STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2015AP2506-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

DANIEL J. H. BARTELT,

Defendant-Appellant.

On Notice of Appeal from a Judgment of Conviction
Entered in the Washington County Circuit Court, the
Honorable Todd K. Martens Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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> After confessing to an attempted homicide, would a reasonable person feel free to terminate a police interview and leave an interrogation room, such that the person is not "in custody" for ***Miranda***[1] purposes?

The circuit court found that Daniel Bartelt was not "in custody" following his confession to an attempted homicide during a police interview at the Slinger Police Department. The court therefore concluded that Bartelt's subsequent request for an attorney did not invoke the ***Miranda-Edwards***[2] rule requiring all custodial interrogations to cease. Instead, the court held that Bartelt was not in custody until he was formally placed under arrest, which occurred a short time after he requested an attorney.

On that basis, the circuit court denied Bartelt's motion to suppress statements about a separate, unrelated homicide that Bartelt made during a second police interview the next day. The court similarly denied his motion to suppress the derivative evidence that police discovered as a result of those statements. That derivative evidence comprised the core of the State's homicide prosecution in this case.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The briefs will adequately address the issue present; however, Bartelt would welcome oral argument if the court would find it helpful. *See* Wis. Stat. § 809.22. Publication is

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[1] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[2] *See* ***Edwards v. Arizona***, 451 U.S. 477 (1981).

appropriate to clarify, for trial courts and law enforcement, whether a person who has confessed to a serious crime in the presence of police, but who was not yet been formally placed under arrest, is "in custody" for ***Miranda*** purposes. *See* Wis. Stat. § 809.23(1)(a)1.

STATEMENT OF THE CASE AND FACTS

A. Allegations of the criminal complaints.

On July 18, 2013, the State filed a criminal complaint charging Bartelt with numerous offenses related to an assault that occurred at the Richfield Historical Park in the Village of Richfield. The charges included: (1) first-degree recklessly endangering safety; (2) aggravated battery; (3) substantial battery; (4) attempted false imprisonment; and (5) disorderly conduct. All charges also included penalty enhancers for the use of a dangerous weapon. (1:1-2).

The complaint alleged that on morning of July 12, 2013, M.R. went to the Richfield Historical Park to walk her dog. (1:3). There, she was attacked by a male suspect with a knife who tackled her to the ground. (1:3). During the ensuing struggle, M.R. sustained multiple injuries; however, she was able to grab ahold of the blade end of the knife and disarm the suspect. (1:3). Thereafter, the suspect fled the scene in a navy blue Dodge Caravan. (1:3).

According to the complaint, M.R. reported to police that during the struggle she noticed that a roll of tape had fallen out of the suspect's pocket. (1:3). Thereafter, officers with the Washington County Sheriff's Department canvassed

the scene and found a role of silver-colored tape identified as "Intertape 698."[3] (1:4).

The complaint also alleged that on July 16, 2013, police interviewed Bartelt about this incident, and he confessed to attacking M.R. (1:4-5).

Thereafter, on July 31, 2013, the State filed an amended criminal complaint, which amended the charges related to the Richfield Park incident to the following: (1) attempted first-degree intentional homicide; (2) first-degree recklessly endangering safety; and (3) attempted false imprisonment, all with penalty enhancers for the use of a dangerous weapon. The amended complaint also added an additional charge of first-degree intentional homicide for the murder of Jessie Blodgett. (4:1-2).

The amended complaint alleged that following Bartelt's confession to the Richfield Park incident, officers with the Washington County Sheriff's Department executed a search warrant at his house on July 17, 2013. (4:7). During the search, the following items were found in Bartelt's bedroom: a pair of shorts and a t-shirt with red stains on them; a book titled "The Interpretation of Murder"; a black plastic cable zip tie; balled-up pieces of Intertape 698; black electrical tape; and baler twine. (4:7-8).

With respect to the homicide charge, the amended complaint alleged that Blodgett was found dead in her home in the city of Hartford on July 15, 2013. (4:4-5). According to preliminary autopsy findings, the cause of death was ligature strangulation. (4:5-6).

[3] According to testimony at trial, Intertape 698 is a type of tape used in heating ventilation and air conditioning applications. (109:978).

The amended complaint further alleged that police interviewed Bartelt for a second time on July 17, 2013, this time with regard to Blodgett's death. (4:8). During the interview, Bartelt denied any involvement in the murder. Instead, he told police that he was at Woodlawn Union Park in city of Hartford on July 15, 2013. (4:8).

After the second interview, police then searched the garbage receptacles at Woodlawn Union Park and discovered a Kellogg's Frosted Mini-Wheats cereal box containing the following items: paper toweling, crumpled strips of Intertape 698, bundles of several different types of ropes, black electrical tape, a roll of masking tape, and antiseptic wipes and antiseptic wipes packaging with red stains. (4:9). Also found amongst the trash at Woodlawn Park was a SpongeBob SquarePants beach towel with red stains on it. (4:9-10). According to the complaint, Bartelt's DNA and Blodgett's DNA were detected on several of the items discovered in the Woodlawn Park garbage. (4:12).

B. Bartelt's motion to suppress statements and derivative evidence.

On March 13, 2014, Bartelt filed a motion to suppress all his statements to law enforcement in this case, as well as all derivative evidence obtained as a result of those statements. (19). On April 18, 2014, the circuit court, the Honorable Todd K. Martens presiding, conducted a ***Miranda-Goodchild***[4] hearing. The State called two witnesses: Detective Joel Clausing of the Washington County Sheriff's Department and Detective Richard Thickens of the Hartford Police Department.

[4] *See* ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1956).

Clausing testified that on July 16, 2013, he and Detective Aaron Walsh, also of the Washington County Sheriff's Department, interviewed Bartelt at the Slinger Police Department. (105:11-12). Clausing indicated that at that point, Bartelt had been identified as "a person of interest" in the attack of M.R. (105:12).

Clausing stated that after obtaining Bartelt's cell phone number from his parents, he called Bartelt around 5:00 p.m. on July 16, 2013 and told him he was investigating an incident and "needed to meet with him." (105:13). Clausing indicated that Bartelt was very compliant during the call and asked when and where they could meet. (105:14). The two then made arrangements to meet at the Slinger Police Department. (105:14). Clausing explained that the Slinger Police Department is in a "shared municipal building," stating that "parks, and planning, and possibly the city hall, it's all in the same building." (105:16).

After Bartelt arrived at the Slinger Police Department around 5:12 p.m., Clausing escorted him back to an interview room in the "internal portion" of the department. (105:16). According to Clausing, the internal portion of the department was separated from the lobby area by a door that was secured for purposes of entering; however, people could freely exit it. (105:16-17). The interview room they used was twenty to twenty-five feet beyond the secured door. (105:18).

Clausing further testified that the interview room had two doors, neither of which was "securable." (105:18). One of the doors was left slightly open during the interview. (105:23). Clausing also stated that the interview room was 13½ feet by 10½ feet in size and had a table and three chairs inside. (105:18-19). In addition, he stated that there were no metal detectors at the Slinger Police Department and that he

did not search or frisk Bartelt prior to entering the interview room. (105:20).

Clausing stated that he and Walsh were wearing casual shirts, pants, and shoes; however, they both had their badges displayed on their belts, as well as their service weapons. (105:20-21). The interview was recorded by audio and video means, but Bartelt was never informed the interview was being recorded. (105:19, 45).

Clausing testified that at the beginning of the interview, he told Bartelt he was not in trouble and that he was not under arrest. (105:24). He also stated he did not read Bartelt his ***Miranda*** rights. (105:44). Additionally, Clausing stated that he informed Bartelt that he could get up and walk out or leave at any point. (105:24). He also indicated that he and Walsh used a "conversational tone" throughout the entire interview. (105:31-32).

During preliminary questioning, Bartelt told the detectives that he was nineteen years old and worked at a factory in Hustisford called Rolair Associated Engineering. (105:26-27). As the interview continued, Clausing asked Bartelt a number of questions about the Richfield Park incident. (105:27). At first, Bartelt denied any involvement, stating that he had had off from work that day and was at his girlfriend's house. (105:27-28; 28 Ex. 1; 31:7-14).

Clausing stated that during the interview, he and Walsh noticed an injury on Bartelt's hand, which Bartelt said happened at work. (28 Ex. 1; 31:11-12). Upon further questioning, however, Bartelt admitted that he had not worked at Associated Engineering since March or April of 2013. (28 Ex. 1; 31:19-20). Clausing explained that after Bartelt was caught in this lie, he "moved [his] chair closer to [Bartelt] and got the table out of [their] way." (105:23). At

that point, Clausing said he was sitting about two feet away from Bartelt. (105:24). Ultimately, Bartelt admitted that he had, in fact, been at Richfield Park on July 12, 2013 and that he had attacked M.R. (105:27-28, 44; 28 Ex. 1; 31:28-32).

Clausing stated that after this confession, Bartelt "was going to be under arrest, and he probably wasn't free to get up and leave." (105:44-45, 48-49). Following the confession, Clausing then asked Bartelt to provide a written statement about the incident. (105:28; 28 Ex. 1). At that point, however, Bartelt asked if he could speak to a lawyer, and Clausing told him this was his choice. Bartelt then stated that "he would prefer having one present." (105:28, 45-46; 28 Ex. 1).

Thereafter, Clausing and Walsh suspended the interview and left the room. (105:29). Before doing so, however, Clausing took custody of Bartelt's cell phone. (105:31). When they returned seven or eight minutes later around 5:53 p.m., Clausing told Bartelt that he was under arrest, handcuffed him, and searched him. (105:29-30).

The next witness called by the State was Detective Thickens. Thickens testified that he was lead investigator regarding the Blodgett murder. (105:58). He further stated that early in his investigation, Bartelt became "a person of interest" following his interview with Clausing and Walsh. (105:58).

Thickens explained that he and Detective James Wolf of the Washington County Sheriff's Department met with Bartelt in an interview room at the Washington County Sheriff's Department on the afternoon of July 17, 2013. (105:59-60). At this point, Bartelt was an inmate at the Washington County Jail. (105:60). The interview was recorded by audio and video means. (105:60-61).

Thickens testified that before meeting with Bartelt, he knew that Bartelt had been in the Washington County Jail for almost twenty-four hours. (105:73). He also knew about Bartelt's interview on July 16, 2013, as well as the fact that the interview ended when Bartelt "asked for an attorney." (105:74, 79).

Prior to beginning the interview, Thickens read Bartelt his ***Miranda*** rights, and Bartelt signed a waiver form and agreed to speak with Thickens. (105:63-65). Thereafter, Bartelt answered questions for approximately ninety minutes about his relationship with Blodgett and his whereabouts on July 15, 2013. (105:65, 68-69). During the interview, Bartelt denied being at Blodgett's house on July 15, 2013 or having any involvement with her murder. (32:7, 42-49). He stated that on the morning of July 15, 2013, he left his house around 6:30 a.m., but then drove all over, eventually ending up at Woodlawn Union Park. (32:42). The interview ended later when Bartelt asked for an attorney. (105:66, 78).

That same day, the circuit court issued its decision in an oral ruling, denying Bartelt's motion to suppress. The court found that Bartelt was not "in custody" for ***Miranda*** purposes during the July 16, 2013 interview, but had voluntarily agreed to speak with police. In this respect, the court concluded that Bartelt was not in custody until he was told by police that he was under arrest and placed in handcuffs at the conclusion of the interview. (105:97-100, 110-11; App. 103-06, 116-17). Accordingly, the court held that no ***Miranda*** warnings were required with respect to the July 16, 2013 interview. (105:96-97, 100; App. 102-03, 106).

The court also concluded that at the time Bartelt requested an attorney during the July 16, 2013 interview, he was not "in custody" or "under arrest." (105:102-03, 110-11;

App. 108-09, 116-17). As support for this conclusion, the court relied on ***State v. Lonkoski***, 2013 WI 30, 346 Wis. 2d 523, 828 N.W.2d 552, which held that the requirements of ***Miranda*** do not "apply when custody is imminent." (105:100; App. 106). The court therefore ruled that Bartelt's request for an attorney did not prohibit police from initiating the July 17, 2013 interview, as "an assertion of Miranda . . . which a person makes while they are not in custody, does not prospectively prohibit law enforcement from attempting to interview an individual later." (105:102; App. 108).

With respect to the July 17, 2013 interview, the circuit court found that, although Bartelt was in custody, he was properly ***Mirandized*** at the outset, voluntarily waived his rights, and agreed to speak with the detectives. (105:101-02; App. 107-08). In addition, the court concluded that all statements made by Bartelt during both interviews were "the voluntary product of his free and constrained [sic] will, the statements reflect deliberateness of choice[, and] were not coerced and not a product of improper police pressures." (105:105-08; App. 111-14). The court therefore denied Bartelt's motion to suppress in its entirety.

C. The trial of the homicide charge.

Prior to the commencement of trial in this matter, the circuit court ordered the homicide charge severed from the charges related to the Richfield Park incident. (103:20-45). The homicide charge was then tried to a jury over a seven-day period commencing on August 11, 2014. (*See generally* 109).[5] The following evidence was presented during the trial.

[5] The transcript dated 08/11/2014 consists of seven volumes and is, in fact, a transcript of the trial proceedings held on 08/11/2014, 08/12/2014, 08/13/2014, 08/14/2014, 08/18/2014, and 08/19/2014. (109).

1. Background regarding Daniel Bartelt.

Bartelt's mother, Laura,[6] testified about her son's background and his whereabouts on July 15, 2013. She explained that in July 2013, Bartelt lived with her and her husband at their home in Hubertus. (109:645-47). She also stated that Bartelt had told her that he had worked for Associated Engineering since March or April 2013. (109:662-63).

Laura testified that on July 15, 2013, Bartelt woke up around 6:15 a.m. and left the house for work at 6:30 a.m. (109:679-80). She said he returned home shortly before noon, however, stating that he had only worked a half-day. (109:680-81). Laura stated that Bartelt then left the house again around 4:30 p.m. to see his girlfriend. (109:682).

Laura further testified that after Blodgett's death, she learned from police that Bartelt had not, in fact, worked for Associated Engineering.[7] (109:671). She also explained that she and her husband owned a blue Dodge minivan, which Bartelt had used as his vehicle. (109:673-74).

2. The homicide of Jessie Blodgett.

Blodgett's mother, Debra,[8] testified that Blodgett lived at home with her and her husband at their home in Hartford. (109:354, 357-58). Debra also explained that Bartelt and Blodgett were friends from high school. (109:403).

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[6] As Laura Bartelt and Daniel Bartelt have the same last name, Laura Bartelt is referred to throughout this brief as Laura.

[7] The human resources manager for Associated Engineering, Wendy Gubin, also testified that Bartelt never worked for that company. (109:713-16).

[8] Debra Blodgett is referred to throughout this brief as Debra.

Debra stated that prior to Blodgett's death, Bartelt had been coming to their house to play piano and make music with Blodgett. (109:403). Specifically, she stated that she had seen Bartelt at their home on three occasions during the six to eight weeks prior to Blodgett's death. (109:405-06).

Debra testified that on the morning of July 15, 2013, her husband left for work at 8:00 a.m., and she left for work around 8:15 a.m. (109:386-87). She stated she did not have any contact with Blodgett that morning and assumed she was sleeping. (109:386). She testified that when she left, she went out "[t]he front breezeway door" and did not lock the door behind her. (109:389).

Debra further testified that she returned home from work for lunch around 12:20 p.m. (109:387). Shortly thereafter, she found Blodgett unresponsive in her bed. (109:392-93). Debra immediately called 911 and then administered CPR; however, she was unable to revive Blodgett. (109:392-96).

Police arrived shortly thereafter and secured Blodgett's room as a crime scene. (109:397-98, 445-57). Thereafter, the Washington County Medical Examiner, Bob Posont, arrived and pronounced Blodgett dead at 2:16 p.m. (109:569). Blodgett's body was then transported to the Waukesha County Medical Examiner's Office for purposes of an autopsy. (109:570-73).

The Waukesha County Medical Examiner, Dr. Lynda Biedrzycki, testified that she performed Blodgett's autopsy on July 16, 2013.[9] (114:14-15). Dr. Biedrzycki stated that she

[9] Dr. Biedrzycki explained that her office contracts with the Washington County Medical Examiner's Office for the performance of autopsies. (114:12).

determined the cause of death to be ligature strangulation. (114:17). She based this finding on, among other things, a ligature abrasion around Blodgett's neck, as well as "a shower of petechiae, or tiny hemorrhages" above that mark. (114:17-18). In addition, she noted that Blodgett's body had additional abrasions and contusions, including patterned injuries to her wrists and ankles, which were consistent with being caused by some sort of binding. (114:18, 24-25). During the autopsy, Dr. Biedrzycki did not find any injuries that would indicate that Blodgett was sexually assaulted. (114:85).

3. Police investigation into the homicide.

Numerous police officers and other witnesses testified about the subsequent investigation into Blodgett's death. Debra testified that nothing had been stolen from her house. (109:401-02). She also explained there was no sign of a break in. (109:402).

Debra further testified that her family owned three cars at the time of Blodgett's death: (1) a navy blue Chrysler Town and Country minivan, which she drove; (2) a silver Prius, which her husband drove; and (3) a silver Saturn station wagon, which Blodgett drove. (109:376-77). Debra stated that on the morning of July 15, 2013, her Chrysler and Blodgett's Saturn were parked in their driveway. (109:377-80, 391). She also stated she drove the Chrysler to and from work that day. (109:387).

A citizen witness named Bethany Gariepy also reported that around 8:00 a.m. on July 15, 2013, she drove past the Blodgett residence and noticed two vehicles parked in the driveway: a "silver tan" vehicle and a "dark blue" vehicle. (109:607-08). Gariepy further testified that she later

returned to the area around 10:15 a.m. and saw two "similar" vehicles in the Blodgetts' driveway. (109:609-10).

Detective Thickens testified about his interview with Bartelt on July 17, 2013. (109:843). Thickens stated that during the interview, Bartelt told him the last time he had seen Blodgett was six or seven days earlier. (109:845). He also noted that Bartelt denied ever being at Blodgett's house on July 15, 2013. (109:849). Instead, Bartelt told him that he left his house around 6:30 a.m. that morning, then drove around for awhile, and eventually ended up at Woodlawn Park around 10:00 a.m. (109:848). Bartelt also said that he was at this park for about two hours, and then returned home around noon. (109:849).

Thickens further testified that the day after the interview, he obtained video surveillance footage from Woodlawn Park, which showed Bartelt at the park on July 15, 2013 at 10:25 a.m. (109:851-52, 683-87). Thickens also stated that after his interview with Bartelt, he decided to collect the garbage at Woodlawn Park to see if Bartelt had disposed of anything there related to Blodgett's murder:

> Based on the statements that Mr. Bartelt had made, after speaking with another one of my officers – or another one of the officers for the police department, we decided it would be a good idea to collect the garbage at Woodlawn Park to see if anything had been disposed of there that would relate to this incident.

(109:852-53).

Thereafter, on July 18, 2013, Thickens and another officer went to Woodlawn Park and collected the garbage. (109:853). According to Thickens, included in the garage was a Frosted Mini-Wheats cereal box containing the following items: paper toweling; Intertape 698; black, white,

and yellow climbing rope; black electrical tape; tan braided rope; bootlace; a bathrobe belt; a roll of masking tape; and antiseptic wipes and antiseptic wipes packaging with red stains. (109:862-71). In addition to the items in the Frosted Mini-Wheats cereal box, Thickens also found more antiseptic wipes and antiseptic wipes packaging with red stains in the Woodlawn Park garbage, as well as bandage packaging, and a SpongeBob SquarePants beach towel. (109:872-74, 953-54).

During a reexamination of Blodgett's body on July 19, 2013, Dr. Biedrzycki determined that the black, yellow, and white climbing robe was consistent with the pattern of the abrasion around Blodgett's neck. (114:73-76). She also concluded that the bootlace was consist with the injuries on Blodgett's wrists and ankles. (114:77).[10]

Thickens testified that thereafter, on July 20, 2013, he obtained a warrant to search Bartelt's home. (109:891). According to Thickens, he obtained the warrant "[t]o determine if what [they] located [at Bartelt's residence] would be any items consistent with the items that [they] had located at Woodlawn Park, or if there were any items of evidentiary value to connect him to the death of Jessie Blodgett." (109:891).

During their search of Bartelt's home, police discovered the following items: Intertape 698; a Frosted Mini-Wheats cereal box; and a SpongeBob SquarePants hacky sack. (109:891-902, 966). They also discovered the following items in his garage: more Intertape 698; brown

[10] Also on July 19, 2013, police executed a search warrant on Bartelt's minivan. (109:1003). In the vehicle, they discovered a box of Kellogg's Frosted Mini-Wheats cereal, a book titled "the Pictorial History of the World's Greatest Trials from Socrates to Eichmann," and Bartelt's laptop computer. (109:1006-07, 1013).

bootlace; a tan braided rope; and black, white, and yellow climbing rope. According to Thickens, the tan braided rope and black, white, and yellow climbing rope appeared visually consistent with the ropes found in the Frosted Mini-Wheats cereal box from Woodlawn Park. (109:902-09).

Thereafter, on July 22, 2013, Thickens conducted a follow-up investigation at the Blodgett residence. (109:906). Also present during the follow-up was Sergeant August Zywicki, an evidence technician with the Hartford Police Department. (109:545-46). Zywicki testified he and Thickens conducted this follow-up because of the "other items of evidentiary significance and other leads" that had been discovered between July 15, 2013 and July 22, 2013. (109:574-75).

According to Zywicki, during this follow up, Thickens located a roll of Intertape 698 under Blodgett's bed that had not previously been collected by police. (109:906). In this regard, Zywicki testified that he had collected a total of thirty-one items of potential evidentiary value from Blodgett's bedroom on July 15, 2013; however, the roll of Intertape 698 under Blodgett bed was not one of these items. (109:551-52, 568). Zywicki explained that at the time, he "was primarily looking for items that would cause ligature marks" because there was no indication at that point that "there was any tape utilized with Ms. Blodgett." (109:581). Thus, on July 15, 2013, he "did not see any significance to the Intertape 698, so that's why [he] didn't collect it."[11] (109:581).

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[11] Another officer with the Hartford Police Department, Nathaniel Dorn, also testified that he had observed the roll of Intertape 698 under Blodgett's bed on July 15, 2013. (109:473-74). Like Zywicki, however, Dorn stated that the roll was not collected on that day because it did not "have any evidentiary significance" to police at the time. (109:474).

4. Forensic evidence presented at trial.

At trial, the State also presented the testimony of Melissa Graff, a fingerprint expert, and Debra Kaurala, an expert with respect to DNA evidence.[12]

Graff testified that six fingerprints were identified on the roll of Intertape 698 found under Blodgett's bed. All six prints matched Bartelt's. (114:129-149).

Kaurala testified that she obtained DNA profiles matching Bartelt from the following items in the Frosted Mini-Wheats cereal box from Woodlawn Park: from blood found on various antiseptic wipes and antiseptic wipes packaging; from swabbings and blood from the tan braided rope; from blood on the paper toweling; from swabbings of the black, yellow, and white climbing rope; and from swabbings of the bootlace. (109:1045-58, 1072). She also obtained a DNA profile matching Bartelt from blood on the SpongeBob SquarePants beach towel. (109:1058-59)

In addition, Kaurala testified that she obtained a DNA profile matching Blodgett from swabbings and blood on the black, yellow, and white climbing rope. (109:1054-57). She also obtained a DNA profile that matched Blodgett from hairs contained on the black electrical tape. (109:1055-57). Furthermore, she noted that semen was detected on vaginal swabs taken from Blodgett, which contained a DNA profile that was consistent with Bartelt. (109:1062-64; *see also* 43 Ex. 142). Finally, Kaurala also detected Bartelt's DNA on fingernail clippings from Blodgett's hands. (109:1072-76).

[12] Ashley Boldig, a computer forensic analyst, also testified about the analysis she performed on Bartelt's laptop computer. (114:148-175).

D. The verdict, subsequent plea deal, and sentencing.

Following the close of evidence, the jury returned a verdict of guilty on the first-degree intentional homicide charge. (109:1259-61). Thereafter, on October 14, 2014, the circuit court conducted Bartelt's sentencing hearing for this offense. The State recommended life imprisonment without the possibility of release to extended supervision. (115:30-31). Defense counsel asked the court to make Bartelt eligible for extended supervision at some point in the future, leaving the exact date to the court's discretion. (115:52).

After hearing the parties' recommendations, as well as statements from various members of Blodgett's family, the court made its remarks and then sentenced Bartelt to life imprisonment without the possibility of release to extended supervision. (115:70-71).

Shortly thereafter, on October 17, 2014, the parties reached a plea agreement regarding the charges related to the Richfield Park incident. In exchange for Bartelt's plea to first-degree recklessly endangering safety (Count 2), the State agreed to dismiss and read in the remaining counts and recommend a consecutive prison sentence with no more than five years of initial confinement. (116:3, 5-6). Thereafter, on October 30, 2014, the circuit court sentenced Bartelt to five years of initial confinement and five years of extended supervision on Count 2, consecutive to his life sentence. (117:22).

This appeal follows. (75, 96).

ARGUMENT

I. Police Violated Bartelt's Fifth Amendment Right To Counsel By Initiating a Second Interview; As a Result, His Subsequent Statements and All Derivative Evidence Should Be Suppressed.

In this case, the State's prosecution regarding the murder of Jessie Blodgett was built on tainted evidence.[13] At the time Bartelt requested an attorney, he had already confessed to a serious crime – the attempted homicide of M.R. He was therefore in custody for ***Miranda*** purposes. No reasonable person – whether a suspect, police officer, or anyone else – could possibly believe that a person would be free to terminate a police interview and leave an interrogation room after confessing to an attempted homicide.

Bartelt's request for an attorney therefore should have triggered the ***Miranda-Edwards*** rule requiring all police interrogation to cease. The police, however, disregarded this rule and initiated a second interview on July 17, 2013. It was during this second interview that Bartelt admitted to being at Woodlawn Park on July 15, 2013. And it was this information that resulted in the discovery of the video footage from Woodlawn Park and all the physical evidence found in the park's garbage the next day. The Woodlawn Park evidence, in turn, led police to all the physical evidence found in Bartelt's home during their search on July 20, 2013, as well as the roll of Intertape 698 found under Blodgett's bed on July 22, 2013. All this evidence was fruit of a poisonous tree; it was obtained by exploiting information obtained during an illegal police interview. Bartelt's July 17, 2013 statements

[13] In this appeal, Bartelt does not challenge his conviction and sentence related to the Richfield Park incident.

and all such derivative evidence should therefore be suppressed.

A. General legal principles and standard of review

The right against self-incrimination is guaranteed by the Fifth Amendment to the United States Constitution, and Article I, § 8 of the Wisconsin Constitution. This court normally construes the right against self-incrimination in Article I, § 8 consistently with the United States Supreme Court's interpretation of the federal right. ***State v. Stevens***, 2012 WI 97, ¶ 40, 343 Wis. 2d 157, 822 N.W.2d 79.

The landmark case of ***Miranda v. Arizona*** imposes two sets of constitutionally-derived rules on custodial interrogations. First, an interrogating officer must provide the suspect with prescribed information about his or her rights and the potential consequences of forgoing them – the well-known ***Miranda*** warnings. 384 U.S. at 444. In addition, an interrogating officer must honor an invocation of those rights – that is, he or she must cease (and not recommence) interrogation if a suspect asserts the right to remain silent or the right to counsel. ***Id.*** at 445.

It is the State's burden to show by a preponderance of the evidence that a statement is voluntary. ***State v. Jerrell C.J.***, 2005 WI 105, ¶ 17, 283 Wis. 2d 145, 699 N.W.2d 110. It is also the State's burden to show that police complied with the requirements of ***Miranda***, including on the issue of whether a custodial interrogation occurred. ***State v. Armstrong***, 223 Wis. 2d 331, 347-51, 588 N.W.2d 606 (1999).

Whether a defendant's ***Miranda*** rights were violated presents a question of constitutional fact. As such, when reviewing a circuit court's denial of a motion to suppress, this

court applies a two-step standard. ***State v. Martin***, 2012 WI 96, ¶ 28, 343 Wis. 2d 278, 816 N.W.2d 270. First, this court upholds the trial court's findings of historical fact unless they are clearly erroneous. ***Id.*** Second, it reviews *de novo* the legal question of whether those facts warrant suppression, including the determination of whether a person is "in custody" for purposes of Fifth Amendment ***Miranda*** rights. ***Id.***; ***State v. Morgan***, 2002 WI App 124, ¶ 11, 254 Wis. 2d 602, 648 N.W.2d 23.

Here, the historical facts are uncontested, and thus the focus of this appeal is on Bartelt's "custodial" status during the police interview on July 16, 2013.

B. The ***Miranda-Edwards*** rule requires police to cease all interrogation after a suspect invokes his right to counsel during a custodial interrogation.

Courts have implemented procedural safeguards consistent with the Fifth Amendment's Self-Incrimination Clause. One such safeguard, grounded in the Constitution, is found in ***Miranda***. In ***Miranda***, the Supreme Court held that no person should be subjected to a custodial interrogation until he or she is "warned that he has a right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the 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." 384 U.S. at 479. If someone is subjected to a custodial interrogation without these warnings and makes statements, whether exculpatory or inculpatory, then those statements cannot be used by the prosecution. ***Id.*** at 444. The ***Miranda*** Court also explained that "[o]nce the warnings have been given, the subsequent procedure is clear. . . . If the individual states that

he wants an attorney, the interrogation must cease until an attorney is present."[14] ***Id.*** at 473-74.

In ***Edwards***, the Court expanded on its holding from ***Miranda***. In that case, police had informed Edwards of his ***Miranda*** rights, and he initially agreed to speak with them. Later, however, Edwards told police that he wanted a lawyer and the questioning ceased. But the next morning, before he had been allowed contact with an attorney, two detectives came to see Edwards in the jail. The detectives again read Edwards his ***Miranda*** rights, and thereafter, he made an inculpatory statement. ***Edwards***, 451 U.S. at 478-79.

The Supreme Court reversed Edwards' conviction on the grounds that use of his statement violated his rights under the Fifth and Fourteenth Amendments. The Court explained its holding as follows:

> [W]e now hold that when an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised on his rights. We further hold that an accused . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.

451 U.S. at 484-85 (1981).

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[14] The Court later clarified that the request for counsel need not come after the giving of warnings to be effective, as the above passage might suggest. A request for counsel may be made before or during the reading of the ***Miranda*** rights. ***Smith v. Illinois***, 469 U.S. 91, 97, n.6 (1984); *see also* ***Lonkoski***, 346 Wis. 2d 523, ¶¶ 2, 12-14.

According to the Court, the ***Edwards*** bright-line proscription "serves the purposes of providing 'clear and unequivocal' guidance to the law enforcement profession." ***Arizona v. Roberson***, 486 U.S. 765, 682 (1988). The rule is "designed to protect an accused in police custody from being badgered by police officers . . . ." ***Oregon v. Bradshaw***, 462 U.S. 1039, 1044 (1983). As the Court noted in ***Fare v. Michael C.***, 442 U.S. 707, 719 (1979), "[t]he right to have counsel present at interrogation is indispensable to the protection of the Fifth Amendment privilege under the system" established by the Court.

C. After Bartelt confessed to a serious crime at a police station, he was "in custody" for ***Miranda*** purposes when he requested an attorney.

Both custody and interrogation are necessary prerequisites to ***Miranda-Edwards*** protections. ***Armstrong***, 223 Wis. 2d at 344-45; ***Montejo v. Louisiana***, 556 U.S. 778, 795 (2009) ("If the defendant is not in custody then [***Miranda*** and ***Edwards***] do not apply; nor do they govern other, noninterrogative types of interactions between the defendant and the State."). Where a person is not in custody, there is no requirement to cease interrogation. ***Lonkoski***, 346 Wis. 2d 523, ¶ 2.

Here, there is no dispute that Bartelt was undergoing interrogation when he asked for an attorney. The issue is whether he was in custody.

The test to determine custody is an objective one. ***State v. Koput***, 142 Wis. 2d 370, 378-79, 418 N.W.2d 804 (1988). The inquiry is whether there is a formal arrest or restraint on freedom of movement of a degree associated with a formal arrest. ***State v. Leprich***, 160 Wis. 2d 472, 477, 465 N.W.2d 844 (Ct. App. 1991) (citing ***New York v. Quarles***, 467 U.S.

649, 655 (1984)). "Stated another way, if 'a reasonable person would not feel free to terminate the interview and leave the scene,' then that person is in custody for ***Miranda*** purposes." ***Lonkoski***, 346 Wis. 523, ¶ 27 (quoting ***Martin***, 343 Wis. 2d 278, ¶ 33).

The custody determination is made in the totality of the circumstances considering many factors. ***Martin***, 343 Wis. 2d 278, ¶ 35. The following factors are relevant in the analysis: "the defendant's freedom to leave; the purpose, place, and length of the interrogation; and the degree of restraint." ***Lonkoski***, 346 Wis. 2d 523, ¶ 6. As one factor in the totality of the circumstances, an interview that takes place in a law enforcement facility such as a sheriff's department, a police station, or a jail, may weigh toward the encounter being custodial. *See, e.g.*, ***State v. Grady***, 2009 WI 47, ¶¶ 4-5, 317 Wis. 2d 344, 766 N.W.2d 729. Where the facts are undisputed, "custody" is a matter of law. ***Koput***, 142 Wis. 2d at 379.

In this case, the circuit court determined that Bartelt was not in custody at the time he asked for an attorney during the July 16, 2013 interview, because he had not yet been formally placed under arrest. That conclusion was erroneous. Although Bartelt came voluntarily to the police station and was not in custody at the outset of the interview, his confession to the attempted homicide of M.R. transformed his custody status to one in which a reasonable person would not have felt free to leave.

Under the totality of the circumstances in this case, no reasonable person would have felt free to terminate the interview and leave the interrogation room after confessing to attacking M.R. To begin with, the purpose of the interrogation was clearly to question Bartelt regarding the

attack of M.R. (31:7). The police treated Bartelt like the target of a serious felony investigation (31:7-28), as opposed to merely the subject of an impromptu ***Terry***[15] stop. *Compare* ***State v. Gruen***, 218 Wis. 2d 581, 582 N.W.2d 728 (Ct. App. 1998). They also tried repeatedly to get him to confess to the attack. (31:14-28). Furthermore, the interrogation was not commensurate with a routine traffic stop, which is characterized by questioning that is "presumptively temporary and brief." *See* ***Berkemer v. McCarty***, 468 U.S. 420, 437 (1984).

In addition, the place of the interview was an interrogation room located in the secured, internal portion of the Slinger Police Department, which was not accessible to the general public. (105:16-18). While the interrogation room itself was not locked, and people were generally free to exit the internal portion of the department, this was still a police-dominated environment, which weighs toward the encounter being custodial. ***Grady***, 317 Wis. 2d 344, ¶¶ 4-5.

Moreover, although Bartelt had not been handcuffed or frisked prior to requesting an attorney, he was still in the presence of two armed police officers during the interview. (105:20:-1). One of the officers, Detective Clausing, even took custody of Bartelt's cell phone after his confession. (105:31). Thus, as a practical matter, Bartelt's freedom to leave the room or the police station following his confession was curtailed in a very real way.

Under these circumstances, no reasonable person would have felt feel free to terminate the interview and leave the room after confessing to attacking M.R. To the contrary, a reasonable person in Bartelt's position would have believed that they were, for all intents and purposes, under arrest at

[15] *See* ***Terry v. Ohio***, 392 U.S. 1 (1968).

that point. And they would have reasonably expected the officers to prevent any attempt they might make to leave the room or the police station – by force, if necessary. A confession to a serious crime like attempted homicide (or aggravated battery or first-degree recklessly endangering safety) is the functional equivalent of a person turning themselves in or surrendering at a police station after an arrest warrant has been issued. No reasonable person, under either circumstance, could possibly believe that they would be free to leave afterwards. As Detective Clausing rightly noted at the suppression hearing, after Bartelt confessed, he "was going to be under arrest, and he probably wasn't free to get up and leave." (105:44-45. 48-49).

Accordingly, the circuit court's reliance on ***Lonkoski*** was misplaced in this case. In ***Lonkoski***, the defendant argued that, although he came to the police station voluntarily and initially agreed to speak with police, once the officers zeroed in on him as a suspect in the interview, he was in custody because there was no way a reasonable person would have felt free to leave at that point. 346 Wis. 2d 523, ¶ 33. The defendant therefore asserted that his subsequent request for an attorney should have triggered the ***Edwards*** rule requiring the interrogation to cease. He further argued that even if he was not in custody at the time he asked for an attorney, he was undisputedly in custody a few seconds later when he was arrested, so ***Miranda*** protections should apply. ***Id.*** ¶ 36.

The Wisconsin Supreme Court rejected both arguments. First, the court concluded that a person's knowledge that officers suspect the person of a serious crime is not a significant factor in the custody determination, noting that "a suspect's belief that he or she is the main focus of an investigation is not determinative of custody." ***Id.*** ¶ 34. The

court also rejected the idea that ***Miranda*** protections should apply when custody is imminent. In this regard, the court stated that before a suspect is in custody, "the coerciveness is substantially lessened because a reasonable person in the suspect's position would believe that he or she could end the conversation and leave at any time." ***Id.*** ¶ 36.

