STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Appeal Case No. 2024AP1976-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

JEREMY A. SOBOTIK,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE CIRCUIT COURT FOR WAUKESHA COUNTY, BRANCH V, THE HONORABLE PRESIDING J. ARTHUR MELVIN, III, TRIAL COURT CASE NO. 23-CT-160

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication, as the arguments are fully developed in the parties' briefs, and the issues presented involve the application of well-established principles to the facts presented.

STANDARD OF REVIEW

The denial of a suppression motion is analyzed under a two-part standard of review: the circuit court's findings of fact are upheld unless they are clearly erroneous, and this Court independently reviews whether those facts warrant suppression. State v. Scull, 2015 WI 22, ¶16, 361 Wis. 2d 288, 862 N.W.2d 562.

ARGUMENT

Despite confusing the issue in the defense filing, the appropriate legal analysis in this case is whether the defendant was in custody at the time of questioning and whether the defendant's statements were voluntary. Article 1 section 8 of the Wisconsin Constitution states that, "No person may … be compelled in any criminal case to be a witness against himself." There are 89 citations to Miranda in the annotation of this constitutional section. Miranda v. Arizona, 384 U.S. 436, 444 (1966). The law provided by defense in State v. Knapp is misplaced, as the circumstances of that case included the state conceding to the fact that the detective violated Miranda intentionally. State v. Knapp, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899. The case is informative, however, in that the court's inquiry began with a Miranda analysis. This is where this Court should begin as well.

I. BECAUSE THE DEFENDANT WAS NOT SUBJECT TO A CUSTODIAL INTERROGATION, AND BECAUSE HIS STATEMENTS WERE VOLUNTARILY GIVEN, THE TRIAL COURT'S DENIAL OF THE DEFENSE MOTION TO SUPPRESS STATEMENTS AND THE BLOOD DRAW SHOULD BE UPHELD

The trial court found that the state met its burden of proof on this issue, and showed by a preponderance of the evidence that the defendant was not in custody. State v. Fischer, 2003 WI App 5, ¶22, 259 Wis. 2d 799, 656 N.W.2d 503. The two parts of the Miranda analysis required the court to analyze whether the defendant was in custody, and whether there was an interrogation. Id. The state conceded that the requirements of an interrogation were met in the interview at issue with the defendant. Therefore, in this case the analysis focused on whether the defendant was in custody.

Although a seizure may occur where a reasonable person does not believe they are free to leave under a Fourth Amendment analysis, that does not necessarily equate to "custody" under a Fifth Amendment analysis. Whether someone is free to leave is a necessary but not determinative first step in establishing Miranda custody. State v. Bartelt, 2018 WI 16, ¶30, 379 Wis. 2d 588, 906 N.W.2d 684. This rationale underlies the lack of a Miranda warning requirement in the context of a traffic stop, or during a search warrant execution. Berkemer v. McCarty 468 US 420 (1984); State v. Kilgore 2016 WI App 47, 370 Wis. 2d 198, 882 N.W.2d 493. Even an inmate in a prison setting has been found to not meet the custody requirement under the Fifth Amendment. State v. Halverson 2021 WI 7 ¶¶ 27-28, 395 Wis. 2d 385, 953 N.W.2d 847.

What is required is a formal arrest or restraint on freedom of movement to a degree associated with a formal arrest. Stansbury v. California, 511 U.S. 318, 322 (1994). It is an objective test that requires consideration of the totality of the circumstances in determining whether a reasonable person would feel free to terminate the interview and leave the scene. State v. Martin, 2012 WI 96, ¶33, 343 Wis. 2d 278, 816 N.W.2d 270. When determining the custody issue, the Court of Appeals indicated that relevant factors include the defendant's freedom to leave the scene and the purpose, place, and length of the interrogation. State v. Leprich, 160 Wis.

2d 472, 477, 465 N.W.2d 844 (Ct. App. 1991). More relevant factors outlined in State v. Gruen, 218 Wis. 2d 581, 582, 582 N.W.2d 728 (Ct. App. 1998) are,

> (1) whether the defendant was handcuffed;
> (2) whether a gun was drawn on the defendant;
> (3) whether a Terry frisk was performed;
> (4) the manner in which the defendant was restrained;
> (5) whether the defendant was moved to another location;
> (6) whether the questioning took place in a police vehicle; and
> (7) the number of police officers involved.

The fact that an investigation has focused on the defendant does not create custody for Miranda purposes. State v. Lonkoski, 2013 WI 30, ¶¶33-35, 346 Wis. 2d 523, 828 N.W.2d 552. Additionally, the place where the interview took place, even if it is a police station, is not dispositive in a custody analysis. Id. at ¶28.

Importantly, the subjective view of law enforcement does not create custody for Fifth Amendment purposes. See State v. Mosher 221 Wis. 2d 203, 584 N.W.2d 553 (Ct. App. 1998). The caselaw progeny beginning with Terry is clear that officers are allowed to conduct field questioning of citizens without Miranda. It is misplaced to claim the holding of State v. Knapp makes Officer Bublitz's subjective intentions to arrest Sobotik relevant to the custody inquiry in this case. In fact, the holdings in the Knapp case center around the detective's intentions to violate Miranda, not an intention to arrest Knapp. The court in Knapp made determinations in light of the detective's intentional Miranda violation aimed at deterring that type of bad police work. Thus the case is not compelling in the analysis here, where the officer did not intentionally or otherwise violate Mr. Sobotik's Miranda rights.

In fact, when discussing the remedy for Miranda violations on the part of police, the Court of Appeals has stated,

> "In the absence of actual coercion, the US Constitution does not require suppression of physical evidence obtained as a consequence of unwarned interrogation. The Wisconsin Constitution does require suppression of physical evidence obtained 'as a direct result of an intentional violation of Miranda,' but in the absence of coercion or

> intentional violation of the suspect's rights, there's no basis for suppressing physical evidence."

State v. Ezell 2014 WI App 101, ¶9, 357 Wis. 2d 675, 855 N.W.2d 453. The Ezell case is cited in the annotations of the constitutional section that defense would have this Court use to reverse the trial court's ruling in this case. Also cited is State v. Lonkoski, indicating that Miranda warnings are not required when custody is "imminent," but not in effect. Lonkoski at ¶¶38-39.

The trial court also implicitly found that the defendant's statements were made voluntarily, and not the product of coercion when denying the defendant's suppression motion.. In this analysis, the state met its burden at the trial court to prove the statements were voluntary by a preponderance of the evidence. State v. Lemoine 2013 WI 5, ¶17, 345 Wis. 2d 171, 827 N.W.2d 589. Although most voluntariness challenges are made in the context of a custodial interview, a voluntariness challenge can also be asserted regarding statements made by someone who is neither under arrest nor in Miranda custody. Id. at ¶33.

In determining whether a statement was voluntarily made, courts consider the totality of circumstances including all the facts surrounding the interview. Lemoine at ¶¶ 3, 14, 18, 37. Within the totality of circumstances, the essential inquiry is whether the confession was procured via coercive means or whether it was the product of improper pressures exercised by the police." State v. Clappes 136 Wis. 2d 222, 236 (1987); *citing* Barrera v. State, 99 Wis.2d 269, 291 (1980), *cert. denied* 451 U.S. 972 (1981). This inquiry is especially important in the case at hand where the defendant sought the suppression of not only the defendant's statements, but also his blood sample, which would require a coercion finding. State v. Ezell 2014 WI App 101, 357 Wis. 2d 675, 855 N.W.2d 453. There is a fundamental requirement that, "coercive or improper police conduct exist" before a finding of involuntariness can be made by this Court. State v. Hoppe 2003 WI 43, ¶37; *citing* State v. Connelly, 479 U.S. 157, 167 (1986). Stated another way, there has to be some "affirmative evidence of improper police practices deliberately used to procure a confession." State v. Clappes, 136 Wis.2d 222, 239, 401 N.W.2d 759 (1987). Only after that finding should the Court engage in a balancing test with regard to the personal characteristics of the defendant against the pressures imposed by police. Id.;

State v. Markwardt, 2007 WI App 242, ¶50, 306 Wis. 2d 420, 742 N.W.2d 546; State v. Albrecht, 184 Wis.2d 287, 301, 516 N.W.2d 776 (Ct. App. 1994).

