COURT OF APPEALS
DECISION
DATED AND FILED

May 25, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3455

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

IN THE INTEREST OF NORMAN G.K.,
A PERSON UNDER THE AGE OF 18:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

NORMAN G.K.,

RESPONDENT-APPELLANT.

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

HOOVER, J. Norman G.K. appeals orders denying his motion to suppress statements and denying postconviction relief. On appeal, Norman contends that his confessions should have been suppressed because: (1) they were

made while he was in custody and had not received his ***Miranda***[1] warnings; (2) he invoked his Fifth Amendment right to counsel; and (3) his confessions were involuntarily. Norman also asserts that the trial court erred by denying his attempts to introduce additional suppression evidence at the postconviction motion hearing. This court concludes that his contentions are without merit because he gave his statements freely and voluntarily during a noncustodial interrogation during which he never requested an attorney and because the trial court did not err by refusing to permit him to supplement the suppression record. Accordingly, the orders are affirmed.

BACKGROUND

This situation arises from three incidents of graffiti/vandalism that occurred in the City of Merrill in September 1998. Graffiti was painted on walls at Franklin School, scratched in the bathroom walls at Stange Park and painted on the walls of Kate Goodrich School. Vandalism was also committed at Kate Goodrich. Merrill police detective Ned Seubert was one of the investigating officers.

During his investigation, Seubert had contact with Norman on five separate occasions. On September 26 Seubert spoke with Norman, who was truant from school at the time, in front of a residence. During this brief encounter, Norman admitted that he might know something about the graffiti incidents. Seubert told Norman to return to school.

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

Seubert's second contact with Norman occurred the following day. Norman went to the police station with his father. Seubert first talked with Norman's father, who indicated that he felt his son was lying to him about the Franklin graffiti and that he wanted Seubert to ascertain the truth. Seubert then interviewed Norman and told him that he was not under arrest, that he did not have to talk with Seubert if he did not want to and that he was free to leave. When Seubert questioned Norman about the Franklin graffiti, Norman denied involvement. After Seubert told him that he was lying and needed to tell the truth, Norman admitted painting the graffiti at Franklin School. Seubert next asked about the Stange Park graffiti. Norman denied involvement, but gave names of others he claimed were responsible. Norman then left the station.

The third contact occurred later the same day, September 27, after Seubert followed up on Norman's information. Seubert first contacted Norman's father at his home and told him he felt Norman was lying about his involvement at Stange Park. Norman's father summoned Norman, and Seubert told Norman he should tell the truth or Seubert would ask that he be placed in secure detention. Seubert then asked if Norman was willing to go to the police station and be truthful, and Norman and his father agreed. Seubert drove Norman to the station and informed him that he was not under arrest, that he could leave and that he would be allowed to talk to an attorney. Norman asked Seubert what would happen to him if he told Seubert what happened. Seubert responded that he planned to return him home to his father. Norman then admitted being responsible for some of the Stange Park graffiti.

Norman initially denied any involvement in the Kate Goodrich graffiti. Seubert confronted Norman with information he had and told Norman to tell the truth, that he had not intended to "secure" him, but that Norman needed to

be honest. Norman then gave several different stories, but admitted some involvement. After the seventy-five-minute interview, Norman went home. Norman gave two written statements during this third contact, one related to Stange Park and the other to Kate Goodrich.

The following day, Seubert again interviewed Norman at the police station. He again told Norman that he was not in custody, not under arrest, he could leave anytime he wanted and that he needed to tell the truth. They discussed the Kate Goodrich graffiti further; Norman affirmed some involvement and again went home after the interview.

Seubert's final interview occurred approximately one week later. He first spoke with Norman's father and told him he was unsure of Norman's involvement with the Kate Goodrich graffiti and asked whether he could interview Norman again. Norman's father assented, and Seubert spoke to Norman in Seubert's squad car. Seubert told Norman he was not under arrest and asked if he was willing to sort things out. Norman agreed to talk. Seubert first confirmed Norman's involvement in the Stange Park and Franklin graffiti. Norman also affirmed involvement with the Kate Goodrich graffiti.

The State initiated delinquency proceedings against Norman, charging him with three counts of painting graffiti. Norman filed a motion to suppress his statements. The motion failed to identify which statements were subject to the motion and the specific grounds upon which each statement was challenged. Trial counsel narrowed the suppression issues at the motion hearing.

She indicated that the basis for suppression was Seubert's failure to comply with ***Miranda*** as to the two September 27 statements.[2]

Before taking evidence at the motion/fact-finding hearing,[3] Norman admitted the Franklin School graffiti, and his attorney stated that he was not challenging his statement on that charge "on ***Miranda*** grounds."[4] During the plea colloquy, Norman's father and attorney both acknowledged, and the trial court found, that Norman was admitting the Franklin School graffiti incident freely, voluntarily and intelligently.

