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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2018AP896-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WILLIAM LESTER JACKSON,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION
ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT,
THE HONORABLE CHRISTOPHER T. DEE, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

ISSUES PRESENTED

1. Defendant-Appellant William Lester Jackson, a convicted felon, arrived at a hospital suffering a gun-shot wound to his leg. Police officers arrived to the hospital and described the scene as "chaotic," as there were multiple shootings investigations occurring at the time. While questioning Jackson to figure out who shot him, Jackson confessed to the police that *he* was in possession of the gun and accidentally shot himself. The State charged Jackson with felon in possession of a firearm. Jackson moved to suppress his statements, arguing that the failure to give him *Miranda* warnings before his confession rendered his statements inadmissible. Did the trial court err when it denied Jackson's motion to suppress?

The trial court determined that, while Jackson was in custody, the officers did not interrogate him, and his statements were admissible under the "public safety" exception to *Miranda*.

This Court should affirm.

2. Alternatively, should this Court disagree with the State and determine that the trial court erred when it denied Jackson's motion to suppress, the next issue is whether the trial court's error was harmless.

The trial court did not address this issue.

This Court should determine that any error was harmless error.

INTRODUCTION

This Court should affirm the judgment of conviction and the trial court's denial of Jackson's motion to suppress his statements. The trial court correctly found that Jackson's statements were admissible because the police did not interrogate him. Further, even if Jackson was subject to

custodial interrogation, his statements were admissible under *Miranda*'s "public safety" exception. As the police officers testified, they believed Jackson was the crime victim—not a suspect, and the officers were trying to control the chaotic scene at the hospital to make sure that Jackson and others at the hospital were safe.

Should this Court disagree and determine that the trial court should have suppressed Jackson's statements, the trial court's error was harmless. The overall strength of the State's case was strong, and Jackson's defense was unbelievable.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request either oral argument or publication. This case can be decided by applying well-established legal principles to the facts of the case.

STATEMENT OF THE CASE

The shooting, Jackson's statements to police, and the suppression motion

On May 4, 2016, around 8 a.m., Milwaukee Police Officer Robert Crawley responded to St. Joseph's Hospital in Milwaukee to investigate a shooting. (R. 72:6.) According to Crawley, when he arrived there were "multiple shootings" investigations at the hospital. (R. 72:7.) He described the atmosphere as very chaotic. (R. 72:7.) "There [were] family members of each shooting running around trying to get to the rear of the hospital where all three victims were at." (R. 72:7.)

Crawley met with Jackson in an emergency room. Jackson had suffered a gunshot wound to his leg. (R. 72:10.) Jackson was initially "standoffish" with Crawley, and "he didn't really want to talk about what had occurred." (R. 72:10.) Jackson refused to provide any information or details regarding the circumstances of how he was shot. (R. 72:11.)

Crawley left Jackson's room because there were "about 20 or 30 people trying to force their way into the hospital" in regards to a homicide victim whose room was about 50 to 60 feet from Jackson's. (R. 72:12.) Crawley informed Jackson that he needed Jackson to stay where he was, "that he couldn't leave, we really, truly needed to find out what happened." (R. 72:12.) Crawley testified that he "needed to try to control [Jackson]" while also handling the "bigger situation that was going on at that time." (R. 72:13.) To restrain Jackson's movement, Crawley handcuffed Jackson to the hospital bed. (R. 72:13.)

Crawley testified that he was still trying to get information about what happened, but Jackson refused to give any information. (R. 72:14.) At this point, Crawley did not suspect that Jackson was guilty of a crime. (R. 72:18.) Rather, Crawley testified, "I knew he was a victim of a crime. I didn't know [what] had occurred at that point." (R. 72:18.)

When asked if he routinely handcuffs victims "in cases such as this," Crawley replied:

> Sometimes, I mean, to control a situation, if we don't have enough officers or we don't have control of the scene, we have to do I guess things a little unorthodox to make sure we make sure our victims are safe and the city - - citizens of Milwaukee are safe I guess.

(R. 72:18–19.)

Around 8:30 a.m., Milwaukee Police Detective Tracy Becker arrived at the hospital to help investigate the shooting. (R. 72:23.) Becker described the scene when he arrived: "It was pretty chaotic. There was another shooting going on. . . . There were police, there were doctors, nurses, other personnel running around in that area trying to take care of all of this that was going on at one time." (R. 72:24.)

Becker attempted to interview Jackson. (R. 72:24.) Jackson informed Becker that he had dropped off LaToya Mitchell's children at school and was going to a gas station to

buy a single cigarette. (R. 72:25.) Jackson told Becker that he was shot while outside the vehicle by an unknown person. (R. 72:25.) Becker replied to Jackson that what Jackson told him "didn't make a lot of sense," and that the gas station would have video of it. (R. 72:25.) Becker told Jackson that he needed to know what occurred and how he was shot. (R. 72:28.)

Becker then spoke with LaToya Mitchell, Jackson's girlfriend, who was in the hospital waiting room, for about 15 minutes. (R. 72:25, 28, 29.) Becker told her that he would be "concerned with her and her kids having [Jackson] with her kids if somebody's going around shooting at him." (R. 72:26.) Mitchell told Becker that Jackson drove her kids to school and then later called her to tell her that he had been shot and was going to the hospital. (R. 72:30.) According to Becker, she "voiced her concerns about what was going on." (R. 72:29.)

After speaking with Mitchell, Becker returned to Jackson's hospital room and informed Jackson that he had spoken with Mitchell. (R. 72:30.) Becker told Jackson that Mitchell stated that she was concerned with Jackson being around her children if Jackson is having an "ongoing problem." (R. 72:30.) At this point, Becker still believed that Jackson was a victim and that Jackson was refusing to tell Becker who shot him. (R. 72:31.) Becker testified that he "believed [Jackson] got shot. I didn't have any idea - - I thought somebody had shot him at that point and my belief was that he knew who had shot him." (R. 72:31.) Becker also testified that he looked at the pajama pants that Jackson was wearing at the time of the shooting, and Becker saw no gunpowder residue, which he would normally see with a "close-contact shot." (R. 72:32.)

After some "goading," Jackson then informed Becker that his wound was actually self-inflicted. (R. 72:32.) Jackson stated that he had been out with a friend, Dion, the night before and that Dion had called him that morning and told him that he had left a gun in Jackson's vehicle. (R. 72:32–33.)

After dropping off Mitchell's kids at school, Jackson found the gun between the seats. (R. 72:32–33.) Jackson explained that there was a casing stuck in the ejector port of the gun, and that he attempted to clear it. (R. 72:33.) At that point the slide moved forward and the gun fired, striking Jackson in the leg. (R. 72:33.)

Jackson then told Becker that he was a felon, and Becker arrested him. (R. 72:33–35.) After obtaining Jackson's confession and consent from Mitchell, the police searched Mitchell's car and found physical evidence "relevant to [their] investigation." (R. 72:34.) Jackson was then conveyed to the police station and advised of his *Miranda* rights. (R. 72:39.)

Jackson moved to have his inculpatory statements suppressed. (R. 14.) He argued that his statements were obtained in violation of *Miranda*. (R. 14:1.) The State responded, arguing that Jackson's statements were not the product of "interrogation" as defined by *Miranda* and its progeny. (R. 16:1.) The court held a suppression hearing, in which Officers Crawley and Becker testified. (R. 72.)

When asked whether he was genuinely concerned about the safety of Mitchell's children or if it was just a ploy, Becker responded, "this isn't a ploy because he's driving those kids around and if somebody's out gunning for him, he shouldn't be anywhere around those kids." (R. 72:36.)

When asked on cross-examination why he did not record his interviews with Jackson, Becker testified: "Because I did not believe I was speaking to a suspect at the time. Had I been speaking to a suspect, I would have *Mirandized* him and taped it at the very least but that wasn't my belief at the time." (R. 72:40.)

The court's ruling on Jackson's suppression motion

The court denied Jackson's motion. (R. 72:52.) The court first determined that Jackson was in custody when he was

questioned. (R. 72:53.) The court noted that Jackson was handcuffed to the bed and was not free to leave. (R. 72:53.)

