[Cite as *State v. Rodriguez*, 2009-Ohio-4460.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-07-162
	:	O P I N I O N
- vs -		8/31/2009
	:	
AMBER LEA N. RODRIGUEZ,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2007-12-2195

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YOUNG, J.

{¶1} Defendant-appellant, Amber Lea N. Rodriguez, appeals her conviction in the Butler County Court of Common Pleas for aggravated murder, aggravated robbery, kidnapping, aggravated burglary, theft, and tampering with evidence. We affirm.

{¶2} In the early morning hours of November 12, 2007, an employee with the Tri-County Inn discovered the deceased body of Sabyasachi Debnath. Following an extensive

police investigation, evidence was discovered linking appellant, Roger Whitten, and Michael Douglass to Debnath's death. At all times relevant, appellant was 16 years old.

{¶3} Appellant is the daughter of Michelle Quijanu, a Florida resident, and Rogelio J. Whitten, an inmate currently incarcerated in Arizona. Prior to this incident, and since she was one, appellant resided in Virginia with Mary and Andreas Rodriguez, her legal custodians and maternal grandparents. However, several months before the discovery of Debnath's body, appellant ran away from home in order to be closer to Roger Whitten, her estranged older brother. Whitten, who was 18 years old, lived in Hamilton, Ohio with Barbara Mathis, the siblings' paternal grandmother. Upon arriving in Ohio, and for approximately three months, appellant lived with Whitten and Mathis.

{¶4} On November 10, 2007, Debnath, a Naples, Florida resident, checked into Room 201 at the Tri-County Inn located in Butler County. That same day, appellant, along with Whitten and Michael Douglass, her brother's friend, were occupying Room 307 at the Tri-County Inn.[1] That night Debnath met Douglass while the two were in the Tri-County Inn parking lot.

{¶5} On November 11, at approximately 10:00 a.m., Nara Estrada, a Tri-County Inn housekeeper, saw Debnath enter Room 307. Upon entering the room, Debnath told Estrada that "his friends were in there," and that he would like to have his room cleaned. Later that afternoon, at approximately 1:00 p.m., another housekeeper called the front desk to report that she had seen Debnath with "a couple other young men" in his room. Since the Tri-County Inn charges extra for additional guests, Sean Pann, the owner of the motel, went to Debnath's room in order to determine if any additional guests were staying with him. After being questioned by Pann, Debnath informed the owner that he was the only person staying

1. At appellant's bindover proceedings, West Chester Police Detective Steve Beck stated that Room 307 of the Tri-County Inn was registered to Angela Workman. However, after speaking to Workman, police discovered that appellant, Whitten, Douglass actually occupied the room.

in his room, that the "two young men" seen with him had their own room, and that they merely stopped by to "use or borrow" his cell phone.

{¶6} Later that evening, at approximately 11:00 p.m., Melissa Young, also a guest at the Tri-County Inn, walked to a nearby gas station in order to purchase cigarettes. While there, Young "made some chitchat" with another customer of "Indian descent" who was purchasing a variety of alcoholic beverages. That customer was later identified as Debnath. After making their purchases, Young and Debnath walked together towards the stairs leading back to the Tri-County Inn. During their short walk, Debnath asked Young if she wanted "to come back and have a couple of beers with him and his friends." Young declined his invitation.

{¶7} Upon reaching the stairs, Young noticed three people standing by the top of the stairs; two men and a woman. Young identified the woman as appellant, who, while standing by the stairs, "was kind of rocking back and forth," "didn't appear to be too sober," and "maybe a little drunk." After one of the men made a "sexual comment" towards her, Young left the group and walked back to her room. As she approached her room, Young noticed appellant, as well as the two men, one of whom was carrying a case of beer, enter Debnath's room. Young indicated that the four individuals appeared "friendly" with each other.

{¶8} In the early morning hours of November 12, at approximately 12:30 a.m., Devon Edwards, a guest staying in Room 202 of the Tri-County Inn, was watching television with a friend when he heard "bumping, boom, boom, boom, just loud noise, a loud noise and muffled sounds" coming from the room next door. Edwards, in order to hear more clearly, put his ear up to the wall and heard what sounded like "somebody jumping on the bed or just jumping up and down on the floor." Edwards then heard what he believed to be "something" being "knocked" over. After a few minutes passed, the noise stopped and Edwards was able to hear people talking. Although he was unable to make out what was said, Edwards "could

tell there was a female voice and a male * * *." Edwards then heard the door open and close. However, upon looking out the window, Edwards did not see anything except the curtain move in the next room. After hearing "some noise" again, Edwards heard the door open and close for a second time. Edwards did not hear any other noise coming from the adjacent room that morning.

{¶9} A short time later, at approximately 1:00 a.m., Jeffry Allen, the owner of Ride Anywhere Taxi, received a call from a "Latino woman" requesting to be picked up from Room 307 at the Tri-County Inn. While obtaining the woman's information, Allen heard "two guys in the background" asking him to "hurry up," and that "they would give [him] more money" if he could get there quicker. In response to the call, Allen dispatched Hubert Gabbard to the Tri-County Inn to pick up the fare. After Gabbard arrived at the Tri-County Inn, three people, "two guys and a girl," emerged from Room 307 and put their bags in the trunk of the taxi. The trio, who did not appear upset, then instructed Gabbard to drive to the Cove Motel. The police later discovered that appellant's aunt, Theresa Estelle, was staying at the Cove Motel.

{¶10} At 2:53 a.m., Jageish Joshi, the manager of the Hamilton Inn, another motel located in Butler County, checked Maria Wright into Room 103. Wright indicated that she, along with one other person, would be staying in the room. However, Joshi did not see Wright arrive at the Hamilton Inn because "they parked the car far from the office," and did not see her go into the room as "it was too late." The police later discovered that Wright was not staying at the Hamilton Inn, but instead, that the room was occupied by appellant, Whitten, and Douglass.[2]

{¶11} Later that morning, at approximately 9:00 a.m., Heather Haueter, a manager for Tri-County Inn, was asked by another employee to go to Room 201 as there may be a

2. Although not part of the trial transcript, Douglass later made a statement to police indicating the trio found a woman "who would check them into the Hamilton Inn for exchange of crack cocaine."

"problem." After she opened the door, Haueter noticed that the desk had been overturned, there was blood on a pillow and the mattress, and that the sheets were piled on the floor at the foot of the bed. After taking a step into the room, Haueter discovered the back of a man's head protruding from the pile of sheets strewn across the floor. Haueter immediately left the room and called the police.

{¶12} A short time later, Sergeant Matthew Tombragel of the West Chester Police Department was dispatched to the Tri-County Inn to investigate. Upon his arrival, Sergeant Tombragel entered the room and noticed that it was in "total disarray" and appeared is if there had been "some sort of struggle, a violent struggle." Sergeant Tombragel then determined that the person covered with the sheets was dead and that "the subject was bound with maybe some sort of tape." After determining that there were no other victims in the room, Sergeant Tombragel exited and conferred with Lieutenant Jay Foltz. Thereafter, Sergeant Tombragel, with the help of several other officers, secured the scene and contacted the criminal investigation unit, as well as the Butler County Coroner's Office. The body found in Room 201 of the Tri-County Inn, which was bound by duct tape, covered in bruises, and stabbed 11 times, was later identified as the remains of Debnath.

{¶13} After securing the scene, Sergeant Tombragel knocked on neighboring doors in order to locate any potential witnesses. After making contact with several people, including Devon Edwards, Sergeant Tombragel learned that Debnath had been seen associating with three young people thought to be staying in Room 307. After being told by Tri-County Inn staff that Room 307 had been vacated, Sergeant Tombragel, along with several other officers, entered the room to determine if there were any other victims. Upon entering the room, Sergeant Tombragel found a white towel with a "dried brownish substance on it," which, according to him, appeared to be blood. A security post was then set up to guard Room 307 as a potential crime scene.

{¶14} Later that afternoon, Joe Hartmann, a taxi driver with All Around Taxi, was dispatched to the local Wal-Mart to pick up a fare. Upon his arrival, he picked up three "young people" ages "anywhere from 17 to 20," that consisted of "a white guy and Hispanic guy and female." The trio told Hartmann to take them to RadioShack and Zip's Tobacco and to wait for them in the parking lot. Upon their return, Hartmann noticed that they had made several purchases that looked like "shoes, clothes, something like that." Hartmann's passengers then told him to drive to the Hamilton Inn.

{¶15} Later that day, Detective Andrew Schweier, a detective with the West Chester Police Department assigned to track Debnath's credit card activity, determined that a number of Debnath's credit cards were used at several local businesses after his body had been discovered that morning. After contacting the credit card companies, Detective Schweier went to RadioShack, Wal-Mart, Meijer, Kroger, Zip's Tobacco, and Burger King, among others, where he was able to obtain surveillance video depicting Debnath's credit cards being used by a group of three people: two men and one woman.

{¶16} After further investigating the credit card activity, as well as Debnath's recent cell phone activity,[3] the police were able to track the three suspects to Room 103 at the Hamilton Inn. Armed with this information, the West Chester Police Department, as well as the Hamilton Police Department, went to the Hamilton Inn in order to apprehend the three suspects.

{¶17} That evening, at approximately 11:00 p.m., Detective David Stromberg, also with the West Chester Police Department, knocked on the door to Room 103 and announced that he was with motel maintenance. Detective Stromberg then saw a man, later identified as Whitten, look through the curtained window. However, there was no answer at the door.

3. Cell phone records indicate that one of Debnath's two cell phones were used to make several calls to appellant's aunt, Teresa Estelle, as well as to her paternal grandmother, Barbara Mathis, in the hours after Debnath was killed.

After Detective Stromberg knocked for a second time, to which he again received no answer, an officer from the Hamilton Police Department unlocked the door, pushed it open, advised the occupants that it was the police, and that if they did not come out that they "would be deploying a canine." In response, appellant, Whitten, and Douglass emerged from the motel room bathroom in which they were hiding. Thereafter, the police searched the room and located a number of Debnath's credit cards, receipts to various local businesses, an assortment of newly purchased clothing items, duct tape, parts of Debnath's cell phones, and his wallet.

{¶18} After being arrested and transported to the West Chester Police Department, appellant was escorted by Detective Lori Beiser into an interview room where she proceeded to waive her *Miranda* rights and confess to taking part in the attack that ultimately led to Debnath's death. During this interview, which was video recorded, appellant stated that Debnath was making sexual comments towards her that made her feel uncomfortable, which prompted "all of [them]" to pull out their knives and stab him. When asked if everyone took part in the stabbing, she responded affirmatively. Appellant also told Detective Beiser that, after stabbing Debnath, they searched his pockets and took his credit cards and cell phones, as well as his digital camera and video camera.[4] After the interview was complete, appellant was transferred to the juvenile detention center.

{¶19} On November 14, just two days later, Detective Beiser went to the juvenile detention center to see appellant in order to "to clear up some matters." During their conversation, to which appellant also waived her *Miranda* rights, appellant told Detective Beiser that even though she was in the room when Debnath was "taped up," she "did not

4. Debnath's cell phone contained a number of pictures of appellant, Whitten, and Douglass, including a picture of appellant and Whitten holding Debnath's video camera. In addition, Debnath's cell phone contained a video depicting Douglass in Room 103 of the Hamilton Inn making stabbing motions towards appellant while holding one of the knives previously used to kill Debnath. Douglass is then shown licking the knife.

actually participate in the stabbing." Appellant also told Detective Beiser that the three knives used to kill Debnath were located in a dumpster outside of Room 103 at the Hamilton Inn. Later that day, three knives matching appellant's description were recovered from the Hamilton Inn dumpster.

{¶20} On December 12, 2007, following a bindover proceeding, the juvenile court transferred the case to the general division of the common pleas court in order to prosecute appellant as an adult. On January 16, 2008, a Butler County Grand Jury returned a six count indictment against appellant charging her with aggravated murder, aggravated robbery, kidnapping, aggravated burglary, theft, and tampering with evidence. Appellant then filed a motion to suppress her November 12 statement, which the trial court denied.

{¶21} On May 1, 2008, following a four-day jury trial, appellant was found guilty of all six charges and sentenced to serve a minimum of 31 years in prison.[5] On July 10, 2008, appellant moved for a new trial based on newly-discovered evidence. The trial court denied her motion for a new trial on August 15, 2008. Appellant now appeals her conviction, raising ten assignments of error.

{¶22} Assignment of Error No. 1:

{¶23} "THE TRIAL COURT DID NOT HAVE JURISDICTION TO TRY APPELLANT AS AN ADULT BECAUSE THE JUVENILE RELINQUISHMENT PROCEEDING WAS DEFECTIVE."

{¶24} In her first assignment of error, appellant argues that the transfer of her case from the juvenile court to the general division of the common pleas court was defective, and therefore, her conviction must be reversed as the trial court did not have jurisdiction to prosecute her as an adult. We disagree.

5. Douglass pled guilty for his role in the attack and was sentenced to life without the possibility of parole. His conviction was affirmed by this court on appeal. See *State v. Douglass*, Butler App. Nos. CA2008-07-168, CA2008-08-199, 2009-Ohio-3826.

{¶25} The juvenile court has exclusive original jurisdiction over any case involving a child alleged to be a delinquent. R.C. 2151.23(A)(1); *State v. Moorer*, Geauga App. Nos. 2001-G-2353, 2001-G-2354, 2003-Ohio-5698, ¶15, citing *State v. Wilson,* 73 Ohio St.3d 40, 44, 1995-Ohio-217. However, in certain specified situations, the juvenile court is required to transfer the case to the general division of the common pleas court in order to prosecute the juvenile defendant as an adult. *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, ¶1, fn. 1; *State v. Hanning*, 89 Ohio St.3d 86, 90, 2000-Ohio-436. These transfers are referred to as "mandatory bindovers." *In re A.J.S.* at ¶1, fn.1. In a mandatory bindover situation, such as the case here, the juvenile court "has a duty to transfer a case when it determines that the elements of the transfer statute are met, to wit: (1) the charged act would be aggravated murder, murder, attempted aggravated murder, or attempted murder if committed by an adult, (2) the child was 16 or 17 at the time of the act, [and] (3) there is probable cause to believe that the child committed the act charged." Id. at ¶22; R.C. 2152.12(A)(1)(a).

{¶26} Appellant does not challenge the juvenile courts findings as they relate to the application of the transfer statute. Instead, appellant argues that the transfer of her case from juvenile court to the general division of the common pleas court was defective because the juvenile court did not identify who held legal custody of her, and that the juvenile court failed to provide anyone with written notice of the scheduled bindover proceedings as required by R.C. 2152.12(G). These arguments lack merit.

{¶27} R.C. 2152.12(G) "reflects a legislative intent to protect juveniles by informing their caregivers of any pending actions [against them] so that the caregivers can offer assistance, guidance and support." *State v. Reynolds*, Franklin App. No. 06AP-915, 2007-Ohio-4178, ¶12, citing *State v. Taylor* (1985), 26 Ohio App.3d 69, 71. Specifically, R.C. 2152.12(G) requires the juvenile court to give "notice in writing of the time, place, and purpose of any hearing held pursuant to division (A) or (B) of this section to the child's

parents, guardian, or other custodian and to the child's counsel at least three days prior to the hearing." As noted above, a hearing held pursuant to R.C. 2152.12(A), also known as a mandatory bindover proceeding, is conducted in order to determine if the elements of the transfer statute are met.

