[Cite as *State v. Ellis*, 2022-Ohio-147.]

**IN THE COURT OF APPEALS OF OHIO**
**SECOND APPELLATE DISTRICT**
**CLARK COUNTY**

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| STATE OF OHIO | : | |
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| Plaintiff-Appellee | : | Appellate Case No. 2020-CA-59 |
| | : | |
| v. | : | Trial Court Case No. 2019-CR-0799 |
| | : | |
| NATASHA ELLIS | : | (Criminal Appeal from |
| | : | Common Pleas Court) |
| Defendant-Appellant | : | |
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O P I N I O N

Rendered on the 21st day of January, 2022.

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TUCKER, P.J.

**{¶ 1}** Natasha Ellis appeals from her conviction in the Clark County Common Pleas Court, General Division, following a bind-over from juvenile court and a negotiated guilty plea to charges of murder and attempted murder.

**{¶ 2}** Ellis contends the juvenile court erred in failing to explain her right to waive a second mental examination regarding her amenability to juvenile rehabilitation. She also challenges the juvenile court's relinquishment of jurisdiction and transfer of her case for criminal prosecution in the general division. Finally, she argues that the trial court erred following the bind over in finding a valid waiver of her *Miranda* rights and refusing to suppress statements she made to law enforcement.

**{¶ 3}** We conclude that the juvenile court did not commit plain error in failing to inform Ellis of her right to waive a second evaluation. However, the juvenile court abused its discretion in its bind-over decision by failing to consider reports favorable to Ellis that had been submitted by a court-appointed expert and a guardian ad litem. Finally, Ellis' guilty plea precludes her from challenging the trial court's suppression ruling. In any event, the juvenile court's failure to consider the two reports necessitates a remand and renders the suppression issue moot. Accordingly, the trial court's judgment will be reversed, and the case will be remanded to the juvenile court for further proceedings.

## I. Factual and Procedural Background

**{¶ 4}** Ellis was charged in the juvenile court with committing acts that constituted murder and two counts of felonious assault. The offenses involved a knife attack that killed one person and injured two others. The State sought a transfer to the general division for 15-year-old Ellis to be prosecuted criminally. Following a hearing, the juvenile

court found probable cause that she had committed the charged acts. In accordance with Juv.R. 30(C) and R.C. 2152.12(C), the juvenile court ordered an investigation into Ellis' history and background, including a mental examination and report by court-appointed psychologist Dr. Daniel Hrinko. The juvenile court also ordered a report and recommendation by court-appointed guardian ad litem Paul Trinh. Both reports were prepared and filed with the juvenile court.

**{¶ 5}** After reviewing Dr. Hrinko's amenability report, which recommended keeping Ellis in the juvenile system, the State moved for a "second opinion." In its motion, the State sought another amenability evaluation due to perceived deficiencies in Dr. Hrinko's report. The juvenile court sustained the motion seven days later, ordering a second evaluation and report to be prepared by psychologist Dr. Kara Marciani. In her report, Dr. Marciani opined that Eillis was not amenable to rehabilitation in the juvenile system.

**{¶ 6}** The matter proceeded to a December 2, 2019 amenability hearing. The State called three witnesses: (1) a detective who testified about his investigation of the offenses, (2) Dr. Marciani, and (3) a victim of the offenses. At the conclusion of its case, the State sought and obtained the admission of Dr. Marciani's amenability report into evidence. The only other witness was Ellis, who testified on her own behalf. Ellis' guardian ad litem was present for the hearing but did not testify. Dr. Hrinko was not called as a witness and does not appear to have been present.

