COURT OF APPEALS
DECISION
DATED AND FILED

October 3, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-1435

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

IN THE INTEREST OF MICHAEL G.,
A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

MICHAEL G.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Lincoln County: J. MICHAEL NOLAN, Judge. *Affirmed.*

¶1 CANE, C.J.[1] The sole issue on appeal is whether Michael G.'s two confessions made on November 18 and 19, 1999, to City of Merrill police officers were voluntary. Michael argues that his first statement was involuntary because he was intoxicated and the statement was taken over the objection of his mother. He contends that the second statement was involuntary because it was the result of improper inducements and false promises. This court rejects his arguments and affirms the trial court's order.

¶2 On November 18, 1999, the Merrill police were called to investigate a burglary committed at Jenny Towers, which is an apartment building for the elderly. Upon arrival at the Towers, they discovered that a number of apartments in the building had been unlawfully entered. One of the victims indicated to the officers that there was a young man visiting one of the tenants in the building. The officers then went to an apartment where they found fourteen-year-old Michael G., who was staying overnight with his grandmother. Michael was sitting on a couch in the living room with various clothing articles scattered on the floor. Next to the clothing was a large black-handled butcher knife. After some discussion, the police arrested Michael and transported him to the police department.[2]

¶3 The police notified Michael's mother, who came to the police department and initially stated that because she felt her son was intoxicated, she did not want them to question him. However, after some further discussion, she consented to her son's questioning. Prior to questioning Michael, the officers

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

[2] Michael did not challenge the arrest at the trial level, nor does he challenge it on appeal.

indicated that Michael appeared intoxicated, but not to the degree that he could not understand what was happening. A preliminary breath test showed his blood alcohol content at .11%. After advising Michael of his ***Miranda***[3] rights and obtaining his waiver of those rights, Michael implicated himself in the burglaries. Before and during questioning, the police told Michael that it would be helpful to his case if he talked to them about the burglaries. They admitted that it was standard procedure to tell suspects that they could try to put in a good word for them if they talked about the incident. The following day, the police again interviewed Michael while he was in custody. They again advised him of his ***Miranda*** rights, which Michael waived. This time Michael went into more detail about the burglaries and also admitted that he had taken the butcher knife with him during the burglaries for protection.

NOVEMBER 18 STATEMENTS

¶4 Michael contends that his statements on November 18 were involuntary because he was intoxicated and his mother initially objected to the police questioning her son. Since Michael was a juvenile when he gave his statement, "the greatest care must be taken to assure that the admission was voluntary." ***In re Gault***, 387 U.S. 1, 55 (1967). The voluntariness of a confession is essentially a factual question, and conflicting factual evidence must be resolved in favor of the trial court's finding. *See* ***State v. Verhasselt***, 83 Wis. 2d 647, 653, 266 N.W.2d 342 (1978); *see also* ***Turner v. State***, 76 Wis. 2d 1, 17-18, 250 N.W.2d 706 (1977). Whether a waiver of rights is voluntarily and intelligently made by a juvenile is a fact question dependent upon the totality of the

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

circumstances. *See* ***Theriault v. State***, 66 Wis. 2d 33, 42, 223 N.W.2d 850 (1974). In determining whether a juvenile has voluntarily and intelligently waived his constitutional rights, parental presence is only one factor to consider and is not an absolute prerequisite. *See* ***id.*** The child's age, maturity, intelligence, education, experience, and ability to comprehend are all factors to be considered in addition to the presence and competence of his parents during waiver. *See* ***id.*** at 42-43.

¶5 Here, the evidence supports the trial court's finding that the confession was voluntary. The police officers testified that although Michael appeared intoxicated, he was coherent and responsive. He understood where he was and what he was doing. It was their impression that Michael understood what was happening, what they were talking about and his ***Miranda*** rights as given to him. The trial court heard the evidence and accepted the testimony of the officers as true. Additionally, although Michael's mother initially objected to the police questioning her son, she later changed her mind and consented to them talking to Michael.

