



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT I/IV**

December 23, 2015

To:

Hon. David L. Borowski  
Circuit Court Judge  
Milwaukee County Courthouse  
901 N. 9th St.  
Milwaukee, WI 53233

John Barrett  
Clerk of Circuit Court  
Room 114  
821 W. State St.  
Milwaukee, WI 53233

Hans P. Koesser  
Koesser Law Office, S.C.  
P.O. Box 941  
Kenosha, WI 53141-0941

Sarah K. Larson  
Assistant Attorney General  
P. O. Box 7857  
Madison, WI 53707-7857

Karen A. Loebel  
Asst. District Attorney  
821 W. State St.  
Milwaukee, WI 53233

You are hereby notified that the Court has entered the following opinion and order:

---

2015AP255-CR                      State of Wisconsin v. Isiah M. Ware (L.C. # 2012CF3769)

Before Kloppenburg, P.J., Sherman and Blanchard, JJ.

Isiah Ware appeals a judgment of conviction and postconviction order. The only issue on appeal is whether the circuit court erred when it denied Ware's suppression motion. Based upon our review of the briefs and record we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

During a custodial interrogation, Ware confessed to sexually assaulting his victims. He moved to suppress his confession, arguing that he had requested counsel and that his request was ignored by police. The State argued that Ware's request was ambiguous, and that Ware ultimately agreed to continue the interrogation without a lawyer. The circuit court agreed with the State, found that Ware's request was ambiguous, and denied the motion. Ware pled guilty and was convicted of two counts of first-degree sexual assault of a child. Ware renewed his suppression argument in a postconviction motion that the circuit court denied.

A suspect in custody has a constitutional right to counsel during an interrogation. Police must immediately stop questioning a suspect who unequivocally invokes that right during a custodial interrogation. *State v. Jennings*, 2002 WI 44, ¶26, 252 Wis. 2d 228, 647 N.W.2d 142. If, however, a suspect makes an ambiguous or equivocal request for a lawyer, the police are not required to stop the interrogation or to ask the suspect clarifying questions. *Id.*, ¶36.

Whether Ware sufficiently invoked the right to counsel is a question of constitutional fact that is resolved using a two-step inquiry. *Id.*, ¶20. This court will uphold the circuit court's findings of historical fact unless they are clearly erroneous but will independently assess the circuit court's application of constitutional principles to the historical facts. *Id.*

The following recorded exchange between Ware and the detective is at issue.

[Detective]: People make mistakes. We're not God, right, because if we weren't, we wouldn't – we're just not, we all make mistakes. Every single one of us. And do people – the ones that move forward and can experience great things in life are the ones that acknowledge that they made a mistake, accept the consequences and move forward and make changes. People who don't –

[Ware]: I'm going to lose my job, uh?

[Detective]: Uh?

[Ware]: I'm going to lose my job, uh?

[Detective]: I don't know.

[Ware]: I honestly do *think* I need to talk to someone.

[Detective]: Like a psychologist, a therapist?

[Ware]: A *lawyer*.

[Detective]: Okay. I'm not going to violate your rights, so if you don't want to tell me what's going on, I can't share it with the DA, because they're the ones that help you.

[Ware]: I thought the District Attorney was the prosecutor.

(Emphasis added.) After some continued conversation, the exchange continued as follows:

[Detective]: So you're – you want to talk – still talk with me – to me without a lawyer?

[Ware]: Uh?

[Detective]: You still want to talk with me, without a lawyer?

[Ware]: Um'huh.

[Detective]: All right. I'm going to go get you a cigarette. Do you want a soda or a water?

[Ware]: No.

Ware went on to implicate himself in the crimes.

To invoke the Fifth Amendment right to counsel, a suspect is required to “articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney.” *Id.*, ¶30 (quoting *Davis v. United States*, 512 U.S. 452, 459 (1994)). The request must be unambiguous. *Davis*, 512 U.S. at 459. A mere reference to an attorney, standing alone, is not sufficient to invoke the right. *Jennings*, 252 Wis. 2d 228, ¶31. The standard is objective. *Id.*, ¶30. Unless a suspect

“actually requests an attorney, questioning may continue.” *Id.*, ¶31 (quoting *Davis*, 512 U.S. at 461). A detective is not required to ask questions to clarify a suspect’s intent. *Id.*

The defendant in *Jennings* said, “I think maybe I need to talk to a lawyer.” *Id.*, ¶36. That statement was found to be “substantially equivalent” to the statement found to be ambiguous and equivocal in *Davis* – “Maybe I should talk to a lawyer.” *Id.* Like the defendant in *Jennings*, Ware *thought* that he needed to talk to a lawyer. The statement is ambiguous. A statement that causes a reasonable police officer to believe that the defendant *might* be invoking the right to counsel is not enough to require the detectives to cease their questioning. *See Davis*, 512 U.S. at 459. Ware’s statement is virtually identical to the statement in *Jennings*. It was not a clear and unequivocal request for an attorney.<sup>2</sup>

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*

---

<sup>2</sup> Ware’s statement is different from the statements in *State v. Conner*, 2012 WI App 105, ¶¶3, 6, 344 Wis. 2d 233, 821 N.W.2d 267, that were held to be unequivocal requests for counsel: “when can I see an attorney”; “I want to talk ... but I want an attorney present”; “I want to consult with a lawyer and talk to the lawyer, ok?”