San Diego District Attorney

D.A. LIAISON LEGAL UPDATE

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Vol. 13 March 12, 2008 No. 3
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Remember 9/11/01; Support Our Troops

Robert C. Phillips (858) 395-0302
Deputy District Attorney (Retired) RCPhill808@AOL.com

THIS EDITION'S WORDS OF WISDOM:

"*Hard work spotlights the character of people: some turn up their sleeves, some turn up their noses, and some don't turn up at all.*" (Sam Ewing)

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***ADMINISTRATIVE NOTES*:**

DA Liaison Deputy: While I continue to remain available to answer legal questions from any and all cops and prosecutors, I must also reiterate that police officers working for the six law enforcement agencies that were previously my responsibility (i.e., San Diego Sheriff, Carlsbad, Oceanside, Escondido, El Cajon and La Mesa Police Departments) have a new liaison deputy; Bob Amador (858-

974-2419, Robert.Amador@sdsheriff.org). I'm telling you this not to discourage you from calling or e-mailing me, but because a lot of officers from the above-listed agencies are apparently still unaware that they have a new liaison deputy.

House for Sale: Breaking a long-standing rule about commercial advertising in the Update, please note that I'm about to put my house on the market after I complete some repairs/upgrades. It's semi-rural horse property in a quiet corner of Poway on two-thirds of an acre, already with a couple of cops (SDPD and EPD) and a fire chief as neighbors. It has three bedrooms, 1½ baths, a large family room, hardwood floors throughout, and an older but serviceable swimming pool. Good schools are all within walking distance. How much I'll be asking for it depends upon a yet-to-be completed appraisal in this deflated, buyer-oriented, market. But I'm willing to split the cost of a real estate broker with you if we can reach a fair deal. More detailed information is available to interested parties.

CASE LAW:

***Sexual Assault; Victim Unconscious of the Nature of the Act*:**

People v. Stuedemann **(Sept. 21, 2007) 156 Cal.App.4th 1**

Rule: A victim who is aware of a sexual touching as it occurs, but who doesn't complain until it occurs due to defendant's representation that he is merely giving her a lawful massage, is not "*unconscious of the nature of the act*."

Facts: Victim Griselda R. accepted a complimentary massage from defendant, a professional masseuse, at a swap meet. Sufficiently satisfied with defendant's performance, she made an appointment with him at his place of business. When Griselda arrived for her scheduled massage, defendant had her disrobe down to her underwear. The massage, which started innocently enough, eventually let to defendant massaging her breasts. Although Griselda was uncomfortable with this, she didn't complain because she assumed it was a normal part of the massage. This, however, led to him pulling down Griselda's panties and twice inserting his finger into her vagina. This, in turn, led to defendant orally copulating her, at which point she "sat up quickly and told him to stop." Defendant immediately complied. After leaving and later discussing this occurrence with a friend, Griselda complained to the police. In a controlled phone call, defendant admitted to getting "lost in fantasy" while committing the alleged acts. He apologized and said that his conduct was "completely uncalled for" and "inappropriate." As a result, defendant was charged with both oral copulation and rape by a foreign object (i.e., his finger) with a victim who was unconscious of the nature of the acts. (P.C. §§ 288a(f)(3) and 289(d)(3), respectively.) Defendant was convicted of all counts and appealed.

Held: The Fourth District Court of Appeal (Div. 1) reversed, finding insufficient evidence to prove that Griselda was unconscious of the nature of the act. Both the "oral copulation" and the "rape by foreign object" sections include subdivisions that punish the sexual act when the victim is "unconscious of the nature of the act and this is known to

