STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2018AP1897-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MORGAN E. GEYSER,

Defendant-Appellant.

APPEAL FROM AN ORDER OF COMMITMENT ENTERED IN THE WAUKESHA COUNTY CIRCUIT COURT, THE HONORABLE MICHAEL O. BOHREN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT OF THE ISSUES

1. Whether the circuit court was required to dismiss the charge against Morgan Geyser at the preliminary hearing based on her argument that she had presented evidence that mitigated her crime from attempted first-degree homicide to attempted second-degree homicide.

The circuit court said no.

This Court should say no.

2. Whether the circuit court erred in denying Geyser's motion to suppress her confessions that she made to police after they informed her of her *Miranda* rights.

The circuit court said no.

This court should say no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication.

INTRODUCTION

After becoming obsessed with the fictional internet figure Slenderman, 11-year-old Morgan Geyser and her 12-year-old friend, Anissa Weier, decided that they would kill someone in order to ingratiate themselves to him. The girls decided that they would kill their friend and plotted the murder months in advance, deciding to carry out their plan at a sleepover party for Geyser's twelfth birthday. On the morning after the sleepover, the three girls went to a nearby park where Weier and Geyser told the victim that they were going to play a game of hide and seek, but instead Geyser stabbed the victim 19 times, nearly killing her.

The State charged Geyser with attempted first-degree intentional homicide, which placed the case in adult court.

Geyser attempted to present evidence at the preliminary hearing that would have mitigated the crime to attempted second-degree homicide, which would have moved the case to juvenile court, but the circuit court determined that the State had proved probable cause for the greater offense. Geyser also unsuccessfully sought to suppress inculpatory statements that she made to police. Eventually, the court accepted Geyser's plea of not guilty by reason of mental disease or defect and ordered her committed for 40 years.

On appeal, Geyser reasserts the arguments that she made in the circuit court. She says that her evidence of mitigation was sufficient to remove the case from adult court and the court erred in denying her motion to suppress her statements. She is wrong.

STATEMENT OF THE CASE

In late May 2014, just before 10:00 a.m., Waukesha Police Department Detective Thomas Casey responded to a report of a stabbing. (R. 344:65–66.) When he got to the scene, the 12-year-old victim had already been taken to the hospital. (R. 344:66–67.) From another officer, he learned that Morgan Geyser was missing, but he did not yet know her involvement. (R. 344:67.)

That afternoon, Waukesha Sheriff's Department Lieutenant Paul Renkas responded to a dispatched report that two possible suspects in a stabbing were near a Park and Ride off of the interstate in Waukesha County. (R. 4:3; 344:9–12.) When Renkas came upon the suspects, he soon realized that the suspect approaching him was a girl, which surprised him. (R. 344:14.) Because they were in a "highway situation," he asked the girl if she had anything on him that could poke him because he was going to handcuff her. (R. 344:13–14.) The girl responded that there was a knife in her nearby purse. (R. 344:14.)

Renkas then took the girl—later determined to be Geyser—back to the area of his squad car where he noticed that she had blood on her clothes. (R. 344:15–16, 20.) He asked Geyser if she was injured and when she said no, he asked her where the blood had come from. (R. 344:16.) Geyser replied that she had been "forced to stab her best friend to death." (R. 344:16.) Renkas then read Geyser her *Miranda* warnings, which Geyser said she understood. (R. 344:16–19.) Renkas asked Geyser if she was willing to talk to him and she agreed to do so. (R. 344:19.) Geyser told him that "she had a sleepover at one of her friend's house and her and another girl had stabbed a girl and they were forced to stab her." (R. 344:19.) Renkas had "felt a sense of urgency that if there was a victim out there, being that [Geyser] had stabbed a victim," the police needed to find the victim quickly. (R. 344:20.) Once he learned that the victim had been found and was receiving medical attention, he took Geyser to the Waukesha police station. (R. 344:20–21.)

Detective Casey—along with another detective—then met Geyser at the police station. (R. 344:68–70.) Casey sat down with Geyser to assess her personal characteristics and determine if she was willing and able to give him a statement. (R. 344:72.) Casey decided that because Geyser was intelligent and coherent, he could read her the *Miranda* warnings and Geyser was capable of invoking her rights or waiving them. (R. 344:74.) After reading Geyser her constitutional rights, Geyser told Casey that she wanted to waive her rights, talk to him, and tell him the truth. (R. 344:75–76.)

The State then charged Geyser with attempted first-degree intentional homicide with the use of a dangerous weapon, as a party to the crime, contrary to Wis. Stat. § 940.01(1)(a). (R. 1.) Pursuant to Wis. Stat. § 970.032(1), the circuit court held a preliminary hearing at which the State argued that there was probable cause for the court to conclude

that Geyser and Weier had stabbed their friend, PL. (R. 1; 326; 327.) Geyser attempted to persuade the court that the case did not belong in adult court by presenting evidence that would mitigate the offense to attempted second-degree homicide.[1] (R. 326:6–9.) But the court concluded that although there was some evidence that Geyser had tried to kill the victim because of her belief that doing so would protect her family from harm, the State had provided probable cause to find that Geyser attempted to commit first-degree homicide. (R. 329:39–43.)

