Circuit Court for Wicomico County
Case No.: C-22-CR-19-000638

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2015

September Term, 2021

JEREMY HOUCK

v.

STATE OF MARYLAND

Beachley,
Shaw,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: December 13, 2022

Appellant, Jeremy Houck, was indicted in the Circuit Court for Wicomico County and charged with: sexual abuse of a minor by a family member; sexual abuse of a minor by a household member; sexual abuse in the second degree; and, two counts of sexual abuse in the third degree.[1] After his motion to suppress his statement to the police was denied, and after his first trial ended in a mistrial due to a hung jury, Appellant was ultimately convicted in a second jury trial of sexual abuse of a minor as a family member and was sentenced to 25 years of incarceration. He timely appealed and presents the following question for our review:

> Did the motions court err in denying the motion to suppress his statement?

For the following reasons, we shall affirm.

BACKGROUND

The sole issue presented asks us to determine whether the circuit court erred in denying Appellant's motion to suppress his pretrial statement, given to Salisbury Police Detective Matthew Rockwell on October 22, 2019. As will be explained in more detail, that statement described inappropriate contact between Appellant and his underage cousin when she was approximately 8 to 10 years old and he was 10 years her senior in age. Appellant contends that his statement was involuntary and should have been suppressed because: (1) it was improperly induced by the detective's repeated suggestions that he

[1] *See* Md. Code (2002, 2021 Repl. Vol.) § 3-602(b)(2) of the Criminal Law Article (sexual abuse of a minor by a family member); § 3-602(b)(2) (sexual abuse of a minor by a household member); § 3-306 (sexual offense in the second degree) (repealed by Acts 2017, chs. 161-62 (effective 10/1/2017); § 3-307 (sexual offense in the third degree). The charge of sexual offense in the second degree concerned conduct that occurred between September 1, 2011, and June 1, 2014.

would only be charged as a juvenile for the alleged sexual offenses committed when he was a minor; and, (2) Appellant relied on those inducements in admitting to inappropriate contact with the underage victim.

In response, and after arguing that some of the grounds raised on appeal by Appellant were not made in the motions court, the State appears to concede that Detective Rockwell suggested that juvenile offenders generally were treated more favorably, but argues that the detective "did not tie the possibility of lenient treatment to Houck making a confession." Moreover, the State continues that any such suggestion with respect to Appellant's juvenile status at the time of the offenses was inaccurate because, although Appellant told the detective he was 14 or 15 years old at the time of the allegations, on the basis of the victim's statement, it was more likely that Appellant was 17 or 18 years old at the pertinent time. The State argues that "[t]he fact that the information provided by Houck about his age turned out to be incorrect does not convert Detective Rockwell's reliance into a ploy" and, "there was no such inducement; leniency as a juvenile was a given fact, not a dangled incentive." The State concludes by noting that Appellant did not testify at the motions hearing, and thus, there was no testimony to suggest that he relied on any improper inducement in making the limited admissions contained within his statement to the detective.

We turn now to the facts adduced at the motions hearing:

Detective Matthew Rockwell, of the Salisbury City Police Department and assigned to the Child Advocacy Center for Wicomico County, testified that T., the alleged victim,

was interviewed with respect to the allegations on October 22, 2019.[2] T., born on October 12, 2004, told investigators, between the time when she was in second to fourth grade, she lived with her parents in a camper on property shared with Appellant and his grandmother. At around this time, T. reported that she was sexually abused by her cousin, Appellant, in his bedroom. Detective Rockwell spoke to T.'s mother and determined that T. was between 7 and 9 years of age at the time the incidents were alleged to have occurred. Detective Rockwell also testified that Appellant's date of birth was April 21, 1994. The detective calculated, albeit after the interview, that Appellant would have been between the ages of 17 and 19 years old at the time of the alleged abuse.[3]

Later the same day as the interview with T., Detective Rockwell spoke to Appellant. Appellant was living in Glen Burnie, Maryland, when he apparently heard about T.'s allegations. As a result, Appellant went to the State Police Barracks in Glen Burnie to try to obtain further information. Detective Rockwell spoke to Appellant when he was at the State Police Barracks and told him that he "wanted to get his side of the story." Appellant and the detective then made arrangements to meet later that day at the Annapolis Police Department.

[2] It is unnecessary to name the minor victim in this case. *See Muthukumarana v. Montgomery Cnty.*, 370 Md. 447, 458 n.2 (2002); *Thomas v. State*, 429 Md. 246, 252 n.4 (2012).

[3] Based on our calculations, using the victim's date of birth and the testimony that she was 7 to 9 years old at the time of the alleged abuse, the incidents appeared to have occurred sometime between 2011 and 2013.

After they both arrived at that mutually agreed location, Detective Rockwell testified that he interviewed Appellant alone and made clear to him that he was not under arrest. The interview took approximately 45 minutes to an hour and Appellant never asked to terminate the interview. Appellant was 25 years old at the time of the interview on October 22, 2019.

During the interview, Appellant confirmed that he knew T. and that she lived with her family in a camper on the property he shared with his grandmother. However, Appellant told the detective he was about 14 or 15 years old at the time. Detective Rockwell further testified that he asked Appellant several times about his age at the time of the incidents and Appellant maintained that he was 14 or 15 years old. Appellant also told the detective that he was being treated for bipolar disorder and depression.

Detective Rockwell then testified that he told Appellant "that if you were 14 or 15 you were still a juvenile at the time of the allegations. I told him hypothetically if you were to be charged, you would be charged as a juvenile." He also told him that "14 and 15 year olds make mistakes." The detective agreed he told Appellant something similar approximately 6 times during the interview. Specifically, Detective Rockwell testified:

> Q. And what was the purpose of you making those references to him during the course of your interview?
>
> A. Because if he was 14 or 15 years old then he would be looking at juvenile charges.
>
> Q. At any time during the course of your interview with Mr. Houck did you tell him that if he confessed he would only be looking at juvenile charges?
>
> A. No.

> Q. Did you make that connection between him confessing to you and being charged only as a juvenile?
>
> A. No, because we didn't talk about other ages in the interview, other than the fact the difference between being a juvenile and being an adult.
>
> Q. So you were generally explaining to him if he had been 14 or 15 that's what he would be looking at regardless of whether or not he confessed to the crime?
>
> A. Correct.

The detective testified that he never threatened or coerced Appellant to give a statement. And he maintained that he never promised Appellant that he would be charged as a juvenile, as opposed to as an adult.

Asked if Appellant made any confessions during the interview, the detective testified: "He spoke about a time where he was in the room and had his arm around her within his bedroom and it could have possibly happened, the allegations could have possibly happened." He also stated "that he doesn't remember it happening but it could have from being curious" and that it was a "one time thing[.]"

