

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 20, 2026

Samuel A. Christensen
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. 2025AP1016-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2017CF5807

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTONIO D. THOMAS, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: J.D. WATTS, Judge. *Affirmed.*

Before Donald, C.J., Colón, P.J., and Geenen, J.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Antonio D. Thomas, Jr., appeals a judgment convicting him of two counts of first-degree sexual assault of a child. Thomas

contends that the trial court erroneously denied two suppression motions prior to his jury trial. Upon review, we affirm.

BACKGROUND

¶2 On December 20, 2017, the State charged Thomas with two counts of first-degree sexual assault of a child. The complaint alleged that Thomas assaulted eleven-year-old Nicole¹ twice while living with Nicole and her family. Thomas, then twenty years old, was friends with Nicole’s older sister and was temporarily residing with Nicole’s family. A few days after Thomas moved out, Nicole sent a text message to her mother, stating that Thomas had been “touching” her. After speaking with Nicole in detail about the assaults, Nicole’s mother took her to the children’s hospital for medical treatment. Nicole tested positive for two sexually transmitted diseases, gonorrhea and chlamydia. Nicole also told her father about the assaults, and stated that she did not tell him earlier because she was afraid Thomas would hurt her family. Nicole also told her sister that Thomas had raped her. Additionally, Nicole wrote the following entry in her diary: “OMG JGR with grown man it hurted bad and my stomach hurt bad why me doe.”²

¶3 Following his arrest, police conducted two ***Mirandized***³ interviews with Thomas. Thomas told the interviewing officers that he was autistic, had

¹ We use a pseudonym for the child victim to protect the family’s privacy. See WIS. STAT. RULE 809.86(4) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

² In a statement to police that the trial court later ruled was inadmissible under the Confrontation Clause, Nicole explained that “JGR” meant “just got raped.” Although the jury did not hear Nicole’s statement, we include the explanation for ease of reading.

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

ADHD and OCD, and had not taken medications in years. He confirmed that he could understand the officers' questions without his medications. Thomas initially denied assaulting Nicole, but ultimately confessed to committing two instances of sexual assault. Thomas denied allegations of oral sex.

¶4 Prior to trial, the trial court ordered a competency evaluation. As relevant to this appeal, the examiner determined that Thomas understood the basic concepts of the criminal justice process and the legal system and could act in his own self-interest. The trial court accepted the examiner's opinion and found that Thomas was competent to stand trial.

¶5 Thomas then moved to suppress his confession, arguing that his waiver of his *Miranda* rights was not knowing and intelligent. He also argued that his subsequent confession made to Detective Andrew Holzem was involuntary. In support of his motion, Thomas provided a report prepared by Dr. Anthony Jurek, a psychologist who evaluated Thomas and determined that "it is unlikely that [Thomas] would have been able to make a knowing and intelligent waiver of his *Miranda* Right" and that Thomas "may have been more susceptible to interrogative pressure than the typical defendant in a criminal case." Both interviewing detectives, a Milwaukee police officer involved in a former arrest of Thomas, and Dr. Jurek testified at a hearing on the motion. The trial court ultimately denied the suppression motion.

¶6 Prior to trial, Nicole died in an unrelated incident. Thomas moved to exclude statements Nicole made to her mother, father, and sister. He also moved to exclude the diary entry stating that she had just been raped. Following a hearing where each family member testified, the trial court denied Thomas's

motion to exclude the evidence. The court found that the evidence fell under exceptions to the hearsay rule.

¶7 The matter proceeded to trial where the jury ultimately found Thomas guilty of both charges. The trial court imposed a twenty-five-year sentence on the first count and a thirty-five-year sentence on the second count, running concurrently. This appeal follows.

DISCUSSION

¶8 On appeal Thomas contends that the trial court erroneously denied both suppression motions. Specifically, he argues that his confession to Detective Holzem should have been suppressed because he did not knowingly and intelligently waive his **Miranda** rights and because his confession was involuntary. He also contends that Nicole's statements to her family members and her diary entry should have been excluded as inadmissible hearsay.

¶9 Our review of a trial court's denial of a motion to suppress presents a mixed question of fact and law. **State v. Casarez**, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385. We uphold the trial court's findings of historical fact unless they are clearly erroneous, but the application of the law to those facts is a question of law that we review independently. **Id.**

¶10 When the State seeks to admit evidence of an accused's custodial statements, it must show that the accused was adequately informed of his or her **Miranda** rights and knowingly, intelligently, and voluntarily waived those rights. **State v. Santiago**, 206 Wis. 2d 3, 18, 556 N.W.2d 687 (1996). The State establishes a prima facie showing of a valid **Miranda** waiver by demonstrating that: (1) law enforcement informed a defendant of all the rights and admonitions

required by **Miranda**; and (2) the defendant indicated that he or she understood those rights and was willing to make a statement. **State v. Lee**, 175 Wis. 2d 348, 360, 499 N.W.2d 250 (Ct. App. 1993). Once the State has made this prima facie showing, a court may conclude that a defendant’s waiver was invalid only if the defendant presents “countervailing evidence” showing that the defendant did not, in fact, knowingly, intelligently, and voluntarily waive his or her **Miranda** rights. *See Lee*, 175 Wis. 2d at 360-61.

¶11 We conclude the State made a prima facie showing that Thomas validly waived his **Miranda** rights and that Thomas failed to present countervailing evidence to rebut that showing. The record establishes that the interviewing detectives read Thomas his **Miranda** rights, that Thomas was able to keep up with their questions, that Thomas adjusted his answers as the detectives presented him with additional facts, that Thomas continuously denied allegations of oral sex, and that Thomas remarked he would go to jail after ultimately confessing. A defendant’s coherent responses to law enforcement’s explanation of his or her **Miranda** rights supports a conclusion that his or her waiver of those rights was valid. **State v. Beaver**, 181 Wis. 2d 959, 967, 512 N.W.2d 254 (Ct. App. 1994).

¶12 Thomas relies on Dr. Jurek’s assessment regarding his cognitive capacity to rebut the showing that he validly waived his **Miranda** rights. This reliance ignores precedent directing us to consider the totality of the circumstances when determining the validity of a **Miranda** waiver. *See State v. Hambly*, 2008 WI 10, ¶91, 307 Wis. 2d 98, 745 N.W.2d 48. That standard applies even when a defendant “casts [herself or] himself as limited in intelligence and sophistication[.]” *Id.*, ¶94. In addition to the circumstances described above, the record also establishes that following a previous arrest, Thomas declined to speak

with the police, demonstrating that he understood his right to remain silent. A defendant's prior experience with law enforcement—and familiarity with **Miranda** warnings—is a proper factor for a court to consider when determining whether a valid **Miranda** waiver occurred. See **State v. Hampton**, 2010 WI App 169, ¶33, 330 Wis. 2d 531, 793 N.W.2d 901.

¶13 Thomas also contends that his confession to Detective Holzem was involuntary. When a defendant challenges the voluntariness of the statements he or she made to law enforcement, the State bears the burden of showing by a preponderance of the evidence that the statements were voluntary. See **State v. Moore**, 2015 WI 54, ¶55, 363 Wis. 2d 376, 864 N.W.2d 827. We evaluate voluntariness in light of all the circumstances surrounding the interrogation and balance the defendant's personal characteristics against the actions of law enforcement. See *id.*, ¶56. Because a defendant's personal characteristics alone cannot form the basis for finding that his or her statements were made involuntarily, however, we “cannot properly label a statement involuntary unless there is ‘some affirmative evidence of improper police practices deliberately used to procure a confession.’” **State v. Dobbs**, 2020 WI 64, ¶72, 392 Wis. 2d 505, 945 N.W.2d 609 (citation omitted).

