

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

LATASHA GENISE MORSON,

Defendant-Appellee.

UNPUBLISHED
December 8, 2000

No. 226119
Oakland Circuit Court
LC No. 99-167284-FC

ON REMAND

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

On remand from the Supreme Court for consideration as on leave granted, plaintiff appeals from the trial court order that granted defendant's motion to suppress her confession. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

An inquiry into whether a waiver of *Miranda* rights is valid requires a bifurcated analysis of whether the waiver was voluntary and whether it was knowing and intelligent, depending on the totality of the circumstances. *People v Daoud*, 462 Mich 621, 633, 638-639; 614 NW2d 152 (2000). While a finding of voluntariness of a waiver depends on the absence of police coercion, a finding that a waiver was knowing and intelligent requires an objective inquiry into the suspect's level of understanding, irrespective of police conduct. *Id.* at 635-636. The prosecutor has the burden of proving that a waiver is valid by a preponderance of the evidence. *Id.* at 634; *People v Abraham*, 234 Mich App 640, 644-645; 599 NW2d 736 (1999).

An appellate court must give deference to the trial court's findings at a suppression hearing. Although this Court reviews the record de novo, it should not disturb the trial court's factual findings regarding a knowing and intelligent waiver of *Miranda* rights unless such findings are clearly erroneous. *Daoud, supra* at 629-630; *People v Cheatham*, 453 Mich 1, 29-30; 551 NW2d 355 (1996).

The issue in this case concerns only whether defendant's waiver of rights was made knowingly and intelligently. To establish a valid waiver, the prosecutor need only demonstrate that the suspect understood that she did not have to speak, that she had the right to the presence

* Circuit judge, sitting on the Court of Appeals by assignment.

of counsel, and that the state could use what she said against her. “That is the meaning of intelligent waiver; that and no more.” *Cheatham, supra* at 29. The focus of the inquiry must be whether the defendant could in fact understand and waive his or her *Miranda* rights, not the reason or motive underlying the confession. *Daoud, supra* at 15, 19.

Here, the trial court clearly erred in finding that defendant’s confession was neither knowingly nor intelligently made by improperly focusing on the possible reasons for defendant’s confession, e.g., lack of food and sleep, and being on pain medication, rather than focusing on whether defendant could in fact understand and waive her rights. At the evidentiary hearing, defendant testified that, despite her physical condition, she was able to converse with the detective, understood what he said, and understood that the notes being taken would be given to the prosecutor. She further testified that, although she did not pay particular attention to the explanation of her rights, she understood them and understood the form when she signed it. Finally, she testified that she had previously been arrested and convicted of uttering and publishing in 1996, and that in that case her rights had been explained to her and she understood them.

In light of defendant’s own testimony, the conclusion that must be drawn is that defendant was in fact able to understand and waive her rights. The trial court clearly erred in finding otherwise and, therefore, we reverse the order suppressing defendant’s confession.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber