3-16-2015

State v. Coulston Respondent's Brief Dckt. 41396

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	No. 41396
Plaintiff-Respondent,	)	
	)	Kootenai Co. Case No.
vs.	)	CR-2011-20976
	)	
GUY L. COULSTON,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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STATEMENT OF THE CASE

Nature Of The Case

Guy L. Coulston appeals from the judgment entered following his conviction by a jury for lewd conduct with a minor under sixteen.

Statement Of The Facts And Course Of The Proceedings

The state charged Coulston with lewd conduct with a minor under sixteen for having genital-to-genital and/or manual-to-genital contact with A.M. when she was between the ages of ten and fifteen. (R., pp.74-75.) The following summary of the facts underlying Coulston's conviction are gleaned from the testimony and evidence presented during his jury trial.

When A.M. was about nine or ten years old,[1] her mother, who was married to Coulston at the time, dropped out of A.M.'s life, resulting in A.M. filling the "mother role" for Coulston and his two younger daughters (A.M.'s half-sisters) while she continued to live in his home; the "role" included cooking, cleaning, laundry, and getting Coulston's daughters ready for school.[2] (Tr., p.307, Ls.12-20; p.311, L.14 - p.312, L.4.[3]) Coulston and A.M.'s mother divorced when A.M. was about ten or eleven years old. (Tr., p.308, Ls.18-24.)

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[1] A.M. was sixteen years old when she testified at trial. (Tr., p.304, Ls.18-19.)

[2] A.M.'s mother and Coulston had two younger daughters together, and A.M. had not had a relationship with her biological father since she was four or five years old. (Tr., p.307, Ls.3-11; p.309, Ls.7-12.)

[3] Apart from the trial transcript, the only transcripts that are part of the appellate record relate to the jury's return of the verdict and Coulston's Rule 35 motion. Inasmuch as there are no appellate issues concerning those matters, the trial transcript will be cited simply as "Tr."

A.M. testified that for about five years, beginning "around two weeks before [A.M.'s] 11th birthday," Coulston engaged in sexual intercourse with her "between two to four times" a week, and "sometimes it would happen every night, and then every once in a while it would happen . . . once a week," usually in his bedroom. (Tr., p.317, Ls.1-16; p.320, Ls.2-23; p.330, Ls.7-10.) Coulston would let A.M. know he wanted to have sexual intercourse with her by telling her that he wanted "love-ins." (Tr., p.321, Ls.23-25.) Coulston supplied A.M. with lubricants and lotions for her to use, but he never used a condom even though he typically ejaculated inside her during sexual intercourse. (Tr., p.323, L.15 - p.324, L.24.) When other people lived or stayed in the house, Coulston would have sexual intercourse with A.M. in his bedroom, but "[h]e would tell people that [they] were spending time, like father/daughter time" together. (Tr., p.328, L.22 - p.329, L.21.) A.M. slept in Coulston's bedroom instead of her own bedroom "[e]very night unless another person was there" because he "would get really mad and angry and just mean if [she] didn't." (Tr., p.321, Ls.3-9.) A.M. took showers in the bathroom of Coulston's master bedroom and kept much of her "stuff" in his bathroom -- cosmetics, toothbrush, razor, lotion, shampoo, conditioner, and other personal care products. (Tr., p.321, Ls.10-18; p.337, L.21 - p.340, L.5.)

A.M. testified that the last time Coulston had sexual intercourse with her was on November 27, 2011, two days before she told a school counselor about the abuse. (Tr., p.314, Ls.12-18.) She explained that she was in Coulston's bed and he removed her clothing and engaged in sexual intercourse until he ejaculated inside her. (Tr., p.316, L.5 - p.318, L.17.) After putting on her clothes, A.M. noticed her underwear "had the

semen in it, and it was gross," so she went to her bedroom and "changed out of those and left them in [her] room and put another pair on." (Tr., p.318, Ls.8-23.)

On November 29, 2011,[4] A.M. (fifteen years old at the time) reported to a high school counselor that Coulston had had sexual intercourse with her. (Tr., p.312, L.5 - p.314, L.18.) Deputy Sheriff Dennis Stinebaugh went to the school and interviewed A.M. with the counselor present. (Tr., p.206, L.15 - p.207, L.18; p.313, Ls.8-19.) After the interview, Deputy Stinebaugh drove A.M. to the detective's division of the Sheriff's Department, where Detective Darrell Oyler interviewed her and prepared her to make a "pretext" phone call to Coulston. (Tr., p.207, L.21 - p.208, L.1; p.215, L. 20 - p.217, L.5; p.313, L.20 - p.314, L.5.)

The recording of the pretext call, State's Exhibit 5, was admitted and published to the jury. (Tr., p.219, L.21 - p. 221, L.4.) During the first part of that conversation, Coulston said he had been told that Sheriffs officers had picked up A.M.'s sisters and he wanted to know if A.M. had also been picked up or knew where her sisters were. (St. Ex. 5, 00:00-01:00.) A.M. denied knowing where her sisters were, and after she told Coulston she was still at school he ordered her to stay there and told her he would have someone pick her up while he tried to find out where the younger sisters were. (Id.)

A.M. told Coulston that she did not want to go home because she was "sick" of the way he was treating her and her sisters, and she had just talked to a school counselor and told her about the physical abuse and beatings. (St. Ex. 5, 01:00-01:40.) A.M. informed Coulston that she "almost told her about our love-ins too." (St. Ex. 5,

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[4] Although the prosecutor asked A.M. if she talked with her school counselor on November 27, 2011 (Tr., p.312, Ls.5-8) -- which was a Sunday -- other testimony correctly establishes that A.M. met with her counselor on November *29*, 2011 (see Tr., p.206, L.15 - p.207, L.13).

01:40-01:50.) Coulston responded, "Well then, you know what [A.M.], then [unclear] you can go with [unclear] him then . . . because all I was trying to do was make your guys' life better." (St. Ex. 5, 01:50-02:00.) A.M. replied, "But Dad, you're 31 and I'm 15." (St. Ex. 5, 02:00-02:05.) A.M. and Coulston argued about whether Coulston had almost beaten her when she tried to talk to him about the subject, and he said, "Well, I guess I'll just go to the Sheriff's Office then," and asked A.M. where she wanted to go. (St. Ex. 5, 02:06-02:46.) The conversation continued, in relevant part, as follows:

A.M.:	Should I tell somebody though?
Coulston:	No! I told you to talk to me about this before [A.M.].
A.M.:	I did -- I tried to.
Coulston:	No you have not.
A.M.:	I did.
Coulston:	No you did not. Uh . . . tell me what you want to do. So, I'm just going to the Sheriff's Office and wait to see what happens.
A.M.:	Well, I want . . . Dad, I want the sex to stop.
Coulston:	Okay, fine [A.M.].
A.M.:	Okay . . . .
Coulston:	Hello?
A.M.:	Hi, are you sorry?
Coulston:	What?
A.M.:	Are you sorry?
Coulston:	Yes, I'm very sorry [A.M.]. I never wanted to hurt you.
A.M.:	I tried telling you I didn't want to . . . .
Coulston:	Uh -- okay, what do you want, what do you want . . . what do I do?
A.M.:	I don't know.
Coulston:	Where do you want to go?
A.M.:	I don't know . . . I was scared that I'd get pregnant Dad.
Coulston:	[A.M.] what do you . . . okay. I'm not gonna take this on. I told you to talk to me and you know what, obviously something is going on in your life that you're not talking to me about and I'm not gonna do this. . . . I'm not . . . I'm sorry if I've ever hurt you girls or anything else and I'm not gonna . . . I'm not gonna do it, so you tell me what you wanna do.

. . . .

A.M.: Parents don't have sex with their kids.
Coulston: What?
A.M.: Parents don't have sex with their kids.
Coulston: [A.M.], you know what? I'm just going to go to the Sheriff's Office because I want to find out who the fuck has been talking to you and what the fuck has been going on.

(St. Ex. 5, 02:50-07:05.)

About an hour later, Detective Oyler called Coulston and asked him come to the Sheriff's Department and talk with him. (Tr., p.222, Ls.9-17.) Coulston went to the Sheriff's Department, and after Detective Oyler advised him of his *Miranda* rights, Coulston stated that he understood his rights and agreed to be interviewed. (Tr., p.16, L.3 - p.17, L.5; St. Ex. 6, 04:50-6:30.) Almost half way through the interview, and before Coulston had admitted to having had sexual intercourse with A.M., he was confronted with several statements he made in response to A.M.'s allegations during the pretext phone call, as well as his failure to deny those allegations. (St. Ex. 6, 24:15-28:15.) The following colloquy ensued:

Coulston: Sad.
Det. Oyler: So this is where we're at with it.
Coulston: No, I'm not . . . no.
Guess from here on out, cause I know you guys got your things and better talk to an attorney. I have no idea.

(St. Ex. 6, 28:15-28:35.)

A few minutes later, after being informed that A.M. was having a sexual abuse examination at the hospital, Coulston agreed to "play ball" with Detective Oyler and admitted that, about two years prior, he woke up from his sleep to find A.M. riding on top of him with his penis outside his underwear. (St. Ex. 6, 41:00-43:15.) Coulston explained that, after that incident, he felt threatened by A.M. and had no real choice but to have sex with her. (St. Ex. 6, 43:16-44:05.) When Detective Oyler asked Coulston

whether he had sexual intercourse with A.M. a couple times a month, Coulston answered, "if." (St. Ex. 6, 4410-44:35.) Coulston said he did not use protection during sexual intercourse with A.M. and that he would ejaculate inside her. (St. Ex. 6, 44:36-44:55.) Coulston further explained that A.M. "had brought it on to [him]." (St. Ex. 6, 44:56-45:06.) At the end of the interview, Detective Oyler took two oral swabs from each of Coulston's cheeks to obtain a sample of Coulston's DNA and placed him under arrest for lewd conduct with a minor under sixteen. (Tr., St. Ex. 6, 55:00-1:01:45.)

Earlier that same day, Detective Oyler had arranged for A.M. to go to "KMC" (Kootenai Medical Center), where she was examined by Nikki Peters, a sexual assault nurse examiner. (Tr., p.222, Ls.1-4; p.425, L.9 - p.426, L.16.) Ms. Peters took swabs of A.M.'s inner thigh, back, mouth, and vagina, and placed them into containers inside a sexual assault kit before releasing it to a police officer. (Tr., p.434, L.15 - p.435, L.24; p.442, L.12 - p.443, L.15.) On November 30, 2011, Detective Oyler obtained and executed a search warrant for Coulston's residence, and during that search officers found and photographed many women's items and products that were in the bathroom of Coulston's master bedroom. (Tr., p.226, Ls.3-24; p.260, L.23 - p.261, L.14; St. Exs. 38-42.) Inside A.M.'s bedroom, Detective Oyler located two pair of panties, seized them, and placed them into evidence with a request that they be sent to the State lab. (Tr., p.262, L.5 - p.264, L.2; St. Exs. 49-52.)

Rylene Nowlin, a Forensic Scientist with the Idaho State Police ("I.S.P.") Forensic Services, tested the swabs from the sexual assault kit and "did find sperm present on the vaginal swabs . . . and a limited number of sperm present on a swab labeled 'back and inner thighs.'" (Tr., p.384, L.22 - p.385, L.3; p.390, L.2 - p.392, L.12.)

She also determined that "[s]perm was present on both pair of panties." (Tr., p.396, L.25 - p.397, L.18.)

Upon further testing for DNA comparison with Coulston's DNA, I.S.P. Forensic Scientist Stacy Guess determined that a vaginal swab from A.M. had a mixture of A.M.'s DNA and a contributor's DNA, and that Coulston could not be excluded as the contributor because "it was 87 billion times more likely to observe the profile developed from this vaginal swab evidence if the DNA came from a mixture of [A.M.] and Mr. Coulston as opposed to if the mixture had come from [A.M.] and an unknown random person selected from the population." (Tr., p.408, L.12 - p.409, L.17.) Similarly, the semen on one of the pair of panties found in A.M.'s bedroom matched the DNA profile of Coulston based on the probability of one in fourteen quintillion that, "when a person is randomly selected from the population, that they too would have a profile that matches the evidence." (Tr., p.410, L.9 - p.412, L.7.) Ms. Guess did not conduct DNA analysis of the other swabs or panties that had semen on them because, "if there's not [sic] thought to be another person who could have possibly contributed semen," she usually analyzes only one sample. (Tr., p.409, L.19 - p.410, L.4; p.412, Ls.20-25.)

Prior to trial, Coulston filed a motion to suppress all the statements he made during his videotaped police interview after he told the Detective Oyler, "Better talk to an Attorney. I have no idea."[5] (R., pp.83-84.) After a hearing, the district court denied the suppression motion. (R., pp.315-316; Tr., p.12, L.5 - p.33, L.6.) At the end of trial, the

[5] The Motion to Suppress alleged, "Defendant told the Detective: " .... from here on out .... I better talk to an Attorney" thereafter the Detective ignored the invocation and continued the interrogation." (R., p.83.) Neither the district court nor Coulston's counsel on appeal include the word "I" in their respective renditions of what the videotaped interview states. (See Tr., p.31, Ls.21-23; p.32, Ls.20-25; Appellant's Brief, p.9.)

jury found Coulston guilty of lewd conduct with a minor under sixteen. (R., p.286.) The district court sentenced Coulston to 35 years with 15 years fixed. (R., pp.298-303.) Coulston timely appealed. (R., pp.306-307.)

ISSUE

Coulston states the issue on appeal as:

> Did the district court err in denying Mr. Coulston's motion to suppress statements made during an interrogation where Mr. Coulston's [sic] unequivocally requested an attorney?

(Appellant's Brief, p.3.)

The state rephrases the issue on appeal as:

Has Coulston failed to show error in the district court's conclusion that he did not make an unequivocal request for counsel during his interview with Detective Oyler?

ARGUMENT

The District Court Correctly Applied The Law To The Facts In Denying Coulston's Motion To Suppress

A. Introduction

On appeal, Coulston claims the district court erred in denying his suppression motion, arguing that his statements to Detective Oyler should have been suppressed because he made an unequivocal request for an attorney. (Appellant's Brief, pp.4-11.) However, a review of the record shows that Coulston did not invoke his right to counsel and that Detective Oyler in no way prevented Coulston from doing so.

B. Standard Of Review

"The standard of review of a suppression motion is bifurcated." State v. Custodio, 136 Idaho 197, 201, 30 P.3d 975, 979 (Ct. App. 2001). On appeal, the court must "accept the trial court's findings of facts which are supported by substantial evidence," but may "freely review the application of constitutional principles to the facts as found." Id.

C. Coulston Has Failed To Show Error In The District Court's Determination That Coulston Did Not Invoke His Right To Counsel

In order to validly invoke Miranda rights, a defendant must be in custody equivalent to formal arrest. State v. Hurst, 151 Idaho 430, 436, 258 P.3d 950, 956 (Ct. App. 2011). Mere presence at a police station while talking to police is not the equivalent of formal arrest. See Oregon v. Mathiason, 429 U.S. 492, 494-95 (1977) (suspect not in custody for purposes of Miranda when he voluntarily went to police

station, was immediately informed that he was not under arrest, and was allowed to leave).[6]

"After rights are read to and acknowledged by the detainee," the police may initiate and continue questioning the detainee "until the right to silence or counsel is asserted." State v. Rhoades, 121 Idaho 63, 822 P.2d 960 (1991). It is undisputed that Detective Oyler read Coulston his rights, and when asked if he understood those rights, Coulston stated that he did. (St. Ex. 6, 04:50-6:30.) Accordingly, it was proper for Detective Oyler to initiate and continue questioning Coulston unless and until Coulston invoked his right to remain silent and/or his right to counsel.

