

COURT OF APPEALS

DISTRICT IV

APPEAL No. 2014A000915CR

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OF WISCONSIN

STATE OF WISCONSIN,

Plaintiff-Respondent

vs.

JODY A. BOLSTAD

Defendant-Appellant.

APPEAL FROM THE DECEMBER 3, 2013 FINAL
JUDGMENT OF THE
CRAWFORD COUNTY CIRCUIT COURT
IN CASE 2013CM06
THE HONORABLE JAMES P. CZAJKOWSKI
PRESIDING

PLAINTIFF-RESPONDENTS BRIEF

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STATEMENT OF THE CASE

On November 22, 2012, Wisconsin Conservation Wardens Dale Hochhausen (Hochhausen) and Tyler Strelow (Strelow) were working over a deer decoy in rural Crawford County when a maroon colored pick-up truck stopped in the road and the passenger in the vehicle took a shot at the decoy. (Tr. 9: 24 – 25, Tr. 10: 1 – 4). Warden Hochhausen made a traffic stop on this vehicle and identified the above-named Defendant-Appellant Jody Bolstad (Bolstad). (Tr. 23: 17 – 23).

Warden Hochhausen proceeded to obtain a written statement from Bolstad wherein Bolstad admitted to certain facts that led to the subject criminal charges being filed against him. Bolstad was seated in Warden Hochhausen's patrol truck when he provided this statement. After speaking with Bolstad, Bolstad exited the patrol truck, returned to the maroon truck he was originally stopped in, and left the area.

Based on previous knowledge and the statements by Bolstad, Wardens Hochhausen and Strelow proceeded to the residence of David Myhre. (Tr. 11: 1 – 10). Once at the Myhre residence, Warden Hochhausen proceeded to take a written

statement from Myhre, wherein Myhre admitted to certain facts that led to the criminal charges being filed against him. Myhre was seated in Warden Hochhausen's patrol truck when he provided this statement. After speaking with Myhre, Myhre exited the patrol truck and Wardens Hochhausen and Strelow departed the area.

Defendant-Appellants Bolstad and Myhre brought a Motion to Suppress their statements based on Miranda violations. On July 11, 2013, the Suppression hearing was held. In a written decision by the trial court, Bolstad's and Myhre's motions were denied.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not necessary in this case and publication is unavailable.

THE SUPPRESSION HEARING

Warden Dale Hochhausen testified. Warden Hochhausen testified that while at the scene of the traffic stop, after the decoy was shot and after Bolstad was identified, he wanted

to speak with Bolstad concerning some potential violation from the previous deer season. (Tr. 24: 2 – 5).

Warden Hochhausen testified that since there was a weapon involved in the shooting of the decoy, he first secured the weapon and the scene of the traffic stop for safety. (Tr. 24: 25, Tr. 25: 1 – 4). Again, since there was a weapon involved and shots were fired, after Bolstad exited the vehicle, Warden Hochhausen performed a pat-down of Bolstad's person. (Tr. 24: 21 – 22).

Warden Hochhausen stated that he secured the scene and waited approximately five (5) minutes for Warden Strelow to arrive at the scene, on foot, as back-up. (Tr. 25: 9 – 21).

Warden Hochhausen had previously testified that at this time, he was in full uniform, wearing a duty belt which included a firearm, handcuffs, and a radio (Tr. 11: 19 – 25, Tr. 12: 1 – 8), and was driving an unmarked patrol truck equipped with interior lights (Tr. 11: 11 – 16) as well as an armed shotgun rack, police radio, and computer (Tr. 35: 6 – 25, Tr. 36: 1 – 7).

Warden Hochhausen testified that he “asked [Bolstad] if he would sit in my squad truck and speak to me regarding some stuff regarding the past deer season . . .”. (Tr. 24: 12 – 14; Tr. 26: 16 – 18). Warden Hochhausen stated that Bolstad “walked over to my pickup truck and sat in the passenger seat while I sat in the driver’s seat”. (Tr. 24: 14 – 15; Tr. 26: 19 – 21). (See also Bolstad’s testimony at Tr. 71: 8 – 24.)

Warden Hochhausen testified that at no time was Bolstad handcuffed or restrained in any way. (Tr. 25: 5 – 13). (See also Warden Strelow’s testimony at Tr. 45: 2 – 8). (See also Bolstad’s testimony at Tr. 71: 20 – 21).

Warden Hochhausen testified that he told Bolstad that he was not under arrest (Tr. 26: 20 – 21), that he did not have to answer any questions (Tr. 26: 21) and that he could stop answering questions at any point (Tr. 26: 22).

