UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0546

September Term, 2014

LENNELL ELLIS

v.

STATE OF MARYLAND

Krauser, C.J.,
Graeff,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: June 3, 2016

Appellant, Lennell Ellis, was charged in the Circuit Court for Baltimore County with first degree murder and related counts. A jury acquitted him of first degree murder, but convicted him of second degree murder, second degree arson, and conspiracy to commit second degree arson. The court sentenced appellant to thirty years for the conviction of second degree murder, twenty years, consecutive, for the conviction of second degree arson, and twenty years, concurrent, for the conviction of conspiracy to commit second degree arson.

On appeal, appellant presents the following questions for our review, which we have consolidated and rephrased slightly, as follows:

> 1. Did the circuit court err by failing to suppress statements and physical evidence that were the fruit of an unlawful detention and arrest?
>
> 2. Did circuit court err by failing to suppress statements made by appellant after he invoked his right to counsel and the police continued to interrogate him?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The issues presented derive entirely from appellant's motion to suppress, and therefore, we will consider in our analysis of the issues presented only the testimony from the suppression hearing.[1] At the hearing prior to trial, Detective Gary Childs, a member of

[1] Although not pertinent to our resolution of the issues presented, we note that, at trial, it was undisputed that there was an altercation between appellant and the victim, Mr. Augustus, after which Mr. Augustus fell down, bleeding from his neck, and died. (continued...)

the Baltimore County Police Department Homicide Unit, testified that, on May 26, 2012, at approximately 7:45 a.m., he received a call regarding a suspicious death in a car fire in Essex, Maryland. When he arrived at the scene, the fire had been extinguished, and he observed a male, face down, in the rear seat of a commercial pickup truck. The body was burned beyond recognition.

While Detective Childs was at the scene of the truck fire, another fire was reported in a wooded area approximately three miles away. Several items of men's clothing, including pants, shirts, and tennis shoes, had been set afire.

Detective Childs learned that the commercial pickup truck that was burned was registered to a furniture company, Price Busters, and normally was driven by a manager of the store, Daryl Augustus. Mr. Augustus' live-in-girlfriend, Amber Matthews, had called earlier that day because Mr. Augustus did not come home the night before, nor did he report to work that morning, which was "very unusual." Ms. Matthews filed a missing person report.

Detective Childs then spoke to one of Mr. Augustus' co-workers, Tamaro McDowell, and ascertained that Mr. Augustus had been out the night before with his cousin, Sean Barry,

[1](...continued)
Appellant testified that he swung a knife at the victim in self-defense, and after the victim died, some of appellant's friends arrived at the apartment. Although he admitted he attempted to clean up Ms. Jones' apartment, appellant denied that he had anything to do with the disposal of Mr. Augustus' body.

celebrating Mr. Augustus' birthday. Ms. Matthews last heard from Mr. Augustus at approximately 2:51 a.m. on May 26, 2012. He called from a gas station and told Ms. Matthews that he would be home when she got off her shift as a nurse at approximately 5:00 a.m. Mr. Augustus was not home when Ms. Matthews arrived.

Detective Childs also spoke to Mr. Augustus' cousin, Mr. Barry, and learned that, when Mr. Augustus left, he said he was going to visit a woman, Brittany Jones, on his way home. Mr. Augustus had been texting Ms. Jones during the evening. Ms. McDowell advised that Ms. Jones was a customer who frequented the store and had been seeing Mr. Augustus on occasion.

Using data obtained from Mr. Augustus' phone records, Detective Childs was able to find Ms. Jones' phone number, and ultimately, her photograph, address, and information regarding a gold Buick registered in her name. Ms. McDowell was shown Ms. Jones' photograph and confirmed that Ms. Jones was the person Mr. Augustus had been involved with in an intimate relationship.

Mr. Augustus' phone records also showed that Mr. Augustus and Ms. Jones had been in contact by phone that evening. The police also learned that Mr. Augustus' phone was used at approximately 3:30 a.m., and it "hit" off a cell phone tower located in an area not far from Ms. Jones' residence.

