

15AP1537

MILW  
DANE COUNTY

STATE OF WISCONSIN COURT OF APPEAL

JERRY D. BUTLER

15AP1537

Plaintiff,

vs.

Case No. 2014FO000465

STATE OF WISCONSIN

Defendant.

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OF WISCONSIN

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BRIEF IN SUPPORT OF MOTION TO SUPPRESS STATEMENT

STATEMENT OF FACTS

On February 26,2015 I returned to my apartment building at 6307 W. Hampton Ave #4 Milwaukee, Wisconsin to find that police had forced entry and were inside of my apartment. There they collected a small amount of marijuana. Officer Martez Ball conducted a pat down for weapons; no weapons were found as a result of the pat down. I was then placed in back of Officer ball's squad car. Although I was not cuffed, I was locked in the back and not free to leave. While locked in the squad car Officer Ball questioned me about a firearm. I was not free to leave at the time of questions from Officer Ball and was not read my Miranda rights.

As a result of the improper line of questioning, and with my permission police did Collect a 40 caliber Firestar handgun which I legally purchased in 1997. I was charged with misconduct and that charged was dismissed. The questions asked By officer Ball were clearly intended to elicit an inculpatory admission.

Asking “do you own or have a firearm concealed anywhere” has a direct goal- getting one to admit (1) that I own a firearm and (2) the location where the said Firearm is kept. It was asked solely for the purpose of linking me to a firearm.

The question(s) asked were clearly seeking potentially incriminating information, were asked prior to reading my Miranda rights and when I was effectively in “custody”. The police then transported me to the district station where I was held for 19 hours. The police charged me with possession .35 grams of marijuana of which part or all was taken from my apartment. I told police that I had taken from a teenager in back of my apartment earlier. Police charged me with two separate charges. The marijuana in municipal court, and the misconduct in circuit court.

#### ARGUMENT

The U.S. Constitution, through the 5<sup>th</sup> and 14<sup>th</sup> Amendments, guarantees individuals the right to not incriminate themselves when charged with commission of a crime. U.S. constitution Amendment 5 (“No person...shall be compelled in any criminal case to be a witness against himself...”);and Amendment 14 (“...nor shall any State deprive any person of life, liberty, or property, without due process of law...”). Additionally, the Constitution of the State of Wisconsin provides similar protection. Constitution of the State of Wisconsin, Article 1, 8 (“No person...may be compelled in any criminal case to be a witness against himself or herself.”) This right applies to all persons and requires the state to be cautious in its methods of interrogation and evidence-gathering.

The Supreme court addressed this issue in Miranda vs. Arizona. In Miranda, the court held that the:

...prosecution may not use statements whether exculpatory or inculpatory,

Stemming from custodial interrogation of the defendant unless it demonstrates

The use of procedural safeguards effective to secure the privilege against self-incrimination.

By custodial interrogation we mean questioning initiated by law enforcement officers after a

Person has been taken into custody or otherwise deprived of his freedom of action in any

Significant way.

Id..384 U.S. 436, 444 (1966). For any statements made by an accused to be admissible it must be demonstrated (1) that the accused was not in the state's custody or deprived, in any significant way, of his freedom of action when he made such statements; or (2) the accused had been informed of his/her constitutional rights and procedural safeguards had been taken by the arresting

Officer(s) that the accused understood those rights before any custodial interrogation began.

#### MY FREEDOM OF ACTION WAS SIGNIFICANTLY CURTAILED

I was locked in the rear of a squad car, unable to leave, when police questioned me regarding a firearm. I was not free to leave and was never informed of my

Miranda rights, additionally, police had already forced entry into my residence, demonstrating for me that I was not in control of the situation, the police were.

#### CONCLUSION

It is for the foregoing reasons, namely the need to determine(1)when or if I was

Informed of my Miranda rights,(2) the nature of and facts surrounding the custodial interrogation, and(3)how the evidence was collected. Therefore I respectfully request the court to dismiss this charge or hold an evidentiary hearing to determine the admissibility of any statements or evidence allegedly made prior to being informed of my constitutional rights. I believe the

Police were procedurally defected. On the word of my downstairs neighbor Police decided to force entry into my apartment on his sworn statement in judge Malmstadt's court on May 1, 2015. Also on the word of Judge Bonnie Gordon's Statement on January 1, and February 05, 2015, intended to rule on the charge, pending the outcome of the alleged misconduct charge case #13cm984. That charged was dismissed. I believe this charge of possession of marijuana was intended to be dismissed by Judge Gordon, I also believe that mistakes were made by police. I believe the case from start to finish has been procedurally defective. Milwaukee police, on the day of February 26<sup>th</sup> 2013 made the wrong decision by forcing entry into my apartment when there was no one home and no treat and no probable cause to do so. After entry I believe police then stretched the truth by putting the incident in a public place, which it was not, and to avoid liability connected my firearm, which was not involved at all to make a case that was not a case at all. I had a simple argument with my neighbor that's all. I am the one who left the argument and did not pose a threat to anyone.

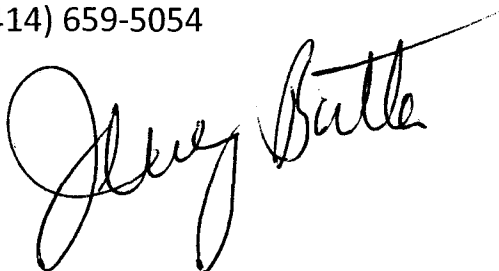
Dated this 29<sup>th</sup> day of October 2015, and resubmitted to the court of Appeals and all other parties.

Jerry D. Butler

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A handwritten signature in black ink, appearing to read "Jerry Butler". The signature is written in a cursive, flowing style with a large initial "J" and "B".