2016 IL App (5th) 140216-U

NO. 5-14-0216

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Jefferson County.
	)	
v.	)	No. 11-CF-190
	)	
MARK A. TAYLOR,	)	Honorable
	)	David K. Overstreet,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err in evaluating the totality of circumstances and in determining that the defendant did not knowingly and intelligently waive his *Miranda* rights; accordingly, the order of the circuit court suppressing the defendant's confession is affirmed.

¶ 2 The defendant, Mark A. Taylor, was charged with three counts of first-degree murder. The defendant filed a motion to suppress his confession on the grounds he lacked the capacity to voluntarily waive his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)). The circuit court initially denied the defendant's motion to suppress. Subsequently, the court granted the defendant's motion to reopen his motion to suppress based on newly discovered evidence concerning the defendant's mental capacity to waive

his rights. Following an evidentiary hearing, the court granted the defendant's motion. The State filed this appeal under Illinois Supreme Court Rule 604(a)(1) (eff. Feb. 6, 2013). For the following reasons, we affirm.

¶ 3 In the early hours of May 31, 2011, Charles Ellis was shot and killed while working as a cab driver in Mt. Vernon, Illinois. Jeremy Reichert and Travis Trotter, detectives with the Mt. Vernon Police Department, were assigned to investigate the homicide. A few hours later, they arrested several persons, including the defendant. At the time of the arrest, the defendant was 18 years old. He had been residing at the Methodist Children's Home in Mt. Vernon, Illinois, and was a charge of the Illinois Department of Children and Family Services (DCFS).

¶ 4 At approximately 4:35 a.m. on the morning of the arrest, Detective Reichert and Detective Trotter questioned the defendant at the Mt. Vernon Police Department. The interview was recorded with audio and video equipment, and lasted for approximately 40 minutes. Prior to the interview, Detective Trotter informed the defendant that he would read him his rights using a *Miranda* waiver form. Detective Trotter told the defendant that as he read him the *Miranda* warnings, he wanted the defendant to initial that he understood each of the rights listed on the waiver form. The defendant responded "Ok." Detective Trotter then read to the defendant each of the rights listed on the *Miranda* waiver form. He did not explain the meaning of any of the rights set forth on the form. Detective Trotter also stated that in order to begin the interview, the defendant had to write the word "yes" on the *Miranda* waiver form. The defendant asked if he should sign the waiver, and Detective Trotter stated, "Yes." The defendant then asked if he would be

released or if he was going home. Detective Reichert responded by saying they needed to talk further about whether he would be released or would be going home.

¶ 5 During the interview, the defendant initially denied being involved in the murder of the cab driver. After additional questioning by detectives Reichert and Trotter, the defendant made several inculpatory statements. A few hours after the initial interview concluded, the detectives conducted a second interview to see whether the defendant could identify another suspect in the case. Before questioning the defendant, Detective Trotter reminded him that the rights that had been previously read to him still applied.

¶ 6 The following day, the defendant was charged by information with three counts of first-degree murder. He was subsequently indicted on the same three counts.

¶ 7 On December 12, 2011, the defendant's counsel, Jerry Crisel, filed a motion to suppress the statements the defendant made while he was interviewed by the detectives. The defendant alleged he was not capable of voluntarily waiving his *Miranda* rights based upon a combination of his youth, lack of sophistication, seclusion from family, marijuana use, and coercive police tactics. During an evidentiary hearing on the defendant's motion, the State called Detective Reichert and Detective Trotter as witnesses. The State also offered into evidence the signed written waiver of the defendant's *Miranda* rights, a compact disk, and written transcripts, containing both interviews of the defendant. The defendant did not offer any evidence. Following the hearing, the circuit court denied the defendant's motion to suppress confession.

