

STATE OF LOUISIANA
COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

NO. 2014 KW 1684

VERSUS

FEB 09 2015

DAVID BROWN

In Re: State of Louisiana, applying for supervisory writs,
17th Judicial District Court, Parish of Lafourche, No.
520401.

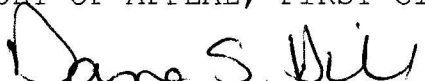
BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

WRIT GRANTED IN PART AND DENIED IN PART. The trial court erred in granting the motion in limine excluding law enforcement's final question to the defendant and his answer to that question from the defendant's interview on November 4, 2012, after he was advised of and waived his **Miranda** rights. Upon questioning the defendant as to why the shirt he indicated he was wearing on the night at issue and that he just described to the officers was found at the crime scene, the defendant responded, "I didn't know." The defendant then immediately invoked his right to counsel and terminated the interview. This question and answer colloquy does not reference the defendant's subsequent invocation of his right to counsel and termination of the interview. There is no indication that a jury would draw an inappropriate inference regarding the defendant's right to remain silent if this question and the defendant's answer are allowed. The United States Supreme Court has held that, because an accused's post-arrest silence is "insolubly ambiguous" and a jury is apt to draw inappropriate inferences from the fact that a defendant chose to remain silent, "the use for impeachment purposes of petitioner's silence, at the time of arrest and after receiving *Miranda* warnings, violated the Due Process Clause of the Fourteenth Amendment." **Doyle v. Ohio**, 426 U.S. 610, 617 & 619, 96 S.Ct. 2240, 2244-45, 49 L.Ed.2d 91 (1976). In the instant case, the defendant did not remain silent after his arrest. He waived his **Miranda** rights and gave a statement. The last question and his answer: "I didn't know[]" do not inappropriately reference his subsequent invocation of the right to counsel. Thus, the final question and the defendant's specific answer to that question should not be barred. However, the trial court correctly granted the motion in limine excluding the portion of the interview wherein the defendant specifically invoked his right to counsel and terminated the interview. Therefore, in all other respects, the state's writ application is denied.

JMM
WJC

Holdridge, J., dissents and would deny the writ application.

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FOR THE COURT