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110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

February 3, 2026

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Daniel J. O'Brien
Electronic Notice

Joshua Odell Gatlin 457752
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2023AP673-CR State of Wisconsin v. Joshua Odell Gatlin (L.C. # 2022CF598)

Before White, C.J., Donald, and Geenen, 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).

Joshua Odell Gatlin, pro se, appeals a judgment of conviction entered following a bench trial at which the circuit court found him guilty of one count of second-degree sexual assault of a child. He also appeals an order denying postconviction relief. The issue presented is whether the circuit court erroneously denied Gatlin's motion to suppress his custodial statements. The court determined that Gatlin invoked his rights to counsel and to remain silent when a detective first sought to question him but that Gatlin subsequently reinitiated questioning, waived his rights, and gave voluntary statements to the detective. The court therefore denied Gatlin's suppression motion and admitted his custodial statements at trial. In postconviction proceedings, the court rejected

Gatlin's efforts to relitigate the suppression motion. Based upon a review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2023-24).[1]

On February 9, 2022, when A.P. was 14 years old, she reported to police that while she was at a bus stop the previous day, she encountered a man who offered to buy a cell phone for her if she would have sex with him. She said that she agreed and twice had sex with the man somewhere on the route to a local Walmart. Police arrested Gatlin in connection with A.P.'s allegations, and he subsequently made incriminating statements to a detective. The State charged Gatlin with two counts of second-degree sexual assault of a child younger than 16 years of age.

Gatlin discharged his trial counsel early in the proceedings. Representing himself, he moved to suppress his custodial statements, asserting that the police questioned him even though he had requested a lawyer; he did not confess; if he did confess, he had not intended to do so; the interrogation was designed to elicit a confession; and his custodial statements were irrelevant. At the suppression hearing, the circuit court heard testimony from Detective Steve Wells and watched the video recordings of Wells's custodial interviews with Gatlin.

The evidence presented at the hearing showed that Wells conducted the first of two recorded custodial interviews mid-morning on February 11, 2022. At the outset of the first interview, Wells read the warnings required by ***Miranda v. Arizona***, 384 U.S. 436 (1966),[2] and

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

[2] Before questioning a suspect in custody, officers must inform the person of, *inter alia*, the right to remain silent, the fact that any statements made may be used at trial, the right to have an attorney present during questioning, and the right to have an attorney appointed if the person cannot afford one. *See* ***Miranda v. Arizona***, 384 U.S. 436, 478-79 (1966).

Gatlin agreed to talk to the detective without a lawyer present. Gatlin next answered some preliminary questions about his family background. Wells then introduced the subject of A.P.'s allegations, falsely stating that A.P. had accused Gatlin of grabbing her, choking her, and raping her by force. Wells went on to describe an even more aggravated crime that included a sexual assault at gunpoint but added: "she didn't say you had a gun." Gatlin interrupted, stating, "I want a lawyer." Wells, who was still talking, responded: "what?" Gatlin repeated that he wanted a lawyer, adding: "that didn't happen." Wells concurred, telling Gatlin: "I just said that didn't happen." Gatlin said again: "I want a lawyer." Wells responded, "ok," and packed up his papers. The video recording ended as the two men left the interview room. Wells testified that at this point he took Gatlin back to his cell.

Wells further testified that during the return to the cell block, Gatlin asked "what happens next?" Wells answered that he had planned to ask Gatlin for a DNA sample, but because Gatlin had requested a lawyer, Wells would instead obtain a search warrant for Gatlin's DNA and would return to execute the warrant in a few hours. Gatlin then offered to provide a DNA sample voluntarily. Wells therefore brought Gatlin back to the interview room where, Wells testified, police normally collect DNA samples. In the interview room, Wells resumed recording his interaction with Gatlin approximately seven minutes after the first interview ended.

When the second recorded interview began, Wells provided a summary of his off-camera interaction with Gatlin, which matched the description that Wells subsequently provided at the suppression hearing. Wells next asked Gatlin if the summary was accurate and invited him to correct or clarify anything he thought was wrong. Gatlin did not offer any corrections.

Wells then filled out the form required for a consensual DNA collection, and he collected DNA samples from Gatlin. The circuit court found that during this process, Gatlin made approximately five separate attempts to obtain information about the case, asking what was "going on," and inquiring about the charges that he faced. Wells responded by stating that he could not discuss the case with Gatlin because he had requested a lawyer.

