2016 IL App (5th) 140134-U

NO. 5-14-0134

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Perry County.
	)	
v.	)	No. 12-CF-134
	)	
TREVON L. JONES,	)	Honorable
	)	James W. Campanella,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's denial of the defendant's motion to suppress is affirmed where the court's finding that the defendant's waiver of his *Miranda* rights was knowingly and intelligently made was not against the manifest weight of the evidence.

¶ 2 The defendant, Trevon Jones, was charged with three counts of aggravated criminal sexual assault and one count of criminal sexual assault. Prior to the trial, the defendant filed a motion to suppress statements he made during an interview conducted by the police. The trial court denied this motion following a hearing. At the stipulated bench trial, the defendant was found guilty of one count of aggravated criminal sexual assault. Thereafter, the court sentenced him to 10 years' imprisonment. On appeal, the

defendant argues that the trial court erred in denying his motion to suppress. For the reasons which follow, we affirm the order of the circuit court.

¶ 3 In October 2012, the defendant was charged with three counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2) (West 2012)) and one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2012)). On September 4, 2013, the defendant filed by counsel a motion to suppress statements made during a police interview, alleging that his waiver of his *Miranda* rights was involuntary where, *inter alia*, he did not fully understand his rights due to his limited mental and intellectual capacity and his age. He was 17 years old at the time of the interview. During the interview, the defendant initially denied that any sexual activity occurred with the alleged victim, but, later in the interview, stated that they had consensual sexual intercourse.

¶ 4 On October 16, 2013, the trial court held a hearing on the motion to suppress the defendant's statements. Jamie Ellermeyer, chief of police for the DuQuoin police department, testified that he conducted the defendant's interview along with officer Terry Prince, Jr. The interview took place at 9:56 a.m. on October 6, 2012, less than one hour after the defendant's arrest. The interview lasted approximately 10 to 15 minutes, and it was not recorded. Chief Ellermeyer revealed that the defendant had attempted to talk with him about the incident before his *Miranda* rights were given, and Chief Ellermeyer had to interrupt.

¶ 5 Prior to questioning, Chief Ellermeyer read the defendant his *Miranda* rights and gave the defendant the rights in written form. The defendant did not ask for any additional explanation regarding these rights nor did he give any indication that he did

not understand his rights. After he was given his *Miranda* rights, the defendant was asked whether he wanted to talk. He responded that he "wanted to tell his side of the story and sign the *Miranda* waiver." The defendant signed the waiver and the interview commenced. Chief Ellermeyer opined that the interview was calm and nonconfrontational. There was no coercion or physical or mental abuse. Chief Ellermeyer observed that the defendant appeared awake, alert, and able to communicate. It appeared that the defendant understood what was taking place. Chief Ellermeyer did not notice any indication of impairment, and the defendant did not appear to be under the influence of alcohol or other substance. The defendant was not physically restrained during the interview. Chief Ellermeyer was aware that the defendant had prior contact with the police department in connection with an arrest for aggravated battery and unlawful consumption, and Chief Ellermeyer had reviewed those files.

¶ 6 Chief Ellermeyer was aware that the defendant was 17 years old at the time of the interview. He did not question the defendant about his schooling or whether the defendant was in special education classes. He was aware that the defendant's mother was at the police station before the interview began, but noted that the defendant did not make any request to speak with her or any other person. Chief Ellermeyer stated as follows with regard to his observations of the defendant during the interview: "He seemed fine to me. We sat and talked and he had answers and he had *** a story to tell and he told the story and then he told a different story and he was no different than talking to anybody else on a normal basis."

¶ 7 Terry Prince, Jr., an officer with the DuQuoin police department, testified that he had transported the defendant to the police station and was present during the interview. He knew that the defendant was 17 years old at that time. Officer Prince observed Chief Ellermeyer read the defendant's *Miranda* rights to him before the interview began. He also witnessed the defendant sign the *Miranda* waiver form after indicating that he understood his rights. Officer Prince observed that the defendant appeared alert and did not have any problems communicating to the officers. He appeared to understand what was taking place and did not ask for any further clarification after being read his *Miranda* rights. Neither he nor Chief Ellermeyer asked the defendant about his schooling or special education classes. The defendant's mother was present at the police station during the interview, but she did not ask Officer Prince to see her son. The defendant also did not ask to speak with his mother during the course of the interview. Officer Prince had prior contact with the defendant as he had been arrested for aggravated battery and unlawful consumption a few months before the interview.

