Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **13th day of May, 2021** are as follows:

PER CURIAM:

2020-KK-00671 *STATE OF LOUISIANA VS. BYRIELLE HEBERT (Parish of Orleans Criminal)*

REVERSED AND REMANDED. SEE PER CURIAM.

Hughes, J., dissents for the reasons assigned by Justice Crain.

Crain, J., dissents and assigns reasons.

05/13/21

SUPREME COURT OF LOUISIANA

No. 2020-KK-00671

STATE OF LOUISIANA

versus

BYRIELLE HEBERT

ON SUPERVISORY WRIT TO THE CRIMINAL DISTRICT COURT, PARISH OF ORLEANS

PER CURIAM:

On May 8, 2019, two armed residents of New Orleans, Zelda and Danny Townsend, confronted a young Black male, later identified as Emanuel Pipkins, who was inside their vehicle. The Townsends blocked the suspect from leaving. As a gray Acura drove by, a male voice shouted "just shoot 'em," and Pipkins began shooting. The Townsends returned fire. Zelda Townsend died. Danny Townsend sustained a gunshot wound in an arm. Pipkins also sustained gunshot wounds but managed to flee. Pipkins later arrived at Tulane Medical Center with injuries to his back and foot. His girlfriend, defendant Byrielle Hebert, and his aunt accompanied him.

Police initially came into contact with defendant at Tulane Medical Center around 10:50 p.m., and they eventually transported her to NOPD homicide headquarters. She arrived at a holding room around 12:30 a.m. wearing handcuffs behind her back. A few minutes later, Detective Marylou Agustin entered the room. The detective released defendant's hands from behind her back but then handcuffed her left hand to a desk. Detective Agustin, who knew defendant from a prior investigation, asked defendant about her job and promised to come visit defendant at

work. She also informed defendant that, just like in the prior investigation, defendant could go home once she gave a statement.

Defendant was then left alone for approximately half an hour while handcuffed to the desk. Another officer entered the room around 1:00 a.m. and advised defendant that she was going to break her wrist if she kept pulling on the handcuffs and banging on the table. He informed defendant that if she escaped the handcuffs, she would be charged with a felony.

Detective Agustin entered the room again around 1:24 a.m. and spoke with defendant for about five minutes, during which time defendant said she did not want to talk to anyone at least six times. Detective Agustin repeatedly assured her that once she gave her statement, she would be taken home or to Tulane Medical Center to see Pipkins. Towards the end of this exchange, Detective Agustin made a final attempt at securing defendant's cooperation, and said "Ok… would you talk to me if, when I finish [some paperwork]?" after which defendant nodded her head in the affirmative. About an hour later, after defendant began banging on the desk and wall again, Detective Agustin returned. Defendant indicated that she was tired and ready to leave, and Detective Agustin apologized and said that it would be just five more minutes.

Eventually, at around 3:30 a.m., Detective Morton entered the interview room with Detective Agustin. Detective Agustin again reminded defendant the she was aware defendant did not want to be there, but that the sooner they get this over with, the sooner defendant could leave. Defendant, whose head was down on the desk, did not respond. Detective Morton then told defendant that she was "under investigation for the crime of second degree murder [and] the possibility of your participation in other crimes is also under investigation," and proceeded to read defendant her *Miranda* rights. Defendant verbally indicated that she understood, and then immediately

reiterated that she did not want to talk by stating, "Sir, I ain't got nothing to speak to y'all about."[1] Detective Morton again explained that she was under investigation and that this was her opportunity to tell them exactly how involved or how uninvolved she was. Defendant responded, "all I know is [Pipkins] was in the east and got shot."

Detective Morton then gave defendant a waiver of rights form and told her to sign it to indicate that she agreed to tell the detectives what she had just said. The detectives continued to interview defendant for approximately 30 minutes, during which time defendant ultimately admitted to being with Pipkins (and another male whom she claimed she did not know) in the gray Acura. She admitted that she witnessed the shootout with the Townsends. Defendant was placed under arrest at 5:05 a.m. pursuant to an open warrant and was not permitted to leave or visit Pipkins at Tulane Medical Center. The record is unclear with regard to when police discovered the open warrant.

