STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Appeal No. 2014AP342-CR
(Milwaukee County Cir. Ct. Case No. 2010CF69)

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JOHNNY JEROME JONES,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT,
THE HONORABLE DAVID L. BOROWSKI PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT STATE OF WISCONSIN

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BRIEF OF PLAINTIFF-RESPONDENT STATE OF WISCONSIN[1]

QUESTION PRESENTED

In light of the circumstances attending the question "So y'all can get a public pretender right now?," and in light of controlling court decisions requiring an unambiguous or unequivocal request for counsel, did the circuit court correctly hold that defendant-appellant Johnny Jerome Jones did not unambiguously or unequivocally invoke his right to counsel?

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[1] To facilitate online reading, the electronically filed version of this brief includes hyperlinked bookmarks.

- By its decision, the circuit court implicitly answered "Yes."
- This court should answer "Yes."

POSITION ON ORAL ARGUMENT AND PUBLICATION OF THE COURT'S OPINION

Oral argument. The State does not request oral argument.

Publication. The State does not request publication of the court's opinion.

STATEMENT OF THE CASE: FACTS AND PROCEDURAL HISTORY

As respondent, the State exercises its option not to present a full statement of the case. Wis. Stat. § (Rule) 809.19(3)(a)2.[2] Instead, the State will present additional facts in the "Argument" portion of its brief.

STANDARDS OF REVIEW

A. Exercise Of Discretion.

When an appellate court reviews a circuit court's discretionary decision, the appellate court asks whether the circuit court exercised discretion, not whether another judge might have exercised discretion differently. ***State v. Prineas***, 2009 WI App 28, ¶ 34, 316 Wis. 2d 414, 766 N.W.2d 206.

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[2] Unless indicated otherwise, all citations to Wisconsin Statutes refer to the 2011-12 edition.

> The term "discretion" contemplates a process of reasoning which depends on facts in the record or reasonably derived by inference from the record that yield a conclusion based on logic and founded on proper legal standards. The record on appeal must reflect the circuit court's reasoned application of the appropriate legal standard to the relevant facts of the case.

State v. Delgado, 223 Wis. 2d 270, 280-81, 588 N.W.2d 1 (1999) (citations omitted).

> Under this standard, the circuit court's determination will be upheld on appeal if it is a reasonable conclusion, based upon a consideration of the appropriate law and facts of record. . . . While the basis for an exercise of discretion should be set forth in the record, it will be upheld if the appellate court can find facts of record which would support the circuit court's decision.

Peplinski v. Fobe's Roofing, Inc., 193 Wis. 2d 6, 20, 531 N.W.2d 597 (1995) (citations omitted).

> Evidentiary determinations are within the trial court's broad discretion and will be reversed only if the trial court's determination represents a prejudicial misuse of discretion. [An appellate court] will find an erroneous exercise of discretion where a trial court failed to exercise discretion, the facts fail to support the decision, or the trial court applied the wrong legal standard.

State v. Burton, 2007 WI App 237, ¶ 13, 306 Wis. 2d 403, 743 N.W.2d 152 (citations omitted).

B. Grant Or Denial Of Suppression Motion.

Whether to grant or deny a motion to suppress evidence lies within the discretion of the circuit court. ***State v. Keith***, 216 Wis. 2d 61, 68, 573 N.W.2d 888 (Ct. App. 1997). Therefore, an appel-

late court will overturn an evidentiary decision of the circuit court only if that court erroneously exercised its discretion. ***Id.*** at 69.

> When we review a discretionary decision, we examine the record to determine if the circuit court logically interpreted the facts, applied the proper legal standard, and used a demonstrated rational process to reach a conclusion that a reasonable judge could reach. In considering whether the proper legal standard was applied, however, no deference is due. This court's function is to correct legal errors. Therefore, we review *de novo* whether the evidence before the circuit court was legally sufficient to support its rulings. Furthermore, if evidence has been erroneously admitted or excluded, we will independently determine whether that error was harmless or prejudicial.

Id. (citations omitted). *See also* ***State v. Eason***, 2001 WI 98, ¶ 9, 245 Wis. 2d 206, 629 N.W.2d 625.

> On review of a motion to suppress, [an appellate] court employs a two-step analysis. First, we review the circuit court's findings of fact. We will uphold these findings unless they are against the great weight and clear preponderance of the evidence. "In reviewing an order suppressing evidence, appellate courts will uphold findings of evidentiary or historical fact unless they are clearly erroneous." Next, we must review independently the application of relevant constitutional principles to those facts. Such a review presents a question of law, which we review de novo, but with the benefit of analyses of the circuit court . . . .

State v. Dubose, 2005 WI 126, ¶ 16, 285 Wis. 2d 143, 699 N.W.2d 582 (citations omitted). *See also* ***State v. Poellinger***, 153 Wis. 2d 493, 506-07, 451 N.W.2d 752 (1990) ("[W]hen faced with a record of historical facts which supports more than one inference, an appellate court must accept and follow

the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law.");[3] ***State v. Owens***, 148 Wis. 2d 922, 929-30, 436 N.W.2d 869 (1989) (when an appellate court reviews a circuit court's decision on a suppression motion, the appellate court defers to the circuit court's credibility determinations); ***State v. Turner***, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987) (appellate court will sustain "the trial court's findings of historical or evidentiary fact unless they are contrary to the great weight and clear preponderance of the evidence. This is basically a 'clearly erroneous' standard of review.").

An appellate court will not reweigh the suppression-hearing testimony. "Confronted with the conflict of testimony, it [is] the trial court's obligation to resolve it." ***Owens***, 148 Wis. 2d at 930. When an appellate court reviews a circuit court's decision on a suppression motion, the appellate court defers to the circuit court's credibility determinations. ***Id.*** at 929-30. *See also* ***Sanders v. State***, 69 Wis. 2d 242, 253, 230 N.W.2d 845 (1975) ("the credibility of witnesses testifying at a hearing outside of the presence of the jury, such as a suppression hearing, is a question to be resolved by the trial judge"). "Any [unresolved] conflicts in

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[3] "[']Incredible as a matter of law['] means inherently incredible, such as in conflict with the uniform course of nature or with fully established or conceded facts. *Chapman v. State*, 69 Wis. 2d 581, 583, 230 N.W.2d 824, 825 (1975); *Simos v. State*, 53 Wis. 2d 493, 495-96, 192 N.W.2d 877, 878 (1972)." ***State v. King***, 187 Wis. 2d 548, 562, 523 N.W.2d 159 (Ct. App. 1994).

testimony will be resolved in favor of the trial court's finding. The credibility of [witnesses] testifying at a suppression hearing outside the presence of the jury is a question for determination by the trial court." ***State v. Flynn***, 92 Wis. 2d 427, 437, 285 N.W.2d 710 (1979) (citations omitted).

ARGUMENT

THE CIRCUIT COURT CORRECTLY HELD THAT, UNDER THE ATTENDANT CIRCUMSTANCES THE QUESTION "SO Y'ALL CAN GET A PUBLIC PRETENDER RIGHT NOW?" DID NOT UNAMBIGUOUSLY OR UNEQUIVOCALLY INVOKE JONES'S RIGHT TO COUNSEL.

This appeal presents one issue: whether a question by Jones during a police interview on January 18, 2010, amounted to an unequivocal invocation of his right to counsel.[4] The circuit court held that Jones did not unequivocally invoke his right to counsel. This court should affirm that decision.

The question — referring to "public pretender" — occurred during this exchange about thirty percent of the way into a one-and-three-quarter-hour interview (the first of two recorded interviews):

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[4] Jones acknowledges that his question occurred after he received his ***Miranda*** warning of rights. *See* Jones's Brief at 3. The record supports his concession. *See* 74:10-11 (transcript of suppression hearing); 111:Exh. 1, at 25:40 to 27:10 (audio recording of interview). During the suppression hearing, Jones testified that he had understood those rights (74:62).

