State of Wisconsin
Court of Appeals
District 2
Appeal No. 2010AP001096 - CR

State of Wisconsin,

Plaintiff-Respondent,

v.

Oscar Ruiz,

Defendant-Appellant.

Appeal from an order of the Washington County Circuit Court, the Honorable Andrew Gonring, presiding

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Defendant-Appellant's Brief

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Statement on Oral Argument and Publication

The issue presented by this appeal is controlled by well-settled law and, therefore, the appellant does not recommend oral argument or publication.

Statement of the Issues

I. Whether the trial court erred in denying the appellant's motion to suppress his statement on the grounds that, at the time the statement was given, the appellant was in custody, subject to interrogation, and he had not been given the Miranda warning.

Answered by the trial court: No.

II. Whether the trial court erred in denying the appellant's (who is a Mexican national who does not speak English well) motion to suppress his statement on the grounds that the statement was involuntary, where the detectives deliberately did not read Ruiz the Miranda warning, raised their voices and were obscene, and deliberately mislead Ruiz as to the strength of the state's case.

Answered by the trial court: No.

Summary of the Argument

I. Ruiz was in custody and he should have been read the Miranda warning. In deciding whether Ruiz was in custody, the court must take into account the totality of the circumstances. The question is whether a reasonable person, in the position of Ruiz, would have believed himself to be in custody. In making this determination, the court must focus on the duration of the interrogation, and the degree of restraint. Here, in denying the motion to suppress, the trial court focused on the trees, and, consequently, the judge completely missed the forest. The detectives removed Ruiz from his familiar surroundings at the laundry, and deliberately directed him to an interrogation room at the Sheriff's Department. This, no doubt, is because the detectives were well aware of the "badge of intimidation" that such locations provide to the interrogators. Additionally, even if, at the outset, Ruiz had been free to leave, the interrogation tactics of the detective made it clear that Ruiz did not have "freedom of expression"-- what reason, then, would Ruiz have to believe that he were free to leave?

II. Ruiz's statement was not voluntary. Ruiz, as a Mexican national with little experience in the American system of justice, was in a vulnerable state when he was interrogated by the detectives. The detectives devised a scheme that could only have been intended to overcome Ruiz's will. This scheme involved moving Ruiz to an interrogation room in the Sheriff's Department but then deliberately not reading him the Miranda warning in an effort to make Ruiz more "forthcoming". When this did not work, the detectives became belligerent and mislead Ruiz into believing that police possessed an audio

recording of Ruiz discussing the incident with the codefendant. All of this, together, overcame Ruiz's will, and it made the statement involuntary.

Statement of the Case

I. Procedural Background

The defendant-appellant, Oscar Ruiz (hereinafter "Ruiz"), was charged with one count of first degree intentional homicide, and two counts of conspiracy to commit first degree intentional homicide (R:1), arising out of an incident that occurred in Washington County on December 12, 2005. Ruiz entered not guilty pleas to all three counts.

Ruiz filed a pretrial motion to suppress inculpatory statements he gave to investigators on August 10, 2007. (R:22) The motion alleged that he was in custody at the time of the interrogation, and that he had not been given the Miranda warning. Further, the motion alleged that his statements were not voluntary.

The trial court conducted a hearing into the motion in December 18, 2008. After making formal findings of fact, the trial court denied the motion in all respects. (R:40)

Thereafter, Ruiz reached a plea agreement with the State. Ruiz pleaded guilty to counts two and three (the counts alleging conspiracy to commit first degree intentional homicide); and count one (first degree intentional homicide) was dismissed. (R:43-1, et seq.) Later, the court sentenced Ruiz as follows: (Count 2) a total of 21 years in the Wisconsin State

Prison, bifurcated as thirteen years and six months initial confinement, and seven years and six months extended supervision; (Count 3) a total of 21 years in the Wisconsin State Prison, consecutive to Count 2, bifurcated as thirteen years and six months initial confinement, and seven years and six months extended supervision. (R:51)

Ruiz timely filed a notice of intent to pursue postconviction relief, and filed a notice of appeal to the Wisconsin Court of Appeals without first filing a postconviction motion.

