Circuit Court for Baltimore City
Case No. 621127002

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1442

September Term, 2022

IN RE: K. E.

Wells, C.J.
Ripken,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: December 14, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In May of 2021, appellant K.E. ("Appellant"), then a fifteen-year-old minor, was stopped by police after an officer made observations related to Appellant carrying a handgun. As a result of this encounter, Appellant was charged with various delinquent acts in the Circuit Court for Baltimore City, sitting as juvenile court. Following a series of pre-adjudication hearings and postponements, the charges against Appellant were sustained at the conclusion of an adjudication hearing. In September of 2022, a juvenile magistrate recommended that Appellant be found delinquent and be placed on six months of probation; the court adopted the recommendation. Appellant noted a timely appeal, alleging that the court made multiple reversable errors regarding the admission and exclusion of various pieces of evidence. For the reasons to follow, we shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case arose from an incident in May of 2021 when Detective Luke Shelley ("Det. Shelley") of the Baltimore Police Department ("BPD") was performing routine patrol of West Baltimore Street in Baltimore City. Det. Shelley observed Appellant walking on the street and testified that "the imprint of what . . . appeared to be a semiautomatic handgun" was visible under Appellant's clothing. Det. Shelley informed two other officers of his observation and expressed that he planned to perform a pat-down on Appellant because of the suspected weapon.

Det. Shelley testified that as the officers parked their vehicles, Appellant went inside a local convenience store "for a couple of moments." As officers approached on foot, Appellant exited the store, and without being prompted, lifted his shirt and per Det. Shelley, said "I don't have a gun on me, I don't have a gun on me." Det. Shelley considered this

behavior "really odd." This claim is corroborated by the body-worn camera footage, of another officer, but no audio was recorded. Det. Shelley asserted that at this point, he no longer observed the imprint of the suspected gun on Appellant. Det. Shelley entered the store, performed a search, and located a Taurus G-2 handgun in a storage area directly adjacent to the store's entrance, at which point Det. Shelley activated his body-worn camera. Det. Shelley recovered the firearm and directed his colleagues to arrest Appellant.

Appellant was arrested without incident approximately one block from the store where the handgun was recovered. After arresting him, officers placed handcuffs on Appellant and informed him of his rights. While Appellant was in custody, Det. Shelley re-entered the store and briefly interviewed the store clerk, who informed Det. Shelley that he had seen Appellant enter the store and go to the area where the firearm was recovered, although the clerk did not actually observe Appellant with a weapon.

Det. Shelley then returned to the area where officers had detained Appellant and interviewed him; Appellant admitted to having purchased the firearm. Additional facts will be incorporated as they become relevant to the issues.

ISSUES PRESENTED FOR REVIEW

Appellant presents the following four issues for our review:[1]

[1] Rephrased from:

1. Whether the Circuit Court erred in admitting incriminating statements by K.E. to law enforcement that were made involuntarily and without a knowing and intelligent waiver of his right against self-incrimination.
2. Whether the Circuit Court erred in admitting body-worn camera footage of a store clerk who made incriminating statements about K.E. to law enforcement, in violation of the prohibition on hearsay and the constitutional right to confrontation.

I. Whether the court erred in concluding that Appellant's statements to police were voluntary, and that he properly waived his *Miranda* rights.

II. Whether a challenge to the court's allegedly erroneous admission of hearsay statements is preserved for our review.

III. Whether the court abused its discretion in concluding that prior Internal Affairs Division complaints were not probative of a police officer's truthfulness or bias.

IV. Whether the court erred in denying Appellant's motion pursuant to *Arizona v. Youngblood*.

DISCUSSION

I. APPELLANT'S STATEMENTS WERE VOLUNTARY, AND HE VALIDLY WAIVED HIS *MIRANDA* RIGHTS.

Appellant argues that the circuit court erred in denying his Motion to Suppress, asserting that he did not voluntarily, freely, and knowingly waive his right against self-incrimination, and his statements to Det. Shelley were not voluntarily made. The State disagrees and contends that it met its burden of showing by a preponderance of the evidence that Appellant's statements were voluntarily made after a valid waiver of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).

A. The Suppression Hearing Evidence

During the suppression hearing, footage of the incident captured by Det. Shelley's body-worn camera was introduced into evidence, as was the body-worn camera footage of

3. Whether the Circuit Court erred in precluding cross-examination of the State's chief witness, a police officer, regarding information contained in sustained IAD complaints against him.
4. Whether the State's bad-faith failure to preserve potentially exculpatory body-worn camera video and audio violated K.E.'s right to due process.

Detective Mitchell Ramsey ("Det. Ramsey"), the officer who advised Appellant of his rights pursuant to *Miranda*. Det. Shelley also testified. The evidence showed that Appellant was initially arrested by Det. Ramsey and another officer. Shortly after, Det. Shelly and an additional officer arrived at the location of the arrest.

Det. Ramsey was the officer who advised Appellant of his rights pursuant to *Miranda*. Immediately after arresting Appellant, Det. Ramsey told him: "Don't say anything. I'm going to talk to you." Det. Ramsey then asked Appellant's age, and Appellant stated he was fifteen years old.[2] Det. Ramsey informed Appellant that as he was a minor, the officers would get the information to contact his parents. Det. Ramsey asked if Appellant could hear and understand him, to which Appellant nodded in affirmation. Det. Ramsey informed Appellant he was under arrest for a handgun violation and stated that he was going to advise Appellant of his rights, to which Appellant again responded by nodding. Det. Ramsey requested that Appellant verbally respond "yes or no" so that his camera could record it; Appellant replied, "yes sir." Det. Ramsey indicated to Appellant that following the advisement of each of his rights, "if you understand that right, state 'yes.' If you don't understand, state 'no,' I'll try to explain it to you further, ok?" Appellant responded in the affirmative.

