Circuit Court for Prince George's County
Case No. JA210103

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 776

September Term, 2021

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IN RE: E.A.

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Graeff,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Arthur, J.

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Filed: July 14, 2022

The Circuit Court for Prince George's County, sitting as a juvenile court, found appellant E. "involved" in an assault in the first degree, an assault in the second-degree, wearing, carrying, or transporting a handgun, and using a handgun during the commission of a felony. Before the adjudicatory hearing, the court heard and denied E.'s motion to suppress the statements that he made during an interview with the police.

On appeal, E. presents the following question: "Did the juvenile court err in denying [E.]'s motion to suppress his statement[?]"

For the reasons we shall discuss, we affirm.

## BACKGROUND

E.'s 13-year-old-neighbor accused E. of pointing a gun at him and ordering him to get off his bike. In response to the accusation, Detective Ige of the Prince George's County Police Department obtained and executed a warrant to search E.'s home for firearms.

During that search, E., his mother, and at least one of E.'s siblings were inside of the home. The detective found no firearms, but had E. transported to the police station alone. In a video-recorded statement, E. admitted to having a loaded gun and to brandishing it at Z.[1]

[1] Inexplicably, the video-recording is not part of the record on appeal. The record does contain a transcript of the hearing on the motion to suppress, which indicates that there was a transcript of the custodial interrogation. Like the recording, however, the transcript of the interrogation is not part of the record on appeal.

The State charged E. with various offenses, including armed robbery; assault in the first and second degree; wearing, carrying, or transporting a handgun; and using a handgun in commission of a felony.

**A. The Motion to Suppress**

Before the adjudicatory hearing, E. moved to suppress the statements that he made to Detective Ige. In his motion, E. asserted that he did not knowingly and voluntarily waive his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966).

**B. The Detective's Testimony on Direct Examination**

At a hearing on the motion to suppress, Detective Ige testified on direct examination that he interviewed E. in a room at a police station. The detective sat at a round table, about two or three arms' lengths from E. E. was not handcuffed, and the detective was unarmed. There was no one in the room other than E. and the detective.

The detective testified that he advised E. of his rights, using a card that he received in his training. He specifically informed E. that he had the right to remain silent; that anything he said could be used against him; that he had the right to have an attorney present during the questioning; that he would be provided an attorney free of cost if he could not afford one; and that if he decided to give a statement, he had the right to stop at any time so that he could speak with a lawyer. The court watched a brief excerpt of a video-recording of the portion of the interview when the detective advised E. of his rights.

The detective asked whether E. understood his rights. He testified that E. responded by nodding his head and saying "'yeah' lightly.'" The detective asked again

whether E. understood his rights. E. nodded his head again and said "yeah." All told, the detective said, he asked three or four times whether E. understood his rights.

According to the detective, E. did not ask the detective to clarify or define any of the terms that he had used. Nor did E. ask any questions after the detective read him his rights.

The detective testified that his conversation with E. was "coherent." The detective noticed nothing unusual about E.'s manner of speech, and E. did not exhibit any characteristics of impairment. E. gave the detective no reason to suspect that he failed to understand what the detective was saying.

The detective asked whether E. had previously been detained by the police and whether he had previously been advised of his rights. E. responded that he had.

The detective denied that he made any threats, offered promises or inducements, or misrepresented E.'s rights.

According to the detective, E. did not request a lawyer before he made a verbal statement. The detective said that the entire interview took about 30 to 40 minutes.

**C. The Detective's Testimony on Cross-Examination**

On cross-examination, the detective agreed that E. waited in the room for at least an hour before the detective came in to speak with him. The detective acknowledged that he did not give E. a chance to talk to his mother.

The transcript and a recording of the interview establish that, about 20 minutes before the interview began, the detective stopped into the room and told E., "I want to talk to you about something that happened a couple of days ago but I just have to grab

some information from you and then I will come back and talk to you." At that time the detective obtained E.'s name and the name of his school and perhaps some other contact information.

When the detective returned, he told E. that he wanted to talk to him about the incident that occurred a few days earlier between E. and his neighbor. He told E.:

> I mean, you're a young dude, man. You get into a little bit of trouble, man. It is progressing and getting bigger and you know, bigger. You may want to buck that U-turn [sic] before you get into some serious trouble or get yourself hurt.

The detective added: "Right now, you are under arrest for first-degree assault, but I want to hear what your side has got to say because something has to change like now, bro."

