Circuit Court for Frederick County
Case Nos. C-10-JV-21-000023 & C-10-JV-21-000025

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

Nos. 852 & 853

September Term, 2021

IN RE: K.G.

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

JJ.

Opinion by Shaw, J.

Filed: April 29, 2022

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This appeal stems from the denial of a motion to suppress by the Circuit Court for Frederick County, sitting as a juvenile court. In three cases, the State alleged that appellant, K.G., at 13 years of age, committed first-degree assaults and related offenses during three stabbings that occurred in Frederick on three dates in February 2021: February 6th, 17th, and 20th. K.G. moved to suppress statements that he made to police officers during two encounters: a street encounter on February 21st and a custodial interview on February 22nd. Following a hearing, the court denied the motion. The parties then reached an agreement, and K.G. entered a stipulation of not involved with an agreed statement of facts as to the first-degree assaults that occurred on February 6th and 17th. At the adjudication hearing, the court found K.G. delinquent as to the two counts. In accordance with the parties' agreement, the State nol prossed the remaining charges and dismissed the case involving the February 20th stabbing. In July 2021, the court committed K.G. to the custody of the Department of Juvenile Services for placement at a residential treatment center. This appeal followed and K.G. presents one question for our review:

> Did the juvenile court err in denying Appellant's motion to suppress?

For reasons to follow, we affirm the judgments of the circuit court.

BACKGROUND

At the hearing on K.G.'s motion to suppress, the State called four witnesses to testify: Officer Sean Fernholz, Detective Ray Bednar, Detective Mike Pecor, and Detective Doug Ames. K.G.'s mother, M.G., testified for the defense. The court admitted the police

body camera footage of the street encounter on February 21st, and the video of the interview at the police station that occurred the next day.

Officer Fernholz was the first officer on scene for the February 6th and 20th stabbings, and he spoke to the victims who both reported that the suspect was wearing a red top and dark pants. Officer Fernholz confirmed that the stabbings were "similar incident[s.]" Prior to his encounter with K.G., Officer Fernholz had reviewed surveillance footage of the February 6th stabbing.

On February 21st, Officer Fernholz spotted K.G. in the "area of Orchard Way and Appleton Place[.]" K.G. was wearing a red top that was "either the same or similar . . . to the one" that the assailant was wearing on the surveillance video that depicted the February 6th stabbing. Officer Fernholz pulled his cruiser to the side of the road, but he did not activate the emergency lights or sirens. He exited his cruiser and while K.G. was on the sidewalk, he asked K.G. "how it was going[.]" Officer Fernholz noticed a "homemade bandage" on K.G.'s finger, and he asked K.G. about the bandage and his whereabouts the day before. Officer Campbell arrived shortly after Officer Fernholz exited his vehicle. Officer Fernholz testified that neither he nor Officer Campbell touched K.G., nor did they stand in a way that blocked him from walking away. The lower court observed that the officers "remained at a distance." At the end of the encounter, K.G. walked away on his own.

The day after the street encounter, police executed a search warrant at the apartment where K.G. resided in Frederick. Detective Ames was the lead detective in the case, and

he participated in the warrant execution. K.G. was in the apartment when police arrived, and he was called out of the apartment, taken into custody, and searched. Detective Ames transported K.G. to the police station, where K.G. was placed in an interview room. Detective Ames advised him of his *Miranda* rights, and K.G. confirmed that he understood those rights. K.G. was interviewed for approximately two hours. K.G. made several inculpatory statements about the stabbings. K.G. was later transported to the Western Maryland Children's Facility for processing and detention.

Detective Ray Bednar assisted with the search warrant execution at K.G.'s family's apartment, and he served as a Spanish language interpreter. Detective Bednar testified K.G.'s mother did not inform him that she wanted to be present with K.G. at the police station. Detective Bednar stated that K.G.'s mother told him that she was "afraid of" her son, and "she couldn't keep control of him." According to K.G.'s mother's testimony, however, when the officers took her son during the warrant execution, they told her she could not come because she had another son in the home who would not be allowed to accompany her.

The defense argued that K.G.'s statements during the street encounter with Officer Fernholz should be suppressed because they were the fruit of an unlawful seizure under the Fourth Amendment, and that he underwent custodial interrogation in violation of the Fifth Amendment. As to the statements made at the police station, the defense argued that those statements should be suppressed for four main reasons: (1) K.G. did not knowingly and voluntarily waive *Miranda*, (2) the interrogation was coercive, in violation of the Fifth

Amendment, (3) the statements were involuntary under Maryland common law, and (4) the interrogation violated Article 22 of the Maryland Declaration of Rights.

