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STATE OF WISCONSIN
IN COURT OF APPEALS
DISTRICT II
CASE NO. 2018AP2319-CR

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MANUEL GARCIA,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT OF CONVICTION IN THE CIRCUIT
COURT OF RACINE COUNTY, THE HONORABLE MICHAEL PIONTEK, PRESIDING

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

Russell D. Bohach
State Bar No. 01016627
4284 Raymir Place
Wauwatosa, Wisconsin 53222
(414) 429-9197
Attorney for Defendant-Appellant

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MANUEL GARCIA,

Defendant-Appellant.

STATEMENT OF ISSUE

- I. DID THE TRIAL COURT COMMIT ERROR WHEN IT ALLOWED THE USE OF MANUEL GARCIA'S STATEMENT TO THE POLICE TO BE USED BY THE PROSECUTION DURING THEIR CASE IN CHIEF?

ANSWERED BY TRIAL COURT: NO

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

There is no need for oral argument in this matter as the issue involves the application of well settled law.

Publication is not necessary because this case involves the application of well settled law to facts that are unique to this matter.

STATEMENT OF THE CASE

This appeal results from a jury trial and sentencing which occurred in the Circuit Court of Racine County the

Honorable Michael Piontek presiding. Manuel Garcia was arrested on March 12, 2010 concerning a First Degree Reckless Homicide that occurred on that same date in the City and County of Racine State of Wisconsin. A complaint was filed on March 15, 2010 alleging First Degree Reckless Homicide. A Preliminary Hearing was held on April 1, 2010 and the defendant waived his preliminary hearing. An arraignment was held on that same date, and a not guilty plea was entered.

Between April 1, 2010, and September 8, 2014, numerous court proceedings were held but most importantly the court heard a motion to suppress the defendant's statement given to police on the date of the alleged homicide.

Judge Wayne Marik, heard testimony concerning the suppression issue beginning on August 22, 2011, and concluding with his ruling on January 11, 2013. That issue was revisited by Judge Michael Piontek prior to trial, and following the court's decision, the trial in this matter began on September 8, 2014. The trial concluded on September 11, 2014 and on that date the jury found the defendant guilty of First Degree Reckless Homicide as charged in the information.

Sentencing was held on November 7, 2014 to a total term of 50 years in the Wisconsin State Prison system, with 40 years of Initial Confinement and 10 years of Extended Supervision. Post-Conviction motions were filed by the

defendant on March 28, 2018, and those Post-Conviction motions were denied by the court by order of September 20, 2018. A Notice of Appeal was filed on December 3, 2018.

STATEMENT OF THE FACTS

J.E.M., the minor child with the date of birth of 1/22/08, was the victim of a homicide on or about March 12, 2010 in the City and County of Racine, State of Wisconsin. (1-2). It was alleged that the defendant struck the victim a number of times in and around the stomach and back area resulting in perforated intestines, lacerated liver, pancreas, and broken ribs. It was also established that the child died of those injuries, and the cause of death was ruled homicide by physical abuse of a child. (1-2).

Shortly after the child's death, members of the Racine Police Department interviewed a number of individuals, including Manuel Garcia. Appendix 103-140. During the questioning of Manuel Garcia, he admitted that he punched the child in the side and the back, and that eventually he threw child on the bed and the child struck the wall. Appendix 103-140. The mother testified to the child's date of birth, and indicated that the defendant had dropped the child off with the mother in the evening because the child was not feeling well. (77; 60-64). The mother testified that while trying to feed the child the child stopped breathing and that the

child was turning blue. (77; 60-64). The defendant and the mother drove to the hospital and eventually the child died at the hospital. (77-67).

Manual Garcia gave a statement to the police discussing various alternative theories with respect to the child's injuries, but eventually gave a statement in which he admitted punching the child and throwing the child onto a mattress.

The statement was the subject of extensive litigation including a Motion to Suppress which was originally heard by Judge Wayne Marik. The court took testimony on several occasions, and ultimately on January 11, 2013, the court issued a ruling that concluded that Mr. Garcia did not knowingly or intelligently waive his Miranda rights and for that reason the state was barred from using that statement as part of its Case in Chief. (59; 1-39).

Prior to the trial, the judge assigned to the case changed, and ultimately the Honorable Michael Piontek was the presiding judge over this matter. Judge Piontek revisited Judge Marik's ruling in a series of court appearances, and ultimately on September 8, 2014 Judge Piontek reaffirmed Judge Marik's rulings suppressing Mr. Garcia's statement as part of the State's Case in Chief. (76; 1-30). The court also determined that should a defense expert, Dr. Shuman

testify, the state would be allowed to utilize Mr. Garcia's statement as part of its cross-examination of the expert. (76; 1-35). Based upon the court's ruling the defense did not call Dr. Shuman as a witness.

