

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2006AP2905-CR

Cir. Ct. No. 2004CF6481

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MIGUEL A. SEGARRA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed.*

Before Curley, P.J., Wedemeyer and Fine, JJ.

¶1 PER CURIAM. Miguel Segarra appeals from the judgment of conviction entered against him. He argues that the circuit court erred when it denied his motion to suppress his statement confessing to the crime. Because we

conclude that the circuit court properly determined that his confession was not coerced, we affirm.

¶2 Segarra was charged with one count of first-degree reckless homicide, and one count of armed robbery, both as a party to a crime. The complaint alleged that Segarra, along with another man, beat Pascual Cruz to death with a baseball bat. After Segarra was arrested, he was interrogated by the police over a period of three days. During that that time, he took a polygraph test and made a number of statements, eventually admitting to having been involved in Cruz's death.

¶3 Before trial, Segarra moved to suppress the statements he made alleging that the police had coerced him into giving the statements. The circuit court held a hearing on the motion, and the police officers involved in Segarra's interrogation testified. Segarra chose not to testify.

¶4 The testimony at the hearing established that Segarra was arrested at 11:50 a.m. on November 23, 2004. He was first interrogated on that date from 3:50 p.m. to 6:30 p.m. During that interview, Segarra told the police that he had been with his girlfriend at the time of the homicide. He was interrogated again that evening beginning at 8:03 p.m. and ending at 4:17 a.m. on November 24. Before that interview began, the police had spoken to Segarra's girlfriend who said she was not with him at the time of the homicide. Segarra then offered a different alibi.

¶5 On November 24, Segarra was again interrogated from 7:48 p.m. until 11:51 p.m. Then, on November 25, a polygraph exam was conducted between 12:27 p.m. and 3:02 p.m. Segarra was interrogated again that evening from 6:10 p.m. until 2:17 a.m. on November 26. During this interrogation, a

detective told Segarra that they had a videotape of the homicide and that it showed that one of the men was him. The prosecutor later told the circuit court that the videotape showed the killing, but it was “debatable whether you can make out the defendant.” At the end of this interrogation session Segarra stated that he wanted to make a statement very soon. The police interrogated him again from 3:53 a.m. until 6:44 a.m. on November 26. During this last interview, he confessed to the crime.

¶6 The circuit court found that Segarra had been interrogated for a total of about twenty-eight hours. The circuit court found that the police had advised Segarra of his *Miranda* rights appropriately and repeatedly during the time they had interviewed him.¹ The circuit court also found that Segarra had “waived those rights, agreed to give a statement, was cooperative with the police in terms of giving statements, never asked for a lawyer, and never asserted his right to silence.” The circuit court also found that the police had offered Segarra “creature comforts from water, to food, to cigarettes,” and that he had been given time between the interviews to rest and “gather his thoughts.”

¶7 The circuit court found that none of the police officers had acted in a coercive manner, and that there was no evidence that any of the officers had attempted to bring undue pressure on Segarra during the interviews. The circuit court considered the circumstances of the interviews including, among other things, the location, who initiated the contact, and Segarra’s age, physical condition, and prior experience with the police. The circuit court concluded that Segarra’s statements were voluntary and denied the motion to suppress.

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

¶8 Segarra now argues that the police coerced him into confessing to the crime and that the circuit court erred when it denied his motion to suppress his statements.

In reviewing the voluntariness of a statement, we examine the application of constitutional principles to historical facts. *State v. Hoppe*, 2003 WI 43, ¶34, 261 Wis. 2d 294, 661 N.W.2d 407. We defer to the circuit court’s findings regarding the factual circumstances surrounding the statement. *Id.* (citing *Arizona v. Fulminante*, 499 U.S. 279, 287 (1991); *State v. Clappes*, 136 Wis. 2d 222, 235, 401 N.W.2d 759 (1987)). However, the application of constitutional principles to those facts presents a question of law subject to independent appellate review. *Id.*

State v. Jerrell C.J., 2005 WI 105, ¶16, 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.

The pertinent inquiry is whether the statements were coerced or the product of improper pressures exercised by the person or persons conducting the interrogation. Coercive or improper police conduct is a necessary prerequisite for a finding of involuntariness.

Hoppe, 261 Wis. 2d 294.

¶9 The court must consider the totality of the circumstances to determine if the statements were made voluntarily, which includes balancing the personal characteristics of the defendant against the pressures applied by the police. *Id.*, ¶38. The court should consider things such as “the defendant’s age, education and intelligence, physical and emotional condition, and prior experience with law enforcement.” *Id.*, ¶39. These are balanced against the police tactics 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.* (citation omitted). This balancing recognizes “that the amount of police pressure that is constitutional is not the same for each defendant.” *Id.*, ¶40.

¶10 Segarra argues that the length of the interrogation, the number of times the police returned to interview him, and the misrepresentation about the videotape, constituted coercion. He also argues that because he was questioned by a number of different detectives over this long period of time, the police engaged in “relay questioning.” We disagree.

¶11 The circuit court found, and the finding is supported by the record, that the various interviews were appropriately separated in time. Segarra was given food, water, cigarettes, rest and bathroom breaks during the entire time. Further, the police read him his *Miranda* rights before each interview.

¶12 We also agree that this was not “relay” questioning. “‘Relay’ questioning implies that different interrogators relieve each other in an effort to put unremitting pressure on a suspect.” *State v. Agnello*, 2004 WI App 2, ¶21, 269 Wis. 2d 260, 674 N.W.2d 594 (citation omitted). In that case, we concluded that because there had been breaks both during and between the interrogation sessions, and one of the changes in interrogation teams was the result of a shift change, the police had not used “relay-team” tactics to put unremitting pressure on the defendant. *Id.* Similarly in this case, there were breaks between the interviews, and shift changes were one of the reasons different detectives

interviewed Segarra. As the circuit court found, the police did not put unremitting pressure on Segarra.

¶13 We also agree that the officers' overstatement about the videotape of the homicide did not, on balance, render the process coercive. It is not uncommon for the police to exaggerate the strength of their evidence. *State v. Triggs*, 2003 WI App 91, ¶15, 264 Wis. 2d 861, 663 N.W.2d 396. Police misrepresentation, however, "is not so inherently coercive that it renders a statement inadmissible; rather, it is simply one factor to consider out of the totality of the circumstances." *Id.*, ¶24. Under all of the circumstances of this case, we conclude that the misrepresentation about the videotape did not make Segarra's statement involuntary. Consequently, the circuit court properly denied the motion to suppress, and we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

