

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter of	:	No. 14AP-683
	:	(C.P.C. No. 13JU-07-9393)
D.F.,	:	No. 14AP-685
	:	(C.P.C. No. 13JU-07-9779)
(Appellant).	:	
	:	(REGULAR CALENDAR)
	:	

D E C I S I O N

Rendered on July 21, 2015

Ron O'Brien, Prosecuting Attorney, and *Katherine J. Press*,
for appellee State of Ohio.

David K. Greer, for appellant.

APPEALS from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch

DORRIAN, J.

{¶ 1} Defendant-appellant, D.F., appeals the August 28, 2014 judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, wherein the trial court adopted the magistrate's decision adjudicating him a delinquent minor as a result of having committed the offense of felonious assault in violation of R.C. 2903.11, a felony of the second degree. For the reasons that follow, we reverse the judgment of the trial court.

I. Facts and Procedural History

{¶ 2} On June 30, 2013, at approximately 10:00 p.m., Gavin Ossoli was walking north on Summit Street in Columbus, Ohio when he was encircled by a group of teenagers who assaulted him with punches and kicks. After beating Ossoli, causing him to fall to the ground, the group took Ossoli's headphones and demanded that he surrender his phone, wallet, and iPod. Ossoli did not comply with the demands to turn over his possessions but sprinted away from the group to a nearby gas station where he was able to attract the attention of a Columbus police officer. Ossoli provided the responding police with a

description of some of the participants. At approximately 10:30 p.m., Columbus police officers detained appellant and arrested him after Ossoli personally identified him as a participant in the attack. At approximately 3:56 a.m. the following day, appellant was interviewed by Detective Gary Bowman of the Columbus Division of Police. On the date of the interview, appellant was 13 years old.

{¶ 3} On July 1, 2013, a complaint was filed against appellant, charging him with four counts of delinquency arising out of the following offenses: robbery in violation of R.C. 2911.02(A)(2), a felony of the second degree; robbery in violation of R.C. 2911.02(A)(3), a felony of the third degree; kidnapping in violation of R.C. 2905.01(A)(2), a felony of the first degree; and aggravated riot in violation of R.C. 2917.02(A)(1), a felony of the fifth degree. On July 10, 2013, a second complaint was filed against appellant, charging him with an additional count of delinquency arising out of the offense of felonious assault in violation of R.C. 2903.11(A)(1), a felony of the second degree.

{¶ 4} On October 1, 2013, appellant filed a motion to suppress his confession. Following a hearing, on November 4, 2013, the juvenile court magistrate filed a decision denying appellant's motion to suppress. On November 7, 2013, appellant filed an objection to the magistrate's decision denying his motion to suppress. On February 8, 2014, the trial court filed a decision and judgment entry overruling appellant's objections to the November 4, 2013 magistrate's decision.

{¶ 5} On July 21, 2014, following an adjudicatory hearing, the magistrate issued, and the trial court adopted, a decision and judgment entry finding that appellant committed the charged offenses and adjudicating him delinquent. On August 28, 2014, the trial court filed a judgment entry adopting the magistrate's findings at the dispositional hearing on August 22, 2014.

II. Assignment of Error

{¶ 6} Appellant appeals assigning the following error for our review:

The trial court erred when it overruled the minor child's objection to the magistrate's decision, which had overruled his Motion to Suppress Statements, in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Section 10 of the Ohio Constitution.

{¶ 7} In his sole assignment of error, appellant asserts that the trial court erred by adopting, over appellant's objection, the magistrate's decision that overruled his motion to suppress. Appellant contends that he did not knowingly and voluntarily waive his *Miranda* rights and that his statements were not voluntarily made. In response, the state first argues that appellant failed to preserve this issue for appeal, except for a claim of plain error, since, although appellant filed an objection to the November 4, 2013 magistrate's decision denying his motion to suppress, appellant failed to object to the trial court's final judgment entered on August 28, 2014.