The juvenile court denied the motion to suppress. As to K.G.'s encounter with police on the street, the court reasoned that the encounter "amounted to nothing more than a mere *Terry*[1] stop[,]" and reasonable articulable suspicion existed to conduct the stop because K.G. matched the description of the suspect who had committed the stabbings. As to the custodial interrogation at the police station, the court determined that K.G. had knowingly and voluntarily waived his *Miranda* rights, and the statements were lawfully obtained.

K.G. then entered a stipulation of not involved with an agreed statement of facts as to the first-degree assaults that occurred on February 6th and 17th. That agreed statement of facts included K.G.'s statements that he made to officers during the street encounter and admissions that he made during the custodial interrogation at the police station. We supply additional facts below as needed.

STANDARD OF REVIEW

In *Thomas v. State*, 429 Md. 246 (2012), the Court of Appeals held:

> Our review of a grant or denial of a motion to suppress is limited to the record of the suppression hearing. The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of testimony must be accepted by this Court unless clearly erroneous. The evidence is to be viewed in the light most favorable to the prevailing party.

[1] *Terry v. Ohio*, 392 U.S. 1 (1968).

> We undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.

Id. at 259 (cleaned up). We review without deference a court's ultimate determination as to whether a Fourth Amendment seizure occurred and review for clear error the court's findings of fact. *Swift v. State*, 393 Md. 139, 154-55 (2006).

Likewise, we review without deference a court's ultimate determination as to whether a confession was voluntary and review for clear error the court's underlying findings of fact. *See Gorge v. State*, 386 Md. 600, 610-11 (2005). "Similarly, an appellate court reviews without deference a . . . court's ultimate determination as to whether *Miranda* was violated and reviews for clear error the . . . court's underlying findings of fact." *Madrid v. State*, 474 Md. 273, 309 (2021).

DISCUSSION

I. The street encounter was a mere accosting.

K.G. argues the court erred in denying the motion to suppress. He contends that a *Terry* stop occurred without reasonable suspicion that he had committed a crime. The State counters that K.G. was not in custody, the officers conducted a brief stop, and the evidence was admissible. The State argues that the brief stop did not rise to the level of custodial interrogation.

The Fourth Amendment to the United States Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. CONST. amend IV. "The exclusion of evidence obtained in violation of these provisions is an essential part of the

Fourth Amendment protections." *Swift*, 393 Md. at 149. *See also Mapp v. Ohio*, 367 U.S. 643, 655-56 (1961).

Not every encounter between the police and an individual implicates the Fourth Amendment. *Swift*, 393 Md. at 149. The Court of Appeals has identified three types of police encounters: (1) an arrest; (2) an investigatory stop ("*Terry* stop"); and (3) a consensual encounter (a mere "accosting"). *Id*. at 149-151. The first type of encounter, an arrest, is the most intrusive and permits the police to take an individual into custody when police have "probable cause to believe that [the individual] has committed or is committing a crime." *Id*. at 150. The second type of encounter, a *Terry* stop, permits the police to briefly detain an individual, but the stop "must be supported by reasonable suspicion that [the individual] has committed or is about to commit a crime[.]" *Id*. The third type of encounter, an accosting, "involves no restraint of liberty and elicits an individual's voluntary cooperation with non-coercive police contact." *Id*. at 151. "Typically, an accosting occurs when police officers approach a citizen and ask for information, usually one's name, address, date of birth, destination, point of origin, and contents of luggage or vehicle." *Reynolds v. State*, 130 Md. App. 304, 322-23 (1999).

Both an arrest and a *Terry* stop involve some restraint on an individual's liberty, and thus implicate the Fourth Amendment. A mere accosting, however, need not be "supported by any suspicion and because an individual is free to leave at any time during such an encounter, the Fourth Amendment is not implicated; thus, an individual is not considered to have been 'seized' within the meaning of the Fourth Amendment." *Swift*, 393 Md. at

151. An encounter that begins as an accosting "may lose its consensual nature and become an investigatory detention or an arrest once a person's liberty has been restrained and the person would not feel free to leave." *Id.* at 152.

