

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1366

Appellee

Trial Court No. CR0201001618

v.

Anferney Fontenet

**DECISION AND JUDGMENT**

Appellant

Decided: April 5, 2013

\* \* \* \* \*

Julia R. Bates, Lucas County Prosecuting Attorney, and  
Evy M. Jarrett, Assistant Prosecuting Attorney, for appellee.

Neil S. McElroy, for appellant.

\* \* \* \* \*

**OSOWIK, J.**

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, in which the Lucas County Court of Common Pleas, Juvenile Division, found that appellant, Anferney Fontenet, a 15 year old, was not amenable to care or rehabilitation in the juvenile justice system and ordered that he should be tried as an adult. Subsequently the trial court denied appellant's motion to suppress statements he made to the police

following his arrest and further found, pursuant to a no contest plea, that appellant was guilty of one count of aggravated robbery and one count of rape.

{¶ 2} On appeal, appellant sets forth the following two assignments of error:

Assignment of Error no. 1

The trial court abused its discretion when it found that Anferney Fontenet was not amenable to care or rehabilitation within the juvenile justice system and, consequently, transferred jurisdiction to the general division. \* \* \*

Assignment of Error no. 2

The trial court erred to the prejudice of the defendant when it denied Anferney Fontenet's motion to suppress his statements. \* \* \*

{¶ 3} On January 19, 2010, at 2:30 p.m., two witnesses reported a rape in progress, on the sidewalk, near the intersection of Lyman and Royalton in Toledo, Ohio. When police arrived on the scene, they found the victim, A.D., who reported that she was attacked from behind by an African-American male who first asked her to perform oral sex; however, when she refused, he threatened her with a pair of scissors and forced her to get down on the ground, where he raped her. The victim also reported that, after the rape was completed, her attacker stole her cell phone before running away.

{¶ 4} Police tracked the victim's cell phone, which led them to TeShayla Henderson, who placed several calls on the victim's phone after it was stolen. Henderson told police that appellant, her boyfriend, gave her the phone. Toledo Police Detectives

Shelli Kilburn and Tonya Rider, among others, went to appellant's home and spoke to his mother. Appellant's mother allowed police to take her son into custody; however, she did not go with appellant to the police station. Instead, Detective Rider and Toledo Police Sergeant Harris remained at appellant's home and spoke to his mother.

{¶ 5} At approximately 2:00 a.m. on January 20, 2010, appellant was interviewed by Kilburn and Rider. At the beginning of the interview, Kilburn read appellant his *Miranda* rights, ascertained that he understood his rights, and asked appellant to sign a waiver form. After appellant signed the form and answered a few questions relating to his educational status and general health, Kilburn asked appellant why he was being interviewed. Appellant responded that he raped a girl. Appellant also told Kilburn that he forced his victim to comply by threatening her with scissors. Appellant further admitted to stealing the victim's cell phone and giving it to Henderson, who he described as his girlfriend. At the conclusion of the interview, appellant volunteered a DNA sample and wrote his victim a letter of apology.

{¶ 6} On January 22, 2010, a complaint was filed in the Lucas County Court of Common Pleas, Juvenile Division, that charged appellant with one count each of rape, in violation of R.C. 2907.02 (case No. 10201391.01), a first degree felony for an adult, and robbery, in violation of R.C. 2911.02(A) (case No. 10201391.02), a second degree felony for an adult.<sup>1</sup> On January 22, 2010, another complaint was filed that charged appellant

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<sup>1</sup> The initial robbery charge was later found to be made against Henderson and not appellant.

with one count of aggravated robbery, in violation of R.C. 2911.01(A)(1), a first degree felony if appellant were an adult.

{¶ 7} On January 22, 2010, the state filed a motion asking the juvenile court to relinquish jurisdiction so that appellant could be tried as an adult. On February 2, 2010, phase one of a combined hearing was held to ultimately determine whether (1) probable cause existed to believe that appellant committed the charged offenses, and (2) appellant should be tried as an adult. At the outset of the hearing, the prosecution and appellant's court-appointed attorney both stipulated that, at the time the crimes were committed, appellant was 15 years old. Thereafter, testimony was presented by Toledo Police Detective Shelli Kilburn.

