

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 25, 2008

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. 2008AP1892

Cir. Ct. No. 2008JV3

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN THE INTEREST OF ALYSSA L. L., A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

v.

ALYSSA L. L.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Door County:
PETER C. DILTZ, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Alyssa L. appeals an order adjudicating her delinquent for sexually assaulting a child under the age of sixteen. Alyssa

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

contends the circuit court erroneously denied her motion to suppress, which alleged her statement to police was custodial and involuntary. We disagree and affirm.

BACKGROUND

¶2 Beth Moeller, a child protective services social worker for Door County, testified at the suppression hearing. The police department informed Moeller it received anonymous information indicating Alyssa possibly had a sexually transmitted disease and had engaged in intercourse with one or more adults. Moeller viewed Alyssa as a potential victim and contacted her mother. Her mother confirmed Alyssa was receiving treatment for a sexually transmitted disease and agreed to bring her to the police department for an interview. It was standard practice for juvenile interviews to be conducted with law enforcement present, regardless of whether the juvenile was suspected to be a victim or perpetrator. This practice was adopted to avoid putting juveniles through multiple interviews. Alyssa was approximately one month shy of her seventeenth birthday at the time of the interview.²

¶3 Alyssa and her mother met Moeller at the social services building and then walked across the street to the police department, which had an interview room with digital recording capabilities. Officer Wendy Rabach then escorted Alyssa and Moeller to the interview room, where she joined them after starting the videotape. No *Miranda*³ warnings were provided to Alyssa at any time. Five

² Alyssa's appellate brief states she was fifteen years old at the time of the December 10, 2007 interview, without citation to the record. The date of birth indicated on both the delinquency petition and dispositional order show otherwise.

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

minutes into the interview, Alyssa provided information about sexual conduct with Jason S. The remainder of the nearly one-hour interview involved a discussion of sexual conduct with adults. It was Alyssa who first mentioned the sexual conduct with Jason, who she thought was fifteen or sixteen, and Moeller was unaware of his existence prior to that point. After the interview, Moeller did not recall the mention of Jason until Rabach called and suggested they follow up with him.

¶4 Moeller did not believe Alyssa was in custody during the interview. When it concluded, Alyssa said goodbye and got up and left, without being told she could leave. However, Moeller had stated, “Thank you for talking with us today[]” and thought Alyssa “picked up on cues that the interview was over....” Moeller described Alyssa’s demeanor as calm, relaxed, and conversational during the interview. Moeller had numerous prior contacts with Alyssa, who was on medication for significant mental illness and was on a WIS. STAT. ch. 51 mental health commitment at the time of the interview.

¶5 Rabach agreed with Moeller’s descriptions of the interview and testified Alyssa was free to leave at any time. Alyssa testified Rabach sat between her and the door in the interview room. Alyssa stated she did not feel free to leave and thought they would put her in jail if she got up to leave the room. Alyssa thought the interview was over when Moeller thanked her for being there.

¶6 Alyssa moved to suppress her statements concerning Jason and all derivative evidence. The circuit court found Moeller’s and Rabach’s testimony credible and determined Alyssa was not in custody, there were no improper police practices directed at procuring a confession, and Alyssa’s statements were voluntary. After the court denied her motion, Alyssa entered a no contest plea.

DISCUSSION

¶7 Alyssa contends her statements and any derivative evidence were inadmissible at trial under *Miranda v. Arizona*, 384 U.S. 436 (1966), because she was placed in custody and interrogated without first being advised of her constitutional rights. The test is whether a reasonable person in Alyssa’s position would have considered herself to be in custody, under the totality of the circumstances. See *State v. Pounds*, 176 Wis. 2d 315, 321, 500 N.W.2d 373 (Ct. App. 1993). Relevant factors include the person’s freedom to leave, the purpose, location, and duration of the interview, and the degree of restraint. *State v. Gruen*, 218 Wis. 2d 581, 594, 582 N.W.2d 728 (Ct. App. 1998). Whether a person is in custody is an objective test, and presents a question of law we review without deference to the circuit court’s determination. *State v. Marten-Hoye*, 2008 WI App 19, ¶14, 307 Wis. 2d 671, 746 N.W.2d 498; *Pounds*, 176 Wis. 2d at 320.

¶8 Alyssa also argues suppression is constitutionally required because her statements were involuntary. “[S]tatements 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.’” *State v. Jerrell C.J.*, 2005 WI 105, ¶18, 283 Wis. 2d 145, 699 N.W.2d 110 (quoting *State v. Hoppe*, 2003 WI 43, ¶36, 261 Wis. 2d 294, 661 N.W.2d 407).

¶9 “A necessary prerequisite for a finding of involuntariness is coercive or improper police conduct.” *Jerrell C.J.*, 283 Wis. 2d 145, ¶19. However, even subtle pressures are considered coercive if they exceed the defendant’s ability to

resist. *Id.* The voluntariness of a statement is evaluated based on the totality of the circumstances. *Id.*, ¶20.

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.

Hoppe, 261 Wis. 2d 294, ¶39 (emphasis added).

¶10 Further, courts must “exercise special caution when assessing the voluntariness of a juvenile confession, particularly when ... the interrogation occurs in the absence of a parent, lawyer, or other friendly adult.” *Jerrell C.J.*, 283 Wis. 2d 145, ¶21. As with the custody determination, we defer to the circuit court's factual findings but independently apply the constitutional principles to those facts. *Id.*, ¶16.

¶11 We conclude Alyssa was not in custody for *Miranda* purposes. As the circuit court noted, the interview was scheduled several days in advance and Alyssa and her mother arrived voluntarily. Thus, they had ample time to inquire whether Alyssa's presence was mandatory or to consult with an attorney if they had any concerns. The stated purpose of the interview was to determine who could have infected Alyssa and at no time prior to, or during, the interview was she accused of committing a crime. Alyssa was accompanied by a social worker who, in fact, asked most of the questions. Alyssa was not handcuffed nor did

Rabach call attention to her weapon, which remained holstered. Most telling, however, is the fact Alyssa simply got up and walked out at the end of the interview. Thus, she was free to leave even after providing the incriminating information. In viewing the totality of the circumstances, we conclude a reasonable person in Alyssa's position would not have believed she was in custody.

¶12 We also conclude Alyssa's statements were provided voluntarily. It appears she may have been more vulnerable to coercive tactics due to her age and mental illness. However, we need not engage in a detailed balancing analysis because a crucial element of Alyssa's involuntariness argument is lacking. To find involuntariness there must have been coercive or improper police conduct employed in an attempt to induce incriminating statements. Here, there was no intent to elicit anything incriminating regarding Alyssa. The circuit court observed, "I don't even see that there's evidence that they're trying to procure a confession, when we talk about a confession being of committing a crime. Basically it was—it was a most unanticipated response...."

By the Court.—Order affirmed.

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

