COURT OF APPEALS
DECISION
DATED AND FILED

June 8, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-1807-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

v.

PHILLIP T. WONDERLY,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dodge County: ANDREW P. BISSONNETTE, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Deininger, JJ.

¶1 PER CURIAM. The State appeals the trial court's order suppressing two incriminating letters that Phillip Wonderly wrote to Detective Joanne Swyers in late February 1998. The issue is whether the trial court properly suppressed the letters. We affirm.

¶2 The State charged Wonderly, a prison inmate, with aggravated battery. Pursuant to ***Edwards v. Arizona***, 451 U.S. 477 (1981), he moved to suppress a statement he made on February 5, 1998, three days after the battery. The trial court suppressed the statement because a prison official had continued interrogating Wonderly after he had invoked his right to counsel. *See* ***id.*** at 484-85 (holding that after an accused invokes the right to counsel, the state may not continue to interrogate unless the accused initiates further communication). The State does not challenge this ruling on appeal.

¶3 Wonderly then moved to suppress two incriminating letters he sent to Detective Joanne Swyers on February 21, 1998. The trial court suppressed the letters, concluding that they were the fruit of a ***Miranda*** violation that occurred on February 18, 1998, when Wonderly was interrogated for a second time about the battery but was not read his ***Miranda*** rights. *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

¶4 The State argues that the letters should not have been suppressed because the detective's failure to read the ***Miranda*** warnings on February 18th was simply a "technical" violation of the ***Miranda*** rule. Relying on ***Oregon v. Elstad***, 470 U.S. 298, 309, 312 (1985), the State contends that "if there is merely a technical violation of ***Miranda*** and no prior constitutional violation, then the 'fruit of the poisonous tree' doctrine [should] not … be applied…."

¶5 Here, however, there *was* a prior constitutional violation. The trial court ruled that an ***Edwards*** violation occurred on February 5th. The State has not challenged that ruling. Further, the State concedes that an additional ***Edwards*** violation occurred during the February 18th interrogation because Wonderly had

previously invoked his right to counsel on February 5th and had not voluntarily initiated subsequent communication.

¶6 Thus, several significant constitutional violations occurred in this case. The police violated Wonderly's rights under ***Edwards*** on February 5th and 18th. The police did not give Wonderly the ***Miranda*** warnings on February 18th before resuming interrogation. Under these circumstances, Wonderly's "ability to exercise his free will" was significantly compromised. *See* ***Elstad***, 470 U.S. at 309. We thus conclude that the letters were the result of improper pressures exercised by the police, rather than "the product of a 'free and unconstrained will, reflecting deliberateness of choice.'" *See* ***State v. Clappes***, 136 Wis. 2d 222, 236, 401 N.W.2d 759 (1987) (citation omitted). As such, the letters were properly suppressed under ***Miranda***.[1]

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[1] We need not reach whether the writing of the letters was sufficiently attenuated from the ***Edwards*** violations so as to purge any taint because we have concluded, as did the trial court, that they should have been suppressed under ***Miranda v. Arizona***, 384 U.S. 436 (1966).