

State of Wisconsin,

Plaintiff,

v.

Case No. 2008CF000534

Mack Smith,

Defendant.

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**Motion to Suppress Statements**

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PLEASE TAKE NOTICE that on the   16th   day of   June  , 2008, at   10:00 a.m.  , or as soon thereafter as counsel may be heard, the above-named defendant will appear before that branch of the Milwaukee County Circuit Court presided over by the Honorable Dennis Moroney, and will then and there move the court to suppress the statements given by the defendant to the police for the reason that the statements were coerced by improper police conduct and, therefore, were involuntary.

This motion is further based upon the attached Memorandum of Law.

Dated at Milwaukee, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2008:

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**Memorandum in Support of Motion to Suppress Statements**

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**Introduction**

The complaint filed in this action alleges that the defendant, Mack Smith, and two other men, went to a home in Milwaukee, gained access, and then robbed at gunpoint the occupants of the home. Smith was arrested when he was caught by police driving a vehicle owned by the victims.

Smith was interviewed on three occasions by the police: Saturday, January 26, 2008; Sunday, January 27, 2008; and Monday, January 28, 2008.

All three interrogations were recorded. A review of these recordings reveals that the critical admissions made by Smith were as a result of police misconduct. Specifically, during the course of the first interview the detective shouted at Smith that, "You will spend the rest of your life in prison if you are convicted of everything here. You have an option to tell who the other people are . . . ." (1/26/2008 CD 1:00:10) During that same interview, at 1:13:39, Smith says that he does not want to talk to either one of the detectives any more. Finally, at 1:26:51, Smith says, "I swear to God I need my medication." Detective Zens says they will get him the medication only if he helps them straighten out this house robbery. Smith later explains that the medication he needs is for anxiety.

The next day the police interrogated Smith again. This time Smith was led to

believe that if all he did was to give the robbers the victim's address that it "would not be a problem." (1/27/2008 CD 13:14). Again, Smith Smith complained that he has only had one hour of sleep because they will not give him his medication and he is supposed to have it every six hours. The detective says they will give it to him "as soon as we are done here." (1/27/2008 CD 30:39)

During the January 28, 2008 interrogation, early on Smith told the detectives, "I want my medication right now my mind aint right." (1/28/2008 CD 16:41). During this interview Smith reiterates several times the fact that the detectives from the day before told him that "giving information" was not a crime. However, several minutes later the detective told Smith that Stephanie (the victim) picked him out of a line up at being at her home. (1/28/2008 CD 24:31) This was a flat-out lie. The victim, Stephanie, was shown a photo line-up by detectives and she picked out someone other than Smith. (see Exhibit B).

### **Argument**

**I. The false promises and lies told to Smith during the course of the interrogation, together with their refusal to give Smith his medication, is improper police conduct that rendered Smith's statements involuntary.**

**A. The court must balance the improper police tactics against the personal characteristics of Smith**

To prove that a defendant waived his or her rights against self-incrimination, the state must show: first, that the defendant was advised of his or her constitutional rights, understood those rights, and intelligently waived those rights; and, second, that the defendant's statements were voluntary. *State v. Mitchell*, 167 Wis.2d 672, 696, 482 N.W.2d 364, 374 (1992). To demonstrate the voluntary nature of the defendant's statement, the state must show, by the greater weight of the credible evidence, that the defendant was willing to give the statement and that the statement was not the result of duress, threats, coercion, or promises. *State v. Lee*, 175 Wis.2d 348, 360, 362-65, 499 N.W.2d 250, 255, 256-57 (Ct. App. 1993).

In determining whether a confession is voluntary, the essential inquiry is whether

it "was procured via coercive means or whether it was the product of improper pressures exercised by the police." *State v. Clappes*, 136 Wis.2d 222, 236, 401 N.W.2d 759, 765 (1987). "[I]n order to justify a finding of involuntariness, there must be some affirmative evidence of improper police practices deliberately used to procure a confession." *Id.* at 239, 401 N.W.2d at 767. The defendant's personal characteristics are determinative only if the police used improper or coercive tactics. *Id.* at 239-40, 401 N.W.2d at 767. Police conduct does not need to be egregious or outrageous in order to be coercive; subtle pressures are coercive if they exceed the defendant's ability to resist. *State v. Hoppe*, 2003 WI 43, 261 Wis. 2d 294, P46, 661 N.W.2d 407. If a defendant's condition renders him or her uncommonly susceptible to police pressures, those pressures may be coercive even though under another set of circumstances, they might not be coercive. *Id.* "As interrogators have turned to more subtle forms of psychological persuasion, courts have found the mental condition of the defendant a more significant factor in the voluntariness calculus." *Colorado v. Connelly*, 479 U.S. 157, 164, 93 L. Ed. 2d 473, 107 S. Ct. 515, (1986)).

Some examples of improper police pressure including denying the defendant a reasonable opportunity for sleep and to eat. *Watts v. Indiana*, 338 U.S. 49, 52-53, 93 L. Ed. 1801, 69 S. Ct. 1347 (1949)

The relevant personal characteristics of the defendant include his age, education, intelligence, his physical or emotional condition, and his prior experience with the police. *Clappes*, 136 Wis.2d at 236. These factors must be balanced against the police pressures and tactics which have been used to induce the admission, such as the length of the interrogation, any delay in arraignment, the general conditions under which the confession took place, any excessive physical or psychological pressure brought to bear on the defendant, any inducements, threats, methods or strategies utilized by the police to compel a response, and whether the individual was informed of his right to counsel and right against self-incrimination. *Id.* at 236-37, 401 N.W.2d at 766.

#### **B. The coercive police conduct overcame Smith's ability to resist**

The recordings of the interrogation, together with testimony that will be presented at the motion hearing, amply demonstrate that Smith's statements were coerced by the

police.

First, Smith will testify that prior to his arrest he was on medication for, among other problems, high levels of anxiety. This is corroborated by Smith's repeated requests for his medication as heard in the recordings. Significantly, the detectives each time said that Smith could have his medication *but only* after the interrogation was complete.

Then, knowing that Smith was subject to high levels of anxiety, the detectives used this to their advantage by telling Smith that he would spend the rest of his life in prison if he was convicted of being part of the armed robbery. This, of course, is not true and it could not have been a good faith prediction on the part of the detective as to how the case may turn out. Rather, it was a deliberate tactic to frighten Smith. This tactic does not even fairly fall into the category of "subtly coercive" police tactics; rather, this is blatantly coercive. This is especially true since it was coupled with the implicit promise that if Smith tells the police who was involved he (Smith) would not spend the rest of his life in prison.

From there the police lied to Smith about the strength of the State's case by falsely claiming that the victim, Stephanie, picked Smith out of a photo line-up.

One can easily imagine what went through Smith's mind. He was led to believe that the police had a solid case (when this was not true) and unless he answered the police questions he would go to prison for the rest of his life (which was also not true).

### **Conclusion**

For these reasons it is respectfully requested that the court suppress the

statements given by Smith while in police custody.

Dated at Milwaukee, Wisconsin, this \_\_\_\_\_ day of \_\_\_\_\_, 2008:

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