COURT OF APPEALS
DECISION
DATED AND FILED

August 07, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2356 **Cir. Ct. No. 2004JV1599**

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

IN THE INTEREST OF DEANGLO L.,
A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

DEANGLO L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: TIMOTHY M. WITKOWIAK, Judge. *Affirmed*.

¶1 KESSLER, J.[1] Deanglo L. (DL)[2] appeals from a delinquency dispositional order.[3] On appeal, DL argues only that the trial court erred when it refused to suppress his statement to police. The trial court considered the factors the law requires in determining whether a statement is voluntary, and made findings of fact which support its conclusion, and which are, in turn, supported by the record. We affirm.

BACKGROUND

¶2 On October 11, 2004, DL was arrested and brought in for questioning regarding an incident with a nine-year-old boy (AS). At the hearing on DL's motion to suppress, Milwaukee Police Detective Keith Kopcha testified that DL, age twelve, was arrested at his home at 6:10 p.m., and was transported by uniformed officers, who had guns, to the police administration building, where Kopcha met with him in an interrogation room. The room was approximately eight-by-eight feet, had no windows, and contained a bench, table, and chair, all of which were bolted to the floor. At no time during the interrogation was DL in handcuffs. Although DL declined an initial offer of food, drink or bathroom use, he later accepted two Snickers® bars and water. The interrogation was not electronically recorded.

---

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

[2] The record identifies the juvenile concerned as either "Deanglo" or "Deangelo."

[3] The subject of the delinquency petition was sexual contact between two boys, ages twelve (DL) and nine (AS), both of whom were special education students. According to DL, the contact was initiated by AS who explained the act, then offered to, and did, pay DL money for the act. DL, also a child under the age of thirteen, was alleged to be delinquent based on violation of WIS. STAT. § 948.02(1) (2003-04), first-degree sexual assault of a child under age thirteen.

¶3 Kopcha interviewed DL between 7:51 p.m. and 10:02 p.m., with an interruption between 8:01 and 8:17 p.m., when Kopcha left the room to take a telephone call from DL's mother. Kopcha, according to DL's mother, refused to allow her to come to the police station to be with her son. Kopcha did not have a clear recollection of the conversation, but agreed that it was contrary to policy to allow a parent to be present when the child is interrogated.

¶4 Kopcha knew before the interrogation that DL was in a special education class, though he did not know specifically why this was so. He also knew that DL was diagnosed as emotionally disturbed. DL denied using any medication, drugs or alcohol. Kopcha testified that at the start of the interrogation, he read the ***Miranda***[4] rights to DL from the Department of Justice Card, that he read each right separately, and that he had DL explain the right in his own words after he read each right. Kopcha wrote DL's explanation of the right in DL's words on the report of the interview. In addition, he had DL explain the difference between the truth and a lie. This process took approximately thirty minutes.

¶5 Kopcha testified that after the explanation of rights, he asked DL what happened, and DL said that nothing happened. Kopcha told DL that AS had gone to the hospital and "evidence was recovered" and explained that if DL had contact with AS, it would show. He gave this explanation as a way of getting DL to tell the truth as to whether "he did it." DL then described what he and AS had done.[5] The admissions occurred about 9:00 p.m. Kopcha testified that he wrote

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

[5] DL's statement to the police, as recorded by Kopcha, describes sexual contact between the boys without penetration, and indicates AS was the instigator and paid DL to perform the act.

down what DL said, read the document to DL, and had DL sign the statement. DL did not read the document himself, and Kopcha did not do anything to demonstrate DL's reading ability. The corrections that DL initialed were because Kopcha asked him to initial the changes, not because DL himself noticed any errors in the statement.

¶6 Kopcha testified that he did not strike, threaten or abuse DL, that he was not wearing a gun and was not wearing a uniform, and that DL seemed calm, alert and answered questions. He described DL as giving answers that made sense in the context of the situation and that were coherent. DL agreed that Kopcha never kicked, hit, punched or did anything to him physically, and never yelled or swore at him.

¶7 The record of the suppression hearing demonstrates occasionally nearly incoherent testimony by DL. As the trial court observed, DL answered the same question several different ways. For example, in response to his lawyer's questions, DL first said that he did not understand that he did not have to talk to Kopcha, but then on the same page of the transcript, remembers understanding that he could stop talking. At various times in his testimony, DL says he asked to talk to his mother before the interview began, when Kopcha was asking him some questions, and after Kopcha told him his mom was "really mad"; DL also says he asked to talk to his mom two times.[6] At other times, DL's testimony is disturbingly illogical and inconsistent. For example, he testified that he had no memory of the statement attributed to him, and no memory of signing the paper

[6] Our supreme court, in ***Jerrell***, declined to adopt a bright line rule invalidating judicial confessions in the absence of parental presence. *See* ***State v. Jerrell C.J.***, 2005 WI 105, ¶43, 283 Wis. 2d 145, 699 N.W.2d 110.

that Kopcha wrote, then claims to have made up the entire statement because he says Kopcha told him he (Kopcha) would be fired if DL did not tell the truth.