During the trial, defense counsel cross-examined Detective Brad Spiegelhoff. (77; 142-192). Following the cross examination, the state moved the court for an order allowing the state to utilize Mr. Garcia's statement as part of its case in chief based upon the cross-examination of Detective Spiegelhoff. (77; 182-184).

Following the review of transcripts and arguments by counsel the court reversed its prior ruling and the ruling made by Judge Marik, and allowed the state to utilize Mr. Garcia's statement as part of its case in chief. The state did utilize the statement that Mr. Garcia made to detectives, in which he admitted punching and throwing the victim. (78; 1-30, 40-45).

On September 11, 2014, the jury returned a verdict of guilty against Manuel Garcia with respect to the charged offense. (32-1).

ARGUMENT

I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT ALLOWED THE USE OF MANUEL GARCIA'S STATEMENT TO THE POLICE TO BE USED BY THE PROSECUTION DURING THEIR CASE IN CHIEF.

Manuel Garcia gave a statement to members of the Racine Police Department on March 12, 2010 in which he admitted striking the victim several times. That statement was tantamount to an admission given the inter-relationship between Mr. Garcia's statement, and the findings of the autopsy and subsequent testimony of the doctors. That statement was also the subject of extensive litigation which took place over a period of four years and was ruled upon by two different Circuit Court judges. (59; 1-39, 75; 1-35). The statement was ruled inadmissible by both Judge Wayne Marik and Judge Michael Piontek based upon the finding that the defendant did knowingly and voluntarily waive his Miranda rights on the date in question, based upon his inability to understand English. (59-34; 76; 1-30). Both judges restricted this ruling to the use of the statement during the state's Case in Chief. Judge Piontek also determined that should the defense call an expert pathologist, the state would be allowed to utilize Mr. Garcia's statement as part of its cross-examination of the defense expert. (76; 1-35). It was also assumed that should Mr. Garcia decide to testify during the defense portion of the case, that the state would be able to utilize the statement as part of its cross-examination or as part of its rebuttal. Beyond those parameters, Judge Piontek did not place any other restrictions on the defense nor did the judge outline any other scenarios in which the state would be allowed

to utilize the statement.

The state called Detective Brad Spiegelhoff as a witness during its case in chief. Detective Spiegelhoff conducted a significant portion of the investigation into the death of the victim in this matter, and also was the individual who took the aforementioned statement made by Mr. Garcia on March 12, 2010.

Following Detective Spiegelhoff's direct testimony, defense counsel cross-examined Detective Spiegelhoff regarding various aspects of his investigation. Based on certain questions asked by defense counsel, the state again moved the court to allow it to utilize Mr. Garcia's statement as part of its case in chief. The state argued that somehow the defense inquiry into various aspects of the investigation opened the door by questioning the credibility of Detective Spiegelhoff.

The court reviewed the questioning by defense counsel and ultimately ruled that it would be manifestly unfair to the state to have the jury hear about Detective Spiegelhoff's investigation and/or lack of investigation, without the state being able to present its theory of why the Detective did not complete certain portions of the investigation. It was the state's theory that once Detective Spiegelhoff had an admission from Mr. Garcia the police stopped investigating other potential causes of death. The judge found that this area of questioning allowed the state to utilize the defendant's previously suppressed statement as

part of the case in chief. The suppression of the statement was litigated and decided based upon the applicable law. It is the position of Garcia that Judge Piontek committed error when he determined that the simple act of cross-examining of the state's witness somehow resulted in a situation where a previously suppressed statement could now be utilized.

Mr. Garcia concedes that the question of whether the court committed error turns upon the court's interpretation of the cross-examination of Detective Spiegelhoff by defense counsel. This is mainly a review of whether there existed sufficient facts from which the court could have determined that defense counsel's questioning was so egregious so as to deprive Mr. Garcia of his Constitutional right.

The appellate courts determined the appropriate standard of review on numerous occasions. The courts have essentially utilized three standards of review depending upon the nature of the inquiry to be made. Those standards of review are:

"(1) a review in court will not overturn findings of fact unless clearly erroneous. (2) a review in court will sustain a discretionary decision that is the product of a rational mental process by which the facts of record and law relied upon or stated and considered together for the purpose of achieving a reasoned and reasonable determination. (3) a review in court will decide questions of law independently of the Circuit Court but benefitting from its analysis." **State v. Brown, 2005 WI 29 Sec. 7**

In this case it is argued that the appropriate standard is a combination of (1) and (2) outlined above. Brown supra @ **Sec. 7.** This is essentially a factual finding made by the trial court. It is the position of Mr. Garcia that the court's determination that the cross-examination allowed for the reversal of a previously suppressed statement, was clearly erroneous. In addition, the court's reasoning was not outlined sufficiently so that the Appellate Court could determine that it was a product of a rational mental process utilizing facts of record and law.

The right against self-incrimination is one of the most valuable and fundamental rights afforded an individual who has been arrested and accused of a crime. The question of whether an incriminating statement made by a defendant should be admitted involves the determination of whether an individual knowingly and with full understanding waived his right against self-incrimination. In this case the admissibility determination centered around a determination as to whether the defendant knowingly and intelligently waived his Miranda rights. Miranda v. Arizona, 86 Sct 1602 (1996), State v. Lee, 175 Wis. 2nd 348 (1993). The state bears the burden to demonstrate that Mr. Garcia knowingly and intelligently waived his privilege against self-incrimination and his right to counsel. Miranda supra. Judge Wayne J. Marik held an extensive motion hearing on the issue of whether Mr. Garcia waived his Miranda rights prior to the

statement that he made to detectives at the Racine Police Department in which he admitted his role in the death of the victim in this matter. At the conclusion of testimony and argument which included briefing and research, Judge Marik succinctly found that the statement that the defendant gave to members of the Racine Police Department could not be used as part of the state's case in chief. Judge Marik stated,

" based upon the application of that objective standard, the court does conclude that the prima fascia showing of a valid waiver has been rebutted on this record. And it further concludes that Mr. Garcia did not understandingly, knowingly or intelligently waive his Miranda rights on the date in question. For that reason, the motion of the state to use his custodial statement as evidence has part of its case in chief would be and is denied at this time." (59-34)

Judge Marik's ruling was revisited by Judge Michael Piontek and Judge Marik's ruling was reaffirmed. (76; 1-30). Judge Piontek did carve out one exception to the rulings suppressing Mr. Garcia's incriminating statement. Judge Piontek indicated that should the defense call any expert in the field of pathology, then the state could utilize Mr. Garcia's statement to cross-examine that expert. Judge Piontek did not carve out an exception which would prohibit the defense from cross-examining any of the prosecution witnesses. Judge Piontek did not carve out an exception prohibiting the defense from presenting a competent defense by way of witnesses (other

than a pathologist), and effective cross-examination of the state's witnesses.

The trial proceeded, and defense counsel cross-examined the lead investigator, Detective Brad Spiegelhoff. The cross-examination was straight forward and sought to illicit from Detective Spiegelhoff the various areas of inquiry that Racine Police Department made into the death of the victim in this matter. The cross-examination elicited testimony regarding several areas of investigative inquiry which were not made by the Racine Police Department. The mere fact that someone confessed to a crime, does not and should not cease all investigation into potential other areas of inquiry regarding the commission of the crime. Detective Spiegelhoff was prohibited from answering the defense questions by stating that Mr. Garcia had confessed. However, that is part of the penalty the state paid by not assuring what Mr. Garcia knowingly and intelligently waived his Miranda warnings before they began to question him without counsel.

The defense was not prohibited from cross-examining any of the state's witnesses by either Judge Marik's or Judge Piontek's original rulings. The cross-examination by defense counsel did not nibble around the edges of Mr. Garcia's statement but rather specifically asked the detective whether certain facts made known to the Racine Police Department were

looked at as part of their homicide investigation. Judge Piontek in his second ruling on September 10, 2014 recited several of the areas of cross-examination that somehow troubled him. (78; 4-11). The court recognized that the cross-examination was completely proper. (78-10).

Judge Piontek then somehow felt that the proper cross-examination done by defense counsel created a situation in which Mr. Garcia's right to not incriminate himself without a knowing and voluntary waiver of his Miranda rights could be stripped away. His reasoning was that somehow the state should have an ability to explain the lack of collateral investigation by the Racine Police Department. The penalty the state paid due to the suppression of Mr. Garcia's statement was exactly that they were prohibited from explaining away the lack of collateral investigation done by the Racine Police Department. Pointing out to the jury that lack of investigation does not create a situation in which a valuable Constitutional right can be waived and rulings by the Judge Pionteck were made without a good basis in fact or law.

Judge Piontek then inexplicitly began to re-evaluate whether the defendant had knowingly and intelligently waived his Miranda rights. Judge Piontek went through the custodial interrogation and the precursor to that interrogation, Mr. Garcia's waiver of his Miranda rights. The facts surrounding

Mr. Garcia's lack of understanding with respect to the waiver of his Miranda rights did not change merely because certain questions were asked. Judge Piontek did not provide a complete and thorough analysis of why the cross-examination questions somehow changed the facts that surrounded the original improper waiver of Mr. Garcia's Miranda rights. The court also did not articulate on the record why the questions asked by defense counsel were so egregious as to require that a well reasoned ruling by Judge Marik needed to be overturned.

