Circuit Court for Prince George's County
Case No. JA-17-0124

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 861

September Term, 2017

IN RE: J.M.

Berger,
Arthur,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 14, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case involves a decision by the Circuit Court for Prince George's County, sitting as a juvenile court, to deny a motion to suppress evidence in a case against J.M., a juvenile. After a hearing, J.M. was adjudicated involved in wearing, carrying, or transporting a handgun, possessing a regulated firearm under the age of 21, and possessing a deadly weapon on school property. A disposition hearing was held on June 2, 2017. J.M. was found to be a delinquent in need of treatment and placed on an indefinite period of supervised probation with conditions. This timely appeal followed.

QUESTIONS PRESENTED

J.M. presents the following questions for our consideration:

> I. Whether the juvenile court erred in denying J.M.'s motion to suppress a statement obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966).
>
> II. Whether the juvenile court abused its discretion in refusing to reopen the motion to suppress to permit questioning about the circumstances of J.M.'s interview with police officers.

For the reasons set forth below, we shall affirm.

FACTUAL BACKGROUND

In January 2017, Oliver Bridges, Jr. was the program coordinator at the Green Valley Academy, an alternative public school in Suitland. According to Bridges, students were not permitted to have book bags or backpacks anywhere in the school. On January 19, 2017, Bridges observed two students with backpacks, one of whom was sixteen-year-old eighth grader J.M., who had enrolled in the school at the end of October 2016. While in the front lobby of the school, with a clear view of the lockers, which were about 8 feet

away, Bridges watched as J.M. placed the black backpack that he was carrying into his locker. At about 10:15 or 10:20 a.m., J.M. removed that backpack from his locker and gave it to another student, K.G., who put it in his locker. Less than 20 minutes later, K.G. opened his locker and removed a jacket.

About 15 to 20 minutes after the backpack was placed in K.G.'s locker, Green Valley Academy's in-school suspension facilitator, Eukali McClain, the school's "I.C." or school resource officer, Myra Saunders,[1] and Bridges searched the locker. They found two backpacks, a blue one that was empty and a black one that appeared to contain items. After feeling the outside of the black backpack, McClain concluded that it might contain a gun. Bridges and Saunders stayed by the locker while McClain took the backpack to the cafeteria where there were no students or school personnel nearby. McClain opened the backpack and removed a handgun, an extra clip, ammunition, a pill bottle, and a drug-like substance. J.M.'s name did not appear on the backpack or on anything inside it. McClain gave the items found in the backpack to Saunders.

[1] Saunders is referred to in the record as an "I.C." and as a school resource officer, but neither term was defined in the record below. Relying on information found on a Prince George's County Schools' web page, the State asserts that the abbreviation "I.C." stands for "Investigative Counselor" and asks us to take judicial notice of that fact. J.M. directs our attention to a Prince George's County Schools' web page explaining the role of "Investigators/Counselors" and suggests that we take judicial notice of the role of such an employee. We decline to take judicial notice of the meaning of the abbreviation "I.C." or the role of a person with that title. As explained more fully, *infra*, regardless of Saunders' actual job title and job description, the record before us does not contain sufficient evidence to establish that J.M. was subject to a custodial interrogation.

Saunders described the gun as a 9 millimeter Glock. She took it to her office and called Prince George's County Police Officer Brian Butler, who arrived at the school a short time later. Officer Butler and Saunders reviewed the school's surveillance video from the locker area beginning at the time J.M. had the backpack in the lobby until the time the locker was searched.[2] Thereafter, Officer Butler and Saunders, both of whom were wearing uniforms, went to the principal's office. Bridges also went to the principal's office. There was some dispute as to whether Bridges or Saunders's assistance brought J.M. to the principal's office, but there was no dispute that J.M. was present. Bridges could not recall whether J.M. was read his *Miranda*[3] rights, but testified that J.M. "identified the book bag as his."

At some point, Officer Butler checked the serial number on the gun and determined that it had been stolen. He also had the gun test fired and determined that it operated properly.

We shall include additional facts as necessary in our discussion of the questions presented.

[2] The State provided defense counsel with surveillance footage for the period between 9:21 and 9:35 a.m., but did not provide any footage for the period from 9:35 a.m. to the time of the search. Defense counsel filed a pretrial motion seeking to have the court exclude testimony about the missing video footage and the court granted a continuance to allow the State time to obtain the missing portion of the video. At the adjudicatory hearing, the State informed the court that the missing footage had not been preserved. The court denied a defense motion to exclude testimony about the missing portions of the recorded video. The portion of the recorded video that was provided to the defense was admitted in evidence.

[3] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

DISCUSSION

I.

J.M. contends that the circuit court erred in denying his oral motion to suppress his statement claiming ownership of the backpack in which the gun was found because it was obtained in violation of his rights under *Miranda*. We disagree and explain.

When reviewing a juvenile court's ruling on a motion to suppress, we review only the "facts and information" from the suppression hearing and accept the court's factual findings unless clearly erroneous. *Smith v. State,* 414 Md. 357, 361 (2010). The court's legal conclusions, on the other hand, are reviewed *de novo*, and we make "our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case[.]" *Id*.

Miranda rights are applicable to juveniles in delinquency proceedings. *See In re Joshua David C.*, 116 Md. App. 580, 594 (1997). "It is a basic principle that a statement taken during custodial interrogation conducted before a defendant is informed of his or her *Miranda* rights may not be used by the State in its case in chief against the defendant." *Drury v. State*, 368 Md. 331, 335 (2002). Although it has been recognized that any police interview of an individual suspected of a crime has "'coercive aspects to it,'" the *Miranda* requirements apply only to custodial interrogation. *State v. Thomas*, 202 Md. App. 545, 565 (2011) (quoting *J.D.B. v. North Carolina*, 564 U.S. 261, 268-69, 131 S.Ct. 2394, 2401-02 (2011)). "'[B]efore a defendant can claim the benefit of *Miranda* warnings, the defendant must establish two things: (1) custody; and (2) interrogation. The burden of

'showing the applicability of the *Miranda* requirements,' *i.e.*, that there was custody and interrogation, is on the defendant.'" *Thomas*, 202 Md. App. at 565.

Bridges was the first witness to testify during the adjudicatory hearing. On direct examination, the State showed him a photograph of a book bag and asked if he knew the person to whom it belonged. Bridges replied that J.M. had "identified the book bag as his." Defense counsel objected to the admission of any statement made by J.M. and requested an opportunity to *voir dire* Bridges to determine whether "the statements were properly obtained, if they were obtained in a custodial setting, if warnings were provided before these statements were given, [and] the circumstances surrounding the statement[.]" The court permitted defense counsel to question Bridges.

During that questioning, Bridges testified that he went to J.M.'s classroom to find J.M. and take him to the principal's office. Saunders and Officer Butler were already in the principal's office when they arrived and Officer Butler was wearing a uniform. Bridges testified that Saunders questioned J.M., but he could not recall if either Saunders or Officer Butler advised J.M. of his *Miranda* rights. Defense counsel questioned Bridges, in part, as follows:

> [DEFENSE COUNSEL]: And you didn't tell J.M. that he was free to leave the principal's office, did you?
>
> [BRIDGES]: I'm not understanding what you're asking me for.
>
> [DEFENSE COUNSEL]: If J.M. had tried to walk out of the room, you would have stopped him?
>
> [BRIDGES]: No.

> [DEFENSE COUNSEL]: No, so –
>
> [BRIDGES]: I mean that's not my position.
>
> [DEFENSE COUNSEL]: So you brought J.M. into the principal's office?
>
> [BRIDGES]: Correct.
>
> [DEFENSE COUNSEL]: And you didn't tell him that he could leave whenever he wanted?
>
> [BRIDGES]: No.

