

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 15, 2010

David R Schanker
Clerk of Court of Appeals

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Appeal No. 2009AP1438-CR

Cir. Ct. No. 2004CF1524

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ARMANDO J. CASTANEDA,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Milwaukee County: ELSA C. LAMELAS and MARTIN J. DONALD, Judges. *Affirmed.*

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

¶1 CURLEY, P.J. Armando J. Castaneda appeals from judgments of conviction for one count of first-degree intentional homicide while armed, two counts of first-degree reckless homicide while armed, and three counts of

attempted first-degree intentional homicide while armed, and the order denying his postconviction motion to withdraw his pleas.¹ Castaneda argues that he should be allowed to withdraw his pleas because trial counsel who represented him at the hearing on his motion to suppress his confession was ineffective and because trial counsel who represented him when he sought to withdraw his guilty pleas prior to sentencing was ineffective for failing to raise as a reason for withdrawing his pleas the ineffectiveness of his attorney at the suppression hearing.² We conclude that the denial of Castaneda's postconviction motion was proper and therefore affirm.

I. BACKGROUND.

¶2 On March 14, 2004, two separate shooting incidents occurred in Milwaukee. In the first incident, multiple gunshots were fired into two vehicles. During this incident, five individuals were shot, two of whom died as a result of their gunshot wounds. In the second incident, multiple gunshots were fired into a van. One person was shot and killed as a result of that incident.

¶3 The following day, Castaneda was taken into custody by police on an outstanding warrant. He was detained for approximately three days and was interrogated four times about the shootings by detectives with the Milwaukee Police Department. None of those interrogations appears to have been recorded.

¹ The Honorable Elsa Lamelas presided over Castaneda's motion to suppress and presentence motion to withdraw pleas, and entered the judgments of conviction. The Honorable Martin J. Donald decided Castaneda's postconviction motion.

² Castaneda was represented by Attorney Bridget Boyle at his suppression hearing. He was represented by Attorney John Birdsall at the hearing to withdraw his guilty pleas prior to sentencing.

¶4 On March 17, 2004, Castaneda confessed to the March 14 shootings. He informed detectives that he was a member of a gang and that on March 14, 2004, his nineteenth birthday, he attended a house party with other members of his gang. He stated that as he was leaving the party, someone in a truck outside the house indicated his affiliation with a rival gang. He stated that he retrieved from the trunk of his vehicle an AK-47 assault rifle with a thirty-round clip and, when the truck drove past him, he fired a number of shots at that truck and at the vehicle following behind the truck. He stated that later that evening he and a group of friends were driving around with his AK-47. They observed a van belonging to a member of another rival gang, and when Castaneda's friend told him to shoot the van, he did. Following his confession, Castaneda was charged with three counts of first-degree intentional homicide while armed, in violation of WIS. STAT. §§ 940.01(1)(a) and 939.63 (2003-04),³ and three counts of first-degree attempted intentional homicide while armed, in violation of WIS. STAT. §§ 940.01(1)(a) and 939.63.

¶5 Castaneda moved the circuit court to suppress his statements to detectives on the basis that they were not made voluntarily because he spent the majority of his detainment in interrogation rooms and “was not able to sleep and[,] if he was able to sleep[,] it was not for any lengthy period of time. As a result, he became very sleep deprived ... [which] resul[t]ed in his not being able to give a voluntary statement.”

³ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

¶6 At the *Miranda-Goodchild* hearing,⁴ the State presented the testimony of detectives Tom Casper, Katherine Hein, Timothy Heier, and Michael Caballero. Detective Casper testified that after reading Castaneda his *Miranda* rights, he interviewed Castaneda on March 15, 2004, from 4:14 a.m. until 10:41 a.m. Detective Casper stated that he went through Castaneda's criminal history with Castaneda, which included probation for graffiti and prior charges for possession of a firearm and sexual assault. Detective Casper described Castaneda as calm, coherent, and cooperative, and stated that Castaneda appeared to be in denial about his involvement in the homicides. Detective Casper also stated that Castaneda did not appear sleepy or tired during his interrogation and that he did not request an attorney or assert his right to remain silent.

¶7 Detective Hein testified that she read Castaneda his *Miranda* rights and interviewed him on March 16, 2004, from 6:40 p.m. until 11:15 p.m. She described Castaneda as polite and stated that he became increasingly upset as the interview progressed. She stated that Castaneda "would have a crying jag," but would then settle down and resume talking with her and her partner. Detective Hein stated that Castaneda did not request a lawyer or assert his right to remain silent. She also stated that at the end of the interview, Castaneda appeared tired, and that he complained about an injury to his thumb or finger, for which he was taken to the hospital to receive medical care.

¶8 Detective Hein testified that Castaneda was again interviewed on March 17, 2004, from 2:50 p.m. until 5:00 p.m. She stated that during this

⁴ See *Miranda v. Arizona*, 384 U.S. 436 (1966); *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

interrogation, Castaneda was informed that he was under arrest for homicide and he was advised of his rights. She stated that Castaneda appeared alert and was responsive to questioning. She stated that at the end of the interview, Castaneda indicated that he was tired and the interview was terminated. She further stated, however, that Castaneda did not appear sleepy or tired at the time. Detective Hein also testified that during this interrogation, Castaneda did not request an attorney or assert his right to remain silent.

¶9 Detective Heier testified that he interviewed Castaneda on March 17, 2004, from 7:31 p.m. until at least 6:00 a.m. the following morning. Prior to the interview taking place, Castaneda was read his *Miranda* rights. He stated that during this interview, Castaneda gave an eleven-page statement regarding the two shootings that occurred on March 14, 2004. He described Castaneda's demeanor as cooperative. He stated that Castaneda did not appear hostile and that Castaneda did not indicate that he wanted to stop the interview. He stated that Castaneda "was rather very meek," and that he was very emotional. Detective Heier stated that during the interview, Castaneda would cry so hard that he would be given a break to compose himself. Detective Heier explained, "it was a roller coaster as far as [Castaneda] would provide a lot of information and then just break down crying ... and then he would recompose himself and talk for a while and then go back to crying." He described Castaneda as "probably a little more emotional than most people." Detective Heier also testified that the only request made by Castaneda was a request to see his girlfriend.

¶10 Detective Caballero interviewed Castaneda with Detective Heier. Detective Caballero testified that he retrieved Castaneda from his cell for the interview at 7:31 p.m. on March 17, 2004, and that Castaneda stated "sure" when

asked if he was ready to continue the interview from earlier that day. Detective Caballero also testified that Castaneda was emotional during the interview.

¶11 The circuit court denied Castaneda's motion to suppress. The court set forth in detail its reasoning for doing so.

[Castaneda] had just turned 19 years old. It was not known to at least the first two detectives, whether he'd ever been interrogated before as a juvenile or as an adult and whether he had ever been in custody before.

I cannot find on this record, although I've searched for it, coercion by the police officers.... The argument is really that ... because [Castaneda] was in the custody of police for this length of time and interrogated four times, the last one at some length, eleven hours, that that set of facts, that length of detention ... deprived him of the opportunity to sleep, to rest, to eat and, therefore, contributed in totality as to the nonvoluntariness of his statements. And indeed the standard for looking at voluntariness of statements is the totality of the circumstances.

As I've reviewed the progression of detention and interviews and which detectives were doing the interviews, it seemed to me that this was generally a reasonably paced detention as well as interrogations. That is, the first interrogation was six hours, two of which were with a break, although he was not brought back to his cell during that lengthy break, but it provided an absence of interrogating.

The detectives then took him back to his cell which was at 10:30 in the morning. He was fed, he was in a private cell. Had a mattress where he could rest and he wasn't interrogated again for seven hours.

So there was ample opportunity for him to regain his composure, so to speak, to regain himself. It wasn't so much composure at that point but to just regain himself and get from whatever stress the first interview may have caused.

The second interview was ended as soon as he said that he was tired and complained of his thumb hurting and he was taken to the hospital. Had that taken care of and then booked back into the cell and it was 12 hours later before he was brought out again.

I find that was again a reasonable time for a young man of this age to have an opportunity to rest, to recover if you will, from the stress of any interrogation, from having been confronted with the new developments and so on and to think about his situation and make decisions about it.

The third interview was short and the last interview was quite long.

He was quite emotional during it. I don't find that so much to be reflective of sleep deprivation in view of my finding based on the testimony that he also cried at the preliminary hearing and he was teary today and acknowledged that he was scared and so on, although he's been able to compose himself in court and has been for most of my period of my findings.

So that it's my view of the record that his emotionality was related less to the alleged sleep deprivation than it was to the gravity of the situation and his admissions to these crimes. I don't find under the totality of circumstances that the 50 hour length of his detention and part of which he was under arrest, accounts for that – for his admissions or for an involuntary admission that he made.

....

His crying episodes were related to his confessions of the homicides either just after he confessed or just before. It makes sense that someone would cry at those times as opposed to crying unassociated with a confession or being over the table as people often are when sleep deprived. His demeanor never evidenced or was consistent with, we commonly know our own selves as well as others, to be when they're sleep deprived.

So I can't find on the bases or basis put forward that that was a nonvoluntary confession.

¶12 On the day of trial, Castaneda entered pleas of guilty to one count of first-degree intentional homicide while armed, two counts of first-degree reckless

homicide while armed, and three counts of attempted first-degree intentional homicide while armed. Prior to sentencing, however, Castaneda moved to withdraw his pleas. He argued that plea withdrawal was appropriate because he entered his pleas under the pressure of Attorney Boyle and, therefore, his plea was not voluntarily entered, and because he did not understand the ramifications of his pleas.

¶13 The circuit court denied Castaneda's motion. After observing that Castaneda's request "should be examined in a liberal manner," the circuit court stated:

the testimony [] of [Attorney] Boyle reveals that there were ample visits to [Castaneda], that [Castaneda] had ample opportunity to discuss his circumstances with [Attorney] Boyle, that the facts of the case were discussed with him, that the law was discussed and explained to him in a manner consistent with the requirements of the 6th Amendment before the day of trial.

The court further stated that "[t]he record here is clear that the defendant was thoroughly informed well before trial of the law pertaining to the various degrees of homicide. The defendant was well-educated by the day of trial regarding the choices that he faced if indeed a choice was offered to him."

¶14 Castaneda was sentenced to life in prison without the possibility of release on count one, first-degree intentional homicide while armed. On the remaining charges, he was sentenced to forty years of initial confinement, followed by twenty-six years of extended supervision. All sentences were ordered to run concurrently.

¶15 Castaneda filed a WIS. STAT. § 809.30 postconviction motion seeking to withdraw his pleas on the basis that his pleas were the product of

ineffective assistance of counsel from both Attorney Boyle and Attorney Birdsall. He claimed that Attorney Boyle was ineffective in seeking to suppress his statements to detectives because she failed to assert, as a basis for suppression, the detectives' denial of his right to an attorney and police coercion and because she failed to present his testimony and the testimony of easily discoverable witnesses, which he claimed would have corroborated his assertion that he was denied counsel by detectives and subjected to police coercion. Castaneda claimed that Attorney Birdsall was ineffective in seeking the presentence withdrawal of his guilty pleas because Attorney Birdsall "failed to present all the relevant evidence, basis, and argument when litigating the motion."

¶16 Following multiple *Machner*⁵ hearings, at which testimony was given by numerous witnesses, both on behalf of Castaneda and on behalf of the State, the circuit court denied Castaneda's motion after concluding Castaneda had not received ineffective assistance of counsel. The court ruled that there were "reasonable and rational, strategic reason[s]" for the manner in which Attorney Boyle pursued the suppression motion. The court further stated that although the result of the hearing "may have been different" had Castaneda testified at the suppression hearing, that possibility did not, in the court's mind, give "rise to the level that would somehow indicate [Castaneda] was [] not given effective representation." Castaneda appeals. Additional facts will be discussed as necessary.

⁵ See *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979) (a *Machner* hearing is an evidentiary hearing to determine trial counsel's effectiveness).

II. ANALYSIS.

¶17 Castaneda argues that plea withdrawal is warranted on the grounds of ineffective assistance of counsel occasioned by Attorney Boyle’s failure to “[p]roperly [i]nvestigate, [p]repare, and [l]itigate the [s]uppression [m]otion,” and Attorney Birdsall’s failure to assert the ineffectiveness of Attorney Boyle as a reason why his presentence plea withdrawal motion should have been granted.

¶18 A defendant seeking to withdraw a guilty plea after sentencing must prove “by clear and convincing evidence that withdrawal is necessary to correct a manifest injustice.” *State v. Milanese*, 2006 WI App 259, ¶12, 297 Wis. 2d 684, 727 N.W.2d 94. A manifest injustice occurs when the defendant’s plea was the result of the ineffective assistance of counsel. *State v. Washington*, 176 Wis. 2d 205, 213-14, 500 N.W.2d 331 (Ct. App. 1993). To prevail on an ineffective assistance of counsel claim, the defendant must prove that counsel’s representation was deficient and that the deficient performance resulted in actual prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¶19 The State does not dispute Castaneda’s contention that Attorney Boyle’s performance relating to the motion to suppress was deficient.⁶ The State does, however, dispute Castaneda’s contention that he suffered actual prejudice as a result of Attorney Boyle’s performance. Accordingly, we limit our review to the question of prejudice.

⁶ To prove deficient performance, a defendant must point to specific acts or omissions by the attorney that are “outside the wide range of professionally competent assistance.” *Strickland v. Washington*, 466 U.S. 668, 690 (1984).

¶20 To prove prejudice, the defendant must demonstrate that the lawyer's errors were so serious that the defendant was deprived of a fair trial and a reliable outcome. *Strickland*, 466 U.S. at 687. Stated another way, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694.

¶21 Whether the defendant was prejudiced presents a mixed question of fact and law. *State v. Pitsch*, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985). The circuit court is the sole judge of the credibility of witnesses testifying before it, WIS. STAT. § 805.17(2), and the court's factual findings "will not be overturned unless clearly erroneous." *State v. Johnson*, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). Whether counsel's performance was deficient under the facts at hand and whether that deficiency prejudiced the defendant are questions of law reviewed *de novo*. *Id.* at 128.

A. Attorney Boyle

1. Denial of right to counsel.

¶22 Castaneda contends that he was prejudiced by Attorney Boyle's failure to assert, as a basis for suppression of his statements to detectives, the denial by detectives of his right to an attorney. Castaneda asserts that he informed Attorney Boyle that during interrogation, detectives denied requests by him for an attorney and that Attorney Boyle was aware that there were witnesses who would corroborate that he had in fact asked for an attorney. He argues that had Attorney Boyle allowed him to testify at the suppression hearing, and had she presented the testimony of corroborating witnesses, it would have been established at the

hearing that his right to counsel had been violated, and therefore, his statements would have been suppressed.

¶23 Over the course of the several *Machner* hearings held on Castaneda's postconviction motion, Castaneda testified and presented the testimony of a number of other witnesses to support his contention that his suppression motion would have been granted had Attorney Boyle pursued suppression on the basis of denial of counsel and had she offered Castaneda's testimony and the testimony of witnesses who would corroborate his claim.

¶24 Castaneda testified that he told Attorney Boyle "a lot of times" that detectives refused to let him speak with an attorney. He testified that he told Attorney Boyle that as soon as he was read his rights he asked for an attorney, but was told that he "needed to give a statement [and] that [he] couldn't see [his] lawyer." He testified that he told Attorney Boyle that during his third interrogation, when he started asking for his lawyer, he was told "no flat out. [He] wasn't getting a lawyer" and that he then "started to tell them over and over again, and again, that [he] want[ed] to see [his] lawyer."

¶25 Sherry Greene, Castaneda's mother, testified that she informed Attorney Boyle "at one of the hearings" prior to Castaneda entering his pleas that while Kathy Figueroa was sitting in a room with her daughter being questioned, Figueroa heard Castaneda screaming for an attorney through the venting system. Daisy Ruiz, Castaneda's girlfriend, testified that she was present when Greene told Attorney Boyle about Figueroa.

¶26 Figueroa testified that she was at the police station on March 17, 2004, from approximately 2:00 p.m. until 5:30 p.m., roughly the same time as Castaneda's third interrogation. She testified that while she was in a waiting room

waiting for Cassie Dimick to be questioned in connection with Castaneda's case, she heard Castaneda yell, "I want my lawyer. I want my fucking lawyer now." She testified that she had known Castaneda since he was about twelve years old and knew at that time what Castaneda's voice sounded like. She further testified that at that time, she did not like Castaneda.

¶27 Cristal Castaneda, Castaneda's cousin, testified that while at the police station, she heard "someone screaming down the hall that they wanted their lawyer, they wanted their mom," though at the time she did not recognize the voice. Dimick, an acquaintance of Castaneda, testified that while she was being questioned at the police station, she heard Castaneda screaming for his mother. Angel Castaneda, Castaneda's brother, testified that he was arrested and questioned in connection with the May 14, 2004 homicides. Angel testified that Castaneda, who was placed in a cell across from him, told him that "they would not allow him an attorney."

¶28 Testimony was also given by Attorney Boyle and the detectives who interrogated Castaneda. Attorney Boyle testified at the hearing, however, that she had no "specific recollection of [] Castaneda specifically informing [her] that he specifically asked for a lawyer." She also had no recollection of Greene informing her that Figueroa overheard Castaneda asking for an attorney.

¶29 Detective David Chavez testified that he interrogated Castaneda on the morning of March 16, 2004, and that at no time during that interview did Castaneda request an attorney. Detective Chavez also testified that he interviewed Cristal Castaneda at the time she claimed to have heard someone screaming for an attorney, and that he never heard anyone screaming for an attorney. He testified that although he heard "loud talking ... the door was closed and [he] couldn't

understand what was being said.” Detective Hein testified that she interviewed Castaneda on the evening of March 16 and that Castaneda did not ask for an attorney during the course of that interview. She testified that she again interviewed Castaneda during the afternoon of March 17, 2004, and that at no time during that interview did Castaneda ask for a lawyer. Detective Hernandez testified that he interviewed Castaneda during the afternoon of March 17, and that Castaneda did not “ask for a lawyer during the course of that interview.” Detective Hernandez also testified that he “conduct[ed] sort of a[n] unscientific experiment with Detective Hein where [he was] in the waiting room and she was in the interrogation room,” and that when Detective Hein tried screaming so that he could hear her in the waiting room, he was only able to hear “muffled” sounds. Detective Heier testified that he interviewed Castaneda on the evening of March 17, and that Castaneda never asked for a lawyer.

¶30 The postconviction circuit court did not make any express findings as to the credibility of any of the witnesses’ testimony. However, as the State observes, when the circuit court does not make express findings, we assume that the circuit court made implicit findings in a manner supporting its decision. *State v. Martwick*, 2000 WI 5, ¶31, 231 Wis. 2d 801, 604 N.W.2d 552. In *State v. Echols*, 175 Wis. 2d 653, 673, 499 N.W.2d 631 (1993), our supreme court noted that, absent an express finding by the circuit court, an appellate court may assume that the circuit court made implicit factual findings supporting its decision regarding the credibility of witnesses who provided testimony contrary to the court’s decision. “Where it is clear under applicable law that the [circuit] court would have granted the relief sought by the defendant had it believed the defendant’s testimony, its failure to grant the relief is tantamount to an express

finding against the credibility of the defendant.” *Id.* (citing *Marshall v. Lonberger*, 459 U.S. 422, 433 (1983)).

¶31 In the present case, had the postconviction court believed the testimony of Castaneda and his corroborating witnesses, Castaneda’s statements would have been obtained in violation of his right to an attorney warranting suppression, and Attorney Boyle’s failure to assert that violation as a basis for suppression, despite her knowledge of the violation, would have been prejudicial to Castaneda. However, the postconviction court’s denial of Castaneda’s motion and its finding that the result of the suppression hearing would not have been different had Castaneda testified at the suppression hearing, indicates that the postconviction court did not find Castaneda or his witnesses to be credible.

¶32 “[T]he weight of the testimony and the credibility of the witnesses are matters peculiarly within the province of the [circuit] court acting as the trier of fact.” *State v. Young*, 2009 WI App 22, ¶17, 316 Wis. 2d 114, 762 N.W.2d 736 (citation omitted). Accordingly, we “will ‘not reweigh the evidence or reassess the witnesses’ credibility, but will search the record for evidence that supports findings the [circuit] court made, not for findings it could have made but did not.” *Id.* (citation omitted); *see also Echols*, 175 Wis. 2d at 672 (implicit finding of fact sufficient when facts of record support circuit court’s decision).

¶33 We conclude that the circuit court’s findings, both explicit and implicit, are not clearly erroneous with respect to Castaneda’s contention that he was prejudiced by Attorney Boyle’s failure to present testimonial evidence regarding the denial of his right to an attorney.

2. Coercion.

¶34 Castaneda contends that he was prejudiced by Attorney Boyle’s failure to present evidence at the suppression hearing showing his statements to detectives were the product of coercive tactics, and thus involuntarily made. He alleges that those tactics included: (1) showing him a non-gruesome picture of one of the victims with tubes in his mouth, which caused Castaneda to have “‘flashbacks’ of his dead brother, who while alive, had tubes inserted in his mouth to allow him to breathe”; (2) subjecting him to physical abuse when the chair he was sitting on “was snatched out from underneath him and he landed on the floor” after he refused to stop yelling; (3) being threatened by detectives with harsher punishment if he did not confess, being told that other gangs would retaliate against his family, and being promised “that he could talk with a lawyer and his mom, he would be granted a \$100,000 bail, and that his penalties would be less severe”; and (4) being repeatedly denied his request to speak with his family.

¶35 Castaneda claims that had Attorney Boyle presented evidence of these tactics, that evidence, in conjunction with the other evidence presented at the suppression hearing, would have led the circuit court to find under the totality of the circumstances, that his statements were involuntary, and the court would have suppressed the statements on the basis of coercion. We agree with the State that the results of the hearing would not have been different if Attorney Boyle had presented evidence of those alleged tactics, and that Castaneda has therefore failed to prove that he suffered any actual prejudice.

¶36 Statements that are the product of coerciveness or improper police tactics deliberately used to procure a confession are involuntary and, therefore, inadmissible. *See State v. Hoppe*, 2003 WI 43, ¶¶33-37, 261 Wis. 2d 294, 661

N.W.2d 407. Whether conduct is coercive varies from between defendants and is determined in light of the totality of the circumstances. *See id.*, ¶¶38-40. “The totality of the circumstances analysis involves a balancing of the personal characteristics of the defendant against the pressures imposed upon the defendant by law enforcement officers.” *Id.*, ¶38.

“If a confession is to be the product of the free and unconstrained will of the defendant it is important that under the totality of the circumstances in which the confession is obtained, the defendant is not the victim of a conspicuously unequal confrontation in which the pressures brought to bear on him by representatives of the [S]tate exceed the defendant’s ability to resist.”

State v. Wallace, 59 Wis. 2d 66, 81, 207 N.W.2d 855 (1973) (citation omitted).

¶37 Castaneda claims his confession was involuntary because he was shown a photograph depicting the face of a victim, free of any injury caused by a gunshot wound, with a small portion of a tube coming out of the victim’s mouth. Castaneda claims that showing him the photograph of someone he knew was “inherently coercive” and that he was “particularly susceptible” to being shown the photograph because he had a brother who had tubes inserted in his stomach for feeding. Castaneda fails to provide any legal authority supporting his assertion that being shown the photograph was “inherently coercive.” He refers this court to *State v. Woods*, 117 Wis. 2d 701, 729, 345 N.W.2d 457 (1984) (observing that use of gruesome photographs as a substitute for morgue identification is cautioned against), and *Bradley v. State*, 36 Wis. 2d 345, 356-57, 153 N.W.2d 38 (1967) (condemning the practice of taking a defendant to the morgue for a corpse identification). Neither of those cases, however, addressed the coerciveness of showing a defendant an admittedly non-gruesome photograph of the face of a victim who is, at best, an acquaintance of the defendant; and in fact, in both of

those cases the supreme court concluded that the defendant's confession was not involuntary. Moreover, Castaneda does not argue that his statements to detectives were induced by being shown the photograph, which is a prerequisite to a determination that a confession was involuntarily due to coercion. *See, e.g., Woods*, 117 Wis. 2d at 730; *Bradley*, 36 Wis. 2d at 357-58.

¶38 Castaneda claims that his statements were involuntarily made because detectives subjected him to physical abuse, threatened him, and promised him numerous things if he confessed. At the hearings on Castaneda's postconviction motion, the detectives denied physically abusing Castaneda, threatening him, or making any promises to him. We conclude that by denying Castaneda's postconviction motion, the circuit court found the testimony of the detectives to be more credible than Castaneda's testimony. *See Martwick*, 231 Wis. 2d 801, ¶31. Determinations of credibility are factual findings within the province of the circuit court and we will not reassess the credibility of witnesses on appeal. *Young*, 316 Wis. 2d 114, ¶17. Accordingly, the circuit court's implicit finding that Castaneda's assertions were not credible was not clearly erroneous.

¶39 Finally, Castaneda claims that his statements were involuntarily made because he was denied the right to speak with his family, in particular his mother. Castaneda has failed to cite to any legal authority supporting his contention that an adult has a constitutional right to speak with his mother. In *State v. Ward*, 2009 WI 60, 318 Wis. 2d 301, 767 N.W.2d 236, the supreme court upheld the confession of a defendant who alleged her confession was involuntary because she was denied the opportunity to speak with her husband. The court in *Ward* stated that "[a] request to speak with family members triggers no constitutional rights in the manner that a request to speak with counsel does." *Id.*, ¶39. Castaneda attempts to distinguish his situation from *Ward* on the basis that

he was younger than the defendant in *Ward*, he was upset during his interrogations, and the interrogations in his case were serious with no joking taking place. He does not suggest, however, how these differences created a constitutional right to speak with his mother. Accordingly, we conclude that the refusal by detectives to allow Castaneda to speak with his mother did not affect the voluntariness of his statements.

¶40 Castaneda has failed to establish that any of the allegedly coercive tactics he now claims detectives employed during his interrogations affected the voluntariness of his statement and has thus failed to prove that the admission of evidence relating to those alleged tactics by detectives at the suppression hearing would have affected the outcome of the hearing. Castaneda has therefore failed to establish he suffered any actual prejudice by Attorney Boyle's failure to present evidence of these tactics at the suppression hearing. Accordingly, Castaneda has failed to prove that Attorney Boyle's representation of him was ineffective in this regard.

B. Attorney Birdsall

¶41 Castaneda has failed to prove that the representation he received from Attorney Boyle with respect to his motion to suppress was ineffective. Because the only basis Castaneda alleges for Attorney Birdsall's ineffectiveness is Attorney Birdsall's failure to allege Attorney Boyle's ineffectiveness as a basis for withdrawing Castaneda's pleas prior to sentencing, we conclude that Castaneda has likewise failed to prove that Attorney Birdsall was ineffective.

By the Court.—Judgments and order affirmed.

Not recommended for publication in the official reports.