Just before he read E. his rights, the detective told him: "Whatever you all got going on, you need to nip this in the bud here, like ASAP." The detective added: "[S]o before I do that, I want you to understand your rights."

The detective asked E. which school he attended, but did not know that E. attended what defense counsel characterized as a special education school. Nor did the detective know that E. had an individualized education plan or "IEP." Defense counsel later introduced the IEP, which apparently was several years old.

The detective confirmed that, whenever he gives *Miranda* warnings to a suspect, he reads the warnings from a card. He agreed that he did not show the card to E.

While he was giving E. the *Miranda* warnings, the detective did not pause after reading each of the individual rights to confirm that E. understood them. E. did not

respond in any way until the detective had finished reading him his rights. The detective did not ask whether E. wanted to discuss his rights with his mother.

The detective did not ask whether E. wanted to waive his rights. Instead, he asked whether E. understood his rights. E. never affirmatively stated that he wanted to waive his rights. When asked whether E. affirmatively stated that he wanted to talk to the detective, the detective responded, "He did talk to me."

The detective acknowledged that, under the Prince George's County Police Department's general orders, "special efforts" should be made to ensure that juveniles understand their rights. The detective interpreted that requirement to mean that he "should make sure that [a juvenile] clearly understand[s] what is going on."

Defense counsel cited a portion of the general orders that require that a suspect's responses to the *Miranda* warnings "be documented." The detective responded that he documented the responses in his report.

The detective agreed that the police department has an advice-of-rights form that contains spaces where suspects can indicate that they understand their rights or are willing to make a statement without a lawyer. The detective did not use that form with E.

At the end of the cross-examination, in an apparent effort to show that E. put up some resistance to the questioning, defense counsel established that E. told the detective, "I am not about to sit [inaudible] and talk shit about my brother."

**D. The Court's Decision**

The juvenile court denied the motion to suppress. Considering the totality of the circumstances, the court found that E. freely and voluntarily waived his *Miranda* rights.

The court specifically found that, despite E.'s age, there was "nothing remarkable" about the custodial interrogation. The court observed that E. was "not in handcuffs," that he was "not promised anything," that he was "not intimidated," that he reportedly "looked coherent," that he was "not confused," and that he was not "under the influence of any drug or alcohol or any other medication." On the basis of its review of the portion of the video in which the detective gave the warnings, the court found that the detective gave them "correctly" and that E. never "indicate[d] that he did not understand" the detective. The court also found that the detective did not talk "too fast" or "minimize" the "impact" of the warnings. The detective, the court found, used clear and unambiguous language and spoke, "at points," in the "vernacular of a 14 year old." The court found it significant that the detective "asked [E.] three or four times if he understood "the warnings, and [E.] verbally and non-verbally indicated that he did." The court also found it significant the detective "inquired into [E.]'s history" with the legal system and "was advised by the youth that he was familiar with the process." The court saw nothing to suggest that E. "did not know what a lawyer was or that he had a right to talk to a lawyer or that he had a right to remain silent." Similarly, the court saw nothing to suggest that E. "did not understand what the officer was saying."

While making these findings, the court acknowledged that E. "is 14 years of age with an IEP." The court found, however, "that the officer did take this into consideration."

The court rejected defense counsel's argument that E. was "intimidated by a police officer." That argument, the court said, was "belied" by E.'s statement that he would not

sit there and let [the detective] talk . . . disparagingly of his sibling." "[O]ne could reasonably deduce," said the court, that "[if] the 14 year old could stand up to a police officer in a custodial setting, or referring to a sibling, he can stand up for himself if he had any questions or [was] somehow confused by the Miranda warnings that were given."

In the midst of these findings, the court reiterated its conclusion "that [E.] understood what his rights were and that he knowingly and voluntarily waived those rights."

Thereafter, the court found that E. was involved in delinquent acts that, if committed by an adult, would constitute first- and second-degree assault, the use of a handgun in the commission of a felony, and wearing, carrying, or transporting a handgun. The court ordered E.'s placement at a residential treatment center.

This timely appeal followed.

## STANDARD OF REVIEW

When reviewing the denial of a motion to suppress, "we ordinarily consider only the evidence contained in the record of the suppression hearing." *Prioleau v. State*, 411 Md. 629, 638 (2009). We give the trial judge's fact and credibility determinations "great deference" and view the evidence "in the light most favorable to the State." *In re Joshua David C.*, 116 Md. App. 580, 592 (1997). Thus, "[w]e will not disturb the trial court's factual findings unless they are clearly erroneous." *State v. Wallace*, 372 Md. 137, 144 (2002). However, "this Court must make its own independent constitutional

determination as to the admissibility of the confession, by examining the law and applying it to the facts of the case." *In re Joshua David C.*, 116 Md. App. at 592.