¶ 8 As the case moved forward, counsel for the defendant became concerned that his client was not mentally fit to stand trial. On August 30, 2013, the defendant's attorney

filed a motion to appoint an expert to determine the defendant's fitness to stand trial. On that same day, the court granted the motion, and appointed Dr. Angeline Stanislaus, a board-certified psychiatrist, to conduct an examination of the defendant.

¶ 9 Approximately two weeks later, the defendant's counsel filed a motion to reopen the motion to suppress based upon newly discovered evidence. The defendant's attorney discovered a June 19, 2008, psychological evaluation of the defendant that had been performed by Dr. Frank Kosmicki, a licensed clinical psychologist. The defendant claimed that the June psychological evaluation demonstrated he did not have the mental or emotional capacity to waive his *Miranda* rights on May 31, 2011.

¶ 10 While the defendant's motion to reopen was pending, Dr. Stanislaus conducted a fitness evaluation of the defendant. The evaluation occurred on September 22, 2013, and lasted for 45 minutes. Dr. Stanislaus then prepared a report detailing her evaluation of the defendant. The report, dated January 20, 2014, was based upon her interview with the defendant, and her review of the investigative reports related to the charges against him. In her report, Dr. Stanislaus noted that the defendant was able to recite the charges against him, and the circumstances surrounding the charges, and he acknowledged certain rights that he had, such as the right to a speedy trial, the right to an attorney, and the right not to testify against himself. She further indicated that the defendant was able to identify the personnel associated with the trial process. Dr. Stanislaus thus concluded that the defendant was fit to stand trial.

¶ 11 Prior to the hearing on the defendant's motion to reopen, defendant's counsel withdrew as the attorney of record because he had been appointed as an associate circuit judge. Attorney Meagan Carnine was appointed as counsel for the defendant.

¶ 12 Judge Crisel later executed an affidavit stating that while representing the defendant, he had met and spoken with the defendant on numerous occasions about the legal process, the court system and its participants, and the defendant's legal rights, including his right to remain silent. Based upon these conversations, Judge Crisel did not believe the defendant fully understood these matters.

¶ 13 On March 7, 2014, the defendant's motion to reopen his motion to suppress confession was called for hearing. The court heard the arguments of counsel, and took the matter under submission. Three days later, the court granted the motion to reopen.

¶ 14 The suppression hearing was held on May 2, 2014. At the outset, the court took judicial notice of the transcripts from the earlier suppression hearing, the audio-visual recording of the defendant's interviews with Detective Reichert and Detective Trotter, and the transcripts of those interviews.

¶ 15 The State then called Dr. Stanislaus, its psychiatric expert, to offer testimony. Dr. Stanislaus testified that she had received a request from the State to now determine whether, on May 31, 2011, the defendant had the capacity to understand and waive his *Miranda* rights. In considering this issue, Dr. Stanislaus indicated she had reviewed the defendant's fitness report she had prepared previously, the transcripts and audio of the defendant's custodial interviews, and the June 2008 psychological evaluation of the defendant previously conducted by Dr. Kosmicki. Based upon her review of these

materials, Dr. Stanislaus opined that the defendant was competent to waive his *Miranda* rights on May 31, 2011. Dr. Stanislaus did not administer IQ testing, or any other standardized tests, to assist her in forming her opinion regarding the defendant's ability to understand and voluntarily waive his *Miranda* rights. When asked which portions of the interviews were significant in arriving at her opinion, Dr. Stanislaus pointed to the fact that the defendant verbally indicated he understood his rights, and placed his initials next to each of the rights listed on the *Miranda* waiver form. Dr. Stanislaus also indicated the defendant was able to provide narrative responses to the detectives' questions, as opposed to yes-or-no answers. A copy of her updated report was admitted into evidence.

