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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2014AP000915-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JODY A. BOLSTAD,

Defendant-Appellant.

On Appeal from the Judgment of Conviction
Entered in the Crawford County Circuit Court,
the Honorable James P. Czajkowski, Presiding

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

Mr. Bolstad's Fifth Amendment Rights Were Violated When He Was Frisked and Interrogated at Length by a Law Enforcement Officer Inside a Law Enforcement Vehicle, Without First Being Informed of His *Miranda* Rights.

By not addressing the issue in its brief, the county conceded that Mr. Bolstad was interrogated. The county also conceded this at the suppression hearing and the circuit court made the same finding. (16:4; 34:82). By not addressing the issue in its brief, the county also conceded that Warden Hochhausen is a law enforcement officer with a duty to notify a person subject to custodial interrogation of his *Miranda* rights. As such, the only issue in dispute in this case is whether Mr. Bolstad was in custody, or was otherwise deprived of his freedom of action in a significant way, and thus should have had his *Miranda* rights read to him. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). The county bears the burden of showing compliance with *Miranda*, including establishing that the defendant was not subject to custodial interrogation. *State v. Armstrong*, 223 Wis. 2d 331, 345, 588 N.W.2d 606 (1999). The county has not met that burden here.

Mr. Bolstad was in custody. A reasonable person in Mr. Bolstad's situation would have felt he was in custody and not free to end the encounter and walk away. That situation included: (1) being confronted by an officer in full uniform, which included a firearm; (2) being asked to get out of his car; (3) being frisked; (4) being asked to leave his friend and get into a squad truck, complete with a police radio, computer, gun rack, emergency red and blue light and

document box, to discuss incidents that occurred during the last hunting season; (5) being subject to a lengthy interrogation inside a law enforcement vehicle, lasting between 1 ½ and 2 ½ hours; and (6) having a second uniformed officer stand outside the squad truck during the course of the entire interrogation.

The county correctly stated that this court must accept the trial court's findings of fact unless clearly erroneous (County's Br. at 10 (quoting *State v. Mosher*, 221 Wis. 2d 203, 211, 584 N.W.2d 553 (Ct. App. 1998))), but none of the court's findings contradict the facts outlined above.

In its brief, the county attempted to minimize the facts of this case that would have led a reasonable person in Mr. Bolstad's position to feel his freedom to leave was curtailed "to the degree associated with formal arrest." *State v. Pounds*, 176 Wis. 2d 315, 321, 500 N.W.2d 373 (Ct. App. 1993) (quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)). For instance, the county admitted the interrogation was lengthy, lasting between 1 ½ and 2 ½ hours but explained that the length of the interrogation was not problematic because "there was a 'lot of stuff to cover.'" (County's Br. at 14). But the fact that the warden had many questions to ask does not make better the fact that Mr. Bolstad was subject to interrogation by a uniformed officer for hours inside a fully-equipped law enforcement vehicle.

In an effort to diminish the importance of Mr. Bolstad being frisked, the county stated that the frisk was necessary because Mr. Bolstad had recently used a firearm. (County's Br. at 14). But the reason for the frisk is not relevant to the question of custody. Rather, what is important is the effect

being frisked would have on a reasonable person in regard to his assessment of whether he was in custody.

Similarly, the county also stated that no threats, promises or coercion were used to obtain statements from Mr. Bolstad. (County's Br. At 7). But this assessment depends, of course, on one's definition of coercion or threat. A reasonable person in Mr. Bolstad's position would have felt coerced to give statements given that he was interrogated by an armed, uniformed officer, for hours, inside a law enforcement vehicle. Additionally, Mr. Bolstad testified that he felt threatened and coerced to talk as Warden Hochhausen told him that if he did not cooperate, he would be arrested. (34:68). Warden Hochhausen confirmed this, testifying that he told Mr. Bolstad that if he lied, it would be considered obstruction, a more serious charge. (34:78). Additionally, a reasonable person in Mr. Bolstad's situation would have felt tricked into answering questions without a lawyer present. Mr. Bolstad testified that he asked Warden Hochhausen if he needed a lawyer, and the warden told him that he did not. (34:65-66).

The county also attempted to minimize the coercive nature of the interrogation by stating that Mr. Bolstad was not arrested after the encounter and was eventually able to leave. (County's Br. at 3, 7, 14). But the fact that Mr. Bolstad was eventually able to leave does not change the fact that a reasonable person in his position would have felt he was in custody and not free to leave during the 1 ½ - 2 ½ hour interrogation. Indeed, during those hours he had no reason to believe he would be able to simply walk away after the interrogation.

Additionally, the county stated in its brief that Warden Hochhuasen obtained a written statement of

confession from Mr. Bolstad. (County's Br. at 3, 7). However, the county conveniently glossed over the lengthy interrogation that took place allowing Warden Hochhausen to secure confessions in that written statement.

Finally, the county stated that Mr. Bolstad said that he did not feel free to leave despite the fact that Warden Hochhausen did not say anything to him that would have made him believe he was not free to leave. (County's Br. at 8). But, again, separating an individual from his friend, asking him to get into a fully-equipped law enforcement vehicle and interrogating the person in that vehicle for multiple hours, would make a reasonable person feel he was not free to leave. A reasonable person in that position would not feel able to stop answering questions, exit the DNR squad truck, walk passed a second, armed and uniformed officer, get back into his car and leave the scene. Because a reasonable person in Mr. Bolstad's situation would have felt he was in custody and not free to end the encounter, Mr. Bolstad was in custody for *Miranda* purposes and thus Warden Hochhausen should have read him his *Miranda* warnings. Because he was not notified of his *Miranda* rights, the statements Mr. Bolstad made should be suppressed.

CONCLUSION

For all the reasons stated in his brief-in-chief and above, this court should vacate the judgment of conviction and order that Mr. Bolstad's statements be suppressed.

Dated this 15th day of August, 2014.

Respectfully submitted,

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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 1,100 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 this 15th day of August, 2014.

Signed:

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