LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

ONE MINUTE BRIEF

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NUMBER: 2020-16 **DATE: 05-04-20** **BY: Devallis Rutledge** **TOPIC: "Clarifying Questions"**

ISSUE: When may interrogating officers ask clarifying questions when seeking a *Miranda* waiver?

If a suspect facing custodial interrogation responds to a *Miranda* admonition by saying something **unambiguous**, such as "I'm not saying anything," or "I want an attorney," there's nothing to clarify, so no admissible statement can be obtained by an officer's continuing to talk. *Arizona v. Roberson* (1988) 486 US 675, 681. On the other hand, if the suspect's response is **ambiguous,** the officer may ask "clarifying questions" to determine whether the suspect is invoking, or waiving. *People v. Duff* (2014) 58 Cal.4th 527, 553-54; 1MB 2019-11.

But what if a simple "No" that appears *in isolation* to be an unambiguous invocation is actually *ambiguous,* **in the context of the waiver question** asked by the officer?

- Alfred Flores murdered multiple victims, in two jurisdictions. After his arrest, detectives from one jurisdiction gave him *Miranda* warnings and obtained a valid waiver at 10:55 pm. The next morning, a homicide lieutenant from the other jurisdiction began his interrogation session with Flores by re-advising him per *Miranda*, but then ad-libbing a **convoluted waiver question**, to which Flores answered "No." The lieutenant continued talking, eventually obtaining admissions as to one murder that were admitted in court. Flores was convicted and sentenced to death.

On appeal, Flores argued that his statements were inadmissible as having been obtained after an unequivocal invocation of his right to remain silent. "No means No." A divided California Supreme Court essentially ruled (5-2) that because the lieutenant's waiver **question** was ambiguous, the suspect's **answer** was therefore also ambiguous, permitting the lieutenant to seek to clarify the suspect's wishes, after which the suspect agreed to talk.

After advising Flores of his rights, the lieutenant had made statements about **two different topics** and then asked, "Do you want to talk about ***that****?"* What your grammar teacher used to call the mistake of a "vague antecedent," the court called a waiver question that was "unclear," "imprecise," and "poorly framed." The majority (and the dissenters) then spent a total of 37 pages of a 107-page opinion analyzing the issues created by the lieutenant's "poorly framed inquiry."

"[T]he clarity of a suspect's answer may depend on the clarity of the officer's question. … [B]ecause [the lieutenant's] question was imprecise … it was therefore reasonable to clarify.

"We do not hold that an officer may purposefully create ambiguity in a suspect's invocation of rights by asking an unclear question. ***Officers should do just the opposite****.* ***They should ask clear questions amenable to simple answers****." People v. Torres* (2020) ___ Cal.5th ___ , No. S116307, slip opn. at 67, 76 (Emphasis added; citations omitted).

(The lieutenant arguably created multiple issues by not following best practices:

• For example, he **needlessly re-Mirandized** within hours of a previous admonition and waiver. See 1MBs 2005-03, 2009-13.

• He did not attempt an **implied waiver**. See 1MB 2008-18.

• He apparently did not **read** the warning from the POST-issued card, and ad-libbed his "poorly framed" waiver question. See 1MB 2005-10.

• He did not seek an **unconditional** waiver, but limited interrogation to talking just about "that." See 1MB 2019-18.)

<u>BOTTOM LINE</u>: If the suspect responds to a *Miranda* warning with an *unambiguous* reply, clarifying questions are not permitted; if his response is *ambiguous,* it may be clarified; however, officers who seek express waivers <u>should not create ambiguity</u> with the form of their questions.