

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 24, 2001

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. 00-2800-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

ANTHONY L. GIPSON,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
PATRICK J. MADDEN, Reserve Judge. *Reversed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. The State appeals from a pretrial order suppressing the statements given to a police officer in a post-polygraph interview. The trial court ruled that the statements given by Anthony L. Gipson in the interview were so closely related to the actual polygraph examination that it should be considered

one event, thus rendering the statements inadmissible. The State claims that the trial court erred when it granted the motion to suppress because the statements were admissible under post-polygraph interview law. Because the post-polygraph statements were admissible, we reverse.

I. BACKGROUND

¶2 On January 23, 2000, Milwaukee Police Detective Richard Wroblewski interviewed Gipson as part of his investigation of two armed robberies that occurred at a McDonald's restaurant. Detective Wroblewski questioned Gipson for approximately two hours, at which point Gipson issued a written statement denying his involvement in either of the McDonald's robberies. Based on the suggestion of Detective Wroblewski, Gipson agreed to take a polygraph examination regarding the two incidents.

¶3 On January 24, 2000, Milwaukee Police Detective Ruben Burgos conducted the polygraph examination after Gipson was given his *Miranda* rights¹ and signed an agreement and release form. At the conclusion of the test, Gipson signed the final two paragraphs of the release form which said in part: "I also understand that any questions I may be asked after this point in time, and any answers I may give to those questions, are not part of the polygraph examination." Detective Burgos then took Gipson into a separate interview room that contained no polygraph equipment to conduct a post-polygraph interview.

¶4 Detective Burgos left the interview room to review the polygraph results, and returned approximately ten minutes later to conduct the post-

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

polygraph interview. During this interview, Gipson gave Detective Burgos a statement admitting his involvement in one of the robberies. Gipson filed a motion to suppress the statements he made to police during this interview. The trial court granted this motion. The State now appeals.

II. DISCUSSION

¶5 This case presents us with the question of whether Gipson's statements were admissible under post-polygraph interview law. The State argues that the post-polygraph interview was sufficiently different in content from the polygraph test, so that the statements Gipson gave should not have been suppressed. Gipson argues that the interview following the polygraph was so closely related to the mechanical portion of the polygraph exam, that it must be considered one event. The trial court agreed with Gipson and suppressed the statements he made. We conclude that the trial court erred.

¶6 We apply a two-part standard of review on this issue: (1) the trial court's factual findings will be upheld unless they are clearly erroneous; and (2) the application of the controlling legal principles to those findings is a question of law that this court reviews independently of the trial court's determination. *State v. Johnson*, 193 Wis. 2d 382, 387, 535 N.W.2d 441 (Ct. App. 1995).

¶7 In *Johnson*, we discussed the law relative to polygraph tests and the interviews, which typically follow the test. We acknowledged that although the polygraph test results are inadmissible in criminal proceedings, the statements made following the interviews may be admitted under certain circumstances. *Id.* at 388. When the post-polygraph interviews are found to be distinct and separate from the polygraph itself, the statements are admissible. *Id.* This determination is made after considering the totality of the circumstances. *Id.* at 388-89.

¶8 The pertinent facts here regarding whether the interview was separate and distinct from the polygraph test are as follows. Gipson signed a release form that expressly stated that the polygraph examination was over before the interrogation began, and that he understood “that any questions I may be asked after this point in time, and any answers I may give to those questions, are not part of the polygraph examination.” Gipson’s statements were made after the completion of the mechanical portion of the polygraph examination, in a separate room, and while he was unattached to the mechanical apparatus. A post-polygraph interview is admissible if it appears from the record that the test was over and the defendant was informed that the test was over. *McAdoo v. State*, 65 Wis. 2d 596, 603, 223 N.W.2d 521 (1974). Burgos testified that he made it clear to Gipson that the polygraph examination was over when he interrogated Gipson. Gipson’s statements during the post-polygraph interview were not so closely associated in content with the polygraph examination that they are considered to be one event. *Barrera v. State*, 99 Wis. 2d 269, 288, 298 N.W.2d 820 (1980).

¶9 In *Johnson*, 193 Wis. 2d at 389, we described the circumstances under which post-polygraph statements are admissible:

Here, we conclude that the actual polygraph examination and the subsequent interview were sufficiently separate events as to both time and content. Johnson’s inculpatory statements were made after the completion of the actual mechanical polygraph portion of the examination while he was not attached to the mechanical polygraph apparatus. Additionally, the post-polygraph examination took place in an adjacent room.

Id. Gipson claims that this case is distinguishable from *Johnson* because Detective Burgos began the interview by telling Gipson that he had not been

truthful, and because Gipson asked about the results of the polygraph test during the interview. We disagree. *Johnson* also involved a statement regarding the defendant's lack of truthfulness; therefore, that statement in light of the totality of the circumstances does not render Gipson's statements inadmissible. Moreover, Detective Burgos responded to Gipson's question about the results by saying, "You know how you did." Although the trial court found that this statement created an "iron chain link" between the polygraph and the interview that followed, we disagree. There was no discussion about the actual results and there was no review of the polygraph charts. The single question and indirect answer were insufficient to alter the distinct break between the two events. Therefore, the trial court's finding in this regard was clearly erroneous.

¶10 Based on the foregoing, we conclude that the trial court erred when it granted the motion to suppress because the statements were admissible under post-polygraph interview law. Accordingly, we reverse the trial court's decision to grant the motion to suppress.

By the Court—Order reversed.

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

