COURT OF APPEALS
DECISION
DATED AND FILED

August 1, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0705-FT **Cir. Ct. No. 01-JV-40**

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

IN THE INTEREST OF JASON W.T., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JASON W.T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Columbia County: DANIEL GEORGE, Judge. *Reversed and cause remanded.*

¶1 VERGERONT, P.J.[1] Jason W.T., a minor, challenges the circuit court's decision not to suppress his confession to a burglary that he made to a

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

police officer when questioned at his school. We conclude that Jason made the confession while being interrogated while in custody and, since he was not given ***Miranda***[2] warnings, the circuit court erred in not suppressing the confession. We therefore reverse the order denying the motion to suppress and remand for further proceedings.[3]

BACKGROUND

¶2 The delinquency petition under WIS. STAT. ch. 938 alleged that Jason, dob 1/15/89, had broken into a neighbor's house and taken some change. According to the petition, Poynette Police Officer Gary Napralla interviewed Jason, who initially denied any involvement, but later stated: "he only went in to see what they had…. [H]e went in through the garage, and did admit to taking the change."[4] Jason moved to suppress the statements he made to Officer Napralla on the ground that he was in custody and no ***Miranda*** warnings had been given, and on the ground that the statements were involuntary.

¶3 At the hearing on the motion, Officer Napralla testified as follows. He knew that Jason lived across the street from where the burglary occurred and, based on Jason's prior history, he thought Jason might possibly have committed the burglary or know who did. Therefore, the Monday following the Friday on

[2] ***Miranda v. Arizona***, 384 U.S. 436, 444-45 (1966).

[3] The parties entered into a consent decree after the motion, which was signed by a court commissioner. Jason appealed the consent decree. Because a court commissioner's order is not appealable as a matter of right, WIS. STAT. § 808.03(1), by order dated June 5, 2002, we assumed jurisdiction over this matter as an interlocutory appeal from the circuit court's suppression order.

[4] The petition charged Jason with burglary in violation of WIS. STAT. § 943.10(1)(a); theft in violation of WIS. STAT. § 943.20(1)(a); and criminal damage to property in violation of WIS. STAT. § 943.01(1).

which the burglary occurred, he went to Jason's school. He was wearing his uniform and had a firearm that was visible. As the officer was walking toward the principal's office, he met Jason in the hallway; a teacher was removing Jason from the classroom for disruptive behavior. Officer Napralla told Jason he wanted to speak with him regarding a matter, and he asked Jason to step into the principal's office with him. Jason went into the principal's office with the officer, and the officer closed the door. Only the two of them were in the office. The office was approximately ten feet by ten feet, with a window facing the hall and a window facing the library; there were no blinds on the windows and one could see in and out. Officer Napralla sat behind the desk and Jason sat on a chair.

¶4 Officer Napralla was aware of three prior theft complaints involving Jason, and he himself had interviewed Jason on a prior occasion. That interview, during which Jason's mother was present, lasted two to two and one-half hours. Officer Napralla was also aware that Jason was in a "special education" classroom.

¶5 On this occasion, after Officer Napralla and Jason were both seated in the principal's office, Officer Napralla told Jason that he was not under arrest and did not have to speak with him. He asked Jason if he understood this, and Jason said "yes." Officer Napralla also testified that he told Jason he was free to go. However, he acknowledged this was not included in his police report, while his statements that Jason was not under arrest and did not have to speak with him were contained in his report. When questioned by Officer Napralla, Jason initially denied entering the neighbor's house. Jason also denied that shoeprints the officer said may have been found at the scene were his. Officer Napralla testified that after Jason's denials, he said:

> And I told him that last time it took two to two and a half hours for him to confess. I did not want to sit there for two and a half hours again. And I told him that we wanted to clear this matter up. And if he would be truthful with me, the sooner he would be truthful with me, the sooner he could go back to class.

¶6 Jason then admitted to entering the home. Officer Napralla asked a few more questions and then told Jason he was free to go back to class. The questioning took ten to fifteen minutes. Jason was at no time given ***Miranda*** warnings.

¶7 Jason testified, and his account of the interview was generally consistent with that of the officer's, although it differed on a few points. However, since the circuit court credited Officer Napralla's account rather than Jason's where they differed, and since Jason does not challenge the factual findings of the court, we do not summarize all of Jason's testimony, but note only the following. Jason testified that he thought he had to stay, that he had been in the principal's office about five times before, and that the interview lasted about a half hour.

