

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 11, 2007**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

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

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

**Appeal No. 2006AP2392-CR**

**Cir. Ct. No. 2005CF5091**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**KEITH L. HUGHES, JR.,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: MEL FLANAGAN, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 PER CURIAM. Keith L. Hughes, Jr. appeals from an amended judgment of conviction for felony murder and possessing a firearm as a felon to challenge the trial court's refusal to suppress his confession. We conclude that the series of interviews by multiple police officers did not constitute coercive tactics,

and that the trial court did not err in determining that Hughes voluntarily confessed. Therefore, we affirm.

¶2 Hughes was charged with felony murder and possessing a firearm as a felon, in violation of WIS. STAT. §§ 940.03 and 941.29(2) (2005-06).<sup>1</sup> At an evidentiary hearing, Hughes sought to suppress his statements to police, claiming that he confessed involuntarily when considered in the totality of the circumstances.<sup>2</sup> After the trial court determined that suppression was unwarranted because Hughes's statements were taken "in an appropriate manner," Hughes decided to plead guilty. The trial court imposed a thirty-year sentence for the felony murder, comprised of twenty- and ten-year respective periods of initial confinement and extended supervision, and a ten-year consecutive sentence for unlawfully possessing the firearm, comprised of two five-year periods of initial confinement and extended supervision. Hughes appeals the denial of the suppression motion, as he may do pursuant to WIS. STAT. § 971.31(10).

¶3 Hughes contends that his confession should have been suppressed because the cumulative effect of six interviews over a four-day period by six teams of investigating officers constituted coercion, resulting in him involuntarily confessing his involvement in these offenses. We disagree.

¶4 Statements made involuntarily by a defendant are inadmissible against that defendant as violative of his or her due process rights under the federal

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2005-06 version.

<sup>2</sup> The trial court conducted a *Miranda-Goodchild* hearing, pursuant to WIS. STAT. § 971.31(3), to determine the voluntariness of Hughes's confession. See *Miranda v. Arizona*, 384 U.S. 436 (1966); *State ex rel. Goodchild v. Burke*, 27 Wis. 2d 244, 133 N.W.2d 753 (1965). No formal suppression motion was filed.

and state constitutions. *See* U.S. CONST. amend. XIV; WIS. CONST. art. I, § 8; *State v. Hoppe*, 2003 WI 43, ¶36, 261 Wis. 2d 294, 661 N.W.2d 407 (citing *Rogers v. Richmond*, 365 U.S. 534, 540 (1961); *State v. McManus*, 152 Wis. 2d 113, 130, 447 N.W.2d 654 (1989)).

A defendant's statements are voluntary if they are the product of a free and unconstrained will, reflecting deliberateness of choice, as opposed to the result of a conspicuously unequal confrontation in which the pressures brought to bear on the defendant by representatives of the State exceeded the defendant's ability to resist.

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.

We apply a totality of the circumstances standard to determine whether a defendant's statements are voluntary. The totality of the circumstances analysis involves a balancing of the personal characteristics of the defendant against the pressures imposed upon the defendant by law enforcement officers.

The relevant personal characteristics of the defendant include the defendant's age, education and intelligence, physical and emotional condition, and prior experience with law enforcement. The personal characteristics are balanced against the police pressures and tactics which were used to induce the statements, such as: the length of the questioning, any delay in arraignment, the general conditions under which the statements took place, any excessive physical or psychological pressure brought to bear on the defendant, any inducements, threats, methods or strategies used by the police to compel a response, and whether the defendant was informed of the right to counsel and right against self-incrimination.

The balancing of the personal characteristics against the police pressures reflects a recognition that the amount of police pressure that is constitutional is not the same for each defendant. When the allegedly coercive police conduct includes subtle forms of psychological persuasion, the mental condition of the defendant becomes a more significant factor in the "voluntariness" calculus. It is the

State's burden to prove by a preponderance of the evidence that the statements were voluntary.

*Hoppe*, 261 Wis. 2d 294, ¶¶36-40 (citations omitted).

¶5 Hughes was arrested on September 1, 2005. Between the early morning of September 2, 2005 and mid-afternoon of September 5, 2005, he was interrogated six times by different teams of police officers. At the outset of each interrogation, Hughes was read his *Miranda* rights. See *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶6 Hughes had been in custody for eight hours before he was interrogated. The first interrogation lasted five hours and forty-four minutes and included four fifteen-minute breaks. According to police, Hughes admitted his involvement in attempting to sell tire rims from a vehicle he knew had been stolen, but denied any involvement in the charged homicide.

¶7 The second interrogation occurred six hours and thirty minutes later. This interrogation lasted four hours and twenty minutes, and included a one-hour and twenty-minute break. According to police, Hughes's statements were substantively similar to those he had made during the first interrogation.

¶8 The third interrogation occurred two hours and thirty minutes later. This interrogation was prompted by another detainee implicating Hughes in a different homicide (the Thomas homicide) than the homicide implicated in this case, the Olivier homicide. This interrogation lasted five hours and forty-three minutes; there were two breaks: one was twenty minutes, the other was ninety

minutes. According to police, Hughes denied his involvement in the Thomas homicide.<sup>3</sup>

¶9 The fourth interrogation occurred nine hours and thirty minutes later. This interrogation was prompted by new information acquired from interviews of other suspects. This interrogation lasted six hours and thirty minutes during which there were three twenty-minute breaks. According to police, Hughes then admitted that he was the lookout in the Thomas homicide.

¶10 Almost sixteen hours later, during which Hughes stood in two lineups, he was interrogated for a fifth time. This interrogation was prompted by his being identified in one of those lineups as the shooter in the charged offense (the Olivier homicide). The fifth interrogation lasted four hours and twenty minutes; there were two breaks: one for fifteen minutes, the other for thirty-five minutes. According to police, after denying his involvement in the victim's death, Hughes said he was tired and had had a long day. One of the officers wrote a one-page statement and ended that interrogation.

¶11 Approximately seven hours later, police interrogated Hughes for the sixth time, after discovering that he may have been burned during the Thomas homicide. Hughes allowed police to examine him for burns, however, they found no evidence that he had been burned. The sixth interrogation lasted four hours and thirty-five minutes during which Hughes took two five-minute breaks. According to one of the police officers, Hughes said that "he wanted to get something off of his chest" because he had "been feeling bad, both physically and mentally."

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<sup>3</sup> According to police, Hughes was not questioned about the Olivier homicide during this interrogation.

Hughes then confessed to the Olivier homicide, which was not even the subject of this interrogation.

¶12 The question of voluntariness involves the application of constitutional principles to historical facts. We give deference to the [trial] court’s findings regarding the factual circumstances that surrounded the making of the statements. However, the application of the constitutional principles to those facts is subject to independent appellate review.

*Hoppe*, 261 Wis. 2d 294, ¶34 (citations omitted).

¶13 After an evidentiary hearing at which six officers testified (one officer from each of the six interrogations), the trial court summarized the facts and, despite the “fairly high number of interviews,” ultimately determined “that there were sufficient developments in the – in the investigation that supported the recontacting the defendant and reinterviewing [hi]m and readvising him.” The trial court then described these developments:

co-defendant statements, witness statements, two lineups were held, there was the information about the burns on the body.

[The trial court] think[s] that that – the fact that there are six, given the developments of the case and how it was progressing, [six interviews] is not unreasonable, and it’s a reasonableness standard that the Court has to apply[] here.

....

And the information that he offered at that time was clearly not – the result of interrogation, per se, it was volunteered. He changed the subject and said, hey, I have something to say to you, and it’s about this.

And given that information, the officer – the detective then just gave him an opportunity to talk and allowed him to give what statement he wanted to give and recorded that statement in an appropriate manner, and [the trial court] do[es]n’t see any – any behavior that would not

be acceptable behavior, and [the trial court] do[es]n't see any violation of Miranda or Goodchild in regard to those – in regard to that statement.

¶14 The facts found by the trial court support its analysis that Hughes's confession was not a product of coercive police tactics.<sup>4</sup> On appeal, Hughes admits that no “individual overt act by any particular detective ... alone, deprived the defendant of his rights.” He claims that nonetheless, the cumulative effect of the six interrogations conducted by six teams of detectives “summoning the defendant back and forth from the county jail to the police administration building at all different times of day and night” constituted coercive police tactics and “plainly led to deprivation of sleep, fatigue and likely disorientation and confusion.”

¶15 “[C]oercive police activity is a necessary predicate to the finding that a confession is not ‘voluntary’ within the meaning of the Due Process Clause of the Fourteenth Amendment.” *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). Hughes does not claim a single example of coercive conduct, but instead claims that the cumulative effect of the “interrogation cycle” rendered his confession involuntary by compelling him to ultimately “confess[] to a crime he had not been asked about.”

¶16 The number of interrogations—six—does not alone constitute coercive police practices. After the second interrogation, investigative developments

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<sup>4</sup> The trial court found that each interrogation was in the approximate range of three to five hours; however, two were almost six hours in duration, and one was six and one-half hours. The trial court also found that the breaks between interrogations were in the four- to twelve-hour range. Most of the intervals were in that range, however, one interval was only two and one-half hours, and the other was almost sixteen hours. These findings, insofar as they are clearly erroneous, are inconsequential to the validity of the constitutional analysis of voluntariness in this case.

continued to provide police with new information and a reasonable basis to prompt the third and each subsequent interrogation. The trial court found that Hughes was provided with creature comforts, and “fairly large breaks between each interview[.]” He was also “given a[n] opportunity to rest between interviews. He had a private cell and a bed.” When Hughes told police that he was tired and had had a long day, they wrote a one-page statement and terminated the interrogation. When Hughes confessed, he had not even been asked about that particular homicide during that particular interrogation. According to Milwaukee Police Detective Timothy Heier, Hughes changed the subject by telling Heier that he wanted “to get something off of his chest,” that had been bothering him “about another homicide.” He volunteered this information; he was not coerced or tricked into confessing. We conclude that police did not engage in coercive or improper tactics when interrogating Hughes; he voluntarily confessed to a crime that was not even the subject of that particular interrogation. Therefore, the trial court did not err in refusing to suppress Hughes’s confession.

*By the Court.*—Judgment affirmed.

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



