RECORD IMPOUNDED

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1229-22

STATE OF NEW JERSEY
IN THE INTEREST OF M.P.,
a minor.

APPROVED FOR PUBLICATION
July 12, 2023
APPELLATE DIVISION

Argued June 6, 2023 – Decided July 12, 2023

Before Judges Geiger, Susswein and Berdote Byrne.

On appeal from an interlocutory order of the Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FJ-07-0934-20.

John P. Flynn, Assistant Deputy Public Defender, argued the cause for appellant M.P. (Joseph E. Krakora, Public Defender, attorney; John P. Flynn, of counsel and on the briefs).

Frank J. Ducoat, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent State of New Jersey (Theodore N. Stephens, II, Acting Essex County Prosecutor, attorney; Barbara A. Rosenkrans, Special Deputy Attorney General/Acting Assistant Prosecutor, of counsel and on the brief).

Lila B. Leonard, Deputy Attorney General, argued the cause for amicus curiae Attorney General of New Jersey (Matthew J. Platkin, Attorney General, attorney; Lila B. Leonard, of counsel and on the brief).

Elana Wilf argued the cause for amicus curiae Rutgers Criminal and Youth Justice Clinic and American Civil

Liberties Union of New Jersey Foundation (Laura Cohen and Elana Wilf, attorneys for Rutgers Criminal and Youth Justice Clinic; Alexander Shalom and Jeanne M. LoCicero, attorneys for American Civil Liberties Union of New Jersey Foundation; Laura Cohen, Elana Wilf, Alexander Shalom, and Jeanne M. LoCicero, on the joint brief).

The opinion of the court was delivered by

SUSSWEIN, J.A.D.

By leave granted, M.P., a juvenile, appeals an interlocutory Family Part order admitting into evidence the statement he gave to police during a stationhouse interrogation. M.P. was sixteen years old when he was questioned in connection with his participation in a murder. His mother attended the interrogation session. M.P. claims the motion court erred in finding he knowingly, intelligently, and voluntarily waived his Miranda[1] rights.

M.P. argues, among other things, the motion court improperly excluded expert testimony pertaining to his intellectual capacity and ability to comprehend his constitutional rights. The State argued in the Family Part that the defense expert's testimony was inadmissible, filing a motion to exclude it from the suppression hearing. The State's position has since changed; the prosecutor acknowledged at oral argument before us that the defense expert's

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

testimony should have been admitted. The State nonetheless contends that, considering the totality of the relevant circumstances, the motion court correctly decided that M.P.'s waiver of his Miranda rights was valid.

Aside from seeking to suppress his incriminating statement to police applying a fact-sensitive totality-of-the-circumstances test, M.P. asks us to adopt a new categorical rule that would prohibit police from conducting a stationhouse interrogation of a juvenile unless and until the minor is represented by an attorney. M.P. relies on neuroscience and behavioral science research that shows juveniles are not only more impulsive and compliant than adults but also tend to lack the cognitive skills to comprehend Miranda rights. He contends that in view of advances in the scientific understanding of adolescent brain development, no juvenile should be subjected to a stationhouse interrogation—with or without parental participation—until the juvenile has consulted with counsel.

We have no authority to pronounce any such per se requirement, especially in light of our Supreme Court's rejection of a less-expansive request for an attorney-appointment rule in State in Int. of A.S., 203 N.J. 131, 154 (2010). We acknowledge there have been significant reforms to New Jersey's juvenile justice system in recent years based on scientific research on how a juvenile's brain develops and how it functions differently from a fully mature

adult brain.[2] But even accepting for the sake of argument the validity and relevance of the scientific studies M.P. relies on, those research findings do not confer upon us authority to substantially rework our State's juvenile interrogation jurisprudence, and certainly not to overturn New Jersey Supreme Court precedent. See Pannucci v. Edgewood Park Senior Hous. — Phase 1, LLC, 465 N.J. Super. 403, 414 (App. Div. 2020) (noting plaintiff asked us "to change the law the Supreme Court has established," and holding, "[t]hat, we may not do" (citing State v. Steffanelli, 133 N.J. Super. 512, 514 (App. Div. 1975))).

Stated another way, we are bound by precedents that already account for the fact that juveniles are different from adults and thus are to be treated differently for purposes of custodial interrogations. While the rules and principles announced in those precedents are not immutable, it is for our Supreme Court and the Legislature—not an intermediate appellate court—to weigh the benefits and costs of the major juvenile justice system policy shift M.P. proposes.