Wells completed the DNA collection after about 12 minutes, and at the conclusion of the procedure, Wells allowed Gatlin a cigarette. Approximately three minutes then passed before Gatlin again sought information about the criminal proceeding, stating that he "want[ed] to see what is going on with the case." Wells responded: "do you want to talk to me without a lawyer?" Gatlin said that he did.

Nineteen minutes and 50 seconds after the second recording began, Wells read the same ***Miranda*** warnings to Gatlin that Wells had read at the start of the first interview. Gatlin said that he understood the warnings and wanted to talk. Wells then questioned Gatlin for approximately 30 minutes. During the course of the questioning, Gatlin made incriminating statements.

Based on the foregoing facts, the circuit court determined that during the first recorded interview, Gatlin invoked his rights to counsel and to remain silent after receiving ***Miranda*** warnings and that Wells therefore ended the interview. The court further determined that Gatlin subsequently reinitiated conversation with Wells about the case and that Gatlin then knowingly and intelligently waived his rights and agreed to talk after receiving ***Miranda*** warnings for the second time. The court therefore denied his suppression motion and admitted his custodial statements at trial, where the court ultimately found him guilty of one count of second-degree sexual assault of a child.

Gatlin filed a postconviction motion alleging that his custodial statements were involuntary. As grounds, he alleged that he was "forced to wear extremely tight handcuffs to the point his hands turned blue and lost circulation." The circuit court denied the motion, declining to revisit the findings and conclusions that underpinned the suppression decision. Gatlin moved for reconsideration, asserting that the court had originally decided his suppression motion "without considering the involuntariness of his custodial statement.... The defendant was painfully handcuffed during the duration of the interrogation." The court denied reconsideration, explaining that Gatlin "made no statements or gestures indicating that [the handcuffs] were causing him pain. For most of the interview, [Gatlin's] hands laid calmly in his lap." Further, the court found that Gatlin did not introduce any evidence or argument during the hearing that the handcuffs interfered with his ability to make a voluntary statement. The court therefore denied the motion for reconsideration. Gatlin appeals.

A familiar standard governs our review of a circuit court's decision resolving a motion to suppress custodial statements. We accept the circuit court's findings of historical fact unless they are clearly erroneous, but we independently review the application of constitutional principles to those facts. ***State v. Ward***, 2009 WI 60, ¶17, 318 Wis. 2d 301, 767 N.W.2d 236.

Also familiar is the principle that when a suspect invokes his or her Fifth Amendment rights to counsel and to remain silent after receiving ***Miranda*** warnings, the police must scrupulously honor those rights. ***Id.***, 384 U.S. at 479; ***State v. Hartwig***, 123 Wis. 2d 278, 279-80, 283-84, 366 N.W.2d 866 (1985); ***State v. Edler***, 2013 WI 73, ¶23, 350 Wis. 2d 1, 833 N.W.2d 564. Thus, "an accused ... having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the

accused himself initiates further communication, exchanges or conversations with the police." ***Edwards v. Arizona***, 451 U.S. 477, 484-85 (1981).

In this case, while the parties agree that Gatlin invoked his rights to counsel and to remain silent almost immediately after receiving ***Miranda*** warnings, Gatlin argues that Wells violated those rights in multiple ways. We reject those arguments.

Gatlin first disputes the circuit court's conclusion that Wells ended the first custodial interview after Gatlin invoked his Fifth Amendment rights. According to Gatlin, Wells continued the interrogation, initially by asking "what?" when Gatlin interrupted Wells to ask for a lawyer; and then by agreeing with Gatlin that an armed assault "didn't happen."

Whether the defendant's interaction with law enforcement constituted interrogation is a question of law, and we therefore review the question de novo. ***State v. Cunningham***, 144 Wis. 2d 272, 281-82, 423 N.W.2d 862 (1988). We conclude that Wells properly ceased questioning Gatlin after he asked for a lawyer.