Det. Ramsey informed Appellant of his right to remain silent, that any of his statements could be used against him in a court of law, that he had a right to an attorney,

[2] This question, which sought only Appellant's age, falls into the "routine booking question exception" to *Miranda*, and does not require a waiver to be admissible. *Hughes v. State*, 346 Md. 80, 95 (1997).

and that if he could not afford one, an attorney would be appointed. Det. Ramsey also informed Appellant that at any point, he could invoke his right to have an attorney present, and no further questions would be asked. Appellant replied affirmatively in response to each of his rights, either verbally or by nodding. After advising Appellant of his rights, Det. Ramsey asked Appellant "do you understand all your rights as I have advised them to you? Yeah?" Appellant then nodded in affirmation.

Appellant was then questioned by Det. Ramsey, while a second officer stood directly next to Appellant, and a third officer stood a few feet away. Det. Ramsey's questions primarily sought demographic information such as Appellant's name, address, and mother's phone number, and did not address the handgun or other criminal activity. Appellant was fully compliant and did not have trouble supplying this information. At this point, a BPD arrestee transport vehicle had arrived, and an additional officer was on the scene, who remained several feet from Appellant.

A few minutes later, after confirming that Appellant had been advised of his rights, Det. Shelley began to question Appellant about the handgun. When Det. Shelley posed questions to Appellant, who was sitting, the detective squatted down to Appellant's level. During Det. Shelley's questioning, five officers were in the general area, but only three of the officers were within immediate physical proximity to Appellant. Det. Shelley's questioning lasted approximately three minutes, and no officers other than Det. Shelley spoke to Appellant during the questioning. In the course of Det. Shelley's questioning, Appellant admitted to purchasing the gun, and stated that he had it for "protection."

Appellant responded promptly and appropriately to all of Det. Ramsey's and Det.

Shelley's questions, although he did not always make eye contact. The entire interaction occurred on a public street, during daylight hours, and the officers' actions were able to be observed by members of the public, several of whom can be seen and heard on the body-worn camera footage. At no point did any officers brandish or reference their service weapons.

B. Standard of Review

"Only voluntary confessions are admissible as evidence under Maryland law." *Knight v. State*, 381 Md. 517, 531 (2004). The circuit court's ruling on the voluntariness of a confession is a mixed question of law and fact that this Court reviews *de novo*:

> In undertaking our review of the suppression court's ruling, we confine ourselves to what occurred at the suppression hearing. [W]e view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion, here, the State. We defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous. We, however, make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case.

Brown v. State, 252 Md. App. 197, 234 (2021) (internal citations and quotations omitted).

C. Voluntary Statements Made After a Valid Waiver of *Miranda* Rights Are Admissible.

When a statement is made while under custodial interrogation, it can only be admissible in the State's case if the suspect has made a "knowing, intelligent, and voluntary" waiver of their *Miranda* rights.[3] *State v. Luckett*, 413 Md. 360, 379 (2010) (citation omitted). This waiver, even when the suspect involved is a juvenile, "need not be

[3] The parties do not dispute that Appellant was under custodial interrogation when he gave his statements to Det. Shelley.

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. 112, 171 (2013). Additionally, independent from the waiver, the statement itself must be voluntarily made, and free from any promises, threats, or inducements on the part of law enforcement that would be sufficient to overbear the will of a suspect and induce them to confess. *See Reynolds v. State*, 327 Md. 494, 504–05 (1992).

While "great care must be taken to assure that statements made to the police by juveniles are voluntary," minors are fully capable of providing a knowing, free, and voluntary waiver of their *Miranda* rights and subsequently continuing to make voluntary statements. *See McIntyre v. State*, 309 Md. 607, 617 (1987). In assessing the voluntariness of a waiver and confession, we look to the totality of the circumstances. *Jones v. State*, 311 Md. 398, 407 (1988) (citation omitted). An involuntary statement or waiver is one that is "the result of police conduct that overbears the will of the suspect[.]" *Lee v. State*, 418 Md. 136, 159 (2011). However, a voluntary statement need not be free from any element that would make a suspect, even a juvenile suspect, uncomfortable or nervous. *See id.* (noting that even "[l]ying to the suspect about the strength of the evidence" does not "rise to the level of the type of police coercion that is viewed as overbearing the will of the suspect.")

In assessing the voluntariness of any statement, including a *Miranda* waiver, "we look to all elements of the interrogation, including the manner in which it was conducted, the number of officers present, and the age, education, and experience of the defendant." *Williams v. State*, 375 Md. 404, 429 (2003). The State's burden to establish a voluntary statement is "by a preponderance of the evidence." *Colorado v. Connelly*, 479 U.S. 157,

168 (1986). Similarly, we assess if Appellant voluntarily, knowingly, and intelligently waived his rights by considering the totality of the circumstances. *McIntyre*, 309 Md. at 616 (citation omitted). In addition to undertaking the same voluntariness analysis described above, we determine if, at the time of the waiver, Appellant had "the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Id.* at 615.

Appellant asserts that all his statements, including his waiver of his *Miranda* rights, were involuntary. He argues that at the time of the interrogation, he was a fifteen-year-old child, that he did not have a parent present at the interrogation, that five officers were present at the scene, and that his general demeanor was that of a "child overawed and intimidated by his circumstances." For these reasons, Appellant contends he was incapable of making voluntary statements during the arrest, including the waiver of his *Miranda* rights. Similarly, he asserts his waiver was not voluntary, knowing and intelligent on the basis that "no special effort was made to ensure that [Appellant] understood the *Miranda* warnings." He also claims that because Det. Ramsey prompted Appellant to answer the question, "Do you understand your rights as I have advised them to you?", and Appellant's response was to nod rather than verbally answer, the State did not carry its burden of showing that the waiver was voluntary.

We find that under the totality of the circumstances, the State met its burden of demonstrating by a preponderance of the evidence that Appellant's waiver was knowing and intelligent, and that his statements were voluntary. We agree with the circuit court's determinations that there was "no indication" that Appellant "failed to understand what the

officers asked of him" nor that the officers used "improper interrogation tactics, lengthy questioning, trickery, or deceit." When Det. Ramsey issued the *Miranda* warning, he began by ensuring that Appellant could hear and understand him. Appellant was told that he was arrested for a handgun violation, and that he was going to be informed of his rights. Det. Ramsey informed Appellant that he would provide a more detailed explanation of any rights if Appellant did not understand them. Det. Ramsey spoke clearly and at a comprehensible rate of speed and did not use particularly technical language in his explanation of the rights.[4] There is nothing in the record which indicates that Appellant had any specific characteristics or disabilities which would prevent him from understanding the *Miranda* warning as given by Det. Ramsey.

After Appellant was informed of each right, he indicated his understanding, either verbally, or by nodding at an appropriate time. The fact that Appellant did not make consistent eye contact or respond in complete sentences does not necessarily indicate that he did not understand his rights as they were explained to him. *See In re Darryl P.*, 211 Md. App at 171 (stating that a waiver "need not be express, but may be inferred from the suspect's very behavior[.]"). Here, as in *Madrid v. State*, 474 Md. 273, 326 (2021), Appellant gave no implicit or explicit indication that he was confused, or that he did not understand any of his rights. Like the juvenile in *Madrid*, Appellant "replied in the affirmative when [the detective] asked him if he understood the rights that had just been read to him." *Id.* (quoting *Madrid v. State*, 247 Md. App. 693, 717 (2021)). Again,

[4] At oral argument, Appellant noted that he was not asserting a deficiency in the substantive language of the *Miranda* warning he received.

mirroring the behavior of the juvenile suspect in *Madrid*, Appellant gave accurate and specific answers "to questions posed immediately before and immediately after the *Miranda* advisement," and "responded appropriately, giving no indication that he was having difficulty understanding the detective's statements." *Id.* (quoting *Madrid*, 247 Md. App. at 717).

As to the voluntariness of his statements in general, Appellant is correct that as he was a fifteen-year-old minor at the time of the incident, his age "is a highly-relevant factor to be considered." *Walker v. State*, 12 Md. App. 684, 708 (1971) However, "age alone will not operate automatically to negate the voluntariness of a confession." *Id.* Nor does the fact that multiple officers were present at the scene negate the indicia of Appellant's voluntariness in making his statements. Notably, although up to five officers were present in the vicinity, only three were in Appellant's immediate area at any given time.[5] Additionally, Appellant correctly notes that he had no prior contact with the criminal justice system, which could serve to increase the intimidating nature of an arrest, although a suspect's lack of "prior experience with the justice system does not alone compel a holding" that a juvenile's confession was involuntary. *See McIntyre*, 309 Md. at 625. To be sure, nearly any arrest is likely to induce some degree of trepidation in the arrestee, but this fact alone is insufficient to overbear the will of a reasonable juvenile. *Lee*, 418 Md. at 159 ("[I]t is the rare and extreme case in which a court will find that a suspect confessed

[5] Moreover, Det. Shelley testified that when he questioned Appellant, he "kneeled down so I could have [an] intimate conversation with [Appellant]" and tried "to make him feel [as] comfortable as I could and get on his level . . . so he clearly could see that I cared."

involuntarily."). Moreover, several factors weigh against a finding that the conditions of the arrest were so coercive as to obviate voluntariness. Appellant's arrest took place on a well-lit public street where civilians walked by and were able to observe the interaction. During the interrogation, which lasted only a few minutes, none of the officers raised their voices or behaved threateningly, nor did any officer display a weapon at any time during the encounter.

Likewise, the fact that Det. Ramsey prompted Appellant to answer a question does not render the *Miranda* waiver involuntary. Approximately a second elapsed between Det. Ramsey finishing the question, "Do you understand all your rights as I have advised them to you?" and adding "Yeah?" at which point Appellant nodded. We do not find that Det. Ramsey's single-word follow up question, in the context of the entirety of the arrest, was sufficient to "overbear [Appellant's] will." *Lee*, 418 Md. at 159; *see also Madrid*, 474 Md. at 324–26 (holding that a juvenile's confession was voluntary when he did not give a response after each individual right, but responded affirmatively to an officer asking "do you understand the rights? Yes? Yes?" after being advised of his *Miranda* rights).

Appellant also highlights the fact that he did not have a parent present during the questioning. Although Appellant is correct that "[t]he absence of a parent or guardian at the juvenile's interrogation is an important factor in determining voluntariness," it is not dispositive. *Jones*, 311 Md. at 407. In deciding *Jones*, this Court found it relevant to note that the minor defendant never requested the presence of a parent. *Id.* at 408. Moreover, the Supreme Court of Maryland found a fifteen-year old's statements voluntary even when his request for the presence of a parent was twice denied by law enforcement officers.

McIntyre, 309 Md. at 609, 624, 626. Like the defendant in *McIntyre*, Appellant was fifteen, but here, Appellant did not request the presence of a parent.[6] *Id.* at 609.

Under the totality of the circumstances, we conclude that the State met its burden of showing by a preponderance of the evidence that Appellant's statements were voluntary, and that Appellant made a valid waiver of his *Miranda* rights.

II. APPELLANT'S CHALLENGE TO THE ADMISSION OF THE STORE CLERK'S HEARSAY STATEMENTS IS UNPRESERVED.

Appellant asserts that a portion of Det. Shelley's body-worn camera footage, in which Det. Shelley asked questions of an unnamed store clerk, was improperly entered into evidence. In the challenged portion of the footage, the clerk, who did not testify during the proceedings, stated to Det. Shelley that he had seen Appellant enter the store and walk over to the area where the firearm was subsequently recovered. Appellant argues that the footage included testimonial hearsay, which violated both the Maryland Rules of Evidence, and the federal Confrontation Clause. Md. Rule 5-802; *Battle v. State*, 252 Md. App. 280, 316 (2021). Appellant contends that this error was not harmless, as the court's ruling precluded his ability to impeach the store clerk's testimony. The State does not dispute that the challenged portion of the footage was admitted erroneously but asserts that Appellant's objection was not preserved. In the alternative, the State argues that to the extent the issue

[6] Appellant also notes that had his interrogation taken place today, Maryland statutory law would require law enforcement officers to take an action "reasonably calculated to give actual notice" to a parent or guardian prior to initiating a custodial interrogation. *See* Section 3-8A-14.2 of the Courts and Judicial Proceedings article of the Maryland Code. However, even under the current Code, juveniles are not required to have a parent present to validly waive their rights under *Miranda*, nor do the statutory changes impact our evaluation of the totality of the circumstances when determining voluntariness. *See id*.

is preserved for our review, the court's error was harmless in light of ample properly admitted evidence sufficient to show Appellant's possession of the firearm.