At approximately 11:00 p.m., Detective Childs, Sergeant Bernard Crumbacker, and Detective Joe Caskey went to Ms. Jones' address. They did not see Ms. Jones' Buick in the parking lot. They proceeded into the apartment building. The door to Ms. Jones' apartment was located up some steps from a closed-in foyer, along with three other apartments. When Detective Childs entered that area, he smelled a "strong odor" of cleaning agents. As officers knocked on the door to Ms. Jones' apartment, Detective Childs also noticed spots on the carpeted floor of the hallway. He reached down and touched a wet spot, and the liquid that adhered to his fingers was pinkish in color. Detective Childs opined that the spot was "diluted blood."

After knocking on Ms. Jones' apartment door and getting no answer, the police began knocking on the doors of surrounding apartments. The tenant of the apartment directly below Ms. Jones' apartment identified a photograph of Ms. Jones, confirmed that Ms. Jones lived in the apartment above, and informed the police that she heard "thumping" the night before, between 3:00 and 4:00 a.m., which she believed, at the time, was attributable to Ms. Jones' children. Other tenants of apartments in the building told police that Ms. Jones' brother, and sometimes another male, would stay in Ms. Jones' apartment. Tenants located on the same floor as Ms. Jones advised that, when they arrived home the night before these events, there was no smell of cleaning agents or wet spots. The next day, however, there

was a "heavy odor" in the hallway, the landing was wet and sticky, and someone had propped open the door to the common area in an apparent attempt to "air out the hallway."

The Crime Lab responded to test the wet spot on the landing near Ms. Jones' apartment. Swabbings of that area came back positive for the presence of blood. Detective Childs also examined the steps leading to Ms. Jones' apartment and observed individual blood droplets on the treads of those steps. The directionality of the droplets indicated that the drops were deposited as the source of the droplets was moving down the steps. There were no blood smears or wipes on the steps, which would have indicated that something, or someone, had been dragged. No other blood evidence was found outside the apartment building.

Based on this, it was Detective Childs' and Sergeant Crumbacker's opinion that something occurred on the landing, and that the body of the victim had been carried down the steps and out of the building. There was evidence, from Motor Vehicle Administration records, that the victim, Mr. Augustus, was six feet three inches tall and weighed approximately 180 pounds.

The officers decided not to enter Ms. Jones' apartment without a search warrant. Detective Childs left Ms. Jones' apartment building at approximately 1:00 a.m. the next day. Sergeant Crumbacker left after the surveillance team, led by Sergeant Michael Keller, arrived to watch the apartment, as well as to keep a lookout for Ms. Jones' Buick.

At approximately 4:30 a.m., the surveillance team observed appellant walk into the building, open the door to Ms. Jones' apartment with a key, and attempt to gain entry. After identifying himself as a Baltimore County Police officer, Sergeant Keller told appellant that this was a potential crime scene. Sergeant Keller asked appellant to exit Ms. Jones' apartment so he could speak with him. Sergeant Keller asked appellant to sit down on the stairs and cross his legs near the landing to Ms. Jones' apartment. Sergeant Keller could not recall whether he patted appellant down for weapons, but appellant was not handcuffed, nor did Sergeant Keller ever unholster his handgun. Appellant was not free to go at that time. Sergeant Keller stated that appellant "was willing to talk to me so I, you know, just interviewed him to find out what he was doing there."

Sergeant Keller asked appellant why he was there at that hour of the morning, and appellant explained that he was retrieving clothes for his children. Appellant, however, was being "evasive" in his answers, and he did not know, or would not tell, where Ms. Jones was at that time.[2]

During the course of the interview, Sergeant Keller saw that appellant was carrying a plastic bag. Sergeant Keller asked appellant if he could search the plastic bag and

[2] This information about appellant's demeanor was admitted without objection when Sergeant Crumbacker testified and recalled his conversation with Sergeant Keller about this encounter with appellant.

appellant gave his consent. Inside the bag, Sergeant Keller observed a towel, a soda, a receipt, and three cell phones.

Police eventually determined that appellant had parked Ms. Jones' Buick a block up the street from the apartment building, despite that there was plenty of parking available in front of the building. When questioned about this, appellant would not provide an answer. The Buick eventually was towed to police headquarters. Appellant was detained and transported to police headquarters for further questioning.

Detective Childs began interviewing appellant at approximately 8:20 a.m. After advising appellant of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), appellant waived those rights and agreed to speak with Detective Childs. He stated that he and Ms. Jones had children together and that he had borrowed her car that day. He stated that he was at Ms. Jones' apartment to pick up clothes for their children.