The court next determined that the police officers did not interrogate Jackson. The court explained:

> Detective Becker, when he was questioning Mr. Jackson, he did not suspect that this was a self-inflicted gunshot wound and that he actually had looked at the pajama bottoms and - - and didn't see evidence of - - a burning that would indicate to him that this was a self-inflicted gunshot wound. The circumstances in the hospital, as Officer Crawley testified, that there were three different shootings being investigated at the same time, it was a fairly chaotic situation going on outside of Mr. Jackson's room which required Mr. Crawley to leave or, sorry, Officer Crawley to leave the room for some time to help out with maintaining order in the - - in the hospital.

(R. 72:53–54.) The court determined that the "environment as a whole indicates" that "the officers were again investigating several cases at once," and that "neither officer indicated that they believed that Mr. Jackson was involved or that there was any indication that he had been shot by any individual involved in these other cases." (R. 72:54.) "[T]hat atmosphere" led the court to find that the officers were "concerned about the safety of everyone" in the emergency room "because of the disturbance being caused by individuals associated with this other case." (R. 72:54.)

The court found that the "safety issue is important" because Jackson was in the emergency room due to a gunshot wound. (R. 72:54–55.) The court explained, "[s]o somewhere there -- there was a gun that had injured Mr. Jackson. The officers at that point didn't know where it was or who had that gun in -- in his or her possession and Detective Becker was trying to make those determinations." (R. 72:55.) The court found that the officers' questions "were not intended to elicit

an incriminating response." (R. 72:55.) Rather, they were "trying to figure out the circumstances of how Mr. Jackson was shot, where he was shot, who shot him." (R. 72:55.) The court noted that Becker believed that Jackson was a victim, "not necessarily a perpetrator." (R. 72:55.)

The court cited to *State v. Stearns*, 178 Wis. 2d 845, 506 N.W. 2d 165 (Ct. App. 1993), finding that in *Stearns* this Court found "a public safety exception" to *Miranda*. (R. 72:55–56.) And the court again recognized that the police in this case had a concern for "the safety of all of the individuals involved not just Mr. Jackson but Ms. Mitchell, her family and then the other individuals who may have been impacted by this shooting." (R. 72:56.) The police were "trying to determine whether other individuals were involved and who those individuals were." (R. 72:56.)

The jury trial and sentence

The case proceeded to trial. Becker testified at Jackson's two-day jury trial, as did Jackson. Becker testified that Jackson "surprised" Becker when he told him that he shot himself. (R. 79:111.) Becker also testified that, after he searched Mitchell's vehicle and could not locate the firearm, Jackson told him he would take Becker to Dion's house to recover it. (R. 79:110.) But then, Jackson changed his mind and did not "want to involve D[i]on in this and we never recovered the gun." (R. 79:110.) Becker also testified that "there was no call from the school saying, children came in saying their father . . . had been shot. There's no indication at all anything happened with the kids or the school." (R. 79:112.)

At trial, Jackson testified that he did not possess a firearm on May 4, 2016, but that he was shot by Joseph Justin, an "[a]ssociate" of Jackson's who no longer lives in Milwaukee. (R. 80:39–40, 67.) Justin, whom Jackson described as a "pill popper," called Jackson that morning

wanting to borrow ten dollars. (R. 80:42.) They met at a store, and Jackson gave Justin the money. (R. 80:44.) When Justin asked Jackson for more money, Jackson reached into his pockets to show him that he did not have more, and then Justin shot him. (R. 80:44.)

Jackson testified that he did not call the police. (R. 80:61.) Instead, Jackson called his wife and told her he was shot, but he did not tell her *who* shot him. (R. 80:45, 54.) Then instead of driving to the hospital, Jackson drove his kids to school, and then afterwards he drove himself to the hospital. (R. 80:45, 54.)

Two of Jackson's children also testified at trial. They both testified that when they got to the store on their way to school, Jackson's friend "Joe" got in the passenger front seat of the vehicle. (R. 80:25, 76–77.) After Jackson gave Joe money and Joe asked for more money, Joe shot Jackson. (R. 80:26.) Jackson's children also testified that they both were sitting in the same seat when this shooting occurred: the back seat (driver's side) directly behind their father. (R. 80:21, 25, 33, 35, 76.)

Jackson testified that, at the hospital, he made the false confession that he shot himself because (1) snitching has consequences, and (2) he did not want his children to be named as witnesses. (R. 80:40, 51, 64, 66.)

During closing argument, the State argued that Jackson's defense was unbelievable. (R. 81:29–30.) During Jackson's closing, his attorney recognized that Jackson's "statements are bad. He made a bad decision. He lied to the cops not once, but twice." (R. 81:37.) But, he argued, Jackson feared for his wife and children, and "that's what he has to deal with." (R. 81:38.)

The jury convicted Jackson of felon in possession of a firearm. (R. 39.) The court sentenced Jackson to four years of

initial confinement and four years of extended supervision. (R. 82:25.)

Jackson appeals.

STANDARD OF REVIEW

This Court employs a two-step process in reviewing a trial court's denial of a motion to suppress. *State v. Harris*, 2017 WI 31, ¶ 9, 374 Wis. 2d 271, 892 N.W.2d 663. First, this Court reviews the trial court's factual findings and will uphold them unless they are clearly erroneous. *Id.* Second, this Court applies "constitutional principles to those facts *de novo*, without deference to the courts initially considering the question, but benefitting from their analyses." *Id.*

ARGUMENT

I. Jackson's confession was not the result of a custodial interrogation; therefore, the officers were not required to provide *Miranda* warnings. If Jackson's confession was the result of a custodial interrogation, the public safety exception to *Miranda* applies.

A. Legal principles

It is well-established that the police must advise a person of his or her *Miranda* rights before conducting a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); *Berkemer v. McCarty,* 468 U.S. 420 (1984). To determine whether *Miranda* warnings are required in a given situation, a court must make two inquiries: whether the suspect was in custody, and whether the police interrogated the suspect. *State v. Armstrong*, 223 Wis. 2d 331, ¶ 29, 588 N.W.2d 606 (1999). A suspect is in custody for *Miranda* purposes when there is a "formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest. *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977).

Interrogation in the *Miranda* context occurs when the police ask a question of a suspect that is "reasonably likely to elicit an incriminating response." *Pennsylvania v. Muniz*, 496 U.S. 582, 601 (1990); *State v. Martin*, 2012 WI 96, ¶ 36, 343 Wis. 2d 278, 816 N.W.2d 270. 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." *State v. Douglas*, 2013 WI App 52, ¶ 14, 347 Wis. 2d 407, 830 N.W. 2d 126 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 300–01 (1980)).

In *New York v. Quarles,* 467 U.S. 649, 655–60 (1984), the Supreme Court set forth a "public safety" exception to the requirement that *Miranda* warnings be given before a suspect's answers may be admitted into evidence. *Id.* at 655–60. The Supreme Court held that police are not required to give *Miranda* warnings before asking questions "reasonably prompted by a concern for public safety." *Id*. at 656. The Court concluded: "[T]he need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." *Id.* at 657.

Wisconsin extended the exception to include both a private safety situation and the safety of the police. *See State v. Kunkel*, 137 Wis. 2d 172, 189, 404 N.W.2d 69 (Ct. App. 1987). The "private safety" exception to the *Miranda* rule "provides that if questioning occurs during an emergency involving the possibility of saving human life, and rescue is the primary motive of the questioner, then no violation of *Miranda* has occurred." *State v. Uhlenberg*, 2013 WI App 59, ¶ 15, 348 Wis. 2d 44, 831 N.W.2d 799. The public policy supporting the safety exceptions rests in the logic that the need for answers to questions in a situation posing a threat to safety and, thus, the need to protect life and neutralize

volatile situations, outweighs the need for the *Miranda* rules. *State v. Camacho*, 170 Wis. 2d 53, 71–72, 487 N.W.2d 67 (Ct. App. 1992) (overruled on other grounds by *State v. Camacho*, 176 Wis. 2d 860, 501 N.W.2d 380 (1993)).

