IN THE COURT OF APPEALS OF IOWA

No. 0-089 / 09-0811
Filed April 21, 2010

STATE OF IOWA,
Plaintiff-Appellant,

vs.

TOSHIKI ITOH,
Defendant-Appellee.

Appeal from the Iowa District Court for Johnson County, Douglas S. Russell, Judge.

The State appeals from the district court's partial grant of the defendant's motion to suppress. **AFFIRMED.**

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, Janet Lyness, County Attorney, Elizabeth Beglin, Assistant County Attorney, and Allen Best, legal intern, for appellant.

Patricia C. Kamath, Iowa City, for appellee.

Heard by Sackett, C.J., and Doyle and Danilson, JJ.

SACKETT, C.J.

The State sought discretionary review of the district court ruling on the defendant's motion to suppress. The State contends the court erred in finding the defendant was in custody and in determining his request for counsel was unequivocal. It further contends the court erred in finding the defendant's statements were involuntary and in not delineating what portion of the suppressed interview would also be inadmissible to impeach the defendant. We affirm.

I. Background.

On July 10, 2008, the University of Iowa Police Department received a call from the complainant, who alleged the defendant had hit her repeatedly. During a medical exam, she also alleged the defendant had touched her breast and vagina repeatedly over the preceding two years.

Defendant is a medical doctor holding a Ph.D. in addition to an M.D. degree from Kumamoto University in Kumamoto, Japan. He is qualified for a general medical license to practice in Japan but not in the United States. At the time of the alleged complaint defendant had been in the United States for about ten years and at the University of Iowa as an assistant professor since 2005.

Defendant later was examined by a linguist who determined he had a moderate proficiency in English but had gaps in his knowledge particularly in non-scientific vocabulary and in unfamiliar situations his language broke down.

Investigators Meyer and Bringman arranged with the university for a Japanese translator and interviewed the defendant at his workplace that same

day. They identified themselves as police officers, told the defendant his rights,[1] told the defendant he was "not under arrest now," and recorded the interview.

On the morning of July 15 the investigators called the defendant at home and asked him to meet with them at the University of Iowa Police Department. He agreed and had his wife drop him off at the police station.

An officer escorted the defendant through a locked door into the secured area of the office and to an interview room. The investigators again advised the defendant of his rights. The entire interview was recorded on video. No translator was present. The interview started with questions about the allegations of a physical altercation between the defendant and the complaining witness, a misdemeanor. After the break in questioning we discuss in the next paragraph, the questioning turned to allegations of sexual assault, a felony. Throughout the interrogation, the defendant's responses, comments, and questions indicate he believed this was an employment-related investigation.

After about forty minutes of questioning the defendant about alleged altercations with the complainant, Meyer said: "All right. Well, you can go ahead and go. I think we pretty much got all of our questions answered so—." Bringman interjected: "I don't think we want to do that. Here, wait just a second [gesturing]." Meyer and Bringman stepped out of the interview room briefly. When they returned, Bringman said "We have a couple more questions." The questioning then turned to the allegations of sexual touching. When asked if he wanted to talk to the officers about it, the defendant said "no." Bringman ignored

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[1] *See Miranda v. Arizona*, 384 U.S. 436, 478-79, 86 S. Ct. 1602, 1630, 16 L. Ed. 2d 694, 722 (1966).

the defendant's response and continued the questioning. The defendant attempted to ask a question, but was repeatedly interrupted by Bringman to the point the defendant said, "I'm begging you." Bringman listed three "yes-or-no" questions for the defendant to answer. The interview continued:

> A. Okay. That's all?
> Q. That's all. We want you to be honest. We want your side of the story. A. Okay. So—
> Q. Okay. Just answer number one first. Did you touch her breasts? A. I gonna ask (inaudible) one, two, three, but probably it's not good to—to my side, right, if I actually talk? *So probably I need some representative for me.* (Emphasis added.)
> Q. That's fine. You don't have to talk to us if you don't want to. That's your right. If you want to talk to an attorney, you have—that's your right. We won't ask you any more questions. A. Okay.
> Q. I just—I asked you the questions, you can give the answer if you want, or you don't have to. I just wanted to get your side of the story— A. Okay.
> Q. —because we heard this, and we wanted to verify what happened. A. Um-hum, I understand. Kind of your job.
> Q Yes, we need— A. Actually—
> Q. —to hear both sides. A. And then actually you write actually correctly, actually for—correctly of report from the both side opinion, or just actually the—summarize—
> Q. We— A. —from the one side?

