Circuit Court for Harford County
Case No. C-12-CR-18-000442

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 715

September Term, 2020

JAYLIN JEROME BROWN

v.

STATE OF MARYLAND

Graeff,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: May 23, 2022

Appellant Jaylin Jerome Brown was convicted in the Circuit Court for Harford County of Second-Degree Specific Intent Murder, First-Degree Assault, Use of a Firearm in the Commission of a Felony or Crime of Violence, and Possessing a Firearm while Under the Age of Twenty-One. He presents the following questions for our review:

> "1. Did the lower court err in failing to ask Mr. Brown's requested *voir dire* questions?
>
> 2. Did the lower court err in permitting the State's firearms examiner to offer an unqualified opinion in this case?
>
> 3. Did the lower court err in excluding Mr. Brown's proposed expert from testifying concerning the scientific flaws and documented error rates in firearms and toolmark identification evidence?
>
> 4. Did the lower court err in finding (a) that Mr. Brown's statement was not the impermissible product of promises and inducements, where he was told that providing a helpful, cooperative, and remorseful statement would 'go[] a long way in a jury's mind'; and (b) that Mr. Brown knowingly and voluntarily waived his right against self-incrimination?"

As to question one, the State agrees with appellant that, under *Kazadi v. State*, 467 Md. 1 (2020), the circuit court erred in failing to ask the requested *voir dire* questions about the burden of proof, presumption of innocence, and the defendant's right to remain silent. Accordingly, we shall reverse and remand this case for a new trial. The State also agrees that, on remand, the trial court should consider the admissibility of expert testimony pursuant to the standards set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509

U.S. 579 (1993), and *Rochkind v. Stevenson*, 471 Md. 1 (2020).[1] We shall also vacate the ruling denying appellant's motion to suppress his statement and remand the issue to the circuit court to reconsider whether the statement was admissible.

I. Background and Facts

Appellant was indicted by the Grand Jury for Harford County. He was convicted by a jury and the circuit court imposed a total term of incarceration of sixty-five years, forty-five years suspended.[2]

This case arises from the death of Thailek Willis on August 3, 2018. At trial, the State alleged that appellant murdered Mr. Willis.

On August 3, 2018, members of the Harford County Sheriff's Office found Mr. Willis in the driver's seat of a vehicle at the scene of a shooting. He had no signs of life. Two shell casings were recovered nearby. A bullet was recovered from Mr. Willis's body during an autopsy.

[1] Because the parties agree that the trial court erred in declining to ask required *voir dire* questions, and that the firearms expert issues will be analyzed under the newly adopted *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), standard, we omit any facts related to those questions.

[2] The circuit court imposed the following sentences: forty years, twenty-five suspended, for Second-Degree Murder; twenty years, consecutive, fifteen suspended, for Using a Firearm in the Commission of a Felony or Crime of Violence; and five years, suspended, for Possessing a Firearm while Under the Age of Twenty-One. For sentencing purposes, the First-Degree Assault conviction merged with the Second-Degree Murder conviction.

Three days after the shooting, appellant was arrested at gunpoint by between twenty and thirty officers of the Harford County Sheriff's Office. While in custody, appellant made a statement to the sheriffs. Appellant filed a pre-trial motion to suppress his statement. We set forth the facts as presented at the suppression hearing.

At the time of this incident, appellant was fifteen years of age. His parents repeatedly tried to contact the sheriff's office to see their child, but they were not permitted to meet with him. Two detectives told appellant that they wanted to get his side of the story. They gave him food and water, and then they explained that they were investigating a homicide at Edgewood High School, that there was a warrant for appellant's arrest, that he was being charged as an adult with first-degree murder, that he was going to go to jail that day, and that there was "nothing" they could "do about that."

The sheriffs gave appellant a sheet of paper containing his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). They also read those rights to him. They asked him whether he understood, and he replied "not really." The detectives then re-explained his rights. They stressed that talking with them was "clearly up to" appellant. The following conversation then ensued:

> "[APPELLANT]: Yeah, I feel what you saying.
>
> DET. BERG: Okay. So you understand what I've told you?
>
> [APPELLANT]: Yeah.
>
> DET. BERG: What you've read? Okay, here's a pen just check the appropriate box . . . you understand what I just told you. Put your initials in that box.