¶8 The psychologist treating Jason testified that Jason had been diagnosed with attention deficit hyperactivity disorder and oppositional defiant disorder and was on medication for these disorders. She also expressed her opinion on Jason's ability to comprehend and process information, which is not relevant to the ***Miranda*** issue. The school psychologist testified concerning various tests and evaluations of Jason's, including that his verbal comprehension score on the IQ test was 70, on the "borderline range … between the mentally deficient and the low average range," and his full scale score (a combination of the verbal score and the performance score) was 60, with 69 and below being mentally deficient.

¶9 With respect to the issue whether Jason was in custody, the circuit court found that the officer told Jason that he was not under arrest, that he did not have to speak to the officer if he did not want to, and that he was free to leave. The court found that Jason had been in the principal's office numerous times in the past, that the officer was seated and was not confrontational with Jason, and that, although the door was closed, the windows opened to the hallway and the library. In light of all these circumstances, the court concluded, this was not "a custodial situation that would have required the ***Miranda*** warnings."

¶10 With respect to the voluntariness of the statements, the court found the following. Jason was twelve years of age at the time. He had some psychological problems, which included an oppositional defiant disorder. He had some intellectual deficiencies. The most important component of his intellectual functioning for present purposes was his verbal comprehension, and in that he functioned "in a low to average kind of range." He had a significant amount of contact with the police. He had been to the principal's office on multiple occasions. He had had significant experience in dealing with adults and being questioned in disciplinary situations, including with police and in psychological sessions. The court found that there was "some subtle coercion" in the "suggestion that the officer did not want to be here like the last time for a couple hours or more," and "[t]here was some reference to the fact that there may have been some footprints or something to that effect." However, the court stated, that did not "rise to the level of such coercion that it overcame the voluntariness of the statement. " The court concluded the confession was voluntary.

DISCUSSION

¶11 Jason appeals both the court's conclusion that ***Miranda*** warnings were not required and the court's conclusion that his confession was voluntary. However, we address only the first issue.

¶12 The prosecution may not use a defendant's statements stemming from a custodial interrogation unless the defendant was given the requisite warnings. ***Miranda v. Arizona***, 384 U.S. 436, 444 (1966). In ***Miranda***, the Court defined custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his [or her] freedom of action in any significant way." ***Id.*** There is no dispute that the officer's questions in this case were interrogation within the meaning of ***Miranda***, *see* ***Rhode Island v. Innis***, 446 U.S. 291, 301 (1980), and therefore the issue is whether Jason was "in custody" at the time he made the incriminating statements.

¶13 Whether a person is in custody for ***Miranda*** purposes is a question of law this court reviews de novo, based on the undisputed facts and the facts as found by the circuit court. ***State v. Mosher***, 221 Wis. 2d 203, 211, 584 N.W.2d 553 (Ct. App. 1998).

¶14 The test for custody is an objective one. *See* ***State v. Pounds***, 176 Wis. 2d 315, 321, 500 N.W.2d 373 (Ct. App. 1993). Courts ask whether a reasonable person in the suspect's position would have considered himself or herself to be in custody, given the degree of restraint under the circumstances. ***Id.*** In determining whether an individual is "in custody" for purposes of ***Miranda*** warnings, we consider the totality of the circumstances, including such factors as the defendant's freedom to leave, the purpose, place, and length of the interrogation, and the degree of restraint. ***State v. Gruen***, 218 Wis. 2d 581, 594,

582 N.W.2d 728 (Ct. App. 1998). Because the test is an objective one, neither the beliefs of the person detained nor the officer's beliefs are determinative in deciding whether the defendant was placed in custody. ***Mosher***, 221 Wis. 2d at 211. The State bears the burden of establishing that a custodial interrogation did not take place by a preponderance of the evidence. ***State v. Armstrong***, 223 Wis. 2d 331, 349, 588 N.W.2d 606 (1999).

