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State v. Hebert: The Louisiana Supreme Court Affirms the Sanctity of Fifth Amendment Rights

I. INTRODUCTION

Shortly after midnight, police officers uncuffed eighteen-year-old Byrielle Hebert's hands from behind her back and re-cuffed them to a desk in the New Orleans Police Department's homicide headquarters.[1] Detective Marylou Agustin informed Ms. Hebert that, once she gave a statement, she could leave.[2] Half an hour later, another officer entered the room and advised Ms. Hebert "that she was going to break her wrist if she kept pulling on the handcuffs and banging on the table" and that, if she escaped, she would face a felony.[3] Detective Agustin returned to the room nearly an hour after handcuffing Ms. Hebert to the desk.[4] Ms. Hebert then announced that she did not want to talk to anyone at least six times over the course of

1. State v. Hebert, 2020-00671, p. 1 (La. 5/13/21); 320 So. 3d 406, 407; Brief for Petitioner at *1, State v. Hebert, 2020-00671 (La. 5/13/21); 320 So. 3d 406 (No. 2020 KK 671), 2020 WL 8677763 (stating Ms. Hebert's age).
2. *Hebert*, 2020-00671 at p. 2; 320 So. 3d at 407.
3. *Id.*
4. *Id.* at p. 2; 320 So. 3d at 407-08.

five minutes.[5] Detective Agustin "repeatedly assured" Ms. Hebert at least seven times that she would be taken home or to the hospital upon providing a statement.[6] Ignoring Ms. Hebert's invocations of her right to remain silent—at least eleven invocations throughout the night—Detective Agustin made "a final attempt" to secure Ms. Hebert's cooperation, asking: "[o]k . . . would you talk to me . . . when I finish [some paperwork]?"[7] Ms. Hebert nodded and noted that she was tired and ready to leave.[8]

At 3:30 A.M., the formal interrogation began.[9] The officers reiterated that "the sooner they [got the interview] over with, the sooner [Ms. Hebert] could leave."[10] Detective Morton informed Ms. Hebert that she was under investigation for second-degree murder and read Ms. Hebert her *Miranda* rights.[11] Ms. Hebert verbally indicated that she understood her rights but said, once again, that she did not want to talk.[12] Instead of terminating the interrogation when Ms. Hebert invoked her right to silence, Detective Morton repeated that Ms. Hebert was under investigation and this was her opportunity to explain her involvement in the offense.[13] Ms. Hebert responded, "all I know is [Pipkins] was in the east and got shot."[14] The officers then asked Ms. Hebert to sign a waiver of rights form and continued the interview for thirty minutes, during which Ms. Hebert admitted to being with Pipkins at the time of the offense.[15] At 5:05 A.M., nearly seven hours since she was first detained, officers arrested Ms. Hebert.[16]

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5. *Id.* at p. 2; 320 So. 3d at 408.

6. *Id.* at p. 2, 7; 320 So. 3d at 408, 410. Ms. Hebert's boyfriend, Emanuel Pipkins, who was also involved in the offense, was at Tulane Medical Center to receive treatment for his gunshot wound. *Id.* at p. 2; 320 So. 3d at 408.

7. *Id.* at pp. 2-5; 320 So. 3d 408-09 (alteration in original).

8. *Id.* at p. 2; 320 So. 3d at 408.

9. *Id.*

10. *Id.*

11. *Id.*; *see also* Miranda v. Arizona, 384 U.S. 436, 444 (1966) (enumerating criminal defendants' *Miranda* rights and the circumstances in which they apply).

12. *Hebert*, 2020-00671 at pp. 2-3; 320 So. 3d at 408.

13. *Id.* at p. 3; 320 So. 3d at 408.

14. *Id.* (alteration in original).

15. *Id.*

16. *Id.*; Brief for Petitioner at *2, State v. Hebert, 2020-00671 (La. 5/13/21); 320 So. 3d 406 (No. 2020 KK 671), 2020 WL 8677763 (noting that Ms. Hebert was initially detained at approximately 10:30 P.M.).

A grand jury indicted Ms. Hebert for "first degree murder, attempted first degree murder, and other felony offenses."[17] The defense filed a motion to suppress Ms. Hebert's pre-arrest statements on four grounds: (1) they were the product of an illegal arrest; (2) they were made after Ms. Hebert invoked her right to remain silent; (3) they were induced by false promises; and (4) Ms. Hebert did not waive her *Miranda* rights.[18] The trial court denied the motion, finding Ms. Hebert's eventual waiver was sufficiently attenuated from "earlier invocations of her right to remain silent."[19] The Louisiana Fourth Circuit Court of Appeal denied Ms. Hebert's application for supervisory writs without substantive comment.[20] In *State v. Hebert*, the Louisiana Supreme Court reversed the decisions of the lower courts and held that the State failed to meet its burden of proving the voluntariness of Ms. Hebert's inculpatory statement.[21]

The Louisiana Supreme Court's decision affirms the sanctity of Fifth Amendment rights. In grounding its ruling in the objective facts surrounding Ms. Hebert's detention and interrogation, the court safeguards the mandates of *Miranda* and stands up for criminal defendants in a way that it has infrequently done in the past. Part II of this Note provides background on Louisiana's confession jurisprudence and highlights a recent shift toward increasingly pro-defendant case law. Part III explores the court's assessment of Ms. Hebert's detention and interrogation. Part IV asserts that the majority took affirmative steps to protect Ms. Hebert's Fifth Amendment rights, in contrast to the dissent's dangerous interpretation of the law and decades of Louisiana Supreme Court jurisprudence evading the topic of statement suppression. Part V concludes.

