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SUPREME COURT OF LOUISIANA

No. 2019-KK-1481

STATE OF LOUISIANA

VERSUS

RICHARD MICHAEL DEIDRICH

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, FIRST CIRCUIT, PARISH OF ST. TAMMANY

PER CURIAM

Writ granted. Before a confession or inculpatory statement made during a custodial interrogation may be introduced into evidence, the State must prove beyond a reasonable doubt that the defendant was first advised of his *Miranda* rights, that he voluntarily, knowingly and intelligently waived those rights, and that the statement was made freely and voluntarily and not under the influence of fear, intimidation, menaces, threats, inducement, or promises. La. Code Crim. Proc. art. 703(D); La. R.S. 15:451; *State v. Hunt*, 2009-1589, p. 11 (La. 12/1/09), 255 So. 3d 746, 754; *State v. Green*, 94–0887 (La. 5/22/95), 655 So.2d 272.

Regarding the knowing and intelligent waiver of a defendant’s *Miranda* rights, this Court has stated:

> In *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), *re'hg denied*, 385 U.S. 890, 87 S.Ct. 11, 17 L.Ed.2d 121 (1966), the United States Supreme Court declared that a condition precedent to obtaining a statement admissible in court from a suspect in police custody is that the suspect be informed that he has the right to remain silent and to consult with an attorney. *Miranda* also made it clear that for such a statement to be admissible it must be made with a knowing and intelligent waiver of those rights. *Miranda, supra*, at 475, 86 S.Ct. at 1602. In other words, for a statement which is the product of custodial interrogation to be entered into evidence against a criminal defendant, at the time the statement is made the defendant must understand that he is entitled to certain protections under the law and nevertheless decide to speak.
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> Even when a defendant has not expressly invoked his rights under *Miranda*, “[t]he courts must presume that a defendant did not waive his rights.” *North Carolina v. Butler*, 441 U.S. 369, 373, 99 S.Ct.

> 1755, 1757, 60 L.Ed. 2d 286 (1979). Furthermore, it is well-settled that a "heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." *Tague v. Louisiana*, 444 U.S. 469, 470, 100 S.Ct. 652, 653, 62 L.Ed. 2d 622 (1980). When, as in this case, a defendant has expressly waived his *Miranda* rights, the question becomes "whether the purported waiver was knowing and intelligent ... under the totality of the circumstances." [*State v.*] *Abadie, supra*, 612 So.2d at 5 [(La.1993)], *quoting Oregon v. Bradshaw*, 462 U.S. 1039, 1044–46, 103 S.Ct. 2830, 2834, 77 L.Ed.2d 405 (1983). This "totality of the circumstances" includes "the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused." *Solem v. Stumes*, 465 U.S. 638, 647, 104 S.Ct. 1338, 1344, 79 L.Ed.2d 579 (1984), *quoting Butler, supra*, 441 U.S. at 374–375, 99 S.Ct. at 1757–1759. *See also State v. Wilson*, 467 So.2d 503 (La.1985), *cert. denied*, 474 U.S. 911, 106 S.Ct. 281, 88 L.Ed.2d 246 (1985); *re'hg denied*, 474 U.S. 1027, 106 S.Ct. 585, 88 L.Ed.2d 567 (1985) (diminished intellectual capacity of defendant only a factor to be considered in determining whether *Miranda* waiver knowing and intelligent).

Green, 94-0887, pp. 9-11, 655 So. 2d at 280. Moderate mental retardation and low intelligence or illiteracy do not of themselves vitiate the ability to knowingly and intelligently waive constitutional rights and make a free and voluntary confession. *State v. Brown*, 414 So. 2d 689 (La. 1982). *See also State v. Tart*, 93–0772 (La. 2/9/96), 672 So.2d 116, *cert. denied*, 519 U.S. 934, 117 S.Ct. 310, 136 L.Ed.2d 227 (1996); *State v. Benoit*, 440 So.2d 129 (La.1983). The critical question is whether or not the defendant has the capacity to understand his constitutional rights and voluntarily, knowingly and intelligently waive them.

The admissibility of a confession is a question for the trial court. *Hunt*, 2009-1589, at 11, 255 So. 3d at 754. The trial court's conclusions on the credibility and weight of the testimony relating to the voluntary nature of the defendant's confession are accorded great weight and will not be disturbed unless they are not supported by reliable evidence. *State v. Brooks*, 92-3331, p. 11, 648 So.2d 366, 372 (La. 1/17/95); *State v. Nuccio*, 454 So.2d 93, 100 (La.1984); *State v. Benoit*, 440 So.2d 129, 131 (La.1983).

At the time of his custodial interrogation, the defendant was a 17-year-old, special education student, with no prior experience with law enforcement or the criminal justice system. The defendant moved to suppress the confession he made during the videotaped interrogation on the basis that his intellectual impairment rendered him incapable of understanding his constitutional rights, or making a voluntary, intelligent, and knowing waiver of those rights.

To support his motion to suppress, the defendant offered the testimony Peter Clark, Ph.D., an expert in child and adolescent psychology. Dr. Clark testified at the suppression hearing that he examined the defendant to determine whether or not the defendant had the mental ability to understand and waive his *Miranda* rights. After conducting a series of tests to assess intellectual aptitude, Dr. Clark determined the defendant has an IQ of 80, which is between low average and borderline mentally deficient. He opined that although the defendant was 17 years and 2 months of age at the time of testing, he actually has a mental age of 12 or 13 and performs at a 6th grade level. Based on the test results and his observations, Dr. Clark determined the defendant has intellectual developmental disorder and neurodevelopmental disorder recognized in the diagnostic and statistical manual of mental disorders (DSM-V) that is characterized by deficits in general intellectual functioning such as reasoning, planning, judgment, abstract thinking, academic learning, and experiential learning. Most significantly, Dr. Clark opined that although the defendant likely understood most of the words on the waiver of rights form, given his intellectual limitations, he could not fully understand the significance and implications of the *Miranda* warnings and their waiver. In addition to Dr. Clark's testimony and expert report, the defendant offered into evidence his special education record from the St. Tammany Parish school system.

The State offered no expert witness to refute Dr. Clark's testimony. Rather, to satisfy its burden of proving the defendant understood his constitutional rights and

knowingly, intelligently, and voluntarily waived them, the State offered the testimony of Lieutenant Covert, the police interrogator; the videotaped interrogation; the waiver of rights form signed by the defendant; and an audio recording of a telephone call the defendant made from the St. Tammany Parish jail, wherein he admits to his father that the detective read him his rights.

In reasons for judgment, the trial court noted that it considered all the evidence in granting the defendant's motion to suppress and concluded, "[t]he defendant was not capable of making a knowing and intelligent waiver of his *Miranda* rights. This court was persuaded by Dr. Clark's testimony and evaluation as to the mental diagnosis of the defendant's mental capabilities; and the belief that clinical assessments are best left to professional clinicians rather than lay people." We cannot say the trial court abused its discretion in suppressing the custodial confession, as there is ample evidence to support its finding that the defendant was incapable of making a knowing and intelligent waiver of his *Miranda* rights. Thus, we conclude the court of appeal erred in reversing the trial court's granting of the motion to suppress.

Accordingly, the judgment of the court of appeal is reversed and vacated, and the judgment of the trial court granting the defendant's motion to suppress the confession is reinstated.