

"US Supreme Court Shines More Light on a Defendant's Fifth Amendment Rights in *Salinas v. Texas*"

CASE NAME: Genovevo Salinas, Petitioner v. Texas (Opinion No. 12-246: June 17, 2013)

ISSUE:

Does the Fifth Amendment privilege against compulsory self-incrimination prohibit a prosecutor from using a defendant's pre-custodial silence as evidence of their guilt?

FACTS:

In 1993 the Houston City police department detective's division began to suspect Genovevo Salinas of having committed two murders. They asked Salinas to come to the police station to "take photographs and to clear him as a suspect." Salinas was taken by the police into an interview room at the police station. Critically, Salinas was not advised of his "Miranda warnings" because he was "free to leave." After answering several questions, Salinas fell silent when he was questioned about a shotgun that was recovered from his home and whether or not "it would match shells recovered at the scene of the murder." Salinas was later convicted of murder at a jury trial. During closing statement, the prosecutor commented to the jury that Salinas had quit answering questions halfway through the interview at the police station.

QUESTION:

Did the Fifth Amendment of the United States Constitution prohibit the Texas prosecutor from commenting to the jury in closing statement regarding Salinas' silence at the police station halfway through the interview?

HOLDING:

No; and accordingly, the decision of the Texas State Court of Appeals upholding Salinas' conviction is affirmed.

Salinas' Fifth Amendment claim fails because he did not expressly invoke his privilege against self-incrimination in response to the officer's questions. A witness who "desires the protection of the privilege must claim it." Additionally, a witness who claims it must also claim it at the time he relies upon it. The US Supreme Court has consistently recognized two exceptions to this requirement. First, a criminal defendant does not have to take the stand and assert the privilege against self-incrimination at their own trial. In the case at bar, Salinas' silence falls outside of this exception because he did not have an unqualified right not to speak during the police interview. The second exception is that a witnesses' failure to invoke the privilege against self-incrimination will be excused where "governmental coercion" makes the forfeiture of this privilege involuntary. Likewise, Salinas cannot benefit from this exception because it is undisputed (from the record) that he agreed to accompany the officers to the police station and was free to leave the police station at any time.

Salinas asks this Court to establish a third exception to the express invocation requirement for cases (as here) where the witness chooses to stand silent or mute rather than give an answer that officials suspect would be incriminating. Due to prior opinions and case law from this Court, the US Supreme Court declined to establish the third exception sought by Salinas.

The US Supreme Court has previously held that "a defendant does not normally invoke the privilege by remaining silent" Roberts v. United States, 445 U.S. 560. Additionally, in Berghuis v. Thompkins, 560 U.S. 370, the Supreme Court held that a defendant failed to invoke his right to remain silent and cut off police

questioning when he in fact remained silent for two hours and 45 minutes. While the Fifth Amendment guarantees that no one may be "compelled in any criminal case to be a witness against himself", it does not create an "unqualified right to remain silent." Furthermore, forfeiture of the privilege against self-incrimination may be unknowing. In its opinion, the US Supreme Court emphasized that it has long required defendants to assert the privilege against self-incrimination in order to subsequently benefit from it.

In the case at bar, the prosecutors comments regarding Salinas' pre-custodial silence did not compel him to give self-incriminating testimony. The US Supreme Court has consistently held that the Fifth Amendment prohibits a prosecutor or judge from commenting upon a defendant's failure to testify; however, this rule should not be extended to a defendant's silence during a pre-custodial interview.

It has long been settled that the privilege against self-incrimination "generally is not self-executing and that a witness who desires its protection must claim it." Here, Salinas was required to assert the privilege before he could attempt to benefit from it. In the case at bar, all parties agree that the interview of Salinas was non-custodial.

In summary, the critical question posed by this case is whether or not under the "circumstances present" Salinas was deprived of his ability to voluntarily invoke his Fifth Amendment rights (while being questioned in a non-custodial setting at the police station). The Court found that he was not. Critically, the Court stressed that there was no allegation that Salinas' failure to assert the privilege was involuntary, and it would have been simple for him to inform the police officers that he was refusing to answer any further questions pursuant to his rights under the Fifth Amendment. Because he failed to so state, the prosecution's use of his non-custodial silence (and comment upon same) did not violate Salinas' Fifth Amendment rights.

Accordingly, the judgment of the Texas State Court of Appeals is affirmed.