IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2006 Term

_____

No. 33035

_____

FILED
November 30, 2006
released at 10:00 a.m.
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA,
Plaintiff Below, Appellee

v.

RONNIE ALLEN RUSH,
Defendant Below, Appellant

Appeal from the Circuit Court of Calhoun County
The Honorable Thomas C. Evans, III, Judge
Criminal Case No. 04-F-26

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Submitted: October 3, 2006
Filed: November 30, 2006

Teresa C. Monk
Rocky D. Holmes
Deena Boyles
Public Defender Corporation
Spencer, West Virginia
Attorneys for the Appellant

Darrell V. McGraw, Jr.
Attorney General
Robert D. Goldberg
Assistant Attorney General
Charleston, West Virginia
Attorneys for the Appellee

The Opinion of the Court was delivered PER CURIAM.

JUSTICE MAYNARD dissents and reserves the right to file a dissenting opinion.

JUSTICE BENJAMIN concurs and reserves the right to file a concurring opinion.

SYLLABUS BY THE COURT

1. "Generally, findings of fact are reviewed [by this Court] for clear error and conclusions of law are reviewed *de novo*. However, ostensible findings of fact, which entail the application of law or constitute legal judgments which transcend ordinary factual determinations, must be reviewed *de novo*." Syl. Pt. 1, in part, *State ex rel. Cooper v. Caperton*, 196 W.Va. 208, 470 S.E.2d 162 (1996).

2. "The Court is constitutionally obligated to give plenary, independent, and *de novo* review to the ultimate question of whether a particular confession was obtained as a result of the delay in the presentment of a juvenile after being taken into custody before a referee, circuit judge, or a magistrate when the primary purpose for the delay was to obtain a confession from the juvenile. The factual findings upon which the ultimate question of admissibility is predicated will be reviewed under the deferential standard of clearly erroneous." Syl. Pt. 2, *State v. Hosea*, 199 W. Va. 62, 483 S.E.2d 62 (1996).

3. "Under W.Va. Code, 49-5-8(d), when a juvenile is taken into custody, he must immediately be taken before a referee, circuit judge, or magistrate. If there is a failure to do so, any confession obtained as a result of the delay will be invalid where it appears that

the primary purpose of the delay was to obtain a confession from the juvenile." Syl. Pt. 3, *State v. Ellsworth*, 175 W.Va. 64, 331 S.E.2d 503 (1985).

4. "[O]nce a defendant is in police custody with sufficient probable cause to warrant an arrest, the prompt presentment rule . . . is triggered." Syl Pt. 2, in part, *State v. Humphrey*, 177 W.Va. 264, 351 S.E.2d 613 (1986).

5. "Where there are substantial defects in the transfer hearing that go to the validity of the probable cause finding, we will reverse and remand the case for a further transfer hearing." Syl. Pt. 7, in part, *In the Matter of Mark E.P.*, 175 W.Va. 83, 331 S.E.2d 813 (1985).

Per Curiam:

This case involves the appeal of Ronnie Allen Rush (hereinafter referred to as "Appellant") of his conviction as an adult by a jury in the Circuit Court of Calhoun County of two counts of manslaughter, one count of first-degree robbery, one count of burglary and one count of conspiracy to commit burglary. Appellant claims that reversal is warranted on several grounds: failure to suppress statements obtained through prompt presentment violation and coercion; inappropriate transfer of the case from juvenile to criminal jurisdiction of the circuit court; refusal to set aside the verdict for first-degree robbery due to insufficient evidence; not returning the case to juvenile status when the jury failed to find Appellant guilty of the charges which elevated his case to adult status; and refusal to sentence Appellant as a juvenile. Having before us the petition for appeal, briefs of the parties and designated record of the proceedings and decisions below, this Court affirms the transfer of the case to the court's criminal jurisdiction but reverses the conviction on prompt presentment grounds.

I. Factual and Procedural Background

In the late night or early morning hours of May 14 and 15, 2003, sixty-nine year-old Warden Groves and his companion, sixty-year-old Mary Hicks, were murdered while asleep in separate bedrooms in Mr. Groves' house at Sand Ridge, Calhoun County,

West Virginia. Both were shot at close range with a shotgun. Appellant, who was sixteen years old at the time,[1] was present when the shooting occurred as he was an overnight guest at Mr. Groves' home. After the shooting, Appellant drove one of Mr. Groves' vehicles to his father's home less than a mile[2] away to telephone 911.[3] Appellant informed the 911 operator that two elderly persons had been shot and, although he was actually making the call to 911 from his father's trailer, he had been sleeping in an upstairs bedroom of the house where and when the shootings occurred.

As related in the record, law enforcement officers from the county sheriff's office and the State Police responded to the murder scene and discovered the bodies. A deputy sheriff was sent to the home of Appellant to request that he accompany the deputy to the crime scene. Appellant obliged the officer and they arrived at the crime scene around 2:00 a.m.; Appellant was left in the sheriff's car upon arrival. At some point before 3:30 a.m., the deputy sheriff returned to the vehicle to perform a gun residue test on Appellant at the request of Trooper Douglas Starcher of the State Police, which test later proved negative. Around 3:30 a.m., Trooper Starcher had Appellant move to his vehicle where he informed

---

[1]Appellant's date of birth is October 23, 1986.

[2]According to the record, Appellant's home was approximately three-tenths of a mile from Mr. Groves' house.

[3]The 911 service had a record of two phone calls about the incident from Appellant between 12:30 a.m. and 1:30 a.m. on May 15, 2003.

Appellant that he was not under arrest and free to leave before apprising Appellant of his *Miranda* rights. Following Appellant's waiver of rights, the trooper set up a tape recorder on the hood of his cruiser and proceeded to conduct and record[4] Appellant's interview outside of the vehicle. The interview lasted about forty minutes.[5] Afterward, Appellant waited in the State Police car while Trooper Starcher and the deputy sheriff returned to reinvestigate the crime scene in light of the explanations Appellant had provided during the interview. Trooper Starcher testified that there were troubling inconsistencies between the crime scene and facts related in Appellant's statement.

When Trooper Starcher returned to his car he drove Appellant to the Grantsville, West Virginia, State Police Detachment.[6] At around 6:00 a.m., another trooper, First Sergeant Dale Fluharty,[7] began questioning Appellant at the detachment after again

---

[4]The tape and its transcription were entered into evidence at the transfer hearing and the criminal trial.

[5]Trooper Starcher testified that during the taped interview he observed Appellant had a vertical red mark on his right interior shoulder, which is consistent with a mark left from a shotgun recoil, in addition to marks on his face that could be possible signs of being present when a shotgun is fired. Another trooper testified Trooper Starcher told him about these marks and that when he intentionally looked at these areas of Appellant's body at about 4:30 p.m. during his pre-polygraph interview he observed no marks in these locations.

[6]We take judicial notice that Grantsville, West Virginia, is located 13.3 miles from Sand Ridge, West Virginia. 2006 Google - Map data ©2006 NAVTEQ™.

[7]The record reflects that Trooper Fluharty had been at the crime scene around

(continued...)

informing Appellant of his *Miranda* rights. Appellant testified that Trooper Fluharty told him that he could leave at this time, but when Appellant started to leave Trooper Fluharty "asked me if I was getting smart with him and he would rip my F-ing head off" after which the trooper said that Appellant was not permitted to leave the detachment.[8] Although Trooper Fluharty's interview[9] lasted approximately two hours, no statement was taken allegedly because Appellant had agreed to take a polygraph test.[10] After Appellant consented to take the test he was moved to another office to await the arrival of the polygraph tester from the Fairmont area.

According to testimony, the State Police polygraph tester, Sergeant Karl Streyle, arrived at the detachment at 2:30 p.m. that day and met alone with Appellant. Trooper Streyle began the pre-test interview with Appellant which included providing

---

[7](...continued)
4:00 a.m. and had asked Trooper Starcher to transport Appellant to the Grantsville detachment. Trooper Fluharty drove separately to the detachment where he arrived around 5:50 a.m.

[8]Trooper Fluharty said that he did not threaten Appellant. The State Police polygraph tester who had been told about the threat by Appellant testified that he questioned Trooper Fluharty about his using profanity and otherwise intimidating Appellant and Trooper Fluharty shrugged and told the tester that he had no patience for interviewing any more.

[9]Trooper Fluharty testified that Trooper Starcher was intermittently present during this interview.