The questioning continued for another two hours and nineteen minutes.

The State charged the defendant with sexual assault in the third degree. He moved to suppress statements made to the investigators during both interviews. Following a hearing on the motion, including testimony about the defendant's ability to understand and speak English, the district court denied the motion to suppress as to the July 10 interview and the first part of the July 15 interview, but granted the motion as to all the defendant's statements following his statement: "So probably I need some representative for me." The court concluded that statement was an "unequivocal request for an attorney and the

interrogation should have stopped at that point." The court also concluded, based on a review of the totality of the circumstances, "that a reasonable person in the place of the defendant would have understood he was in custody" and that after Bringman said, "I don't think we want to do that. Here, wait just a second" that the defendant "had been told he was not free to leave."

The district court listed more than two pages of quotes from the transcript of the July 15 interview in support of its conclusions the defendant did not understand what was going on. He did not recognize this was not a civil matter dealing with his employment. He did not know what "charges" were. He did not know what a trial was or that the county attorney was not the judge of the matter. The court continued:

> The overall impression the court got from viewing the July 15 interview tape was that the defendant's statements were not the result of a knowing, voluntary, and intelligent waiver of his Fifth and Sixth Amendment rights. His body language and gestures showed his reluctance to talk. His statements that he did not want to talk did not result in an end to questioning. His request for an attorney did not result in an end to the questioning. If the officers had listened to him more carefully, they would have understood he was requesting an attorney and refusing, at times, to answer questions.
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> The officers used many standard interrogation techniques including the common practices of lying to the defendant about the facts, pretending to know more than they did, . . . using the good cop/bad cop alternating questioning technique, manipulating the defendant's ego and reputation, appealing to his conscience, trying to get him to answer questions with a yes or no, and denying him the chance to make explanations. They confronted defendant with the evidence against him referring to the victim's side of the story and the fictitious medical report of her condition. Their impatience with the defendant prevented his making complete statements and the defendant showed his frustration with this. The cumulative effect of these techniques was to overbear defendant's will and render his statements involuntary.
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> But the truly fatal flaws in the July 15th interrogation were two. First, . . . the defendant asked for an attorney, and the

> questioning did not cease. Second, . . . the officers made improper promises of leniency. Lieutenant Hyche's offer to go to the county attorney on the defendant's behalf was clearly an offer of help with the county attorney in exchange for the defendant's confession while the defendant believed the county attorney was the judge in this case.
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> Dr. Itoh testified that after Officer Meyer told him he could leave and Officer Bringman put up his hand and said, "Wait a minute," it was clear to him that he was not free to go. The defendant was certain he was not free to go and certain that he had requested an attorney. He also tried to stop the questions but was unable to do so because of the pressure and pace of the officers' questioning and their apparent unwillingness to listen to what he was saying.

The court ordered all statements after "So probably I need some representative for me" suppressed from evidence. The State sought discretionary review, which the supreme court granted.

II. Scope of Review.

> We review constitutional issues de novo. In assessing the validity of a defendant's *Miranda* waiver, the State bears the heavy burden of proving by a preponderance of the evidence that the waiver was made knowingly, intelligently, and voluntarily without intimidation, coercion, or deception. Our review of the record is de novo, and we will make our own evaluation of the circumstances.

State v. Walls, 761 N.W.2d 683, 685 (Iowa 2009) (citations omitted). "We nevertheless give weight to fact findings because of the district court's opportunity to assess the credibility of witnesses." *State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997). However, we are not bound by the district court's findings. *State v. Simmons*, 714 N.W.2d 264, 271 (Iowa 2006).