Judge Piontek did not address the defendant's lack of understanding with respect to the waiver of his Miranda rights. Judge Piontek's ruling does not explain why the cross-examination questions which were not prohibited by any prior court ruling, somehow required the court to allow the use of the statement which had been elicited by improper police tactics. Judge Piontek's rationale was as follows:

"apparently Judge Marik had trouble with his, you know, his English comprehension and made the ruling that he did which, you know, is -- the ruling in this case.

So applying those facts, that is, the questions asked by Mr. Saldana which are totally appropriate in proper cross-examination and subject to proper argument at the time the jury hears the closing arguments of counsel, considering the impression that the jury would receive from those questions and that argument, I find that the defense has made a strategic decision on how far it went in cross-examination - - and that's totally appropriate - - that is how to handle various witnesses.

But too - - from a fundamental fairness perspective to not allow the jury, and they are the fact finders, to hear Inspector Spiegelhoff's reasoning or rationale behind his decision to not investigate further would cause the jury to be mislead period.

I believe it would be manifestly unfair to have the jury hear just that side of it and not allow the investigator, because of Judge Marik's ruling, to explain it. This did not have to be an issue in controversy. There are other avenues, strategic avenues, that could be explored.

You know, but it offends me that a jury would be mislead in to believing that somehow the investigator did not do his job when that is really at the behest of the defense to not allow him to explain why he took the actions he did." (78; 21-22).

The sum total of Judge Piontek's argument is that he did not like the fact that the state could not utilize Mr. Garcia's statement and in the end found a way to allow that statement to be presented to the jury.

Judge Piontek's decision is not supported by the facts as shown by the cross-examination of Detective Spiegelhoff or the law that creates a penalty for the state when the police improperly interrogate an individual. The right against self incrimination is a Constitutional right. In order for an individual to incriminate themselves they must make a knowing and voluntary determination to waive their right against self-incrimination. Judge Marik's spent a tremendous amount of time determining the issues surrounding the statement Mr. Garcia made to the members of the Racine Police Department. He determined that Mr. Garcia did not knowingly and intelligently

waive his Miranda rights. Judge Piontek upheld that ruling, and put one constriction on the defense. Judge Piontek did not put any other constrictions on defense counsel's ability to properly cross-examine witnesses. The cross-examination conducted by counsel did not call into question the investigative techniques by the Racine Police Department, but rather made an inquiry as to whether the detective investigated all possible causes and manners of death. Even in a situation where the confession has been procured, the lead investigator should explore all avenues that the evidence leads to in order to determine that an injustice does not occur. The proper cross-examination of the state's witnesses should not and can not be the basis to overturn a well reasoned decision suppressing an individual's statement which was gathered without a proper waiver of their Miranda rights. The court's determination to allow a confession to be heard by a jury after that confession was suppressed, was erroneous and not supported by the facts in this case. The defendant's statement to police should have remained suppressed, and the failure to do so constituted reversible error. Based upon that error, Mr. Garcia requests that the Judgment of Conviction in this matter be vacated, and the matter remanded for a new trial.

CONCLUSION

Based upon the argument set forth above, it is respectfully requested that the Court of Appeals vacate the Judgment of Conviction in this matter, reverse the jury's verdict as a matter of law, and remand the matter to the Circuit Court of Racine County for proceedings consistent with the court's ruling.

Dated at Milwaukee, Wisconsin this ____ day of June 2019

Respectively submitted,

Russell D. Bohach
State Bar No. 01016627
Attorney for Defendant-Appellant

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in 809.19(9) (b) and (c) for a brief and appendix produced with the monospaced font. The length of this brief is 16 pages.

Dated at Milwaukee, Wisconsin this _____ day of June 2019.

Respectively submitted,

Russell D. Bohach
State Bar No. 01016627

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 S. 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.

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 _____ day of June 2019.

Russell D. Bohach

APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with 809.19 (2) (a) Stats. And that contains:

- (1) A table of contents;
- (2) Relevant trial court record entries;
- (3) The findings or opinion of the trial court; and
- (4) Portions of the record essential to an understanding of the issues raised, including oral or written rulings for decisions showing the trial court's reasoning regarding those issues.

I hereby 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 first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record that have been so reproduced to preserve confidentiality and with appropriate references to the record.

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.

Dated at Milwaukee, Wisconsin, this ____ day of June 2019.

Respectively submitted,

Russell D. Bohach
State Bar No. 01016627

APPENDIX

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