As a threshold matter, we address the preservation of Appellant's objection. At the pre-adjudication hearing on Appellant's motion to suppress, defense counsel objected to the admission of certain portions of Det. Shelley's body-worn camera footage "at either the suppression hearing or in the trial." Defense counsel expressed the contention that the clerk's statements, as captured by the body-worn camera footage, were both inadmissible hearsay and violations of the Confrontation Clause. The court ruled that it would give "proper weight" to "any statements made during the officer's investigation. If the Court finds that they are more prejudicial than probative, the Court will not give them weight. If the statements are made in support of the investigation, then the Court will give them the weight that they deserve." The defense noted its objection to the court's ruling. At the start of the adjudication hearing, the court incorporated the findings of the suppression hearing into the adjudication hearing. The defense again noted its objection on hearsay grounds, which was denied. The court indicated that it would "address any hearsay objections if the[y] come up." The parties then proceeded to the adjudication hearing. In that hearing, aside from the camera footage, Det. Shelley also testified twice that the clerk had informed him that Appellant had entered the store and walked to the area where the firearm was recovered. In neither instance did defense counsel object to Det. Shelley's testimony.

The State argues that notwithstanding the defense's objection to the hearsay statement in the video at the suppression hearing, the issue is not preserved for our review, as Appellant failed to lodge a subsequent objection when the same evidence was later

introduced at the adjudication hearing through Det. Shelley's testimony. In reply, Appellant asserts that because his counsel's initial objection was to the challenged portion of the video "coming in as evidence at either the suppression hearing or in the trial," and because the objection was later renewed at the outset of the adjudication proceeding, the challenge is preserved for our review.

"[W]hen a motion *in limine* to exclude evidence is denied, the issue of admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial." *Klauenberg v. State*, 355 Md. 528, 539 (1999); *see also DeLeon v. State*, 407 Md. 16, 31 (2008) (noting that "[o]bjections are waived if, at another point during the trial, evidence on the same point is admitted without objection.").

Here, Appellant objected to the introduction of a specified portion of the body-worn camera footage both during the suppression hearing, and again the outset of the adjudication hearing, when "the findings from the motions hearing" were incorporated into the adjudication. Both objections were overruled. However, defense counsel did not make an objection when Det. Shelley, on direct examination, testified that the store clerk informed him that Appellant "went directly to the area where I recovered the firearm." Defense counsel also did not renew the objection on cross-examination, when Det. Shelley again testified that "the clerk advised" that Appellant went to the area of the store where the gun was recovered. This situation falls well within the confines of the general rule that objections are waived when "evidence on the same point is admitted without objection" at another point in the trial. *DeLeon*, 407 Md. at 31; *see also Webster v. State*, 221 Md. App.

100, 114 (2015); *Paige v. State*, 226 Md. App. 93, 124 (2015).

For the first time, in his reply brief, Appellant asks us to differentiate his case from those which articulate this rule, urging that an exception is warranted because his prior objections, although unrenewed at the time the testimony was presented, were nevertheless specific enough to generally put the court on notice of the issue. We decline to do so. Because Det. Shelley's testimony about the clerk's out-of-court comments was introduced at the adjudication hearing without a contemporaneous objection being made, the prior objections to the same statement in the body-worn camera footage were waived, and thus, the current challenge is unpreserved for our review. *See Paige*, 226 Md. at 124; *Klauenberg*, 355 Md. at 539.

In the alternate, Appellant urges us to apply plain error review to his unpreserved contention. Considering an unpreserved contention by utilizing plain error review is a "rarely used and tightly circumscribed" process. *Malaska v. State*, 216 Md. App. 492, 524 (2014). Accordingly, it is reserved for errors that are "compelling, extraordinary, exceptional, or fundamental to assure the defendant of a fair trial." *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). In order for us exercise our discretion to review an unpreserved error, among other factors, the alleged error must have "affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it affected the outcome of the district court proceedings." *Id.* (internal quotation marks omitted) (quoting *State v. Rich*, 415 Md. 567, 578 (2010)). We decline to address Appellant's unpreserved objection. *See Morris v. State*, 153 Md. App. 480, 506–07 (2003).

III. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING IAD COMPLAINTS WERE NOT PROBATIVE OF THE OFFICER'S BIAS OR TRUTHFULNESS.

A. The Parties' Contentions

Appellant next asserts that the circuit court committed reversible error by precluding cross-examination of Det. Shelley using records of misconduct complaints that were sustained by the BPD's Internal Affairs Division ("IAD").[7]

Specifically, Appellant claims that the court abused its discretion by failing to allow cross-examination under both Maryland Rule of Evidence 5-608(b) ("Rule 5-608(b)"), which permits the examination of a witness's prior conduct that is "probative of a character trait of untruthfulness," as well as Maryland Rule of Evidence 5-616(a) ("Rule 5-616(a)"), which allows cross-examination through questions directed at "[p]roving that the witness is biased, prejudiced, interested in the outcome of the case, or had a motive to testify falsely." Appellant argues that the sustained complaints were probative of Det. Shelley's truthfulness and racial bias, and therefore should have been valid subjects of cross-examination. The State disagrees, arguing the court did not err in concluding that insufficient facts existed to support the assertion that the IAD complaints were probative of Det. Shelley's bias or character for untruthfulness. The State asserts that disallowing inquiry into the IAD complaints was a valid exercise of the court's discretion to limit the scope of cross-examination.

[7] The IAD is now formally known as the Public Integrity Bureau. For clarity, we continue to refer to it as the IAD to conform with the language used in the parties' briefs.

B. The IAD Complaints

The circuit court reviewed Det. Shelley's sustained IAD complaints "in their entirety," as have we.[8]

An initial group of five sustained complaints raise minimal issue in the context of admissibility in this case. In 2016, Det. Shelley was disciplined for the improper handling of evidence. In 2017, Det. Shelley was determined to have erroneously turned off his body-worn camera, but another officer's body-worn camera captured the incident, and Det. Shelley was not found to have otherwise acted improperly. In 2020, Det. Shelley was found to have neglected his duty by not discovering a handgun on the person of an arrestee. 2021, Det. Shelley failed to properly submit evidence; in that instance, a suspect's property fell out of a recovered backpack while in a department vehicle, where it was discovered by another officer two days later. Also in 2021, Det. Shelley was found to have failed to properly guard a prisoner, briefly allowing the prisoner to escape; Det. Shelley was also found not to have his body-worn camera activated at the beginning of the incident.

The circuit court found that none of the sustained IAD complaints listed above were probative of Det. Shelley's untruthfulness or bias. As we shall explain in more detail *infra*,

[8] Det. Shelley also had several complaints that were found unsustained or unfounded, also reviewed by the court below. We need not recount them here, as at the time of the suppression and adjudication hearings, section 3-110 of the Public Safety Article of the Maryland Code "precluded the admission of evidence of a complaint that was determined to be unfounded or unsustained[,]" and consequently they could not have been used as impeachment evidence. *Blake v. State*, 485 Md. 265, 300 (2023); *see also* Ch. 59, 2021 Md. Laws (repealing the provision preventing the admission of unfounded or unsustained complaints, with an effective date of July 2022). Even under current law, such unsubstantiated complaints are "no more than the complainant's hearsay accusations," and cannot supply a reasonable factual basis for impeachment. *Blake*, 485 Md. at 300–01.

with respect to the complaints above, none of which included any finding of bad faith, bias, or untruthful statements by Det. Shelley, the circuit court acted well within the bounds of "sound discretion" in determining the previously identified complaints were not probative of either bias or untruthfulness. *Robinson v. State*, 298 Md. 193, 201 (1983); *see also Blake*, 485 Md. at 301 (determining that a finding of neglect of duty was not probative of an officer's truthfulness).

However, another of Det. Shelley's sustained complaints presented a closer question for the court. In 2019, Det. Shelley and another officer, Detective Bruce Dhaiti ("Det. Dhaiti")[9] stopped a man they suspected of purchasing drugs. Det. Shelley confirmed the individual was in possession of narcotics, and in lieu of arresting him, ordered the suspect to destroy the drugs by stomping on them, and informed the suspect he would not be arrested. This incident was observed by Det. Shelley's sergeant, who subsequently *did* arrest the suspect, and initiated an IAD investigation against Det. Shelley and Det. Dhaiti, which was memorialized as case number 2019-1834. Although Det. Shelley did not activate his body-worn camera, he performed this action in front of other officers, including a superior officer, and at no point seems to have attempted to hide or mischaracterize his actions, either immediately following the incident, or during the ensuing IAD investigation.

While the investigation into complaint 2019-1834 was ongoing, two officers submitted reports that they no longer wished to work with Det. Shelley. The first report came from Det. Dhaiti, who stated that he did not wish to partner with Det. Shelley because

[9] Det. Dhaiti's name is spelled both as "Dhaiti" and "D'Haiti" in various records. We adopt the language used in the original IAD reports.

of Det. Shelley's "bias[ed] practice[s] toward some citizens of the City of Baltimore," as well as that Det. Shelley "sometimes utilizes 'profiling method' to conduct traffic stops as well as armed person investigations." The second report came from Detective Roberto Arena ("Det. Arena"), who stated that Det. Shelley's "integrity has been compromised and [I] believe[] he is no longer fit to be trusted within the unit due to how he works within the squad. [I] find[] it difficult to find truth within [Det.] Shelley's work." Both reports were submitted the same day, and neither contained any specific allegations of a situation where Det. Shelley had acted inappropriately.

A BPD lieutenant who received the officers' complaints noted that they were "vague and did not provide specific examples." In order to clarify them, he interviewed both Det. Dhaiti and Det. Arena the day after they filed their complaints; both officers stated that their complaints referred to incident 2019-1834, and "advised that they were not aware of nor could they give examples of any other incidents." The same day as their interviews, both Det. Dhaiti and Det. Arena submitted follow up reports, confirming their prior complaints referred only to incident 2019-1834, where Det. Shelley ordered a suspect to destroy drugs. Det. Dhaiti's filing noted that the specific reason he did not want to be partnered with Det. Shelley was "[d]ue to an open and pending IA investigation [case number 2019-1834] where myself and Ofc. Shelley have been accused of instructing a citizen to destroy evidence." Det. Arena's follow up statement clarified that he did not feel comfortable working with Det. Shelley "because of a recent incident where [Det. Shelley] destroyed drugs during an encounter with a citizen." Det. Arena went on to say that "because of that incident [I] do not believe [Det. Shelley] can be trusted within this

specialized unit and that [Det. Shelley's] integrity has been compromised."

C. The Court's Findings

In evaluating the sustained complaints, the circuit court correctly noted that Maryland Rule 5-608(b) allows a party to attack the truthfulness of a witness using prior conduct only when the prior incident is probative of a witnesses' truthfulness and there is "a reasonable factual basis for asserting that the conduct of the witness occurred." As previously discussed, the court, after reviewing the IAD files, found that Det. Shelley's sustained IAD complaints for failing to secure contraband and for improperly turning off his body-worn camera were not probative of his character for untruthfulness or bias. The court also found that unsustained or unsubstantiated complaints were not probative of a witnesses' character, and there was no requirement they be allowed to be used for impeachment purposes.[10]

With regard to incident 2019-1834, the court did not find it probative of Det. Shelley's bias or character for untruthfulness and disallowed it as a topic for cross-examination under both Rule 5-616 and Rule 5-608(b). The court explained that it defined untruthfulness as: "Lying. Wanting in veracity. Diverging from or contrary to the truth, not corresponding [to] the fact[s] of reality." By contrast, it saw integrity as "adherence to moral and ethical principle and soundness of moral character." The court distinguished the terms, saying: "In one instance you have a lack of moral character, in the other instance,

[10] As noted above, exclusion of unsustained or unfounded IAD complaints was statutorily required at the time of the suppression and adjudication hearings. *See Blake*, 485 Md. at 300.

you have a liar." The court found that Det. Shelley's decision to order "a suspect to stomp on drugs demonstrates a lack of integrity. It does not . . . demonstrate a propensity to lie." Notwithstanding the fact that the complaining officers' statements were "replete with references to [Det. Shelley's] integrity," the court found they were not probative of his character for untruthfulness. The court gave "little weight" to Det. Arena's complaint that he "does not find truth in Shelley's work," as Det. Arena "failed to cite a single example of how Officer Shelley's actions are untruthful," and was not an investigating officer.

D. Analysis

Both the Maryland Declaration of Rights and the Sixth Amendment guarantee criminal defendants the right to cross-examine the witnesses against them. *Marshall v. State*, 346 Md. 186, 192 (1997). The "right to cross-examine is not without limits, however, and 'trial judges retain wide latitude . . . to impose reasonable limits on such cross-examination[.]'" *Smallwood v. State*, 320 Md. 300, 307 (1990) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). The scope of inquiry on cross-examination is "subject to the trial judge's sound discretion." *Robinson*, 298 Md. at 201 (1983). "[A] ruling reviewed under the abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *Nash v. State*, 439 Md. 53, 67 (2014) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)). Rather, we will disturb the circuit court's ruling only if the limitations imposed by the trial judge "inhibited the ability of the defendant to receive a fair trial." *Pantazes v. State*, 376 Md. 661, 681–82 (2003).

1. *The circuit court did not abuse its discretion in precluding cross-examination under Rule 5-608(b).*

Rule 5-608(b) allows the impeachment of a witness by examination of prior conduct which did not result in a conviction over objection only if "a reasonable factual basis for asserting that the conduct of the witness occurred" is established, and if the conduct is "probative of a character trait of untruthfulness." Md. Rule 5-608(b). Appellant asserts that Det. Shelley's sustained complaints for "failures to detect a weapon, to guard a prisoner, to submit property left in a vehicle, and, on three occasions, to comply with Department [body-worn camera] policy," are probative of his character trait of untruthfulness. Appellant attempts to bolster this argument by equating these findings to those in *Fields v. State*, 432 Md. 650, 661, 674–75 (2013), and *Martin v. Conner*, 287 F.R.D. 348, 352 (D. Md. 2012). However, these cases are inapposite.

In *Fields*, the Supreme Court found that a sustained IAD complaint against officers who falsified timesheets was valid impeachment evidence under Rule 5-608(b). 432 Md. at 674. Deliberate falsification of a document is exactly the sort of evidence that would be probative of a witness's character for truthfulness, as opposed to a violation of policy that does not inherently include lying or deception. *See id.* at 674. In *Martin*, a federal court, applying the analogous federal rule of evidence, found that unsustained complaints were *discoverable*, as they "could be reasonably calculated to lead to admissible evidence[,] [s]pecifically evidence of specific instances involving the veracity of [the] defendants[.]" 287 F.R.D. at 352 (internal quotation marks and citations omitted). The *Martin* court, while making no ruling on the admissibility of the reports at issue, noted that "the standard for

admissibility is, of course, a higher standard than for discoverability[.]" *Id.* at 356.

The sustained IAD complaints for failure to properly guard a prisoner, detect a weapon, submit property, or conform to the BPD's body-worn camera policy do not describe acts inherently probative of Det. Shelley's character for truthfulness. Therefore, in precluding cross-examination about them, the court did not abuse its discretion "in an arbitrary or capricious manner or . . . beyond the letter or reason of the law." *Kelly v. State*, 392 Md. 511, 531 (2006) (quoting *Cooley v. State*, 385 Md. 165, 175–76 (2005)).

We next examine the issue of the statements included in the 2019-1834 investigation, which include allegations that Det. Shelley's "integrity has been compromised," and that it is "difficult to find truth within [Det. Shelley's] work." The circuit court noted that "there was no mention of specific instances of untruthfulness, theft, fraud, deception[,]" and that "ordering a suspect to stomp on drugs demonstrates a lack of integrity. It does not in this Court's view demonstrate a propensity to lie." The court further indicated that it gave "little weight to one complaining officer's commentary that he, quote, does not find truth in Shelley's work, unquote."

Appellant asserts that the court erred by differentiating between "truthfulness" and "integrity," and by not placing more weight upon the complaining officers' characterizations of Det. Shelley. In so arguing, Appellant cites several dictionary definitions which encompass the quality of 'honesty' within the definition of 'integrity.' Appellant also claims that courts "regularly" permit cross-examination about a witness'

integrity in assessing their character for truthfulness.[11]

We cannot say that the circuit court abused its discretion in precluding cross-examination of Det. Shelley based on the 2019-1834 IAD complaint. While the circuit court's distinction between 'integrity' and 'truthfulness' articulates a fine line, it remains so that the central test for impeachment under Rule 608(b) is that the prior conduct must be "probative of a character trait of untruthfulness," and there must be a "reasonable factual basis for asserting the conduct of the witness occurred." Md. Rule 608(b). The court was required to exercise its discretion, and did so, concluding that "ordering a suspect to stomp on drugs" does not "demonstrate a propensity to lie." Although Det. Shelley's action in the 2019-1834 incident was against BPD policy, the court did properly exercise its discretion in concluding that the sustained IAD reports did not provide a "reasonable factual basis" that he made or attempted to make a false statement or otherwise mislead any person in any way. *Id.*

