STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

LOWER CASE NO. 2011CF797

APPEAL NO. 2014AP1767-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

BRIAN I. HARRIS,

Defendant-Appellant.

BRIEF-IN-CHIEF AND APPENDIX OF DEFENDANT-APPELLANT
PURSUANT TO RULE 809.32, STATS.

Kathleen M. Quinn
Attorney at Law
State Bar No. 1025117

207 E. Buffalo Street, Suite 514
Milwaukee, WI 53202
414-765-2373; Fax: 414-765-0828
quinnkathleen@4law.com

Attorney for Brian I. Harris

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ISSUE PRESENTED

I. Was the defendant deprived of his right against self-incrimination and his rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 8 of the Wisconsin Constitution by the admission at trial in the state's case-in-chief of his unwarned custodial statements made in response to questions from law enforcement?

Circuit Court: No, as indicated by its ruling denying defendant's pretrial motion to suppress his in-custody statements to law enforcement.

STATEMENT OF THE CASE

On or about August 19, 2011, Brian Harris was charged by criminal complaint with one count of burglary of a building or dwelling as a repeater in violation of §§ 943.10(1m)(a), 939.50(3)(f), and 939.62(1)(c), Stats. (Count One); one count of possession of burglarious tools as a repeater in violation of §§ 943.12, 939.50(3)(i), and 939.62(1)(b), Stats. (Count Two); one count of criminal damage to property as a repeater in violation of §§ 943.01(1), 939.51(3)(a), and 939.62(1)(a), Stats. (Count Three); and one count of criminal trespass as a repeater in violation of §§ 943.14, 939.51(3)(a), 939.62(1)(a), Stats. (Count Four). (Criminal Complaint, R1, App 2:1-4) In support of the repeater allegations invoked by § 939.62(1)(a), Stats., the probable cause section of the complaint alleged that Harris was previously convicted of theft in 2009; theft and possession of an illegally obtained prescription in 2009; and a violation of harassment restraining order, disorderly conduct, and misdemeanor bail jumping in 2007 in Kenosha County Circuit Court cases 2008CM2389, 2008CF876, and 2007CM210, respectively.

On May 3, 2013, an amended information was filed by which Harris was charged with the same four offenses set forth in the criminal complaint. R35. On May 6, 2013, Harris proceeded to jury trial. (Transcript, Jury Trial, 05/06/13, R96). On May 8, 2013, the jury returned verdicts of guilty on all four counts. (Transcript, Jury Trial,

05/08/13, R98:141-45; Verdicts, R38, R39, R40, R41; Judgment of Conviction, R49, App 1:1-3).

On July 17, 2013, Harris was sentenced. (Transcript, Sentencing, 07/17/13, R101). The court withheld sentences on all counts and put Harris on probation for 30 months on Counts 1 and 2 and for 24 months on Counts 3 and 4. R101:29-31; R49, App 1:1-3).[1]

A notice of intent to pursue postconviction relief was filed. R54. This appeal follows.

STATEMENT OF FACTS

Jury Trial

In the early morning hours of August 13, 2011, R97:74-75, the occupant of 1123 63rd Street in Kenosha called the police regarding noise coming from the attached townhouse unit at 1121 63rd Street. R97:63, 64, 65.

Officer Niebuhr arrived at about 3:22 a.m.. R97: 74-75. He went inside the caller's home at 1123 63rd Street to listen to the noise coming from the connected townhouse apartment. R97:75. He heard a loud, constant, fairly rhythmic clanging of metal that was continuous for several minutes. R97:76. Niebuhr took the investigation outside where he found the door to 1121 63rd Street to be locked and, from looking through the front windows, he saw that the townhouse was completely dark and empty of furniture. R97:76. It appeared to be a vacant residence. R97:76.

Niebuhr went to the back of the house and found the back door locked. R97:77. A screen from one of two small windows going into the kitchen area was on the ground, and the latch on the top of that window was unlocked and the glass cracked. R97:77. Niebuhr called for back-up as the metal sound continued. R97:77.

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[1] Harris's probation has since been revoked and he was sentenced after revocation on January 23, 2014. This appeal does not concern the sentence imposed after revocation.

Officer Gonzalez arrived and entered the window in the back and let Niebuhr into the kitchen area of the house. R97:78. As soon as both officers were in the kitchen making noise by walking on the kitchen floor, the metal clanging noises stopped. R97:78. Niebuhr determined the banging appeared to have been coming from the basement, the door to which was wide open. R97: 79. While Niebuhr kept watch at the basement door, Gonzalez let two more officers in through the front door to go search the upstairs. R97:79.

Niebuhr and Gonzalez then started down the stairs into the darkened basement, calling for anyone in there to come out and show their hands. R97:80, 81. They got no response. R97:80. As the officers were still on the stairs, they saw a pair of feet sticking out from another staircase that was in the basement. R97:80. They got no response when they directed the person to come out with hands up. R97:81. The officers made their way over to the other staircase and saw Brian Harris seated there. R97:81. He came out and was arrested. R97:81. He was wearing a pair of black work-style gloves on his hands. R97:83.

Niebuhr saw there was copper piping on the floor that appeared to have come from the basement ceiling. R97:82. Some was still partially connected to the ceiling, having been cut but left hanging. R97:82. There was also a duffel bag on the floor with tools in it. R97:82-83. The tools included a saw with replacement blades, a bolt cutter type of tool, several crowbars, a couple of flashlights and a large garbage bag. R97:83.

Harris was then brought out to Niebuhr's squad car. R97:83. Niebuhr claimed that, without being questioned, Harris offered that he was homeless and consistently goes into vacant buildings to sleep. R97:84. Harris told Niebuhr that he was going to sell copper piping for money and often commits misdemeanors and sells things he gets from vacant homes to have money to get by. R97:84, 85.

The next morning at about 9:00 a.m., Detective Buchanan went to the jail to interview Harris. R97:142, 153. Harris was brought to Buchanan in a common area, R97:143, in a hallway, outside of the interview rooms. R97:151. Buchanan asked Harris if he would like to

give a statement to which Harris responded something like, "They caught me, man, I got nothing else to say." R97:151.

After admission of the statements attributed to him by Niebuhr and Buchanan during the state's case-in-chief, Harris testified at trial. R97:191-217. He told the jury he recalled drinking alcohol throughout the afternoon and all during the evening of August 12, 2011 with his friend, Mark Handy, at Handy's house and also at a bar to which the men walked called Carl and Doug's. R97: 191-195. He very faintly recalled leaving the bar with Handy at about 2:30 a.m. on August 13, 2011. R97:194, 203. He walked in the direction of his friend Sherman Taylor's house on 64th Street where he planned to stay. R97:194, 204. Harris could not recall what happened when he got to Taylor's house because he was intoxicated. R97:195. He did not recall if he made it to Taylor's. R97:217. The next thing Harris remembered was a police officer standing over him in a house and the officer telling Harris he was in a house he should not have been in. R97:195-96. He recalled being handcuffed by that officer and then recalled nothing else until he was awakened, at the jail, by a detective. R97:196.

On cross-examination, Harris explained he did not know anyone who owned 1121 63rd Street nor anyone that ever lived there. R97:206. He knew nothing at the place belonged to him and he knew he did not have consent to be in the house at 1121 63rd Street or to damage anything there. R97:205, 206. Because of the alcohol he drank, Harris did not remember damaging or cutting any piping. R97:206. He did not remember any of the incident. R97:206. He believed it was dark inside and he never had a flashlight. R97:209. He never heard banging noises inside the house. R97:209.

According to Harris, he drank alcohol every time he saw Handy. R97:202. During the summer of 2011, Harris saw Handy four or five days out of a week. R97:202. Sometimes there were times Harris could not remember. R97:203. Harris drinks excessively but it is not a problem. R97:209. He is a functional alcoholic. R97:209. During the spring and summer of 2011, Harris *did* have a problem with alcohol. R97:210.

Harris did not bring a duffle bag of tools with him to Carl & Doug's. R97:198. Harris did not own any of the items - - the duffel bag,

the tools, the crowbars, the bolt cutter, the gloves - - that were found at the house. R97:198-99.

Harris did not remember going into the house. R97:198. Harris did not intend to go into it. R97:199-200. He did not intend to break anything nor take anything from the house when he did enter. R97:199.

The suppression motion

Prior to trial, counsel for Harris filed a motion to suppress statements attributed to him at the scene of his arrest and later at the jail. R32, App 3:1-2. The motion sought suppression of Harris' statements because required Miranda warnings were not given at the scene of his arrest nor at the jail and, under the totality of the circumstances, his statements were not voluntary. R32, App 3:1-2.

