IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE
December 6, 2022 Session Heard at Johnson City[1]

STATE OF TENNESSEE v. KEMONTEA DOVON MCKINNEY

Appeal by Permission from the Court of Criminal Appeals
Circuit Court for Robertson County
No. 74CC2-2018-CR-186B William R. Goodman, III, Judge

No. M2020-00950-SC-R11-CD

A Robertson County jury convicted Kemontea Dovon McKinney ("Defendant"), a juvenile at the time of the offenses, of aggravated robbery, premeditated first-degree murder, two counts of first-degree felony murder, and theft of property valued at over $10,000. The trial court merged the murder convictions and merged the theft conviction into the aggravated robbery conviction. The trial court imposed a life sentence for the murder conviction and eight years for the aggravated robbery conviction. This appeal concerns whether Defendant's pretrial statement to detectives was voluntary, whether Defendant validly waived his *Miranda* rights, and whether the evidence was sufficient to support his conviction for premeditated first-degree murder. The trial court denied Defendant's motion to suppress and admitted Defendant's pretrial statement into evidence. The Court of Criminal Appeals reversed. We granted the State's application for permission to appeal to consider whether the intermediate court erred when it stated that an involuntary-confession claim is "inextricably linked" to a *Miranda*-waiver claim, such that the two inquiries can be considered together. We also granted the State's application to consider whether the Court of Criminal Appeals erred in determining that the evidence was insufficient to support Defendant's conviction for premeditated first-degree murder. After review, we conclude that the Court of Criminal Appeals erred with respect to the issues raised by the State. We reiterate that the voluntariness test is distinct from the test for *Miranda* waiver, despite similarities between the analyses. After separately considering both questions, we conclude that Defendant's overall statement was voluntary and his *Miranda* waiver was both knowing and voluntary. Additionally, we conclude that the evidence presented by the State was sufficient to support Defendant's conviction for premeditated first-degree murder. We reverse the decision of the Court of Criminal Appeals and reinstate the trial court's judgments.

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[1] Oral argument was heard in this case on the campus of East Tennessee State University in Johnson City, Tennessee, as part of the S.C.A.L.E.S. (**S**upreme **C**ourt **A**dvancing **L**egal **E**ducation for **S**tudents) project.

Tenn. R. App. P. 11 Appeal by Permission; Judgments of the Court of Criminal Appeals Reversed; Judgments of the Trial Court Affirmed

ROGER A. PAGE, C.J., delivered the opinion of the court, in which SHARON G. LEE, JEFFREY S. BIVINS, HOLLY KIRBY, and SARAH K. CAMPBELL, JJ., joined.

Jonathan Skrmetti, Attorney General and Reporter; Andrée Sophia Blumstein, Solicitor General; Richard D. Douglas, Senior Assistant Attorney General; John W. Carney, Jr., District Attorney General; and Jason White and James Milam, Assistant District Attorneys General, for the appellant, State of Tennessee.

Gordon W. Rahn, Clarksville, Tennessee, for the appellee, Kemontea Dovon McKinney.

OPINION

I. FACTUAL & PROCEDURAL HISTORY

Jonathan Outlaw ("the victim") posted an online advertisement on Craigslist for his 2015 Chevrolet Camaro. On October 24, 2017, the victim traveled to a gas station in Robertson County to meet a potential buyer. Kemontea Dovon McKinney, a seventeen-year-old juvenile at the time, traveled in the backseat of a vehicle driven by Ricardo Lamont Murray Jr. to meet the victim on the pretense of buying the car. Another accomplice, Johnathan Reed, also traveled in the same vehicle with Defendant and Mr. Murray.

While en route, Defendant sent a text message to a friend stating that he was about to "go handle some business." After his friend attempted to persuade him to remain in his current location, Defendant sent her a picture of two handguns and stated that he was already in the car. One of the weapons in the photograph was later proven to be the murder weapon.

After the victim and the perpetrators arrived at the gas station, video surveillance established that Mr. Murray, Defendant, and the victim walked around the Camaro to inspect the vehicle. As Mr. Murray inspected the Camaro, Defendant appeared to position himself behind the victim. While the victim's car was running, Mr. Murray entered the driver's side door, locked the doors, and proceeded to drive away in the Camaro. As Mr. Murray began to drive away, the victim attempted to enter the car from the passenger side. According to Defendant, the victim then appeared to reach for a concealed gun. Police later confirmed that the victim did possess a concealed holstered firearm on his hip, although testimony also indicated that the victim did not remove it from his holster. Defendant fired a total of two shots while standing behind the victim. One bullet struck the victim in the back, traveled left to right, and exited through his chest. Stray bullet

fragments also traveled throughout the gas station parking lot, hitting one bystander in the arm. After the shooting, Defendant ran to the back of the gas station, and Mr. Reed picked him up. They fled the scene. At the same time, Mr. Murray also fled the scene while driving the stolen Camaro.

Later that evening, police tracked the Camaro using OnStar, eventually locating it in Nashville and disabling it. Shortly thereafter, police found the Camaro abandoned and crashed into the side of a building. During a search of the vehicle, they found a receipt that led them to Mr. Murray's brother. After interviewing Mr. Murray's brother, police developed Mr. Murray as a suspect. However, police were still trying to determine the identity of the shooter. An anonymous tip two days after the shooting identified Defendant by name as the shooter. Using the provided name, police searched for Defendant on Facebook. Additionally, police utilized the surveillance footage captured at the gas station. Although the quality of the surveillance video was not abundantly clear and did not immediately allow police to identify the perpetrators, the footage did reveal that the shooter was wearing a bright-green hoodie. The detectives' search of Defendant's Facebook page uncovered a photo of Defendant wearing the same bright-green hoodie worn by the shooter in the video.

After discovering the photograph of Defendant, Robertson County detectives and Montgomery County sheriff's deputies traveled to Defendant's Clarksville home to interview him. When they arrived, Defendant was at home with his infant son, siblings, and Thomas Johnson, the boyfriend of his mother. Mr. Johnson opened the door and allowed the officers to enter the home. According to the detectives' testimony, at some point during the conversation in the living room, Mr. Johnson "said something to the effect of [Defendant] shouldn't have been there" and "shouldn't have ever done that." During the conversation, detectives learned that Defendant's mother, Shareka McKinney, was at work in Nashville. They called her and asked her to meet them at the sheriff's department in Springfield and requested that Defendant ride there with them. She agreed.

Defendant rode with the detectives to the sheriff's department in an unmarked car. In addition to the driver, one detective sat in the front passenger seat and another detective sat in the backseat with Defendant. The conversation on the way to the police station was largely small talk that included topics such as basketball and video games. Ms. McKinney was waiting at the station when they arrived.

The detectives led Defendant and Ms. McKinney to an interview room and left them alone for approximately eight-and-a-half minutes. During this period of time, Defendant clarified to his mother that the detectives told him he was not under arrest. He then asked his mother whether he should tell the detectives what happened. She replied: "Tell them what you know."

After the eight-and-a-half minutes of waiting, Detectives Arms and Kendrick entered the room and took a seat. All four individuals engaged in small talk for approximately four minutes. The overall tone of the conversation was friendly and relaxed. Although both detectives possessed visible holstered firearms on their hips, neither detective touched or brought attention to his weapon. After the small talk concluded, Detective Kendrick informed Defendant and Ms. McKinney that they "obviously got some things [they] need to talk about" and that they had "some questions . . . to ask." Detective Kendrick continued by saying:

> But we need to do everything like we're supposed to. Whenever we bring somebody in, talk to them about this type of stuff, there's a couple things we always do. Okay? But one of the most important things is we're going to read you your rights. Okay? So you make sure you understand all your rights and all that good stuff. . . . And then when we get done, we can talk about where we're at, where we're going, what, you know, what's, we want to hear what's going on.

Detective Arms then read Defendant his *Miranda* rights using the rights-waiver form. Although the pacing was somewhat fast, Detective Arms' reading of the *Miranda* rights was understandable. After reading the Defendant his rights, Detective Arms asked Defendant: "Do you understand?" Defendant affirmatively shook his head and verbally said, "mmm hmm." Detective Arms then incorrectly told Defendant that the rights-waiver form was "just saying that" he read him his *Miranda* rights.

Detective Arms handed the rights-waiver form to Defendant, and Defendant signed the form without displaying any confusion and without asking any questions. As Defendant signed the form, both detectives continued to speak with Ms. McKinney about her children. After signing the form, Defendant did not ask any questions and proceeded to answer the detectives' questions.

Defendant informed detectives that when he entered the car driven by Mr. Murray, he did not know about the plan to steal the victim's car. According to Defendant's statement to detectives, Mr. Murray told Defendant they were simply going to look at a car and did not tell him on the way to the gas station that they planned to steal the vehicle when they arrived. Roughly a minute later during the questioning, Defendant stated that, during the drive to the gas station, Mr. Murray and Mr. Reed threatened to harm his family if he did not fire the gun if necessary. Detective Arms later asked follow-up questions attempting to ascertain exactly what information Defendant knew while traveling to the gas station. Defendant then admitted that he knew of the plan to steal the car while en route to the gas station.

Regarding the shooting, Defendant informed detectives that he shot the victim when the victim appeared to reach for a weapon after attempting to enter his Camaro from the passenger-side door. Defendant stated that he threw his weapon in an area behind the store after the shooting, but police never found the gun in that location and did not obtain the weapon until an unrelated traffic stop approximately ten months later.

On May 2, 2019, the trial court held a suppression hearing to determine the admissibility of Defendant's pretrial statement made to police during the interview. At the suppression hearing, the State entered Defendant's psychological evaluation as an exhibit, which the trial court later found to be relevant for purposes of ruling on the motion. In pertinent part, the evaluation stated: "[Defendant's] [e]ye contact was adequate. Speech was within normal limits in regard to rate and volume, and vocabulary suggested roughly average intelligence."

After testimony by Detective Arms, Ms. McKinney and Defendant testified at the suppression hearing. Ms. McKinney informed the court that she did not understand the *Miranda* warnings as they were read during the police interview. However, she agreed that she had the opportunity to ask the detectives about the *Miranda* warnings and that she nodded her head to indicate that she understood the rights as they were being read.

Concerning her son, Ms. McKinney testified that Defendant's grades in school were "good," although she also stated that "[h]e had a little trouble in reading and math." She stated that Defendant had previously been enrolled in special education classes but was not in any such classes at the virtual high school that Defendant was attending at the time of the police interview. Ms. McKinney agreed on cross-examination that her son's attendance was a concern in the past. She also agreed that Defendant received a passing grade in a government and civics class. When asked briefly about Defendant's experience outside of school, Ms. McKinney stated that he was previously employed at two restaurants.

Defendant's school records were entered as an exhibit and revealed that he received some passing grades in English but also received a failing grade in at least one other semester. Further, the records contained Defendant's ACT results, showing a composite score of thirteen. Aside from grades, the records also revealed Defendant's poor attendance log and stated that his attendance was "problematic."

Defendant testified at the suppression hearing after his mother. He testified that he struggled with reading in school. He recalled taking a government and civics class but denied that it covered *Miranda* or other constitutional rights. He confirmed that he was enrolled in a virtual high school program at the time of the shooting and had believed he was capable of obtaining enough credits to graduate. Regarding the interrogation, Defendant acknowledged that he signed the rights-waiver form. He testified that the detectives were talking "at the same time" while his rights were being read and that

Detective Arms read his rights "real fast." When asked whether he understood his rights at the time of the police interview, Defendant replied: "Not at all." Defendant stated that he had not been in trouble with the police before this instance and had not previously been interrogated. Regarding his previous employment referenced by Ms. McKinney, Defendant testified that his only responsibilities at the restaurants were mopping the floors and making cookies.

The trial court denied Defendant's motion to suppress, finding that Defendant "did knowingly and voluntarily waive his rights and agreed to speak" to the detectives. Specifically, the trial court emphasized that Defendant previously held two jobs, was a few months from his eighteenth birthday at the time of the questioning by police, and had received a passing grade in English in his last in-person semester. The trial court also noted that his mother was present for the entire questioning and expert testimony opined that Defendant's vocabulary suggested roughly average intelligence.

In July 2019, Defendant's trial began. Detectives Arms and Kendrick both testified. Detective Kendrick testified that he previously received specialized training for interviewing adolescents. On October 26, 2017, Detective Kendrick was asked to assist Detective Arms with interviewing Defendant. Detective Kendrick testified that Ms. McKinney was present during the interview. He described his interview technique as "more passive" in an attempt to "minimize the moral seriousness of what [Defendant] did in order to get him . . . to talk to us and give us more information." Detective Kendrick also informed the jury that Defendant gave the detectives the passcode to his cell phone, and Detective Kendrick later provided the phone and passcode to a deputy to conduct data extraction. Following Detective Kendrick, Detective Arms testified that he believed Defendant understood the wavier form he signed.

On July 5, 2019, a Robertson County jury convicted Defendant as charged for one count of premeditated first-degree murder, two counts of first-degree felony murder, one count of aggravated robbery, and one count of theft of property over $10,000. The trial court merged the theft conviction into the aggravated robbery conviction and merged the first-degree murder convictions. Defendant was sentenced to life imprisonment for the first-degree murder conviction and eight years of imprisonment for the aggravated robbery conviction. The trial court ordered the two sentences to be served concurrently.

Defendant appealed his conviction. On appeal, the Court of Criminal Appeals held that Defendant "did not freely and voluntarily give his statement after a knowing and intelligent waiver of his constitutional rights." *State v. McKinney*, No. M2020-00950-CCA-R3-CD, 2022 WL 42565, at *17 (Tenn. Crim. App. Jan. 5, 2022), *perm. app. granted*, (Tenn. May 18, 2022). Thus, the intermediate court determined that the trial court erred by denying Defendant's motion to suppress and admitting Defendant's confession into evidence. *Id.* The intermediate court further concluded that the trial court's decision did

not constitute harmless error, thereby requiring Defendant's conviction to be reversed and remanded for a new trial. *Id.* In addition to the issues of voluntariness and *Miranda*, the Court of Criminal Appeals concluded that the State's evidence was insufficient to support Defendant's conviction for premeditated first-degree murder. *Id.* at *20. As a result, the intermediate court limited the new trial on remand to include two counts of felony murder, one count of second-degree murder, one count of aggravated robbery, and one count of theft. *Id.* at *1.

We granted the State's application for permission to appeal to consider whether the intermediate court erred when it stated that an involuntary-confession claim is "inextricably linked" to a *Miranda*-waiver claim, such that the two inquiries can be considered together. Additionally, we granted the State's application to consider whether the Court of Criminal Appeals erred in determining that the confession was involuntary, that Defendant did not validly waive his rights, and that the evidence was insufficient to support the conviction for premeditated first-degree murder.

II. ANALYSIS

A. Voluntariness and *Miranda* Waiver

We first note the standard of review applicable to Defendant's motion to suppress. "[A] trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." *State v. Odom*, 928 S.W.2d 18, 23 (Tenn. 1996). The prevailing party "is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." *State v. Talley*, 307 S.W.3d 723, 729 (Tenn. 2010) (quoting *Odom*, 928 S.W.2d at 23). "[I]n evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." *State v. Henning*, 975 S.W.2d 290, 299 (Tenn. 1998). However, this Court reviews a trial court's application of law to the facts under a de novo standard of review with no presumption of correctness. *State v. Echols*, 382 S.W.3d 266, 277 (Tenn. 2012) (citing *State v. Walton*, 41 S.W.3d 75, 81 (Tenn. 2001)).

With this standard of review in mind, we begin our analysis by considering the arguments from both parties as they relate to the voluntariness of Defendant's confession and Defendant's *Miranda* waiver. Both Defendant and the State agree that whether a statement was voluntary and whether an individual waived his or her *Miranda* rights are two separate inquiries. However, the State argues that the intermediate court erred by regarding the voluntariness of Defendant's statement and the voluntariness of Defendant's *Miranda* waiver as "inextricably linked." The following is the disputed language from the Court of Criminal Appeals' opinion:

> Because the test for voluntariness is the same regardless of whether the defendant was provided with *Miranda* warnings, and because the question whether the defendant voluntarily provided a statement to the police is inextricably linked with the question whether the defendant voluntarily waived his constitutional right to remain silent by providing a statement after the warnings were given, we will consider those issues together to determine whether, under the totality of the circumstances, the defendant's statement was freely and voluntarily given after a knowing and intelligent waiver of his constitutional rights.

McKinney, 2022 WL 42565, at *16 (citation omitted). According to the State, by regarding the two inquiries as "inextricably linked," the Court of Criminal Appeals effectively created a per se rule that an involuntary *Miranda* waiver always establishes an involuntary confession. The State argues that the intermediate court also erred in determining that Defendant's statement to detectives was not voluntary and that Defendant did not validly waive his *Miranda* rights.

