IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,	) Supreme Court No.) **S191747**
v.	) Court of Appeal No.) G041831
JOSE SAUCEDA-CONTRERAS, Defendant and Appellant	) Superior Court No.) 07NF0170

Fourth Appellate District, Division Three
Orange County Superior Court, Honorable Richard F. Toohey, Judge

ANSWER TO PETITION FOR REVIEW

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By appointment of the
Court of Appeal under the
Appellate Defenders, Inc.
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ANSWER TO PETITION FOR REVIEW

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

Pursuant to rule 8.500(a)(2) and (e)(4), California Rules of Court,[1] appellant Jose Sauceda-Contreras answers respondent's petition for review of the unpublished decision of the Court of Appeal, Fourth Appellate District, Division Three, filed February 16, 2011 in case number G041831, reversing the judgment.

[1] All further rule references are to the California Rules of Court unless otherwise indicated.

QUESTION PRESENTED

When a suspect is advised of his *Miranda*[2] rights, and responds, "If you can bring me a lawyer . . . that way I can tell you everything that I know and everything that I need to tell you and someone to represent me," may an officer ask questions to clarify whether the suspect wished to invoke his *Miranda* rights? (Petition for Review ("PTR") 1.)

STATEMENT OF THE CASE

After deliberating over the course of five days, a jury found appellant guilty of the first degree murder of Maria Mendoza (Pen. Code, § 187, subd. (a)). (2 CT[3] 308-309, 443, 453, 513-514; 3 RT 627-629.)

Earlier, the court had denied appellant's motion to suppress his statements to police pursuant to *Miranda.* (2 CT 422; 1 RT 72.) The court sentenced appellant to 25 years to life in state prison. (2 CT 555, 568; 3 RT 637.)

On appeal, appellant challenged his conviction on seven grounds: (1) the trial court erroneously admitted his statements in violation of the Fifth Amendment because he had unequivocally and unambiguously invoked his right to counsel and silence; (2) the trial court erroneously admitted

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[2] *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed 2d 694, 86 S.Ct. 1602] (hereafter "*Miranda*").)

[3] "CT" stands for the clerk's transcript. "RT" stands for the reporter's transcript.

evidence in violation of the Fourth Amendment because the justification for the search lacked sufficient exigent circumstances; (3) the evidence appellant committed an act causing death was constitutionally insufficient under the Fourteenth Amendment to uphold the conviction; (4) the evidence of premeditation and deliberation was constitutionally insufficient under the Fourteenth Amendment to uphold the first degree murder conviction; (5) the change in Supreme Court-approved language of consciousness of wrongdoing in CALJIC No. 2.03 to consciousness of legal guilt in CALCRIM No. 362 permitted the jury to draw irrational presumptions of his guilt of the charged crime, including his mental state, in violation of the Fourteenth Amendment; (6) there was cumulative and collective prejudice from all the errors; and (7) the appellate court should review subpoenaed material which the trial court reviewed but refused to release to defense counsel.

The Court of Appeal, Fourth Appellate District, Division Three reversed the judgment finding that the trial court erroneously admitted appellant's statements to police because he had unequivocally and unambiguously invoked his Fifth Amendment right to counsel and silence pursuant to *Miranda*. (Typed opn., p. 13.) In light of its reversal on the *Miranda* issue, the court did not reach the remaining six issues.

STATEMENT OF THE FACTS

For purposes of this petition for review only, appellant adopts the statement of facts set forth by the Court of Appeal in its opinion. (Typed opn., pp. 2-12.)

ARGUMENTS

THIS COURT NEED NOT GRANT REVIEW BECAUSE THERE IS NO SPLIT OF AUTHORITY OR DECISIONAL CONFLICT, THE QUESTION IS NOT AN IMPORTANT ISSUE OF LAW BUT A ROUTINE APPLICATION OF SETTLED LAW TO THE FACTS OF THE CASE, AND THE DECISION OF THE COURT OF APPEAL IS SOUND AND WELL-REASONED.

