

SUPREME COURT OF LOUISIANA

No. 2017-KK-0954

STATE OF LOUISIANA

VERSUS

WARREN DEMESME

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,

FOURTH CIRCUIT, PARISH OF ORLEANS

CRICHTON, J., additionally concurs and assigns reasons:

I agree with the Court’s decision to deny the defendant’s writ application and write separately to spotlight the very important constitutional issue regarding the invocation of counsel during a law enforcement interview. The defendant voluntarily agreed to be interviewed twice regarding his alleged sexual misconduct with minors. At both interviews detectives advised the defendant of his *Miranda* rights and the defendant stated he understood and waived those rights. Nonetheless, the defendant argues he invoked his right to counsel. And the basis for this comes from the second interview, where I believe the defendant ambiguously referenced a lawyer—prefacing that statement with “if y’all, this is how I feel, if y’all think I did it, I know that I didn’t do it so why don’t you just give me a lawyer dog cause this is not what’s up.”

As this Court has written, “[i]f a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable police officer in light of the circumstances would have understood only that the suspect *might* be invoking his right to counsel, the cessation of questioning is not required.” *State v. Payne*, 2001-3196, p. 10 (La. 12/4/02), 833 So.2d 927, 935 (citations omitted and emphasis in original); *see also Davis v. United States*, 512 U.S. 452, 462, 114 S.Ct. 2350, 2357, 129 L.Ed.2d 362 (1994) (agreeing with the lower courts’ conclusion that the

statement “[m]aybe I should talk to a lawyer” is *not* an unambiguous request for a lawyer). In my view, the defendant’s ambiguous and equivocal reference to a “lawyer dog” does not constitute an invocation of counsel that warrants termination of the interview and does not violate *Edwards v. Arizona*, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981).