II. Factual Background

A. Generally

In sum[1], the criminal complaint (R:1) alleged that Ruiz, and an individual named Anselmo Gonzalez-Castillo, worked on a farm in Washington County. Several others also worked at the farm, including the victims in this case, Roman Sanchez, Rosendo Sanchez, and Gabriella Solis. At some point, Ruiz began to suspect that the Sanchez brothers were "telling stories" about him to the farmer, Thull, who employed them. Thus, Ruiz approached Gonzalez-Castillo, and asked him whether he would be willing to kill the Sanchez brothers. Gonzalez-Castillo agreed to do so.

At close to midnight on December 12, 2005, Gonzalez-Castillo went to the Thull farm and, while the Sanchez brothers were milking the cows, he turned out the lights in the barn and

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1. This generally summary of the factual background is taken from the criminal complaint. (R:1) It is presented to provide the reader with a context for the evidence presented at the motion hearing.

then beat the Sanchez brothers on the head with a metal pipe. The brothers were severely injured and, later, Roman Sanchez died from his injuries.

The Washington County Sheriff investigated the incident. Gonzalez-Castillo was developed as a suspect, and in 2006, he pleaded guilty to, and he was convicted of, first degree intentional homicide. During the sheriff's investigation in December, 2005, Ruiz was interrogated by a sheriff's deputy, but he invoked his right to counsel. No charges were filed against Ruiz at that time.

In the summer of 2007, though, Detective Joel Clausing of the Washington County Sheriff's Department received a letter from Gonzalez-Castillo. In the letter, Gonzalez-Castillo implicated Ruiz in the beatings.

Thereafter, Clausing, and a Milwaukee County Sheriff's Deputy who spoke Spanish, went to Ruiz's place of employment, and directed him to go to the Washington County Sheriff's Department so that they could question him. Ruiz complied.

At the Sheriff's Department, Ruiz was told that he was not under arrest. However, after "intensive" confrontation by the investigators, Ruiz wrote a statement admitting that he was involved in the homicide of Roman Sanchez.

B. Motion Hearing

On, December 13, 2005, Washington County Sheriff's Deputy Robert Konstanz was investigating a battery complaint. As part of that investigation, and with the assistance of a secretary, Dolores Malchow, who, according to Konstanz, spoke Spanish, Konstanz interrogated Oscar Ruiz at the

Sheriff's Department. (R:29-11). Konstanz had Malchow read Ruiz the *Miranda* warning in Spanish. (R:29-15) Following the warning, Konstanz completed a written waiver of *Miranda* that was then signed by Ruiz (R:29-14)

Shortly thereafter, Ruiz indicated that he preferred to have a lawyer present. (R:29-16) The interrogation was terminated.

During the initial investigation, Anselmo Gonzalez-Castillo was also interrogated by Washington County Sheriff's Deputy Joel Clausing. During this interrogation, Gonzalez-Castillo admitted that he was the one who battered Roman and Rolando Sanchez. (R:29-30, 31) Gonzales-Castillo claimed that *he had acted alone. Ibid.* In 2006, Gonzales-Castillo was charged with, and convicted of, first degree intentional homicide. *Ibid.*

Later, in 2007, Gonzales-Castillo sent a letter to Clausing, which prompted Clausing to reopen the investigation. With the help of a Milwaukee County Sheriff's Deputy, Fernando Santiago (R:29-105)[2], Clausing visited Gonzales-Castillo at the Waupun Correctional Institution. (R:29-32, 33) Gonzales-Castillo gave Clausing leads that caused Clausing to want to interview Oscar Ruiz. *Ibid.*

Therefore, on August 10, 2007, Clausing and Santiago went to a laundry service where they believed Ruiz was employed. As the officers were about to park in the lot they observed Ruiz

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2. Santiago testified that he was born in Puerto Rico, and he lived there for seventeen years. He attended Marquette University before he became a Milwaukee County Sheriff's Deputy. There was no factual issue as to Santiago's ability to translate Spanish-English and English-Spanish. (R:29-109, et seq)

drive into the lot. (R:29-35) According to Clausing, he spoke to Ruiz in English, and Ruiz agreed to go with the officers to the Sheriff's Department to be interviewed. (R:29-35) Clausing instructed Ruiz to drive his own vehicle (Ruiz's vehicle) to the Sheriff's Department, and to meet the officers there. (R:29-37)

Once at the Sheriff's Department, Clausing escorted Ruiz to an interview room. Ruiz was not in handcuffs. (R:29-40) There, Clausing, speaking in English, told Ruiz that he was not under arrest, but that he (Clausing) wanted to ask him some questions. Significantly, Clausing could have employed Detective Santiago to inform Ruiz that he was under arrest, but Clausing chose not to do so. (R:29-71)[3] Clausing did not read Ruiz the Miranda warning, nor did he inform Ruiz of his rights under the Vienna Convention. (R:29-65, 66) Clausing admitted that in nearly 90% of the interrogations he conducts at the Sheriff's Department, he tells the subject that he or she is not under arrest, and, therefore, he does not read them the Miranda Warning. (R:29-83)

Not suprisingly, Ruiz agreed to answer questions. (R:29-41) According to Clausing, Ruiz appeared to sometimes understand English, and sometimes he did not. (R:29-42) On a number of occasions during the interview, Ruiz told Santiago that he (Ruiz) did not understand Clausing. (R:29-123) Detective Santiago then conducted parts of the interview in Spanish. *Ibid*. During the first two hours of the interrogation, Ruiz denied that he was involved in the homicide (i.e. what Ruiz said was inconsistent with Anselmo's letter). (R:29-85) At one

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3. To the contrary, Santiago testified that he did tell Ruiz, in Spanish, that he was not under arrest, but he could not recall when he did so. (R:29-119)

point, Clausing called Ruiz a "liar". *Ibid* Clausing also directed obscenities toward Ruiz. (R29-86) Clausing told Ruiz that he was frustrated with all the *bullshit* that Ruiz was feeding him. (R:29-86) By Clausing's estimation, shortly before the two hour mark during the interrogation, the pressure being put on Ruiz by the detectives was "intense." (R:29-87) At about that time, the detectives presented a copy of Anselmo's letter to Ruiz. (R:29-89) Clausing also "implied" that there was a recording on which he (Ruiz) and Anselmo's voices were heard (though there was no such recording). (R:29-95, 96)

At approximately 2:00 p.m., the detectives left the room in order to permit Ruiz to write a statement. (R:29-52) The statement was written in Spanish; however, Detective Santiago translated the statement into English. (R:29-54) The statement partially inculpated Ruiz in the homicide; however, Clausing still did not read Ruiz the Miranda Warning, nor did he arrest him. (R:29-97) Thereafter, Ruiz wrote two additional statements, each of which was more inculpatory, and, at about 4:00 p.m., he was arrested. (R:29-58)

At no time during the interview did Ruiz ask for an attorney. (R:29-60)

The trial court made findings of fact consistent with the motion testimony. (R:37; App. B) The trial court denied the motion in all respects, finding that Ruiz was not in custody at the time the statements were given; and that the statements were voluntary. (R:40; App. D)

Argument

I. Ruiz was in custody at the time of the interrogation and, therefore, the trial court should have suppressed the statement because Ruiz was never given the Miranda Warning.

Few legal principals are more well known than the following: The prosecution may not use a defendant's statements stemming from custodial interrogation unless the defendant has been given the requisite warnings. *Miranda v. Arizona*, 384 U.S. 436, 444, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966).

Here, there is no dispute about the fact that Ruiz was not given the Miranda warning prior to the interview. At the motion hearing, the State's position was that no warning was required because Ruiz was not in custody. Thus, the central issue on this appeal is whether, at the time he was interrogated, Ruiz was in custody for Fifth Amendment purposes.

