

2015 IL App (2d) 130761-U
No. 2-13-0761
Order filed September 4, 2015

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,)	
v.)	No. 07-CF-1151
WILLIE WALLS,)	Honorable Fred Foreman and Daniel B. Shanes,
Defendant-Appellant.)	Judges, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion to suppress, and his sentence was not excessive; therefore, we affirmed.

¶ 2 Following a jury trial, defendant, Willie Walls, was found guilty of first-degree murder (720 ILCS 5/9-1(a)(3) (West 2006)) and sentenced to 43 years' imprisonment. In this direct appeal, defendant argues that the trial court erred by denying his motion to suppress on the basis that his statement was not voluntary and that his 43-year sentence is excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 After defendant became a suspect in the March 6, 2007, shooting death of Herman Allison, he was taken into custody on April 2, 2007, and interviewed by police officers from the Waukegan police department. Defendant made incriminating statements during the interview and was later charged by indictment with eight counts of first-degree murder.

¶ 5 On February 4, 2010, defendant filed an amended motion to suppress, and a hearing on defendant's motion commenced that day.

¶ 6 A. Suppression Hearing

¶ 7 Detective Dominic Cappelluti testified first on behalf of the State. In his 15 years of experience, he had interviewed over 150 homicide suspects.

¶ 8 After defendant was arrested in connection with Allison's death on April 2, 2007, defendant arrived at the police station somewhere between 7:00 p.m. and 10:15 p.m. Cappelluti was not advised that defendant was at the station until about 30 minutes prior to the interview, which began at 10:46 p.m. Cappelluti retrieved defendant from the booking room, asked if he needed to use the bathroom, and then took him to the interview room. Defendant had a can of soda when entering the interview room, and Cappelluti thought that either he or the juvenile advocate (Detective Charles Schletz) had given it to him. The interview lasted about 40 minutes and was recorded.

¶ 9 Defendant was born March 29, 1990, which meant that he was 16 years old at the time of the offense but 17 years old at the time of the interview. Cappelluti explained that suspects under the age of 17 were considered juveniles. Because defendant was under the age of 17 at the time of the shooting, Cappelluti took the extra precaution of advising defendant of his juvenile rights and of having a juvenile advocate present.

¶ 10 As Cappelluti read defendant his juvenile rights, defendant followed along and initialed each one. Defendant appeared to understand his rights and could read and write. The juvenile rights form contained extra warnings, one of which was that defendant could meet with his mother, parent, or guardian. When advised that he could speak with a parent or guardian, defendant expressed no desire to do so. A second additional juvenile warning was that there was a possibility that the juvenile case could be transferred to an adult court. When advised that his case could be transferred to adult court, defendant asked “my case can be transferred?” Cappelluti responded:

“At one point, it can be transferred in this case where after, uh, a hearing in Juvenile Court, okay? But at this point these are your juvenile rights waiver and, uh, just so you understand that’s uh, always a possibility. But the good thing is that we’re reading your rights because we’re investigating a case, that’s what you need to understand, [defendant]. Do you understand that? Okay.”

Defendant replied “Yeh.”

¶ 11 Cappelluti had defendant read the last paragraph of the juvenile rights form out loud. When doing so, defendant had trouble saying the word “coercion,” and Cappelluti helped defendant pronounce the word. Cappelluti asked defendant whether he understood the meaning of the word, and defendant said that he did not. Cappelluti then explained the meaning, and defendant said he understood.

¶ 12 Detective Schletz was present during the interview and served as defendant’s juvenile advocate. Cappelluti explained Schletz’s role to defendant, which was to make sure that no promises were made and that Cappelluti did not violate any of defendant’s rights. Cappelluti told defendant that Schletz was “here on [defendant’s] behalf.” Cappelluti told defendant that

Schletz was present in case defendant had questions and also that Schletz would let Cappelluti know about any questions he did not like. Schletz did not say anything to defendant during the interview.

¶ 13 Cappelluti's interview technique was to develop a rapport with defendant and ask open-ended questions. Cappelluti's interview of a witness, Bobby Dodd, as well as information from other witnesses and sources, had led to defendant becoming a suspect in the case.

¶ 14 Cappelluti summarized the interview at the end. He did so because from his experience, "a motion would come forward that we made promises to him before the videotape started, or there was another interview, so I usually attempt to summarize that that was the only time we spoke. I usually put that on videotape and avoid any legal issues to come forward." Cappelluti anticipated that defendant would be charged with murder but he had no opinion whether defendant would be charged as a juvenile or as an adult.

