COURT OF APPEALS
DECISION
DATED AND RELEASED

DECEMBER 12, 1995

No. 95-1369-CR

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

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

JANE M. RONEY,

Defendant-Respondent.

APPEAL from an order of the circuit court for Brown County: DONALD J. HANAWAY, Judge. *Reversed.*

CANE, P.J. The State appeals the trial court's order suppressing Jane Roney's written statement where she admitted to stealing money from her employer. The trial court concluded that because the officer's statement to Roney was inherently coercive and violated fundamental fairness, her written admissions must be suppressed. The order is reversed.

The facts are undisputed. Officer Michael Van Rooy went to Roney's home to interview her about some money missing from her employer, the Bridal Chateau. Roney invited the officer into her home, and they sat in her kitchen where Van Rooy explained to her that she was not under arrest and that he just wanted to talk to her about some inconsistencies in the bridal shop

records. Roney concedes that she was not placed under arrest and that ***Miranda***[1] warnings were not required. She also agrees that the officer made no improper threats or promises to induce the written statement. However, she argued successfully to the trial court that when Van Rooy admitted that in order to get a statement from Roney, he told her that she seemed like a good person and asked her if she just borrowed the money with the intent to pay it back, this police strategy was inherently coercive and violated fundamental fairness. Consequently, the trial court ordered that Roney's written admissions to stealing money from her employer were inadmissible.

The Fourteenth Amendment to the United States Constitution prohibits involuntary statements because of their inherent unreliability and the judicial system's unwillingness to tolerate illegal police behavior. ***State v. Pheil,*** 152 Wis.2d 523, 535, 449 N.W.2d 858, 863 (Ct. App. 1989). As our supreme court stated in ***State v. Hunt,*** 53 Wis.2d 734, 740, 193 N.W.2d 858, 863 (1972), "The essential question, in determining the voluntariness of a confession, is whether the confession was coerced, or the product of improper pressures exercised by the police. To be admissible into evidence, a confession must be the voluntary product of a free and unconstrained will, reflecting deliberateness of choice."

Roney argues that the issue is not one of a coercive atmosphere, but whether Van Rooy's subtle strategy in obtaining a confession was an improper strategy rendering the written confession inadmissible. Because the underlying facts relative to the taking of the statement are undisputed, whether the police conduct rendered the statement involuntary presents an issue of law this court reviews independently of the trial court's determination. *See* ***State v. Clappes,*** 136 Wis.2d 222, 235, 401 N.W.2d 759, 765 (1987).

At a suppression hearing, the State has the burden of proving the voluntariness of a statement by a preponderance of the evidence. ***State v. Rewolinski,*** 159 Wis.2d 1, 16 n.7, 464 N.W.2d 401, 407 n.7 (1990). When determining voluntariness, courts examine the totality of the circumstances surrounding the statement, weighing the defendant's personal characteristics against the pressures imposed upon the defendant by the police, in order to

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

induce a response to the questioning. ***Clappes***, 136 Wis.2d at 236-37, 401 N.W.2d at 766. In ***Clappes,*** our supreme court stated:

> The relevant personal characteristics of the confessor include his age, his education and intelligence, his physical and emotional condition, and his prior experience with the police. These factors must be balanced against the police pressures and tactics which have been used to induce the admission, such as the length of the interrogation, any delay in arraignment, the general conditions under which the confessions took place, any excessive physical or psychological pressure ... any inducements, threats, methods or strategies utilized by the police to compel a response, and whether the individual was informed of his right to counsel and right against self-incrimination.

Id. (Citation omitted.)

In ***State v. Albrecht,*** 184 Wis.2d 287, 300, 516 N.W.2d 776, 781 (Ct. App. 1994), we recognized that in the battle against crime, the police, within reasonable bounds, may use misrepresentations, tricks and other methods of deception to obtain evidence.

A review of the circumstances surrounding Roney's written confession does not suggest any improper policy strategy constituted an inherently coercive approach or violated fundamental fairness. Here, the interview lasted for approximately thirty minutes at Roney's home. She is forty-seven years old and has two years of college education. She was not in custody or under arrest. The discussion about the inconsistencies in the bridal shop receipts and whether she took any money took place in the kitchen while Roney dyed and rinsed her hair. There was no physical pressure placed on Roney. Although Van Rooy told Roney that he did not think she stole the money, he never made any promises or threats against her. Roney has no characteristics that would suggest she is unusually susceptible to psychological pressure. When reviewing Roney's testimony at the suppression hearing, conspicuously absent is any statement or suggestion from her that Van Rooy's strategy of telling her that she must have borrowed the money without any intent to steal it

caused her to make any incriminating statement. The thrust of her testimony was that she did not make the incriminating statements contained in the written confession. That is a matter left for the trier of fact at trial.

Under these circumstances, this court concludes that Van Rooy's conduct was within the permissible bounds of interviewing Roney, an individual suspected of stealing from her employer. The officer's strategy was not the type of conduct or pressure that is inherently coercive or a violation of fundamental fairness. Therefore, the trial court's order suppressing Roney's incriminating statements is reversed.

By the Court.—Order reversed.

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