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2017 IL App (4th) 140778-U

NO. 4-14-0778

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 24, 2017
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Macon County
DELMONT E. THOMAS, JR.,	)	No. 11CF1736
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas E. Griffith, Jr.,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The appellate court found defendant's waiver of his *Miranda* rights was valid, in that it was knowingly and intelligently made.

(2) The appellate court affirmed the trial court's denial of defendant's motion to suppress where the trial court’s finding that defendant's confession was, under the totality of the circumstances, voluntary and free of coercion was not against the manifest weight of the evidence.

(3) There exists no justification for a *per se* rule that a juvenile must be represented by a concerned adult before he can validly waive his *Miranda* rights (see *Miranda v. Arizona*, 384 U.S. 436 (1966)).

(4) Defendant’s 55-year sentence did not violate the eighth amendment’s prohibition against cruel and unusual punishment, as the sentence was the product of judicial discretion upon consideration of applicable mitigating and aggravating factors.

¶ 2 Defendant, Delmont E. Thomas, Jr., files this direct appeal from his conviction of first degree murder and his sentence of 55 years in prison. Defendant raises several issues

regarding the waiver of his *Miranda* rights (*Miranda v. Arizona*, 384 U.S. 436 (1966)), his subsequent confession, and the propriety of his sentence. For the reasons that follow, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In December 2011, defendant, a backseat passenger, shot Brian Carney in the head as Carney drove his car around Decatur. Defendant was 16 years old at the time and was accompanied by two friends, Tyheim Johnson and Byron Adams, also juveniles. Witnesses saw the three juveniles run from the vehicle after the shots were fired. Police saw defendant walking near the area and began to approach him. Defendant ran from the police but was eventually caught and taken to police headquarters, at approximately 3:30 p.m.

¶ 5 Detective Charles Hendricks began defendant's interview, which was audio and video recorded, at approximately 4:10 p.m. The following is a summary of that recording. Hendricks began by asking defendant general questions. Within two minutes, defendant asked if the police had contacted his aunt. Hendricks said he did not know. Defendant told Hendricks he "stayed with" his aunt and grandmother, and they had better "make it quick" because his aunt had someplace to be. Hendricks swabbed defendant's hands, presumably for gunshot residue, and then Hendricks left the room.

¶ 6 Hendricks and Detective James Wrigley entered the room at approximately 5:20 p.m. Wrigley, the juvenile officer, told defendant he had tried to contact his mother but was unsuccessful. Wrigley explained to defendant he was there to "look out" for his rights. Hendricks said he was going to read defendant his rights and that Wrigley would explain them "a little further." After Hendricks read defendant's rights from the preprinted form, Wrigley told

defendant he did not have to talk if he did not want to. Wrigley said: "Anything you tell him, he is going to tell a judge." Wrigley asked defendant if he knew what an attorney was. Defendant said it was "like a lawyer." Wrigley explained an attorney is the same as a lawyer and he could have an attorney there while he spoke with Hendricks. Wrigley explained he could have an attorney appointed if he did not have money to hire one. Wrigley asked if he understood. Defendant said he did. Wrigley asked if defendant had any questions about his rights. Defendant indicated he did not.

¶ 7 Hendricks told defendant to initial "all these little lines here" if he understood them. Defendant is seen writing on the paper. Hendricks points to one more spot and tells defendant to "initial that one," and defendant writes again. Hendricks said: "Sign it right here indicating you understand this form." Wrigley told defendant he would be "in and out" but he was there to "look out" for him. He told defendant if he had any questions to stop Hendricks and Hendricks would get Wrigley and then Wrigley would try to explain things for him. Wrigley left the room.

¶ 8 Hendricks asked defendant to explain what he had done earlier in the day. Defendant said he had met two of his friends at 16th and North Streets in Decatur to "chill and smoke weed." They were walking toward Eisenhower High School when the police pulled up. Defendant said he ran from the police because he had two marijuana blunts in his possession. He was eventually caught and brought to the police station. After defendant's explanation, Hendricks got up to leave the room, indicating he was going to talk to his boss to see if there was anything else they needed. At this point, defendant had been in the room for approximately an hour and a half. Defendant asked Hendricks if they ever contacted his aunt. Hendricks said: "I don't think they did." Defendant gave Hendricks her telephone number. Hendricks asked

defendant if his aunt was his legal guardian. Defendant said she was not, but she was one of his "emergency callers." Hendricks left the room.