In contrast, Defendant argues that the language "inextricably linked" applied only to the specific facts of this case and thus did not create a per se rule. Based on this argument, Defendant contends that the Court of Criminal Appeals correctly held that Defendant's statement was not voluntary and that Defendant did not validly waive his *Miranda* rights based on the totality of the circumstances.

We agree with both the State and Defendant that there are two separate inquiries when analyzing the voluntariness of a statement and the validity of a *Miranda* waiver. The fact that the inquiries are distinct is especially evident when considering their histories. "Historically, courts of the United States evaluated the admissibility of confessions under a voluntariness test that originated in the common law courts of England and which recognized that coerced confessions are inherently untrustworthy." *State v. Northern*, 262 S.W.3d 741, 748 (Tenn. 2008) (citing *Dickerson v. United States*, 530 U.S. 428, 432-33 (2000)). A series of U.S. Supreme Court cases in the mid-twentieth century "based the rule against admitting coerced confessions primarily, if not exclusively, on notions of due process." *Dickerson*, 530 U.S. at 433; *see, e.g.*, *Brown v. Mississippi*, 297 U.S. 278, 286-87 (1936) (concluding that a confession obtained through violence violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution). To determine the voluntariness of a statement under the Due Process Clause, the primary inquiry is "'whether a defendant's will was overborne' by the circumstances surrounding the giving of a confession." *Dickerson*, 530 U.S. at 434 (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973)). To make this determination, "[t]he due process test takes into consideration 'the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.'" *Id.* (quoting *Schneckloth*, 412 U.S. at 226).

In addition to the issue of voluntariness, the U.S. Supreme Court's landmark decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), added another layer of analysis that must be considered to determine the admissibility of a criminal defendant's statements. *Miranda* requires that a person "subjected to custodial police interrogation," 384 U.S. at 439, must receive certain "prophylactic [warnings] that the Court found to be necessary to protect the Fifth Amendment right against compelled self-incrimination," *Vega v. Tekoh*, 142 S.Ct. 2095, 2106 (2022). The U.S. Supreme Court reasoned that "[u]nless adequate protective devices are employed to dispel the compulsion inherent in custodial surroundings, no statement obtained from the defendant can truly be the product of his free choice." *Miranda*, 384 U.S. at 458. The now-ubiquitous safeguards of *Miranda* require police to inform a person subjected to custodial interrogation:

> that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement.

Id. at 479. "Only if the totality of the circumstances surrounding the interrogation reveal[s] both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *State v. Climer*, 400 S.W.3d 537, 564-65 (Tenn. 2013) (alteration in original) (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)). Relevant to the facts of this case, juveniles may also waive their *Miranda* rights. *See State v. Callahan*, 979 S.W.2d 577, 582-83 (Tenn. 1998).

Although both inquiries utilize a totality-of-the-circumstances test, the "issue under *Miranda* is whether a suspect received certain warnings and knowingly and voluntarily waived certain rights, whereas the essential inquiry under the voluntariness test is whether a suspect's will was overborne so as to render the confession a product of coercion." *State v. Davidson*, 509 S.W.3d 156, 189 (Tenn. 2016) (citing *State v. Freeland*, 451 S.W.3d 791, 815 (Tenn. 2014)). In other words, the *Miranda*-waiver inquiry analyzes the knowing and voluntary nature of the *waiver*. In contrast, the due process voluntariness inquiry is broader in scope and analyzes whether a defendant was coerced into providing a statement. Thus, it is possible for a statement to be voluntary under a due process analysis but otherwise fail to abide by the requirements of *Miranda*. Conversely, although it may be rare, it is possible for a defendant to be coerced into providing a statement after validly waiving his or her *Miranda* rights. *See Berkemer v. McCarty*, 468 U.S. 420, 433 n.20 (1984) ("[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement

authorities adhered to the dictates of *Miranda* are rare."); *Dickerson*, 530 U.S. at 444 ("The requirement that *Miranda* warnings be given does not, of course, dispense with the voluntariness inquiry.").

While we can envision a set of facts that involves an involuntary waiver of *Miranda* rights such that the remainder of the confession is also deemed involuntary under a due process analysis, holding that the inquiries are "inextricably linked" increases the potential for judicial error. This is because the two inquiries carry different evidentiary ramifications. For example, statements elicited in violation of *Miranda* are inadmissible in the prosecution's case-in-chief as evidence of guilt but may be used for impeachment purposes if the statement is otherwise voluntary. *Climer*, 400 S.W.3d at 571 (citing *Harris v. New York*, 401 U.S. 222, 224-26 (1971)) (approving the use of a statement obtained in violation of *Miranda* for impeachment purposes "provided of course that the trustworthiness of the evidence satisfies legal standards"). In contrast, involuntary statements under a due process analysis are inadmissible at trial for all purposes. *Mincey v. Arizona*, 437 U.S. 385, 398 (1978) (collecting cases).

The admissibility of non-testimonial physical evidence discovered through a confession may also turn on the outcome of both the voluntariness and *Miranda* inquiries. This Court has previously held that "a defendant may seek suppression of non-testimonial evidence discovered through his or her unwarned statements only when the statements are the product of an actual violation of the privilege against self-incrimination, *i.e.*, such as when actual coercion in obtaining the statement is involved . . . ." *Walton*, 41 S.W.3d at 92. In other words, non-testimonial physical evidence, such as Defendant's cell phone data in this case, is only excludable when the suspect's unwarned statements are deemed involuntary.