III. Merits.

A. Custodial Interrogation and Request for Counsel. The State contends the district court erred in finding that the defendant was in custody on July 15 when he made incriminating statements and that his request for counsel

was unequivocal. The State argues "any restraint the officers imposed on defendant's freedom was insufficient to place him in custody." The Supreme Court held that a suspect is in custody after the suspect is formally arrested or "otherwise deprived of his freedom of action in any significant way." *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694, 706 (1966). "A custody determination depends on objective circumstances, not the subjective belief of the officers or the defendant." *State v. Bogan*, 774 N.W.2d 676, 680 (Iowa 2009). "In determining whether a suspect is 'in custody' at a particular time, we examine the extent of the restraints placed on the suspect during the interrogation in light of whether 'a reasonable man in the suspect's position would have understood his situation' to be one of custody." *State v. Ortiz*, 766 N.W.2d 244, 251 (Iowa 2009) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S. Ct. 3138, 3151, 82 L. Ed. 2d 317, 336 (1984)). We apply a four-factor test. *State v. Miranda*, 672 N.W.2d 753, 759 (Iowa 2003). These factors are "'the language used to summon the individual, the purpose, place and manner of the interrogation, the extent to which the defendant is confronted with evidence of his guilt, and whether the defendant is free to leave the place of questioning.'" *Simmons*, 714 N.W.2d at 274-75 (quoting *State v. Smith*, 546 N.W.2d 916, 922 (Iowa 1996)). We examine each factor in turn.

The Language Used to Summon the Individual. Investigator Meyer called defendant on the phone and asked him to come to the University of Iowa police department to talk about his case. Defendant agreed and had his wife drive him to the police station. Meyer and Bringman had interviewed defendant a few days

earlier about allegations he struck a coworker during arguments on two different days. He had been told by the university to expect an interview. We do not see anything in the language used to summon defendant that a reasonable person would perceive as summoning him to a custodial interrogation.

The Purpose, Place, and Manner of the Interrogation. When defendant arrived at the police station, he had to wait to be admitted to the secured area of the station. Investigator Meyer admitted the defendant through the door that requires scanning a badge for entry and has a numeric keypad on the inside of the door. He was escorted to an interview room in the secured area and seated at a table with the two investigators, Meyer and Bringman. Defendant was given the *Miranda* warnings at the beginning and indicated he understood. They gave him no indication he was free to leave. Except when the investigators entered or left the room, the door was kept closed. The questions went immediately to the alleged assaults discussed in the prior interview. It is clear from the recording that defendant thought the subject matter was the employment relationship with the complaining witness and her job performance. The investigators repeatedly told defendant they knew what had happened and had all the evidence, but just wanted his side. They asked questions repeatedly until they got the answer they wanted from the defendant. Sometimes they had to explain words he did not understand. The two investigators frequently interrupted defendant as he attempted to explain answers. Defendant's discomfort with the manner and intensity of the interrogation is clear in the video.

After about forty minutes of questioning Meyer said: "All right. Well, you can go ahead and go. I think we pretty much got all of our questions answered so—" Bringman interjected: "I don't think we want to do that. Here, wait just a second [gesturing]." Meyer and Bringman stepped out of the interview room briefly. When they returned, Bringman said "We have a couple more questions." The questioning then turned to the allegations of sexual touching. The defendant attempted to ask a question, but was repeatedly interrupted by Bringman. After the defendant stated "So probably I need some representative for me" the investigators acknowledged his statement and that he did not need to continue answering questions, but then turned back to their "we just want your side of the story" refrain. The interrogation continued for another two hours and nineteen minutes.

Meyer and Bringman repeatedly confronted the defendant with the fact they had all the evidence and knew what happened. Lieutenant Hyche soon joined the interrogation, taking turns with one of the investigators. At the suppression hearing he testified his involvement was just to obtain a confession from the defendant. He carried a piece of paper he said was a lab report that contradicted what the defendant was saying about why he touched the complaining witness. The interrogators frequently required the defendant to answer questions with yes or no and did not allow him to explain.

After the interrogators obtained what they considered to be a confession, the told the defendant to write it down. It was not until he indicated he did not understand what to do and needed some time to talk to an attorney that there is

any indication from the interrogators that the defendant could leave and complete the written statement at another time.