This testimony by Warden Hochhausen was reiterated on cross-examination. (Tr. 36: 20 – 25, Tr. 37: 1 – 4).

Warden Hochhausen stated that Bolstad seemed to understand these statements (Tr. 26: 23 – 25, Tr. 1 – 5) and

Bolstad agreed to speak with and answer questions of Warden Hochhausen. (Tr. 27: 6 – 8).

Warden Hochhausen proceeded to take a written statement from Bolstad. Warden Hochhausen detailed how the statement was taken and how Defendant Appellant Bolstad came to make corrections and sign the statement. (Tr. 28 – 29). Bolstad conceded that the statement was voluntarily given to Warden Hochhausen (Tr. 73: 9 – 15).

Warden Hochhausen stated that after the statement was taken, Bolstad exited the patrol truck and was allowed to leave the scene of the traffic stop in the vehicle he arrived in. (See Warden Strelow's testimony at Tr. 45: 21 – 25). (See also Bolstad's testimony at Tr. 73: 16 – 23).

Warden Hochhausen testified that Bolstad was not given his Miranda warnings at any time during this procedure. (Tr. 31: 5 – 10). Further, Warden Hochhausen testified that at no time during this interview process did Bolstad request counsel or request that questioning cease. Warden Hochhausen testified that no threats, promises, or coercion was used to obtain these statements from Bolstad. (Tr. 32: 25, Tr. 33: 1 – 16).

As expected, Bolstad had different views of the same event.

Bolstad conceded that Warden Hochhausen did tell him he was “free to leave” (Tr. 65: 15 – 18), but that he also asked if he needed a lawyer, but was advised that he did not, (Tr. 65: 18 – 25), because he was not under arrest (Tr. 66: 1 – 3).

Bolstad testified that he was not told he was free to leave until after the interview (Tr. 67: 3 – 17) and that he did not feel that he was free to leave prior to that point (Tr. 67: 18 – 19), despite the admission that the Warden did not say anything to him that would have made him believe he was not free to leave (Tr. 70: 6 – 11).

Bolstad further claimed that he felt threatened with criminal charges and jail if he did not sign his statement (Tr. 68: 5 – 13) and that Warden Hochhausen apparently specifically told him that if he didn’t cooperate, he’d be arrested (Tr. 68: 23 – 25).

Bolstad testified that this interview process took approximately 2 ½ hours (Tr. 75: 7 – 16), although Warden Hochhausen testified on re-direct it was “an hour and a half, forty-five minutes” (Tr. 76: 7 – 12). Warden Hochhausen reiterated, again, that he told Bolstad he was “free to leave”

both before and after the interview, that he was told he was not under arrest, and that he did not have to answer any questions. (Tr. 77: 5 – 23).

TRIAL COURT DECISION

On August 9, 2013, the trial court issued a written decision denying Bolstad's motion to suppress.

The trial court made specific findings of fact concerning Bolstad.

The trial court found that the Bolstad interview took place immediately after the traffic stop, and that Warden Hochhausen asked Bolstad to sit in his truck. The trial court found that once inside the truck, Bolstad was informed that he was not under arrest and that he could stop [answering questions] at any time.

The trial court found that prior to the statement given, Warden Hochhausen told Bolstad he "could leave at any time" and that he was "not under arrest". The trial court found that Bolstad was not transported to the jail for an interview, no weapons were used, and no handcuffs or other restraints were employed.

The trial court found that the length of the interview was between 1 ½ and 2 ½ hours.

The trial court found that Bolstad's statement was signed and given voluntarily.

The trial court also found that Bolstad was not given his Miranda warnings.

Given the findings of fact, stated above, the trial court concluded that Bolstad was not in custody at the time he gave his statement, thus Miranda was not required. The trial court found the statement voluntarily given and the motion to suppress was denied.

ARGUMENT

Standard of Review

"In reviewing a trial court's determination on a motion suppress evidence, we accept the trial court's finding of historical fact unless they are clearly erroneous". State v. Mosher, 221 Wis. 2d 203, 211 (Ct. App. 1998), citing State v. Turner, 136 Wis. 2d 333 (1987). See also State v. Post, 301 Wis.2d 1, 6 – 7 (2007).

“Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Wis. Stats. § 805.17(2). See also, State v. Van Camp, 213 Wis.2d 131, 140 (1997), State v. Owens, 148 Wis. 2d 922 (1987).

“When reviewing the voluntariness of a statement, this court must accept the trial court’s findings of historical fact and its assessment of the witness’s credibility, unless they are clearly erroneous”. Id.