At some point during the interview, appellant asked for a lawyer. Detective Childs, however, disputed when that happened, asserting that, when appellant initially stated: "I'm getting a lawyer," that was not a request for the assistance of an attorney. Detective Childs continued to speak to appellant until appellant stated: "I think I need to get a lawyer now." After this invocation, Detective Childs stopped interviewing appellant.

At approximately 4:30 p.m., Detective Childs returned to Ms. Jones' apartment during execution of the search warrant. Detective Childs was informed that there was a lot

of blood at the apartment, and he observed a Rug Doctor shampooer, numerous towels and cleaning agents, as well as different cleaning devices with tags still attached, indicating where they had been purchased. Detective Childs was eventually able to trace the purchase of those cleaning supplies to various stores in the immediate area of Ms. Jones' apartment.

Detective Childs also identified blood-soaked items found in two garbage bags in Ms. Jones' bedroom. Inside one of those bags, Detective Childs saw a yellow robe that had been purchased from a Goodwill store. Detective Childs testified that "the item was there and there was a tag on it and it said Goodwill on it." Detective Childs confirmed that a Goodwill receipt for the robe was later found on appellant's person in a plastic bag.

Detective Childs returned to the police station and spoke with appellant until approximately 11:45 p.m. Appellant was then released from custody.[3] The police retained certain items seized from appellant, including a hotel key, keys to Ms. Jones' car and apartment, three cellphones, and a receipt for purchases made at Goodwill. On May 29, 2012, after speaking with Ms. Jones, Detective Childs applied for search warrants for the three phones, identified as a Cricket phone, an Apple phone, and a Samsung phone. After obtaining the search warrant, police retrieved data, including text messages from these phones.

[3] Appellant had been in the interview room for approximately 20 hours when he was released.

Detective Childs testified that Ms. Jones confirmed in her May 29 interview that the Cricket cell phone belonged to appellant. She advised that appellant was listed in her contacts list for her own cellphone as "P." There also was information on Ms. Jones' phone indicating that she had been in contact with the victim, Mr. Augustus.

On May 28, 2012, Detective Childs obtained a video from the Goodwill store, which showed that, at approximately 6:00 p.m. on May 26, 2012, Ms. Jones placed a number of towels, sheets, and cloth materials on the counter. Ms. Jones then left and appellant entered to pay for the items. While he was at the register, appellant stepped away from the counter and returned with a yellow robe, described as "a terrycloth robe, very absorbent material." Detective Childs testified that appellant added the robe to the items he was purchasing, paid for them, then exited the Goodwill store.[4]

During argument on his motion, appellant requested that the court suppress all statements that he made after he was detained by the police, all phone records obtained for cell phones that the police seized from him, and evidence derived from the Goodwill receipt found on his person. In support, he argued that he was illegally arrested when Sergeant Keller approached him in the stairwell of the apartment building. He asserted that there was no probable cause to support his arrest, and the items he sought to suppress were

[4] Although not included with the record on appeal, the video and the robe were moved into evidence at the motions hearing.

the fruit of the illegal arrest. He also argued that his statements at the scene, including statements regarding Ms. Jones' children and her whereabouts, why he parked where he did, *et cetera*, should be suppressed because, when he was questioned at the scene, he was in custody and the police failed to give him his *Miranda* rights. Finally, appellant argued that evidence derived from his cell phone number, which he provided at the police station on an information sheet, should be suppressed because he had not yet been give his *Miranda* rights.

After hearing argument from the State, the court denied the motion to suppress. The court noted that the police were dealing with a "fluid situation," involving a badly-burned, unidentified victim found after an arson. Once they determined the identity of the victim, the police were able to determine that the victim and Ms. Jones likely had been together before he disappeared. When they went to her apartment, they "saw and smelled some things that were very alarming," including the odor of cleaning solution, a carpet that was wet and "pinkish," and blood stains that suggested that someone had been carried out of the apartment. At 4:30 a.m., they saw appellant, who did not park in the open spaces in front of the building, use a key to enter the apartment. The court found that the police request to talk with appellant at this point was reasonable and based on reasonable articulable suspicion.

The court then found that the brief detention ripened into an arrest based on probable cause that "criminal activity was afoot," given that appellant was driving Ms. Jones' car, but he did not know where she was, he parked a distance away, but he did not have an explanation, and he had a shopping bag with a towel in it, which was relevant because the crime scene was in the process of being cleaned up. Accordingly, the court found that any evidence seized was properly seized as a search incident to arrest.

