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Context Is King: Lawyer Dogs, Pure Applesauce, and Your *Miranda* Right to Counsel

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I. OVERVIEW

Warren Demesme was arrested in October 2015 on counts of aggravated rape and indecent behavior with a juvenile.[1] Prior to his arrest, Demesme agreed to two separate interviews with police regarding allegations of sexual misconduct with minors.[2] During the second interview, Demesme allegedly made incriminating statements to police.[3] He challenged the admissibility of the statements, alleging that his right to counsel was violated because he requested an attorney before making the statements, and the police did not stop

1. Petition for Supervisory Writs to Review the Trial and Appellate Courts' Denial of Mr. Demesme's Motion to Suppress Statements at 8, State v. Demesme, 2017-0954 (La. 10/27/17); 228 So. 3d 1206 [hereinafter Petition]; Opposition to Defendant's Original Writ Application at 3, *Demesme*, 2017-0954; 228 So. 3d 1206 [hereinafter Opposition].
2. Petition, *supra* note 1, at 10; Opposition, *supra* note 1, at 4.
3. Petition, *supra* note 1, at 10; Opposition, *supra* note 1, at 4-6.

interrogating him at that point.[4] Demesme's motion to suppress the statement was denied, and he appealed to the Louisiana Fourth Circuit Court of Appeal, then finally to the Louisiana Supreme Court.[5]

On October 27, 2017, the Louisiana Supreme Court voted 6-1 to deny Demesme's writ application for certiorari.[6] While five of the six justices did not assign reasons for their denial, Justice Scott J. Crichton authored a concurrence to assign reasons for his decision that received almost immediate attention from news outlets around the country.[7] The subject of the intrigue, and the subject of this Note, was the concurrence's reasoning for denying certiorari: "In my view, the defendant's ambiguous and equivocal reference to a 'lawyer dog' does not constitute an invocation of counsel . . . ."[8]

II. BACKGROUND

In *Miranda v. Arizona*, the United States Supreme Court held that a suspect undergoing custodial questioning has a right to counsel before and during questioning to protect his Fifth Amendment privilege against self-incrimination.[9] In *Miranda*, the Court established that "if [a defendant] indicates in any manner and at any stage of [a custodial interrogation] that he wishes to consult with an

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4. Petition, *supra* note 1, at 11-13.

5. State v. Demesme, No. 528-008 (Orleans Par. Crim. Dist. Ct. Sept. 16, 2016) (denying defendant's motion to suppress his statement); State v. Demesme, No. 2017-K-303 (La. App. 4 Cir. May 8, 2017) (denying writ); *Demesme*, 2017-0954; 228 So. 3d 1206 (denying writ).

6. *Demesme*, 2017-0954 at p. 1; 228 So. 3d at 1206 (Crichton, J., concurring).

7. *Id.* at pp. 1-2; 228 So. 3d at 1206-07; *see, e.g.*, Ken Daley, *Orleans Rape Suspect's 'Lawyer Dog' Request Lacking, State Supreme Court Finds*, NOLA.COM (Oct. 30, 2017), http://www.nola.com/crime/index.ssf/2017/10/orleans_rape_suspects_lawyer_d.html; Elie Mystal, *Suspect Asks for a 'Lawyer, Dog,' Willfully Ignorant Court Denies Comma, Counsel*, ABOVE L. (Oct. 30, 2017, 1:15 PM), https://abovethelaw.com/2017/10/suspect-asks-for-a-lawyer-dog-willfully-ignorant-court-denies-comma-counsel/; *Rape Suspect's Request for 'Lawyer Dog' Was Insufficient, Court Rules*, FOX NEWS (Oct. 30, 2017), http://www.foxnews.com/us/2017/10/30/rape-suspects-request-for-lawyer-dog-was-insufficient-court-rules.html; Eugene Volokh, *You Have the Right to Ask for a Lawyer Dog—But It Won't Do You Any Good*, WASH. POST: VOLOKH CONSPIRACY (Oct. 31, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/10/31/you-have-the-right-to-ask-for-a-lawyer-dog-but-it-wont-do-you-any-good; Debra Cassens Weiss, *Did Suspect Ask for a 'Lawyer Dog' or a 'Lawyer, Dawg'? Request Was Ambiguous, Justice Says*, ABA J. (Nov. 1, 2017, 10:57 AM), http://www.abajournal.com/news/article/did_suspect_ask_for_a_lawyer_dog_or_a_lawyer_dawg_request_was_ambiguous_jus/.

8. *Demesme*, 2017-0954 at p. 1; 228 So. 3d at 1206.

9. 384 U.S. 436, 444-45 (1966).

attorney before speaking[,] there can be no questioning."[10] The Court went on to hold in *Edwards v. Arizona* that when "an accused . . . expresse[s] his desire to deal with the police only through counsel, [he] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication . . . with the police."[11] Accordingly, once a suspect has invoked his right to counsel, the police must immediately cease questioning him until an attorney is provided or until the suspect reinitiates the conversation about the offense with the interrogating officers.[12] If the police do not cease such questioning and the suspect does not himself reinitiate the conversation, any statements made thereafter cannot be used against the suspect in the prosecution's case-in-chief.[13]

These decisions left courts with a question: What is required for a suspect to invoke his right to counsel? The Court attempted to clarify this issue in *Davis v. United States*, where it determined that the accused must "at a minimum, [make] some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney."[14] However, the Court noted 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."[15] The Court was careful to note that "[a]lthough 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."[16] The Court in *Davis*, applying this reasoning, found that the defendant's statement—

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10. *Id.* A "custodial interrogation" is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id.* at 444.

11. 451 U.S. 477, 484-85 (1981).

12. *See id.* at 485.

13. *See id.* at 485-87 (concluding that the statements made after the suspect had invoked his right to counsel were inadmissible); *see also* Oregon v. Elstad, 470 U.S. 298, 306-07 (1985) (discussing the "*Miranda* exclusionary rule").

14. Davis v. United States, 512 U.S. 452, 459 (1994) (quoting McNeil v. Wisconsin, 501 U.S. 171, 178 (1991)).

15. *Id.* (citing *McNeil*, 501 U.S. at 178; *Edwards*, 451 U.S. at 485).

16. *Id.* (internal citation omitted) (quoting Souter, J., concurring in judgment, at 476).

"Maybe I should talk to a lawyer"—was not an unequivocal request for counsel.[17]

The Louisiana Supreme Court has accepted and employed the objective inquiry set forth in *Davis* and has noted that a "suspect must articulate his or her desire to have counsel present with sufficient clarity that a reasonable police officer in the circumstances would understand the [suspect's] statement to be a request for an attorney."[18] This inquiry has led to specific analysis of the facts presented on a case-by-case basis. In *State v. Payne*, the Louisiana Supreme Court held that, under the circumstances, the statement "may I call a lawyer—can I call a lawyer?" was too ambiguous and equivocal to constitute sufficient invocation of the defendant's right to counsel.[19] In *Payne*, the Louisiana Supreme Court took great care to point out the specific circumstances of the defendant's statements, finding that they were not in response to the detective's questions and that the defendant was not under interrogation at the time she made the statements.[20] In contrast, the Louisiana Supreme Court held in *State v. Bell* that when the defendant—who was in police custody and subject to interrogation at the time—stated that "I'd rather wait until my mom get me a lawyer," he spoke with sufficient clarity to invoke his right to counsel.[21]

III. COURT'S DECISION

Because the only stated reasons proffered for the court's denial of Demesme's writ application were given by the concurrence, this Note will limit itself to review of the reasoning provided therein.[22]

The defendant's statement at the center of the controversy was quoted in the concurrence: "[I]f 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

17. *Id.* at 462.

18. State v. Payne, 2001-3196, p. 14 (La. 12/4/02); 833 So. 2d 927, 938 (citing *Davis*, 512 U.S. at 459) (emphasis omitted).

19. *Id.* at p. 15; 833 So. 2d at 938.

20. *Id.* The existence of both custody and interrogation are required to trigger *Miranda* rights. Miranda v. Arizona, 384 U.S. 436, 444-45 (1966).

