

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MAY 7, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**Nos. 95-2979-CR
95-2980-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBERT GAGNER, JR.,

Defendant-Appellant.

APPEALS from judgments of the circuit court for Barron County:
EDWARD R. BRUNNER, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Robert Gagner appeals his conviction for felony theft and misdemeanor battery, having pleaded guilty to the charges. He argues that the trial court wrongfully refused to suppress inculpatory statements he gave police after he invoked his right to counsel. The police had given him *Miranda* warnings forty-five minutes to an hour before he invoked his right to counsel. When Gagner invoked his right to counsel, the police

ceased their questioning and unsuccessfully attempted to contact counsel on Gagner's behalf. Shortly thereafter, Gagner resumed his discussions on his own without counsel. After the police reminded him that he had a right to have counsel present, Gagner confessed. Gagner argues that the police had an obligation to reread him his *Miranda* rights once he resumed his discussions with the police. We reject this argument and therefore affirm his conviction.

The police had no obligation to give Gagner new *Miranda* warnings one hour after the original warnings. Rather, once Gagner independently reopened discussions, the police could question him without counsel as long as he voluntarily and intelligently submitted to the questioning. See *Oregon v. Bradshaw*, 462 U.S. 1039, 1044-47 (1983); *Edwards v. Arizona*, 451 U.S. 477, 482 (1981); *State v. Kramar*, 149 Wis.2d 767, 790-91, 440 N.W.2d 317, 326-27 (1989); *State v. Turner*, 136 Wis.2d 333, 347, 401 N.W.2d 827, 834 (1987). Gagner's actions, including his initial decision to invoke his right to counsel, demonstrated that he had a sufficient understanding of his rights to later waive counsel's presence. His waiver was also voluntary. Ordinarily, involuntariness requires some element of police coercion. See *State v. Clappes*, 136 Wis.2d 222, 238-40, 401 N.W.2d 759, 766-67 (1987). Gagner has provided no evidence that the police employed any degree of coercion when he resumed his discussions. Instead, they reminded him of his right to counsel. As a result, the trial court correctly refused to suppress the statement Gagner gave the police.

By the Court.—Judgments affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.