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[2] Examples of those other reforms relate to the involuntary transfer of minors from juvenile to adult court, see N.J.S.A. 2A:4A-26.1 (2016), and the sentencing of juvenile offenders who ultimately are convicted in adult court, see Miller v. Alabama, 567 U.S. 460 (2012); State v. Zuber, 227 N.J. 422 (2017); State v. Comer, 249 N.J. 359 (2022).

M.P. also asks us to revise the Miranda warnings administered by police in New Jersey to make them more comprehensible to adolescents. We decline that request as well for similar reasons. In doing so, we do not mean to suggest the current warnings are sacrosanct and cannot be improved based on juvenile brain research. Rather, we believe the task of revising the familiar Miranda warnings to address the inherent differences between adults and juveniles is beyond our authority, especially considering the limited record before us. Cf. State v. Henderson, 208 N.J. 208, 217 (2011) (appointing a Special Master to review and report on scientific studies pertaining to the reliability of eyewitness identifications, providing the evidence-based foundation for significant reforms).

Turning to the application of existing precedents and guiding principles to the present case, although we are mindful of the deference we owe to the motion court's factual findings, we are not persuaded the State proved beyond a reasonable doubt that M.P. knowingly, intelligently, and voluntarily waived his right to remain silent. Considering all relevant circumstances, including M.P.'s intellectual challenges, mental conditions, and highly emotional state, as well as the role his mother played, we conclude his statement should have been suppressed.

I.

We discern the following facts and procedural history from the record.[3] At approximately 11:40 a.m. on December 11, 2019, Newark police took M.P. into custody for possession of a handgun. The Essex County Prosecutor's Office (ECPO) learned of his arrest and had him transported for questioning in relation to a shooting death three days earlier.

Police found the victim's body across the street from his home with a gunshot wound to the back. A surveillance video recovered near the crime scene showed five individuals, one of whom was M.P., approached the victim's car. The State alleges that M.P. and another individual, N.H., forced the victim to exit the car at gunpoint and had him walk towards his house. When the victim began to run, N.H. fired two shots, one of which struck the fleeing victim in the back. The victim died shortly thereafter. A surveillance video captured the group running away from the scene; M.P. was carrying a gun.

After the stationhouse interrogation, M.P. was formally charged by complaint with several acts of delinquency. At issue in this appeal are charges that would constitute the following crimes if committed by an adult: first-degree murder, N.J.S.A. 2C:11-3(a)(1); first-degree felony murder, N.J.S.A.

[3] We note this appeal comes to us before trial and that M.P. is presumed innocent of all allegations.

2C:11-3(a)(3); first-degree robbery, N.J.S.A. 2C:15-1(a)(1); second-degree conspiracy to commit robbery, N.J.S.A. 2C:5-2 and 2C:15-1(a)(1); second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1); and second-degree possession of a weapon for an unlawful purpose, N.J.S.A. 2C:39-4(a)(1).

On February 7, 2020, the State filed a motion to transfer jurisdiction to adult court.[4] In May 2022, the State moved to admit into evidence the statement M.P. gave to police during the stationhouse interrogation. He opposed the motion, arguing that he did not make a knowing, intelligent, and voluntary waiver of his rights. The Family Part court ruled that it would decide the motion to suppress before deciding the motion to transfer jurisdiction.

M.P. sought to present expert testimony from Dr. Emily Haney-Caron on adolescent brain development and juvenile comprehension of Miranda warnings and rights. The State filed a motion pursuant to N.J.R.E. 104 and 702 to exclude her testimony from the suppression hearing. The motion court reserved decision on the State's application, ruling it would consider her report

[4] That motion is still pending before the Family Part judge. The State's application to waive jurisdiction to adult court is not before us in this appeal, and we offer no opinion on whether this prosecution should be resolved in the Family Part or Criminal Part.

and hear her testimony during the Miranda hearing before issuing a decision on the testimony's admissibility. Following the two-day Miranda hearing, the motion court excluded Dr. Haney-Caron's testimony on the grounds it was not beyond the ken of the average factfinder.

The motion court heard testimony from one of the two detectives who conducted the interrogation. The court also watched an electronic recording of the interrogation, whereupon it ruled M.P.'s waiver of Miranda rights was valid and that his statement would be admissible at trial. We granted M.P.'s motion for leave to appeal that interlocutory order. We also granted a motion by the American Civil Liberties Union of New Jersey and the Rutgers Criminal and Youth Justice Clinic (collectively, defense amici) to participate as amici curiae. We invited the Attorney General to also participate as amicus.

M.P. raises the following contentions for our consideration:

> POINT I
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> THE TRIAL COURT ERRED IN ADMITTING THE CUSTODIAL STATEMENT BECAUSE THE STATE FAILED TO CARRY ITS HEAVY BURDEN TO PROVE THE VALIDITY OF THE MIRANDA WAIVER BEYOND A REASONABLE DOUBT.
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> A. The trial court abused its discretion in disregarding the expert's testimony, which detailed factors present in M.P's case that cast doubt on the validity of his Miranda waiver.

B. The detectives' failure to allow M.P. and his mother to consult in private after being provided Miranda warnings creates reasonable doubt as to the validity of the waiver.

C. The detective's misleading response to the mother's question during the waiver procedure casts reasonable doubt as to the validity of the waiver.

D. The role of M.P.'s mother as an assistant to the police during the interrogation and the consistent pressure she applied upon M.P. to speak creates reasonable doubt as to the voluntariness of M.P.'s Miranda waiver.

E. The trial court erred as a matter of law in concluding that the totality of the circumstances did not create reasonable doubt as to the validity of M.P.'s Miranda waiver.

POINT II

ALTERNATIVELY, THIS CASE DEMONSTRATES THAT JUVENILES MUST BE PROVIDED COUNSEL DURING CUSTODIAL INTERROGATIONS IN ORDER TO FULLY PROTECT THEIR CONSTITUTIONAL RIGHTS.

II.

We first address M.P.'s request that we create a new categorical rule that would preclude police from conducting a custodial interrogation of a minor unless he or she has consulted with an attorney. Because we are by no means writing on a clean slate, we begin our legal analysis by canvassing the current principles that safeguard the right against self-incrimination.

A.

We first address the constitutional right to remain silent that protects all persons, adult and juvenile. "The right against self-incrimination is guaranteed by the Fifth Amendment to the United States Constitution and this state's common law, now embodied in statute, N.J.S.A. 2A:84A-19, and evidence rule, N.J.R.E. 503." State v. Nyhammer, 197 N.J. 383, 399 (2009). Both the statute and evidence rule mirror the constitutional rule, stating that "every natural person has a right to refuse to disclose in an action or to a police officer or other official any matter that will incriminate him or expose him to a penalty or a forfeiture of his estate." State v. O.D.A.-C., 250 N.J. 408, 420 (2022).

As summarized by our Supreme Court in State v. Tillery:

> In Miranda, the United States Supreme Court held that before law enforcement subjects a suspect to custodial interrogation, the suspect must be advised: (1) "that he has the right to remain silent"; (2) "that anything he says can be used against him in a court of law"; (3) "that he has the right to the presence of an attorney"; and (4) "that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Miranda imposes a fifth requirement: "that a person must be told that he can exercise his rights at any time during the interrogation."
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> [238 N.J. 293, 315 (2019) (internal citations omitted).]

Those familiar warnings are designed to help mitigate the inherent coercion of a custodial interrogation. Miranda, 384 U.S. at 468.

An interrogee may, of course, waive Miranda rights, "provided the waiver is made voluntarily, knowingly and intelligently." Id. at 444. The standard for reviewing the validity of a waiver is especially strict under New Jersey law, which provides criminal suspects greater protections than are afforded under the United States Constitution. Our Supreme Court very recently reaffirmed in State v. Erazo that "[w]ith respect to the trial court's admission of police-obtained statements, . . . an appellate court 'should engage in a "searching and critical" review of the record to ensure protection of a defendant's constitutional rights.'" ___ N.J. ___, ___ (2023) (slip op. at 23) (quoting State v. Hreha, 217 N.J. 368, 381–82 (2014)). Importantly, moreover, our law requires the State to prove a valid waiver beyond a reasonable doubt. O.D.A.-C., 250 N.J. at 420. Federal law, in contrast, requires proof the waiver was valid by the much lower preponderance-of-the-evidence standard. Ibid. (quoting Colorado v. Connelly, 479 U.S. 157, 168 (1986)).