{¶ 8} We find no merit to the state's contention that appellant was required to object both to the magistrate's denial of his motion to suppress evidence and also when the trial court entered its final judgment following the adjudicatory proceedings. The state argues that objections to preliminary evidentiary rulings must be lodged at the appropriate times to preserve appellate review. However, unlike in the context of a ruling on a motion in limine, a trial court's decision on a motion to suppress evidence attaches with finality to the remaining proceedings before the trial court. *See State v. French*, 72 Ohio St.3d 446, 449 (1995) (comparing the purpose and effect of a motion to suppress and a motion in limine and stating that "[a]n important characteristic of a motion to suppress is that finality attaches so that the ruling of the court at the suppression hearing prevails at trial."). *Compare State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, ¶ 70 (finding that the defendant waived all but plain error by failing to renew objections to the introduction of "other acts" testimony at trial following a ruling on a motion in limine). Thus, since the trial court's decision on appellant's objection to the magistrate's decision on the motion to suppress was binding on the proceedings at trial, it was unnecessary for appellant to renew such objection again following the trial.

{¶ 9} Further, contrary to the state's argument that appellant was required to renew the objection in order to ensure that the trial court was aware of the objection, the trial court had already overruled such objection and recorded its decision in a judgment entry, demonstrating that it was aware of appellant's objection to the introduction of the confession. Thus, the renewal of such an objection after the trial court entered a written decision on the matter would serve no functional purpose. Accordingly, we next examine the merits of appellant's assignment of error.

{¶ 10} The Fifth Amendment to the United States Constitution and Article I, Section 10 of the Ohio Constitution provide that no individual shall be compelled to be a witness against himself or herself in any criminal case. In *In re Watson*, 47 Ohio St.3d 86, 88-89 (1989), the Supreme Court of Ohio, quoting *In re Gault*, 387 U.S. 1, 55 (1967), stated:

The Supreme Court of the United States has noted with respect to juvenile defendants that "the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults. We appreciate that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. * * * If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."

{¶ 11} Thus, although a juvenile can appreciate his or her rights and voluntarily waive them in the absence of an interested adult or parent, a court must consider the totality of the circumstances in order to ascertain whether or not the juvenile's waiver was given voluntarily. *In re Watson* at 90. "In construing whether a juvenile defendant's confession has been involuntarily induced, courts should consider * * * the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity and frequency of the interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement." *Id.* at 89-90, citing *State v. Edwards*, 49 Ohio St.2d 31 (1976), vacated in part on other grounds, 438 U.S. 911 (1978).

{¶ 12} In applying the above standard, "the Supreme Court of Ohio has stated that a confession is 'involuntary and violative of the United States and Ohio Constitutions if it is the product of "coercive police activity." ' " *State v. Mardis*, 134 Ohio App.3d 6, 23 (10thDist.1999), quoting *State v. Loza*, 71 Ohio St.3d 61, 66 (1994), overruled on other grounds, quoting *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). See also *In re Hill*, 10th Dist. No. 03AP-82, 2003-Ohio-6185, ¶ 9. "Coercive law enforcement tactics may include,

but are not limited to, physical abuse, threats, deprivation of food, medical treatment or sleep, use of certain psychological techniques, exertion of improper influences or direct or implied promises, and deceit." *In re N.J.M.*, 12th Dist. No. CA2010-03-026, 2010-Ohio-5526, ¶ 20, citing *State v. Getsy*, 84 Ohio St.3d 180, 189 (1998).

{¶ 13} "Appellate review of a trial court's decision regarding a motion to suppress evidence involves mixed questions of law and fact." *State v. Holland*, 10th Dist. No. 13AP-790, 2014-Ohio-1964, ¶ 8. When considering a motion to suppress, the trial court, as trier of fact, is in the best position to resolve factual questions and evaluate the credibility of witnesses. *State v. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 23 (10th Dist.). "In reviewing a trial court's ruling on a motion to suppress, an appellate court must accept the trial court's factual findings if they are supported by competent, credible evidence, and must independently determine as a matter of law whether the facts meet the 'voluntariness' standard." *Mardis* at 23, citing *State v. Guysinger*, 85 Ohio App.3d 592, 594 (1993). *See also Holland* at ¶ 8, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. In this case, the relevant facts are not disputed. Therefore, we apply a de novo standard in determining whether the trial court properly denied appellant's motion to suppress. *State v. Johnson*, 10th Dist. No. 13AP-637, 2014-Ohio-671, ¶ 6, citing *Burnside* at ¶ 8; *Gravely* at ¶ 23.