DET. PILACHOWSKI: What'd you mark?

[APPELLANT]: Yeah.

DET. BERG: Are you willing to talk to me after being advised of your rights?

[APPELLANT]: What you mean?

DET. BERG: Are you willing to talk to us; you wanna talk tonight?

DET. PILACHOWSKI: We'd like your side of the story Jaylin. Stories are being told but only you know what you know. The . . . other people put words in your mouth.

DET. BERG: We've already spoken with people. People that were there that night, people that identified you as being there that night; we just wanna get your side of the story of what happened. I think it's my stomach.

DET. PILACHOWSKI: And mine.

DET. BERG: Yeah; sorry. You're also the first of 2 people that we're talking to.

[APPELLANT]: I don't got nothing . . .

DET. BERG: So you're willing to talk to us after being advised of your rights?

[APPELLANT]: Yeah.

DET. BERG: Okay. Have any threats, promises, force . . . duress been used to have you talk to us? Have we forced you to talk to us? And what'd you check off?

[APPELLANT]: Mm?

DET. BERG: What box did you check?

[APPELLANT]: No.

> DET. BERG: Okay. And can you sign where it says signature of person being advised?
>
> [APPELLANT]: I don't even know how to write cursive.
>
> DET. BERG: How old are you?
>
> [APPELLANT]: 15.
>
> DET. BERG: Did, did they stop teaching cursive in school? They didn't teach you guys? What year did they stop teaching that?
>
> DET. PILACHOWSKI: It's not too long ago.
>
> DET. BERG: Alright.
>
> [APPELLANT]: When I was going to the 3rd grade.
>
> DET. BERG: Okay. And Detective Pilachowski is gonna sign here in the witness box. Alright, what happened Friday night?
>
> [APPELLANT]: (Inaudible) know. Mm . . . I don't know for real.
>
> DET. BERG: Something bad happened and I don't think it was meant to happen. Somebody died that night; they're never coming home. I had to go tell their mom and dad at 02:30 in the morning that their son was murdered; shot. Shot in the back. Bullet went through . . . bullet went through shoulder, through a lung and into his heart.
>
> [APPELLANT]: Mm mm . . . that don't make sense . . . . Went (inaudible)."

The detectives asked appellant whether he knew someone named "Yotti" and whether and how that person was involved in Mr. Willis's death. The detectives asked

appellant about his living situation, family, hobbies, and what he was doing on the night Mr. Willis died. They told appellant as follows:

> "DET. BERG: And we know that sometimes things happen. We, we do this for a living. We talk to people every day and we know sometimes people do things and things get a little out of control and unexpected things happen. It doesn't mean you're a bad person. It just means something bad happened. And it's all in what you do after that happens. And being honest and up front, this stuff we all, already know is gonna look a lot better down the road to other people including the victim's family. His name is Thailek; do you know Thailek? He was a really good soccer player. Um, sold weed in the area and mom and dad at home; uh, brother at home.
>
> DET. PILACHOWSKI: Sometimes good people make silly mistakes. It all happens. Like Detective Berg said, sometimes it just spirals out of control and sometimes you can't control that by what others do. Do you understand that? I think you'd feel better if you got it off your chest. Just tell us what happened. Did you set it up?"

Det. Berg asked appellant to "give me something to tell the parents." The detectives asked appellant if he "could take it all back, would" he? Appellant replied "I wish I could take back," and he stated "I don't even wanna be here . . . . I'm talking on this earth."