To the contrary, the court considered the evidence before it, to include evidence that Det. Shelley's action was done in full view of multiple other officers, and that he appears to have been fully forthcoming during the subsequent IAD investigation. Although Det. Arena stated that Det. Shelley was "no longer fit to be trusted within the unit due to how he works within the squad," and it was "difficult to find truth within officer Shelley's

[11] In asserting the regularity of this practice, Appellant's citations are limited to a Fourth Circuit case from 1941, a Tenth Circuit case from 1969, and an unreported U.S. District Court decision. We also note that each of these cases explicitly references "truthfulness" in addition to "integrity." *See Simon v. United States*, 123 F.2d 80, 85 (4th Cir. 1941); *Butler v. United States*, 408 F.2d 1103, 1104 (10th Cir. 1969); *United States v. Riley*, 2015 WL 501786 at *15 (D. Md. Feb. 4, 2015).

work," Det. Arena *also* stated that the sole reason for his complaint was Det. Shelley's actions pursuant to the 2019-1834 incident, which did not involve falsity on Det. Shelley's part. Therefore, the court was not required to give substantial weight to Det. Arena's personal impressions of Det. Shelley as dispositively constituting the "reasonable factual basis" required for impeachment under Rule 5-608(b), and instead could consider those impressions to be "a hearsay accusation of guilt [with] little logical relevance to the witness' credibility." *Fields*, 432 Md. at 674 (internal quotation marks and citation omitted). Therefore, we cannot conclude that the circuit court abused its discretion in precluding cross-examination under Rule 5-608(b) regarding Det. Shelley's sustained IAD complaints.

2. *The circuit court did not abuse its discretion in precluding cross-examination under Rule 5-616.*

Rule 5-616 provides, in relevant part, that the "credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at . . . [p]roving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely." Md. Rule 5-616(a)(4). In general, trial courts "retain wide latitude in determining what evidence is material and relevant, and to that end, may limit, in their discretion, the extent to which a witness may be cross-examined for the purpose of showing bias." *Merzbacher v. State*, 346 Md. 391, 413 (1997). Nevertheless, questions eliciting witness bias during cross-examination "should be prohibited only if (1) there is no factual foundation for such an inquiry in the presence of the [factfinder], or (2) the probative value of such an inquiry is substantially outweighed by the danger of undue

prejudice or confusion." *Calloway v. State*, 414 Md. 616, 638 (2010) (quoting *Leeks v. State*, 110 Md. App. 543, 557–58 (1996)).

Appellant argues that the court erred when it prohibited the introduction of incident 2019-1834 for impeachment purposes, as Det. Dhaiti's complaint stated that he did not wish to continue working with Det. Shelley because of his "bias[ed] practices" and use of "'profiling method[s]' to conduct . . . armed person investigations." The State argues that the circuit court acted within the bounds of its discretion in determining that no factual foundation existed to allow Det. Shelley to be cross-examined based on the IAD complaints. We agree with the State.

In this case, the only portions of Det. Shelley's IAD file which Appellant asserts are probative of Det. Shelley's alleged racial bias are complaints made by Det. Dhaiti, who specifically stated that his complaint was in response to the 2019-1834 incident. During the 2019-1834 incident, for which Det. Dhaiti was also being investigated, Det. Shelley did not make an arrest, and instead directed a suspect to destroy drugs. At no point did Det. Dhaiti explain how the 2019-1834 incident was related to bias, nor did he identify any specific incident where Det. Shelley exhibited racial bias, and when asked to do so by an investigating officer, "advised that [he] was not aware of nor could [he] give examples of any other incidents." Moreover, although the IAD complaint against Det. Shelley was sustained as to the accusations of improper use of his body-worn camera, neglect of duty, and conduct unbecoming an officer, the allegations against him for discriminatory policing and making an improper stop were *not* sustained.

Similar to how a mere "hearsay accusation of guilt [is] not sufficient" for the

purposes of establishing a factual basis for the purposes of Rule 5-606(b), *Pantazes*, 376 Md. at 687, here, the circuit court did not err in concluding that, without more, Det. Dhaiti's complaint was insufficient to show that the incident was probative of bias. In so deciding, the court had available before it the very general and unsustained nature of Det. Dhaiti's accusations, the fact that the accusation was made while Det. Dhaiti was himself a target of the same 2019-1834 IAD investigation as Det. Shelley, and the fact that the sustained portion of the complaint was not inherently probative of bias. Thus, a reasonable factfinder could conclude from the evidence that the IAD complaint did not constitute the factual foundation indicating bias anticipated as a prerequisite for cross-examination by *Leeks* and *Calloway*. *See Calloway*, 414 Md. at 638–39 (quoting *Leeks*, 110 Md. App. at 557–58). Therefore, we cannot say that the circuit court abused its discretion in precluding questioning about the sustained IAD complaints under Rule 5-616.

IV. THE CIRCUIT COURT DID NOT ERR IN CONCLUDING THE OFFICER DID NOT ACT IN BAD FAITH WHEN FAILING TO PROMPTLY ACTIVATE HIS BODY-WORN CAMERA.

Appellant argues that the circuit court erred by denying his motion pursuant to *Arizona v. Youngblood*, which asserted that Det. Shelley's failure to activate his body-worn camera at the start of the encounter was a failure to preserve potentially useful evidence done in bad faith. 488 U.S. 51 (1988). The State disagrees, contending that failing to act affirmatively to *record* a police encounter is not equivalent to failing to *preserve* evidence already in existence, that any potential usefulness of additional body-worn camera footage or audio is speculative, and that Appellant has failed to show that Det. Shelley acted in bad faith. In the alternate, the State asserts that if *Youngblood* was violated, any resulting error

was harmless.

