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Remember 9/11/01; Support Our Troops

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THIS EDITION'S WORDS OF WISDOM:

“If a man says something in the forest and there’s no woman around to hear him, is he still wrong?” (Unknown author)

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ADMINISTRATIVE NOTES:

The New Legal Update Webpage: After some growing pains, the new Legal Update Webpage is almost ready to kick off. By clicking on the link (or typing into your web browser) www.legalupdateonline.com, you will be able to access the current and prior Legal Updates, as well as (as we build onto it) a wealth of other useful and important legal, law enforcement-orientated information. When a new Legal Update is published, those of you who are on the e-mail mailing list

will receive notice of its availability on legalupdateonline.com. Your feedback, pro and con, will be appreciated.

CASE LAW:

Miranda; Ignoring an Attempted Invocation:

People v. DePriest (Aug. 9, 2007) 42 Cal.4th 1

Rule: Statements obtained in violation of *Miranda* (i.e., ignoring an invocation), so long as not “coerced,” are admissible for purposes of impeachment.

Facts: Defendant, a parolee, left San Bernardino for Garden Grove despite his parole agent’s denial of permission to leave the area. In Garden Grove, Hong Thi Nguyen’s bruised and battered body, bleeding from a head wound and nude from the waist down, was found discarded along with the trash at the rear of a Thrifty Drug Store. She died on the way to the hospital. A later autopsy showed that although she died from a gunshot to the head, she had also been beaten, strangled and raped. Her purse and Toyota MR2 were missing. Two days later, defendant was seen in Springfield, Missouri, driving Nguyen’s Toyota MR2. Defendant subsequently got into a shootout with the Springfield police, wounding one officer, and was arrested. A couple of weeks later, defendant, charged only with his Missouri offenses, was visited in jail by two Garden Grove detectives. As soon as he was told that they were from California and that they needed to advise him of his *Miranda* rights, defendant blurted out that he had been advised by both his mother and a California attorney (apparently hired by his mother) not to talk to the police. Acknowledging that defendant had just invoked his *Miranda* rights, the detectives prepared to terminate the interview. But on the way out, one of the detectives commented; “Well, you understand that this can’t be used in the case-in-chief against you.” The detective later admitted in testimony that although not part of any pre-planned tactic, his intent in making this comment was to get defendant talking in the hopes of obtaining some incriminating statements that the prosecution might be able to use for impeachment purposes. No one ever discussed with defendant the intricacies of this legal concept or the differences between the People’s “case-in-chief” and impeachment during rebuttal. The tactic worked, leading to defendant making some incriminating statements that directly connected him to Nguyen’s murder. Charged with capital murder, defendant sought to suppress his statements to the Garden Grove detectives, arguing that the statements should not be allowed into evidence for any purpose. The trial court denied his motion. With the specter of being impeached by his statements to the detectives, defendant did not testify at his trial. Convicted of all charges and sentenced to death, defendant’s appeal to the California Supreme Court was automatic. Among the issues on appeal was whether it was error for the trial judge to refuse to suppress his statements.

Held: The California Supreme Court unanimously affirmed. Defendant’s primary argument on appeal was that the 2000 U.S. Supreme Court decision of *Dickerson v. United States* (530 U.S. 428), reaffirming the rule of *Miranda*, had the effect of reversing the long standing rule that uncoerced statements, obtained in violation of *Miranda*, were

admissible for purposes of impeaching the credibility of a defendant who testifies and lies (See *Harris v. New York* (1971) 401 U.S. 222; *People v. Peevy* (1998) 17 Cal.4th 1184.), even though those same statements are otherwise inadmissible in the People's case-in-chief. To this the Court simply noted: "Nothing in *Dickerson* indicated that the court's careful balancing of the parameters of the *Miranda* rule had changed." The Court did note, however, that telling Defendant after his invocation that his statements could not be used in the People's "case-in-chief," without further explaining the converse principle; i.e., that those same statements might be used for purposes of impeachment, was an issue that could not be ignored. However, under the facts of this case, with a man who held his own during the interrogation, "there (was) no evidence that defendant, a convicted felon, did not understand (the detective's) point, or that detectives otherwise mischaracterized the interview as wholly 'off the record.'" The Court further found that nothing in the detectives' tactics, even their failure to explain to him about the potential use of his statements for purposes of impeachment, amounted to coercion. Under the circumstances of this case, where the unrestrained defendant was comfortable, the interrogation was brief (45 minutes), there was neither threats nor harsh questioning, and absolutely nothing was done by the detectives that might have "overborne" his "free will, . . . neither the failure to read defendant his *Miranda* rights, nor the continued interrogation after he asserted such rights, compels a finding of official coercion." Allowing defendant's statements to be available for use by the prosecution for impeachment purposes was not error.

Note: The Court, at least in this decision, made no mention of the propriety of ignoring a defendant's invocation and questioning him anyway, purposely attempting to obtain impeachment evidence. This glaring omission is surprising, given ravings by the Court in prior cases discussing the inadvisability of such an interrogation tactic. For instance, it wasn't too long ago that a very angry Supreme Court expended a significant amount of ink severely chastising several detectives for doing just that. (See *People v. Jablonski* (2006) 37 Cal.4th 774.) Specifically, the Court in *Jablonski* referred to such an intentional *Miranda* violation as "*unethical*," and a tactic that is "*strongly disapproved*." (*Id.*, at p. 817.) Given the usual negative reaction by both the California Supreme Court (see also *People v. Neal* (2003) 31 Cal.4th 63.) and the United States Supreme Court (e.g., *Missouri v. Seibert* (2004) 542 U.S. 600, at fn. 2.) to police officers purposely ignoring suspects' attempted *Miranda* invocations, there are those of us who strongly believe that police officers and prosecutors, being bound by both the United States and California Supreme Courts' firm dictates not to engage in such misconduct, should not be doing this. The failure of the Court in this case to discuss the issue does not alter this conclusion.

Airport Searches as an Administrative Search:

United States v. Aukai (Aug. 10, 2007) 497 F.3rd 955

Rule: The warrantless, suspicionless search of airline passenger, after passing through the magnetometer, is lawful as an administrative search. Because such a search is *not* an issue of "implied consent," the person being searched has no right to change his mind.

Facts: Defendant intended to board a Hawaiian Airlines flight from Honolulu to Kona, Hawaii. Checking in at the ticket counter, defendant failed to produce a government-issued picture identification. As a result, the ticket agent wrote “No ID” on his boarding pass. Defendant proceeded to the security checkpoint where signs were posted advising prospective passengers that they were subject to search. Neither defendant nor his carry-ons triggered any alarms at the magnetometer. But when he presented his boarding pass (marked “No ID”) to a Transportation Security Administration (TSA) officer, he was directed to the secondary screening area. TSA standardized procedures require that passengers without ID be subjected to a secondary screening despite the lack of any other reason to be suspicious. Secondary screening consists of a TSA officer passing a handheld magnetometer (i.e., a “wand”) near and around the passenger’s body. If the magnetometer alarm is set off, then the TSA agent will pat down that area of the passenger’s clothing. If that area is near a pocket, the passenger will be directed to empty his pocket. Although complaining that he was running late, defendant initially complied when directed to the secondary screening area. However, he didn’t stay there, returning to the carry-on conveyor belt where he tried to retrieve his belongings. He was brought back to the secondary screening area again, still complaining about being late, and subjected to the wand. The wand alarm was triggered when it passed over defendant’s right front pants pocket. When asked what he had in that pocket, defendant denied that there was anything there. The wand was used again with the same result. Defendant continued to deny that there was anything in his pocket. The TSA agent felt the outside of the pocket and could feel an object in it. Defendant announced at some point during these proceedings that he no longer wanted to board the plane and that he wished to leave the airport. However, he was not allowed to leave. When the wand triggered at defendant’s pants pocket a third time, he was told to empty his pocket. Defendant removed some keys or change, but there was still a visible bulge. He finally removed a glass meth pipe. A law enforcement officer was summoned and defendant was arrested. Searched incident to the arrest, methamphetamine was recovered. Indicted in federal court, defendant’s motion to suppress the meth (and some resulting incriminating statements) was denied by the trial court. Defendant pled guilty and appealed.