Detective Berg advised appellant as follows:

> "If you were sitting in front of a jury, right; your court trial. You got all these people staring at you and they went back and watched an interview and they see that you're being remorseful, you're being respectful . . . which you are. But you're being remorseful and you're sorry about what happened and you're willing to cooperate, goes a long way in a jury's mind.
>
> And like I said when things spiral out of control and I think you got caught up in something you weren't expecting. I think things went a little too far. But this is the time to tell us cause

> once, once you leave here tonight it, it's . . . you're not . . . you're gonna be sitting and thinking about stuff and other people are gonna have opportunities to talk. This is your time to tell your story and what happened that night. And we just wanna . . . we just wanna know what happened. I want something to go back and tell that family, you know what; it was an accident and they feel horrible about it. It was just stuff that spiraled out of control."

Appellant then made a statement to the detectives. He admitted that he had had an encounter with Mr. Willis the night Mr. Willis died, that he had brought a handgun to that encounter, and that the handgun had discharged at that encounter. He told the detectives that, in the aftermath, he had "almost killed" himself and had had problems sleeping.

The detectives asked appellant about that handgun. They said to him as follows:

> "It's okay. I mean listen, I'm not sugar coating anything. You're . . . it's a lot of trouble here. You're in a lot of trouble. You know? And I think when you sit later and you're really . . . the weight of all this hits you, it, it's a big, big deal. And you got a family who loved their son they're never gonna see again, and a brother who is devastated. Grandma's called me every day crying wanting . . . wondering what's going on. And I think you just owe them the truth of what happened. This is your chance to do the right thing.
>
> ***
>
> [T]ell us how everything went down that night, no matter how hard it, it is. You're gonna feel better and you get it out there and you're gonna be seen as a, as an honest person that just made a mistake or just somebody that made a mistake. How did you guys wind up there at that school that night.
>
> ***
>
> I wanna be sure if somebody handed it to you that's okay but we need to know that now. I don't wanna find out down the road, oh wait . . . I, I made that up about finding the gun. You know what I mean? So if it came from somebody we need to know cause we don't wany any . . . you don't want any other charges on you."

Appellant stated that he had discovered the gun earlier that evening on a school basketball court. The detectives asked appellant "[d]o you think [the bullet that killed Mr. Willis]'s gonna be from the gun you had?" Appellant responded "I hope . . . I don't . . . I hope not."

One of the detectives told appellant "we need to go get this gun." He told appellant "that's huge for you. And cooperating and you telling us hey, I didn't know this was all gonna happen, that's huge, you understand?" Appellant then led law enforcement officers to the handgun, but, before they left the Sherriff's Department office, the following exchange ensued:

> "DET. BERG: Mr. Brown, just real quick, um, I know you're upset about what happened. You made some comments earlier. Are, are you gonna hurt yourself? Do you wanna hurt yourself? You gotta speak up, I gotta . . .
>
> [APPELLANT] No.
>
> DET. BERG: Okay. Were you saying that because you're upset about what happened?
>
> [APPELLANT]: No, cause it's the truth.
>
> DET. BERG: Was it the truth at the time; like after you . . . after the shooting happened or is it the truth like today?
>
> [APPELLANT]: Both.
>
> DET. BERG: Are you gonna hurt yourself?
>
> [APPELLANT]: No.
>
> DET. BERG: But you understand when you say that stuff we kind of have an obligation so I gotta . . . that's why I'm trying to gauge that . . .

[APPELLANT]: Right.

DET. BERG: If you're serious about that, you know, take you to talk to somebody. If you're not, you know, gonna hurt yourself you just gotta let me know.

[APPELLANT]: (Inaudible mumble)

DET BERG: How would you hurt yourself?

[APPELLANT]: I wouldn't. Don't even matter.

DET. BERG: It does matter.

[APPELLANT]: I don't even know. If the time . . . I guess if the time was right or whatever.

DET. BERG: What would you do?

[APPELLANT]: Wouldn't be here.

DET. BERG: Where would you be?

[APPELLANT]: (Inaudible)

DET. BERG: Where?

[APPELLANT]: Heaven or hell.

DET. BERG: What's that mean?

[APPELLANT]: I'd be gone.

DET. BERG: Where would you be?

[APPELLANT]: Dead.

DET. BERG: Why.

[APPELLANT]: It's too much.

DET. BERG: Alright.

[APPELLANT]: I'll be fine.

DET. BERG: Well you're telling me that . . . heaven or hell, you'd be dead. Then you're saying you'd be fine, what am I supposed to believe? How am I supposed to believe you're gonna be fine?

[APPELLANT]: I'm not gonna do nothing.

DET. BERG: You look me in the eye and tell me that?

[APPELLANT]: I'm not gonna do nothing. I'm not.

DET. BERG: Alright, listen; I told you before I think shit happened that night that wasn't supposed to happen. I don't think anybody intended to kill anybody. I may be wrong. You're the only one that knows that. Did you intend to kill anybody that night?

[APPELLANT]: Course not.

DET. BERG: Okay. We're gonna go get this gun, we'll, we'll match it up, okay? We know which one you had; we know which one he had cause of what you described and what the witnesses described.

[APPELLANT]: Right.

DET. BERG: Okay? You're cooperating; you're, you're doing the right thing. We're gonna get you on track, okay; alright? You're doing what's right. You just gotta be honest and upfront but I need to know, are you gonna hurt yourself? We take you to jail, are you gonna hurt yourself? Do we need to put you on suicide watch? Alright, alright; hang tight. I'm gonna go get these guys and we'll get going."

At the suppression hearing, appellant testified that when he was speaking to the detectives, he did not know what was going on, was scared, and was not really paying

attention. He testified that he did not know that "attorney" meant "lawyer." Regarding the law enforcement officers interrogating him, appellant testified that he "thought they were going to benefit for me . . . [l]ike benefit me in a good way instead of wanting me to be locked up. I didn't think they wanted me locked up." He testified that he trusted the police because his godfather was a detective. He testified that he initialed the *Miranda* form because the detectives told him to.

Appellant called Dr. Neil Blumberg as a witness. Dr. Blumberg testified that appellant suffered "from three mental disorders: Post-traumatic stress disorder, attention-deficit/hyperactivity disorder, combined presentation by history, and cannabis use disorder, moderate." He opined that appellant's psychological profile would "cause substantial impairment in his knowingly, intelligently and voluntarily understanding and waiving his *Miranda* rights." Finally, he testified that there were long pauses in the interrogation, which, in his opinion, "suggested that [appellant] may not have understood or may have had some difficulty with focus or concentration."

Appellant's counsel cross-examined Det. Berg. He admitted that he could have contacted appellant's parents but did not do so because he had "interviewed numerous people and when parents are present, we very rarely get the juvenile to open up about what happened."

Appellant's counsel argued that appellant's statement should be suppressed because it was the involuntary product of police inducements and it was not preceded by a knowing and voluntary waiver of his Fifth Amendment right against self-incrimination.

The trial judge stated that appellant's testimony that he was scared during the interrogation was credible, but that his testimony that he did not know what was going on during the interrogation and his testimony that he was not really paying attention during the interrogation was not credible

The trial court denied the motion to suppress appellant's statements. With respect to appellant's improper inducement argument, the trial court found that appellant was not induced improperly to make a statement, reasoning as follows:

> "Counsel for Mr. Brown also recited those cases in which statements made by the interrogating officers were deemed to be improper inducement in this case. But in this case what I find is that in examining them in light of [*Hillard v. State*, 286 Md. 145 (1979)], as defense counsel points out, it is not merely that there is no consideration from a prosecuting authority. That's not the sole measure as to these *Hillard* factors. It is also whether there is any reliance on these statements in order for Mr. Brown to have made them.
>
> But they are not improper inducements in this case. The detectives techniques and interrogating techniques are not improper in this case. None of them are lies. They are all relating to public safety, how the Defendant might feel if he talks about them, and what collateral benefits in terms of telling the victim's parents. Then there are also exhortations to tell the truth, which are not improper inducements under *Winder* [*v. State*, 362 Md. 275 (2001)].
>
> Even at first glance if the statements regarding imagine what a jury would think in this case, how they would feel about you cooperating with us, that is not an improper inducement in this case because those are things that a jury might consider in this case. It is true that a jury might consider remorse. It doesn't mean and can't be held as an inducement by the detectives to mean that they can control what the jury does in trial in this case.