Finally, in *State v. Stearns*, 178 Wis. 2d 845, 852, 506 N.W.2d 165 (Ct. App. 1993), this Court held that if the police are not actively seeking to obtain a confession but rather are attempting to secure a potentially dangerous situation, the concerns of *Miranda* are not implicated. This is true even if the suspect is "technically" in custody and under interrogation at the time the statements are made. *See id.* at 854. "[C]ourts should not presume to impose *Miranda* requirements on the police in such supercharged situations where the constitutional concerns of *Miranda* are not present. The police—not judges—are better equipped and trained to deal with such matters." *Id.*

B. The police were not required to advise Jackson of his *Miranda* rights because they did not interrogate Jackson.

The State does not dispute the trial court's finding that Jackson was technically in custody for *Miranda* purposes. *See Stearns*, 178 Wis. 2d at 854. (R. 72:53.) As the trial court recognized, Jackson was handcuffed to the bed, and the officers testified that Jackson was not free to leave. (R. 72:53, 38, 13.) A reasonable person would not have felt "free to end the questioning and leave the scene." *Uhlenberg*, 348 Wis. 2d 44, ¶ 11. So the issue is whether Jackson's statements were the result of interrogation. They were not.

As previously indicated, interrogation in the *Miranda* context occurs when the police ask a question of a suspect that is "reasonably likely to elicit an incriminating response." *Muniz*, 496 U.S. at 601. In this case, the police officers did not even consider Jackson a suspect, and their questions were not reasonably likely to elicit an incriminating response from

him. While Jackson was in custody, he was not interrogated by police.

Jackson arrived at the hospital with a gunshot wound. Upon looking at his pajama pants, the officers believed that it was not a self-inflicted injury. As they both testified, they did not consider Jackson to be a suspect of a gun-shot wound, but a *victim*. (R. 72:18, 31, 40.) Specifically, at the time of Officer Becker's *second* interview (when Jackson confessed), Becker knew the following: (1) Jackson claimed to have been shot at a gas station, (2) Jackson had, at that point, refused to divulge any additional details of the shooting, (3) Jackson had called Mitchell before he went to the hospital and told her that he had been shot, and (4) he and Mitchell were concerned by the prospect of a potential gunman seeking to harm Jackson while he was with Mitchell's children. In short, Becker had no reason to suspect that Jackson had committed a crime. Instead, Becker was treating Jackson as a victim and was trying to gain cooperation by explaining his and Mitchell's concerns.

Under these circumstances, Becker could not have known that his second conversation with Jackson was reasonably likely to elicit an incriminating response. He was simply trying to learn the identity of Jackson's shooter. He had no reason to believe that Jackson shot himself. Thus, Becker's questions to Jackson—why he had been shot and who shot him—were not interrogation for *Miranda* purposes.

While Jackson argues that the police officers' questions amount to interrogation because they "wanted to find out what [the] defendant was hiding," and that they "wanted to determine if [the] defendant had committed a crime" (Jackson's Br. 12), their testimony was undisputed that they did *not* consider Jackson to be a suspect or that he had committed a crime (R. 72:18, 31, 40). As the trial court found, Becker did "not suspect that this was a self-inflicted gunshot wound and that he actually had looked at the pajama bottoms

and - - and didn't see evidence of - - a burning that would indicate to him that this was a self-inflicted gunshot wound." (R. 72:53–54.) The court further explained that "somewhere there -- there was a gun that had injured Mr. Jackson. The officers at that point didn't know where it was or who had that gun in -- in his or her possession and Detective Becker was trying to make those determinations." (R. 72:55.) These findings are not clearly erroneous.

This Court should affirm the trial court's decision that the officers' questions "were not intended to elicit an incriminating response." (R. 72:55.) Rather, they were "trying to figure out the circumstances of how Mr. Jackson was shot, where he was shot, who shot him." (R. 72:55.) Based on the facts of this case, the police inquiries were not aimed at eliciting a confession from Jackson. Because there was no custodial interrogation, the police were not required to provide Jackson the *Miranda* warnings.

C. Even if Jackson was interrogated, the police were not required to advise Jackson of his *Miranda* rights because the public safety exception applies.