The hearing focused on the two September 27 written statements. Seubert testified that on more than one occasion, he told Norman that he wanted the truth and that if he got it he would not have to consider taking Norman into custody. The trial court found that Seubert implied, but did not explicitly say that if Norman did not tell the truth, he would likely be taken into custody. Nevertheless, the court denied the suppression motion and found Norman delinquent.

After the dispositional hearing, Norman filed a postconviction motion essentially asking the court to reconsider the suppression motion. At the hearing on that motion, Norman attempted to introduce additional evidence. The court rejected that attempt, and this appeal ensued.

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[2] Although counsel's argument did not make it clear, we infer from the court's findings that custody was at issue. It also appears that the trial court addressed voluntariness.

[3] The motion hearing was held in conjunction with the fact-finding hearing.

[4] Norman has not challenged the voluntariness of his statements regarding the Franklin School graffiti, either before the trial court or here.

STANDARD OF REVIEW

The suppression issues involve historical and constitutional fact questions. This court will uphold a court's findings of fact unless they are clearly erroneous. *See* § 805.17(2), STATS.; *see also* ***State v. Phillips***, 218 Wis.2d 180, 195, 557 N.W.2d 794, 801 (1998). The trial court's credibility assessments will not be overturned unless they are inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts. *See* ***Chapman v. State***, 69 Wis.2d 581, 583, 230 N.W.2d 824, 825 (1975). This court independently decides questions of constitutional fact. *See* ***Phillips***, 218 Wis.2d at 195, 577 N.W.2d at 801.

The postconviction motion was in essence a motion to reopen and reconsider the suppression motion, which is addressed to the trial court's discretion. *C.f.* ***Conrad v. Conrad***, 92 Wis.2d 407, 414-15, 284 N.W.2d 674, 677-78 (1979) (the trial court's decision on a motion to reopen and reconsider a judgment is a discretionary determination). This court will not disturb the trial court's determination absent an erroneous exercise of that discretion. *See* ***Baird Contracting v. Mid Wisconsin Bank***, 189 Wis.2d 321, 324, 525 N.W.2d 276, 277 (Ct. App. 1994). A trial court properly exercises its discretion when it examines the relevant facts, applies the proper standard of law and, using a demonstrated rational process, reaches a conclusion that a reasonable judge could reach. ***Id***.

ANALYSIS

Norman contends that he was in custody when he gave written statements on September 27 because Seubert told him that if he left the police station, he would go to secure detention. The State contends, and the trial court

concluded, that reasonable people would not, under all the circumstances of this case, consider themselves in custody.

Miranda requirements apply to juvenile delinquency proceedings. ***State v. Thomas J.W.***, 213 Wis.2d 264, 271, 570 N.W.2d 586, 588 (1997). This court looks at the totality of the circumstances to determine if Norman was in custody, triggering ***Miranda*** warnings, *see* ***State v. Gruen***, 218 Wis.2d 581, 593-94, 582 N.W.2d 728, 732-33 (Ct. App. 1998), and asks if a reasonable person would have considered himself in custody, that is, not free to leave, given the degree of restraint under the circumstances. *See* ***Berkemer v. McCarty***, 468 U.S. 420, 442 (1984); ***State v. Koput***, 142 Wis.2d 370, 380, 418 N.W.2d 804, 808 (1988). In addition, this court considers the purpose, length and place of the interrogation. *See* ***State v. Leprich***, 160 Wis.2d 472, 477, 465 N.W.2d 844, 846 (Ct. App. 1991). Although questioning at the police station will demonstrate some coercion, no ***Miranda*** warnings are required unless the suspect's freedom has been restricted to place him in custody. *See* ***Oregon v. Mathiason***, 429 U.S. 492, 495 (1977).

This court concludes that the trial court properly determined that Norman was not in custody. This was Norman's third contact with Seubert. His experience with Seubert during the three occasions he gave statements educated him that he would be free to leave and not be taken into custody. Both Norman and his father consented to the interview. Norman agreed to go to the police station with Seubert, he was told he need not cooperate and was not under arrest. Further, the interview lasted just over an hour, Norman's signed statement acknowledges he was not under arrest, and he left, as he had each session, free to go home. All of these factors support the trial court's conclusion. In addition, the court did not believe Norman when he said he thought he was not free to leave.

There is no reason to upset the court's credibility assessment. *See* ***Chapman***, 69 Wis.2d at 583, 230 N.W.2d at 825.[5]

This court next addresses Norman's contention that his statements were not freely and voluntarily given. He claims he understood Seubert's statement that if he told the truth he would not be placed in secure detention to mean that he had to confess to the offenses or be placed in secure detention. Norman contends that he simply agreed with Seubert's version of what happened so he could go home. He also complains that his father was not present for the interview despite Norman's request, that the interview room door was closed and that the interview lasted over two hours. The State contends that there was no police coercion and the statements are therefore voluntary. The trial court implicitly found that Norman's statements were freely and voluntarily given because it did not suppress them.

A statement is not involuntary, in violation of the defendant's Fifth Amendment rights, unless obtained by coercive police activity. ***State v. Kunkel***, 137 Wis.2d 172, 191, 404 N.W.2d 69, 77 (Ct. App. 1987). This inquiry focuses on whether the police used actual coercion or improper police practices to compel the statement. ***State v. Clappes***, 136 Wis.2d 222, 235-36, 401 N.W.2d 759, 765 (1987). If the defendant fails to establish that the police used actual coercive or improper pressures to compel the statement, the inquiry ends. ***Id***. at 236, 401

[5] In connection with Norman's claim of custodial interrogation, he also asserts he was denied his right to counsel. He contends that his father had asked Seubert before the third interview whether Norman needed an attorney which, he claims, was an invocation of Norman's right to counsel. We reject Norman's contentions because he was not in custody, *see* ***Miranda***, 384 U.S. at 444, and he did not invoke his right to counsel. Norman did not ask whether he needed counsel; his father did. Moreover, even if Norman had asked, "Do I need an attorney?" that is not an unequivocal, unambiguous request for an attorney. *See* ***State v. Walkowiak***, 183 Wis.2d 478, 515 N.W.2d 863 (1994).

N.W.2d at 765. However, if the defendant establishes coercive conduct, the court must undertake a balancing analysis, weighing the defendant's personal characteristics of the defendant against the coercive police conduct, to determine whether the statement was voluntary. ***Id***. at 236, 401 N.W.2d at 766.

This court agrees with the trial court that the statements were freely and voluntarily given. The trial court specifically rejected Norman's claim that he was forced or coerced into giving the statement, finding that Norman was not a credible witness. Norman's written statement contained representations that he knew he was not under arrest or required to speak to Seubert and that he could leave. The trial court noted that Norman had twice previously been interviewed on the subject, once with his father present. Norman knew that Seubert came to his home and *asked* if he would talk to him for a third time. "This wasn't a matter of an officer detaining him on the street, pulling him into the station and saying now you're going to talk to me or else. Tell me the truth or else." The trial court found that by this time, Norman should have been aware that he could refuse to either go to the police station or speak further to Seubert.

The trial court also found incredible, after a meticulous review of the evidence, Norman's assertion that he made up a story because he felt coerced into telling Seubert what he believed the officer wanted to hear. The court noted the detailed nature of Norman's account and his otherwise inexplicable implication of his girlfriend and her friend. The court pointed to the number of changes Norman instructed Seubert to make to the written statement when they reviewed it for accuracy. The trial court also considered Norman's gratuitous offers of information during the third interview to be inconsistent with his testimony that he was trying to "just parrot back to Officer Seubert what Officer Seubert was telling him."

The trial court also did not believe that Norman requested that his father be present. It found "that didn't happen." The court was aware that Norman's father had earlier told Seubert that he was concerned about Norman lying and had "in effect, said come down hard on him and get the truth." In addition, although his father testified, he never mentioned that Norman had requested he be present at the third interview.

The trial court's credibility assessment was not inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts. *See* ***Chapman***, 69 Wis.2d at 583, 230 N.W.2d at 825. There is no reason here to overturn the court's assessments. Because there was no coercion, our inquiry ends. ***Clappes***, 136 Wis.2d at 236, 401 N.W.2d at 765.

Finally, Norman asserts that the trial court made inadequate findings when it denied the motion to suppress Norman's statements. He contends this somehow entitles him to introduce additional evidence at the postconviction motion. He asserts he would introduce evidence of his attention deficit disorder, that he did not understand what signing the confessions meant, and that he is a D to F student. The State contends that this is simply a motion to reconsider the suppression motion and that the court did not err by refusing to permit the introduction of additional evidence. The trial court rejected Norman's attempt to supplement the record, citing its previous ruling and its crowded calendar.

There is no merit to Norman's argument that he should be permitted to supplement the suppression hearing testimony at a postconviction hearing. The time to present the lawfulness of the confession evidence is at the suppression hearing. He offers no authority for the proposition that the hearing record can be supplemented postconviction, and no reason why the evidence was not offered at

the appropriate time. This court declines to consider arguments that are unsupported by citation to authority. ***M.C.I., Inc. v. Elbin***, 146 Wis.2d 239, 244-45, 430 N.W.2d 366, 369 (Ct. App. 1988). In addition, litigants have no right to burden trial courts with successive evidentiary hearings on the same issue. Successive hearings tend to monopolize the court's time, waste judicial resources and deprive other litigants of timely consideration of their cases. The trial court did not err by refusing to permit Norman to introduce additional suppression evidence.

By the Court.—Orders affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.