{¶28} Initially, appellant argues that the juvenile court erred by transferring her case to the general division of the common pleas court because it made no "findings as to [her] parents, guardians, or custodians," and never identified or designated anyone as her "'custodians' or as 'guardians.'" However, when asked by the juvenile court who held legal custody of appellant at the November 13, 2007 "hearing on a complaint," her family in attendance responded by stating: "The Rodriquez * * * Her grandparents, the Rodriquez's," and because they had to travel from Virginia, they "[would] be here within the next few days." In response, the juvenile court decided not to appoint a guardian-ad-litem for appellant "as [her] legal custodians [were] in route to Ohio." As a result, even though there was no supporting documentation provided, the record clearly indicates that the juvenile court identified appellant's maternal grandparents, Mary and Andreas Rodriguez, as her legal custodians. See, e.g., *State v. Parks* (1988), 51 Ohio App.3d 194, 196 (juvenile defendant's grandmother deemed to hold legal custody for notification purposes of bindover proceeding even though no supporting documentation provided). Therefore, appellant's claim that the juvenile court failed to identify her legal custodians is simply not supported by the record.

{¶29} Next, appellant argues that the juvenile court erred when it failed to provide anyone with written notice of the November 13 hearing. However, this hearing, which came before a juvenile court magistrate, was not part of the required bindover proceedings as it was not a "hearing held pursuant to division (A) or (B)" of the transfer statute. See R.C. 2152.12. Instead, during the November 13 hearing, the transcript of which spans a total of three pages, the magistrate read appellant the charge pending against her, scheduled a

bindover proceeding to be held before the juvenile court judge, identified appellant's legal custodians as her maternal grandparents, and determined that appellant wished to be represented by counsel. As a result, due to its limited scope, the November 13 "hearing on a complaint" was not a part of the mandatory bindover proceedings requiring notice under R.C. 2152.12(G) as it was not conducted in order to determine if the elements of the transfer statute were met. Therefore, because the November 13 hearing was not "held pursuant to division (A) or (B)" of the transfer statute, the notice requirements of R.C. 2152.12(G) were inapplicable.[6]

{¶30} Appellant also argues the juvenile court erred when it failed to provide anyone with written notice of its November 26, 2007 and December 12, 2007 hearings.[7] However, while the record is devoid of any evidence indicating written notice was provided, it is obvious, nonetheless, that her legal custodians, as well as a number of her other family members, had actual notice of the bindover proceedings as they personally appeared in court in order to offer appellant their assistance, guidance, and support.[8] See, e.g., *State v. Revels* (June 30, 1986), Butler App. No. CA85-06-069, at 17 (finding juvenile defendant's mother had sufficient and adequate notice despite the lack of service when she appeared in court during initial bindover proceedings). As a result, even though the juvenile court failed to provide her legal custodians with written notice as required by R.C. 2152.12(G), due to their

6. It should be noted, however, that appellant's family, including Mathis, her paternal grandmother who had "establishment" to have her in Ohio, as well as Estelle, her aunt, and Anthony Tenet, her uncle, were present for the November 13 hearing. In turn, even though this hearing was not "held pursuant to division (A) or (B)" of the transfer statute, appellant's family was actually notified of the hearing as evidenced by their subsequent attendance in order to offer their assistance and support.

7. Unlike the November 13 "hearing on a complaint," both the November 26 and the December 12 hearings were part of the bindover proceedings as they came on from the state's motion "to transfer [the] cause to the General Division of the Court of Common Pleas * * * for criminal prosecution," and were conducted in order to determine if the elements of the transfer statute were met.

8. The juvenile court's entries dated November 26 and December 12 indicate Mary and Andreas Rodriguez, appellant's maternal grandparents and legal custodians, along with numerous other family members, were all "present for the hearing[s]."

personal appearance at the hearings, they had sufficient and adequate notice of the charges and proceedings pending against their granddaughter. Therefore, because appellant's legal custodians actually attended the scheduled bindover proceedings, we find no prejudicial impact resulting from the juvenile court's failure to provide them with written notice of such. *Reynolds*, 2007-Ohio-4178 at ¶14. Accordingly, as we find no reversible error, appellant's first assignment of error is overruled. Id.

{¶31} Assignment of Error No. 2:

{¶32} "APPELLANT'S CONSTITUTIONAL RIGHTS TO AN INDICTMENT WERE VIOLATED BECAUSE THE INDICTMENT FAILED TO CHARGE AGGRAVATED ROBBERY AND AGGRAVATED MURDER."

{¶33} In her second assignment of error, appellant argues that her indictment was defective as it relates to the charges of aggravated robbery and aggravated murder. Although not particularly clear, appellant essentially argues that the indictment failed to charge her with aggravated robbery because it did not allege a culpable mental state as to the "theft portion" of aggravated robbery charge, and that the state "disingenuously impose[d] * * * strict liability for the element of knowingly" during its closing argument. According to appellant, because the indictment did not properly charge her with aggravated robbery, the predicate offense from which her aggravated murder charge was based, both her aggravated robbery and aggravated murder convictions must be reversed.[9] We disagree.

{¶34} After reviewing the record, we find appellant's indictment properly charged aggravated robbery in relation to the "theft portion" as it explicitly refers to a theft offense "as defined in section 2913.01 of the Revised Code," which requires the state to prove appellant acted "knowingly." Crim.R. 7(B); *State v. Buehner*, 110 Ohio St.3d 403, 2006-Ohio-4707,

9. Appellant does not argue that the indictment failed to contain a culpable mental state for the deadly weapon portion of her aggravated robbery charge. R.C. 2911.01(A)(1); *State v. Lester*, Slip Opinion No. 2009-Ohio-4225, ¶1.

syllabus; *State v. Brakeall*, Fayette App. Nos. CA2008-06-022, CA2008-06-023, 2009-Ohio-3542, ¶30; see, e.g., *State v. McCain*, Montgomery App. No. 22716, 2009-Ohio-1959, ¶9. In addition, there is simply no evidence to support appellant's claim that the state substituted "strict liability for the element of knowingly" during its closing argument. Instead, the record clearly indicates that the state informed the jury on numerous occasions that appellant could not be found guilty of any crime unless she acted "with the mental state necessary * * *," and that the judge would "tell [them] what those mental states [were] for each of the crimes."[10] Therefore, because the indictment did allege a culpable mental state as to the "theft portion" of the aggravated robbery charge, and because the record reveals that the state never argued that the "theft portion" was based on strict liability, appellant's second assignment of error is overruled.

{¶35} Assignment of Error No. 3:

{¶36} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY OVERRULING HER MOTION TO SUPPRESS HER STATEMENTS."

{¶37} In her third assignment of error, appellant argues that the trial court erred by denying her motion to suppress because she did not knowingly, intelligently, and voluntarily waive her constitutional right against self-incrimination. Specifically, appellant argues that, "based on her age and education," she lacked the "requisite level of comprehension necessary to make a valid waiver" of her right to silence. This argument lacks merit.

{¶38} Appellate review of a trial court's ruling on a motion to suppress evidence presents a mixed question of law and fact. *State v. Long* (1998), 127 Ohio App.3d 329, 332. When considering a motion to suppress, the trial court assumes the role of the trier of fact, and therefore, is in the best position to resolve factual questions and evaluate witness

10. Appellant concedes, and we agree, that the trial court "properly defined aggravated robbery to include an instruction for 'knowingly' * * *" in its jury instructions.

credibility. *State v. Burnside,* 100 Ohio St.3d 152, 2003-Ohio-5372, ¶8. A reviewing court must accept the trial court's findings of fact if they are supported by competent, credible evidence. *State v. Bryson* (2001), 142 Ohio App.3d 397, 402. The appellate court then determines, as a matter of law, and without deferring to the trial court's conclusions, whether the trial court applied the appropriate legal standard. Id.

{¶39} Juveniles are entitled to the Fifth Amendment's protection against self-incrimination, and therefore, are entitled to receive *Miranda* warnings prior to a custodial interrogation. *State v. Starcher*, Stark App. No. 2004CA00025, 2004-Ohio-6993, ¶31, citing *In re Gault* (1967), 387 U.S. 1, 87 S.Ct. 1428. However, a juvenile may waive her right against self-incrimination so long as the totality of the circumstances indicates her waiver was knowingly, intelligently, and voluntarily made. *State v. Reid*, Montgomery App. No. 19729, 2003-Ohio-6079, ¶28; *Miranda v. Arizona* (1966), 384 U.S. 436, 444, 86 S.Ct. 1602.

{¶40} At the suppression hearing, the state conceded that appellant was in custody for *Miranda* purposes when she provided her statement to police on the night of November 12, 2007. Therefore, the only issue before the trial court at the suppression hearing, and to this court on appeal, is whether appellant's waiver was knowingly, intelligently, and voluntarily made.

{¶41} In determining whether a juvenile's waiver was valid, the court should consider the age, mentality and prior criminal experience of the accused, the length, intensity and frequency of interrogation, deprivation or mistreatment, and the existence of a threat of inducement. *In re Moyer*, Licking App. No. 03CA116, 2004-Ohio-5882, ¶42, citing *In re Watson* (1989), 47 Ohio St.3d 86, 89-90; *State v. Edwards* (1976), 49 Ohio St.2d 31, paragraph two of the syllabus. Special care must be taken to insure that a juvenile's rights are protected, particularly when it is alleged that she has waived her right to silence "since the validity of the waiver is affected by the factors of age, emotional stability and mental

capacity." *In re K.W.*, Marion App. No. 9-08-57, 2009-Ohio-3152, ¶12; *In re Goins* (1999), 137 Ohio App.3d 158, 162.

{¶42} At the suppression hearing, Detective Beiser testified that she began interviewing appellant "just slightly before midnight." Detective Beiser then testified that during the interview, which lasted approximately two hours, appellant was "very quiet," "calm," appeared "stable," and that she "seemed very mature." Detective Beiser also testified that she read appellant her *Miranda* rights "word for word" just as the teenager would "have seen it on TV," and that appellant indicated she understood her rights before signing the *Miranda* waiver card. In addition, Detective Beiser testified that she told appellant that "if there was a question that she didn't want to answer, that she did not have to answer it," to which appellant replied that she understood.

{¶43} Appellant, testifying at the suppression hearing, stated that she did not remember being read her rights, but admitted that Detective Beiser "had to have read it to [her]," and that she did not understand her rights, but that she still signed the *Miranda* waiver card. Appellant also testified that she could read and write, had completed the tenth grade, had taken Algebra II, Science, World History, and Spanish, and that she had received "straight A's." Appellant's testimony also revealed that Detective Beiser was "nice" to her during the interview, she was given water, she was not threatened or coerced in any way, and that, after the interview was complete, appellant made a number of corrections to her written statement. In addition, when asked if she told Detective Beiser "things that [she] wanted to tell her," appellant responded affirmatively.

