STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0364

In the Matter of the Welfare of: A. A., Child.

Filed November 2, 2020
Affirmed in part, reversed in part, and remanded
Frisch, Judge

Lac qui Parle County District Court
File No. 37-JV-19-183

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Richard G. Stulz, Lac qui Parle County Attorney, Lori Buchheim, Assistant County Attorney, Madison, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Cleary, Judge.*

U N P U B L I S H E D O P I N I O N

FRISCH, Judge

Appellant challenges his delinquency adjudication for property damage, arguing that his confession was involuntary and should have been excluded from evidence and that his trial counsel was ineffective for failing to move to suppress the confession. He argues

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

alternatively that the district court failed to make necessary findings in support of its restitution order. We affirm the adjudication but reverse and remand the restitution order for the district court to make findings required by statute and rule.

FACTS

The state charged juvenile-appellant A.A., then 13 years old, with first-degree damage to property, alleging that in May 2019, he and a friend (R.R.) spray-painted several buildings in Dawson, Minnesota. A.A. and R.R. agreed to a joint court trial, where the district court received the following evidence.

Three business owners testified that they discovered graffiti at their respective workplaces on the morning of May 4, 2019. They also testified regarding the cost to repair the damage, which collectively exceeded $1,000.

Dawson Police Officer Jordan Baldwin testified that he reviewed security camera footage from a local business, saw "a kid on a longboard," then asked local high school administrators for assistance in identifying the person in the camera footage as well as "who else [he should] be looking at" as a suspect. School officials named A.A. as a person of interest. On May 6, Officer Baldwin went to A.A.'s home, spoke with A.A.'s mother, and learned that the family had been out of town on the day of the graffiti incident. That night, Officer Baldwin received a message from A.A.'s stepfather claiming that A.A. was "freaking out saying he's being framed." In a follow-up phone call, the stepfather reported to Officer Baldwin that A.A. was "possibly . . . suicidal." Officer Baldwin returned to A.A.'s home and viewed A.A.'s phone, which contained messages from other children inquiring whether A.A. was responsible for the graffiti.

Officer Baldwin photographed A.A. and told A.A. that he would review the security camera footage again. In addition to the longboarder, the recordings showed two other children traveling together on foot. Officer Baldwin observed that one of the children in the video matched A.A.'s description.

Officer Baldwin later returned to A.A.'s home and interviewed A.A. in the presence of his mother. Officer Baldwin recorded the interview. During the interview, A.A. stated that he returned from Iowa the night of May 3, 2019, and then later met with R.R. Together, they walked to R.R.'s brother's home and to a convenience store and then "just kept walking around." When Officer Baldwin asked A.A. what else they did that night, A.A. claimed that he did not have a clear memory but thought that he went home or returned to R.R.'s brother's home. Officer Baldwin then informed A.A. he had a chance to be honest. A.A. responded that he "would admit to it" and that he "guess[ed they] spray-painted it," but denied knowing which buildings had been spray-painted. A.A. stated that he would "clean up and admit to it," to "get over with this" because it was "too much," explaining, "I'd rather just take the fall for someone else and just do it." The recorded interview lasted approximately two minutes.

A.A. and Officer Baldwin offered different accounts of what happened next. A.A. testified that, after the recording ended, Officer Baldwin "told [A.A.] that if [he] just admitted to it, even if [A.A.] didn't [d]o it . . . it would all be cleaned up and none of this would have happened and if [A.A.] didn't [Officer Baldwin] said he'd [be] back the next morning and put [A.A.] in handcuffs." Officer Baldwin admitted to informing A.A. that the decision to pursue criminal charges was "up to the business owners" and that "they may

not file criminal charges on kids if they clean it up." He denied threatening to handcuff A.A. if he did not confess.

Officer Baldwin then testified that A.A.'s mother "got after A.A." and that A.A. then agreed to a second interview. Officer Baldwin began a second recorded interview. A.A. admitted that he and R.R. had spray-painted buildings with faces, "420," and "random stuff." A.A. admitted to using black spray paint but claimed that they "just found it" lying "on the street."

A.A. testified that he confessed only because Officer Baldwin threatened to arrest him between recordings and implied that A.A. could simply clean up the graffiti. A.A. also identified an alternative perpetrator based on a social-media post, where the actual vandal purportedly threatened to kill A.A. if A.A. revealed what had occurred. A.A. denied vandalizing any of the buildings and testified that he and R.R. only walked around town together.

