66047-1 66047-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	NO. 66047-1-I
	)	
RESPONDENT,	)	
	)	
v.	)	**STATEMENT OF ADDITIONAL**
	)	**GROUNDS FOR REVIEW**
BRANDI MARTINEZ,	)	RAP 10.10
	)	
APPELLANT.	)	

(STATEMENT ATTACHED)

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1. SUMMARY OF ARGUMENT

On August 18, 2010 Brandi Martinez was present during the 3.5 hearing in the Skagit County Superior Court, in Mount Vernon, Washington. Officer Serrano, Sargent Moore and Officer McCloud, Officers employed through the Mount Vernon Police Department, were all present and took the stand. In testimony the officers all stated that they had not performed a custodial interrogation. All officers agreed and testified that they had not asked Ms. Brandi Martinez any question during the arrest. The Honorable Judge Needy allowed all of Ms. Brandi Martinez's statements in at the trial on August 24, 2010. Ms. Brandi Martinez informed the defense counsel that the officers had indeed ask her question after she was arrested. The defense counsil said she didn't have proof that it was true."

On August 24, 2010 Ms. Brandi Martinez was present for the two day trial. Officer Serrano took the stand and admitted to asking Ms. Brandi Martinez questions. The defense failed to object to have the testimony excluded from the recorded.

The Defense Counsel had the investigator go and take pictures for evidence on August 24, 2010, which was the day of the trial. The Defense Council was aware since February 2010 that Ms. Brandi Martinez was going to pursue to a trial. Also evidence needed to show the officer's credibility even though Ms. Brandi Martinez made the request to the defense counsel to submit admissible evidence to the trial. The counsel failed to obtain and present these facts to help the defense.

Ms. Brandi Martinez now appeals her conviction due to custodial interrogation, violating Ms. Brandi Martinez's Constitutional Rights under the Fifth Amendment and ineffective counsel under the Sixth Amendment.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Whether Officer performed custodial Interrogation violated Ms. Brandi Martinez's Constitutional Rights.
2. Whether Ms. Martinez had ineffective counsel though the terms described under Strickland v. Washington, 466 U.S. 668 (1984.
    a. Show that it fell below an "objective standard of reasonableness."
    b. Counsel performed the duty to make "reasonable investigations."
3. Whether the state had sufficient evidence to prove beyond a reasonable doubt to convict Ms. Brandi Martinez with the charges, with the violations of her Constitution Rights listed above

2. Statement of Facts

In the early morning hours of January 30, 2010, Officer Serrano of the Mount Vernon Police Department responded to a possible motor vehicle hit and run in the area of North LaVenture Road in Mount Vernon, WA 8/23/10 RP 4-6. The car involved was described as white Honda type Vehicle. 8/23/10 RP 4. Officer Serrano activated his lights and siren in an attempt to pull over the suspect vehicle. 8/23/2010 RP 9. The vehicle did not stop and instead pulled into s

residential neighborhood. 8/23/2010 RP 9. The vehicle continued at a high rate of speed approximately forty miles an hour through the residential streets. 8/23/2010 RP. Officer Serrano the vehicle finally stopped at a dead-end cul-de-sac where there was a parking lot boats, RVs, and numerous cars parked. 8/23/2010 RP 12. The vehicle came to a stop Ms. Brandi Martinez exited the vehicle to the West, through the back door behind the driver's side. 8/24/2010 RP. Officer Serrano apprehended and put Ms. Brandi Martinez under arrest.8/23/10 CT 15. 8/18/2010 RP 8, 11, 14-15, 20. Officer Serrano read Ms. Brandi Martinez her Constitutional Rights verbatim, using his department issued card. 8/18/2010 RP 7-8, 12. Ms. Brandi Martinez stated she did not understand her constitutional rights. 8/18/2010 RP 8,12, 29. Then Officer Serrano asked Ms. Brandi Martinez who else was in the vehicle with her?, who was driving? and who was in the vehicle?. 8/24/2010 RP 117-118. 8/23/2010 RP 29. 8/18/2010 RP 8, 11-12. Ms. Brandi Martinez responded that she was the only person in the vehicle and that she was not driving. 8/18/2010 RP 5, 8. 8/23/2010 RP 19, 29. 8/24/2010 RP 117. Both Ms. Brandi Martinez and Ms. Veronica Ceja the two

1The Appellant will refer to the verbatim report of proceedings by using the date followed by "RP" & the page number.

passengers in the vehicle caught, stated Ms. Brandi Martinez was not driving. 8/18/2010 RP 5, 8. 8/23/2010 RP 19, 29. 8/24/2010 RP 81, 117. Officer Serrano waited for back up to come and kept an eye on the vehicle. 8/23/2010 CT 16. Officer McCloud arrived on the scene. 8/23/2010 CT 16. Officer Serrano handed Ms. Brandi Martinez to Officer McCloud. 8/23/2010 RP 29. Between Sergeant Moore and Officer McCloud they kept an eye on Ms. Brandi Martinez. 8/23/2010

CT 29. Officer Serrano was searching the house on the West of the parking lot. 8/24/2010 CT 16. Then officer McCloud then radioed that they had apprehended Ms. Ceja. 8/24/2010 RP 16. Ms. Brandi Martinez and Ms. Veronica Ceja were then taken to the Skagit County Jail 8/23/2010 20 RP.

February 1, 2010, investigator Brandi Bowers went in and took pictures of Ms. Brandi Martinez's bruises on her right arm and wrists. 8/24/2010 RP 114-115. Ms. Martinez posted bail and was released on Bond on February 6, 2010. Ms. Martinez then met with her Counsel Mrs. Laura Riquelme in February 2010. Ms. Martinez informed Mrs. Riquelme she would not take a plea and would take this case to trial to prove her innocence; Ms. Martinez informed Mrs. Riquelme every court hearing and continuance of the case. Ms. Martinez spoke with Mrs. Laura Riquelme on many occasions and provided the contact numbers of Ms. Veronica Ceja and Melissa Comacho. Ms. Martinez asked Mrs. Riquelme to contact the tow truck company to testify the position of the car in order to prove the contradictory and creditability of the police officers story. Ms. Martinez asked Counsel Mrs. Laura Riquelme to show the distance between the patrol car and the white Honda, by printing the satellite picture and showing the distance between the vehicles. Mrs. Riquelme informed Ms. Brandi Martinez that she would have to contact a person from the city to testify and confirm the satellite pictures.

At the 3.5 hearing the on August 18, 2010 Honorable Judge Dave Needy made the statements admissible. 8/18/2010 RP 28. The court stated that the Ms. Brandi Martinez was read her rights and did not understand them and that Officer Serrano did not ask her any questions. 8/18/2010 RP 29.

Trial on August 23, 2010, Ms. Brandi Martinez met with Counsel Mrs. Laura Riquelme, to see if counsel had got the needed evidence needed for trial. Mrs. Laura Requelme stated she did not have enough time to contact and get someone from the city to testify about the satellite picture, in order show the distance between the white Honda and the patrol car. Mrs. Laura Riquelme states she would also send her investigator to take pictures of the bumper in the white Honda, that day. These pictures would later be admitted as exhibits used as evidence in this case. When Officer Serrano took the stand, during the cross examination, Officer Serrano admitted to asking Ms. Brandi Martinez, who else was in the vehicle 8/18/2010 RP 29. Everyone paused and counsel and the Judge looked at officer Serrano with an expression of shock. Counsel did not question the officer why in a previous testimony at the 3.5 hearing he stated he did not ask Ms. Brandi Martinez any questions. Instead counsel kept on with the trial. When cross-examination was done and Mrs. Riquelme came to be seated. Ms. Brandi Martinez asked why Mrs. Laura Riquelme had not asked Officer Serrano had now changed his answer about interrogation question at the 3.5 hearing. Mrs. Laura Riquelme stated she did not ask for the transcripts to refer back on those exact statements. Mrs. Riquelme did not believe she did not need the transcripts.

III. ARGUMENT

A. Ms. Brandi Martinez's Fifth and Fourteenth Constitutional rights were violated.

Miranda v. Arizona 384 U.S. 436 (1966), was a landmark 5–4 decision of the United States Supreme Court. The Court held that both inculpatory and exculpatory

statements made in response to interrogation by a defendant in police custody will be admissible at trial only if the prosecution can show that the defendant was informed of the right to consult with an attorney before and during questioning and of the right against self-incrimination prior to questioning by police, and that the defendant not only understood these rights, but voluntarily waived them.

Ms. Martinez was read her Miranda rights and did not understand them. 8/18/2010 RP 8,12, 29. The incrimating statements against Ms. Martinez's custodial statements should have not been introduced into court.

Custodial statements made by an accused are inadmissible unless preceded by a full advisement of rights and a knowing, intelligent, and voluntary waiver of rights, including the right to remain silent and the right to have counsel present at questioning. U.S. Const. amend. V; Miranda, 384 U.S. at 469-73; State v. Athan, 160 Wn.2d 354, 380,158 P.3d 27 (2007).

The State based this case on credibility. 8/24/2010 RP closing argument. "[A]ny system of administration which permits the prosecution to trust habitually to compulsory self-disclosure as a source of proof must itself suffer morally thereby. The inclination develops to rely mainly upon such evidence, and to be satisfied with an incomplete investigation of the other sources. The exercise of the power to extract answers begets a forgetfulness of the just limitations of that power. The simple and peaceful process of questioning breeds a readiness to resort to bullying and to physical force and torture. If there is a right to an answer, there soon seems to be a right to the expected answer, - that is, to a confession of guilt. Thus the legitimate use

grows into the unjust abuse; ultimately, the innocent are jeopardized by the encroachments of a bad system. Such seems to have been the course of experience in those legal systems where the privilege was not recognized." 8 Wigmore, Evidence (3d ed. 1940), 309. (Emphasis in original.) [378 U.S. 478, 490], Escobedo v. Illinois, 378 U.S. 478 (1964)

Haynes v. Washington, 373 U.S. 503, 519 .We have also learned the companion lesson of history that no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights. No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights. 13 If the exercise of constitutional rights will thwart the effectiveness of a system of law enforcement, then there is something very wrong with that system. 14

A traditional principle of `fairness' to criminals, which has quite possibly lost some of [378 U.S. 478, 496] the reason for its existence, is maintained in words while it is disregarded in fact. . . . Escobedo v. Illinois, 378 U.S. 478 (1964)

The Court relies on the virtues and morality of a system of criminal law enforcement which does not depend on the "confession." No such judgment is to be found in the Constitution. It might be appropriate for a legislature to provide that a suspect should not be consulted during a criminal investigation; that an accused should never be called before a grand jury to answer, even if he wants to, what may well be incriminating questions; and that no person, whether he be a suspect, guilty

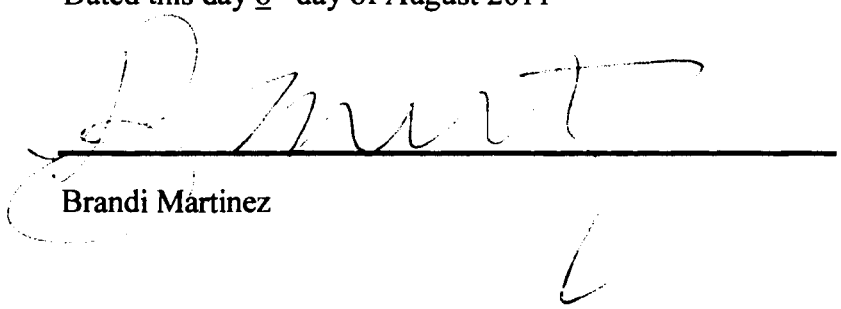
criminal or innocent bystander, should be put to the ordeal of responding to orderly noncompulsory inquiry by the State. But this is not the system our Constitution requires. The only "inquisitions" the Constitution forbids are those which compel incrimination. Escobedo v. Illinois, 378 U.S. 478 (1964)

Perhaps the truth is that the Rules have been abandoned, by tacit consent, just because they are an unreasonable restriction upon the activities of the police in bringing criminals to book." Williams, Questioning by the Police: Some Practical Considerations, 1960. Crim. L. Rev. 325, 331-332. See also 1964. Crim. L. Rev. 161-182. [378 U.S. 478, 500], Escobedo v. Illinois, 378 U.S. 478 (1964)

IV. CONCLUSION

The statements used as evidence to convict Ms. Brandi Martinez of Eluding a Police Vehicle and an enhancement charge, of reckless Endangerment, In which resulted a prison sentence away from her two young children for one year and a day. 9/15/2010 RP 9. This evidence was obtained through custodial interrogation. A clear violation of Ms. Brandi Martinez's Constitutional right and there for the cases should be reverenced and remanded.

Dated this day 8th day of August 2011



Brandi Martinez