STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT II

Case No. 2020AP56-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DANIEL J. REJHOLEC,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION AND AN ORDER DENYING POSTCONVICTION RELIEF ENTERED IN SHEBOYGAN COUNTY CIRCUIT COURT, THE HONORABLE REBECCA L. PERSICK, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

JOSHUA L. KAUL
Attorney General of Wisconsin

SARA LYNN SHAEFFER
Assistant Attorney General
State Bar #1087785

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-5366
(608) 294-2907 (Fax)
shaeffersl@doj.state.wi.us

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Page

Page

Statues

Other Authorities

INTRODUCTION

After police advised Daniel J. Rejholec of his *Miranda* rights and Rejholec signed a waiver of those rights, Rejholec confessed to sexually assaulting his girlfriend's 14-year-old daughter. Rejholec moved to suppress his confession, arguing that it was involuntary because he was coerced. The court held a hearing, where the detective who interviewed Rejholec testified. After the hearing and after watching the recorded interview, the trial court denied Rejholec's motion. It concluded that the totality of the circumstances show that Rejholec's statements were not coerced, but voluntary. In making that conclusion it found that Rejholec: "didn't appear fearful or sleepy," that he "felt comfortable asking for a bathroom break" which was provided, that he "appear[ed] to be intelligent," that he was a middle-aged adult, that he was "physically and emotionally healthy," and that "he didn't seem confused or intimidated by the process." The court also found no threats were made, that Edson was "soft-spoken," that Rejholec was not in handcuffs, and that there were "no offers or promises other than if [Rejholec] told the truth [Edson] would convey that."

Rejholec subsequently pled no contest to repeated sexual assault of a child. During sentencing he exercised his right to allocution and admitted committing the assaults.

ISSUE PRESENTED

Is Rejholec entitled to withdraw his plea based on his assertion that his confession was involuntary?

This circuit court held, No.

This Court should affirm.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Like Rejholec, the State requests neither oral argument nor publication.

STATEMENT OF THE CASE

The complaint

The complaint alleges that on January 13, 2017, police were dispatched to the home of Brian Hahn, who reported that his 14-year-old daughter, Natalie[1], had told him that she was sexually assaulted by Rejholec, who was her mother's boyfriend. (R. 6:2.) Natalie suffers from severe cognitive impairment and "functions at about half her age." (*Id.*)

Natalie told Hahn that she hated her mother and Rejholec. (*Id.*) Natalie told Hahn that Rejholec "had pulled down his pants and made her touch and suck his penis and then he hit her face and body with his penis." (*Id.*) Natalie also told Hahn that Rejholec "had inserted his finger in [Natalie's] butt hole and that [Rejholec] either tried or did insert his penis in her vagina as well as possibly a finger in her vagina." (R. 6:3.) Finally, Rejholec had naked pictures of Natalie on his phone and "nude pictures on his computer of either children or women." (*Id.*)

Police took Rejholec into custody and Detective Eric Edson of the Sheboygan Police Department interviewed him. (*Id.*) Rejholec admitted to having sexual contact with Natalie on several occasions, which included "her touching his penis, him touching her vagina, her putting his penis in her mouth and him licking her vagina with his tongue." (*Id.*) Rejholec also "admitted showing her depictions of nudity on his computer which he has subsequently destroyed." (*Id.*)

---

[1] The State uses a pseudonym pursuant to Wis. Stat. § (Rule) 809.86.

The State charged Rejholec with three counts: sexual assault of a child under 16 years of age, exposing intimate parts, and exposing a child to harmful material. (R. 6.)

Suppression motion and hearing

Rejholec moved to suppress the statements he made to law enforcement. (R. 30.) Rejholec did "not contend that there was a *Miranda* violation. Detective Edson did advise Mr. Rejholec of his *Miranda* rights both verbally and in writing. Mr. Rejholec then signed a waiver form, acknowledging that he was waiving his *Miranda* rights." (R. 30:2.) Rather, Rejholec's argument was that "the tactics used by [police] during the interrogation were coercive, resulting in Mr. Rejholec's statements being involuntary." (*Id.*) Rejholec noted that he was "fifty-three years old, he graduated from high school, he has no physical limitations and he has no diagnosed mental health issues." (R. 30:3.) But, Rejholec argued, he had "no prior experience with law enforcement," and Edson "used psychological pressure and inducements" that "were coercive and overcame Mr. Rejholec's will." (*Id.*)

The court held a suppression hearing where the officer who conducted Rejholec's interview, Detective Eric Edson, testified. (R. 100.)

Edson testified that he was assigned to interview Rejholec at the Sheboygan police department on January 17, 2017. (R. 100:8–9.) The interview with Rejholec occurred after Natalie's forensic interview. (R. 100:8–10.) It also occurred after Edson had searched Rejholec's apartment, where he found a bottle of "warming liquid that was described by [Natalie]" during her forensic interview. (R. 100:11.)

Rejholec's interview took place in an interview room in the Sheboygan Police Department's booking area. (R. 100:15.) Edson described the room: "It's an approximate eight-by-eight-foot room with concrete block walls. It has a metal table and two metal stools that are bolted to the floor." (*Id.*) The

interview began at 8:40 p.m. and ended at 10:10 p.m., which Edson considered "an average length of an interview." (R. 100:20.) Edson was wearing plain clothes, with his badge displayed and his firearm on his side. (R. 100:17.) He had a pair of handcuffs and a walkie-talkie on his back. (*Id.*) No additional officers were ever involved in the interview, and at no time during the interview was Rejholec handcuffed. (R. 100:23, 15, 30.) Both Edson and Rejholec sat the entire time. (R. 100:24.)

