

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

JEW  
J.P.  
M.C.

NUMBER 2011 KJ 0897

STATE OF LOUISIANA  
IN THE INTEREST  
OF  
M.A.C.

Judgment Rendered: September 14, 2011

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Appealed from the  
City Court of Slidell, Juvenile Division  
In and for the Parish of St. Tammany, Louisiana  
Trial Court Number 10 JP 4618

Honorable James "Jim" Lamz, Judge

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M.A.C.

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

WELCH, J.

A sixteen-year-old juvenile, identified herein as M.A.C., was alleged to be delinquent by a petition filed on September 9, 2010, pursuant to the Louisiana Children's Code.<sup>1</sup> The petition was based upon the alleged commission of assault by drive-by shooting, a violation of La. R.S. 14:37.1. The juvenile court denied the juvenile's motion to suppress the confession. After an adjudication hearing, the juvenile was adjudged to be a delinquent as alleged. At the disposition hearing, the juvenile court committed the juvenile to confinement until his twenty-first birthday.

On appeal, the juvenile argues that the juvenile court erred in denying the motion to suppress the confession, in overruling repeated defense objections to the admission of various statements and evidence, and in imposing an illegally excessive disposition. After a thorough review of the record and the errors assigned, we affirm the juvenile's adjudication, vacate the disposition, and remand for re-disposition.

### FACTS

During the late evening hours on August 29, 2010, gunshots were fired at a residence located at 340 Foxcroft Street in Slidell, Louisiana. Bullets entered the home through a bedroom wall and the garage, blowing out the windows of a vehicle parked therein. Based on police investigation, M.A.C., a fifteen-year-old juvenile at the time, was considered a suspect and was arrested on September 2, 2010. Earlier in the day of the shooting, M.A.C. had a near-altercation with residents of the home in question including August Williams and his mother and older brother who intervened and forced the juvenile to leave as the juvenile cursed and indicated that he would be back. After his arrest, M.A.C. confessed to the shooting.

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

## ASSIGNMENT OF ERROR NUMBER ONE

In assignment of error number one, the juvenile contends that the juvenile court erred in denying the motion to suppress the confession. He specifically argues that his confession should have been suppressed because he did not understand his **Miranda** rights, an adult interested in his welfare was not present during the questioning, there was no proper waiver of rights, and his statement was improperly induced by promises of help. The juvenile notes that at the suppression hearing he repudiated the statement given to the detective. The juvenile further argues that testimony adduced at the motion to suppress hearing and adjudication hearing indicated that he had been in special education classes since at least third grade. He contends that he was unable to comprehend his rights and understand the ramifications of waiving his rights. According to the juvenile, Detective Ray Smith of the St. Tammany Parish Sheriff's Office interrogated him for over an hour, although the detective was not called to testify at the motion to suppress or adjudication hearing. The juvenile contends that the State did not rebut his assertions that Detective Smith employed coercive measures, including threats and promises, and that he was denied access to his grandmother. The juvenile concludes that his statement should have been suppressed, and he is entitled to a new adjudication hearing.

The State contends the juvenile's grandmother was present when he was given his rights and the juvenile's statement was spontaneous and voluntary and not the result of police interrogation. The State further notes it was not given notice of the claim that Detective Smith coerced the juvenile, the juvenile's allegations did not amount to illegal coercion, and the juvenile court, which was in the best position to observe the juvenile, found the juvenile's testimony not credible due to his extensive record and level of sophistication with the legal system.

Louisiana Code of Criminal Procedure article 703(D) provides that on a motion to suppress, the burden is on the defendant to prove the ground of his motion, except the State shall have the burden of proving the admissibility of a purported confession or statement by the defendant. The confession of an accused of any age is valid only if it was given knowingly and voluntarily. **State v. Fernandez**, 96-2719, p. 5 (La. 4/14/98), 712 So.2d 485, 487. Thus, before a purported confession can be introduced in evidence, it must be affirmatively shown that the statement was free and voluntary, and not made under the influence of fear, duress, intimidation, menaces, threats, inducements, or promises. La. Ch.C. art. 881.1; La. R.S. 15:451.

In accordance with La. Ch.C. art. 881.1(B), the following factors are to be considered when making this determination: (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. While the above factors shall be considered to aid the court in making a determination, the totality of circumstances standard as the basis for determining the admissibility of juvenile confessions remains applicable.<sup>2</sup> Thus, all of the facts and circumstances must be reviewed to determine whether a juvenile's confession was freely given.