In considering whether the demanding proof-beyond-a-reasonable-doubt standard has been met, courts assess the totality of the circumstances surrounding the interrogation, including "the defendant's age, education and intelligence, advice as to constitutional rights, length of [the] detention,

whether the questioning was repeated and prolonged in nature and whether physical punishment or mental exhaustion was involved." Erzao, ___ N.J. at ___ (slip op. at 29) (alteration in original) (quoting Nyhammer, 197 N.J. at 402). "The inquiry also considers statements and behaviors by the police that tend to contradict the Miranda warnings, or otherwise render them ineffective." Ibid.

Constitutional protections that safeguard the right against self-incrimination do not stop with the administration of Miranda warnings and the signing of a form acknowledging and waiving the enumerated rights. "Beyond the issue of [a Miranda] waiver, there are separate due process concerns related to the voluntariness of a confession." O.D.A.-C., 250 N.J. at 421. "Due process requires the State to 'prove beyond a reasonable doubt that a defendant's confession was voluntary and was not made because the defendant's will was overborne.'" Ibid. (quoting State v. L.H., 239 N.J. 22, 42 (2019)). "The voluntariness determination weighs the coercive psychological pressures brought to bear on an individual to speak against his power to resist confessing." L.H., 239 N.J. at 43 (citing Dickerson v. United States, 530 U.S. 428, 434 (2000)).

"The due process test takes into consideration the totality of all the surrounding circumstances—both the characteristics of the accused and the

details of the interrogation." Id. at 42 (internal quotation marks omitted) (quoting Dickerson, 530 U.S. at 434). This totality-of-the-circumstances test shares "'a substantial overlap [with] the factors that' apply to a [Miranda] waiver analysis."[5] O.D.A.-C., 250 N.J. at 421 (first alteration in original) (quoting Tillery, 238 N.J. at 316–17). The voluntariness factors are "'assessed qualitatively, not quantitatively,' for 'the presence of even one of those factors may permit the conclusion that a confession was involuntary.'" L.H., 239 N.J. at 43 (quoting Hreha, 217 N.J. at 384). An involuntary confession is "inadmissible in evidence regardless of its truth or falsity." Ibid. (quoting State v. Miller, 76 N.J. 392, 405 (1978)).

B.

We next briefly summarize the special safeguards against self-incrimination that apply specifically to interrogees who are less than eighteen years old. No one disputes that children are different from adults for purposes of determining the admissibility of admissions and confessions given to police. See State in Int. of A.W., 212 N.J. 114, 136 (2012) (noting in the context of a

[5] "[T]he factors relevant to the voluntariness analysis include 'the suspect's age, education and intelligence, advice concerning constitutional rights, length of detention, whether the questioning was repeated and prolonged in nature, and whether physical punishment were involved,' as well as previous encounters with law enforcement." Ibid. (quoting State v. Hreha, 217 N.J. 368, 383 (2014)).

juvenile's confession, "[w]e have consistently recognized that juveniles are different from adult suspects"). Indeed, it is well-settled under New Jersey law that children "receive heightened protections when it comes to custodial interrogations." State in Int. of A.A., 240 N.J. 341, 354 (2020).

These additional protections apply because juveniles "are typically less mature, often lack judgment, and are generally more vulnerable to pressure than adults." Ibid. Importantly, our Supreme Court has stressed that "'the greatest care must be taken to assure that' a juvenile's admission is 'voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.'" Ibid. (quoting In re Gault, 387 U.S. 1, 55 (1967)).

To that end, juvenile interrogees in this State have the right to have a parent or guardian present when Miranda warnings are administered. State v. Presha, 163 N.J. 304, 322 (2000). The Court in A.S. explained, "'[t]he role of a parent in the context of a juvenile interrogation takes on special significance,' because '[i]n that circumstance, the parent serves as advisor to the juvenile, [and] someone who can offer a measure of support in the unfamiliar setting of the police station.'" 203 N.J. at 147 (alterations in original) (quoting Presha, 163 N.J. at 314). The Court in Presha reasoned that "[p]arents are in a position to assist juveniles in understanding their rights, acting intelligently in waiving

those rights, and otherwise remaining calm in the face of an interrogation." 163 N.J. at 315. Chief Justice Rabner, writing for a unanimous Court, recently confirmed "[t]he protections outlined in Presha remain good law." A.A., 240 N.J. at 358.