II. BACKGROUND

The Fifth Amendment states that no person "shall be compelled in any criminal case to be a witness against himself."[22] In *Miranda v. Arizona*, the United States Supreme Court interpreted this right

17. *Hebert*, 2020-00671 at p. 3; 320 So. 3d at 408.
18. *Id.*
19. *Id.* at pp. 3-4; 320 So. 3d at 408.
20. *Id.* at p. 4; 320 So. 3d at 408-09. However, Judge Belsome dissented, asserting that although Ms. Hebert waived her *Miranda* rights, the detectives coerced her cooperation before she signed the waiver. *Id.*
21. *Id.* at pp. 8-9; 320 So. 3d at 411.
22. U.S. CONST. amend. V.

against self-incrimination as the right to remain silent.[23] Both federal and Louisiana law requires law enforcement to inform suspects of their constitutional rights pursuant to *Miranda* when the individual is: (1) in custody and (2) subject to interrogation.[24] A person is in custody when formally arrested or when their freedom of movement is restrained in a manner equivalent to formal arrest.[25] This objective assessment considers both the circumstances surrounding the interrogation and how a reasonable person in the interrogee's position would view the limits on their freedom of action.[26] In *Rhode Island v. Innis*, the Supreme Court defined interrogation.[27] There, the Court explained that interrogation includes not only express questioning, but also any words or actions that the police should know are reasonably likely to elicit an incriminating response.[28] A person in custody must be Mirandized prior to interrogation.[29] Any undue delay may render the statement inadmissible, as "it would defeat the purpose of the *Miranda* warnings to allow law enforcement officials to wait until a suspect has suffered the effects of psychological coercion before informing [them] that [they are] not obliged to incriminate [themselves]."[30]

Louisiana's *Miranda* equivalent is broader in scope and independent in source.[31] Article I, Section 13 of the Louisiana Constitution, which codifies the rights enumerated in *Miranda*, requires law enforcement to Mirandize "any person [who] has been arrested *or detained* in connection with the investigation or commission of any offense."[32] The Louisiana Supreme Court, in *State ex rel. Dino*, held that the use of "detained" in addition to "arrested" was meant "to go beyond *Miranda* and to require more of the State."[33] In Louisiana, detention is a lower threshold than custody.[34] A

23. 384 U.S. 436, 444 (1966).

24. *Id.*; State v. Menne, 380 So. 2d 14, 16-17 (La. 1980).

25. California v. Beheler, 463 U.S. 1121, 1124 (1983) (per curiam) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)); *Menne*, 380 So. 2d at 16-17.

26. State v. Manning, 2003-1982, p. 24 (La. 10/19/04); 885 So. 2d 1044, 1073.

27. 446 U.S. 291, 292 (1980); State v. Leger, 2005-0011, p. 30 (La. 7/10/06); 936 So. 2d 108, 134.

28. *Innis*, 446 U.S. at 292.

29. *Miranda*, 384 U.S. at 444.

30. State v. Ned, 326 So. 2d 477, 480 (La. 1976).

31. LA. CONST. art. I, § 13.

32. *Id.* (emphasis added).

33. 359 So. 2d 586, 592 (La. 1978); *see also* State v. Menne, 380 So. 2d 14, 17 (La. 1980) ("[T]he framers intended to require that investigating officers give the warnings

person can be detained "without any physical restraint or express declaration that [they are] under arrest," even if the officer told them they were free to leave.[35] In evaluating the admissibility of a statement on Fifth Amendment grounds, one must consider: (1) the validity of any invocations, (2) whether law enforcement scrupulously honored the invocations, and (3) whether the statement was voluntary.

A. Statement Admissibility Under the Fifth Amendment

The Fifth Amendment right to silence must be invoked unambiguously.[36] If the accused remains silent or makes a statement regarding their right to silence that is ambiguous or equivocal, law enforcement is not required to end the interrogation.[37] As long as the invocation is clear, *Miranda* does not require the use of any particular phrasing in order to exercise one's right to silence, nor does the invocation need to be made at a specific time within the period of detention.[38] This assessment is more complicated than it may seem at face value.[39] In the absence of more specific guidance on effective invocation, lower courts are left with the task of determining what verbal and non-verbal communications qualify as unambiguous invocations.[40]

When an individual asserts their right to remain silent, law enforcement must "scrupulously honor" the invocation and end the interrogation.[41] As the United States Supreme Court stated in *Miranda*, if one "indicates in *any manner*, at *any time* prior to or

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anytime such a citizen was deprived of his liberty in a significant way or was not free to go as he pleased.").

34. *Menne*, 380 So. 2d at 17.

35. *Id.*; State v. Kinard, 2016-0917, p. 8 (La. App. 4 Cir. 3/15/17); 214 So. 3d 109, 114.

36. Berghuis v. Thompkins, 560 U.S. 370, 381 (2010).

37. *Id.* Louisiana courts strictly apply this rule, sometimes overlooking defendants' attempts to exercise their right against self-incrimination because the attempted invocation was not totally unequivocal. *See, e.g.*, State v. Daniel, 378 So. 2d 1361, 1366 (La. 1979) (finding defendant's confession voluntary even though the defendant said "no" when asked if he wanted to speak with the officers); State v. Pourciau, 2016-0521, p. 11, 2016 WL 7409382, at *7 (La. App. 1 Cir. 12/22/16) (finding statement voluntary even though defendant told officers "I don't want to speak. I don't want to talk").

38. State v. Taylor, 2001-1638, p. 6 (La. 1/14/03); 838 So. 2d 729, 739.

39. *See generally* Jeffrey D. Knight, *Meditations on Post-*Thompkins *Invocations: A Model of "Clarity,"* 47 NEW ENG. L. REV. 217 (2012) (discussing the difficulties of evaluating invocations of the right to silence).