{¶ 8} Kilburn testified at the hearing that on January 18, 2010, at approximately 2:30 p.m., a rape was reported to be in progress near the intersections of Royalton and Lehman Streets in Toledo, Ohio. Kilburn further testified that the victim, A.D., told police that someone approached her from behind, grabbed her neck, threatened her with scissors, and raped her by the side of the road. The man then stole her cell phone and ran away. A.D. described her attacker to police as a young black man, between 15 and 17 years old. Kilburn stated that, as result of her investigation, appellant was identified as a suspect. Kilburn also stated that she interviewed appellant at the police station. At that point, a video recording of the interview was played.<sup>2</sup>

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<sup>2</sup> Only a portion of Kilburn's interrogation of appellant was included in the transcription of the hearing. However, the record shows that the entire recorded interview was played

{¶ 9} After the court heard the interview, Kilburn testified that she obtained appellant's description from a witness who made a 911 call to report that a woman was being raped by the side of the road. In addition, A.D. described her attacker to police when she was questioned at the hospital. Kilburn further testified that she spoke to appellant's mother before taking appellant to the police station for questioning. At the close of Kilburn's testimony the juvenile court found that, based on the evidence presented at the hearing, probable cause existed to believe that an aggravated robbery and a rape occurred, and that appellant was the perpetrator of those crimes. Appellant was ordered to undergo an evaluation by the Court Diagnostic and Treatment Center ("CDTC"), and the second phase of the hearing was scheduled for March 15, 2010.

{¶ 10} On March 15 and 17, 2010, a second hearing was held to determine whether appellant should be tried as an adult. After admitting the CDTC report and appellant's medical records into evidence, the trial court heard testimony from Lucas County Probation Officer Judy Hohenberger, who testified that she interviewed appellant in February 2010, for 30 to 45 minutes. Hohenberger stated that, during the interview, appellant was cooperative, exhibited appropriate behavior, and took the interview process seriously. On cross-examination, Hohenberger testified that appellant was quiet and not aggressive.

{¶ 11} Detective Rider testified at the hearing that she assisted Kilburn in interviewing appellant. Rider further testified that, during the interview, appellant

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for the juvenile court. Likewise, this court has reviewed the entire recording, which will be discussed in this decision as necessary.

appeared indifferent and gave straightforward answers. She also stated that appellant appeared calm and serious, and exhibited mature adult-like behavior. On cross-examination, Rider testified that she talked to appellant's mother for a few minutes, during which appellant's mother stated that she believed appellant was capable of rape. However, Rider admitted that neither appellant's parents nor an attorney were present during the interview.

{¶ 12} At the close of Rider's testimony, attorneys for both sides made statements to the court. The prosecutor, referring to the CDTC report, stated that appellant was capable of appropriate behavior during the interview and he appeared to be mature, but he was also violent. The prosecutor further stated that the juvenile system is not equipped to handle the kind of violence exhibited by appellant, and asked the juvenile court to grant the state's motion for relinquishment of jurisdiction and transfer to the adult system.

{¶ 13} The defense then stated that, while appellant was charged with serious crimes and appeared somewhat mature during questioning, the factors against transferring him to the adult system outweighed those in favor of such a transfer. Specifically, defense counsel argued that appellant was not previously adjudicated to be a delinquent child and had no other prior contacts with the juvenile justice system. Defense counsel also argued that sufficient time existed to rehabilitate appellant within the juvenile system because appellant was 15 years old at the time of the hearing. In addition, defense counsel stated that appellant had a serious head injury at the age of

three, which induced certain behavioral and emotional abnormalities that “may be a specific diagnosis of impulse control disorder.” Defense counsel reminded the court that the CDTC report contained the conclusion that appellant would not benefit from transfer to the adult criminal justice system.

{¶ 14} The juvenile court found, after considering all of the testimony, counsel’s arguments, Hohenberger’s and the CDTC’s reports, and appellant’s medical records, that the state met its burden to show appellant is not amenable to care and rehabilitation in the juvenile system, and that the safety of the community requires that he be adjudicated as an adult. In making this decision, the juvenile court stated that it had considered the evidence in light of the factors set forth in R.C. 2152.12(D) and (E). Specifically, the juvenile court said that the factors in favor of transfer were that the victim suffered physical and psychological harm, which was exacerbated by the fact that she suffers from a form of autism. The court also noted that, while appellant had no prior adjudications as a juvenile, he had admitted to attempting to rape his cousin in 2008 because he was in the mood to have sex, and he failed to complete counseling that was recommended at that time. The court also noted that appellant returned for counseling due to depression in 2009, but he only completed two sessions.

{¶ 15} As for the factors against transfer, the juvenile court stated that appellant has not previously been adjudicated as a delinquent child; however, the court reiterated that appellant failed to complete services that are substantially the same as those available in this case. The court stated that appellant’s depression and anxiety were factors that

mitigate against transfer and also noted that, while appellant was calm throughout the court proceedings, it was unclear whether his attitude was due to maturity. Finally, the juvenile court referred to the CDTC report authored by Dr. Forgac, which stated:

Of significance is the level of threat and harm delivered in the instant offense and the reckless and impulsive nature of the offense.

It is also of significance that there is a history of an attempted rape committed by Anferney in 2008 which was not reported to the police or court.

It appears the appropriate intervention may require several years of detention and sex-offender-specific treatment, followed by long-term Community Control.

{¶ 16} The juvenile court concluded, in spite of Dr. Forgac's recommendation that appellant remain in the juvenile system, that the type and duration of treatment necessary to treat and/or rehabilitate appellant was not available in the juvenile system. The court stated that appellant's acts were "brazen" and "violent," and that the victim is obviously not safe from such an attack, which took place in broad daylight on a public street. The court further stated that appellant showed no remorse for his crime, and did not give the court the impression that he knew he had committed a serious offense. Accordingly, the juvenile court said that:

I thought it was interesting that even Mom felt he was capable of doing this act. I didn't know that until Detective Rider testified today.



To assume that [appellant] could get the kind of treatment that we have to offer on a local level and then be at home being monitored by his family would be a huge risk to our public safety because there has been a lack of family involvement in prior treatment, and there is nothing that would assure me that he would be kept home safe while he's getting the treatment.

{¶ 17} The juvenile court stated that it is “doubtful” whether appellant could be successfully helped in the five years remaining before he turns 21, particularly since the offense in this case is much more violent than those typically committed by juveniles who have no prior contact with the court system. Accordingly, the juvenile court found that the state met its burden and granted the motion to relinquish jurisdiction to the adult system. A judgment entry certifying appellant as an adult and transferring the case to the Lucas County Court of Common Pleas was journalized on March 19, 2010.

{¶ 18} On April 8, 2010, the Lucas County Grand Jury indicted appellant on one count of aggravated robbery in violation of R.C. 2911.01(A)(1), and one count of rape, in violation of R.C. 2907.02(A)(2) and (B), both of which are first degree felonies. A pretrial hearing was held on May 28, 2010, at which a CDTC report by Charlene Cassel, Ph.D., was entered into evidence, after which appellant withdrew his former not-guilty plea and asked to enter a plea of not guilty by reason of insanity (“NGRI”). The trial court scheduled appellant for an NGRI assessment. On May 28, 2010, a pre-trial hearing was held at which the trial court, after reviewing the results of appellant’s NGRI

assessment, found that appellant was competent to stand trial, and that he did not qualify for an insanity defense. An order to that effect was journalized on June 1, 2010.