¶ 9 When Hendricks returned, he told defendant he knew *what* happened (referencing the shooting), he just did not know *why*. Hendricks explained there could be "all kinds of different scenarios," such as whether it was intentional or accidental. He said: "Now is the time to worry about Delmont and try to help Delmont out." He indicated this was defendant's "one chance to try to make this right." He said the detectives had been talking to the other two juveniles and the police "know exactly what happened." According to Hendricks, this was defendant's one chance to be honest. Hendricks said: "So, what happened?" Defendant said he had just told him what happened. Hendricks said: "That's not what the other two are saying." Hendricks continued interrogating, while defendant continued to deny any involvement with the shooting.

¶ 10 At approximately 5:50 p.m., another detective, Lieutenant Moore (whose first name does not appear in the record), entered the room with mannerisms that one could describe as more aggressive than Hendricks. Moore told defendant he knew where everyone had been sitting in the car. Moore asked defendant: "Did you shoot this guy in the head?" Defendant said no. Moore said: "That's a lie. I know it's a lie. I've got two other people telling me you did it. Who did? If you didn't, who did? You were there." Defendant tried to ask what made Moore think he was lying. Moore interrupted. Defendant explained the last time he was in the vehicle was at 9:15 a.m. Moore again interrupted and said: "coincidentally, you were within two blocks of this car when the guy gets shot in the head." Defendant tries to speak. Moore again interrupts with: "There are no such things as coincidences. Your two buddies are giving you up; that's how I know where everyone was sitting. I know what kind of gun it was. It's time for you to start

being honest and give up some information." Defendant said: "It's what you got right there; that's the truth right there." Moore asked: "Did you shoot this guy in the head?" Defendant said he did. Defendant went on to explain why. He said Carney had threatened to call the police to report that defendant and his friends had stolen Carney's car. Defendant said Carney was driving when this conversation took place. An argument ensued. Carney reached around to try to hit defendant. Defendant reached under the driver's seat, pulled out the gun, and shot Carney in the head several times. Hendricks assured defendant he did the right thing by confessing.

¶ 11 Defendant filed a motion to suppress his recorded statement, claiming defendant was not afforded the right to have his parent or guardian present during the police interrogation, relying primarily on *People v. Murdock*, 2012 IL 112362 (to determine voluntariness of a confession, courts look to the totality of circumstances, including certain factors relating to defendant himself and the environment). As a result, defendant claims, his statements were not voluntary.

¶ 12 At the hearing on defendant's motion to suppress, the State called Detective Wrigley, who testified, as a juvenile detective, his job was to ensure defendant "was being treated fairly, making sure his rights weren't being violated, [and] making sure that his needs were being met." He said he tried to contact defendant's mother but she did not answer her telephone. Wrigley left a message on her voicemail, telling her that defendant was in custody and asking her to contact them. Wrigley indicated he was present when defendant's *Miranda* rights were read to him. He said defendant acknowledged his understanding of those rights and had no questions. He said defendant had no hesitation about waiving his rights and agreeing to speak with detectives. Approximately one hour after he had left a message for defendant's mother, Wrigley indicated he had received a telephone call "from a female who identified herself as

Stephanette Bond," defendant's mother. She wanted to know why she had not been contacted. She told Wrigley she had not received a message from him. Wrigley said she told him she was heading to the police station, but, Wrigley said, she never arrived. As far as Wrigley knew, no other concerned adult arrived.

¶ 13 On cross-examination, Wrigley admitted he was not able to monitor everything from defendant's interview because he was monitoring other juveniles at the same time. Wrigley said, approximately 11 minutes after defendant's interview began, defendant's mother called. She asked to speak with defendant but Wrigley denied her because he "couldn't verify the identity of the person on the other end of the phone." He said she would have been allowed to meet with defendant in person. Wrigley was not aware of any other attempt to contact any other parent or guardian.

¶ 14 Detective Charles Hendricks testified the juvenile investigative unit was responsible for making attempts to contact a concerned adult. He was not sure what attempts were made. Hendricks' 40-minute interview (cut down to exclude the times when defendant was in the interrogation room alone) was played for the trial court. Hendricks said nothing indicated to him that defendant's statements were not voluntary. On cross-examination, Hendricks admitted he and Moore told defendant he was lying and their voices were raised during the interview.

