Express waiver of Miranda rights not required in receiving a confession from a seventeen year old.[Boyd v. State](17-4-1)

On August 18, 2017, the Dallas Court of Appeals held that an express waiver of Miranda was not required in a motion to suppress a confession, only that the trial court’s custody analysis includes review of all relevant circumstances, including the suspect’s age.

¶ 17-4-1. **Boyd v. State**, MEMORANDUM, No. 05-16-00106-CR, 2017 WL 3574799 (Tex.App.—Dallas, 8/18/2017).

**Facts:** Appellant and RW dated in high school in an on-again, off-again relationship. After their last break-up, appellant pleaded with RW to meet him at his friend’s house. RW finally agreed. At the friend’s house, appellant and RW began arguing and RW tried to leave. The argument led to a fight during which appellant strangled RW. Appellant told the Irving police officer who responded to the 911 call that he “choked” RW.

At the police station, two detectives interviewed appellant and recorded the interrogation. Before the detectives asked questions of appellant, one of the detectives read to him the rights afforded under Miranda v. Arizona, 384 U.S. 436 (1966). The detective asked appellant if he understood these rights; appellant nodded and said “yes.” The officer said, “Yes?” Appellant nodded again. The detective asked appellant for his full name, date of birth, home address, and work history, and they talked about school and appellant’s work at Braum’s. Then the detective asked appellant about his relationship to the deceased. The detective did not ask appellant to expressly waive his rights under Miranda before he started questioning appellant about the murder.

The State offered the recording of this custodial interrogation into evidence at trial, and appellant objected on the basis that appellant “was not properly Mirandized at the time of giving his statement and we feel like that because the nature of his age at the time he was giving the statement that they didn’t follow the constitutional requirements.” The trial court held an evidentiary hearing outside the jury’s presence during which the court watched the beginning of the recorded statement and asked appellant’s age at the time the statement was given. At the conclusion of the hearing, appellant argued that the statement was not admissible under Supreme Court jurisprudence because “when interrogating individuals under ... 18 years of age ... police detectives need to take special precautions.” He said failure to take “these special precautions” does not “per se, violate[ ] their constitutional rights,” but in this case the officers did not take “these special precautions.” The trial court overruled appellant’s objection and admitted the statement into evidence.

In issue three, appellant contends that the trial court abused its discretion by admitting his statement into evidence because he was 17 years old at the time he gave the statement and was “a juvenile under Supreme Court jurisprudence” and “entitled to be treated as a juvenile, with all the additional protections that pertain thereto.” His specific complaint is that Supreme Court jurisprudence requires more than reading the rights under Miranda to a suspect under age 18; he contends it requires police to obtain an express waiver of those rights before questioning can begin. He argues that in this case, the police “just explained the rights and then started talking to [him].”

**Held:** Affirmed

**Memornadum Opinion:** The case appellant relies on most heavily, J.D.B. v. North Carolina, involved a failure to provide the warnings required by Miranda. In that case, a 13–year-old student was removed from his class and questioned by police about a crime. 564 U.S. at 265. The police did not read the child his Miranda warnings, did not allow him to speak with his grandmother, and did not inform him he was free to leave the room. Id. at 266. The child sought suppression of his statements arguing he was interrogated without having been warned under Miranda. Id. at 267. The trial court concluded the child was not in custody at the time he gave the statements and denied the motion. Id. at 268. The North Carolina Court of Appeals and the North Carolina Supreme Court agreed with the trial court, expressly declining to consider the child’s age when conducting the custody analysis. Id. After examining the purpose of Miranda and reviewing its prior decisions about how children are different from adults, the Supreme Court held “that so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer,” age is a factor to be considered in determining whether a child was in custody such that Miranda warnings were required to be read before questioning. Id. at 277. The Court concluded that it was “beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave.” Id. at 264–65. The Court remanded the case to the state courts to address the custody determination, “this time taking account of all of the relevant circumstances of the interrogation, including J.D.B.’s age at the time.” Id. at 281.