¶ 15 Cappelluti first became aware that defendant's mother was at the Waukegan police station after the interview, when defendant took a bathroom break. Detective Schletz spoke to defendant's mother, and she did not want defendant to be interviewed further. At that point, Cappelluti stopped questioning defendant. Although Cappelluti had planned to show defendant some photos of the scene after the interview, he did not show defendant the photos after the interview because his mother was present.

¶ 16 Cappelluti made no promises of leniency, did not promise that defendant would be prosecuted as a juvenile, and did not promise that defendant would be out of jail before he turned 21 years of age. In addition, there was no portion of the interview that was not recorded.

¶ 17 Detective Schletz testified as follows. Schletz was advised that defendant had been taken into custody on April 2, but he was not sure what time he was advised of that. It was possible that defendant was taken from the booking room to the interview room; Schletz could not recall.

¶ 18 Schletz's role as juvenile advocate was to make sure defendant understood his rights and that his rights were adequately protected. Given this role, Schletz did not ask any investigative questions. Cappelluti explained Schletz's role to defendant. Schletz admitted that he was investigating the case. Nevertheless, it was appropriate to use him as a juvenile advocate rather than bring in someone else from a different agency. Schletz admitted writing something on his hand during the interview, clearing his throat, and showing his hand to Cappelluti. Schletz could not recall what he wrote. Schletz explained that there was nothing in Schletz's role as a juvenile advocate that prevented him from aiding the investigator.

¶ 19 Defendant was advised of his juvenile rights as a precaution, and defendant appeared to understand when his rights were read to him. When defendant asked about the warning that anything he said could be used against him in a subsequent adult proceeding, Cappelluti adequately answered defendant's question. For this reason, Schletz felt no need to offer further explanation. The same was true when defendant struggled with the word coercion; Cappelluti adequately explained the word to defendant. Defendant did not ask to speak to a lawyer or parent.

¶ 20 After a break in the interview, Schletz was advised that defendant's mother was at the station. Schletz spoke with defendant's mother, and she wanted to speak with defendant. When defendant was advised that his mother was at the station, he wanted to speak with her. Schletz was not required to contact defendant's mother prior to the interview because defendant was 17 years old at the time.

¶ 21 Schletz further testified that neither he nor Cappelluti went over details of their investigation with defendant before interviewing him; neither promised that defendant would be tried as a juvenile; and neither promised that the charges would be reduced if defendant admitted involvement.

¶ 22 Defendant's mother, Wanda Gooden, testified on behalf of the defense. On April 2, her daughter informed her that defendant had been arrested and put in a squad car. Gooden drove to that location and saw defendant in a Waukegan police car; it was early evening. North Chicago police were also present at the scene. The police did not let Gooden approach the squad car, and she was told not to go to the police station because it was going to be "a while." As a result, Gooden went home for about 30 or 45 minutes. After that, she went to the Waukegan police station and was told that defendant was not there. Gooden then went to the North Chicago police station and was told that defendant was not there. Gooden returned home for about two hours and then went back to the Waukegan police station around 7 p.m. or so. Again, she was told defendant was not there. From there, Gooden went to the Lake County jail but defendant was not there. Gooden returned home for another two hours and then went back to the Waukegan police station; it was after 10 p.m. Gooden spotted the officer who arrested defendant, and he confirmed that defendant was there. At that point, Gooden was allowed to talk to defendant.

¶ 23 Defendant testified as follows. Before being interviewed, he was arrested in a traffic stop around 6:45 p.m. Defendant remained in a squad car at the scene for about 40 minutes before being taken to the Waukegan police station, where he arrived around 8 p.m. Defendant was not taken to the booking room; he was taken directly to an interview room. He waited there for about 30 minutes before Cappelluti showed up and offered him a drink and bathroom access. Defendant used the bathroom and was given a soda. He and Cappelluti then returned to the

interview room. Cappelluti told defendant not to worry about the case for which he was arrested; Cappelluti would be back to talk about another case. Defendant waited alone in the interview room.

¶ 24 Next, Cappelluti and Schletz came into the interview room, which was not the same room that was shown on the videotape of the recorded interview. Cappelluti said that defendant was suspected for a homicide; that Bobby Dodd had told him everything; that Cappelluti had photos of the scene and defendant's DNA; and that he wanted to hear defendant's side of the story. Defendant was not given adult or juvenile *Miranda* rights and this interview lasted 90 minutes. Cappelluti knew that defendant was 16 years old at the time of the shooting and said that he would be tried as a juvenile. Cappelluti said that at worst, defendant would be "out" by his 21st birthday.

¶ 25 Cappelluti then went to talk to the "big guys" at the station and returned. Cappelluti said to go to the other interview room and to shake hands like it was their first meeting. Defendant assumed that Cappelluti wanted to shake hands because the interview would be recorded. Cappelluti told defendant to say "the same thing" in the second interview as the first interview. Based on what Cappelluti said, defendant believed that his case was a juvenile matter and that if he cooperated with police, he would be out of prison by age 21. According to defendant, this was the reason he participated in the recorded interview.

¶ 26 Defendant further testified that the only conversation he had with Schletz was when Schletz asked him how he was doing. Defendant was not allowed to speak to his mother until after the second interview.

¶ 27 On cross-examination, defendant could not recall whether he was given *Miranda* warnings in relation to an attempted murder charge three years prior (2003). Defendant took high school classes in the department of corrections for juveniles.

¶ 28 The State's rebuttal consisted of the following stipulations. Cappelluti would testify that he never made any promises to induce defendant to implicate himself in the shooting of Allison, and he never promised that defendant would be released from prison prior to his 21st birthday if he made statements regarding the killing of Allison. Schletz would testify that he was present during the recorded interview as a juvenile advocate. Schletz did not hear Cappelluti make promises to defendant to induce him to implicate himself and did not hear Cappelluti promise defendant he would be released from prison prior to his 21st birthday.

¶ 29 The trial court rendered its decision on April 26, 2010. The court began by expressing "some concern as to the [defendant's] understanding of the role" of Schletz; it was not "thoroughly explained" to defendant. Though Schletz did not actively question defendant during the interview, he did write something on his hand as a reminder to Cappelluti, meaning that Schletz served a "hybrid role" during the interview. Still, the court found that the detectives' testimony was credible. Both Cappelluti and Schletz testified that there was no rehearsal of statements prior to the recorded interview. Defendant's claim that there was a rehearsal in preparation of the recorded interview was "not credible" in comparison to the detectives' testimony; there was no evidence that the detectives contrived the story and forced defendant to give the version of events they wanted to hear.

¶ 30 In watching the recorded interview, the court noted that defendant was "intelligent" and "understood the questions of the officers." Defendant did not have an extensive education but had attended high school and had prior experience with the court system. In addition, defendant

was young and in good physical condition, and the interview was “rather short”; the duration of his detention was not extensive. The court saw no open or overt physical or mental abuse; there were “no threats or promises, compulsion or inducement for the defendant” to implicate himself. The court further noted that the detectives stopped questioning defendant when he said he wanted to speak with his mother. In sum, this was not a situation in which defendant’s will was overcome. Accordingly, the court found that defendant’s statement was voluntary and denied his motion to suppress.

¶ 31 On August 3, 2010, defendant pled guilty to one count of felony murder. The parties had no sentencing agreement, and the court imposed a sentence of 25 years’ imprisonment. Defendant subsequently moved to withdraw his guilty plea, and the court allowed defendant to do so.

¶ 32 **B. Jury Trial & Sentencing**

¶ 33 A jury trial commenced in May 2013, and the following evidence was adduced. An autopsy report indicated that Allison died from a gunshot wound to the chest, and defendant’s DNA was found under the fingernails of Allison’s left hand.

¶ 34 Dodd testified that Calvin Hearnton, a drug dealer, wanted Dodd and defendant to gather information about Allison, another drug dealer who lived next door to Dodd. Dodd arranged to buy drugs from Allison while defendant stood behind Allison’s building. As Dodd sat in his car and ingested the drugs he had just purchased, defendant got into Dodd’s car. Defendant said that Allison had jumped on him and that the gun accidentally discharged; defendant thought Allison was dead. Dodd and defendant drove away, and defendant discarded his cell phone out the car window, which police recovered.

¶ 35 Defendant's recorded interview was played for the jury, and the jury was given a transcript. During the interview, defendant told Cappelluti that the plan was to rob Allison because Allison was a drug dealer with a lot of money. Hearton gave a gun to Dodd, who gave it to defendant. Dodd then arranged to buy drugs from Allison while defendant waited in the back yard. Defendant, showing his gun, asked Allison for money, and Allison ran inside. Defendant chased Allison into the stairwell. Allison was going upstairs and then jumped back down and fought with defendant. Defendant tried to run away but they were already "tussling," and defendant's gun fired four times. The last shot struck Allison in the chest. Defendant drove away with Dodd and threw his cell phone out the car window.