As will be set forth in more detail below, in deciding whether Ruiz was in custody, the court must take into account the totality of the circumstances. The question is whether a reasonable person, in the position of Ruiz, would have believed himself to be in custody. In making this determination, the court must focus on the duration of the interrogation, and the degree of restraint. Here, in denying the motion to suppress, the trial court focused on the trees, and, consequently, the judge completely missed the forest. The detectives removed Ruiz from his familiar surroundings at the laundry, and deliberately directed him to an interrogation room at the Sheriff's Department. This, no doubt, is because the detectives were well aware of the "badge of intimidation" that such locations

provide to the interrogators. Additionally, even if, at the outset, Ruiz had been free to leave, the interrogation tactics of the detective made it clear that Ruiz did not have "freedom of expression"-- what reason, then, would Ruiz have to believe that he were free to leave?

A. Standard of Appellate Review

On appeal, the court reviews a motion to suppress in two steps. *State v. Eason*, 245 Wis. 2d 206, 629 N.W.2d 625 (2001). The appellate court must uphold the trial court's factual findings unless they are clearly erroneous; but the appellate court will apply constitutional principles to the facts *de novo. Id.* Whether a suspect is "in custody" is a legal, constitutional question that the appellate court decides independently. State v. Pounds, 176 Wis. 2d 315, 321, 500 N.W.2d 373 (Ct. App. 1993).

B. Ruiz was in custody at the time of interrogation

A person is "in custody" for *Miranda* purposes when one's "freedom of action is curtailed to a 'degree associated with formal arrest.'" *Berkemer v. McCarty*, 468 U.S. 420, 440, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984)

> In determining whether an individual is "in custody" for purposes of Miranda warnings, we consider the totality of the circumstances, including such factors as: the defendant's freedom to leave; the purpose, place, and length of the interrogation; and the degree of restraint. *State v. Gruen*, 218 Wis. 2d 581, 594, 582 N.W.2d 728 (Ct. App. 1998). When

> considering the degree of restraint, we consider: whether the suspect is handcuffed, whether a weapon is drawn, whether a frisk is 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.* at 594-96.

State v. Morgan, 2002 WI App 124 (Wis. Ct. App. 2002). Even though the question of whether a person is in custody for *Miranda* purposes is an objective test; the court in *Morgan* pointed out:

> [W]hen we inquire whether a person is in custody for Miranda purposes, we do not focus only on the reasonableness of the police officer's conduct: that is relevant insofar as it has a bearing on how a reasonable person in the suspect's situation would perceive his or her situation, but it is not dispositive. Officers may act reasonably in detaining and restraining suspects, but, when the challenge is that a Miranda warning should have been given, the issue is whether those acts give rise to a custodial situation. *State v. Pounds*, 176 Wis. 2d 315, 322, 500 N.W.2d 373 (Ct. App. 1993). For this reason the relevant factors-as we articulated them in *Gruen,* 218 Wis. 2d at 594-96, and have listed them in P12 of this decision-are *directed to the duration and the degree of restraint.*

(emphasis provided) 2002 WI App 124 (Wis. Ct. App. 2002)

> An officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned. (internal citations omitted). Those beliefs are relevant only to the extent they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her "'freedom of action.'"

Stansbury v. California, 511 U.S. 318, 325 (1994)

1. The degree of restraint

The trial court placed emphasis on the fact that Ruiz was allowed to drive to the Sheriff's Department for the interview, that he was told that he was not under arrest, that he was not handcuffed, and that no weapons were produced. In other words, there was little degree of restraint placed on Ruiz.

What was completely overlooked by the trial court, though, was the fact that the detectives *chose the place of the interrogation*, and they chose a back room in the Sheriff's Department. If this were merely an "interview", it could have taken place at the laundry where Ruiz worked; it could have taken place at a neutral site, such as a coffee shop; it could even have taken place in Ruiz's home. Instead, Ruiz was directed to the Sheriff's Department-- the home field of the interrogators.

There is no better way to illustrate the intimidation of Ruiz that was intended by the investigators' choice of location, than to simply borrow from the Supreme Court's explanation of why the Miranda warning is necessary. The Supreme Court wrote:

In the cases before us today, given this background, we concern ourselves primarily with this interrogation atmosphere and the evils it can bring. In No. 759, *Miranda v. Arizona*, the police arrested the defendant and took him to a special interrogation room where they secured a confession. In No. 760, *Vignera v. New York,* the defendant made oral admissions to the police after interrogation in the afternoon, and then signed an inculpatory statement upon being questioned by an assistant district attorney later the same evening. In No. 761, *Westover v. United States*, the defendant was handed over to the Federal Bureau of Investigation by local authorities after they had detained and interrogated him for a lengthy period, both at night and the following morning. After some two hours of questioning, the federal officers had obtained signed statements from the defendant. Lastly, in No. 584, *California v. Stewart,* the local police held the defendant five days in the station and interrogated him on nine separate occasions before they secured his inculpatory statement.

In these cases, we might not find the defendants' statements to have been involuntary in traditional terms. Our concern for adequate safeguards to protect precious Fifth Amendment rights is, of course, not lessened in the slightest. In each of the cases, ***the defendant was thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures***. The potentiality for compulsion is forcefully apparent, for example, in Miranda, where the indigent Mexican defendant was a seriously disturbed individual with pronounced sexual fantasies, and in Stewart, in which the defendant was an indigent Los Angeles Negro who had dropped out of school in the sixth grade. To be sure, the

> records do not evince overt physical coercion or patent psychological ploys. The fact remains that in none of these cases did the officers undertake to afford appropriate safeguards at the outset of the interrogation to insure that the statements were truly the product of free choice.
>
> ***It is obvious that such an interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation.*** To be sure, this is not physical intimidation, but it is equally destructive of human dignity. The current practice of ***incommunicado interrogation*** is at odds with one of our Nation's most cherished principles -- that the individual may not be compelled to incriminate himself. Unless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice.

(emphasis provided) *Miranda,* 384 U.S. at 456-458.

In this environment there was no need for handcuffs or for weapons. The "badge of intimidation" inherent in such back-room interrogations is sufficient.

Additionally, the factors relied upon by the trial court in finding that Ruiz was not in custody all exclude the possibility that, during the course of the interrogation, circumstances could change such that a reasonable person would come to believe that he was no longer *free to leave.* That is, even if the trial court were right, that Ruiz was not initially in custody, as the interrogation progressed, the circumstances changed so

dramatically that any reasonable person would have come to believe that he was no longer free to leave.

Ruiz was initially told that he was going to be "asked some questions" at the Sheriff's Department, and with this assurance, Ruiz drove himself to the Sheriff's Department. He was not handcuffed, and he was not locked in the room. There were no weapons trained on him. It is possible that, at the beginning of the interview, a reasonable person could have believed that he was free to leave.

However, as Clausing began his interrogation, and as Ruiz answered the questions, any reasonable person would have surmised that this was no mere information gathering process. After two hours of questioning, Clausing became angry-- and loud and profane-- and he called Ruiz a *liar,* and demanded that Ruiz stop feeding him such *bullshit.* It was two police detectives, in the back room, against a Mexican national who could not speak English very well. Short of gagging him, there could be no more effective means of thwarting Ruiz's *freedom of expression*.

If Ruiz were not free to answer Clausing's questions in the way he saw fit, why would Ruiz reasonably believe that he was free to walk out of the interrogation room?

2. The duration of the restraint

It is always a mistake to think of the "duration" of an interview only in terms of the chronological length of the interrogation. Here, the interrogation went on for in excess of four hours-- which is significant in and of itself. However, what is more significant is the fact that the interrogation *endured* even after Ruiz responded to the initial round of

questions. Not only did the interview endure, the intensity of the questioning increased.