Edson provided Rejholec with his *Miranda* rights. (R. 100:18.) Nothing suggested to Edson that Rejholec was "below average intelligence." (R. 100:23.) Edson testified that he never showed any signs of force or raised his voice. (R. 100:24.) Rather, "[t]he entire interview was a very conversational tone, and in my opinion, my behavior could be described as empathetic." (*Id.*) Edson talked about his technique that he used with Rejholec: "I just tried to be empathetic with him and stressed, I think, as a theme throughout the entire for sure second half of the interview that the most important thing was for him just to be honest and to be truthful about what happened." (R. 100:34.)

When asked at any point if he ever told Rejholec that he didn't believe he was telling the truth, Edson replied, yes, that he did so "maybe two or three times." (R. 100:32–33.) Edson testified that he told Rejholec it was important to be honest:

> The character of the interview was, again, very conversational. I remember discussing certain types of forensic evidence that we were hoping to reveal to review. I remember telling him we had not had an opportunity to review any type of either DNA or computer evidence at that point. I remember telling him several times that it was important for him to be honest about what happened and then asked him some specific questions about sexual contact with [Natalie].

(R. 100:25.)

Edson told Rejholec that "juries very much disliked [it] when they knew that someone was lying." (R. 100:28.) Edson also talked about an interview technique that he used on Rejholec, where Edson placed the blame on the victim as being sexually active or sexually overt. (R. 100:29.) After a bathroom break, Edson asked Rejholec if "he wanted to start with telling the truth and getting everything off his chest." (R. 100:31.) Rejholec then acknowledged "that there had been some sexual contact between them." (*Id.*)

Edson acknowledged he alluded to potential forensic DNA evidence, even though none had been collected, because Edson "found it to be a useful technique that if someone has perpetrated a crime where DNA might be left behind that if they believe that that DNA was found that they would be more likely to admit what they had done." (R. 100:37, 39.)

There was no time during the interview that Rejholec asked Edson to stop. (R. 100:38.)

When the State asked Edson if he was "familiar with the Reid school or model of interviews," Edson responded, "I am, but I've never had any formal training in that." (R. 100:7.) No further questions by either party were asked about the "Reid technique," including whether Edson used the technique when he interviewed Rejholec. (R. 100.) When asked if he made any promises to Rejholec, Edson replied, "[t]he only promise that I made to him was that if he were to be honest with me that I could advocate on his behalf that he was honest and that he came forward." (R. 100:32.) He continued, "I never promised any type of special considerations or any special handling with as far as how much time that he would possibly face if he were convicted or what the charges might be from the District Attorney's Office." (*Id.*)

On cross-examination, defense counsel asked Edson, "[a]t any point in time did he ever ask for an attorney?" And

Edson, replied, "No." (R. 100:42.) Edson testified that during the interview he referred to a SANE examination, blankets, clothing, and use of a glow light—all of which never took place. (R. 100:39.) Edson also testified that he referred to seizing a router and IP address, which never occurred. (R. 100:40.) Defense counsel asked Edson why he moved closer to speak to Rejholec during the latter half of the interview, and Rejholec explained: "I wasn't, you know, grilling him in his face. It was just to be a little bit closer so that maybe he didn't have to talk as loud." (R. 100:41.) He continued, "I've just found in life in general that when you're talking about serious things like that that it's nice for people to be a little bit closer." (*Id.*)

Denial of Rejholec's motion to suppress

After arguments from parties and watching the video of Rejholec's interview, the court issued an oral ruling, stating: "the relevant question is really whether the statement was coerced or a product of improper pressure. And looking at a totality of the circumstances and [Rejholec's] personal characteristics, I'm going to deny the defense motion. I don't believe the statements [Rejholec] gave were coerced." (R. 103:3.) The court found that Officer Edson "spoke very casually" to Rejholec. (*Id.*) And, while Edson "did have a gun and a badge and a radio," the court noted that "they were all on his belt. They weren't prominent." (*Id.*) Additionally, the court found that Rejholec "didn't appear fearful or sleepy. He felt comfortable asking for a bathroom break, which he was given. He appears to be intelligent." (*Id.*) While Rejholec acknowledged that he had never been arrested, the court found that "he didn't seem confused or intimidated by the process." (*Id.*)

The court also found that "[t]his wasn't a situation like you see on TV with the good cop/bad cop. There were no threats made." (R. 103:3–4.) Rather, Edson was "soft-spoken," both Edson and Rejholec were seated during the interview,

Rejholec was not in handcuffs, and "[t]here were no threats made or offers or promises other than if [Rejholec] told the truth [Edson] would convey that." (R. 103:4–5.)

The court found that Edson *did* "pressure [Rejholec] to be honest, but not in a way that I think rises to the level of overcoming [his] will." (R. 103:4.) Edson's strategy, the court found, was not coercive:

> You know, what the defense characterized as coercive the detective characterized in his testimony as empathetic. So I think -- and what I mean by that is the defense seems to indicate because the detective was saying, well, you know, I can help you out if you're truthful with me, and that's kind of a theme he repeated throughout, when the officer actually testified, he said he was trying to be empathetic with the defendant. So I don't think that that tactic or strategy was coercive.

