

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 3, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP3152-CR

Cir. Ct. No. 2003CF2931

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAVELL DEANGELO LOVE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARY KUHNMUENCH, Judge. *Affirmed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Lavell Love appeals a judgment convicting him of second-degree reckless homicide while armed with a dangerous weapon and an order denying his postconviction motion. The sole issue on appeal is whether Love's inculpatory statement to police should have been suppressed on the

grounds that the police used deception to induce the statement. For the reasons discussed below, we affirm.

BACKGROUND

¶2 Love was seventeen years old and had completed the eleventh grade when the police arrested him in connection with a homicide. The police conducted two interviews on the day of Love's arrest, which are not at issue on this appeal. The following day, shortly after Love participated in a lineup procedure, the police conducted a third interview that lasted nearly four and a half hours. According to the detectives who testified, the police gave Love *Miranda*¹ warnings before they began questioning him, accommodated his requests for food, beverages, and bathroom breaks, and did not handcuff him, physically injure him or make any threats during the interview.² However, the police told Love that they believed he had been lying in his prior interviews and they also led Love to believe that multiple witnesses had identified him during the lineup, even though none of the witnesses had actually been able to identify him. Love eventually made inculpatory statements during the interview, which he subsequently moved to suppress. The trial court concluded that the police tactics during the interview were acceptable and denied the suppression motion.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

² In deeming the detectives' testimony to be more credible than Love's, the court explicitly rejected Love's assertions that the police had failed to give him his *Miranda* warnings at the beginning of the interview and that he had been high on cocaine during the interview; it also implicitly rejected Love's additional allegations that he had requested counsel, asked to have the questioning stop, and been told that he could not sleep until after he had given a statement. Credibility determinations by a trial court acting as the factfinder are not reviewable by this court. *State v. Oswald*, 2000 WI App 3, ¶47, 232 Wis. 2d 103, 606 N.W.2d 238.

DISCUSSION

¶3 Love argues on appeal that the trial court erred in failing to suppress his statement to police as involuntary under the totality of the circumstances.³ When reviewing the denial of a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2) (2003-04);⁴ *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, we independently determine whether the facts found by the circuit court satisfy applicable constitutional provisions. *State v. Ellenbecker*, 159 Wis. 2d 91, 94, 464 N.W.2d 427 (Ct. App. 1990).

¶4 Only voluntary confessions are admissible. *State v. Jerrell C.J.*, 2005 WI 105, ¶17, 283 Wis. 2d 145, 699 N.W.2d 110. “[A] defendant’s statements are voluntary ‘if they are the product of a free and unconstrained will, reflecting deliberateness of choice, as opposed to the result of a conspicuously unequal confrontation in which the pressures brought to bear on the defendant by representatives of the State exceeded the defendant's ability to resist.’” *Id.*, ¶18.

¶5 Coercive or improper police conduct is a necessary, but not sufficient, prerequisite for a finding of involuntariness. *Id.*, ¶¶19-20. Thus, a deliberate lie by police about the strength of evidence against a defendant would be one factor to consider under the totality of the circumstances in deciding

³ In the alternative, Love asks this court to certify this appeal to the Wisconsin Supreme Court to decide whether to adopt a bright line rule that confessions induced by police deception violate the Wisconsin Constitution. We decline to do so, however, because we are satisfied that a petition for review will be sufficient to bring the issue to the court’s attention.

⁴ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

whether a particular confession was voluntary.⁵ *Id.*, ¶20; *State v. Triggs*, 2003 WI App 91, ¶17, 264 Wis. 2d 861, 663 N.W.2d 396.

¶6 Here, however, the trial court found that the police had not actually engaged in any outright lies. Instead, they made some deliberately ambiguous statements, apparently so the defendant would draw the erroneous inference that several witnesses had actually identified him during the lineup. Such conduct did not rise to the level of misrepresentation by police which triggered the need to engage in a balancing test encompassing the totality of the circumstances in *Triggs*. Rather, as the trial court noted, the interview techniques used in this case were well within the range of acceptable police tactics.

¶7 Moreover, even if the conduct here could be deemed deceptive or misleading in some regard, we are not persuaded it was “coercive.” As we noted in *Triggs*, statements relating to the evidence of a suspect’s involvement of a

⁵ The supreme court has described the test as follows:

The totality of the circumstances test involves a balancing of the personal characteristics of the defendant against the pressures and tactics used by law enforcement officers.... “The relevant personal characteristics of the defendant include the defendant’s age, education and intelligence, physical and emotional condition, and prior experience with law enforcement. The personal characteristics are balanced against the police pressures and tactics which were used to induce the statements, such as: the length of the questioning, any delay in arraignment, the general conditions under which the statements took place, any excessive physical or psychological pressure brought to bear on the defendant, any inducements, threats, methods or strategies used by the police to compel a response, and whether the defendant was informed of the right to counsel and right against self-incrimination.”

State v. Jerrell C.J., 2005 WI 105, ¶20, 283 Wis. 2d 145, 699 N.W.2d 110 (citations omitted).

crime do not “interject the type of extrinsic considerations that would overcome [the suspect’s] will by distorting an otherwise rational choice of whether to confess or remain silent.” *Triggs*, ¶19. Since the police conduct in this case was neither improper nor coercive, no particularized discussion of Love’s personal characteristics is necessary. We conclude the trial court properly refused to suppress Love’s statement.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