¶ 16 The defense then called Dr. Kosmicki, a licensed clinical psychologist. Dr. Kosmicki testified that in 2008, he was contacted by DCFS to evaluate the defendant, and to assist in identifying appropriate services for him. He stated that prior to the June 2008 evaluation, he reviewed a number of the defendant's records, including DCFS's Integrated Assessment and other educational records. In reviewing these records, Dr. Kosmicki noted that the defendant was an infant when his mother murdered his father, and that he ended up living with his paternal grandmother until the age of 10, when she passed away. The defendant then went to live with his aunt until he was arrested for the destruction of property. The record did not indicate if the defendant was taken into custody for this crime. His aunt decided she was no longer willing to take care of him, and, at that point, the defendant was placed under the guardianship of DCFS. In terms of educational history, Dr. Kosmicki testified that the defendant's records showed that he was taking special education classes in the ninth grade because he was emotionally disturbed, and

had been diagnosed with mild mental retardation. Dr. Kosmicki declared that as of 2008, the term "mental retardation" was the accepted scientific term, although the diagnosis is now more particularly referred to as "intellectually disabled."

¶ 17 Dr. Kosmicki stated that he evaluated the defendant on June 19, 2008. He diagnosed the defendant with conduct disorder, posttraumatic stress disorder, major depressive disorder, and mild mental retardation. Dr. Kosmicki administered an intelligence test that revealed the defendant's IQ was 62. Dr. Kosmicki explained that a person who scores in that range would have problems with reasoning and understanding consequences. He also testified that an increase in IQ would not be typical for a person with an IQ in that range. Dr. Kosmicki determined that the defendant's abstract reasoning was very poor, that he was unable to read at a fourth grade level, and that it would be difficult for the defendant to have obtained a much higher level of reading.

¶ 18 Dr. Kosmicki also described in detail the difference between a fitness evaluation and a diagnosis of mental retardation. He stated a fitness evaluation gauges a defendant's ability to identify the personnel associated with the trial, and to understand the procedures at a general level. A diagnosis of mental retardation describes a person's broader abilities to extrapolate and understand those concepts in an abstract way. Dr. Kosmicki asserted that it would be possible for a person who was mentally retarded, and unable to understand the consequences of his or her actions, to also be fit to stand trial.

¶ 19 When asked about "parroting," Dr. Kosmicki explained that individuals with lower than average IQs tend to mimic, or parrot, information that is repeatedly told to them. He provided an example of an attorney who frequently described the court process to a

person who is mentally retarded. In that hypothetical, the mentally retarded person would be able to memorize and repeat information about the court process without any real understanding of that process.

¶ 20 On cross-examination, Dr. Kosmicki stated that he did not review the interviews of the defendant while he was in police custody. He testified that it was generally unlikely that an individual's IQ would fluctuate significantly between ages 15 and 18, but acknowledged that it was possible. During redirect examination, Dr. Kosmicki reaffirmed his position that the IQ of a 15 year old would stay relatively the same from the age of 15 to the present. He also disclosed that he was not asked to opine whether the defendant had the ability to waive his *Miranda* rights. Instead, Dr. Kosmicki stated that the purpose of his testimony was to explain the defendant's 2008 psychological evaluation. Finally, on recross, the State elicited the response that in 2008, the defendant was functionally illiterate.

¶ 21 At the conclusion of the hearing, after arguments from both the State and defendant's counsel, the court indicated it would take the matter under submission. Prior to adjourning the proceeding, however, the court advised the parties that it was well aware that the tests for determining fitness to stand trial were distinct from whether this defendant knowingly and voluntarily waived his rights to remain silent. He summarized his statements by stating to counsel that, "you could be found fit to stand trial … but nevertheless, could be found that–that back in 2000–May 31st, 2011, the defendant did not knowingly and intelligently, you know, waive his Fifth Amendment Rights, so two separate tests."

¶ 22 A few days later, on May 7, 2014, the court reconvened, and issued its ruling, with all parties present. During that proceeding, the court orally recited the facts of the case and made extensive findings of fact. The circuit court found that the defendant did not have the ability to knowingly and intelligently waive his Miranda rights, and granted the defendant's motion to suppress. This appeal followed.

