

Whether a particular request for counsel is equivocal presents a mixed question of law and fact. When there is support in the record for the Appellate Division's determination of a mixed question of law and fact, the issue is beyond further review by this Court. Here, however, there is no support in the record for the determination that defendant's request for counsel was equivocal. To the contrary, the only evidence -- defendant's words "I think I need an attorney," coupled with the interviewing officer's notation that defendant was "asking for an attorney" -- demonstrates an unequivocal invocation of defendant's right to counsel. This is not to say that utterance of the words defendant used would unequivocally invoke the right to counsel in every instance. But on this record, where there were no additional facts upon which a contrary inference could be drawn, further inquiry by the police was not permitted. Defendant's confession, made after police questioning continued, must therefore be suppressed.

Finally, the Appellate Division's finding that the police had consent to search the premises where defendant was located has support in the record and is thus beyond our review.

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Order reversed, defendant's motion to suppress statements granted and a new trial ordered, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided November 15, 2007