{¶ 19} On June 15, 2010, appellant filed a motion to suppress the statements he made to Kilburn and Rider. Appellant stated that his confession was illegally obtained, in violation of his “rights guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.” Appellant also asked the trial court to suppress any evidence that was obtained as a result of the illegal confession. In support, appellant argued that he was never properly advised of his constitutional rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and that, as a 15-year-old suspect, he was denied his absolute right to an attorney and to have a parent present during questioning. Appellant further argues that, as a result of these violations, his confession was not knowingly, voluntarily and intelligently made.

{¶ 20} Detective Kilburn testified at a suppression hearing on August 23 and August 30, 2010. Kilburn testified that she responded to a 911 call at 2:30 p.m. on January 19, 2010. After going to see the victim, A.D., at Toledo Hospital, Kilburn went to appellant’s home at approximately 1:30 a.m., where she spoke to appellant’s mother for ten minutes before taking appellant to the police station for questioning. Kilburn stated that appellant’s mother was “cooperative.” Kilburn further stated that she interviewed appellant at 2:15 a.m., and that the interview was recorded. At that point, the recorded interview was played for the court and was made a part of the record. Kilburn

testified that she advised appellant of his constitutional rights and that appellant asked for a further explanation of the phrase “Unless you’re willing to give up the above rights, no statement of yours can be accepted and no questions will be asked of you.” After an explanation was given, appellant indicated that he understood and signed the waiver form. She further testified that appellant also made a written statement.

{¶ 21} On cross-examination, Kilburn testified that she and four members of the fugitive task force went to appellant’s house after they first visited his girlfriend and co-defendant, TeShayla Henderson. Kilburn further testified that the officers were wearing street clothes and badges. She stated that a review of appellant’s juvenile record showed only one incidence of unruliness, and also showed appellant’s age. Kilburn stated that appellant’s mother told police that she believed appellant “did commit the act.”

{¶ 22} Kilburn further stated that appellant was not made aware that his mother gave the police permission to interview her son, and Kilburn did not ask appellant if he wished to have his mother present during questioning. Kilburn testified that she read appellant his *Miranda* rights, and explained one portion of the form to him. She did not advise appellant of the charges against him.

{¶ 23} At the close of Kilburn’s testimony, arguments were presented by both the prosecutor and appellant’s defense attorney. No witnesses were called to testify on appellant’s behalf. After hearing the arguments presented by both sides, the trial court stated that, after watching the recorded interview, it was apparent that *Miranda* warnings were given in “a very clear, step-by-step process” and in a very “conversational soft

spoken manner.” The trial court noted that Kilburn explained one statement to appellant “in lay terms,” after which appellant indicated that he understood. In addition, the trial court stated that, while appellant is 15 years old, he gave no indication that he did not understand his situation, he confessed in a “clear headed” and “direct” manner, and gave answers that were “certainly coherent and logical.” The trial court also stated that:

This young man seemed to be aware of the seriousness of what he was involved with and he in no way tried to mitigate any of the allegations. He simply answered the questions very straightforward and logical [sic] across the board. I would say that while the age at 15 is, you know, a young person that, absent police coercions, age standing alone does not show that there is a lack of voluntariness in the statement.

{¶ 24} The trial court found no threats were given by the detectives and, although the interview was conducted in the early morning hours, it was less than one hour in length and did not put undue stress on appellant to confess. Accordingly, the trial court found that appellant’s confession was knowingly, intelligently and voluntarily made, and denied the motion to suppress.

{¶ 25} A plea hearing was held on November 29, 2010, at which appellant withdrew his not-guilty plea and entered a plea of no contest to one count of aggravated robbery and one count of rape, as charged in the indictment. After engaging in an exchange with appellant in compliance with Crim.R. 11, and ascertaining that appellant’s

plea was knowingly, intelligently, and voluntarily made, the trial court found appellant guilty of one count of aggravated robbery and one count of rape.