The interrogation took place in an interview room inside the locked, secure area of the police station. The questioning was intense and confrontational. The defendant's stress and resultant difficulty understanding the questions and answering them is apparent in the videotape. When the defendant was told he could go, he immediately was stopped, told no, and told to wait. The questioning quickly resumed. The defendant was confronted with photographs and what was claimed to be a lab report as evidence of his guilt. He was told the "lab report" proved his version of what happened was not true. The purpose, place, and manner of the interrogation weigh heavily in favor of a custodial interrogation.

The Extent to Which the Defendant is Confronted with Evidence of Guilt. As noted above, the officers repeatedly told the defendant they already knew what happened. He was shown photographs of injuries on the complaining witness and told he caused them. He was confronted with a supposed lab report that the interrogators said contradicted his account of examining the complaining witness for an infection. This factor weighs in favor of custodial interrogation.

Whether the Defendant is Free to Leave. At the beginning of the interview a reasonable person might have felt free to leave even though not expressly told so. Once the defendant was told to wait, instead of being free to go, however, the circumstances weigh heavily in favor of the interrogation being custodial in the mind of a reasonable person even though there was no physical restraint. The *Miranda* opinion holds that a suspect is in custody upon formal arrest or

under any other circumstances where the suspect is deprived of his or her freedom of action in any significant way. *Miranda*, 384 U.S. at 444, 86 S. Ct. at 1612, 16 L. Ed. 2d at 706; *but see Countryman*, 572 N.W.2d at 558 (finding no custody in the absence of physical restraint).

From our review of the recordings and applying the factors in *Simmons*, 714 N.W.2d at 274-75, we determine a reasonable person in the defendant's position "would have understood his situation to be one of custody." *Ortiz*, 766 N.W.2d at 251. The *Miranda* warnings were required and were given. We turn next to the defendant's statement regarding counsel.

Was the Statement an Unequivocal Request? The State contends the defendant's statement, "So probably I need some representative for me" was not an unequivocal request for counsel and was insufficient to invoke his right to counsel. It cites cases from a variety of jurisdictions around the country in which courts have found statements using "probably" not to be unambiguous requests for an attorney. The State focuses on the word "probably" and argues the district court erred in determining the word was a "hesitation word" entitled to no meaning. The defendant repeatedly uses "actually" as a hesitation word like a native speaker might use "um" or "uh." From our review of the recordings, however, we do not find support for the district court's conclusion concerning "probably." This does not automatically mean the defendant's inclusion of "probably" in his statement makes it equivocal or ambiguous.

When we review the totality of the circumstances and view the statement in context, we conclude the defendant, as much as he understood the nature of

the interview and his right to counsel, was indicating he should have a "representative" for himself and it was "not good to—to my side, right, if I actually talk." Bringman understood the defendant's statement, because he immediately responded with assurances the defendant didn't have to talk to them, it was his right to talk to an attorney, and "we won't ask you any more questions." The defendant said "okay," but Bringman then resumed the questioning. The State characterizes the investigator's remarks as Bringman essentially choosing to give defendant another *Miranda* warning.

The defendant's remark here is stronger than the defendant's question in *State v. Johnson*, 318 N.W.2d 417, 430 (Iowa 1982), whether he should have an attorney. There the supreme court concluded the defendant "manifested indecision as to whether he desired counsel." *Johnson*, 318 N.W.2d at 431. In the circumstances before us, defendant indicated it was "not good" for him to talk to the police and he probably should have a representative. Taken together, the request is stronger than "maybe I should talk to a lawyer" that was found to be equivocal by the Supreme Court. *Davis v. United States*, 512 U.S. 452, 462, 114 S. Ct. 2350, 2357, 129 L. Ed. 2d 362, 373 (1994). The defendant made statements "that can reasonably be construed to be an expression of a desire for the assistance of an attorney." *Id.* at 459, 114 S. Ct. at 2355, 129 L. Ed. 2d at 371 (citation omitted). We do not believe that "a reasonable officer in light of the circumstances would have understood only that the suspect *might* be invoking the right to counsel." *Id.* (emphasis in original). The district court aptly observed, "If the officers had listened to him more carefully, they would have understood he

was requesting an attorney and refusing, at times, to answer questions." That observation is supported by the evidence before us and we agree with the district court. We conclude the questioning should have stopped once the defendant requested a "representative."