After the interview was over, Appellant was allowed to leave. It was at that time, according to Detective Rockwell, that he first calculated that Appellant was 17 to 19 years old at the time associated with T.'s allegations. Subsequently, Appellant was indicted in connection with the allegations on November 4, 2019 and arrested shortly thereafter.

At that point during the motions hearing, the court admitted a video recording of Appellant's interview with Detective Rockwell. The testimony ended and the motions court recessed for the day to review the recorded interview.[4]

Looking to the transcript of the interview, Detective Rockwell began the encounter by patting Appellant down for "my safety and yours[,]" and informing him he was not under arrest. The detective further advised that there were some "allegations" involving the time when he lived on Powerline Road in Mardela Springs, Maryland, with his grandmother. Appellant stated that T. and her family lived on the same property in a camper when Appellant was "14/15, maybe 16" years old. Thereafter, Appellant maintained throughout the interview that he was 14 or 15 years old at the time of the allegations. Pertinent to our discussion, the following then transpired:

> DETECTIVE ROCKWELL: But listen, that's neither here nor there. Okay? I'm going to shortly tell you the allegations. All right? But I want you to keep something in your mind, you said you were 14 or 15 years old when they -- this is what this is revolving around, the time that they lived in the camper next to the house you and your grandma lived in.
>
> The key point here is you were 14 or 15 years old. How old are you now?
>
> MR. HOUCK: I'm 25.
>
> DETECTIVE ROCKWELL: So we're talking ten or 11 years ago?

[4] A CD of the interview was admitted during the motions hearing as Defendant's Exhibit 1 and is included with the record on appeal. A redacted transcript of that interview is included in the record on appeal, albeit as a State's Exhibit from the trial, not the motions hearing. Although our review is limited to the record of the suppression hearing, in this case, as there does not seem to be any dispute that the transcript admitted at trial and provided with the appellate record is an accurate transcription, we shall refer to it for ease of reference.

MR. HOUCK: Yes, sir.

DETECTIVE ROCKWELL: Right. So at 14 or 15, you're still a juvenile. Right? And now you're an adult, plus it's been over ten years. So the allegations is that you didn't have sex with her. You didn't forcibly rape her. It's not like -- it's not like that. All right?

The allegation is that you, during that time period, digitally penetrated her. Or, for lack of better terms, you fingered her.

MR. HOUCK: No.

DETECTIVE ROCKWELL: All right. So listen, the accusation. And you kissed her. You fingered her and you kissed her. And we're not talking about rape here. We're not talking about, you know, gradual intercourse with your penis or anything like that.

Detective Rockwell then inquired, at length, whether the incident(s) with T. when Appellant was 14 or 15 years old was or were "experimental." The detective stated "[t]here's a whole dynamic of what could happen. And most of that dynamic is -- well, that dynamic I just explained to you is there's a criminal and a non-criminal element to everything, right?" And, "[s]o experimental doesn't usually fall underneath criminal amongst teenagers. Right? So that's why you're not under arrest."

Detective Rockwell then reiterated that Appellant had not been charged because he wanted to hear Appellant's "side of the story on this." He also stated that the question was not "*if* your finger went in her vagina" but rather, "*why* it went in there." (Emphasis added.) The interview continued:

[DETECTIVE ROCKWELL:] So that's not the question here. The question I have is why it went in there. And what is the situation as to why it went in there. And then is it a criminal element or is it a non-criminal element? *Because 14 or 15, if [I] was to charge [sic] -- hypothetically speaking, if I was to charge you right now, Jeremy, I couldn't even charge you as an adult. It would be as a juvenile status because of the 14-year-old age.* Make sense?

MR. HOUCK: Mm-hmm.

DETECTIVE ROCKWELL: Because it happened prior to you becoming an adult.

MR. HOUCK: I understand.

(Emphasis added.)

After further discussion, Appellant replied: "I don't remember any of this happened, because me and her were never alone" and "I never did anything with [T.]" Detective Rockwell returned to "why" it happened the way T. reported, stating "not all explanations are criminal, even as a juvenile status." The detective continued:

> It's not -- I think you're probably sitting here talking to a cop in a brick room in an interview and I get it. If I was in your shoes I'd be up to here with like -- probably with like nerves and what's going on. *I'm telling you that at 14 or 15 years old, I would have to charge you as a juvenile if I were to charge you.*
>
> And at ten years, the statute of limitations might even be up on this. There might not even be charges, I would have to confer with the State's Attorney to see if I can still even charge this. Worst-case scenario. I'm just telling you I'm here to get an explanation as to why it happened.

(Emphasis added.)

Appellant maintained that he did not "remember it ever happening" and that, when he was 14 or 15, he was on Adderall due to his attention deficit hyperactivity disorder ("ADHD"). The detective asked if it was a "possibility" that he put his finger in T.'s vagina and Appellant replied "[t]hat would be something I would remember." Appellant agreed that T. was approximately 9 years old at the pertinent time.

At this point during the interview, Detective Rockwell indicated that whereas he knew that Appellant "did it," and whereas Appellant maintained that he did not remember

what happened because he was either "on medication," or he "didn't do it[,]" the detective stated "we're not going to get anywhere with that, Jeremy." The detective then declared:

> Understand, I said before and I'm going to reiterate it, that *at worst-case scenario you're looking at juvenile charges if this happened when you were a juvenile. You're a juvenile until the age of 18. Everything on the timeline matches up. So she's not lying about that.*
>
> I know she got on your nerves at times because you were living with them, living on the same property. I get that. And it's not an excuse as to it not happening. So we have two options. You know, I'm going to ask you to tell me the truth. All right? Or you can leave here today and I won't know the truth and you won't have told me the truth.
>
> And, you know, you can look like [a] monster when you leave here or we can figure this out. This is just simply me asking for your side of the story and why it happened. That's it.

(Emphasis added.)

Detective Rockwell continued to emphasize that these allegations occurred ten years earlier when Appellant was 14 or 15 years old and when he may have been "curious" or "over-excited" with his younger cousin. This included the detective stating, "I think at 14 or 15 I would never hold what happened ten or 11 years ago, I would never hold it against a current man, because you've lived, you've grown, you've matured and you got your ducks in a row and obviously you're past that curiosity stage." At that point, Appellant stated, "I don't remember doing it, but she was always laying on me." He also admitted, in response to further questioning, that he may have become "a little excited[.]" Detective Rockwell then continued:

> DETECTIVE ROCKWELL: Right. It's a little bit more excitable when you're that age and you're starting to hit puberty. You know, I'll tell you, like *if you were 14 years old and we were having this conversation, do*

you know what the outcome of this would be in the long run through the State of Maryland?

