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STATE OF WISCONSIN
C O U R T O F A P P E A L S
District I
Case No. 2013 AP 000453 CR

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

STANLEY K. BULLOCK,

Defendant-Appellant

ON APPEAL TO REVIEW THE JUDGMENT OF CONVICTION
ENTERED ON JUNE 11, 2012, THE HONORABLE
REBECCA F. DALLET PRESIDING,
ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY.

BRIEF AND APPENDIX OF APPELLANT

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BRIEF AND APPENDIX OF THE APPELLANT

ISSUE PRESENTED

I. Whether or not the trial court erred in denying

Defendant's Motion to Suppress his statements to law enforcement officers. This, when Defendant was in a highly vulnerable position when he had provided these statements, just having suffered extensive medical injuries. Relevant and applicable case law holds that he did not possess rational intellect and free will when providing these statements.

Trial Court Answered: No.

POSITION ON ORAL ARGUMENT AND PUBLICATION

This Appeal involves issues of law which are not settled. Arguments need to be presented in more detail in oral argument. Therefore, oral argument and publication are requested.

STATEMENT OF THE CASE

In case 11 CF 594, Mr. Stanley Bullock was charged in a one Count Criminal Complaint dated February 1, 2011. The one Count charged Defendant with First Degree Intentional Homicide, contrary to Wis. Stats. 940.01(1)(a) and 939.50(3)(a). The charge alleged that Defendant killed Dedrie A. Kelly-Baldwin in the residence that they shared. When police arrived at their residence, they found the Defendant with several serious lacerations. Fire Department transported him to the hospital. Furthermore, they found the victim

deceased. According to the Complaint, she had suffered various puncture wounds that had led to her death. While at the hospital, Defendant allegedly provided a statement to the police that home invaders had committed the crimes against both him and the victim. (3:1-4).

A preliminary hearing occurred on February 9, 2011. Seven individuals testified on behalf of the State. After hearing this testimony and receiving other evidence, the Court Commissioner found probable cause and bound Defendant over for trial. The State filed a Criminal Information charging the same one charge against Defendant as indicated in the Criminal Complaint. (47:70; 4:1).

Arraignment in 11 CF 594 occurred immediately after the bindover after the preliminary hearing. At that time, Defendant entered a plea of Not Guilty to the one Count in the Information. (47:71).

On April 5, 2011, Defendant filed two Suppression Motions. First, he filed a Motion to Suppress Statements. (9:1-4). Second, he filed a Motion to Suppress or Quash Medical records of Defendant seized by the State for use at trial with attachments. (10:1-38). Only the Motion to Suppress Statements is relevant to this present Appeal. By this Motion, Defendant sought to suppress various statements to law enforcement. First, he sought to suppress a statement that he had provided to Milwaukee police officer James Phelps while an ambulance was transporting the Defendant to the

hospital on January 21, 2011. Second, while at the hospital's intensive care unit, he had provided a statement to Detective Eric Gulbrandson on that same date. (9:1-4).

The trial court conducted an evidentiary motion hearing on November 1, 2011. Two witnesses testified. First was Officer Phelps. Second was Detective Gulbrandson. Both of these statements had occurred on January 21, 2011. (55:13-51).

On November 14, 2011, Defendant filed a Brief in Support of his Motion to Suppress Statements. (25:1-12).

On November 18, 2011, the trial court issued an oral decision denying Defendant's Motion to Suppress Statements. The court orally denied the Motion to Suppress Statements with respect to both statements that had occurred on January 21, 2011. (56:2-12).

Eventually, Defendant entered a plea of guilty to an amended charge of First Degree Reckless Homicide. This occurred on April 4, 2012. (59:2-5). The trial court ordered a presentence investigation report and adjourned sentencing. (59:12).

On June 8, 2012, the trial court sentenced Defendant to twenty years of initial confinement plus ten years of extended supervision. (60:68).

This Appeal has been filed within the schedule established by the Court of Appeals.