In A.S., the Court emphasized, moreover, that "mere presence of a parent is insufficient to protect a juvenile's rights." 203 N.J. at 148. "In order to serve as a buffer," the Court explained, "the parent must be acting with the interests of the juvenile in mind." Ibid. The Court nonetheless recognized, "[t]hat is not to say that a parent cannot advise his or her child to cooperate with the police or even to confess to the crime if the parent believes that the child in fact committed the criminal act." Ibid.; see also State in Int. of Q.N., 179 N.J. 165, 176 (2004) (finding a juvenile's confession was voluntary even though the mother urged her son to confess and then left interrogation room).

III.

M.P. and defense amici ask us to create a new bright-line rule requiring the appointment of counsel before police may interrogate a juvenile who is in custody. Any such rule could have far-reaching unintended consequences. For one thing, an attorney-appointment requirement might effectively eliminate juvenile custodial interrogations since we would expect an appointed counsel to advise the juvenile to remain silent. As Justice Stein noted in his

concurring opinion in State v. Reed, "any lawyer worth his salt will tell the suspect in no uncertain terms to make no statement to police under any circumstances." 133 N.J. 237, 273 (1993) (Stein, J., concurring) (quoting Watts v. Indiana, 338 U.S. 49, 59 (1949) (Jackson, J., concurring)).

There is, of course, a public safety interest in solving crimes expeditiously. Properly conducted custodial interrogations can promote that salutary objective without compromising a suspect's constitutional rights. We add that the categorical rule M.P. and defense amici propose could conceivably have an unintended adverse impact on some juveniles, potentially depriving them, for example, the benefit of a stationhouse adjustment or other diversion from formal prosecution.[6]

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[6] A 2020 directive issued by the Attorney General to implement juvenile justice reform defines a stationhouse adjustment as:

> [A] mechanism that allows law enforcement agencies to resolve a juvenile's unlawful conduct without formal court proceedings. A stationhouse adjustment, which must be memorialized in a signed agreement, establishes one or more conditions that the juvenile must meet in exchange for the law enforcement agency declining to pursue a formal delinquency complaint against the juvenile.
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> [Attorney General, Directive Establishing Policies, Practices, and Procedures to Promote Juvenile Justice Reform, (Dec. 3, 2020) (Directive 2020-12).]

M.P. and defense amici nonetheless argue a categorical attorney-appointment rule is needed because parents are not an adequate substitute for a lawyer. Certainly, the function served by a parent during a stationhouse interrogation is different from the role that would be played by an attorney. A parent may comfort and calm the child whereas an attorney is focused on providing legal counsel and protecting the child's penal interests. As our Supreme Court noted in A.S., a parent may advise a child to waive the right to remain silent and confess to a crime. 203 N.J. at 148. In contrast, as we have already noted, we would expect a lawyer to advise a client—adult or adolescent—to remain silent and allow the lawyer to speak on the client's behalf when dealing with law enforcement.

The crux of M.P.'s policy argument is that our Supreme Court's reliance on parental involvement to mitigate the inherent coerciveness of custodial interrogation has not proved to be effective in practice. M.P. and defense

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We note a stationhouse adjustment would be unavailable for the serious crimes with which M.P. was eventually charged. However, the categorical attorney-appointment rule requested by M.P. and defense amici would not be limited by the degree of crime under investigation but rather would be triggered automatically by any stationhouse interrogation. We add that making an attorney-appointment rule dependent on unfiled charges under investigation would be problematic for reasons explained in State v. Sims, 250 N.J. 189, 215 (2022). See ibid. ("[E]ven when there is probable cause for an arrest, there may be insufficient information about the victim's injuries, the arrestee's mental state, and other key issues to enable an officer to accurately identify the charges.").

amici argue that while parents sometimes assist children in comprehending Miranda rights and deciding whether to waive them, parents generally lack the ability to serve as the "buffer" envisioned in Presha, and therefore their participation in an interrogation is insufficient to protect the interests of their children.

But as we have noted, in A.A., our Supreme Court unanimously reaffirmed that parents must be afforded the opportunity to serve as a buffer between police and their children. 240 N.J. at 355–56. In light of that recent reaffirmation, we have no authority to conclude parental participation is generally ineffective as M.P. and defense amici contend, much less that it is harmful more often than helpful in protecting a juvenile interrogee's constitutional rights.

It bears emphasis the parental participation rule announced in Presha and recently restated in A.A. does not displace the totality-of-the-circumstances test but rather is a critical part of it. The Court in A.S. stressed that point, explaining, "the presence of a parent is a 'highly significant factor' in the totality of the circumstances analysis contemplated by Presha." 203 N.J. at 154 (emphasis in original).