¶ 36 The jury found defendant guilty of first-degree murder in that he knew his acts created the possibility of great bodily harm and death.

¶ 37 Defendant filed a motion for a new trial, which the trial court denied.

¶ 38 At the sentencing hearing, the State presented evidence that in April 2003, defendant had shot an individual named Trevor Curry. Defendant was riding in the backseat of a vehicle, and the driver had stopped by Curry's apartment. When Curry approached the vehicle, the driver about asked him about drugs and made some accusation. Defendant then exited the vehicle, pointed a gun at Curry, and again made an accusation about drugs. When Curry turned away, defendant shot him in the face. The case was transferred to adult court, and defendant pled guilty to aggravated discharge of a firearm in June 2004. For that offense, defendant was sentenced to seven years' imprisonment. Defendant was on parole for that offense when he committed the instant offense.

¶ 39 The State also presented evidence regarding defendant's apprehension in the instant case. On April 2, 2007, police conducted a routine traffic stop of a car in which defendant was a

passenger. There was a gun in the car, and defendant and the driver fled on foot. The gun was later recovered in a dog house on the same street that defendant was located.

¶ 40 Additional evidence presented at the sentencing hearing included defendant's involvement in three fights with other inmates in jail and jail telephone recordings of him attempting to facilitate a favorable affidavit from Dodd and later stating that Dodd could not be allowed to testify at trial.

¶ 41 Two witnesses testified on defendant's half. Defendant's older sister, Monique Walls, testified that she and defendant grew up in an abandoned house with no parents and no heat; it was a tough life. Defendant wanted things that other people had, like nice clothes and shoes, but associated with the wrong people. Defendant was convinced by two adults to commit a crime; he was trapped. However, now that defendant had a son, he was much more mature. He also obtained his GED while in prison. Defendant's mother, Gooden, testified that she had three daughters and one younger son, defendant. Gooden asked for leniency because defendant was a juvenile at the time of the offense and was coerced by two adults, who were never charged. Like Monique, she testified that defendant had become more mature and cared deeply about his son.

¶ 42 The trial court considered the factors in aggravation and mitigation in fashioning defendant's sentence. It stated as follows. This was a case of "needless violence." However, defendant's background lacked good role models and all the "things that humanity provides to raise its young." Defendant grew up thinking that a life of violence was normal. As far as criminal history, defendant shot Curry when he was 13 years old. Defendant had been on parole for six months for that offense when he shot Allison. In addition, the court was not convinced that defendant's criminal conduct was the result of circumstances unlikely to recur; defendant's view on life was "awfully violent." In addition, there was evidence that defendant had attempted

to influence the witness testimony of Dodd. Still, a mitigating factor was that the offense was facilitated or induced by someone else, namely Hearton. Also, defendant had a dependent, a son, and was only 16 years old at the time of the offense. Based on the above, the court sentenced defendant to 43 years' imprisonment.

¶ 43 Defendant's motion to reconsider his sentence was denied, and defendant timely appealed.

¶ 44

II. ANALYSIS

¶ 45

A. Motion to Suppress

¶ 46 Defendant's first argument on appeal is that the trial court erred by denying his motion to suppress. We apply a two-part standard of review when reviewing a trial court's ruling on a motion to suppress evidence. *People v. Cosby*, 231 Ill. 2d 262, 271 (2008). Under this two-part standard, we give great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence. *Id.* Still, we remain free to undertake our own assessment of the facts in relation to the issues and may draw our own conclusions when deciding what relief should be granted. *Id.* Accordingly, we review *de novo* the trial court's ultimate legal ruling whether the evidence should be suppressed. *Id.*

¶ 47 The basis for defendant's suppression argument is that his statement to police was not voluntary. "In determining whether a defendant's statements are voluntarily made, a court must look to the totality of the circumstances surrounding the making of the statements. *People v. Armstrong*, 395 Ill. App. 3d 606, 624 (2009). Circumstances to consider include the defendant's age, education, background, experience, mental capacity, and intelligence; the defendant's physical and emotional condition at the time of questioning; the duration of the questioning; and whether the defendant was subjected to physical or mental abuse by the police. *Id.* The "true

test of voluntariness” is whether the defendant made the statement freely, voluntarily, and without compulsion or inducement of any sort, or whether the defendant’s will was overcome at the time he confessed. *People v. Murdock*, 2012 IL 112362, ¶ 55. No one factor is dispositive, and each case must be evaluated on its own specific facts. *Id.*

¶ 48 Before delving into defendant’s arguments, we note that this case presents a unique factual situation in that defendant was 16 years old at the time of the offense but age 17 at the time he was arrested and questioned by police. Therefore, although defendant was a juvenile at the time of the offense (see *People v. Taylor*, 221 Ill. 2d 157, 161-62 (2006) (a “delinquent minor” under the Juvenile Court Act means any minor who prior to his or her 17th birthday has violated any state law)), he was not a juvenile at the time of questioning (see *People v. J.S.*, 103 Ill. 2d 395, 402-03 (1984) (the Juvenile Court Act was enacted to apply to those persons who have *not yet* attained the age of 17)).¹

¶ 49 Given the discrepancy in age between the time of the offense and the time of the interview, it is not a certainty that defendant was entitled to the additional safeguards that apply to juveniles when questioned by police, which both parties acknowledged at oral argument. See *In re Marquita M.*, 2012 IL App (4th) 11011, ¶ 23 (taking the confession of a juvenile is a sensitive concern, and courts look at factors such as whether the juvenile had the opportunity to consult with an adult before or during interrogation, whether the police prevented the juvenile from conferring with a concerned adult, or whether the police frustrated the parent’s attempt to talk with the juvenile). Moreover, our research has revealed only one case presenting this same

¹ Section 5-105(3) of the Juvenile Court Act (705 ILCS 405/5-105(3) (West 2014)) now defines “delinquent minor” as any minor who prior to his 18th birthday violates the law. See Pub. Act 98-61 (eff. Jan. 1, 2014).

factual scenario as to the defendant's age, and in that case the court found it proper to provide the additional juvenile safeguards. See *People v. Walker*, 61 Ill. App. 3d 891, 895 (1978) (where the defendant was 16 years old on the date of the offense but had turned 17 before he was questioned, it was proper for the officers to call in a juvenile officer, who remained until the defendant's confession had been reduced to writing).

¶ 50 In this case, we need not determine whether defendant was entitled to the additional juvenile safeguards at the time he was questioned by police. Both Cappelluti and Schletz testified that although defendant was not entitled to be treated as a juvenile during the interview, based on the fact that he was 17 years old, they took extra precautions to preempt any legal challenges to the proceedings. As a result, defendant was provided a juvenile advocate and admonished as to his juvenile *Miranda* rights. Therefore, because the decision was already made to provide defendant these juvenile safeguards, we need not decide whether he was entitled to them.

¶ 51 Indeed, defendant argues that it was these additional safeguards, when considered collectively with his other claims, which "perpetuated" his belief that he would be treated as a juvenile. See *In re Marvin M.*, 383 Ill. App. 3d 693, 705 (2008) (a factor to consider, for both juveniles and adults, is the presence of police trickery and deceit). To this end, defendant argues that the actions of Cappelluti and Schletz reasonably led him to believe that he was a juvenile subject to the special protections afforded a juvenile. Defendant points out that he received juvenile *Miranda* warnings; he was provided a juvenile advocate; when he asked whether his statements could be used against him in adult court, he was wrongly told that transfer of his case was a "possibility"; and Schletz failed to fulfill his role as a juvenile advocate when Cappelluti misinformed him about the transfer of his case. In addition, defendant claims that: police

promised that he would be prosecuted as a juvenile and that he would be released from prison by age 21; police obstructed his mother's attempts to speak with defendant before questioning; and police employed a question-first, warning-later method of interrogation that produced incriminating statements that were used against him at trial. According to defendant, these acts by police rendered his statement involuntary.

¶ 52 First, the majority of defendant's argument rests on claims that allegedly occurred outside the recorded interview, claims that the trial court specifically rejected. The trial court rejected defendant's claims on the basis that the detectives, and not defendant, were more credible when testifying. See *People v. \$280,020 in U.S. Currency*, 2013 IL App (1st) 11180, ¶ (we examine the evidence with deference to the trial court, who saw the witnesses and thus could better assess their credibility).

¶ 53 Contrary to defendant's argument that the detectives interviewed him twice but did not tape the first interview, the court noted that both Cappelluti and Schletz testified that there was no rehearsal of statements prior to the recorded interview, and there was no evidence that the detectives contrived the story and then forced defendant to give the version of events they wanted to hear. Though defendant testified that he was never taken to a booking room, but instead to an interview room where an initial 90-minute interview was not recorded, Cappelluti testified that he retrieved defendant from the booking room and then interviewed him once. According to Cappelluti, there was no portion of the interview that was not recorded.

¶ 54 In a similar vein, the court did not find credible defendant's claim that he was promised that he would be tried as a juvenile and released by the age of 21. The court found that the detectives did not make promises or induce defendant to implicate himself.

¶ 55 In addition, the court found no merit to defendant's claim that police obstructed him from talking to his mother prior to the recorded interview. Rather, the court found that the detectives stopped questioning defendant as soon as he said he wanted to speak with his mother. In addition, defendant was advised of his right to speak with a parent prior to the recorded interview, and he expressed no desire to do so. In sum, these factual findings by the trial court are entitled to deference, and we cannot say that they were against the manifest weight of the evidence.

¶ 56 That said, there is merit to defendant's claim that he was misled when he asked if his case could be transferred. In response to defendant's question, Cappelluti explained that the case could be transferred after a hearing in juvenile court and that transfer to adult court was "always a possibility." Defendant argues that because the law requires the mandatory transfer of murder cases by 16-year-olds to adult criminal court, Cappelluti misled him with this response. See 705 ILCS 405/5-130(1)(a) (West 2006) (providing for the automatic transfer of a case where the minor was charged with first-degree murder); see also *In re Marvin M.*, 383 Ill. App. 3d at 719 (a respondent's statements must not result from deceptive interrogation tactics calculated to overcome the respondent's free will). We agree that Cappelluti downplayed the reality that the case would be transferred to adult court in the event that defendant was charged with the first-degree murder of Allison. Rather than stating that a transfer was a possibility, the better answer would have been to advise defendant that his case would automatically be transferred if he were charged with first-degree murder.

¶ 57 Still, police trickery or deception will not invalidate a minor's statement as a matter of law, but is only one factor to consider in the totality of the circumstances. *Id.* For example, in *In re Marvin M.*, the police told the respondent that several witnesses had implicated him in the

shooting when only two witnesses, in fact, had implicated him, and this court found that this police trickery or deception was minimal. *Id.* at 719-20. Likewise, in *People v. Minniti*, 373 Ill. App. 3d 55, 69-71 (2007), the police overstated the evidence against the defendant by falsely stating that they had satellite images showing someone going from the defendant's home to the scene of the crime and that they had DNA evidence matching the defendant from the inside of the victim. This court held that these deceptions did not rise to the level necessary to overbear the defendant's free will. *Id.* at 72.

¶ 58 Here, as in *In re Marvin M.* and *Minniti*, any deception or misstatement by Cappelluti in downplaying the likelihood of the transfer of defendant's case was but one factor in the totality of circumstances. Again, while the better answer would have been for Cappelluti to advise defendant that transfer was automatic in the event he was charged with first-degree murder, we note that Cappelluti did not go as far as telling defendant that his case would *not* be transferred. While we disapprove of Cappelluti's response, and he could have answered defendant's question more accurately, it was one of many factors in the totality of the circumstances and not sufficient to overcome defendant's will and render his statement involuntary.

¶ 59 Moreover, as the trial court noted, defendant had prior experience with the court system, in that four years before, at age 13, he was charged with attempted murder. The attempted murder case, which was less serious than the instant case, was transferred to adult criminal court, making defendant aware of the increased likelihood that this case would also be transferred.

¶ 60 Turning to Schletz, defendant argues that he failed to protect his rights when Cappelluti misinformed him about the transfer of his case. Defendant is correct that Schletz said nothing when Cappelluti advised defendant that the transfer of his case was "always a possibility." Even so, we have already determined that any deception or misleading by Cappelluti in this regard was

but one factor in the totality of the circumstances, and that it did not rise to the level of overbearing defendant's will.

¶ 61 Defendant further argues that Schletz failed to take any actions on his behalf during the entire interrogation. According to defendant, Schletz acted as a detective working to secure his statement rather than a concerned adult who was protecting his interests. We note that the trial court found that Scheltz played a "hybrid role" during the questioning of defendant and that his role was not "thoroughly explained." The court acknowledged that Schletz did not ask questions but noted that he wrote something down on his hand to assist Cappelluti during the interview of defendant.

¶ 62 On the issue of a juvenile officer, our supreme court has stated that there is no requirement that one be present when a minor is questioned, and the absence of a juvenile officer will not render a juvenile's statements *per se* involuntary. *Murdock*, 2012 IL 112362, ¶ 52; *cf. In re G.O.*, 191 Ill. 2d 37, 55 (2000) (noting that while a juvenile's confession should not be suppressed simply because he was denied the opportunity to confer with a parent or other concerned adult before or during the interrogation; it was a factor to consider in determining whether a juvenile's confession was voluntary). In addition, as we explain, our supreme court has found a juvenile's statement to be voluntary even when the juvenile officer completely abandoned his role and acted as a lead investigator.