R.R.'s mother testified that she encountered A.A. and R.R. outside a grocery store that evening. She also testified that she observed other children running down the street in the area. She admitted that a can of spray paint was missing from her home.

The district court found A.A. guilty. It found that A.A. admitted his guilt, credited Officer Baldwin's testimony that he never threatened to handcuff A.A., and discredited A.A.'s testimony that an alternative perpetrator threatened A.A. The district court found that A.A.'s confession was credible based on corroborating evidence, including A.A. and R.R.'s proximity to the vandalized building, the absence of other suspects, testimony that

the boys were together, and the fact that spray paint was missing from R.R.'s home. And it found that the cumulative cost to repair the vandalism was $1,306.

Community corrections filed a report and recommendations, and the state filed a certificate of restitution and supporting documentation. The district court conducted a dispositional hearing, adjudicated A.A. delinquent, placed A.A. on probation, and ordered A.A. to pay restitution. This appeal follows.

D E C I S I O N

I. The district court did not plainly err by admitting evidence of A.A.'s confession.

A.A. argues that the district court should have excluded evidence of his confession, which he claims was involuntary. "A defendant is deprived of constitutional due process of law if he is convicted on the basis of an involuntary confession." *State v. Blom*, 682 N.W.2d 578, 614 (Minn. 2004). Ordinarily, the state bears the burden of proving by a preponderance of the evidence that a confession is voluntary. *State v. Zabawa*, 787 N.W.2d 177, 182 (Minn. 2010). The district court must then make factual findings "regarding the circumstances of the interview" and a "legal determination of whether a defendant's statement was voluntary." *Id.* On appeal, we review the district court's legal determination de novo and accept underlying findings unless the findings are clearly erroneous. *State v. Nelson*, 886 N.W.2d 505, 509 (Minn. 2016); *Zabawa*, 787 N.W.2d at 182. We look at the totality of circumstances to determine whether the confession was voluntary. *Zabawa*, 787 N.W.2d at 183.

A.A. raises this issue for the first time on appeal. "A defendant may preserve a claim of evidentiary error by making a pretrial motion to exclude the challenged evidence or by objecting at trial when the evidence is introduced." *State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018). A.A. neither moved to suppress evidence of his confession nor did he object to its admission during trial. Evidentiary and constitutional errors are subject to forfeiture upon a defendant's failure to make a timely assertion of a right. *Id.* A.A. forfeited his argument by failing to argue that his confession was involuntary before or during trial.

Despite the forfeiture, A.A. urges us to review the admissibility of his confession de novo because the trial record provides an adequate factual record to determine whether his confession was voluntary.[1] But when a defendant forfeits a challenge to the voluntariness of his confession, we apply a plain-error analysis rather than de novo review. *Blom*, 682 N.W.2d at 614 (deeming issue of voluntariness forfeited and reviewing for plain error); *see also State v. Balandin*, 944 N.W.2d 204, 220–21 (Minn. 2020) (deeming *Miranda* challenge forfeited and rejecting argument on its merits). "A defendant is entitled to relief from a plain error if (1) there was an error, (2) the error was plain, and (3) the error affected the defendant's substantial rights." *Vasquez*, 912 N.W.2d at 650 (quotation

[1] A.A. cites *Johnson v. State*, 673 N.W.2d 144 (Minn. 2004), and *State v. Grunig*, 660 N.W.2d 134 (Minn. 2003), for the proposition that the interests of justice warrant the de novo review of the voluntariness of the confession. Both cases are inapposite. *Grunig* permits the affirmance of the underlying decision when "the alternative grounds would not expand the relief previously granted," 660 N.W.2d at 137, while in *Johnson*, "[t]he parties agree[d] on the relevant facts" and disputed what was "largely an issue of law," 673 N.W.2d at 148. By contrast, A.A. seeks reversal of his adjudication, and the parties disputed key facts at trial.

omitted). An error is plain if it "contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). "If the three prongs of the plain error test are met, we then consider whether [we] should address the error to ensure fairness and the integrity of the judicial proceedings." *Vasquez*, 912 N.W.2d at 650 (alteration in original) (quotations omitted).

When we evaluate whether a confession was voluntary, the primary question is whether the defendant's will was overcome at the time of the confession. *State v. Ezeka*, 946 N.W.2d 393, 404 (Minn. 2020). The question is not merely whether police action contributed to the confession but whether such action was "so coercive, so manipulative, so overpowering" that the individual was deprived of the ability to independently choose whether to confess. *Id.* The voluntariness of a confession depends on many factors, including the defendant's age, maturity, intelligence, education, and experience with police; the nature and length of questioning; the presence of promises, trickery, or other stress-inducing techniques; whether the defendant was restrained; and the defendant's access to family and friends. *See, e.g.*, *id.*; *Nelson*, 886 N.W.2d at 509–10; *Blom*, 682 N.W.2d at 614.

A.A. argues that the following evidence shows his confession was involuntary: his stepfather reported that A.A. was "freaking out" and "possibly . . . suicidal," which demonstrated that A.A. was "disturbed"; A.A. repeatedly denied his involvement; Officer Baldwin initially expressed doubt about A.A.'s involvement; the audiotape revealed a "male police officer" using "a firm and commanding voice of an adult in a superior position of authority"; A.A. testified that he decided to "take the fall" for somebody else; and A.A.

testified that Officer Baldwin prompted his confession by threatening to return to handcuff him and implying that A.A. could merely clean up the graffiti.

To be sure, we recognize that A.A. is young and inexperienced with police.[2] And Officer Baldwin's suggestion that business owners "may not file criminal charges on kids if they clean it up" is questionable, although the suggestion does not rise to the level of an "express or implied" promise that "invite[s] suppression of [a] statement" when used to secure a confession. *Ezeka*, 946 N.W.2d at 405. But the totality of circumstances show that the confession was voluntary. *See Zabawa*, 787 N.W.2d at 183.

To begin, the circumstances described by A.A. do not demonstrate that his confession was coerced. A.A.'s stepfather communicated his observations the day *before* A.A. confessed, and nothing in the record suggests A.A. was "disturbed" at the time of his confession. Officer Baldwin's expressions of doubt occurred *after* A.A. repeatedly gave equivocal answers, and Officer Baldwin's statements do not suggest forceful questioning. Further, Officer Baldwin's use of a "firm and commanding voice" in a position of authority does not rise to the level of a "tone of voice indicating that compliance with the officer's request might be compelled." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (quotation omitted). As for A.A.'s claimed willingness to "take the fall" for someone else and Officer

[2] A.A. argues that his age should be a prominent factor in the voluntariness determination. We decline to elevate age above all other factors on plain-error review. *See Webster*, 894 N.W.2d at 787 ("An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." (quotation omitted)); *State v. Milton*, 821 N.W.2d 789, 807 (Minn. 2012) (concluding that erroneous jury instruction was "troublesome" but that the supreme court had not previously articulated a clear requirement on the instruction).

Baldwin's alleged threat to arrest A.A. if he did not confess, we must defer to the district court's finding that A.A.'s testimony was not credible. *See State v. Olson*, 884 N.W.2d 906, 911 (Minn. App. 2016), *review denied* (Minn. Nov. 15, 2016).

And other circumstances demonstrate that A.A.'s confession *was* voluntary. A single officer questioned A.A. for a very short time in the comfort of his home. A.A. was unrestrained. His mother was present with him. And A.A. made his unequivocal confession only *after* his mother "got after" him, a fact that the district court found as follows: "During the interview, [A.A.'s] mother urged him to tell the truth.[3] *That is when he made his admission*." (Emphasis added.)

Accordingly, the totality of the circumstances demonstrate that A.A.'s will was not overcome at the time of his confession and that he was free to choose whether to confess. *See Ezeka*, 946 N.W.2d at 404. The district court did not plainly err by admitting the evidence.

II. A.A.'s trial counsel was not ineffective in failing to move to suppress evidence of A.A.'s confession.

A.A. argues alternatively that his counsel was ineffective for failing to either "move to suppress the confession or explicitly challenge . . . voluntariness." An ineffective-assistance claim requires proof that: "(1) [A.A.'s] trial counsel's representation fell below

[3] A.A. claims that the district court discredited A.A.'s account because his mother urged him to confess. A.A. cites Officer Baldwin's testimony that A.A.'s mother's urging meant she knew A.A. was guilty and argues this was error because "[his] mother could not have known what was true." But the district court relied on the *timing* of A.A.'s confession, not an inference that A.A.'s mother knew he was lying. And the district court sustained an objection to the officer's testimony. A.A.'s speculation that the district court relied on evidence that it specifically excluded is unpersuasive.

an objective standard of reasonableness and (2) there is a reasonable probability that, but for the counsel's unprofessional errors, the result of the proceeding would have been different." *Crow v. State*, 923 N.W.2d 2, 14 (Minn. 2019).

