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DISTRICT IV

November 16, 2023

To:

Hon. Todd J. Hepler
Circuit Court Judge
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

Julie Kayartz
Clerk of Circuit Court
Columbia County Courthouse
Electronic Notice

Adam P. Nero
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2022AP1705-CR

State of Wisconsin v. Allen Arthur Jessel (L.C. # 2020CF526)

Before Kloppenburg, P.J., Blanchard, and Graham, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

The State of Wisconsin appeals the circuit court's pre-trial order suppressing oral statements made to law enforcement by Allen Arthur Jessel. After reviewing the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).¹ We summarily reverse.

On the night of January 8, 2020, Deputy Michael Rosecky of the Columbia County Sheriff's Department pulled over a vehicle for a speeding violation. Jessel was the driver of the

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

vehicle, and there were three other occupants. Rosecky smelled the odor of marijuana emitting from the vehicle and Rosecky asked who had the marijuana. Jessel reached into the center console and handed a small bag of marijuana to Rosecky. Rosecky asked Jessel to step out of the vehicle and asked Jessel when he had last smoked. Jessel replied that he had smoked about an hour earlier. Jessel also said that he had smoked marijuana every day for approximately forty years. After administering field sobriety tests, Rosecky concluded that Jessel was impaired and placed him under arrest. Rosecky read the “Informing the Accused” form verbatim to Jessel, and Jessel agreed to provide a blood sample for testing. Laboratory reports from the testing of Jessel’s blood sample indicated the presence of THC in the blood.

The State charged Jessel with one count of operating with a restricted controlled substance in his blood as a fourth offense, and one count of possession of THC as a second offense. On March 19, 2021, Jessel made a pretrial demand for discovery and inspection. Jessel demanded that the State provide to the defense, among other materials, “a written summary of any and all oral or recorded statements of the defendant which the District Attorney plans to use in the course of the trial” pursuant to WIS. STAT. § 971.23(1)(b). Jessel also filed a motion requesting a hearing to determine the admissibility of Jessel’s statements pursuant to *Miranda-Goodchild*.²

In response to the discovery demand, the State provided Jessel with the five-page “Incident/Narrative Report” prepared by Rosecky. The Incident/Narrative Report contained background facts regarding the traffic stop, a description of Rosecky’s roadside interview with

² See *Miranda v. Arizona*, 384 U.S. 436 (1966); *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

Jessel, an explanation of the field sobriety tests administered, details about Jessel's arrest and the nature of the charges, information regarding the release of Jessel's vehicle, a description of the evidence obtained, as well as an account of the citations and paperwork that Rosecky prepared. The State also provided the defense with copies of the citations issued, the notice sent to Jessel regarding suspension of his operating privileges, the consent form signed by Jessel prior to submitting to a blood test, and lab reports from the Wisconsin State Laboratory of Hygiene. Additionally, the State provided the defense with copies of the dash camera video recorded from Rosecky's squad car and the squad car of another officer who responded to the scene of the traffic stop.

On May 27, 2021, the circuit court held the *Miranda-Goodchild* hearing requested by the defense. Rosecky testified at the hearing regarding the traffic stop, his roadside interview with Jessel, the field sobriety testing, and the events leading up to and following Jessel's arrest. The dash camera video from Rosecky's squad car was played at the hearing. After hearing arguments from counsel on both sides, the circuit court ruled that there were no Fourth Amendment or Fifth Amendment violations during the traffic stop and the questioning, and that Jessel's statements to Rosecky were admissible.

The case was scheduled to proceed to trial on September 2, 2022. A few days before trial, the State filed a pretrial motion for an order "finding that any and all statements made by the Defendant are admissible as evidence in the trial[.]" The State filed this motion despite the fact that the circuit court had already determined over a year earlier, at the *Miranda-Goodchild* hearing, that Jessel's statements to law enforcement were admissible. The State asserted in the motion that it had provided Jessel with "copies of police reports and/or audio recordings pursuant to the State's discovery obligations under WIS. STAT. § 971.23." The State further asserted that

Jessel had not filed any motion challenging the admissibility of any of his statements contained in those materials.

On August 29, 2022, the circuit court held a hearing on the motion. At the hearing, the court asked the prosecution if it had provided the defense with a written summary of all oral statements of the defendant that it planned to use in the trial, and the names of any witnesses to those statements, pursuant to WIS. STAT. § 971.23(1)(b). The prosecutor replied, “All of the statements at issue were provided on the recording of the incident and were described by Deputy Rosecky in his report; so I believe so.” Jessel, now represented by new counsel, argued that although he had received the discovery materials, including Rosecky’s report, the prosecution had not provided him an additional, separate written summary of the statements pursuant to § 971.23(1)(b).

This court observes, in reviewing the transcript of the August 29, 2022 hearing, that it would have been helpful to the circuit court if the prosecutor had simply pointed out that the court had already held a *Miranda-Goodchild* hearing at which it had ruled that Jessel’s statements were admissible, and also articulated more clearly that all of the defendant’s statements had been turned over both in recorded form and in the form of a written summary contained in Rosecky’s Incident/Narrative Report. The lack of clarity on these simple points created unnecessary confusion. Instead, the prosecutor argued only that Jessel failed to point to any authority that would require that the statements of the defendant be provided in any particular format. The circuit court ruled that WIS. STAT. § 971.23(1)(b) required the State to provide a separate written summary and excluded Jessel’s statements. The State filed a motion for reconsideration, which the circuit court denied. The State then filed a notice of appeal.

On appeal, the State argues that the circuit court erred in its interpretation and application of WIS. STAT. § 971.23(1)(b) to the facts of this case. The interpretation and application of a statute are questions of law that this court reviews de novo. *State v. Quintana*, 2008 WI 33, ¶11, 308 Wis. 2d 615, 748 N.W.2d 447.

WISCONSIN STAT. § 971.23(1) specifies what a district attorney must disclose to the defendant in a criminal case. Relevant to this case is § 971.23(1)(b), which states that a district attorney must provide “[a] written summary of all oral statements of the defendant which the district attorney plans to use in the course of the trial and the names of witnesses to the defendant’s oral statements.” On the specific facts of this case, we conclude that the discovery materials provided by the State to Jessel were sufficient to comply with § 971.23(1)(b), and that the circuit court erred in suppressing the statements. In reaching this conclusion, we do not rule that in *all* cases a police narrative or police report purporting to summarize the oral statements of a defendant, if disclosed by the prosecution, is sufficient to satisfy the requirements of § 971.23(1)(b). However, in this case, we are satisfied that the detailed Incident/Narrative Report prepared by Rosecky, which included a description of all of the questions asked and all of Jessel’s answers, was sufficient to satisfy the requirement that the State provide a “written summary of all oral statements of the defendant which the district attorney plans to use in the course of the trial.” Sec. 971.23(1)(b).

IT IS ORDERED that the order of the circuit court is summarily reversed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals