

[Cite as *State v. Griffin*, 2015-Ohio-3055.]

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

STATE OF OHIO	:	
	:	
<i>Plaintiff-Appellee</i>	:	Appellate Case No. 26475
	:	
v.	:	Trial Court Case No. 2014-CR-1737
	:	
CHRISTOPHER GRIFFIN	:	(Criminal Appeal from
	:	Common Pleas Court)
<i>Defendant-Appellant</i>	:	
	:	

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OPINION

Rendered on the 31st day of July, 2015.

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WELBAUM, J.

{¶ 1} Defendant-appellant, Christopher Griffin, appeals from the decision of the Montgomery County Court of Common Pleas overruling his motion to suppress. Griffin sought to suppress statements he made to detectives during two separate interviews regarding allegations of rape and unlawful sexual conduct with a minor. For the reasons outlined below, the judgment of the trial court will be affirmed.

Facts and Course of Proceedings

{¶ 2} On May 22, 2014, Griffin was indicted on two counts of rape by force or threat of force in violation of R.C. 2907.02(A)(2), a felony of the first degree, and two counts of unlawful sexual conduct with a minor in violation of R.C. 2907.04(A), a felony of the third degree. Griffin initially pled not guilty to the charges and thereafter filed a motion to suppress. In his motion to suppress, Griffin moved the court to suppress statements he made to detectives during two separate interviews conducted on May 12 and 13, 2014.

{¶ 3} During the first interview, Griffin denied touching the minor victim; however, during the second interview, he confessed to smacking and squeezing the victim's buttocks, grabbing the victim's breasts, and licking around the victim's vagina. Griffin also confessed to rubbing his flaccid penis against the victim's vagina. In support of his motion to suppress, Griffin argued that he did not knowingly, intelligently and voluntarily waive his *Miranda* rights at either of the two interviews, and that his admissions during the second interview were not voluntary in that they were induced by threats of punishment and implied promises of leniency if he confessed.

{¶ 4} The trial court held a two-day hearing on Griffin's motion to suppress that

concluded on July 14, 2014. At the hearing, Griffin testified in his defense, whereas Detective Stephfon Daniels, one of the two interviewing detectives, testified on behalf of the State. In addition to this testimony, the trial court also admitted two pre-interview forms into evidence, as well as a video recording of each interview. The pre-interview forms listed Griffin's *Miranda* rights and included a waiver of those rights, which Griffin signed and initialed. A recorded jail telephone call between Griffin and his daughter was also admitted into evidence over Griffin's objection. On the recording, Griffin admitted to rubbing the victim's breasts and buttocks, as well as explicitly stating that he "did rub on her and shit like that." See State's Exhibit 6.

{¶ 5} After reviewing the testimony and evidence, the trial court overruled Griffin's motion to suppress. Specifically, the trial court found that Griffin knowingly, intelligently, and voluntarily waived his *Miranda* rights during both interviews. The trial court also found that Griffin's statements in both interviews were voluntary. After the trial court issued its decision, Griffin entered into a plea agreement wherein he agreed to plead no contest to one count of rape in exchange for the remaining charges being dismissed. Following his no contest plea, the trial court sentenced Griffin to seven years in prison and designated him a Tier III sex offender.

{¶ 6} Griffin now appeals from the trial court's decision overruling his motion to suppress, raising two assignments of error for review.

First Assignment of Error

{¶ 7} Griffin's First Assignment of Error is as follows:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY

FINDING THAT STATEMENTS THAT WERE MADE BY APPELLANT TO DETECTIVES DURING AN INTERROGATION WERE MADE KNOWINGLY, VOLUNTARILY, AND WITHOUT THREAT OR PROMISES.

{¶ 8} Under his First Assignment of Error, Griffin generally contends that the trial court erred in failing to suppress the statements he made to detectives. Specifically, Griffin claims that his statements were involuntary and made without knowingly, intelligently and voluntarily waiving his *Miranda* rights. While Griffin states in his appellate brief that he is challenging “all statements made during his first Interrogation with Detectives, on May 12, 2014,” we will review both interviews as Griffin’s confession actually took place during the second interview conducted on May 13, 2014.

{¶ 9} “Whether a statement was made voluntarily and whether an individual knowingly, voluntarily, and intelligently waived his or her *Miranda* rights are distinct issues.” (Citations omitted.) *State v. Lovato*, 2d Dist. Montgomery No. 25683, 2014-Ohio-2311, ¶ 30. “ ‘To be knowing, intelligent and voluntary, the relinquishment of [*Miranda*] rights must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion or deception, and the waiver must have been made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.’ ” *State v. Abner*, 2d Dist. Montgomery No. 20661, 2006-Ohio-4510, ¶ 20, quoting *State v. Brown*, 2d Dist. Montgomery No. 19113, 2002-Ohio-6370, ¶ 11. “Only if the ‘totality of the circumstances surrounding the investigation’ reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.” *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135, 89 L.Ed.2d 410 (1986), quoting *Fare v.*

Michael C., 442 U.S. 707, 725, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979). (Other citation omitted.) “The [S]tate bears the burden of proving a knowing, intelligent, and voluntary waiver by a preponderance of the evidence.” *State v. Alexander*, 2d Dist. Greene No. 98 CA 35, 1999 WL 114959, *3 (Mar. 5, 1999), citing *Colorado v. Connelly*, 479 U.S. 157, 168, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986).

{¶ 10} Similarly, “[t]he State must prove by a preponderance of the evidence that a defendant’s confession is voluntary.” (Citation omitted.) *State v. Knight*, 2d Dist. Clark No. 04-CA-35, 2008-Ohio-4926, ¶ 107. “In determining whether a pretrial statement is involuntary, a court ‘should consider the totality of the circumstances, including the age, mentality, and prior criminal experience of the accused; the length, intensity, and frequency of interrogation; the existence of physical deprivation or mistreatment; and the existence of threat or inducement.’ ” *State v. Brown*, 100 Ohio St.3d 51, 2003-Ohio-5059, 796 N.E.2d 506, ¶ 13, quoting *State v. Edwards*, 49 Ohio St.2d 31, 358 N.E.2d 1051 (1976), paragraph two of the syllabus. “ ‘If all of the attendant circumstances indicate that the confession was coerced or compelled, it cannot be used to convict the defendant. That determination depends upon a weighing of the pressure to confess against the power of resistance of the person confessing.’ ” *State v. Strickland*, 2d Dist. Montgomery No. 25545, 2013-Ohio-2768, ¶ 11, quoting *State v. Jackson*, 2d Dist. Greene No. 02CA0001, 2002-Ohio-4680, ¶ 22.

{¶ 11} “A defendant’s statements to police after a knowing, intelligent, and voluntary waiver of the individual’s *Miranda* rights are presumed to be voluntary.” *Lovato* at ¶ 31, citing *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). However, “ ‘[t]he *Miranda* presumption applies to the conditions inherent in custodial

interrogation that compel the suspect to confess. It does not extend to any actual coercion police might engage in, and the Due Process Clause continues to require an inquiry separate from custody considerations and compliance with *Miranda* regarding whether a suspect's will was overborne by the circumstances surrounding his confession.' ” *Id.*, quoting *State v. Porter*, 178 Ohio App.3d 304, 2008-Ohio-4627, 897 N.E.2d 1149, ¶ 14 (2d Dist.). (Other citation omitted.)

{¶ 12} In this case, Griffin claims he did not knowingly, intelligently and voluntarily waive his *Miranda* rights because he: (1) was unable to read the rights and waiver contained in the pre-interview forms without his glasses; (2) was under the influence of alcohol and prescription drugs at the time of the first interview; (3) had an overwhelming urge to urinate during both interviews due to a medical condition, which, according to Griffin, created an exigency to say and sign whatever necessary to conclude the interviews; and (4) was misled by the detectives into believing that if he agreed with the detectives' statements and signed the pre-interview forms, he would be allowed to return home. Griffin also claims that his statements during the interviews were involuntary as a result of his intoxicated state, his need to urinate, and coercion by the interviewing detectives.

{¶ 13} When ruling on a motion to suppress, “ ‘the trial court assumes the role of trier of facts and is in the best position to resolve questions of fact and evaluate the credibility of witnesses.’ ” *State v. Hopfer*, 112 Ohio App.3d 521, 548, 679 N.E.2d 321 (2d Dist.1996), quoting *State v. Venham*, 96 Ohio App.3d 649, 653, 645 N.E.2d 831 (4th Dist.1994). In turn, “[t]he court of appeals must accept the trial court's findings of fact if they are supported by competent, credible evidence in the record.” (Citation omitted.)

