

NMDPS - MIRANDA – WAIVER: “Not at the moment.”

The victim of a robbery had been beaten badly. Defendant sat in an interrogation room at the Farmington Police Department. After saying he understood his Miranda rights, the detective asked if he wished to answer questions. Defendant replied, “Not at the moment. Kind of intoxicated.”

The detective focused on the second part of his answer. After telling Defendant intoxication was not a reason not to talk, he asked him again. Defendant responded, “Like I said, not at the moment.” The detective persisted, telling Defendant about six times to sign the (waiver of rights) form. Finally, Defendant signed the form and gave an incriminating statement.

Soon afterwards, the victim died, and Defendant was charged with first degree murder. Supreme Court held Defendant’s statement could not be used. Once a suspect makes an unambiguous (clear) statement that he or she wishes to remain silent, questioning must cease. Defendant made it clear (twice) he did not wish to give a statement.

A waiver of rights has no meaning if it is not voluntarily given. Once a person chooses not to give a statement, repeated efforts to get that person to change his or her mind – even though done with good intentions – is not acceptable. If a person makes an admission or gives a confession, it will be inadmissible at trial. State v. King (2013).

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I hope it ain't gonna be one of those days!