¶ 63 In *Murdock*, for example, the supreme court determined that the juvenile officer abandoned his role when he began questioning the defendant, a juvenile, about his role in the offense. *Id.* ¶ 51. The court noted that the juvenile officer was not merely standing by while another officer took the lead in interviewing the defendant; the juvenile officer was the lead interviewer. *Id.* Because the juvenile officer could not act as a concerned adult while at the

same time compiling evidence against the defendant, the court viewed it as though no juvenile officer were present with the defendant. *Id.* Nevertheless, the court found the juvenile's statement voluntary. *Id.* ¶ 55. The court noted that while the presence of a juvenile officer was a significant factor in the totality of the circumstances argument, there was no requirement that such a person be present, and the defendant was given his *Miranda* rights, properly treated, offered food, given access to restroom facilities, and not physically or mentally threatened. *Id.* ¶ 52.

¶ 64 Here, in contrast to *Murdock*, Schletz never questioned defendant, other than to pose one general question as to his well-being. Rather, Cappelluti acted as sole interviewer. The one incidence of Schletz writing something on his hand and showing it to Cappelluti is a far cry from the situation in *Murdock*, where the juvenile officer abandoned his role by becoming the lead interviewer. In addition, Schletz fulfilled his role as juvenile advocate to the extent that defendant was provided his juvenile *Miranda* rights, properly treated, offered a drink, given access to restroom facilities, and not physically or mentally threatened.

¶ 65 Schletz's role in this case more closely resembles the situation in *People v. Patterson*, 2014 IL 115102, ¶ 53, where the juvenile officer did not ask any questions but fulfilled the fundamental duties of inquiring whether the defendant needed anything, ensuring that he was treated properly while in custody, reading the defendant his *Miranda* rights, and ascertaining that he understood those rights. Though the defendant in *Patterson* argued that the juvenile officer improperly participated in the investigation by helping the investigating officer type the defendant's statement, reading it to the defendant, and obtaining his signature, our supreme court disagreed. *Id.* ¶ 51.

¶ 66 As the *Patterson* court noted, if the complete absence of a juvenile officer was not sufficient to mandate a finding that a statement was not voluntary, and the active, adverse participation of a purported juvenile officer in the questioning of a juvenile was also not sufficient to mandate a finding that a statement was not voluntary (as in *Murdock*), then the defendant's argument that the juvenile officer improperly participated in the investigation necessarily failed. *Id.* ¶ 56. Again, we look to the totality of the circumstances in determining whether defendant's statement was voluntary (see *Armstrong*, 395 Ill. App. 3d at 624), and the trial court, despite its finding that Schletz played a hybrid role, still found that defendant's statement was voluntary.

¶ 67 Finally, defendant argues that his personal characteristics require this court to exercise great caution when determining whether his statement was voluntary. Defendant points out that his IQ was measured to be 65 and his formal education ended in sixth grade. However, because this information was elicited at the sentencing hearing and not the suppression hearing, the State argues that it should not be considered.

¶ 68 Our supreme court has distinguished between parties seeking to affirm a trial court's ruling on a motion to suppress or to overturn it. *Murdock*, 2012 IL 112362, ¶¶ 35-36. For example, the *Murdock* court noted that in *People v. Brooks*, 187 Ill. 2d 91 (1999), the defendant relied on evidence elicited at trial, not the suppression hearing, to argue that his motion to suppress was erroneously denied by the trial court. *Id.* ¶ 36. In response to the defendant's argument that the reviewing court could consider evidence introduced at trial as well as the suppression hearing, the supreme court disagreed, noting that defendant was not seeking to affirm the trial court's decision but to overturn it. *Id.*

¶ 69 Defendant does not respond to the State’s argument in his reply brief, and we decline to consider evidence from defendant’s sentencing hearing to overturn the trial court’s decision on his motion to suppress. Regarding defendant’s ability to understand what transpired at the recorded interview, we note that the court found that defendant was “intelligent” and “understood the questions of the officers.” In addition, the court noted that defendant had taken high school classes in the department of corrections for juveniles. Both Cappelluti and Schletz testified that defendant appeared to understand his rights, and defendant had prior experience with the court system. Accordingly, nothing about defendant’s personal characteristics affected the voluntariness of his statement.

¶ 70 In sum, the trial court’s credibility and factual findings were not against the manifest weight of the evidence. We determine that under the totality of the circumstances, defendant’s statement was voluntary, and the trial court properly denied his motion to suppress.

¶ 71 B. Sentence

¶ 72 Defendant’s second and last argument is that his sentence is excessive. Defendant argues that the trial court abused its discretion in imposing a 43-year sentence because he was only 16 years old at the time of this “botched robbery”; two older men, Hearton and Dodd, recruited defendant and facilitated his attempt to rob Allison, a rival drug dealer; and defendant had a disadvantaged and dysfunctional childhood combined with low intellectual functioning. Characterizing the sentence as a *de facto* term of life in prison, he points out that he will not complete his sentence until 2050, when he is 59 years old. Defendant notes that the previous court sentenced him to 25 years’ imprisonment before he withdrew his plea, making the 43-year sentence an especially harsh punishment. Finally, defendant points out that juveniles have diminished culpability and enhanced capacity for rehabilitation.

¶ 73 Defendant cites several United States Supreme Court decisions to illustrate the “growing national consensus” that extensive prison sentences are inappropriate for defendants who were juveniles at the time of the offense. For example, in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the Court noted that its previous decisions in *Graham v. Florida*, 560 U.S. 48 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005), established that children are constitutionally different from adults for purposes of sentencing. *Miller*, 132 S. Ct. at 2464. Because juveniles have diminished culpability and greater prospects for reform, they are less deserving of the most severe punishments. *Id.* The Court listed three significant gaps between juveniles and adults: (1) children have a lack of maturity and an underdeveloped sense of responsibility which leads to recklessness, impulsivity, and heedless risk-taking; (2) children are more vulnerable to negative influences and outside pressures, have limited control over their own environment, and lack the ability to extricate themselves from crime-producing settings; and (3) a child’s character is not as well formed as an adult’s, his traits are less fixed, and his actions less likely to be evidence of “irretrievable depravity.” *Id.*

¶ 74 Defendant points out that *Miller* mandates the sentencing court to “follow a certain process – considering an offenders’ youth and attendant characteristics – before imposing a particular penalty. *Id.* at 2471. Defendant argues that applying those principles here, his youth was a strong factor in this case, as was his environment, in the sense that his acts in this case were strongly influenced and facilitated by two older men.

¶ 75 Although the legislature has prescribed the permissible ranges of sentences, great discretion still resides in the trial court to fashion an appropriate sentence within the statutory limits. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). The trial court is granted such deference because the trial court is generally in a better position than the reviewing court to determine the

appropriate sentence. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court must base its sentencing decision on the particular circumstances of each case, considering such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Fern*, 189 Ill. 2d at 53. A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* at 54.

¶ 76 Defendant acknowledges that the sentence imposed by the court was three years above the middle of the 20 to 60-year sentencing range. See 730 ILCS 5/5-8-1(a)(1) (West 2006). As the State points out, defendant does not argue that the trial court failed to consider certain evidence at the sentencing hearing. Rather, he argues that the court improperly weighed the evidence, especially his youth and environment. We disagree.

¶ 77 The trial court carefully considered the factors in aggravation and mitigation when determining defendant's sentence in this case. In recognizing that a different trial court had imposed a sentence of only 25 years' imprisonment, based on defendant's later-withdrawn guilty plea, the trial court noted that it had heard "far more evidence" based on the trial and the sentencing hearing than the previous court. The court found mitigating factors to include the fact that defendant was only 16 at the time of the offense; that the offense was facilitated by others; that defendant had a very difficult background; and that defendant had a son.

¶ 78 Still, aggravating factors included defendant's criminal history and the likelihood of recurrence. The circumstances surrounding both shootings were the same in that defendant was influenced by others, involved in drugs, and willing to shoot a gun at another individual. Indeed, the trial court noted that defendant had been on parole for only six months at the time that he shot Allison. At the time of sentencing, other than the six months' of parole, defendant had spent

the last 10 years in prison. In addition, the pattern of “needless violence” continued when defendant was apprehended for the Allison shooting: he and the driver tried to flee, and the gun that was found had likely been in defendant’s possession, given its proximity to defendant. Finally, defendant attempted to influence witness testimony during trial and was involved in altercations with other inmates.

¶ 79 Given this evidence, we cannot say that the trial court’s decision to impose a sentence three years above the median was an abuse of discretion. Accordingly, we reject defendant’s argument that his 43-year sentence was excessive.

¶ 80 **III. CONCLUSION**

¶ 81 For the aforementioned reasons, the judgment of the Lake County circuit is affirmed.

¶ 82 Affirmed.