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ONE MINUTE BRIEF

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NUMBER: 2019-11 **DATE:** 04-29-19 **BY:** Devallis Rutledge **TOPIC:** Ambiguity After Waiver

ISSUE: What are the rules on clarifying a suspect's ambiguous statements *before* and *after* a valid *Miranda* waiver?

Before the prosecution can introduce in its case-in-chief a suspect's statement obtained by police custodial interrogation, a valid *Miranda* waiver must usually be shown. *Miranda v. Arizona* (1966) 384 US 436, 444. "A heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived," *Id.*, at 470, and if the suspect indicates "in any manner" that he does not want to be questioned, no waiver can be established. *Id.*, at 445. This means that any ambiguity as to the suspect's wishes **when a waiver is sought** must be **clarified before proceeding**. *People v. Duff* (2014) 58 Cal.4th 527, 553-54.

"However, when ... a defendant **has waived** his *Miranda* rights and agreed to talk with police, any **subsequent** invocation of the right to counsel or the right to remain silent must be **unequivocal and unambiguous**. ... [O]fficers may, but **are not required to**, seek clarification of ambiguous responses before continuing substantive interrogation [once a waiver has been obtained]. The same rules apply to an invocation of the right to **silence** as apply to an invocation of the right to **counsel**."

People v. Sanchez (2019) ___ Cal.5th ___, No. S087569, slip. opn. at p. 46.

- For example, Juan Sanchez raped a teenaged girl and then murdered the girl and her mother. After arrest, he was fully *Mirandized* and **gave a valid waiver**. Police then asked him to submit to a voice-stress analyzer test, and he agreed. During the instructional exchange with the officer about how the test would be conducted, Sanchez said, "I want you to put the machine on me. I'm not going to say nothing more."

The officer turned on the machine and began interrogation, which culminated in a confession the following day. Appealing his conviction and death sentence, Sanchez argued that he had invoked his right to remain silent, triggering *Miranda* sanctions. The California Supreme Court unanimously disagreed:

*“In context, defendant’s statement, ‘I’m not going to say nothing more,’ was **not an unambiguous invocation** of his right to remain silent. Instead, the statement showed impatience to take the voice stress analyzer test. ... [W]e find that defendant did not unequivocally invoke his right to silence....”* *Id.*, at p. 47-48.

Noting that Sanchez had already given a valid waiver **before** his ambiguous remark during the test prep, the court said this:

*“The question whether a suspect has waived the [Miranda rights] with sufficient clarity **prior to the commencement of interrogation** is a **separate inquiry** from the question whether, **subsequent to a valid waiver**, he or she effectively has invoked.... It is settled that in the latter category, **after** a knowing and voluntary waiver, interrogation may proceed until and unless the suspect **clearly** [invokes].”* *Id.*, at p. 46.

- If the suspect **clearly** asserts either his right to silence or his right to counsel upon *Miranda* advisement, his subsequent statements **cannot be used** to argue that “in context,” his initial response was not intended as an invocation. *Smith v. Illinois* (1984) 469 US 91, 99.

BOTTOM LINE: If a Mirandized suspect responds to the warnings with an equivocal or ambiguous response, officers should clarify whether the suspect is waiving or invoking his rights; however, once a valid waiver has been obtained, the suspect’s subsequent equivocal or ambiguous statements need not be treated as invocations, and need not be clarified, before interrogation continues.

(Bold emphases added and citations omitted in quoted material.)

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