The court then stated that, even if there was not probable cause, the recovery of the evidence sought to be suppressed was sufficiently attenuated from any illegality. With respect to the Goodwill surveillance video, the court found that it inevitably would have been discovered. With respect to the information about appellant's cell phone, the court found that this would have been found when Ms. Jones went to the police station, identified appellant in her phone as "P," and voluntarily allowed the police access to the contact information in her cell phone. Finally, it found that, under the totality of the circumstances, the statements made at the police station were obtained voluntarily, and therefore, it implicitly accepted the State's argument that they were sufficiently attenuated from any taint of an illegal arrest. The court, therefore, denied the motion to suppress.

STANDARD OF REVIEW

The Court of Appeals has described the standard of review to be applied in motions to suppress, as follows:

> When we review a trial court's grant or denial of a motion to suppress evidence alleged to have been seized in contravention of the Fourth Amendment, we view the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion. We defer to the trial court's fact-finding at the suppression hearing, unless the trial court's findings were clearly erroneous. Nevertheless, we review the ultimate question of constitutionality de novo and must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

Corbin v. State, 428 Md. 488, 497-98 (2012) (citation and quotations omitted).

DISCUSSION

I.

Appellant contends that the motions court erred in "failing to suppress physical evidence and statements that were fruit of an illegal detention and arrest." The State disagrees, arguing that appellant was legally detained and arrested, and therefore, the motions court properly denied the motion to suppress. Alternatively, the State asserts that, even if the detention and arrest was illegal, the circuit court properly denied the motion to suppress because the evidence sought to be suppressed was not the "fruit" of appellant's detention or arrest because any taint was purged.

The Fourth Amendment to the Constitution of the United States, made applicable to the States through the Fourteenth Amendment, guarantees, *inter alia*, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). *Accord Allen v. State*, 197

Md. App. 308, 317-18 (2011). "The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991).

There is an "exclusionary rule" designed to safeguard Fourth Amendment rights. *See Herring v. United States*, 555 U.S. 135, 139-40 (2009) ("[O]ur decisions establish an exclusionary rule that, when applicable, forbids the use of improperly obtained evidence at trial."). This exclusionary rule

> reaches not only primary evidence obtained as a direct result of an illegal search or seizure, *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914), but also evidence later discovered and found to be derivative of an illegality or "fruit of the poisonous tree." *Nardone v. United States*, 308 U.S. 338, 341, 60 S.Ct. 266, 268, 84 L.Ed. 307 (1939). It "extends as well to the indirect as the direct products" of unconstitutional conduct. *Wong Sun v. United States*, 371 U.S. 471, 484, 83 S.Ct. 407, 416, 9 L.Ed.2d 441 (1963).

Segura v. United States, 468 U.S. 796, 804 (1984); *see also Miles v. State*, 365 Md. 488, 575 (2001) (observing that the rule applies to "'tangible, physical material actually seized in an illegal search, items observed or words overheard in the course of the unlawful activity, or confessions or statements of the accused obtained during an illegal arrest and detention.'" (quoting *United States v. Crews*, 445 U.S. 463, 470 (1980)), *cert. denied*, 534 U.S. 1163 (2002).

With this background in mind, we address the specific arguments made in this case.

A.

Initial Detention

Appellant first contends that the circuit court erred in determining that the police had reasonable suspicion to detain him when they saw him attempting to enter Ms. Jones' apartment in the middle of the night. We disagree.

It is well settled that the police may stop and briefly detain a person for purposes of investigation if the officer has a reasonable suspicion, supported by articulable facts, that criminal activity may be afoot. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968). *Accord Holt v. State*, 435 Md. 443, 459 (2013). Reasonable suspicion is "'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'" *Illinois v. Wardlow*, 528 U.S. 119, 128 (2000) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981)). It is "a 'common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act.'" *Holt*, 435 Md. at 460 (citations omitted). Although "the level of required suspicion is less than that required by the probable cause standard, reasonable suspicion nevertheless embraces something more than an 'inchoate and unparticularized suspicion or hunch.'" *Id.* (quoting *Terry*, 392 U.S. at 27). Even seemingly innocent behavior, under the circumstances, may permit a brief stop and investigation. *Wardlow*, 528 U.S. at 125-26 (recognizing that even in *Terry*, the conduct justifying the stop was ambiguous and susceptible of an innocent explanation, but that,

because another reasonable interpretation was that the individuals were casing the store for a planned robbery, "*Terry* recognized that the officers could detain the individuals to resolve the ambiguity").

