COURT OF APPEALS
DECISION
DATED AND FILED

August 2, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP1262 **Cir. Ct. No. 2002JV000710A**

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

IN THE INTEREST OF JOSE R.,
A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JOSE R.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: JOSEPH R. WALL, Judge. *Affirmed*.

¶1 FINE, J. Jose R., born on May 2, 1986, appeals an order finding him delinquent for unlawfully possessing tetrahydrocannabinols, *see* WIS. STAT. §§ 961.01(14), 961.14(4)(t), and 961.41(3g)(e), and two counts of possessing a

dangerous weapon while under the age of eighteen, *see* WIS. STAT. §§ 948.60(2)(a) and 938.02(3m) (With exceptions not material here, "'[d]elinquent' means a juvenile who is 10 years of age or older who has violated any state or federal criminal law."). He contends that his confession to the police was not voluntary. On October 27, 2004, at the parties' request, we held this appeal in abeyance pending a decision by the Wisconsin Supreme Court in ***State v. Jerrell C.J.***, 2005 WI 105, No. 2002AP3423. ***Jerrell C.J.*** was issued on July 7, 2005, and, in our October 27 order, we gave the parties to this appeal ten days from issuance of ***Jerrell C.J.*** to submit cross-briefs addressing issues raised by that decision. Thus, under WIS. STAT. RULE 801.15(1), their supplemental briefs were due on July 21, 2005, and were received a day or so before that date. We affirm.[1]

¶2 ***Jerrell C.J.*** reaffirmed the totality-of-the-circumstances test for the assessment of whether a juvenile's confession is voluntary. 2005 WI 105, ¶¶20–21, 43. Our review of a trial court's determination is two fold: (1) the trial court's findings of historical fact will be upheld unless they are clearly erroneous, and (2) its legal conclusions are reviewed *de novo*. ***Id.***, ¶16. Here, Jose R. does not contend that the trial court's findings of historical fact are clearly erroneous, even though Jose R.'s testimony differed from that of the interrogating police officer. Accordingly, we apply those findings to the pertinent legal principles.

[1] In addition to the suppression of his confession, Jose R. also sought imposition of *per se* rules requiring that: (1) juveniles undergoing police interrogation have access to their parents or other interested adults, and (2) police interrogations of juveniles be recorded electronically. ***State v. Jerrell C.J.***, 2005 WI 105, ¶3, No. 2002AP3423, adopted prospectively the latter requirement. It rejected, however, imposition of a *per se* rule requiring that juveniles be granted access to a parent or other interested adult. ***Id.***, ¶¶3, 37–43.

I.

¶3 Jose R. was arrested in the afternoon of November 12, 2002, and interrogated by City of Milwaukee police detective John Belsha that day starting at 7:05 p.m. Jose R. was then six months shy of seventeen.

¶4 Belsha's interrogation of Jose R. lasted twenty-five minutes. Belsha was in plainclothes and not armed. The trial court noted that Jose R. was in the interrogation room for what the trial court called, without further specification, "an extended period of time." The trial court credited Jose R.'s testimony that the officers checked him periodically. Jose R. also testified that he was not handcuffed during that time and drank "[s]ome water" while he was waiting.

¶5 Although the trial court did not make findings of fact in connection with its denial of Jose R.'s motion to suppress his confession as to when Jose R. was placed in the interrogation room, and thus how long he was there before Belsha came in to ask him questions, the record indicates that Jose R. was arrested sometime after 2:30 p.m. on November 12, and was subsequently placed in the interrogation room while officers were searching his home, having been given permission to do so by Jose R.'s father. Jose R. testified that he was in the room from 3 p.m. on. Thus, we can safely infer from the record that Jose R. was in the room for, at the most, some four-plus hours before Belsha started to ask him questions.

¶6 The trial court also did not address specifically Jose R.'s claim that he asked to call his mother and a lawyer. It did opine, however, that it believed Belsha's version of what happened, and discounted Jose R.'s testimony when it conflicted with that of the detective. Thus, we read the trial court's credibility determination as rejecting Jose R.'s claim that he asked to call his mother and a

lawyer. *See* ***State v. Hubanks***, 173 Wis. 2d 1, 27, 496 N.W.2d 96, 105 (Ct. App. 1992) ("Although the trial court did not make specific findings of fact, we may assume on appeal that such findings of fact were made implicitly in favor of its decision.").

¶7 According to the trial court's findings of historical fact, Belsha explained to Jose R. his rights under ***Miranda v. Arizona***, 384 U.S. 436 (1966), Jose R. understood and waived those rights, no promises were made to Jose R. to induce him to talk, and Jose R. voluntarily agreed to answer Belsha's questions. Significantly, there was evidence in the record that in early April of 2002, a police officer tried to interrogate Jose R. in a juvenile room at a Milwaukee police station, but that Jose R., as the officer wrote on a report received into evidence at the suppression hearing in this case, "refused to answer any questions and would not say a word." Further, Jose R. admitted to knowing from "cop shows" that "they're supposed to give you your rights." This supports the trial court's finding that Jose R. understood what Belsha was telling him.

¶8 The trial court also found that although Jose R. testified at the suppression hearing that he was "high" during the twenty-five-minute interrogation from having previously smoked marijuana, Jose R.'s "residual impairment from smoking marijuana" did not affect "the voluntariness of his statement," observing that "Jose stated that actually when he was under the influence he's able to concentrate more."[2] Jose R. admitted during the interview to having two guns at his house and possessing marijuana.

[2] Jose R. testified: "Like sometimes when I go to school and like I smoke before I go to school, like, I'm more -- I don't know. I don't know if it's the right thing to say but I'm more into like -- I'm more concentrated."

II.

¶9 As the trial court recognized in concluding that Jose R.'s confession was voluntary, the touchstone of involuntariness "is coercive or improper police conduct." ***Jerrell C.J.***, 2005 WI 105, ¶19. Flowing from that is the general rule as restated by ***Jerrell C.J.***:

> [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."
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> ….
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> "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."

Id., ¶¶18, 20 (quoted sources omitted, internal citations omitted by ***Jerrell C.J.***). Under these principles and on our *de novo* review, the trial court correctly concluded that Jose R.'s confession was voluntary, especially in light of ***Jerrell C.J.***, which determined that Jerrell C.J.'s confession was not voluntary. ***Id.***, ¶36.

¶10 First, unlike the fourteen-year-old Jerrell C.J., ***id.***, ¶26, Jose R. was halfway between sixteen and seventeen. Second, unlike Jerrell C.J., who "was handcuffed to a wall and left alone" in the interrogation room for approximately two hours before he was questioned by detectives, ***id.***, ¶6, Jose R. was not handcuffed, was checked periodically, and was able to drink water. Third, unlike Jerrell C.J., who asked repeatedly to call his mother or father, ***id.***, ¶10, Jose R., despite his testimony to the contrary, never—based on what we infer from the trial court's credibility determination and its ultimate conclusion that Jose R.'s confession was voluntary—asked to call either his mother or father. Fourth, unlike Jerrell C.J., who was subjected to two police-detective interrogators, ***id.***, ¶6, only Belsha spoke to Jose R. in the interrogation room. Fifth, unlike Jerrell C.J., who was interrogated from approximately 9 a.m. to 2:40 p.m., with one twenty-minute break for lunch, ***id.***, ¶¶6–11, Jose R.'s interrogation lasted but twenty-five minutes.

¶11 We affirm.

By the Court.—Order affirmed.

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