COURT OF APPEALS
DECISION
DATED AND FILED

December 14, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP2307-CR **Cir. Ct. No. 2008CF307**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LEON L. LAUDIE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed*.

Before Brown, C.J., Reilly, J., and Neal Nettesheim, Reserve Judge.

¶1 PER CURIAM. Leon L. Laudie appeals from a judgment convicting him of one count of first-degree sexual assault of a child as a persistent repeater and twenty counts of possession of child pornography as a repeater. He contends that the circuit court erred in allowing the State to introduce at trial the

videotaped statement of the alleged minor victim, Rhiana V. He further contends that the circuit court erred when it denied his motion to suppress a statement he gave to police. Because we conclude that the circuit court properly admitted both statements into evidence, we affirm.

¶2 This case concerns events occurring in the spring and summer of 2008. The sexual assault charge stemmed from allegations that Laudie had penis-to-vagina contact with four-year-old Rhiana, as depicted in two photos that police found on Laudie's home computer. The child pornography charges stemmed from allegations that during the execution of a search warrant at Laudie's residence, police found on Laudie's home computer twenty photos of Rhiana posed in a sexually explicit manner, nude from the waist down. Following his conviction and sentencing on all charges, Laudie appealed.

¶3 Laudie first contends that the circuit court erred in allowing the State to introduce at trial the videotaped statement of Rhiana. Specifically, Laudie complains that Rhiana's statement does not satisfy the admissibility requirements of WIS. STAT. § 908.08(3)(c) (2007-08)[1] because the State failed to establish–in lieu of oath or affirmation–that Rhiana "underst[ood] that false statements are punishable and the importance of telling the truth."[2] Although the State acknowledges that § 908.08(3)(c) may not be satisfied, it maintains that the

[1] All references to the Wisconsin Statutes are to the 2007-08 version.

[2] Near the beginning of the videotaped statement, Rhiana answered "No" when the interviewing social worker asked if "anybody ever talked to [Rhiana] about the difference between a truth and a lie." Furthermore, while Rhiana promised to tell the social worker "only … real stuff," she answered, "No," when asked if she gets in trouble for telling her mother "something that didn't really happen."

statement was admissible in accordance with § 908.08(7) under the residual hearsay exception of § 908.03(24).

¶4 A circuit court's decision to admit evidence is discretionary, and this court will uphold that decision if there was a proper exercise of discretion. ***State v. Manuel***, 2005 WI 75, ¶24, 281 Wis. 2d 554, 697 N.W.2d 811. Under WIS. STAT. § 908.08(7), a circuit court may admit a videotaped statement into evidence if it falls under an exception to the hearsay rule. A court may admit a child's videotaped statement under the residual hearsay exception of WIS. STAT. § 908.03(24) after conducting the following analysis:

> First, the attributes of the child making the statement should be examined, including age, ability to communicate verbally, to comprehend the statements or questions of others, to know the difference between truth and falsehood, and any fear of punishment, retribution or other personal interest, such as close familial relationship with the defendant, expressed by the child which might affect the child's method of articulation or motivation to tell the truth.
>
> Second, the court should examine the person to whom the statement was made, focusing on the person's relationship to the child, whether that relationship might have an impact upon the statement's trustworthiness, and any motivation of the recipient of the statement to fabricate or distort its contents.
>
> Third, the court should review the circumstances under which the statement was made, including relation to the time of the alleged assault, the availability of a person in whom the child might confide, and other contextual factors which might enhance or detract from the statement's trustworthiness.
>
> Fourth, the content of the statement itself should be examined, particularly noting any sign of deceit or falsity and whether the statement reveals a knowledge of matters not ordinarily attributable to a child of similar age.
>
> Finally, other corroborating evidence, such as physical evidence of assault, statements made to others, and opportunity or motive of the defendant, should be

> examined for consistency with the assertions made in the statement.

State v. Sorenson, 143 Wis. 2d 226, 245-246, 421 N.W.2d 77 (1988).

¶5 Before trial the circuit court analyzed the admissibility of Rhiana's videotaped statement under the totality of the circumstances bearing on the trustworthiness of her statement. The court determined that the statement was admissible, concluding, "the totality of the statement in my mind does show that the child had an understanding of the importance of telling the truth." Although the court may have combined the requirements of WIS. STAT. § 908.08(3)(c) with the trustworthiness standard that underlies the residual hearsay exception of WIS. STAT. § 908.03(24), the record reflects a sustainable exercise of discretion.[3]

¶6 Examining the ***Sorenson*** factors, Rhiana's videotaped statement possessed sufficient guarantees of trustworthiness to be admissible under the residual hearsay exception. First, Rhiana was four years old at the time of the statement. "[A] child of such a young age is unlikely to review an incident of sexual assault and calculate the effect of a statement about it." ***Sorenson***, 143 Wis. 2d at 246. Second, the statement was made to a social worker, who possessed no apparent ulterior motive to encourage Rhiana to falsely accuse Laudie of touching her inappropriately or of taking nude photos of her. Third, the statement was within three-and-a-half months of the charged crimes–a relatively short time for such disclosures. Fourth, the content of the statement is devoid of any sign of deceit or falsity, but rather has a ring of credibility given Rhiana's ability to recount events of a sexual nature. Fifth, and most importantly, the

[3] We will affirm a ruling if the circuit court reaches the right result, even if for the wrong reason. *See* ***State v. Alles***, 106 Wis. 2d 368, 392, 316 N.W.2d 378 (1982).

statement was corroborated by the nude photos of Rhiana found on Laudie's home computer, including photos showing Laudie's penis in contact or near contact with Rhiana's vagina. For these reasons, we conclude that the circuit court properly admitted the videotaped statement into evidence.[4]

¶7 Laudie next contends that the circuit court erred when it denied his motion to suppress a statement he gave to police. The statement occurred in the front of an unmarked squad car parked in the driveway of Laudie's residence during the execution of a search warrant at his residence. Laudie asserts that his statement should have been suppressed due to a ***Miranda***[5] violation.

¶8 In response, the State maintains that no ***Miranda*** violation occurred because Laudie was not "in custody" for ***Miranda*** purposes when police elicited the statement. Accordingly, the State submits that ***Miranda*** warnings were unnecessary to preserve the admissibility of his statement.

¶9 The circuit court held a hearing on Laudie's motion to suppress at which Detective Brian Kilpin and Sheriff's Deputy Garth Frami testified. According to Kilpin, he and four other officers went to Laudie's residence to execute a search warrant. When Laudie answered the door, Kilpin identified himself, informed Laudie of the search warrant, and asked Laudie to step out to

[4] In reaching this conclusion, we are mindful of the criticism of the residual hearsay exception articulated by Justice Geske in ***State v. Huntington***, 216 Wis. 2d 671, 575 N.W.2d 268 (1998). There, she expressed great concern about case law stretching the exception in child sexual assault cases to the point that hearsay statements admitted under it no longer possess the inherent trustworthiness justifying admissibility. ***Id.***, ¶54 (Geske, J., dissenting).

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

speak with him. Kilpin said that Laudie did so and then "walked by himself" with Kilpin to an unmarked squad car parked in the driveway.

¶10 Kilpin estimated that his encounter with Laudie lasted ten to fifteen minutes. Laudie sat in the front passenger seat of the squad car, next to Kilpin. Although the car doors were closed, Kilpin said that Laudie was able to open his door from the inside. Kilpin noted that Laudie was not handcuffed during their encounter. He further noted that he twice told Laudie "that he was not under arrest and he didn't need to speak with me if he didn't want to," that Laudie "was free to leave." Despite these statements, Laudie agreed to talk.

¶11 During the interview, Kilpin said that he made no threats or promises to Laudie and that he spoke with Laudie in "a normal conversational voice." He also said that Laudie gave coherent, "logical" responses to his questions and never asked to end the interview or exit the squad car.

¶12 After the interview concluded, Kilpin said that Laudie stood outside with another officer while Kilpin went inside the residence to assist with the search warrant. Although Frami testified that he had been told in advance that Laudie "was going to be brought back to the sheriff's department," Laudie was not actually arrested by police until after his digital camera and computer were seized.

¶13 Based upon the testimony presented, the circuit court found "no evidence of coercive action, display of weapons, threats, depriving him of any type of liberty, at that time of the discussion." Accordingly, it concluded that Laudie was not "in custody" for ***Miranda*** purposes when he gave his squad-car statement.

¶14 On review, this court will "uphold the circuit court's findings of historical or evidentiary fact unless they are clearly erroneous." *See* ***State v. Jennings***, 2002 WI 44, ¶20, 252 Wis. 2d 228, 647 N.W.2d 142. However, we review independently the circuit court's application of constitutional principles to those facts. *See* ***id.***, ¶20.

¶15 When determining whether a person is in custody for ***Miranda*** purposes, the relevant inquiry is how a reasonable person in the suspect's position would understand the situation. ***State v. Morgan***, 2002 WI App 124, ¶10, 254 Wis. 2d 602, 648 N.W.2d 23. In making such a determination:

> [W]e 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. When considering the degree of restraint, we consider: whether the suspect is handcuffed, whether a weapon is drawn, whether a frisk is performed, the manner in which the suspect is restrained, whether the suspect is moved to another location, whether questioning took place in a police vehicle, and the number of officers involved.

Id., ¶12 (citations omitted).

¶16 Under the totality of the circumstances, we are satisfied that a reasonable person in Laudie's position would not believe him or herself to be in custody at the time of the squad-car statement. Here, Laudie voluntarily agreed to accompany Kilpin to the front seat of the squad car for questioning. The interview that he participated in was short and nonthreatening. Moreover, the degree of restraint that he experienced while interviewed was virtually nonexistent. This is evident from the lack of handcuffs, the car's unlocked door, and the fact that Kilpin twice told Laudie "that he was not under arrest and he didn't need to speak with me if he didn't want to," that Laudie "was free to leave." For these reasons,

we conclude that the circuit court properly admitted Laudie's statement into evidence.[6]

By the Court.—Judgment affirmed.

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

[6] Even if the circuit court had erred in admitting the statement, such an admission would constitute harmless error. After all, Laudie's squad-car statement was not strongly inculpatory. Laudie merely indicated some reservation or disagreement with the accusations made by the police, but he gave no directly incriminating statements.