¶ 8 Marci Shaffer, a school psychologist for Tri-County Special Education Cooperative, testified that the defendant had participated in their special education program since kindergarten. In her employment capacity, she had given the defendant IQ tests at various times in the program, the most recent occurring in 2006 when the defendant was approximately 11 years old. She testified that the defendant tested below average for visual-spatial skills and working memory. She explained that the defendant's visual-spatial abilities in the academic arena made it difficult for him to do math. She also explained that the defendant showed a lack of flexibility in his thought process,

making it difficult for him to change his thought process once he attempted to problem solve in a particular way. She indicated that a person with low average working memory had difficulty with holding "information in [his] head long enough to do something with it and then give an answer."

¶ 9 The defendant's ability to process and comprehend information was "quite a bit lower" than the average person, thus making it difficult for him to comprehend information that had been presented to him. She revealed that his overall IQ was 83 and his verbal IQ was 85. An IQ of 85 is considered low average. Although she had not evaluated the defendant in six years, she opined that the defendant's present-day IQ was likely to be lower. She testified that the defendant read at a sixth-grade level at that time.

¶ 10 Furthermore, Shaffer analyzed the *Miranda* waiver form and discussed the difficulty that the defendant would have understanding the form. In particular, she identified words used as well as particular rights that the defendant would have difficulty understanding as they were written. She specifically noted that the defendant would have difficulty with the compound sentences used on the waiver form. She opined that in order for the defendant to comprehend the waiver form, he would need to be pre-taught vocabulary words from the *Miranda* waiver form and asked to restate and rephrase each *Miranda* right. She explained that he would need a day of this individualized, strategic teaching to comprehend the waiver. She opined that a simple reading of the waiver form verbatim would not be sufficient for the defendant to understand it. She acknowledged that the defendant was more likely to understand something that was read to him as opposed to something that he had to read himself. She also acknowledged that his ability

to understand or comprehend the waiver form would be greater if he had previously been exposed to the same concepts. However, she opined that it would not matter how many times the defendant was read a document if he did not understand the vocabulary that was used.

¶ 11 Diane Jones, the defendant's mother, testified that she went to the police station the morning of the defendant's arrest. According to Jones, she asked both Officer Prince and Chief Ellermeyer if she could see her son but was not allowed to speak with him. She described the defendant as quiet and explained that if he did not understand something, he would not express his confusion. Instead, he would try to figure it out for himself.

¶ 12 Following the testimony, the trial court noted that the defendant was not a minor for the purpose of criminal charges. The court acknowledged that the defendant was below average intelligence, but explained that this did not automatically mean that he did not freely, voluntarily, and intelligently waive his *Miranda* rights. The court opined that the defendant did "have difficulty processing information," has "low potential to solve problems," and "has considerably lower mental skills." The court acknowledged Shaffer's testimony that the defendant may not have completely comprehended the waiver, but noted that it was her opinion, which was based on one reading of the *Miranda* waiver form.

¶ 13 In addition, the trial court specifically noted the following concerning the circumstances of the actual interview: the officers testified that the defendant was alert, awake, and aware; the interview atmosphere was calm and the officers were

nonconfrontational; there was no evidence of any promises of leniency or coercion; the defendant was not physically restrained; the defendant did not request an attorney or his parents; and the interview lasted, at the maximum, approximately 15 minutes. Moreover, the court stated as follows with regard to the defendant's criminal history:

> "Not the defendant's first rodeo. *** There is eight entries, seven because one was refiled but since 2008 [the defendant] has been exposed to criminal procedure for battery, disorderly conduct, trespass to land, disorderly conduct, aggravated battery with great bodily harm, and unlawful consumption of alcohol, now of course aggravated criminal sexual assault. I will hazard a guess that none of those included *Miranda* warnings. That I will grant you. But I don't know that they didn't include a lot of court procedure because I do know I have dealt with [the defendant] on more than one occasion."

¶ 14 Furthermore, the trial court placed "some emphasis" on Chief Ellermeyer's uncontroverted testimony that he had to interrupt the defendant to keep him from talking before the *Miranda* rights were given. Although the court noted that the officers "could always do more" when conducting an interview, it found that, in this case, the defendant's statement was voluntary. Thus, the court denied the motion to suppress.

¶ 15 Following the trial court's denial of the motion to suppress, the defendant agreed to a stipulated bench trial. The court found the defendant guilty of one count of aggravated criminal sexual assault and sentenced him to 10 years' imprisonment to be followed by 3 years to life of mandatory supervised release (MSR). The defendant appeals the court's denial of his motion to suppress.

¶ 16 The sole issue on appeal is whether the defendant knowingly and intelligently waived his *Miranda* rights. In reviewing a circuit court's ruling on a motion to suppress evidence, including statements, we apply a two-part standard of review. *People v. Goins*, 2013 IL App (1st) 113201, ¶ 47. Under this standard, the reviewing court reviews *de novo* the circuit court's ultimate legal ruling as to whether the suppression is warranted. *Id.* In contrast, a circuit court's findings of fact and credibility determinations are accorded great deference and will be reversed only if they are against the manifest weight of the evidence. *Id.* The reason is because the circuit court is in a better position to determine and weigh the credibility of the witnesses, observe their demeanor, and resolve conflicts in the testimony. *Id.* A finding is against the manifest weight of the evidence where the opposite conclusion is clearly evident or the finding itself is unreasonable, arbitrary, or not based on the evidence presented. *Id.*

¶ 17 In order for a defendant's confession to be admitted at trial, the State has the burden of proving, by a preponderance of evidence, that the *Miranda* waiver was the product of an uncoerced choice and the requisite level of comprehension. *Id.* ¶ 48. A valid *Miranda* waiver must be knowing and intelligent, which means that the waiver must reflect an intentional relinquishment or abandonment of a known right or privilege. *In re J.M.*, 2014 IL App (5th) 120196, ¶ 24. The critical test is whether the words in the context used, considering the age, background, and intelligence of the individual being interrogated, conveyed a clear and understandable warning of all of the individual's rights. *Id.* ¶ 25.

¶ 18 A defendant's limited intellectual capacity must be taken into consideration when determining whether a *Miranda* waiver is valid. *Goins*, 2013 IL App (1st) 113201, ¶ 49. However, evidence of the defendant's limited mental or intellectual capacity at the time that he made the statements is not sufficient, by itself, to render a statement inadmissible. *Id.* 50. Rather, it is only one of several factors to be considered in this regard. *Id.* The court must consider the totality of the circumstances, including the background, experience, and conduct of the accused, without any one circumstance or factor controlling. *Id.*; *People v. Jones*, 2014 IL App (1st) 120927, ¶ 49. "The defendant need not understand far-reaching legal and strategic effects of waiving his or her rights or appreciate how widely or deeply an interrogation may probe; instead, the defendant must, at a minimum, understand basically what those rights encompass and minimally what their waiver will entail." (Internal quotation marks omitted.) *Jones*, 2014 IL App (1st) 120927, ¶ 49. Whether a waiver is knowing and intelligent depends, in each case, on the particular facts and circumstances of that case. *People v. Brown*, 2012 IL App (1st) 091940, ¶ 40.

