

No. 1-12-1989

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10 CR 19462 01
)	
SON LE,)	Honorable
)	Noreen V. Love,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* The judgment of the trial court, denying the defendant's motion to suppress his statements made to police, was affirmed where the defendant made a knowing and intelligent waiver of his *Miranda* rights.

¶ 2 The defendant, Son Le, directly appeals from his burglary conviction (720 ILCS 5/19-1(a) (West 2006)), arguing that the trial court erred in denying his motion to suppress evidence. He contends that, because of his inability to speak English, he did not knowingly and

intelligently waive his *Miranda* rights when he made an inculpatory statement to the police. See *Miranda v. Arizona*, 384 U.S. 436 (1966). We affirm.

¶ 3 On November 2, 2010, a grand jury indicted the defendant on one count of burglary (720 ILCS 5/19-1(a) (West 2006)), alleging that, on October 7, 2010, he unlawfully entered a building in Cicero with the intent to commit a theft therein. On May 6, 2011, the defendant moved to suppress all statements which he made to the police after his arrest. In his motion, he alleged that the police interrogated him in English and without the aid of an interpreter. He claimed that, because Vietnamese was his primary language and he spoke limited English, he was unable to appreciate and understand the full meaning of his *Miranda* rights. Thus, the defendant argued that he did not knowingly and intelligently waive his *Miranda* rights.

¶ 4 On May 12, 2011, at a pretrial hearing on the defendant's motion to suppress, Cicero Police Officer Richard Robinson testified that he interviewed the defendant on October 7, 2010, without the aid of an interpreter, even though he knew the defendant's primary language was Vietnamese. He testified that he asked the defendant if he spoke English and the defendant told him that he understood spoken English, but that he could not write or read English. Officer Robinson testified that he read and explained, in English, each of the rights listed on a preprinted *Miranda* form to the defendant. After he read each right, Officer Robinson asked the defendant whether he understood the right, and the defendant responded that affirmatively after each one.

¶ 5 Officer Robinson stated that the defendant answered questions using English words, albeit "broken English," and he was able to provide details about the crime. According to Officer Robinson, the defendant never indicated that he did not understand the questions being asked of him or that he was unwilling to answer them. Regarding the preprinted *Miranda* form,

Officer Robinson signed the form, but he did not ask the defendant to sign it because he had already stated that he could not read or write in English.

¶ 6 Through the aid of a Vietnamese interpreter¹, the defendant testified that: his primary language was Vietnamese; he was born in Vietnam in 1972; he has lived in the United States since 1991; and he never attended school in either Vietnam or the United States. The defendant stated that he did not understand English well and that he did not “know any English words.” He testified that he has worked as a cleaning person since arriving in the United States and that there has always been someone on the job who translated for him. The defendant admitted that he obtained a driver's license in this country, but explained that he studied and took the test in Vietnamese.

¶ 7 After his arrest, the defendant testified that two police officers told him to "sign a paper." He told the officers that "I do not sign because I didn't do anything and I wait for a Vietnamese translator to come over to tell me what I commit before sign." He admitted that the officers showed him a video of the crime scene containing his image, but he was "sure that it was wrong, not [his] picture in the camera." The defendant specifically testified as follows:

"[DEFENDANT]: In the morning when two police officer told me—told me to sign a paper, and I said I do not sign because I didn't do anything and I wait for a Vietnamese translator to come over to tell me what I commit before sign. I saw my picture in the camera. I am sure that it was wrong, not my picture in the camera.

[STATE]: So the police officers told you they saw your picture in a video camera, right?

¹ An interpreter was used at all times throughout the defendant's proceedings.

[DEFENDANT]: Yeah. The police officer told me that my picture in the camera and I said I did not do it so I did not sign a paper and you want me to sign. I wait for it goes to the trial and there is a translator and over there and at least I know what I commit before I sign.

[STATE]: So is it your testimony you had no idea why the police-you were at the police department?

[DEFENDANT]: No. The police told me that I did something wrong. I said no. That is why I did not sign the paper."

¶ 8 The defendant testified that he did not know why the police had arrested him. However, when the State questioned the defendant as to whether he had interacted with the police before, he stated "Okay. Yeah. Before then, I hang around with some people so I did something wrong. But since [age] 22 in the year 2006, I know the law. I did not commit anything wrong." The State then impeached the defendant with evidence of his prior conviction for burglary in 2003.

