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A suspect who has received and understood the *Miranda* warnings, and has not invoked his *Miranda* rights, waives the right to remain silent by making an uncoerced statement to the police.

QUESTION: Does a waiver of the right to remain silent need to be express, or can it be inferred from the actions and words of the person interrogated?

ANSWER: A waiver of the right to remain silent does not have to be explicit. Waiver can be inferred from the actions and words of the suspect. It is incumbent upon the suspect to invoke his or her right to remain silent clearly.

CASE: *Berghuis, Warden v. Thompson*
Supreme Court of the United States, Decided June 1, 2010

In this case, the Supreme Court considered whether a waiver of the right to remain silent must be definite and precise. The facts established that, on January 10, 2000, a shooting occurred outside a mall in Southfield, Michigan. Among the victims was Samuel Morris, who died from multiple gunshot wounds. The other victim, Frederick France, recovered from his injuries and later testified. Van Chester Thompson, who was a suspect, fled. About a year later, he was found in Ohio and arrested there.

Two Southfield officers traveled to Ohio to interrogate Thompson. The interrogation began around 1:30 p.m. and lasted about three hours. The interrogation was conducted in a room that was 8 by 10 feet, and Thompson sat in a chair that swings around to provide a surface to write on. At the beginning of the interrogation, one of the officers, Detective Helgert, presented Thompson with a form derived from the *Miranda* rule. The form contained the standard *Miranda* warnings, including a fifth paragraph that read: "You have the right to decide at any time before or during questioning to use your right to remain silent and your right to talk with a lawyer while you are being questioned." Detective Helgert asked Thompson to read the fifth warning out loud. Thompson complied. Detective Helgert did this to make sure that Thompson understood English. Detective read the other four *Miranda* warnings out loud and asked Thompson to sign the form to demonstrate that he understood his rights. Thompson declined to sign the form.

The officers then began an interrogation. At no point during the interrogation did Thompkins say that he wanted to remain silent, that he did not want to talk with police or that he wanted an attorney. Thompkins said very little during the three-hour interrogation. He gave only limited one word responses, such as “yeah,” “no,” or “I don’t know.” He also nodded his head a few times. Thompkins declined a peppermint and complained that his chair was “hard.”

After about 2 hours and 45 minutes, Detective Helgert asked Thompkins if he believed in God. Thompkins looked at the detective and said “Yes.” Thompkins eyes also began to fill with tears. Detective Helgert asked Thompkins if he prayed to God, and Thompkins said “Yes.” The detective then asked Thompkins if he prayed to God to forgive him “for shooting that boy down?” Thompson answered “Yes” and looked away. Thompkins refused to make a written confession and the interrogation ended minutes later.

Thompkins was charged with first-degree murder and related offenses. He moved to suppress the statements made during the interrogation. He argued that he had invoked his Fifth Amendment right to remain silent, requiring police to end the interrogation at once. The trial court denied the motion. Thompkins appealed. After a series of appeal through both State and federal courts, the Supreme Court agreed to hear the case.

The Supreme Court stated that, in the context of invoking the right to remain silent, the test was the same invoking the right to counsel--the suspect must do so unambiguously. If an accused makes statement concerning the right to remain silent that is unclear or vague, then, in essence, the accused has not invoked his right to remain silent. The burden is on the accused to assert his or her right in a clear and direct way. If he or she doesn’t do so, the interrogation may continue. Otherwise, police would be required to “guess” about an accused’s unclear intent and face the consequences of suppression if the “guess wrong.” Since Thompkins did not say that he wanted to remain silent or that he did not want to talk with the police, he failed to invoke his right to remain silent. And, since the evidence established that Thompkins waiver was both knowing and voluntary, his statements were properly admitted at trial.

NOTE: A knowing and voluntary waiver of *Miranda* rights does not require an explicit written waiver, although that practice is preferred, or a formal, express oral statement. In the absence of these, however, the State’s burden of proving by a preponderance of the evidence that the defendant knowingly and intelligently waived his or her privilege against self-incrimination or his or her right to retained or appointed counsel is more difficult. If, however, the *Miranda* rights were given and understood, an accused’s uncoerced statement establishes an implied waiver of the right to remain silent. And, once the warnings are given understood, and waive, police are not required to rewarn suspects from time to time.

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