Relying on ***Lonkoski***, the circuit court in this case reasoned that Bartelt was not in custody during the July 16, 2013 interview, even after police zeroed in on him as a suspect after he was caught in a lie about his employment status and the source of his injury. (105:100; App. 106). However, the circuit court's reasoning overlooked the important fact that police here did not merely *suspect* that Bartelt had attacked M.R. at the time he requested an attorney, as in ***Lonkoski***. Bartelt had actually *confessed* at that point to the attack on M.R. for which police were interrogating him.

Bartelt's confession is a critical fact that distinguishes this case from ***Lonkoski***. Again, no reasonable person could believe that they would be free to get up and leave an interrogation room after confessing to an attempted homicide or other serious crime in the presence of police who are questioning them regarding this serious crime.

At least one Wisconsin case supports this conclusion. *See* ***Koput***, 142 Wis. 2d 370. In ***Koput***, the Wisconsin Supreme Court held that the defendant in that case was not in custody for ***Miranda*** purposes at the time he confessed to murdering the victim. ***Id.*** at 377-80. The court noted that the defendant had come to the police station voluntarily. It also noted that there was testimony that, had he desired, he could have left the station at any time prior to giving his inculpatory statement. ***Id.*** at 377. The court therefore upheld his

conviction. Nevertheless, the court indicated that the defendant's custody status changed *after* his confession:

> Therefore, the facts show that the defendant was not in custody until after his confession, sometime after 4:15 P.M. *It was only then that a reasonable person viewing the situation objectively would conclude that he was not free to leave but was in custody*.

Id. at 380 (emphasis added).

Numerous cases from other jurisdictions also support the conclusion that following a confession a person should be considered to be in custody for ***Miranda*** purposes. *See, e.g.*, ***State v. Pitts***, 936 So.2d 1111, 1134 (Fla. Dist. Ct. App. 2006) (holding that suspect was in custody after confessing to a "serious crime"); ***Jackson v. State***, 528 S.E.2d 232, 235 (Ga. 2000) ("A reasonable person in Jackson's position, having just confessed to involvement in a crime in the presence of law enforcement officers would, from that time forward, perceive himself to be in custody, and expect that his future freedom of action would be significantly curtailed."); ***People v. Carroll***, 742 N.E.2d 1247, 1250 (Ill. Ct. App. 2001) (finding that custodial situation began when investigation had become focused exclusively on the defendant and he had inculpated himself in the crime); ***Ackerman v. State***, 774 N.E.2d 970, 978-79 (Ind. Ct. App. 2002) (finding that admission of offense of leaving scene of an accident was a factor suggesting that the defendant was in custody); ***Commonwealth v. Smith***, 686 N.E.2d 983, 987 (Mass. 1997) ("[A]fter the defendant told the police that he was there to confess to the murder of his girlfriend, given the information the police already had received about the murder, we conclude that if he had wanted to leave at that point, he would not have been free to do so."); ***People v. Ripic***, 587 N.Y.S.2d 776, 782 (N.Y. App. Div. 1992) (finding it "utter sophistry"

to suggest that person who had just made an incriminating statement concerning the crime officers were investigating would feel she was free to leave).

This court should similarly hold that Bartelt was in custody for ***Miranda*** purposes following his confession, and that his subsequent request for an attorney therefore triggered the ***Miranda-Edwards*** rule requiring all police interrogation to cease.

D. Bartelt's in-custody request for an attorney required all police interrogation to cease; his subsequent statements to law enforcement and all derivative evidence should therefore be suppressed.

Because Bartelt requested an attorney during a custodial interrogation, all of his subsequent statements to law enforcement should have been suppressed. Once a criminal suspect invokes his or her right to counsel, judicial inquiry into voluntariness, i.e., whether the subsequent statements were actually coerced, is "beside the point." ***Smith***, 469 U.S. at 99 n.8. "[T]he voluntariness of a consent or an admission on the one hand, and a knowing and intelligent waiver on the other, are discrete inquiries." ***Edwards***, 451 U.S. at 484.

Following invocation, the key issue becomes whether the right to counsel was effectively waived. A suspect may, of course, choose to waive his right to counsel, but even suspect-initiated conversation does not constitute *a priori* proof of waiver. ***State v. Harris***, 199 Wis. 2d 227, 250, 544 N.W.2d 545 (1996). A valid waiver of an asserted right "cannot be established by showing only that [the suspect] responded to further police-initiated custodial interrogation even if he has been advised of his rights. ***Edwards***, 451 U.S. at 484. Moreover, if the authorities reinitiate contact, "it is

presumed that any subsequent waiver that has come at the authorities' behest, and not at the suspect's own instigation, is itself the product of the 'inherently compelling pressures' and not the purely voluntary choice of the suspect." ***Roberson***, 486 U.S. at 681.

Moreover, the ***Miranda-Edwards*** right to counsel is not offense-specific. Rather, once the right is invoked for a particular offense, police may not approach the suspect for interrogation regarding any other offense without counsel present. ***State v. Coerper***, 199 Wis. 2d 216, 223, 544 N.W.2d 423 (1996).

Here, Bartelt did not reinitiate discussions after his request for an attorney. It was the police who initiated the second interview on July 17, 2013 to gain information about Blodgett's murder. The second interview therefore violated the ***Edwards*** rule requiring all police interrogation to cease. All statements made by Bartelt during this interview should therefore be suppressed.

In addition, all the derivative evidence obtained by police as a result of Bartelt's statement should also be suppressed. An ***Edwards*** violation, unlike a mere ***Miranda*** warnings violation, triggers the "fruit of poisonous tree" doctrine and requires the suppression of all physical evidence proximately derived from the violation. ***Harris***, 199 Wis. 2d at 231; *but see* ***Oregon v. Elstaad***, 470 U.S. 298, 308 (1985) (the "poisonous tree" doctrine does not apply to ***Miranda*** warnings violations). In ***Harris***, the Wisconsin Supreme Court held as follows:

> We find that there is a critical difference between a mere defect in the administration of ***Miranda*** warnings "without more" and police-initiated interrogation conducted after a suspect unambiguously invokes the

> right to have counsel present during questioning. The latter is a violation of a constitutional right. As such, an ***Edwards*** violation triggers the fruit of the poisonous tree doctrine requiring the suppression of the fruit of that constitutional violation.

199 Wis. 2d at 248; *see also* ***United States v. Hubell***, 530 U.S. 27, 45 (2000) (Fifth Amendment "protection encompasses compelled statements that lead to the discovery of incriminating evidence even though the statements themselves are not incriminating and are not introduced into evidence.").

It was during the July 17, 2013 interview that Bartelt told police he was at Woodlawn Park on July 15, 2013. All the physical evidence discovered in the park's garbage the next day, as well as the video footage from Woodlawn Park, was thus obtained as a direct and proximate result of Bartelt's statement. Without the statement, police would not have known Bartelt was at Woodlawn Park that day, and they would have had no reason to the collect the garbage or obtain the video footage. As Detective Thickens testified in this case:

> Based on the statements that Mr. Bartelt had made [on July 17, 2013] . . . we decided it would be a good idea to collect the garbage at Woodlawn Park to see if anything had been disposed of there that would relate to this incident.

(109:851-53).

Furthermore, the Woodlawn Park evidence directly resulted in the discovery of all the physical evidence found in Bartelt's house and garage during the search on July 20, 2013. Without the Woodlawn Park evidence, there would have been no evidentiary link connecting Bartelt to Blodgett's

murder. Police thus would have lacked probable cause to obtain a warrant to search his residence on July 20, 2013 for evidence related to this offense.[16] All the evidence discovered during this search was obtained by exploitation of the prior illegality. This evidence should therefore be suppressed as fruit of the poisonous tree, as well. *See* ***Wong Sun v. United States***, 371 U.S. 471, 485-88 (1963) (The exclusionary rule applies to both tangible and intangible evidence and also excludes derivative evidence under certain circumstances, via the fruit of the poisonous tree doctrine, if such evidence is obtained "by exploitation of that illegality.").

Finally, the roll of Intertape 698 discovered under Blodgett's bed on July 22, 2013 should also be suppressed as derivative evidence. It was only because of the discovery of the Woodlawn Park evidence and the evidence seized at Bartelt's house on July 20, 2013 that officers with the Hartford Police Department returned to Blodgett's home for a follow-up investigation on July 22, 2013. They returned at that point to determine if any of the items they had discovered at Woodlawn Park or Bartelt's house might have come from the Blodgett residence. As Sergeant Zywicki testified, he and Thickens decided to return to the Blodgett residence to conduct a follow-up investigation because of the "other items of evidentiary significance and other leads" that had been discovered between July 15, 2013 and July 22, 2013. (109:574-75). Thus, without the evidence found at Woodlawn Park and Bartelt's house, the follow-up investigation would likely not have occurred.

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[16] While police certainly had probable cause at the time to believe that Bartelt had attacked M.R., they had already searched his house to obtain evidence related to this offense on July 17, 2013. (4:7-8). There was thus no reason for them to search his house again regarding the Blodgett homicide.

Moreover, even if members of the Hartford Police Department would have, for some unknown reason, decided to conduct a follow-up investigation at the Blodgett residence, they still likely would not have realized the evidentiary significance of the roll of Intertape 698 and collected it. Zywicki testified that prior to the discovery of the evidence from Woodlawn Park and Bartelt's residence, he "was primarily looking for items that would cause ligature marks," since there was no indication at that point that "there was any tape utilized with Ms. Blodgett." (109:581). He therefore "did not see any significance to the Intertape 698, so that's why [he] didn't collect it" prior to the discovery of the other derivative evidence in this case. (109:581). Officer Dorn also testified that the Intertape 698 was not previously collected because it did not "have any evidentiary significance" at that time.[17] (109:474). The roll of Intertape 698 should thus also be considered tainted fruit.

Accordingly, this court should reverse in part the circuit court's order denying Bartelt's suppression motion and order the suppression of all his statements made to police on July 17, 2013. In addition, this court should order the suppression of the following categories of derivative evidence: the video footage obtained from Woodlawn Park; all physical evidence found in the Woodlawn Park garbage on or around July 18, 2013; all physical evidence found during the search of Bartelt's home on or around July 20, 2013; the

[17] Intertape 698 had been previously collected as an item of evidentiary significance with respect to Richfield Park incident; however, that investigation was conducted by the Washington County Sheriff's Department. (1:4; 4:7-8; 105:47-48). The follow-up investigation regarding Blodgett's murder, on the other hand, was conducted by members of the Hartford Police Department. Intertape 698 had no evidentiary significance to members of the Hartford Police Department until after the discovery of the Woodlawn Park evidence.

roll of Intertape 698 found in Blodgett's home on or around July 22, 2013; and all testimonial, video, photographic, or documentary evidence describing, depicting, or otherwise relating to any of the foregoing categories of evidence, as well as all forensic evidence analyzing such evidence.

In the alternative, should this court conclude that it is not appropriate for it to decide for the first time on appellate review which specific items of derivative evidence should be suppressed, then Bartelt asserts that he should be entitled to an evidentiary hearing on this issue before the circuit court. In his suppression motion, Bartelt specifically requested the suppression of "all derivative evidence," in addition to the suppression of his statements. (19:1). He also requested a hearing at which the State would be required to prove that police obtained his statements in a lawful manner, and in the event the State failed to meet this burden, an order "declaring the statements and any evidence gained therefrom as inadmissible at trial." (19:1-2).

However, because the circuit court ruled that all of Bartelt's statements were admissible, it never had the opportunity to address the derivative evidence issue. As such, if this court now determines that the circuit court erred in denying Bartelt's motion to suppress, but declines to decide which items of derivative evidence should actually be suppressed, than this court should remand the matter to the circuit court with instructions to hold an evidentiary hearing on this issue.

CONCLUSION

For the foregoing reasons, Daniel Bartelt respectfully requests that this court reverse the circuit court's judgment and order regarding the homicide charge in this case, order the suppression of all of Bartelt's statements to police on July 17, 2013, along with all derivative evidence described in this brief, and remand the matter to the circuit court for a new trial. Should this court decline to decide the issue of which specific items of derivative evidence should be suppressed, then Bartelt requests that this court remand the matter to the circuit court with instructions to hold an evidentiary hearing on the issue, and thereafter, a new trial.

Dated this 7th day of April, 2016.

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 8,858 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 7th day of April, 2016.

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CERTIFICATION AS TO APPENDIX

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 § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (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 circuit 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.

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 one or more initials or other appropriate pseudonym or designation 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 7th day of April, 2016.

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