Held: The Ninth Circuit Court of Appeal affirmed. Normally, the Fourth Amendment requires “*probable cause*” and a search warrant as a prerequisite to conducting a search. But the U.S. Supreme Court has recognized that “where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as ‘reasonable’” Airport searches are one of those categories where the risk to the public safety is so great that the need to do “*blanket suspicionless searches*” has been recognized. Airport searches are constitutionally reasonable so long as it is no more extensive nor intensive than necessary under the circumstances. While there are cases that have held that an administrative search can be upheld on an “implied consent” theory (e.g., by voluntarily passing the warning signs at an airport, telling passengers that they and their luggage are subject to search), the Supreme Court has announced that whether the passenger has consented or not is irrelevant. An administrative search is reasonable, with or without consent, when “conducted as part of a general regulatory scheme in furtherance of an administrative purpose, namely, to prevent the carrying of weapons or

explosives aboard aircraft and thereby to prevent hijackings.” Federal statutes allow for such a suspicionless search (49 U.S.C. § 44901). When a statute authorizes an administrative search, “all that is required is the passenger’s election to attempt entry into the secured area of an airport.” That election occurs at that point in time when the passenger walks through the magnetometer or places items on the x-ray machine conveyor belt. The search of defendant’s person in this case, triggered by the lack of a government-issued picture identification, was minimally intrusive. Having passed through the magnetometer, defendant lost the right to change his mind. He was held for no more than 18 minutes. He was not asked to empty his pockets until after it became more than evident that he was hiding something (which could have been a weapon) in his pocket as was determined through the triggering of the wand and his denial that there was anything there. Given these facts, the procedures used here were “no more extensive nor intensive than necessary.” Defendant was lawfully searched.

Note: The Court notes that more than 700 million passengers fly commercially in the United States every year. That’s a lot of people for the often-criticized TSA to check, and to check competently. While it’s easy to criticize the TSA for the inconveniences they cause in trying to do their job, I find that taking off my shoes or dumping the bottle of water I stupidly just bought a small price to pay for feeling reasonably comfortable in the knowledge that my plane and my body will all come down in one piece. Next time you have to wait in line to get through the security check, rather than complain, why not thank that TSA officer for being there and doing a job neither you nor I would touch with a ten-foot pole.

Arrests and Probable Cause:

Rodis v. City and County of San Francisco (9th Cir. Aug. 28, 2007) 499 F.3rd 1094

Rule: The possessing and passing of a counterfeit \$100 bill is not a crime absent evidence tending to show at least a “*fair probability*” that the suspect knew it was fake and that he passed (or attempted to pass) the bill with an intent to defraud.

Facts: Rodel E. Rodis, an attorney and a San Francisco City Community College school board member, attempted to purchase some items at a neighborhood drugstore with a \$100 bill. The bill aroused the cashier’s suspicions because, being an old 1985 bill, it appeared to have a texture different than other bills. The cashier took it to the store manager who compared it with other \$100 bills in the store’s safe and noticed that they did not look the same. But he also used a counterfeit detector pen on it that indicated that the bill was genuine. Still suspicious, the manager eventually called the police. As Rodis waited for all this to occur, he used another \$100 bill to make his purchases. Four San Francisco police department officers eventually showed up and also looked at the bill. Although the officers never compared this bill with the bill Rodis used to complete his purchase, or with the store’s bills the manager used in his comparison, they concluded that the bill might be counterfeit; a violation of 18 U.S.C. § 472. Section 472, generally, makes it a felony to possess or use a counterfeit bill “with the intent to defraud.” Without attempting to establish whether Rodis knew the bill was a fake or that he had the

necessary “intent to defraud,” the officers arrested him so that they could take him to the police station where it would be easier to complete the investigation. Rodis was transported in handcuffs and in the back seat of a patrol car. While at the station, with Rodis being held in a holding area, the Secret Service was called. After waiting 20 to 30 minutes for the Secret Service to return their telephone call, and a 5 to 10-minute conversation with a Secret Service agent, it was determined that the bill was in fact genuine. Rodis was *unarrested* and taken back to the drugstore. Having no sense of humor, Rodis sued the officers (and everyone else up the chain of command) in federal court for false arrest, among other allegations. The civil defendants’ (the officers) motion for summary judgment (i.e., to dismiss the civil suit prior to trial) was denied, at least as to the officers involved, with the trial court finding that the officers lacked evidence tending to support the belief that Rodis had an intent to defraud—an element of the charged offense—when they arrested him. The trial court also ruled that the officers were not entitled to “qualified immunity” from civil liability because the law on the issue was “*clearly established*,” i.e., the officers should have known that they lacked probable cause of Rodis’ alleged intent to defraud. The officers appealed.