State v. Isaac, 2d Dist. Montgomery No. 20662, 2005-Ohio-3733, ¶ 8. Accepting those facts as true, the appellate court must then determine, as a matter of law and without deference to the trial court's legal conclusion, whether the applicable legal standard is satisfied. *State v. Retherford*, 93 Ohio App.3d 586, 592, 639 N.E.2d 498 (2d Dist.1994).

{¶ 14} After reviewing the testimony and evidence presented at the suppression hearing, which included the pre-interview forms and the video recordings of Griffin's interviews, the trial court found that Griffin demonstrated an ability to read the pre-interview form without his glasses during the first interview and that he testified falsely at the suppression hearing when he claimed otherwise. Specifically, the trial court found that during both interviews, Griffin mentioned that he did not have his glasses, but did not request his glasses at any time. The trial court also found that during the first interview, Griffin was able to confirm that his social security number and date of birth were correctly written on the pre-interview form after reviewing the form without his glasses. In addition, the trial court found that Griffin read aloud the first *Miranda* right written on the form at both interviews, as well as the entire "Waiver of Rights" section on the form during the first interview, all without his glasses.

{¶ 15} Continuing, the trial court found that Griffin did not appear to be intoxicated during either interview. Rather, the trial court found that Griffin spoke clearly, without slurred speech and was coherent and alert at all times. In addition, with respect to Griffin's need to use the restroom, the trial court found that Griffin requested to use the restroom three times during the first interview, but that no admissions were ever made after those requests. During the second interview, the trial court found that Griffin did not ask to use the restroom until the very end of the interview, after he had already made his

confession. While Griffin testified that he had asked to use the restroom immediately prior to both interviews, the trial court found his testimony lacked credibility given that his requests were not captured on the video recordings and due to the false testimony he gave regarding his ability to read the pre-interview form. Furthermore, the trial court found that during both interviews, Griffin never advised the detectives that he had a medical condition causing an urgency to urinate, did not exhibit any signs of physical discomfort as a result of his alleged need to urinate, and at no point requested to stop the interview to use the restroom.

{¶ 16} The trial court also found that during the first interview, Griffin stated that he had been advised of his *Miranda* rights in the past. In addition, the trial court found that during both interviews, Griffin correctly defined the meaning of the word “coercion,” and stated that he had completed 12 years of schooling and obtained a GED. In confirming his understanding of his rights, the trial court found that Griffin asked Detective Daniels if he was allowed to stop the interview at any time, to which the detective responded: “That’s correct, Chris. Yes you are. That’s your right.” Decision and Entry Overruling Motion to Suppress (Aug. 26, 2014), Montgomery County Court of Common Pleas Case No. 2014-CR-1737, Docket No. 27, p. 3. The trial court further found that after Griffin read the first of his *Miranda* rights aloud from the form, the detective then proceeded to read each of the remaining rights to Griffin at a speed that Griffin could understand. During both interviews, Griffin thereafter stated that he understood each right without hesitation and initialed each right on the form to confirm his understanding.

{¶ 17} Finally, the trial court found that while Griffin testified that he signed the waiver of rights on the pre-interview form only because he thought it would allow him to

get home quicker, on cross-examination, Griffin conceded that the detectives never promised him that he would get to go home if he signed the form. The trial court also found that at no point during either interview did the detectives either explicitly or implicitly convey any threats or promises to Griffin.

{¶ 18} Upon reviewing the record in this case, we find that the foregoing findings of fact made by the trial court are supported by competent, credible evidence; namely, the video recordings of Griffin's interviews, the pre-interview forms, and Detective Daniels' testimony. However, we note that the trial court's finding that Griffin read aloud the entire "Waiver of Rights" section on the pre-interview form during the first interview is not supported by the record, as the video recording indicates that Detective Daniels read that portion of the form to Griffin with Griffin thereafter signing the form. Regardless, the video did depict Griffin reading aloud the first of his *Miranda* rights and confirming his social security number and birthdate written on the form without his glasses. Therefore, exclusive of this one erroneous finding, we adopt the trial court's factual findings as true.