The grand jury indicted defendant for first degree murder, attempted first degree murder, and other felony offenses. The trial court found her not competent to proceed to trial, and the court remanded her to the custody of the Department of Corrections to receive mental health treatment. After she was restored to competency, defendant filed a motion to suppress her pre-arrest statements, arguing that they flowed from an illegal arrest; they were made after she invoked her right to remain silent; she did not waive her *Miranda* rights; and her statements were made under duress and induced by false promises.

The trial court, although noting its reservations about the tactics used by the detectives, denied the motion because it found that defendant's eventual *Miranda* waiver was sufficiently attenuated from defendant's earlier invocations of her right to

[1] Detective Morton sought clarification, and defendant again stated, "I ain't got nothing to speak

remain silent. The court of appeal denied defendant's application for supervisory writs without substantive comment. *State v. Hebert*, 2020-0153 (La. App. 4 Cir. 5/6/20) (unpub'd). Judge Belsome dissented. Judge Belsome observed that defendant was in custody and handcuffed to a table for the duration of her time in pre-arrest custody, all while being promised she would be released in exchange for her statement. Judge Belsome therefore found that, although defendant was informed of and waived her *Miranda* rights, detectives had already coerced her cooperation before the waiver.

Defendant argues that her statements should be suppressed because they are the product of an illegal arrest, her invocation of her right to remain silent was not honored, and her statements were induced by false promises. The State responds that the arrest was valid based on the open attachment, and that the totality of the circumstances show that defendant's post-*Miranda* statements were made freely and voluntarily.

We first briefly address defendant's argument that her statements should be suppressed because they are the product of an illegal arrest in violation of the Fourth Amendment. The United States Supreme Court held in *Dunaway v. New York*, 442 U.S. 200, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979), and *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975), that statements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will. *See also Florida v. Royer*, 460 U.S. 491, 501, 103 S.Ct. 1319, 1326, 75 L.Ed.2d 229 (1983). Nonetheless, the discovery of the existence of an outstanding arrest warrant gives an officer probable cause to arrest, and may constitute an intervening circumstance, which may dissipate the taint caused by prior police misconduct. *State v. Hill*, 97-2551, p. 8

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to y'all about."

(La. 11/6/98), 725 So. 2d 1282, 1286. Here, while the record is unclear as to when the outstanding warrant was discovered, we believe it sufficed to dissipate any taint that may have been caused by defendant's prior detention and transportation from the hospital to the police station, where it is clear that she was restrained and not free to leave.

We now turn to defendant's contentions that her statements should be suppressed because her invocation of her right to remain silent was not scrupulously honored, and because her statements were induced by false promises in violation of the Fifth Amendment. The United States Supreme Court instructed in *Miranda v. Arizona*, 384 U.S. 436, 473–74, 86 S.Ct. 1602, 1627, 16 L.Ed.2d 694 (1966), "If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." In addition, that Court imposed the requirement that any exercise of the right to remain silent must be scrupulously honored. *Miranda*, 384 U.S. at 479, 86 S.Ct. at 1630; *see also Michigan v. Mosley*, 423 U.S. 96, 104, 96 S.Ct. 321, 326, 46 L.Ed.2d 313 (1975) ("We therefore conclude that the admissibility of statements obtained after the person in custody has decided to remain silent depends under *Miranda* on whether his 'right to cut off questioning' was 'scrupulously honored.'").

Here, even before she was read the *Miranda* rights, defendant repeatedly stated that she did not want to talk to police and that she wanted to leave. She told an officer or detective at least eleven times that she did not want to talk to anyone; and she repeated that several more times while she was left alone in the room. After Detective Morton eventually arrived and started the interview, beginning by reading defendant the *Miranda* rights, defendant confirmed that she understood her rights and told him again, "Sir, I ain't got nothing to speak to y'all about." In response to the detective's

request for clarification, she repeated herself, "I ain't got nothing to speak to y'all about." Detective Morton responded by immediately by telling her that she was under investigation for murder and informing her that this was her opportunity to tell police what she knew. Under these circumstances, it is difficult to conclude that defendant's attempts to exercise her right to remain silent were scrupulously honored as required.

In addition, the State has failed to carry its burden of proving that defendant's statements were not obtained by inducements or promises. "[B]efore 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 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." *State v. Hunt*, 09-1589, p. 11 (La. 12/1/09), 25 So.3d 746, 754; *see also State v. Glover*, 343 So.2d 118, 128 (La. 1976).

To be clear, *Miranda* holds that in order to waive the rights conveyed in the *Miranda* advisements, such waiver must be made voluntarily, knowingly and intelligently. *See also Moran v. Burbine*, 475 U.S. 412, 421; 106 S.Ct. 1135, 1140–41, 89 L.Ed.2d 410 (1986). Furthermore, this State mandates by statute that "[b]efore what purports to be a confession can be introduced in evidence, it must be affirmatively shown that it was free and voluntary, and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises." La. R.S. 15:451. If a confession is obtained as the result of promises or inducements, it is not admissible. *State v. Serrato*, 424 So.2d 214, 222 (La. 1982).

Here, defendant was told several times that if she gave a statement she could go home and/or visit her wounded boyfriend in the hospital (i.e. that she could leave).

Specifically, Detective Agustin told her this seven different times, beginning when she made contact with defendant in the interview room. Indeed, when defendant first indicated that she would talk by nodding her head in agreement, Detective Agustin had just promised her that she would be taken home or to the hospital once she gave a statement.

This court summarized the framework for evaluating the voluntariness of a confession in light of alleged improper inducements in *State v. Turner*, 16-1841 (La. 12/5/18), 263 So.3d 337:

> The analytical framework for evaluating the voluntariness of defendant's confession is well settled. The Supreme Court previously adhered to the view that any inducement "however slight" taints a confession. *Bram v. United States*, 168 U.S. 532, 542-43, 18 S.Ct. 183, 42 L.Ed. 568 (1897). However, under current standards, voluntariness is determined by the totality of the circumstances, with the ultimate focus on whether "the statement was the product of an essentially free and unconstrained choice or the result of an overborne will." *State v. Lewis*, 539 So.2d 1199, 1205 (La. 1989) (internal quotation marks and citation omitted). *See also Schneckloth v. Bustamonte*, 412 U.S. 218, 236, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973) ("In determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.").

State v. Turner, 16-1841, pp. 96–97, 263 So.3d at 399.

In *Turner*, the interrogating officer referred to himself as a "lifeline" for defendant. This court found that such a statement was not a promise of immunity from the death penalty. In looking at the totality of the circumstances, this court also found that it was not the death penalty that ultimately swayed Turner to confess—it was the fact that Turner was presented with increasingly incriminating evidence linking him to the two murders that ultimately broke his prior denials of any involvement.

Here, at the time defendant first began giving her statement, defendant had not been presented with increasingly incriminating facts. Defendant had been presented with very few facts, if any, at that point. Instead, the preceding circumstances were that

defendant had been handcuffed to a desk in a room at the police station in the middle of the night for several hours. Throughout that time, she had shouted, cried, and beat on the desk, repeatedly exclaiming that she did not want to talk to anyone and that she wanted to go home. She was promised that if she gave a statement, she could go home, and this promise was reiterated by Detective Agustin immediately before Detective Morton began the interview.

The State relies on cases that turn on a defendant's own subjective belief, without more, regarding release. For example, in *State v. Lilly*, 12-0008 (La. App. 1 Cir. 9/21/12), 111 So. 3d 45, *writ denied*, 12-2277 (La. 5/31/13), 118 So. 3d 386, a detective testified that he did not make any promises to the defendant and that the defendant may have subjectively believed his cooperation would lead to release. Likewise, in *State v. Gregory*, 05-628 (La. App. 5 Cir. 3/28/06), 927 So. 2d 479, a detective testified that he did not make any promises to defendant. In contrast, defendant here was repeatedly told she could go home once she gave a statement. Thus, the issue does not turn on defendant's subjective belief when the video clearly shows that defendant was promised that she would be able to leave once she gave a statement.

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). While the State asks us to view the *Miranda* waiver in a vacuum and ignore the preceding hours defendant spent handcuffed to a desk shouting that she did not want to talk to anyone, the jurisprudence makes clear that the validity of a waiver and the voluntariness of a statement must be analyzed under the totality of the circumstances. Under the totality of the circumstances

presented here, the State failed to carry its heavy burden in proving the voluntariness of the defendant's statements, which were induced by the promise of release.

Accordingly, we reverse the ruling of the court of appeal, and we vacate the trial court's ruling, which denied defendant's motion to suppress. We grant defendant's motion to suppress her statements, and we remand to the district court for further proceedings consistent with the views expressed herein.

REVERSED AND REMANDED

SUPREME COURT OF LOUISIANA

No. 2020-KK-00671

STATE OF LOUISIANA

VS.

BYRIELLE HEBERT

On Supervisory Writ to the Criminal District Court, Parish of Orleans Criminal

CRAIN, J., dissents and assigns reasons.

I believe the statement made by the defendant was voluntary. The circumstances of the interrogation did not render the statement involuntary, nor was the statement the result of an improper inducement or coercion. I additionally disagree that the defendant's right to remain silent was not scrupulously honored.

The test for voluntariness is whether the statement is the product of an essentially free and unconstrained choice by its maker. Voluntariness is assessed case-by-case under a totality of the circumstances standard. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); *State v. Manning*, 03-1982 (La. 10/19/04), 885 So. 2d 1044, *cert denied*, 544 U.S. 967, 125 S. Ct. 1745, 161 L. Ed. 2d 612 (2005). In *Schneckloth*, the United States Supreme Court discussed application of the totality of the circumstances standard:

> In determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation. Some of the factors taken into account have included the youth of the accused; his lack of education; or his low intelligence; the lack of any advice to the accused of his constitutional rights; the length of detention; the repeated and prolonged nature of the questioning; and the use of physical punishment such as the deprivation of food or sleep. In all of these cases, the Court determined the factual circumstances surrounding the confession, assessed the psychological impact on the accused, and evaluated the legal significance of how the accused reacted.

412 U.S. at 225–26, 93 S. Ct. at 2046–47 (citations omitted) (quoting *Culombe v. Connecticut,* 367 U.S. 568, 602, 81 S.Ct. 1860, 1879, 6 L.Ed.2d 1037 (1961)).

When deciding whether a confession is knowing and voluntary, inducement is merely one factor in the totality of the circumstances analysis. *State v. Blank*, 2004-0204, p. 10 (La. 4/11/07), 955 So. 2d 90, 103. In this case, with the exception of age, the *Schneckloth* factors (length of the custodial interrogation, environment, and treatment by the police) weigh against suppression.[1] The duration was five hours,[2] the defendant was allowed visits to the restroom, food, drink, and sleep,[3] and interaction with the police was benign and non-threatening. While the defendant was clearly in custody, being handcuffed, custody was justified by both her having obstructed justice (threw away the suspect's jacket) and an outstanding warrant.[4] Thus, the more vexing issue is whether the officers' suggestion that the defendant could go home or to the hospital once she made a statement was an improper inducement.

In *Bram v. United States,* 168 U.S. 532, 542-43, 18S.Ct. 183, 42 L.Ed. 568 (1897), the court declared a confession "obtained by any direct or implied promises, however slight," is not voluntary. While this language suggests all confessions

[1] Factual findings on motions to suppress are reviewed under an abuse of discretion standard of review. *State v. Wells*, 2008-2262 (La. 7/6/10), 45 So. 3d 577, 581. Because the trial court denied the motion to suppress on attenuation grounds and not upon a review of the totality of the circumstances, it made no factual findings relevant to the *Schneckloth* factors. Consequently, no deference is owed.

[2] In *State v. Platt*, 43,708 (La. App. 2 Cir. 12/3/08), 998 So. 2d 864, 870, *writ denied sub nom. State ex rel. Platt v. State*, 2009-0265 (La. 11/6/09), 21 So. 3d 305, the court found a five-hour interrogation did not render the confession involuntary.

[3] See *Blank, supra*, where the defendant was allowed food, drink, sleep, and bathroom visits, rendering the length of the interrogation permissible.

[4] See relatedly *Utah v. Strieff,* 136 S. Ct. 2056, 195 L. Ed. 2d 400 (2016), where the officer's discovery of a valid, pre-existing arrest warrant attenuated the connection between an unlawful stop and drug-related evidence seized from the defendant during a search incident to arrest, making the evidence admissible.

following a promise to the defendant are involuntary, in *Arizona v. Fulminante*, 499 U.S. 279, 285, 111 S. Ct. 1246, 1251, 113 L. Ed. 2d 302 (1991), the Supreme Court clarified that the *Bram* passage "does not state the standard for determining the voluntariness of a confession." Rather, the promise must be sufficiently compelling to overbear the suspect's will in light of all attendant circumstances. ("The question in each case is whether the defendant's will was overborne at the time he confessed." *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963)); *see also State v. Turner*, 2016-1841 (La. 12/5/18), 263 So. 3d 337.

Part of this determination is whether the police intended to elicit an admission. *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 1690, 64 L. Ed. 2d 297 (1980). "The state of mind of the defendant and the interrogating officer are highly relevant to resolution of the issue whether the inducement or promise was *calculated,* under the circumstances of the particular case, *to induce a confession.*" *State v. Harper*, 485 So.2d 224, 225 (La. App. 2d Cir.1986). [emphasis in original.]

Here, when the defendant was initially taken into custody, she was not a suspect in the homicide that had occurred just hours before. Rather, she was being held for questioning as part of an active investigation of that homicide. Viewed as a potential witness, Detective Agustin told the defendant she would be able to leave once her statement was obtained from the lead detective. Detective Agustin repeated this while waiting for the lead detective, Detective Morton, who was gathering information and following developments in the case. Detective Agustin's statements that she could leave once the lead detective got her statement were never "calculated" to elicit a confession.[5] In fact, Detective Agustin's statements were not even made during the interrogation, as no questions were asked.

[5] Moreover, when Detective Agustin asked the defendant if she would talk to her, she nodded affirmatively; accordingly, Detective Agustin did not overbear the defendant's will or coerce her to speak.

By the time Detective Morton started interrogating the defendant hours later, after more information was gathered, he explained she was then being investigated for homicide and *Mirandized* her. While he told her "the sooner we get this over, the sooner you can get out of here," he also stated, "you're under investigation for second degree murder. Now you can go sit in jail tonight, or you can . . . tell the truth about what happened." Detective Morton testified he did not promise the defendant anything for making a statement, and that his reference to her leaving after the interview meant she would leave to go to jail. The statement "you can go to jail tonight" corroborates this.

Nor was it reasonable for the defendant to subjectively believe she would be released, since she had been informed she was now a suspect for murder, had an open arrest warrant on an unrelated charge, and, in any event, was properly detained on probable cause for obstructing justice.[6] So, even if the defendant subjectively believed she could leave after her statement, that belief was not reasonable and does not render her statement involuntary. *See State v. Lilly*, 2012-0008 (La. App. 1 Cir. 9/21/12), 111 So. 3d 45, 56, *writ denied*, 2012-2277 (La. 5/31/13), 118 So. 3d 386.

Next, the majority finds the officers did not scrupulously honor the defendant's right to remain silent. I disagree. The defendant never expressed the desire to not talk *in response to questioning*. While she did tell police she did not want to talk during the early period of her custodial detainment, those comments were not part of her interrogation. No questions were asked before the 3:30 a.m. colloquy. Immediately before Detective Morton informed her she was under

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[6] "A mild exhortation to tell the truth, or a remark that if the defendant cooperates the officer will 'do what he can' or 'things will go easier,' will not negate the voluntary nature of a confession." *State v. Blank,* 955 So.2d at 108. Statements of this sort are not considered improper promises or inducements because they "are more likely musings not much beyond what this defendant might well have concluded for himself." *State v. Petterway,* 403 So.2d 1157, 1160 (La.1981). Here, the defendant, after being informed she was a suspect for murder, must have known any inculpatory statement she made would only secure her release from the interrogation room to jail. Thus, Detective Morton's remark to "get her out of here" was more likely a "musing not much beyond what [she] might well have concluded for [herself]." *Id.*

investigation for murder, the defendant said "I ain't got nothing to speak to y'all about." That statement did not clearly invoke the defendant's right to remain silent. Having nothing to say is not the same as expressing an unwillingness to speak. But, even if this statement did invoke her right to remain silent, Detective Morton's next statement only informed her of her status as a suspect and invited her to explain her involvement, if any, in the crime. She was read her *Miranda* rights and a waiver was signed. Only then did the defendant permissibly change her mind and make a statement. I do not believe this exchange dishonored her right to silence, induced a confession with an improper promise of release which overbore her will, or rendered her statement involuntary. I dissent.