The court next held a "reverse waiver" hearing under Wis. Stat. § 970.032(2) at which Geyser presented evidence in support of her request to be transferred to the juvenile system. (R. 331; 332; 333.) After acknowledging both the brutal nature of the allegations against Geyser as well as her significant mental health needs, the court concluded that Geyser had not met her burden to warrant transfer. (R. 334:10–25.) In its ruling, the court stressed its concern that if Geyser were transferred to the juvenile system, there would be no way to ensure her mental health treatment or the public's safety after she reached age eighteen. (R. 334:21–25.)

Geyser petitioned for leave to appeal the court's non-final order denying her request for reverse waiver. (R. 134.) This Court granted the petition, but ultimately affirmed the circuit court's decision denying waiver. (R. 143; 176.)

Geyser returned to the circuit court and moved to suppress statements that she made to the police.[2] (R. 190.) Geyser challenged "three separate statements given in three separate environments." (R. 345:13.) Geyser challenged

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[1] A charge of attempted second-degree homicide does not confer original adult court jurisdiction. Wis. Stat. § 938.183(am).

[2] Geyser also moved for a change of venue and severance but because these issues are not before the Court on appeal, the State does not address them.

statements that she made to Renkas when he first took her into custody. (R. 190; 345:20–21.) And she moved to suppress statements that she made to Casey after he provided *Miranda* warnings. (R. 190:14–15.) Geyser argued that she made the statements without being offered her rights and had not voluntarily made the statements. (R. 190:1–2.)

The circuit court reviewed the totality of the circumstances surrounding Geyser's statements to police. (R. 345:15.) Citing *J.D.B. v. North Carolina*,[3] the court said that police "need no imaginative powers, knowledge of developmental psychology, training, and cognitive science or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7 year old is not a 13 year old and neither is an adult." (R. 345:15.)

Pointing to *In re Jerrell C.J.*,[4] the court noted that when assessing the voluntariness of a juvenile's statements to police, the court considers the juvenile's "relevant personal characteristics," such as "age education, intelligence, physical and emotional condition, and prior experience with law enforcement." (R. 345:17.) And against those characteristics it balances "the police pressure and tactics which are used to induce statements such as the length of questioning, any delay in arraignment, 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 police to compel a response." (R. 345:17.)

The court concluded that Geyser's first statements to Renkas—those made before Renkas read Geyser her *Miranda* warnings but after she was in custody—were voluntary and

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[3] *J.D.B. v. North Carolina*, 564 U.S. 261, 279–80 (2011).

[4] *In re Jerrell C.J.*, 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110.

in response to an emergency. (R. 345:20–22.) The court concluded that Geyser made the second set of statements to Renkas after he properly informed her of her *Miranda* warnings, and she waived her rights and voluntarily talked to him. (R. 345:22–25.) Similarly, the court concluded that Geyser made her final set of statements at issue to Casey after he gave her the warnings and she waived her rights, answering questions voluntarily. (R. 345:25–28.)

Geyser eventually pleaded not guilty by reason of mental disease or defect, which the court accepted. (R. 302.) The court entered an order of commitment to the Department of Health Services for 40 years. (R. 302.) Geyser appeals.

ARGUMENT

I. The adult court had exclusive original jurisdiction over Geyser because it found probable cause that she had attempted to commit first-degree homicide; thus, there was no need for it to dismiss the charge.

A. Standard of review.

Whether there is sufficient evidence to support a bindover is a question of law that this Court reviews de novo. *State v. Toliver*, 2014 WI 85, ¶ 24, 356 Wis. 2d 642, 351 N.W.2d 251.

B. Background and relevant law concerning adult court jurisdiction over juveniles.

"The Juvenile Justice Code—Wis. Stat. ch. 938—became effective on July 1, 1996, after a substantial revision of the former Children's Code." *Toliver*, 356 Wis. 2d 642, ¶ 26. Under the Juvenile Justice Code, "juvenile courts generally adjudicate cases against delinquent juveniles ages ten and older." *Id.* But adult courts have exclusive original

jurisdiction over certain crimes, including attempted first-degree intentional homicide.[5] *Id.*

As part of the new code, the Legislature also created Wis. Stat. § 970.032, which instructed the adult court that to bind over a juvenile defendant, it must find probable cause of the specific offense that qualifies the case for adult jurisdiction. *Id.* ¶ 28. This is in contrast to the general preliminary hearing statute, which requires only that the court find probable cause of *any* felony. *Id.* ¶ 27. For juveniles charged with a crime for which the adult court has exclusive jurisdiction, the circuit court's failure to find probable cause of the qualifying offense requires the court to discharge the juvenile from the adult court, although he or she may be subject to proceedings under the Juvenile Code. *Id.* ¶ 28.

The purpose of the preliminary hearing under Wis. Stat. § 970.032(1) is to ensure that the adult court has jurisdiction over the offense and to allow the juvenile the opportunity "to introduce evidence in an effort to get the charge reduced." *State v. Kleser*, 2010 WI 88, ¶¶ 57, 62, 328 Wis. 2d 42, 786 N.W.2d 144. The hearing gives the juvenile the chance to "to negate that specific offense during the preliminary examination—to prevent the state from prevailing on the specific offense charged or, possibly, to deprive the criminal court of its 'exclusive original jurisdiction.'" *Id.* ¶ 60.