¶ 15 Defendant called his mother, Stephanette Bond, as a witness. She told police she could not get back to Decatur until after 9 p.m. as she was in Springfield and did not have her own transportation. She said she would try to get someone to come to the station to speak with defendant. She said defendant dropped out of school toward the end of his junior year. She said her telephone did not have the capability of leaving messages, so she disputes Wrigley's

testimony that he had left a message for her on her telephone. She said she never called the police station, and the police called her for the first time at approximately 6:30 p.m.

¶ 16 After considering the evidence and arguments of counsel, the trial court stated as follows:

> "The question before the court is whether based on the totality of the circumstances the court believes the defendant's confession was voluntary. And to get right to the point, the court clearly believes the confession was voluntary.
>
> I think the taped interview speaks volumes. In looking at the *Murdock* factors in a number of these things each of you have pointed out, the defendant was 16, almost 17 years of age. I believe he would have been 17 in January. He was carefully Mirandized. The defendant may have dropped out of high school but he appeared to be quite intelligent and also had some talents as demonstrated on the portion that I viewed in my chambers.
>
> ***
>
> In terms of any type of mental infirmities, I certainly did not view anything on the tape. His physical condition appeared to be fine, although he had, apparently, smoked marijuana early in the day. The defendant had slept subsequent to that time and appeared to be okay on the tape.
>
> If the defendant was slightly under the influence, and I can't say that he was, from looking at the tape. The court could certainly surmise the defendant described his hobby as 'chilling,' Mr. Jones [defense counsel], and being slightly under the influence of marijuana may not have been out of the ordinary for the defendant.

> There was certainly no physical abuse. There was no mental abuse. The officers did press the defendant on a couple of occasions, but not unduly so. There was no shouting. There was no fist pounding. There was no threatening. The interview was lengthy, but not unduly so. There was a juvenile officer initially present. He did check on the welfare of the defendant. Do you need to use the bathroom, can I get some water, etc.
>
> Regarding the concerned adult, the *Murdock* case is very clear that that is one factor of all the factors that we've been over, for the court to consider. It is certainly not a controlling factor. It is also significant to the court that the officer made every attempt to contact the defendant's mother. He asked her to come down to headquarters, spoke with her on three separate occasions, and she did not come down to the headquarters.
>
> The court finds the greatest care was taken with the—with this defendant regarding his interview. And on that basis again, show the motion to suppress the defendant's statement is denied."

¶ 17 Prior to the start of the jury trial, in open court, defendant asked the trial court for leave to file a subsequent or amended motion to suppress, asserting counsel had just been made aware that defendant's grandmother had been present at the police station during the interview, but she was not allowed to speak to defendant. The trial court denied leave, finding "no requirement that the police attempted try to contact every viable relative. And again, this motion has previously been heard. It's been ruled upon. We are not going to reopen it at this time. So, your motion to file some type of amended pleading is denied, Mr. Jones."

¶ 18 At the jury trial, the recorded interrogation of defendant and his resulting confession were played for the jury. After considering this evidence, along with the testimony of the State's witnesses, the parties' arguments, and jury instructions, the jury found defendant guilty of first degree murder by personally discharging a firearm.

¶ 19 Defendant filed a motion for a judgment notwithstanding the verdict or, in the alternative, a new trial, alleging the trial court erred by (1) denying his motion for a directed verdict, (2) denying him leave to reopen evidence on his motion to suppress, (3) allowing the jury to consider defendant's recorded interrogation and confession, and (4) overruling his objection to the jury watching the recorded interview during deliberation. Defendant also claimed the evidence was insufficient to find him guilty beyond a reasonable doubt. The court denied defendant's motion and sentenced him to 55 years in prison. The court also denied defendant's motion to reconsider his sentence as excessive.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 A. Did Defendant Validly Waive *Miranda?*

¶ 23 Defendant, for the first time in this appeal, argues he did not knowingly and intelligently waive his *Miranda* rights. Indeed, the only issue before the court on defendant's motion to suppress was whether defendant's confession was voluntary, not whether his *Miranda* waiver was valid. See *People v. Bernasco*, 138 Ill. 2d 349, 358 (1990) (there is a distinction between voluntariness of a confession and a knowing and intelligent waiver of *Miranda* rights). Nevertheless, defendant contends this court should review the issue under a plain-error analysis

because "the error was serious," as it involved an issue of substantial constitutional rights. As this court has previously noted, typically, the first step in a plain-error analysis is to determine whether error occurred at all. *People v. Stutzman*, 2015 IL App (4th) 130889, ¶ 30.

¶ 24 The fifth amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const., amend. V. Similarly, the Illinois Constitution of 1970 provides that "[n]o person shall be compelled in a criminal case to give evidence against himself." Ill. Const. 1970, art. I, § 10. The rule set forth in *Miranda* requires suppression of statements made by a defendant in response to a custodial interrogation unless police officers warn the defendant of certain rights, including the right to remain silent and the right to an attorney, and obtain a voluntary waiver of those rights. *Miranda*, 384 U.S. at 478-79.

¶ 25 A defendant validly waives *Miranda* when he (1) freely and deliberately (voluntarily) relinquishes the right, rather than through intimidation, coercion, or deception; and (2) is fully aware of both the nature of the right he is abandoning and the consequences of his decision to do so. *Moran v. Burbine*, 475 U.S. 412, 421 (1986). In determining whether a waiver is knowing and intelligent, the court must look at the specific facts and circumstances, including the defendant's background, experience, and conduct. *People v. Braggs*, 209 Ill. 2d 492, 515 (2003). A defendant need not have "the ability to understand far-reaching legal and strategic effects of waiving one's rights" but must have "the ability to understand the very words used in the warnings." *Bernasco*, 138 Ill. 2d at 363.

¶ 26 Defendant alleges his waiver of his *Miranda* rights was invalid where (1) he was denied access to a concerned adult, (2) the officers directed him to sign the waiver without first asking if he wanted to waive his rights, and (3) his cognitive functioning was underdeveloped

due to his age and affected by recent drug use. Defendant was one month from his 17th birthday when he was interviewed. During the interview, defendant initially denied any involvement or knowledge about the shooting, but, later in the interview, admitted he shot Carney in the head multiple times. Prior to any questioning, Detective Hendricks read defendant his *Miranda* rights, allowed the juvenile officer, Detective Wrigley, to explain the rights further, and gave defendant the rights in written form to initial next to each paragraph. Defendant did not ask for any additional explanation, nor did he give any indication he did not understand his rights.

¶ 27 However, after defendant initialed and signed the form, the detectives did not specifically ask whether defendant wanted to talk, which defendant claims was improper, resulting in an invalid waiver. Defendant claims he was "forced" to initial the last paragraph on the form, which stated as follows:

> "The above rights have been read to me and by me, and I fully understand those rights. Understanding the above rights, I do agree to speak with the officer(s) interviewing me. I also understand and consent that this interview may be audio and video recorded."

¶ 28 Contrary to defendant's position, we find the recorded interview clearly indicates the detectives explained to defendant that he did not have to speak with them, anything he told them would be told to a judge, and he could have an attorney present. Detective Wrigley specifically said: "you don't have to talk if you don't want to," "[y]ou can have an attorney here while you are speaking with Detective Hendricks," and "[i]f you don't have money for [an attorney], they will give you one for free." Defendant indicated he understood and had no questions. He signed the form, waiving his rights, and proceeded to speak with Hendricks and Moore.

¶ 29 “In order to be valid, a defendant's waiver of *Miranda* rights must be knowing and intelligent, which means it must reflect an intentional relinquishment or abandonment of a known right or privilege.” *In re J.M.*, 2014 IL App (5th) 120196, ¶ 24 (citing *Braggs*, 209 Ill. 2d at 514). The recorded interview clearly demonstrated defendant knowingly and intelligently waived his *Miranda* rights by indicating he understood the meaning of the rights and by indicating he was intentionally relinquishing or abandoning those rights. We find defendant’s *Miranda* waiver was valid.

¶ 30 B. Was Defendant’s Confession Voluntary?

¶ 31 Defendant next contends, even if his *Miranda* waiver was valid, his confession was involuntary. He does not contend he was physically coerced into making a statement, but he contends his confession was involuntary because (1) the police prevented him from speaking to a concerned adult; (2) the juvenile officer, Detective Wrigley, played a minimal role in representing his interests; (3) Detective Moore used an intimidating manner and tactics; (4) there was no evidence defendant had prior interrogation experience; and (5) his cognitive function was underdeveloped at his age or adversely affected by his use of marijuana. Relying on these factors, defendant contends the trial court erred in denying his motion to suppress his confession. Defendant’s argument is unpersuasive.

¶ 32 “Where a defendant challenges the admissibility of his confession through a motion to suppress, the State has the burden of proving the confession was voluntary by a preponderance of the evidence.” *Braggs*, 209 Ill. 2d at 505 (citing 725 ILCS 5/114-11(d) (West 2000)). On review of a trial court's ruling on the voluntariness of a confession, the court's factual findings are accorded great deference and will be reversed only if they are against the manifest

weight of the evidence. *In re G.O.*, 191 Ill. 2d 37, 50 (2000). However, the court's ruling on the ultimate question of whether the confession was voluntary is entitled to *de novo* review. *People v. Morgan*, 197 Ill. 2d 404, 437 (2001).

¶ 33 Recently, our supreme court addressed the voluntariness standard as follows:

> "To determine the voluntariness of a confession, courts consider the totality of the circumstances, including such factors as the defendant's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning. [Citation.] Other factors include the duration and legality of the detention and whether there was any physical or mental abuse by the police. [Citation.] Threats or promises made by the police may be considered physical or mental abuse. [Citation.] No single factor is dispositive, rather '[t]he test of voluntariness is whether the individual made his confession freely and voluntarily, without compulsion or inducement of any kind, or whether the individual's will was overborne at the time of the confession.' " *Murdock*, 2012 IL 112362, ¶ 30 (quoting *Morgan*, 197 Ill. 2d at 437).

¶ 34 Defendant argues his statement is involuntary due to the factors set forth above—namely his young age, the absence of a concerned adult, his drug use, and the intimidating tactics used during the interrogation. We note, as an aside, defendant presents this court with a considerable amount of information throughout his brief regarding the effects marijuana has on an individual, the underdeveloped brain of a 16-year-old, and improper police tactics used specifically against juveniles to support his arguments that his confession was involuntary *and* his waiver of *Miranda* was involuntary. "[G]enerally, a party may not rely on matters outside the appellate record to support his or her position on appeal." *Kildeer-Countryside School District*

No. 96 v. Board of Trustees of the Teachers' Retirement System, 2012 IL App (4th) 110843, ¶ 21. As a result, we decline to consider matters not presented to the trial court.

¶ 35 We note the *Murdock* court explained:

> "The taking of a juvenile's confession is a sensitive concern, and for this reason the greatest care must be taken to assure that the confession was not coerced or suggested. [Citation.] The confession should also not be the product of adolescent fantasy, fright, or despair. [Citation.] Illinois courts have recognized an additional factor not applicable in cases involving adults: the presence of a 'concerned adult.' [Citation.] This factor considers whether the juvenile, either before or during the interrogation, had an opportunity to consult with an adult interested in his welfare. [Citation.] In weighing this factor, courts also consider whether the police prevented the juvenile from conferring with a concerned adult and whether the police frustrated the concerned adult's attempt to confer with the juvenile. [Citation.]
>
> However, a juvenile's confession or statement should not be suppressed merely because he was denied the opportunity to confer with a parent or other concerned adult before or during the interrogation. [Citation.] The concerned adult factor is particularly relevant in situations in which the juvenile has demonstrated trouble understanding the interrogation process, he asks to speak with a concerned adult, or the police prevent the concerned adult from speaking with him. [Citation.] The concerned adult factor is just one of the many factors to be examined when determining whether a juvenile's confession was voluntary. [Citation.]" *Murdock*, 2012 IL 112362, ¶¶ 32-33.

¶ 36 Here, the trial court relied on several factors in determining defendant's confession was voluntary. The court based its ruling on the testimony from the detectives, as well as defendant's mother. After considering the totality of the circumstances, the court found, as a whole, defendant was not coerced directly or indirectly. The court found the recorded interview "sp[oke] volumes." Defendant was almost 17 years old, he was "carefully Mirandized, he appeared "quite intelligent," he was "clearly from a good family," he had no obvious "mental infirmities," no obvious physical impairments, he had slept subsequent to his marijuana use that particular day, there were no signs of physical or mental abuse, no undue pressure was utilized during interrogation, he was not threatened, the interview was "not unduly" lengthy, the juvenile officer was present to check on defendant's welfare, and "the greatest care was taken with *** this defendant regarding this interview." With regard to the concerned-adult factor, the court found the officer "made every attempt to contact the defendant's mother. He asked her to come down to headquarters and spoke with her on three separate occasions," yet she did not appear at the police station.