STANDARD OF REVIEW

¶8 "Our standard of review on a denial of a motion to suppress is mixed. We uphold the trial court's findings of fact unless clearly erroneous." ***State v. Oswald***, 2000 WI App 3, ¶42, 232 Wis. 2d 103, 606 N.W.2d 238. ***State v. O'Brien***, 223 Wis. 2d 303, 315, 588 N.W.2d 8 (1999). "Whether those facts pass constitutional muster is a question of law we review *de novo*." ***Oswald***, 232 Wis. 2d 103, ¶42. "A trial court's findings … are accepted as true unless clearly erroneous." ***State v. Wilson***, 179 Wis. 2d 660, 683, 508 N.W.2d 44 (Ct. App. 1993) (citing WIS. STAT. § 805.17(2)), *overruled on other grounds by* ***State v. Weed***, 2003 WI 85, 263 Wis. 2d 434, 666 N.W.2d 485. "Further, in ascertaining witness credibility, '[t]he trial court is the final arbiter.'" ***Id.*** (citation omitted; alteration in ***Wilson***); *see also* ***Oswald***, 232 Wis. 2d 103, ¶47.

DISCUSSION

¶9 Involuntary confessions are not admissible at trial under the due process clause of the Fourteenth Amendment. *See* ***Rogers v. Richmond***, 365 U.S. 534, 540 (1961); ***State v. Agnello***, 2004 WI App 2, ¶8, 269 Wis. 2d 260, 674 N.W.2d 594. "The pertinent inquiry is whether the statements were coerced or the product of improper pressures exercised by the person or persons conducting the interrogation.… Coercive or improper police conduct is a necessary prerequisite for a finding of involuntariness." ***State v. Hoppe***, 2003 WI 43, ¶37, 261 Wis. 2d 294, 661 N.W.2d 407 (citations omitted). It is the State's burden to prove the voluntariness of a confession by a preponderance of the evidence. ***Id.***, ¶40 (citing

United States v. Haddon, 927 F.2d 942, 945 (7th Cir. 1991); ***State v. Agnello***, 226 Wis. 2d 164, 182, 593 N.W.2d 427 (1999)).

¶10 The evaluation must consider the totality of the circumstances. ***State v. Jerrell C.J.***, 2005 WI 105, ¶20, 283 Wis. 2d 145, 699 N.W.2d 110. This includes the juvenile's personal characteristics such as age, ***id.***, ¶25, intelligence and education, ***id.***, ¶27, and experience with police, ***id.***, ¶29, as well as psychological pressure due in part to the length of interrogation, ***id.***, ¶34, and denial of access to a parent or other friendly adult, ***id.***, ¶31. Additionally, we are cognizant of "the need to exercise 'special caution' when assessing the voluntariness of a juvenile confession." ***Id.***, ¶21.

¶11 The trial court considered the totality of the circumstances and noted that a primary factor making a statement involuntary is coercive government activity. The trial court expressed that its primary concern was whether DL "was able to understand his rights and was able to give a voluntary confession." The trial court considered that approximately half an hour of the two-hour interview (with a gap of approximately fifteen minutes when Kopcha took the telephone call) was devoted to discussing the ***Miranda*** rights and what they meant. The court also considered the delay between the arrest at 6:10 p.m. and the commencement of the interrogation at 7:51 p.m., the lack of any evidence of threats or physical abuse, the short time of total interrogation (approximately two hours), and that DL was given food and water and was not deprived of sleep.

¶12 After considering the appropriate factors, based upon the facts before it, the trial court found the confession was voluntary and was not coerced. The trial court expressed understandable concern about the intelligence and understanding of DL, who the court found was "functioning at a sixth grade level"

and "although getting B's and C's in classes, those are special ed classes." The trial court then found that DL understood the questions asked in court, but "decided to give different answers with regard to those questions." That amounts to a finding that DL was not a credible witness. As we have explained, the trial court is the judge of witness credibility. *See* ***Wilson***, 179 Wis. 2d at 683; ***Oswald***, 232 Wis. 2d 103, ¶47.

¶13 There is no expert testimony or other evidence explaining the specific emotional disability from which DL suffered or how that may have impacted DL's understanding, susceptibility to pressure or suggestion, or his ability to respond consistently to the same questions. It is impossible to determine on this record what DL's version of the interrogation actually was. Under these circumstances, it would have been surprising for the trial court to have concluded that DL's version of the arrest and interrogation supported a finding of improper police conduct, or that DL suffered from such emotional disability as to otherwise make his responses to Kopcha's questions involuntary.

¶14 For all the foregoing reasons, we affirm.

By the Court.— Order affirmed.

This opinion will not be published. *See* WIS. STAT RULE 809.23(1)(b)4.