Under rule 8.500(b)(1), there is no necessity for review in the present case. First, this court's guidance is not needed because there is no lack of uniformity of decision among the appellate courts. Second, any decision by this court would have limited impact, because there is no important question of law as the case turns on its facts and involves an everyday application of principles settled by the United States Supreme Court to a specific fact pattern unlikely to recur in cases. Third, the appellate decision in this case is sound and well-reasoned, so review is not required. Lastly, were this court to grant review and reverse the Court of Appeal after briefing and decision, there are a number of unresolved constitutional issues which would need to be remanded to the Court of Appeal for a decision. This court should deny review.

First, under Grounds for Review, respondent maintains that this court must review the decision "to secure uniformity of decision." (PTR 1.) However, respondent has not cited any case law showing a decisional conflict among the appellate courts, between California law and federal

law, or between another court's decision and that of the appellate court in this unpublished decision. (PTR 1-2.)

Respondent also asserts this court should review the decision "to resolve *the existing ambiguity in the law* as to how law enforcement officers should proceed when an arrestee mentions an attorney, but at the same time demonstrates he is willing to waive his rights and talk to investigators." (PTR 2, emphasis added.) Putting aside for the moment respondent's interpretation of what appellant demonstrated by his answer, there is no ambiguity in case law, and respondent has not cited any decisions showing such existing ambiguity. The question of what police are to do when a suspect speaks of an attorney and expresses a willingness to talk is already answered by *Smith v. Illinois* (1984) 469 U.S. 91 [105 S.Ct. 490, 83 L.Ed.2d 488] ("*Smith*"), which states that all questioning must cease after a clear and unequivocal request for an attorney and *Davis v. United States* (1994) 512 U.S. 452, 459, 461-462 [114 S.Ct. 2350, 129 L.Ed.2d 362] ("*Davis*"), which states that objectively ambiguous or equivocal references to an attorney do not require the cessation of questioning.

The cases respondent has cited in the Argument section do not show any decisional split or existing ambiguity of law. (PTR 6-14.) For example, respondent cites *Berghuis v. Thompkins* (2010) 560 U.S. ____ [130 S.Ct. 2250, 176 L.Ed.2d 1098] but never argues that its reasoning

contradicts the result reached here. (PTR 11-12.) Indeed, in *Berghuis v. Thompkins*, the United States Supreme Court merely re-affirms both the reasoning and result of *Davis, supra,* 512 U.S. at p. 462, that invocations be unambiguous and that compulsion is inherent in custodial interrogation. (*Berghuis v. Thompkins*, *supra*, 560 U.S. ___, ___ [130 S.Ct., at p,. 2260.)

Nor does respondent ever explain how *People v. Williams* (2010) 49 Cal.4th 405 ("*Williams*"), indicates a split of authority or illustrates any ambiguity in decisional law. (PTR 13-14.) As the opinion here points out, its result does not conflict with that in *Williams*. (Typed opn., p. 21.) *Williams* is simply inopposite to the present case *on its facts*. (Typed opn., p. 20.) Unlike the defendant in *Williams*, appellant did not clearly indicate he would relinquish his right to remain silent before the exchange at issue; he responded to the officer's compound question about silence and an attorney. (Typed opn., p. 20.) Unlike the defendant in *Williams*, appellant did not respond with a question; he answered that he wanted a lawyer. (Typed opn., p. 20.) To make *Williams* applicable, the dissent was forced to appellant's answer as two questions, (1) whether a lawyer could be brought and (2) whether one could be provided *right now*. (Typed opn., p. 20.) As the opinion points out, the officer did not construe appellant's answer as the dissent did; she did not tell appellant *whether* a lawyer could be brought or *when* a lawyer could be provided. (Typed opn., p. 20.) Instead, having failed to secure a waiver the first time, she tried to secure a

wavier again, more forcefully this time, by telling appellant he did not understand the rights he had just demonstrated he quite fully understood by exercising them. (Typed opn., pp. 20-21.)

Second, respondent seeks review on the grounds this court needs to "settle an important issue of law." (PTR 1.) Respondent has failed to demonstrate the importance of the issue being raised. The Court of Appeal's decision is a routine and straightforward application of existing law under *Miranda* and *Smith, supra,* 469 U.S. at p. 98 to the facts of this case. The result here is more dependent on the facts than the law. Any decision after review by this court would have very limited impact, as shown by the narrowness of the question respondent wants resolved, which asks whether an officer may ask clarifying questions when a suspect answers just like appellant did -- "If you can bring me a lawyer . . . ." (PTR 1.) Because the answer depends on the unique fact pattern of the colloquy, whatever decision this court reaches is unlikely to have widespread impact, add substantially to the body of case law, or assist police, trial courts, or appellate courts in any meaningful way.