the person committing the act." (I.e., P.C. §§ 288a(f)(3) and 289(d)(3).) A victim is "*unconscious of the nature of the act*" whenever he or she is "incapable of resisting because the victim meets one of" four qualifying conditions listed in the statutes. The prosecution in this case chose to prosecute defendant under only one of these qualifying conditions; i.e., that the victim "[w]as not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact." The statutes, however, don't define the term "*fraud in fact*." So the Court turned to prior case authority for a definition. In so doing, the Court noted that there are two types of fraud; "*fraud in fact*" and "*fraud in the inducement*." The fraud in this case was in telling her that she was to receive a legitimate massage when in fact she was to be subjected to some sexually-motivated touchings. The issue is whether defendant's fraud negated, or "*vitiated*," the victim's consent to the touching. First, it must be determined whether defendant's misrepresentations are to be classified as a "*fraud in fact*" or a "*fraud in the inducement*." The general rule is that "*fraudulently induced consent is consent nonetheless*," and therefore cannot lead to an illegal act. So while "*fraud in the inducement*" does not vitiate consent, "*fraud in fact*" does. However, Griselda was not ignorant of the true nature of the acts performed on her. She knew that she was to be touched. When the touching degenerated into a sexual touching, she immediately recognized it for what it was, telling him to stop. Defendant's fraud, therefore, did not make Griselda unconscious of the nature of what was being done to her. There being no "unconsciousness" involved, defendant cannot be guilty under this theory.

Note: The fine hair-splitting done by the Court in this case left me a bit confused. For example, the Court describes what constitutes "*fraud in the inducement*," but never really says that defendant's acts fell into this category. In fact, it eventually notes that defendant's acts here are to be classified as a "*fraud in fact*," but that he still didn't do anything illegal. This is because his fraud did not cause Griselda to be unconscious of what was going on, as the charged sections require. The Court also hints that defendant might have been guilty of these charges under one of the other legal theories listed in these two statutes, but then intimates that defendant didn't do anything illegal by suggesting that the Legislature do something to fix the hole in the statute to cover his acts. And then finally, in a footnote (fn. 6), the Court tells us that it would have reduced defendant's conviction to the lesser included offenses of misdemeanor battery, per P.C. §§ 242 or 243(a), had someone asked. I am also wondering why it wasn't a felony sexual battery, per P.C. § 243.4(c). Anyway, it all left me confused.

***Possession of a Completed Check, per P.C. § 475(c)*:**

People v. Mares **(Sept. 27, 2007) 155 Cal.App.4th 1007**

Rule: A filled-out bank withdrawal slip is a "*completed check*" for purposes of P.C. § 475(c) (possession of a completed check with the intent to defraud).

Facts: Defendant went to an "upscale" car dealership and test-drove a luxury car. While negotiating for the car, he was apparently given a form used for transferring monies electronically directly from a customer's bank account to the dealership's bank account.

The form listed the dealership's name, bank account number and routing number. A month later, defendant showed up at the dealership's bank and, giving the clerk the dealership's account and routing numbers, asked to withdraw $5,000 from what he told them was his account. The bank teller helped him fill out a withdrawal slip and, with defendant's signature and a supervisor's okay, gave defendant the requested money. Defendant also asked for, and received, a copy of the dealership's bank statements reflecting, along with other information, the fact that there was a $4 million balance and that over $34,000 had recently been deposited. Returning to the dealership with these documents, defendant showed them to the salesman while claiming to have a $34,000 credit with the dealership. He then asked them to apply $14,000 of that credit towards the purchase of a new $40,000 car with the remaining $20,000 being refunded to himself. The dealership employees finally got suspicious and checked out the paperwork, discovering that the documents defendant possessed were for the dealership's own account. When they refused to return the documents to him, the irate defendant called the police. Defendant told the responding officers that the bank account was his and that the $4 million in the account had been donated to him by a church. Defendant ended out getting himself charged with two counts of second-degree (commercial) burglary and possession of a completed check with the intent to defraud (P.C. § 475(c)). Despite defendant's claim that he mistakenly believed that all that money was his, defendant was convicted of all charges. He appealed, arguing (among other issues) that a bank withdrawal slip did not qualify as a completed check, and thus could not be convicted of P.C. § 475(c); possessing a completed check with the intent to defraud.

