# *MIRANDA:* THE MAGIC WORDS TO INVOKE ONE'S RIGHTS

Devika Singh*

Recently, the Supreme Court of Kansas overturned a conviction based on police officers' failure to honor the defendant's assertion of his right to remain silent.[1] The court held that the defendant's statement, "This—I guess where, I, I'm going to take my rights . . . " was an invocation of the right to remain silent, regardless of the wavering words "I guess" and the defendant's follow-on assertion that he wanted to continue helping the police. The defendant's ambiguous invocation could have resulted from the failure of the *Miranda* warning he received to specify how to assert his rights.[2] To reduce instances of ambiguous invocation, the Supreme Court should revise *Miranda* warnings to specify words sufficient to invoke Fifth Amendment *Miranda* rights.

In *State v. Aguirre*, Kansas police suspected defendant Luis Aguirre of killing his ex-girlfriend Tanya Maldonado and their son Juan Maldonado.[3] The police arranged an interview with Mr. Aguirre, initially telling him that they simply wanted to find the missing mother and son.[4] Mr. Aguirre voluntarily came in for an interview.[5] Police eventually revealed that they knew Ms. Maldonado was dead and that Mr. Aguirre was lying about having no knowledge of Tanya's death.[6]

As the interrogation became increasingly aggressive Mr. Aguirre said, "This is—I guess where I, I'm going to take my rights and I want to turn in David [Aguirre's son with his then girlfriend] to his family and I'll be back here. I mean, I would like to keep helping you guys I just want to—."[7] Detectives responded, "Okay. We do appreciate that help," and then continued with the interrogation.[8] The Supreme Court of Kansas ruled that Mr. Aguirre invoked his right to remain silent and that the police should have ceased questioning at that point.[9]

---

* Georgetown University Law Center, J.D. expected 2018. The author is a Featured Online Contributor for the *American Criminal Law Review.*

[1] *SCOTUS Won't Say If "I Guess" Can Invoke Miranda*, BLOOMBERG BNA: CRIM. L. REP. (Jan. 20, 2016), http://0-news.bna.com.gull.georgetown.edu/crln/display/alpha.adp?mode=topics&letter=H&frag_id=81947947&item=3271&prod=crln.

[2] *See* Miranda v. Arizona, 384 U.S. 436, 444 (1966).(holding that a defendant in custodial interrogation must be warned of his right to remain silent, his right to an attorney, and that his statements can be used against him at trial).

[3] State v. Aguirre, 301 Kan. 950, 953 (2015).

[4] *Id.*

[5] *Id.*

[6] *Id.* at 955.

[7] *Id.*

[8] *Id.* at 956.

[9] *Id.* at 960.

The court acknowledged that *Berghuis v. Thompson* held that a suspect's invocation of *Miranda* rights must be unambiguous.[10] Kansas state law says that in order to determine whether an individual's invocation is unambiguous, a court should determine if a reasonable police officer would perceive an invocation.[11] The court focused on the fact that Mr. Aguirre's *Miranda* waiver form stated that "I have read this statement of *my rights* and I understand what *my rights* are," and that Mr. Aguirre subsequently use the same phrase "my rights" in his invocation of the Fifth Amendment privilege.[12] The waiver form also did not require Mr. Aguirre to offer a particular reason to stop answering questions; Aguirre's justification of getting his son home did not change the analysis.[13] Judge Biles, dissenting, pointed out that Mr. Aguirre said that he wanted to continue answering questions and used the words "I guess," which created ambiguity.[14] In reality, how a reasonable police officer would have perceived Mr. Aguirre's words could likely go either way. "I guess" coupled with Mr. Aguirre's assertion that he wished to keep talking later could mean that he wasn't invoking his rights at all. Even if he was invoking a right – was it the right to remain silent or the right to counsel? On the other hand, the words "I'm going to take my rights" are fairly clear.

More importantly, if judges on the Kansas Supreme Court cannot agree on what constitutes an invocation, it begs the question, how would a suspect in custodial interrogation know what would be sufficient to invoke *Miranda*? After all, many suspects likely have never heard of *Berghuis*' unambiguous standard.[15] What if a suspect said, "I might want to exercise my rights"? What about, "do you think I should exercise rights?" Why, even, is clarity crucial?