¶ 23 The State's sole contention on appeal is that the circuit court erred in granting the defendant's motion to suppress statements he made during the interviews on May 31, 2011. The State argues that the court's ruling was erroneous because there is nothing in the recorded interviews that indicated the defendant was under a disability, or that he lacked the capacity to knowingly and voluntarily waive his *Miranda* rights. Moreover, the State argues that the court's ruling was in error because its expert, Dr. Stanislaus, was the only expert who offered an opinion on the defendant's mental capacity to understand and knowingly waive his *Miranda* rights. The State also maintains that the court relied too heavily on the defendant's low IQ score in determining whether the defendant had the mental capacity to understand and waive his *Miranda* rights. The State concludes that the court failed to properly consider the totality of the circumstances in making its determination.

¶ 24 The review of a circuit court's decision on a motion to suppress involves both questions of fact and law. *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). A circuit court's findings of fact, including credibility determinations, receive great deference, and those findings will be reversed only if they are against the manifest weight of the evidence. *People v. Braggs*, 209 Ill. 2d 492, 505 (2003); *People v. Richardson*, 234 Ill.

2d 233, 251 (2009). The ultimate question posed by the legal challenge, however, is reviewed *de novo*. *People v. Richardson*, 234 Ill. 2d 233, 251 (2009).

¶ 25 On a motion to suppress confession, the State bears the burden of proving, by a preponderance of the evidence, that the confession was voluntary. *People v. Braggs*, 209 Ill. 2d 492, 505 (2003). Voluntariness includes proof that the defendant made a knowing and intelligent waiver of his *Miranda* rights. *People v. Braggs*, 209 Ill. 2d 492, 505 (2003). This means that there must be proof that the defendant possessed sufficient awareness of the relevant circumstances, and the likely consequences to occur at the time of the waiver. *People v. Braggs*, 209 Ill. 2d 492, 514-15 (2003). Indeed, sufficient awareness requires that the defendant possess a basic understanding of what his rights encompass, and minimally, what a waiver of those rights will entail. *People v. Braggs*, 209 Ill. 2d 492, 515 (2003). It does not mean that the defendant is required to know and understand every possible consequence of his *Miranda* waiver. *People v. Braggs*, 209 Ill. 2d 492, 515 (2003).

¶ 26 In order to determine whether a confession is voluntary, a court must consider the totality of circumstances in the particular case. *People v. Richardson*, 234 Ill. 2d 233, 253 (2009). Factors to be considered include the defendant's age, intelligence, background, experience, mental capacity, education, physical condition at the time of questioning, the legality and duration of the detention, the presence of *Miranda* warnings, the duration of the questioning, and any physical or mental abuse by police. *People v. Richardson*, 234 Ill. 2d 233, 253-54 (2009). Our supreme court has recognized that persons with mental retardation are generally considered more susceptible to police

pressure than people of normal intellectual ability, tend to be submissive, and are less likely to understand their rights. *People v. Braggs*, 209 Ill. 2d 492, 514 (2003). Nevertheless, no single factor is dispositive of the outcome. *People v. Richardson*, 234 Ill. 2d 233, 253 (2009).

¶ 27 The circuit court, in this case, concluded that the defendant lacked the capacity to knowingly and intelligently waive his right not to incriminate himself, and could not have waived those rights given to him on the *Miranda* warning form used by the detectives. From the record before us, it is clear that the trial court acted diligently in reviewing all of the evidence that had been submitted, and did not arrive at its conclusion without considering every argument, and the case law that had been submitted by the parties. Indeed, it is clear that the court based its determination on those factors required to determine voluntariness, including the defendant's age, intelligence, mental capacity, education, and the circumstances of the waiver itself. At the outset of the dispositional hearing, the court noted that every case is fact specific. The court was clearly concerned about the defendant's mental capacity, and fully examined the testimony from each of the experts. The court accepted Dr. Kosmicki's testimony that the defendant was mildly mentally retarded, and that the defendant's highest level of education was the ninth grade, where he was enrolled in special education classes due to his emotional and intellectual disabilities. The court specifically stated that Dr. Kosmicki determined that the defendant was "functionally illiterate." In reliance upon Dr. Kosmicki's statement that IQ essentially remains the same between the ages of 15 and 18, the court determined that the defendant would still have an IQ of 62. Inasmuch as Dr. Kosmicki believed that IQ was

an essential component of whether an individual had the ability to understand his fifth amendment rights, it is clear the court relied heavily upon that fact in determining that the defendant did not voluntarily waive his *Miranda* rights. Finally, based upon Dr. Kosmicki's opinion, the court acknowledged that the defendant had significant problems with abstract reasoning, which directly correlated to an individual's ability to understand consequences.

¶ 28 The court gave less credence to the testimony of Dr. Stanislaus than that of Dr. Kosmicki because the opinion testimony of Dr. Stanislaus was limited to her review of her prior fitness evaluation, and the audio recording and transcript from the defendant's interviews with the detectives. Again, the court pointed out that a determination of fitness to stand trial is distinct from whether the defendant knowingly and voluntarily waived his rights. Dr. Stanislaus did not personally interview the defendant, or perform any standardized tests, such as the Grisso test, which would have been an important factor in determining whether the defendant had the ability to waive his *Miranda* rights. Contrary to the State's argument, the court was not bound to accept the opinion of Dr. Stanislaus merely because she was the only expert witness to offer an ultimate opinion on the defendant's capacity to waive his rights. See *People v. Urdiales*, 225 Ill. 2d 354, 431 (2007). It is within the province of the trial court to weigh the credibility of expert evidence, and to discount opinions which lack credibility. *People v. Urdiales*, 225 Ill. 2d 354, 431 (2007).

¶ 29 In addition to the testimony given by Dr. Kosmicki, the court noted the defendant was only 18 years of age at the time he was interviewed by the detectives. This was of

some significance, although the court did not weigh this factor heavily. Another factor the court considered was the circumstances surrounding the detectives' encounter with the defendant and the completion of the *Miranda* warning form. The court was clear that the detectives did not overreach in their questioning of the defendant. In fact, the court complimented the detectives on the job they did. However, the court indicated that the detectives had no reason to know that this defendant had a low IQ, and that this might affect his ability to understand his rights. The court had reviewed the video and audio of the taped statement, and described how it had interpreted the defendant's conduct. Clearly, the court was concerned that after the defendant initialed the *Miranda* form, as instructed to do so by the detective, the first question the defendant asked was in reference to whether he would be able to go home. The circuit court believed that this question was not indicative of someone who understood his rights.

¶ 30 The defendant's prior experience with law enforcement was also considered, but the court gave this factor little consideration. The evidence produced at the hearing showed the defendant previously had some encounters with law enforcement, but there was insufficient evidence to make this factor significant. Therefore, this factor neither favored, nor disfavored, the defendant.

¶ 31 The final factors the court considered included the defendant's physical condition at the time of questioning, the legality and duration of the detention, the duration of the questioning, and any physical or mental abuse by police. The circuit court found, and we agree, that the interviews of the defendant were neither oppressive nor abusive, and were

relatively short in duration. The court commended the detectives in their treatment of the defendant during each of the interviews.

¶ 32 In conclusion, the record demonstrates that the court considered all of the evidence presented, applied the evidence to the relevant factors, weighed those factors, and made a reasonable determination based upon the evidence. After reviewing the record, we must affirmatively state that the court did not err in evaluating the totality of the circumstances, and in determining that the defendant did not knowingly, intelligently, and voluntarily waive his *Miranda* rights. Accordingly, the order of the circuit court suppressing the defendant's confession is affirmed.

¶ 33 Affirmed.