[10]Appellant informed the trooper who was to administer the lie detector test about the threatening and profane statements Trooper Fluharty had made.

Miranda warnings and completing a waiver of rights statement. During the course of the interview, Appellant said that he would probably fail the test if Trooper Streyle asked if he could truthfully respond to the question of who killed the victims. Appellant also asked Trooper Streyle if he could go home that evening because he was a juvenile and he had a paper stating that he was mentally retarded.[11] As reflected in the record, after knocking on the door where Trooper Streyle was interviewing Appellant, Trooper Fluharty entered the room very upset and told Appellant in a raised voice that new evidence had been found and warned Appellant to tell what he knew about what went on at the Groves house.[12] According to Trooper Streyle, immediately thereafter Appellant's demeanor changed and he appeared frightened and asked the trooper if he would ask Trooper Fluharty to return to the room to find out what the evidence was. Trooper Streyle left the room, asked Trooper Fluharty to calmly return to the interview room. Trooper Fluharty returned to the room and told Appellant that he was not sure about what evidence existed but that he should keep talking to Trooper Streyle. When Trooper Fluharty then left the room for a second time, Trooper

[11]The record contains two reports from court ordered evaluations which indicate that Appellant scored a 64 and a 69 on previous IQ tests, putting him at a low-moderate to mild mental retardation level. The reports also relate that Appellant had completed the ninth grade before quitting school but is functionally illiterate, with reading, writing and math skills at no more than the first grade level.

[12]The following is an excerpt from the testimony of Trooper Fluharty at the transfer hearing regarding what spurred him to become upset and interrupt the pre-polygraph interview: "Sergeant Cooper called and informed me that he had found some money in some vehicles that implicated Ronnie Rush and that, based on what he had found, Ronnie was definitely involved in this crime."

Streyle related that Appellant became very upset, stood up from his chair and indicated that he wanted an attorney before he talked with anyone else. After Appellant invoked his right to counsel and right to remain silent, Trooper Streyle stopped the pre-test interview; the official ending of the pre-test interview is reflected in the record as 5:00 p.m. According to Trooper Streyle's testimony,[13] he informed Trooper Fluharty and Trooper Starcher of Appellant's assertion of the rights to counsel and silence.[14] Trooper Streyle testified that he left the detachment about an hour after the interview ended and no trooper had approached or talked with Appellant during that time. Trooper Fluharty testified that at some point after the pre-test interview concluded he told Appellant that he was free to leave and he would take Appellant home, or he could wait at the detachment until the detachment commander, Sergeant Jeff Cooper, returned from speaking with the prosecutor. At the same time Trooper Fluharty informed Appellant that if he decided to leave and the prosecutor did advise that charges be filed then troopers would pick him up at his father's trailer later that evening. Appellant remained at the detachment.

[13] Trooper Streyle not only testified but he also was the author of memoranda admitted into evidence about what had occurred before, during and after the pre-test interview, including receiving a request from a fellow officer to omit from the routine report any mention of the fact that Appellant had asserted his right to counsel. An internal State Police investigation was conducted regarding these events.

[14] Trooper Starcher testified at the transfer hearing that Trooper Streyle did not inform him and Trooper Fluharty that Appellant had requested a lawyer; Trooper Fluharty testified at the transfer hearing that Trooper Streyle told him that Appellant wanted a lawyer.

It was established that Trooper Cooper arrived at the crime scene between 9:30 and 10:00 a.m. on May 15, 2003. After conducting a walk-through of the Groves house and speaking with officers at the scene, Trooper Cooper proceeded to the trailer of Appellant's father. Trooper Cooper collected guns and money at both residences and in vehicles parked at both locations.[15] Given the inconsistencies in Appellant's statements and the evidence he collected, Trooper Cooper testified that he believed he had sufficient cause to take Appellant into custody. Based on that conclusion, Trooper Cooper proceeded to try to locate the prosecutor, who was not in his office or reachable by cell phone, in order to obtain his opinion.[16] Trooper Cooper arrived at the detachment at about 7:45 p.m.,[17] and he told Appellant that based on the evidence he uncovered and a discussion with the prosecutor Appellant was under arrest for both murders and possibly robbery. Appellant became emotional after hearing about the charges and expressed his sorrow and love for the deceased

---

[15]Review of any determinations about the admissibility of this evidence is not before us in this appeal.