21. State v. Bell, 2007-1124, pp. 1-2 (La. 6/29/07); 958 So. 2d 1173, 1174, 1176 ("I'd rather wait until my mom get me a lawyer then. Because I'm telling you what I know, and you're trying to make me tell you other.").

22. *See* State v. Demesme, 228 So. 3d 1206, 1206 (La. 10/27/17) (denying writ without assigning reasons); *id.*, 2017-0954, p. 1 (Crichton, J., concurring and assigning reasons).

dog cause this is not what's up."[23] The concurrence cited to the Louisiana Supreme Court's holding in *State v. Payne* for the proposition that "if 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."[24] As an example of such a statement, Justice Crichton offered the phrase presented in *Davis*, "Maybe I should talk to a lawyer," where the Supreme Court determined that the request for counsel was ambiguous.[25] The concurrence then concluded, without further explanation, that "the defendant's ambiguous and equivocal reference to a 'lawyer dog' does not constitute an invocation of counsel."[26]

IV. ANALYSIS

In denying Demesme's writ application, the majority of the court did not assign reasons for its decision.[27] However, Justice Crichton wrote "separately to spotlight the very important constitutional issue regarding the invocation of counsel during a law enforcement interview."[28] While much media hostility has arisen based on the concurrence's reasoning—that Demesme was asking for a "lawyer dog" and therefore his request for counsel was ambiguous and equivocal—there are other phrases and words used in Demesme's statement that could have led the majority to deny certiorari in this case.[29] By writing separately from the majority and reaching its conclusion with little analysis, the concurrence provides persuasive authority that could potentially be used to dilute a suspect's *Miranda* right to counsel.[30]

23. *Demesme*, 2017-0954 at p. 1; 228 So. 3d at 1206 (Crichton, J., concurring); *see also* Opposition, *supra* note 1, at 4 (quoting the same).
24. *Demesme*, 2017-0954 at p. 1; 228 So. 3d at 1206-07 (alteration omitted) (quoting *Payne*, 2001-3196 at p. 10; 833 So. 2d at 935).
25. *Id.* at p. 2; 228 So. 3d at 1207 (alteration omitted) (quoting Davis v. United States, 512 U.S. 452, 462 (1994)).
26. *Id.*
27. *See id.*
28. *Id.* at p. 1; 228 So. 3d at 1206.
29. *See* discussion *infra* Part IV.A.
30. *Id.*

A. Proper Application of Precedent and Likely Absurd Results

As previously noted, in determining if a suspect has invoked his right to counsel such that custodial interrogation must cease, Louisiana courts should examine whether "[t]he suspect . . . articulate[d] his or her desire to have counsel present with sufficient clarity that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney."[31] As the Louisiana Supreme Court's decision in *Payne* displays, this is a fact-specific inquiry requiring a thorough examination of the circumstances surrounding the suspect's statement.[32] Understanding the importance of this inquiry, Louisiana appellate courts have focused not only on the words of the defendant but the surrounding circumstances in which they were made.[33]

In *State v. Genter*, the Louisiana Fourth Circuit held that the defendant's statement, "I already told you everything and if this is gonna [sic] continue I'll just wait for a lawyer," was not an unequivocal invocation of his right to counsel.[34] In *Genter*, the defendant was appointed counsel who visited him during his interview with police; however, after his attorney left, the officer continued to ask the defendant about the case while he remained in the interrogation room.[35] It was at this point, and shortly after he made the above referenced statement regarding his desire to "just wait for a lawyer," that the defendant made incriminating statements.[36] In its analysis, the Louisiana Fourth Circuit Court of Appeal did not simply carve out the phrase "I'll just wait for a lawyer," and hold that it was an equivocal invocation of the right to counsel but instead examined the surrounding circumstances before coming to the conclusion that the defendant's statement was, in fact, equivocal.[37]

The presence of tempering words like "might" or "if" often lead courts to conclude that a defendant's request for counsel was equivocal or ambiguous.[38] In *State v. Austin*, the Louisiana Fifth

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31. State v. Payne, 2001-3196, p. 14 (La. 12/4/02); 833 So. 2d 927, 938 (emphasis omitted) (citing Davis v. United States, 512 U.S. 452, 459 (1994)).