40. *Id.*

41. Michigan v. Mosley, 423 U.S. 96, 104 (1975); State v. Thucos, 390 So. 2d 1281, 1284 (La. 1980).

during questioning, that [they wish] to remain silent, the interrogation must cease."[42] Once the individual exercises their Fifth Amendment privilege, any subsequent statement "cannot be other than the product of compulsion, subtle or otherwise."[43] Any statement taken in violation of *Miranda* is inadmissible against the defendant in the prosecution's case-in-chief.[44]

The statement must also be voluntary. In order to be admissible under Louisiana law, a statement cannot have been "made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises."[45] The prosecution bears a "heavy burden" to prove beyond a reasonable doubt that police advised the defendant of their *Miranda* rights and the defendant then voluntarily and intelligently waived those rights.[46] If police coercion overbore the will of the suspect, any resulting statement is involuntary and its use against the suspect would offend due process.[47] In such cases, the statement is therefore inadmissible for any purpose.[48]

Voluntariness is determined on a case-by-case basis, under the totality of circumstances.[49] In *Schneckloth v. United States*, the United States Supreme Court analyzed its confession jurisprudence to provide additional guidance on voluntariness.[50] The Court explained that characteristics of the accused and details of the interrogation must be evaluated, including, but not limited to: the suspect's age and education, the duration of the suspect's detention, whether law enforcement Mirandized the suspect, and whether law enforcement used punishment tactics such as food and sleep deprivation.[51] While these factors may be significant in assessing voluntariness, "[n]o single fact is dispositive."[52] The determination of voluntariness "must be answered on the facts of each case."[53] In practice, however, the

42. 384 U.S. 436, 473-74 (1966) (emphasis added).
43. *Id.* at 474.
44. *Id.* at 476-78.
45. LA. REV. STAT. § 15:451; *see also* U.S. CONST. amends. V, VI; LA. CONST. art. I, § 13.
46. Tague v. Louisiana, 444 U.S. 469, 470 (1980) (citing *Miranda*, 384 U.S. at 475).
47. Schneckloth v. Bustamonte, 412 U.S. 218, 225-26 (1973) (citing Culombe v. Connecticut, 367 U.S. 568, 602 (1961)).
48. State v. Jackson, 414 So. 2d 310, 312 (La. 1982).
49. State v. Lewis, 539 So. 2d 1199, 1205 (La. 1989).
50. 412 U.S. at 226-27.
51. *Id.* at 226.
52. Brown v. Illinois, 422 U.S. 590, 603 (1975).
53. *Id.*

Louisiana Supreme Court simply applies the more generalized totality of circumstances test in statement suppression cases[54] and uses the *Schneckloth* factors for assessing the voluntariness of consent for a warrantless search.[55]

Inducements and promises are another important factor when assessing voluntariness.[56] If a defendant asserts that they confessed because of a promise or inducement, the state must specifically rebut that allegation to establish the confession's voluntariness.[57] Ultimately, if a defendant confessed because of an inducement or promise, the confession is inadmissible.[58] The rationale underpinning these rules is that even slight inducements from an authoritative figure, such as a police officer, can cause a person to believe that the authoritative figure is credible and able to effectuate the inducement.[59]

In Louisiana, the interrogating officer's subjective state of mind is "quite relevant" to whether their comments or questioning induced the confession.[60] For example, in *State v. Thibodeaux*, the court held that the defendant's statement was voluntary because the officer "flatly denied that he misrepresented the evidence," despite the defendant's claim that the officer induced his confession by overstating the case against him.[61] In *State v. Richard*, the defendant's statement was similarly admissible because the officer did not intend to induce a confession when he told the defendant it would be easier for him if he confessed.[62]

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54. *See, e.g.*, State v. Blank, 2004-0204, p. 10 (La. 4/11/07); 955 So. 2d 90, 103 ("When deciding whether a statement is knowing and voluntary, a court considers the totality of circumstances under which it is made[.]").

55. *See, e.g.*, State v. Frisch, 393 So. 2d 1220, 1222 (La. 1981); State v. Barrett, 408 So. 2d 903, 904 (La. 1981). The Louisiana Supreme Court has only cited *Schneckloth* in five cases involving statement suppression. In those cases, *Schneckloth* was only used to mention the totality of circumstances test in general and the factors were not mentioned. *See* State v. Bartie, 2019-01727, p. 5, 2020 WL 5405885, at *9 (La 9/1/20) (per curiam); State v. Turner, 2016-1841, p. 97 (La. 12/5/18); 263 So. 3d 337, 399 (La. 2018); State v. Sparks, 1988-0017 (La. 5/11/11); 68 So. 3d 435, 452-53; State v. Hattaway, 621 So. 2d 796, 804 (La. 1993); State v. Brumley, 320 So. 2d 129, 133 (La. 1975).

56. *Turner*, 2016-1841 at p. 96; 263 So. 3d at 399.

57. State v. Serrato, 424 So. 2d 214, 222 (La. 1982).

58. LA. REV. STAT. § 15:451; *Serrato*, 424 So. 2d at 222.

59. State v. Jackson, 381 So. 2d 485, 486 (La. 1980).

60. State v. Nuccio, 454 So. 2d 93, 103 (La. 1984); *see* State v. Dison, 396 So. 2d 1254, 1258 (La. 1981); State v. Richard, 66 So. 2d 589, 590-91 (La. 1953); State v. Ross, 31 So. 2d 842, 846-47 (La. 1947); State v. Harper, 485 So. 2d 224, 225 (La. App. 2 Cir. 1986).

61. 414 So. 2d 366, 368 (La. 1982).

62. 66 So. 2d at 590-91.

In contrast, when the interrogating officer intentionally induced the confession, the statement is inadmissible.[63] In *State v. Harper*, the interrogating officer told the defendant that his employer would not be informed of the investigation, he might not go to jail, the case would be handled privately, and the officers would ask the prosecutor to agree to these conditions.[64] Based on the officer's assurances, the defendant confessed, noting that he provided his "statement with the strict understanding that [the officers would] not . . . drag [his] wife or [his] daughter through a court fight."[65] Curiously, the officers asked the defendant if any coercion was used against him, to which he replied: "in my opinion yes. You stated yesterday that if I did not give you this statement, that you would drag [my family and me] into the papers and into the court system."[66] The court found that, under the totality of circumstances, the confession was influenced by the officers' promises, which were calculated to induce a confession.[67] The defendant's statement was therefore inadmissible.[68]

Assessing the subjective intent of an officer, however, is no small task. The Louisiana Supreme Court has yet to explicitly clarify how courts should weigh an interrogating officer's statements when the officer says they did not intend to induce a confession, but the statement nevertheless had that effect.[69] In rebutting a defendant's allegations of inducements or promises, the State cannot rely on general disclaimers.[70] For example, in *State v. Franklin*, the court found that the State's flat denial of the defendant's specific and detailed allegations of physical abuse used to obtain his statement was "insufficient to dispell . . . the doubt cast on the statement's voluntariness."[71] Yet, beyond this general rule, the court has not articulated how an officer's assertion that they did not intend to make false promises should be evaluated against the defendant's subjective understanding of the officer's statements.

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63. *Harper*, 485 So. 2d at 226-28.
64. *Id.*
65. *Id.* at 226.
66. *Id.*
67. *Id.*
68. *Id.*
69. For example, the Louisiana First Circuit Court of Appeal considers the credibility of the witnesses when police officer and defendant testimonies contradict each other. *See* State v. Sylvas, 558 So. 2d 1192, 1197 (La. App. 1 Cir. 1990).
70. State v. Serrato, 424 So. 2d 214, 222 (La. 1982).
71. 381 So. 2d 826, 827-28 (La. 1980).

B. In Context: Louisiana Supreme Court Precedent

In recent decades, the Louisiana Supreme Court has rarely ruled in favor of statement suppression, even when the facts of the case suggest that the statement was involuntary.[72] Between 1987 and 2021, the court only suppressed statements on five occasions.[73] Notably, the court recently decided three of the five cases in 2019 and 2020.[74] Apart from these cases, the Louisiana Supreme Court did not grant or affirm suppression of any other statements during this period of thirty-two years.[75] Before this gap, however, the court suppressed several statements in the 1970s and '80s.[76] While it is unclear what caused this shift, it is evident that the court's recent decisions all take a strong, pro-defendant stance, honoring defendants' constitutional rights.

In *State v. Deidrich*, the first of the three recent suppression cases, the court made a rare finding that a defendant with an intellectual disability was incapable of knowingly and intelligently waiving his *Miranda* rights.[77] There, the defendant was a seventeen-

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72. *See, e.g.*, State v. Hunt, 2009-1589 (La. 12/1/09); 25 So. 3d 746 (finding defendant's statement was admissible even though trial court determined that police officer was not credible because he failed to execute a *Miranda* waiver form and failed to record defendant's statement); State v. Blank, 2004-0204 (La. 4/11/07); 955 So. 2d 90 (finding that defendant's statement was voluntary where defendant expressed fatigue and physical discomfort during interrogation and officers appealed to defendant's emotions and religious beliefs in referencing his deceased mother).

73. *See* State v. Bartie, 2019-01727, pp. 13-14, 2020 WL 5405885, at *7 (La. 9/1/20) (per curiam); State v. Alexander, 2019-00645, p. 15, 2020 WL 500022, at *8 (La. 1/29/20); State v. Deidrich, 2019-1481, p. 4 (La. 11/25/19); 283 So. 3d 489, 492; State v. Caston, 2015-1348, p. 1 (La. 7/11/15); 170 So. 3d 152, 152; State ex rel. White v. State, 606 So. 2d 787, 789 (La. 1992).

74. *See Bartie*, 2019-01727 at pp. 13-14; 2020 WL 5405885, at *7; *Alexander*, 2019-00645 at p. 15; 2020 WL 500022, at *8; *Deidrich*, 2019-1481 at p. 4; 283 So. 3d at 492.

75. State v. Lee, 524 So. 2d 1176, 1184 (La. 1987); *Deidrich*, 2019-1481 at p. 4; 283 So.3d at 492.

76. *See Lee*, 524 So. 2d at 1184; State v. Arceneaux, 425 So. 2d 740, 744 (La. 1983); State v. McCarty, 421 So. 2d 213, 216 (La. 1982); State v. Rebstock, 418 So. 2d 1306, 1309 (La. 1982); State v. Rodrigue, 409 So. 2d 556, 562 (La. 1982); State v. Thucos, 390 So. 2d 1281, 1285 (La. 1980); State v. Reed, 390 So. 2d 1314, 1316 (La. 1980); State v. Tague, 381 So. 2d 507, 507 (La. 1980); State v. Menne, 380 So. 2d 14, 19 (La. 1980); State v. Lusk, 371 So. 2d 1125, 1126 (La. 1979); State v. McGraw, 366 So. 2d 1278, 1282 (La. 1978); State ex rel. Dino, 359 So. 2d 586, 594 (La. 1978); State v. Rankin, 357 So. 2d 803, 805 (La. 1978).

77. 2019-1481, p. 4; 283 So. 3d at 492. Before *Deidrich*, the court often found that defendants with intellectual disabilities made voluntary statements. *See, e.g.*, State v. Istre, 407 So. 2d 1183 (La. 1981) (finding that mentally ill defendant with sixth grade education, who did not know his own age, provided a voluntary statement); State v. Green, 94-0887 (La. 5/22/95); 655 So. 2d 272 (finding defendant with diminished mental capacity, who was

year-old special education student who had an IQ that was "between low average and borderline mentally deficient[,]" a "mental age of 12 or 13[,] and perform[ed] at a 6th grade level."[78] In affirming the trial court's suppression of the defendant's confession, the court reasoned that there was "ample evidence" that the defendant was incapable of waiving his rights.[79]

The Fifth Amendment rights to silence and counsel were both upheld in *State v. Alexander*.[80] Reversing the Louisiana Fourth Circuit Court of Appeal's ruling, the Louisiana Supreme Court held that the defendant's statement was inadmissible.[81] The police failed to both inform the defendant that his attorney wanted to speak with him and to give the attorney access to the defendant when the attorney was on the scene of the arrest and asked to see his client.[82] The defendant's rights were not, therefore, knowingly and voluntarily waived.[83] In reaching this conclusion, the court made a deliberate effort to protect the defendant's right to counsel—something it has not always done.[84]

Finally, in *State v. Bartie*, the court made another unusual ruling when it suppressed a statement on Fifth Amendment grounds and recognized officers' threats as improper inducements.[85] The defendant

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unable to comprehend his *Miranda* rights according to the testimony of a forensic psychologist, provided a voluntary statement).

78. *Id.* at p. 3; 283 So. 3d at 491.

79. *Id.* at p. 4; 283 So. 3d at 492.

80. 2019-00645, p. 15, 2020 WL 500022, at *8 (La. 1/29/20).

81. *Id.*

82. *Id.*

83. *Id.*

84. *See, e.g.*, State v. Demesme, 2017-0954 (La. 10/27/17); 228 So. 3d 1206 (denying defendant's writ application and leaving trial court's denial of motion to suppress statement in place when defendant invoked his right to counsel by saying, "I know that I didn't do it so why don't you just give me a lawyer dog cause this is not what's up"); State v. Mouton, 366 So. 2d 1336 (La. 1978) (finding defendant waived his Sixth Amendment rights when he requested permission to contact his attorney but was unable to do so because his phone was out of order and then responded to officer's questions after being unable to reach his attorney).

85. 2019-01727, pp. 13-14, 2020 WL 5405885, at *7 (La. 9/1/20). The court rarely recognizes officers' threats as improper inducements, even in the most visceral of fact patterns. *See, e.g.*, State v. Wilms, 449 So. 2d 442 (La. 1984) (finding that defendant's confession was voluntary even though his pregnant wife, who was arrested along with defendant, was struck in the stomach by an arresting officer prior to being taken to the police station, and even if the officer in charge of interrogation promised defendant that if he confessed, his wife would receive necessary medical attention and would be released); State v. Williams, 383 So. 2d 369 (La. 1980) (finding defendant's statement was voluntary, despite his assertion that his confession was induced by his emotional disturbance over his wife's interrogation).

in *Bartie* was interrogated for seven hours after DNA testing connected him to an unsolved murder.[86] The interrogating officers threatened the defendant with the death penalty even though he was categorically exempt from capital punishment because he was only seventeen at the time of the murder.[87] Shortly after, the defendant began invoking his right to remain silent.[88] The officers, however, either ignored the invocations or countered them by telling the defendant that he could avoid the death penalty if he confessed to the murder.[89] The court held that the officers' repeated threats overbore the defendant's will and induced him to confess, thereby rendering his statement inadmissible.[90]

Deidrich, *Alexander*, and *Bartie* demonstrate the Louisiana Supreme Court's recent willingness to take affirmative steps in furtherance of *Miranda*, grounding its rulings in the objective facts of the cases. This appreciable shift from the court's reasoning in prior cases will assist Louisiana courts in upholding the constitutional rights of criminal defendants.

III. COURT'S DECISION

In the noted case, the Louisiana Supreme Court continued its recent line of cases affirming statement suppression and upholding the Fifth Amendment.[91] First, the court found that Ms. Hebert's "invocation of her right to remain silent was not scrupulously honored."[92] Second, the court established that Ms. Hebert's statement was "induced by false promises."[93] Third, the court applied the totality of circumstances test to evaluate whether the statement was voluntary in light of the improper inducements.[94] On these grounds, the court held that the State failed to meet its burden.[95] Ms. Hebert's statement was not voluntary, but instead induced by the promise of release.[96]

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86. 2019-01727 at pp. 1-2; 2020 WL 5405885, at *1.
87. *Id.* at p. 3; 2020 WL 5405885, at *2.
88. *Id.* at p. 2; 2020 WL 5405885, at *1.
89. *Id.*
90. *Id.* at pp. 13-14; 2020 WL 5405885, at *7.
91. State v. Hebert, 2020-00671, pp. 8-9 (La. 5/13/21); 320 So. 3d 406, 411.
92. *Id.* at pp. 5-6; 320 So. 3d at 409-10.
93. *Id.* at p. 6; 320 So. 3d at 410.
94. *Id.* at pp. 8-9; 320 So. 3d at 411.
95. *Id.*
96. *Id.*

First, the court found that Ms. Hebert's "invocation of her right to remain silent was not scrupulously honored."[97] Ms. Hebert told officers at least eleven times that she did not wish to speak with anyone.[98] These statements qualified as valid invocations of her right to remain silent.[99] Instead of scrupulously honoring these invocations and ceasing the interrogation, the officers informed Ms. Hebert that she was a suspect in a murder investigation and this was her opportunity to provide a statement.[100] The court found that, under these circumstances, Ms. Hebert's invocation of her rights was not scrupulously honored.[101]

Second, the court held that the State failed to carry its affirmative burden of proving that Ms. Hebert's statements were voluntary.[102] For an inculpatory statement to be admissible, "the State must prove beyond a reasonable doubt that the defendant was first advised of [their] *Miranda* rights . . . and that the statement was made freely and voluntarily and not under the influence of fear, intimidation, menaces, threats, inducement, or promises."[103] The court emphasized that Louisiana law goes beyond the mandates of *Miranda* in requiring an affirmative showing of voluntariness for the confession to be admissible.[104] Here, the officers' multiple promises to Ms. Hebert that she could go home if she provided a statement induced the confession, regardless of whether the officers intended to do so.[105]

Third, the court assessed the overall voluntariness of Ms. Hebert's statement, applying the totality of the circumstances test.[106] The court specifically noted that law enforcement officers handcuffed Ms. Hebert to a desk, where she remained for several hours in the middle of the night.[107] She "shouted, cried, and beat on the desk."[108] She repeatedly stated that she did not want to talk to anyone, despite receiving at least seven promises that she could go home if she

