STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2018AP2319-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MANUEL GARCIA,

Defendant-Appellant.

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

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Did the circuit court erroneously permit the State to introduce Defendant-Appellant Manuel Garcia's previously excluded inculpatory statements on redirect examination of a witness—Investigator Brad Spiegelhoff of the Racine Police Department—after Garcia cross examined him about his failure to fully investigate certain injuries the victim allegedly sustained before the victim's death?

The circuit court permitted the State to introduce Garcia's inculpatory statements, concluding that Garcia had opened the door by suggesting that Investigator Spiegelhoff had conducted a shoddy investigation and that it would mislead the jury to not allow Investigator Spiegelhoff to explain how Garcia's confession led him not to investigate other injuries.

This Court should affirm.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. This Court can resolve this case by applying settled legal principles to the facts.

INTRODUCTION

In March of 2010, Garcia beat his girlfriend's two-year-old son, J.E.M., to death. As police investigated the child's death, they arrested and interviewed Garcia. During the interview, Garcia confessed that he had punched J.E.M. in the abdomen multiple times and thrown him onto a bed.

During protracted pretrial litigation, the Racine County Circuit Court, the Honorable Wayne J. Marik, presiding, ruled that Garcia's confession was voluntary and was not the result of police misconduct, but further concluded that Garcia—who is not a native English speaker—demonstrated

that he did not understand his *Miranda* rights when he waived them before police questioning. The circuit court therefore concluded that the State would not be permitted to present Garcia's confession during its case-in-chief, but the court reserved the possibility that the State would be permitted to present the evidence in rebuttal.

At trial, Garcia questioned Spiegelhoff at length about his failure to investigate certain incidents in which J.E.M. may have been injured. Outside of the jury's presence, the State requested that it be allowed to rehabilitate Spiegelhoff by introducing Garcia's confession as the reason police did not investigate these incidents further. Over Garcia's objection, the court granted the State's request, reasoning that although Garcia's questioning was proper, it was likely to mislead the jury if left unrebutted. The State presented the confession, and the jury convicted Garcia of first-degree reckless homicide.

Garcia now appeals, arguing that the circuit court's admission of his confession was improper. Contrary to precedent and sound policy, he suggests that he should have been allowed to mislead the jury as a "penalty" for the State failing to ensure his *Miranda* waiver was knowing and intelligent. This Court should adhere to precedent, which instructs that the exclusionary rule is not absolute in the case of all *Miranda* violations. The circuit court properly concluded that the police did not engage in any misconduct when eliciting Garcia's confession and that Garcia's questioning would likely mislead the jury. This Court should affirm.

STATEMENT OF THE CASE

In the early morning hours of Friday, March 12, 2010, Racine Police Investigator Brad Spiegelhoff responded to a call of a deceased 26-month-old child—J.E.M.—at Wheaton Franciscan Hospital. (R. 1:1.) Spiegelhoff interviewed J.E.M.'s mother, L.M., who reported that Garcia told her that

J.E.M. had vomited earlier in the day on Thursday and that J.E.M. did not seem to be hungry throughout the day. (R. 1:1.) J.E.M. was "acting a little sick," so L.M. gave him some Tylenol around 8:00 p.m. (R. 1:1–2.) Garcia got home around 11:30 p.m., and a short time later, L.M. noticed that J.E.M. was cold, and his lips were turning blue. (R. 1:2.) She called to Garcia, who attempted CPR. (R. 1:2.)

Spiegelhoff and Racine County Medical Examiner Tom Terry also interviewed Garcia. (R. 1:2.) Garcia told them that he watched J.E.M. while Martinez was at work during the week. (R. 1:2.) When Spiegelhoff asked Garcia whether anything happened that could explain J.E.M.'s injuries, Garcia related two incidents. (R. 1:2.) First, Garcia claimed that J.E.M. had fallen down three stairs on Wednesday afternoon, "possibly hitting his back and [the] back of his head." (R. 1:2.) Second, Garcia said that on Thursday afternoon, J.E.M. jumped from Garcia's truck, "possibly striking the running board and then falling onto the ground." (R. 1:2.) Spiegelhoff later testified that this conversation happened entirely in English and that Garcia did not seem to have any difficulty understanding or communicating. (R. 56:12.)