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<sup>2</sup> We note that the juvenile has asked this court on appeal to consider the U.S. Supreme Court's recent opinion in **J.D.B. v. North Carolina**, 564 U.S. \_\_\_, \_\_\_, 131 S.Ct. 2394, 2402-06, 180 L.Ed.2d 310 (2011). While this court has reviewed that opinion, we note that the holding therein (which relates to whether the child is "in custody" for **Miranda** purposes) is not applicable to the instant case, since the fact that the juvenile in this case was in custody at the time of his confession is not disputed by any party.

**Fernandez**, 96-2719 at pp. 7-8, 712 So.2d at 488.

The special needs of juveniles are analogous to the special needs of individuals with mental deficiencies and are factors to be considered. The waiver of a juvenile'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. **State ex rel. J.M.**, 99-1271, p. 3 (La. App. 4<sup>th</sup> Cir. 6/30/99), 743 So.2d 228, 229-30. 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 at p. 6, 743 So.2d at 231.

When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, *i.e.*, unless such ruling is not supported by the evidence. See **State v. Green**, 94-0887, p. 11 (La. 5/22/95), 655 So.2d 272, 281. However, a trial court's legal findings are subject to a *de novo* standard of review. See **State v. Hunt**, 2009-1589, p. 6 (La. 12/1/09), 25 So.3d 746, 751.

Herein, at the hearing on the motion to suppress, Detective Brian Williams of the St. Tammany Parish Sheriff's Office testified that before the instant offense took place, M.A.C. was a suspect in a complaint involving an altercation that took place at the scene between the juvenile and the homeowner's son. On September 2, 2010, Detective Williams executed a warrant for the juvenile's arrest for the instant offense. The arrest took place at the juvenile's residence. The juvenile's grandmother arrived at the residence shortly after the juvenile was taken into custody and he was advised of his **Miranda** rights in her presence. The juvenile and his grandmother signed an advice of rights form, and he was transported to the Slidell Police Department and placed into an interview room.

In accordance with their standard procedural rule against leaving juveniles

alone, Detective Williams instructed Detective Smith to sit with the juvenile as he contacted the Florida Parish Detention Center to arrange for the juvenile's transfer. As Detective Williams was doing paperwork (thirty to forty-five minutes after the juvenile was placed in the interview room), Detective Smith informed him that the juvenile wanted to speak to him. When Detective Williams entered the interview room, the juvenile, with teary eyes, confessed to the shooting and stated he did not intend to hurt anyone. The juvenile explained that he had been involved in a near-altercation at the residence in question prior to the shooting. The juvenile stated that a brother of one of the residents had forcibly removed him from the premises and brought him to a vehicle, then later went to the juvenile's home and struck him. Detective Williams testified that he was not interviewing the juvenile at the time of the confession and the confession was not recorded. The juvenile was not questioned regarding his educational level. Detective Williams testified that the juvenile did not ask to speak to his grandmother.

The juvenile's grandmother also testified at the motion to suppress hearing. When asked about the juvenile's medical history, she stated, "Well, he has had learning disabilities all his life and has been in Special Ed. He has ADA, autism." She stated that the juvenile receives a SSI check and was in ninth grade at the time of the hearing. She indicated she was uncertain as to whether he was still taking special education classes, although she noted that he was having difficulty in school because it was a "larger setting" than that to which he was accustomed. She further stated that the juvenile sometimes had difficulty understanding directions given at home. She testified that the juvenile was already in the police unit when she arrived home and that she was told that he would be transported directly to Florida Parish Detention Center. She acknowledged her signature on the advice of rights form and believed that the rights must have been explained to her but could not recall it, noting that she was upset at the time. The juvenile's mother testified

that the juvenile has been receiving a SSI check since third grade, specifying as to his diagnosis, "I remember them diagnosing him as autism. I can't -- I don't know the actual name of it because it's different kinds." She further testified that the juvenile had difficulty learning for as long as she could remember.

The juvenile also testified at the hearing. He confirmed that his **Miranda** rights were explained to him at the time of his arrest in the presence of his grandmother, that he signed the advice of rights form, and that he understood them "[a] little bit" adding, "I just know the part where he said what you say might be used in a court of law." The juvenile testified that he was informed of his rights a second time at the police department and told to sign a form. The juvenile testified that he was left alone in the interview room for "about 30, maybe about an hour and a half." Eventually a detective whom the juvenile did not name, but whom the juvenile insisted was not the detective who had testified earlier (Detective Williams), entered the interview room and told the juvenile that he might be going away for a long time. The juvenile further testified as follows, "I explained to him what was going on and he also told me that's not going to work when you get in court but if you tell me that you did it then we can help you. Then I asked him can I speak to my grandma and he told me no." The juvenile testified that the detective continued to question him and did not allow him to speak to his grandmother despite his request to do so. The juvenile testified that he was afraid and asked for his grandmother numerous times adding, "because he [the unnamed detective] kept on telling me that that wasn't going to work but if I tell him then he can help me. Then he can help me. And after that I just -- I just said I did it." The juvenile estimated that he had been at the police department for two hours or more. The juvenile testified that he was in Special Education classes and had been during most of his schooling. He confirmed that he never asked Detective Williams to allow him to speak to his grandmother and that Detective Williams did not

question him.

Regarding the specifics of his statement, the juvenile stated that he initially told the first detective that he was angry before the shooting because August Williams's older brother punched him in the face, but denied committing the shooting. He repeated this story to Detective Williams and both Detective Williams and the other detective repeatedly told him that he might be "going a long time" and that they could not help him if he kept repeating the same story. According to the juvenile, he then lied and told them that he fired shots at the house because, "they kept on pressuring me ... to say I did it and they told me that they knew Mr. Lamz personally and they can talk to him about stuff and they can help me if I say I did it so I just told them that I did it because I thought it was just going to help me get out of trouble." The juvenile was asked to read the first right stated on the **Miranda** rights form and he testified as follows, "You have the right to -- the right to remain --." At that point, the prosecutor interrupted and began to further question the juvenile concerning his **Miranda** rights. The juvenile responded positively when asked if he was informed of his right to remain silent and that anything he said could and would be used against him in a court of law. When asked if he was informed of his right to an attorney, the juvenile responded, "A lawyer like the lawyer you can buy?" The juvenile testified that he was not informed he could either buy an attorney or one would be given to him. The juvenile further stated that the only part he really understood is the fact that anything he said could be used against him in a court of law. The juvenile did not remember being told that he could decide to exercise his rights and not answer any questions or make any statements.

The juvenile court questioned the juvenile regarding his prior involvement in criminal cases. The juvenile estimated that he had been in that courtroom for other cases on about four occasions. According to the juvenile, in most of those



instances his rights were read to his legal guardian and he was instructed to sign a form. He acknowledged, however, that this case was not the first case wherein he was advised of his **Miranda** rights.

In denying the motion to suppress, the juvenile court specifically referenced La. Ch.C. art. 881.1's burden of proof concerning the admissibility of statements made by juveniles and its enumeration of the factors for the court to consider in making such a determination. The juvenile court specifically referenced the juvenile's age and evidence offered by the juvenile to show that he had some type of learning disability, but found the testimony to be vague and lacking in specificity and credibility. Regarding the juvenile's knowledge of the nature of his rights to consult with an attorney and to remain silent, the juvenile court noted that the juvenile was read his **Miranda** rights two times after he had been taken into custody, the first time in the presence of his grandmother. The court further noted that the juvenile had several encounters with law enforcement such that his **Miranda** rights were not a foreign concept, specifically indicating that the juvenile had fourteen delinquency cases in the City Court of Slidell dating back to 2008, and in all of those cases, the juvenile had been advised of his rights one or more times by police officers and the courts. The court found the juvenile's testimony to be lacking in credibility particularly due to his extensive record and level of sophistication with the legal system. Specifically, the court found the juvenile's claim that he was pressured into confessing to the crime and his claim that his request to speak with his grandmother had been denied lacked credibility. The juvenile court added that even if it were inclined to believe the juvenile's testimony, the described persuasion would not rise to the level of illegal coercion. The juvenile court stated that it believed the testimony of Detective Williams and found it was reasonable for the juvenile to wait in an interview room with Detective Smith while arrangements were made for the juvenile's transportation to

another facility.

During the adjudication hearing, Detective Williams' testimony was consistent with his testimony at the motion to suppress hearing. He specifically denied telling the juvenile that if he told the police what happened they would help him go home.

The admissibility of a confession is, in the first instance, a question for the trial 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. **State v. Guidry**, 93-1091 (La. App. 1<sup>st</sup> Cir. 4/8/94), 635 So.2d 731, 733-34, writ denied, 94-0960 (La. 7/1/94), 639 So.2d 1163. Once the trial court has determined that the State has met its burden of proof with respect to voluntariness of the confession, its decision is entitled to great weight on review. **State v. Ondek**, 584 So.2d 282, 293 (La. App. 1<sup>st</sup> Cir.), writ denied, 586 So.2d 539 (La. 1991).

After a careful review of the record before us, we find that under the totality of the circumstances, there was evidence showing that the juvenile's waiver of his rights and his statement were intelligently and voluntarily made. We note that the juvenile confirmed that he had been informed of his **Miranda** rights in this case and in previous cases. The juvenile court found Detective Williams to be a credible witness and accepted his testimony that M.A.C. and his grandmother were read all of the rights on the form and indicated that they understood the rights and that M.A.C. voluntarily, without any force or intimidation, waived his rights and made a statement. This credibility determination will not be disturbed on appeal. We further note that the juvenile admitted he had been informed of his right to remain silent and that he understood that anything he said could and would be used

against him in a court of law prior to making his confession. In the instant case, the record fully supports the juvenile court's denial of the motion to suppress the confession. Therefore, we find that the juvenile court did not err or abuse its discretion in denying the motion to suppress the statement.

### **ASSIGNMENT OF ERROR NUMBER TWO**

In the second assignment of error, the juvenile notes that during the testimony of Detective Williams at the adjudication hearing, the juvenile's attorney raised several hearsay objections. The juvenile notes that the juvenile court overruled most of the objections, finding the testimony admissible under the present sense impression exception to the hearsay rule. The juvenile contends that the court erred in applying this exception, specifically to the statement purportedly made by State witness Gerren Clark as to the identity of the shooter. The juvenile notes that the recorded statement given by Clark was in response to police interrogation and was not made during or immediately after the shooting. The juvenile further notes that Clark testified at the adjudication hearing that he did not know where the shots were fired from and the prosecution did not attempt to offer his recorded statement at the hearing. The juvenile concludes that Clark's statement was improperly admitted and prejudicial and he is entitled to a new adjudication hearing. The State contends that the testimony at issue was elicited by the juvenile's attorney due to defense objections that Detective Williams failed to explain how the juvenile became a suspect in the investigation, did not constitute hearsay as it was offered not to prove the truth of the matter, but to explain the steps in the police investigation, and was harmless as the adjudication was clearly unattributable to any error in its admission.

During the State's direct examination of Detective Williams at the adjudication hearing, the following pertinent colloquy took place,

Q. Please continue about your investigation.

A. There was an altercation between young men earlier that day.

MS. NAN BOUSFIELD: [Defense counsel]

I'm going to object. There's no information as to how he gets this information.

THE COURT:

You need to rephrase that. Tell us what you were investigating. Don't come to any conclusions yet.

THE WITNESS:

Okay. I was investigating a drive-by shooting and after obtaining the information I got off the incident that occurred, [M.A.C.] was listed as a suspect in the crime.

Q. Now, in the course of your investigation, what is the first step that you took?

A. I looked over the incidents that occurred during -- I mean that night. And found that a car fitting the description that was --

MS. NAN BOUSFIELD:

I'm going to object again. He's laying, [sic] no foundation for anything he's testifying to.

Based on this objection by the defense attorney, the court instructed the detective to provide step-by-step details, including what information he considered and with whom he spoke. Detective Williams indicated that Clark provided an audiotaped statement wherein he admitted that he was the driver of the vehicle involved and stated that M.A.C. fired a weapon at the house on Foxcroft Street. In overruling the defense objection, the court stated that the testimony constituted a present sense impression exception to the hearsay rule specifically adding, "He's relating his investigation."

During cross-examination, Detective Williams admitted that it had been a month or possibly more since he reviewed Clark's audiotaped statement and confirmed that his memory was possibly lacking, adding that he did not testify as to Clark's exact words. Clark testified at the adjudicated hearing, in pertinent part, that he picked up M.A.C. on the night in question to give him a ride and heard

gunshots when they arrived at the residence on Foxcroft Street. Clark stated that he was unable to tell if the gunshots came from inside or outside of his vehicle and could not particularly say whether M.A.C. was the shooter. Clark denied firing or even having a gun and confirmed that he and M.A.C. were the only occupants of the vehicle at the time of the shooting.

Hearsay is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted. La. C.E. art. 801(C). A present sense impression, defined as a statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter, is not excluded by the hearsay rule, even though the declarant is available as a witness. La. C.E. art. 803(1). Although the juvenile court, in part, referred to the challenged testimony as a present sense impression, it is clear that Clark did not make the statement while he was perceiving the event or immediately thereafter. Thus, it is apparent that the statement would not be properly admissible under the present sense impression exception to the hearsay rule.

Nonetheless, in certain circumstances, the testimony of a police officer may encompass information provided by another individual without constituting hearsay if offered to explain the course of the police investigation and the steps leading to the arrest of the accused. See State v. Smith, 400 So.2d 587, 591 (La. 1981); State v. Calloway, 324 So.2d 801, 809 (La. 1975); State v. Monk, 315 So.2d 727, 740 (La. 1975). However, the Supreme Court has warned that the State should not be allowed to use an officer as a “passkey” to present inadmissible hearsay evidence to the jury in the guise of explaining police actions. State v. Hearold, 603 So.2d 731, 737 (La. 1992); see also State v. Broadway, 96-2659, p. 8 (La. 10/19/99), 753 So.2d 801, 809, cert. denied, 529 U.S. 1056, 120 S.Ct. 1562, 146 L.Ed.2d 466 (2000)(“[T]he fact that an officer acted on information obtained

during the investigation may not be used as an indirect method of bringing before the jury the substance of the out-of-court assertions of the defendant's guilt that would otherwise be barred by the hearsay rule."); **State v. Wille**, 559 So.2d 1321, 1331 (La. 1990).

Confrontation errors are subject to a harmless error analysis. The correct inquiry is whether the reviewing court, assuming that the damaging potential of the cross-examination was fully realized, is nonetheless convinced that the error was harmless beyond a reasonable doubt. **Delaware v. Van Arsdall**, 475 U.S. 673, 684, 106 S.Ct. 1431, 1438, 89 L.Ed.2d 674 (1986). Factors to be considered by the reviewing court include the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case. **Van Arsdall**, 475 U.S. at 684, 106 S.Ct. at 1438; **Wille**, 559 So.2d at 1332. The verdict may stand if the reviewing court determines that the guilty verdict rendered in the particular trial is surely unattributable to the error. **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993).

In **Broadway**, the Louisiana Supreme Court noted that the State may not do indirectly, under the guise of asking the police to describe the course of their investigation, what it cannot do directly: place before the jury the presumptively unreliable statement of a non-testifying participant implicating the accused in the crime. **Broadway**, 96-2659 at pp. 9-10, 753 So.2d at 809-10. In that case, the court conducted a harmless error analysis and concluded that the very serious confrontation error was harmless beyond a reasonable doubt. **Broadway**, 96-2659 at p. 25, 753 So.2d at 818.

In the instant case, Clark did testify at the adjudication hearing and was

subject to cross-examination. Where, as here, the hearsay declarant is present and subject to cross-examination, the traditional protections of the oath, cross-examination, and the opportunity for the factfinder to observe the witness's demeanor satisfy the constitutional requirements of the confrontation clause. **United States v. Owens**, 484 U.S. 554, 560, 108 S.Ct. 838, 843, 98 L.Ed.2d 951 (1988); **California v. Green**, 399 U.S. 149, 158-61, 90 S.Ct. 1930, 1935-36, 26 L.Ed.2d 489 (1970). Upon cross-examination, Detective Williams admitted that he did not recall Clark's statement word-for-word and had not recently reviewed it. While Clark did not directly implicate the juvenile during his testimony, he did confirm that he and the juvenile were the only two individuals in the vehicle at the time of the shooting and further confirmed that he did not commit the shooting. Considering the evidence, including the juvenile's confession to the shooting, we find any error in the admission of the testimony in question harmless beyond a reasonable doubt. See La. C.Cr.P. art. 921. This assignment of error lacks merit.

### **ASSIGNMENT OF ERROR NUMBER THREE**

Regarding the disposition, the juvenile notes if he remains in secure care until his twenty-first birthday, he will have served five years, two months, and eleven days, which exceeds the five-year maximum sentence for assault by drive-by shooting pursuant to La. R.S. 14:37.1(B) and violates La. Ch.C. art. 898(A). The juvenile, therefore, concludes that the disposition in this case is illegal. Noting the juvenile court's discretion in imposing a disposition, the juvenile contends that the case should be remanded for the entry of a disposition term that does not exceed the maximum permitted by law. The juvenile further supports this argument by noting that no one was hurt during his offense and that he was provoked by an earlier battery inflicted by a family member of those who lived at the scene of the shooting. The State has no objection to the amendment of the disposition to five years.

The juvenile's date of birth is November 13, 1994, and he will become twenty-one years of age on November 13, 2015. As noted by the juvenile court at the disposition hearing, the juvenile was taken into the detention center on September 2, 2010. Based on the record, we agree with the juvenile's contention that the commitment imposed in this case is improper since it exceeds five years, which is the maximum length of time an adult could have been incarcerated for the instant offense pursuant to La. R.S. 14:37.1(B). Accordingly, the disposition imposed is vacated and the case remanded to the trial court for re-disposition in accordance with La. Ch.C. art. 898(A).

### **CONCLUSION**

For the foregoing reasons, the juvenile's adjudication is affirmed, the disposition is vacated, and the matter is remanded for further proceedings.

**ADJUDICATION AFFIRMED, DISPOSITION VACATED, AND  
REMANDED FOR FURTHER PROCEEDINGS.**