The quantum of evidence the State must provide at a preliminary hearing to support a court's finding of probable cause is the same regardless whether it is a preliminary hearing under Wis. Stat. § 970.032(1) or a standard preliminary hearing under Wis. Stat. § 970.03(1). *See Toliver*,

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[5] An "adult court" means a court using the Criminal Justice Code and a "juvenile court" means one operating under the Juvenile Justice Code. *State v. Toliver*, 2014 WI 85, ¶ 2 n.2, 356 Wis. 2d 642, 851 N.W.2d 251.

356 Wis. 2d 642, ¶ 24 n.11. "A preliminary hearing as to probable cause is not a preliminary trial or a full evidentiary trial on the issue of guilt beyond a reasonable doubt." *State v. Dunn*, 121 Wis. 2d 389, 396, 359 N.W.2d 141 (1984). "The focus of the judge at a preliminary hearing is to ascertain whether the facts and the reasonable inferences drawn therefrom support the conclusion that the defendant probably committed [the] felony." *Id.* at 397–98.

C. The circuit court's probable cause determination is well-supported by the evidence.

At the preliminary hearing, Waukesha Police Department Detective Shelley Fisher testified that she interviewed the victim in this case shortly after the assault. (R. 326:14–17.) Fisher said that the victim told her that just before the stabbing, she had been at the park with Geyser and Weier and had gone into the park's bathroom with the girls. (R. 326:26–27.) The victim told Fisher that while in the bathroom, Weier hit her in the head so that it slammed into the wall. (R. 326:27.) All three girls then went into a bathroom stall where Geyser held the victim's arms behind her back and said, "I thought we agreed you were going to do this." (R. 326:29.) Weier and Geyser left the stall, but they returned and Weier held the victim's arms behind her back. (R. 326:29–30.) But when nothing more happened, Weier suggested that the victim leave the bathroom to go play on the park's equipment, which she did. (R. 326:29–30.)

Shortly thereafter, Weier and Geyser joined the victim on the playground. (R. 326:31.) All three girls then went for a walk in the woods and Weier suggested that they play hide and seek. (R. 326:32.) Gesyer was to count while Weier and the victim were to hide. (R. 326:32–33.) Weier directed the victim to lie on the ground, which she did. (R. 326:32–33.) After a short time, Geyser approached her, sat on her legs,

whispered in her ear, "I'm so sorry," and started to stab her. (R. 326:33.) Geyser and Weier told the victim not to move around so that she would not lose as much blood. (R. 326:34.)

Waukesha Police Department Officer Paul DeJarlais testified that he observed the victim's post-stabbing surgery and that she had been "within one millimeter of certain death." (R. 326:79.) He said she had been stabbed 19 times. (R. 326:79.)

Waukesha Police Department Detective Michelle Trussoni testified that Weier told her that she and Geyser had begun discussing the idea of killing someone in December 2013 or January 2014. (R. 326:84–85, 96–97.) Weier said that Geyser picked their victim so that they could become "proxies" for Slenderman. (R. 326:97.) Weier explained that Slenderman was a killer whom she had learned of from a website and whom she believed he was real. (R. 326:94–96.) She said that he had "long tentacles, and that he lived up in a mansion in the Nicolet National Forest." (R. 326:98.) She wanted to kill the victim to prove that Slenderman was real. (R. 326:97.) Trussoni testified that "[t]here was a lot of—seemed a lot of planning, some talking about it on the bus and such leading up to this birthday." (R. 326:98.)

Detective Casey testified that Geyser told him that they had stabbed the victim because Weier told her "that they had to do it" and that it was "necessary." (R. 326:159.) Geyser told Casey that she and Weier had started planning the killing in December 2013 and that they had intended to kill the victim in her sleep at the birthday party. (R. 326:163.) Geyser called their plan "flawless." (R. 326:163.)

Geyser also told Casey that "people that trust you become very gullible and that they were able to trick [the victim] to going into the woods." (R. 326:164.) Geyser said that both she and Weier stabbed the victim and "tried to say that [Weier] is the person that stabbed her first." (R. 326:165.)

When Casey asked Geyser if she felt remorse for her actions, she said that it was "easier to live without regret"; she said that she felt no remorse and that that surprised her. (R. 326:166.) When Weier expressed a desire to return home after the crime, Geyser told her that they could not do so because they would be arrested. (R. 326:167.) When Casey asked Geyser what she thought the consequences should be for someone who had done what she had done, Geyser said that the person "should either go to prison for a long time or that they should go to an insane asylum," but that "she did not think that she was insane." (R. 326:167.)

Geyser presented testimony from three witnesses. (R. 327.) Doctor Deborah Collins, a licensed psychologist, testified that she had met with Geyser multiple times and had reviewed her medical records. (R. 327:8–17.) Collins said that Geyser was unwavering in her belief in the existence of Slenderman. (R. 327:19.) Collins said that Geyser told her that she stabbed the victim because she was motivated to do Slenderman's bidding. (R. 327:19–20.) Geyser also told her—without emotion—that "had she not acted on behalf of Slenderman, he could have very well killed her or her family and that she didn't want to die." (R. 327:23.) Officer Shelley Grunke from the Washington County Sheriff's Office testified that when Geyser was in jail, Geyser told her—seemingly in reference to the crime—that "it had to be done" because "the man ordered it." (R. 327:41, 49–50.) And David Janisch, a private investigator, testified that he found mutilated Barbie dolls, drawings and writings on Slenderman, as well as writings concerning death in Geyser's bedroom. (R. 327:74–82.) From this evidence, Geyser argued that she had shown probable cause of attempted second-degree homicide, under a theory of imperfect self-defense. (R. 326:6–13; 329:39–40.) *See* Wis. Stat. § 940.01(2)(b), (d).

The circuit court found that Geyser and Weier began plotting to kill the victim as early as December 2013 "in an

effort to ingratiate each of [them] with Slenderman . . . They concluded that killing someone permitted them to become proxies as Slenderman." (R. 329:40.) The court found that the girls thought that if they killed someone and became "proxies," it would "prove to the skeptics that Slenderman existed." (R. 329:40.) The court also found that Geyser and Weier each "believed that Slenderman would kill their families if they did not kill [the victim]." (R. 329:41.)

The court found "four reasons" for the attempted killing—(1) a belief in Slenderman; (2) a desire to become a proxy for Slenderman; (3) a desire to prove to skeptics that Slenderman existed; (4) and a "need to kill to protect self and protect the family from Slenderman." (R. 329:41–42.) Looking at the totality of the evidence, the court then concluded that there was probable cause to support the charge of attempted first-degree homicide. (R. 329:42–43.) The court said that it just could not "find at this time that the mitigating circumstances exist" to allow it find that the State had not proved probable cause for attempted first-degree homicide. (R. 329:42.)

Therefore, the circuit court concluded that there was probable cause to find that Geyser had attempted to commit first-degree intentional homicide. (R. 329:39–42.) Although the court allowed that there was some evidence that one of Geyser's motivations for the crime may have been a belief that she was acting in self-defense or defense of others, the State had provided sufficient evidence of an attempted violation of Wis. Stat. § 940.01. (R. 329:42–43.)

On appeal, Geyser argues that the court erred in concluding that the State satisfied its burden. In her view, the evidence and the court's factual findings required it to conclude that the State failed to disprove the circumstances that mitigated her crime to attempted second-degree

homicide.[6] In other words, Geyser seems to say that because she may also have been able to argue to a jury that she had an actual belief that she had to kill the victim in order to protect her family, she was entitled to have the circuit court conclude that there was probable cause only of attempted second-degree homicide.

But this argument confuses the State's burden of production to satisfy the bind-over query at a preliminary hearing with the defendant's burden of production to allow her to present self-defense evidence at trial. Because of this confusion, Geyser's reliance on *Head* is misdirected.[7]

In *Head*, Head had argued that she killed her husband in self-defense. *State v. Head*, 2002 WI 99, ¶¶ 1–3, 255 Wis. 2d 194, 648 N.W.2d 413. Head had offered evidence to the trial court that her husband had been abusive and that she knew of his threats to others. *Id.* ¶¶ 1–2. But the trial court declined to allow her to present her evidence to the jury or to instruct the jury on either perfect or imperfect self-defense, reasoning that Head had not made the threshold showing that she had had an objectively reasonable belief that killing her husband was necessary to prevent her imminent death or harm. *Id.* ¶ 2. The court of appeals affirmed the circuit court's decision. *Id.* ¶ 3.

But the supreme court reversed. *Id.* ¶¶ 4–8. The court held "that a defendant who claims self-defense to a charge of first-degree intentional homicide may use evidence of a victim's violent character and past acts of violence to show a satisfactory factual basis that she *actually* believed she was in imminent danger of death or great bodily harm and *actually* believed that the force used was necessary to defend herself, even if both beliefs were unreasonable." *Id.* ¶ 6. And

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[6] Geyser's Br. 21–22.

[7] Geyser's Br. 19–22.

applying that principle to Head's case, the court concluded that her offer of proof was sufficient to allow her to present evidence of imperfect self-defense and that the court should have instructed the jury on the defense. *Id.* ¶ 7.

Head thus concerns the quantum of proof necessary for a defendant to be allowed to present mitigation evidence at trial and for her to be entitled to a jury instruction on mitigation defense. It says nothing about the State's burden of production to establish probable cause at a preliminary hearing, and there is no maxim that may be derived from *Head* that is applicable here.

Quoting *Kleser*, Geyser argues that she had "'a strong incentive' to aver her imperfect self-defense claim at her preliminary hearing and require the State to disprove it, which she did."[8] Geyser certainly had incentive to prevent the State from prevailing on its theory that Geyser had attempted to kill the victim pursuant to Wis. Stat. § 940.01. And the State agrees that under *Kleser* and *Toliver*, the court was required to give Geyser latitude in her attempt to mitigate the crime to attempted second-degree intentional homicide under Wis. Stat. §§ 940.01(2) and 940.05, which would have removed the case from the adult court's jurisdiction. *See* Wis. Stat. § 938.183(1)(am); *Kleser*, 328 Wis. 2d 42, ¶ 60. But in extending that latitude, the court was not required to ignore the substantial evidence that Geyser had attempted to commit first-degree homicide, which wholly supported its conclusion that the State had proved probable cause for that crime.

Geyser argues that because the circuit court found "multiple motivations for her crime," it had to conclude that

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[8] Geyser's Br. 21 (quoting *State v. Kleser*, 2010 WI 88, ¶ 60, 328 Wis. 2d 42, 786 N.W.2d 144).

she acted in imperfect self-defense.[9] She says that because the law does not require only one motivation for a crime, the court erred in its conclusion that "she was not entitled to mitigate."[10] But Geyser offers no support for her position.

Even if a defendant may have had multiple motivations for the crime, there is no requirement that a court must find probable cause relating to only one of her motivations. And Geyser points to no law in support of such an argument. Probable cause is established when a reasonable inference from the evidence supports a finding that the defendant committed the felony of which she is accused. *See Dunn*, 121 Wis. 2d at 397–38.

Geyser's argument is essentially that she offered mitigating evidence.[11] That may well be. But her assertion that the court concluded that she was "not entitled to mitigate her crime based on imperfect self-defense because other things motivated her crime" is incorrect.[12] Instead, the court concluded only that the State had established probable cause to believe that she had committed attempted first-degree homicide. At trial, Geyser may have been able to present mitigation evidence as contemplated in *Head*, but that does not negate that the State satisfied its burden of production at the preliminary hearing.

In sum, the State demonstrated probable cause that Geyser intentionally tried to kill the victim and had planned the attack for months. The State showed that Geyser believed her plan had been "flawless" and took multiple steps to change course when the original plan failed; that she stabbed the victim 19 times and attempted to evade capture; that she

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[9] Geyser's Br. 22.

[10] Geyser's Br. 23.

[11] Geyser's Br. 23.

[12] Geyser's Br. 23.

knew what she had done was wrong; and that she offered multiple reasons for the brutal assault. The evidence amply supported the court's determination of probable cause to bind over Geyser for attempted first-degree intentional homicide.

II. The circuit court properly denied Geyser's motion to suppress statements she made to the police.

A. Standard of review.

Whether a defendant knowingly, intelligently, and voluntarily waived her right to silence and to counsel is a question of law that this Court reviews de novo. *See State v. Ward*, 2009 WI 60, ¶ 17, 318 Wis. 2d 301, 767 N.W.2d 236.

When this Court reviews a circuit court's denial of a motion to suppress, it accepts the circuit court's factual findings unless they were clearly erroneous. *State v. Schloegel*, 2009 WI App 85, ¶ 8, 319 Wis. 2d 741, 769 N.W.2d 130. But this Court applies constitutional principles to those facts de novo. *State v. Grady*, 2009 WI 47, ¶ 13, 317 Wis. 2d 344, 766 N.W.2d 729.

B. The State adequately proved that Geyser made her statements knowingly, intelligently, and voluntarily.

In the trial court, Geyser argued that there were three separate categories of statements that the court should suppress. (R. 190.) She said that the court should have suppressed the statements that she made to Lieutenant Renkas before he read her *Miranda* warnings, the statements she made to Renkas after he gave the *Miranda* warnings, and the statements that she made to Detective Casey in her interview after he read her constitutional rights to her. (R. 190.)

On appeal, Geyser argues that only the two sets of statements she made after she received *Miranda* warnings should have been suppressed.[13] The State will therefore address only these two sets of circumstances. She argues both that she did not knowingly and intelligently waive her constitutional rights, and that her statements were not voluntary.[14] The State disagrees.

1. Relevant facts.

When Renkas came upon Geyser on the side of the interstate, she had blood on her clothes. (R. 344:15–16.) Concerned that Geyser was injured, he asked her where the blood had come from. (R. 344:16.) After Geyser confessed to Renkas that she had been "forced to stab her best friend to death," he read her the *Miranda* warnings. (R. 344:16.) After Geyser responded that she understood her rights—including her right to stay silent and that her words could be used against her—Geyser told Renkas that she was willing to talk to him. (R. 344:18–19.) Because Renkas did not know if the victim had yet been found, he asked Geyser what had happened. (R. 344:19.) She told him that "she had a sleepover at one of her friend's house [sic] and her and another girl had stabbed a girl and they were forced to stab her." (R. 344:19.) Shortly after that, Renkas learned that police had found the victim and he then stopped asking Geyser any more questions that elicited inculpatory information.[15] (R. 344:20–23.)

At the police station, Casey began his conversation with Geyser to determine whether he was "able to read her her rights" in order to get a statement, explaining that not every

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[13] Geyser's Br. 26–36.

[14] Geyser's Br. 26–36.