We generally decline to review the reasonableness of matters of trial strategy absent a compelling reason. *Carridine v. State*, 867 N.W.2d 488, 494 (Minn. 2015). Whether to file a motion to suppress evidence is generally a matter of trial strategy. *See id.* A.A. suggests that counsel "could not have [had] any reasonable strategic . . . reason" not to move to suppress but argues that if such reason *could* exist, we should remand for an evidentiary hearing. A.A. did not file a posttrial motion alleging ineffective assistance as allowed by Minn. R. Juv. Delinq. P. 16.01, subd. 1(H), and we see no "compelling reason to depart from the general rule that appellate courts do not review an attorney's trial strategy for competence." *Id.*

Even if we were to consider the reasonableness of counsel's trial strategy, "[a] claim of ineffective assistance of counsel may not rest on the failure of an attorney to make a motion that would have been denied if it had been made." *Johnson v. State*, 673 N.W.2d 144, 148 (Minn. 2004). On this record and as set forth herein, the district court would have denied A.A.'s motion to suppress evidence of his confession because the totality of the circumstances demonstrate that his confession was voluntary.

Accordingly, we affirm the adjudication by the district court.

III. The district court abused its discretion by failing to issue written findings in support of the restitution order.

A.A. asks us to vacate the district court's restitution order because the district court failed to issue supportive findings as required by statute and rule. The state concedes that the district court failed to make adequate findings.

We review a district court's restitution order for an abuse of discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). A district court may order restitution in a juvenile-delinquency proceeding when the disposition is "necessary to the rehabilitation of the child" and "if [a] child is found to have violated a state or local law or ordinance which has resulted in damage to the person or property of another." Minn. Stat. § 260B.198, subd. 1(a)(5) (Supp. 2019).[4] In determining the amount of restitution, the district court must consider "the amount of economic loss sustained by the victim as a result of the offense" and "the income, resources, and obligations of the defendant." Minn. Stat. § 611A.045, subd. 1(a) (2018).

An order for disposition under section 260B.198

> *shall* contain *written* findings of fact to support the disposition ordered and *shall* also set forth *in writing* . . .
>
> (1) why the best interests of the child are served by the disposition ordered; and
>
> (2) what alternative dispositions were considered by the court and why such dispositions were not appropriate in the instant case . . . .

[4] In 2019, the legislature renumbered Minn. Stat. § 260B.198, subd. 1(1)-(13) (2018), to Minn. Stat. § 260B.198, subd. 1(a), (b) (Supp. 2019). *See* 2019 Minn. Laws. ch. 50, art. 1, § 85, at 216-18.

Minn. Stat. § 260B.198, subd. 1(b) (emphasis added). And Minn. R. Juv. Delinq. P. 15.05, subd. 2(A), similarly requires the district court to set forth *in writing* (1) "why public safety and the best interests of the child are served by the disposition ordered" and (2) "what alternative dispositions were recommended to the court and why such recommendations were not ordered." A district court's failure to support a disposition with adequate written findings is reversible error. *In re Welfare of I.N.A.*, 902 N.W.2d 635, 642 (Minn. App. 2017) ("Written findings are required in juvenile-delinquency cases to show that the district court considered vital standards and to enable the parties to understand the court's decision."), *review denied* (Minn. Nov. 28, 2017).

Here, the district court failed to support its restitution order with written findings (1) considering A.A.'s ability to pay, (2) analyzing why restitution served public safety and A.A.'s best interests, or (3) explaining what other dispositions it considered and why those dispositions were not appropriate. *See* Minn. Stat. §§ 260B.198, subd. 1(b), 611A.045, subd. 1(a); Minn. R. Juv. Delinq. P. 15.05, subd. 2(A). Written findings are required by statute and rule, and the district court's failure to issue written findings was therefore an abuse of discretion. Although A.A. urges us to simply vacate the district court's order, our caselaw clarifies that remand is appropriate to allow the district court to issue written findings. *See I.N.A.*, 902 N.W.2d at 645; *State v. Miller*, 842 N.W.2d 474, 480 (Minn. App. 2014), *review denied* (Minn. Apr. 15, 2014).

Affirmed in part, reversed in part, and remanded.