¶ 19 Turning to the facts of this case, the defendant primarily relies on the testimony of Shaffer, the school psychologist, to support his argument that his waiver of his *Miranda* rights was invalid. Shaffer testified that the defendant had participated in special education since he was in kindergarten and that his full-scale IQ at age 11 was 83, which was in the bottom 15% of the population, and that he read at a sixth-grade level. Based on her experience with the defendant, Shaffer had expressed concerns about his ability to understand the *Miranda* warnings that he was provided at the time of his statement. With

regard to the defendant's failure to express any lack of comprehension of the *Miranda* warnings to the officers, the defendant points to his mother's testimony that he would not express any lack of understanding and would instead attempt to figure it out for himself. Shaffer further testified that reading the *Miranda* form verbatim to the defendant, no matter how many times, would not help with his comprehension.

¶ 20 The State counters that the defendant's verbal IQ was 85, which is considered low average, and that the defendant was a senior in high school and would have graduated had he not committed the crime in question. With respect to Shaffer's testimony, the State counters that Shaffer had not seen the defendant in four years and had not evaluated him in six years. The State also noted that Shaffer did not know of the defendant's prior experience with criminal procedure and his previous contacts with law enforcement personnel. The State points out that the defendant had at least seven previous arrests, which the State asserts established the defendant's experience with the criminal justice system. The State further notes that the trial court was "well acquainted with [the] defendant," an observation that was apparent from the record when the trial court stated at the suppression hearing that it had "dealt with [the defendant] on more than one occasion."

¶ 21 As examples of the defendant's knowledge of the criminal justice system, the State points to several instances during the various hearings in this case where the defendant comprehended the concepts that the trial court was explaining to him. In particular, the State noted that the defendant explained the difference between concurrent and consecutive sentences to the trial court, was able to calculate how much time he

would serve for two consecutive sentences, and was able to correctly tell the trial court the least and most amount of time that he would receive if he was convicted on all four charges, including the length of his MSR. Further, in other hearings held in this particular case, the trial court revealed that it was aware that the defendant had participated in a special education program, but that he could read and write, an assertion that was agreed to by the defendant. During sentencing, the court remarked that it had never seen the defendant exhibit any traits that would make it doubt the defendant's fitness. Also, during this hearing, the defendant's counsel was questioned as to whether there was any question as to his client's fitness and counsel responded as follows: "There is no question in my mind that he exhibits a lot more than most of my clients."

¶ 22 The State also points to the circumstances of the actual interrogation in support of its position that the defendant's *Miranda* waiver was valid. The interview took place less than an hour after the defendant's arrest and it lasted approximately 10 to 15 minutes. The defendant was not shackled during the interview. The interviewing officer found talking to the defendant "no different than talking to anybody else on a normal basis," and the observing officer, who had prior contact with the defendant, had no problems communicating with him. Both officers testified that the defendant appeared to understand what was taking place and that he responded to their questions appropriately. The State also pointed to Shaffer's testimony that the defendant comprehended best when something was read to him and that the interviewing officer had read the defendant the *Miranda* rights. The interviewing officer also testified that the defendant attempted to

talk with him about the case before his *Miranda* rights were given, and the officer had to interrupt in order to read him his rights.

¶ 23 The defendant cites to numerous cases where an accused's *Miranda* waiver was deemed to be invalid because of the individual's limited mental or intellectual capacity. However, as we have previously noted, whether a waiver is knowing and intelligent depends, in each case, on the particular facts and circumstances of that case. See *Brown*, 2012 IL App (1st) 091940, ¶ 40 (when the question is whether a defendant has intelligently waived his *Miranda* rights, other cases are of limited value as the issue depends, in each case, on the particular facts and circumstances of that case).

¶ 24 The trial court considered the totality of the circumstances, including the background, experience, the conduct of the defendant, and Shaffer's testimony as well as the testimony of the defendant's mother. As previously mentioned, we give deference to the trial court as the finder of fact and will not substitute our judgment for that of the trial court regarding the weight to be given the evidence or the inferences to be drawn therefrom. In light of the entire record, we cannot say that the trial court's finding that the defendant's waiver of his *Miranda* rights was knowing and intelligent was against the manifest weight of the evidence. Thus, the trial court's denial of the defendant's motion to suppress is affirmed.

¶ 25 For the foregoing reasons, the judgment of the circuit court of Perry County is hereby affirmed.

¶ 26 Affirmed.