Held: The Fourth District Court of Appeal (Div. 2) affirmed. P.C. § 475(c) makes it a felony to possess "any completed check, . . . whether real or fictitious, with the intent to utter or pass or facilitate the utterance or passage of the same, in order to defraud any person." Defendant's argument on appeal was that the he used a *withdrawal slip*, which is not listed in the section. The Commercial Code, however, defines a "check" as (1) a draft, other than a documentary draft, payable on demand and drawn on a bank, (2) a cashier's check or teller's check, or (3) a demand draft. An instrument may be a check even though it is described on its fact by some other term. (Cal. U.C.C. § 3104(f)) A "draft" is an order to pay upon demand and includes a check. (Cal. U.C.C. § 3104(e)). Based upon this, the Court here reasoned that a withdrawal slip, as a "preprinted order directing the bank to pay the authorized person on the account a sum certain 'upon demand,'" qualifies as a type of check when it is filled out and handed over to the teller. When defendant used the filled-out withdrawal slip as a means of extracting money from the car dealership's bank account, he violated P.C. § 475(c).

Note: Another issue concerned the trial court's failure to instruct the jury that if they found that defendant really believed that the money in the bank was his, whether that belief was reasonable or not, such a belief is enough to negate the required "*specific intent*" to defraud. But that error, says the Appellate Court, was "*harmless*" and did not require a reversal. This is because despite defendant's erratic behavior (he was later diagnosed with a "Delusional Disorder, Grandiose and Persecutory Types"), there was plenty of evidence that he was not as crazy as he was putting on. But those little problems aside, the reason I briefed this case was to let it be known that the term "*check*"

is not limited to what you and I commonly know to be a check, at least for purposes of P.C. § 475. So while a lot of you like to complain that your D.A.'s office doesn't take chances and file unusual charges, it is apparent here that some issuing DDA took the time to do a little research on what constitutes a "check" and issued on a charge that a lot of us would never have even considered. Good work.

***Possession of a Weapon by an Inmate and Self-Defense*:**

People v. Saavedra **(Oct. 29, 2007) 156 Cal.App.4th 561**

Rule: The possession of a weapon by an inmate of a penal institution may be justifiable when that inmate is confronted with the imminent danger of a mortal attack, at least where the weapon is immediately thereafter turned over to the authorities.

Facts: Defendant, while an inmate at the Centinela State Prison, was physically assaulted by two other inmates in the prison yard. Guards used pepper spray to break up the attack. As a result of the fight, defendant suffered some cuts, scrapes and bruises, and lost his dentures. He appeared to be dazed, and complained of having difficulty breathing. He was taken to the prison's medical clinic where he was given oxygen, and later transported by stretcher to the central health center where he was thoroughly searched. An inmate-manufactured knife, consisting of a single razor blade wrapped in tissue and attached by masking tape to a shaving razor handle, was found in his shoe. Although able to communicate to the medical staff, defendant was purportedly "in so much pain that he could not answer" when asked about the knife. The guard later testified that defendant never told him about the presence of the weapon. Defendant was charged with possession of a weapon while confined in a penal institution, per P.C. § 4502. At trial, defendant claimed that the weapon was not his and that he noticed it for the first time when one of his assailants dropped it. Defendant testified that while he was being beaten on, he picked the weapon up off the ground to keep the other inmates from using it on him and put it into his shoe. He also claimed to have told the guard about the weapon as soon as he was conscious enough to do so. The trial court instructed the jury on the defense of "*necessity*." No instructions were requested nor given on the possible defenses of "*duress*" or "*self-defense*." Defendant was convicted and appealed.