Spiegelhoff later learned from Terry and forensic pathologist Dr. Linda Biedrzycki that J.E.M. had experienced kidney failure, perforated intestines, a lacerated liver and pancreas, and broken ribs. (R. 1:1; 56:15.) Dr. Biedrzycki told Spiegelhoff that the injuries were caused by blunt force trauma to the chest and abdomen and that a simple fall could not have caused injuries that significant. (R. 1:1.) Spiegelhoff then went to Garcia and L.M.'s home and took them into custody. (R. 1:2; 56:17.)

At the police station, Spiegelhoff had Garcia read a notification and waiver of rights form. (R. 56:19.) After reading the form, Garcia signed it, indicating that he understood his rights and wished to speak with Spiegelhoff.

(R. 1:2; 56:30.) "Within a couple of minutes, Garcia was crying and apologizing for what had happened." (R. 1:2.) Garcia admitted that he became frustrated with J.E.M. while trying to get ready for work on Thursday and punched J.E.M. two or three times, then threw him onto a mattress before punching him again. (R. 1:2.) Garcia said he punched J.E.M. in the chest, on the back by his kidneys, on the side of his body, and on the front right side of his abdomen. (R. 1:2.)

The State charged Garcia with first-degree reckless homicide on April 1, 2010. (R. 3:1.) During pretrial proceedings, the State moved to admit Garcia's confession at trial. (R. 9:1.) The circuit court held a series of hearings over the course of the next two years to determine whether Garcia's statements were admissible under *Miranda*[1] and *Goodchild*[2]. (R. 56; 57; 58; 59; 62.) The hearings included testimony from Spiegelhoff (R. 59:7–9) and Garcia (R. 59:9–11), as well as expert testimony related to Garcia's capacity to understand the English language. (R. 59:15–28.)

Following the hearings and written arguments by the parties, the circuit court delivered an oral ruling. (R. 59:1.) The court reviewed the voluminous testimony collected during the hearings and concluded that the State had made a prima facie showing that Garcia waived his *Miranda* rights, but further determined that Garcia had successfully rebutted the State's showing and demonstrated that he did not understand his rights when he waived them. (R. 59:35.) The court therefore denied the State's motion to use Garcia's confession as a part of its case in chief. (R. 59:35.) The court

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

[2] *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

noted, however, that its ruling had "no effect upon use for rebuttal purposes." (R. 59:36.)

A jury trial began on September 8, 2014.[3] (R. 76:1.) On the second day of trial, Spiegelhoff testified about his involvement with the case and the investigation into J.E.M.'s death. (R. 77:142.) While cross examining Spiegelhoff, Garcia asked a series of questions that evoked answers indicating that police investigators did not follow up on an incident at a laundromat in which J.E.M. allegedly fell from a laundry cart. (R. 77:163–168.) Garcia also asked questions that suggested that the police did not investigate anything that happened the Wednesday before J.E.M.'s death, and that they did not thoroughly investigate Garcia's claim that J.E.M. fell down some stairs at the house. (R. 77:169–180.)

After Garcia completed cross examination, the State requested a sidebar. (R. 77:182.) Outside of the jury's presence, the State argued that Garcia had "gone to great lengths to challenge the credibility and the job done by Investigator Spiegelhoff." (R. 77:182.) The State argued that this questioning opened the door to Garcia's confession because explaining why the police did not investigate certain things—they already had Garcia's confession—was the only way to rehabilitate Spiegelhoff's credibility as a witness. (R.77:182.) The court noted that some of Garcia's questions caused it some concern. (R.77:183.) The court deferred ruling on the State's request until it had the opportunity to review the transcript.

The next morning, the court returned to the State's request. (R. 79:3.) The court began by reciting Garcia's cross examination of Spiegelhoff. (R. 79:5–10.) The court then commented that it was "absolutely proper cross-examination." (R. 79:10.) The court noted that the State did

[3] The Honorable Michael J. Piontek presided over the trial.

not object to the questioning, but further explained that the issue was whether the questioning "opened the door or, put it in legal terms, put the issue into controversy as to whether or not the investigator can explain why he didn't investigate these things." (R. 79:10.)