MR. HOUCK: No.

DETECTIVE ROCKWELL: *You'd have to go to therapy and talk to someone about your sexual feelings. All right? That's* it.

(End Tape 1 – Start Tape 2.)

DETECTIVE ROCKWELL: But, I'm here not to put you in handcuffs today and haul you back to Salisbury. I'm here to simply get a closure of this case. That's it.

MR. HOUCK: I mean, what you said, it could have happened. I don't remember it happening, but she was always laying on me.

(Emphasis added.)

Detective Rockwell continued with the theme of Appellant being 14 or 15 years old at the time and that "mistakes happen. We learn from mistakes and we move on with life." And, "I'm saying something that happened ten or 11 years ago doesn't reflect on the person you are today." Further, "that's why I'm simply here trying to get your side of the story on this. Because if I thought it was more to it than this, I would have just gone and got a warrant for your arrest." Appellant replied that he understood the detective's meaning, and reiterated "I mean, it could -- it could have happened that way, but I don't remember it." He also stated "[i]f it happened it probably would have only been a one-time thing, but I don't remember it happening at all."

Detective Rockwell continued to challenge Appellant's memory, stating that "[t]ouching a vagina at 14 or 15 years old is something that you don't forget." After Appellant again stated that "I don't remember[,]" the detective reiterated:

> [L]ike I told you, we have no big warrant for your arrest, you're free to walk out of here anytime. I'm not going to run you down. I'm not going to chase you down. You can get in your car and drive away. I'm going to close up this room and walk out and get in my car and go back to Salisbury. All right?

Appellant then admitted that he remembered T. "laying next to me" and "I remember her touching me right here." After stating that he did not "touch my first vagina until I was 18 -- no, 17[,]" Appellant then confirmed that he remembered laying next to T. with his arm around her and that, "my hand may have been down there but I wasn't purposefully trying to do anything." After the detective stated that Appellant was not being entirely truthful, Appellant replied "I just put my arm on her. Like I said, my hand could have been there. I don't know." Asked again whether he touched T.'s vagina, Appellant replied again "it may have happened. I don't remember." The detective said "at 14 or 15 years old, I don't think it's unreasonable that that happened[,]" and Appellant replied "[i]t may have happened. I don't -- I remember holding her, that's it." The detective then summed up Appellant's admissions as follows:

> [DETECTIVE ROCKWELL:] But, here's where we're at. So you got her laying next to you and she touched your inner thigh. Do you remember if she touched your penis at all?
>
> MR. HOUCK: I don't think she ever did.
>
> DETECTIVE ROCKWELL: All right. And you could have possibly have touched her vagina at that point?
>
> MR. HOUCK: Sure.
>
> DETECTIVE ROCKWELL: Okay. That's what you said. Am I correct on that?
>
> MR. HOUCK: Yes.

DETECTIVE ROCKWELL: If I'm not, correct me please. So here's where we're at, so this happened when she was in the second or third grade, which I guess would probably make you 14 or 15. But she didn't say it happened one time. She said that it happened a lot. Why would she say that it happened a lot?

MR. HOUCK: I have no idea.

Appellant added "I just -- I don't remember. I don't -- I never personally put my hand down her pants to play with her or anything like that." And, that he did not "purposely" hurt anyone. The detective replied as follows:

DETECTIVE ROCKWELL: I don't think -- I don't think this is a situation where anybody was hurt. You know what I mean? I think it's a situation that happened. I don't think your intentions were to hurt her when it happened. I honestly don't. I think if you were going to hurt her, or your intentions were to hurt her, it would have gone a lot farther than where it went.

MR. HOUCK: I understand.

DETECTIVE ROCKWELL: You know what I mean? I think it would have went a lot farther. I think this is something that happened. There was not force involved, I don't think, that -- what's the word I'm looking for?

I don't think -- I think it was something that happened in agreeance (sic) with one another. I think there was two participating parties. I think you had her participating and I think you were willingly participating. And you were 14-years-old and she was 9 or 10 and you were both young and dumb. I mean, that's what I think it boils down to.

MR. HOUCK: Okay.

DETECTIVE ROCKWELL: And I don't know if that's going to mean any criminal elements if that's the case. But at the end of the day I've got two boxes on the report, arrest or not arrest. You know? And if that's what happened then that's what happened.

I don't mind clicking arrest. And I certainly don't mind clicking not arrest. I give it a day, I have an explanation as to why an accusation was said. And then I have an explanation, I type it up and it gets off desk and I go on to the next one. Because Lord knows I've got (indiscernible 0:26:48) sitting

> on my desk right now. Right? So that's why I came out here today and I'm trying to talk to you today because I can move things along.
>
> MR. HOUCK: I don't -- I don't remember it happening, but it could have been being curious.[5]

Returning to the motions hearing, the court heard argument from the parties after reviewing the recorded interview overnight. Recognizing that the test for voluntariness was an objective one, Appellant's counsel argued the statement was involuntary because the detective repeatedly conveyed that Appellant would only be charged as a juvenile, and not as an adult. Counsel cited numerous examples when the detective addressed whether Appellant could have or would have been charged as a juvenile.

Focusing on Appellant's age at the time of the incidents, including how old Appellant said he was, as opposed to his actual age using the timeframe provided by the victim, defense counsel argued that, even using 17 to 19 years old, Appellant was both a juvenile and an adult when the allegations occurred. And that, based on this, the detective implied that "nothing is going to happen to [Appellant] as a result of this case." And counsel argued that the implication of the detective's comments throughout was that Appellant could be charged in the juvenile system, although counsel opined that jurisdiction of the juvenile court was questionable given that Appellant was 25 years old when he gave the statement. Counsel also noted that Appellant had no prior contact with

[5] The interview then concluded with the detective giving Appellant his phone number and Appellant being allowed to leave the Annapolis Police Department.

the criminal justice system, and that he was not given any advisements pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).[6]

Defense counsel argued it was shortly after these alleged inducements that Appellant admitted that "something could have happened[,]" a statement that the State agreed was incriminating and intended to use at trial. Counsel concluded:

> And when you couple that with the things that are being said to him throughout this interview I think a reasonable person would have made the statements Mr. Houck made expecting that nothing, because of the inducement, that nothing can really happen to him for saying those words that he says to the police officer.

The State responded that any confusion about Appellant's age at the time of the allegations was entirely created by Appellant. Further, the tone of the detective's statements, about whether Appellant could be charged as a juvenile, were simply "hypothetical scenarios[.]" The State argued, in part:

> There really was no promise by Detective Rockwell, and I think what's most important is there's no causal connection between him being charged as a juvenile and him making confessions. So there's never a statement if you tell me what happened, if you tell me that you did touch her then you'll be charged as a juvenile.