**DISCUSSION**

The Fifth Amendment to the United States Constitution prevents persons from being compelled to be witnesses against themselves in a criminal case. The Fifth Amendment applies to the states through the Fourteenth Amendment. *See Malloy v. Hogan*, 378 U.S. 1, 7 (1964).

The Fifth Amendment's privilege against self-incrimination extends to persons who are subjected to custodial interrogation by law enforcement officials. *See Miranda v. Arizona*, 384 U.S. 436, 467 (1966). In *Miranda* the Supreme Court held that, before any questioning can occur in a custodial interrogation, suspects must be warned that they have a right to remain silent, that any statement they make may be used against them, and that they have a right to the presence of an attorney, either retained or appointed. *Id*. at 444. Suspects may, however, waive their *Miranda* rights, "provided the waiver is made voluntarily, knowingly and intelligently." *Id*.

The State "does not need to show that a waiver of *Miranda* rights was express." *Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010). "An 'implicit waiver' of the 'right to remain silent' is sufficient to admit a suspect's statement into evidence." *Id*. (quoting *North Carolina v. Butler*, 441 U.S. 369, 376 (1979)). "[A] waiver of *Miranda* rights may be implied through 'the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver.'" *Id*. (quoting *North Carolina v. Butler*, 441 U.S. at 373). "Where the prosecution shows that a *Miranda* warning was given and that

it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent." *Id*.; *accord In re Darryl P*., 211 Md. App. 112, 171 (2013) (stating that a waiver "need not be express, but may be inferred from the suspect's very behavior in making a statement after having received the *Miranda* advisements").

"In evaluating the validity of a waiver in a given case, [a] court must consider 'the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.'" *Gonzalez v. State*, 429 Md. 632, 651 (2012) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)). "This inquiry has 'two distinct dimensions.'" *Id*. (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)).

> "First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."

*Id*. at 652 (quoting *Moran v. Burbine*, 475 U.S. at 421).

"Only if the 'totality of the circumstances surrounding the interrogation' reveals 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. at 421 (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)); *accord Gonzalez v. State*, 429 Md. at 652.

Courts look to the totality of the circumstances "when determining the voluntariness of a juvenile's confession." *Moore v. State*, 422 Md. 516, 528 (2011). The totality of the circumstance includes:

> where the interrogation was conducted; its length; who was present; how it was conducted; its content; whether the defendant was given Miranda warnings; the mental and physical condition of the defendant; the age, background, experience, education, character, and intelligence of the defendant; when the defendant was taken before a court commissioner following arrest[;] and whether the defendant was physically mistreated, physically intimidated[,] or psychologically pressured.

*Hof v. State*, 337 Md. 581, 596-97 (1995) (citations omitted); *accord Madrid v. State*, 474 Md. 273, 321 (2021).

"[Y]outh" is "a crucial factor in determining, in the totality of the circumstances, whether the [juvenile defendant's] confession was voluntary under the due process clause of the Fourteenth Amendment." *McIntyre v. State*, 309 Md. 607, 618 (1987); *accord Moore v. State*, 422 Md. at 532. "[A] denial of parental access to a juvenile charged as an adult with a crime is a factor, and a very important one, in applying the totality of the circumstances test." *McIntyre v. State*, 309 Md. at 618 ; *accord Moore v. State*, 422 Md. at 532. Nonetheless, "the age of a juvenile, in itself, will not render a confession involuntary[.]" *Jones v. State*, 311 Md. 398, 407 (1988). Moreover, "lack of access to parents" will not "automatically make a juvenile's statement inadmissible." *Id*. at 407-08.

The State's burden "is not more than the burden to establish waiver by a preponderance of the evidence." *Berghuis v. Thompkins*, 560 U.S. at 384.

In view of the totality of the circumstances in this case, we are satisfied that the juvenile court did not err in concluding that E. knowingly and voluntarily waived his *Miranda* rights. The detective did not conduct the interview in an intimidating or coercive manner; he was alone with E.; he was unarmed; and he sat several feet away

from E., who was not handcuffed. The interview itself was of "brief duration," lasting only 30 to 40 minutes. *See McIntyre v. State*, 309 Md. at 623-24 (concluding that a juvenile's waiver of his *Miranda* rights was knowing and voluntary in part because the questioning lasted "less than an hour").