Defense counsel asked the court to suppress "any statements" that were made in the principal's office while both Saunders and Officer Butler were present because J.M. was "in a custodial setting when being questioned by law enforcement in a school," and there was no evidence that he had been advised of his *Miranda* rights. The State countered that J.M. was not in custody because he was questioned by Saunders, who was a school resource officer not employed by the police department, and the mere presence of Officer Butler did not convert the meeting in the principal's office into a custodial situation. Alternatively, the State argued that the public safety exception would allow for identification of the owner of the backpack even if J.M. was found to be in a custodial setting.

The juvenile court denied the motion to suppress J.M.'s statements, stating:

> The Court finds that it has not been established, one, that the Respondent was not treated – that a reasonable person wouldn't be free to leave. The testimony is that he was taken to the office by the witness, I.C.J. person was there as well as an Officer was there.
>
> The witness was asked a hypothetical if he were asked to leave would he have been free to leave and he said – would he have stopped him, he said no. But that's really all that was

> explored in this case. No testimony regarding the Respondent's age or knowledge or prior, if any prior contact in this case, and there, there wasn't also any discussion as to if at all what, how the statements, if any, who posed any of the questions, so the Court is not convinced
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> * * *
>
> -- looking at the totality of the circumstances that the Respondent was a reasonable person in the Respondent's situation would not feel he was free to leave by a State agent, nor whether the, in this case, so the Court is going to deny the motion that the statements were not freely and voluntarily made.

Subsequently, during Officer Saunders's testimony, defense counsel sought to question her about the meeting with J.M. in the principal's office. The following colloquy occurred:

> [DEFENSE COUNSEL]: Your Honor, as a part of my motion to suppress I will need to ask Officer Saunders –
>
> THE COURT: You already had your motion to suppress. We're at a hearing; it was denied.
>
> [DEFENSE COUNSEL]: Your Honor, at the time it was denied, given the testimony of one witness, I believe that there are additional –
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> THE COURT: You chose to –
>
> [DEFENSE COUNSEL]: -- witnesses.
>
> THE COURT: You chose to do it at that point.
>
> [DEFENSE COUNSEL]: No,Your Honor, I, I'm renewing again my motion because there were multiple people present in that room –
>
> THE COURT: Right.
>
> [DEFENSE COUNSEL]: -- when the statements were taken.

THE COURT: But you chose to make your argument at that point –

[DEFENSE COUNSEL]: Your Honor, I didn't chose [sic] to make my argument –

THE COURT: -- and I heard you.

[DEFENSE COUNSEL]: -- based on what the witness said at that time. I argued that there was a custodial setting, but Your Honor –

THE COURT: And I denied the motion.

[DEFENSE COUNSEL]: -- said that there are additional witnesses could provide a basis for a finding that there was a custodial interrogation.

THE COURT: But you chose to do it at that time.

[DEFENSE COUNSEL]: I did not waive the, the motion, Your Honor, I –

THE COURT: No, you –

[DEFENSE COUNSEL]: I argued based on the testimony of the witness –

THE COURT: Right –

[DEFENSE COUNSEL]: -- that there was.

THE COURT: -- we had a witness, you made your argument and I denied the motion.

[DEFENSE COUNSEL]: Your Honor, I only raised an objection to the witness talking about statements that we had not yet understood whether or not they were properly admitted, so I argued then based on that witness, witness' testimony.

> THE COURT: You don't argue after each witness, you chose to make your argument, you actually produced case law as part of your argument.
>
> [DEFENSE COUNSEL]: And I'm renewing that again, Your Honor, because we need, we require additional witnesses to get to whether there was a custodial interrogation.
>
> THE COURT: The motion was already ruled on and denied.
>
> [DEFENSE COUNSEL]: Your Honor, I'm objecting again that we need to question additional witnesses to understand whether those statements were –
>
> THE COURT: Denying your motion to renew.
>
> [DEFENSE COUNSEL]: Your Honor, the motion was heard as a part of trial; therefore, if it were, if it were done prior to trial Your Honor would have heard multiple witnesses as to whether there was a custodial –
>
> THE COURT: I've already made my decision.
>
> [DEFENSE COUNSEL]: -- setting.
>
> THE COURT: Do you have any more questions for this witness?
>
> [DEFENSE COUNSEL]: I do have questions about, that go to the statements, Your Honor.
>
> THE COURT: I've already ruled on that.
>
> [DEFENSE COUNSEL]: Well then I have nothing further.

Thereafter, during cross-examination of Officer Butler, defense counsel inquired as to whether J.M. was questioned in the principal's office. The State objected on the ground that the question was not relevant and was "an apparent back door attempt to challenge a motion to suppress" that the court had already ruled on twice. Defense counsel explained

that she was renewing the motion to suppress and proffering that Officer Butler would testify that J.M. "was questioned in his presence in the principal's office where he was not free to leave and that any statements that were made" in the office when Officer Butler and Saunders were present should be suppressed. The court stated that it had "already ruled on that motion" and denied it again. Defense counsel noted her objection.

J.M. argues that he was subjected to a custodial interrogation because he was removed from his classroom and questioned in the principal's office by a uniformed school police officer in the presence of another uniformed police officer, and was not told he was free to leave. According to J.M., a reasonable person of his age would have felt bound to submit to police questioning. He maintains that the custody requirement was satisfied, an interrogation was established, and, as he was not advised of his *Miranda* rights, his statement should have been suppressed. We disagree and explain.

"A determination of whether custodial questioning has occurred requires, in the first instance, a finding that the defendant was in 'custody,' as that term is defined in the *Miranda* opinion." *Arguetta v. State*, 136 Md. App. 273, 282 (2001) (citations omitted). "Although the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, *the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest.*" *Smith v. State*, 186 Md. App. 498, 529 (2009) (quoting *California v. Beheler*, 463 U.S. 1121 (1983)) (emphasis in *Smith*). Facts that may be relevant to a custody determination include:

> "when and where [the interrogation] occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation [such as] whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant as a reasonable person, would have felt free to break off the questioning."

Brown v. State, 452 Md. 196, 210-11 (2017) (quoting *Thomas v. State*, 429 Md. 246, 260-61 (2012) (citations omitted)). In regard to juveniles,

> we have added the caveat that it is reasonable … for courts to apply a wider definition of custody for *Miranda* purposes. Indeed, in determining whether a juvenile's statement was made while in custody, the court must consider additional factors, such as the juvenile's education, age, and intelligence.

In re Joshua David C., 116 Md. App. at 594 (internal quotations and citations omitted).

As our review of the juvenile court's denial of J.M.'s motion to suppress is limited to the facts and information from the suppression hearing, *Smith v. State*, 414 Md. at 361, we limit our review to defense counsel's *voir dire* of Bridges and the arguments based on that testimony in support of the motion to suppress. Bridges stated that he retrieved J.M. from his classroom and escorted him to the principal's office and that Saunders and Officer Butler were already there. Officer Butler was wearing a police uniform, but Bridges could not recall if he had a gun. According to Bridges, Officer Butler and Saunders were in the principal's office to maintain a safe environment. Bridges did not tell J.M. that he could

leave the office if he wished, but testified that J.M. was free to leave and that if he had tried to walk out of the office, Bridges would not have stopped him. According to Bridges, Saunders asked J.M. questions. Bridges was not sure if either Saunders or Officer Butler advised J.M. of his *Miranda* rights.

The record of the suppression hearing in the instant case reveals that J.M. failed to establish that he was in custody for purposes of *Miranda*. There was no evidence concerning J.M.'s age, education, or intelligence, other than the undisputed fact that the events occurred at Green Valley Academy. There was no evidence as to how long J.M. was in the principal's office, how long Saunder's questioned J.M., what Officer Butler, Saunders and others said and did, where J.M. was positioned in the room and whether he was restrained, whether Officer Butler or Saunders was stationed at the door to the office, or how the meeting ended and how J.M. left. Simply put, J.M. failed to meet his burden of showing a custodial situation.

Even if it had been established that J.M. was in custody while in the principal's office, he failed to establish that he was interrogated. The term "interrogation," as it is used in *Miranda*, is not limited to express questioning, but also includes "its 'functional equivalent.'" *Drury*, 368 Md. at 336 (quoting *Rhode Island v. Innis*, 446 U.S. 291 (1980)).

> That is to say, the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police. This focus reflects the fact that the *Miranda* safeguards were designed to vest a suspect in custody with an added

> measure of protection against coercive police practices, without regard to objective proof of the underlying intent of the police.

Id.

As noted above, there was no evidence of the questions posed to J.M. in the principal's office or of any actions on the part of Officer Butler, Saunders, or anyone else. As a result, J.M. failed to meet his burden of establishing that a custodial interrogation occurred which triggered the mandates of *Miranda*.

II.

J.M. contends that the juvenile court abused its discretion in refusing to reopen the motion to suppress to permit questioning of Saunders and Officer Butler about the circumstances of J.M.'s interview in the principal's office. We disagree.

As J.M. recognizes, the Maryland Rules governing juvenile causes make no provision for motions to suppress or the reconsideration of such motions.[4] Trial judges, however, are entrusted with broad discretion "to control the flow of the trial and the reception of evidence," *Muhammad v. State*, 177 Md. App. 188, 273-74 (2007), *cert. denied*, 403 Md. 614 (2008), and a decision to reopen a suppression hearing falls within the discretion of the trial judge. *Marr v. State*, 134 Md. App. 152, 179 (2000), *cert. denied*,

[4] Maryland Rule 4-252(h)(2)(C), which applies to proceedings in the circuit court, provides that if a court "denies a motion to suppress evidence, the ruling is binding at the trial unless the court, on the motion of a defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing de novo and rules otherwise." Maryland has adopted a separate system for juvenile offenders that is civil in nature. *In re Victor B.*, 336 Md. 85, 91 (1994); *see also In re Areal B.*, 177 Md. App. 708, 714 (2007) ("Juvenile causes are civil, not criminal proceedings) (citation omitted). The criminal rules of procedure are not applicable to juvenile proceedings. *In re Victor B.*, 336 Md. at 96.

362 Md. 623 (2001). Where the decision or order of a trial court is a matter of discretion, it will not be disturbed on review absent an abuse of that discretion. *Bazzle v. State*, 426 Md. 541, 549 (2012) (and cases cited therein). An abuse of discretion has been described as discretion that is manifestly unreasonable, exercised on untenable grounds or for untenable reasons. *Id.* It has also been described as "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Renbaum v. Custom Holding Inc.*, 386 Md. 28, 43 (2005) (quoting *In re Yve S.*, 373 Md. 551, 583-84 (2003)).

In the instant case, the juvenile court acted well within its discretion in prohibiting the defense from revisiting the suppression issue as each witness who was present in the principal's office testified. Moreover, even if the juvenile court's refusal to revisit the suppression issue constituted error, it would be harmless beyond a reasonable doubt. *Dorsey v. State*, 276 Md. 638, 659 (1976); *In re Owen F.*, 70 Md. App. 678, 685-86 (1987) (harmless error analysis applied to juvenile cause). The surveillance video recordings and testimony from various witnesses established that J.M. brought the book bag to school, exercised control over it and its contents, and placed it into the locker of another student, from which it was recovered. That evidence alone, without J.M.'s statement, would have been sufficient to find him involved in the delinquent acts with which he was charged. The juvenile court expressly noted this when it explained:

> And also the Court finds that even subject to the admission as to ownership of the book bag, with the video, the video that was admitted and the testimony thereafter, there was still sufficient information that the black book bag that the Respondent was carrying and handed off to [another student]

> and for the aforestated reasons still would be sufficient evidence to find the Respondent responsible, involved in all counts, even without the admission that was made in the office.

We, therefore, affirm the judgments of the circuit court, sitting as a juvenile court.

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