DETECTIVE: You see the thing is, Johnny, is no one can, no one can speak for you. No one else, no witnesses, no one that was there.

JONES: I know.

DETECTIVE: We can't, nothing like that.

JONES: I just feel so damn horrible.

DETECTIVE: Well and that's, and that's why . . .

JONES: So . . .

DETECTIVE: . . . it's important to get your side out.

JONES: So y'all can get a public pretender right now?[5]

[*LAUGHTER*]

DETECTIVE: You said it right, pretender . . .

[*LAUGHTER*]

DETECTIVE: . . . they're called public defenders.

JONES: Oh yeah.

DETECTIVE: Um, we ca–, obviously due to the time right now,[6] we can't, um . . .

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5 In his appellate brief, Jones notes that "[t]rial counsel's and the State's recitation of this line varied slightly. According to trial counsel's circuit court brief, Mr. Jones said 'Y'all can get me a public pretender now.' (26:1-2). According to the State's brief, Mr. Jones said 'So you all gonna get a public pretender right now'. (25:2)." Jones's Brief at 4 n.2. The circuit court heard the question as "so y'all going to get a public pretender right now, sort of with a question mark at the end of it" (76:8). State's appellate counsel listened to the question many times (including through headphones, to block out external noise) and heard the question as transcribed in the text accompanying this footnote. During the suppression hearing, Jones characterized the remark as a question (74:47).

[*BRIEF SILENCE*]

JONES: How, how much, how much time is it anyway, you face off of reckless homicide?

DETECTIVE: Well it's, I believe it's between, the max is 15 years. I believe. Now I'm not, don't quote me on that, but . . .

JONES: [Interview continues]

(111:Exh. 1, at 28:51 to 29:52 (footnotes added).)

At the beginning of the hearing on Jones's suppression motion (74), the circuit court stated, "For the record I've listened to the interviews, both of the interviews that were conducted in this case" (74:3). When the court decided to deny Jones's motion, the court said, "I also, again, listened to the portion of the interview, the portion of the interrogation that's questioned, specifically the language from the defendant about a 'public pretender'" (76:3). Later, the court explained its assessment of the question:

> For the record, as indicated, I did review the briefs that were submitted by both sides. I also reviewed the case law in Wisconsin including the *Jennings* case. Beyond that I reviewed the *Markwardt* decision, along with the *Fischer* case.
>
> I will note, first of all, that in the argument presented by both sides, there's a disagreement between the State and the defense as to what was exactly said. And it's important in the Court's analysis because, beyond reading the Wisconsin cases, I spent a bit of time yesterday, had a law clerk assist me with some additional research on some cases at the feder-

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(footnote continues from previous page)

[6] The interview began shortly after 1:18 a.m. (111:Exh. 1, at 00:10 to 00:12).

al level that also discuss the request for an attorney and whether or not a defendant's statement or request for counsel is unequivocal.

And I think it is important in my analysis to put this in context and to be very careful about exactly what was said by the defendant, The defense argues that Mr. Jones said, "y'all can get me a public pretender now". The State argues that the defendant said "so y'all going to get a public pretender right now."

And there is a difference. I've listened to that portion of the CD at least half-a-dozen times. The defendant clearly says "so y'all going to get a public pretender right now." He does not say, "you all can get me a public defender now." And he says it clearly in what I interpret to be effectively a joking tone.

To my ears, and I listened to the CD many times, he makes the comment, so y'all going to get a public pretender right now, sort of with a question mark at the end of it, and he says it in a sort of a joking manner. To my ears, he and the two detectives were laughing at this comment. It was said in a tone that was, in my view, not particularly serious from Mr. Jones. It was answered by the detective as pretty much along the lines you said it right "pretender", with a very short pause, they are called public defenders. And the defendant says, oh, yeah, or something to that effect.