To be effective, a defendant's invocation of his Fifth Amendment right to counsel must be clear and unequivocal. The United States Supreme Court, in Davis v. United States, 512 U.S. 452 (1994), held:

> [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.
>
> Rather, the suspect must unambiguously request counsel . . . . [A suspect] must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would

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[6] The record shows that Coulston voluntarily went to the Sheriff's Department to be interviewed. (Tr., p.222, Ls.9-17.) Upon entering the interview room, the detective told Coulston he appreciated him "coming down . . . in a timely manner." (St. Ex. 6, 04:20-04:25.) Coulston responded, "My kids are important . . . what the heck is going on here?" (St. Ex. 6, 04:26-04:30.) After Coulston provided his full name and date of birth, the detective told him, "Well, before we go any further I'm gonna read you your rights okay. You're not under arrest at this time." (St. Ex. 6, 04:50-05:00.) After being advised of his Miranda rights, Coulston acknowledged that he understood his rights and agreed to be interviewed. (Tr., p.16, L.3 - p.17, L.5; St. Ex. 6, 05:03-06:30.) However, over half way through the interview, and before Coulston made any specific verbal admissions, the detective told him, "at this stage, yeah, I'm gonna arrest ya, I'm not gonna lie to ya, I'm gonna arrest ya." (St. Ex. 6, 40-40-40:47.) The state does not contend that Coulston was not in custody after that point in the interview.

> understand the statement to be a request for an attorney. If the statement fails to meet the requisite level of clarity, *Edwards* [*v. Arizona*, 451 U.S. 477 (1981)], does not require that the officers stop questioning the suspect.

Davis, 512 U.S. at 459 (internal citations omitted; Edwards citation added).

In Davis, the defendant, after ninety minutes of questioning, said, "Maybe I should talk to a lawyer." 512 U.S. at 455. The Court held this "was not a request for counsel." Id. at 461 (emphasis added). Idaho law is in accord. In State v. Doe, 137 Idaho 519, 525, 50 P.3d 1014, 1020 (2002), the Idaho Supreme Court held that a mother asking whether her son needed a lawyer and advising the detective that she could not afford a lawyer was not a clear and unambiguous request for counsel. In State v. Varie, 135 Idaho 848, 26 P.3d 31 (2001), the Supreme Court held that stating "I don't have a lawyer" and asking "am I supposed to have a lawyer?" or "will I get a lawyer tomorrow?" does not equate to a clear and unequivocal request for counsel. Finally, in State v. Eby, 136 Idaho 534, 37 P.3d 625 (Ct. App. 2001), the court held that telling the detective "I've got an attorney" was merely an "oblique reference" to an attorney, "not an invocation of the right to counsel that obligated the officers to terminate their interrogation."

At the end of the suppression motion hearing, the district court correctly noted the operable law, explaining:

> The law in his area in the state of Idaho, the leading case, I think, is State versus Eby, 136 Idaho 534. In that case the defendant during an interview made a statement as follows: "I've got an attorney." The court stated the law to be as follows:
>
> > "Under Miranda and its progeny, when a person who is being subjected to custodial interrogation states that he wants an attorney, the interrogation must cease until an

> attorney is present or the suspect himself reinitiates the conversation."
>
> ". . . regardless of whether Eby was 'in custody' for Miranda purposes, his oblique reference to his attorney was not an invocation of the right to counsel that obligated the officers to terminate their interrogation. The Miranda restraint on police questioning does not arise unless the request for counsel is clear and unambiguous."

(Tr., p.29, L.11 - p.30, L.6.) The court further noted that the Eby decision embraced Davis, 512 U.S. 452, and its statement that:

> "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."
>
> "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.' Although a suspect need not 'speak with the discrimination of an Oxford don,' 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" . . . the law "does not require that the officers stop questioning the suspect." [Quoting *Eby*, 136 Idaho at 537, 37 P.3d at 682 (quoting *Davis*, 512 U.S. at 458).]
>
> "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 . . ." "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."

(Tr., p.30, L.12 - p.31, L.17 (quoting Eby, 136 Idaho at 537, 37 P.3d at 628).)

After reviewing the testimony and evidence, including Coulston's videotaped interview by Detective Oyler, presented at the suppression hearing, the district court concluded that Coulston's statement was not an unequivocal request for counsel, stating:

Applying that law to the present case, the exact statement by Mr. Coulston in the disk was as follows: "Guess from here on out, because I know you guys got your things, better talk to an attorney. *I have no idea.*" That was the first one.

Then at the end of the statement at the end of the interview, the defendant stated, "Do I still get to speak to an attorney?" The detective responded as follows: "Yeah. You can get an attorney anytime you want to. No one ever said you couldn't' get an attorney." And then the defendant stated: "Well, I know my rights."[7]

Implying [sic] the law to those statements, it seems to me that those are not a -- that neither statement is a clear and unequivocal request to have an attorney. I think the statement is ambiguous and is equivocal.

The -- the issue came up in -- it's a Texas case. . . . That is Davis versus State, 313 Southwest 3rd 317, which is a Texas appellate court decision of 2010. In that case the -- during the interview the defendant stated, "I should have an attorney." The Court there went through a very extensive analysis of the law in this area and came to the conclusion that this was not an unambiguous request and was not sufficient to halt the interview. The statement that was made in that request that was made in that Davis case, "I should have an attorney," and the one part of the statement here where Mr. Coulston says, "Better talk to an attorney. *I have no idea*," I think are similar. I think that, using the reasoning of that case, which of course is not binding, but the reasoning is persuasive. The request by Mr. Coulston here was not an unambiguous, unequivocal request for an attorney. It was ambiguous.

Accordingly the motion to suppress is denied.

(Tr., p.31, L.19 - p.33, L.6. (emphasis added).)

On appeal, Coulston *initially* correctly recites the comment he made during his police interview that allegedly invoked his right to counsel as, "better talk to an attorney. *I have no idea.*" (Appellant's Brief, p.9 (emphasis added).) However, when he makes his actual argument, Coulston neither mentions nor addresses the comment, "I have no idea." (See Appellant's Brief, pp.10-11). Coulston states:

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[7] Although mentioned by the district court, there was no issue below, nor is there on appeal, as to whether Coulston's question at the end of his police interview (i.e., does he "still get to speak to an attorney?") invoked his right to counsel.

> When Officer Oyler pressed further, saying, "So this is where we're at with it," Mr. Coulston responded with, "No, I'm not[,] [n]o." Mr. Coulston then stated, "Guess from here on out, cause I know you guys got your things; better talk to an attorney." There is nothing unequivocal [sic] about Mr. Coulston's request, he stated, based upon the accusations ("I know you guys got your things") he had "better talk to an attorney." Any other conclusion *ignores the totality of the interrogation*, Mr. Coulston's body language, and the circumstances at the time he made his unequivocal request.

(Appellant's Brief, p.10 (emphasis added).) By failing to even mention his "I have no idea" comment in his actual argument, Coulston fails to address the essential facts underlying the district court's decision, and instead analyzed a set of facts that does not exist. In short, it is Coulston, not the district court, who "ignores the totality of the interrogation." (See Id.)

The failure to address that phrase is significant, as the district court clearly based its decision upon the entirety of Coulston's comment -- "better talk to an attorney. I have no idea." (Tr., p.31, Ls.19-23, p.32, Ls.20-25.) On its face, Coulston's comment, "I have no idea," makes his preceding comment of "better talk to an attorney" completely equivocal. An objective listener to Coulston's comment could reasonably conclude that, even if Coulston was thinking about talking to an attorney, he had "no idea" whether he wanted to do so. A person would be hard-pressed to find a clearer expression of uncertainty and equivocation than "I have no idea." (See http: //www.merriam-webster.com/dictionary/equivocal ("having two or more possible meanings.")

In an effort to lend credence to his position, Coulston argues "it is apparent" Detective Oyler recognized Coulston's request for counsel, by ignoring the request and (in part) pressing "even harder for an incriminatory statement" -- in contrast to the

detective's response to Coulston's question about an attorney at the end of the interview, when the detective acknowledged the request. (Appellant's Brief, pp.10-11.) However, because Coulston's statement of "better talk to an attorney" was immediately followed by "I have no idea," a reasonable police officer in those circumstances would not have understood his statement to be an unequivocal request for an attorney. Therefore, Coulston's statement did not require Detective Oyler to stop his questioning of Coulston. Davis, 512 U.S. at 459.

Coulston has failed to establish that the district court's factual findings were clearly erroneous or that the district court's decision to deny Coulston's motion to suppress was inconsistent with applicable constitutional principles.

D. If There Was Error, It Was Harmless Beyond A Reasonable Doubt

Even if this Court concludes that Detective Oyler failed to scrupulously honor an unequivocal invocation by Coulston of his right to counsel, this Court should find that any error in the district court's ruling was harmless beyond a reasonable doubt. See Chapman v. California, 368 U.S. 18, 24 (1967).[8] In so doing, this Court should consider that "[s]tatements obtained by police in violation of an accused's right to counsel may not be used in the State's case-in-chief, but are admissible to impeach the accused if he testifies at trial." State v. Cherry, 139 Idaho 579, 581, 83 P.3d 123, 125 (Ct. App. 2004) (citing Harris v. New York, 401 U.S. 222, 224 (1971), and Michigan v Harvey, 494 U.S. 344, 350-351 (1990)).

[8] Under Chapman v. California, 368 U.S. 18, 24 (1967), an appellate court may find some constitutional errors harmless where the court can hold beyond a reasonable doubt that it was harmless.

Coulston testified at trial that his admissions to Detective Oyler during the videotaped interview were truthful "[o]n one point" -- that he "woke up and found [A.M.] on top of [him]." (Tr., p.827, Ls.9-14.) As to his other admissions, Coulston testified that he was just agreeing with what the detective said. (Tr., p.827, Ls.15-17.) Even if this Court concludes Coulston unequivocally invoked his right to counsel, the admissions Coulston subsequently made during that interview would have been admissible for the purpose of impeaching Coulston's testimony that he did not have sexual intercourse with A.M., and he had never used the term "love-ins" with A.M. to indicate he wanted sex. (See Tr., p.809, Ls.15-25; p.817, L.25 - p.818, L.11; p.823, Ls.12-14; p.872, L.22 - p.876, L.14; p.879, Ls.12-13; St. Ex. 6, 49:25-50:05.)

The "Statement of Facts," *supra*, outlines the testimony and evidence presented at trial showing Coulston's guilt. Even if the videotape of Coulston's interview with Detective Oyler is removed from consideration as substantive (or even impeachment) evidence, there remains overwhelming evidence to support Coulston's conviction. The state relies on those facts to show that any error in admitting Coulston's videotaped interview by Detective Oyler into evidence was harmless.

CONCLUSION

The state asks this court to affirm Coulston's judgment of conviction for lewd and lascivious conduct.

DATED this 16th day of March, 2015.

JOHN C. McKINNEY
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March, 2015, I served a true and correct copy of the attached RESPONDENT'S BRIEF by causing a copy addressed to:

ERIC D. FREDERICKSEN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in the State Appellate Public Defenders' basket located in the Idaho Supreme Court Clerk's office.

JOHN C. McKINNEY
Deputy Attorney General

JCM/vr