The circumstances here also demonstrate again the value of the investigator asking follow-up, clarifying questions, although they are not required.

> 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.

Id. at 461, 114 S. Ct. at 2356, 129 L. Ed. 2d at 373; *see State v. Harris*, 741 N.W.2d 1, 7 (Iowa 2007) (finding a clear and unequivocal request after officer asked, "You want to do it with a lawyer, is that what you're saying?").

B. Voluntary Statements. The State contends we should reverse the district court's suppression of the defendant's statements because they were voluntary and because the district court did not distinguish between the defendant's invocation of his right to counsel and when the interview became coercive. The State argues that, even assuming the district court was correct in determining the defendant's statements became involuntary at some point, the district court did not clarify in its suppression order whether the statements between the two "truly fatal flaws"[2] could be used to impeach the defendant.

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[2] The court saw the fatal flaws as (1) the defendant asked for an attorney, and the questioning did not cease and (2) the officers made improper promises of leniency.

The warnings[3] set forth in *Miranda* protect a suspect's Fifth Amendment right against self-incrimination "ensuring that a suspect knows that he may choose not to talk to law enforcement officers, to talk only with counsel present, or to discontinue talking at any time." *Colorado v. Spring*, 479 U.S. 564, 574, 107 S. Ct. 851, 857, 93 L. Ed. 2d 954, 966 (1987). For the defendant's statements to be admissible, the State must show he "was adequately informed of his Miranda rights, understood them, and knowingly and intelligently waived them." *State v. Ortiz*, 766 N.W.2d 244, 249 (Iowa 2009). "Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Spring*, 479 U.S. at 573, 107 S. Ct. at 857, 93 L. Ed. 2d at 965 (citation omitted).

Waiver. From our review of the videotaped interrogation, we conclude the defendant's statements after he was advised of his rights at the beginning of the interrogation do not indicate a knowing and intelligent waiver of those rights. *See Ortiz*, 766 N.W.2d at 249 (requiring the State to prove defendant "was adequately informed of his *Miranda* rights, understood them, and knowingly and intelligently waived them"). "[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights." *Edwards v. Arizona*, 451

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[3] *See Miranda*, 384 U.S. at 469-70, 86 S. Ct. at 1625-26, 16 L. Ed. 2d at 722 (holding a person subject to custodial interrogation must be advised that "he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed").

U.S. 477, 484, 101 S. Ct. 1880, 1884-85, 68 L. Ed. 2d 378, 386 (1981). In other words, "an accused, . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates further communication, exchanges, or conversations with the police.*" *Id.* at 484-85, 101 S. Ct. at 1885, 68 L. Ed. 2d at 386 (emphasis added); *see also Harris*, 741 N.W.2d at 6. The defendant did not initiate further communication. It was the investigators who did. Bringman encouraged the defendant to give his side of the story because the investigators just "wanted to verify what happened." The defendant's response was, "Um-hum, I understand. Kind of your job". Considering that the defendant was unfamiliar with the nature of the interview—that it was not concerning his employment or the employment of the complaining witness, that he did not understand the rights he would be waiving and the consequences of that waiver, this statement cannot be understood as a waiver of the rights defendant just reasserted.

Voluntariness. Even if the State fails to demonstrate a defendant's waiver was knowing, intelligent, and voluntary, a defendant's statements may be admissible to impeach the defendant. *Harris v. New York*, 401 U.S. 222, 226, 91 S. Ct. 643, 646, 28 L. Ed. 2d 1, 5 (1971); *State v. Davis*, 446 N.W.2d 785, 788 (Iowa 1989). However, the State must show by a preponderance of the evidence that a defendant's statements were voluntarily. *Ortiz*, 766 N.W.2d at 249; *State v. Countryman*, 572 N.W.2d 553, 558 (Iowa 1997). In determining voluntariness, we employ a totality-of-circumstances test: "it must appear the statements were

the product of 'an essentially free and unconstrained choice, made by the defendant whose will was not overborne or whose capacity for self-determination was not critically impaired.'" *Countryman*, 572 N.W.2d at 558 (quoting *State v. Payton*, 481 N.W.2d 325, 328 (Iowa 1992)). The relevant considerations include:

