COURT OF APPEALS
DECISION
DATED AND FILED

April 17, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP1935 **Cir. Ct. No. 2005JV1248**

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

IN THE INTEREST OF JOSEPH F., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JOSEPH F.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DAVID L. BOROWSKI, Judge. *Affirmed*.

¶1 FINE, J. Joseph F. appeals from an order finding him delinquent for having committed the crime of second-degree sexual assault of a child, as a

party to a crime. *See* WIS. STAT. §§ 948.02(2), 939.05. Joseph F. confessed and, after the trial court denied his motion to suppress that confession, pled guilty. The only issue on appeal is whether the trial court erred in determining that Joseph F.'s confession was voluntary. We affirm.

¶2 Joseph F. was born in May of 1991, and was fourteen on June 29, 2005, when he was arrested and interrogated by Village of Greendale police detective Ryan Rosenow. This appeal turns on our standard of review in connection with the trial court's findings of fact and its legal conclusion.

¶3 "A [trial] court's ruling on a motion to suppress evidence presents a mixed question of fact and law." ***State v. Wallace***, 2002 WI App 61, ¶8, 251 Wis. 2d 625, 634, 642 N.W.2d 549, 553. "We will not reverse the [trial] court's factual findings unless they are clearly erroneous." ***Ibid.*** Thus, when the circumstances surrounding a suspect's confession are at issue, as they are here, "[w]e defer to the [trial] court's findings regarding the factual circumstances surrounding the statement." ***State v. Jerrell C.J.***, 2005 WI 105, ¶16, 283 Wis. 2d 145, 155, 699 N.W.2d 110, 115. We review *de novo*, however, whether those facts pass constitutional muster. ***Ibid.***

¶4 At a suppression hearing where the voluntariness of a confession is challenged, the State must prove by a preponderance of the evidence that the confession was, indeed, voluntary. ***State v. Hoppe***, 2003 WI 43, ¶40, 261 Wis. 2d 294, 310, 661 N.W.2d 407, 415.

> A necessary prerequisite for a finding of involuntariness is coercive or improper police conduct. However, police conduct need not be egregious or outrageous in order to be coercive. "Rather, subtle pressures are considered to be coercive if they exceed the defendant's ability to resist. Accordingly, pressures that are not coercive in one set of circumstances may be

> coercive in another set of circumstances if the defendant's condition renders him or her uncommonly susceptible to police pressures."
>
> The voluntariness of a confession is evaluated on the basis of the totality of the circumstances surrounding that confession. This analysis involves a balancing of the personal characteristics of the defendant against the pressures and tactics used by law enforcement officers.

Jerrell C.J., 2005 WI 105, ¶¶19–20, 283 Wis. 2d at 156–157, 699 N.W.2d at 115–116 (citations and quoted source omitted). ***Jerrell C.J.*** reiterated the pertinent criteria:

> "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."

Id., 2005 WI 105, ¶20, 283 Wis. 2d at 157, 699 N.W.2d at 116 (quoted source omitted). We examine the trial court's findings of fact and conclusions of law against this background.

¶5 The trial court made the following findings of fact:

- Joseph F. was fourteen when arrested and questioned;
- He did not, at that time, have any experience "with the police or with law enforcement";

- "Based on the testimony there was not anything to indicate that the juvenile, Joseph [F.], is anything other than the average 14-year-old";

- Joseph F. "is not in any LD [presumably, learning disabled] classes that would indicate that he's behind";

- Joseph F. "testified that he gets basically B's [*sic*] and C's [*sic*]; that he's on track academically";

- Joseph F. explained that when he wrote at the bottom of Detective Rosenow's written reification of Joseph F.'s confession, "Wut u read to me was my statement," he was using text-message spelling;

- Joseph F. "seems more equipped in my experience compared to some 14-year-olds that I would have seen and have seen here in juvenile court, probably more equipped to be able to answer questions, to understand his Miranda [***v. Arizona***, 384 U.S. 436 (1966)] rights, to be able to assert, if he had chosen for himself, a request like asking for an attorney, asking for his parents or parent";

- Joseph F. appeared in court to be "extremely calm," with "a flat affect";

- Joseph F. was barefoot while questioned at the police station, which under the circumstances was "odd";

- Joseph F. was arrested and taken to the police station in "the middle of summer";

- Joseph F. was questioned "in a room with a table and a couple of chairs";

- The room in which Joseph F. was questioned "was a sparse, relatively small room";

- Joseph F. "himself testified that at no time did he ask to see an attorney; that at no time did he ask to see a parent; that at no time did he ask to use the bathroom; that at no time was he unduly [un]comfortable";

- As testified to by Detective Rosenow, Joseph F. was not "frightened" during the questioning;

- "[O]nce or possibly twice" the night of Joseph F.'s arrest and questioning, Joseph F.'s mother asked to speak to him; and

- As "a very minor factor in my overall analysis," it is "doubtful, at best, that [Joseph F.], as he testified, never saw or heard anything about Miranda rights prior to this interrogation," given Joseph F.'s "access to T.V.s, movies, the internet."

The trial court concluded that the State had satisfied its burden that Joseph F.'s "confession was free and unconstrained."

¶6 Joseph F. recognizes the burden of showing that the trial court's findings of fact are clearly erroneous, and, other than unsupported rhetoric that the trial court "failed to incorporate United States Supreme Court concerns about the emotional and intellectual maturity of young defendants, especially those under 16," attempts to satisfy that showing by honing in on the following in support of his contention that the trial court erred in not suppressing his confession: (1) the trial court's reference to what it had seen at Children's Court in connection with other juveniles; (2) the trial court should not have disregarded, as it apparently did because it was not mentioned in the trial court's findings of fact, Joseph F.'s testimony that Detective Rosenow yelled at him and told him that he, Joseph F., would not be leaving the police station until he confessed; and (3) the trial court's reference to ***Miranda*** in popular culture. These contentions are without merit.

¶7 First, a judge making credibility assessments may consider matters within the ken of what that judge gleaned from life in general, just as jurors making those assessments are told that they may use their common experiences in "the affairs of life" in fashioning a verdict. *See* WIS JI—CRIMINAL 195; *cf.* ***State v. Sarnowski***, 2005 WI App 48, ¶15, 280 Wis. 2d 243, 251, 694 N.W.2d 498, 502 (judge may not, however, draw inferences from a personal *sui generis* instance; judge's inability to hire a carpenter an improper basis to conclude that there was

plenty of work available for those seeking that employment); ***State v. Anson***, 2004 WI App 155, ¶22, 275 Wis. 2d 832, 847, 686 N.W.2d 712, 720 (trial judge improperly relied on what it saw of the defendant's "family's courtroom interactions"), *aff'd*, 2005 WI 96, 282 Wis. 2d 629, 698 N.W.2d 776. A judge's or jurors' general experience with juveniles and how they behave and their general level of understanding is on the general-community-ken side of the line, and thus the trial court did not err in comparing Joseph F. to other juveniles it had seen and with whom it had interacted.

¶8 Second, Detective Rosenow denied yelling at Joseph F., and also denied telling Joseph F. that he could not leave the police station unless and until he confessed. In a matter not tried to a jury, the task of determining the credibility of witnesses is the trial judge's, ***Estate of Dejmal v. Merta***, 95 Wis. 2d 141, 151–152, 289 N.W.2d 813, 818 (1980), and we assume that "where a trial court does not expressly make a finding necessary to support its legal conclusion … the trial court made the finding in the way that supports its decision," ***State v. Wilks***, 117 Wis. 2d 495, 503, 345 N.W.2d 498, 501 (Ct. App. 1984).

¶9 Third, the trial court noted in its oral decision that its skeptical view of Joseph F.'s claimed unawareness from contemporary culture of ***Miranda*** warnings played a "very minor factor in [its] overall analysis." Indeed, whether Joseph F. (or any questioned suspect) knew from life of his rights under ***Miranda*** is immaterial—the warning must be given nevertheless. ***Miranda***, 384 U.S. at 468–469; *see, e.g.*, ***Desire v. Attorney Gen. of California***, 969 F.2d 802, 805 (9th Cir. 1992) (***Miranda*** warnings had to be given to deputy sheriff).

¶10 Our review of the trial court's legal conclusion that Joseph F.'s confession was voluntary is, as noted, subject to our *de novo* review, and excising

the contemporary culture aspect of the trial court's findings, Detective Rosenow's questioning of Joseph F. was well-within what the Constitution permits. *See* ***Jerrell C.J.***, 2005 WI 105, ¶¶19–20, 283 Wis. 2d at 156–157, 699 N.W.2d at 115–116. Accordingly, we affirm.[1]

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

[1] We commend Lori S. Kornblum, Esq., for the excellent and comprehensive brief she submitted on the State's behalf.