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**SUPREME COURT**

STATE OF WISCONSIN  
  
IN SUPREME COURT

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No. 2023AP2102

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In the interest of K. R. C., a person under the age of 18:

STATE OF WISCONSIN,

Petitioner-Respondent,

v.

K. R. C.,

Respondent-Appellant-Petitioner.

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**RESPONSE TO PETITION FOR REVIEW**

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Petitioner-Respondent State of Wisconsin opposes Respondent-Appellant-Petitioner's petition for review on the following grounds:

1. The petition doesn't satisfy this Court's criteria for review. This case presents issues of *Miranda* custody and the voluntariness of statements, both of which are governed by well-established tests. (Pet. App. 11–12, 14–16.)

Kevin's<sup>1</sup> pitch for review exclusively focuses on the *Miranda* issue. (Pet. 5–7.) He asks this Court to grant review “to apply the *Miranda* ‘reasonable person’ custody standard to a child.” (Pet. 5.) As a preliminary matter, the law is settled on this issue: “a child's age properly informs the *Miranda* custody analysis.” *J.D.B. v. North Carolina*, 564 U.S. 261, 265 (2011). Nevertheless, Kevin submits that guidance is necessary because there's “no published case in Wisconsin that applies the *J.D.B.* reasonable child standard.” (Pet. 6.) But he's wrong. In *State v. Kruckenberg*, 2024 WI App 45, ¶¶ 84–91, 413 Wis. 2d 226, 11 N.W.3d 131, the court of appeals recently applied *J.D.B.* in determining whether a juvenile was in custody for *Miranda* purposes.<sup>2</sup>

Even if Kevin was right that Wisconsin lacked a published decision applying *J.D.B.*, it doesn't follow that guidance is needed on this totality-of-the-circumstances issue. Between this case and *In re J.T.M.*, No. 2015AP1585, 2016 WL 3884577, ¶¶ 11–21 (Wis. Ct. App. July 19, 2016) (unpublished), Wisconsin now has two unpublished but citable opinions applying *J.D.B.*'s “reasonable child”

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<sup>1</sup> Pseudonym. (Pet. 4.)

<sup>2</sup> The State's petition for review in *Kruckenberg* (2023AP396-CR) is currently pending before this Court. In *Kruckenberg*'s response to the petition, he flagged that he would argue a *Miranda* custody issue if review were granted, thereby triggering *J.D.B.* Response to Petition for Review at 23 n.11, *State v. Kruckenberg*, No. 2023AP396-CR (Wis. Sept. 25, 2024).

standard, with each case coming out differently. Thus, this isn't a situation where lower courts are overlooking *J.D.B.*'s holding. And Kevin doesn't suggest that lower courts are taking conflicting approaches toward applying the standard. (Pet. 5–7.) Simply stated, Kevin hasn't raised a significant question of constitutional law or shown that law development is necessary. (Pet. 5–7.)

When stripped of the argument that guidance is needed on how to apply *Miranda*'s "reasonable person" standard to a child, Kevin's petition merely seeks error correction.<sup>3</sup> He's asking this Court to apply well-settled law to the facts of this case and reach a different conclusion from the court of appeals. (Pet. 14–21.) But in general, this Court doesn't engage in error correction, because its primary purpose is law development. *See Blum v. 1st Auto & Cas. Ins. Co.*, 2010 WI 78, ¶¶ 47, 50, 326 Wis. 2d 729, 786 N.W.2d 78.

2. Even if this Court did engage in error correction, there is no error to correct. The court of appeals correctly considered the totality of the circumstances—including Kevin's age ("Kevin's youth weighs in favor of . . . custody") and the use of school resource officers—in determining that Kevin wasn't in custody when he made incriminating statements to police. (Pet. App. 12–14.) Ultimately, the "very short" duration of the interviews (ten minutes and two to three minutes, respectively), together with a lack of restraint and a "prominently displayed sign . . . inform[ing] Kevin that

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<sup>3</sup> While Kevin also submits that review is warranted "to address the role of 'school resource officers' in investigating children," he offers little explanation why. (Pet. 6–7, 26–28.) The court of appeals properly factored the use of school resource officers into its analysis, finding that some aspects of the officers' presence favored a finding of custody. (Pet. App. 12–14.) It did not hold or suggest that school resource officers should "be given a free pass on *Miranda* warnings." (Pet. 27.)

he could leave if he wished,” tipped the scales in favor of the State. (Pet. App. 13–14.)

The court of appeals’ decision fits comfortably within *Miranda* custody case law. In particular, that a free-to-leave sign with “easily readable letters” was “positioned at Kevin’s eye level” just “one foot away from” his chair strongly favors a finding of no custody. (Pet. App. 13); *See State v. Quigley*, 2016 WI App 53, ¶ 40, 370 Wis. 2d 702, 883 N.W.2d 139 (stating that free-to-leave advisements are “highly probative” of non-custody). While Kevin argues that this critical fact “is either irrelevant or factors toward a finding of custody” because there’s no evidence that he saw the sign, he offers no law supporting his position. (Pet. 18.) Indeed, the law doesn’t favor him on this point: courts are required to consider the totality of the circumstances in assessing *Miranda* custody, and the test is objective—it “involves no consideration of the ‘actual mindset’ of the particular suspect subjected to police questioning.”<sup>4</sup> *J.D.B.*, 564 U.S. at 270–71. Thus, the court of appeals properly considered how the sign would affect a reasonable person in Kevin’s position. (Pet. App. 13.)

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<sup>4</sup> Notably, there’s no evidence that Kevin observed things like Officer Tobison’s “full uniform” or the officer’s positioning between “Kevin and the door,” yet Kevin argues that these facts are fair game. (Pet. 17–18.)

## CONCLUSION

This Court should deny Kevin's petition for review.

Dated this 6th day of January 2025.

Respectfully submitted,

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Electronically signed by:

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### **FORM AND LENGTH CERTIFICATION**

I hereby certify that this response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a response produced with a proportional serif font. The length of this response is 841 words.

Dated this 6th day of January 2025.

Electronically signed by:

Kara L. Janson  
KARA L. JANSON

### **CERTIFICATE OF EFILE/SERVICE**

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Supreme Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 6th day of January 2025.

Electronically signed by:

Kara L. Janson  
KARA L. JANSON