Noting that Appellant's statement was not a full confession, but that it intended to use the admissions therein at trial in any event, the State argued "at the most he says is I don't remember it happening. If it happened it would have been a one time thing. I remember laying in the bed, I don't think I ever touched her." The State concluded the statement was voluntarily made because "there's really no, and there can be no inducement

[6] *Miranda* is not at issue in this appeal.

if there's no promises or implication that he would be given any sort of special consideration if he makes any admission of confession."

Appellant's counsel replied that there did not have to be an "express *quid pro quo*" and that the detective's implication that he would only be charged as a juvenile was the improper inducement. Asked by the court what the "benefit" of only being charged as a juvenile was, counsel replied that the implication that whatever happened between Appellant and the victim was "not criminal behavior."

The court then denied the motion to suppress, relying primarily on *Hill v. State*, 418 Md. 62 (2011), and the law on voluntariness as set forth in *Hillard v. State*, 286 Md. 145 (1979). The court recognized that there was a "two prong test" and that:

> Under the test an inculpatory statement is involuntary and must be suppressed if an officer or agent of the police force promises or implies to a 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 that the suspect makes a confession in apparent reliance on the police officer's explicit or implicit inducement.

Accepting that the State intended to use Appellant's statement at trial, the court continued:

> So then the question becomes as to the first prong in determining that the Court looks at whether or not a reasonable person in the position of the accused would be moved to make an inculpatory statement upon hearing the officer's declaration. An accused's subjective belief that he will receive a benefit carries no weight.
>
> The question becomes, unlike in *Hill*, you know, this is kind of the back and forth we just had where the Court talked about a direct benefit by confessing. In effect that the victims only wanted an apology. That by issuing the apology in effect the inducement is that the charges go away. The Court finds that in this case I don't see what the direct benefit is. While Detective Rockwell may have been near the line, I don't think he crossed it.

> Basically the timeline that he was being provided with was the timeline being provided to him by the Defendant in this case, and based upon that timeline that the age of the Defendant potentially would have put him as a minor. In effect Detective Rockwell was saying if you're 14 or 15, in effect, you're a minor, basically you would be charged as a juvenile. As he stated in his own testimony, he was not attempting to provide an inducement but in effect was just explaining what he felt was that at the age of 14 or 15 you would be, in effect, you would have faced juvenile charges.
>
> He at this point doesn't know, in effect, or has not calculated the fact that if this would have occurred in 2011 to 2013 that the Defendant would have been 17 to 19, in effect, subject to the jurisdiction of the adult court.
>
> The Court finds that I don't think that a reasonable person in the position of the accused at that time would be moved to make an inculpatory statement. In effect, even at this point the question is while the statements the State's attempting to use are potentially somewhat inculpatory, I mean it's not the full confession came out of this, that he said, oh, gee, I'm going to be charged as a juvenile, let me make a full confession here so that this can get moving, like what occurred in *Hill*.
>
> So the Court's going to deny the motion, find that the officer did not make an improper inducement, and we'll go from there.

We may include additional detail in the following discussion.

DISCUSSION

Summarizing the positions of the parties, Appellant argues, under Maryland common law, that he was improperly induced to give a statement by the detective's repeated suggestions and statements that Appellant could be charged more leniently as a juvenile. Appellant avers that he made his admissions in reliance on those promises. The State counters that the detective never tied "the possibility of lenient treatment to Houck

making a confession." Because there was no "implicit or explicit offer[,]" the State continues that Appellant was not induced to confess to the allegations.[7]

On review of the denial of a motion to suppress, we look solely to the evidence adduced at the suppression hearing, and view it in the light most favorable to the prevailing party on the motion. *Gonzalez v. State*, 429 Md. 632, 647 (2012). "The credibility of the witnesses, the weight to be given to the evidence, and the reasonable inferences that may be drawn from the evidence come within the province of the suppression court." *Id.* at 647-48 (citing *Longshore v. State*, 399 Md. 486, 499 (2007)). Pertinent to this case, the question of whether a statement was voluntary is a mixed question of law and fact that we review *de novo*. *See, e.g.*, *Smith v. State*, 220 Md. App. 256, 272 (2014), *cert. denied*, 442 Md. 196 (2015). On review, "[w]e are limited to the facts presented at the suppression hearing, and we must view the 'evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party.'" *Smith*, 220 Md. App. at 272 (quoting *Lee v. State*, 418 Md. 136, 148 (2011)).

The sole issue presented is the voluntariness of Appellant's admission. "A trial court may not admit a confession made during a custodial interrogation that is involuntary

[7] Initially, the State notes that two of the three grounds asserted by Appellant on appeal were not raised in the motions court. The State contends Appellant never argued that the detective improperly conveyed that Appellant's "situation would improve if he told the detective what happened[,]" nor that "he just needed to find out why it happened and that he just needed to get closure for the case." Although defense counsel did mention "closure" during closing argument, we tend to agree with the State that these two grounds were not the primary basis of defense counsel's argument, and we are persuaded that they are not preserved for further review. *See Hartman v. State*, 452 Md. 279, 299 (2017) ("We made clear in *State v. Bell*, 334 Md. 178 (1994) that our review of arguments not raised at the trial level is discretionary, not mandatory.").

under the common law of Maryland, the Due Process Clause, or Article 22." *Madrid v. State*, 474 Md. 273, 317 (2021) (citing *Brown v. State*, 452 Md. 196, 209-10 (2017)).[8] "Where a defendant 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." *Id*. (citing *Hill v. State*, 418 Md. 62, 75 (2011)). The Court explained:

> 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) (citation omitted). The common law of Maryland prohibits the admission of a confession where:
>
> > (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 (citing *Hillard v. State*, 286 Md. 145, 153 (1979)). "Both prongs of the *Hillard* test must be satisfied before a confession is deemed to be involuntary." *Lee*, 418 Md. at 161 (quoting *Winder v. State*, 362 Md. 275, 310 (2001)) (brackets omitted). The first prong of the *Hillard* "test is an objective one[,]" in that "a suspect's subjective belief that he or she will be advantaged in some way by confessing will not render the confession involuntary unless the belief was premised upon a statement or action made by an interrogating officer." *Winder*, 362 Md. at 311 (citations omitted). The second prong of the *Hillard* test requires a court "to determine whether there was a nexus between the promise or inducement and the accused's confession" by assessing "the particular facts and circumstances surrounding

[8] In its brief, even though Appellant met the police at the station and was allowed to leave after the interview, the State assumes that Appellant was in custody when he was interrogated by the detective. Although the cited portion of *Madrid* suggests that the voluntariness test only applies to custodial interrogations, and another noted treatise questions whether the voluntariness analysis applies in a non-custodial setting, that issue was never raised or decided in the motions court and is not before us. *See* Jezic, et al., *Maryland Law of Confessions* § 3:2 (2021-22 edition) (hereinafter "Jezic") (observing that *Hill v. State*, 418 Md. 62 (2011) and related cases did not clearly determine whether custody is a prerequisite for common law voluntariness).

