

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 2, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP968-CR

Cir. Ct. No. 2006CF1018

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JESSY L. HANSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marathon County:
VINCENT K. HOWARD, Judge. *Reversed and cause remanded with directions.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Jessy Hanson appeals a judgment convicting him of armed robbery. Hanson pled no contest pursuant to a plea agreement after the circuit court, on reconsideration, denied Hanson's motion to suppress inculpatory statements he made to detectives. Hanson contends the statements should have

been suppressed because the detectives failed to stop the interrogation after he invoked his right to remain silent. We agree. We remand the matter with directions to suppress all statements made after Hanson said “I will stay silent.”

¶2 Hanson was a suspect in armed robberies. After waiving his *Miranda*¹ rights, he was interrogated by detectives from the Wausau Police Department and the Portage County Sheriff’s Office. After more than four hours of questioning, the interrogation focused on whether Hanson had an accomplice, and the following exchange occurred:

DETECTIVE KOEHMSTEDT: So you weren’t alone?

(Inaudible.)

JESSY HANSON: Yeah. I was alone.

DETECTIVE KOEHMSTEDT: Okay.

(Inaudible.)

DETECTIVE KOEHMSTEDT: What about Wausau? Did you have some assistance in Wausau --

(Inaudible.)

DETECTIVE MORRIS: You were by yourself there in the Wausau areas?

JESSY HANSON: Yeah.

DETECTIVE STROBACH: And you don’t want to tell us who was with you?

(No audible response.)

DETECTIVE KOEHMSTEDT: When you were in Junction City and after you bought the cigarettes --

(Inaudible.)

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

DETECTIVE KOEHMSTEDT: --where did you park your car when you walked in to rob it?

(No audible response.)

DETECTIVE KOEHMSTEDT: Help us help you, Jessy. If you don't want to tell about the other people, then I will respect your decision on that. Okay. But explain to us what happened. All right?

JESSY HANSON: I will stay silent.

DETECTIVE KOEHMSTEDT: Silent to what?

(No audible response.)

DETECTIVE KOEHMSTEDT: Tell me about Junction City, how that went down.

(No audible response.)

¶3 The discussion then focused on why Hanson committed the robberies, with the detectives suggesting Hanson's wife's cancer and pregnancy motivated his actions. The detectives indicated they would like to put that in their report but they needed to hear it from Hanson:

DETECTIVE MORRIS: Was it for her, to make her life better, make her feel a little better, maybe buy her something every once in awhile, out of work for so long, no income. 20 bucks here and there don't do a whole lot.

You were backed into a corner. Your wife is sick and pregnant at the same time, and you love her very much, and you wanted to do some things for her to help her out and make her feel better. Is that what was going on here? Jessy?

JESSY HANSON: I will be quiet.

DETECTIVE MORRIS: What did he say?

DETECTIVE STROBACH: Not quite.

JESSY HANSON: I said I will be quiet.

DETECTIVE MORRIS: You will be quiet. He said he was going to be silent on that.

(Inaudible.)

¶4 At that point some detectives went to McDonald's to get food for Hanson, who took a cigarette and bathroom break. Approximately fifty-three minutes after Hanson indicated he would stay silent, he told a detective he "thinks he did three of the six robberies." He eventually signed a statement admitting to three armed robberies in the City of Wausau.

¶5 Whether Hanson sufficiently invoked his right to remain silent is a question of constitutional fact. *State v. Jennings*, 2002 WI 44, ¶20, 252 Wis. 2d 228, 647 N.W.2d 142. This court must uphold the trial court's findings of historical or evidentiary fact unless they are clearly erroneous. *Id.* However, we independently review the application of constitutional principles to those facts. *Id.*

¶6 A suspect must unequivocally invoke his right to remain silent before police are required to either stop their interview or to clarify any equivocal remarks by the suspect. *State v. Ross*, 203 Wis. 2d 66, 75-79, 552 N.W.2d 428 (Ct. App. 1996). The suspect must articulate his or her desire to remain silent or cut off questioning sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be an invocation of the right to remain silent. *Id.* Police are not required to clarify an ambiguous or equivocal statement that might constitute an invocation of *Miranda* rights. *Jennings*, 252 Wis. 2d 228, ¶36. In *State v. Markwardt*, 2007 WI App 242, ¶36, 306 Wis. 2d 420, 742 N.W.2d 546, this court clarified a suspect's obligation to clearly invoke *Miranda* rights:

The *Ross* rule allows no room for an assertion that permits even the possibility of reasonable competing inferences: there is no invocation of the right to remain silent if any reasonable competing inference can be drawn. Accordingly, an assertion that permits reasonable

competing inferences demonstrates that a suspect did not sufficiently invoke the right to remain silent.

¶7 Hanson’s statement “I will remain silent” unambiguously invoked his right to remain silent. Hanson’s statement was unequivocal and does not allow any competing inference. The trial court concluded his statement, in the context of his other statements, could reasonably be construed as a refusal to discuss the role of any accomplice. Nothing in the statement suggests any willingness to discuss some matters. An unambiguous, unequivocal statement by a suspect cannot be undermined by an interrogator’s suggestion that the suspect was selectively choosing which topics were off limits.

¶8 Hanson’s invocation of his *Miranda* rights is underscored by his subsequent statement: “I will be quiet.” Again a detective attempted to limit Hanson’s statement to questions about his wife and what motivated the robberies, but Hanson’s own statement did not suggest any limitation on his refusal to talk.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