The detective says due to the time right now, we can't pause this for a short period of time. The defendant then continues and asks the question of how much time can I get for this any ways; how much do I face for this homicide. The detective then goes on and says he believes it's 15 years but don't quote me on that and it goes on from there.

(76:7-9.)

Mr. Jones is someone who, frankly, does have experience in the criminal justice system. This was not the first time he had been involved in the criminal justice system. It appears it was certainly not the first time he was being interrogated. And, in my

> view, he was specifically along the lines of what the State argued as part of the "thrust and parry" between the detectives and the defendant using his term; a slang, derogatory, joking fashion. It was meant to be used in a slang fashion. It was meant to be derogatory. It was meant to be insulting to the capabilities or lack thereof of public defenders.
>
> And the analysis of what he said is also important because, in looking at the Wisconsin decisions and some federal cases, the State is correct. Obviously, the long line of cases, both at the federal level and the Wisconsin courts after the *Miranda* decision, make it clear that the defendant, as someone being interrogated as Mr. Jones was, needs to make his request in unequivocal fashion. He needs to articulate his request for an attorney clearly.

(76:9-10.)

> The bottom line is I do not believe this was an unequivocal request under the circumstances. I think that this defendant, Mr. Jones, was joking around with the officers. He and they laughed to my ears at his derogatory, slang phrase, this insulting phrase about public defenders. I think this was a situation where he was, if there was any request, whatsoever, I'm not sure that there was, it was very equivocal. It was certainly not an unequivocal request. It was part of the thrust and parry, which is indicated by the context and the circumstances, including that very, very shortly before this comment, which beyond what I've said already, was said in almost a rhetorical kind of odd fashion.
>
> Clearly, again to my ears, Mr. Jones and the detectives, all three of them were laughing at his comment about a public pretender. It was thrust and parry. It was not an unequivocal request.

> The State has met their burden in this case. The motion to suppress the statement is denied on this ground and on the grounds that we dealt with last week. . . .

(76:12.)

Under controlling court decisions (cited and discussed below), the circuit court correctly denied Jones's motion. Under the standards for reviewing a circuit court's exercise of discretion (pp. 2-3, above) and for reviewing a circuit court's decision whether to deny or grant a suppression motion (pp. 3-6, above), this court should affirm the circuit court's order.

In ***Davis v. United States***, 512 U.S. 452 (1994), the Supreme Court of the United States set out the "clear articulation rule" for invoking the right to counsel after a defendant has received the ***Miranda***[7] warning of rights:

> The applicability of the "'rigid' prophylactic rule" of *Edwards*[8] requires courts to "determine whether the accused *actually invoked* his right to counsel." *Smith v. Illinois*, *supra*, 469 U.S., at 95 (emphasis added), quoting *Fare v. Michael C.*, 442 U.S. 707, 719 (1979). To avoid difficulties of proof and to provide guidance to officers conducting interrogations, this is an objective inquiry. See *Connecticut v. Barrett*, *supra*, at 529. Invocation of the *Miranda* right to counsel "requires, at a minimum, some statement that can reasonably be construed to be an expression

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[7] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[8] ***Edwards* v. *Arizona***, 451 U.S. 477 (1981).