Furthermore, the detective accurately advised E. of his *Miranda* rights at the outset of the interview. Thereafter, the detective asked E. if he understood his rights. In response, E. indicated, on three or four occasions, that he did.

The evidence establishes that E. "looked coherent" during the interview and that he was "not confused or under the influence of any drug or alcohol or any other medication." The evidence also establishes that E. had prior experience with the juvenile justice system and had received *Miranda* warnings in the past. These factors, too, support the juvenile court's conclusion that E. knowingly and voluntarily waived his *Miranda* rights.

Nor are there any allegations of physical mistreatment, intimidation, or psychological pressure. The detective did not threaten E. or offer him any inducements. And, as the juvenile court observed, E. certainly did not appear to have been intimidated or unable to fend for himself when he defiantly told the detective that he was "not about to sit [inaudible] and talk shit about [his] brother."

In addition, E. made no requests at any point during the brief interview. In particular, E. did not ask to speak to his mother, and at no point did he ask to speak with a lawyer or to stop the interview.

"Tellingly," E. "did not testify at the suppression hearing that he did not understand his rights." *Madrid v. State*, 474 Md. at 326. "Therefore, we do not have even his word" that he did not understand his rights, or that he did not intend to waive them, or that his will was overborne. *See Lee v. State*, 418 Md. 136, 160 (2011).

In these circumstances, the juvenile court did not err in concluding that E. knowingly and voluntarily waived his *Miranda* rights.

In advocating for a contrary conclusion, E. argues, first, that the juvenile court erred in "finding that the detective considered E.'s special education needs." E. bases that argument on the following statement in the court's extemporaneous, oral ruling:

> All is true that this Respondent is 14 years of age with an IEP. I find that the officer did take this into consideration.

It is not entirely clear what the court meant when it said that the detective took "this" into consideration. Did it mean that the detective took E.'s age into consideration? Or did it mean that the detective took both E.'s age and IEP into consideration?

In context, it seems unlikely that the court meant that the detective considered both. The IEP was first mentioned only on cross-examination, when the detective candidly admitted that he was unaware of it. Moreover, in closing argument, just before the judge ruled, defense counsel stressed that the detective "did not check to see if [E.] had an IEP." It is difficult to believe that the court misunderstood a point that the defense counsel had stressed only moments before, especially given the court's strong grasp on the many other factual nuances of the case.

Nonetheless, even if we were to assume, solely for the sake of argument, that the judge erroneously found that the detective took both E.'s age and IEP into consideration, we would conclude that the error is harmless beyond a reasonable doubt. In the circumstances of this case, where there is no evidence of intimidation, coercion, threats, or inducements, where the detective accurately informed E. of his rights and confirmed that E. understood them before the questioning began, where E. was already familiar with his rights from a prior encounter with the juvenile justice system, and where E. evidenced his ability to stand up for himself during his encounter with the detective, whether the detective's knew or did not know of a two-year-old IEP is a detail of no importance.

E. also argues that, although the detective orally advised him of his rights, the detective did not allow him to read his rights on a written form. "An officer," however, "is not required to Mirandize a juvenile in writing." *Madrid v. State*, 474 Md. at 324. Indeed, the *Madrid* Court cited numerous cases that have found an adequate waiver of a juvenile's *Miranda* rights on the basis of oral warnings alone. *Id.* at 324-25 (citing *Fare v. Michael C.*, 442 U.S. at 710-11; *McIntyre v. State*, 309 Md. at 609; *Miller v. State*, 251 Md. 362, 365-67 (1968), *vacated in part on other grounds*, 408 U.S. 934 (1972); and *In re Darryl P.*, 211 Md. App. at 164-65).

E. argues that the detective "minimized the significance" of the warnings. He cites the following statement, which the detective made about 20 minutes before the interview began: "I want to talk to you about something that happened a couple of days ago but I just have to grab some information from you and then I will come back and talk to you." According to E., the detective's statement portrayed the *Miranda* warnings as a

"preliminary ritual" (*Miranda v. Arizona*, 384 U.S. at 476) or a "bureaucratic step" that does not "warrant the suspect's attention." Anthony J. Domanico, et al., *Overcoming Miranda: A Content Analysis of the Miranda Portion of Police Interrogations*, 49 Idaho L. Rev. 1, 8 (2012).

We disagree that the detective's statement "minimized the significance" of the warnings. In fact, the statement has nothing to do with the warnings. After telling E. that he needed to "grab some information," the detective obtained E.'s name, his contact information, and the name of his school. Then the detective left the room for 20 minutes, presumably to do something with the information that he had just obtained. In short, when the detective referred casually to "grab[bing] some information" from E., he was not talking about taking a statement from a suspect.

In addition to the detective's statement about grabbing some information and coming back, E. cites two other statements that, he says, minimized the warnings. First, just before he informed E. of his rights, the detective said, "I want to hear what your side has got to say because something has to change now, bro." Shortly thereafter, the detective said, "Whatever you all got going on, you need to nip this in the bud here, like ASAP, so before I do that, I want you to understand your rights." In his brief, however, E. does not explain how these statements served to minimize the significance of the warnings. Consequently, we need not consider the merits of that issue. *See, e.g.*, *In re D.M.*, 250 Md. App. 541, 560 n.4 (2021); Md. Rule 8-504(a)(6).

But even if we were to consider the issue, we would not conclude that the detective minimized the warnings, as E. claims. In *Madrid v. State*, 474 Md. at 328 n.10,

the Court of Appeals rejected a challenge to similar statements during the custodial interrogation of a juvenile who was suspected of committing a murder and an attempted murder. In that case, a detective prefaced the *Miranda* warnings by stating: "I'm gonna advi[s]e you of your rights ah, then we're gonna get into why you're here right now, understand?" *Id.* The detective added: "That's something you can tell me, were you threatened or what? Or did you want to do this, what was it?" *Id.* Although the first statement arguably assumed that the questioning would go forward once the juvenile had been advised of his rights, the Court of Appeals concluded that it was not "coercive" and that it "in no way indicated that Madrid was required to waive his rights." *Id.* "Similarly," the Court concluded, the detective's second statement, "about why Madrid participated in the murder and attempted murder," did "not demonstrate that he failed to properly advise Madrid of his Miranda rights or improperly induced Madrid to waive his rights." *Id.*

In this case, Detective Ige's challenged statements are no more objectionable than the statements in *Madrid*. The detective said that he wanted to hear E.'s side of the story "because something has to change now." The detective also said that E. "need[ed] to nip this in the bud[.]" The detective may have given E. reasons to waive his rights, but he did not convey the impression that E. was required to waive his rights. To the contrary, the detective stressed that he wanted E. "to understand [his] rights."

Much of E.'s brief involves an extensive comparison between what the detective did in this case and what the law enforcement officers did in other cases in which courts have held that suspects knowingly and voluntarily waived their *Miranda* rights. In

essence, E. argues that in other cases the officers did more to ensure a knowing and voluntary waiver than the detective in this case did. But to say that the detective could have done more in this case is not to say that he failed to do enough. *See Madrid v. State*, 474 Md. at 325.

Finally, E. attacks the ruling on the ground that the detective did not ask him whether he waived his rights, but only whether he understood his rights. He adds that he did not unambiguously waive his rights by nodding his head after the defendant asked whether he understood his rights. Yet, "[n]o case . . . holds that for a Miranda waiver to be given knowingly and voluntarily an officer interviewing a juvenile is required to obtain a specific response from the juvenile after each advisement or expressly re-ask certain questions to confirm the juvenile's waiver of rights" *Madrid v. State*, 474 Md. at 325. "Rather, case law uniformly requires that a determination as to voluntariness be based on the totality of the circumstances of the case." *Id*.

In this case, as in *Madrid*, E. "'gave no indication that he was confused" or that he "did not understand anything [the detective] had explained to him." *Id.* at 326 (quoting *Madrid v. State*, 247 Md. App. 693, 717 (2020), *aff'd*, 474 Md. 273 (2021)). E., like Madrid, "replied in the affirmative when [the detective] asked him whether he understood the rights that had just been read to him." *Id*. (quoting *Madrid v. State*, 247 Md. App. at 717). "And, in the answers [he] gave to questions posed immediately before and immediately after the *Miranda* advisement," E., like Madrid, "responded appropriately, giving no indication that he was having any difficulty understanding the detective's statements." *Id*. (quoting *Madrid v. State*, 247 Md. App. at 717).

As previously stated, a waiver "need not be express, but may be inferred from the suspect's very behavior in making a statement after having received the *Miranda* advisements." *In re Darryl P.*, 211 Md. App. at 171. Viewing the totality of the circumstances of this case, we conclude that the juvenile court did not err in finding that E. knowingly and voluntarily waived his *Miranda* rights.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, SITTING AS THE JUVENILE COURT, AFFIRMED. COSTS TO BE PAID BY APPELLANT.**