32. *See supra* note 20 and accompanying text.

33. *See, e.g.*, State v. Genter, 2003-1987, p. 35 (La. App. 4 Cir. 4/7/04); 872 So. 2d 552, 570-71 (detailing the circumstances surrounding the defendant's statement).

34. *Id.* at p. 36; 872 So. 2d at 571.

35. *Id.* at pp. 28, 35; 872 So. 2d at 567, 570-71.

36. *See id.* at p. 35; 872 So. 2d at 570.

37. *Id.* at pp. 35-36; 872 So. 2d at 570-71.

38. *See, e.g.*, Davis v. United States, 512 U.S. 452, 462 (1994) (holding that the phrase "maybe I should talk to a lawyer" was ambiguous and equivocal).

Circuit Court of Appeal held that a defendant's request for counsel was ambiguous and equivocal when he "prefaced his statement with the conjunction 'if,' indicating a hypothetical situation."[39] The defendant in *Austin* stated: "If that's what y'all gonna arrest me for? F***, take me to jail and let me f***ing have . . . call a lawyer and sh** because this is bullsh**."[40] Similarly, in *State v. Chesson*, the Louisiana Third Circuit Court of Appeal held that the defendant's statement to police officers that "I think I might should talk to an attorney" was not an unambiguous and unequivocal invocation of counsel as required by *Davis*.[41]

The defendant's statement in *Demesme* regarding his request for an attorney—"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"[42]—is prefaced by the conjunction "if," making any request for a lawyer contingent on the officer's state of mind and arguably equivocal. The reasoning asserted in *Austin* could certainly justify the denial of certiorari.[43] Similarly, the presence of the phrase "why don't you" could alter the understanding of Demesme's statement when looked at in its entirety.[44] Here, the phrase could be understood as either an inquiry into why the police have not provided him with an attorney, or as a request that counsel be provided.[45] One could argue that a full review of the circumstances surrounding Demesme's statement could lead a reasonable officer to believe that Demesme was not requesting counsel but was instead asking why, "if [the police] think [he] did it," was a lawyer not present?[46]

In contrast, the concurrence's reasoning that reference to a "lawyer dog" is an ambiguous and equivocal invocation of counsel

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39. 12-629, p. 18 (La. App. 5 Cir. 3/13/13); 113 So. 3d 306, 318.

40. *Id.* at p. 16; 113 So. 3d at 317.

41. State v. Chesson, 2003-606, pp. 6-10 (La. App. 3 Cir. 10/1/03); 856 So. 2d 166, 173-75 (citing *Davis*, 512 U.S. 452).

42. State v. Demesme, 2017-0954, p. 1 (La. 10/27/17); 228 So. 3d 1206, 1206 (Crichton, J., concurring); *see also* Opposition, *supra* note 1, at 4 (quoting the same).

43. *See Austin*, 12-629 at p. 18; 113 So. 3d at 318.

44. *Demesme*, 2017-0954 at p. 1; 228 So. 3d at 1206.

45. *But see, e.g.*, State v. Veiman, 546 N.W.2d 785, 791 (Neb. 1996) (finding that "the phrase 'why don't you' does not make an instruction into a permissive invitation" when a police officer asked a defendant "*why don't you* just get in my car?").

46. *See Demesme*, 2017-0954 at p. 1; 228 So. 3d at 1206. In fact, the state's opposition brief argued that Demesme's invocation of his right to counsel was ambiguous or equivocal because he prefaced the request with the phrase "If y'all think I'm guilty." Opposition, *supra* note 1, at 8. The State asserted that "because the defendant communicated that whether he actually wanted a lawyer was dependent on the subjective beliefs of the officers," his invocation was in fact equivocal. *Id.*

finds no support in precedent. The Louisiana Supreme Court has never held that a phrase such as "lawyer, man" or "lawyer, brother," is, on its own, equivocal or ambiguous and therefore insufficient to constitute a request for counsel. Instead, the concurrence in *Demesme* seems to introduce a new idea—that a request for an attorney can be ambiguous and equivocal based entirely on the word that follows "lawyer."[47] In addition to lacking support in precedent, this reasoning ignores the Supreme Court's admonishment in *Davis* that "a suspect need not speak with the discrimination of an Oxford don."[48]