(*Id*.) Therefore, "based on the totality of the circumstances," the court denied Rejholec's motion. (R. 103:5.)

No contest plea and sentencing

Rejholec pled no contest to repeated sexual assault of a child. (R. 53:1.) In exchange, the State agreed to dismiss the other counts and cap its sentencing recommendation to 15 years of initial confinement and 10 years of extended supervision. (R. 53:2; 106:17.)

At the sentencing hearing, Rejholec exercised his right to allocution and admitted to committing the sexual assaults:

> I would like to -- everyone to know that I'm truly sorry for what happened between [Natalie] and I. I know that I'm the adult, and I now -- I understand that I should have, shouldn't have allowed this to happen. This does not take away at all my responsibility for what I did to [Natalie] and that I will fully understand I need to be held accountable and punished.

(R. 106:21.) He later added, "It's hard for me to understand why I did this." (*Id*.)

The court told Rejholec that it was "relieved" to hear that Rejholec took responsibility. (R. 106:23.) But, "what happened was so violative of [Natalie] and of normal behavior for anyone dealing with a child much less a child who's cognitively delayed." (R. 106:25.) It sentenced Rejholec to 12 years of initial confinement followed by 10 years of extended supervision. (*Id*.)

Postconviction proceedings

Rejholec moved for postconviction relief, arguing that he was entitled to sentence modification. (R. 84.) The court held a hearing and then denied his motion. (R. 92; 111:16.)

Rejholec appeals. The only issue he raises is whether he should be allowed to withdraw his plea because his confession was involuntary.

ARGUMENT

Under the totality of the circumstances, Rejholec's confession was voluntary.

Rejholec argues that his confession was involuntary because Officer Edson did the following: used "coercive Reid-style interrogation,"[2] isolated Rejholec, used "victim blaming," lied about evidence, and "most critically by effectively countermanding *Miranda* warnings." (Rejholec's Br. 16–17.) Because the totality of the circumstances reveals that Rejholec's confession was voluntary, this Court should

[2] The Reid technique is a method of interrogation first discussed in Fred E. Inbau and John E. Reid, *Criminal Interrogation and Confession* (1962). Common elements of the Reid technique are the officer (1) maintaining privacy with the defendant; (2) positing guilt of the suspect as fact with questions that seek to understand why the crime was committed; (3) minimizing the moral seriousness of the crime; (4) exhibiting confidence in the ability to get a confession; and (5) blaming the victim or society at large. *See Miranda v. Arizona,* 384 U.S. 436, 449–50 & nn.9–10, 12–13 (1966).

reject his arguments. The circuit court properly denied Rejholec's motion to suppress.

A. Standard of review and general legal principles guiding a motion to suppress statements on voluntariness grounds.

"Whether evidence should be suppressed is a question of constitutional fact." *State v. Johnson*, 2007 WI 32, ¶ 13, 299 Wis. 2d 675, 729 N.W.2d 182 (quoting *State v. Knapp*, 2005 WI 127, ¶ 19, 285 Wis. 2d 86, 700 N.W.2d 899). Constitutional facts consist of "the circuit court's findings of historical fact, and its application of these historical facts to constitutional principles." *Id.* The circuit court's findings of historical fact are reviewed under the clearly erroneous standard. *Id.* The court's application of constitutional principles to those historical facts is reviewed de novo. *Id.*

The Fifth and Fourteenth Amendments require "that a confession be voluntary to be admitted into evidence." *Dickerson v. United States*, 530 U.S. 428, 433 (2000). "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. A statement is involuntary only if it is obtained through coercive police activity or improper conduct. *Id.* ¶ 46. The State has the burden of proving by a preponderance of the evidence that the defendant's statements to the police were voluntary. *State v. Lemoine*, 2013 WI 5, ¶ 17, 345 Wis. 2d 171, 827 N.W.2d 589.

A court determines the voluntariness of a defendant's statements under the totality of circumstances, balancing a defendant's personal characteristics with the pressures that

the police imposed. *Id.* ¶ 18. The Wisconsin supreme court has described the test as follows:

> 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 (citations omitted). Another factor that cuts against a finding of psychological coercion includes the police giving *Miranda* warnings, *Missouri v. Seibert*, 542 U.S. 600, 608–09 (2004) (plurality opinion).

B. Edson's interrogation of Rejholec was not coercive.

Rejholec argues that Edson employed Reid-style interrogation with "ruthless efficiency" when he interviewed Rejholec, and that this technique put "Rejholec under psychological pressure or duress," making his confession involuntary. (Rejholec's Br. 20–21.) A review of the recording proves otherwise.[3]

But first, while Rejholec relies heavily on Saul M. Kassin's article in his appellate brief to argue that Edson's interview was coercive (Rejholec's Br. 20, 21, 23, 32, 33, 38), Kassin's article is not part of the record that was before the trial court. The trial court made its decision on Rejholec's

[3] The recording of the interview that has been made part of the appellate record, R. 113, is audio only.

motion to suppress with the evidence, arguments, and materials before it, and the Kassin article was not included. The State now turns to the recorded interview, which *was* in front of the trial court.