As explained above, voluntariness and *Miranda* waiver are distinct inquires, carry different evidentiary ramifications, and require separate analyses. Indeed, this Court has previously emphasized that the "due process voluntariness test is distinct from *Miranda*." *Davidson*, 509 S.W.3d at 189 (first citing *Dickerson*, 530 U.S. at 434-35; and then citing *Mincey*, 437 U.S. at 397-98); *see also Climer*, 400 S.W.3d at 568 ("The voluntariness test remains distinct from *Miranda*."). The Court of Criminal Appeals erred to the extent that it adopted a per se rule that an invalid waiver of *Miranda* rights always establishes an involuntary confession. Even accepting Defendant's argument that the Court of Criminal Appeals did not create a per se rule, courts should avoid conflating the inquiries and make a clear determination for both voluntariness and *Miranda* waiver. Conflating the two inquiries increases the risk of applying the harsher evidentiary ramifications associated with involuntary confessions to facts that only involve an invalid waiver.

Defendant's Miranda Waiver Was Both Knowing and Voluntary

Having clarified that there are two separate inquiries for voluntariness and *Miranda* waiver, we now turn to the merits of the parties' arguments and complete each inquiry in turn. We opt to complete the *Miranda*-waiver inquiry first because it includes a voluntariness component that also examines the totality of the circumstances. *See Callahan*, 979 S.W.2d at 581-82 ("Tennessee courts have adhered to the federal totality-of-the-circumstances test when examining waivers of *Miranda* rights."). Additionally, many of the factors for determining whether a statement was voluntary are similar to the factors for determining whether a juvenile waived his or her *Miranda* rights. *Compare id.* at 583 (listing factors relevant to determining whether a juvenile defendant waived his or her *Miranda* rights), *with Climer*, 400 S.W.3d at 568 (setting out a list of similar factors to consider in the voluntariness analysis). Consequently, many of the same facts that are pertinent to the *Miranda*-waiver inquiry are also pertinent to the due process voluntariness inquiry discussed later in the opinion.

The State carries the burden of proving a defendant's valid waiver by a preponderance of the evidence. *State v. Bush*, 942 S.W.2d 489, 500 (Tenn. 1997) (citing *Colorado v. Connelly*, 479 U.S. 157, 168 (1986)). Waiver may be either express or implied. *Climer*, 400 S.W.3d at 565. "A valid waiver 'has two distinct dimensions.'" *Id.* at 564 (quoting *Moran*, 475 U.S. at 421). A waiver "must be 'voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception.'" *Id.* (quoting *Moran*, 475 U.S. at 421). In addition, a waiver must be executed "with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Id.* (quoting *Moran*, 475 U.S. at 421). "Neither the United States Constitution nor the Tennessee Constitution mandates that a criminal suspect be apprised of every possible consequence of a *Miranda* waiver." *Callahan*, 979 S.W.2d at 582 (citing *Colorado v. Spring*, 479 U.S. 564, 574 (1987)). A defendant's statements during a custodial interrogation are inadmissible "unless the prosecution can establish that the accused 'in fact knowingly and voluntarily waived [*Miranda*] rights' when making the statement." *Berghuis v. Thompkins*, 560 U.S. 370, 382 (2010) (alteration in original) (quoting *North Carolina v. Butler*, 441 U.S. 369, 373 (1979)). "Only if the totality of the circumstances surrounding the interrogation reveal[s] both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Climer*, 400 S.W.3d at 564-65 (alteration in original) (quoting *Moran*, 475 U.S. at 421).

When the accused is a juvenile, Tennessee courts analyze the totality of the circumstances using factors that specifically consider juvenile-related characteristics. *Callahan*, 979 S.W.2d at 583. These factors include:

(1) consideration of all circumstances surrounding the interrogation including the juvenile's age, experience, education, and intelligence;
(2) the juvenile's capacity to understand the *Miranda* warnings and the consequences of the waiver;
(3) the juvenile's familiarity with *Miranda* warnings or the ability to read and write in the language used to give the warnings;
(4) any intoxication;
(5) any mental disease, disorder, or [disability][2]; and
(6) the presence of a parent, guardian, or interested adult.

Id. "While courts shall exercise special care in scrutinizing purported waivers by juvenile suspects, no single factor such as mental condition or education should by itself render a confession unconstitutional absent coercive police activity." *Id.* (citing *Connelly*, 479 U.S. at 167).

The State argues that the proof supported the trial court's finding that Defendant knowingly and voluntarily waived his *Miranda* rights. The State further contends that Defendant explicitly waived his rights and, in the alternative, asserts that Defendant implicitly waived his rights by not asking questions and continuing to talk to detectives. Defendant disagrees and argues that his waiver was not knowing and voluntary.

To complete this inquiry, we first outline the pertinent facts from the record when considering the *Callahan* factors for juveniles. Defendant was roughly two months shy of his eighteenth birthday at the time of the police questioning. He previously worked two jobs in the restaurant industry. A psychologist's report entered into evidence as an exhibit at the suppression hearing provided: "[Defendant's] [e]ye contact was adequate. Speech was within normal limits in regard to rate and volume, and vocabulary suggested roughly average intelligence."

Regarding education, Defendant was enrolled in a virtual high school program and believed he was capable of graduating. In the past, Defendant received some passing grades in English while enrolled at an in-person high school. Defendant also received at least one failing grade in English and received a composite score of thirteen on the ACT. Defendant's school records revealed his poor attendance log and stated that his attendance was "problematic." At trial, Ms. McKinney testified that Defendant was previously enrolled in special education classes for reading but was not enrolled in such classes at the virtual school he was attending.

[2] We replace the original term used in *Callahan*, 979 S.W.2d at 583, with the term "disability" for the same reason that the Tennessee General Assembly amended various portions of the Tennessee Code Annotated: to remove "anachronistic terms for disabilities." Act of Apr. 28, 2011, ch. 197, 2011 Tenn. Pub. Acts 474-75.