Whether a reasonable person would feel free to leave an encounter with the police is a fact-specific inquiry that requires examining the "totality of the circumstances[.]" *Ferris v. State*, 355 Md. 356, 377 (1999). The Court of Appeals has identified several factors that can be probative to this inquiry, including "the activation of a siren or flashers, commanding a citizen to halt, display of weapons, and operation of a car in an aggressive manner to block a defendant's course or otherwise control the direction or speed of a defendant's movement." *Swift*, 393 Md. at 153 (citing *Michigan v. Chesternut*, 486 U.S. 567, 575 (1988)). Other factors include the following:

- the time and place of the encounter,
- the number of officers present and whether they were uniformed,
- whether the police moved or isolated the person,
- whether the person was told that he was free to leave or suspected of a crime,
- whether the police retained the person's documents, and
- whether the police exhibited threatening behavior or physical contact.

Id.

Here the court determined that K.G.'s street encounter with police "amounted to nothing more than a mere *Terry* stop[.]" In our view, the street encounter did not rise to the level of a *Terry* stop. The encounter was a mere accosting.

The officers approached K.G. on a public street without any display of force. The record shows that Officer Fernholz saw K.G. walking, pulled over to the side of the road, approached K.G. on the sidewalk, asked him "how it was going," and did not activate his emergency lights or sirens. Officer Fernholz asked K.G. if he spoke English, and K.G. confirmed that he did. Another officer, Officer Campbell was also present. As the court observed, Officer Fernholz and Officer Campbell remained at a distance from K.G. throughout the interaction. Officer Fernholz asked K.G. for his name and date of birth. At first, K.G. provided untruthful answers to those questions. Officer Fernholz called the information into dispatch "just so [he] knew who [he] was talking to[.]"[2] Officer Fernholz asked K.G. about the "homemade bandage" that he observed on K.G.'s finger, and he asked about K.G.'s whereabouts the day before. The interaction between K.G. and the officers lasted less than eight minutes. K.G. walked away on his own. The entire encounter was recorded on Officer Fernholz's body cam.

Based on our independent constitutional appraisal, we hold the street encounter between K.G. and the officers was a consensual encounter. *See Swift*, 393 Md. at 152 ("Consensual encounters, therefore, are those where the police *merely* approach a person in a public place, engage the person in conversation, request information, and the person is free not to answer and walk away."). Reviewing the totality of the circumstances in the light most favorable to the State, we hold that a reasonable person in K.G.'s position would have felt free to leave and continue towards their destination. Instead, K.G. chose to briefly

[2] Despite the untruthful information that K.G. had provided to Officer Fernholz, dispatch was still able to advise Officer Fernholz of K.G.'s correct name and date of birth.

respond to Officer Fernholz's questions. Because the street encounter was a mere accosting, the Fourth Amendment is not implicated. And even if we were to assume that the encounter was a *Terry* stop, the detention was brief and there was reasonable suspicion, as the trial judge found that K.G.'s clothing matched the description of clothing worn in two of the stabbings and the officer's observations of the suspect from the video depicting one of the incidents matched K.G.

II. K.G. was not in custody for *Miranda* purposes during the street encounter.

K.G. also contends the street encounter was unconstitutional because police subjected him to custodial interrogation without *Miranda* warnings. The State argues that the juvenile court correctly found that K.G. was not in custody for purposes of *Miranda* during the street encounter, and thus *Miranda* warnings were not required.

Miranda implements the Fifth Amendment right against self-incrimination by preventing the State from using "statements . . . stemming from custodial interrogation of the defendant" unless the defendant was "warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed[,]" and knowingly elected to waive those rights. *Miranda*, 384 U.S. at 444.

Under *Miranda*, "custodial interrogation" means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id*. "In analyzing whether an individual is in custody for *Miranda* purposes, we ask, under the 'totality of the circumstances' of the

particular interrogation, 'would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.'" *Thomas v. State*, 429 Md. 246, 259 (2012) (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). That test involves looking at the circumstances of the interrogation while focusing on the following non-exhaustive list of relevant factors:

> 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 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, 211 (2017) (cleaned up).

The *Miranda* custody inquiry is an objective test. *E.g.*, *J.D.B. v. North Carolina*, 564 U.S. 261, 277 (2011). Because K.G. was a juvenile, our analysis takes into account his age to the extent that it "was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer[.]" *Id.* That "is not to say that a child's age will be a determinative, or even a significant, factor in every case." *Id.*

To be sure, the *Miranda* custody analysis is different from the Fourth Amendment analysis above. But the factual foundations of the analyses overlap. As a result, we reiterate the circumstances of the street encounter. Officer Fernholz and Officer Campbell did not display any sign of force. Neither officer touched K.G, nor did the officers move

K.G. from the sidewalk where he had been walking. The interaction occurred on a sidewalk by a public street in daylight. The interaction between K.G. and the officers was brief and at the end of the interaction, K.G. walked away on his own. The court properly determined that K.G. was not in custody for *Miranda* purposes.[3]

III. The court properly found that K.G.'s *Miranda* waiver at the police station was knowing and voluntary.

K.G. argues that his statements made during the custodial interrogation at the police station should be suppressed because he did not knowingly and voluntarily waive *Miranda*. "The 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.

In *Gonzalez v. State*, 429 Md. 632 (2012), the Court of Appeals described the requirements for a determination that *Miranda* rights have been waived:

> 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. 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.

Id. at 652 (cleaned up). In assessing whether there was a valid waiver under the totality of the circumstances, a court must consider the defendant's age, experience, education,

[3] K.G. also argues on appeal that the fruits of the search warrant should be suppressed because the application in support of the warrant contained K.G.'s verbal interactions with Officer Fernholz as a basis for obtaining the warrant. As we have determined, K.G.'s statements to Officer Fernholz were lawfully obtained.

background, intelligence, and conduct. *Id*. *See also McIntyre v. State*, 309 Md. 607, 615-16 (1987) (holding that this assessment "includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given [to] him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights" (quotation marks and citation omitted)). "The totality of the circumstances standard remains the same regardless of whether the person being interviewed is a juvenile or an adult." *Madrid*, 474 Md. at 322 (citing *McIntyre*, 309 Md. at 615).

Detective Ames testified about the circumstances surrounding K.G.'s *Miranda* waiver. When K.G. was taken into custody, he was only wearing shorts, so police took K.G. back inside the apartment to "get him shoes and a shirt[.]" Detective Ames transported K.G. to the police station and testified that "[a]s soon as we got into the car and started to transport him, [K.G.] asked without question, . . . was this about a murder or something else."

When they arrived at the police station, K.G. was placed into an interview room. There were two detectives present: Detective Ames and Detective Irons. Detective Ames removed K.G.'s handcuffs, and the detectives put away their service weapons before interviewing K.G. They told K.G. that the interview room was being audio and video recorded. The detectives briefly discussed with K.G. his "school and his family."

At that point, Detective Ames went through the *Miranda* advisements with K.G., and he confirmed that he understood the rights. K.G. never asked for a parent to be present.

He was given water and a snack. He responded coherently to every question. Although K.G. said that he was schizophrenic, the detectives observed that K.G. exhibited no signs of mental illness or confusion. The detectives interviewed K.G. for about two hours with breaks. Detective Ames then sent reports to the Department of Juvenile Services, and the Department of Juvenile Services tried to contact K.G.'s mother, who did not answer the phone. K.G. was ultimately transported to the Western Maryland Children's Facility.

K.G. argues that the "officer presented the signing of the waiver as a mere procedural formality that had to be performed." We disagree. As the court found, the detectives had taken great care to ensure that K.G. understood his *Miranda* rights:

> So, now, we're back to the fact that I found that the interrogating officers took great care to ensure respondent understood his Miranda rights. The interrogating officers told respondent that if he did not understand any or all of his rights, they would try to clarify them for him and told him to speak up. And then, they proceeded to read each individual right to the respondent and make him acknowledge that right before they went on to the next.
>
> It wasn't like on television where they're walking along, they're reading their rights to somebody just one after another and say, yeah, you have all those rights. No, that's not what they did. They went through each and every one of them slowly, carefully, distinctly and respondent then acknowledged that he understood them. He did that mostly through either a physical nodding of his head or a grunting and the police did not let him do that. He kept saying, you have to say yes or no and he did say yes, I think, twice, and uh-huh, you could tell it was the uh-huh being yes, rather than a unh-uh, being no. I know they're all spelled the same, but it was acknowledging yes before they moved into any interrogation.

We perceive no error in the court's view of the totality of the circumstances. The court reviewed the video of the interview process and confirmed that the *Miranda* waiver was

not a "mere procedural formality[.]"[4] We hold the court did not err in determining that K.G.'s *Miranda* waiver at the police station was knowing, intelligent, and voluntary.

IV. The court did not err in determining that K.G.'s statements were voluntary under federal and state law.

Under the common law of Maryland, a confession is involuntary where "it is the product of an improper threat, promise, or inducement by the police." *Lee v. State*, 418 Md. 136, 158 (2011). The admission of a confession is prohibited when both of the following prongs are met:

> (1) any officer or agent of the police promises or implies to the suspect that he will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession, and (2) the suspect makes a confession in apparent reliance on the police officer's explicit or implicit inducement.