> The defendant's knowledge and waiver of his Miranda rights, the defendant's age, experience, prior record, level of education and intelligence, the length of time the defendant is detained and interrogated, whether physical punishment is used, including the deprivation of food or sleep, the defendant's ability to understand the questions, the defendant's physical and emotional condition and his reactions to the interrogation, whether any deceit or improper promises were used in gaining the admission, and any mental weakness the defendant may possess.

State v. Morgan, 559 N.W.2d 603, 608 (Iowa 1997) (citation omitted). We also may consider a defendant's alienage and unfamiliarity with our legal system. *See State v. Hajtic*, 724 N.W.2d 449, 454 (Iowa 2006).

The State urges that the totality of the circumstances demonstrate the defendant's statements were the product of a free and unconstrained choice, made when his will was not overborne nor his capacity for self-determination critically impaired. *See Countryman*, 572 N.W.2d at 558. The State asserts the defendant understands and speaks English well, is well-educated and intelligent, has been in the United States for nearly ten years, understands his rights and the American legal system, and willingly chose to deal with the police unassisted. It also asserts the length of the interview was not excessive and no physical punishment or deprivation of food or sleep was employed. *See id.* (three-hour interview); *State v. Brown*, 341 N.W.2d 10, 16 (Iowa 1983) (two-and-a-half hour interview).

We agree with the State that the defendant is intelligent, well-educated and has been in the United States for nearly ten years. We also acknowledge that the length of the interview was not excessive and no physical punishment or deprivation was employed.

From our review of the totality of the circumstances as revealed in the audiotaped interview on July 10 and the videotaped interrogation on July 15, however, we like the district court, conclude the defendant's statements for at least part of the videotaped session were not voluntary.[4] In reaching this conclusion we have considered the defendant's experience, prior record, ability to understand the questions and to communicate his responses understandably, his alienage, his unfamiliarity with our legal system, his emotional condition, his statement he did not want to talk to the officers, his request for a representative, and his statements that indicate he was trying to give the officers the answers they wanted to hear or to agree with their version of the events. Furthermore, the defendant clearly did not understand the criminal nature of the interrogation. He believed it was related to his employment or the employment of the complaining witness. He also indicated this was "basically first time to talk to any police person."

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[4] Considering the defendant's unfamiliarity with our legal system, his inability to understand the questions and the criminal nature of the questioning, statements such as the following in the July 10 interview cause us concern, but do not necessarily rise to the level that the defendant's statements after that point in the interview were involuntary:

Meyer: Okay. But first *we just need you to say*, "I got upset and I hit her. I shouldn't have done it. It won't happen again." (Emphasis added).

Defendant: I don't know what kind of answer you look for.

In the July 15 interrogation, just moments after telling the defendant, "Here, wait just a second," and then starting the questions about sexual touching, the defendant indicated he did not want to talk to the officers about it.

> Q. We have heard information that there was more going on in your lab and in your office between you and her as far as touching. We just want to know what the truth is. Do you want to talk to us about it? A. No, actually—so—

The officers ignored his answer and continued the questioning. The defendant is visibly distraught. He tells the officers he is upset. Officer Meyer then misleads the defendant about the serious criminal consequences of an admission: "I mean if you touched her breasts, *it's,* hey, *no big deal.*" (Emphasis added). For the next several interchanges, the defendant tries to answer or to ask a question, but Officer Bringman interrupts and pressures the defendant. Just moments later the defendant makes his request for a representative.

We conclude the defendant clearly expressed his desire not to talk to the officers without a "representative." All of his statements after that point should be suppressed as involuntary. We affirm the district court ruling that all of the defendant's statements after page forty-two, line twenty of the transcript of the July 15 interrogation, where defendant expressed his desire for a representative, are suppressed as involuntary and may not be used for any purpose at trial.

AFFIRMED.