

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF KARA C.,
DELINQUENT CHILD

JUDGES:
: Hon. W. Scott Gwin, P.J.
: Hon. Sheila G. Farmer, J.
: Hon. John W. Wise, J.
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: Case No. 09-CA-27
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: OPINION

CHARACTER OF PROCEEDING: Civil appeal from the Fairfield County Court of Common Pleas, Juvenile Division, Case No. 2008DL 413

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: January 27, 2010

APPEARANCES:

For Appellee

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Gwin, P.J.

{¶1} Appellant Kara C., a minor, appeals a judgment of the Court of Common Pleas, Juvenile Division, of Fairfield County, Ohio, which found her delinquent for committing two acts of aggravated arson, which would be first degree felonies if committed by an adult. Appellant assigns three errors to the trial court:

{¶2} “I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY OVERRULING THE JUVENILE’S MOTION TO SUPPRESS.

{¶3} “II. THE JUVENILE’S ADJUDICATION OF DELINQUENCY FOR ARSON WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶4} “III. THE JUVENILE’S ADJUDICATION OF DELINQUENCY FOR ARSON IS BASED UPON INSUFFICIENT EVIDENCE.”

{¶5} The record indicates appellant’s home caught fire on August 9, 2008, and was determined to be suspicious and caused by a human act. There were no eye witnesses to the fire.

{¶6} The investigating officers questioned appellant within minutes of the fire, sometime between 2:30 and 5:39 in the morning. Appellant’s mother signed a waiver of rights, but was not present for the entire interview. During the initial interview, appellant admitted to starting the fire.

{¶7} Subsequently, the investigating officer interviewed appellant at Crossroads Center for Youth, a facility run by the Fairfield County Juvenile Court. The investigating officer instructed appellant’s probation officer that she did not need to contact the child’s mother. Although the probation officer questioned this, she did not contact mother. Investigators interrogated appellant for nearly two hours and she was

not free to leave. Ultimately, appellant admitted starting the fire, but did not provide any details.

{¶8} The trial court conducted a suppression hearing and reviewed a tape recording of the interview at Crossroads. The trial court concluded appellant's statements were not voluntary, and were coerced by the investigators. The trial court suppressed the statements appellant made at Crossroads. However, the court found considering the totality of the circumstances, appellant's age, experience, education, background and intelligence, she intelligently and voluntarily waived her rights and voluntarily gave the statement on August 9.

I

{¶9} In her first assignment of error, appellant argues the court erred in not suppressing her statement made to police on August 9, 2008. The court found appellant and her mother were advised of appellant's Miranda rights and mother gave permission for officers to question appellant. The court found appellant's mother was present during the most of the questioning and there was no physical or psychological coercion used.

{¶10} Juvenile delinquency proceedings are civil, not criminal, but due process protections still apply. *In Re: Gault* (1967), 37 U.S. 1, 87 S. Ct. 148; *In Re: Anderson* (2001), 92 Ohio St. 3d 63 748 N.E. 2d 67.

{¶11} In the seminal case of *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed 2d 694, the Supreme Court held statements made during custodial interrogations are admissible only if the police officer informs the suspect of his or her constitutional rights before commencing the interrogation. If the warnings are not given,

the statements must be suppressed. An individual may waive his Miranda rights, and any statements he makes after waiver are admissible if the waiver was voluntary, knowingly, and intelligently made. *Michigan v. Tucker* (1974), 417 U.S. 433. The Ohio Supreme Court has found a statement is voluntary if it is the product of an essentially free and unconstrained choice by its maker. *State v. Wyles* (1991), 59 Ohio St. 3d 71.

{¶12} In determining whether a juvenile's confession was made voluntarily, courts must consider the totality of the circumstances, including the age, mentality, and prior criminal experience, the length, and intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement. *State v. Edwards* (1976), 49 Ohio St. 2d 31.

{¶13} The trial court here applied the correct standard. On review, we must determine whether as a matter of law, the applicable legal standard has been met. *State v. Rutherford* (1994), 93 Ohio App. 3d 586, 639 N.E. 2d 498.

{¶14} Appellant argues the same officer interrogated appellant on August 9, and August 11. The trial court suppressed the August 11th statement, and appellant argues the investigator's tactics in the second interview demonstrate the officer's goal always was to coerce a confession from appellant.

{¶15} It does not necessarily follow that because one custodial interrogation was flawed, all interviews conducted by the same investigator are also suspect.

{¶16} We have reviewed the record before us, and we find the trial court did not err in concluding appellant's statements of August 9, 2009 were made voluntarily and intelligently, and thus were admissible into evidence.

{¶17} The first assignment of error is overruled.

II & III

{¶18} In her second assignment of error, appellant argues the trial court's decision was against the manifest weight of the evidence. In her third assignment of error, appellant argues the court's decision is not supported by the sufficiency of the evidence.

{¶19} Our standard of reviewing claims a decision is not supported by the sufficiency of the evidence differs from the standard for claims a decision is against the manifest weight of the evidence. *State v. Thompkins* 78 Ohio St. 3d 380, 1997-Ohio-52, 678 N.E. 2d 541, syllabus by the court paragraph 2.

{¶20} Sufficiency of the evidence is a term of art meaning that legal standard which is applied to determine whether the evidence is legally sufficient to support the jury verdict as a matter of law. *Id.* at 386, citing Black's Law Dictionary (6 Ed.1990) Thus, we must determine if the record contains sufficient evidence that a reasonable trier of fact could find all the elements of the crime were proven beyond a reasonable doubt.

{¶21} To determine if a decision is against the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the decision must be reversed. *Id.* at 387. If there is substantial credible evidence going to all the elements of an offense, this court cannot reverse the trial court's decision. *State v. Johnson* (1991), 58 Ohio St. 3d 40, 567 N.E. 2d 266.

{¶22} Appellant's argument there was no credible evidence to support the trial court's decision presumes her August 9, 2008 confession should have been suppressed. Because we find no error in admitting the August 9 confession, we conclude the trial court's decision was supported by sufficient evidence and was not against the manifest weight of the evidence.

{¶23} The second and third assignments of error are overruled.

{¶24} For the foregoing reasons, the judgment of the Court of Common Pleas, Juvenile Division, of Fairfield County, Ohio, is affirmed.

By Gwin, P.J.,

Farmer, J., and

Wise, J., concur

HON. W. SCOTT GWIN

HON. SHEILA G. FARMER

HON. JOHN W. WISE

