

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2015 KJ 0315**

**STATE OF LOUISIANA**

**IN THE INTEREST OF**

**E.D.J.**

**Judgment Rendered: JUN 05 2015**

\* \* \* \* \*

On Appeal from  
The East Baton Rouge Parish Juvenile Court  
Parish of East Baton Rouge, State of Louisiana  
No. JU106751, Division B

Honorable Pamela Taylor Johnson, Judge Presiding

\* \* \* \* \*

Hillar C. Moore, III  
District Attorney  
and  
Dylan C. Alge  
Raveen Hills  
Assistant District Attorneys  
Baton Rouge, Louisiana

Counsel for Appellee  
State of Louisiana

Katherine M. Franks  
Abita Springs, Louisiana

Counsel for Defendant/Appellant  
E.D.J.

\* \* \* \* \*

**BEFORE: WHIPPLE, C.J., McCLENDON AND HIGGINBOTHAM, JJ.**

*Handwritten initials: JMC, WBN, TMH*

**McCLENDON, J.**

The State filed a petition alleging that E.D.J., a child,<sup>1</sup> should be adjudicated delinquent and/or in need of supervision based upon the commission of one count of simple burglary, a violation of LSA-R.S. 14:62 (count I), and one count of misdemeanor theft less than \$750.00, a violation of LSA-R.S. 14:67(B)(4) (count II). The juvenile denied both allegations of the petition. After an adjudication hearing, the juvenile was adjudged delinquent as alleged on count I, with count II being subsequently dismissed. He was committed to confinement for one year with the Department of Public Safety and Corrections, to run consecutively with the disposition imposed pursuant to another adjudication. On appeal, the juvenile argues that the juvenile court erred in denying his pre-hearing motion to suppress regarding an inculpatory statement made during his arrest. For the following reasons, we affirm the juvenile's adjudication and disposition.

**STATEMENT OF FACTS**

On October 19, 2014, while inside his Aubinwood Drive home in Baton Rouge, Ken Evans heard his wife "hollering." As he looked outside, Evans observed the juvenile leaning inside his 2011 Nissan Frontier truck. Evans immediately came out of his home, and the juvenile ran. Evans was unable to catch the juvenile. Evans returned home, inspected his vehicle, and discovered the only missing item was a prescription pill bottle filled with toothpicks. He then called the police and, upon their arrival, showed them footage from his personal video surveillance system which captured the juvenile's images and actions.

In response to the burglary, Corporal Charles Cambre, Jr. of the Baton Rouge Police Department was dispatched to Evans' home. After reviewing Evans' surveillance footage, which he noted was "very good quality," Corporal Cambre provided a description of the juvenile to other officers in the area. Fellow Baton Rouge Police Department Officer, Corporal Aime, located, identified, and detained the juvenile at Old Hammond Highway and Sherwood Forest

---

<sup>1</sup> The juvenile was fourteen years old at the time of the offenses and filing of the petition.

Boulevard. Corporal Cambre traveled to the intersection, positively identified the juvenile, placed him under arrest, and advised him of his **Miranda**<sup>2</sup> rights. Corporal Cambre testified the juvenile indicated he understood his rights. The juvenile then confessed to Corporal Cambre that “he did, in fact, go in the vehicle, but it was unlocked and he didn’t damage it.”

### **MOTION TO SUPPRESS**

In his sole assignment of error, the juvenile contends that the statement he gave to Corporal Cambre during his arrest was not freely or voluntarily made and, as such, the juvenile court erred by denying his pre-hearing motion to suppress the statement. Specifically, he argues that Corporal Cambre made no effort to obtain a signed waiver form from him wherein he would have acknowledged an understanding of his **Miranda** rights. Further, the juvenile asserts that he did not have an opportunity to speak with any concerned adult prior to giving a statement, nor did Corporal Cambre “call anyone else to advise the [juvenile] before taking [his statement.]”