**{¶ 7}** On December 3, 2019, the juvenile court sustained the State's motion to transfer the case to the general division. In its judgment entry, the juvenile court observed that Dr. Hrinko and the guardian ad litem both had submitted reports to the court. The juvenile court noted, however, that neither party had sought admission of those reports

into evidence for the juvenile court's consideration in its amenability determination. The juvenile court then noted that "[t]he only expert opinion admitted into evidence at the [hearing] was provided by Dr. Marciani." (December 3, 2019 Judgment Entry at 3.) Consistent with Dr. Marciani's recommendation, the juvenile court proceeded to analyze the statutory "amenability" factors found in R.C. 2152.12(D) and (E) and to find that the evidence weighed in favor of transferring the case to the general division for criminal prosecution.

**{¶ 8}** Following the juvenile court's bind-over ruling, Ellis was indicted on charges of aggravated murder, murder, attempted murder, and felonious assault. She subsequently filed a motion to suppress incriminating statements based in part on a violation of her *Miranda* rights. The trial court sustained the motion with respect to a pre-*Miranda* statement but overruled it with respect to statements Ellis made after being advised of her *Miranda* rights. Thereafter, Ellis entered into a negotiated plea agreement. In exchange for a guilty plea to charges of murder and attempted murder and her agreement to testify against a co-defendant, the State dismissed the aggravated-murder and felonious-assault charges. The trial court accepted the guilty pleas and imposed consecutive sentences of 15 years to life in prison for murder and seven to 10.5 years in prison for attempted murder. This appeal followed.

## II. Analysis

**{¶ 9}** Ellis advances three assignments of error:

I. THE COURT COMMITTED PLAIN ERROR WHEN IT DEPRIVED NATASHA OF A HEARING REGARDING HER RIGHT TO WAIVE THE STATE'S REQUEST FOR A SECOND MENTAL HEALTH EXAMINATION.

II. THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED PREJUDICIAL ERROR WHEN IT BOUND NATASHA OVER TO THE GENERAL DIVISION OF THE CLARK COUNTY COMMON PLEAS COURT TO BE TRIED BY THE CRIMINAL DIVISION AS AN ADULT.

III. THE COMMON PLEAS COURT GENERAL DIVISION ERRED WHEN IT HELD NATASHA MADE KNOWING AND INTELLIGENT WAIVERS OF HER *MIRANDA* RIGHTS AND, WITH CERTAIN EXCEPTIONS HER STATEMENTS TO LAW ENFORCEMENT WERE ADMISSIBLE.

**{¶ 10}** In her first assignment of error, Ellis contends the juvenile court was required to hold a hearing to advise her of her right to waive a second amenability examination prior to ordering the examination. She also claims the juvenile court deprived her of an opportunity to respond to the State's motion for a second examination by sustaining the motion seven days after it was filed. For these reasons, Ellis asks us to declare void ab initio the juvenile court's order granting a second evaluation, the evaluation itself, Dr. Marciani's written report, and Dr. Marciani's hearing testimony. Ellis further argues that we should remand the case with instructions for the juvenile court to find her amenable to treatment in the juvenile system.

**{¶ 11}** Ellis' argument implicates Juv.R. 30 and R.C. 2152.12. After a finding of probable cause in a discretionary bind-over case,[1] the rule and the statute both obligate a juvenile court to continue the proceedings for an investigation into the child's history

[1] There is no dispute that Ellis, who was 15 years old at the time of the incident in question, was subject to discretionary transfer for criminal prosecution in the general division.

and background. “This investigation includes a mental examination of the child, a hearing to determine whether the child is ‘amenable to care or rehabilitation within the juvenile system’ or whether ‘the safety of the community may require that the child be subject to adult sanctions,’ and the consideration of 17 other statutory criteria to determine whether a transfer is appropriate.” *In re M.P.*, 124 Ohio St. 3d 445, 2010-Ohio-599, 923 N.E.2d 584, ¶ 12, citing Juv.R. 30(C) and R.C. 2152.12(B), (C), (D), and (E).

**{¶ 12}** The mental-examination requirement is found in Juv.R. 30(C), which states that a “full investigation” prior to an amenability hearing “shall include a mental examination of the child by a public or private agency or by a person qualified to make the examination.” Likewise, R.C. 2152.12(C) provides that “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.” The statute directs that “[t]he investigation shall be completed and a report on the investigation shall be submitted to the court as soon as possible but not more than forty-five calendar days after the court orders the investigation.” Finally, Juv.R. 30(F) and R.C. 2152.12(C) both permit a child to waive the required mental examination. The statute provides that such a waiver is valid if it is “competently and intelligently made.” The rule and the statute also both state that a child’s refusal to submit to a mental examination constitutes a waiver. Juv.R. 30(F); R.C. 2152.12(C).

**{¶ 13}** Here Ellis underwent a mental examination conducted by Dr. Hrinko, who submitted a report finding her amenable to rehabilitation in the juvenile system. After receiving Dr. Hrinko’s report, the State moved for a second mental examination based on

concerns that the report "was not as thorough as warranted[.]" The juvenile court sustained the motion without giving Ellis time to respond. As noted above, Ellis subsequently underwent a second examination by Dr. Marciani, who found her not amenable to rehabilitation in the juvenile system.

**{¶ 14}** Although the juvenile court did not give Ellis time to respond to the State's motion, Ellis never objected to the court-ordered second examination, to Dr. Marciani's testimony at the amenability hearing, or to the admission of Dr. Marciani's amenability report at the hearing. Under these circumstances, Ellis acknowledges that her first assignment of error is subject to plain-error review.

**{¶ 15}** Contrary to Ellis' argument, we see no error—much less plain error—in the juvenile court's failure to hold a hearing to advise Ellis of her right to refuse or to waive a second mental examination.[2] In reaching this conclusion, we note that Juv.R. 30 and R.C. 2152.12 both require a juvenile court to order one mental examination. The rule and the statute also give a child the right to waive that examination. Neither the rule nor the statute obligates a juvenile court to hold a hearing, however, to inform a child of his or her right to invoke such a waiver.

**{¶ 16}** Although Juv.R. 30 and R.C. 2152.12 do not specifically authorize a second mental examination, they do not prohibit one either. In *State ex rel. Doe v. Tracy*, 51 Ohio App.3d 198, 555 N.E.2d 679 (12th Dist.1988), upon which Ellis relies, the Twelfth District

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[2] Contrary to the passing suggestion in Ellis' appellate brief, we note too that nothing about the juvenile court's actions rendered "void ab initio" its order for a second examination, the actual examination, or Dr. Marciani's report and later testimony. The juvenile court had jurisdiction over Ellis and subject-matter jurisdiction to sustain the State's motion and to order an examination. Even if we assume, purely arguendo, that it erred in exercising its jurisdiction, the examination and resulting report and testimony are not "void."

recognized that a juvenile could not be compelled to undergo a second mental examination to assess amenability. In that case, the child underwent one examination pursuant to Juv.R. 30 and R.C. 2151.26, which was a predecessor to the current R.C. 2152.12. As here, the State sought a second examination, which the juvenile court ordered. The child in *Tracy* responded by invoking a right to waive a second examination under the rule and the statute. The juvenile court refused to accept the waiver and held the child in contempt. On appeal, the Twelfth District recognized that "the decision to submit to or waive the examination rests ultimately with the child." *Id*. at 201. Therefore, the Twelfth District held that the juvenile court could not attempt to secure a second examination by holding the child in contempt and continuing the proceeding until the child submitted. *Id*.

**{¶ 17}** The Twelfth District's decision in *Tracy* does not say a juvenile court must hold a hearing to advise a child of his or her right to refuse a mental examination. Rather, it stands for the proposition that a juvenile court cannot compel a child to undergo an examination after the right to waive such a hearing has been invoked. Here Ellis had the assistance of counsel and a guardian ad litem. If she wished to waive or refuse a second examination, she could have objected, invoked her right to waiver, and refused to undergo the examination.

**{¶ 18}** We can only speculate why Ellis and her counsel did not refuse the second examination. It could be that counsel agreed with the State that Dr. Hrinko's report was assailable and, therefore, that his conclusions were subject to being rejected at an amenability hearing. Or perhaps Ellis anticipated Dr. Marciani concurring in Dr. Hrinko's opinion, thereby increasing the likelihood of the juvenile court finding her amenable to

rehabilitation in the juvenile system. Regardless of why Ellis underwent the second examination, we see no plain error in the juvenile court's failure to hold a pre-examination hearing to tell her she could refuse to participate. The first assignment of error is overruled.

**{¶ 19}** In her second assignment of error, Ellis contends the juvenile court abused its discretion when it bound her over for criminal prosecution in the general division of the common pleas court. In support, she again challenges the juvenile court's order for a second examination. She also claims the juvenile court improperly ignored the written opinions of its own witnesses, Dr. Hrinko and guardian ad litem Trinh. Finally, she challenges the trial court's reliance on Dr. Marciani's testimony and written report, which Ellis claims were flawed and unreliable. Ellis maintains that the record supports finding her amenable to rehabilitation in the juvenile system when the statutory "transfer" factors in R.C. 2152.12(D) and (E) are considered in light of all of the evidence.

**{¶ 20}** Ellis correctly recognizes that juvenile court's amenability determination is reviewed under an abuse-of-discretion standard. *State v. Howard*, 2d Dist. Montgomery No. 27198, 2018-Ohio-1863, ¶ 14, citing *In re M.P*. at ¶ 14. As often stated, "a trial court abuses its discretion when it makes a decision that is unreasonable, unconscionable, or arbitrary." *State v. Darmond*, 135 Ohio St.3d 343, 2013-Ohio-966, 986 N.E.2d 971, ¶ 34. Ordinarily, " '[a]s long as the [juvenile] court considers the appropriate statutory factors and there is some rational basis in the record to support the court's findings when applying these factors, [an appellate court] cannot conclude that the trial court abused its discretion in deciding whether to transfer jurisdiction.' " *Howard* at ¶ 15, quoting *State v. West*, 167 Ohio App.3d 598, 2006-Ohio-3518, 856 N.E.2d 285, ¶ 10 (4th Dist.).

**{¶ 21}** In its December 3, 2019 judgment entry transferring jurisdiction, the juvenile court considered the appropriate factors under R.C. 2152.12(D) and (E). It addressed those factors in light of the evidence presented at the December 2, 2019 amenability hearing, with particular emphasis on the opinion of Dr. Marciani, who found Ellis not amenable to rehabilitation in the juvenile system. In reaching its conclusion, however, the juvenile court refused even to consider the written reports that had been submitted to it by Dr. Hrinko and the guardian ad litem.

**{¶ 22}** With regard to the guardian ad litem's report, the juvenile court stated: "The Guardian Ad Litem submitted a report regarding amenability with the Court on August 20, 2019, however, neither party requested that report be submitted into evidence for consideration in this matter." Concerning Dr. Hrinko's report, the trial court stated: "The amenability report of Dr. Hrinko was submitted to the Court on August 18, 2019. Dr. Hrinko did not testify at the amenability hearing nor was a request made by either side to enter his report into evidence for the Court to consider when making a determination on amenability." After refusing to consider these reports by court-appointed expert Dr. Hrinko and court-appointed guardian ad litem Trinh, the juvenile court observed: "The only expert opinion admitted into evidence at the trial was provided by Dr. Marciani. Dr. Marciani's expert opinion is that the youth is mature enough for the transfer and there is not sufficient time to rehabilitate the youth in the juvenile justice system." The juvenile court proceeded to find Ellis not amenable to rehabilitation in the juvenile system.