Gatlin's argument, in effect, is that Wells could not lawfully communicate with Gatlin at all after Gatlin invoked his constitutional rights. That is not the case. Police may make context-appropriate comments and otherwise interact with a suspect in custody without running afoul of ***Miranda*** so long as the interaction is not reasonably likely to elicit an incriminating response. ***State v. Harris***, 2017 WI 31, ¶31, 374 Wis. 2d 271, 892 N.W.2d 663. Examples of such interaction include answering direct questions and offering "non-editorialized statements of fact." ***Id.*** Here, the exchange between Wells and Gatlin that immediately followed Gatlin's invocation of his rights is the type of non-inquisitorial interaction that ***Harris*** allows. Because Wells at that point did not

say anything calling for an incriminating response, his interaction with Gatlin did not constitute an interrogation. *See* ***Rhode Island v. Innis***, 446 U.S. 291, 301-02 (1980).

Next, Gatlin faults Wells for revealing that he planned to obtain a warrant for Gatlin's DNA. According to Gatlin, this constituted a failure to honor his Fifth Amendment rights. Upon our independent review, we again disagree. *See* ***Cunningham***, 144 Wis. 2d at 281-82. An advisement that police plan to seek a warrant is a "non-editorialized" factual statement and thus not an interrogation. *See* ***Harris***, 374 Wis. 2d 271, ¶31.

Moreover, the Fifth Amendment privilege against self-incrimination does not protect a suspect from being compelled to produce "real or physical evidence." ***Pennsylvania v. Muniz***, 496 U.S. 582, 588-89 (1990) (citation omitted). Wells therefore could have pursued a warrant compelling Gatlin to submit to DNA collection notwithstanding Gatlin's invocation of his ***Miranda*** rights. *See* ***Muniz***, 496 U.S. at 591. Gatlin fails to demonstrate that the analysis changes merely because Wells disclosed his intent to get a warrant.

We next reject Gatlin's vague suggestion that a constitutional violation occurred when Wells accepted Gatlin's offer to provide DNA voluntarily.[3] "A consent to search, as such, is

[3] Gatlin concedes early in his appellant's brief-in-chief that he agreed to give a DNA sample to Wells. At a later point in the brief, however, Gatlin suggests otherwise, alleging that Wells "fabricated ... what occurred" off-camera. Gatlin fails to demonstrate that he made this allegation during the suppression hearing. We require parties to make their arguments first to the circuit court. ***State v. Rogers***, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995). Moreover, the circuit court found that while Wells and Gatlin were off-camera, Wells explained that he intended to obtain a warrant for Gatlin's DNA, and Gatlin responded by offering to provide his DNA voluntarily. The circuit court's findings are supported by Wells's testimony and by the second video recording, in which Wells summarized what occurred off-camera without any objection or correction from Gatlin. Accordingly, to the extent that Gatlin now disputes the circuit court's findings as to what occurred off-camera, those findings are not clearly erroneous, and we accept them. *See* ***State v. Ward***, 2009 WI 60, ¶17, 318 Wis. 2d 301, 767 N.W.2d 236.

neither testimonial, nor communicative in the [F]ifth [A]mendment sense." ***State v. Turner***, 136 Wis. 2d 333, 352, 401 N.W.2d 827 (1987) (citations omitted). Accordingly, we see no basis for Gatlin's suggestion that Wells could not accept Gatlin's offer.

We next consider whether Gatlin validly waived his Fifth Amendment rights at the conclusion of the DNA collection.[4] We conclude that he did.

A suspect in custody who has invoked the right to counsel can waive that right: (1) by initiating further communication, exchanges, or conversations with the police; if (2) the suspect's waiver was knowing, voluntary, and intelligent. ***State v. Hambly***, 2008 WI 10, ¶¶67-70, 307 Wis. 2d 98, 745 N.W.2d 48. Our review again requires us to uphold the circuit court's findings of historical fact unless they are clearly erroneous but to apply the facts to the legal and constitutional principles de novo. *See* ***id.***, ¶71. The facts relevant to this inquiry are not disputed, so we move directly to the law.

Hambly requires that we first determine whether Gatlin reinitiated further communication with law enforcement. *See* ***id.***, ¶69. Two possible tests govern the question. Under one test, the suspect's inquiries or statements to police must "evince[] a willingness and a desire for a generalized discussion about the investigation"; under the other test, the suspect's inquiries or statements must seek a dialogue "about the subject matter of the criminal investigation." ***Id.***, ¶¶73-

[4] In the reply brief, Gatlin argues for the first time in this litigation that both custodial interviews violated his Sixth Amendment right to counsel. The Sixth Amendment "right to counsel attaches during the 'first formal proceeding against an accused.'" ***State v. Robinson***, 2024 WI App 50, ¶20, 413 Wis. 2d 534, 12 N.W.3d 535 (citation omitted). Gatlin asserts—notably without identifying any support in the record—that formal proceedings against him had begun before the start of his first interview with Wells. Therefore, he contends, he had a Sixth Amendment right to counsel that Wells failed to honor from the outset. We will not address this contention. We do not normally consider arguments raised for the first time on appeal, let alone arguments raised for the first in a reply brief. ***State v. Anderson***, 215 Wis. 2d 673, 683, 573 N.W.2d 872 (Ct. App. 1997).

