No. SC95613

In the
Missouri Supreme Court

STATE OF MISSOURI,

Appellant,

v.

DAVID K. HOLMAN,

Respondent.

Appeal from Lawrence County Circuit Court
Thirty-Ninth Judicial Circuit
The Honorable Jack A. L. Goodman, Judge

APPELLANT'S SUBSTITUTE BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

JURISDICTIONAL STATEMENT

This is an interlocutory appeal from the Circuit Court of Lawrence County's judgment granting Defendant's motion to suppress. Missouri law authorizes the State to appeal orders suppressing evidence in criminal cases. § 547.200.1(3). This appeal was originally filed in the Missouri Court of Appeals, Southern District, pursuant to Mo. Const. art. V, § 3, and sections 477.060 and 547.200.3. On May 3, 2016, this Court ordered that the cause be transferred to the Missouri Supreme Court.

STATEMENT OF FACTS

This is an appeal from a Lawrence County Circuit Court judgment granting Defendant David K. Holman's motion to suppress evidence. (L.F. 36-37). Viewed in the light most favorable to the court's judgment, the evidence presented showed the following:

On December 10, 2013, at approximately 12:17 A.M., Deputy Devost[1] and Deputy Thorn of the Lawrence County Sheriff's Department were dispatched to Defendant's home. (Tr. 3). When the deputies reached Defendant's home and knocked on the front door, Defendant told them that they could enter. (Tr. 3). Inside the home, it appeared that Defendant had been shot by his wife, RaDonna Holman, with a Smith and Wesson .40 caliber handgun, and that Defendant had shot and killed Mrs. Holman. (L.F. 19).

While Deputy Thorn attempted to perform CPR on Mrs. Holman, Deputy Devost conducted a security sweep of the home and found a .357 Magnum lying on the floor of either the kitchen or the back area of the home. (Tr. 3). Believing that Defendant was intruding on the crime scene, Deputy

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[1] The deputy's name is spelled "Davost" in Joint Exhibit 2. The remainder of the record uses the "Devost" spelling, which appears to be the correct spelling. (Tr. 3).

Devost removed Defendant, and after asking several questions, decided to place Defendant in handcuffs. (Tr. 3-4). Deputy Devost then placed Defendant in a patrol car while they waited for Deputy Thorn. (Tr. 4). A short time later, the EMTs arrived and declared that Mrs. Holman was dead. (Tr. 4). Everyone left the home, and the crime scene was taped off and secured. (Tr. 4).

Deputy Thorn then took Defendant to the ambulance to have his wound treated. (Tr. 4). While Deputy Thorn and Defendant were talking inside the ambulance, Defendant became animated and upset with the law enforcement officers for not addressing the medical needs of his wife. (Tr. 4). Defendant became increasingly emotional, and he continued to ask why the officers were not doing anything for his wife and stated that he could not believe that she had shot him. (Tr. 4).

Believing that it was appropriate to advise Defendant of his constitutional rights, Deputy Devost read Defendant the *Miranda* warnings from a department-issued card he kept inside his shirt pocket. (Tr. 4-5). Defendant then continued to converse with Deputy Thorn. (Tr. 5). Sometime later, Deputy Devost asked Defendant to execute a form consenting to a search of Defendant's home. (L.F. 20; Tr. 5). In response, Defendant told Deputy Devost, "I ain't signing shit without my attorney." (L.F. 20, 36; Tr. 5). Deputy Devost did not ask any more questions of Defendant. (L.F. 36; Tr. 5,

10). Defendant was transported to the hospital, treated, and then taken to the Lawrence County jail. (L.F. 20, 36).

The next morning, Defendant was interviewed by Detective McElroy and Deputy Sergeant Berry. (L.F. 20, 36; Joint Ex. 3 at 98). Prior to asking Defendant any questions, Detective McElroy read Defendant the *Miranda* warnings, which Defendant indicated he understood. (L.F. 20, 36; Tr. 14-15; Joint Ex. 3 at 98). Defendant then proceeded to make statements to the officers concerning what had occurred at his home, along with details such as where he had been standing. (Tr. 15).

On February 15, 2014, Defendant was charged with first-degree murder for the December 10, 2013 shooting death of his wife, Radonna Lynn Holman. (L.F. 13). Defendant was also charged with one count of armed criminal action. (L.F. 13).

On April 11, 2015, Defendant filed a motion to suppress statements made by Defendant to Detective McElroy and Deputy Sergeant Berry. (L.F. 5, 15). Defendant argued that the officers were not permitted to interview him outside the presence of his attorney because he had invoked his Fifth Amendment right to counsel when he had refused Deputy Devost's request for consent to search his home by saying, "I ain't signing shit without my attorney." (L.F. 15). On May 21, 2015, a suppression hearing was held, at which point the parties stipulated to the basic facts at issue. (L.F. 9; Tr. 1-2).

On June 4, 2015, the trial court issued an order sustaining Defendant's motion to suppress. (L.F. 36).

POINT RELIED ON

The trial court erred in granting Defendant's motion to suppress statements that Defendant made to the police after finding that Detective McElroy and Deputy Sergeant Berry violated Defendant's Fifth Amendment rights because Defendant did not unequivocally assert his Fifth Amendment right to counsel in that Defendant simply refused to sign a consent-to-search form without an attorney when asked to do so, but did not otherwise refuse to communicate with the police or invoke his right to counsel.

Connecticut v. Barrett, 479 U.S. 523 (1987).

Davis v. United States, 512 U.S. 452 (1994).

McNeil v. Wisconsin, 501 U.S. 171 (1991).

State v. O'Neal, 392 S.W.3d 556 (Mo. App. W.D. 2013).

ARGUMENT

The trial court erred in granting Defendant's motion to suppress statements that Defendant made to the police after finding that Detective McElroy and Deputy Sergeant Berry violated Defendant's Fifth Amendment rights because Defendant did not unequivocally assert his Fifth Amendment right to counsel in that Defendant simply refused to sign a consent-to-search form without an attorney when asked to do so, but did not otherwise refuse to communicate with the police or invoke his right to counsel.

A. Standard of Review

"This Court reviews a trial court's ruling on a motion to suppress in the light most favorable to the ruling and defers to the trial court's determinations of credibility." *State v. Edwards*, 116 S.W.3d 511, 530 (Mo. banc 2003). "The inquiry is limited to whether the decision is supported by substantial evidence, and it will be reversed only if clearly erroneous." *Id.*

"Factual issues on motions to suppress are mixed questions of law and fact." *State v. Werner*, 9 S.W.3d 590, 595 (Mo. banc 2000). "An issue of fact is one of primary, or historical facts: facts in the sense of a recital of external events and the credibility of their narrators." *Werner*, 9 S.W.3d at 595 (internal quotation marks omitted). "This Court gives deference to the trial court's factual findings but reviews questions of law *de novo*." *State v. Gaw*,

285 S.W.3d 318, 320 (Mo. banc 2009). Thus, mixed questions of law and fact qualify for independent review. *See Werner*, 9 S.W.3d at 595 ("The question of whether a suspect is in custody in the context of federal habeas corpus review likewise 'presents a mixed question of law and fact qualifying for independent review.'"); *State v. Smith*, 422 S.W.2d 50, 55 (Mo. banc 1967) ("The constitutional issue having been raised, it is our duty to reach an independent judgment on the mixed question of law and fact whether [the book] Candy is obscene.").

