

STATE OF WISCONSIN : CIRCUIT COURT : MARINETTE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 02-CF-78

ISAAC DETTMAN,

Defendant.

**MOTION TO SUPPRESS ALL STATEMENTS
OF THE DEFENDANT**

The defendant, Isaac Dettman, by his attorneys, The Shellow Group, will, subject to jurisdictional objections, on the 17th day of December, 2002 at 8:30 a.m., move this Court to suppress all statements, oral or written, allegedly made by the defendant to law enforcement officers on the grounds that such statements were made in violation of the defendant's rights in *Miranda v. Arizona*, 380 U.S. 435 (1965) and *State ex rel. Goodchild v. Burke*, 28 Wis.2d 244, 133 N.W.2d 753 (1965). Further, these statements were made in violation of the defendant's rights under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section Eight of the Wisconsin Constitution.

Specifically, the defendant asserts that he was in custody at the time he was questioned and that he was not read his Miranda warnings. Therefore, his statements were made involuntarily. The State must prove the sufficiency of the Miranda warnings and the knowing and intelligent waiver of Miranda rights by a preponderance of the evidence. *State v. Santiago*, 206 Wis. 2d 3, 10, 556 N.W.2d 687, 689 (1996) citing *State v. Jones*, 192 Wis. 2d 78, 114, 532

N.W.2d 79 (1995). “The test for determining whether one is in custody is whether, under the totality of the circumstances, a reasonable person would believe that he or she is not free to leave.” *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984); *State v. Koput*, 142 Wis. 2d 370, 379-90, 418 N.W.2d 804, 808 (1988).

A statement is not involuntary in violation of the defendant’s Fifth Amendment rights unless the statement was obtained by coercive police activity. *State v. Owen*, 202 Wis. 2d 621, 551 N.W.2d 50, 59 (Wis. App. 1996). This inquiry focuses on whether the police used actual coercion or improper police practices to compel the statement. *State v. Clappes*, 136 Wis. 2d 222, 235-236, 401 N.W.2d 759, 765 (1987). If the defendant fails to establish that the police used actual coercive or improper pressures to compel the statement, the inquiry ends. *Id.* at 236, 4091 N.W.2d at 765. However, if the defendant establishes coercive conduct, the court must undertake a balancing analysis, weighing the personal characteristics of the defendant against the coercive police conduct, to determine whether the statement was voluntary. *Id.* at 236-37, 401 N.W.2d at 766. The personal characteristics of the accused that should be considered in this balance are “. . . his age, his education and intelligence, his physical and emotional condition, and his prior experience with the police.” *Barrera v. State*, 99 Wis. 2d 269, 298 N.W.2d 820, 830 (1980).

The defendant asserts that he was questioned while in custody, prior to any Miranda warnings being given. Additionally, he asserts that any waiver of his Miranda rights was made involuntarily.

The defendant requests an evidentiary hearing where the state must prove the lawfulness and admissibility of all statements allegedly made by the defendant.

Dated at Milwaukee, Wisconsin this _____ day of November, 2002.

Respectfully submitted,

THE SHELLOW GROUP

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