Certainly, the reason that the court must look at the duration of the questioning is because, at some point, the suspect must ask himself: How long will this continue? It is when the defendant reaches that point, that it is most important to inform him of his rights. The Miranda warning itself answers the defendant's question. The interrogation process may end at any time the suspect chooses.

Here, not having been informed of his Miranda warnings, surely Ruiz had to be wondering if he would ever get out of the interrogation room.

Thus, Ruiz was in custody, at least by the time he provided the detectives with the written confessions; and, therefore, the confessions should be suppressed.

II. The conduct of the police overcame Ruiz's will and, therefore, the statement was not voluntary.

In the event that the court finds that Ruiz was not in custody, then the court should suppress his confessions for the reason that the statements were not voluntarily given. Ruiz, as a Mexican national with little experience in the American system of justice, was in a vulnerable state when he was interrogated by the detectives. The detectives devised a scheme that could only have been intended to overcome Ruiz's will. This scheme involved moving Ruiz to an interrogation room in the Sheriff's Department but then deliberately not reading him the Miranda warning in an effort to make Ruiz more "forthcoming". When this did not work, the detectives became belligerent and

mislead Ruiz into believing that police possessed an audio recording of Ruiz discussing the incident with the codefendant. All of this, together, overcame Ruiz's will, and it made the statement involuntary.

To be involuntary, a statement must be obtained by coercive police activity. *See State v. Owen*, 202 Wis. 2d 621, 641-42, 551 N.W.2d 50 (Ct. App. 1996). The totality of the circumstances must be considered in resolving the question of voluntariness. The defendant's personal characteristics, such as his or her age, education, intelligence, physical and emotional condition, and prior experience with the police, are weighed against the coercive police conduct. *See id.* In determining whether police conduct was coercive, relevant factors include the length of the interrogation, the general conditions under which the questioning took place, whether excessive physical or psychological pressure was brought to bear on the accused, whether the police used inducements or threats to compel a response, and whether the defendant was properly informed of his or her right to counsel and to remain silent. *See id.* However, if the defendant fails to establish that the police used actual coercion or improper pressure to obtain a statement, the inquiry ends and involuntariness cannot be found. *See State v. Williams*, 220 Wis. 2d 458, 464, 583 N.W.2d 845 (Ct. App.); *Owen*, 202 Wis. 2d at 642.

A. Ruiz's personal characteristics

The trial court found, as a fact, that Ruiz was of average intelligence for his age. (R:37-Par. 15) The court found that Ruiz was not under the influence of alcohol, and that he

possessed at least a rudimentary ability to read and to write in Spanish. *Ibid.*

Nonetheless, mere "intelligence" does not settle the question. Rather, "knowledge" is equally important. The State presented to no evidence that Ruiz had even an elemental understanding of the criminal justice system in the United States. Persons who have been raised in the United States are very likely to have some knowledge of how the system works. The same cannot be said about a Mexican national, such as Ruiz. Thus, Ruiz was very vulnerable to the strategies of his interrogators.

B. Coercive police conduct

The evidence presented at the motion hearing established three glaring examples of coercive police conduct: (1) the strategy to deliberately refrain from reading Ruiz the Miranda warning; (2) the confrontational-- some would say "intimidating"-- manner in which Clausing accused Ruiz of "feeding him bullshit"; and, (3) the prevarication in which Santiago deliberately lead Ruiz to believe that the police possessed a recording of him (Ruiz) and Gonzalez-Castillo discussing the incident.

Whether or not Clausing had an obligation to read Ruiz the Miranda warning depends entirely upon whether Ruiz was in custody. If the court finds that Ruiz was, in fact, in custody, then the voluntariness of the statement does not matter because the statement must be suppressed as a result of the Miranda violation. Nonetheless, if the court finds that Ruiz was not in custody at the time of his interrogation, the court should not simply overlook the fact that Clausing deliberately chose not to read the Miranda warning to Ruiz. According to Clausing,

this was done in an effort to make Ruiz more "forthcoming." (R:29-84) In fact, Clausing did not read any of the Spanish-speaking people involved in this investigation the Miranda warning. (R:29-82)

Why would Clausing do such a thing? There is only one possible reason. It is to take unfair advantage of the Spanish-speaker's unfamiliarity with the system of justice in the United States. An American suspect is likely to expect to be read the Miranda warning. The American may already know of his right to remain silent, whether or not he is read the warning. A Mexican national, though, is very unlikely to be aware of the provisions of the Fifth Amendment. A person like Ruiz probably was unaware of the fact that he was not required to answer Clausing's questions.

