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DISTRICT II

August 15, 2018

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You are hereby notified that the Court has entered the following opinion and order:

2017AP1738-CR State of Wisconsin v. Robert S. Swanton (L.C. # 2015CF525)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robert S. Swanton appeals from a judgment convicting him of first-degree intentional homicide with use of a dangerous weapon. He contends that the circuit court should have suppressed his statement to police. Based upon our review of the briefs and record, we conclude

at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).[1] We affirm the judgment of the circuit court.

Swanton killed Melissa Hansen by stabbing her multiple times. Police sought to interview Swanton shortly after the homicide, but he refused. After securing physical evidence against him, police arrested Swanton, read ***Miranda***[2] warnings to him, and sought to interview him again. This time, he agreed. During questioning, police told Swanton a number of times that the interview would be his last opportunity to tell his version of events. Swanton subsequently confessed to killing Hansen.

The circuit court held a hearing on the admissibility of Swanton's statement to police. It ultimately concluded that the statement was voluntary and admissible. The case proceeded to trial where a jury found Swanton guilty of first-degree intentional homicide with use of a dangerous weapon. The court sentenced Swanton to life in prison with extended supervision eligibility after forty years. This appeal follows.

On appeal, Swanton contends that the circuit court should have suppressed his statement to police. He asserts that his statement was involuntary because police kept telling him that the interview would be his last opportunity to tell his version of events. According to Swanton, such representations suggested that if he did not tell police what happened he would be unable to tell a jury later at trial.

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[1] All references to the Wisconsin Statutes are to the 2015-16 version.

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

"The question of voluntariness involves the application of constitutional principles to historical facts." ***State v. Hoppe***, 2003 WI 43, ¶34, 261 Wis. 2d 294, 661 N.W.2d 407. We give deference to the circuit court's findings of historical facts; however, the application of constitutional principles to those facts is subject to independent appellate review. ***Id.***

A defendant's statement is voluntary if it arises from a free and unconstrained will and reflects deliberateness of choice, as opposed to arising from an unequal confrontation in which the pressures on the defendant exceed the defendant's ability to resist. ***Id.***, ¶36. "Coercive or improper police conduct is a necessary prerequisite for a finding of involuntariness." ***Id.***, ¶37.

Here, we are not persuaded that police engaged in coercive or improper conduct in securing Swanton's statement. When considered in context, their representations to Swanton indicate that the interview, which was their second attempt to question him, would be his last opportunity to tell *them* his version of events. Police did not say, or even imply, that if Swanton did not tell them what happened he would be unable to tell a jury later at trial. Accordingly, we are satisfied that the circuit court properly admitted Swanton's statement.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals