SUPERIOR COURT
OF THE
STATE OF DELAWARE

WILLIAM C. CARPENTER, JR.
JUDGE

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September 9, 2021

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RE: State v. Harry Charles
ID Nos. 2006000287A, 2006000287B,
2008001207A, 2008001207B

Submitted: September 3, 2021
Decided: September 9, 2021

Dear Counsel:

Before the Court is Defendant Charles' Motion to Suppress the statement he gave to the police on June 1, 2020.[1] At the time his statement was given to the police, he was fifteen years of age. The statement was given while the Defendant was in custody at the Dover Police Department and his mother was present before

[1] Def. Charles' Mot. to Suppress Statement.

the interview occurred and gave permission for the officers to speak to her son. While it is unclear exactly what information was provided to his mother before the interview, it does appear she was aware that the incident for which he was under arrest involved a firearm. However, neither the mother nor the Defendant were advised that the victim had died at the shooting scene until the interview was completed.

The Court held a hearing on September 3, 2021 in which both officers involved in interviewing the Defendant testified. As a result of this testimony, the Court first finds that there is no improper conduct regarding the officers' interaction with the Defendant's mother. The officers' testimony as to the interaction with her is uncontested and provides no basis to suppress the Defendant's statement. As such, the only issue for the Court to decide is whether the Defendant, a fifteen-year-old juvenile, knowingly and voluntarily spoke to the police with a full appreciation of his *Miranda* rights.

In Delaware, juvenile confessions and incriminating statements are given "special scrutiny."[2] The State must prove by a preponderance of the evidence that the juvenile defendant knowingly and voluntarily waived his *Miranda* rights.[3]

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[2] *Brown v. State*, 947 A.2d 1062, 1068 (Del. 2007); *Rambo v. State*, 939 A.2d 1275, 1279 (Del. 2007) ("Stricter scrutiny must be applied to the facts testing the voluntariness of a confession in any case where a juvenile is involved.").
[3] *Smith v. State*, 918 A.2d 1144, 1149 (Del. 2007)

More specifically, a court is expected to consider (1) whether "the relinquishment of the right…[was] voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion or deception[,]" and (2) whether the waiver was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."[4]

If a defendant's waiver of rights is ambiguous, "[i]t is a well-settled principle in Delaware law that…the interrogating officer has an obligation…to clear up any confusion before continuing to ask questions."[5] The Delaware Supreme Court has reasoned that "[b]ecause of the inherently persuasive nature of in-custody interrogation, suspects express themselves in a variety of ways…[and] the speaker's true intent is unknown, [therefore] clarifying ambiguities is vital to safeguarding the values embedded in the Fifth Amendment right to silence and the Sixth Amendment right to counsel."[6] The Delaware Supreme Court has held that a method of clarification may include "the repeating of *Miranda* warnings as a means of emphasizing the defendant's constitutional right to counsel."[7] An ambiguous waiver is one that "displays a measure of indecision on the part of the defendant that casts doubt on the validity of the interrogation process."[8]

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[4] *Rambo*, 939 A.2d at 1278–79.
[5] *Id.* at 1280.
[6] *Garvey v. State*, 873 A.2d 291, 296–97 (Del. 2005).
[7] *Crawford v. State*, 580 A.2d 571, 577 (Del. 1990).
[8] *Garvey*, 873 A.2d at 297.

Additionally, with juvenile waivers, the Court must apply a "totality of the circumstances" standard which requires an "evaluation of the juvenile's age, experience, education, background, and intelligence, and…whether he has the capacity to understand the warnings given to him, the nature of his…rights, and the consequences of waiving those rights."[9] However, Delaware courts have "expressly rejected the so-called 'interested adult' rule—the contention that a juvenile cannot waive his rights without first being given the opportunity to consult with a parent or other interested adult."[10] Nevertheless, "the lack of guidance from an interested adult certainly is a factor in the 'totality of circumstances.' And, it is an important factor if, in addition, the juvenile suffers from diminished mental capacity."[11]

The Delaware Superior Court in *State v. Singer*, denying the juvenile defendant's motion to suppress, held that "the fact that the defendant asked to see his mother and his mother asked to see him…is one factor to be considered in evaluating the voluntariness of the defendant's statements."[12] Even though the juvenile defendant in *Singer* was not permitted to immediately speak with his mother upon request and had no experience with the criminal justice system, the

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[9] *Rambo*, 939 A.2d at 1278–79.
[10] *Smith v. State*, 918 A.2d 1144, 1149–50 (Del. 2007) (citing *Haug v. State*, 406 A.2d 38, 43 (Del. 1979)).
[11] *Id.*
[12] 1979 WL 195351, at *5 (Del. Super. Ct.).

Singer Court reasoned that where a fifteen-year-old juvenile had no physical infirmities, was of average intelligence, and was twice informed of his rights, the juvenile defendant knowingly waived his rights.[13]

In *State v. Rafal*, the Delaware Superior Court denied the juvenile defendant's motion to suppress statements because at fifteen years old the juvenile defendant (1) was "street smart and intelligent," (2) "had considerable experience with the legal system," (3) was with an adult she knew and who was chosen to accompany her, and (4) was not only read her *Miranda* rights—albeit quickly—but after the officer received "verbal acknowledgment of understanding from either the defendant or her aunt[,] [t]he police officer added an additional caution to remind them that they could stop if they did not feel comfortable answering the question."[14]

By contrast, the Family Court of Delaware *In Interest of Eric D.R.* granted the juvenile defendant's motion to suppress statements reasoning that "[w]ith a twelve-year-old juvenile whose mother showed up at the police station [asking to speak with her son] at least three hours before he waived his *Miranda* warnings and who stayed there for an additional four hours [before being permitted to see her son], there was an obligation to let the mother speak to the juvenile prior to

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[13] *Id.* at *4.
[14] *State v. Rafal*, 932 A.2d 497, 501 (Del. Fam. Ct. 2007).

proceeding further."[15] In *State v. C.W.*, the Family Court of Delaware also granted the juvenile defendant's motion to suppress reasoning that "[g]iven the defendant's age [of thirteen years old], low IQ, third grade reading level, ADHD, and the police's hurried recitation of incomplete *Miranda* Warnings during a custodial interrogation without a guardian present, the Court finds the defendant did not comprehend the rights administered to him, making it impossible for him to waive them."[16]

When the Court considers the factors under the totality of the circumstances standard, a couple of key factors stand out regarding this case. First, at a relatively young age, the Defendant has accumulated an impressive criminal history. While the State's presentation as to his prior criminal history was somewhat disjunctive,[17] a report from the Capital School District reflects that he had been arrested on at least two different occasions involving charges of Attempted Murder First Degree, Possession of a Firearm During the Commission of a Felony, Wearing a Disguise During the Commission of a Felony, Conspiracy Second Degree, Illegal Gang Participation, Theft of a Motor Vehicle and Resisting Arrest.[18] While the defense pointed out at the hearing that the offenses had been resolved in a single plea

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[15] *In Int. of Eric D.R.*, 1996 WL 434510, at *2 (Del. Fam. Ct.).
[16] *State v. C.W.*, 2003 WL 23269458, at *5 (Del. Fam. Ct.).
[17] The State had the officers testify that the Defendant's DELJIS record reflected seven different arrests but they never introduced the actual criminal record during the hearing.
[18] Ex. 3 (Letter from Capital School District to Ms. Tonya Cruz-Ortiz and Harry Charles December 18, 2018) p. 1.

proceeding which led to the Defendant's confinement at Ferris School, these offenses clearly represent a significant criminal history and familiarity with the criminal justice system. There also appears to be no dispute that he has been read his *Miranda* rights on numerous previous occasions.

It is also clear to the Court the Defendant has had a less than stellar education experience. The records introduced at the hearing reflect that he has been disruptive, violent, disrespectful, and defiant to his teachers and other supervisors.[19] These records clearly reflect he had little interest in school which eventually led to him failing some grades and being required to attend the Capital School District's alternative schooling at Parkway Academy.[20] While there is no question the Defendant was not performing at grade level, the testing provided by the Delaware System of Student Assessment in 2018-2019 reflects that the Defendant's scoring for grade 7 literacy was significantly above other individuals residing at the Stevenson House Detention Center or even other children being managed by the Department of Services for Children, Youth and Their Families.[21] While the scoring is 150 points below the average Delaware student, the testing was intended to determine the individual's likelihood of success in entry-level

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[19] Ex. 3 (Report for Alternative Placement Level Meeting) p. 1-3; *Id.* (Behavior Incidents for Charles, Harry Grade 07)
[20] Ex. 3 (Capital School District DSCYF Transition Meeting Summary Jan. 30, 2020) p. 1.
[21] *Id.* (Delaware System of Student Assessments Individual Student Report for Charles, Harry 2018-2019) p. 1.

credit-bearing college coursework after high school,[22] an avenue this Defendant clearly had no intention of pursuing. In addition, while housed at the Stevenson House in late 2018 and early 2019, he scored a B- in English, Science and Social Studies.[23] So, it appears to the Court that when the Defendant was put in a structured environment, he was able to succeed and his education underachievement does not rise to the level that would cause the Court to determine he was unable to understand the *Miranda* warnings or the consequences of speaking to the police.

Finally, the Court has reviewed the video-recorded interaction the police had with the Defendant when the *Miranda* warnings were given, and the comments of both the officers and the Defendant at that time.

During the interrogation, the conversation between Defendant and police about his *Miranda* rights was as follows:

Detective Boney:	So this is just saying for you to talk to me… [*Miranda* rights] Do you voluntarily waive these rights? You have to say yes or no.
Defendant Charles:	No – well, yes.
Detective Boney:	Okay. And are you willing to voluntarily answer my questions? Yes?
Defendant Charles:	(No verbal response)

[22] *Id.*
[23] *Id.* (Grade Report, Stevenson House Detention Center).

Detective Boney: Is that a yes?

Defendant Charles: Yes.[24]

While certainly the Court believes the better practice would have been for the officer to have again reviewed the *Miranda* warnings after the Defendant responded "no…well, yes" and to specifically ask if the Defendant understood his rights, the Court finds the failure to do so does not rise to the level that requires the suppression of the statement.

First, there is no allegation or evidence to suggest the Defendant's statement was the product of intimidation, coercion or deception. The Defendant was provided a blanket to keep warm, and a Dover Police Department school resource officer, who was familiar with the Defendant, attended the interview. Certainly if the Defendant had any concerns, this was an officer he would have felt comfortable asking for assistance.

Secondly, while there is arguably some indication of initial confusion when the Defendant responded "No…well, yes," the officer clarified the response by specifically inquiring if the Defendant was willing to voluntarily answer his questions. This clarification resulted in an affirmative response and there is nothing during the interview which would contradict this finding. The statement, including the reading of the *Miranda* rights, was all video recorded, and in the

[24] Tr. of Interview of Harry Charles, Jr., at 4-5 (June 1, 2020).

Court's view, the Defendant did not appear confused or to be acting in a manner that would reflect a failure to appreciate the significance of the event. In fact, it appears the Defendant was motivated to answer the officers' questions as he clearly believed his actions that morning were justified. Both when he was being put in the patrol car at the arrest scene, as well as in his statement, he indicated he only shot the victim because the victim had accused him of shooting his cousin and pulled a gun on him in the car. During the interview it even appears the Defendant became frustrated when he told the officers, "you all don't understand. I almost could have f------ died and you all like…and all I do is get f------ blamed for all this."[25]

In conclusion, the Defendant, while only fifteen years old, had been an active participant in the criminal justice system and had multiple previous contacts with the police during which his *Miranda* rights would have been read to him. There is no question that he preferred the freedom of the street rather than schooling, but his lack of academic achievement does not rise to a level that would make his understanding diminished. He is clearly street smart beyond his years.

Finally, it appears the Defendant, once caught, was motivated to tell his side of the story, as in his mind, it justified his action. While the police here could have

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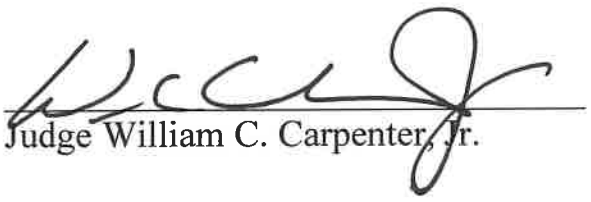
[25] *Id.* at 31.

done a much better job in clarifying whether the Defendant totally understood his *Miranda* rights, the United States Supreme Court has held that there is no "precise formulation" necessary to satisfy the requirements of *Miranda*'s procedural safeguards.[26] Here the Court finds under the totality of the circumstances standard, the statement was made voluntarily with an appreciation of his basic *Miranda* rights. As such, the Defendant's Motion to Suppress is hereby denied.

IT IS SO ORDERED.



Judge William C. Carpenter, Jr.

[26] *Hubbard v. State*, 16 A.3d 912, 918 (Del. 2011)(citing *Florida v. Powell*, 559 U.S. 50, 59 (2010)).