On the day of trial, an evidentiary hearing was held on the motion. R96: 4-33. At the hearing, Niebuhr testified about statements he attributed to Harris at the scene of his arrest, and Buchanan testified about the statement he attributed to Harris at the Kenosha County Jail several hours after his arrest. R96: 5-18, 19-21. Harris did not testify at the suppression hearing. R96.

Niebuhr testified at the hearing about his observations before and after entering the basement up until finding Harris under the staircase. R96:5-8. He testified that after Harris came out from the under the stairs, either he or Gonzalez placed him in handcuffs and looked around the basement. R96:8, 14. Niebuhr believed Harris was handcuffed almost immediately. R96:14. They observed the cut piping, the duffle bag and its contents, the assorted tools and the flashlight. R96:8-9, 14. Niebuhr was sure that while Harris was in the basement and before he was removed to the squad car, Harris was asked questions about who he was and what he was doing in that location. R96:15. Niebuhr's aim was to find out who Harris was, if he lived at the building, and the reason he was in there. R96:16.

Harris was then moved to Niebuhr's squad car. R96:9,15. A plastic plexiglass partition separated Niebuhr from Harris, who was in the back of the squad. R96:15. Niebuhr obtained a mugshot of Harris based on either locating an ID on Harris or on Harris giving Niebuhr his

name. R96:16. Niebuhr tried to get in contact with the property owner and was completing paperwork. R96:9,15.

Although Niebuhr was not asking Harris any questions at this time, Harris was making statements while seated in the back seat. R96:9, 10. Niebuhr testified he was not making any threats nor promises to Harris to get him to make statements. R96:10. Harris was telling Niebuhr that he had been homeless for approximately seven years; that he frequently went into vacant houses to sleep; that he was going to take the copper piping and sell it for money for food; that he often commits misdemeanor crimes to get items to sell for food; and that he was alone. R96:9.[2]

Buchanan also testified at the hearing. He explained he went to the Kenosha County Jail to ask Harris if he would like to come with Buchanan to the detective bureau to be interviewed. R96:19-20. (At trial, Buchanan testified that he simply asked Harris if Harris would like to give a statement - - with no mention of the detective bureau. R97:151.) Buchanan testified Harris stated in response something like, "I got caught, man, that is there's nothing else to say." RR96:20. The conversation, which was not videotaped, ended there. R96:20, 21. It took place on the main floor just outside the interview rooms. R96:20. Harris had been escorted there by a jail guard. R96: 20-21.

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[2] At trial, Niebuhr could not remember if there was any conversation in the basement, but he knew there was some conversation at some point. R97: 121. Niebuhr testified at trial that when Harris was able to stand up in the basement, he was handcuffed and that either shortly before he was handcuffed or maybe right after, Niebuhr was asking Harris who he was and what he was doing there. R97: 120. During cross-examination at trial, Niebuhr contradicted his testimony at the suppression hearing (that he was "sure" he had questioned Harris while Harris was in the basement and before he was removed to the squad car, asking who he was and what he was doing in that location, R96:15) and his testimony earlier in the trial (that he questioned Harris about who he was and what he was doing there, R:97:120), and stated that he did *not* ask Harris any questions about what he was doing there. R97: 123-124.

ARGUMENT

I. Because the statements attributed to defendant-appellant were made while he was in custody and in response to interrogation without Miranda warnings, the admission of the statements at trial in the state's case-in-chief violated his rights against self-incrimination and under the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, § 8 of the Wisconsin Constitution.

Standard of Review

On appeal of a trial court order denying a suppression motion alleging functional interrogation, the evidentiary and factual findings of the trial court will not be disturbed unless they are clearly erroneous. *State v. Fischer*, 2003 WI App 5, ¶ 28, 259 Wis. 2d 799, 656 N.W.2d 503. However, the determination of whether the facts satisfy the legal standard for functional interrogation is a question of law that is reviewed independently. *Id*.

1. Miranda warnings were required because defendant-appellant was in custody and subject to questioning likely to elicit incriminating responses.