Held: The Fourth District Court of Appeal (Div. 1) affirmed. On appeal, the defendant argued that the trial court should have given the jury, sua sponte (i.e., on its own motion), instructions on "*duress*" and "*self-defense*." While first noting that the defense of "*duress*" is only available to a defendant who commits a crime "under threats or menaces sufficient to show that (he) had reasonable cause to, and did believe, (that his) life would be endangered if (he) refused," the Court found that no one made such a threat to defendant here. "*Duress*," therefore, did not apply under the facts of this case. However, the Court ruled that defendant *was* entitled to a "*self-defense*" instruction and that it was error for the trial court not to have so-instructed the jury. P.C. § 4502 makes it a felony for a person confined in "any penal institution" to possess any of the weapons listed in the section (which includes a "sharp instrument"). It has previously been held that the defendant cannot raise the defense of "*self-defense*" merely out of fear of some

anticipated, future attack. But it has also been recognized in dicta that "self-defense might justify violation of the statute where the prisoner (1) was under imminent mortal attack, (2) had no opportunity to seek protection of the authorities, and (3) temporarily seized a prohibited weapon in order to save his life." (*People v. Velasquez* (1984) 158 Cal.App.3rd 418, 420-421.) The Court here ruled that there was substantial evidence to support a self-defense claim and that the jury should have been given the option to consider it. However, under the circumstances of this case, the Court found the error to be "harmless," thus not requiring reversal. This is because the jury had been instructed on the defense of "*necessity*." Had the jury believed defendant when he claimed to have picked up the knife to protect himself, they would have acquitted him based upon the defense of "*necessity*." Because the jury convicted him, they obviously did not find him credible. Having found that "necessity" did not apply, the jury necessarily would have also rejected defendant's claim that he possessed the knife in self-defense. Also, for this limited self-defense theory to apply, it must also be shown that the defendant possessed the weapon "no longer than was necessary to deliver or transport the (weapon) to a law enforcement (officer)." Even by defendant's own account, he did not tell the prison staff about the knife until after it was discovered in his shoe, if he told them at all. Defendant, therefore, would have been convicted even if the jury had been properly instructed.

Note: This rule is consistent with the previously established rule (and now a statute; see P.C. § 12021(h)) that a convicted felon, charged with being a felon in possession of a firearm (P.C. § 12021), may use the defense of self-defense when he grabs a firearm upon being confronted with an imminent danger, in those instances where "the firearm only became available during an emergency and was possessed temporarily in response to the emergency and there was no other means of avoiding the danger." The firearm must also have been immediately thereafter transported or given to law enforcement. (*People v. King* (1978) 22 Cal.3rd 12, 24.) But in the case of a jail or prison inmate, I'm not sure that allowing inmates to possess a weapon under *any* circumstance is a good idea, a theory that can only help to generate a certain amount of havoc as inmates claim justification for grabbing any and all weapons in supposed self-defense during, for instance, a jail riot. Suppression of a jail riot, it would seem to me, requires the minimization of the use of weapons; not legalization of the opportunity to use them.

***Residential Entry Serving a Misdemeanor Bench Warrant*:**

***United States v. Gooch* (9th Cir. Nov. 1, 2007) 506 F.3rd 1156**

Rule: A non-consensual residential entry to execute a bench warrant is lawful.

Facts: Spokane Police Department Officer Alan Edwards contacted the occupants of a motor vehicle that was observed stopped on the road. Officer Edwards recognized the passenger as Michael Conn, who he had arrested once before. While Officer Edwards was doing a warrant check, Conn fled on foot. Edwards gave chase, running in the direction of Conn's known residence on Regal Street in Spokane. By the time Officer Edwards got to the Regal Street address, he had lost sight of Conn. He didn't see Conn enter the house, but he heard a commotion at the back door; the home's only usable