**{¶ 23}** In our view, the juvenile court abused its discretion by failing to consider the opinions of Dr. Hrinko and guardian ad litem Trinh, both of whom it had appointed and directed to file written reports to assist in the amenability determination. It is not surprising

that the juvenile court found Ellis unamenable to rehabilitation in the juvenile system when it ignored all contrary evidence in the reports of Dr. Hrinko and Trinh, both of whom believed Ellis should remain in the juvenile system. Although a trial court has discretion to *disagree* with an expert's opinion regarding amenability, we do not believe the trial court had discretion to refuse to *consider* the opinions of Dr. Hrinko and Trinh. While neither party sought to have the reports of Dr. Hrinko and Trinh admitted into evidence at the amenability hearing, those reports already had been filed and submitted to the juvenile court. Under these circumstances, the trial court was not at liberty simply to ignore them.

**{¶ 24}** With respect to Dr. Hrinko in particular, R.C. 2152.12(C) provides that before considering a transfer at an amenability hearing, a juvenile court must order an investigation that includes a mental examination of the child. The statute states that a report of the investigation "shall be submitted to the court[.]" Here Dr. Hrinko's report was part of the required investigation, which also was performed by guardian ad litem Trinh. In compliance with R.C. 2152.12(C), Dr. Hrinko submitted his mental-evaluation report to the juvenile court prior to the amenability hearing. In compliance with an August 1, 2019 order of the juvenile court, Trinh likewise submitted his guardian ad litem's report and recommendation prior to the hearing. Under these circumstances, the juvenile court acted unreasonably, and thereby abused its discretion, by failing to consider the reports submitted by Dr. Hrinko and Trinh, both of whom had been appointed by the juvenile court.

**{¶ 25}** The statutorily required investigation into a child's background and history, including a mental examination, and the submission of a written report to the juvenile court serve no purpose if a court can refuse to consider such information because the

parties neglected to make the report an exhibit at an amenability hearing. Implicit in the requirement for a juvenile court to obtain an investigation report is a concomitant requirement to consider the report. Because the reports prepared by Dr. Hrinko and Trinh already had been filed and submitted to the juvenile court at the direction of the juvenile court, they fell within the universe of information properly before it for consideration in its amenability determination. If the juvenile court believed it was necessary to make those reports hearing exhibits, it could have marked them as court exhibits. *Compare State v. Lewis*, 9th Dist. Summit No. 27887, 2017-Ohio-167, ¶ 12 ("Here, at the amenability hearing, Dr. Thomas Webb testified as a court witness. Dr. Webb testified that he was the juvenile court psychologist, and he completed a psychological consult and amenability evaluation with regard to Mr. Lewis. The report was marked as a court exhibit and entered into evidence."). What the juvenile court could not do was fail to consider reports favorable to Ellis submitted by Dr. Hrinko and the guardian ad litem and make its amenability decision solely based on the "second opinion" expert report from the State's witness, Dr. Marciani.

**{¶ 26}** We hold that the juvenile court abused its discretion in making its amenability determination without considering the written reports submitted to it by Dr. Hrinko and guardian ad litem Trinh. The second assignment of error is sustained insofar as Ellis contends the juvenile court abused its discretion in failing to consider those reports. Whether Ellis is amenable to remaining in the juvenile system is a matter properly left to the juvenile court's discretion after considering all of the information before it.

**{¶ 27}** In her third assignment of error, Ellis contends the trial court erred, following her bind over to the general division, when it found that she made a knowing and

intelligent waiver of her *Miranda* rights and that post-*Miranda* statements to law enforcement were admissible. The State correctly notes, however, that a guilty plea waives the ability to challenge a trial court's suppression ruling. *State v. Strodes*, 2d Dist. Clark No. 2005-CA-70, 2006-Ohio-2335, ¶ 21. In any event, our resolution of Ellis' second assignment of error effectively moots this issue. The third assignment of error is overruled.

## III. Conclusion

**{¶ 28}** Having sustained Ellis' second assignment of error in part, we reverse the trial court's judgment and remand the case to juvenile court for an amenability determination that includes consideration of the reports submitted by Dr. Hrinko and guardian ad litem Trinh.

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WELBAUM, J., concurs.

DONOVAN, J., concurs in judgment only.

Copies sent to:

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