¶6 Michael also argues that the police coerced him when they told him that they would try to put a good word in for him and that it would be helpful to him if he talked to them.[4] When government coercion is at issue, this court reviews the trial court's factual findings to determine whether they are clearly erroneous. *See* ***State v. Clappes***, 136 Wis. 2d 222, 235, 401 N.W.2d 759 (1987); ***State v. Deets***, 187 Wis. 2d 630, 635, 523 N.W.2d 180 (Ct. App. 1994). Because

[4] Michael makes this argument on appeal assuming this representation was made to him when the second statements were taken on November 19. The record, however, shows that this representation was made before the first statements on November 18 and no such representations of this nature were made when taking the November 19 statements. Therefore, this court addresses this contention in the context of the November 18 statements.

the historical facts have been established, this court on appellate review independently determines whether they constitute coercive conduct. *See* ***Clappes***, 136 Wis. 2d at 236-37; ***Deets***, 187 Wis. 2d at 635. This is done "in order to ensure that the scope of constitutional protections does not vary from case to case." ***State v. Turner***, 136 Wis. 2d 333, 344, 401 N.W.2d 827 (1987).

¶7 "[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), but coercive activity does not, in and of itself, establish involuntariness. As stated in ***State v. Pheil***, 152 Wis. 2d 523, 535, 449 N.W.2d 858 (Ct. App. 1989), "[d]etermination of whether a statement is voluntary requires a balancing of the personal characteristics of the defendant against the coercive or improper police pressures." Thus, a trial court should not undertake the balancing analysis unless some improper or coercive police conduct has occurred. *See* ***id.***; ***Clappes***, 136 Wis. 2d at 239-40.

¶8 This court rejects Michael's argument that there was a form of coercion when the police officers told Michael that if he talked to them, they would try to put in a good word for him or it would be helpful to his case. An officer telling a defendant that his cooperation would be beneficial to him is not coercive conduct, at least so long as leniency is not promised. *See* ***State v. Cydzik***, 60 Wis. 2d 683, 692, 211 N.W.2d 421 (1973). Similarly, coercive conduct does not occur when an officer, without promising leniency, tells a defendant that if he or she does not cooperate the prosecutor will look upon the case differently. In either case, the officer does nothing other than predict what the prosecutor will do, without making a promise one way or the other. *See* ***Deets***, 187 Wis. 2d at 637. Here, there were no threats or promises of leniency.

Therefore, under the totality of the circumstances, the trial court could reasonably conclude that Michael's statements on November 18 were voluntary.

NOVEMBER 19 STATEMENTS

¶9 Next, Michael contends that his statements on November 19 were involuntary because the record does not demonstrate that the officers informed him of his ***Miranda*** rights and they did not inform him that his confession could result in him being charged with a more serious crime because of carrying the knife during the commission of the offenses.

¶10 First, as the State correctly points out, the record does show that the police properly informed Michael of his ***Miranda*** rights and that Michael waived those rights. Second, Michael never argued before the trial court that the police had a duty to inform him that if he confessed, he could be charged with a more serious crime. Generally, this court need not address an argument raised for the first time on appeal. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980). In any event, this court is not persuaded that the police had such a duty. Michael relies on ***State v. Glotz***, 122 Wis. 2d 519, 362 N.W.2d 179 (Ct. App. 1984), for this proposition. In ***Glotz***, the juvenile intake worker failed to perform a statutory duty of advising the juvenile of the potential for waiver. Although on appeal we did not suppress the statement, we suggested that "there may be situations where the reasonable expectations of a minor that his confession will be used against him only in juvenile proceedings should be protected." ***Id.*** at 523. Here, there is no statutory duty imposed upon the police to inform a juvenile suspect that his confession may result in a more serious charge or placement in a serious juvenile offender program. Nor does this court perceive this to be a situation where such a duty must be imposed on the police.

¶11 Therefore, this court agrees with the trial court that Michael's statements on November 18 and 19 were voluntary. Accordingly, the trial court's order denying the motion to suppress the statements is affirmed.

By the Court.—Order affirmed.

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