97. *Id.* at pp. 5-6; 320 So. 3d at 409-10.
98. *Id.* at p. 5; 320 So. 3d at 409.
99. *Id.* at pp. 5-6; 320 So. 3d at 409-10.
100. *Id.*
101. *Id.*
102. *Id.*
103. *Id.* at p. 5; 320 So. 3d at 410 (quoting State v. Hunt, 2009-1589, p.11 (La. 12/1/09); 25 So. 3d 746, 754).
104. *Id.* (quoting LA. REV. STAT. § 15:451).
105. *Id.* at pp. 6-8; 320 So. 3d at 410-11.
106. *Id.* at pp. 8-9; 320 So. 3d at 411.
107. *Id.* at pp. 7-8; 320 So. 3d at 410-11.
108. *Id.*

provided a statement.[109] The government has a "heavy burden" to prove that the defendant knowingly and intelligently waived their Fifth Amendment privilege against self-incrimination.[110] Evading this burden, the State attempted to limit the court's voluntariness analysis to the period of active interrogation, ignoring the hours Ms. Hebert spent handcuffed to the desk, repeatedly invoking her right to remain silent. The court, however, asserted that voluntariness must be assessed under the totality of the circumstances, considering Ms. Hebert's full experience in police custody.[111] Thus, the State did not meet its burden in proving the voluntariness of Ms. Hebert's statements, which the officers induced through false promises.[112]

In dissent, Justice William J. Crain, joined by Justice Jefferson D. Hughes III, asserted that the statement was voluntary.[113] In reaching this conclusion, the dissent applied a different version of the voluntariness test than the majority, utilizing the *Schneckloth* factors to assess the voluntariness of Ms. Hebert's statement.[114] The dissent found that the *Schneckloth* factors weighed against suppression, as "[t]he duration [of Ms. Hebert's detention] was five hours, [she] was allowed visits to the restroom, food, drink, and sleep, and interaction with the police was benign and non-threatening."[115] Further, the officers' alleged inducements did not render the statement involuntary because they were "never 'calculated' to elicit a confession," nor were they made during the interrogation.[116] The dissent asserted that evaluation of any direct or implied promises, and their impact on the voluntariness of a statement, is a subjective inquiry.[117] The alleged inducement "must be sufficiently compelling to overbear the suspect's will," and both the defendant and the interrogating officers' states of mind are relevant to this analysis.[118]

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109. *Id.*

110. *Id.* (quoting Tague v. Louisiana, 444 U.S. 469, 470 (1980) (per curiam)).

111. *Id.*

112. *Id.*

113. *Id.* at pp. 1-5; 320 So. 3d at 412-14 (Crain, J., dissenting).

114. *Id.* at p. 1; 320 So. 3d at 412 (quoting Schneckloth v. Bustamonte, 412 U.S. 218, 225-26 (1973)).

115. *Id.* at pp. 1-2; 320 So. 3d at 412.

116. *Id.* at p. 3; 320 So. 3d at 413.

117. *Id.* at pp. 2-4; 320 So. 3d at 413.

118. *Id.* at p. 3; 320 So. 3d at 413 (citing Lynumn v. Illinois, 372 U.S. 528, 534 (1963)).

The dissent ultimately disagreed with the majority's conclusion that Ms. Hebert's right to silence was not scrupulously honored.[119] Applying a narrower interpretation of *Miranda* than the majority, the dissent asserted that Ms. Hebert did not invoke her Fifth Amendment rights, as she "never expressed [a] desire to not talk *in response to questioning*."[120] The dissent acknowledged that Ms. Hebert said she did not want to talk, but asserted these statements were not part of her interrogation and her ultimate *Miranda* waiver was valid.[121] In the dissent's view, Ms. Hebert's rights were honored and her statement was voluntary, free from improper inducements.[122]

IV. ANALYSIS

The Louisiana Supreme Court's decision in *Hebert* signals an important shift in the court's protection of Fifth Amendment rights, both in comparison to the dissent's interpretation of the law and in the broader context of Louisiana jurisprudence on this issue.[123] The Louisiana Supreme Court rarely finds a sufficient factual basis to establish that a statement was involuntary.[124] In the noted case, the court not only found that Ms. Hebert's statement was involuntary, but also upheld her Fifth Amendment rights with unequivocal clarity.[125] In contrast, the dissent interpreted the constitutional rights of criminal defendants in a manner that is either inconsistent with the law or would pose an undue burden on defendants.[126] The majority and dissent's opposing interpretations come into direct conflict on three main points: (1) the standard for evaluating voluntariness, (2) the standard for evaluating officers' inducements, and (3) the scope of interrogation for *Miranda* purposes. These three points are illustrative of both the majority's affirmative protection of—and the dissent's erosion of—Fifth Amendment rights.

First, the majority's application of the totality of circumstances test is both consistent with prior jurisprudence and provides a more realistic assessment of Ms. Hebert's detention than the dissent's

119. *Id.* at p. 4; 320 So. 3d at 414.
120. *Id.* (emphasis in original).
121. *Id.* at pp. 4-5; 320 So. 3d at 414.
122. *Id.*
123. *See* discussion *supra* subpart II.B.
124. *See supra* notes 72-75 and accompanying text.
125. *Hebert*, 2020-00671 at pp. 4-9; 320 So. 3d at 409-11.
126. *Id.* at pp. 1-5; 320 So. 3d 412-14.

approach.[127] The majority considered all relevant facts to determine whether "the statement was the product of an essentially free and unconstrained choice or the result of an overborne will."[128] Under the totality of circumstances, including the length of the detention, that it occurred in the middle of the night, that Ms. Hebert invoked her right to silence many times, and the officers' repeated promises that Ms. Hebert could go home, the majority found that the statement was involuntary.[129] This approach allowed for all facts bearing on voluntariness to be weighed in unison, which accounts for the fact that multiple coercive elements may have a greater impact on the defendant when considered together than they would apart.