Thus, Clausing's strategy was a calculus designed to take unfair advantage of persons who do not understand the American justice system.

Additionally, Clausing's loud use of profanity, and his accusation that Ruiz was a "liar", are examples of *improperly* coercive police conduct. Although the courts do not expect the police to question criminal suspects with fleckless courtesy--and to blithely accept everything the suspect tells them-- the law does require police to avoid language and behavior that is likely to overcome the suspect's will. Here, Clausing's behavior was obnoxious and it was intended to intimidate Ruiz. It had the desired effect. The trial court found as a matter fact that Ruiz was crying at times during the interview. (R:37-Par. 15).

Finally, the law ought not permit the police to lie to a suspect in order to "get to the truth." Clausing and Santiago deliberately mislead Ruiz into believing that the police possessed a

recording of Ruiz discussing the incident with Gonzalez-Castillo. It is well-settled that, "[L]ies told by the police do not necessarily make a confession involuntary; rather, this is simply one factor to consider out of the totality of the circumstances." United States v. Velasquez, 885 F.2d 1076, 1088 (3d Cir. 1989); see also, State v. Triggs, 2003 WI App 91, P19 (Wis. Ct. App. 2003).

The court certainly should not be fooled by Clausing's rationalization that what he told Ruiz was not, technically, a lie ("I merely asked what his response would be if we had his voice of a tape with Gonzalez-Castillo"). This may not be a lie, but it certainly is a prevarication-- and prevarications mislead just as surely as do lies.

Just as important, though, is the fact that this prevarication was part of an overall strategy to overcome Ruiz's denials. In addition to suggesting that Ruiz's voice was on a tape with Gonzalez-Castillo, the detectives left Ruiz with a copy of Gonzalez-Castillo's letter in which he implicates Ruiz. This calculus could only have been meant to overcome Ruiz's denials. The detectives intended that Ruiz come to the conclusion that where he might be able to deny Gonzalez-Castillo's allegations in a letter (or, possibly, in his testimony at trial), an audio recording of Ruiz discussing the matter with Gonzalez-Castillo would be devastating. Thus, Ruiz must have believed that he had no alternative but to mitigate his circumstances by writing the confession to the police.

Of course, Ruiz did have an alternative. Had he known of his rights, he could have simply remained silent. He could have exercised his constitutional right to a trial, and to compel the

state to produce the evidence against him. There would, naturally, be no such audio recording.

Plainly, the officers intended to, and succeeded in, overcoming Ruiz's will. Thus, the statement was not voluntary.

Conclusion

For these reasons, it is respectfully requested that the court reverse the court of the trial court denying Ruiz's motion to suppress evidence; enter an order suppressing the confessions; and to permit Ruiz to withdraw his no contest pleas.

Dated at Milwaukee, Wisconsin this ____ day of _____, 2010.

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Certification as to Length and E-Filing

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of the brief is 5834 words.

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Dated this _____ day of
_____, 2010:

_____
Jeffrey W. Jensen

State of Wisconsin
Court of Appeals
District 2
Appeal No. 2010AP001096 - CR

State of Wisconsin,

Plaintiff-Respondent,

v.

Oscar Ruiz,

Defendant-Appellant.

Defendant-Appellant's Appendix

A. Record on Appeal

B. Trial court's findings of fact from the 12-18-2008 motion hearing

C. Defendant's motion brief

D. State's motion brief

E. Memorandum Decision from the trial court

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated at Milwaukee, Wisconsin, this _____ day of _____, 2010

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