Third, the appellate decision is sound and well-reasoned in contrast to respondent's position. Respondent argues that, when appellant responded with "If you can bring me a lawyer . . .", "while he spoke or asked about them bringing him an attorney, he also expressed his clear desire to speak to them." (PTR 12-13.) Respondent parses appellant's

desire to speak to police from his expressed desire to do so only with the guiding hand of counsel. This reasoning is illogical, because the right to an attorney is the right to have an attorney present during interrogation. As respondent would have it, any suspect unfortunate enough to reiterate the right verbatim to his interrogator -- "I would like to have an attorney present during interrogation" or "I will speak to you only with an attorney present" -- has spoken ambiguously, because he has also expressed a desire to speak to police.

The Court of Appeal, on the other hand, properly concluded that, "[a]fter being advised it was his right to have a lawyer present during the interrogation, [appellant] essentially responded -- bring me a lawyer and I will talk." (Typed opn., p. 18.) As the court concludes, appellant "clearly understood his right to counsel and invoked it" and "[h]is straightforward and clear response did not require clarification" (typed opn., p. 18). Review of this decision will not alter this well founded conclusion.

Finally, were this court to grant respondent's petition for review, appellant does not request that this court address the additional issues presented to the Court of Appeal but not mentioned in respondent's petition for review. (See Rule 8.500(a)(2).) Appellant notes that the Court of Appeal declined to reach multiple federal constitutional issues of importance, including a warrantless search, sufficiency of the evidence as to both an act causing death and premeditation and deliberation, and an

irrational permissive presumption of guilt regarding appellant's mental state. The issues not reached by the Court of Appeal in light of its reversal on the *Miranda* issue are listed in the Statement of the Case, *ante*, and are argued in Appellant's Opening Brief and Appellant's Reply Brief. However, were this court to grant review on the *Miranda* issue and reverse the decision of the Court of Appeal, appellant will ask this court to remand the matter to the Court of Appeal with directions that the appellate court consider those issues in the first instance. (See, e.g., *In re Manuel G.* (1997) 16 Cal.4th 805, 814, fn. 3.)

There is no necessity for this court to grant review where there is no conflict of decisional law, there is no significant issue of law, the appellate court's decision is sound, and respondent's reasoning is faulty. This court should deny review.

CONCLUSION

There is no need for this court to grant review because there is no split of decisional authority, the case does not present an important question of law because it is fact dependent and involves routine application of settled law to the facts, the appellate court resolved the matter correctly, and respondent's reasoning is faulty. This court should not grant review.

Dated: April 17, 2011

Respectfully submitted,

/s/

Diane Nichols
Attorney for Defendant
and Appellant

CERTIFICATION OF WORD COUNT

Pursuant to California Rules of Court, rule 8.504(d)(1), I hereby certify the number of words in Appellant's Answer to Petition for Review is 2,120, based on the calculation of the computer program used to prepare this brief. The applicable word-count limit is 8,400.

Dated: April 17, 2011 /s/

Diane Nichols

DECLARATION OF SERVICE

PEOPLE OF
THE STATE OF CALIFORNIA SUPREME COURT NO. **S191747**
v. **JOSE SAUCEDA-CONTRERAS** COURT OF APPEAL NO. **G041831**

The undersigned declares: I am an attorney duly licensed to practice in the State of California and am not a party to the subject cause. My business address is P.O. Box 2194, Grass Valley, California 95945-2194. I served the attached **APPELLANT'S ANSWER TO PETITION FOR REVIEW** by placing a true and correct copy thereof in a separate envelope for each addressee named hereafter, addressed as follows:

Court of Appeal
Fourth Appellate District,
Division Three
P.O. Box 22055
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Each envelope was then sealed and with the postage thereon fully prepaid deposited in the United States mail by me at Cedar Ridge, California on April 18, 2011.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Cedar Ridge, California on April 18, 2011.

/s/

Diane Nichols