The Fifth Amendment to the United States Constitution (applicable to the states by the Fourteenth Amendment), and Article I § 8 of the Wisconsin Constitution guarantee that no person will be compelled to incriminate himself in a criminal case. "To protect this privilege against self-incrimination, the law forbids police from interrogating suspects held in custody unless the subject of the questioning is first advised of his . . . right to remain silent, i.e., given the *Miranda* warnings." *State v. Ezell*, 2014 WI App 101, ¶ 8, 357 Wis. 2d 675, 855 N.W.2d 453, citing *State v. Torkelson*, 2007 WI App 272, ¶11, 306 Wis. 2d 673, 743 N.W.2d 511. Statements obtained via custodial interrogation without the *Miranda* warnings are inadmissible against the defendant at trial. *Id*.

The Supreme Court in *Miranda v. Arizona*, 384 U.S.436, 86 S.Ct. 1602 held:

> [W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning . . . [h]e must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. *Id*., 384 U.S. at 478-79.

Failure to comply with these constitutional safeguards renders the person's statements inadmissible against that person. *Id*.

At the suppression hearing, the state conceded and the court accepted that at the time of all the statements, Harris was in custody and no Miranda warnings were given. R96:22, 30. However, the trial court denied the motion to suppress Harris' statements on the grounds that his statements were otherwise voluntary and, in the case of his statement to Buchanan, no Miranda warnings were required.

In denying Harris' motion to suppress the statements made to Niebuhr, the trial court reasoned:

> "The defendant was located in the basement of a residence that was reported to be vacant by an adjoining residence - - connected residence. A resident heard banging noises like metal - - pounding of metal, which resulted in them calling the police.
>
> "The officers then gained entrance to the allegedly vacant premises and heard the pounding of the metal - - apparently heard that at the residence of the complaining witness. And, then, they, officers, gained access to the adjoining premises and the pounding stopped. They went down in the basement. They located the defendant seeing first feet sticking out - - feet or shoes sticking out, and the defendant was immediately placed in handcuffs. They found copper pipe and duffle bag with a saw, crow bar, flashlight with red lens. Defendant had black work gloves on. The defendant was taken to a squad. The defendant

> indicated who he was. The officer got a picture, apparently, on the communication with the department in order to get a picture of the defendant.
>
> "The defendant was in the back of the squad. The officer was trying to get ahold of the owner of the premises when the defendant said that he was homeless for seven years, frequently goes into vacant homes to sleep, taking copper pipe to sell for food to get by. He was alone.
>
> "The officer said he wasn't asking any questions. There were no threats or promises. The defendant did not appear to be intoxicated or overly tired. Officer said, and it is stipulated, no Miranda Warnings were given, and I'm satisfied that based on the testimony of Officer Niebuhr that the statements made by the defendant, based on the totality of the circumstances, were completely voluntarily; that there was in looking at the situation if the focus looking at any impairments of the defendant's mental freedom, there's no deficiency in the defendant in terms of being tired, being intoxicated, having a mental issue. And *State v. Wedgeworth*, 100 Wis. 2d 514, 1981 case, indicates that the defendant spoke imprudently or out of remorse, later regrets making a statement, does not vitiate otherwise voluntarily statements. It's clear that the statements to Officer Niebuhr were voluntarily [sic.], and they appear to me to be the product of free and unconstrained will, reflecting deliberate choice, not coerce of improper police pressure."

R96:30-32.

The trial court did not consider nor incorporate into his decision the custodial questioning to which Niebuhr subjected Harris in the basement before Harris was moved to the squad where his responsive statements were made. The trial court did not undertake an analysis of whether the squad car statements were sufficiently attenuated from the basement questioning so as to purge them of their taint.

The basement questioning was express questioning of a suspect from whom the officer should have known the questions were likely to elicit incriminating answers. The suspect was found in the middle of the night hiding under the stairs in the basement of a vacant house through

which apparent entry had been made through a damaged window, surrounded by tools and hanging, damaged pipes. The circumstances warranted immediate handcuffing and arrest of the suspect. Probable cause for that arrest was evident. Questioning of the suspect about what he was doing in the house at that point was nothing but custodial interrogation. *Miranda* warnings were required and their improper denial could not be cured by an assessment of only whether Harris' statements were *otherwise* voluntary.