Early in the interview, Rejholec immediately casts Natalie a "a liar," and that "all she does is lie." (R. 113, minute 16:55 and 17:52.) Rejholec soon plays the victim, and he tells Edson that 14-year-old Natalie was trying to impress him and "trying to come on to me." (R. 113, minute 35:30.) Edson tells Rejholec that he did not believe him, and that he was giving Rejholec an opportunity to get ahead of his story, because a judge and jury would have more questions for him. (R. 113, minute 44:47, 45:20.) Edson tells Rejholec, "this stuff always comes out in the end." (R. 113, minute 45:17.) And, that Rejholec can choose to maintain his lie, or he can take responsibility for what he did. (R. 113, minute 46:00.) Edson tells Rejholec that he "made a mistake," and "let's talk about it." (R. 113, minute 48:33.)

Rejholec then asks for a bathroom break, which he was given. (R. 113, minute 48:50.) When he returns, Rejholec again denies that he ever had sexual contact with Natalie. (R. 113, minute 52:45.) Edson again tells Rejholec that he "made a mistake." (R. 113, minute 1:01:00.) He informs Rejholec that once they're done talking, "you and I are not going to have another chance to talk, Dan, ok? Because most likely you'll get an attorney," and "the first thing that attorney is going to tell you is, you're not going to talk to the police anymore." (R. 113, minute 1:07:45.) Edson tells Rejholec, "[y]ou're not going to get a chance to tell your story. So the jury is never gonna hear your side of the story." (*Id.*)

Edson then informs Rejholec, "If you're honest with me, I can help you," but that it "depends on your honesty." (R. 113, minute 1:12:00.) After telling Rejholec that he "can have a right to a lawyer, if that's what you want," Edson also informs Rejholec that Edson can make a recommendation to the

district attorney. (R. 113, minute 1:16:33 and 1:18:00.) But, Edson tells Rejholec, Rejholec needs to "own up" that he made a mistake. (R. 113, minute 1:19:00.)

Rejholec tells Edson that Natalie "came onto" him, and that Rejholec "kept saying no" to her. (R. 113, minute 1:24:00.) But the next minute, Rejholec tells Edson that he "might have touched [Natalie's] breast" when he washed her hair, and that he had sexual contact with Natalie "a couple times," the last time being just days prior. (R. 113, minute 1:30:00.) Four minutes later, Rejholec agrees to sign a statement. (R. 113, minute 1:34:00.)

A review of the one hour and thirty-six-minute recorded interview validates exactly what the trial court found: Rejholec's statements were not coerced. (R. 103:3.) As the audio proves, Edson

- "Spoke very casually"
- Did not make any threats
- was "soft-spoken"
- did not pressure Rejholec to be honest in a way that rises to the level of overcoming his will.

The court also found that Rejholec:

- "didn't appear fearful or sleepy."
- "appears to be intelligent."
- "didn't seem confused or intimidated by the process."
- felt comfortable asking for a bathroom break, which Edson provided.

(R. 103:3–5.)

It is true, as Rejholec points out, that Edson urged Rejholec to be honest. (Rejholec's Br. 6, 9–11, 13.) Edson also told Rejholec that if he was honest, Edson could help him. (R. 113, minute 1:12:00.) Such statements by law enforcement do

not create compelling pressures which undermine an individual's will to resist. *State v. Cydzik*, 60 Wis. 2d 683, 692, 211 N.W.2d 421 (1973); *see also See United States v. Nash*, 910 F.2d 749, 753 (11th Cir. 1990) ("[T]elling the defendant in a noncoercive manner of the realistically expected penalties and encouraging him to tell the truth is no more than affording him the chance to make an informed decision with respect to his cooperation with the government.") (citation omitted). As the trial court found in this case, "the defense seems to indicate because the detective was saying, well, you know, I can help you out if you're truthful with me, and that's kind of a theme he repeated throughout, when the officer actually testified, he said he was trying to be empathetic with the defendant." (R. 103:4.) The court continued, "So I don't think that that tactic or strategy was coercive." (*Id*.)

It is also true, as Rejholec points out, that detective Edson stated that he believed Rejholec was lying. (Rejholec's Br. 9–10, 12, 21, 25.) But "[a]n officer may express dissatisfaction with a defendant's responses during an interrogation. The officer need not sit by and say nothing when the person provides answers of which the officer is skeptical." *State v. Deets*, 187 Wis. 2d 630, 636, 523 N.W.2d 180 (Ct. App. 1994). Accusing a suspect of lying is not an improper police tactic. *State v. Owen*, 202 Wis. 2d 620, 642, 551 N.W.2d 50 (Ct. App. 1996). The same is true for expressing a belief that a victim has been truthful in reporting to police.

But Rejholec also argues that Edson's deception that he had "forensic DNA and computer evidence" . . . "fall[s] on the coercive/involuntary side of the totality of the circumstances."[4] (Rejholec's Br. 33; *see also* 22.) But an

[4] Rejholec also argues that "Edson had no evidence beyond [Natalie's] claims, so he fabricated the existence of incriminating DNA

officer's telling a suspect that he knows more than he does "is a common interview technique." *Dassey v. Dittman*, 877 F.3d 297, 313 (7th Cir. 2017).[5] Law enforcement's use of such deception "has not led courts (and certainly not the Supreme Court) to find that a suspect's incriminating answers were involuntary." *Id.* (citing *Frazier v. Cupp*, 394 U.S. 731, 739 (1969)). Further, this Court has held that a police officer's use of deception alone does not warrant suppression of a suspect's interview statements. *See, e.g.*, *State v. Triggs*, 2003 WI App 91, ¶¶ 12–23, 264 Wis. 2d 861, 663 N.W.2d 396 (stating that police deception during an interrogation does not itself render a confession involuntary.).

Rejholec also argues that "Edson interjected victim-blaming" throughout the interview. (Rejholec's Br. 23–26.)[6] But Rejholec was the one who initially put blame on Natalie, not Edson. Edson testified at the motion hearing, "I recall Mr.

---

and computer evidence." (Rejholec's Br. 21.) This is not true. Not only did the interview with Rejholec occur after Natalie's forensic interview (R. 100:8–10), but also when asked at the suppression hearing, "What items were you aware were known or in police custody prior to your interview?" Edson, responded: "Several cell phones believed to belong to Mr. Rejholec and possibly to his girlfriend, the child's mother, and a bottle of that warming liquid that was described by [Natalie.]" (R. 100:11.)

[5] The *Dassey* Court also correctly noted that the "debates over interrogation techniques have not resulted in controlling Supreme Court precedent condemning the techniques used with Dassey." *Dassey v. Dittman*, 877 F.3d 297, 318 (7th Cir. 2017). Further, the dissent in *Dassey* focused on Dassey's young age and mental limitations when considering voluntariness, both of which are not factors here: "Dassey at the relevant time was 16 years old and had an IQ in the low 80s;" Dassey "was a mentally limited 16–year–old. It was thus incumbent on the state courts to evaluate his 'confession' in light of those traits;" and, "Dassey's age and mental limitations made him particularly susceptible to this psychologically manipulative interrogation." *Id.* at 319, 320 (Wood, C.J., dissenting).

[6] *See also* Rejholec's Br. at 33 ("Edson's minimizing tactic in hammering a contrived and irrelevant narrative of the allegations being [Natalie's] fault; that she was relentless in coming on to him and that this could happen to anyone, was yet another form of coercion.")

Rejholec himself placing blame on the juvenile." The audio supports this. (*See* R. 113, minutes 17:52 and 35:33 (where Rejholec states, Natalie lies about "me doing stuff to her;" and, "She was trying to come on to me.").) Therefore, Edson, testified, he "dovetailed" off Rejholec's suggestion during the interview. (R. 100:29.)

In sum, Rejholec points to nothing that could be described as coercive means or improper pressures by Detective Edson. *See Barrera v. State*, 99 Wis. 2d 269, 291, 298 N.W.2d 820 (1980). Rather, Rejholec's statements were the product of a "free and unconstrained will, reflecting deliberateness of choice." *Norwood v. State*, 74 Wis. 2d 343, 364, 246 N.W.2d 801 (1976). He was not a "victim of a conspicuously unequal confrontation in which the pressures brought to bear on him by [police] exceed[ed] [his] ability to resist." *State v. Hoyt*, 21 Wis. 2d 284, 308, 128 N.W.2d 645 (1964). Rather, Rejholec was able to respond to Edson's questions, his responses were intelligible and coherent, the interview was not excessively long, and Rejholec points to no real threat. Finally, Rejholec points to no cases which have *per se* prohibited the use of the Reid technique, and that's because courts look to the totality of the circumstances when looking at voluntariness.

In this case, in listening to the recorded interview, it would be stretching the concept of coercion beyond reasonable limits to conclude that Edson's conduct was coercive in any way. And to justify a finding of involuntariness, there must be some affirmative evidence of improper police practices deliberately used to procure a confession; here, there is none.

C. *Miranda* was not undermined.

It is undisputed that Detective Edson provided Rejholec his *Miranda* rights both verbally and in writing, that Rejholec *never* asked for a lawyer, and that later in the interview Detective Edson told Rejholec that if he wanted a lawyer, they

were done talking. *Miranda* was not "undermined." (*See* Rejholec's Br. 29, 36–38.)

In his suppression motion, Rejholec specifically told the court he was not arguing that Edson violated *Miranda*. He stated he "does not contend that there was a *Miranda* violation." (R. 30:2.) This is because, Rejholec argued, "Detective Edson did advise Mr. Rejholec of his *Miranda* rights both verbally and in writing. Mr. Rejholec then signed a waiver form, acknowledging that he was waiving his *Miranda* rights."[7] (*Id*.) Also in his suppression motion, Rejholec argued that "[a]t one point during the interrogation, Mr. Rejholec did ask about having a lawyer involved. Detective Edson responded that he had a right to talk to a lawyer and if he told him he wanted a lawyer then they would be done talking if that's what he wanted."[8] (R. 30:7.) And, at the suppression hearing, trial counsel stated, "Just so the record is clear, we're not actually challenging the *Miranda* portion." (R. 100:21.)

But for the first time on appeal, Rejholec argues that Edson "undermined the purpose and substance of the *Miranda* warnings" when he told Rejholec that a jury is never going to hear his side of the of the story. (Rejholec's Br. 27–29, 34.) Yet as the audio shows (R. 113, minute 1:16:33), and as Rejholec admitted to the trial court, Edson informed Rejholec he "had a right to talk to a lawyer and if he told him he wanted a lawyer then they would be done talking if that's what he wanted." (R. 30:7.) Also admitted by Rejholec, "Rejholec remained silent and did not respond." (*Id*.) Indeed,

---

[7] Rejholec recognizes in his brief, "[t]he interrogation DVD shows that after reading aloud a *Miranda* rights form Edson directed Rejholec to sign a waiver form, and Rejholec complied." (Rejholec's Br. 27.)

[8] The audio recording supports this. (R. 113: minute 4:05–5:45.)