The court then reviewed the transcript of Garcia's confession. (R. 79:13–18.) The court noted that Judge Marik's initial ruling on the admissibility of the confession did not mention the *Goodchild* portion of the inquiry related to voluntariness. (R. 79:19.) The court further acknowledged Judge Marik's statement that the court's ruling had "no effect upon use for rebuttal purposes." (R. 79:19.) The court continued, "So Judge Marik's aware of the Miranda Goodchild law rules. And he indicated no effect upon use for rebuttal purposes which again leads me to conclude that Judge Marik had no issue with the voluntariness of the statement." (R. 79:19–20.) Finally, the court noted, "The reason that's important again is because if it's nonvoluntary, it doesn't matter how the State seeks to use it. If it's voluntary, the State can use it under certain circumstances." (R. 79:20.) The court agreed with Judge Marik's determination that the confession was voluntary. (R. 79:20.)

The court concluded that while Garcia's questioning of Spiegelhoff was proper, "from a fundamental fairness perspective to not allow the jury, and they are the fact finders, to hear Investigator Spiegelhoff's reasoning or rationale behind his decision to not investigate further would cause the jury to be misled. Period." (R. 79:21.) The court called it offensive "that a jury would be misled into 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 that he did." (R. 79:22.) The court continued, "the only way for him to do that is to explain that he had this statement in hand, what the statement said, and he felt he didn't need to go any further with looking for other

potential causes." (R. 79:22.) The court therefore ruled that the State would be allowed to recall Spiegelhoff as a witness and ask questions related to Garcia's confession. (R. 79:22.)

The State recalled Spiegelhoff, who testified that he did not follow up on certain aspects of the investigation because he had already received a "plausible explanation of the injuries" from Garcia and explained Garcia's confession. (R. 79:30.) The State then played a portion of Garcia's videorecorded interview with police for the jury. (R. 79:31.) In due course, the jury found Garcia guilty of first-degree reckless homicide. (R. 80:86.) The court sentenced Garcia to 40 years of initial confinement and 10 years of extended supervision. (R. 35:1.)

Garcia now appeals.

STANDARD OF REVIEW

Determinations as to the admissibility of evidence are generally "left to the discretion of the circuit court." *State v. Dunlap*, 2002 WI 19, ¶ 31, 250 Wis. 2d 466, 640 N.W.2d 112. This Court will not disturb the circuit court's discretionary decision to admit or exclude evidence unless the circuit court applied an improper legal standard or the facts of record fail to support the circuit court's decision. *State v. Ringer*, 2010 WI 69, ¶ 24, 326 Wis. 2d 351, 785 N.W.2d 448.

ARGUMENT

The admission of Garcia's confession was proper.

A. Circuit courts have discretion to admit voluntary confessions obtained in violation of *Miranda* in certain circumstances.

It is well established that custodial statements made by a defendant without his being given the proper *Miranda* warnings are generally inadmissible in the State's case-in-

chief. *State v. Knapp*, 2003 WI 121, ¶ 114, 265 Wis. 2d 278, 666 N.W.2d 881 ("*Knapp I*"), *vacated and remanded*, 524 U.S. 952 (2004), *reinstated in material part*, 2005 WI 127 ¶ 2, 285 Wis. 2d 86, 700 N.W.2d 899 ("*Knapp II*"). But statements obtained in violation of *Miranda* are admissible in certain circumstances because "the exclusionary rule is not absolute, but rather is connected to the public interest, which requires a balancing of the relevant interests." *Knapp II*, 285 Wis. 2d 86, ¶ 23. It is equally well established, for example, that the State may use such statements for the limited purposes of impeachment and rebuttal as long as the statements were voluntary. *See Knapp I*, 265 Wis. 2d 278, ¶ 114 (citing *Harris v. New York*, 401 U.S. 222 (1971)). In such cases, the usual standards for trustworthiness of evidence apply; while involuntary statements are not considered trustworthy, "failure to comply with *Miranda* [is] not enough to destroy the reliability or the trustworthiness of the statements." *Upchurch v. State*, 64 Wis. 2d 553, 563, 219 N.W.2d 363 (1974). *See also Harris*, 401 U.S. at 224. Voluntary statements obtained in violation of *Miranda* "are barred from use only during direct examination." *State v. Franklin*, 228 Wis. 2d 408, 416, 596 N.W.2d 855 (Ct. App. 1999) (citation omitted).