{¶ 19} Having accepted the trial court's findings of fact as true, we find a preponderance of the evidence supports the trial court's finding that Griffin knowingly, intelligently and voluntarily waived his *Miranda* rights, as the totality of the circumstances indicates that Griffin's waiver was made with full awareness of the nature of the rights that he was waiving and the consequences thereof. The totality of the circumstances also indicates that Griffin's waiver was not the product of intimidation, coercion or deception.

{¶ 20} We further find by a preponderance of the evidence that Griffin's statements to detectives confessing his sexual acts with the minor victim were voluntary. Contrary to Griffin's claim otherwise, the totality of the circumstances does not indicate that Griffin's

confession was the product of any promises or threats made by the detectives. In fact, after a thorough review of the record, including the video recording of both interviews, we find in neither interview was Griffin's will overborne, nor was his capacity for self-determination critically impaired due to any alleged coercive conduct on the part of the detectives.

{¶ 21} In reaching this decision, we agree with the trial court that the present case is distinguishable from our decision in *State v. Waldo*, 2d Dist. Champaign No. 99CA24, 2001 WL 1103330 (Sept. 21, 2001), a case in which we held that a defendant's incriminating statements were involuntary in part because the police refused the defendant's request to use the restroom during an interrogation after the defendant indicated that he had a strong need to urinate. *Id.* at *4. Specifically, the officers in *Waldo* told the defendant that they "want[ed] to get this taken care of, then we'll let you go." *Id.* "[T]he defendant's first incriminating statement was not made until after he asked to be allowed to relieve himself and that request was denied." *Id.* Unlike *Waldo*, in this case, Griffin's confession came during his second interview before he ever requested to use the restroom. Accordingly, *Waldo* is distinguishable.

{¶ 22} Griffin's First Assignment of Error is overruled.

Second Assignment of Error

{¶ 23} Griffin's Second Assignment of Error is as follows:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT RULED AT THE SUPPRESSION HEARING THAT COMMENTS APPELLANT MADE TO [HIS] DAUGHTER ONE WEEK AFTER HIS FIRST

INTERROGATION WERE ADMISSIBLE AS BEING RELEVANT.

{¶ 24} Under his Second Assignment of Error, Griffin contends the trial court erred in admitting statements he made to his daughter during a telephone call he placed from jail, wherein he admitted to rubbing on the victim and touching the victim's breasts and buttocks. According to Griffin, the statements he made to his daughter were irrelevant and inadmissible. We disagree.

{¶ 25} "Relevant evidence is generally admissible whereas irrelevant evidence is not." *State v. Wilson*, 2d Dist. Montgomery No. 24577, 2012-Ohio-3098, ¶ 73. To that end, Evid.R. 402 provides that "[a]ll relevant evidence is admissible * * * [and that] [e]vidence which is not relevant is not admissible." Pursuant to Evid.R. 401, "relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Decisions regarding the admissibility of evidence at trial are within the broad discretion of the trial court and will be upheld absent an abuse of discretion and material prejudice. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 86.

{¶ 26} After a thorough review of the record, we find that Griffin's statements to his daughter were similar to what he had told the detectives during the second interview, as he told his daughter that he rubbed on the victim and touched her breasts and buttocks. In turn, the fact that Griffin's conversation with his daughter mirrored the content of his admissions to the detectives makes it more probable that his admissions to police during the second interview were true. Therefore, the trial court did not abuse its discretion in finding that Griffin's statements to his daughter were relevant and admissible. In so

holding, we also note that the trial court specifically stated in its decision overruling Griffin's motion to suppress that it had not attributed any weight to the statements he made during the jail call in rendering its decision. See Decision and Entry Overruling Motion to Suppress (Aug. 26, 2014), Montgomery County Court of Common Pleas Case No. 2014-CR-1737, Docket No. 27, p. 2. Accordingly, even if it had been inappropriate for the trial court to admit the jail call into evidence, such a decision would have constituted, at worst, harmless error.

{¶ 27} Griffin's Second Assignment of Error is overruled.

Conclusion

{¶ 28} Having overruled both assignments of error raised by Griffin, the judgment of the trial court is affirmed.

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FROELICH, P.J. and DONOVAN, J., concur.

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