

RECEIVED

08-16-2012

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Case No. 2012AP520-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ADREAN L. SMITH,

Defendant-Appellant.

On Appeal From a Judgment of Conviction Entered in
Milwaukee County Circuit Court, the Honorable Thomas P.
Donegan, Presiding

REPLY BRIEF OF
DEFENDANT-APPELLANT

DUSTIN C. HASKELL
Assistant State Public Defender
State Bar No. 1071804

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4807
haskelld@opd.wi.gov

Attorney for Defendant-Appellant

TABLE OF CONTENTS

ARGUMENT	1
I. Adrean Smith Unambiguously Invoked His Right to Silence When He Said “I Don’t Want to Talk About This;” Therefore, His Subsequent Statements Should Be Suppressed.	1
CONCLUSION	4
CERTIFICATION AS TO FORM/LENGTH.....	5
CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)	5

CASES CITED

<i>Berghuis v. Thompkins</i> , 130 S.Ct. 2250 (2010)	1, 2
<i>Edwards v. Arizona</i> , 451 U.S. 477 (1981)	3
<i>State v. Goetsch</i> , 186 Wis. 2d 1, 519 N.W.2d 634 (Ct. App. 1994).....	1, 2, 3
<i>State v. Harris</i> , 199 Wis. 2d 227, 544 N.W.2d 545 (1996)	2
<i>State v. Wiegand</i> , No. 2011AP939 (WI App Feb 7. 2012)	2, 3
<i>United States v. Davis</i> , 512 U.S. 542 (1994)	1

ARGUMENT

- I. Adrean Smith Unambiguously Invoked His Right to Silence When He Said “I Don’t Want to Talk About This;” Therefore, His Subsequent Statements Should Be Suppressed.

The parties agree that during custodial interrogation, Mr. Smith told the detective: “I don’t want to talk about this.” State’s Response Brief at 2. The parties only dispute whether “a reasonable police officer” would understand that statement to be a request to remain silent. *Berghuis v. Thompson*, 130 S.Ct. 2250, 2260 (2010); *United States v. Davis*, 512 U.S. 542, 549 (1994). The Supreme Court requires a suspect to do nothing more than say “that he wanted to remain silent or that he did not want to talk with the police” to invoke the right to silence. *Berghuis*, 130 S.Ct. at 2260. Because Mr. Smith unequivocally invoked his right to silence, all of his subsequent statements should be suppressed.

This case is directly controlled by *State v. Goetsch* where this Court held that a defendant unequivocally invoked his right to silence when he made statements nearly identical to those of Mr. Smith. 186 Wis. 2d 1, 8-9, 519 N.W.2d 634 (Ct. App. 1994). Goetsch told police: “I don’t know, I don’t know, *I don’t want to talk about this anymore. I’ve told you, I’ve told you everything I can tell you.* You just ask me any questions and I just want to get out of here. Throw me in jail, I don’t want to think about this.” *Id.* at 7 (emphasis in original). This Court held that Goetsch unambiguously invoked his right to silence and his statement made it clear that he “did not consent to continued questioning.” *Id.* at 8.

Mr. Smith's statement, "I don't want to talk about this" was substantively the same as Goetsch's. The State attempts to distinguish **Goetsch** because Mr. Smith told his interrogators "I don't want to talk about this," whereas Goetsch said "I don't want to talk about this *anymore*." State's Response Brief at 3 (emphasis added). However, "anymore" is not a magic word that when uttered transforms an ambiguous invocation into an unambiguous one. Even without that word, Mr. Smith's invocation makes it sufficiently clear that like Goetsch, he wished to stop talking to police and had nothing further to say.

The State also suggests that a suspect must exhibit sufficient "exasperation" before the words "I don't want to talk about this" can be construed as a clear invocation of the right to silence. State's Response Brief at 4. However, no court has imposed such a requirement on a suspect subject to the "inherently compelling pressures of custodial interrogation." **State v. Harris**, 199 Wis. 2d 227, 238, 544 N.W.2d 545 (1996) (internal quotations omitted). The test is simply whether a reasonable officer would understand the suspect's words to be a request to remain silent, not whether the suspect was sufficiently exasperated when making the request. See **Berghuis**, 130 S.Ct. at 2260. So long as the suspect says "that he [wants] to remain silent or that he [does] not want to talk with the police," that is enough. **Id.**

The State also attempts to distinguish this Court's recent opinion in **State v. Wiegand** where a defendant's statements were suppressed. State's Response Brief at 4-5. Wiegand told police "I don't want to say anything more." **State v. Wiegand**, No. 2011AP939, unpublished slip op. ¶ 8 (WI App Feb 7, 2012). The State focuses on Wiegand's use of the additional phrase "anything more" to suggest that the request was somehow clearer than Mr. Smith's "I don't want

to talk about this.” State’s Response Brief at 4-5. However, that additional phrase added nothing to substantively distinguish Wiegand’s statement from Mr. Smith’s statement that he did not want to continue talking to police. Both statements make it abundantly clear to a reasonable police officer that the suspect does not want to answer more questions.

The State also notes that Wiegand used the “magic word ‘lawyer’” when invoking his right to silence. State’s Response Brief at 5. However, Wiegand’s reference to a lawyer merely suggested the possibility that he had also invoked his separate right to counsel under *Edwards v. Arizona*, 451 U.S. 477 (1981). This Court expressly declined to consider whether Wiegand invoked his right to counsel because it concluded he had unambiguously invoked his right to silence by saying “I don’t want to say anything more.” *Wiegand*, slip op. at ¶ 8. Thus, the fact that Mr. Smith did not haphazardly insert the word “lawyer” in his statement is irrelevant to determining whether he unequivocally invoked his right to silence.

Finally, the State briefly points out the varied results in other states when a suspect says something akin to Mr. Smith’s “I don’t want to talk about this.” State’s Response Brief at 5. Nevertheless, the ambiguity in other states is wholly irrelevant because Wisconsin already ruled on the issue in *Goetsch*. Just as Goetsch unequivocally invoked his right to silence by saying “I don’t want to talk about this anymore,” so to did Mr. Smith invoke his right to silence by saying the substantively identical phrase “I don’t want to talk about this.” Therefore, this Court should reverse the decision of the circuit court and suppress any of Mr. Smith’s statements made as the product of custodial interrogation after he invoked his right to silence.

CONCLUSION

For the reasons stated above, and for the reasons stated in his initial brief, Mr. Smith requests that this Court reverse the decision of the circuit court and suppress his statements, and any fruits of those statements, made after his invocation of the right to silence.

Dated August 15, 2012.

Respectfully submitted,

DUSTIN C. HASKELL
Assistant State Public Defender
State Bar No. 1071804

Office of the State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4807
haskelld@opd.wi.gov

Attorney for Defendant-Appellant

CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 932 words.

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated August 15, 2012.

Signed:

DUSTIN C. HASKELL
Assistant State Public Defender
State Bar No. 1071804

Office of State Public Defender
735 North Water Street, Suite 912
Milwaukee, WI 53202-4116
(414) 227-4807
haskelld@opd.wi.gov
Attorney for Defendant-Appellant