{¶ 26} A sentencing hearing was held on December 14, 2010, at which statements were made by defense counsel, the prosecution, the victim's mother, and appellant. Defense counsel reminded the court that appellant had no prior contact with the juvenile justice system, and that appellant had a head injury as a small child, after which he suffered from poor impulse control. Appellant told the trial court that his actions were wrong, that he would like to apologize to his victim and her family, and that he wants to learn from his mistake and avoid such situations in the future "and not have to put me or anybody else through this again." The prosecutor then stated that appellant's actions caused irreparable harm to his victim, who has continuing psychological issues, and that treatment programs are available in prison that would benefit appellant.

{¶ 27} The victim's mother read her daughter's written statement at the hearing. In the statement, A.D. stated that she has had nightmares since the rape took place, and had to spend 15 days in the psychiatric unit at the hospital. A.D.'s letter also stated that appellant's actions have affected the quality of her neighborhood, and that she is now scared to be around "Afro-American males." A.D. ended the letter by asking the trial court to "sentence [appellant] to the maximum time allowed."

{¶ 28} After hearing the above statements, the trial court stated that it had reviewed the entire record, including evidence that appellant suffered from depression and had a head injury as a child, and that such conditions do not justify the crime of rape.

In addition, the trial court noted that appellant has extremely poor impulse control, shows little remorse for his crime, and has not benefitted from treatment in the past and is, therefore, not amenable to community control. After affording appellant all of his rights pursuant to Crim.R. 11, and balancing the principles and purposes of sentencing pursuant to R.C. 2929.11 and the seriousness and recidivism factors pursuant to R.C. 2929.12, the trial court ordered appellant to serve a term of 8 years in prison as to Count 1, aggravated robbery, and a mandatory 10 years in prison as to Count 2, rape. Appellant was advised as to the terms of mandatory postrelease control, and was warned of the consequences of violating postrelease control. A judgment entry of sentencing was journalized on December 16, 2010, and a timely notice of appeal was filed in this court on December 28, 2010.

{¶ 29} In his first assignment of error, appellant asserts that the juvenile court abused its discretion by transferring jurisdiction to the court of common pleas so that appellant could be tried as an adult. In support, appellant argues that the juvenile court did not correctly analyze the factors set forth in R.C. 2152.12 in light of the evidence contained in the record. We disagree.

{¶ 30} A juvenile court's decision to relinquish jurisdiction in a discretionary transfer proceeding conducted pursuant to R.C. 2152.12 will not be overturned on appeal absent a finding of abuse of discretion. *State. v. Grimes*, 2d Dist. No. 2009-CA-30, 2010-Ohio-5385, ¶ 14, citing *In re. A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629. An abuse of discretion connotes more than a mere error of law or judgment, instead

requiring a finding that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 276 (1983).

{¶ 31} In this case, it is undisputed that appellant was 15 years old at the time the alleged crime occurred, and appellant has not attacked the juvenile court's determination as to the existence of probable cause. However, appellant does argue that the juvenile court erred when it found that appellant is not amenable to rehabilitation within the juvenile justice system.

{¶ 32} Pursuant to R.C. 2152.12(B)(3), after establishing the juvenile's age and finding that probable cause exists, the court must determine, using the factors set forth in R.C. 2152.12, whether the juvenile is amenable to rehabilitation within the juvenile justice system and whether the juvenile should be subject to adult sanctions in order to protect the community. *Grimes, supra*, at ¶ 15. In making its decision under this division, the court shall consider whether the applicable factors under division (D) of this section indicating that the case should be transferred outweigh the applicable factors under division (E) of this section indicating that the case should not be transferred. The record shall indicate the specific factors that were applicable and that the court weighed. R.C. 2152.12(B)(3).

{¶ 33} Pursuant to R.C. 2152.12(C):

[b]efore considering a transfer \* \* \*, the juvenile court shall order an investigation into the child's social history, education, family situation, and

any other factor bearing on whether the child is amenable to juvenile rehabilitation, including a mental examination of the child by a public or private agency or a person qualified to make the examination. \* \* \*

{¶ 34} R.C. 2152.12(D) sets forth a list of eight non-exclusive factors for the court to consider that weigh in favor of transfer. The relevant factors that were considered by the juvenile court in this case are:

(1) The victim of the act charged suffered physical or psychological harm \* \* \* as a result of the alleged act.

(2) The physical or psychological harm suffered by the victim due to the alleged act of the child was exacerbated because of the physical or psychological vulnerability or the age of the victim.

\* \* \*

(7) The results of any previous juvenile sanctions and programs indicate that rehabilitation of the child will not occur in the juvenile system.

(8) The child is emotionally, physically, or psychologically mature enough for the transfer.

(9) There is not sufficient time to rehabilitate the child within the juvenile system.

{¶ 35} In addition, R.C. 2152.12(E) sets forth the following factors that mitigate against such a transfer, such as:

\* \* \*



(5) The child previously has not been adjudicated a delinquent child.

(6) The child is not emotionally, physically, or psychologically mature enough for the transfer.

(7) The child has a mental illness or is a mentally retarded person.

(8) There is sufficient time to rehabilitate the child within the juvenile system and the level of security available in the juvenile system provides a reasonable assurance of public safety. \* \* \*

{¶ 36} The record shows that, after reviewing all relevant reports, holding a hearing, and considering the factors in R.C. 2152.12(D), the juvenile court found that the factors in favor of transferring jurisdiction to the court of common pleas included that the victim, A.D., suffered physical and psychological harm, which was exacerbated by the fact that she has bipolar disorder and Asperger's syndrome, which make her psychologically vulnerable. The juvenile court also found that although not discussed on the record, Dr. Forgac's report stated that appellant had attempted to rape his cousin in the past, and that he had not completed treatment that was recommended at the time. The court also noted that appellant suffers from depression, for which he failed to complete treatment in the past.

{¶ 37} As for the factors in R.C. 2152.12(E) against transfer, the juvenile court noted that appellant had no prior adjudications of delinquency, and he does suffer from depression. The juvenile court also stated that it could not determine whether or not

appellant is emotionally and/or psychologically mature for his age; however, he appeared calm.

{¶ 38} The juvenile court stated that, due to the nature of appellant's acts, which included violent, impulsive behavior, the type of treatment needed to help appellant "cannot be at the Department of Youth Services," where "there is little to no intensive sex offender treatment available." The court characterized appellant's acts as "brazen," and stated that victims such as A.D. are not safe from individuals like appellant, who are willing to attack them in broad daylight, on a public street. The court also noted that appellant shows no remorse and does not appear to know why he attacked the victim, and even appellant's mother thought he was capable of such an act. The juvenile court concluded by stating:

Based on Dr. Forgac's statement that this treatment would have to be several years of detention and sex-offender-specific treatment, followed by long-term community control, we are talking about five years that we could have [appellant] in our system, up to age 21, and it's doubtful whether that can be accomplished \* \* \*.

Therefore, I find that the State has met its burden, and the Motion to Relinquish Jurisdiction to the adult system will be granted.

{¶ 39} On consideration of the foregoing, this court finds that the juvenile court adequately considered the entire record and analyzed the evidence in light of the factors both in favor of and against the transfer of jurisdiction. Accordingly, we cannot say that

the juvenile court's decision to relinquish jurisdiction and certify appellant to be tried as an adult was arbitrary, unreasonable or unconscionable so as to constitute an abuse of discretion. Appellant's first assignment of error is not well-taken.

{¶ 40} In his second assignment of error, appellant asserts that the trial court erred by denying his motion to suppress his confession, which was made during the interview conducted by Kilburn and Rider on January 20, 2010. In support, appellant argues that, pursuant to R.C. 2151.352, as a juvenile, he had the absolute right to have a parent present during police questioning. Therefore, his confession was not knowing and voluntary, since he was not given the opportunity to have a parent or other interested adult present during questioning, and he agreed to waive his *Miranda* rights without the benefit of consultation with either a parent or counsel.