¶15 We have not found a published Wisconsin decision deciding the "in custody" issue when a child is being interrogated. In the context of deciding whether a confession is voluntary, the Wisconsin Supreme Court has recognized that "confession of juveniles involve special problems that may require authorities to use different techniques from those used in connection with adult confessions and that require courts to use the 'greatest care' in assessing the validity of the confession." ***Theriault v. State***, 66 Wis. 2d 33, 39, 223 N.W.2d 850 (1974). However, the issue of whether a confession is voluntary is determined under the totality of the circumstances, requiring the court to balance the personal characteristics of the defendant against the pressures imposed by police in order to induce him or her to respond to police questioning. ***State v. Clappes***, 136 Wis. 2d 222, 236, 401 N.W.2d 759 (1987). Therefore, in deciding whether Jason was in custody, we conclude it is not appropriate to take into account his personal characteristics, such as his level of maturity, his experiences, his understanding: those are unique to him and would constitute a subjective analysis. However, we are persuaded that, in applying the objective test, it is appropriate to ask what a reasonable child in Jason's circumstances would understand his situation to be; we cannot see how to apply the objective test in a rational way while overlooking the fact that he is twelve years old and not an adult. The standard remains an

objective one, because we are asking what a reasonable child in Jason's situation would understand, not what Jason actually did understand.

¶16 In this case there is no question that when the officer began to question Jason, a reasonable child in his situation would have understood he was not in custody. The officer told Jason that he was free to go, that he was not under arrest, and that he did not have to talk to him if he did not want to. The circumstances of being in the principal's office, even though the officer had closed the door, were not inconsistent with what the officer was saying: if you want to, you can leave without answering my questions. However, the officer's statement to Jason after Jason had made denials is, in our view, a critical change in the circumstances:

> And I told him that last time it took two to two and a half hours for him to confess. I did not want to sit there for two and a half hours again. And I told him that we wanted to clear this matter up. And if he would be truthful with me, the sooner he would be truthful with me, the sooner he could go back to class.

¶17 The circuit court did not refer to this statement in analyzing the "in custody" issue. We are uncertain why, since the court did refer to it in its analysis on voluntariness, describing it as "subtle coercion." While we would have benefited from the court's view of how this statement factors into the analysis of "in custody," we are not precluded by our standard of review from taking this into account in our own analysis. Since there is no dispute the officer said this, and since we are applying an objective standard, there is no fact finding required to decide how a reasonable child in Jason's circumstances would have understood this statement.

¶18 We conclude a reasonable child in Jason's situation would have understood the statement to mean that the child was not free to leave until he told the officer that he had been involved in the burglary. Jason had already denied involvement, but the officer did not end the questioning. A reasonable child in Jason's situation would understand that the officer was going to continue to question him until the officer received something other than a denial. Because the questioning was being done by a police officer, who was in uniform and who was carrying a weapon that had been visible,[5] and because the officer was in the room alone with the child and had shut the door, a reasonable child would believe that the officer had the authority to keep him in that room. A reasonable child would not believe that he had a choice about leaving the room or about answering the officer's questions after the officer made that statement. Therefore, we conclude that after the officer made that statement, Jason was subject to custodial interrogation, and all questioning after that statement should have been preceded by ***Miranda*** warnings.

¶19 The State makes two arguments in opposition to this conclusion, but we are not persuaded by either. First, the State argues that the quoted statement of the officer is not properly considered for purposes of the "in custody" analysis, but only for purposes of the voluntary analysis because it is a subjective, "Jason-specific" factor. The State does not explain this assertion, and we do not understand it. The fact that the officer is referring to a specific situation involving Jason does not mean that we disregard the statement as one of the circumstances relevant to whether a reasonable child would consider himself to be in custody.

[5] The officer testified that Jason could not see the weapon when the officer was seated, but that it had been visible.

¶20 Alternatively, the State argues that "[a]t most, a reasonable person could infer from this statement that the interview was not to last indefinitely, but could go as long as two and a half hours." We do not agree. The State's construction of the statement entirely overlooks the last two sentences of the officer's statement.

¶21 The reason for ***Miranda*** warnings is that without them, "the process of in[-]custody interrogation of persons suspected or accused of crime contains inherently compelling pressures which work to undermine the individual's will to resist and to compel [the individual] to speak where [the individual] would not otherwise do so freely." ***Miranda***, 384 U.S. at 467. We conclude that, in view of all the other circumstances, once the officer made the statement we have quoted above, a reasonable child in Jason's circumstances would have considered himself to be "in custody." At that point, from the standpoint of a reasonable child, the compelling pressure of a custodial interrogation existed and ***Miranda*** warnings were required before further questioning. Since none were given, any incriminating statements Jason made after the officer's statement must be suppressed.

By the Court.—Order reversed and cause remanded.

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