{¶ 14} In *State v. Kerby*, 2d Dist. No. 03-CA-55, 2007-Ohio-187, the defendant asserted that his confession was not voluntary under the totality of the circumstances because "he was 17 at the time and his parents were not present during his arrest and interrogation, and the officers questioning him made statements of deception and exaggeration." *Id.* at ¶ 44. Although the court found that the defendant's age alone was not sufficient to demonstrate that his confession was involuntary, it considered the defendant's age to be relevant in evaluating the deceptive and exaggerative practices used to secure his confession during the interrogation. *Id.* at ¶ 45-46. Specifically, the court found that the interrogating officers' suggestion that the defendant could receive the death penalty for his involvement was deceptively misleading and a misstatement of the law. Because the record reflected that the interrogating officers attempted to create the impression that the defendant could be facing a death sentence unless he cooperated by confessing, the court concluded that, in light of the defendant's lack of criminal experience

and understanding of the law, the misstatement of the potential penalty faced by the defendant deprived him of his capacity to intelligently and voluntarily waive his rights. The court further found that, considering the totality of the circumstances, those factors outweighed the influence of the defendant's maturity and overall short duration of the interrogation. *Id.* at ¶ 87.

{¶ 15} In the present matter, at the suppression hearing, the trial court reviewed a videotape of the interrogation of appellant conducted by the detective. The recording begins at approximately 3:00 a.m. and shows appellant alone in the interview room, seated in a chair, leaning forward with his hands handcuffed behind his back. At times, appellant appears completely bent forward, with his head hanging over his chest. At approximately 3:07 a.m., an officer entered the room and removed appellant's handcuffs; after the officer left the room, appellant appears to massage his hands and wrists. For nearly 50 minutes following the removal of his handcuffs, appellant remained alone in the room, during which time he audibly yawned over a dozen times and shifted position numerous times, appearing to be physically uncomfortable.

{¶ 16} At 3:56 a.m., the detective entered the room and began the interrogation by asking appellant his name. Immediately after responding, appellant stated that he was cold. The detective did not address appellant's complaint but, rather, stated: "We'll get you out of here in a bit. I gotta go -- I gotta go and do something real quick too." (Suppression Tr. 21.)

{¶ 17} Appellant inquired as to whether his parents had been called. The detective responded only as follows: "Um, disconnected, dude." (Suppression Tr. 22.) At the suppression hearing, the detective testified that he did make an attempt to call appellants' parents, but the number, which he obtained in the report of the officers who arrested appellant, was disconnected. After appellant finished spelling his name, the following dialogue took place:

[Appellant]: Will I be able to go home today?

[Detective]: No. You're going to jail.

[Appellant]: Am I?

[Detective]: Yep. All of ya'. You're not going home.

[Appellant]: For how long?

[Detective]: I don't know. They can keep you till you're 21 if they wanted to. You guys committed a robbery.

(Suppression Tr. 23.)

{¶ 18} After the detective made the above statements, he exited the room and then reentered with a piece of paper. Appellant inquired what the paper was, and the detective stated that "[t]his paper is your Constit -- got your Constitutional Rights or Waiver on it," and appellant responded: "I don't know what that is." (Suppression Tr. 24.) The detective attempted to explain the constitutional rights waiver form in plain language, stating the following:

What it is is when you get arrested in the State -- in the United States, okay? You ever watch TV they go, you know, read him his rights and they go, you have the right to remain silent and all that stuff, and they say that, you know? What it is, is you have the right, well, I'm gonna read this to you, but what -- what -- in the United States when you get arrested they're supposed to read you your rights. Your rights are that you have to [sic] right to be quiet, not say a word if you want to or you have the right to talk to me only if there is an attorney present and you're like, well I can't afford one, well then they'll give you one, they'll give you one for free. They will appoint one. So you know that going in before you answer any questions. Anything you say can be used against you in Court. And the other part of this what it says is at any time if you are if you are talking to me and there is a lawyer present you can stop talking to my at any time you want is what it says. Now that is what this is all about and I kind -- I'm saying it -- I'm gonna read it to you word for word, but that's kinda what it says and that's kind what it's all about. Is about the law and what your rights are as a person, a human being, that kinda thing.