The child may move to suppress evidence obtained in violation of the Constitution of the United States or the Constitution of Louisiana. LSA-Ch.C. art. 872. More specifically, Louisiana Children’s Code Article 881.1(A) provides that before a purported confession by an accused child can be introduced in evidence, the State must prove beyond a reasonable doubt that the statement was free and voluntary, and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises.

“The confession of an accused of any age is valid only if it was given knowingly and voluntarily. The age of the accused, although an extremely important and extremely relevant factor in determining knowingness and voluntariness, is not absolutely determinative, and the rigid invalidation of an otherwise valid confession because the accused has not quite reached the age of seventeen has no federal or state constitutional basis.” **State v. Fernandez**, 96-2719 (La. 4/14/98), 712 So.2d 485, 487.

---

<sup>2</sup> **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

The ruling in **Fernandez** overruled **State in the Interest of Dino**, 359 So.2d 586 (La. 1978), cert. denied, 439 U.S. 1047, 99 S.Ct. 722, 58 L.Ed.2d 706 (1978), and reinstated the totality of the circumstances standard that prevailed prior to the **Dino** decision. Pursuant to **Dino**, a "purported waiver by a juvenile must be adjudged ineffective upon the failure by the State to establish any of three prerequisites to waiver, viz., that the juvenile actually consulted with an attorney or an adult before waiver, that the attorney or adult consulted was interested in the welfare of the juvenile, or that, if an adult other than an attorney was consulted, the adult was fully advised of the rights of the juvenile." **Dino**, 359 So.2d at 594. The **Fernandez** court reinstated the totality of circumstances standard as the basis for determining the admissibility of juvenile confessions by stating that "[a] confession by a juvenile given without a knowing and voluntary waiver can be, and should be, suppressed under the totality of circumstances standard applicable to adults, supplemented by consideration of other very significant factors relevant to the juvenile status of the accused." Further, "[u]nder a totality of circumstances standard, the special needs of juveniles can be accommodated in a manner that affords protection not only to juveniles, but also to the interests of society and of justice." **Fernandez**, 712 So.2d at 489.

Furthermore, Article 881.1(B) provides the following factors a court is to consider when ruling on the admissibility of a juvenile's confession: (1) the age of the child; (2) the education of the child; (3) the knowledge of the child as to both the substance of the charge, if any has been filed, and the nature of his rights to consult with an attorney and to remain silent; (4) whether the child is held incommunicado or allowed to consult with relatives, friends, or an attorney; (5) whether the child was interrogated before or after formal charges had been filed; (6) the methods used in the interrogation; (7) the length of the interrogation; (8) whether or not the child refused to voluntarily give statements on prior occasions; and (9) whether the child has repudiated an extra-judicial statement at a later date.

The special needs of juveniles are analogous to the special needs of individuals with mental deficiencies which are simply factored into the totality of the circumstances. The waiver of the defendant's constitutional rights in making a confession or statement does not require a higher level of mental capacity than his level of competency to enter a plea of guilty, to assist counsel at trial, to waive his right to an attorney, or to waive other constitutional rights. The testimony of a police officer alone can be sufficient to prove that the juvenile's statements were freely and voluntarily given. **State ex rel. J.M.**, 99-1271 (La.App. 4 Cir. 6/30/99), 743 So.2d 228, 229-30.

When a juvenile court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the juvenile court's discretion, *i.e.*, unless such ruling is not adequately supported by reliable evidence. See **State v. Green**, 94-0887 (La. 5/22/95), 655 So.2d 272, 280-81. However, a juvenile court's legal findings are subject to a *de novo* standard of review. See **State v. Hunt**, 09-1589 (La. 12/1/09), 25 So.3d 746, 751.

