FILED

MAY 18 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GREGORY WILLIAMS, Petitioner - Appellant, v. ROBERT HOREL, Warden, Respondent - Appellee.	No. 08-15678 D.C. No. 07-CV-04269-THE MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Thelton E. Henderson, District Judge, Presiding

Argued and Submitted May 6, 2009
San Francisco, California

Before: HUG, HAWKINS, and TALLMAN, Circuit Judges.

Gregory Williams ("Williams") appeals the denial of his § 2254 habeas corpus petition, arguing the California Court of Appeal applied Supreme Court precedent in an objectively unreasonable manner by concluding that (1) he did not unequivocally invoke his right to counsel during a custodial interrogation, and (2) his statements

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

during the interrogation were not involuntary as a result of his methamphetamine intoxication. Reciting the facts only as necessary, we affirm.

Invocation of the Right to Counsel

It is well settled that interrogations must cease upon invocation of the right to counsel only if the suspect "*unambiguously* request[s] counsel." *Davis v. United States*, 512 U.S. 452, 459 (1994) (emphasis added). "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." *Id*. In *Davis*, the Supreme Court found the statement, "[m]aybe I should talk to a lawyer," to be equivocal and ambiguous. *Id*. at 462.

The California court's determination that Williams's statement, "I think first, um, I should have a lawyer," was ambiguous and equivocal was not an objectively unreasonable application of *Davis*. We have previously held that a state court's conclusion that the statement, "I think I would like to talk to a lawyer," was equivocal and ambiguous, was not an objectively unreasonable application of *Davis*. *See Clark v. Murphy*, 331 F.3d 1062, 1069-72 (9th Cir. 2003). The statement at issue here is a precise hybrid between those at issue in *Clark* and *Davis*. In *Clark*, the suspect said "I *think* I would like to talk to a lawyer." *Id*. at 1070 (emphasis added). In *Davis*, it was "*Maybe* I *should* talk to a lawyer." 512 U.S. at 462 (emphasis added). Here,

Williams said "I *think* … I *should* have a lawyer." The statements in *Davis* and *Clark* were equivocal and ambiguous, and there is no material difference between those statements and the statement at issue here. Williams has not cited any Supreme Court opinion handed down in the time since we decided *Clark* that would change the substance of our analysis in that case.

Williams's later response, "Right," to the question "Now, you said, the first thing you said, you wanted a lawyer? Is that the first thing you said?" was also not an unequivocal request for counsel. The word "Right" was merely a confirmation that he had previously made a statement about a lawyer—a statement that was, according to Supreme Court precedent, not an unambiguous request for counsel. What is more, the officers carefully explained during that same exchange that "if you want a lawyer, we'll walk out of this room," making clear that the interrogation would end if Williams requested representation. Williams responded, "I'll just talk to you then," unambiguously communicating his wish to decline his rights to have counsel present and to remain silent. On these facts, the California court's decision that Williams did not make an unequivocal request to have a lawyer present and that the police asked appropriate clarifying questions was not objectively unreasonable. *Cf. Anderson v. Terhune*, 516 F.3d 781, 788-90 (9th Cir. 2008) (en banc) (granting habeas relief in an analogous case only where the petitioner's invocation of his right to remain silent has

been *absolutely certain*, and the state court's decision to the contrary had been "fanciful" and "baffling" and "ma[de] no sense").

Voluntariness of the Confession

There is no indication here that Williams's confession was coerced. While the voluntariness of a confession must be judged from the "totality of all the surrounding circumstances," including consideration of "the characteristics of the accused and the details of the interrogation," *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973), the Supreme Court has made clear that "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment," *Colorado v. Connelly*, 479 U.S. 157, 167 (1986).

There is no indication that the police acted coercively even assuming arguendo that Williams's "mental state … at the time he made the confession, interfered with his 'rational intellect' and his 'free will.'" *Id*. at 159. Williams cannot point to any evidence demonstrating that the interviewing officers committed coercive misconduct. While he suggests that "the police subjected [Williams] to two lengthy interrogations," the record shows each was only about one hour long. And while he argues the officers' questioning was highly suggestive, and that the officers were "persistent" in their "efforts to get appellant to say that he entered the house to have sex with the Bauers' twelve-year-old daughter," there is no Supreme Court precedent

that would require us to find suggestive or persistent questioning to be coercive after a valid waiver of *Miranda* rights. In any event, Williams himself acknowledges that he refused to agree with the persistent suggestions the officers made, indicating that he ably resisted any allegedly improper interrogation tactics and, *ipso facto*, that the interrogation was not coercive.

AFFIRMED.