(Suppression Tr. 25-26.)

{¶ 19} After the detective finished his explanation of the constitutional rights waiver form, he observed that appellant was "very young" and asked, "You're only what, 13?" (Suppression Tr. 26.) Appellant stated that he was 13 years old and had completed the sixth grade. Appellant confirmed that he could read and write, that he did not wear

glasses or contacts, and that he was not under the influence of drugs or alcohol. The detective read the form in its entirety and then the following dialogue occurred:

[Detective]: So if you want to read that just briefly, if you have any questions, ask me and I will be -- I'll try my best to answer for you. If you want to talk to me at all you need to do is sign right there, okay.

[Appellant]: If I want to talk to you?

[Detective]: If you want to talk to me.

[Appellant] Like right now?

[Detective]: Right now.

(Suppression Tr. 28-29.) Immediately following this exchange, without reading the constitutional rights waiver form which the detective placed in front of him, appellant signed the form.

{¶ 20} The detective asked appellant, "[D]o you know why you're down here?" (Suppression Tr. 30.) Appellant stated that he watched a fight, and the detective responded, "Well, see that's not what they're saying." (Suppression Tr. 30-31.) Appellant then stated that he "was with a group of kids who were trying to fight." (Suppression Tr. 31.) The detective responded that he was "talking to your other friends and they're telling me you're involved too. So this is your opportunity to like tell me whose idea it was, you know, tell me why you done it, you know. If you felt peer pressure or you just, you know, I don't know why you did it. But you know, I'm willing to listen to you. If you're sorry about what you did, I think you should say you're sorry and move on from there." (Suppression Tr. 31.)

{¶ 21} After asking about other individuals involved in the attack and attempting to determine who decided to attack Ossoli, the detective asked whether appellant participated in the attack. Appellant responded, "I swear to God, I'm gonna keep it honest, I was thinking about it and then I got a second thought in my head, like my mom raised me better than this so." (Suppression Tr. 33.) Appellant stated that he did not hit the victim with his hands, kick him, or touch him. Appellant further stated that he did not surround the victim, but did watch the attack.

{¶ 22} Although appellant denied that he participated in the fight, the detective stated the following:

[Detective]: I don't -- I don't think you deserve a second chance. I think that if you did it, then there's consequences. Like if I light a lighter, now if I say to you, if you put your hand over that flame, you're gonna get burned, right? If you do, you get burns.

[Appellant]: I know.

[Detective]: If you choose not to you don't, right? Those are consequences. You can't change 'em. You beat somebody up and take their stuff, there's consequences; you go to prison. So you're gonna go to the detention center, Juvenile Detention Center, that's where you're gonna go. You're gonna be charged with three felonies.

[Appellant] Three?

[Detective]: Three.

[Appellant]: What is -- like what are they?

[Detective]: Kidnapping, two counts of robbery, robbery F-2, robbery F-3 --

[Appellant]: You're kidding me.

[Detective]: -- with a maximum amount of years, 28 years.

[Appellant]: That's -- that's how much years I'm gonna be in there?

[Detective]: No, that's how many years max you could go to prison for. If you get the very max the sentence had, that's how long it would be.

[Appellant]: I never -- I never even like -- this is my first time here --

[Detective]: It doesn't matter. This is serious. This ain't a game. This ain't a game. The question is whether or not you're sorry you were involved.

[Appellant]: You mean am I sorry that I wasn't?

[Detective]: No that you're sorry about what you did 'cause I don't hear you're sorry. All I hear you say is --

[Appellant]: I mean, yeah, I mean I feel bad.

[Detective]: If you were involved. You did, you did touch this guy. So what you need to do is tell me that you're sorry that you did, rather than tell me you didn't. 'Cause I'll be glad to tell the Court you're sorry for what you did and maybe they -- maybe they'll take that into consideration, maybe they won't, I don't know. But I think going in there and saying you're sorry is a heck of a lot better than saying I didn't do it, when you did, all right?

[Appellant]: Uh-huh.

[Detective]: So I'm gonna ask you, all right, I'm not trying to hurt your feelings. Are you sorry about hitting this guy?

[Appellant]: Yes, sir.

[Detective]: Okay. So it's wrong what you did, right?

[Appellant]: Yes, sir.

[Detective]: And there's consequences just like with the flame, right?

[Appellant]: Yes, sir.

[Detective]: So what I'm asking you is, you deserve some sort of punishment, right? But you made a big mistake, didn't you? And you're really sorry about what you did, right?

[Appellant]: Yes, sir.

[Detective]: Did you only punch him or did you kick him or both, which one?

[Appellant]: It was only a punch, not no kicking.

[Detective]: Just a punch, okay. But that had to be pretty scary for him huh? This is really wrong. And here's the thing, you're just a kid right now, right? The worst they could do is lock you up till you're 21. That's the worst thing that can happen. That's a long time when you're with -- how old are you?

[Appellant]: Thirteen.

[Detective]: Thir -- that's a long time that's eight years. That's more or less three quarters of your life. If you're an adult, do you know those 28 years we were talking about? They can do that if you want to.

(Suppression Tr. 36 -39.)

{¶ 23} Considering the totality of the above facts leads us to conclude that appellant did not knowingly and intelligently waive his constitutional rights, and that appellant's confession was involuntarily induced.

{¶ 24} First, based upon our review of the conversation between the detective and appellant, it is unclear that appellant understood the nature of his constitutional rights or the import of waiving them. We begin by noting that appellant was 13 years old at the time of the interview and had no criminal record, both facts of which the detective was aware. Specifically, after the detective told appellant that he was subject to a maximum sentence of 28 years, appellant stated "I never -- I never even like -- this is my first time here," and the detective responded that "[i]t doesn't matter." (Suppression Tr. 37.) The detective also observed that appellant appeared to be "very young" and confirmed that appellant was in fact 13 years old. (Suppression Tr. 26.)

{¶ 25} We also note that appellant was unaccompanied by a parent or similarly interested adult. Appellant specifically asked whether or not his parents had been called, and the detective responded merely "disconnected," later clarifying at the suppression hearing that he had called the number appellant provided but that such number was inoperative. Although it is not a conclusive factor in our analysis, the absence of a parent or similarly interested adult weighs against the ability of a child to knowingly and intelligently consent to a waiver of constitutional rights. *Compare* *Mardis* at 24 (finding confession voluntary where detective read the defendant and his mother *Miranda* rights waiver form, and both the defendant and mother signed the form); *In re M.B.*, 9th Dist. No. 22537, 2005-Ohio-5946, ¶ 13 (trial court did not err in failing to suppress statements made by the defendant where findings supported by extensive criminal background, testimony by officers, and the fact that the defendant was able to call his mother during the interview); *In re Goins*, 137 Ohio App.3d 158, 161, 164 (12th Dist.1999) (finding waiver voluntary where mother was present and investigator explained the defendant's

constitutional rights to the defendant and his mother and confirmed that they wished to proceed without an attorney present).

{¶ 26} Additionally, before the detective read appellant the waiver form and attempted to explain the process using plain language, appellant specifically stated that he did not know what the constitutional rights waiver was. The detective never asked whether appellant understood his constitutional rights, and evidence of such understanding, other than appellant's signature on the waiver form, is absent from the record. Instead, after the detective finished reading the form to appellant, he stated that, "[i]f you want to talk to me at all you need to do is sign" the form. (Suppression Tr. 28.) The recording of the interview reflects that appellant never read the form himself, but immediately after being presented with the form asked if he had to sign "right now" in order to speak with the detective and whether he needed to sign in cursive or not. In conclusion, appellant's responses to the detective's statement only indicate that he wished to speak to the detective, not whether or not he understood the waiver form which he signed.