> the confession[,]" including "the amount of time elapsed between the inducement and confession." *Id*. at 311-12.

Id. at 317-18. *Accord Smith*, 220 Md. App. at 274-76.

As further explained by the leading commentator in Maryland on the subject, the first part of the test is objective:

> The Court of Appeals in *Winder v. State* established an "objective" test for determining whether the police communicated an improper promise. First, a statement will not be suppressed just because the defendant sincerely believed that he would receive some benefit for his confession, without any evidence that his belief was reasonably "premised on a statement or action made by an interrogating officer." A defendant's "subjective belief that he or she will be advantaged in some way by confessing is irrelevant." Second, the Court in *Winder* held that, "[a]lthough a defendant need not point to an express *quid pro quo*, … a promise or offer within the substance of the officer's eliciting statement" is required.

Jezic, *supra*, § 3:6 (footnotes omitted).

As for the second part of the test, namely, reliance, if the court finds that an improper inducement was made, the court engages in a causation analysis, *i.e*., whether "the suspect makes a confession in apparent reliance on the police officer's explicit or implicit inducement." *Lee*, 418 Md. at 161 (citing *Hillard*, 286 Md. at 153). Factors to consider in this causation analysis include: "[T]he amount of time that elapsed between the improper inducement and the confession, . . . whether any intervening factors, other than the officer's statement, could have caused the confession, . . . and the testimony of the accused at the suppression hearing related to the interrogation[.]" *Hill*, 418 Md. at 77. The State has the burden to prove, "by a preponderance of the evidence, that the accused did not make the inculpatory statement in reliance on the improper inducement." *Id*. As stated, "[b]oth prongs must be satisfied before a confession is deemed to be involuntary." *Winder*, 362

Md. at 310. As the *Winder* Court explained:

> If a suspect did not rely on an interrogator's comments, obviously, the statement is admissible regardless of whether the interrogator had articulated an improper inducement. By definition, there would have been no "inducement" at all, because the interrogator "induced" nothing.
>
> Both prongs must be satisfied before a confession is deemed to be involuntary.

Id. at 309-10 (quotation marks and citations omitted).[9]

It is apparent that Detective Rockwell made a number of statements suggesting that a juvenile, of a certain age, who committed the offenses as alleged might not be charged as a criminal. The parties disagree over whether the detective made those statements to induce Appellant to either confess or admit in some way to the allegations. However, the test is not simply whether there was an inducement; the test also contemplates that the alleged inducement be "improper." *Madrid*, 474 Md. at 317; *Smith*, 220 Md. App. at 274-76.

In assessing Detective Rockwell's statements to Appellant during the interview, neither party addresses the threshold issue of whether Appellant, who was 25 years old when he made his statement on October 22, 2019, was subject to the jurisdiction of the juvenile court in the first instance. Because we are of the opinion that that question bears

[9] Maryland appellate courts have suggested that the second prong of the *Hillard* test is subjective. *See Hof v. State*, 337 Md. 581, 619 (1995) ("The critical focus in an involuntariness inquiry is the defendant's state of mind. Whether the defendant's incriminating statement was made voluntarily or involuntarily must depend upon that defendant's mental state at the time the statement was made."); *Uzzle v. State*, 152 Md. App. 548, 576 ("On the issue of voluntariness, a defendant's subjective state of mind is, after all, the ultimate issue. It is the defendant who knows that state of mind better than anyone else."), *cert. denied*, 378 Md. 619 (2003).

on whether any alleged inducement was improper under our *de novo* review, and because numerous statutes in the Courts and Judicial Proceedings Article address juvenile jurisdiction, standard rules of statutory interpretation apply. Generally, those are as follows:

> "The interpretation of a statute is a question of law that this Court reviews *de novo*." *Johnson v. State*, 467 Md. 362, 371 (2020). We assume that the General Assembly's "intent is expressed in the statutory language and thus our statutory interpretation focuses primarily on the language of the statute to determine the purpose and intent of the General Assembly." *Id*. at 371 (cleaned up). "If the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written." *Rogers v. State*, 468 Md. 1, 14 (2020), *cert. denied*, ___ U.S. ___, 141 S. Ct. 1052 (2021) (citation omitted). "In addition, we neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly used or engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning." *Id*. at 14 (citation omitted).

DeJarnette v. State, 478 Md. 148, 162 (2022).

Applying these principles, we conclude that Detective Rockwell was not wrong in his interpretation of the juvenile laws. Pertinent to our discussion, a circuit court, sitting as a juvenile court, has exclusive original jurisdiction over a child who is at least 13 years old and alleged to be delinquent. *See* Maryland Code (1974, 2020 Repl. Vol., 2022 Supp.), § 3-8A-03(a)(1) of the Courts & Judicial Proceedings Article ("Cts. & Jud. Proc."). A child is defined as "an individual under the age of 18 years." Cts. & Jud. Proc. § 3-8A-01(d). This age is "the crucial dividing line between childhood and adulthood" and is significant in that "[o]nce a person reaches age 18 and is an adult, the person may be prosecuted for a crime as an adult." Rees, *Maryland Family and Juvenile Law Practice*

Manual and Forms, vol. 1, § 6.2.1.6 (2019 ed.) (hereinafter, "Rees"). Moreover, "the age of the person at the time the alleged delinquent act was committed controls the determination of jurisdiction" of the juvenile court. Cts. & Jud. Proc. § 3-8A-05(a). *See also In re Darren M.*, 358 Md. 104, 112 (2000) ("In making a jurisdictional determination based on age, the age of the person at the time he or she allegedly committed the acts underlying the charges generally controls.").

However, under ordinary circumstances, the jurisdiction of the juvenile court ends when a person reaches 21 years old. *See* Cts & Jud. Proc. § 3-8A-07(a) ("If the court obtains jurisdiction over a child under this subtitle, that jurisdiction continues until that person reaches 21 years of age unless terminated sooner."); *see also* Rees § 6.2.1.7 ("Age twenty-one is the maximum age for juvenile court jurisdiction."). There is an exception provided by statute – juvenile jurisdiction may apply to persons over 21 as follows:

> The court has exclusive original jurisdiction, but only for the purpose of waiving it, over a person 21 years of age or older who is alleged to have committed a delinquent act while a child.

Cts. & Jud. Proc. § 3-8A-07(e).

A reading of this provision, *i.e.*, subsection 3-8A-07(e), suggests that a person of Appellant's age – who was 25 years old at the time of the interview with Detective Rockwell – could be subject to juvenile court jurisdiction "but only for the purpose of waiving it[.]" "Waiving" jurisdiction of the juvenile court simply means waiving juvenile jurisdiction and charging the child as an adult when the statutes permit. *See* Cts. & Jud. Proc. § 3-8A-07(d) ("A person subject to the jurisdiction of the court may not be prosecuted for a criminal offense committed before he reached 18 years of age unless jurisdiction has

been waived."); *Whaley v. State*, 186 Md. App. 429, 443 (2009) ("After a juvenile delinquency petition has been filed, the prosecution has the right to request waiver of the juvenile court's jurisdiction so that the juvenile may be tried as an adult in criminal court." (citing Cts. & Jud. Proc. § 3-8A-06)); *see also Gaines v. State*, 201 Md. App. 1, 9-10 (observing that a "reverse waiver" is when a case is originally charged in adult court and the child requests the case be waived back to juvenile court (citing Md. Code (2001, 2018 Repl. Vol., 2022 Supp.) § 4-202 of the Criminal Procedure Article)), *cert. denied*, 424 Md. 55 (2011).

In other words, depending upon the age of the child and the seriousness of the offense, jurisdiction will lie in adult court. *Gaines*, 201 Md. App. at 10 (citing Cts. & Jud. Proc. §§ 3-8A-03(d)(1), (4)); *see also* Cts. & Jud. Proc. § 3-8A-06(a) (juvenile court may waive jurisdiction for (1) a child 15 years or older; or (2) a child under 15 years old who commits an act that, if committed by an adult, would be punishable by life imprisonment). For instance, the juvenile court does *not* have jurisdiction over a child who is at least 14 years old and alleged to have committed an act subject to life imprisonment. Cts. & Jud. Proc. § 3-8A-03(d)(1). In this case, Appellant claimed he was 14 or 15 during the interview with Detective Rockwell but none of the charged offenses were subject to life imprisonment, therefore, this waiver provision of subsection (d)(1) to adult court would not apply.

Of additional relevance, the juvenile court does not have jurisdiction over a child at least 16 years old who is alleged to have committed a number of offenses, including, for example, third degree sexual offense under Criminal Law § 3-307(a)(1). *See* Cts. & Jud.

Proc. § 3-8A-03(d)(4)(vii). Appellant ultimately was charged in this case with, inter alia, third degree sexual offense, but he claimed to be 14 or 15 years old, *i.e.*, under the 16 year old minimum applicable for such an offense. Again, this waiver provision of subsection (e)(4) would not apply under the facts in this case.[10]

Returning to subsection 3-8A-07(e), we note that although this subsection has not been the subject of much interpretation, *In re Saifu K.*, 187 Md. App. 395 (2009), is instructive. There, a petition was filed alleging that Saifu committed sexual offenses against his cousin when he was 14 years old. That petition was not served on Saifu K. until he was 21 years old. *In re Saifu K.*, 187 Md. App. at 396. The State moved, pursuant to Section 3-8A-07(e), to waive juvenile jurisdiction and transfer the matter to adult court for criminal prosecution. *Id*. The juvenile court concluded that waiver of jurisdiction was not mandatory under the provisions of Section 3-8A-07(e), noting that the offenses were alleged to have been committed when Saifu was 14 years old and were not offenses punishable by death or life imprisonment. *Id*. at 399. The State's motion was denied and the court granted Saifu's motion to dismiss the petition. *Id*. at 397.

On appeal, this Court considered whether the juvenile court erred in declining to

[10] The motions court accepted Detective Rockwell's testimony that he did not calculate Appellant's true age at the time of the offenses (roughly 17 to 19 years old) until after the interview. As our standard of review is a mixed question of law and fact, *see Smith, supra*, 220 Md. App. at 272 (citing *Winder, supra*, 362 Md. at 310), we defer to the court's non-clearly erroneous factual finding. None of Appellant's remaining charges are set forth as waivable to adult court in Cts. & Jud. Proc. § 3-8A-06.

transfer the case to adult court.[11] In doing so, we discussed *In re Appeals No. 1022 & 1081*, 278 Md. 174 (1976), a case where the Court of Appeals considered a similar argument under former Cts. & Jud. Proc. § 3-807(b), the prior version of current Section 3-8A-07(e). There, the Court of Appeals found no ambiguity in the plain language mandating waiver. *In re Appeals No. 1022 & 1081*, 278 Md. at 178. That Court further noted that mandating waiver under the pertinent statutory provision could permit the State to delay the institution of juvenile proceedings if it desired, instead, to wait and charge the individual as an adult. *Id*. at 179. The Court of Appeals concluded "that a waiver hearing held with respect to an adult who had allegedly committed delinquent acts must be conducted according to the same standards that would have been applicable if the State proceeded against him while still a child, and that a mandatory waiver is not contemplated" under former § 3-807(b). *Id*. at 179.

This Court saw no rational basis to interpret the renumbered statutes, including Section 3-8A-07(e), any differently than the Court of Appeals did in *In re Appeals No. 1022 & 1081*. *See In re Saifu K.*, 187 Md. App. at 407, 407 n.5. We, therefore, rejected the State's argument in *In re Saifu K.* "that the character of a juvenile offense that could not have been prosecuted in the criminal court because of the juvenile's age when the act was committed could be transformed into a criminal act that the State could prosecute in adult criminal court should the State wait until the respondent turns 21." 187 Md. App. at

[11] We considered the prior pertinent statutes, observing that the current provisions were "equivalent" and "unchanged." *In re Saifu K.*, 187 Md. App. at 400-05 (citing former Cts. & Jud. Proc. §§ 3-804 to 3-807, 3-817).

407. This conclusion was supported by our understanding of the plain language of the statutes and the legislative history involved in renumbering the statutes at issue in *In re Appeals No. 1022 & 1081*. *See In re Saifu K.*, 187 Md. App. at 409-10. We concluded by affirming the juvenile court's orders:

> Although the charges against the juvenile offenders were dismissed by the court in *In re Appeals No. 1022 & 1081*, it is not a foregone conclusion that the waiver hearing conducted pursuant to former CJ § 3-807(b) (or the modern CJ § 3-8A-07(e)) for an adult brought before the juvenile court after reaching the age of 21 would result in non-waiver and dismissal. In Saifu's case, the juvenile court correctly based its refusal to waive upon the fact that Saifu's age at the time of the alleged offense would have precluded waiver if he had appeared before reaching the age of 21. For offenders accused of committing offenses for which juvenile jurisdiction is waivable, the result of a waiver hearing might be otherwise. But in a case such as Saifu's, in which the court could not have waived jurisdiction before he reached the age of 21, CJ § 3-807(b) did not authorize, let alone require, the juvenile court to waive jurisdiction after the respondent reached the age of 21. Accordingly, the juvenile court did not err in denying the State's motion to waive the juvenile court's jurisdiction and in dismissing the petition in this case.