The admissibility of evidence is typically a matter for the trial court's discretion. *State v. Brewer*, 195 Wis. 2d 295, 305, 536 N.W.2d 406 (Ct. App. 1995). Moreover, under the "rule of completeness," parties are permitted to introduce evidence "necessary to provide context and prevent distortion." *State v. Eugenio*, 219 Wis. 2d 391, 412, 579 N.W.2d 642 (1998). The idea is to prevent one party from presenting an inaccurate description and creating a misleading impression of a matter through the admission of partial evidence taken out of context. *Id.* at 409. *See also State v. Sharp*, 180 Wis. 2d 640, 654, 511 N.W.2d 316 (Ct. App. 1993).

B. The circuit court properly exercised its discretion when allowing the State to introduce Garcia's confession.

Here, the circuit court properly exercised its discretion[4] when it allowed the State to introduce Garcia's confession in response to his questioning of Spiegelhoff. The court began by reviewing the exchange between Garcia and Spiegelhoff during cross examination. (R. 79:5–10.) The court commented that the questioning put Garcia in a position to argue that the police had conducted a "completely shoddy" investigation without giving the State the opportunity to explain to the jury why Spiegelhoff did not conduct a more thorough investigation. (R. 79:10.) The court then reviewed Garcia's confession to confirm that Garcia gave it voluntarily, thus verifying that it would be admissible under the right circumstances. (R. 79:13–18.)

With all of that in mind, the court turned to the public interest in not allowing Garcia to mislead the jury. (R. 79:21–22.) The court stated, "from a fundamental fairness perspective to not allow the jury, and they are the fact finders, to hear Investigator Spiegelhoff's reasoning or rationale behind his decision to not investigate further would cause the jury to be misled. Period." (R. 79:21.) The court went on to state its belief that "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." (R. 79:21–22.) The court noted that Garcia made a strategic decision to attack the investigation, and that it did not have to be "an issue in controversy." (R. 79:22.) The court called it offensive "that a jury would be misled into believing that somehow the investigator did not do his job when that is really at the behest

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[4] Although this case involves Garcia's constitutional rights under *Miranda*, Garcia concedes that the question is whether the circuit court's decision was "clearly erroneous." (Garcia's Br. 9.)

of the defense to not allow him to explain why he took the actions that he did," and stated that the only way for Spiegelhoff to explain himself was by allowing him to tell the jury that he already had Garcia's confession in hand. (R. 79:22.)

The court's comments evince the deliberative process that is the hallmark of a proper exercise of discretion. The court thoroughly reviewed the relevant material and decided that Garcia's questions opened the door to his confession in the interest of giving the jury the full picture. Even though the decision implicated Garcia's rights under *Miranda*, it was proper and in line with Wisconsin and federal precedents. For example, *Knapp II* explained that the exclusionary rule is not absolute and that statements obtained in violation of *Miranda* may nevertheless be admissible when the balance of the "relevant interests" dictates. *Knapp II*, 285 Wis. 2d 86, ¶ 23. *See also Harris*, 401 U.S. at 224; *Wold v. State*, 57 Wis. 2d 344, 354–55, 204 N.W.2d 482 (1973). Here, the court determined that the relevant interest of avoiding the jury being misled warranted admission of Garcia's confession.

In one instructive case, the State was allowed to elicit testimony about the defendant's pre-*Miranda*-warning silence because his lawyer "opened the door" to that issue while cross examining a police officer who had arrested the defendant. *State v. Brecht*, 143 Wis. 2d 297, 313, 421 N.W.2d 96 (1988). Specifically, defense counsel in *Brecht* elicited testimony that the defendant had told the arresting officer that he "wanted to talk to someone," and that the defendant had said "it was a 'big mistake,'" though the defendant did not explain to the officer what he meant by "big mistake." *Id.* at 314. Although testimony about a defendant's pre-*Miranda*-warning silence is generally inadmissible during the State's case-in-chief, the supreme court held that the State properly elicited testimony on that subject during its redirect examination of the officer. *Id.* at 313–14. The court reasoned

that "[b]ecause Brecht's counsel initially raised the issue of Brecht's silence when under arrest, the State was free to subsequently elicit [the officer's] testimony on Brecht's silence during arrest on redirect." *Id.* at 314. The court suggested that the State's redirect was a "fair response." *Id.* (quoting *United States v. Robinson*, 485 U.S. 25 (1988)).