Further considering "all [of the] circumstances surrounding the interrogation" and waiver, the detectives led Defendant and Ms. McKinney to the interrogation room after arriving at the police station. Defendant and his mother remained alone in the interrogation room for approximately eight-and-a-half minutes before detectives re-entered to begin talking with them. Detective Arms read Defendant his constitutional rights clearly and coherently, albeit somewhat quickly. Defendant affirmatively shook his head when asked if he understood his rights, verbally said, "mmm hmm," and did not ask any questions to detectives or Ms. McKinney. Before handing the waiver form to Defendant, Detectives Arms incorrectly stated that the rights-waiver form was "just saying that" he read him his *Miranda* rights. However, the bottom of the waiver form provided a space for Defendant's signature to acknowledge that he wished to waive his rights, not merely that Detective Arms had read him his rights. After some additional small talk while Detective Arms filled out his portion of the document, Defendant received the waiver form and signed it. Although both detectives continued to speak with Ms. McKinney about her children while Defendant signed the form, Defendant did not ask any questions after signing the form and proceeded to answer the detectives' questions.

Both parties agree that Defendant had no prior experience with police, thereby reducing the likelihood of him having a familiarity with *Miranda*. Both parties also agree the *Callahan* factors involving intoxication, mental disease, or other disorders are not present in this case. Regarding the final *Callahan* factor, both parties agree that Defendant's mother was present for the duration of questioning by police.

Based on the totality of the circumstances, we agree with the State that Defendant's waiver of his *Miranda* rights was explicit, knowing, and voluntary.[3]

Concerning the voluntariness prong of the waiver inquiry, the record simply does not support the finding that the detectives engaged in coercive activity such that the waiver was not "the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Climer*, 400 S.W.3d at 564 (quoting *Moran*, 475 U.S. at 421). To the contrary, Defendant and Ms. McKinney were inside the interrogation room for only a short period of time before the waiver was obtained; the detectives were polite, calm, and respectful in tone; and Defendant was apprised of his constitutional rights. The most concerning aspect of Defendant's waiver involves Detective Arms' misleading statement involving the meaning of the waiver form. As previously mentioned, the rights-waiver form did not "just say[] that" Detective Arms read Defendant his rights. Rather, the form provided a space for Defendant's signature to acknowledge that he wished to *waive* his rights. We agree that Detective Arms' comment was inappropriate considering the importance of the rights

[3] Because we hold that Defendant explicitly waived his rights by signing the waiver form, we need not determine whether Defendant implicitly waived his rights.

Defendant was forfeiting. This misclassification skirts the edge of what is permissible police conduct but stops short of being deceptive.[4] When viewed in the totality of the circumstances, we hold that this single misclassification does not render the waiver involuntary. The evidence does not preponderate against the trial court's findings that Defendant could read and possessed the opportunity to ask questions about the waiver form.

Before moving to the "knowing" prong of the waiver inquiry, we address two aspects of the detectives' questioning noted by the Court of Criminal Appeals that relate to voluntariness. First, we disagree with the intermediate court's emphasis on the detectives entering "the room with guns visible, a clear show of authority." *McKinney*, 2022 WL 42565, at *16. Police officers routinely openly carry firearms on their persons. There is no evidence in the record of the detectives unholstering, using, or drawing attention to their weapons during the interview. Thus, when considering the totality of the circumstances, we give little weight to the officers merely possessing their holstered, job-related firearms during the questioning.

Additionally, we disagree with the intermediate court's conclusion that Detective Kendrick's language implied an expectation for Defendant to waive his rights and talk to detectives. In part, Detective Kendrick stated detectives had "some things [they] need to talk about" and that they had "some questions [they] want[ed] to ask." Similar to the facts involving the detectives' holstered weapons, this fact does not offer any notable weight when considered in the totality of the circumstances. The detectives' statements did not include any compulsory language or ultimatum in the event Defendant did not wish to speak. Further, Detective Kendrick's statements occurred prior to Detective Arms reading Defendant his rights, which included the standard language informing Defendant that he had the right to remain silent.

In addition to concluding that Defendant's waiver was voluntary, we also conclude his waiver was executed "with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran*, 475 U.S. at 421. Detective Kendrick informed Defendant that reading him his *Miranda* rights was "one of the most important things" that the detectives would do. After Detective Arms read Defendant his constitutional rights, Defendant affirmatively shook his head when asked if he understood his rights, verbally said, "mmm hmm," and did not ask any questions to detectives or Ms. McKinney. Defendant's education and intelligence level was not lacking to the extent necessary to preponderate against the trial court's finding that he possessed the capacity to understand the consequences of waiving his rights. The record provides

[4] It should go without saying that such a reckless mischaracterization of a defendant's waiver form is not best practice. Law enforcement officers should be especially careful with their words when obtaining a defendant's waiver, especially from a juvenile. If Detective Arms was ever in doubt, he should have been more precise and looked to the rights-waiver form for guidance.

ample support for the trial court to have concluded that Defendant was able to read, have a conversation, and understand the consequences of his waiver. *Cf. Climer*, 400 S.W.3d at 566 (concluding that the State failed to meet its burden of showing that the defendant understood his rights based on the defendant's statements to detectives indicating confusion regarding his right to an attorney). Additionally, prior to detectives entering the room, Defendant asked Ms. McKinney whether he should tell detectives what happened. She replied: "Tell them what you know." We agree with the State that this is an indication that Defendant knew he could remain silent if he wished.

While detectives never orally asked Defendant whether he wished to waive his rights, we conclude that Defendant explicitly, knowingly, and voluntarily waived his rights by signing the waiver form after being apprised of his rights. As a result, we disagree with the Court of Criminal Appeals and conclude that Defendant's waiver was both knowing and voluntary based on the totality of the circumstances.

