STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2219

State of Minnesota,
Respondent,

vs.

Darryl Deshon Johnson,
Appellant.

Filed January 20, 2009
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 06065068

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Mike Freeman, Hennepin County Attorney, Elizabeth R. Johnston, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Gary R. Bryant-Wolf, The Felony Defense Center, 2300 Northeast California Street, Minneapolis, MN 55418; and Shana Gail Buchanan, 3208 West Lake Street, #35, Minneapolis, MN 55416 (for appellant)

Considered and decided by Schellhas, Presiding Judge; Johnson, Judge; and Crippen, Judge.[*]

[*]Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

A Hennepin County jury found Darryl Deshon Johnson guilty of six felony offenses, including second-degree murder, based on evidence that he shot and killed 15-year-old Courtney Brown. On appeal, Johnson argues that he did not validly waive his *Miranda* rights before making inculpatory custodial statements that were admitted into evidence at trial. We conclude that the district court did not err in determining that Johnson knowingly, intelligently, and voluntarily waived his *Miranda* rights and, therefore, affirm.

FACTS

On the evening of September 2, 2006, Johnson, who was 17 years old, was standing near the intersection of Dowling Avenue and Lyndale Avenue North in Minneapolis with four other young males. Another group of young males approached, including Brown, age 15, and T.B., age 16. According to the state's evidence at trial, Johnson pointed a gun at Brown and T.B. and ordered them to give him their shoes and jerseys. T.B. ran away. Brown took off his jersey and also ran away. As Brown was running away, Johnson fired a shot in Brown's direction. Brown died of a gunshot wound at the scene.

Six days later, Johnson was arrested at his home by members of the Minneapolis Police Department's Violent Crimes Apprehension Team. He was handcuffed and taken to the police station, where he was interviewed by Sergeants Richard Zimmerman and Charles Adams. Johnson's handcuffs were removed before the interview began, and he

was detained for approximately three-and-a-half hours, during which time he was questioned for a total of approximately 45 minutes. At the beginning of the interview, Sergeant Zimmerman read Johnson his *Miranda* rights, and Johnson orally waived them. Johnson confessed during the interview that he pointed the gun at Brown and pulled the trigger. Johnson concedes that he was permitted fluids and bathroom breaks during the interview and that his "interrogators did not use threats, deceit or trickery."

The state charged Johnson with multiple offenses. In early July 2007, Johnson moved to suppress the evidence of the inculpatory statements he made during his interrogation. After an evidentiary hearing, the district court denied the motion to suppress on the ground that his waiver of his *Miranda* rights was knowing, intelligent, and voluntary.

Trial lasted nearly a month. On August 3, 2007, the jury returned verdicts of not guilty on several counts and verdicts of guilty on the following six counts: (1) second-degree murder while attempting to commit aggravated robbery of Brown; (2) second-degree murder while committing second-degree assault of Brown; (3) attempted aggravated robbery of Brown; (4) second-degree assault with a dangerous weapon on Brown; (5) second-degree attempted aggravated robbery of T.B.; and (6) second-degree assault of T.B. The district court imposed two consecutive sentences -- a sentence of 180 months of imprisonment for second-degree murder of Brown while attempting to commit aggravated robbery, and a sentence of 36 months of imprisonment for attempted aggravated robbery of T.B. while armed with a dangerous weapon. Johnson appeals and raises only one issue -- whether his *Miranda* waiver is valid.

D E C I S I O N

A suspect facing interrogation in a criminal investigation must be informed of certain constitutional rights, including, among others, the Sixth Amendment right against self-incrimination. *Miranda v. Arizona*, 384 U.S. 436, 444, 467-73, 86 S. Ct. 1602, 1612 (1966). A suspect may waive his *Miranda* rights so long as the waiver is knowing, intelligent, and voluntary. *State v. Camacho*, 561 N.W.2d 160, 168 (Minn. 1997). To determine whether a juvenile understood his rights and the consequences of his waiver, the court must evaluate the totality of the circumstances, including "the juvenile's age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *State v. Burrell*, 697 N.W.2d 579, 593 (Minn. 2005) (quotation omitted).

This court "review[s] findings of fact surrounding a purported *Miranda* waiver for clear error, and we review legal conclusions based on those facts de novo to determine whether the state has shown by a fair preponderance of the evidence that the suspect's waiver was knowing, intelligent, and voluntary." *Id.* at 591. "[A]n appellate court will make a subjective factual inquiry to determine whether under the totality of the circumstances the waiver was valid. Despite this inquiry, the standard of review remains whether the district court's finding is clearly erroneous." *Camacho*, 561 N.W.2d at 169.

In denying Johnson's motion to suppress, the district court noted that Johnson had six prior felony arrests for auto theft during the two years prior to Brown's death. Johnson attempts to distinguish the current situation from his prior arrests by asserting

that his exposure to the criminal system was limited to property crimes. But the fact that the prior charges were property crimes does not diminish their significance because Johnson was given the *Miranda* warning on each prior occasion, and on at least two of those occasions he elected to remain silent. The district court stated that those arrests "show a plethora of contacts with handcuffs, with various police, with having his rights explained, with on some instances exercising his right to remain silent." The record supports the district court's finding that Johnson had experience with, and an understanding of, the criminal justice system, and the district court's consideration of those factors was appropriate.

A defendant's intelligence also is a factor in determining whether a *Miranda* waiver is valid. *See State v. Edwards*, 589 N.W.2d 807, 813 (Minn. App. 1999) (holding that *Miranda* waiver was valid because defendant was "reasonably intelligent"), *review denied* (Minn. May 18, 1999); *Camacho*, 561 N.W.2d at 169 (holding that waiver was valid even though defendant's IQ was between 79 and 82). The district court noted "repeated references" in the record to Johnson's intelligence. The district court quoted a report from Keystone Community Services stating that Johnson is "a very energetic, intelligent young man [with] many leadership skills and has the ability to do very well in school." The evidence in the record supports the district court's conclusion that Johnson was capable of understanding his rights.

Johnson further contends that he was "emotionally overwrought during the interrogation, almost to the point of being incoherent." In the case of an emotionally distressed defendant, the issue is "whether [the defendant's] mental and emotional state

impaired his ability to comprehend his constitutional rights as they were read to him, to intelligently and knowingly waive those rights, and to freely and voluntarily choose to make inculpatory statements to the police." *State v. Andrews*, 388 N.W.2d 723, 730 (Minn. 1986); *see also State v. Hoffman*, 328 N.W.2d 709, 714 (Minn. 1982), *superseded on other grounds by statute as recognized in State v. Bouwman*, 354 N.W.2d 1, 9 (Minn. 1984). In *Andrews*, the defendant was "extremely upset and crying," but the interrogating police officers testified that, despite that distress, he "was coherent and responsive while being advised of his *Miranda* rights." 388 N.W.2d at 731. The supreme court concluded that the defendant was capable of knowingly and intelligently waiving his rights at the time of the waiver. *Id.* at 730-31. The court also noted that the interview was properly terminated once Andrews's emotional distress overwhelmed him such that he no longer could understand or answer questions. *Id.* at 730.

The videotape of the interrogation shows that Johnson was coherent and generally composed in the presence of the officers and answered their questions appropriately. Although he began to cry at one point during the questioning, his crying was soft and was limited to a few minutes, during which time he continued to answer questions without pressure from Sergeants Zimmerman and Adams. Most importantly, Johnson was not distraught when he waived his *Miranda* rights. Johnson cried uncontrollably later, when he was alone in the room and was talking to his mother on the telephone, but that was after his *Miranda* waiver. When the police officers reentered the room, Johnson regained his composure and continued to answer the few remaining questions posed to him. Thus,

Johnson's *Miranda* waiver is not invalid on the ground that he was emotionally overwrought. *See Andrews*, 388 N.W.2d at 730-31; *Hoffman*, 328 N.W.2d at 713-14.

Johnson also contends that his *Miranda* waiver is invalid because the police officers failed to advise him that he might face adult prosecution. "When a juvenile is interrogated in connection with a crime that might be prosecuted outside of juvenile court, there is heightened concern that the juvenile understands that any inculpatory statements he makes after waiving his *Miranda* rights can be used against him in adult court." *Burrell*, 697 N.W.2d at 591. The supreme court has stated that the "best course" is to warn the juvenile that his statement might be used in adult court. *Id.* at 592. Even if a specific warning is not given to a juvenile, however, a *Miranda* waiver still may be effective because "[a]wareness of potential criminal responsibility may often be imputed to a juvenile when the police are conducting the interrogation." *Id.* (quotation omitted). Whether knowledge of possible adult prosecution can be imputed to a juvenile is determined through an analysis of several factors, including the circumstances of the juvenile's arrest and the discussions preceding the reading of the *Miranda* rights. *Id.*

In *Burrell*, the 16-year-old appellant was handcuffed when he entered the police department interrogation room, and an investigator told the appellant, before giving him his *Miranda* rights, that "we're looking at that little girl that got shot." *Id.* The supreme court held that knowledge of possible adult prosecution could be imputed to the appellant. *Id.* Similarly, in *State v. Ouk*, 516 N.W.2d 180 (Minn. 1994), the supreme court imputed knowledge of possible adult prosecution to a 15-year-old boy whose home was surrounded by armed police officers, who was told that he was a suspect in a

shooting and robbery, and who was handcuffed and taken to a homicide unit conference room. *Id.* at 185. Likewise, in *State v. Williams*, 535 N.W.2d 277 (Minn. 1995), the supreme court held that a juvenile reasonably could have anticipated adult prosecution because police squad cars made felony arrest maneuvers, and the juvenile was told that police were investigating a double homicide. *Id.* at 287.

In this case, the district court found that "Mr. Johnson clearly knew the seriousness of the situation." The evidentiary record supports this finding, even though the police officers did not specifically warn Johnson that his statements might be used in adult court. Johnson was made aware of the seriousness of the situation by being arrested and handcuffed by the Violent Crimes Apprehension Team. Also, Sergeant Zimmerman told Johnson that he worked in homicide and was investigating the death of Brown. Thus, knowledge of potential charges against Johnson may be imputed to him because of the circumstances of the arrest and the information he was given prior to his *Miranda* waiver. *See Burrell*, 697 N.W.2d at 592; *Williams*, 535 N.W.2d at 287; *Ouk*, 516 N.W.2d at 185.

Johnson also contends that his *Miranda* waiver is invalid because he was not allowed to speak with his mother. The supreme court has rejected a per se rule requiring parental presence during a juvenile's interrogation and, instead, has adopted a totality-of-the-circumstances test. *State v. Hogan*, 297 Minn. 430, 440, 212 N.W.2d 664, 671 (1973). In *Hogan*, the supreme court held that the juvenile's *Miranda* waiver was valid where there was no indication that the appellant had asked to speak with his grandmother before he volunteered an inculpatory remark to police. *Id.* at 432-33, 212 N.W.2d at 666-

67. Similarly, in *Williams*, the supreme court held that the juvenile's waiver was knowing, intelligent, and voluntary where the juvenile never asked to speak with a parent. 535 N.W.2d at 282, 288. In *Burrell*, however, the supreme court held that the *Miranda* waiver was invalid, but the juvenile in that case had asked to speak with his mother three times before receiving a *Miranda* warning and ten times afterward but was denied each time. 697 N.W.2d at 596-97.

The district court found that Johnson never asked to have his mother present. The record, which includes a transcription of the interrogation, supports the district court's finding and demonstrates that the police never prevented Johnson from speaking to his parents. Johnson asked to speak with his mother near the end of the interrogation, at which point Sergeant Zimmerman immediately provided him with his own cell phone so that Johnson could make the call. Johnson was allowed to speak with his parents for approximately 15 to 20 minutes. Thus, this case is unlike *Burrell*, in which the juvenile made 13 requests to speak to his mother during a three-hour interrogation, all of which were denied. 697 N.W.2d at 588, 596. The police officers were not required to do more, such as to inform Johnson that he could have a parent present during the interrogation. *See Williams*, 535 N.W.2d at 282, 288.

In sum, the district court did not err by concluding that, under the totality of the circumstances, Johnson knowingly, intelligently, and voluntarily waived his *Miranda* rights.

Affirmed.