STATEMENT OF THE FACTS

In case 11 CF 594, Mr. Stanley Bullock was charged in a one Count Criminal Complaint dated February 1, 2011. The one Count charged Defendant with First Degree Intentional Homicide, contrary to Wis. Stats. 940.01(1)(a) and 939.50(3)(a). The charge alleged that Defendant killed Dedrie A. Kelly-Baldwin in the residence that they shared. When police arrived at their residence, they found the Defendant with several serious and extensive lacerations. The police transported him to the hospital. Furthermore, they found the victim deceased. According to the Complaint, she had suffered various puncture wounds that had led to her death. While at the hospital, Defendant allegedly provided a statement to the police that home invaders had committed the crimes against both him and the victim. (3:1-4).

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On April 5, 2011, Defendant filed two Suppression Motions. First, he filed a Motion to Suppress Statements. (9:1-4). Second, he filed a Motion to Suppress or Quash Medical records of Defendant seized by the State for use at trial with attachments. (10:1-38). Only the Motion to Suppress Statements is relevant to this present Appeal. By this Motion, Defendant sought to suppress various statements to various Milwaukee law enforcement officers. First, he sought to suppress a statement that he had provided to Milwaukee police officer James Phelps while in an ambulance on his way to the hospital on January 21, 2011. Second, while at the hospital's intensive care unit, he provided a statement to Detective Eric Gulbrandson on that same date. (9:1-4).

The trial court conducted an evidentiary motion hearing on November 1, 2011. Two witnesses testified for the State. First was Officer Phelps. Second was Detective Gulbrandson. Each officer interviewed the Defendant on January 21, 2011. (55:13-51).

Officer Phelps was the first officer to testify for the State on November 1, 2011. He testified that on January 21, 2011 he had responded to the location of 3929 North 28th Street in Milwaukee. At that time, he noticed the Defendant Stanley Bullock. When he first noticed the Defendant, he was on a fire department gurney being led to a med unit with injuries. He was about to be transported. Officer Phelps accompanied that transport. He spoke

with Defendant during the conveyance. Defendant made several statements to him. (55:16-17). The conveyance was heading to Froedtert Hospital. Defendant's injuries that Officer Phelps had observed were a severe laceration to the neck, his wrist, and two puncture wounds to his abdomen area. (55:19-20).

Officer Phelps also testified that he found Defendant's injuries to be extensive medical injuries. He confirmed that this was his testimony at the preliminary hearing. Furthermore, he testified that, during the conveyance to Froedtert Hospital, Defendant was somewhat disoriented. The conveyance was in an ambulance. Furthermore, none of the Defendant's statements to Officer Phelps had been recorded. (55:20-22).

The State's second witness on November 1, 2011 was Detective Eric Gulbrandson. On January 21, 2011, he was a detective with the Milwaukee Police Department homicide unit. On that date, he met and interviewed Defendant Stanley Bullock. He testified that he and his partner Rodney Young began the conversation with Defendant at 9:10 p.m. and then the recorded interview commenced at 9:13 p.m.. This interview took place at the SICU Room Number 7 of Froedtert Hospital. Defendant was in a hospital bed. Detective Gulbrandson checked with a nurse prior to the interview. The nurse told him that he was on pain medications. The interview ended at 10:43 p.m.. (55:24-26). The police Mirandized the Defendant. (55:27-28). The Detective testified that it was not the normal course of his

business for him to conduct an interview in a hospital setting. (55:29). The Defendant had told the Detective that he was in pain. (55:31).

Prior to the recording of the interview, there was about a three minute conversation between the Detectives and the Defendant. (55:42). When the Detective first spoke with the Defendant, it appeared to the Detective that Defendant was injured. The Detective testified that he never spoke with a doctor prior to conducting the interview. He also did not review any medical records prior to conducting the interview. At the start of the interview with the Defendant, Defendant was moaning. The witness testified that, if moaning was on the recording, then Defendant was moaning. Also, either his wrist or his ankle was handcuffed to the bed. Defendant had been restrained during the interview. Prior to the recording began, the witness had never ascertained the Defendant's educational level or his ability to understand the English language. Prior to the interview commencing, Defendant could not even tell the Detective what day it was. This was a private room set up in the Surgical Intensive Care Unit of the hospital. (55:43-45).

On November 14, 2011, Defendant filed a Brief in Support of his Motion to Suppress Statements. (25:1-12).

On November 18, 2011, the trial court issued an oral decision denying Defendant's Motion to Suppress Statements. The court orally

denied the Motion to Suppress Statements with respect to both statements that had occurred on January 21, 2011. (56:2-12).

On November 18, 2011, the trial court had indicated that it had listened to the audio cd of Detective Gulbrandson's interview with the Defendant. It concluded that Defendant was in some pain during the interview. It also heard suctioning sounds, such as mucus or saliva being suctioned out. As the interview proceeded, Defendant became more animated. (56:8). However, Defendant never advised the Detectives that he was not in pain.

On November 18, 2011, the trial court also noted that it had heard some moaning at the beginning of the interview. (56:9). The trial court also agreed that Defendant's injuries were terrible. (56:11).

Once again, despite the trial court finding that Defendant was in pain during Detective Gulbrandson's interview, with audible moaning and terrible injuries and being on pain medication, the trial court denied Defendant's Suppression motion with respect to that statement. Furthermore, the trial court denied Defendant's Suppression motion with respect to the statement that he had provided to Officer Phelps. This, even though the Defendant was somewhat disoriented during the interview, suffering from extensive medical injuries, during an ambulance transport to the hospital.

Eventually, Defendant entered a plea of guilty to an amended charge of First Degree Reckless Homicide. This occurred on April 4,

2012. (59:2-5). The trial court ordered a presentence investigation report and adjourned sentencing. (59:12).

On June 8, 2012, the trial court sentenced Defendant to twenty years of initial confinement plus ten years of extended supervision. (60:68).

This Appeal has been filed within the schedule established by the Court of Appeals.

ARGUMENT

I. DEFENDANT'S STATEMENTS TO BOTH TESTIFYING OFFICERS WERE NOT VOLUNTARY. HIS WILL HAD BEEN OVERBORNE BY HIS INJURIES. FURTHERMORE, THE FACT THAT DETECTIVE GULBRANDSON DID NOT RECORD THE INITIAL THREE MINUTES OF HIS INTERVIEW SHOULD BE HELD AGAINST THE POLICE.

A. Defendant's Condition when he gave the Statements to the Various Police Officers was highly Vulnerable. The Officers improperly took advantage of this condition. Defendant's Statements Were not the product of a Rational Intellect and Free Will.

A confession is involuntarily made if it is procured by coercive means. State vs. Clappes, 136 Wis.2d 222, 401 N.W.2d 759 (1987). A trial court's findings of evidentiary or historical facts will not be overturned unless they are contrary to the great weight and clear preponderance of the evidence. This is the clearly erroneous test, under Wis. Stats. 805.17(2). However, whether any constitutional principles have been offended involves an

independent review by an appellate court. State vs. Michels, 141 Wis.2d 81, 414 N.W.2d 311 (Ct.App. 1987). The appellate court independently applies constitutional principles to the facts as found to determine whether the standard of voluntariness has been met. State vs. Xiong, 178 Wis.2d 525, 504 N.W.2d 428 (Ct.App. 1993).

The admission of involuntary statements violates a Defendant's due process right under both the U.S. and Wisconsin Constitutions. A Defendant's statements are voluntary if they are the product of a free and unconstrained will, reflecting deliberateness of choice. Coercive or improper police conduct is a necessary prerequisite for a finding of involuntariness. State vs. Hoppe, 261 Wis.2d 294, 661 N.W.2d 401 (2003). Any statement to law enforcement must be the product of a rational intellect and free will. Mincey vs. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978), citing Townsend vs. Sain, 372 U.S. 293 (1963).

The United States Supreme Court has ruled that statements, under circumstances similar to those present here, are inadmissible as being involuntary. In Mincey vs. Arizona, the Defendant had been transported to the hospital after having been shot. He was examined and treated. He had sustained a wound in his hip, resulting in damage to the sciatic nerve and partial paralysis of the right leg. He had received various drugs and had been transported to the intensive care unit. Mincey vs. Arizona, 437 U.S. 385 at 396.