Additionally, finding a statement insufficient to invoke one's right to counsel based solely on the word following "lawyer" would produce absurd results. It is easy to see the impact that such an interpretation could have on a defendant's right to counsel. If a defendant says, "Give me a lawyer pig," or "Give me a lawyer b****," it follows that such statements would be insufficient to invoke his right to counsel because there is no such thing as a "lawyer pig"[49] or "lawyer b****." What if the defendant had said, "Give me a lawyer brother"? Would the fact that the defendant has no brother who holds a law degree mean that he had failed to invoke his right to counsel? Such reasoning would require that criminal defendants speak "with the discrimination of an Oxford don" in order to invoke their right to counsel, a standard the United States Supreme Court has rejected.[50]

B. Context Is King

"[W]ords are chameleons, which reflect the color of their environment."[51] A word without context is "at best a marker of certain possible meanings that dictionaries lay out."[52] A prime

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47. *See Demesme*, 2017-0954 at p. 2; 228 So. 3d at 1207 ("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 . . . .").

48. Davis v. United States, 512 U.S. 452, 459 (1994) (internal quotation marks omitted); *see also* People v. Kutlak, 364 P.3d 199, 206 (Colo. 2016) (noting "that suspects may not be legally sophisticated or paragons of clarity in their use of language" (internal quotation marks omitted)).

49. *But see* State v. Collier, 736 P.2d 231, 234 n.4 (Utah 1987) (noting that the term "pig," "[i]n current slang, . . . refers to police officers"); *Pig*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/pig (last visited Feb. 5, 2018) (noting that the slang term "pig" is a disparaging word for a police officer).

50. *See Davis*, 512 U.S. at 459.

51. Comm'r v. Nat. Carbide Corp., 167 F.2d 304, 306 (2d Cir. 1948) (Hand, J.).

52. Harold Anthony Lloyd, *Law's "Ways of Words": Pragmatics and Textualist Error*, 49 CREIGHTON L. REV. 221, 255 (2016); *see also* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS, at xxvii (2012) ("Neither

example of the need for context is presented by Justice Scalia's characterization of one element of the Court's opinion in *King v. Burwell* as "[p]ure applesauce."[53] Harold Lloyd notes that Justice Scalia's words must be considered in context, because "[i]n its context, Justice Scalia no doubt gives 'pure applesauce' the slang meaning of 'pure nonsense' rather than the standard meaning of apples stewed to a pulp and sometimes sweetened or spiced."[54] To read Justice Scalia's words in a literal sense would render them absurd.

A proper inquiry into the words of a suspect under custodial interrogation requires examining not only the words presented but their context. In *Payne*, the Louisiana Supreme Court explicitly noted that the proper inquiry into a suspect's words requires examination of the circumstances in which they were made.[55] To understand Demesme's words, the listener or reader must first recognize the use of "direct address," and second, understand the possible meanings of the term "dog" (or "dawg"). Below, this Note addresses each of these inquiries in turn.

1. Direct Address

The Chicago Manual of Style notes that "[a] comma is used to set off names *or words* used in direct address."[56] In the case of a direct address, commas are generally used "to indicate that the noun isn't grammatically part of the sentence."[57] The presence or lack of a comma, or commas, can be critical to understanding what a speaker

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written words nor the sounds that the written words represent have any inherent meaning. Nothing but conventions and *contexts* cause a symbol or sound to convey a particular idea." (emphasis added)); RESTATEMENT (SECOND) OF CONTRACTS § 202 cmt. d (AM. LAW INST. 1981) ("[The] [m]eaning [of a word] is inevitably dependent on [its] context."); *Id.* cmt. b ("The meaning of words . . . commonly depends on their context.").