"[W]hen the evidence is uncontested[,] no deference is due to the trial court's findings. Then, the issue is legal and there is no finding of fact to which to defer." *White v. Dir. of Revenue*, 321 S.W.3d 298, 306-07 (Mo. banc 2010) (citations omitted) (emphasis removed). "[I]n that circumstance, the only question before the appellate court is whether the trial court drew the proper legal conclusions from the facts stipulated." *Id.* at 308. "In reviewing a particular issue that is contested, the nature of the appellate court's review is directed by whether the matter contested is a question of fact or law. *See City of St. Joseph v. Vill. of Country Club,* 163 S.W.3d 905, 907 (Mo. banc 2005) (questions of law are reviewed de novo); *Bd. of Educ. of City of St. Louis v. Mo. State Bd. of Educ.,* 271 S.W.3d 1, 7 (Mo. banc 2008) (when reviewing questions of fact, deference is given to the fact-finder). When the facts relevant to an issue are contested, the reviewing court defers to the trial

court's assessment of the evidence." *Id.* at 308. "[W]here there is no conflict in the evidence, the question becomes one of law for the court and not one of fact for the jury." *State v. Pierce*, 433 S.W.3d 424, 445 (Mo. banc 2014) (Stith, J., concurring and dissenting) (citing *White v. Dir. of Revenue*, 321 S.W.3d 298, 308 (Mo. banc 2010)).

B. Facts

At the motion-to-suppress hearing, the parties stipulated as to what the essential facts were. (Tr. 2). Counsel for Defendant stated, "[The prosecutor] and I can agree on most of the facts and then the question will become what is operative law vis-a-vis the facts. And if you will permit me, I will recite what I think the facts would be." (Tr. 2). Counsel for Defendant then recited the facts (Tr. 2), and the prosecutor then made two factual corrections, indicating that he did not believe the corrections were relevant to motion (Tr. 6). The parties continued to stipulate facts throughout the hearing. (Tr. 2-24). The stipulated facts include the following:

While Deputy Thorn and Defendant were talking inside the ambulance, Defendant became animated and upset with the law enforcement officers for not addressing the medical needs of his wife. (Tr. 4). Defendant became increasingly emotional, and he continued to ask why the officers were not doing anything for his wife and stated that he could not believe that she had shot him. (Tr. 4). Believing that it was appropriate to advise Defendant of his

constitutional rights, Deputy Devost read Defendant the *Miranda* warnings from a department-issued card he kept inside his shirt pocket. (Tr. 4-5). Defendant then continued to converse with Deputy Thorn, though Deputy Thorn did not record any of this conversation. (Tr. 5). Deputy Devost then asked Defendant to execute a form consenting to a search of his home. (L.F. 20; Tr. 5). In response, Defendant told Deputy Devost, "I ain't signing shit without my attorney." (L.F. 20; Tr. 5). Deputy Devost did not ask any more questions of Defendant. (L.F. 36; Tr. 5, 10).

The next morning, Defendant was interviewed by Detective McElroy and Deputy Sergeant Berry. (Tr. 14-17; L.F. 20, 36; Joint Ex. 3 at 98). Prior to asking Defendant any questions, Detective McElroy read Defendant the *Miranda* warnings, which Defendant indicated he understood. (L.F. 20, 36; Tr. 14-15; Joint Ex. 3 at 98). Defendant then proceeded to make statements to the officers concerning what had occurred at his home, along with details such as where he had been standing. (Tr. 15).

C. Defendant did not invoke his right to counsel for all purposes.

"The Fifth Amendment prohibition against compelled self-incrimination provides an accused with the right to have counsel present during custodial interrogations." *State v. Jones*, 914 S.W.2d 852, 860 (Mo. App. S.D. 1996). "In order to safeguard that right, in *Edwards v. Arizona,* the Court held that when an accused person in custody has requested counsel he

shall not be questioned further until counsel has been made available to him." *Jones*, 914 S.W.2d at 860 (internal citation omitted). But "[t]his rule *only* applies when the accused *clearly* asserts his right to the assistance of counsel." *State v. Jones*, 914 S.W.2d 852, 860 (Mo. App. S.D. 1996) (emphases added). An accused "must 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." *Davis v. United States*, 512 U.S. 452, 459 (1994). "The question of whether an accused has invoked the right to counsel is objective." *State v. Harris*, 305 S.W.3d 482, 485 (Mo. App. E.D. 2010). "[C]ourts must look to the full context of a particular statement in order to determine whether a suspect invoked his rights or not." *State v. O'Neal*, 392 S.W.3d 556, 569 (Mo. App. W.D. 2013).

Reinforcing the notion that the request for counsel must be *clearly* asserted, "[i]n *Davis v. United States,* the Court emphasized that the suspect must unambiguously request counsel. It observed that a statement is either an assertion of the right to counsel or it is not." *Jones*, 914 S.W.2d at 860. "[I]f a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel, our precedents do not require the cessation of questioning. . . . [T]he *likelihood*

that a suspect would wish counsel to be present is not the test for applicability of *Edwards*." *Davis v. United States*, 512 U.S. 452, 459 (1994).

One of the primary purposes of the *Miranda* warnings is to inform a suspect that he can "control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation." *Michigan v. Mosley*, 423 U.S. 96, 103-04 (1975). "[A] defendant may selectively waive his *Miranda* rights, deciding to respond to some questions but not others." *State v. Cummings*, 850 N.W.2d 915, 928 (Wis. 2014) (internal quotation marks omitted). "The fundamental purpose of the Court's decision in *Miranda* was to assure that *the individual's right to choose* between speech and silence remains unfettered throughout the interrogation process." *Connecticut v. Barrett*, 479 U.S. 523, 528 (1987) (emphasis in original) (internal quotation marks omitted).

Here, the *Miranda* warnings functioned effectively. Defendant exercised his right to choose to talk with the police without an attorney present, and he exercised his right to refuse to sign anything without an attorney present. As Maryland's highest court explained, when a defendant volunteers an oral statement but refuses a written statement, to interpret the defendant's actions as an invocation of rights such that the police are wholly prohibited from questioning the defendant, would "stretch[] the purposes of *Miranda* to illogical and irrational extremes. That the defendant chooses one

form of speech over another does not necessarily signify, *absent some additional evidence,* that the defendant has chosen silence over speech." *Crosby v. State*, 784 A.2d 1102, 1109-10 (Md. 2001) (emphasis in original).

Based on the principles outlined above, if a suspect is willing to speak with police on a limited basis but wants to consult with counsel in some other respect, he must make clear the category of statements for which he is invoking his right to counsel:

> Given these principles, it follows that when a suspect makes a qualified invocation by requesting the presence of counsel before answering certain kinds of questions, the qualification must also be unequivocal and unambiguous and thereby make it clear to a reasonable police officer what kinds of questions the suspect is unwilling to answer. *See Davis,* 512 U.S. at 458–59, 114 S.Ct. at 2354–55. To do that, the qualification must be one that a reasonable police officer would understand as placing a specific question outside the boundaries of the interrogation until the condition the suspect has placed on the question is met, i.e., until counsel is present.
>
> . . .
>
> However, a suspect's qualified invocation will not render later incriminating statements inadmissible if a reasonable police officer

would believe only that the qualification *might* place certain questions outside the boundaries of the interrogation while counsel is not present. *Burrell v. Com.*, 710 S.E.2d 509, 515-16 (Va. Ct. App. 2011) (footnote omitted).

Here, Defendant did not clearly indicate that any questioning was "outside the boundaries of the interrogation." *Burrell*, 710 S.E.2d at 516. It is notable that Defendant chose not to invoke his right to an attorney immediately after Deputy Devost initially read the *Miranda* warnings to Defendant. Rather, Defendant continued to converse with Deputy Thorn. (Tr. 5). It was only sometime later that Deputy Devost made a narrow, specific request that Defendant sign the consent-to-search form, to which Defendant then replied, "I ain't *signing* shit without my attorney." (Tr. 5) (emphasis added).