In Mincey, at about 8:00 p.m., Detective Hust came to the intensive care unit to interview Mincey. Hust gave him his Miranda warnings. Mincey responded to Hust's questions by writing answers on a piece of paper. Hust began to ask him questions about what had happened earlier that night. Id. at 396.

The U.S. Supreme Court found that it was hard to imagine a situation less conducive to the exercise of a rational intellect and free will than in Mincey. Mincey had been seriously wounded just a few hours earlier, and had arrived at the hospital depressed. Although he had received some treatment, his condition at the time of Hust's interrogation was sufficiently serious that he was in the intensive care unit. He complained about his pain. Finally, while Mincey was being questioned, he was lying on his back in a hospital bed at the intensive care unit. He was, in short, at the complete mercy of Detective Hust, unable to escape or resist the thrust of Hust's interrogation. The Court referred to Mincey's condition as being debilitated and helpless. Id. at 398-399. The Court found that Mincey was weakened by pain and shock, isolated from friends, family, and legal counsel, and barely conscious. His will was simply overborne. The Court concluded that due process of law required that any statements obtained as these had been obtained could not be used in any way against the Defendant at his trial. Id. at 401-402.

Here, Defendant's situation is identical to that of Mincey's.

With respect to his injuries, Officer Phelps referred to them as extensive. He spoke with the Defendant while Defendant was being transported by ambulance to the hospital. Furthermore, Officer Phelps testified that Defendant was disoriented. This is not rational intellect. There was no indication that Mincey had received any medications to ease his pain from his extensive medical injuries and numerous lacerations and wounds. Clearly, Defendant was as "debilitated and helpless" during this time as Mincey. Hence, he was at the complete mercy of Officer Phelps. Nevertheless, Phelps continued to question the Defendant, even while knowing of Defendant's highly vulnerable and helpless state. Accordingly, contrary to the trial court, Defendant's statements to Phelps were not the product of a rational intellect and free will. His will had been overborne by Phelps' conduct. The trial court erred in denying Defendant's Motion to Suppress these statements. This Decision must be reversed.

Similarly, the trial court's Decision denying Defendant's Suppression Motion with respect to the interrogation by Detectives Gulbrandson and Young must also be reversed. Unlike the situation in Mincey, two Detectives interrogated the Defendant in the closed confines of a private hospital room. In Mincey, only one detective had conducted the interview. This heightens the coercive nature of the interview. The remainder of the interrogation is materially similar to that in Mincey. Defendant was in an intensive care unit

of a hospital, just having suffered major injuries. The Court found that he was in pain at the time of the interview, making moaning noises. The hospital was providing him with medical treatment, by sucking out mucus and saliva. He was in a hospital bed. Even though he answered questions, he had complained to Detective Gulbrandson that he was in pain. Although the Detectives might have testified that he was coherent, there is no indication that his statement was the product of a rational intellect. To the contrary, Defendant could not even tell the Detectives what the day was. Hence, any indication by Defendant that he was "fine," or conclusion that he was coherent, must be tempered by the understanding that such a finding was made while Defendant was in the intensive care unit of a hospital, while under medications. Gulbrandson's conclusion that Defendant was coherent is contrary to the facts and erroneous.

Clearly, this present situation is identical to that in Mincey. The Detectives would not leave until after they had obtained their statement. Hence, they overbore his free will by their improper conduct for an entire hour and half. During this time, Defendant was being treated for extensive medical injuries, while in the intensive care unit of the hospital, under medications, while suffering pain, and receiving medical treatment during the interrogation. The Detectives took improper advantage of this situation.

Furthermore, there was no indication by the Detectives as to

why they could not wait until after Defendant had sufficiently recovered so he could be out of the intensive care unit. The Detectives interviewed him the very same day that he had been taken to this unit. Clearly, the Detectives sought to take advantage of Defendant's highly vulnerable condition. This is improper and coercive procedure.

For the aforementioned reasons, like Mincey, this Court must overturn the trial court's Decision. This Court must order suppression of Defendant's statement to Detectives Gulbrandson and Young.

B. The Fact that Detectives Gulbrandson and Young Chose not to Record the First Three Minutes of their Interview with the Defendant Must Be Held Against The Credibility of Detective Gulbrandson.

