

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 5, 2003**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-3413-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 02-CF-141**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-APPELLANT,**

**v.**

**TAMMY E. MILLERLEILE,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Marathon County:  
VINCENT K. HOWARD, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The State appeals an order suppressing Tammy Millerleile's statements to police in which she admitted shaking a fourteen-month-old baby, who later died. The trial court suppressed Millerleile's initial confession

on the ground that she was in custody and the police had not advised her of her *Miranda*<sup>1</sup> rights. The court also suppressed subsequent statements as fruits of the initial, tainted statement. Because we conclude that Millerleile was not in custody at the time of the initial confession, we reverse the order and remand for further proceedings.

¶2 Although this court gives deference to the trial court's findings of historical fact, whether Millerleile was in custody at the time she made the initial inculpatory statement is a question of law that we decide independently. *See State v. Mosher*, 221 Wis. 2d 203, 211, 584 N.W.2d 553 (Ct. App. 1998). A person is in custody when he or she is deprived of freedom of action in any significant way. *See State v. Armstrong*, 223 Wis. 2d 331, 353, 588 N.W.2d 606 (1999). The test is whether a reasonable person in the suspect's position would have considered himself or herself to be in custody given the degree of restraint under the circumstances. *Mosher*, 221 Wis. 2d at 211. This court considers the totality of the circumstances including the suspect's freedom to leave, the purpose, place and length of questioning, and the degree of restraint employed. *See State v. Gruen*, 218 Wis. 2d 581, 594, 582 N.W.2d 728 (Ct. App. 1998).

¶3 Millerleile initially told police at her home that the child fell down the stairs. The baby was taken to the hospital and the officers asked Millerleile to make a written statement at the police station. Her husband stayed at home to care for their sleeping children. An officer transported Millerleile to the police station. She was not handcuffed or frisked and rode in the front seat of the vehicle. She was specifically told that she was not under arrest and was free to leave. At the

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

police station, she was interviewed for less than ninety minutes, reiterating her statement that the child accidentally fell down the stairs. The detectives told Millerleile that she was free to leave. She could not leave, however, because she did not have a driver's license. The officers then directed her to the "comfort room," an unsupervised, unlocked waiting room where she waited for her husband to pick her up.

¶4 When Millerleile's husband arrived, the detectives asked to speak with him as well. Millerleile waited in the comfort room with her children during his interrogation. During that interrogation, the detectives were informed that the child had died.

¶5 The detectives asked Millerleile to return to the interrogation room after they finished questioning her husband. At that time, they informed her that the baby had died. Millerleile began to cry and the officers waited until she composed herself. They then informed her in an accusatorial tone that the doctors were skeptical of her statement that the baby fell down the stairs, that an autopsy to be performed in Madison would determine the true cause of death and that it would be in her best interests to be honest with the officers. Millerleile then confessed to shaking the baby.

¶6 Under these circumstances, a reasonable person would not believe that he or she was in custody. Until Millerleile confessed, the police had no evidence to contradict her story of an unfortunate accident. By noting that the child would be sent to Madison for an autopsy that would determine the cause of death, the detectives implied that no arrest would occur until they received the autopsy report. Although Millerleile spent substantial time at the police station in the comfort room with her children, the total interrogation time before she

confessed was less than two hours. Nothing the officers did or said would contradict their earlier statement that she was not under arrest and was free to leave.

¶7 The trial court based its conclusion on two factors, the detectives' accusatory tone and its belief that the public expected that "those accused of causing the death of a child in their custody are arrested, jailed and prosecuted." Confronting a suspect with incriminating evidence during a station house interview does not automatically convert the interview into a custodial interrogation. See *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). The detectives' accusatory tone, coupled with the suggestion that the autopsy might contradict Millerleile's statement, would not cause an ordinary person to believe that the earlier promise that she was free to leave had been rescinded.

¶8 Neither the trial court nor Millerleile cite any authority for the proposition that citizens believe they will be arrested if a child in their care dies. Until Millerleile confessed, she had provided the police with no basis for believing a crime had been committed. The doctors' and the detectives' skepticism about Millerleile's account of the accident would not provide a basis for an arrest until it was confirmed by the autopsy. We conclude that a reasonable person would have believed that no arrest would occur until the autopsy confirmed the suspicion.

*By the Court.*—Order reversed and cause remanded.

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