{¶ 27} Second, here, like in *Kerby*, the interrogating officer used deceptively misleading statements, combined with inducements to cooperate, that served to deprive appellant of his capacity to intelligently and voluntarily waive his rights in the absence of an interested adult or parent. At the very outset of the interview, before appellant had been read his rights, the detective responded to appellant's question regarding whether he was going to be able to go home by stating, "No. You're going to jail." (Suppression Tr. 23.) When appellant inquired for how long, the detective responded by stating "I don't know. They can keep you till you're 21 if they wanted to. You guys committed a robbery." (Tr. 23.) The detective then left the room, leaving appellant to ponder this statement.

{¶ 28} After appellant signed the waiver form, the detective compared appellant's actions to holding his hand over a flame and stated that appellant was going to be sent to the Juvenile Detention Center and charged with three felonies. The detective then stated that appellant faced a sentence of 28 years in prison. After appellant asked whether that was how many years he was going to receive, the detective clarified that that was the maximum that appellant could receive. In the video of the interview, appellant clearly appears shocked by the detective's statements that he would be charged with three

felonies and subject to a maximum sentence of 28 years. Appellant repeatedly sought to clarify the detective's statements and stated that this was his "first time here." The detective overrode appellant's objection and stated: "It doesn't matter. This is serious. This ain't a game. This ain't a game." (Suppression Tr. 37.)

{¶ 29} Although the trial court's decision accepts the state's position that the detective's suggestion of a 28-year prison sentence "was off by only one or two years if a Serious Youthful Offender (SYO)¹ maximums sentence was ever invoked," it is clear from the transcript of the interview that the detective did not consider such a possibility to be a truthful approximation of the sentence appellant could have faced based on the charged conduct.² (Decision, 6.) This is evident from the fact that, prior to appellant's confession, the detective stated that appellant faced "a maximum amount of * * * 28 years." (Suppression Tr. 36.) However, *after* appellant confessed, the detective admitted that the "worst they could do is lock you up till you're 21. That's the worst thing that can happen." (Suppression Tr. 39.) He further stated that the possibility of 28 years in prison applied "[i]f you're an adult." (Suppression Tr. 39.) The detective's statement after appellant confessed that the "worst they could do is lock you up till you're 21" demonstrates that he did not seriously believe that appellant would receive a 28-year prison sentence but, instead, used the threat of such a lengthy sentence in order to secure a confession.

{¶ 30} Whereas the use of similarly misleading statements against an adult or a minor under different circumstances might result in a different analysis, appellant's age is "relevant in supporting his claim that officers used deceptive statements and exaggerations concerning the evidence that they had obtained to secure his confession during the interrogation." *Kerby* at ¶ 46. In *Kerby*, the court found that "it was not unrealistic for the officers to know" that, if the defendant confessed, he would be charged

¹ Determination of eligibility for SYO involves a "combination of factors including the age of the juvenile and the seriousness of his offense—that determine whether the juvenile will face a traditional juvenile disposition, a mandatory serious-youthful-offender disposition, or a discretionary serious-youthful-offender disposition." *See State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, ¶ 24. Here, pursuant to R.C. 2152.11, appellant was eligible for a more restrictive disposition as a serious youthful offender. However, the "adult sentence remains stayed unless the juvenile fails to successfully complete his or her traditional juvenile disposition." *Id.*

² We note that, based on the three felony charges that Detective Bowman listed at the time of the interview, even if tried as an adult, appellant would have only faced a maximum potential sentence of 22 years for one first-degree felony kidnapping charge, one second-degree felony robbery charge, and one third-degree felony robbery charge. *See* R.C. 2929.14; R.C. 2905.01; R.C. 2911.02.

with aggravated murder but could only be sentenced to imprisonment instead of potentially being subject to the death penalty. *Id.* at ¶ 86. Similarly, here, it was not unrealistic for the detective to know, as he later admitted during the interview, that appellant could not face a 28-year prison sentence, as he was a minor at the time of the commission of the offense, and the imposition of such an "adult" sentence depended on a determination that appellant was a serious youthful offender and would be stayed unless appellant failed to successfully complete a traditional juvenile disposition. As a result, given appellant's age and lack of criminal experience, we find that such a tactic is intentionally misleading and constitutes deceptive conduct that undermines the voluntariness of appellant's statements.

