COURT OF APPEALS
DECISION
DATED AND FILED

December 27, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2006AP535-CR **Cir. Ct. No. 2005CF408**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

BRANDON S. STURM,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Sheboygan County: JAMES BOLGERT, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

¶1 PER CURIAM. The State appeals from an order partially suppressing a statement Brandon Sturm gave to police because Sturm did not

understand his ***Miranda***[1] rights and the consequence of waiving those rights. We affirm the order.

¶2 Sturm is charged with sexual assault of a child under thirteen years of age. When questioned by police about the alleged assault, Sturm, then age seventeen, was being held at a juvenile detention center on an unrelated manner. Sturm was read the department's ***Miranda*** warning and waiver form and was provided the form to look over. The detective asked Sturm if he understood. Sturm replied, "mostly." The detective then asked Sturm, "What questions? Do you have any questions." Sturm replied, "No." The detective then explained to Sturm that if he understood and wanted to answer questions and waive his rights, he needed to sign the form. Sturm signed the waiver form. When confronted with the assault allegation, Sturm provided details about his sexual contact with the four-year-old victim. A written statement was produced.

¶3 Sturm moved to suppress his statements to the detective on the ground that because he is severely learning disabled, he did not understand his ***Miranda*** rights and did not knowingly or voluntarily waive his rights. He alleged that he was confused about his ability to refuse or to stop the interrogation. He also argued that the detective's words and demeanor coerced his statement. Sturm's educational records were produced at the suppression hearing and show that he consistently was below peer levels of achievement in all areas. An evaluation authored just six months before his police interview remarked that his reading skills were in the third or fourth grade level. The school district's special education administrator also testified. She explained parts of the school records

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

and that through middle school Strum was known to have speech and language problems. She read IQ reports indicating that Sturm has an IQ in the low average-to-borderline range.

¶4 The trial court found that the reading of the ***Miranda*** rights was not effective because Sturm is unable to understand things the first time around and therefore, the waiver of rights was not voluntary. The court also found that coercive police tactics had not been used. It ruled that Sturm's statements could be used only for impeachment purposes if Sturm testifies.

¶5 The State bears the burden of demonstrating by a preponderance of the evidence that Sturm knowingly and intelligently waived his ***Miranda*** rights. *See* ***State v. Santiago***, 206 Wis. 2d 3, 12, 556 N.W.2d 687 (1996). The validity of the waiver of ***Miranda*** rights is an ultimate issue of constitutional fact which this court determines de novo. ***Santiago***, 206 Wis. 2d at 18. "'[T]he waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" ***Id.*** at 18-19 (quoting ***Moran v. Burbine***, 475 U.S. 412, 421 (1986)). Because the question of whether the accused could intelligently waive ***Miranda*** rights is in essence a question of voluntariness, the totality of the circumstances must be examined and there must be a balancing between the personal characteristics of the accused and the pressures to which he was subjected in order to induce the statement. ***Norwood v. State***, 74 Wis. 2d 343, 363-64, 246 N.W.2d 801 (1976). Factors to be considered in examining the totality of the circumstances include: the age of the accused, the education and intelligence of the accused, the conditions under which the interrogation took place, the physical and mental condition of the accused, any inducements, methods and stratagems which were used to persuade the accused to

give a statement, and what the responses were to his requests for counsel. ***Id.*** at 365.

¶6 The State argues that the trial court focused solely on Sturm's limited comprehension capacity as detailed in the extensive educational materials presented by Sturm at the suppression hearing. It charges that the trial court failed to consider the totality of the circumstances when ruling that Sturm did not understand the ***Miranda*** warnings.

¶7 The State's argument is based on a far too narrow view of the trial court's ruling; it is an attempt to compartmentalize the ruling to manufacture error. "We do not necessarily review a decision based upon the legal term of art used by the circuit court to characterize its reasoning. We review the overall analysis used by the court." ***Daniel R.C. v. Waukesha County***, 181 Wis. 2d 146, 156, 510 N.W.2d 746 (Ct. App. 1993).

¶8 The State concedes that the trial court considered the reliability of Sturm's statement and the detective's conduct in determining that the statement was voluntary—that is, produced without police coercion. We read the trial court's decision as incorporating those considerations in determining whether Sturm was capable of understanding the ***Miranda*** warnings as well. Indeed, the trial court was concerned about the manner in which the detective gave the warnings and the detective's failure to adequately follow up on Sturm's equivocal response that he "mostly" understood what was read to him.

¶9 Even if we deem the trial court's decision to be underdeveloped, the record otherwise supports the decision. The reading of the ***Miranda*** warnings without pause between each advisement coupled with the evidence that Sturm does not assimilate new information rapidly demonstrates his failure to understand

the rights read to him and the significance of waiving those rights. The school records demonstrate that Sturm does not understand things the first time around. At least one school record explains that Sturm could respond appropriately to questions but was unable to independently articulate information. Thus, the detective's query of whether Sturm had any questions was not useful in ferreting out problems with Sturm's understanding of the warnings.

¶10 Sturm had prior police contacts and on four prior occasions over approximately a three-year period had been read his ***Miranda*** rights and signed a waiver of those rights. However, one officer testified that during the interview following the waiver of rights he had a sense that Sturm was not comprehending everything and the interview was terminated. The prior police contacts mean little in the absence of any suggestion that Sturm, at a younger age, understood the rights then read to him. We affirm the trial court's determination under the totality of the circumstances that Sturm did not understand the ***Miranda*** warnings and therefore, could not validly waive his rights.

By the Court.—Order affirmed.

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