In this case, because the defendant was not in custody for Miranda purposes, there was nothing unlawful about the officer's questions in this case and the order of the trial court should be affirmed. Officer Bublitz testified at the Motion Hearing and a copies of his body camera footage were entered into evidence as Exhibit 1 and Exhibit 2. (R51) Exhibit 2 is the portion of the case where Officer Bublitz reads the defendant the informing the accused form. Exhibit 1 is content from Officer Bublitz' arrival on scene and subsequent contact with the defendant. Officer Bublitz testified consistently with what is depicted in the body camera footage.

The testimony and body camera footage support the trial court's factual finding that the defendant was not in custody at the time he was questioned by Officer Bublitz. A formal arrest takes place after standardized field sobriety tests are completed. (R25 at 15:3-7) However the custody analysis outlined above focuses not only on a formal arrest, but also whether there was restraint on the defendant's freedom of movement to a degree associated with a formal arrest. Some relevant considerations listed above are worth commenting on here. There were two officers on scene of the traffic crash initially, Officer Bublitz who spoke with the defendant and another officer who spoke with the operator of the Toyota Camry. (R25 at 8:6-9). During the officer's discussion with the defendant he was never in handcuffs or restrained in any way. (R25 at 12:21 - 13:1). Officer Bublitz never yelled at the defendant, frisked him, moved him in a squad, or drew his sidearm while speaking with him. (R25 at 13:2-11). Officer Bublitz testified that he never threatened the defendant. (R25 at 13:14-16). The video evidence confirms the defendant was not being asked questions inside a squad car. (R51).

The trial court made a factual determination that the defendant was not in custody during the questioning at issue, and that factual finding is not clearly erroneous so it should be upheld. Support for this finding is found not only in the officer's testimony but also supported by the circumstances depicted in the body camera footage. (R51). The state underscores the fact

that officers are allowed to freeze a scene and investigate possible criminal activity by asking questions during a Terry stop without Miranda. Berkemer v. McCarty 468 US 420 (1984). That is exactly what happened in this case and therefore this Court should affirm that the Officer's field questioning in this case was lawful and appropriate. Officer Bublitz' ability to investigate an operating while impaired offense was not limited because of his understanding regarding restricted controlled substances (RCS), nor was his ability to investigate curtailed at a point in time when the defendant purports that probable cause existed to arrest Sobotik for an RCS violation.

The same facts noted above are also informative to the voluntariness analysis in this case. The general tone and respectful discussion that occurs between Officer Bublitz and the defendant in Exhibit 1 certainly underscores the fact the coercion was not used in this case, nor were there any undue pressures exerted by law enforcement to obtain the responses that were given. Officer Bublitz testified that the defendant was very cooperative on the scene. (R25 at 17:22-24). Officer Bublitz indicated that he never threatened the defendant with an arrest if he didn't answer questions, and he never used deception or misinformation during his discussion with the defendant. (R25 at 14:15-20) The lack of physical or psychological coercion in the case is evident on review of the officer's testimony and body camera footage, and thus the trial court's finding that Sobotik's statements were admissible should be upheld. Given the legal standard analyzed above, this case does not have the hallmark of "coercive or improper police conduct" which makes using an extreme remedy of suppression of physical evidence in this case inappropriate. Thus the trial court ruling should be upheld.

CONCLUSION

Based on the foregoing legal analysis and factual findings, this Court should affirm the circuit court's order denying Sobotik's motion to suppress.

Dated this 10th day of February, 2025.

Respectfully submitted,

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Electronically signed by : Abbey Nickolie
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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 word count of this brief is 2066.

Dated this 10th day of February, 2025

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