In *Youngblood*, the United States Supreme Court held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." 448 U.S. at 58; *see also Gimble v. State*, 198 Md. App. 610, 621 (2011). Similarly, the Supreme Court of Maryland has noted that Maryland's constitutional protections "do not extend beyond *Youngblood*, nor apply in cases where the defendant cannot show bad faith by the police." *Cost v. State*, 417 Md. 360, 378 (2010). Therefore, unless Appellant shows that Det. Shelley made the decision not to activate his body-worn camera in bad faith, we need not determine if any resultant evidence would have been potentially useful to the defense or reach the question of whether a law enforcement officer's failure to record an interaction constitutes a failure to preserve evidence.[12] *Id*.

We review the circuit court's factual finding that Det. Shelley did not act with bad faith in neglecting to promptly activate his body-worn camera for clear error. *Elliot v. State*, 185 Md. App. 692, 737 (2009). Consequently, "we will not disturb the factual findings of the trial court if there is any competent evidence to support those factual findings." *Dickerson v. Longoria*, 414 Md. 419, 433 (2010) (alterations and internal quotations

[12] In urging us to consider this question, Appellant notes that body-worn camera of the type worn by Det. Shelley, prior to being manually activated, is continually in "buffer" mode, meaning the camera is continuously capturing video, but the camera neither saves the video nor records audio unless the wearer takes action. Upon manual activation, the camera begins recording audio, and saves the camera footage, beginning with the previous sixty seconds of silent video footage. No footage captured more than sixty seconds before the camera is activated is retained.

omitted); *see also In re Elrich S.*, 416 Md. 15, 30 (2010). We have noted that for the purposes of showing a *Youngblood* violation, the need to demonstrate that law enforcement acted in bad faith is "a high standard . . . typically found only in the most egregious of cases." *Steck v. State*, 239 Md. App. 440, 466 (2018).

In seeking to show that Det. Shelley's failure to activate his body-worn camera at the start of the interaction was done in bad faith, Appellant focuses on the fact that BPD policy would have required Det. Shelley to activate the camera earlier, and Det. Shelley had previously violated the policy. The BPD policy on body-worn camera states that when safe and practical, an officer "must activate" their camera "[a]t the initiation of . . . [an] activity or encounter that is investigative or enforcement-related in nature." Additionally, the camera must be activated in response to any "activity likely to require immediate enforcement action," or "as soon as the [officer] . . . develops reasonable suspicion for the stop."

Appellant, in asserting bad faith on behalf of the police, also presents several sustained IAD complaints against Det. Shelley, discussed *supra*. Appellant is correct that Det. Shelley had previously been disciplined multiple times for failing to follow BPD policy with regard to the use of his body-worn camera. However, none of the prior IAD investigations resulted in findings that Det. Shelley had acted in bad faith or intentionally violated BPD policy with regard to the use of his body-worn camera.[13] Appellant also

[13] In a 2017 incident, Det. Shelley, then one month out of training, mixed up the codes for having his camera off and on, and consequently did not record an interaction; another officer's camera *was* recording, and did not show Det. Shelley violating the law or violating any other BPD policy. In a 2021 incident, Det. Shelley did not immediately reactivate his

asserts that it is "doubtful" that Det. Shelley could have seen the outline of a gun through Appellant's clothing, and posits that Det. Shelley's initial stop was instead motivated by racial profiling. In support of this contention, Appellant notes that as part of a prior IAD complaint, another officer alleged that Det. Shelley utilizes "bias[ed] practices," and that he "sometimes utilizes 'profiling method' to conduct traffic stops as well as armed person investigation[s]." *See* Section III *supra*.

Assuming that Det. Shelley's action in this case violated the BPD's policy on the use of body-worn cameras, we note that while a "failure to follow police procedures *can* indicate bad faith, that is but one factor to be considered." *Gimble*, 198 Md. App. at 621. An officer's negligent failure to follow police procedure is even alone insufficient to establish bad faith. *Id.* at 622.

Here, the circuit court reviewed Det. Shelley's previous IAD complaints and his body-worn camera footage. The court did not identify any evidence in the sustained IAD complaints that demonstrated that Det. Shelley had intentionally violated the BPD's body-worn camera policy on any previous occasion. Additionally, the court determined that the administrative reports which claimed Det. Shelly used biased practices or profiling were "vague and failed to provide specific examples," and that "neither [reporting officer] gave examples of any other incident" aside from the episode where Det. Shelley asked a suspect

camera upon leaving a hospital with a prisoner; BPD policy does not generally allow the use of body-worn cameras while in a hospital. In a 2019 incident, discussed at length *supra*, Det. Shelley did not activate his body-worn camera when, rather than arresting a suspect for possession of heroin, instead told him to destroy the narcotics. Det. Shelley asserted that at the time, he was "not conducting an investigation and believed [the suspect] did not possess a felony amount of heroin."

to destroy narcotics rather than arresting him. The court also heard directly from Det. Shelley, who testified to the circumstances that led him to approach Appellant, and his understanding of the BPD's body-worn camera policy, which he asserted did not require him to activate his camera before he did so. Ultimately, the court found that there was "no evidence that the state, vis a vis the police, acted in bad faith in failing to, at the moment of the investigation turn on body worn camera."

The barrier of clear error, particularly in the case of identifying bad faith, is a high one. Moreover, as we have explained:

> [I]t is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different decisional phenomenon of being persuaded. . . . Mere non-persuasion . . . requires nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard.

Starke v. Starke, 134 Md. App. 663, 680–81 (2000). In this case, the circuit court was not persuaded that Det. Shelley acted with bad faith when he failed to activate his camera at the outset of his interaction with Appellant, and there is competent evidence in the record to support the court's finding. As we do not conclude that the court's finding of fact was clearly erroneous, we need not reach the question of whether failing to timely active a body-worn camera could constitute a failure to preserve evidence under *Youngblood*.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.