

WISCONSIN SUPREME COURT
MONDAY, FEBRUARY 25, 2013
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed an Oneida County Circuit Court decision, Judge Mark Mangerson, presiding.

2010AP2809-CR

[State v. Lonkoski](#)

This case examines what constitutes interrogation and what constitutes custody under Miranda.

Some background: In a decision affirmed by the Court of Appeals, Matthew A. Lonkoski was convicted of recklessly causing great harm to a child and neglecting a child resulting in the child's death. Lonkoski's 10-month-old daughter, Peyton, was found dead by her parents, Lonkoski and Amanda Bodoh. The autopsy determined that Peyton's blood and urine contained a deadly amount of morphine and hydromorphone.

Detectives asked Bodoh to come to the sheriff's department for an interview. Lonkoski drove her to the interview and waited in the lobby while Bodoh was interviewed. After speaking with Bodoh, the officers sent her to another room and brought Lonkoski into the interview room for an interview that was video recorded. Detective Sara Gardner and Lt. Jim Wood interviewed Lonkoski, with Lonkoski sitting in the corner furthest from the door of the interview room.

Wood informed Lonkoski that he was not under arrest. He stated that he had closed the door to the interview room so other people could not hear the interview. For about the first half-hour, the detectives and Lonkoski talked about events since Peyton's death. Then Wood told Lonkoski that an autopsy showed that Peyton died of a morphine overdose. Lonkoski asked the detectives if he was being accused of giving his daughter morphine. The following exchange then occurred:

Lonkoski: *I want a lawyer. I want a lawyer now. This is bullshit.*

Wood: *Okay.*

Lonkoski: *I would never do that to my kid, ever. I wasn't even at the apartment at all except at night. Why are you guys accusing me?*

Wood: *I didn't accuse you.*

Gardner: *We were just asking.*

Lonkoski: *There is this is is is is is is is is insane.*

Wood: *I have to stop talking to you though 'cause you said you wanted a lawyer.*

Lonkoski: *Am I under arrest?*

Wood: *You are now.*

Lonkoski: *Then I'll talk to you without a lawyer . . . I, I don't want to go to jail*

Shortly after this exchange, Lonkoski was escorted from the room to smoke a cigarette and use the bathroom. When Lonkoski, Gardner, and Wood returned to the room, Wood read Lonkoski his Miranda rights and Lonkoski agreed to answer further questions. Over approximately two additional hours of questioning, Lonkoski made incriminating statements; specifically, that he and a friend had used morphine – the drug that killed Peyton – around the

time of Peyton's death. Lonkoski was again interrogated four days later and made more incriminating statements.

Lonkoski moved to suppress his statements to police as violative of his Miranda rights. After the trial court denied Lonkoski's motion to suppress, Lonkoski pled guilty to and was convicted of recklessly causing great harm to a child and neglecting a child resulting in the child's death.

The Court of Appeals affirmed the conviction, concluding that Lonkoski voluntarily, knowingly and intelligently waived his Miranda rights.

Lonkoski now asks the Supreme Court to review whether a police officer ceases interrogation as required by Edwards v. Arizona [, 451 U.S. 477 (1981)] where, in response to the interrogated person's invocation of the right to counsel, the officer places the person under arrest. Lonkoski also asks the court to review whether the right to invoke Miranda v. Arizona, 384 U.S. 436 (1966) when custodial interrogation is "imminent or impending" applies where interrogation is ongoing but custody is imminent.