The dissent did not evaluate the facts under the totality of circumstances. Instead, the dissent cherry-picked individual *Schneckloth* factors to bolster its case while disregarding facts indicating that the statement was involuntary.[130] The Louisiana Supreme Court has never taken this approach in a statement suppression case.[131] This analysis ignores the rules that no single *Schneckloth* factor is dispositive and that the totality of circumstances must be collectively weighed.[132] For example, considering the *Schneckloth* factor of "length of the custodial interrogation," the dissent suggested that, because a statement was ruled admissible in another case involving a five-hour detention, here, too, should Ms. Hebert's statement come in.[133] However, in addressing the officers' promises, which the majority found to be clear inducements, the dissent stated that "inducement is merely one factor."[134] While it is true that inducement is just one factor, it is a critical factor that alone can be a valid basis for suppression under Louisiana law.[135] The dissent's sterile assessment of the facts undermined Ms. Hebert's experience and distorted its evaluation of voluntariness.[136]

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127. *Id.* at pp. 7-9; 320 So. 3d at 410-11.

128. *Id.* (quoting State v. Lewis, 539 So. 2d 1199, 1205 (La. 1989)).

129. *Id.* at p. 8; 320 So. 3d at 411.

130. *Id.* at p. 2; 320 So. 3d at 412-13.

131. *See supra* notes 54-55 and accompanying text.

132. *See supra* notes 52-53 and accompanying text.

133. *Hebert*, 2020-00671 at p. 2; 320 So. 3d at 412 (citing State v. Platt, 43,708, p. 6 (La. App. 2 Cir. 12/3/08); 998 So. 2d 864, 870). Notably, *Platt* is not a binding decision for the Court, as it was decided by the Second Circuit. 43,708 at p. 6; 998 So. 2d at 870.

134. *Hebert*, 2020-00671 at p. 2; 320 So. 3d at 412.

135. LA. REV. STAT. § 15:451; State v. Serrato, 424 So. 2d 214, 222 (La. 1982).

136. *Hebert*, 2020-00671 at p. 2; 320 So. 3d at 412.

Second, the majority went beyond the current law to apply a purely objective assessment of the interrogating officers' improper inducements.[137] The majority explained that voluntariness does not turn on Ms. Hebert's subjective expectation of release when video footage "clearly shows that [she] was promised that she would be able to leave once she gave a statement."[138] Conversely, the dissent took a subjective approach, giving deference to the officers' testimony that they did not intend to coerce Ms. Hebert.[139] As a result, the dissent found that it was unreasonable for Ms. Hebert to believe the officers' statements that she could leave if she provided a statement.[140]

Although courts may consider the interrogating officers' intent, the majority's deference to the objective presence of promises is a superior application of the law. Louisiana courts have yet to explicitly clarify how an interrogating officer's confession-inducing statements should be weighed when the officer says that they did not intend to have such an effect.[141] Here, the officers told Ms. Hebert at least seven times that she could leave after providing a statement.[142] In the absence of more specific guidance from the court, these facts should be assessed in terms of whether the officers' promises overbore Ms. Hebert's will at the time she confessed.[143] Regardless of the interrogating officers' intent, if their words had the effect of overbearing Ms. Hebert's will, those words are inducements.

The majority's analysis of the inducements is also better aligned with *Miranda* than that of the dissent. If an improper inducement overbears a defendant's will, the court must suppress any subsequent statement.[144] The court's typical deference to the subjective criteria of the officers' intent, however, usually trumps what would otherwise objectively qualify as an inducement or false promise.[145] Here, the court made a deliberate decision to take a different path: it placed Ms. Hebert's constitutional rights above the subjective intent of the officers and avoided the dissent's strategy of searching for additional

137. *Id.* In previous rulings, the court has almost always deferred to the intent of the officer. *See supra* notes 60-62 and accompanying text.

138. *Hebert*, 2020-00671 at p. 8; 320 So. 3d at 411.

139. *Id.* at pp. 3-4; 320 So. 3d at 413.

140. *Id.*

141. *See* discussion *supra* subpart II.A.

142. *Hebert*, 2020-00671 at p. 7; 320 So. 3d at 410.

143. State v. Lewis, 539 So. 2d 1199, 1205 (La. 1989).

144. LA. REV. STAT. § 15:451.

145. *See* discussion *supra* subpart II.A.

factors to undermine the repeated promises the officers made to Ms. Hebert.[146]

Third, the majority's finding that the police officers did not scrupulously honor Ms. Hebert's invocations was a critical protection of her constitutional rights.[147] Under *Miranda*, if a person is subject to custodial interrogation, any invocation of rights prior to questioning is valid and that person may not be subsequently interrogated.[148] When law enforcement brought Ms. Hebert to the police station, she was in custody within the meaning of *Miranda* because her freedom of movement was restrained in a manner akin to formal arrest.[149] At 1:24 A.M., after an hour of being chained to a desk at the police station, Detective Agustin told Ms. Hebert that she could leave if she gave a statement.[150] This arguably qualifies as an interrogation because Detective Agustin should have known that such a promise was reasonably likely to elicit an incriminating response from Ms. Hebert, an eighteen-year-old handcuffed to a desk in a police station in the middle of the night.[151] If Ms. Hebert was not subject to interrogation when officers repeatedly asked her to make a statement throughout the night, she was certainly interrogated at 3:30 A.M. when Detective Morton told Ms. Hebert she was under investigation for felony offenses and Mirandized her prior to questioning.[152] The court does not specify when Ms. Hebert was first subject to custodial interrogation; rather, it simply concludes that Ms. Hebert's right to remain silent was not scrupulously honored, citing the eleven instances where Ms. Hebert told officers she did not want to talk.[153]

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146. *Hebert*, 2020-00671 at pp. 7-9; 320 So. 3d at 410-11.

147. *Id.* at pp. 4-9; 320 So. 3d at 409-11.

148. 384 U.S. 436, 437-74 (1966) ("If the individual indicates in any manner, at any time prior to or during questioning, that [they wish] to remain silent, the interrogation must cease.").

149. California v. Beheler, 463 U.S. 1121**,** 1125 (1983); State v. Menne, 380 So. 2d 14, 17 (La. 1980).

150. *Hebert*, 2020-00671 at p. 2; 320 So. 3d at 407.

151. *See* Rhode Island v. Innis, 446 U.S. 291, 292 (1980) (defining interrogation for *Miranda* purposes). If this qualified as custodial interrogation, Ms. Hebert should have been Mirandized at that time. *Miranda*, 384 U.S. at 444. Ms. Hebert was not read her *Miranda* rights until 3:33 A.M., after five hours in custody. Brief for Petitioner at *8, State v. Hebert, 2020-00671 (La. 5/13/21); 320 So. 3d 406 (No. 2020 KK 671), 2020 WL 8677763.

152. *Hebert*, 2020-00671 at p. 2; 320 So. 3d at 408; *Innis*, 446 U.S. at 292; State v. Reeves, 97-1806, pp. 1-2 (La. 6/26/98); 714 So. 2d 696, 696 (finding that defendant was subject to interrogation when officers told him this was his opportunity to respond to the evidence against him and continued pressuring him to provide a statement).

153. *Hebert*, 2020-00671 at pp. 5-6; 320 So. 3d at 410.

This ruling aligns with the court's precedent and is good policy.[154] It is overly optimistic to assume that *Miranda* warnings could cure the coercive effects of five hours handcuffed in police custody. However, in refraining from identifying the point in the night when Ms. Hebert was first subject to custodial interrogation, triggering *Miranda*, the court makes a somewhat broad ruling, which fails to directly rebut the dissent's contrary arguments. While the majority's holding is favorable for criminal defendants, further insight into the court's reasoning would have provided greater precedential ammunition for future defendants.

In contrast, the dissent applied an unduly narrow interpretation of interrogation, limiting the term to express questioning.[155] The dissent asserted that the officers' requests for Ms. Hebert to provide a statement and their promises that she could leave upon doing so were not part of the interrogation "as no questions were asked."[156] The dissent further asserted that Ms. Hebert's invocations were not valid because she "never expressed the desire to not talk *in response to questioning*."[157] Interrogation extends beyond mere questioning and includes any words or actions that the police should know are reasonably likely to elicit an incriminating response from the defendant.[158] In limiting interrogation to express questioning, the dissent misapplied *Innis* and its progeny.[159] Instead of assessing whether Ms. Hebert's invocations were scrupulously honored as a question of fact under the totality of the circumstances, the dissent once again distorted the law at the expense of Ms. Hebert's constitutional rights.[160]

Furthermore, the dissent's attempt to limit the scope of interrogation is a dangerous precedent to entertain. As the *Miranda* Court stated, the Fifth Amendment privilege is "fundamental to our system of constitutional rule[;]" therefore, an individual must be informed "[a]t the outset . . . in clear and unequivocal terms that [they

154. *See supra* note 30 and accompanying text.
155. *Hebert*, 2020-00671 at pp. 3-4; 320 So. 3d at 413-14.
156. *Id.* at p. 3; 320 So. 3d at 413.
157. *Id.* at p. 4; 320 So. 3d at 414 (emphasis in original).
158. Rhode Island v. Innis, 446 U.S. 291, 292 (1980).
159. *Id.*; *see supra* notes 27-28.
160. *Hebert*, 2020-00671 at pp. 3-4; 320 So. 3d at 413-14; State v. Brooks, 505 So. 2d 714, 722 (La. 1987) (noting the standard for assessing whether one's rights were scrupulously honored).

have] the right to remain silent."[161] The dissent's suggestion that Ms. Hebert's invocations of her right to silence were invalid when made prior to formal interrogation cuts against her "fundamental" privilege and places an undue burden on defendants attempting to exercise their constitutional rights.

Ms. Hebert should never have experienced police misconduct, but future defendants will hopefully be treated more fairly because of her case. The court's decision in *Hebert*, along with *Deidrich*, *Alexander*, and *Bartie*, represents a clear affirmance of the constitutional rights of criminal defendants. Statement suppression is actively litigated in trial courts despite its limited presence in Louisiana's highest court. As such, these four cases provide important practical guidance to lower courts. These cases likewise instruct law enforcement on the parameters of their interrogation practices and demonstrate to practitioners, specifically defense attorneys, additional variables to consider in advocating for their clients. Although in the past, the court made it difficult for defendants to establish that they requested an attorney,[162] did not understand their rights,[163] or chose to invoke their right to silence,[164] these recent cases collectively offer a common-sense application of *Miranda* that works toward leveling the playing field for criminal defendants. In comparison to the absence of statement suppression cases in prior decades and the presence of decisions that limit defendants' rights or impose significant burdens on their claims, these cases signal hope.

V. CONCLUSION

Hebert heralds a new dawn for the Louisiana Supreme Court. The noted case protects and affirms criminal defendants' Fifth Amendment rights. In stark contrast to the dissenting opinion, which interprets these rights in a manner that is either inconsistent with the law or would pose an undue burden on defendants, the majority goes beyond the existing case law to guard the Fifth Amendment. In a state that has the highest rate of incarceration in the world, a rate that has

161. Miranda v. Arizona, 384 U.S. 436, 467-68 (1966).

162. *See supra* note 84.

163. *See, e.g.*, State v. Istre, 407 So. 2d 1183 (La. 1981); State v. Green, 94-0887 (La. 5/22/95); 655 So. 2d 272.

164. *See supra* note 37.

only increased in recent decades, these rights, and the Louisiana Supreme Court's actions in *Hebert*, are vital.[165]

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165. *See Louisiana Profile*, PRISON POL'Y INST., https://www.prisonpolicy.org/profiles/LA.html (last visited June 21, 2022) [https://perma.cc/5DWK-ZFW2].

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