Here, it is undisputed that appellant received Miranda warnings before making a statement. Consequently, J.D.B.’s facts are different. As additional support for his argument, however, appellant compares the method of interrogation used by the detective in this case to the “question-first tactic” used by the police in Missouri v. Seibert, 542 U.S. 600 (2004). In Seibert, the police had a “protocol for custodial interrogation” in which they did not give Miranda warnings until after they got a confession, then they would provide the warnings and “lead[ ] the suspect to cover the same ground a second time.” Id. at 604. Appellant contends that the detective’s tactic here of reading the Miranda warnings to him and then immediately talking to him without getting an express waiver had the same effect as the tactic used in Seibert. We disagree that the facts in this case are similar to those in Seibert or that Seibert supports appellant’s argument for the requirement of an express waiver of Miranda for suspects under age 18. In Seibert, the Supreme Court condemned the “question-first tactic” because it “effectively threatens to thwart Miranda’s purpose of reducing the risk that a coerced confession would be admitted” and “reveal[ed] a police strategy adapted to undermine the Miranda warnings.” Id. at 616–17 (footnote omitted). But the Court did not require an express waiver of those warnings. See id.

More applicable to the issue here, in North Carolina v. Butler, the Court “rejected the rule” that would have required police officers to obtain an express waiver of Miranda rights before interrogation began. 441 U.S. 369, 379 (1979). The Court saw “no reason” to require such “an inflexible per se rule.” Id. at 375. And the Court reaffirmed this ruling in Berghuis v. Thompkins, 560 U.S. 370, 387 (2010) (“The Butler Court ... rejected the rule ... which would have ‘requir[ed] the police to obtain an express waiver of [Miranda rights] before proceeding with interrogation.’ ”) (quoting Butler, 441 U.S. at 379). As the Court stated, the primary “purpose of Miranda is to ensure that an accused is advised of and understands the right to remain silent and the right to counsel.” Id. at 383. In determining whether a defendant has waived the rights under Miranda, a court examines whether the waiver was “ ‘voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception,’ and ‘made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.’ ” Id. at 381 (quoting Moran v. Burbine, 475 U.S. 412, 421 (1986)). And this determination does not necessarily turn on whether there was an express oral or written waiver. See Butler, 441 U.S. at 373 (“An express written or oral statement of waiver of the right to remain silent ... is not inevitably either necessary or sufficient to establish waiver. The question is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in the Miranda case.”).

Whether a particular defendant has waived his rights under Miranda is determined by a review of “ ‘the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.’ ” Id. at 374–75 (quoting Johnson v. Zerbst, 304 U.S. 458, 454 (1938)). One of the “facts and circumstances surrounding [the] case” would include a suspect’s age. See id.; see also J.D.B., 564 U.S. at 281 (requiring custody analysis to include review of all relevant circumstances, including suspect’s young age); Berghuis, 560 U.S. at 388 (waiver based on review of “the whole course of questioning”).

Appellant does not argue that his statement was involuntary or that he was unaware of the nature of the right or the consequences of his decision to answer the detective’s questions. He also does not argue that the trial court refused to consider his age in ruling on his objection to the admission of his statement. Instead, he asks this Court to draw a bright line and create a rule that suspects under age 18 must expressly waive rights under Miranda before being questioned about their involvement in a crime or else the custodial statement is inadmissible. But the Supreme Court has not drawn this bright line. See id. And we decline to create this “inflexible rule” when the Supreme Court has chosen not to do so. See Berghuis, 560 U.S. at 387; Butler, 441 U.S. at 376.

**Conclusion:** In this case, the record shows that the trial court asked about appellant’s age and was aware appellant was 17 years old at the time he gave his statement. There is nothing in the record to indicate the trial court did not factor appellant’s age in determining the admissibility of appellant’s statement. Based on our review of Supreme Court jurisprudence, we conclude that the trial court did not abuse its discretion by admitting the statement into evidence. We resolve issue three against appellant and affirm the trial court’s judgment.