> of a desire for the assistance of an attorney." *McNeil v. Wisconsin*, 501 U.S., at 178. But if 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. See *ibid.* ("[T]he *likelihood* that a suspect would wish counsel to be present is not the test for applicability of *Edwards*"); *Edwards v. Arizona*, *supra*, 451 U.S., at 485 (impermissible for authorities "to reinterrogate an accused in custody if he has *clearly asserted* his right to counsel") (emphasis added).
>
> Rather, the suspect must unambiguously request counsel. As we have observed, "a statement either is such an assertion of the right to counsel or it is not." *Smith v. Illinois*, 469 U.S., at 97-98 (brackets and internal quotation marks omitted). Although a suspect need not "speak with the discrimination of an Oxford don," *post*, at 476 (SOUTER, J., concurring in judgment), he 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. If the statement fails to meet the requisite level of clarity, *Edwards* does not require that the officers stop questioning the suspect. See *Moran v. Burbine*, 475 U.S. 412, 433, n. 4 (1986) ("[T]he interrogation must cease until an attorney is present *only* [i]f the individual states that he wants an attorney") (citations and internal quotation marks omitted).

Id. at 458-59 (footnote added).

The *Edwards* rule—questioning must cease if the suspect asks for a lawyer—provides a bright line that can be applied by officers in the real world of investigation and interrogation without unduly hampering the gathering of information. But if we were to require questioning to cease if a suspect makes a statement that *might* be a request for an attorney, this clarity and ease of application would be

> lost. Police officers would be forced to make difficult judgment calls about whether the suspect in fact wants a lawyer even though he has not said so, with the threat of suppression if they guess wrong. We therefore hold that, after a knowing and voluntary waiver of the *Miranda* rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney.
>
> Of course, when a suspect makes an ambiguous or equivocal statement it will often be good police practice for the interviewing officers to clarify whether or not he actually wants an attorney. That was the procedure followed by the NIS agents in this case. Clarifying questions help protect the rights of the suspect by ensuring that he gets an attorney if he wants one, and will minimize the chance of a confession being suppressed due to subsequent judicial second-guessing as to the meaning of the suspect's statement regarding counsel. *But we decline to adopt a rule requiring officers to ask clarifying questions. If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.*
>
> To recapitulate: We held in *Miranda* that a suspect is entitled to the assistance of counsel during custodial interrogation even though the Constitution does not provide for such assistance. We held in *Edwards* that if the suspect invokes the right to counsel at any time, the police must immediately cease questioning him until an attorney is present. But we are unwilling to create a third layer of prophylaxis to prevent police questioning when the suspect *might* want a lawyer. *Unless the suspect actually requests an attorney, questioning may continue.*

Id. at 461-62 (emphases added). *See also* ***Berghuis v. Thompkins***, 560 U.S. 370, 381-82 (2010).

"Wisconsin courts have merged the *Davis* 'clear articulation rule' into Wisconsin jurisprudence with respect to a suspect's invocation of the right to counsel. *See State v. Coerper*, 199 Wis. 2d 216,

223, 544 N.W.2d 423, 426 (1996)." ***State v. Ross***, 203 Wis. 2d 66, 75, 552 N.W.2d 428 (Ct. App. 1996). *See also* ***State v. Markwardt,*** 2007 WI App 242, ¶ 26 n.7, 306 Wis. 2d 420, 742 N.W.2d 546 (noting "clear articulation rule" for invoking right to counsel adopted in Wisconsin).

> If a suspect's statement is susceptible to "reasonable competing inferences" as to its meaning, then the "suspect did not sufficiently invoke the right to remain silent." *Markwardt*, 306 Wis. 2d 420, ¶ 36 (citation omitted). If a suspect makes such an ambiguous or equivocal statement, "police are not required to end the interrogation . . . or ask questions to clarify whether the accused wants to invoke his or her Miranda rights." *Berghuis*, 560 U.S. at 381 (citing *Davis*, 512 U.S. at 461-62).

State v. Cummings, 2014 WI 88, ¶ 51, ___ Wis. 2d ___, 850 N.W.2d 915. "[T]he unequivocal invocation standard is an objective test." ***Id.*** ¶ 50 (citing *Berghuis*).

> [T]he sufficiency of the defendant's invocation of his right to counsel . . . is a question of constitutional fact that [an appellate court] review[s] under a two-part standard. [An appellate court] uphold[s] the circuit court's findings of historical or evidentiary fact unless they are clearly erroneous. [An appellate court] review[s] independently the lower court's application of constitutional principles to those evidentiary facts.

State v. Jennings, 2002 WI 44, ¶ 20, 252 Wis. 2d 228, 647 NW 2d 142 (citations omitted).

In assessing the sufficiency of a defendant's invocation, context matters. *See, e.g.*, ***United States v. Wysinger***, 683 F.3d 784, 794-95 (7th Cir. 2012) ("In this context, a reasonable officer might not understand Wysinger's initial reference to an at-

torney as an unequivocal request for a lawyer."); ***United States v. Hampton***, 675 F.3d 720, 727 (7th Cir. 2012) ("Whether a suspect clearly invoked his right to counsel is an objective inquiry. We have emphasized that the 'analysis does not end with words alone; . . . we also consider the circumstances in which the statement was made.'" (citations omitted)); ***United States v. Peters***, 435 F.3d 746, 752 (7th Cir. 2006) ("the context of Peters's statement does not clarify its meaning"); ***United States v. Muhammad***, 120 F.3d 688, 697-98 (7th Cir. 1997) (describing circumstances showing that defendant's reference to "an attorney" did not unambiguously invoke right to counsel); ***Lord v. Duckworth***, 29 F.3d 1216, 1221 (7th Cir. 1994) ("[T]he context in which [the suspect] made reference to a lawyer also supports the conclusion that any request for counsel was ambiguous. . . ."); ***Jennings,*** 252 Wis. 2d 228, ¶ 22 ("The central evidentiary findings relevant to the suppression motion concern the circumstances surrounding Jennings' mid-interrogation statement to Detective Kreitzmann, 'I think maybe I need to talk to a lawyer.'"); ***State v. Fischer,*** 2003 WI App 5, ¶ 19, 259 Wis. 2d 799, 656 N.W.2d 503 ("[W]e conclude that Fischer's statement to detectives that if the officers read him his rights he would not answer any questions and would request an attorney is sufficiently ambiguous or equivocal such that a reasonable officer *in light of the circumstances* would have understood only that Fischer *might* be invoking the right to counsel." (first emphasis added)); ***Jennings,*** 252 Wis. 2d 228, ¶ 36 ("I think maybe I need to talk to a lawyer" not an unequivocal invocation of right to counsel);

Here, Jones's question did not amount to an unequivocal or unambiguous invocation of the right to counsel. The circuit court described the circumstances surrounding Jones's question:

> The bottom line is I do not believe this was an unequivocal request under the circumstances. . . . Mr. Jones[ ] was joking around with the officers. He and they laughed to my ears at his derogatory, slang phrase, this insulting phrase about public defenders. I think this was a situation where he was, if there was any request, whatsoever, I'm not sure that there was, it was very equivocal. It was certainly not an unequivocal request. It was part of the thrust and parry, which is indicated by the context and the circumstances . . . .
>
> Clearly, again to my ears, Mr. Jones and the detectives, all three of them were laughing at his comment about a public pretender. It was thrust and parry. It was not an unequivocal request.

(76:12.) If nothing else, the qualification of the question with the terminal "now" indicated the contingency of Jones's question. The detective certainly interpreted the question that way ("Um, we ca–, obviously due to the time right now, we can't, um . . ." (111:Exh. 1, at 29:21 to 29:27)). After the detective informed Jones that they could not get a public defender at that hour, Jones continued speaking with the detectives, a circumstance further confirming that Jones's inquiry did not amount to an unequivocal request for counsel but instead depended on a contingency.

In addition, in denying Jones's motion, the circuit court stated that "there is a difference" between Jones asking whether "y'all can get me a public pretender now" and asking whether "so y'all going to get a public pretender right now":

> And I think it is important in my analysis to put this in context and to be very careful about exactly what was said by the defendant, The defense argues that Mr. Jones said, "y'all can get me a public pretender now." The State argues that the defendant said "so y'all going to get a public pretender right now."
>
> And there is a difference. I've listened to that portion of the CD at least half-a-dozen times. The defendant clearly says "so y'all going to get a public pretender right now." He does not say, "you all can get me a public defender now." And he says it clearly in what I interpret to be effectively a joking tone.

(76:8.) The State agrees with the court's characterization of Jones asking the question in a "joking tone" (by itself, the reference to "public pretender" shows as much). But the State disagrees that the difference between the question phrased with "can" and the question phrased with "going to" or "gonna" (see note 5, above) does not carry any substantive significance. In context, and under the objective standard for assessing whether the question amounted to an unambiguous or unequivocal invocation of Jones's right to counsel, asking whether the detectives "can get me a public pretender now," "[are] gonna get me a public pretender now," or "[are] going to get me a public pretender now" carries the same contingent message: what can you detectives do now — not later, but now — in terms of "get[ting] me a public pretender"? In effect, the word "now" — not "can," "going to," or "gonna" — shows the contingent (hence, equivocal) character of the question. "Can," "going to," and "gonna" just serve as inconsequentially different phrasings of the same time-constrained (*i.e.*, equivocal) inquiry.

In the end, therefore, the circuit court correctly held that in asking this question about "a public pretender," Jones did not unequivocally or unambiguously invoke his right to counsel. The audio recording shows that the circuit court did not clearly err in making this finding of fact. Consequently, under the standards for reviewing a circuit court's decision on a suppression motion (pp. 3-6, above), this court should not overturn the circuit court's decision denying Jones's suppression motion.

In summary, Jones's question did not satisfy the clear-articulation rule. *Cf.* ***Wysinger***, 683 F.3d at 794-95 (examples of both equivocal and unequivocal statements); ***Peters***, 435 F.3d at 751 (examples of ambiguous statements). The attendant circumstances — notably, the "joking tone" and the detectives' responses, including laughter and the explanation about the inability to obtain a public defender at that hour — buttress that view. The circuit court therefore correctly determined that Jones did not unambiguously or unequivocally invoke his right to counsel.

CONCLUSION

For the reasons offered in this brief, this court should affirm the circuit court's decision to deny Jones's motion to suppress his statements made during interviews with Milwaukee Police Department detectives and should affirm Jones's judgment of conviction. Under the circumstances evident in the record, and in accord with the controlling court decisions, the question "So y'all can get a public pretender right now?" did not unambiguously or unequivocally invoke Jones's right to counsel.

Date: November 4, 2014.

Respectfully submitted,

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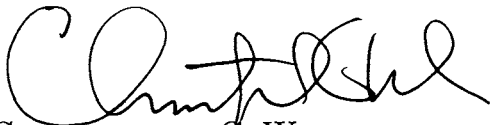

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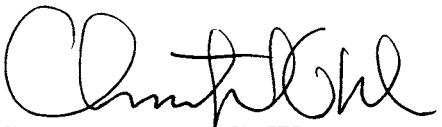
CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(8): FORM AND LENGTH REQUIREMENTS

In accord with Wis. Stat. § (Rule) 809.19(8)(d), I certify that this brief satisfies the form and length requirements for a brief and appendix prepared using a proportional serif font: minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per line, and a length of 4,604 words.



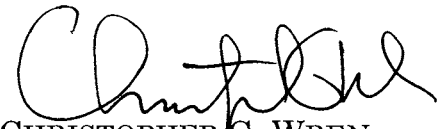
CHRISTOPHER G. WREN

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12): ELECTRONIC BRIEF

In accord with Wis. Stat. § (Rule) 809.19(12)(f), I certify that I have submitted an electronic copy of this brief (excluding the appendix, if any) via the Wisconsin Appellate Courts' eFiling System and that the electronic copy complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that the text of the electronic copy of this brief is identical to the text of the paper copy of the brief.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.



CHRISTOPHER G. WREN