¶ 37 Given our deferential review of the trial court's factual findings, we cannot say those findings were against the manifest weight of the evidence. Although defendant indeed requested that the police contact his aunt, he nevertheless waived his *Miranda* rights, willingly agreed to speak with detectives, and, thus, by all accounts in the record, voluntarily confessed to the crime. We do not find a connection between defendant's request to have his aunt contacted and a lack of voluntariness with regard to his confession. He seemed to be concerned only that someone in his family was advised of his whereabouts.

¶ 38 Further, in this court's opinion, the new evidence discovered by counsel that defendant's grandmother was present at police headquarters but was denied access to defendant

would have had no effect on the trial court's decision to deny the motion to suppress. This is so because, given the totality of the circumstances and the consideration of the other factors, the factor involving the absence of a concerned adult was not dispositive. See *People v. Gardner*, 282 Ill. App. 3d 209 (1996). In *Gardner*, the defendant's grandmother appeared at the police station during the juvenile defendant's detention and interrogation but was denied access to him. *Gardner*, 282 Ill. App. 3d at 217. The reviewing court affirmed the trial court's decision to admit the defendant's confession despite this evidence. *Gardner*, 282 Ill. App. 3d at 218. The court reached its decision after considering the totality of the circumstances, pointing out the fact a youth officer was present to protect the juvenile's rights. *Gardner*, 282 Ill. App. 3d at 218. The court noted, although a parent or guardian must be notified, there is no *per se* rule that a parent or guardian be present. *Gardner*, 282 Ill. App. 3d at 218. We agree with *Gardner*, and applying the same principles to defendant's case, we conclude the grandmother's denial of access to defendant did not affect the voluntariness of defendant's confession under the totality of the circumstances presented.

¶ 39 C. Juvenile's Right To Representation

¶ 40 Defendant contends this court should find there exists a presumption that an unrepresented juvenile cannot intelligently waive his *Miranda* rights. He further contends the presumption should be irrebuttable if the police deny the juvenile's request to speak with a concerned adult. We decline to do so.

¶ 41 Our supreme court addressed and declined a similar request in *G.O.*, 191 Ill. 2d 37. There, the State argued the appellate court had seemingly created a *per se* rule requiring the suppression of a juvenile's confession if the juvenile was denied the ability to confer with a

concerned adult before or during his interrogation. See *G.O.*, 191 Ill. 2d at 55. The supreme court agreed with the State in arguing against the appellate court's decision, finding "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." *G.O.*, 191 Ill. 2d at 55. The court found, "[w]hile not dispositive, this is one of many factors to be examined when determining whether a juvenile's confession was voluntary." In other words, the supreme court explicitly declined to create a *per se* rule requiring minors to consult with a parent, guardian, or attorney before being interviewed. *G.O.*, 191 Ill. 2d at 57 ("[W]e have already determined that the ability of a juvenile to consult with a concerned adult is one of many factors that courts must consider when determining whether a confession is voluntary. However, we see no basis in the law to conclude that this single factor should be dispositive."). Therefore, following our supreme court's guidance, we will not create a *per se* rule that an unrepresented juvenile can never intelligently waive *Miranda*.

¶ 42 D. Sentencing

¶ 43 Lastly, defendant contends this case should be remanded for resentencing for one of two reasons: (1) for the retroactive application of the newly enacted statute provided in Public Act 99-69, section 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105 to the Unified Code of Corrections (Unified Code)), which took effect during the pendency of this appeal and requires a trial court to consider special mitigating factors when sentencing juveniles; or (2) because his 55-year sentence is a *de facto* life sentence in contravention of the principles espoused in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012) .

¶ 44 1. *Statutory Grounds*

¶ 45 Defendant alleges the new statute should be applied retroactively because the temporal reach of the statute is not specifically stated, and the statutory amendments are procedural in nature. The statute in question, section 5-4.5-105 of the Unified Code (730 ILCS 5/5-4.5-105 (West Supp. 2015) (eff. Jan. 1, 2016)), took effect while defendant's direct appeal was pending.

¶ 46 To determine whether a statute applies retroactively or prospectively, we follow the approach set forth by the United States Supreme Court in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). See *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 23. Under *Landgraf*, we first look to the clear language of the amended statute to see if the legislature specifically indicated the temporal reach. *Hayashi*, 2014 IL 116023, ¶ 23. If not, then generally, Illinois courts look to the general savings clause of Illinois, section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2014)). In this case, we need look no further than the legislature's express language regarding the intended temporal reach.

¶ 47 Section 5-4.5-105 provides:

> "(a) *On or after the effective date of this amendatory Act* of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court, at the sentencing hearing conducted under Section 5-4-1, shall consider the following additional factors in mitigation in determining the appropriate sentence[.]" (Emphasis added.) Pub. Act 99-69, § 10 (eff. Jan. 1, 2016) (adding 730 ILCS 5/5-4.5-105).

¶ 48 As stated, the legislature clearly indicated a trial court is required to apply the new provisions only at sentencing hearings held "[o]n or after the effective date" of January 1, 2016. Because the language is plain and clear, we will not undermine the legislature by reading into the statute any alternative application. See *People v. Hunter*, 2016 IL App (1st) 141904, ¶ 43 (citing *People v. Glisson*, 202 Ill. 2d 499, 505 (2002)). Therefore, we look no further to find defendant is not entitled to resentencing for the retroactive application of this statute.

¶ 49 2. *Constitutional Grounds*

¶ 50 Defendant also alleges the mandatory 25-year firearm enhancement, as applied to him, violates the eighth amendment (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11). He contends the mandatory minimum sentence for first degree murder and the mandatory firearm enhancement, which resulted in his sentence of 55 years' imprisonment, violates the constitutional principles announced in the United States Supreme Court's decision in *Miller*.

¶ 51 We note that our supreme court recently held that a legislatively mandated term of imprisonment that is so long as to constitute a *de facto* life sentence is impermissible. *People v. Reyes*, 2016 IL 119271, ¶ 9. A sentencing court must consider mitigating factors such as the juvenile defendant's youth, immaturity, and potential for rehabilitation. *Reyes*, 2016 IL 119271, ¶ 9. *Reyes* unequivocally states that sentencing a juvenile offender to a mandatory term that "is the functional equivalent of life without the possibility of parole constitutes cruel and unusual punishment in violation of the eighth amendment." *Reyes*, 2016 IL 119271, ¶ 9.

¶ 52 In *Reyes*, the 16-year-old offender convicted of murder and two counts of attempted murder with a firearm was sentenced to a legislatively mandated term of 97 years.

Because this was a *de facto* life-without-parole sentence, the court found it unconstitutional pursuant to *Miller*. *Reyes*, 2016 IL 119271, ¶ 10. The supreme court held the sentence imposed violated the principles established in *Miller*, as defendant would "most certainly not live long enough to ever become eligible for release." *Reyes*, 2016 IL 119271, ¶ 10. Here, defendant, who was 16 years old at the time of the 2011 offense, was sentenced to a 55-year sentence. His scheduled release date is in December 2066. Thus, he will be one month shy of his 72nd birthday at the time of his release.

¶ 53 In *Reyes*, the supreme court interpreted *Miller* to say that in order to justify a lengthy sentence, judicial discretion must be applied. *Reyes*, 2016 IL 119271, ¶ 9 (a juvenile may not be sentenced to a mandatory, unsurvivable prison term without first considering mitigating factors). In this case, the mandatory minimum sentence was 45 years, not a *de facto* life sentence for a 16-year-old. Defendant was sentenced to 55 years, but that sentence was based on judicial discretion—exactly what *Miller* requires for justifying lengthy juvenile sentences. See *Reyes*, 2016 IL 119271, ¶¶ 9-10.

¶ 54 The trial court had the opportunity to, and in fact did, consider mitigating circumstances, including defendant's age, the fact he was "from a good family," he was a father, and he "ha[d] little education." The court also considered the aggravating circumstances, including defendant's "substantial juvenile record," his lack of remorse, the fact he had "not accepted responsibility for his conduct," and the fact it was "a very cold, heartless act." The length of the sentence here was not legislatively mandated, it was formulated by the trial court after careful consideration of the circumstances. Thus, in our view, *Reyes* does not apply and does not render defendant's sentence unconstitutional.

¶ 55 III. CONCLUSION

¶ 56 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 57 Affirmed.