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SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2020AP345-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANNE E. STRECKENBACH,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

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INTRODUCTION

During a traffic stop, Appleton Police Officer Jason Schmitz developed reasonable suspicion that Defendant-Appellant-Petitioner Anne E. Streckenbach was intoxicated. Officer Schmitz investigated further by asking Streckenbach a series of questions and then having her perform standard field sobriety tests, which Streckenbach failed. A preliminary breath test reported Streckenbach's blood alcohol content to be .130, and eventual blood testing revealed it to be .156. After denial of a motion to suppress the evidence, Streckenbach pleaded no contest to her second OWI offense, and the court of appeals affirmed her conviction.

Streckenbach now asks this Court to review her case. She claims that review is appropriate so that this Court can weigh in on the extent to which police can question a criminal suspect before her arrest consistent with Article I, Section 8 of the Wisconsin Constitution. But this is a settled area of law that does not require this Court's attention. The State therefore opposes Streckenbach's petition for review.

DISCUSSION

This Court should deny the petition because it does not meet the criteria set forth in Wis. Stat. § (Rule) 809.62(1r).

Streckenbach argues that this Court should review her case primarily because this Court has never determined what limitations the Wisconsin Constitution places on the ability of police officers to question a suspect before her arrest. (Pet. 6.) This, she claims, justifies this Court's review pursuant to Wis. Stat. § (Rule) 809.62(1r)(c). Contrary to Streckenbach's assertions, however, this Court's review is not necessary to provide "clarity" in the law.

This Court generally considers the protections afforded by Article I, Section 8 of the Wisconsin Constitution and the

protections afforded by the Fifth Amendment to the United States Constitution to be consistent with one another. *See State v. Halverson*, 2021 WI 7, ¶ 26, 395 Wis. 2d 385, 953 N.W.2d 847; *see also State v. Bartelt*, 2018 WI 16, ¶ 30, 379 Wis. 2d 588, 906 N.W.2d 684, *State v. Edler*, 2013 WI 73, ¶¶ 29–30, 350 Wis. 2d 1, 833 N.W.2d 564 (acknowledging an exception to this general rule but “declin[ing] to extend the meaning of Wisconsin Constitution Article I, Section 8 in this situation so as to provide different protection than the Fifth Amendment to the United States Constitution”); *State v. Stevens*, 2012 WI 97, ¶ 40, 343 Wis. 2d 157, 822 N.W.2d 79. This makes sense considering the language of the two provisions is nearly identical. *See Stevens*, 343 Wis. 2d 157, ¶¶ 37, 39.

To be sure, a state is free to afford more protection to criminal suspects under its own constitution than the federal Constitution does. *See State v. Doe*, 78 Wis. 2d 161, 171, 254 N.W.2d 210 (1977). And Streckenbach is correct: Wisconsin has done so in the past. *See State v. Knapp*, 2005 WI 127, ¶ 73, 285 Wis. 2d 86, 700 N.W.2d 899 (holding that the Wisconsin Constitution prohibits the introduction of physical evidence obtained as a result of a deliberate violation of *Miranda*, contrary to *United States v. Patane*, 542 U.S. 630 (2004)).

Streckenbach’s argument falls apart, however, with the suggestion that *Knapp* completely untethered the interpretation of Article I, Section 8 from its federal counterpart. *Knapp* is the only instance where this Court has held that Article I, Section 8 deviates from the Fifth Amendment. Indeed, this Court arrived at its decision in *Knapp* “guardedly.” *Knapp*, 285 Wis. 2d 86, ¶ 74. And subsequent decisions such as *Halverson* demonstrate that this Court still considers the two provisions to be largely consistent.

That leaves, then, the question of whether the law, in its current state, sufficiently addresses situations like

Streckenbach's. It does. Streckenbach does not argue that Officer Schmitz unlawfully extended his seizure of her to ask the questions.¹ The only argument she advances is that Officer Schmitz should have been required to read her the *Miranda* warnings before asking her the series of questions. But it is well settled that the *Miranda* warnings are required only when a suspect is subject to "custodial interrogation." See, e.g. *State v. Lonkoski*, 2013 WI 30, ¶ 2, 346 Wis. 2d 523, 828 N.W.2d 552. Likewise, the standard for whether a person is "in custody" for purposes of *Miranda*—the totality of the circumstances—is settled. See *id.* ¶ 6. The court of appeals simply applied these principles to this case when it concluded that Streckenbach was not "in custody" for *Miranda* purposes—and therefore was not required to be given the related warnings—when Officer Schmitz questioned her. (Pet-App. 109–10.)

The law *is* clear; Streckenbach simply does not like the outcome and so she asks this Court to accept review and create a new rule that will allow her to escape criminal culpability. This Court should decline her invitation.

¹ Streckenbach's petition is somewhat confusing on this point, however. The petition focuses on self-incrimination and Article I, Section 8 of the Wisconsin Constitution, but makes an argument related to *Berkemer v. McCarty*, 468 U.S. 420 (1984), *State v. Gammons*, 2001 WI App 36, ¶ 18, 241 Wis. 2d 296, 625 N.W.2d 623, and the Fourth Amendment. (Pet. 15–17.) Nevertheless, because the issue presented concerns only Article I, Section 8 of the Wisconsin Constitution (Pet. 3), the State believes Streckenbach has conceded there was no Fourth Amendment violation.

CONCLUSION

For the reasons discussed, this Court should deny Streckenbach's petition for review.

Dated this 19th day of January 2022.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rule) 809.19(8)(b) and 809.62(4) (2019–20) for a response produced with a proportional serif font. The length of this response is 888 words.

Dated January 19, 2022.

Respectfully submitted,



JOHN A. BLIMLING

Assistant Attorney General

**CERTIFICATE OF COMPLIANCE WITH
WIS. STAT. §§ (RULE) 809.19(12) and 809.62(4)(b)
(2019–20)**

I hereby certify that:

I have submitted an electronic copy of this response, excluding the appendix, if any, which complies with the requirements of Wis. Stat. §§ (Rule) 809.19(12) and 809.62(4)(b) (2019–20).

I further certify that:

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

A copy of this certificate has been served with the paper copies of this response filed with the court and served on all opposing parties.

Dated January 19, 2022.

Respectfully submitted,



JOHN A. BLIMLING

Assistant Attorney General