Rejholec also remained silent after Edson told him seconds later, "If that's what you want [a lawyer], you have to tell me that's what you want." (R. 113, minute 1:16:44.) Therefore, it is undisputed that Rejholec never told Edson to stop or that he wanted a lawyer.

Rejholec briefly cites three federal cases and one out-of-state case to support his position that "Rejholec's subsequent admissions [are] involuntary": *Hart v. Attorney Gen. of the State of Florida,* 323 F.3d 884 (11th Cir. 2003)*; United States v. Anderson,* 929 F.2d 96 (2nd Cir. 1991); *Commonwealth v. Baye,* 967 N.E.2d 1120 (Mass. 2012); and *California Attorneys for Criminal Justice v. Butts,* 195 F.3d 1039, 1047 (9th Cir. 1999). (Rejholec's Br. 29–30.) All those cases are distinguishable.

In *Hart*, the officers explained each *Miranda* warning to Hart, including that anything he said could be used against him in court. 323 F.3d at 893. Hart then signed the waiver form. *Id.* Nevertheless, Hart asked the detective about the "pros and cons" of hiring a lawyer, which, the Eleventh Circuit held, indicated that he "did not fully understand" his rights and was asking for clarification of them. *Id.* at 894. In response, the detective told him that the "disadvantage" of having a lawyer was that the lawyer would tell him not to answer incriminating questions. *Id.* The detective also told Hart that "honesty wouldn't hurt him." *Id.* The Eleventh Circuit held that Hart "did not truly understand the nature of his right against self-incrimination or the consequences that would result from waiving it," meaning that his waiver was not voluntary. *Id.* at 895. In so holding, the court emphasized that it had interpreted the officer's comment in light of the totality of the circumstances, especially the fact that the suspect had asked for a clarification of his rights, which indicated that he did not truly understand the nature of his right against self-incrimination or the consequences of waiving that right. *See id.* at 894–95 & nn.19, 21.

Nothing like that happened here. To the contrary, nothing indicates that Rejholec was unsure of his rights. Nothing indicates Rejholec did not understand the *Miranda* warnings that were originally read to him. And, the recording indicates that later in the interview, Edson told him, "You can have a right to a lawyer. If that's what you want, we're done talking." (R. 113, minute 1:16:33.)

Anderson is also distinguishable. There, the agent told the defendant that "this [is] the time to talk to us, because once you tell us you want an attorney we're not able to talk to you and as far as I [am] concerned, we probably would not go to the U.S. Attorney or anyone else to tell them how much [you] cooperated with us." *Anderson*, 929 F.2d at 97 (alterations in original). The Second Circuit found that this statement was false and misleading because it is common practice for defendants to enter into cooperation agreements with the government after retaining counsel. *Id.* at 100. The court explained that the agent's statement may have caused the defendant to develop "a false sense that he must confess at that moment or forfeit forever any future benefit that he might derive from cooperating with the police agents." *Id.* Accordingly, the court held that "[u]nder the totality of the circumstances, [the agent's] statements contributed to the already coercive atmosphere inherent in custodial interrogation and rendered [the defendant's] confession involuntary." *Id.* at 102.

But in this case, Edson in no way indicated that, if Rejholec did not confess to him at that moment, he would "forfeit forever" a chance to cooperate with him or the police. Also, Edson informed Rejholec that if Rejholec was honest with him, that Edson would put that in his report/recommendation to the district attorney. (R. 113, minute 1:18:00.) *See Deets,* 187 Wis. 2d at 637 (no impropriety where police told defendant that if he did not cooperate, district attorney would look at the case differently).

Baye is also inapposite. (*See* Rejholec's Br. 30, 37.) In that Massachusetts case, the officers engaged in "multiple improprieties" and dissuaded the defendant, in a nearly ten-hour interrogation, from speaking with an attorney by "clearly implying" that his statements would not be used against him. *Baye*, 967 NE.2d 1120. But here, Rejholec's interview lasted an hour and a half[9], he was given a bathroom break, Edson did not engage in "multiple problematic tactics" (*see id.*), and Rejholec was never told or implied that his statements would not be used against him. Thus, this case is distinguishable from *Baye*.

Rejholec's reliance on *Butts*, 195 F.3d 1039(abrogated by *Chavez v. Martinez*, 538 U.S. 760 (2003)), is also misplaced. In *Butts,* plaintiffs sued the City of Los Angeles and individual officers for an alleged policy, set forth in certain training programs and materials, which authorized continued interrogation "outside *Miranda*" despite the suspects' invocation of their right to remain silent and their requests for an attorney. The policy was based on the position that the coerced statements could be used at impeachment at trial. The plaintiffs alleged that the defendants used coercion and intimidation to obtain incriminating statements. The Ninth Circuit denied qualified immunity to officers who had intentionally violated the suspects' *Miranda* rights, in accordance with their training and departmental policy. The court stated, "Officers who intentionally violate the rights protected by *Miranda* must expect to have to defend themselves in civil actions." *Butts,* 195 F.3d at 1050. Here,

---

[9] *See State v. Turner*, 136 Wis. 2d 333, 401 N.W.2d 827 (1987) (Twelve and one-half hours of custodial questioning over two days did not render statements involuntary); *State v. Williams*, 220 Wis. 2d 458, 583 N.W.2d 845 (Ct. App. 1998) (An interrogation consisting of three separate sessions over a 25-hour period was not involuntary where suspect was allowed to sleep, eat, drink and relax when it was requested.).

unlike *Butts*, Rejholec does not introduce any evidence of custom, policy, or practice established by the Sheboygan Police Department for violating *Miranda* rights.