53. *See* King v. Burwell, 135 S. Ct. 2480, 2501 (2015) (Scalia, J., dissenting).

54. Lloyd, *supra* note 52, at 222 n.3 (alteration, citation, and internal quotation marks omitted).

55. *See* State v. Payne, 2001-3196, pp. 14-16 (La. 12/4/02); 833 So. 2d 927, 938-39.

56. CHICAGO MANUAL OF STYLE § 6.53 (17th ed. 2017) (emphasis added); *see also* Erin Brenner, *Punctuation Point: The Direct Address Comma*, WRITING RESOURCE (Feb. 11, 2010), http://thewritingresource.net/2010/02/11/punctuation-points-the-direct-address-comma/.

57. Erin Brenner, *Identifying Nouns of Direct Address*, COPYEDITING (June 16, 2017), https://www.copyediting.com/identifying-nouns-direct-address/; *see also* FRANCES M. PERRY, A PUNCTUATION PRIMER 22 (1908) ("Words or phrases that have no grammatical relation to the sentences in which they are found, such as interjections and words of direct address, and all parenthetical expressions, are set off by commas. It will be noticed that the grammatical integrity of the following sentence is complete when the italicized words set off by commas are omitted: *Yes*, I suppose, *Martha*, that *as usual*, you were too busy to write.").

said. A fairly simple example of this principle can be shown with: "Let me eat, Mom." The presence of the comma denotes a direct address to "Mom." Would a "reasonable" person presented with the phrase "Let me eat Mom" read it as the speaker's request to eat his mother? Of course not. Such a proposition is nothing more than "[p]ure applesauce."[58]

2. Words and "Meaning"

The final inquiry is the meaning of "dog" (or "dawg") in the context presented here. "Dog," of course, generally refers to a domesticated canid.[59] However, the slang term "dawg" is "used especially as a familiar form of address" similar to the words "buddy" or "man."[60] Although "dog" is spelled in its conventional manner here, courts do not always take trial transcripts on their face.[61] Because a word's meaning inevitably depends upon context and

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58. *See King*, 135 S. Ct. at 2501 (Scalia, J., dissenting). As noted above, a suspect's command that an interrogating police officer "get me a lawyer, pig," should be read plainly as a command to get a lawyer, directly addressing the officer as a "pig." *See* discussion *supra* Part IV.A. No "reasonable" reader or listener would understand the suspect's words as a request for a bar-admitted pig. *Id.*

59. *Dog*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/dog (last visited Feb. 5, 2018). "Dog" is also used to describe "a worthless or contemptible person." *Id.*

60. *Dawg*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/dawg (last visited Feb. 5, 2018) (noting that the word is "used especially as a familiar form of address"). Argument could be made that Randy Jackson brought the word "dawg" into mainstream use during his tenure as a judge on *American Idol*. Jackson, in an interview with Oprah Winfrey, noted that he picked up the term "dawg" when he was growing up "in the hood in the south of Baton Rouge, Louisiana." *Randy Jackson On Why He Always Uses the Word 'Dawg' (VIDEO)*, HUFFINGTON POST (Aug. 8, 2014, 8:59 PM), https://www.huffington post.com/2014/08/08/randy-jackson-dawg-american-idol_n_5663123.html. He described "dawg" as "another name to use to call people," rather than by their name. *Id.* Jackson used the word "dawg" regularly in the episodes of *American Idol* in which he appeared, a show that went on to become "TV's top-rated show for a record seven consecutive seasons" from 2003 until 2011. *See* Bill Keveney, *5 Reasons 'American Idol' May Go On Nearly Forever—or Not*, USA TODAY (Jan. 17, 2012, 9:43 PM), https://usatoday30.usatoday.com/ life/television/news/story/2012-01-14/American-Idol-endurance/52625742/1. In its 2005-06 run, *American Idol* averaged 30.6 million viewers per episode. *See I.T.R.S. Ranking Report*, ABC TELEVISION NETWORK (May 31, 2006), https://web.archive.org/web/20141011060406/ http://abcmedianet.com/web/dnr/dispDNR.aspx?id=053106_05.