¶14 Thomas contends that Detective Holzem engaged in two coercive tactics which led to his confession: (1) Detective Holzem told Thomas that Nicole's forensic interview was equivalent to a lie detector test; and (2) Detective Holzem told Thomas that he was charged with forcing Nicole to have sex and that it would be a “different story” if Nicole had initiated the sexual contact.

¶15 In determining whether Thomas's statements were voluntary, we consider the totality of the circumstances. **State v. Hoppe**, 2003 WI 43, ¶38, 261

Wis. 2d 294, 661 N.W.2d 407. This test requires balancing the personal characteristics of the defendant against the pressures and tactics employed by law enforcement officers to induce the statement, which include:

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., ¶39.

¶16 We conclude that the totality of the circumstances demonstrates that Thomas's confession was voluntary. At the time of the interview, Thomas was twenty years old and had completed most of his high school education before dropping out. He also had interacted with the police on prior occasions and had declined to speak with the police during a prior arrest. Thomas confirmed that he was not impaired and could understand the line of questioning. Detective Holzem also testified that Thomas seemed to understand his rights and the questions. Thomas had been interviewed for less than two hours, divided into two separate interviews. Thomas was not handcuffed during either interview, and he was interviewed by one officer at a time. Thomas again relies on Dr. Jurek's report to support his contention, but that reliance again ignores the totality of the circumstances. Even if Detective Holzem's conduct could be considered coercive or improper, under the totality of the circumstances, we agree that Detective Holzem's conduct was not so fundamentally coercive as to overpower Thomas's will.

¶17 Thomas next contends that the trial court erred in admitting Nicole's statements to her family and her diary entry stating that she had been raped.

Thomas contends that the evidence constituted inadmissible hearsay and did not fall under the residual or present sense impression hearsay exceptions.

¶18 Under WIS. STAT. § 908.045(6), “[a] statement not specifically covered by any of the foregoing exceptions but having comparable circumstantial guarantees of trustworthiness” is not excluded by the hearsay rule. Though often called the “residual” hearsay exception, it “is not a ‘catch-all’ or ‘near miss’ category that permits the admissibility of otherwise unacceptable hearsay.” *State v. Stevens*, 171 Wis. 2d 106, 120, 490 N.W.2d 753 (Ct. App. 1992). The exception exists “for the novel or unanticipated category of hearsay that does not fall under one of the named categories, but which is as reliable as one of those categories.” *Id.* Accordingly, “[i]t is intended that the residual hearsay exception rule will be used very rarely, and only in exceptional circumstances.” *Id.* The present sense impression exception excludes from the hearsay rule statements “describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.” WIS. STAT. § 908.03(1).

¶19 We review the trial court’s decision to admit or exclude evidence for an erroneous exercise of discretion. *State v. Sullivan*, 216 Wis. 2d 768, 780, 576 N.W.2d 30 (1998). We will uphold the court’s decision if it examines the relevant facts, applies the correct legal standard, and reaches a rational conclusion. *Id.* at 780-81.

¶20 Here, the trial court found that Nicole’s statements to her parents and her sister fell under the residual hearsay exception. The court noted that Nicole confided in her family after Thomas left her home—once she felt the threat was removed—that she confided in her family first, and that there was no indication of

falsity or deceit in her statements. The court also noted, based on testimony from her family members, that Nicole's personality changed following the assaults and that her behaviors were reflective of a young assault victim. The court also noted that Nicole's statements were not testimonial, as they were not made in anticipation of litigation. We conclude that the trial court examined the relevant facts, applied the correct legal standard, and reached a rational conclusion.

¶21 As to the Nicole's diary entry, the trial court determined that the entry was admissible as a present sense impression. We agree. The court noted that the statement was sufficiently trustworthy, as it was not made in anticipation of litigation, was consistent with the statements Nicole made to her family, and appeared to be written shortly after one of the assaults occurred. Accordingly, we conclude that the trial court did not erroneously exercise its discretion in admitting Nicole's diary entry into the evidence at trial.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