The statements were not sufficiently attenuated from the improper unwarned custodial interrogation so as to purge the statements of the taint of the police misconduct. The temporal proximity between the unwarned custodial questioning and the making of the incriminating statements was tight, with no intervening circumstances other than movement of Harris from the basement to the squad. Niebuhr's purpose was to find out who Harris was and if he lived at the building or the reason he was in the building. R96:16. Under the circumstances in which the officer found and immediately arrested Harris, the officer should have known that the questions were likely to elicit incriminating answers.. Under all the factors to be considered by courts in assessing attenuation cases, Harris' statements were the product of unpurged police illegality occurring just moments before the statements were made. *State v. Anderson*, 165 Wis. 2d 441, 448, 477 N.W.2d 277, 281 (1991)(A court must look to "the temporal proximity of the official misconduct and the confession, the presence of intervening circumstances, and the purpose and flagrancy of the official misconduct.") As the product of unwarned custodial interrogation, the statements should have been suppressed from use in the state's case-in-chief.

In denying Harris' motion to suppress the statements made in the squad car, the trial court misapplied to Harris' motion the *Wedgeworth* case. In *State v. Wedgeworth,* 100 Wis. 2d 514, 302 N.W.2d 810 (1981), the voluntariness of a defendant's statement made *after* being advised of his *Miranda* rights was considered. *Id*., 100 Wis. 2d at 523. The case is inapposite to this case in which Harris was never advised of his *Miranda* rights, although he was in custody when Niebuhr asked him questions about who he was and what he was doing in the vacant house.

In denying Harris' motion to suppress the statement attributed to him by Buchanan, the trial court reasoned:

> "As to the Detective Buchanan's testimony in that he was - - was prepared to take a statement from the defendant; that the defendant was brought to the detective - - placement at the safety building and - - Excuse me. They spoke to the defendant in the Kenosha County Jail, this officer. Detective Buchanan's intent was to ask the defendant to come into the interview rooms for an interview and ask the statement or the question was, would you like to give a statement? And the defendant said, I got caught, man, I have nothing else to say. Again if that simple statement was - - would be viewed as either the pressure or the unlawful question to the defendant, there would be no way to initiate the whole concept of giving a statement. I'm satisfied that again the statement was voluntary. If there was going to be a statement, it would have been in the interview room and the defendant's response would have - - the response to the question by the detective might very well have been, yes, I'll give a statement or, no, I won't give a statement. But the defendant again voluntarily said, I got caught, man, I have nothing else to say.
>
> "So I'm satisfied that again the defendant made a voluntarily [sic.] statement both in the officer's squad and in the - - outside the interview room, and I'm satisfied that no Miranda Warnings were required to be given before the defendant was asked would you like to give statement [sic]. So I am going to find that the statements - - that both to Officer Niebuhr and to Detective Buchanan were proper and not in violation of the Goodchild voluntary standard or Miranda Warning standard."

R96:32-33.

The trial court erred in its finding that no Miranda warnings were required before asking Harris if he was willing to give an interview or a statement. Here, Detective Buchanan went to the jail at 9:00 a.m. where Harris had been in custody for over five hours. Buchanan asked Harris either if he would like to go with Buchanan to the detective bureau to be interviewed or if Harris would like to give a statement - - presumably right then and there. Harris immediately informed

Buchanan that the only statement he had to say was the self-incriminating statement, "I got caught."

Law enforcement officers must administer Miranda warnings at the first moment an individual is subjected to "custodial interrogation." *Miranda*, 384 U.S. at 444. In other words, police must read the Miranda warnings to any person who is both "in custody" and under "interrogation." *State v. Armstrong*, 223 Wis. 2d 331, ¶29, 588 N.W.2d 606 (Wis. 1999).

Interrogation includes the express questioning of a suspect and conduct or words that are the functional equivalent of express questioning. *State v. Fischer*, 2003 WI App 5, ¶ 24, 259 Wis. 2d 799, 656 N.W.2d 503, ¶ 24. The functional equivalent of express questioning is "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id*., ¶ 25, quoting *State v. Cunningham*, 144 Wis. 2d 272, 278, 423 N.W.2d 862 (1988). "[I]f an objective observer (with the same knowledge of the suspect as the police officer) could, on the sole basis of hearing the officer's remarks or observing the officer's conduct, conclude that the officer's conduct or words would be likely to elicit an incriminating response, that is, could reasonably have had the force of a question on the suspect, then the conduct or words constitutes interrogation." *Fischer*, ¶ 27.

The seminal case on interrogation is *Rhode Island v. Innis*, 446 U.S. 291 (1980). Under *Innis*:

> ". . . [T]he Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect."

Innis, 446 U.S. at 300-301.