In this case, the trial court was correct in its synopsis:

> At one point [Rejholec] asked about having a lawyer, and the detective told him that he had that right, and if that's what he wanted, they'd be done talking. So [Rejholec] not only got the *Miranda* warnings written and verbally at the beginning of the interview, but that right to an attorney was reiterated during the interview.

(R. 103:4.) Simply put, Rejholec was not deceived about "the nature of his rights and the consequences of abandoning them." *Moran v. Burbine,* 475 U.S. 412, 423–24 (1986). *See also Illinois v. Perkins,* 496 U.S. 292, 297 (1990) ("Ploys to mislead a suspect or lull him into a false sense of security that do not rise to the level of compulsion or coercion to speak are not within *Miranda*'s concerns."). Trial counsel in this case was correct when he chose not to argue that *Miranda* was "undermined."

Finally, the issue in this case is not whether Edson actively misled Rejholec or whether Edson "undermined" *Miranda*; rather, the ultimate question is whether, under the totality of the circumstances, Rejholec voluntarily confessed. He did.

D. The circuit court was correct. Under the totality of the circumstances, Rejholec's confession was not coerced, it was voluntary.

Rejholec argues that under the totality of the circumstances, his confession was coerced. (Rejholec's Br. 30–38.) The trial court disagreed, and this Court should affirm.

First, to avoid redundancy, and because the test is totality of the circumstances, the State incorporates its

arguments in Subsection B., "Edson's Interrogation of Rejholec was not coercive," and Subsection C., "*Miranda* was not undermined."

Second, the trial court properly looked at the totality of the circumstances and Rejholec's personal characteristics (R. 103:3) when it concluded that Rejholec's statements were not coerced. *See State v. Knapp*, 2003 WI 121, 265 Wis. 2d 278, 666 N.W.2d 881. The court found that Edson "spoke very casually." (R. 103:3.) Rejholec "didn't appear fearful or sleepy. He felt comfortable asking for a bathroom break, which he was given." (*Id.*) Rejholec appeared "to be intelligent." (*Id.*) "[H]e didn't seem confused or intimidated by the process." (*Id.*) The court found that "[t]his wasn't a situation like you see on TV with the good cop/bad cop. There were no threats made." (R. 103:3–4.) Edson was "soft-spoken," both Edson and Rejholec were seated during the interview, Rejholec was not in handcuffs, and "[t]here were no threats made or offers or promises other than if [Rejholec] told the truth [Edson] would convey that." (R. 103:4–5.) While Edson did "pressure [Rejholec] to be honest," he did not do it in a way that "rises to the level of overcoming [his] will." (R. 103:4.) Edson's strategy was not coercive. (*Id.*)

The audio recording (R. 113) supports these findings and the court's ultimate conclusion that Rejholec's confession was voluntary. Edson never yelled or drew his weapon. His questioning lasted only about an hour and a half, and Rejholec was allowed to go to the bathroom when he asked. Rejholec was a mature adult, at least in a chronological sense, and there is no evidence that his intelligence was below average. *See Frazier,* 394 U.S. at 739 (interrogator's lie that accomplice had already confessed, while "relevant," was insufficient to make defendant's otherwise voluntary confession inadmissible where "questioning was of short duration, and petitioner was a mature individual of normal intelligence").

While Rejholec asserts that he was both "unemployed and uneducated" (Rejholec's Br. 31), he cites to nothing in the record to support these two assertions. This is because the reverse is true. Rejholec attended and *graduated* from high school. (R. 59:13; 109:3; 30:3.) He was also *employed* at SEEK Services prior to his arrest. (*Id.*) So, when looking at Rejholec's individual characteristics, the Court cannot consider that he was "unemployed" and "uneducated" (Rejholec's Br. 31) because it's not true.[10]

While Rejholec also argues the Edson was "armed and imposing" (Rejholec's Br. 32), the trial court found that while Edson "did have a gun and a badge and a radio . . . they were all on his belt. They weren't prominent."[11] (R. 103:3.) This is confirmed by Edson's testimony: at no time did he display his gun. (R. 100:17–18, 23–24.)

Rejholec also argues that the interview room was "uncomfortable claustrophobia-inducing."[12] (Rejholec's Br. 32.) This was never argued to the trial court, either in Rejholec's motion or at the hearing, and so the court did not make a finding on this. (R. 30; 100.) Regardless, when asked at the motion hearing, "Is that a room that is used commonplace for these types of interviews?" Edson replied,

---

[10] Even trial counsel recognized this is his suppression motion: Edson "graduated from high school, he has no physical limitations and he has no diagnosed mental health issues." (R. 30:3.)

[11] The State is unable to verify this finding from the recording, because as previously stated the recording in the appellate record (R. 113) is audio only. As the appellant, Rejholec has the burden to make sure the record is complete. An appellate court will assume the missing material supports the circuit court ruling under attack. *See State v. Holmgren,* 229 Wis. 2d 358, 362 n.2, 599 N.W.2d 876 (Ct. App. 1999). Rejholec has not shown that this factual finding is clearly erroneous.

[12] *See* note 3, *supra*.

"Yes. There are four to five identical rooms in the booking area. And they are used to interview people that are in custody." (R. 100:16.)