{¶ 31} The detective also made potentially misleading statements to appellant that other persons, including appellant's friends, told him that appellant was involved in the incident. Specifically, after appellant stated that he had "watched a fight," the detective stated that "that's not what they're saying." (Suppression Tr. 30-31.) After appellant again denied involvement in the incident, the detective stated that "they asked a guy and he's saying you're involved too. I'm talking to your other friends and they're telling me you're involved too." (Suppression Tr. 31.) Nothing in the record at the suppression hearing or in the detective's testimony at the adjudicatory hearing confirms that other persons in fact stated that appellant was involved. Instead, the detective's repeated statements demonstrate that he was not willing to accept appellant's answer that he was not involved or had merely been a bystander when the incident occurred.

{¶ 32} In addition to rebutting appellant's denials of involvement by repeatedly claiming that others had implicated appellant, the detective repeatedly appealed to appellant's conscience. Even though appellant had not admitted involvement in the incident, the detective told appellant "I don't think you deserve a second chance" and stated that "[t]he question is whether or not you're sorry you were involved." (Suppression Tr. 36-37.) When appellant attempted to clarify "[y]ou mean am I sorry that I wasn't," the detective responded: "No that you're sorry about what you did 'cause I don't hear you're sorry." (Suppression Tr. 37.) The detective then stated that appellant did touch the victim and that he needed to tell the detective that he was "sorry that [he] did, rather than tell [the detective] that [he] didn't." (Suppression Tr. 37.) The detective offered an

inducement by stating "I'll be glad to tell the Court you're sorry for what you did and maybe they -- maybe they'll take that into consideration, maybe they won't, I don't know. But I think going in there and saying you're sorry is a heck of a lot better than saying I didn't do it, when you did, all right?" (Tr. 37-38.) After the detective again asked appellant whether he was sorry about hitting the victim, appellant stated that he was sorry. Despite appellant's repeated denials of involvement, the detective used his authority to appeal to appellant's conscience in seeking to secure a confession. Throughout the interview, appellant was respectful of the detective's authority and, as a minor, may have felt the need to respond to the entreaties of an authority figure to say he was sorry for a crime that he may not have committed.

{¶ 33} Thus, we find that the detective used the implication of leniency combined with the threat of 28 years' imprisonment in order to create the impression that, unless appellant stated that he was sorry and admitted involvement, he would receive the aforementioned punishment. As in *Kerby*, the "fact that these threats came from the same people who were attempting to appeal to Appellant's conscience, coupled with Appellant's lack of criminal experience and understanding of the law" demonstrates that the questioning by police deprived appellant of his capacity to intelligently and voluntarily waive his Fifth Amendment rights. *Id.* at ¶ 87.

{¶ 34} Finally, although the trial court found that appellant was "alert and responsive" during the entirety of the interview, appellant spent the time preceding the interview yawning repeatedly and struggling to stay awake. Appellant also told the detective immediately after the detective entered the room that he was cold. Further, as noted by the trial court, appellant was "held by the police for approximately four hours before being read his *Miranda* rights and may have been handcuffed the majority of that time." (Decision at 5.) Additionally, the interview was conducted at nearly 4:00 a.m., and there is no evidence in the record that appellant was fed or offered drink at any point following his arrest. Thus, we find these circumstances support a finding that appellant's statements were involuntarily induced.

{¶ 35} In conclusion, considering the totality of the circumstances, the factors present in this case outweigh the relatively short duration of the interrogation. Therefore, we find that the trial court erred in determining that appellant's confession was voluntary.

{¶ 36} Accordingly, we sustain appellant's assignment of error.

III. Disposition

{¶ 37} Having sustained appellant's assignment of error, we reverse the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, and remand this cause for further proceedings in accordance with law and consistent with this decision.

Judgment reversed; cause remanded.

LUPER SCHUSTER and BROGAN, JJ., concur.

BROGAN, J., retired, of the Second Appellate District,
assigned to active duty under the authority of the Ohio
Constitution, Article IV, Section 6(C).