Wisconsin adopted the *Innis* test in *State v. Cunningham*, 144 Wis. 2d 272, 276-82, 423 N.W.2d 862 (1988). In Cunningham, the Wisconsin Supreme Court stated:

> Even where the officer testifies that his or her actions had some purpose other than interrogation, the action must be viewed from the suspect's perspective to determine whether such conduct was reasonably likely to elicit an incriminating response. *Cunningham*, 144 Wis. 2d at 279-80.

Buchanan's question, regardless of his own stated purpose, had the force of exactly what it was - - a question - - and it elicited a responsive answer that objectively could have been anticipated - - an incriminating response. Had Buchanan asked Harris if he wanted a glass of water and Harris blurted out, "I got caught," that would be a nonresponsive incriminating answer not likely to be objectively anticipated. The question Buchanan posed could be and was objectively understood by Harris as a request for a statement. His incriminating response should have easily and objectively been anticipated.

2. The admission of these statements at trial during the state's case-in-chief amounted to defendant-appellant being a witness against himself and compelled him to testify to explain the statements.

Statements made by a defendant during custodial interrogation conducted prior to receiving Miranda warnings are inadmissible in the state's case-in-chief. *State v. Knapp*, 2003 WI 121, ¶ 114, 265 Wis. 2d 278, 666 N.W.2d 881, *vacated and remanded by* 542 U.S. 952 (2004), *reinstated in material part by* 2005 WI 127, ¶ 2 n.3, 285 Wis. 2d 86, 700 N.W.2d 899. However, the state may use such statements for the limited purpose of impeachment and rebuttal as long as the statements were voluntarily given. *Id*.

The admission of the statements violated Harris' constitutional privilege against self-incrimination for which Miranda was to provide protections, as well as Harris' Fifth Amendment rights under the United States Constitution and his rights under Article I, § 8 of the Wisconsin Constitution because he was compelled to testify at trial to explain the statements. *See Harrison v. United States*, 392 U.S. 219

(1968)(defendant testified only after the government introduced into evidence three confessions, all wrongfully obtained "and the same principle that prohibits the use of confessions so procured also prohibits the use of any testimony impelled thereby - - the fruit of the poisonous tree, to invoke a time-worn metaphor." *Id*. at 222.)

After the jury heard the statements attributed to him by Niebuhr and Buchanan, Harris testified to explain the statements and what he could and could not recall of the morning of his arrest. R97:191-217. He testified that after walking from the bar at which he had drank to the point of intoxication and after heading toward his friend's house, the next thing he could remember was a police officer standing over him at this house. R97:195. At that moment, Harris did not know what house he was in but he realized where he was at when the officer told him. R97:195. The officer said to Harris that he was in a house that he should not have been in. R97:195. Clearly, this testimony was offered to explain his statement to Buchanan that he was "caught" and was compelled by the introduction of that statement made in response to Buchanan's request for a statement or interview. This was in violation of his Fifth Amendment rights.

CONCLUSION

For the reasons stated above, defendant-appellant's conviction should be vacated and the case remanded for a new trial at which these statements are suppressed from use in the state's case-in-chief.

Dated this 14th day of May, 2015

Respectfully submitted:

Kathleen M. Quinn
Attorney at Law, SBN 1025117
207 E. Buffalo Street, Suite 514
Milwaukee, WI 53202
414-765-2373; Fax: 414-765-0828
quinnkathleen@4law.com

CERTIFICATION OF CONFORMITY
WITH § 809.19(8)(b) and (c)

I, Kathleen M. Quinn, hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief and appendix produced with proportional serif font. The length of this brief is 4,789 words according to the word count function of the word processor available in WordPerfect 9.

Kathleen M. Quinn
State Bar No. 1025117

CERTIFICATION OF COMPLIANCE WITH
§ 809.19(12)

I, Kathleen M. Quinn, hereby certify that I have submitted an electronic copy of the brief, excluding the appendix, which complies with the requirements of § 809.19(12). I further certify that the electronic brief is identical in content and format to the printed form of the brief filed.

Signed:

Kathleen M. Quinn
State Bar No. 1025117

CERTIFICATION OF CONFORMITY WITH § 809.19(2)(b) REGARDING APPENDIX

I hereby certify that filed with this brief, as a part of the paper version of the brief, is an appendix that complies with § 809.19(2)(a) and that contains: (1) a table of contents; (2) the findings or opinions of the trial court; (3) a copy of any unpublished opinion cited under § 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

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State Bar No. 1025117

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