However, even though the “clearly erroneous” standard is used to determine historical fact, a question of constitutional fact is a two-step approach, with the application of those facts to constitutional principles is reviewed independently. State v. Post, 301 Wis.2d 1, 7 (2007), citing also State v. Martwick, 231 Wis.2d 801(2000) and State v. Payano-Roman, 290 Wis.2d 380 (2006).

Custody

It is clear from the findings of fact by the trial court that in weighing the credibility of the witnesses that the court ‘believed’ the Wardens when it came to any testimony that

was contradictory, i.e. when Bolstad was told he was free to leave or whether he was threatened or coerced to give this statement in any way.

Based on this historical fact, the trial court concluded that Bolstad was not in custody. Given these historical fact findings, this Court must now independently review as to whether these facts show that Bolstad was not in custody for Miranda purposes.

“The test is ‘whether a reasonable person in [Bolstad’s] position would have considered himself or herself to be in custody given the degree of restraint under the circumstances’”. Mosher at 211, citing State v. Gruen, 218 Wis.2d 581 (Ct. App. 1998) and State v. Swanson, 164 Wis.2d 437, 446-47(1991).

“A suspect is in custody when the suspect’s freedom to act is restricted to a “degree associated with formal arrest””. State v. Torkelson, 306 Wis.2d 673, 680 (Ct. App. 2007), citing Berkemer v. McCarty, 468 U.S. 420, 440 (1984).

Following Berkemer, courts have developed a ‘list of factors’ to use when considering whether a person’s “freedom to act is

restricted to a degree associated with formal arrest.”

Torkelson at 681 (other citations omitted).

These factors include the suspects freedom to have, the purpose, place, and length of interrogation, and the degree of restraint. The degree of restraint includes “whether the suspect was handcuffed, whether a weapon is drawn, whether a frisk was performed, the manner in which the suspect is restrained, whether the suspect is moved to another location, whether questioning took place in a police vehicle, and the number of officers involved.

Id.

Torkelson went on to say that these factors are not dispositive – they are merely “reference points that help to determine whether Miranda safeguards are necessary. In other words, we use these factors relevant in a given case to determine whether the circumstances present a risk that police may “coerce or trick captive suspects into confessing,” or show that a suspect is subject to “compelling pressures generated by the custodial setting itself.” Torkelson at 681, citing Berkemer, 468 U.S. at 433.

From the evidence taken at the suppression hearing and from the trial court’s finding of historical fact, Plaintiff-Respondent does not feel that it can be said that, under the totality of the

circumstances, Bolstad felt as though he was restrained to the point of a formal arrest.

Bolstad was asked to come to the patrol truck. Bolstad was asked to sit inside the patrol truck. Bolstad was told he was free to leave, was not under arrest, and could stop answering questions at any time. Bolstad provided a statement to Warden Hochhausen, reviewed it, made corrections, and signed it after being read the language on the form concerning the voluntariness of giving the statement.

The interview lasted between 1 ½ and 2 ½ hours, but Warden Hochhausen indicated there was a 'lot of stuff to cover'.

Bolstad was never restrained, never handcuffed, never threatened, and although he was frisked, he was done so because there had been an illegal shooting of the deer decoy just minutes before the traffic stop.

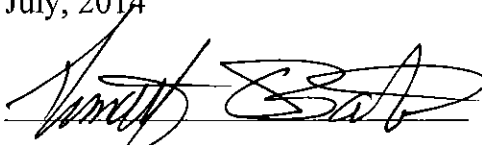
Weapons were not drawn and Warden Strelow stayed outside the truck during the interview which was taken right at the scene of the traffic stop. Bolstad exited the patrol truck and was allowed to leave in the vehicle he came in, with the person he came with.

There was no coercion, trickery, or undue pressure placed on Bolstad by Warden Hochhausen.

CONCLUSION

Based on the above, the Plaintiff-Respondent respectfully urges this Court to find that Defendant-Appellant Bolstad was not in custody so as to trigger the Miranda protections and find that Defendant-Appellant Bolstad's statement was voluntarily given to Warden Hochhausen.

Date this 31st day of July, 2014

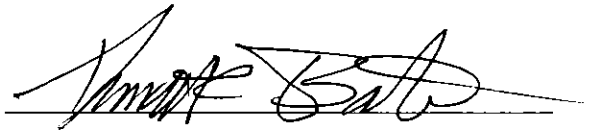
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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c). for a brief produced with a proportional serif font.

The length of this brief is 2,472 words.

A handwritten signature in black ink, appearing to read "Timothy C. Baxter", written over a horizontal line.

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12) -- Brief

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

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