entrance. While waiting for backup, Officer Edwards received information that Conn had an outstanding bench warrant for his arrest, stemming from his failure to appear in court on a probation violation. When help arrived, Officer Edwards and a second officer entered the residence, searching for Conn. The officers searched all the rooms, including a bedroom belonging defendant Gooch. Noted in plain sight in both Conn's and defendant's individual bedrooms were several residue-coated spoons and other paraphernalia, suggesting heroin use. The officers left without locating Conn (who, it was later determined, was hiding in the attic) and obtained a search warrant for controlled substances, using their plain sight observations in the house as their probable cause. Returning some days later with the warrant, defendant, a convicted felon, was contacted in his bedroom with three loaded firearms. Charged in federal court with being a felon in possession of a firearm, defendant's motion to suppress the officers' observations which lead to the search warrant, and the guns, was denied. He was convicted and appealed.

Held: The Ninth Circuit Court of Appeal affirmed defendant's conviction. Defendant's argument at trial and on appeal was that a bench warrant, based solely on a person's failure to appear in court and without a specific finding of probable cause, constitutes insufficient cause to justify a non-consensual entry into one's residence. If the entry while looking for Conn was illegal, then the search warrant, with observations made in the house as its probable cause, was illegal. The Court disagreed with defendant's argument that a simple bench warrant does not allow for a non-consensual entry into a residence. The case law clearly allows an entry into a residence for the purpose of executing an arrest warrant. (*Payton v. New York* (1980) 445 U.S. 573; see also *People v. Ramey* (1976) 16 Cal.3rd 263.) A bench warrant, issued by a court when a defendant fails to appear in court, and despite being issued without a showing of probable cause, is still a court order authorizing the arrest of the individual. As such, it carries with it the same authority for making residential entries as does any standard arrest warrant. The Court noted that "a valid arrest warrant issued by a neutral magistrate judge, including a properly issued bench warrant for failure to appear, carries with it the limited authority to enter a residence in order to effectuate the arrest as provided for under *Payton*." It was therefore lawful for the officers to make entry into the residence to look for Conn. Their observations of narcotics paraphernalia being made while in a place they had a legal right to be, using those observations as probable cause for a search warrant was also lawful.

Note: The defendant's argument here is not really all that far-fetched. Recent case authority has been leaning towards emphasizing the privacy rights of an individual in his own home, precluding residential entries by police under circumstances where we used to think making entry was not even an issue. In discussing the legality of residential entries, the Courts have noted that we must balance the right to privacy in one's home with the importance or necessity, if any, of the government's intrusion. (E.g., *Conway v. Pasadena Humane Society* (1996) 45 Cal.App.4th 163, 172; emphasizing the government's "*heavy burden*" in justifying residential entries. And see *People v. Thompson* (2006) 38 Cal.4th 811, discussing the important governmental interest in arresting a DUI suspect in his home.) So it's good to see the Ninth Circuit finding that serving a lowly bench warrant is important enough to outweigh a homeowner's privacy rights. Also note, by the way, the Court's reference in a footnote (fn. 2) that before

entering the residence, an officer must have *full-blown* "*probable cause*" to believe that the subject of the warrant is in fact inside at the time. (*People v. Jacobs* (1987) 43 Cal.3rd 472, 478-479.) The probable cause to believe that Conn had run into his house was not contested in this case. But based upon the questions I get, I know that a lot of officers are still under the mistaken impression that you can check a house just to see if the subject of an arrest warrant might be there, or that you only need a "*reasonable suspicion*" to believe he's there in order to force entry. The law is quite clear that it takes more.

***Detentions; Spotlighting*:**

People v. Garry **(Nov. 13, 2007) 156 Cal.App.4th 1100**

Rule: Spotlighting a person plus aggressive police conduct constitutes a detention.

Facts: Vallejo Police Officer Brian Crutcher, in full uniform and a marked patrol car, observed defendant standing on a street corner at 11:23 p.m. in a "high-crime, high-drug" area of Vallejo, which was also known for being an area where assaults on police officers were common. Officer Crutcher turned his vehicle's spotlight on defendant who was some 35 feet away. Noticing defendant's nervous reaction, the officer immediately got out of his vehicle and "briskly" walked towards him. Defendant took two or three steps backwards while volunteering that he lived there, pointing at a nearby house. Officer Crutcher responded; "Okay, I just want to confirm that." Asked if he was on probation or parole, defendant admitted being on parole. After hearing that, Officer Crutcher decided to detain defendant in order to do a parole search, grabbing onto him as defendant started to pull away and actively resist. Defendant was put on the ground and handcuffed. Searched incident to arrest, 13 individually wrapped pieces of rock cocaine were recovered. Defendant's later motion to suppress the cocaine was denied, the trial court holding that the officer did no more than conduct a "*consensual encounter*" by spotlighting defendant and approaching him, the contact not becoming a detention until defendant admitted to being on parole. Convicted of possession of cocaine for sale, defendant appealed.

Held: The First District Court of Appeal (Div. 2) reversed, ruling that defendant had been illegally detained from the onset. The issue here, of course, is whether the act of spotlighting defendant, followed immediately by the officer "briskly" walking up to him while asking questions, constituted a "*detention*" or merely a "*consensual encounter*." Contrary to the trial court's conclusions, the Appellate Court ruled that under the circumstances as described here, defendant had been detained. And because the prosecution conceded that there wasn't any reasonable suspicion justifying the detention, the resulting evidence should have been suppressed. The test for determining when a consensual encounter becomes a detention is whether, under the circumstances, a reasonable person in the defendant's position at the time would have felt free to ignore the officer's attempts at initiating the conversation. In applying this test to the circumstances in which defendant found himself, the Court reviewed a number of spotlighting cases where detentions were found only when something in addition to the simple act of spotlighting occurred. Such additional circumstances might be when

officers purposely block the defendant's intended path, when the defendant is outnumbered four to one with the officers being overtly armed, or when the officers make commands, "manifest(ing) police authority," leaving little doubt that compliance was mandatory. In this case, the Court found that an officer briskly walking up to a person while asking questions after having spotlighted him, late at night in a high-crime area, was sufficient "manifest(ation)" of "police authority" to cause a reasonable person to believe that he was not free to end the contact. As such, defendant was "*detained*." The evidence recovered as a result of this illegal detention should have been suppressed.

Note: This is undoubtedly a close case. A petition for review by the Supreme Court has been filed but, as of today, has not yet been acted upon. So this decision should not yet be considered as final. But note the lesson to be learned here. The line between a consensual encounter and a detention is indeed thin, and not always easily discerned. While the Court notes that the act of spotlighting (or flashlighting) a person, by itself, is not enough to constitute a detention, it does not take much more in the way of aggressive police actions or other circumstances to cross over the line. The moral to this story is that until you're convinced that you've developed a reasonable suspicion of criminal activity sufficient to justify a detention, keep the contact as low key and non-aggressive as possible while not compromising your own safety. Ask questions in a manner that implies a choice; e.g., "*Sir, do you mind talking to me for a moment*?" Avoid the use of too many officers, surrounding the suspect, or exhibiting weapons unnecessarily. Temper the tone of the conversation keeping it mildly inquisitive as opposed to aggressively accusatory. And then, most importantly, record the circumstances in detail in your reports and be prepared to testify accordingly.

***Miranda*; *Equivocal Invocations and an Officer's Duty to Clarify*:**

United States v. Rodriguez **(9th Cir. Mar. 10, 2008) 2008 DJDAR 3402**

Rule: Absent a prior wavier, an officer has a duty to clarify an equivocal attempt at invocation of one's *Miranda* rights.