Even assuming for the sake of argument that the police interrogated Jackson, the facts of this case present a situation that warrants application of the public safety exception. As the trial court correctly noted, there "were three different shootings being investigated at the same time," and so "it was a fairly chaotic situation going on outside of Mr. Jackson's room," which led "Officer Crawley to leave the room for some time to help out with maintaining order in the - - in the hospital." (R. 72:54.) The "environment as a whole," the court found, indicated that the police were "investigating several cases at once," and that "neither officer indicated that they believed that Mr. Jackson was involved or that there was any indication that he had been shot by any individual involved in these other cases." (R. 72:54.) "[T]hat atmosphere," the court

found, led the officers to be "concerned about the safety of everyone" in the emergency room "because of the disturbance being caused by individuals associated with this other case." (R. 72:54.)

The court further explained that "somewhere there -- there was a gun that had injured Mr. Jackson. The officers at that point didn't know where it was or who had that gun in -- in his or her possession and Detective Becker was trying to make those determinations." (R. 72:55.) The officers were "trying to figure out the circumstances of how Mr. Jackson was shot, where he was shot, who shot him." (R. 72:55.) These findings were not clearly erroneous. This Court should affirm the trial court's conclusion that the "public safety exception" to the *Miranda* requirement applies in this case. (R. 72:54–55.) The officers were "reasonably prompted by a concern for the public safety." *Quarles*, 467 U.S at 656.

As previously indicated, this Court in *Stearns* held that, even if a defendant is technically under custodial interrogation at the time the statements are made, if police are not actively seeking to obtain a confession but are attempting to secure a potentially dangerous situation, the concerns of *Miranda* are not implicated. *See Stearns*, 178 Wis. 2d at 852, 854. So, under *Stearns*, even if this Court finds that the police were interrogating Jackson when he made his confession, the evidence in this case is undisputed that the officers were attempting to secure a dangerous and chaotic situation at the hospital. *Miranda* was not implicated.

Jackson argues that the facts in *Stearns* do not resemble the facts in this case: "Mr. Jackson was not holding hostages with a gun but harmlessly chained to a hospital bed presenting no possible danger to himself or to others." (Jackson's Br. 14.) As Jackson correctly notes, *Stearns* involved another serious, potentially deadly, situation. 178 Wis. 2d at 847–48. But that does not discount the seriousness

of the situation at the hospital when Jackson arrived as a patient.

The officers in this case described the hospital scene as "chaotic," and their public safety concern for Jackson and others at the hospital was not mere "guesswork and speculation." (Jackson's Br. 14.) Rather, the officers' *undisputed* testimony provided that: (1) "[t]here [were] family members of each shooting running around trying to get to the rear of the hospital where all three victims were at," (R. 72:7); (2) there were "about 20 or 30 people trying to force their way into the hospital" in regards to a homicide victim whose room was about 50 to 60 feet from Jackson's, (R. 72:12); (3) Becker testified that "[t]here was another shooting going on. . . . There were police, there were doctors, nurses, other personnel running around in that area trying to take care of all of this that was going on at one time," (R. 72:24); (4) Crawley informed Jackson that Jackson "couldn't leave, we really, truly needed to find out what happened," (R. 72:12); (5) Crawley "needed to try to control [Jackson]" while also handling the "bigger situation that was going on at that time," (R. 72:13); and (6) the officers' public safety concern was not "a ploy" because Jackson was "driving those kids around if somebody's out gunning for him, he shouldn't be anywhere around those kids" (R. 72:36).

Given all these factors, the trial court correctly determined that the atmosphere at the hospital led the officers to be "concerned about the safety of everyone." (R. 72:54.) It was a concern for "the safety of all of the individuals involved[,] not just Mr. Jackson[,] but Ms. Mitchell, her family and then the other individuals who may have been impacted by this shooting." (R. 72:56.) The public safety exception to *Miranda* applies, and the circuit court should be affirmed.

II. Any error in admitting Jackson's statements is harmless error.

Should this Court determine that the trial court erred in admitting Jackson's statements, this Court must determine whether such error was harmless error.