[16]The State maintains in its brief that Trooper Cooper began searching for the prosecutor at 6:00 p.m., but it was established that the basis for Trooper Fluharty interrupting the polygraph interview between 4:30 p.m. and 5:00 p.m. was that Trooper Cooper had called him about finding new evidence. Based on the testimony and written reports in the record of Trooper Streyle, it appears that Trooper Fluharty knew at this earlier time that Trooper Cooper had begun his search for the prosecutor. Trooper Cooper also testified at the pretrial hearing that he was trying to locate the prosecutor before he learned Appellant had refused to take the polygraph "[b]ecause I felt that we had uncovered enough evidence to go ahead and charge Mr. Rush."

[17]Trooper Cooper testified at the suppression hearing that he briefly stopped at the detachment to use the rest room or "switch cars" at different times during the day, including around 5:00 p.m.

victims. Trooper Cooper testified that while he knew through a phone conversation with Trooper Fluharty before he returned to the detachment that Appellant did not take the polygraph, he was not informed Appellant had asserted his right to silence and had asked for an attorney.[18] He went on to say that because he felt that Appellant's statement could be construed as some type of confession, he advised Appellant of his constitutional rights by reading the rights form statements to Appellant, and had Appellant initial each statement before signing the form to indicate that he agreed to waive his rights. After obtaining the rights waiver at 7:52 p.m., Trooper Cooper proceeded to conduct another tape recorded interview of Appellant, which concluded at 10:02 p.m.[19] During the interview, Appellant indicated that his first statement given to Trooper Starcher earlier that day was not entirely true. Trooper Cooper testified that no one had informed him at that juncture Appellant had invoked his right to counsel during the pre-polygraph interview, and that had he been so informed he would not have attempted to take a statement from Appellant.

[18]On cross examination during the pretrial hearing, Trooper Cooper said that he probably did tell the prosecutor that he feared Appellant was going to "lawyer up." He explained his fear was "[d]ue to the fact that he had refused to take a polygraph examination, I just became more wary that he might be refusing to cooperate anymore in the matter. I felt that it was urgent for us to take a stand, if we were going to."

[19]The tape or its transcription was not admitted into evidence during the transfer hearing; however, during the trial the jury heard this taped interview and received a copy of the transcribed audio tape.

Appellant was taken before the magistrate for an initial appearance at 11:00 p.m. The criminal complaint filed at that time charged Appellant with being an accessory to murder both before and after the fact. The case proceeded in circuit court as statutorily required where it was eventually transferred from the juvenile jurisdiction to the adult criminal jurisdiction of the circuit court.

Two weeks after the arrest, another trooper received a phone call from Appellant's father. Mr. Rush reported that while emptying the trash in the bathroom of his trailer he discovered a large sum of money[20] he could not account for hidden underneath the plastic bag lining the trash can. Mr. Rush testified at trial that he could not recall whether Appellant visited the bathroom the night of the murders before the police arrived to take his son back to the scene of the crime. In a statement he gave to the investigating trooper, Mr. Rush said he could not recall whether he had emptied the trash between the night of the murders and when he discovered the money.

The September 2004 Term of the Calhoun County Grand Jury returned an eight-count indictment against Appellant charging him with two counts of first-degree murder, one count of first-degree robbery, one count of nighttime burglary, one count of grand larceny, two counts of conspiracy to commit murder and one count of conspiracy to

[20]The amount of money found in the trash can was $2,732.

commit robbery. Appellant's trial began on December 13 and ended on December 22, 2004. The jury returned the verdict of guilty of two counts of the lesser-included offenses of voluntary manslaughter, one count of first-degree robbery, one count of nighttime burglary and one count of conspiracy to commit robbery. Appellant moved to be sentenced as a juvenile offender or, alternatively, that sentence be suspended and that he be confined at the Anthony Correctional Center. These motions were denied and the court sentenced Appellant on March 18, 2005, to fifteen years for each count of voluntary manslaughter, thirty-five years for first-degree robbery, one to fifteen years for burglary, and one to five years for conspiracy to commit burglary. With the exception of the conspiracy sentence, all sentences were ordered to be served consecutively. The petition for appeal was filed in this Court on October 11, 2005, and granted on March 2, 2006.

II. Standard of Review

The instant appeal presents assignments of error having varying standards of review. To the extent necessary, applicable standards of review will be set forth at the outset of our discussion of a specific alleged error. We simply note at this point that "[g]enerally, findings of fact are reviewed [by this Court] for clear error and conclusions of law are reviewed *de novo*. However, ostensible findings of fact, which entail the application of law or constitute legal judgments which transcend ordinary factual determinations, must be

reviewed *de novo*." Syl. Pt. 1, in part, *State ex rel. Cooper v. Caperton*, 196 W.Va. 208, 470 S.E.2d 162 (1996).

III. Discussion

Appellant's first contention is that the lower court erred by denying suppression of all of his out-of-court statements which Appellant maintains were obtained in violation of the prompt presentment rule. Appellant asserts that he was in custody or reasonably believed he was in custody from the time that he was taken to the murder scene by the sheriff's department. Appellant's challenge, therefore, extends to the admissibility of the statements he made to Trooper Starcher, Trooper Streyle and Trooper Cooper.

We examine this issue under the standard of review this Court announced in syllabus point two of *State v. Hosea*, 199 W.Va. 62, 483 S.E.2d 62 (1996), which states:

> The Court is constitutionally obligated to give plenary, independent, and *de novo* review to the ultimate question of whether a particular confession was obtained as a result of the delay in the presentment of a juvenile after being taken into custody before a referee, circuit judge, or a magistrate when the primary purpose for the delay was to obtain a confession from the juvenile. The factual findings upon which the ultimate question of admissibility is predicated will be reviewed under the deferential standard of clearly erroneous.

Consequently, our review in this case of whether the trial court properly decided to admit some or all of Appellant's inculpatory statements is de novo.

The applicable prompt presentment rule at issue appears in West Virginia Code § 49-5-8 (c)(4) (2006)[21] (2006 Supp.) as follows:

> (c) Upon taking a juvenile into custody, with or without a court order, the official shall:
>
> * * *
>
> (4) Take the juvenile without unnecessary delay before a juvenile referee or judge of the circuit court for a detention hearing pursuant to section eight-a [§ 49-5-8a] of this article: Provided, That if no judge or juvenile referee is then available in the county, the official shall take the juvenile without unnecessary delay before any magistrate then available in the county for the sole purpose of conducting such a detention hearing. In no event may any delay in presenting the juvenile for a detention hearing exceed the next day after he or she is taken into custody.

This Court addressed the meaning and consequences related to this statutory provision in syllabus point three of *State v. Ellsworth*, 175 W.Va. 64, 331 S.E.2d 503 (1985), by explaining that:

> [u]nder W.Va. Code, 49-5-8(d), when a juvenile is taken into custody, he must immediately be taken before a referee, circuit judge, or magistrate. If there is a failure to do so, any confession obtained as a result of the delay will be invalid

[21]The 1998 statutory provision in effect at the time relevant to the events in this case is the same as the current statute.

> where it appears that the primary purpose of the delay was to obtain a confession from the juvenile.

After recognizing that the underlying purpose of prompt presentment requirements is to provide meaningful protection for a defendant's constitutional rights, we stressed in *Ellsworth* that there is a heightened significance to this purpose in juvenile cases not only due to this population's immaturity but also because of the likelihood that a juvenile who commits a serious crime may be transferred to the court's criminal jurisdiction and tried as an adult. *Id*. at 69, 331 S.E.2d 507-508. With this in mind we undertake the twofold *Ellsworth* inquiry to determine: (1) when Appellant was placed in custody, and (2) whether the primary purpose for the delay in presentment to a judicial officer was to obtain a confession.

In *Ellsworth*, we also elaborated on the meaning of the term "custody" as it is used in West Virginia Code § 49-5-8 by stating that "[i]t is apparent from this section that the term 'custody' is equivalent to an arrest, that is, it must be based upon probable cause where the juvenile is being taken into custody for an act which if committed by an adult would be a crime." *Id.* at 70, 331 S.E.2d at 509. It is well established that an arrest by a law enforcement officer of either a juvenile or adult means detaining a person "by any act or speech that indicates an intention to take . . . [the person] into custody and . . . subject[] . . . [that person] to the actual control and will of the" arresting officer. Syl. Pt. 1, in part, *State v. Muegge*, 178 W.Va. 439, 360 S.E.2d 216 (1987), *overruled on other grounds, State v.*

Honaker, 193 W.Va. 51, 454 S.E.2d 96 (1994); *see also* Syl. Pt. 3, in part, *State v. Preece*, 181 W.Va. 633, 383 S.E.2d 815 (1989), *overruled on other grounds, State v. Guthrie*, 205 W.Va. 326, 518 S.E.2d 83 (1999) (an arrest or custodial detention equivalent to an arrest exists when "a reasonable person in the suspect's position would have considered his or her freedom of action curtailed to a degree associated with a formal arrest."). Essentially, "once a defendant is in police custody with sufficient probable cause to warrant an arrest, the prompt presentment rule is . . . triggered." Syl Pt. 2, in part, *State v. Humphrey*, 177 W.Va. 264, 351 S.E.2d 613 (1986). Appellant contends that the prompt presentment rule was implicated around 2:00 a.m. when the deputy drove him to the crime scene from his father's trailer, whereas the State contends that it was not until Appellant was actually arrested around 8:00 p.m. that prompt presentment issues arose. We cannot agree with either assertion.

There is no indication in the record that Appellant even subjectively felt he was under the control of an officer until he arrived at the State Police detachment when Trooper Fluharty threatened Appellant. Appellant testified that he willingly accompanied the deputy sheriff from his father's house and knew he was not under arrest. Additionally, Appellant admitted that he did not hesitate to undergo the gun residue test and had no problem with telling what happened at the Groves house to Trooper Starcher. Trooper Starcher testified as well that he informed Appellant that he was free to leave before he read the Miranda

warnings to the young man and subsequently took his statement. Moreover, probable cause to arrest Appellant did not exist when Trooper Starcher interviewed Appellant.

The first time Appellant related that he believed his freedom was curtailed was when he arrived at the State Police detachment around 6 a.m. It was at this time that Trooper Fluharty told Appellant he was free to leave but, as Appellant related, as soon as he began to leave the trooper used anger and profanity to intimidate him into staying. After this incident, Appellant participated in an unrecorded two-hour interview with Trooper Fluharty and agreed to take a polygraph test.

Based upon the foregoing, we find no evidence that Appellant was in custody at the time he gave his statement to Trooper Starcher.[22] However, we believe that the record establishes that statements Appellant made to Trooper Streyle and Trooper Cooper were inadmissible on prompt presentment grounds. Any reasonable person in Appellant's position would have believed they were subject to the actual control and will of law

[22]Appellant also contends that the statement he made to Trooper Starcher was inadmissible because it was not made voluntarily. We reach a contrary conclusion after applying the two prong analysis explained in *State v. Goff*, 169 W.Va. 778, 782, 289 S.E.2d 473, 476 (1982). First, Appellant was informed of his *Miranda* rights. The officer, aware of Appellant's reading and writing deficiencies, read the rights form to Appellant before asking him to sign the form, which Appellant did without hesitation. Secondly, there is no evidence of mental or physical coercion used by the officer in obtaining either of the statements so as to find that they were "not the product of the freewill" of Appellant. *Id*. at Syl. Pt. 2.

enforcement as a result of Trooper Fluharty's intimidating behavior. Appellant testified that he indeed felt threatened when this occurred around 6:00 a.m. at the State Police Detachment on May 15, 2003. "Once such custodial arrest of a juvenile has occurred, his right to be immediately taken before a judicial officer arises under W.Va. Code, 49-5-8 (d)[,]" unless the primary purpose in such delay in presentment was not to obtain a confession. *Ellsworth*, 175 W.Va. at 70, 331 S.E.2d at 509. The State bears the burden of proving that delay was not for the purpose of obtaining a confession. *In the Matter of Steven William T.*, 201 W.Va. 654, 661, 499 S.E.2d 876, 883 (1997).

The State contends that Appellant was free to leave the detachment at any time and that Trooper Fluharty even offered to take Appellant home. It is difficult to imagine that Appellant, or anyone in Appellant's shoes, would even consider trying to leave when a trooper had threatened him or her earlier for attempting to leave. It is even harder to believe that anyone would gladly accept an offer of a ride from, and in so doing being alone in a closed vehicle with, someone who had exhibited a volatile temper. It is not clear why Appellant did not call his father for a ride home, but it is clear that walking to his home was hardly an option since he lived over thirteen miles from Grantsville. Instead, Appellant stayed at the detachment and underwent two hours of questioning and complied with the request to undergo a polygraph test. As this Court has previously recognized, a person such as Appellant with an impaired mental condition has an increased susceptibility to

manipulation, influence and coercion. *State v. Goff*, 169 W.Va. at 784, 289 S.E.2d at 477. In short, the circumstances refute the State's contention that Appellant was free to leave the detachment. Moreover, there simply is no evidence that the excessive delay in taking Appellant before a judicial officer was for a reason other than to extract a confession from Appellant.

Absent proof by the State to the contrary, it appears from the totality of the circumstances in light of Appellant's juvenile status and mental impairment that the significant period of delay in this case was to elicit a confession from Appellant. Thus, the incriminating statements obtained from Appellant by Trooper Streyle at and after 2:00 p.m. and Trooper Cooper at and after 7:52 p.m. on May 15, 2003, as a result of the delay renders the statements inadmissible. The lower court's ruling to the contrary must therefore be reversed.[23]

The remaining error raised by Appellant which we will address[24] involves the trial court's decision to transfer this case to the court's criminal jurisdiction.[25] Relying on

---

[23]Based upon this determination, there is no need to separately address whether the incriminating statements were voluntarily made.

[24]In light of the disposition of this case, we find it unnecessary to address Appellant's assignments regarding trial and sentencing errors.

[25]The transfer of jurisdiction in juvenile cases is addressed in West Virginia (continued...)

syllabus points one, two and three of *In the Matter of Steven William T.*, 201 W.Va. 654, 499 S.E.2d 876 (1997), we summarized our standard for reviewing orders in juvenile-to-adult-jurisdiction transfer proceedings in *In re James L.P.*, 205 W.Va. 1, 3, 516 S.E.2d 15, 17 (1999) as follows: "[W]e apply the deferential, 'clearly erroneous' standard of review to factual findings by the circuit court; we review the circuit court's legal conclusions under the non-deferential, 'de novo' standard."

While somewhat unclear, it appears that Appellant's essential claim is that the trial court's probable cause finding is based upon the herein previously discussed statements Appellant claimed to be inadmissible and was made without adequate appreciation of Appellant's immaturity and mental deficiency.

---

[25](...continued)
Code § 49-5-10 (2001) (Repl. Vol. 2004), in which it is stated in pertinent part:

> (d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:
>
> (1) The juvenile is at least fourteen years of age and has committed the . . . the crime of murder under sections one, two and three, article two of . . . chapter [sixty-one of this code].
>
> * * *
>
> (g) The court may, upon consideration of the juvenile's mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction . . . .

The only statements of Appellant which were admitted into evidence and relied upon by the trial court during the transfer proceeding were those given to Troopers Starcher and Streyle. Even though we have found the statement given to Trooper Streyle inadmissible, we see no reason to find this flawed evidence fatal to the lower court's decision to transfer. It is only when "there are substantial defects in the transfer hearing that go to the validity of the probable cause finding . . . [that] we will reverse and remand the case for a further transfer hearing." Syl. Pt. 7, in part, *In the Matter of Mark E.P.*, 175 W.Va. 83, 331 S.E.2d 813 (1985). Even without the inadmissible statement, the trial court's twenty-eight page transfer order details sufficient evidence to support the lower statutory standard of probable cause. The transfer order also reflects that due consideration was given to Appellant's age and mental disability in light of all of the evidence before it. We find no abuse of discretion and the order transferring Appellant to adult jurisdiction is, therefore, affirmed.

IV. Conclusion

Based upon the above, the trial court's May 18, 2004, order transferring this case from juvenile to criminal jurisdiction is affirmed. However, we reverse the conviction obtained in the subsequent criminal trial due to the inadmissibility on prompt presentment

grounds of the statements Appellant made to law enforcement at and after 2:00 p.m. and at and after 7:52 p.m. on May 15, 2003. The case is remanded for a new trial.

Affirmed, in part, reversed, in part, and remanded.