But Rejholec invokes *Hoppe*, 261 Wis. 2d 294 (Rejholec's Br. 32, 37), to argue that Edson's tactics overcame Rejholec's "free and unrestrained will." But *Hoppe* is nothing like what we have here.[13] *Hoppe* addressed law enforcement's use of numerous coercive techniques with a demonstrably incapacitated suspect. *Id*. ¶¶ 47–49.[14] In this case, unlike

---

[13] The Massachusetts case that Rejholec cites, *Commonwealth v. Baye*, 967 N.E.2d 1120 (Mass. 2012) (*see* Rejholec's Br. 37– 38), is also not on point, and is distinguished in Subsection C., "*Miranda* was not undermined."

[14] The *State v. Hoppe* Court detailed the defendant's condition during the interviews:

> Hoppe was suffering from cognitive impairment associated with his chronic alcoholism. He had deficits in his short-term memory and impairment of his reasoning and problem-solving abilities. He was hallucinating. He was confabulating, meaning that he was making up for his deficits by answering questions by stating what he thought sounded correct or reasonable. Hoppe had a tendency during the questioning to adopt, over time, the scenarios suggested by [police] during the course of the interviews. He had difficulty understanding the questions as evidenced by a need for repetition and long pauses between questions and answers. He demonstrated difficulty following simple directions. Hoppe had slurred speech and drifted off. During the second and third interviews, he was on a Librium protocol, which reportedly can cause confusion.
>
> Hoppe's physical state was affected by his alcoholism and his state of alcohol withdrawal. He was lethargic, dehydrated, had been vomiting, and suffered tremors. Upon admission to the hospital, his blood sugar was low and he needed oxygen. Dr. Hayes believed that Hoppe was not competent to consent to questioning and not competent to withdraw his consent. While Dr. Hayes' opinion in this regard is not a legal conclusion, it is a professional opinion

Hoppe, there is simply no evidence that Rejholec "was having significant mental and physical difficulties at the time of the interview." *Id.* ¶ 47.

E. If this Court concludes that the trial court erred in denying Rejholec's motion to suppress evidence, the remedy would be to remand for the trial court to enter an order granting suppression.

As argued above, the circuit court properly denied Rejholec's motion to suppress his confession. If this Court were to disagree, and reverse the circuit court's decision and judgment, the remedy would not be plea withdrawal, but only remand to the circuit court to enter an order granting either or both suppression motions.

Where a defendant pleads no contest following the denial of a motion to suppress, the test for harmless error on appeal is "whether there is a reasonable possibility that the erroneous admission of the disputed evidence contributed to the conviction." *See State v. Semrau*, 2000 WI 54, ¶ 22, 233 Wis. 2d 508, 608 N.W.2d 376. Put another way, the question is whether there is a "reasonable probability that, but for the trial court's failure to suppress the disputed evidence, [the defendant] would have refused to plead and would have insisted on going to trial." *Id.* ¶ 26.

Rejholec asserts that "had the court properly granted the suppression motion Mr. Rejholec would have gone to trial to vindicate his *professed innocence*." (Rejholec's Br. 39) emphasis added).) But this is not a case of a false confession. That concern is not present here. Rejholec confessed his

---

> that is relevant to the analysis of whether Hoppe's statements were the product of a free and unconstrained will, reflecting deliberateness of choice

2003 WI 43, ¶¶ 48–49, 261 Wis. 2d 294, 661 N.W.2d407. Rejholec is no Hoppe.

sexual assaults not only to Officer Edson, but he also confessed—in what cannot be claimed to be under "coercive circumstances"—to the sentencing court:

> I would like to -- everyone to know that I'm truly sorry for what happened between [Natalie] and I. I know that I'm the adult, and I now -- I understand that I should have, shouldn't have allowed this to happen. This does not take away at all my responsibility for what I did to [Natalie] and that I will fully understand I need to be held accountable and punished.

(R. 106:21.) Second, there is not a reasonable probability that Rejholec would not have pled guilty because he received the benefit of a plea deal that resulted in the dismissal of two counts. (R. 53:2; 106:17.) Finally, Rejholec has not developed an argument on appeal that he is entitled to withdraw his no contest plea.

Rather, if this Court concludes that the circuit court erred when it denied Rejholec's motion to suppress evidence, the remedy is to remand the case to the circuit court to enter an order granting the motion to suppress evidence. The circuit court may then entertain a motion from Rejholec to withdraw his guilty plea. The circuit court should grant plea withdrawal only if the State cannot meet its burden of demonstrating that the circuit court's error in refusing to suppress error was harmless, guided by the factors this Court identified in *Semrau*, 233 Wis. 2d 508, ¶ 22. This Court should decide the suppression question only and leave the matter of plea withdrawal to the circuit court on remand, if necessary.

CONCLUSION

This Court should affirm the judgment of conviction and order denying postconviction relief.

Dated this 17th day of September 2020.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

s/ Sara Lynn Shaeffer
SARA LYNN SHAEFFER
Assistant Attorney General
State Bar #1087785

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-5366
(608) 294-2907 (Fax)
shaeffersl@doj.state.wi.us

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 7,433 words.

Dated this 17th day of September 2020.

Electronically signed by:

s/ Sara Lynn Shaeffer
SARA LYNN SHAEFFER

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

I further certify that:

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

Dated this 17th day of September 2020.

Electronically signed by:

s/ Sara Lynn Shaeffer
SARA LYNN SHAEFFER