It is clear that Defendant's remark was a direct response to the deputy's request for Defendant to sign the specific consent-to-search form presented to him. Courts must look to the "ordinary meaning" of a suspect's language when determining whether and to what extent the suspect invoked his right to counsel. *Connecticut v. Barrett*, 479 U.S. 523, 529-30 (1987). "Interpretation is only required where the defendant's words, understood as ordinary people would understand them, are ambiguous." *Connecticut v. Barrett*, 479 U.S. 523, 529 (1987).

Defendant's statement was not ambiguous. He clearly articulated his desire not to sign a document without an attorney. To hold that such a request constitutes an expressed desire for an attorney before speaking at all with police would require not a "broad interpretation of an ambiguous statement, but a disregard of the ordinary meaning of [Defendant's] statement." *Connecticut v. Barrett*, 479 U.S. 523, 529-30 (1987). A reasonable police officer would not have understood the ordinary meaning of Defendant's statement as a request for an attorney for all purposes. *Davis v. United States*, 512 U.S. 452, 459 (1994). Furthermore, over 24 hours from when Deputy Devost first read Defendant the *Miranda* warnings, a different officer read Defendant the *Miranda* warnings again the next day before interviewing Defendant, and Defendant responded that he understood the warnings. (L.F. 20, 36; Tr. 4-5, 14-15; Joint Ex. 3 at 98). Defendant then actively and voluntarily answered Detective McElroy's and Deputy Sergeant Berry's questions. (Tr. 15).

Recently, the United States Supreme Court further articulated the specificity with which a Defendant must invoke his Fifth Amendment right to counsel. In *McNeil v. Wisconsin*, the Court stated that the *Edwards* rule "applies only when the suspect ha[s] *expressed* his wish for the particular sort of lawyerly assistance that is the subject of *Miranda*." *McNeil v. Wisconsin*, 501 U.S. 171, 178 (1991) (emphasis in original) (internal quotation marks

omitted). "It requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney *in dealing with custodial interrogation by the police.*" *Id.* (emphasis in original).[2] "[R]equesting consent to search does not constitute interrogation because a statement of consent is not an incriminating response." *State v. Baldwin*, 290 S.W.3d 139, 144 (Mo. App. W.D. 2009). Here, it is clear from the context of Defendant's comment that he wanted an attorney before signing a consent form regarding the search of his home. A reasonable police officer would not have interpreted Defendant's comment as invocation of the right to counsel for all Fifth Amendment purposes. *Davis*, 512 U.S. at 459. Additionally, "*Miranda* rights cannot be anticipatorily invoked outside the context of a custodial interrogation." *State v. Case*, 140 S.W.3d 80, 89 (Mo. App. W.D. 2004). Because Defendant made his remark absent police questioning and

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[2] The *McNeil* court further stated that "[t]o invoke the Sixth Amendment interest is, as a matter of *fact, not* to invoke the *Miranda–Edwards* interest." *McNeil v. Wisconsin*, 501 U.S. 171, 178 (1991). Likewise, Defendant's request for an attorney in connection with signing a form to consent to a search of his house, a Fourth Amendment matter, does not constitute invocation of an attorney for Fifth Amendment purposes.

simply in response to a request to consent to a search—which is not interrogation, *Baldwin*, 290 S.W.3d at 144—Defendant was not being interrogated when he made his remark. (Tr. 4-5). Thus, Defendant's limited invocation could not have constituted an invocation for all Fifth Amendment purposes, as the invocation was premature. *Case*, 140 S.W.3d at 89; *McNeil*, 501 U.S. at 182 n.3 ("We have in fact never held that a person can invoke his *Miranda* rights anticipatorily, in a context other than 'custodial interrogation.'").

The Seventh Circuit has similarly held that a refusal of a request to consent to search without an attorney does not constitute an invocation for all Fifth Amendment purposes. *United States v. LaGrone*, 43 F.3d 332, 336-37 (7th Cir. 1994). The facts in *Lagrone* are extremely similar to the facts here. In *Lagrone*, the defendant had been handcuffed and was read the *Miranda* warnings, and was then asked to consent for officers to search his grocery store. *Id.* at 333. The defendant then demanded that he be allowed to call his attorney. *Id.* at 336. The court rejected the defendant's argument that he had invoked his right to counsel prior to undergoing further police interrogation, holding that the defendant had invoked his right to an attorney for the limited purpose of the search of his store. *Id.* at 336-37. Here, Defendant's request for an attorney—that he simply would not *sign* anything without an

attorney—was even narrower than the defendant's request in *Lagrone*, which was a demand to call his attorney.

Russell v. State, 215 S.W.3d 531 (Tex. App. 2007), is similar. In *Russell*, the defendant was very briefly interrogated by being asked where the knife was, and then the defendant was searched and his pockets were emptied. *Russell*, 215 S.W.3d at 533-34. The defendant then stated, "I need my cell phone to call my lawyer." *Id.* The court held that the defendant had not invoked his Fifth Amendment right to counsel:

> Russell's mention of his attorney was not in response to a question by Officer Henderson. It came some time after the question and answer regarding the knife and in response to a search and his cell phone being taken away. A request for counsel in these circumstances cannot reasonably be seen as a request for the type of assistance envisioned by *Miranda*.

Id. at 535. Likewise, Defendant's remark here, made immediately after a request to consent to a search, cannot reasonably be seen as a request for the type of assistance envisioned by *Miranda*.

Defendant's unambiguous, limited invocation is also akin to the defendant's request in *Connecticut v. Barrett*, where that defendant expressly stated he was unwilling to give the police any written statements, but he was willing to talk with police about the incident. *Barrett*, 479 U.S. at 525. "That

the defendant chooses one form of speech over another does not necessarily signify, *absent some additional evidence,* that the defendant has chosen silence over speech." *Crosby v. State*, 784 A.2d 1102, 1109-10 (Md. 2001) (emphasis in original). "The fundamental purpose of the Court's decision in *Miranda* was to assure that *the individual's right to choose* between speech and silence remains unfettered throughout the interrogation process." *Connecticut v. Barrett*, 479 U.S. 523, 528 (1987) (emphasis in original) (internal quotation marks omitted). The defendant in *Barrett* provided no additional evidence that he had chosen silence over speech. The *Barrett* court held that the defendant had made only a limited request for counsel: "The fact that officials took the opportunity provided by Barrett to obtain an oral confession is quite consistent with the Fifth Amendment. *Miranda* gives the defendant a right to choose between speech and silence, and Barrett chose to speak." *Connecticut v. Barrett*, 479 U.S. 523, 529 (1987).

Likewise, Defendant's limited invocation here was not accompanied by any additional evidence indicating to the officers that he was choosing silence over speech. *Crosby*, 784 A.2d at 1109-10. On the contrary, Defendant actively chose to speak with Detective McElroy and Deputy Sergeant Berry, even after being read the *Miranda* warnings a second time, over 24 hours from when Deputy Devost initially read Defendant the *Miranda* warnings. (Tr. 4-5, 14-15; L.F. 20; Joint Ex 3. at 98).

The Seventh Circuit case of *United States v. Martin* further illustrates that if a defendant's invocation is made in response to a police officer's request, the defendant's invocation must be viewed in context of the officer's request. In *Martin*, police asked the defendant if he would make a written statement. *United States v. Martin*, 664 F.3d 684, 685 (7th Cir. 2011). The defendant responded, "I'd rather talk to an attorney first before I do that." *Id.* Officers ended that initial interview, but interviewed the defendant again two or three hours later. *Id.* The court found that the defendant was "directly responding to a request to make a written statement at the time he invoked his right to counsel." *Id.* at 688-89. The court held that the defendant made only a limited invocation of the right to counsel and that his subsequent statements to police were admissible. *Id.*

State v. Uraine is similar. The defendant in *Uraine* was driving erratically, and an officer read the defendant the implied consent form. *State v. Uraine*, 754 P.2d 350, 350 (Ariz. Ct. App. 1988). The defendant responded that he would not take the breath test until he talked to his lawyer. *Id.* The court noted the context in which the defendant's limited invocation was made when holding that the defendant did not invoke his right to counsel for all purposes: "[A]ppellant asked to speak to a lawyer before making a decision as to whether he would submit to a breath test. *This occurred immediately after he was advised of the implied consent law*. The appellant's limited invocation

of the right to counsel did not operate as a request for counsel for all purposes." *Id.* at 351 (emphasis added).

Similar to *Martin* and *Uraine*, Defendant's statement that he would not sign anything without an attorney was made immediately after police asked Defendant to sign the consent-to-search form. (Tr. 5). Thus, viewed in context, *O'Neal*, 392 S.W.3d at 569, it is apparent that Defendant's invocation was not for all purposes, but was limited to the context in which it was made—with regard to signing the consent-to-search form or other documents.

Missouri courts have had some occasion to apply the limited-invocation doctrine. In *State v. Hunter*, the defendant told police that if reward money was still being offered, then he would like an attorney, but if not, then there would be no need for an attorney. *State v. Hunter*, 840 S.W.2d 850, 870 (Mo. banc 1992). At the next meeting, officers told the defendant that the reward had been withdrawn, and the defendant then gave a confession. *Id.* The court held that the defendant had only made a limited invocation of rights and that the police had honored that limited invocation. *Id.* In *State v. Blackman*, the defendant was arrested for shoplifting and was then questioned regarding an unrelated homicide. *State v. Blackman*, 875 S.W.2d 122, 128, 137 (Mo. App. E.D. 1994). After the interview, when officers told the defendant that he would be booked for the shoplifting charge, the defendant asked to talk to his father or have the police contact an attorney because the defendant believed

that the shoplifting warrant had been "recalled." *Id.* at 137. Police called the attorney for the defendant. *Id.* The court held that the defendant had not asserted his right to counsel in the context of the police interrogation regarding the homicide. *Id.*

Thus, the courts used the ordinary language of the requests made by the defendants in *Blackman* and *Hunter* to determine that those defendants had not invoked their right to counsel for all purposes. Those defendants' requests were not ambiguous, and so there was no reason to give the requests a broad interpretation. *See Barrett*, 479 U.S. at 529-30. Likewise, Defendant's invocation here was not ambiguous and was limited to signing the consent-to-search form and other documents. The trial court's ruling is clearly erroneous. *State v. Edwards*, 116 S.W.3d at 530.

"Voluntary confessions are not merely a proper element in law enforcement, they are an unmitigated good, essential to society's compelling interest in finding, convicting, and punishing those who violate the law." *Maryland v. Shatzer*, 559 U.S. 98, 108 (2010) (internal citations and quotation marks omitted). "[T]he *Edwards* rule [that once a defendant expresses a desire to deal with the police only through counsel, the police may not further interrogate the defendant until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversation with the police] is not a constitutional mandate,

but judicially prescribed prophylaxis." *Id.* at 105. As such, the rule is "justified only by reference to its prophylactic purpose" and "applies only where its benefits outweigh its costs." *Id.* at 106.

The rule serves no notable prophylactic purpose when applied to suppress statements in cases like the present one. The police did not exploit Defendant's limited invocation. Rather, questioning stopped immediately after Defendant's remark. (Tr. 5). Additionally, by providing the *Miranda* warnings again to Defendant prior to interviewing him the next day, officers took steps to ensure that Defendant continued to understand his rights—thereby giving him an additional opportunity to affirmatively exercise those rights and choose between speech and silence. (L.F. 20, 36; Tr. 14-15; Joint Ex. 3 at 98). Defendant chose to speak.

CONCLUSION

The trial court's judgment granting Defendant's motion to suppress should be reversed.

Respectfully submitted,

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STATE OF MISSOURI

CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 4794 words, excluding the cover, certification and appendix, as determined by Microsoft Word 2010 software; and

2. That a true and correct copy of the attached brief, was sent through the eFiling system on June 22, 2016, to:

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