Essentially the same thing happened here. Here, like in *Brecht*, the defense lawyer's cross examination of a police officer "opened the door" to allow the State to ask the officer on redirect about a topic that was generally inadmissible under the *Miranda* line of cases. Defense counsel here "opened the door" to Garcia's confession by cross examining Spiegelhoff about the limited nature of his investigation. The circuit court here properly let the State ask Spiegelhoff about the confession on redirect because that testimony was a fair response to Garcia's cross examination of Spiegelhoff.

Moreover, the rule of completeness supports the circuit court's decision. The Wisconsin Statutes permit circuit courts to allow the introduction of evidence in a manner that "[m]ake[s] the interrogation and presentation effective for the ascertainment of truth." Wis. Stat. § 906.11(1). For example, in *Eugenio*, the Wisconsin Supreme Court upheld a decision allowing the State to present evidence of the victim's truthfulness "necessary to provide context and prevent distortion" during its case-in-chief. *Eugenio*, 219 Wis. 2d at 412. The court arrived at this decision by acknowledging the codification of the "rule of completeness" in Wis. Stat. § 906.11. *Id.* The court went on to note, "'Inherent within this concept [of the rule of completeness] is the notion that fairness should prohibit a party from presenting an inaccurate depiction of an event through the admission of partial evidence which is taken out of context.'" *Id.* at 408–09 (alteration in original) (quoted source omitted). In another case, the rule of completeness allowed the State to introduce a child victim's inadmissible hearsay statements to

interviewers to fairly rebut the defendant's cross examination of the child, which "implied" that "incompleteness or inconsistency within and among the interviews indicated improper influence on the child's testimony." *Sharp*, 180 Wis. 2d at 658.

The "fairness" language in *Eugenio* is striking for its similarity to the language of the challenged decision in this case, where the court stated that "it would be manifestly unfair to have the jury hear just that side of it and not allow the investigator . . . to explain it." (R. 79:21–22.) And, like the defendant's implication in *Sharp* that interviews with the victim were incomplete, Garcia's cross examination of Spiegelhoff implied that the police investigation into the victim's death was incomplete. The circuit court here properly used its discretion when it allowed the State to fairly respond to that implication.

Garcia's argument, at its core, seems to be summed up in this way: "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." (Garcia's Br. 12.) In other words, Garcia argues that *Miranda* should act as a sword for the defense rather than a shield. His interpretation would create windfalls for defendants who make un-*Mirandized* statements by allowing them to mislead juries without penalty. Garcia does not provide any precedent to support this radical notion. (Garcia's Br. 10–15.) Indeed, case law is clear that the response to a *Miranda* violation is not to grant the defendant a license to mislead the jury, but rather to prohibit the State from introducing the confession unless the defense puts it at issue. *See Harris*, 401 U.S. at 224; *Knapp II*, 285 Wis. 2d 86, ¶ 23; *Wold* 57 Wis. 2d 356. It is a fact of litigation that a defendant's decision to pursue certain defense strategies may leave him vulnerable on other issues. *See, e.g.*, *Ohler v. United States*, 529 U.S. 753, 759–60

(2000) (discussing defendants' weighing of pros and cons when deciding whether to testify). Here, Garcia pursued a defense strategy of attacking the investigation into J.E.M.'s death, and the circuit court responded by properly exercising its discretion by allowing the jury to understand the full picture.

CONCLUSION

For the reasons set forth above, the State requests that this Court affirm Garcia's judgment of conviction.

Dated this 20th day of August 2019.

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 3,556 words.

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JOHN A. BLIMLING
Assistant Attorney General

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

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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 20th day of August, 2019.

_____
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