

**RECEIVED**

**08-16-2018**

**CLERK OF COURT OF APPEALS  
OF WISCONSIN**

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT I  
CASE NO: 2018 AP 0000896-CR

---

STATE OF WISCONSIN,  
Plaintiff-Respondent

vs.

WILLIAM LESTER JACKSON.  
Defendant-Appellant

---

ON NOTICE OF APPEAL TO REVIEW A JUDGMENT  
OF CONVICTION ENTERED ON OCTOBER 25, 2017 BY  
MILWAUKEE CIRCUIT COURT JUDGE CHRISTOPHER DEE

---

BRIEF AND APPENDIX OF APPELLANT DEFENDANT

---

MICHAEL S. HOLZMAN  
ROSEN AND HOLZMAN LTD.  
400 W. MORELAND 3C  
WAUKESHA, WI. 53188  
WIS BAR NO. 1012492

## TABLE OF CONTENTS

### PAGE

ARGUMENT.....	1
I.. DEFENDANT-APPELLANT’S CONFESSION WAS THE RESULT OF <u>UNMIRANDIZED</u> CUSTODIAL INTERROGATION.....	1
II. WITHOUT THE CONFESSION THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A CONVICTION BEYOND A REASONABLE DOUBT. THE CASE SHOULD BE DISMISSED.....	6
CONCLUSION.....	7

### CASES CITED

<u>Miranda vs. Arizona</u> , 348 U.S. 436(1966).....	2,4,5, 6,8
<u>New York vs. Quarles</u> , 467 U.S. 649, 104 S.Ct. 2626(1984).....	3,4
<u>State vs. Camacho</u> , 170 Wis. 2d 53, 487 NW2d 67(1992).....	4
<u>State vs. Stearns</u> , 178 Wis. 2d 845, 506 NW2d 165 (Ct. App. 1992).....	2,3
<u>State vs. Uhlenberg</u> , 2013 WI APP 59, 348 Wis. 2d 44. 831 NW2d 799.....	4

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT I  
CASE NO: 2018 AP 000896-CR

---

STATE OF WISCONSIN,  
Plaintiff-Respondent

vs.

WILLIAM LESTER JACKSON,  
Defendant - Appellant

---

ON NOTICE OF APPEAL TO REVIEW THE JUDGMENT  
OF CONVICTION ENTERED IN MILWAUKEE COUNTY ON OCTOBER 25,  
2017, THE HONORABLE CHRISTOPHER DEE, PRESIDING

---

REPLY BRIEF OF DEFENDANT APPELLANT

---

ARGUMENT

I. DEFENDANT-APPELLANT'S CONFESSION WAS THE RESULT OF A CUSTODIAL  
INTERROGATION

In responding to the State's arguments it is necessary to point out certain facts that do not seem to be in dispute. These include:

- Defendant-Appellant was in police custody and not free to go when he provided his incriminating statements to Detective Becker..
- At the time he made his incriminating statements Mr. Jackson had not been read his Miranda rights.
- At the time he questioned Mr Jackson, Det.. Becker did not believe his version of the offense saying it did not make sense. He asked him what really happened. (72:28).
- Only after Mr. Jackson was accused of, in effect, lying to the police, did he tell the real story--- that the wound was self inflicted.
- The “chaotic” atmosphere of the hospital had nothing to do with Mr. Jackson’s shooting. Neither officer testified that there was any indication that Mr. Jackson was shot by or was involved with any of these other shootings. (72:54).
- Since Det. Becker did not believe that Mr. Jackson’s first story of the shooting was true. He clearly believed that defendant had lied to the police.
- Detective Becker checked for gunpowder residue on Mr. Jackson’s pants because he did not believe his story .

Here , however, any semblance of an agreement stops. The State argues, as does the trial Judge, that Det. Becker’s questioning about what really happened was only done to avert further injury and to protect the public. Respondent refers to several cases, most notably, State vs. Stearns that conclude that the Miranda requirement may be waived if the police questioning is necessary for the public safety.

A. There was no immediate threat to the public safety which was great enough to justify defendant’s detention and the denial of his constitutional rights.

The facts of the cases cited in Respondent’s Brief establish that the threat to the public safety which permits this exception to Miranda rights must be an immediate one and not a speculative one. The public safety exception may only be raised in a “supercharged”

situation where the interrogation is necessary to defuse a dangerous and violent situation. State vs. Stearns, 178 Wis. 2<sup>nd</sup> 845, 506 NW 2d 165(Ct. App. 1992). In Stearns the police had barricaded the defendant in a building . He was armed and apparently held hostages. The Police had to take immediate action to talk with the defendant to save the lives of the hostages and prevent further violence. The threat to the public safety in the facts of the present case was at worst speculative and did not involve Mr. Jackson. He was the victim , not the dangerous perpetrator in this case.. Initially, he was not suspected of having a firearm. Since he was chained to a hospital bed he could not possibly be a threat to anyone. Further to allege that there was a crazed gunman in the community randomly shooting Mr. Jackson and others is mere conjecture. These facts are unlike the facts in Stearns where the threat was real and immediate.. There were no others for the police to protect in Mr. Jackson's case . The chaos and shootings in the hospital did not involve Mr. Jackson. The trial court erred by attempting to bootstrap Mr. Jackson's shooting with these other unrelated shootings in order to create a false public safety exception. Unlike the facts in Stearns, the facts in this case did not create an immediate threat to the community which would entitled Det. Becker to disregard Mr. Jackson's constitutional rights and illegally question him.

The other cases cited by respondent in support the court's use of the public safety exception all describe dangerous situations in which an immediate response to protect the public was necessary. The facts of the present case are not nearly so egregious. In New York vs. Quarles , 467 U.S. 649, 104 S.Ct. 2626(1984) the police arrested a rape suspect who had just entered a supermarket carrying a gun. The suspect had an empty holster. Without reading him his rights ,

the police asked him where the gun was and Quarles pointed to the weapon which was then recovered by police. The Supreme Court held that the officer did not violate Miranda by asking where the gun was because there was an “immediate need to determine the location of the missing gun.” Quarles, 467 U.S.655-0659. In the present facts there was no immediate need to further question defendant to find a weapon or to defuse a supercharged situation. Defendant-Appellant apparently had no knowledge of where the gun was located or who had shot him. There was no evidence that there was a random shooter in the community creating a danger to the public. Defendant Jackson was supposedly a victim not a perpetrator. The public safety exception does not apply in these facts.

The facts of the other cases cited by respondent are similarly confined to more immediate and serious threats to the public than those in this case. In State vs. Camacho 170 Wis. 2d 53, 487 Wis 2d 67(1992), a police officer was shot and the police asked the arresting officer where the gun was without reading him his rights. In the facts of Camacho, where there is an armed and dangerous suspect involved in a shooting the public safety exception did clearly apply. On the other hand, the facts of this case do not involve such a direct threat to the public safety.

Similarly in State vs. Uhlenberg, 2013 WI APP 59, 348 Wis 2d 44, 831 NW2d 799, there was an immediate threat to the life of a private individual which necessitated a private safety exception to the Miranda rules. In Uhlenberg, the Defendant had asserted his constitutional rights but was then observed attempting to commit suicide while in custody. To defuse the situation and protect his life, the police engaged in discussions with Defendant which led to an

incriminating statement. These statement were admitted as evidence under the private safety exception to Miranda. This exception permits waiver of Miranda rights when a individual's life is in danger. In Uhlenberg there was clearly an immediate need to stop Defendant's self harm. In these circumstances, the police could properly avoid honoring defendant's prior invocation of Miranda. Here, the immediate harm to the community or to Mr. Jackson is speculative at best. The facts of this case do not necessitate any immediate action by the police to stop violence or avoid danger. Neither the public nor the private safety exceptions apply to these facts and the court erred by relying on them to deny the suppression motion.

To justify the detention of Mr. Jackson (who was a victim/witness not a perpetrator) in these circumstances through the public safety exception would greatly broaden the public safety exception to unreasonable, dangerous levels. Here, there was no immediate danger to the public safety. To detain Mr. Jackson based upon these speculative fears of danger denied him his constitutional rights and expanded the use of this exception to virtually every situation in which the police doubted a witness's veracity. The Motion to Suppress should have been granted.

B. The questions asked by Det. Becker were calculated to elicit an incriminating response.

Respondent also argues that the statements of Det. Becker were not interrogation and not calculated to elicit an incriminating response. This argument is not supported by the facts. When Det. Becker interrogated Defendant the second time, he clearly believed that Defendant had lied to the police in his first version of the incident. He told Mr. Jackson that his version of the incident was not the "real story" and that "it did not make any sense." The detective then



asked Defendant to tell him what really happened. When Defendant responded to these questions, he admitted that he had in fact lied to the police in his first version of the incident. Testimony at the suppression hearing establishes that defendant-Appellant had also provided the police a false name . Mr Jackson could easily have been charged with obstruction of justice . Det. Becker's questions were calculated to elicit an incriminating response—that he had lied to the police. Det. Becker erred by asked these questions which would establish defendant's obstruction of justice without first reading him his constitutional rights pursuant to Miranda.

Taken in their totality, the words and actions of Det.. Becker intended to elicit a response from defendant which would either incriminate him in the shooting or prove his obstruction of justice or both.

Based upon the foregoing, Det. Becker interrogated defendant in an attempt to admit to a crime, including obstruction of justice. Further, due to the remote and speculative nature of the danger to the community in these circumstance, this interrogation was not subject to the public safety exception to the Miranda rules.

The Trial Court erred by not granting Defendant-Appellant's Motion to Suppress.

II. WITHOUT THE CONFESSION THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A CONVICTION BEYOND A REASONABLE DOUBT. THE CASE SHOULD BE DISMISSED.

Respondent argues that if the confession had been suppressed there would still be enough evidence to justify the jury's verdict of guilt beyond a reasonable doubt. Unfortunately, this conclusion is not supported by the evidence submitted at trial. The gun was not recovered. Defendant's three children each testified that someone else had shot defendant. The .380 casing

that was recovered from Defendant's vehicle was not linked to any weapon in defendant's possession. Det Becker did not discover powder burns when he examined Defendant's pants. (The Detective testified that presence of these powder burns would be an indication of a close range/ self inflicted shooting.)

Becker also testified that the downward trajectory of the wound / bullet supported the theory that the wound was self inflicted. On the other hand, the downward trajectory of the bullet could have been caused by a third party who fired down at defendant. Additionally, Det. Becker is not an expert in bullet trajectories.. Notwithstanding this, an examination of the record establishes that the key evidence against defendant at trial was not Detective Becker's speculative assessment of the bullet's trajectory bu the incriminating statements of Mr. Jackson himself.

Given the fact that there were three eyewitnesses to support defendant's statement, and none to the contrary, as well as the absence of powder burns, it is reasonably probable that if the confession had been suppressed the outcome of the trial would have been different.

Based upon these facts, Defendant-Appellant requests that the Court of Appeals reverse the Judgment of Conviction and enter a Judgment of Acquittal in this matter. In the alternative, Mr. Jackson requests that the court vacate the Judgment of Conviction and remand this matter for a new trial in which Defendant's statements are excluded.

### CONCLUSION

Based on the foregoing, the trial court erred by denying the Motion to Suppress filed by

defense counsel. First, it is not in dispute that defendant was chained to a bed and in custody for approximately two hours. Second, the police continued to question Mr. Jackson, saying they did not believe him without advising him of his rights. The police did this knowing that defendant had lied about his name and the incident. Their questioning was calculated to elicit incriminating responses. Finally, the police's UnMirandized questioning of defendant is not entitled to the protections of the public safety exception to the Miranda rules. There was no immediate, serious threat to the public as in the previously cited cases which would justify the broadening of the public safety exception to these facts.

The admission of this confessions was not merely harmless error, as argued by Respondent. Without Defendant's confession, the State had very little if any evidence of guilt, only the conclusions of the impact of a bullet's trajectory by a non expert witness.

Defendant-Appellant respectfully requests that this court vacate the judgment of conviction and dismiss this case. In the alternative, Defendant-Appellant requests that the Court vacate the Judgment of Conviction and remand the case for a new trial in which Defendant's statements are excluded.

Dated this 14<sup>th</sup> day of August, 2018 in Waukesha, Wisconsin.

Respectfully Submitted,

SSMichael S. Holzman  
Michael S. Holzman  
Attorney for Defendant-Appellant  
Wis. Bar No. 1012492

Rosen and Holzman Ltd.  
400 W. Moreland#C  
Waukesha, Wi. 53188  
1-262-544-5803

CERTIFICATION

I HEREBY CERTIFY THAT THE Reply Brief of the Appellant-Defendant William Lester Jackson in the matter of State vs. William Lester Jackson,, Case No., 2018 AP 000896-CR conforms to the rules contained in Wis. Stats. Sec. 809.19(b)© for an Appellant's Reply Brief produced with a proportional font and the length of the Reply Brief is 8 pages. The brief contains 2231 words.

Dated this 14<sup>th</sup> day of August, 2018 in Waukesha, Wisconsin.

SS///Michael S. Holzman  
Attorney for Defendant-Appellant

CERTIFICATION

I HEREBY CERTIFY that the text of the e-brief of Defendant-Appellant's Reply Brief in the matter State vs. William Lester Jackson, Case No. 2018 AP 000896-CR is identical to the text of the paper brief filed in the same case.

Dated on this 14<sup>th</sup> day of August, 2018 in Waukesha, Wisconsin.

SS//Michael S. Holzman  
Michael S. Holzman  
Attorney for Defendant-Appellant