{¶ 41} R.C. 2151.342 states, in relevant part, that:

A child \* \* \* is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152 of the Revised Code. If, as an indigent person, a party is unable to employ counsel, the party is entitled to have counsel provided for the person \* \* \*. If a party appears without counsel, the court shall ascertain whether the party knows of the party's right to counsel and of the party's right to be provided with counsel if the party is an indigent person. \* \* \* Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If

the interests of two or more such parties conflict, separate counsel shall be provided for each of them.

{¶ 42} The Supreme Court of Ohio recently held that, contrary to appellant’s argument, “[t]he term ‘proceedings’ as used in R.C. 2151.352 means court proceedings, and in that context, a child is statutorily entitled to representation by legal counsel upon the filing of a complaint in juvenile court or upon initial appearance in the juvenile court.” *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164, syllabus. The court based its conclusion, in part, on its earlier holding that “[t]aken as a whole, the purpose of R.C. 2151.352 is to insure to the juvenile his right to counsel and/or his right to have parents present at any hearing.” *Id.* at ¶ 24, quoting *State v. Ostrowski*, 30 Ohio St.2d 34, 42, 282 N.E.2d 359 (1972). Accordingly, appellant’s argument that his confession was made in violation of R.C. 2151.352 is without merit.

{¶ 43} The remaining issue to be decided is whether appellant’s confession was obtained in violation of his Fifth Amendment rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). In reviewing the trial court’s ruling on a motion to suppress, an appellate court

accepts the trial court’s factual findings, relies on the trial court’s ability to assess the credibility of witnesses, and independently determines whether the trial court applied the proper legal standard to the facts as found. \* \* \*

An appellate court is bound to accept the trial court’s factual findings as long as they are supported by competent, credible evidence. *State v. Lail*,

2d Dist. No. 24118, 2011-Ohio-2312, ¶ 16, quoting *State v. Purser*, 2d Dist. No. 2006 CA 14, 2007-Ohio-192, ¶ 11.

{¶ 44} We note initially that “the constitutional privilege against self-incrimination is applicable in the case of juveniles as it is with respect to adults.” *In re J.C.*, 10th Dist. No. 74AP-80, 1974 WL 184229 (July 23, 1974). The relevant inquiry in such cases is whether, under the totality of the circumstances, the confession was involuntarily obtained after taking into account the accused’s age, mentality and prior criminal experience. Additional factors include the length, intensity and frequency of the interrogation, the existence of physical deprivation or mistreatment, if any, and whether there was physical deprivation or mistreatment or any threats or inducements. *In re Watson*, 47 Ohio St.3d 86, 88, 548 N.E.2d 210 (1989).

{¶ 45} In this case the trial court found, based on Kilburn’s testimony and appellant’s recorded confession that, although appellant was only 15 years old, he exhibited self-control during the interview. The court also noted the “slow methodical explanation of the Miranda warnings” given to appellant. The court stated that appellant did not ask for his mother to participate in the proceedings.

{¶ 46} The trial court stated, and the recording shows, that appellant was apprised of his rights in a “very clear, step-by-step process in a very \* \* \* conversational soft spoken manner.” The court further stated that appellant’s confession was “extremely quick” and he was “clear headed” and “direct” when he responded to questions. The court also stated that “in each sequence [appellant] appeared to be behaving logically and

coherently and did not appear to be exhibiting any of the body reactions one might look at when you see somebody in a significant state of stress or intimidation.”

{¶ 47} In addition to the foregoing, the trial court said that it did not observe any threats being made, and the length of the entire interview was one hour. The court did not find that any additional stress was placed on appellant just because the interview was conducted at 2 a.m. Accordingly, the trial court found that appellant’s confession was voluntarily made and denied the motion to suppress.

{¶ 48} After reviewing the entire record in this case, including a review of the recorded interview, and giving appropriate deference to the trial court’s findings of fact, we find that the trial court’s denial of the motion to suppress was supported by competent, credible evidence. Accordingly, the trial court did not err by denying the motion to suppress. For all of the foregoing reasons, appellant’s second assignment of error is not well-taken.

{¶ 49} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

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JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.