Facts: A National Park Service Ranger observed defendant driving his pickup truck erratically through the Lake Mead National Recreation area. Suspecting that defendant was driving while under the influence of alcohol, the Ranger affected a traffic stop. A radio check determined that defendant was a convicted felon. When asked to step out of his vehicle for the purpose of conducting a field sobriety test, the Ranger observed the handle of a pistol protruding from an open bag in the bed of the pickup. Asked if he had any other weapons, defendant admitted to another pistol being under the seat. Upon retrieval of both pistols, one of them was found to have a home-made silencer attached. Defendant was arrested for being a felon in possession of a firearm and the possession of an unlicensed silencer. After being advised of his *Miranda* rights, defendant was asked if he was willing to waive his rights. Defendant responded; "*I'm good for tonight*." The Ranger took this as an indication that he was willing to talk. Based upon this perceived waiver, defendant was later questioned and admitted to ownership of the weapons and the silencer. Charged in federal court, defendant filed a motion to suppress his post-*Miranda*

confession, arguing that he had invoked his right to silence. The trial court denied the motion, ruling that the statement, "*I'm good for tonight*," was sufficiently ambiguous that the Ranger could reasonably have understood it to be a wavier, and that pursuant to U.S. Supreme Court case law (i.e., *Davis v. United States* (1994) 512 U.S. 452.), the Ranger was not required to seek clarification. Defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal reversed. The Court first agreed with the trial court holding that the statement, "*I'm good for tonight*," was ambiguous. Defendant could have been trying to tell the Ranger that he did not intend to talk with him that night, or that he was willing to waive his rights, at least for the night. However, the Court determined that the trial court had misinterpreted *Davis v. United States*. *Davis* does in fact say that a suspect's equivocal attempt to invoke his rights under *Miranda* is legally ineffective, and that a police officer may continue an interrogation without seeking clarification of such a statement. However, *Davis* specifically deals with the situation where the in-custody suspect has already waived his rights and then, during the ensuing interrogation, made the ambiguous attempt at an invocation. Prior case law (e.g., *Nelson v. McCarthy* (9th Cir. 1981) 637 F.3rd 1291.), holding that an ambiguous attempt at an invocation triggers a duty on the part of the law enforcement interrogator to clarify whether the suspect is in fact asking to remain silent or for an attorney, is still the law. The only exception to this rule, as provided in *Daivs*, is when there is a prior valid waiver and the equivocal comments that could possibly be interpreted as an invocation don't occur until sometime during the ensuing interrogation. In such a situation, the officer is not required to seek clarification and may validly continue on with the already-occurring questioning. In the instant case, because there was no such prior valid waiver of his *Miranda* rights, defendant's equivocal statement, made upon being advised of his rights, should have been clarified before he was interrogated. Having failed to seek such clarification, defendant's confession should have been suppressed.

Note: Well now, this literally screws up a lot of training I've been providing over the years. While a lot of you may question the validity of this ruling (perhaps based upon information I've given you myself), and while this decision is not yet final and may very well be appealed, I have to admit to you that I think the Ninth Circuit is "spot on" in this case. While conceding that there are a few jurisdictions that have ruled to the contrary, the Court notes in a footnote (fn. 6.) that at least three state supreme courts and three other lower appellate courts have reached similar conclusions. And in my readings, I've also found that our own California Supreme Court has at least strongly intimated that equivocal invocations can only be ignored when made during an interrogation after a prior valid waiver. (See *People v. Gonzalez* (2005) 34 Cal.4th 1111 and *People v. Stitely* (2005) 35 Cal.4th 514.) Also, as a side issue not discussed in this case, I've been teaching that the majority rule is that an equivocal invocation may be ignored only when the suspect makes a request for an attorney. However, this case (and several others; see *People v. Farnam* (2002) 28 Cal.4th 107; and *People v. Stitely*, *supra*; and the dissenting opinion in *Arnold v. Runnels* (9th Cir. 2005) 421 F.3rd 859.) have applied the same rule to equivocal attempts at invocation to one's right to silence as well. So I'm going to have to go back an re-read a lot of case law on this and will report back to you when I'm more comfortable with admitting that I've been wrong all these years. Stay tuned.