In assessing the issue, reviewing courts "must look at the 'totality of the circumstances' of each case to see whether the detaining officer has a 'particularized and objective basis' for suspecting legal wrongdoing." *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002). *Accord Bost v. State*, 406 Md. 341, 356 (2008) ("The test is 'the totality of the circumstances,' viewed through the eyes of a reasonable, prudent, police officer."). And "'the court must . . . not parse out each individual circumstance for separate consideration.'" *Holt*, 435 Md. at 460 (quoting *Crosby v. State*, 408 Md. 490, 507 (2009)). *Accord In re: David S.*, 367 Md. 523, 535 (2002) ("Under the totality of circumstances, no one factor is dispositive.").

Here, as the circuit court noted, the victim, Mr. Augustus, was reported missing, despite having informed his girlfriend that he was on his way home, and his work truck was found in a rural area, burning, with an unidentifiable body located inside. Male clothing was found burning in an area not too far away. According to cell phone records, the victim and Ms. Jones were in contact at approximately 3:30 a.m. in an area close to Ms. Jones' apartment. When police arrived at Ms. Jones' apartment, neither Ms. Jones, nor her vehicle, were there. And the area near Ms. Jones' apartment smelled of cleaning agents and there was

diluted blood on the carpet outside her door, as well as blood spatter leading down the steps away from her apartment. Neighbors informed police that the smell of cleaning agents was new, and that they heard a commotion coming from Ms. Jones' apartment the night before. Based on this information, it was reasonable to infer that the victim had been murdered inside the apartment and subsequently carried down the stairs.

When appellant arrived at Ms. Jones' apartment in the middle of the night, when no one else was present, and used a key to attempt to gain entry to that apartment, a suspected crime scene where there appeared to be efforts to clean, the police had, at minimum, reasonable articulable suspicion to believe that appellant may have been involved in criminal activity. The circuit court properly determined that the initial investigative detention was lawful.[5]

[5] Appellant does not, for good reason, reiterate on appeal the argument he made below that the officers erred in questioning him during the initial *Terry* stop without giving him his *Miranda* warnings. The Supreme Court has made clear that such questioning is not subject to the requirements of *Miranda*. *See Maryland v. Shatzer*, 559 U.S. 98, 113 (2010) ("[T]he temporary and relatively nonthreatening detention involved in a traffic stop or *Terry* stop, *see Terry v. Ohio*, 392 U.S. 1 (1968), does not constitute *Miranda* custody."). *Accord Howes v. Fields*, 132 S. Ct. 1181, 1190 (2012).

B.

Probable Cause to Arrest

Appellant next asserts that, at the point he was "handcuffed, searched and placed in a patrol car," he "was clearly under arrest," and he contends that the circuit court erred in ruling that the police had probable cause to justify the arrest. We agree with appellant that the initial detention ripened into an arrest when he was brought to the police station. We disagree, however, with the contention that the arrest was not supported by probable cause.

The Court of Appeals explained the concept of probable cause, as follows:

> Probable cause, we have frequently stated, is a nontechnical conception of a reasonable ground of a belief of guilt. A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion. Our determination of whether probable cause exists requires a nontechnical, common sense evaluation of the totality of the circumstances in a given situation in light of the facts found to be credible by the trial judge. . . . Therefore, to justify a warrantless arrest the police must point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion.

Bailey v. State, 412 Md. 349, 374-375 (2010) (citations omitted). *Accord Stokeling v. State*, 189 Md. App. 653, 663 (2009) ("[W]e consider the totality of the circumstances, in light of the facts found to be credible by the trial judge, factoring in the variables of the information leading to police action, the environment, the police purpose, and the suspect's conduct."), *cert. denied*, 414 Md. 332 (2010).

Here, in addition to the fact that appellant arrived at Ms. Jones' apartment in the middle of the night, with a key, when no one was home, the police obtained further information during the investigative detention that increased the level of suspicion. Appellant stated that he was at Ms. Jones' apartment to pick up clothes for Ms. Jones' children, but he did not know where Ms. Jones was located, a claim that appeared inconsistent with the fact that appellant arrived at Ms. Jones' apartment in Ms. Jones' vehicle. Additional discrepancies in appellant's account were suggested by his decision to surreptitiously park some distance from the apartment building, despite the availability of empty parking spots near the front. These facts, in addition to the fact that appellant brought a towel back to the suspected crime scene, which appeared to be in the process of being cleaned, provided the police with probable cause to believe that criminal activity was afoot. The motions court properly rejected the argument that the police did not have probable cause to support appellant's arrest.

II.

Appellant next asserts that the court erred by failing to suppress statements he made "after he invoked his right to counsel and the police continued to interrogate him." The State contends that the issue is not preserved for this Court's review because appellant did not raise this issue in the circuit court. In any event, it contends that appellant "failed to unequivocally and unambiguously indicate a present desire to have counsel present for questioning."

As discussed below, we agree with the State that the issue was never presented to the circuit court, and therefore, the issue is not preserved for this Court's review. Accordingly, we decline to consider the issue on the merits. *See Wilson v. Shady Grove Adventist Hosp.*, 191 Md. App. 569, 586 ("We decline to reach the merits of appellant's contention because appellant failed to preserve this issue for our review."), *cert. denied*, 415 Md. 43 (2010).

Maryland Rule 4-252 provides, in pertinent part, as follows:

> (a) Mandatory Motions. In the circuit court, the following matters shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise:
>
> * * *
>
> (4) An unlawfully obtained admission, statement, or confession.

"It is well established that, absent good cause, Rule 4-252 prohibits a criminal defendant from raising a theory of suppression on appeal that was not argued in the circuit court." *Savoy v. State*, 218 Md. App. 130, 141 (2014); *see also Jones v. State*, 213 Md. App. 483, 493 (2013) ("The failure to raise a particular argument in support of a request to exclude evidence acts as a waiver of the argument for the purposes of appellate review."), *cert. denied*, 438 Md. 740 (2014). This general prohibition applies even when a claim may be rife with constitutional merit. *See Robinson v. State*, 404 Md. 208, 218 (2008) ("Appellant's constitutional argument, raised for the first time on appeal, was not raised in the trial court; it is not a jurisdictional argument, and we therefore will not consider it."); *see also Harper*

v. State, 162 Md. App. 55, 85 (2005) (observing that appellant's argument that his statement to the detective was involuntary, because the dictates of *Miranda* were not met, was not properly before this Court where the argument was not presented or decided below).

Here, appellant filed, pursuant to Maryland Rule 4-252, an omnibus motion, in which appellant argued generally "[t]hat all admissions, statements or confessions of the Defendant be suppressed as having been obtained involuntarily, forcibly and in violation of the Defendant's Constitutional and other legal rights." Appellant subsequently filed a Supplemental Motion to Suppress Physical Evidence, in which he argued that he was arrested without probable cause, and the evidence obtained following arrest, as well as the fruits of that arrest, should be suppressed under the Fourth Amendment.

In the memorandum accompanying that motion, appellant made no argument, nor did he cite any cases in support, that his Fifth Amendment rights were violated because Detective Childs continued to interview him after he invoked his right to counsel. Indeed, in furtherance of his argument that his statement was the fruit of an unlawful arrest, and contrary to the argument made on appeal, appellant asserted that "[t]he fact that the officer complied with *Miranda* and the Fifth Amendment once they began questioning Mr. Ellis at the station does not lead to the admissibility of the statements subsequent to a Fourth Amendment violation."

At the hearing on appellant's motion to suppress, defense counsel did mention that appellant "does ask for a lawyer twice," but we have carefully reviewed the transcript of the hearing, and it is clear that the argument that defense counsel was making was that appellant was illegally arrested at the moment Sergeant Keller approached him in the apartment building and that any statements made from that point forward were the fruit of an illegal arrest without proper *Miranda* warnings. The comments about appellant's request for a lawyer were made in the context of the State's alternative argument that, even if the arrest was illegal, the statement that appellant gave at the police station, which was voluntarily given after *Miranda* warnings, was sufficiently attenuated from any taint.

Appellant did not argue below that any statement at the police station should be suppressed because it was obtained after he had invoked his right to counsel. And the circuit court, understandably, did not address this issue in its decision.

Because the record reflects that appellant never raised the issue he presents on appeal regarding a request for counsel, the issue is not properly preserved for this Court's review. Accordingly, we will not address it on the merits.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.