74 (emphasis, citation, and footnote omitted). Although our supreme court has not yet decided which of the two tests to apply, *see* ***id.***, ¶75, this unresolved question need not be answered here. Gatlin's repeated efforts to engage Wells in a discussion of what was "going on" with the case and to coax him into revealing information about the potential charges satisfy both tests: the inquiries evidenced Gatlin's desire for a generalized discussion of the investigation and for a discussion of the subject matter of the investigation. *See* ***id.***, ¶¶73-74.

Turning to the second step in the ***Hambly*** analysis, we conclude that Gatlin's custodial statements were voluntary. In assessing voluntariness, "'[t]he pertinent inquiry is whether the statements were coerced or the product of improper pressures exercised by the' interrogator[.]" ***State v. Rejholec***, 2021 WI App 45, ¶21, 398 Wis. 2d 729, 963 N.W.2d 121 (citation omitted). However, "[c]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of ***Miranda*** are rare." ***Ward***, 318 Wis. 2d 301, ¶32 (citation omitted). Here, Gatlin made his inculpatory statements only after he received ***Miranda*** warnings—for the second time—and agreed to talk.

Gatlin did not offer any basis during the suppression hearing to conclude that this was the rare case that reflected a compelled statement notwithstanding a proper ***Miranda*** warning. Rather, Gatlin explicitly acknowledged that he "never said in [his] motion that [his statement] was involuntary." Instead, as he explained to the circuit court, his position was that Wells improperly induced Gatlin to submit to questioning by falsely stating that he "raped and beat this young girl and drug her in the bushes [sic]." This argument, however, was illogical and defeated by the record. Wells described a hypothetical violent assault early in the first interview, at which point

Gatlin immediately invoked his right to counsel and the questioning ended. Wells's description of a violent assault therefore did not coerce Gatlin's statement.

Moreover, the police are "authorized ... to lie and fabricate evidence in pursuit of a confession." ***Rejholec***, 398 Wis. 2d 729, ¶22. Indeed, while misrepresentations about a suspect's connection to a crime "may cause a suspect to confess ... causation alone does not constitute coercion[.]" ***State v. Triggs***, 2003 WI App 91, ¶19, 264 Wis. 2d 861, 663 N.W.2d 396 (citation omitted). Gatlin's complaints that Wells misrepresented the evidence thus did not show that Wells engaged in improper pressure tactics to induce a confession. Accordingly, the circuit court properly concluded at the hearing that these arguments did not support suppression.

In postconviction proceedings, Gatlin changed his approach and alleged that his second custodial interview was coercive because his handcuffs were so tight that his "hands turned blue and lost circulation." The circuit court declined to grant relief on this basis, observing both that Gatlin had failed to raise the allegation during the suppression hearing and that the record did not support the claim. The circuit court did not err.

Gatlin did not present any authority that permitted him to relitigate his pretrial suppression motion in a postconviction proceeding. The circuit court therefore properly rebuffed his efforts to do so. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (reflecting that claims unsupported by legal authority normally will not be considered). Moreover, Gatlin's postconviction allegation was defeated by the lack of any objective support in the second videorecording, which did not reflect that he was in any physical discomfort. Therefore, he was not entitled to a hearing on his postconviction claim, even assuming some basis for relitigating the suppression motion. *See* ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433

(providing that a circuit court may deny a postconviction motion without a hearing when the defendant offers only conclusory allegations or the record conclusively shows that the defendant is not entitled to relief).

In sum, the circuit court correctly determined that Gatlin waived his rights to counsel and to remain silent and made a voluntary custodial statement after reinitiating questioning by the police. The circuit court therefore properly admitted Gatlin's confession at trial. For all the foregoing reasons, we affirm.

IT IS ORDERED that the judgment and order are summarily affirmed. *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