Held: The Ninth Circuit Court of Appeal, in a split, 2-to-1 decision, affirmed, agreeing with the trial court that the officers did not have probable cause to arrest Rodis. As noted by the Court, 18 U.S.C. § 472 requires that the officers have probable cause of three elements; (1) possession of counterfeit money, (2) knowledge, at the time of possession, that the money is counterfeit, and (3) possession with the intent to defraud. The officers acknowledged on appeal that Rodis had in fact been arrested (as opposed to merely detained). They also agreed that they did not have any evidence of Rodis’ intent to defraud, or that Rodis even knew that the bill he used was counterfeit. Their argument that the arrest of Rodis was lawful was based upon the theory that in establishing the existence of probable cause, it is not always necessary that there be specific evidence of each and every one of the elements as listed above. The officers asserted they had probable cause to arrest Rodis based solely on evidence suggesting the bill might have been fake, and that it was not necessary to show a specific intent to defraud. The Court disagreed, noting that there must be at least a “*fair probability*” of two “*mens rea*” components to prove this particular offense; i.e., “*knowledge*” and “*an intent to defraud*.” “It is fundamental that a person is not criminally responsible unless criminal intent accompanies the wrongful act.” The Court agreed with the officers when they argued that not every element needed to convict must necessarily be shown to establish probable cause. “However, this rule must be applied with an eye to the core probable cause requirement; namely, that ‘under the totality of the circumstances, a prudent person would have concluded that there was a fair probability that the suspect had committed a crime.’ In this case, however, the arresting officers had absolutely no evidence that Rodis intended to defraud the store or that he even believed that the bill was counterfeit. Also, there was evidence of which the officers were aware tending to indicate that the \$100 bill in question was *not* counterfeit. For instance, Rodis had other \$100 bills in his possession, one of which he used to make his purchases. Also, a counterfeit detector pen showed that there was nothing wrong with the bill. Based upon all these factors (assuming they are proved in the pending civil trial), it is clear that “no reasonable or prudent officer could have concluded that Rodis intentionally and knowingly used a

counterfeit bill.” The officers, therefore, did not have probable cause upon which to base an arrest. Their motion for summary judgment was properly denied.

Note: The Court was particularly critical of the officers’ failure to question Rodis concerning his state of mind before arresting him. Assuming that is in fact what happened, I have to agree. If in fact Rodis did harbor a criminal intent, the likelihood of getting some good admissible statements from him to help prove his criminal intent would have been significantly greater had they questioned him while he still thought he might be able to talk his way out of being arrested and before he had a chance to think up a good lie. The earlier in the investigation an officer can get into the mind of a detainee or arrestee, the more likely we will get some good, admissible, “*consciousness of guilt*” statements. The Court also noted as an argument weighing against an arrest the fact that the officers knew Rodis was a San Francisco attorney, a locally-elected public official, and someone who had strong ties to the community. This is not meant to suggest that “important” people should get better treatment. It is relevant, however, to the fact that he wouldn’t be tough to locate *after* a proper investigation was completed. It is not always necessary to put people in jail just for the sake of putting people in jail. Absent a likelihood of the suspect escaping, that he might be a potential danger to others, or where arresting him is necessary to prevent the destruction of evidence, there is seldom any real reason why anyone needs to go to jail right now.

Search Warrants and Good Faith:

United States v. Crews et al. (9th Cir. Sept. 10, 2007) 502 F.3rd 1130

Rule: Good faith reliance upon a facially valid search warrant will save a warrant that is otherwise invalid due to a lack of sufficient probable cause.

Facts: A Portland, Oregon, police officer saw Defendant Uhuru Crews fail to signal while driving at about 2:00 a.m., and attempted to stop him. Crews, however, increased his speed and then abandoned his car. He was arrested after a short foot pursuit. Crews told police he fled because he had an outstanding arrest warrant. The car Crews had been driving was registered to Codefendant Ebonique Manus, at her home address of 6731 SE 82nd Avenue, Apt. 3, which was only a couple of blocks away. Neither the Portland Police Data System nor Crews’ invalid driver’s license listed Manus’ apartment as his residence. A sweep of the area where Crews was arrested resulted in the recovery of a .22 caliber revolver from some shrubbery. Because both Crews and Manus were convicted felons, and believing that the gun belonged to either Crews or Manus, officers later surveilled Manus’ apartment for a few days. Crews, already released from jail, was observed in the area leaving in a vehicle that had been parked in apartment 3’s parking space. The next day, Manus was also seen near apartment 3, leaving in another car that had also been parked in apartment 3’s parking space. Later, Crews and Manus were seen together coming and going from apartment 3, and then leaving in a car together. Hoping to find evidence tying Crews to the .22 caliber pistol, a Portland police officer wrote an affidavit for a search warrant for apartment 3, alleging the facts concerning Crews’ arrest, his association with Manus, and the sightings of him at and around Manus’ apartment.

The officer also alleged the following: Both Crews and Manus had prior felony convictions for delivering and manufacturing controlled substances and that, in the officer's expert opinion, such persons often possess firearms for protection. Based upon the circumstances of Crews' arrest, it was suspected that Crews had been in possession of the pistol while in Manus' car and that the pistol therefore belonged to either Crews or Manus. The affidavit also attempted to connect Crews to Manus' apartment by describing how he has been within blocks of apartment 3 when arrested, driving Manus' car, and noting that it appeared that he was living there. Twelve days after Crews' initial arrest, officers executed the search warrant. A .38 caliber derringer and ammunition were found in a dresser drawer in Manus' bedroom. Crews was arrested again and, after being reminded of his *Miranda* rights, admitted to staying with Manus in apartment 3 about 70% of the time. He also admitted to his possession of the .22 caliber revolver. Manus, when questioned, admitted that the derringer was hers. Both defendants were charged in federal court with being felons in possession of a firearm. Defendant Manus sought to suppress the derringer as the product of a search warrant obtained without probable cause. Defendant Crews moved to suppress his admissions concerning his possession of the .22 caliber revolver, arguing that his statement to police was the verbal product of the illegal search warrant. The trial court agreed with both defendants, finding insufficient evidence to establish probable cause for the search warrant. The court also found that the "good faith" exception did not apply. The Government appealed.

Held: The Ninth Circuit Court of Appeal reserved, finding that "good faith" saved the search warrant. The validity of the search warrant being the key issue here, the Court declined to determine whether the warrant affidavit contained sufficient facts to establish probable cause. Instead, it went straight to the issue of whether the officers acted in "good faith reliance upon an objectively reasonable search warrant." The "good faith" exception to the Fourth Amendment requirement that a search warrant must be supported by a sworn statement establishing "probable cause" was set out by the U.S. Supreme Court in *United States v. Leon* (1984) 468 U.S. 897. The Court in *Leon* also ruled, however, that the good faith exception does not justify the use of a warrant under certain circumstances, such as where: (1) the affiant misleads the issuing magistrate by making a false statement or recklessly disregarding the truth in making a statement; (2) the magistrate wholly abandons his or her judicial role in approving the warrant, acting only as a "rubber stamp" rather than as a neutral and detached official; (3) the warrant is so facially deficient in detail as to the place to be searched or the things to be found that the officers could not reasonably presume it to be valid; or (4) the affidavit upon which the warrant is based is so lacking in indicial of probable cause that no reasonable officer could rely upon it in good faith. The defendants challenged this warrant based upon numbers (1) and (4). The trial court felt that the affiant had misled the magistrate because the warrant contained superfluous information that was misleading. The Ninth Circuit disagreed. For instance, the affiant's conclusion that there was probable cause to justify the search was not misleading. Also, it was not misleading to leave out the fact that felons often flee from the police because of outstanding arrest warrants. In fact, it was noted in the affidavit that Crews had claimed to have fled from the police because he had a warrant out for him. It was also included in the affidavit the fact that Crews' documented address was other than apartment 3, noting that a person can have one

domicile, but several residences. The Court further held that inclusion of the fact that both defendants had prior felony convictions was not misleading, and in fact was necessary in that the basis for the warrant was that the defendants were felons in possession of a firearm. And because the officers were lawfully looking for evidence tending to prove that either Crews or Manus were in illegal possession of a firearm, “merely requesting authority to seek additional—albeit unnecessary—evidence of a crime (e.g., Crews’ act of eluding the police) is not misleading.” As for number (4), the Court here noted that in order for the warrant to be upheld, the officers must have relied on the search warrant in an objectively reasonable manner, the affidavit establishing at least a “colorable argument for probable cause.” While noting that the affidavit in this case was “not a model of flawless(ness) . . . (or) thoroughness,” it was close enough. Based upon the circumstances of this case, it was not unreasonable for the officers here to believe that they would find evidence tending to help prove that Crews, or possibly Manus, both convicted felons, had been in possession of the .22 caliber revolver found in the bushes after Crews’ arrest. The warrant, therefore, was valid under the “good faith” exception to the Fourth Amendment’s probable cause requirement.

Note: There were a host of other lesser arguments offered by the defendants, but they were all a bit farfetched and not worth talking about here. The importance of this case is in highlighting the fact that in instances where you are a bit thin on your probable cause for a search warrant, it is always beneficial to (1) work with a prosecutor and see if there is some way to tighten it up a bit, and (2) remember, if you are otherwise at a dead end in gathering support for your warrant, “*nothing ventured, nothing gained.*” Give it a shot. If the magistrate declines to sign it, you are no worse off than if you hadn’t done anything. This is not to say that you should be writing up warrant affidavits in instances where you know you’re not close, and then finding that one judge who will sign anything. Aside from the potential civil ramifications, *U.S. v. Leon* does not allow for such a tactic, not to mention that it’s just not good police work.

Miranda; Asking for an Attorney:

Arson; Burning Community Property:

***People v. Simons* (Sep. 27, 2007) 155 Cal.App.4th 948**

Rule: An equivocal attempt to invoke one’s right to the assistance of an attorney is legally ineffective and may be ignored. Burning personal community property after murdering the co-owner is an arson.

Facts: Seventeen-year-old Jenna Nannetti married defendant with the consent of her aunt, who was Jenna’s legal guardian. As a wedding gift, the aunt bought the young couple a Ford Mustang, registering it to Jenna and/or defendant. The marriage self-destructed within a month, with defendant moving in with his new girlfriend, Katherine Belflower, and her friend, Jeffery Hamilton. Mistakenly believing that he was the beneficiary to a life insurance policy the aunt had taken out on Jenna, defendant began to plan Jenna’s murder. Calling Jenna and asking for a meeting to discuss possibly getting back together, defendant drove Jenna in the Mustang to a remote area called Whiskey

Slough. Katherine and Jeffery were waiting there with a shotgun. Defendant got the shotgun and killed Jenna with two point-blank shots to the chest. Leaving Jenna's body in the bushes, the three of them then took the Mustang to another location and set it on fire. While being investigated as a possible principal in another homicide, Jeffery told police that defendant had murdered Jenna. Defendant was eventually arrested and questioned. After waiving his *Miranda* rights, defendant put the bulk of the blame for Jenna's death on Katherine and Jeffery. When the detectives told defendant that they weren't buying his story, defendant asked; "*How long would it take for a lawyer to get here for me?*" Asked if he wanted a lawyer, defendant said: "*How long would it take if I said yeah?*" When told that they would stop the questioning if he wanted an attorney, defendant said: "*I mean, how long would it take?*" This was followed by some discussion about his inability to afford an attorney and that the court would appoint one for him but that he wouldn't see that attorney until he went to court. Finally, when asked if he wanted to continue talking to the detectives, defendant said that he did. Never admitting his culpability as the shooter, but nonetheless making some incriminating statements connecting himself to the murder, defendant brought a pre-trial motion to suppress his statements, arguing that he had invoked his right to counsel and that the questioning should have ceased at that point. The trial court denied defendant's motion. Defendant was subsequently convicted of first degree murder with special circumstances and arson, and sentenced to life without parole. Defendant appealed.

Held: The Second District Court of Appeal (Div. 3) affirmed. First, the Court ruled that defendant *did not* successfully invoke his right to an attorney, under *Miranda*. It is a legal requirement that one's attempt to invoke his right to an attorney, to be legally effective, must be "*clear and unequivocal.*" Defendant "must articulate his desire to have counsel present sufficiently clearly (so) that a reasonable police officer in the circumstances would understand the statement to be a request for a lawyer." Comparing the facts here with prior similar cases, the Court concluded that defendant, by merely talking about how long it would take to get a lawyer there if he asked for one, did not legally invoke his right to counsel. Also, although there is no legal requirement that the interrogating officers attempt to clarify an ambiguous statement, the detectives did attempt to answer his questions and gave him several opportunities to clarify whether he was intending to invoke. As such, the trial court properly denied his motion to suppress his statements. As to the arson charge, defendant argued that as community property, the mustang automatically reverted to him when he killed Jenna. Because a person cannot be guilty of arson for burning his own personal property, that conviction must be reversed. However, the Court ruled that even assuming the Mustang was community property, California Probate Code § 251 prevents one from inheriting property from a person he murdered. So the Mustang, not being defendant's to burn, can be the subject of an arson.

Note: The arson issue was a gimme. The attempted invocation of one's right to an attorney is also a hard and fast rule, but one that a lot of cops (not to mention prosecutors and judges) don't recognize. For anyone who's interested, I have a whole line of cases dealing with various forms of equivocal attempts to invoke, each one of which has been consistently held against the defendant. I can send them to you upon request.