61. *See, e.g.*, United States v. Murphy, 406 F.3d 857, 859 n.1 (7th Cir. 2005) (correcting a transcript that read "snitch bitch hoe," and replacing the word "hoe"—which the court noted is generally "a tool used for weeding and gardening"—with the word "'ho,' a staple of rap music vernacular"). "Ho" is generally used to denote a prostitute and is often used as a derogatory term toward women. *Ho*, OXFORD LIVING DICTIONARIES, https://en. oxforddictionaries.com/definition/ho (last visited Feb. 5, 2018).

spelling, courts should avoid blindly trusting either the grammar or the spelling presented in transcripts and briefs.[62]

Courts have, on occasion, been asked to determine what a word or set of words means and have recognized that an individual's words should be reviewed in their context, rather than in isolation.[63] Although courts have not examined the use of slang in the right to counsel context, at least one court has addressed the use of colloquialisms in determining whether a defendant has requested counsel during a police interrogation.[64] In *Ballard v. State*, Maryland's highest court recognized and accepted the colloquial meaning of the phrase "you mind if."[65] There, the defendant stated: "You mind if I not say no more and just talk to an attorney about this[?]"[66] The court reasoned that while the phrase "you mind if" generally means that an individual is asking for *permission* to do

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62. RESTATEMENT (SECOND) OF CONTRACTS § 202 cmt. d (AM. LAW INST. 1981); *see also supra* note 61. "The meaning of words . . . commonly depends on their context." RESTATEMENT (SECOND) OF CONTRACTS § 202 cmt. b. In *Demesme*, the concurrence adopted its characterization and spelling of the suspect's statement from the state's opposition brief, hence the spelling of the word "dawg" appearing as "dog." *Compare* Opposition, *supra* note 1, at 4 (quoting Demesme as saying, in part, "why don't you just give me a lawyer dog cause this is not what's up"), *with* State v. Demesme, 2017-0954, p. 1 (La. 10/27/17); 228 So. 3d 1206, 1206 (Crichton, J., concurring) (same). The defense's petition did not mention the word "dawg" or "dog" when describing Demesme's statement. *See* Petition, *supra* note 1.

63. *See, e.g.*, Knievel v. ESPN, 393 F.3d 1068, 1087-88 (9th Cir. 2005) (holding that "pimp" could not be reasonably interpreted in its literal, criminal meaning in the context presented); Abela v. Martin, 380 F.3d 915, 926 (6th Cir. 2004) (rejecting the contention that the defendant's words should be "viewed in isolation," and noting that "language that might be less than clear, when viewed in isolation, can become clear and unambiguous when the immediately surrounding circumstances render them so."); People v. Kutlak, 364 P.3d 199, 206 (Colo. 2016) (recognizing that courts should "assess[] whether a request for counsel is ambiguous by considering the totality of the circumstances, including such factors as the words spoken by the interrogating officer; the words used by the accused in referring to counsel; the officer's response to the accused's reference to counsel; the speech patterns of the accused; the demeanor and tone of the interrogating officer; the accused's behavior during interrogation; and the accused's youth, criminal history, background, nervousness or distress, and feelings of intimidation or powerlessness"); State v. Scheffer, 230 P.3d 462, 475-76 (Mont. 2010) (noting that in reviewing whether a suspect has invoked his right to counsel "our analysis does not end with words alone; . . . we also consider the circumstances in which the statement was made" (quoting United States v. Shabaz, 579 F.3d 815, 819 (7th Cir. 2009))); *c.f.* State v. Rogers, 760 N.W.2d 35, 58 (Neb. 2009) ("In considering whether a suspect has clearly invoked the right to remain silent, we review not only the words of the criminal defendant, but also the context of the invocation.").

64. *See* Ballard v. State, 24 A.3d 96 (Md. 2011); *see also Colloquialism*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/colloquialism (last visited Feb. 5, 2018) (citing as an example that "'[c]hicken out' is a colloquialism for 'los[ing] one's nerve.'").

65. *Ballard*, 24 A.3d at 103-04.

66. *Id.* at 97.

something, in this context, it was a colloquialism that signaled a forthcoming *request* "to have the desired thing occur."[67] Thus, the court found that the defendant had in fact made an unambiguous request for counsel, despite his use of the phrase "you mind if."[68] Just as the court in *Ballard* considered the context and accepted the colloquial meaning of the phrase "you mind if," the concurrence in *Demesme* should have considered the statement's context and accepted the slang meaning of the term "dawg."[69]

This Note does not seek to assert that in reviewing a suspect's words, courts must peer into the deep recesses of a suspect's mind to divine a word's particular meaning. Instead, courts should, and have, taken notice of "slang commonly used today."[70] While courts should bear no burden in uncovering secretive or hidden meanings within a suspect's words, once a slang word or expression has come into common contemporary usage, courts should not feign ignorance of their meaning.[71] This should be particularly true when courts are reviewing possible *Miranda* violations because the suspect's fundamental right to liberty is at stake.

V. CONCLUSION

The statement in *Demesme* illustrates a clear use of a "direct address" and slang. The defendant was not referring to a hypothetical "lawyer dog," but was in fact using "dawg" to connote a direct address to the interrogating officer. To properly understand what the defendant in this case meant, the comma should be used with "good judgment, with the goal being ease of reading."[72] To do so, and thus render the statement presented in the record comprehensible, the defendant's statement should be read as: "If y'all, this is how I feel, if

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67. *Id.* at 103.

68. *Id.* at 103-04; *cf.* Prioleau v. State, 984 A.2d 851, 861 (Md. 2009) (finding the phrase "what's up," is "a general term of salutation" that could not be reasonably viewed as designed to elicit an incriminating response from the suspect).

69. *See Ballard*, 24 A.3d at 103-04.

70. *See, e.g.*, Knievel v. ESPN, Inc., 223 F. Supp. 2d 1173, 1181 (D. Mont. 2002) (noting that "calling someone a pimp is not necessarily an insult and can be a compliment" (citing *Pimp*, ONLINE SLANG DICTIONARY, http://onlineslangdictionary.com/meaning-definition-of/pimp (last visited Feb. 5, 2018))); *see also* State v. Collier, 736 P.2d 231, 234 n.4 (Utah 1987) ("In current slang, [the term 'pig'] refers to police officers.").

71. *See* Edwards v. San Jose Printing & Pub. Co., 34 P. 128, 129 (Cal. 1893) (noting that "[c]ourts cannot affect to be ignorant of the recent meaning which [a] word . . . has acquired" and noting in particular that, at the time, "the word 'sack' . . . signifie[d] a fund in hand to be used for purposes of corruption").

72. CHICAGO MANUAL OF STYLE § 6.16 (17th ed. 2017).

y'all think I did it, I know that I didn't do it[,] so why don't you just give me a lawyer[, dawg,] cause this is not what's up."[73]

The concurrence made a critical mistake by reading Demesme's words without their context. Demesme was being interrogated by the police and speaking directly to the interrogating officers.[74] The objective inquiry announced in *Davis* asks what a "reasonable officer in light of the circumstances" would have understood the defendant's words to mean.[75] Here, it is clear that no "reasonable officer" would have understood Demesme's words to mean that he was requesting some fictional "lawyer dog" be provided for him. The common usage of the term "dawg" makes this clear.[76] The view that this word was sufficient on its own to strip Demesme of his *Miranda* right to counsel is patently absurd. *Davis* explicitly cautions against imposing upon defendants the requirement that they "speak with the discrimination of an Oxford Don."[77] If this concurrence is to be taken on its face, that is precisely what it seeks—a result all courts should reject.

Christopher A. Hebert*

73. State v. Demesme, 2017-0954, p. 1 (La. 10/27/17); 228 So. 3d 1206, 1206 (Crichton, J., concurring).

74. Opposition, *supra* note 1, at 4-6.

75. United States v. Davis, 512 U.S. 452, 459 (1994).

76. *See supra* note 60 and accompanying text.

77. *Davis*, 512 U.S. at 459 (quoting Souter, J., concurring in judgment, at 476).

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