Defendant's Statement was Voluntary

Following the issue of waiver, we now consider whether Defendant's overall statement to police was voluntary under a due process inquiry. As explained further above, "[a] court determining voluntariness must examine the totality of the circumstances surrounding the giving of a confession, 'both the characteristics of the accused and the details of the interrogation.'" *Climer*, 400 S.W.3d at 568 (quoting *Dickerson*, 530 U.S. at 434). When analyzing the totality of the circumstances, Tennessee courts consider a list of non-exclusive factors provided in *Climer* to help guide the inquiry. *Id.* at 568. These factors include:

(1) the age of the accused;
(2) his lack of education or his intelligence level;
(3) the extent of his previous experience with the police;
(4) the repeated and prolonged nature of the questioning;
(5) the length of the detention of the accused before he gave the statement in question;
(6) the lack of any advice to the accused of his constitutional rights;
(7) whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession;
(8) whether the accused was injured, intoxicated, or drugged, or in ill health when he gave the statement;
(9) whether the accused was deprived of food, sleep, or medical attention;
(10) whether the accused was physically abused;
(11) and whether the suspect was threatened with abuse.

Id. (quoting *State v. Huddleston*, 924 S.W.2d 666, 671 (Tenn. 1996)).

The State argues that the Court of Criminal Appeals erred to the extent it concluded that Defendant's statement to detectives was not voluntary. Defendant maintains that his statement was involuntary, and thus, in violation of his due process rights based on the factors outlined in *Climer*.

Considering the relevant facts for purposes of the *Climer* factors, we first incorporate the same facts stated in the previous section involving Defendant's education, age, intelligence, and all of the circumstances surrounding the waiver. As we stated in the section above, we do not find those facts sufficient to rise to the level of coercion or to indicate Defendant's will was overborne. However, because the scope of the due process voluntariness inquiry is larger than the scope of the *Miranda*-waiver inquiry, the following additional post-waiver facts must also be considered in determining whether Defendant's overall statement was voluntary.

Defendant's most consequential statements all occurred relatively soon after the questioning began. Defendant admitted to shooting the victim approximately twenty-five minutes after entering the interrogation room. Later, about an hour and five minutes into the interview, Defendant admitted to hearing his co-defendants talk about stealing the car. In total, Defendant remained in the interrogation room for approximately three hours; detectives were only present for approximately one hour. Detectives read Defendant his rights. Lastly, there is no evidence to suggest that Defendant was deprived of any essential needs, was threatened with abuse, or suffered physical abuse.

Based on the totality of the circumstances, we agree with the State that Defendant's statement to police was voluntary. Although Defendant can point to various facts in the record that support certain *Climer* factors, most notably his lack of prior involvement with police and his age, the totality of the circumstances simply does not indicate that Defendant's "will was overborne so as to render the confession a product of coercion." *Davidson*, 509 S.W.3d at 189. Similar to our reasoning involving waiver, the evidence does not preponderate against the trial court's findings involving Defendant's intelligence and education. Further, the length of the interview was reasonable; Defendant provided vital information soon after questioning began; and the detectives were polite, calm, and respectful in tone. Therefore, we conclude that Defendant's statement to detectives was voluntary and disagree with the Court of Criminal Appeals to the extent that it held otherwise.

B. Sufficiency of the Evidence

The State also appealed the Court of Criminal Appeals' determination that the evidence at trial was insufficient to support Defendant's conviction for premeditated first-degree murder.

To determine whether the evidence is sufficient to support a conviction, an appellate court asks "whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011) (first citing Tenn. R. App. P. 13(e); and then citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "In making this determination, we afford the prosecution the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom." *State v. Majors*, 318 S.W.3d 850, 857 (Tenn. 2010). We do not reweigh the evidence, *State v. Smith*, 24 S.W.3d 274, 279 (Tenn. 2000), since questions regarding witness credibility, the weight to be given the evidence, and factual issues raised by the evidence are resolved by the jury, as the trier of fact, *Majors*, 318 S.W.3d at 857. This Court applies the same standard of review "whether the conviction is based upon direct or circumstantial evidence." *Dorantes*, 331 S.W.3d at 379 (quoting *State v. Hanson*, 279 S.W.3d 265, 275 (Tenn. 2009)). "The jury decides the weight to be given to circumstantial evidence, and '[t]he inferences to be drawn from such evidence, and the extent to which the circumstances are consistent with guilt and inconsistent with innocence, are questions primarily for the jury.'" *State v. Rice*, 184 S.W.3d 646, 662 (Tenn. 2006) (quoting *Marable v. State*, 313 S.W.2d 451, 457 (1958)), *abrogated on other grounds by State v. Miller*, 638 S.W.3d 136 (Tenn. 2021). "A guilty verdict by the jury, approved by the trial court, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the prosecution's theory." *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997) (citing *State v. Grace*, 493 S.W.2d 474, 476 (Tenn. 1973)). "Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the criminal defendant bears the burden on appeal of showing that the evidence was legally insufficient to sustain a guilty verdict." *Hanson*, 279 S.W.3d at 275 (citing *State v. Evans*, 838 S.W.2d 185, 191 (Tenn. 1992)).

We begin the analysis of this issue by outlining the applicable offense. "First degree murder is . . . [a] premeditated and intentional killing of another; [or] . . . [a] killing of another committed in the perpetration of or attempt to perpetrate any . . . robbery [or] theft . . . ." Tenn. Code Ann. § 39-13-202(a)(1), (2) (2014 & Supp. 2022). Tennessee Code Annotated section 39-13-202(d) defines "premeditation" to mean

> that the intent to kill must have been formed prior to the act itself. It is not necessary that the purpose to kill preexist in the mind of the accused for any definite period of time. The mental state of the accused at the time the accused allegedly decided to kill must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation.