> In this matter, therefore, I find that the statement was not improperly induced in this matter. Mr. Brown, in observing him on the video, appeared to get more comfortable, understood what the detectives were telling him and asking him, but those are not improper inducements even in light of all of those things under *Hillard* when I examine them under that rubric."

With respect to appellant's inadequate waiver argument, the trial court considered the appellant's "mental and physical makeup . . . age, education, background . . . experience" and conduct during the interrogation. The trial court found the State had met its burden of proving that appellant's waiver was knowing and voluntary.

Appellant proceeded to trial, was convicted, and sentenced. This timely appeal followed.

II. Motion to Suppress Appellant's Statement

We turn to appellant's motion to suppress his custodial statement to law enforcement.

Appellant argues that the motions court erred in failing to suppress his custodial statement because it was the product of improper promises and improper inducements and the State failed to establish a knowing and voluntary waiver of his right against self-incrimination. Appellant bases his arguments on *Miranda*, Maryland common law and *Hillard*, the Due Process Clause, and Article 22 of the Maryland Declaration of Rights. He maintains that his custodial statement was the involuntary product of police inducements,

including the police statement that he would improve his image before the jury if he made a statement to them.

The State argues that the motions court denied the motion to suppress properly and that there were no improper inducements or promises by law enforcement. The State highlights that appellant was entering the eleventh grade and was literate, that the law enforcement officers verbally explained his rights to him multiple times, and that they sought multiple verbal and written assurances from him, before they proceeded, that he understood his rights and wanted to talk to them.

III. Appellant's statements

In Maryland, a confession may be excluded because it was involuntary under Maryland common law and/or it was involuntary under constitutional law. *See* Andrew V. Jezic, Patrick L. Woodward, E. Gregory Wells, and Kathryn Grill Graeff, *Maryland Law of Confessions* 14 (2021-2022 ed.). Additionally, "[a] trial court may not admit a confession made during a custodial interrogation unless a law enforcement officer properly advised the defendant of the defendant's rights under Miranda and the defendant knowingly, intelligently, and voluntarily waived those rights." *Madrid v. State*, 474 Md. 273, 310 (2021). First, appellant argues that his confession was involuntary. Second, appellant argues that his *Miranda* waiver was neither knowing nor voluntary.

Whether a statement or confession was voluntary depends on the totality of the circumstances surrounding that confession, including "both the characteristics of the

accused and the details of the interrogation" resulting in the confession. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). In the seminal case of *Hillard*, the Court of Appeals stated as follows:

> "Under Maryland criminal law, independent of any federal constitutional requirement, if an accused is told, or it is implied, that making an inculpatory statement will be to his advantage, in that he will be given help or some special consideration, and he makes remarks in reliance on that inducement, his declaration will be considered to have been involuntarily made and therefore inadmissible."

286 Md. at 153. Factors we consider include where the interrogation was conducted, its length, who was present, how it was conducted, its content, the mental and physical condition, age, education, and intelligence of the accused, whether the accused was informed of his or her constitutional rights or was subjected to any physical punishment, and when the defendant was taken before a court commissioner following arrest. *Hof v. State*, 337 Md. 581, 596-97 (1995).

Significantly, the question of whether a juvenile confession is voluntary must be evaluated with "great care." *Jones v. State*, 311 Md. 398, 407 (1988). The Supreme Court, in *Gallegos v. Colorado*, 370 U.S. 49 (1962), explained that a teenager may not, on his own, be able to fully appreciate what is at stake when the police seek to question him:

> "[A] fourteen-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police.
>
> ***
>
> He cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his

> right—from someone concerned with securing him those rights—and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not. Adult advice would have put him on a less unequal footing with his interrogators. Without some adult protection against this inequality, a fourteen-year-old boy would not be able to know, let alone assert, such constitutional rights as he had."