Herein, at the motion to suppress hearing, Corporal Cambre testified that when he encountered and identified the juvenile, he "told him he was under arrest for breaking into a vehicle and...advised him of his **Miranda** rights which he understood." When asked how he knew the juvenile understood these rights, Corporal Cambre testified that the juvenile gave verbal acknowledgement of his understanding. Although no parent was present at the time the juvenile was advised of his rights, Corporal Cambre testified that nothing indicated to him that the juvenile was impaired or otherwise could not understand his rights. While Corporal Cambre acknowledged that he did not allow the juvenile to contact counsel, there was no evidence the juvenile requested an opportunity to do so. Further, Corporal Cambre did not offer any promises or make any threats toward the juvenile, who cried the whole way to the juvenile detention center. J.J., the juvenile's mother, was, however, contacted by Corporal Cambre, who said to "take him, I already know ... what you got him for." J.J. appeared at the motion

to suppress hearing, and testified that the juvenile had been previously arrested, and to her knowledge, was aware of his **Miranda** rights.

The juvenile court, in denying the motion, stated:

We look at the totality of the circumstances. His mother is not present. She's testified that he understands. He's been through the process before. He understand[s] she believed that he understood his rights as they were explained to him. We are no longer under **Dino**. We have [**Fernandez**]. As you - - then asked about his demeanor, whether he understood. The officer's assessment is he understood. ... If he - - given his rights, if he asks to speak to an attorney and they deny him that, we don't have any evidence of that. So let's proceed. Your motion is denied.

The admissibility of a confession is, in the first instance, a question for the juvenile court; its conclusions on the credibility and weight of the testimony relating to the voluntary nature of the confession are accorded great weight and will not be overturned unless they are not supported by the evidence. Whether a showing of voluntariness has been made is analyzed on a case-by-case basis with regard to the facts and circumstances of each case. See **State v. Guidry**, 93-1091 (La.App. 1 Cir. 4/8/94), 635 So.2d 731, 733-34, writ denied, 94-0960 (La. 7/1/94), 639 So.2d 1163. The juvenile court's determination that the State has met its burden of proof with regard to voluntariness is entitled to great weight. Furthermore, the determination of a witness's credibility on this issue, being a function of the trier of fact, is entitled to great weight. See **State v. Ross**, 95-1240 (La.App. 1 Cir. 5/10/96), 674 So.2d 489, 494.

After a careful review of the record before us, we find that under the totality of the circumstances, the juvenile's waiver of his **Miranda** rights, along with his statement to Corporal Cambre, was made intelligently and voluntarily. The juvenile court found Corporal Cambre to be a credible witness and accepted his testimony that the juvenile voluntarily, without any force or intimidation, waived his rights and made a statement. This credibility determination will not be disturbed on appeal, as the record fully supports the juvenile court's denial of the motion to suppress the confession. Moreover, we note that beginning in 2010, the juvenile had been arrested on numerous charges, including simple battery, resisting an officer, theft, simple burglary, and disturbing the peace. It

would appear that after such an extensive delinquent history, the juvenile would be aware of his **Miranda** rights, specifically his rights to remain silent and to speak with an attorney. Accordingly, the fact that the juvenile's waiver of rights and statement were obtained prior to his consultation with a concerned adult did not automatically render the waiver and statement ineffective. See State v. Harrell, 12-0821 (La.App. 5 Cir. 5/23/13), 120 So.3d 743, 750 writ denied, 13-1450 (La. 2/14/14), 132 So.3d 401 ("[t]he presence or absence of a parent is a factor which may be considered by a court in determining admissibility of a custodial inculpatory statement, but once the evidence shows beyond a reasonable doubt that a juvenile has been properly advised of and has knowingly and voluntarily waived his rights, the reasonableness or justification of a parent's absence becomes irrelevant to admissibility[.]") Therefore, we find that the juvenile court did not err or abuse its discretion in denying the motion to suppress. This assignment of error lacks merit.

#### **CONCLUSION**

For the foregoing reasons, we affirm the juvenile's adjudication and disposition.

**ADJUDICATION AND DISPOSITION AFFIRMED.**