A. Legal principles

In *State v. Harvey*, 2002 WI 93, ¶ 51, 254 Wis. 2d 442, 647 N.W.2d 189, the supreme court held that, for an error to be deemed harmless, the party who benefited from the error must show that "it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error." As the party benefitted by the error, the State bears the burden of showing the error was harmless. *State v. LaCount*, 2008 WI 59, ¶ 85, 310 Wis. 2d 85, 750 N.W.2d 780. An "error is harmless if the beneficiary of the error proves 'beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'" *State v. Mayo*, 2007 WI 78, ¶ 47, 301 Wis. 2d 642, 734 N.W.2d 115. This Court must be satisfied, beyond a reasonable doubt, that the jury would have arrived at the same verdict had the error not occurred. *See Harvey,* 254 Wis. 2d 442, ¶ 46.

B. The trial court's admission of Jackson's statements, if taken in violation of *Miranda*, was harmless.

Assuming an error, the trial court's admission of Jackson's statements was harmless because it is clear beyond a reasonable doubt that a rational jury would have found Jackson guilty absent the error.

Jackson argues that, without his statements to police, the State had insufficient evidence to convict him. (Jackson's Br. 15.) According to Jackson, the only substantial evidence of his guilt was his own words. (*Id.*) He notes that the gun was never recovered, there were no witnesses to the accidental

shooting, the casing found was not linked to any weapon in Jackson's possession, and Officer Becker found no powder burns. (*Id.*) But there was other evidence at trial that indicates the overall strength of the State's case was strong. *See Mayo*, 301 Wis. 2d 642, ¶ 48 (noting that a factor to consider whether an error is harmless is the overall strength of the State's case).

At trial, the State introduced several photographs indicating that Jackson's wound was self-inflicted. Exhibits 1 through 5 were photographs of Jackson's injury. (R. 79:96.) Exhibits 6 through 12 were photographs of Mitchell's vehicle. (R. 79:106.) Officer Becker testified that "with the evidence of the car where he was seated, it was a downward trajectory, it wasn't from the outside. It wasn't from far away. It went right through his leg, right into the seat, and hit the bottom of the seat, so it's more up and down than on an angle." (R. 79:119.) Becker testified that, in addition to Jackson's confession, the wound itself and the evidence left behind in the car led him to believe that he is positive it was a self-inflicted gunshot wound. (R. 79:121.) When asked on cross-examination, "Now, you're positive this is a self[-]inflicted gunshot wound?" Becker, responded, "I am positive, yes." (R. 79:120.)

Further, as the State argued during closing, Jackson's defense was unbelievable. *See Mayo*, 301 Wis. 2d 642, ¶ 48 (providing that the nature of the defense is a factor courts can consider when determining harmless error). The State argued:

> [Y]ou have to believe that [Jackson] agreed to meet a known pill popper . . . with his kids in the back of the car.
>
> You have to believe that when this known pill popper pulled out a gun on [Jackson his] first instinct was to reach his hands into his pockets because he told you he didn't think the guy was going to shoot him.

> You have to believe that after being shot in the leg in broad daylight in a public place in front of his three children [Jackson] didn't call the police.
>
> You have to believe that he called his wife but didn't tell her who shot him. You have to believe that instead of going straight to the hospital . . . just down the road . . . he instead drove his children . . . to . . . [s]chool. . . .
>
> And it wasn't until after dropping the children off that he noticed that he was bleeding profusely and decided he needed to go to the hospital.

(R. 81:29–30.) As the State established in its closing, Jackson's story was incredible and required numerous unjustified leaps of logic.

The overall strength of the State's case was strong, even without Jackson's testimony, and the nature of the defense was unpersuasive, even incredible. Accordingly, any error in admitting Jackson's confession was harmless error.

CONCLUSION

This Court should affirm the trial court's denial of Jackson's motion to suppress his statements and affirm his judgment of conviction.

Dated this 8th day of August, 2018.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 5,258 words.

Dated this 8th day of August, 2018.

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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 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 Wis. Stat. § 809.19(12).

I further certify that:

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

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Dated this 8th day of August, 2018.

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