Id. at 161.

A trial court may not admit a confession made during a custodial interrogation that is involuntary under the common law of Maryland, the Due Process Clause, or Article 22 of the Maryland Declaration of Rights. *See Brown*, 452 Md. at 209-10. When a defendant

[4] K.G. points to his mother's testimony and argues that "his mother was told she could not bring her younger son with her to the police station, effectively preventing her from accompanying K.G." To be sure, K.G.'s mother testified that the police told her that she could not accompany K.G.: "So, I said I was going to go there with why they were taking him, but they told me I couldn't and I couldn't because I had my other son with me and he wouldn't have been, I didn't have anybody to leave him with and they didn't have any, they wouldn't have allowed him to come anyway." But the court found that K.G.'s mother must have been confused: "Therefore, the only thing that I can conclude is that [K.G.'s mother] is confused because Detective Bednar was very specific as to his role and what he did during the course of his time at respondent's house with respondent's mother and Detective Bednar was very specific that [K.G.'s mother] never asked to be involved with going to the CID headquarters to be with her son during the interrogation." We find no error in the court's credibility determination.

moves to suppress a confession on the ground that it was involuntary, the State has the burden to prove by a preponderance of the evidence that the confession was voluntary. *See Hill v. State*, 418 Md. 62, 75 (2011).

K.G. argues that police told him "that if he was 'having some issues,' they could try to get him 'some help,' which could have been construed as an inducement." At the suppression hearing, when Detective Ames was asked whether he promised K.G. anything in return for talking to him, Detective Ames testified that "no promises were made at all." Further, there is nothing in the record that supports the assertion that officers promised or implied to K.G. that he would receive "special consideration from a prosecuting authority or some other form of assistance in exchange for [a] confession[.]" *Lee*, 418 Md. at 161. Because we hold there was no inducement, and thus, the first prong of the voluntariness test was not satisfied, we need not address the second prong. *See Madrid*, 474 Md. at 329 (holding that a court is unable to address whether the suspect made a confession in apparent reliance on a police officer's explicit or implicit inducement when no explicit or implicit inducement occurred).

Next, we address whether the State has proven by a preponderance of the evidence that K.G.'s confession was voluntary under the Due Process Clause and Article 22. The Due Process Clause of the Fourteenth Amendment states: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]" The Self-Incrimination Clause of the Fifth Amendment states: "No person . . . shall be compelled in any criminal case to be a witness against himself[.]" The Self-Incrimination Clause applies

to the States through the Due Process Clause of the Fourteenth Amendment. *See Dickerson v. United States*, 530 U.S. 428, 434 (2000). Under both the Due Process Clause and the Self-Incrimination Clause, a confession made during a custodial interrogation must be voluntary to be admissible. *See id.* at 432-33.

The Self-Incrimination Clause's Maryland counterpart is Article 22 of the Maryland Declaration of Rights: "That no man ought to be compelled to give evidence against himself in a criminal case." The Court of Appeals has generally interpreted Article 22 *in pari materia* with the Self-Incrimination Clause. *See, e.g.*, *Madrid*, 474 Md. at 320.

The Supreme Court has set forth a test for voluntariness that precludes the admission of confessions that are "the result of police conduct that overbears the will of the suspect and induces the suspect to confess." *Lee*, 418 Md. at 159 (citing *Arizona v. Fulminante*, 499 U.S. 279, 288 (1991)). Many factors can bear on the voluntariness of a confession, including the following:

> 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). Additionally, access to food and water is a factor when determining whether a confession was voluntary. *See Whittington v. State*, 147 Md. App. 496, 526 (2002).

The Court of Appeals has set forth additional considerations when a confession involves a juvenile defendant:

> Great care must be taken to assure that statements made to the police by juveniles are voluntary before being permitted in evidence. The absence of a parent or guardian at the juvenile's interrogation is an important factor in determining voluntariness, although the lack of access to parents prior to interrogation does not automatically make a juvenile's statement inadmissible.

Moore v. State, 422 Md. 516, 531-32 (2011) (cleaned up).

The record confirms that the court did not err in determining that K.G.'s statements were voluntary. K.G. never asked for a parent to be present, he was given bathroom breaks, snacks, and water. The officers' tone and demeanor were not coercive, nor were the statements that they made. While K.G. argues that the statement was involuntary because he "told the officers that he was 'schizophrenic' and they continued the interrogation without any further inquiry," at the suppression hearing, Detective Ames testified about his observations of K.G. during the interview. Detective Ames stated that K.G. did not appear to have any mental condition, K.G. showed no signs of mental confusion, and K.G. did not indicate that he was having any mental distress. Indeed, K.G. responded coherently to the questions asked. Under these circumstances, the court did not err in determining that K.G.'s statements were voluntary.

V. We decline K.G.'s invitation to adopt an exclusionary rule for juveniles who are interrogated without an opportunity to consult with an interested adult.

Lastly, K.G. argues that "Maryland courts should exclude pursuant to Article 22 [of the Maryland Declaration of Rights] all statements made by juveniles who have not had the opportunity to consult with an interested adult." The State contends that this argument was not presented to the juvenile court, and it is thus unpreserved for our review. *See, e.g.*, *Johnson v. State*, 138 Md. App. 539, 560 (2001) ("The failure to argue a particular theory in support of suppression constitutes a waiver of that argument on appeal.").

Our review of the record shows that K.G. raised this argument in written motions filed before the suppression hearing. At the suppression hearing, K.G.'s counsel argued: "given his age, Your Honor, they should have consent for parent or really interested adult." The following exchange between K.G.'s counsel and the court occurred:

[K.G.'s COUNSEL]:	Your Honor, I did cite, don't want to spend very much time on it, but just for the record, I did cite the Maryland Declaration of Rights, that there should be an exclusionary rule for juveniles of his age that don't have an interested adult --
THE COURT:	And we know that then. I mean, we could debate --
[K.G.'S COUNSEL]:	I understand.
THE COURT:	-- what should be in many areas of the law that is not there.
[K.G.'S COUNSEL]:	Right, right, so, I would --
THE COURT:	Right.

[K.G.'S COUNSEL]: -- just ask for a decision on that as well. I am not going to spend time on it.

Under these circumstances, K.G.'s argument is preserved under Md. Rule 8-131(a).

K.G. argues that we should adopt the "interested adult rule": any statement made by a juvenile before a meaningful opportunity to consult with an interested adult cannot be considered voluntary and should be excluded under Article 22. K.G. contends that, at a minimum, the interested adult rule should apply to juveniles as young as thirteen. K.G. acknowledges, however, that Maryland does not recognize an exclusionary rule under our Declaration of Rights. Nevertheless, K.G. argues that "Maryland courts should adopt the exclusionary rule for violations of its state constitution, as at least forty-three other states have done."

In *Fitzgerald v. State*, 384 Md. 484 (2004), the Court of Appeals noted that, at that time, forty-six states had an exclusionary rule for their state constitutions. *Id*. at 508. Yet, the Court declined Fitzgerald's invitation to adopt an exclusionary rule for evidence obtained in violation of Article 26 of the Declaration of Rights. *Id*. at 509. The Court held that case was not one "to revisit whether Article 26 contains an exclusionary rule, because even were we to adopt [the defendant]'s position, we would uphold the" validity of the dog sniff at issue in that case. *Id*. *See also Brown v. State*, 397 Md. 89, 98 (2007) ("there is no general exclusionary provision in Maryland for . . . violations" of the Maryland Declaration of Rights). Similarly, we are not persuaded that a violation of Article 22 occurred in this case and we decline to consider whether to adopt an exclusionary rule for violations of the Declaration of Rights.

K.G. notes that the text of Article 22 deals chiefly with coercion, and juvenile access to an interested adult reduces the coercive forces of an interrogation. Our case law does consider that principle: lack of parent access and the juvenile's age are factors in determining the voluntariness of a juvenile's confession in Maryland.[5] *See Madrid*, 474 Md. at 321. *See also Sun Kin Chan v. State*, 78 Md. App. 287, 311 (1989) ("One may not wish an exclusionary rule into being by waving a magic wand. It is something that must be deliberately and explicitly created to cover a given type of violation."). We decline K.G.'s invitation to adopt his proposed interested adult rule. As explained above, the court did not err when it determined that K.G.'s statements were voluntary.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.

[5] We also note that Article 22 is generally interpreted *in pari materia* with its federal counterpart in the U.S. Constitution. The Court of Appeals reaffirmed that principle last year. *See Madrid*, 474 Md. at 320 (Article 22 is generally interpreted "*in pari materia* with the Self-Incrimination Clause" of the Fifth Amendment). *See also State v. Rice*, 447 Md. 594, 644 (2016) (recognizing the "few occasions" when the Court of Appeals has "construed Article 22 to provide broader protections than its federal counterpart.").