An individual's invocation of *Miranda* severely constrains police actions going forward. If an individual invokes his right to remain silent, police must cease questioning.[16] If an individual invokes his right to an attorney, the police can only resume questioning in the presence of an attorney.[17] If police do not honor an invocation of *Miranda*, future statements during the interrogation cannot be used at trial.[18] For example, the Supreme Court of Kansas remanded the case to give Mr.

---

[10] *Id.* at 957 (citing Berghuis v. Thompkins, 560 U.S. 370, 381–82 (2010) (holding that the defendant's silence during the first two hours and forty-five minutes of a three hour interrogation was insufficient to invoke his right to remain silent)).
[11] *Id.*
[12] *Id.* at 958–59.
[13] *Id.* at 959.
[14] *Id.* at 964.
[15] *Berghuis*, 560 U.S. at 381.
[16] Miranda v. Arizona, 384 U.S. 436, 445 (1966).
[17] *Id.*
[18] *Id.* at 444.

Aguirre a new trial excluding evidence obtained after the invocation of Mr. Aguirre's right to remain silent.[19]

Rules relating to the Fifth Amendment privilege stem from the *Miranda* Court's original goal of protecting the Fifth Amendment right against self-incrimination in custodial interrogations.[20] The Court presumed that custodial interrogations are inherently coercive.[21] They include tactics such as creating an isolating and oppressive atmosphere, employing trickery, running the good-cop bad cop routine, and even withholding food or water.[22] The Court presumed that these "over-zealous" police practices will force a suspect into self-incrimination, thereby violating his Fifth Amendment rights.[23] The Court created a bright line rule for all custodial interrogations: police must warn a suspect of his right to silence and counsel and must honor those rights if invoked, thereby dissipating the coercion inherent to interrogation.[24]

Despite *Miranda*'s attempt to create an easily administrable bright line rule, suspects are never told what would be sufficient to invoke their rights. For instance, Mr. Aguirre was given the below warning:

> MR. AGUIRRE: Advise [sic] of rights, your rights. Before we ask you any questions you must understand—you must understand your rights. You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning. If you cannot afford to hire a lawyer one will be appointed to represent you free of charge before any questioning if you wish. If you decide to answer questions now without a lawyer present you will have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.[25]

At no point was Aguirre told that he should say something such as: "I am exercising my right to silence" or "I am exercising my right to an attorney." Without such clarity in the warning, suspects are left guessing as to what counts as an invocation. If *Miranda* warnings are meant to

---

[19] *Aguirre*, 301 Kan. at 952.
[20] *See Miranda*, 384 U.S. at 458 ("[W]e can readily perceive an intimate connection between the privilege against self-incrimination and police custodial questioning.").
[21] *See id.* at 457 ("[S]uch an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner").
[22] *Id.* at 449–53.
[23] *Id.* at 444.
[24] *Id.*
[25] *Aguirre*, 301 Kan. at 958.

dissipate coercion, they should inform a suspect of the words necessary to exercise his rights.

Some may argue against going to such lengths to ensure that someone like Mr. Aguirre, who allegedly committed a violent double homicide, can exercise his right against self-incrimination. However, *Miranda* rights exist to protect the innocent as well as the culpable.

The innocent may give false confessions, particularly in the face of police tactics used during custodial interrogations. Of the first 225 convictions exonerated by DNA evidence, twenty-three percent were based on false confessions.[26] Furthermore, a study by Professors Saul Kassin and Katherine Kiechel of Williams College shows that tactics used by police interrogators make it more likely that an innocent person will confess.[27] In the study, sixty-nine percent of participants signed a confession that they hit a computer key causing an error in the system after being confronted with false evidence that they were responsible.[28] Twenty-eight percent of participants believed that they were responsible and nine percent confabulated details to confirm their false beliefs.[29] Of course, mistakenly hitting a computer key and committing a murder are two different things; however, the study shows how police tactics, such as lying about evidence, can influence an individual's psyche.

The United States Supreme Court has deemed *Miranda* the most effective way to protect the right against self-incrimination in custodial interrogations; The Supreme Court should revise *Miranda* warnings to include a specific statement on how to invoke one's rights. After all, "[y]ou have the right to remain silent. To exercise this right, you can say 'I wish to exercise my right to remain silent'" seems better than leaving suspects in the dark, struggling to pinpoint the magic words.

---

[26] Amelia Hertz et al., *False Confessions*, CORNELL L. SCH. SOC. SCI. & L. (2010), http://courses2.cit.cornell.edu/sociallaw/student_projects/FalseConfessions.html.
[27] *Id.*
[28] *Id.*
[29] *Id.*