370 U.S. 49, 54 (1962); *see also A.M. v. Butler*, 360 F.3d 787, 800-01 & n.10-11 (7th Cir. 2004); Kenneth J. King, Waiving Childhood Goodbye: How Juvenile Courts Fail to Protect Children from Unknowing, Unintelligent, and Involuntary Waivers of Miranda Rights, 2006 Wis. L. Rev. 431, 432-33, 434-44 (noting the complexity of a decision to waive one's rights and explaining why, given the way in which an adolescent develops psycho-socially and his brain matures, a juvenile is ill-equipped to make a knowing and intelligent waiver without adult assistance).

When analyzing a juvenile confession, it is relevant to consider the previous experience of the accused with the criminal justice system, the emotional characteristics of the accused, and whether the confession was induced by police deception. *Winder*, 362 Md. at 305. Along with the length of time that the juvenile was questioned by the police, whether a parent or other friendly adult was present bears on the voluntariness of the juvenile's confession. *Smith v. State*, 220 Md. App. 256, 282 (2014); *Hardaway v. Young*, 302 F.3d 757, 762 (7th Cir. 2002).

As to whether a waiver of *Miranda* rights was proper, "[t]he State has the burden to prove by a preponderance of the evidence a knowing, intelligent, and voluntary waiver of

the defendant's rights under Miranda." *Madrid*, 474 Md. at 310. This is also a "totality of the circumstances" analysis in which, among other factors, age must be considered. *See id.* (stating "a court must consider the defendant's age, experience, education, background, intelligence, and conduct.").

This case comes before this Court in an unusual posture. In the 2021 session, the General Assembly enacted 2022 Md. Laws, Chap. 50, the Child Interrogation Protection Act, which provides, in pertinent part, as follows:

> "A law enforcement officer may not conduct a custodial interrogation of a child until the child has consulted with an attorney who is retained by the parent, guardian or custodian of the child; or provided by the Office of the Public Defender; and [t]he law enforcement officer has made an effort reasonably calculated to give actual notice to the parent, guardian, or custodian of the child that the child will be interrogated."

Significantly, the statute creates a rebuttable presumption as to the admissibility of any custodial child statement to law enforcement, providing as follows:

> "There is a rebuttable presumption that a statement made by a child during a custodial interrogation is inadmissible in a delinquency proceeding or a criminal prosecution against that child if a law enforcement officer willfully failed to comply with the requirements of this section."[3]

The Child Interrogation Protection Act, expressing the public policy of Maryland, becomes effective October 1, 2022.

[3] "The State may overcome the presumption by showing, by clear and convincing evidence, that the statement was made knowingly, intelligently, and voluntarily." 2022 Md. Laws, Chap. 50.

The motions judge concluded that appellant's statement "was voluntary, free from the taint of improper inducements." As to compliance with *Miranda,* the circuit court concluded that "there was a knowing and voluntary waiver that was made in this case." As to the absence of appellant's parents, the circuit court explained as follows:

> "His parents were not required to be there. And in this case, although much is made of the fact that Detective Berg said I didn't even think about it and we're not required to do it and that there is protocol regarding that, there is no formal protocol and I think Detective Berg ultimately admitted that on cross-examination. There is no age requirement by which a juvenile is required to have a parent present. Detective Berg made it clear ultimately it is on a case by case basis if he felt there was something to be gained or helpful in having the parents there. But that doesn't negate the fact or undercut the fact that the whole purpose of the custodial interrogation is to get the Defendant to make a statement. It is not required that you make it easy for a Defendant not to make a statement in this case under the law."

It is clear that the motions judge gave little or no weight to the absence of counsel or appellant's parents or that appellant's parents asked five times to see their son. The Court of Appeals has made clear, however, that the denial of parental access to a juvenile is a factor to consider. *See McIntyre v. State*, 309 Md. 607, 625 (1987). Appellant will be receiving a new trial because of the *Kazadi voir dire* error. In light of our discussion above, we shall vacate the order denying appellant's motion to suppress his statement and remand that matter for a new motions hearing.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY REVERSED. ORDER DENYING APPELLANT'S MOTION TO SUPPRESS VACATED. CASE REMANDED TO THAT COURT

FOR A NEW TRIAL AND SUPPRESSION HEARING CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY HARFORD COUNTY.