[15] For example, Renkas asked Geyser if she had taken any medication and he thought she responded that she had taken an antihistamine for asthma. (R. 344:22.)

suspect is capable of giving the police a valid statement. (R. 344:72.) Casey said that he has to "do a balancing of their education, their intelligence, their emotional state, their physical state, and prior law enforcement experience to try to determine if it's somebody that is willing and able to give us a statement." (R. 344:72.) To make this assessment, he talked to Geyser about her school and current events, as well as her likes and dislikes. (R. 72:3:Ex. S:28:00–32:43; 344:74.)[16] He asked her if anyone had read her rights to her before and why. (R. 72:3:Ex. S:33:28.) Geyser replied that she had been read her rights earlier that day when she was in a car with a police officer, but that Weier had also told her about her rights. (R. 72:3:Ex. S:33:28–33:59.) She said that she understood her rights; when asked whether she had any questions about them, Geyser said she did not. (R. 72:3:Ex. S:33:50–34:14.) Casey concluded that Geyser was coherent, intelligent, and able to "willingly and knowingly either invoke" her constitutional rights or waive them. (R. 344:74.)

Casey then told Geyser that he was going to ask her some questions from a form and ask her to sign the bottom of the form. (R. 72:3:Ex.S:34:14–19.) Geyser asked Casey why she had to sign the form. (R. 72:3:Ex. S:34:19–20.) Casey replied, "So that you know you sort of understood it. I mean, you're starting to be a little bit older here. So that we know that we're talking about the same thing. And so that I don't try to switch something." (R. 72:3:Ex. S:34:20–34:40.)

Casey then read Geyser each of her constitutional rights, explaining specifically that she did not have to talk to him. (R. 72:3:Ex. S:35:33–35:50.) He asked her to sign and

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[16] Geyser labels the exhibit of the recording of her custodial interview "NERI" for a Non-Electronic Record Item. (Geyser's Br. 7 n.2.) Because the recording was submitted as an exhibit at the preliminary hearing, the State uses the record number from the exhibit list at the preliminary hearing to refer to the recording. (R. 72:3.)

initial the form, which she did. (R. 72:3:Ex. S:35:50–36:47.) When Casey asked why she thought she was at the police station, Geyser then told him that it was because she and Weier ran off after hurting the victim. (R. 72:3:Ex. S:36:36:50–36:58.)

In its ruling, the circuit court acknowledged that it had kept "in mind that at the time of the incident Miss Geyser was 12 years old, was in the 6th grade, had no prior law enforcement contact." (R. 345:13.) The court noted that in every case concerning a defendant's motion arguing she had not knowingly, intelligently, and voluntarily waived her rights or made statements to police involuntarily, it must assess the defendant's "[a]ge, education, intelligence, physical and emotional condition, and prior law enforcement experience." (R. 345:15.)

Applying these tenets to Geyser's contention that her confession to Renkas should be suppressed, the court concluded that Geyser made her confession after Renkas had read her her rights and that Renkas had done so "in conformity with law."[17] (R. 345:24.) The court further concluded that Geyser waived those rights and gave Renkas a statement. (R. 345:24.) The court found that there was no evidence of "improper conduct on the part of Lieutenant

[17] Geyser's statement was not recorded, which the court concluded was acceptable as an exception to the statute governing the admission of juvenile statements because of extenuating public safety concerns. (R. 349:19–24.) *See* Wis. Stat. § 938.31(3)(c)5. The lack of recording was also acceptable because Geyser made her statement outside of Renkas's squad car. The statute requires that police record juveniles' statements only when they are in a "place of detention," which is defined by statute as particular buildings. Wis. Stat. § 938.195(1)(c), 195(2). That said, the State agrees with the circuit court that the public safety exception in Wis. Stat. § 938.31(3)(c)5. applies and disposes of any argument that Renkas should have instantly brought Geyser to a police station or other facility had he wanted to ask her questions.

Renkas to induce the statement through force, duress, threats, promises." (R. 345:25.) In short, there was no evidence that Geyser's waiver had been anything but knowing, intelligent, and voluntary. Moreover, her statements themselves were voluntary.

Turning to Geyser's statements to Casey, the court noted that Casey had spent some time earlier in the day with Geyser's parents and after spending time with Geyser, concluded that she was "articulate and did not lack the ability to understand questions that would be asked of her. (R. 345:26.) She followed along while he read her rights to her, she initialed them, and she said that she understood them. (R. 345:26–27.) The court concluded that the evidence showed that Geyser knowingly, intelligently, and voluntarily waived her rights. (R. 345:27.)

And the court found that there was nothing improper about Casey's interview with Geyser that made her statements involuntary. (R. 345:27.) The court found that in telling Geyser that he would work to get her help in response to her concerns about prison, Casey did not "promise anything to her" or make the interview "coercive or otherwise oppressive." (R. 345:27.)

In conclusion, the court said that the State had met its burden by a preponderance of the evidence that Geyser's statements to the police were admissible. (R. 345:27.) It therefore soundly denied her motion to suppress. (R. 345:27.)

2. Geyser knowingly and intelligently waived her constitutional rights.

The Constitution requires that a criminal suspect in custody not be compelled to be a witness against herself. *Colorado v. Spring*, 479 U.S. 564, 574 (1987). "The *Miranda* warnings protect this privilege by ensuring that a suspect knows that he may choose not to talk to law enforcement officers, to talk only with counsel present, or to discontinue

talking at any time." *Id.* A waiver of a suspect's Fifth Amendment rights must be knowing and intelligent and this is accomplished "by requiring that the suspect be fully advised of this constitutional privilege." *Id.*

When a defendant moves to suppress statements that she made to police while in custody, the State is required to show that police gave her *Miranda* warnings. *State v. Jiles*, 2003 WI 66, ¶ 26, 262 Wis. 2d 457, 663 N.W.2d 798. To introduce any statement the defendant made in custody, the State must also show that the defendant knowingly and intelligently waived the rights that *Miranda* protects. *Id.* And the State must satisfy its burden by the preponderance of the evidence. *Id.*

The State established that Geyser knowingly and intelligently waived her *Miranda* rights after both Renkas and Casey read them to her. To both officers, she indicated that she understood her rights and that she wanted to talk to them both. The video evidence in particular shows Geyser as a smart, responsive, calm girl who was capable of understanding the rights explained to her and choosing to talk to Casey and explain to him what had happened. (R. 72:3:Ex. S.) Although Geyser was young and had not had previous experience with law enforcement, the evidence supports the conclusion that the State met its burden to show that she knowingly and intelligently waived her rights.

Geyser argues that the court erred in its decision denying her suppression motion because "she was an extremely mentally ill, barely twelve-year-old girl with no prior experience in the criminal justice system."[18] Geyser argues that she did not "appreciate the seriousness of the legal consequences that might befall her," "[h]er delusional devotion to Slender Man clouded her judgment," "[s]he was more interested in serving Slender Man's bidding than in

[18] Geyser's Br. 27.

helping herself," and it took her months of "targeted education" after the crime for her "to gain sufficient knowledge such that she understood the legal system."[19]

At the outset, the State disputes Geyser's version of these facts. The recording of Geyser's interview with Casey shows Geyser's thorough understanding of the seriousness of her crime and the potential ramifications. For example, she assures Casey that her parents were not involved. (R. 72:3:Ex. S:50:00–50:10.) She explains that the reason she has been arrested was because she and Weier were "careless." (R. 72:3:Ex. S:50:45.) She says, "I knew this would happen. I knew we'd get in trouble." (R. 72:3:Ex. S:50:45–50:49.) She said that they had planned on killing the victim since December 2013, knew that they would do so at Geyser's sleepover party and that "[i]t was a flawless plan, actually." (R. 72:3:Ex. S:51:00–51:24.) Geyser said of the victim, "People who trust you become very gullible and it was sort of sad." (R. 72:3:Ex. S:52:30–52:38.) She volunteered that she felt "no remorse" and that she "still has this idea in [her] head that it was necessary" to kill the victim. (R. 72:3:Ex. S:1:01:00–1:02:00.) Geyser also said that she had thought about what would happen to them after the crime; she explained that while Weier had asked to go home, Geyser said, "No! We're gonna get arrested if we go home." (R. 72:3:Ex. S:1:04:00–1:04:28.) All of this shows that Geyser understood the severity of her actions.

But equally significantly, Geyser did not present sufficient evidence at the suppression hearing to support her current contention that her waiver of her rights unknowing and unintelligent. (R. 190; 345.) She did not present any witnesses at the suppression hearing to opine that Geyser was incapable of knowingly and intelligently waiving her rights. (R. 345.) Neither did she testify that she did not know

[19] Geyser's Br. 27–28.

or understand what she was agreeing to when she waived her rights and talked to police. (R. 345.)

Against this backdrop, Geyser's arguments that her waiver was not knowing and intelligent is unsupported and seems to suggest no child can knowingly and intelligently choose to waive her rights. But this is not the law.

The *Miranda* knowing-and-intelligent analysis considers age as just one of many factors the court must weigh in assessing the totality of the circumstances surrounding the waiver. *State v. Woods*, 117 Wis. 2d 701, 722, 345 N.W.2d 457 (1984). As the circuit court said, the court considers a defendant's age, education, background, conduct, intelligence, and legal experience. *State v. Jones*, 192 Wis. 2d 78, 101, 532 N.W.2d 79 (1995). Here, despite Geyser's youth, mental health problems, and lack of experience with the legal system, the totality of the circumstances show that she was a bright, coherent, capable girl who knowingly and intelligently waived her constitutional rights to silence and counsel.

3. Geyser voluntarily confessed to stabbing the victim.

Geyser argues that even if she knowingly, intelligently, and voluntarily waived her constitutional rights, her confession was nonetheless inadmissible because she made it involuntarily.[20] Geyser acknowledges that to establish that statements were involuntary, she must show coercive or improper police conduct.[21] To do so, she relies heavily upon her personal characteristics—her age, mental health, and unfamiliarity with law enforcement. In addition, citing *Jerrell C.J.*, Geyser argues that her custodial interview was too long, her lack of contact with her parents was coercive, and that

[20] Geyser's Br. 29–36.

[21] Geyser's Br. 21.

Casey's "psychological techniques" made her confession involuntary.[22] Her argument is unpersuasive.