Id. § 39-13-202(d) (2014). As the Court of Criminal Appeals has noted in the past, "[p]roof of premeditation is inherently circumstantial." *State v. Gann*, 251 S.W.3d 446, 455 (Tenn.

Crim. App. 2007). "The trier of fact cannot speculate what was in the killer's mind, so the existence of premeditation must be determined from the defendant's conduct in light of the circumstances surrounding the crime." *Id.* This Court has provided the following non-exclusive factors a jury may consider to infer premeditation: (1) use of a deadly weapon upon an unarmed victim; (2) the particular cruelty of the killing; (3) declarations by the defendant of an intent to kill; (4) evidence of procurement of a weapon; (5) preparations before the killing for concealment of the crime; (6) calmness immediately after the killing; (7) a lack of provocation on the victim's part; and (8) a defendant's failure to render aid to a victim. *State v. Clayton*, 535 S.W.3d 829, 845 (Tenn. 2017) (first citing *Davidson*, 121 S.W.3d at 615; and then citing *Finch v. State*, 226 S.W.3d 307, 318-19 (Tenn. 2007)). Proof that establishes a motive for the killing is also a factor a jury may consider. *State v. Adams*, 405 S.W.3d 641, 663 (Tenn. 2013) (citing *State v. Nesbit*, 978 S.W.2d 872, 898 (Tenn. 1998)).

In this case, the State presented the jury with sufficient evidence to conclude that Defendant acted with premeditation when he shot and killed the victim. First, Defendant admitted to detectives that he overheard Mr. Murray and Mr. Reed discussing the upcoming robbery on the way to meet the victim. If the jury believed this to be true, it could have then rationally concluded that Defendant exited the vehicle armed with a handgun planning to kill the victim. The jury could have formed this conclusion even assuming that they also believed testimony at trial indicating that Defendant frequently armed himself for protection. Even if Defendant entered Mr. Murray's vehicle armed with a weapon and with no knowledge of the upcoming robbery at that time, Defendant could have opted to leave his weapon in the car once he learned of the full plan. Critically, he did not leave the weapon in the car and exited Mr. Murray's vehicle armed with a handgun.

Second, the State presented evidence of Defendant's text messages to a friend on the way to the robbery. One message to his friend stated that he was going "to handle some business." After his friend attempted to persuade him to remain in his current location, Defendant sent her a picture of two handguns and stated that he was already in the car. Thus, a rational jury could have concluded that Defendant's messages indicated his plan to kill the victim during the robbery.

Third, the jury could have inferred premeditation based on a lack of provocation by the victim. Prior to the robbery and homicide, the victim and the perpetrators walked around the vehicle. Defendant followed and positioned himself behind the victim, appearing to shadow him as the vehicle was inspected. The victim also appeared to have his back to Defendant as Mr. Murray pulled away with the stolen Camaro. According to Defendant's testimony, he shot the victim because he believed the victim was turning in his direction and reaching for a weapon. Although it was later confirmed that the victim did possess a handgun on his hip, testimony and photographs introduced at trial indicated that the gun was never removed from its holster. At trial, Defendant admitted that he did

not see the gun leave the holster. It is also important to note that the victim's movement coincided with Mr. Murray driving away in the stolen vehicle. Therefore, while one jury could have found that the victim reaching for his weapon provoked Defendant, when viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found that Defendant shot the victim without provocation for the purpose of providing support to steal the vehicle.

Fourth, a rational jury could have inferred premeditation due to Defendant failing to render aid. Rather than provide help to the victim following the shooting, such as calling an ambulance, Defendant ran behind the gas station and fled the scene.

Fifth, a rational jury could have inferred premeditation due to the State producing evidence of a motive to kill the victim. As highlighted by the State in their brief, phone records revealed communications between Mr. Murray and the victim about the Camaro. The victim also engaged in conversation with Mr. Murray and Defendant, and the victim saw the perpetrators' faces. Therefore, a rational trier of fact could have determined that Defendant believed the victim could implicate Defendant in the robbery, which caused him to shoot the victim to prevent this from occurring.

Upon review of the evidence in the light most favorable to the prosecution, we conclude that the Court of Criminal Appeals erred when it held that the evidence was insufficient to sustain Defendant's conviction for premeditated first-degree murder. Not only does Defendant bear the burden on appeal of showing the evidence was legally insufficient, the standard of review employed by this Court when considering this question is deferential. *See Dorantes*, 331 S.W.3d at 379 (requiring the appellate court to ask "whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt"). When analyzed under this deferential standard, we cannot say that no rational trier of fact could have inferred premeditation based on the proof presented at trial. To the contrary, the State presented evidence of multiple factors from which the jury was entitled to infer premeditation. Thus, Defendant has failed to carry his burden of establishing that the evidence was legally insufficient to support the jury's verdict finding him guilty of premeditated first-degree murder. The Court of Criminal Appeals' decision holding otherwise is reversed.

III. CONCLUSION

The voluntariness test is distinct from the test for *Miranda* waiver, despite similarities between the analyses. After considering both issues separately, we conclude that Defendant's statement was voluntary and that his express waiver was both knowing and voluntary. We further conclude that the evidence presented by the State was sufficient

to support Defendant's conviction for premeditated first-degree murder. Therefore, we reverse the Court of Criminal Appeals and reinstate the judgments of the trial court.

It appearing that Defendant, Kemontea Dovon McKinney, is indigent, costs of this appeal are taxed to the State of Tennessee.

ROGER A. PAGE, CHIEF JUSTICE