{¶44} After reviewing the totality of the circumstances, we find that appellant's statement was voluntarily given after she knowingly and intelligently waived her right to remain silent. Although appellant was 16 years old with virtually no prior criminal history, we agree with the trial court's finding appellant to be an "extremely intelligent, alert young lady,"

who had "no deficits to her ability to think, understand and make decisions."[11] As a result, although she may now claim otherwise, we find that there is simply nothing in the record to suggest appellant was of insufficient intelligence as to impair her ability to understand, and thereby waive, her rights. Therefore, because the trial court did not err in finding appellant made a knowing, voluntary, and intelligent waiver of her right to silence, her third assignment of error is overruled.

{¶45} Assignment of Error No. 4:

{¶46} "APPELLANT'S STATUTORY AND PROCEDURAL DUE PROCESS RIGHTS WERE VIOLATED WHEN THE POLICE OBTAINED A STATEMENT FROM HER WITHOUT PROVIDING NOTICE TO HER PARENTS, GUARDIAN OR CUSTODIAN."

{¶47} In her fourth assignment of error, appellant argues that she could not be subject to custodial interrogation "unless her parents [had] been notified, advised her, and waived her right to counsel and to silence." However, contrary to appellant's claim, Ohio law does not require a juvenile's parents, guardian, or custodian to consent to the waiver of the juvenile's rights before she can be subject to a custodial interrogation because the trial court can properly determine whether the juvenile appreciated her rights and voluntarily waived them in the absence of an interested parent or adult. *State v. Lallathin*, Noble App. No. 03 NO 312, 2004-Ohio-7066, ¶45; *In re M.D.*, Madison App. No. CA2003-12-038, 2004-Ohio-5904, ¶27. Therefore, because notice to her parents or legal custodians was not required, appellant's fourth assignment of error is overruled.

{¶48} Assignment of Error No. 5:

{¶49} "THE TRIAL COURT VIOLATED APPELLANT'S DUE PROCESS RIGHTS BY FAILING TO DETERMINE WHETHER SHE WAS COMPETENT TO STAND TRIAL OR TO

11. Although appellant now claims that she did not understand her rights based on her "education," she later admits, under her sixth assignment of error, that she was a "good student."

ASSIST IN HER OWN DEFENSE."

{¶50} In her fifth assignment of error, appellant argues that the trial court erred by failing to conduct a competency hearing. However, not only did appellant never request a competency hearing, there is nothing in the record that would even remotely suggest an "indicia of incompetency" that would necessitate such an inquiry.[12] See R.C. 2945.37(B), (G); see, also, *State v. Thomas*, 97 Ohio St.3d 309, 2002-Ohio-6624, ¶39; *In re Jessica N.C.*, Williams App. No. WM-07-005, 2008-Ohio-249, ¶20-34. As noted previously, the trial court found appellant to be an "extremely intelligent, alert young lady," who had "no deficits to her ability to think, understand and make decisions." Therefore, we find the trial court did not err by failing to conduct a competency hearing, sua sponte, as to whether appellant was competent to stand trial. Accordingly, her fifth assignment of error is overruled.

{¶51} Assignment of Error No. 6:

{¶52} "THE TRIAL COURT VIOLATED APPELLANT'S DUE PROCESS RIGHTS BY FAILING TO DETERMINE WHETHER SHE WAS LEGALLY INSANE AT THE TIME OF THE OFFENSE OR WHETHER EMOTIONAL DISTRESS WAS A MITIGATING FACTOR IN HER CONDUCT."

{¶53} In her sixth assignment of error, appellant argues that "the trial court was *required* to order an assessment to determine whether [she] had mental or emotional problems that rose to the level of an affirmative defense," and that "the court's failure to order such an assessment to *assist* in a defense is plain error." (Emphasis added.) However, contrary to appellant's claim, insanity is an affirmative defense, placing the *burden on the accused* to establish the defense by a preponderance of the evidence. R.C. 2901.01(A)(14); R.C. 2901.05(A); *State v. Leisure*, Preble App. No. CA2007-10-023, 2008-Ohio-6386, ¶10;

12. At the April 24, 2008 final pre-trial hearing, appellant's trial counsel stated that he had "not had any problems in having any discussions and very blunt and open discussions with [appellant]," at which time she was "receptive and listened and responded."

State v. Filiaggi, 86 Ohio St.3d 230, 242, 1999-Ohio-99. In addition, our research has not revealed any applicable law that would support appellant's assertion that the trial court was somehow "required" to "assist" in her defense. Therefore, because appellant never raised insanity as a defense, and because there is simply nothing in the record to indicate appellant suffered from a "severe mental disease or defect" beyond her vague allegations and wild speculation, her sixth assignment of error is overruled.[13]

{¶54} For ease of discussion, appellant's seventh and eighth assignments of error will be addressed together.

{¶55} Assignment of Error No. 7:

{¶56} "THE STATE'S EVIDENCE WAS INSUFFICIENT TO SUPPORT CONVICTIONS FOR AGGRAVATED MURDER, AGGRAVATED ROBBERY, KIDNAPPING, AGGRAVATED BURGLARY, THEFT AND TAMPERING WITH EVIDENCE."

{¶57} Assignment of Error No. 8:

{¶58} "THE JURY'S VERDICT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶59} In her seventh and eighth assignments of error, appellant argues that the trial court erred in denying her Crim.R. 29 motion for acquittal, that the state provided insufficient evidence to support her conviction, and that her conviction was against the manifest weight of the evidence. Specifically, appellant argues that her conviction must be reversed because the state "lacked any physical evidence linking [her] to the crimes," and that "DNA evidence confirms" that she was not present during the resulting "bloodbath." We disagree.

{¶60} Our review of a trial court's denial of a Crim.R. 29 motion for acquittal is governed by the same standard as that used for determining whether a verdict is supported

13. For the first time on appeal, appellant claims that she was "sexually abused, operating under mental stress, suffering from diminished capacity or from the Stockholm Syndrome * * *." As noted above, there is simply nothing in the record that could even remotely support these claims.

by sufficient evidence. *State v. Haney,* Clermont App. No. CA2005-07-068, 2006-Ohio-3899, ¶14. Whether the evidence presented is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52. An appellate court, in reviewing the sufficiency of the evidence supporting a criminal conviction, examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Carroll,* Clermont App. Nos. CA2007-02-030, CA2007-03-041, 2007-Ohio-7075, ¶117. After examining the evidence in a light most favorable to the prosecution, the appellate court must then determine if "any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." Id. Proof beyond a reasonable doubt is "proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs." R.C. 2901.05(D).

{¶61} Unlike a sufficiency of the evidence challenge, a manifest weight challenge concerns the inclination of the greater amount of credible evidence offered in a trial to support one side of the issue rather than the other. *Carroll* at ¶118. An appellate court considering whether a conviction was against the manifest weight of the evidence must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of witnesses. *State v. Good,* Butler App. No. CA2007-03-082, 2008-Ohio-4502, ¶25, citing *State v. Hancock,* 108 Ohio St.3d 57, 2006-Ohio-160, ¶39. Under a manifest weight challenge, the question is whether, in resolving conflicts in the evidence the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *Good* at ¶25. This discretionary power should be invoked only in extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant. *State v. Hart*, Warren App. No. CA2008-06-079, 2009-Ohio-997, ¶18.

{¶62} "Because sufficiency is required to take a case to the jury, a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of

sufficiency." *State v. Wilson,* Warren App. No. CA2006-01-007, 2007-Ohio-2298, ¶35. As a result, a determination that a conviction is supported by the manifest weight of the evidence will also be dispositive of the issue of sufficiency. *State v. Smith*, Fayette App. No. CA2006-08-030, 2009-Ohio-197, ¶73.

{¶63} After reviewing the record, including both of appellant's statements to Detective Beiser implicating her involvement in the crime, we find that the state presented an abundance of evidence that clearly indicates appellant, along with her brother, Whitten, and his friend, Douglass, attacked and killed Debnath in his motel room by binding his arms and legs with duct tape and stabbing him 11 times. In addition, the evidence indicates that after they stabbed him to death, the trio scrounged through Debnath's pockets, took his credit cards and cell phones, and proceeded to engage in an all out shopping spree. Furthermore, the evidence indicates appellant, along with her two cohorts, cut up Debnath's credit cards, broke his cell phones into a number of pieces, and tossed their murder weapons into a dumpster. As a result, when viewed in a light most favorable to the prosecution, there was overwhelming competent, credible evidence to prove appellant not only actively participated in robbing Debnath, but that she also wielded one of the knives used to kill him and then helped conceal her knife in a dumpster. Therefore, while her DNA was not found on any of the murder weapons or on her clothing, we cannot say that appellant's conviction created such a manifest miscarriage of justice that her conviction must be reversed. Accordingly, appellant's seventh and eighth assignments of error are overruled.

{¶64} Assignment of Error No. 9:

{¶65} "APPELLANT'S CONSTITUTIONAL RIGHT TO COUNSEL WAS PREJUDICED BY THE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL."

{¶66} In her ninth assignment of error, appellant argues that her trial counsel was ineffective. We disagree.

{¶67} Reversal for ineffective assistance of counsel requires appellant to show that her trial counsel's performance was deficient, and that the deficient performance prejudiced her defense so as to deprive her of a fair trial. *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, ¶137; *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052. Prejudice exists where there is a reasonable probability that, but for her trial counsel's errors, the result of the trial would have been different. *State v. Douglass*, Butler App. Nos. CA2008-07-168, CA2008-08-199, 2009-Ohio-3826, ¶47; *Strickland* at 694. A reviewing court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *State v. White*, Butler App. No. CA2008-02-046, 2009-Ohio-2965, ¶32; *State v. Bradley* (1989), 42 Ohio St.3d 136, 143.

{¶68} "Trial counsel is entitled to a strong presumption that his or her conduct falls within the wide range of reasonable assistance." *Smith*, 2009-Ohio-197 at ¶49; *State v. Carver,* Montgomery App. No. 21328, 2008-Ohio-4631, ¶112, citing *Strickland* at 689. "Hindsight is not permitted to distort the assessment of what was reasonable in light of counsel's perspective at the time, and a debatable decision concerning trial strategy cannot form the basis of a finding of ineffective assistance of counsel." *Carver* at ¶112.

{¶69} Initially, appellant claims that her trial counsel was ineffective because he "failed to take necessary actions to obtain evidence to support his suppression theory that [appellant's] *Miranda* waiver was not knowingly and intelligently made." However, while effective representation carries with it a duty to investigate, there is nothing in the record to indicate appellant's trial counsel failed to investigate the facts and circumstances surrounding the waiver of her right to silence. *State v. Degaro*, Butler App. No. CA2008-09-227, 2009-Ohio-2966, ¶15. In addition, appellant's claim, which essentially assumes that the trial court would have found her *Miranda* waiver was not knowingly, intelligently, and voluntarily made had her trial counsel engaged in a more thorough investigation, is based on nothing more

than pure speculation. See *State v. Giles*, Franklin App. No. 08AP-841, 2009-Ohio-2661, ¶19. Speculation, like that presented by appellant, is insufficient to establish a claim of ineffective assistance of counsel. Id.

{¶70} Next, appellant argues that her trial counsel was ineffective because he failed to request a psychiatric examination in order to determine if she was competent to stand trial or be found not guilty by reason of insanity. However, as noted in her fifth and sixth assignments of error, appellant did not display any indicia of incompetency to warrant a competency hearing and there is nothing in the record to indicate she suffered from any form of severe mental disease or defect. Therefore, because the record is devoid of any evidence even remotely implying appellant suffered from either of those conditions, her trial counsel's failure to request the trial court to order a competency hearing or a psychiatric examination did not constitute deficient performance. *Thomas*, 2002-Ohio-6624 at ¶39; *State v. Bowman*, Montgomery App. No. 22459, 2008-Ohio-5157, ¶21.

{¶71} Appellant also argues that her trial counsel was ineffective for he "failed to object to the defective indictment or to the prosecutor's closing argument," which, according to her, "misstate[ed] the mens rea element required * * *." However, as discussed in her second assignment of error, appellant's indictment properly charged her with aggravated robbery and there is no evidence to indicate the state somehow misstated the "mens rea element required" during its closing argument. Therefore, we find appellant's claim of ineffective assistance based on her trial counsel's failure to object to the indictment, as well as his failure to object to the statements made by the prosecutor during closing argument, to be without merit.

{¶72} Appellant raises other instances of alleged ineffectiveness, including a vague assertion that her trial counsel "ignored authority from the Ohio Supreme Court that protected his client's due process rights * * *." However, even if we were to assume deficient

performance of counsel, based on the overwhelming evidence presented against her, appellant cannot show any resulting prejudice. *Diar*, 2008-Ohio-6266 at ¶239; *Strickland*, 466 U.S. at 687. Therefore, because appellant has failed to establish that her trial counsel's representation fell below the objective standard of reasonableness, or that she was prejudiced by her trial counsel's alleged deficient representation, her ninth assignment of error is overruled.

{¶73} Assignment of Error No. 10:

{¶74} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S MOTION FOR A NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE."

{¶75} In her tenth assignment of error, appellant argues that the trial court erred in denying her motion for a new trial based on newly-discovered evidence. We disagree.

{¶76} The trial court may grant a new trial "[w]here new evidence material to the defense is discovered which the defendant could not with reasonable diligence have discovered and produced at the trial." Crim.R. 33(A)(6). When a motion for a new trial is based on newly-discovered evidence, such as the case here, the defendant must produce an affidavit of the witness from whom the newly-discovered evidence is expected to be provided that informs the trial court of the substance of the evidence to be presented if a new trial were granted. *State v. Thornton*, Clermont App. No. CA2008-10-092, 2009-Ohio-3685, ¶59; *State v. Holmes,* Lorain App. No. 05CA008711, 2006-Ohio-1310, ¶13. A trial court may weigh the credibility of the affidavits submitted in support of a motion for a new trial to determine whether to accept the statements in the affidavit as true. *State v. Beavers,* 166 Ohio App.3d 605, 2006-Ohio-1128, ¶20-21. In assessing the credibility of an affidavit, the trial court should consider all relevant factors. Id. at ¶20.

{¶77} In addition, to warrant the granting of a new trial based on newly-discovered

evidence, the new evidence must, among other things, disclose a "strong probability" that it will change the result if a new trial is granted. *State v. Barton,* Warren App. No. CA2005-03-036, 2007-Ohio-1099, ¶31; *State v. Hawkins* (1993), 66 Ohio St.3d 339, 350. The decision as to whether to grant a new trial on the grounds of newly-discovered evidence rests within the trial court's discretion, and the trial court's decision will not reversed absent an abuse of that discretion. *State v. Clark*, Warren App. No. CA2008-09-113, 2009-Ohio-2101, ¶24. An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Hancock*, 2006-Ohio-160 at ¶130.

{¶78} Appellant's motion for a new trial was based on an affidavit from Michael Douglass, who, as noted previously, pled guilty and was sentenced to life in prison for his involvement in Debnath's death. In his affidavit, which was given to appellant's trial counsel on June 12, 2008, Douglass claims that appellant was not in the room when he and Whitten, appellant's brother, robbed and killed Debnath. However, after careful review of the record, we find appellant failed to show that there was a strong probability that this new evidence would have changed the outcome of her previous trial. As noted above, there was overwhelming competent and credible evidence, including appellant's November 12 statement describing her involvement during the stabbing, to prove appellant actively participated in the robbing and killing of Debnath. Therefore, because appellant failed to show that there was a strong probability that this new evidence would have changed the outcome of her trial, the trial court did not err or abuse its discretion in overruling appellant's motion. Accordingly, appellant's tenth assignment of error is overruled.

{¶79} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.

[Cite as *State v. Rodriguez*, 2009-Ohio-4460.]