The State may not use an involuntary confession against a defendant in a criminal prosecution. *Miller v. Fenton*, 474 U.S. 104, 109 (1985). As with the knowing and intelligent nature of a defendant's waiver, the circuit court assesses the totality of the circumstances surrounding the confession to determine its voluntariness. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). These circumstances include both the characteristics of the defendant as well as those of the police interview. *Id.* The purpose is to determine whether "the defendant's will was in fact overborne." *Miller,* 474 U.S. at 116. Courts pay particular attention to a child's age when applying the voluntariness test. *See J.D.B. v. North Carolina*, 564 U.S. 261, 280–81 (2011).

"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." *State v. Hoppe*, 2003 WI 43, ¶ 36, 261 Wis. 2d 294, 661 N.W.2d 407. "Coercive or improper police conduct is a necessary prerequisite for a finding of involuntariness." *Id.* ¶ 37.

For the same reasons that Geyser's age, mental health, and unfamiliarity with the legal system did not make her waiver of rights unknowing or unintelligent, those features did not make her confessions involuntary. But even assuming that Geyser has vulnerable personal characteristics, she has not pointed to any police conduct that exploited those vulnerabilities or that could credibly be characterized as

[22] Geyser's Br. 33.

coercive or improper that made her confession involuntary. Her will was simply not "overborne." *Miller*, 474 U.S. at 116.

In *Jerrell C.J.*, which Geyser relies upon to show her will was overborne and she was coerced into confessing, the court examined "the pressures and tactics used by police during the interrogation." *In re Jerrell C.J.*, 2005 WI 105, ¶ 30, 283 Wis. 2d 145, 599 N.W.2d 110.

First, the court addressed Jerrell's claim that his confession was involuntary because police had denied his request to call his parents. *Id.* ¶ 30. The court emphasized the importance of police calling a juvenile's parents to tell them about the interview. *Id.* ¶¶ 30–31. Although the court did not say that this action was per se coercive, it warned that the denial of "Jerrell's requests to talk to his parents [w]as strong evidence of coercive police conduct." *Id.* ¶ 31.

In contrast, Geyser's parents were at the police station when Geyser was interviewed. (R. 344:91.). And of larger import, Geyser never asked police if she could talk to her parents. (R. 344:57.) Thus, unlike in *Jerrell C.J.*, the police conduct with regard to parental presence bore no sign of impropriety.

Second, the court addressed the length of Jerrell's custody, calling it "an important factor in evaluating police behavior." *Jerrell C.J.*, 283 Wis. 2d 145, ¶ 32. Jerrell had been handcuffed to a wall for two hours and left alone. *Id.* ¶ 33. And he was then interrogated for over five hours "before finally signing a written confession." *Id.*

In contrast, here, Geyser was seated in a room without handcuffs, offered food and drink, and kindly asked if everyone had been nice to her that day. (R. 73:2: Ex. S:25:00–25:40.) And after waiving her rights, she immediately confessed to Casey that she had tried to kill the victim. Thus, even if the interview should have ended sooner, her confession was still voluntary.

And finally, the *Jerrell C.J.* court addressed the psychological techniques that the police employed in questioning Jerrell. *Id.* ¶ 34. The detectives refused "to believe Jerrell's repeated denials of guilt, but they also joined in urging him to tell a different 'truth,' sometimes using a 'strong voice' that 'frightened' him." *Id.* ¶ 35. Although the court noted that Jerrell did not appear to have any significant mental or emotional problems that would have made him particularly vulnerable to coercion, it remained concern that these types of interview techniques applied to a juvenile "over a prolonged period of time could result in an involuntary confession." *Id.*

But here, the police employed none of these sorts of techniques. Unlike the officers in *Jerrell C.J.*, Casey asked open-ended questions to allow Geyser to explain what had happened. There is no evidence from which to conclude that Renkas or Casey was anything but kind, calm, and solicitous. Indeed, Geyser does not argue to the contrary. She instead argues that Casey's equanimity was "grooming" behavior. But if an officer's attempt to make a suspect comfortable is unduly coercive, it is unclear how police could ever properly conduct an interview with a child.

Even taking Geyser's personal characteristics together with the nature of the interrogations, Geyser immediately and repeatedly voluntarily confessed to the crime. There was no coercion or improper behavior on the part of police.

C. Even if the court should have suppressed any of Geyser's statements, the failure to do so was harmless beyond a reasonable doubt.

Finally, any error on the part of the circuit court in declining to suppress any of Geyser's statements is harmless. An error is harmless is if the beneficiary of the error can show that absent the error, the effect of the proceedings would have

been the same. *See State v. Nelson*, 2014 WI 70, ¶ 44, 355 Wis. 2d 722, 849 N.W.2d 317. Here, any error is surely harmless.

Absent Geyser's own statements, the evidence against her was overwhelming. Like Geyser, Weier had immediately confessed to the crime and its details. More importantly, the victim identified Weier and Geyser as her friends who had tried to kill her. The victim's statements were extensive, detailed, convincing, and beyond reproach. It is not credible to suggest that Geyser would not have entered the pleas that she did had the court suppressed her own inculpatory statements.

CONCLUSION

For the above reasons, the State respectfully requests that this Court affirm the circuit court's order of commitment.

Dated this 22nd day of April, 2019.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 7,591 words.

Dated this 22nd day of April, 2019.

_____
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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 22nd day of April, 2019.

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