In re Saifu K., 187 Md. App. at 410.

Our reading of *In re Saifu K.* is that it is consistent with the plain language of Section 3-8A-07(e), namely, the juvenile court will have jurisdiction over a person over the age of 21 and alleged to have committed a delinquent act while a child, but only for the purpose of conducting a waiver hearing. This is also consistent with Detective Rockwell's general understanding of juvenile jurisdiction. Appellant directs our attention to numerous statements by Detective Rockwell during the October 22, 2019, interview with Appellant. These include, but are not limited to, the following:

- "So at 14 or 15, you're still a juvenile. Right? And now you're an adult, plus it's been over ten years."

- "So experimental doesn't usually fall underneath criminal amongst teenagers. Right? So that's why you're not under arrest."

- "Because 14 or 15, if [I] was to charge -- hypothetically speaking, if I was to charge you right now, Jeremy, I couldn't even charge you as an adult. It would be as a juvenile status because of the 14-year-old age. Make sense? … Because it happened prior to you becoming an adult."

- "And not all explanations are criminal, even as a juvenile status."

- "I'm telling you that at 14 or 15 years old, I would have to charge you as a juvenile if I were to charge you.

  And at ten years, the statute of limitations might even be up on this. There might not even be charges, I would have to confer with the State's Attorney to see if I can still even charge this. Worst-case scenario."

- "Understand, I said before and I'm going to reiterate it, that at worst-case scenario you're looking at juvenile charges if this happened when you were a juvenile. You're a juvenile until the age of 18. Everything on the timeline matches up. So she's not lying about that."

- "I don't want you to think that what we're talking about now is what I think you are now. I think at 14 or 15 I would never hold what happened ten or 11 years ago, I would never hold it against a current man[.]"

- "You know, I'll tell you, like if you were 14 years old and we were having this conversation, do you know what the outcome of this would be in the long run through the State of Maryland? … You'd have to go to therapy and talk to someone about your sexual feelings. All right? That's it."

- "I don't think -- I think it was something that happened in agreeance (sic) with one another. I think there was two participating parties. I think you had her participating and I think you were willingly participating. And you were 14-years-old and she was 9 or 10 and you were both young and dumb. I mean, that's what I think it boils down to. … And I don't know if that's going to mean any criminal elements if that's the case. But at the end of the day I've got two

> boxes on the report, arrest or not arrest. You know? And if that's what happened then that's what happened.
>
> I don't mind clicking arrest. And I certainly don't mind clicking not arrest."

We recognize that mistakes of law made by a police interviewer may be a factor when considering the voluntariness of a statement. *See, e.g.*, *Green v. State*, 91 Md. App. 790, 798 (1992) (holding that "incorrectly advising a minor that he may be subject to the death penalty constitutes 'improper influence' to the extent that the minor's free will is overcome" and that the mistake of law undermined the voluntariness of the statement, mandating reversal); *see also United States v. Duvall*, 537 F.2d 15 (2d Cir. 1976) (prosecutor's unrealistic threat that burglary defendant could get 100 years of prison rendered statement involuntary); *People v. Cahill*, 28 Cal. Rptr. 2d 1 (3d Dist. 1994) (false statement that non-intentional killing during robbery could not result in first degree murder conviction rendered confession involuntary); Jezic, *supra* § 4:5 ("[D]eception about *the law* could cause an involuntary confession." (citing *Green*, *supra*)). However, we are persuaded in this case, where the fact finding court determined that Detective Rockwell accepted that Appellant was 14 or 15 years old at the time of the incident, and considering the plain language of subsection 3-8A-07(e) and this Court's holding in *In re Saifu K.*, any statements by the detective that Appellant could be charged as a juvenile were accurate statements of law. In other words, to the extent that the detective's statements were that Appellant could be charged as a juvenile, those were not wrong, hence, they were not improper.

Moreover, even if Appellant were subject to criminal prosecution in adult court, the issue circles back to the first prong of the *Hillard* test, *i.e.*, whether he was improperly induced. Looking to the statements in the proper light, we believe that there was no express

quid pro quo in the detective's conditional statements that Appellant would be treated more leniently should he explain what happened. Indeed, the detective repeatedly qualified his statements and queries by the use of the subordinating conjunction "IF." In other words, "IF" appellant was a juvenile when these events occurred, THEN he would be treated as such. Nor are we persuaded that a reasonable person would have concluded the detective implied leniency, especially given the detective's qualified language and tone throughout the interview.

Indeed, we note that this is not unlike other scenarios where the police encourage a suspect to adopt an accidental theory of the case or to admit to a lesser crime. For instance, in *Smith v. State*, 220 Md. App. 256 (2014), *cert. denied*, 442 Md. 196 (2015), the accused was arrested for engaging in anal intercourse with a 4 year old. *Smith*, 220 Md. App. at 261-62. During a police interview, detectives told Smith that a polygraph confirmed that he engaged in intercourse with a child, and if he denied it, they would move forward with the case presuming that Smith used force to compel the minor to have intercourse. *Id*. at 264-65. One of the detectives stated that "this is your opportunity, if it was not force, then you need to tell us, because what happens is you walk out of here, we're going with the force." *Id*. at 264. The detective then stated that the police frequently heard: "I was raped and I was forced[,]" stating that "you're going to get in trouble for that. If it was consensual, that's a whole different story." *Id*. After Smith denied using force, the detective stated: "Okay. Tell me what the consensual part of it was and we can roll out of this. If it's consensual, then tell us it's consensual." Smith then confessed to having anal intercourse with the minor, asserting that it was her idea. *Id*. at 265.

On appeal, Smith argued that the detective's statements constituted an improper inducement, and he relied on those statements in making the confession. *Id.* at 271. We noted that the detectives "never actually said [Smith] would be charged with a lesser offense if the sex was consensual, and they never offered [Smith] assistance if he confessed." *Id*. at 279. Furthermore:

> Even if [Smith] actually believed that the detectives' statements meant that by confessing to consensual sexual conduct, a lesser charge would be filed against him, we note that encouraging a suspect to adopt a version of the facts that might mitigate the punishment for the crime he committed is not in itself an improper inducement under Maryland law. [*Williams v. State*, 219 Md. App. 295, 338 (2014), *aff'd*, 445 Md. 452 (2015)]. Moreover, in the instant case, the detectives did not actually tell [Smith] that a lesser charge may be filed against him by saying the sex was consensual. We are not called upon to evaluate what [Smith] might have believed the detectives meant, but what a reasonable layperson would have understood the detectives' words to mean. *Lee*,[] 418 Md. at 156. Indeed, "[a]n accused's subjective belief that he will receive a benefit in exchange for a confession carries no weight under [prong one of the *Hillard* test.]" *Hill*, 418 Md. at 76. Because no objectively reasonable layperson would rely on Detective Birch's statements as a promise of non-prosecution or a lesser charge, Detective Birch's statements did not constitute an improper inducement, and the first prong of the *Hillard* test is not satisfied. As a result, we need not evaluate the second prong.

Id. at 280-81. *See Ball v. State*, 347 Md. 156, 168-69, 178-80 (1997) (concluding that defendant's will was not overborne by an investigatory technique that presented him with two different versions of events, one of which suggested the homicide at issue was accidental), *cert. denied*, 522 U.S. 1082 (1998); *see also Williams v. State*, 445 Md. 452, 481 (2015) ("[P]resentment of two different ways of characterizing the situation is not an inducement." (citing *Ball, supra*)); *Smith v. State*, 20 Md. App. 577, 591-92 (while "[u]rging an accused, during the course of custodial interrogation, to 'cop to a lesser charge' clearly would be prohibited, … [t]he statement which the detective admitted making, namely, that the court might take into consideration a version by the accused of

the fire being accidental, does not bear the benchmark of prohibited inducement"), *cert. denied*, 272 Md. 748 (1974), *cert. denied*, 420 U.S. 909 (1975). *See generally*, Jezic, *supra*, § 3:17. There was no improper inducement.

Reliance

Having concluded there was no improper inducement, we need not consider whether Appellant relied on Detective Rockwell's statements. *See Madrid, supra*, 474 Md. at 329 ("Because the first prong of the *Hillard* test is not satisfied, we need not address the second prong of the *Hillard* test[.]"); *Winder, supra*, 362 Md. at 310 ("Both prongs must be satisfied before a confession is deemed to be involuntary."); *Smith, supra*, 220 Md. App. at 281 (declining to consider reliance, and noting, in any event, proving reliance was problematic given that Appellant did not testify at his suppression hearing). However, even were we to consider the second prong, as stated earlier, there are three factors of relevance: (1) the passage of time between the alleged inducement and the statement; (2) any other intervening factors, other than the officer's statement, that could have caused the admission; and, (3) the testimony of the accused at the suppression hearing. *See Hill*, 418 Md. at 77 (noting that the State must show by a preponderance of the evidence that the accused did not rely on the improper inducement).

The brevity of the interview, and the fact that there does not appear to be any intervening factors between the officer's statements and Appellant's admission, weigh in Appellant's favor. The third factor is more problematic. Although Appellant is not required to prove reliance, *see Hill*, 418 Md. at 77, as the State notes, Appellant did not testify at the suppression hearing. As this Court stated:

> We note that even if we were to review the second prong, our review would be limited, because Appellant did not testify at his suppression hearing, thereby leaving only the transcript and DVD of the interview for us to consider. As this Court stated in *Ashford v. State*, 147 Md. App. 1, 56, *cert. denied*, 372 Md. 430 (2002), "the failure of a defendant to testify almost forecloses any chance of prevailing" on a suppression motion based on an alleged absence of voluntariness. "Only the defendant can truly tell us what was going on in the defendant's mind. Without such testimony, there is usually no direct evidence of involuntariness." *Id*.

Smith, 220 Md. App. at 281 n.11; *see also Lee*, *supra*, 418 Md. at 160 ("We cannot help but note, nonetheless, that Petitioner did not testify at the suppression hearing. Therefore, we do not have even his word that [the detective's] improper comment overbore his will and produced his confession."); Jezic, *supra*, § 3:4 ("The defendant's testimony about the effect of the promise could make the difference in a case where the record, by itself, does not appear to support a finding of causation between the promise and the subsequent statement.").

We also add that the totality of the circumstances do not suggest involuntariness. Appellant drove himself to the interview, which transpired at the Annapolis Police Department, a mutually agreeable location. Appellant was not under arrest, was not handcuffed, was interviewed by just one detective in a large room, showed no signs of coercion, never asked to stop the interview, nor did he ever ask for an attorney or to remain silent. And, after the interview concluded, Appellant left on his own accord. Under these circumstances, we conclude the motions court did not err in finding that Appellant voluntarily made his statement and in denying the motion to suppress.

Harmless Error

Moreover, we agree with the State that any error in denying the motion was harmless beyond a reasonable doubt in this case. *See Gross v. State*, 481 Md. 233, 237 (2022) (restating that harmless error is when "the reviewing court is convinced, beyond a reasonable doubt, that the error in no way influenced the jury's verdict" and reaffirming that the court may consider "the cumulative nature of an erroneously admitted piece of evidence when conducting harmless error analysis"). At trial, T. testified in the State's case that Appellant touched her vagina. Mostly, Appellant touched her on the outside of her vagina, but, on one occasion, according to T., "he did stick his fingers inside of me[.]" She also testified that Appellant made her touch his penis on a different occasion. In addition, other times, Appellant kissed her on her lips.

Appellant's redacted interview was then played for the jury. As recounted earlier, the jury heard that Appellant was asked about touching and placing his finger inside T.'s vagina. Appellant maintained that nothing "inappropriate" happened, but that he remembered T. "laying" on him during their encounters and that, while he did not remember touching her, his "hand could have been there." And, asked whether he "could have possibly have touched her vagina[,]" Appellant replied "Sure." He also admitted he could have been "curious."

Following the State's case, and unlike at the motions hearing, Appellant testified during trial. On direct examination, Appellant denied he ever touched T.'s vagina. And, he maintained that he did not have any "inappropriate interaction" with any of his cousins. On cross-examination, Appellant admitted that T. would "crawl up next to me" and lay on

him. Asked several questions about his interview with Detective Rockwell, Appellant never denied that he made certain admissions during that interview. At trial, he went beyond the admissions in the interview and testified: that he may have been "aroused" when T. was next to him; that he could have touched T.'s vagina, but that it was "[b]y accident"; and, that he "never touched her on purpose inappropriately." On redirect, Appellant maintained that he never intentionally touched T.'s vagina.

Following this, the jury acquitted Appellant of second and third degree sexual offense, but convicted him of sexual abuse of a minor by a family member. Given the jury's verdict on the specific sex offenses, and considered along with the victim's testimony and Appellant's cumulative admissions at trial, we are persuaded that any error in admitting Appellant's statement was harmless beyond a reasonable doubt.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.