

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID B. ORMSBEE,

Defendant-Appellant.

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UNPUBLISHED

July 11, 2000

No. 209386

Oakland Circuit Court

LC No. 97-155031 FC

Before: McDonald, P.J., and Gage and Talbot, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(c); MSA 28.788(2)(1)(c), and one count of first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2). The trial court sentenced defendant to concurrent terms of fifteen to forty years' imprisonment for each of the CSC I convictions, and fifteen to thirty years' imprisonment for the home invasion conviction. Defendant appeals as of right, and we affirm.

Defendant first contends that the trial court erred in denying his motion to suppress his statement to police because the statement occurred after defendant had requested counsel. We review de novo a trial court's ruling on a motion to suppress a confession, but we defer to the trial court's findings of fact, which we will not disturb unless they are clearly erroneous. *People v Kowalski*, 230 Mich App 464, 471-472; 584 NW2d 613 (1998).

After a suspect knowingly and voluntarily waives his *Miranda*<sup>1</sup> rights, police officers may question him until the suspect clearly requests an attorney. When the suspect invokes his right to counsel, the police must immediately cease their interrogation. *Davis v United States*, 512 US 452, 458; 114 S Ct 2350; 129 L Ed 2d 362 (1994). "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," the police need not cease questioning or seek to clarify the suspect's reference to counsel. *Id.* at 459, 461 (emphasis in original).

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<sup>1</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

A review of the suppression hearing transcript reveals some conflicting testimony with respect to the exact phrasing of defendant's statement concerning counsel. We cannot conclude, however, that the trial court clearly erred in crediting the interviewing detective's testimony that defendant stated, "[S]hould I talk to a lawyer." *Kowalski, supra*. In light of defendant's question or equivocal statement, we find that a reasonable officer would have understood only that defendant *might* have been considering the invocation of his right to counsel, and that therefore the detective need not have discontinued his interrogation or even clarified defendant's feelings concerning counsel. *Davis, supra* at 459, 462; *People v Granderson*, 212 Mich App 673, 676-678; 538 NW2d 471 (1995).

Defendant also argues that because of a clerical error his judgment of sentence must be corrected. The trial court at the sentencing hearing imposed terms of fifteen to forty years for the three CSC I convictions, and fifteen to thirty years for the home invasion conviction. The judgment of sentence, however, transposes the sentences for Counts III and IV, indicating a sentence of fifteen to thirty years for one of the CSC I convictions, and fifteen to forty years for the home invasion conviction. Accordingly, we remand to the trial court for the limited purpose of correcting the judgment of sentence to reflect that defendant was sentenced to fifteen to forty years for each CSC I conviction, and fifteen to thirty years for the first-degree home invasion conviction. MCR 7.216(A)(7), 6.435(A).

Defendant's convictions are affirmed, but the case is remanded for ministerial correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ Hilda R. Gage

/s/ Michael J. Talbot