If an audio or visual recording of a Defendant's custodial interrogation is not available for a jury during a trial, and that statement has been introduced into evidence, then the court shall instruct the jury that it is the policy of this state to make and audio or audio and visual recording of a custodial interrogation of a person suspected of committing a felony and that the jury may consider the absence of such an audio or audio and visual recording of the interrogation in evaluating the evidence relating to the interrogation and the statement in this case. This instruction shall occur upon request by the Defendant. Wis. Stats.

972.115(2)(a).

Detectives Gulbrandson and Young did not record the first three minutes of their interview with Defendant. Detective Gulbrandson provided no explanation of this lapse except that they had discussed with the Defendant during this time as to whether or not he was fine to provide a statement. The Detective testified that he and his partner wanted to determine whether or not the Defendant was in a condition to speak. (55:42). However, there was no reason provided as to why this portion of the interview could not have been recorded. There is no indication as to what statements had been made by the Detectives to the Defendant upon their initial contact with the Defendant. This three minute introduction period was highly important and relevant. During this time, the police utilized whatever method(s) necessary in order to "convince" the Defendant to cooperate in his weakened and highly vulnerable condition. The Detectives sought to "hide" this conversation by making the conscious choice not to record the first three minutes of their interview with the Defendant.

Here, clearly, the Detectives chose not to record the first three minutes of their interview with the Defendant. This, even though they had the recording equipment available to make such a recording. This violates the policy of the state of Wisconsin, as detailed in the relevant Wisconsin Statute, cited above. This Court should also consider this conscious failure to make such a

recording as affecting the credibility of Detective Gulbrandson. Clearly, if the Detectives had nothing to hide about the first three minutes of their interview with the Defendant, then they would have recorded this time period. This fact, and conclusion, further corroborates Defendant's position that the Detectives used improper and coercive procedures during their interview with him while he was in the intensive care unit of the hospital.

Based upon the foregoing, and the evidence at the Motions hearing, the trial court erred in denying Defendant's suppression motion with respect to his statements to both Officer Phelps, as well as the statement to Detectives Gulbrandson and Young. This Court must overturn that decision.

CONCLUSION

The trial court erred in denying Defendant's suppression motion. The trial court erred as to the statements given to Officer Phelps as well as the interrogation statement given to Detectives Gulbrandson and Young. Defendant's physical and mental condition at the time of the taking of these statements was such that these statements were not the product of a rational intellect and free will. Law enforcement improperly took advantage of this condition.

Based upon the foregoing, Defendant respectfully requests that this Court reverse the Judgment of Conviction and enter all

appropriate Decisions consistent with the issues that Defendant has raised in this Brief. This would include suppression of all statements relevant to this brief, including all statements to Officer Phelps as well as the statement to Detectives Gulbrandson and Young.

Respectfully Submitted, this _____ day of September, 2013.

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CERTIFICATION

I hereby certify that the revised Appellant's Brief of Defendant-Appellant in the matter of State of Wisconsin vs. Stanley Bullock, 2013AP000453 CR conforms to the rules contained in Wis. Stats. 809.19 (8) (b) (c) for a Brief with a monospaced font and that the length of the Brief is eighteen (28) pages.

Dated this 19th day of September, 2013, in Waukesha, Wisconsin.

Mark S. Rosen
Attorney for Defendant-
Appellant

CERTIFICATION

I hereby certify that the text of the e-brief of the revised Appellant's Brief of Defendant-Appellant in the matter of State of Wisconsin vs. Stanley Bullock, Case No. 2013AP000453 CR is identical to the text of the paper brief in this same case.

Dated this 19th day of September, 2013, in Waukesha, Wisconsin.

Mark S. Rosen
Attorney for Defendant-
Appellant

CERTIFICATION

I hereby certify that filed with this Brief, either as a separate document or as a part of this Brief, is an appendix that complies with Wis. Stats. 809.19(2)(a) and that contains:

- (1) a table of contents;
- (2) relevant trial court record entries;
- (3) the findings or opinion of the trial court; and
- (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decision showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 19th day of September, 2013, in Waukesha, Wisconsin.

Mark S. Rosen
Attorney for Defendant-
Appellant