¶ 9 The court denied the defendant's motion to suppress, finding that the defendant's ability to communicate with the police allowed him to make a knowing and intelligent waiver of his *Miranda* rights. While the court acknowledged that a person's education may play a big role in whether he can knowingly and intelligently waive his *Miranda* rights, it also noted that education was not a dispositive factor. Despite the defendant's lack of formal education, the court noted that he had been in this country for 20 years and had testified that he was able to tell the police that the video image of the scene was wrong and that the image was not of him. Further, the trial court found Officer Robinson's testimony credible as the court highlighted the fact that the officer testified that the defendant stated he could speak English; that he understood the rights as read to him in English; and that he answered questions in English, albeit broken English. The

court stated that "it was clear from the officer that yes, [the defendant's] English was broken, but, no, they did not have a problem communicating."

¶ 10 After the defendant's suppression motion was denied, the case proceeded to a jury trial in July 2011. However, the court declared a mistrial after the jury remained deadlocked despite several hours of deliberation. A second trial was conducted on April 24, 2012, and we summarize the evidence adduced at that trial as follows.

¶ 11 Arnie White, a security guard at Hawthorne Mall, testified that, in the early morning hours on October 7, 2010, he was patrolling the deserted strip mall, which included Pro Nails Salon. He testified that a dead-end alley was located behind the strip mall, created by the mall and a nearby movie theater. He stated that the alley could be accessed from the south or through one of the strip mall's rear doors. At around 5:00 a.m., White noticed an empty Ford SUV parked directly in front of the salon with its engine running and that the glass on Pro Nails' door had been broken at the bottom. While he did not notice anyone near the salon, White testified that he saw "stuff scattered all over the place" inside it. White testified that he called for backup, and Cicero police officers responded to the call. After the police arrived, White assisted them in the alley, flipping lids on the dumpsters. He stated that the defendant jumped out of the one of the dumpsters and started running away.

¶ 12 Officer Robinson testified that, upon his arrival, he ran the license plates of the Ford and determined that the car was registered to the defendant; he also called the salon owner to bring the keys to the front door. While Officer Robinson waited for the owner, Officer Baumgartner and Officer Pater² went to the back alley. Shortly thereafter, he received a radio call that the

² The first names of Officers Baumgartner and Pater are not contained in the record.

others were involved in a foot chase. After the owner arrived, Officer Robinson went to the back of the salon where the officers had detained the defendant.

¶ 13 Regarding the defendant's interrogation at the police station, Officer Robinson's testimony at trial remained nearly identical to his testimony at the suppression hearing. In sum, Officer Robinson testified that: the defendant told him that he understood spoken English but was unable to read or write in English; he read and explained to the defendant each of his *Miranda* rights from a preprinted form and the defendant acknowledged that he understood each right; he did not ask the defendant to sign the form because he could not read English; and, the defendant responded to all questions in English, never indicating that he did not understand them or that he did not want to answer them. According to Officer Robinson, he asked the defendant general questions about the salon and if he had been inside it to which the defendant told him that "he did a bad thing and that he had got into there but didn't take anything." Officer Robinson also stated that the defendant told him that he had broken into Pro Nails in order to steal money to pay the renewal fee for his expired license plate sticker.

¶ 14 Officer Robinson described the defendant's language as "broken English" and "choppy," but he thought the defendant understood his questions and stated that the defendant never requested an interpreter. Officer Robinson further testified that no fingerprints were taken from the scene and no security camera footage was ever recovered for trial because the film was damaged.

¶ 15 Officer Baumgartner testified that he and Officer Pater chased the defendant out of the alley and that, when they caught up to him, the defendant stated in English "I give up; I give up." Upon searching the defendant, he found \$90 in crumpled money in his pocket.

¶ 16 Lien Van, the manager of Pro Nails, testified that an estimated \$100 dollars had been left in the salon before the defendant was arrested.

¶ 17 The defendant did not present any evidence and elected not to testify.

¶ 18 On April 24, 2012, the jury found the defendant guilty of burglary. The defendant filed a motion for a new trial, which was denied. On May 31, 2012, he was sentenced to eight years' imprisonment and his motion to reconsider his sentence was denied the same day. The defendant timely appealed, arguing that his statements to police should have been suppressed because his minimal English skills prevented him from knowingly and intelligently waiving his *Miranda* rights.

¶ 19 *Miranda* provides that a suspect is constitutionally entitled to the assistance of counsel and to remain silent during a custodial interrogation. *Miranda*, 384 U.S. at 478–79. “Any statements obtained in derogation of those rights are inadmissible in a later criminal prosecution unless those rights were voluntarily, knowingly, and intelligently waived.” *People v. Goins*, 2013 IL App (1st) 113201, ¶ 48, 999 N.E.2d 18, *appeal pending* (Jan. 2014). A defendant validly waives his rights under *Miranda* when he (1) freely and deliberately (voluntarily) relinquishes the right and (2) is fully aware of both the nature of the right being abandoned and the consequences of the decision to do so. *Goins*, 2013 IL App (1st) 113201, ¶ 48; *People v. Bernasco*, 138 Ill. 2d 349, 354 (1990). At a hearing on a motion to suppress, the State has the burden of demonstrating, by a preponderance of the evidence, that the *Miranda* waiver was the product of (1) an uncoerced choice and (2) the requisite level of comprehension. *Goins*, 2013 IL App (1st) 113201, ¶ 48. Once the State has established its *prima facie* case, the burden shifts to defendant to show that his waiver was not knowing, intelligent or voluntary. *Id.*

¶ 20 Here, the defendant contends that his statements should have been suppressed where the evidence showed that, due to his limited English skills, he was unable to knowingly and intelligently waive his *Miranda* rights. The validity of a *Miranda* waiver is a question of fact to be determined in light of the totality of the circumstances. *People v. Brown*, 2012 IL App (1st) 091940, 967 N.E.2d 1004, ¶ 25. The crucial test used to determine whether a defendant knowingly and intelligently waived his *Miranda* rights is whether the words used, considering the defendant's age, background and intelligence, imparted a clear, understandable warning of all of his right. *Id.*

¶ 21 In reviewing a trial court's ruling on a motion to suppress evidence, we apply a bifurcated standard of review. *Goins*, 2013 IL App (1st) 113201, ¶ 47. Under this standard, the ultimate question of whether the defendant's statement was voluntary is reviewed *de novo*, but the question of whether the defendant knowingly and intelligently waived the *Miranda* rights is factual in nature and reviewed under a manifest-weight-of-the-evidence standard. *Id.* “This is true because the trial court is in the superior ‘position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony.’ ” *Id.* (quoting *People v. Pitman*, 211 Ill. 2d 502, 512, 813 N.E.2d 93 (2004)). A finding is against the manifest weight of the evidence “only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *Id.* (quoting *People v. Deleon*, 227 Ill.2d 322, 332, 882 N.E.2d 999 (2008)). Here, we do not find that the trial court's factual finding, that Officer Robinson's testimony that the defendant understood English well enough to provide a knowing and intelligent waiver of his *Miranda* rights was credible, is against the manifest weight of the evidence.

¶ 22 In *In Interest of J.S.*, the respondent, who was a 14-year old Hispanic, was taken into police custody after an informant implicated him in the murder of a robbery victim. *In re J.S.*, 121 Ill. App. 3d 927, 929 (1984). The respondent moved to suppress statements he made to the police, arguing that he did not knowingly and intelligently waive his *Miranda* rights because of his age and inability to comprehend the English language. *Id* at 29. In support of its case, the State presented evidence that the respondent understood his *Miranda* warnings because: he never requested an interpreter; spoke only English to the arresting officer, his youth officer, and the Assistant State’s Attorney; repeatedly stated to the officers that he understood the *Miranda* warnings; and, read and initialed a transcript of his statement to police. *J.S.*, 121 Ill. App. 3d at 930-32. The respondent’s evidence included the testimony of his psychiatrist, who concluded that he could not speak clear English; the testimony of two former schoolteachers and his former guidance counselor, who testified that he had grade-school reading abilities and was in category “B” bilingual education; and his testimony in which he admitted previously taking a number translation test and scoring 90%. *Id* at 931-32. The trial court denied the respondent’s motion, finding that there was no evidence that his statement was coerced and finding the evidence, including his courtroom interactions and his performance on the translation test, established his comprehension of the English language. *Id.* at 932.

¶ 23 The appellate court in *J.S.* affirmed, noting that the respondent’s witnesses had not had contact with him before his commitment to the Juvenile Detention Center and his guidance counselor never had any personal contact with him. *Id.* at 935. The court further stated that the trial court, “having observed the witnesses, their demeanor, candor and sincerity while testifying in court, [was] in a far better position than the [it] to weigh that evidence in the determination of respondent’s ability to comprehend the English language.” *Id.* Therefore, the court found that

the trial court's factual findings, that the respondent's evidence was not credible and that he provided a knowing and intelligent waiver, were not against the manifest weight of the evidence.

Id. at 935-36.

¶ 24 In *People v. Calvillo*, 170 Ill. App. 3d 1070, 1073-74 (1988), the police gave the defendant his *Miranda* warnings in both English and Spanish. The defendant argued in his suppression motion that his waiver was invalid because he was given the warnings after a night of extensive interrogations in jail and because he was not given the warnings in Spanish until after he made his statement to the police. *Id.* at 1081. The appellate court found that the trial court's findings were not against the manifest weight of the evidence as the record showed that the police advised the defendant of his *Miranda* rights immediately after his arrest and before any questioning the next day. *Id.* The court further noted that the police officers and the prosecutor testified that the defendant acknowledged that he understood the rights as given to him in English, but even so, the fact that they had also provided him his rights in Spanish did not "require the conclusion that they knew he did not understand English and wanted to ensure the propriety of their interrogation after the fact." *Id.*

¶ 25 Like the defendant in *J.S.*, the defendant in this case never requested an interpreter, spoke in English during his interrogation, and stated to officers that he understood the *Miranda* rights which were read and explained to him by Officer Robinson. While the defendant testified to the opposite of Officer Robinson, stating he told the officer that he did nothing wrong and wanted to wait for an interpreter because he did not understand English, the trial court found the testimony of Officer Robinson credible. As stated, we defer to trial court's factual findings as it is in the best position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony. Further, like in *Calvillo*, the fact that the

defendant had enjoyed the aid of an interpreter during his court proceedings does not require the conclusion that he did not understand his rights as read to him in English. Therefore, based on the evidence presented in this matter, we cannot find that the trial court's factual findings are against the manifest weight of the evidence.

¶ 26 In so holding, we reject the defendant's reliance upon three cases, *People v. Bernasco*, 138 Ill. 2d 349 (1990), *People v. Higgins*, 239 Ill App. 3d 260 (1993), and *People v. Araiza*, 19 Ill. App. 3d 52 (Ill. App. Ct. 3d Dist. 1974), as they are factually distinguishable from the facts of this case.

¶ 27 In *Bernasco*, the trial court suppressed the defendant's confession in light of significant evidence of his subnormal intelligence, which prevented him from knowingly and intelligently waiving his *Miranda* rights. *People v. Bernasco*, 185 Ill. App. 3d 480, 485 (1989). That evidence included the testimony of: the defendant's psychologist, who stated the defendant had an IQ around 80 and the reading comprehension skills of a beginning fourth grader; his father, who stated that the defendant had dropped out of school in the ninth grade and never had any interaction with the police before; the defendant's testimony that he had substantial difficulty understanding routine questions and simple concepts in English as he could only comprehend single words. *Bernasco*, 185 Ill. App. 3d at 483-86. Here, the defendant did not present any expert testimony regarding his language skills or any other evidence refuting the State's *prima facie* case that his waiver was a knowing and intelligent one. Rather, only the defendant's testimony was submitted to rebut the State's case, and the trial court found he lacked credibility. Accordingly, we do not find the outcome in *Bernasco* binding under the facts of this case.

¶ 28 Similar to *Bernasco*, in *Higgins*, the trial court suppressed the confession of a 17-year-old defendant who had an IQ of 67. *People v. Higgins*, 239 Ill. App. 3d 260, 261 (1993). The

appellate court deferred to the trial court's conclusion that the defendant did not intelligently and knowingly waive his rights based on the testimony of: two psychologists, who stated that the defendant would have difficulty understanding a rote reading of his *Miranda* rights, and that many of the words therein were beyond his comprehension; two police officers who testified that they gave the defendant his *Miranda* rights but did not simplify or explain the rights; and the defendant, who unsuccessfully attempted to read the *Miranda* rights form to the court. *Higgins*, 239 Ill. App. 3d at 269-71. Additionally, the defendant presented evidence that, although he had previous encounters with the police, he had not been given his *Miranda* rights on those occasions. *Id.* Here, although the defendant had previous encounters with the police, no evidence was submitted by either party to indicate whether he was given his *Miranda* rights on those occasions. Further, unlike in *Higgins*, there was no expert testimony admitted regarding the defendant's language skills, and Officer Robinson testified that he had explained each right to the defendant. Accordingly, we do not find *Higgins* persuasive where the facts of this case are distinguishable.

¶ 29 Finally, the defendant relies on *People v. Araiza*, where the trial court suppressed the defendant's confession because he was intoxicated, had not slept, could not speak any English, and the interpreter used by the police was not a professional one. See *People v. Araiza*, 19 Ill. App. 3d 52, 54-55 (1974). The appellate court affirmed, finding the evidence was undisputed and ample to support the trial court's findings. *Id.* at 55. Here, the evidence of the defendant's English skills was not undisputed, and therefore, we do not find the holding of *Araiza* controlling under the facts of this case.

¶ 30 Based on the foregoing reasons, we affirm the judgment of the circuit court of Cook County which denied the defendant's motion to suppress the statements he made to the police after he knowingly and intelligently waived his *Miranda* rights.

¶ 31 Affirmed.