The actual role played by a parent during a stationhouse interrogation—whether as a "buffer" or instead as an adjunct law enforcement interrogator—is

a fact-sensitive question to be determined on a case-by-case basis. Stated another way, as we discuss in Section XI, a parent's participation may militate for or against a finding of voluntariness depending on the circumstances. See A.A., 240 N.J. at 358 (noting the parent's conduct during the interrogation in that case "upended the model envisioned in Presha"). We add that the totality-of-the-circumstances analytical paradigm is by no means toothless, especially when applied in the context of the proof-beyond-a-reasonable doubt standard.

M.P. bases his request for a categorical attorney-appointment requirement on brain development and behavioral science studies similar to those his expert, Dr. Haney-Caron, relied upon in her report and testimony.[7] M.P. argues those and comparable studies provided the foundation for landmark judicial decisions establishing special sentencing rules for juveniles tried and convicted as adults based on the limited executive functioning resulting from the delayed development of the prefrontal cortex of adolescents and young adults. See supra note 2; see also Roper v. Simmons, 534 U.S. 551, 569 (2005); Graham v. Florida, 560 U.S. 48, 68 (2010).

According to M.P., the studies consistently establish that: (1) juveniles lack the cognitive abilities to understand Miranda rights and, because they have difficulty assessing long-term consequences, do not appreciate the

[7] We recount Dr. Haney-Caron's testimony in detail in Section VI(B).

significance of waiver; (2) juveniles do not understand that the right to remain silent means they do not have to answer any question, a judge cannot force them to answer, they can refuse to answer at any time, and they will not be punished for refusing to answer; (3) youth from economically poor backgrounds and ethnic minorities are at a disproportionately greater risk of not understanding Miranda rights, despite their increased likelihood of having contact with the criminal justice system;[8] (4) youth are generally unable to restate Miranda rights after advisement, showing a lack of comprehension and deficiencies in memory; (5) on average, ninety percent of juveniles waive their rights, which is disproportionately higher than the rate for adults; (6) parents generally have misconceptions about Miranda rights, particularly in relation to children, and nearly always advise their child to waive their rights; and (7) juveniles are 250% more likely than adults to give a false confession.

M.P. also notes that other jurisdictions have relied upon juvenile brain science to require appointment of counsel as a precondition to a Miranda

[8] Defense amici further argue that Black youth are at an even greater disadvantage based on the perception that police tend to accuse them of crime at a disproportionate rate as well as related manifestations of implicit bias. We believe that disproportionate impact on minority interrogees is an important consideration warranting further study and close scrutiny. See State v. Scott, 474 N.J. Super. 388, 399 (App. Div. 2023) ("The problem of implicit bias in the context of policing is both real and intolerable.").

waiver, citing to policies adopted in California and Washington.[9] Although M.P. cites the attorney-appointment rules in those jurisdictions as persuasive authority, we emphasize those policies were established by legislation, not judicial decisions. Notably, M.P. cites no case law authority for imposing a categorical attorney-representation rule as a matter of federal or state constitutional imperative.

Defense amici join in M.P.'s request, arguing that since Presha was decided, "a robust body of social science and legal scholarship" has established that parents: (1) lack a basic understanding of Miranda rights, rendering their assistance ineffective; (2) "are as susceptible as their children to police interrogation tactics"; (3) are often conflicted by the desire to teach their child a moral lesson and admit their wrongdoing without adequately understanding the legal consequences; and (4) often fail to provide their child any advice regarding Miranda rights and waiver, and those who do offer advice usually tell their child to waive their rights. Thus, defense amici contend, the effect of parental assistance is often to "inadvertently propel the child towards an adjudication, a waiver of jurisdiction, or a conviction based largely or

[9] See CAL. WELF. & INST. CODE § 625.6(a); WASH. REV. CODE ANN. § 13.40.740.

exclusively on the resulting confession," which contributes to a high rate of false confessions and wrongful convictions among juveniles.

This is not the first time this issue has been raised in New Jersey. In A.A., the Court "decline[d] to address the ACLU's argument that juveniles must be allowed to consult with counsel before they can waive their Miranda rights." 240 N.J. at 359 n.1. The Court noted, "A.A. did not advance that claim and, as a general rule, the Court 'does not consider arguments that have not been asserted by a party, and are raised for the first time by an amicus curiae.'" Ibid. (quoting State v. J.R., 227 N.J. 393, 421 (2017)).

In A.S., the Court considered an attorney-appointment rule on the merits in the narrow context of a parent who had a conflict of interest. 203 N.J. at 154–55. There, the Court commented:

> Toward the conclusion of its thorough and thoughtful opinion, the Appellate Division added this rather expansive directive:
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> > [i]n circumstances such as those existing in the present matter, where the adult advisor is known to have a close family relationship to both the victim and the alleged perpetrator, the prudent approach would be to require the presence of an attorney capable of advising the juvenile with respect to her rights and her potential culpability, a procedure adopted elsewhere.

> [Id. at 154 (alteration in original) (quoting State in Int. of A.S., 409 N.J. Super. 99, 122–23 (App. Div. 2009)).]

The Court rejected the attorney-appointment requirement proposed by the Appellate Division, explaining:

> We do not believe that a broad representation requirement that would require the presence of an attorney in every such case is warranted. As we have discussed throughout this opinion, the presence of a parent is a "highly significant factor" in the totality of the circumstances analysis contemplated by Presha and, generally, that reassuring presence will assist the juvenile in the exercise of his or her rights. We decline to embrace a categorical rule that an attorney must be present any time that there is perceived clash in the interests of a parent based on a familial relationship with the victim or another involved in the investigation. Even in cases of such apparent clashing interests, a parent may be able to fulfill the role envisioned in Presha. And, in those cases where a parent is truly conflicted, another adult—not necessarily an attorney—may be able to fulfill the parental assistance role envisioned by Presha. Moreover, when it is apparent to interrogating officers that a parent has competing and clashing interests in the subject of the interrogation, the police minimally should take steps to ensure that the parent is not allowed to assume the role of interrogator and, further, should strongly consider ceasing the interview when another adult, who is without a conflict of interest, can be made available to the child.
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> [Id. at 154–55 (footnote omitted).]

Having explicitly rejected a per se attorney-appointment rule when the parent attending the interrogation has a conflict of interest, we must presume

the Court would likewise decline to embrace a categorical lawyer-appointment requirement in all cases. Indeed, the categorical rule proposed by M.P. is a far more "expansive directive," to use the Court's characterization, than the one it explicitly rejected in A.S.

IV.

To this point, we have discussed legal principles derived from the Fifth Amendment right against self-incrimination. There is another constitutional paradigm—derived from Sixth Amendment principles—that safeguards the right to counsel at critical stages of a criminal proceeding. New Jersey jurisprudence, like federal law, recognizes that the right to counsel attaches under the state constitutional analogue to the Sixth Amendment—Article 1, Paragraph 10 of the New Jersey Constitution—at a certain point in the criminal justice process. However, unlike federal law, once the right to counsel attaches under the State Constitution, defendants "may not waive their Miranda rights absent counsel." State in Int. of P.M.P., 200 N.J. 166, 178 (2009). In the adult arena, that categorical restriction occurs when an indictment is returned. Ibid.

In Patterson v. Illinois, the United States Supreme Court held that a defendant's Sixth Amendment right to counsel after indictment is not "more difficult to waive than the Fifth Amendment counterpart." 487 U.S. 285, 297–

98 (1988). In State v. Sanchez, 129 N.J. 261, 276 (1992), our Supreme Court "parted company from that principle." P.M.P., 200 N.J. at 174. The Court held under the New Jersey Constitution that "after indictment, the State 'should not initiate a conversation with defendants without the consent of defense counsel.'" Ibid. (quoting Sanchez, 129 N.J. at 277).

The Court explained that "an indictment transforms the relationship between the State and the defendant." Ibid. (quoting Sanchez, 129 N.J. at 276). The Court added that "Miranda warnings were insufficient to inform [the] defendant of 'the nature of the charges, the dangers of self-representation, or the steps counsel might take to protect the defendant's interests.'" Id. at 175 (quoting Sanchez, 129 N.J. at 277). Accordingly, following indictment, adult defendants "may not waive the right to counsel without the approval of counsel." Id. at 171. Importantly, the Court explicitly declined to extend that prohibition to an earlier stage in adult criminal proceedings. Id. at 175 (citing State v. Tucker, 137 N.J. 259, 290 (1994)).

In P.M.P., our Supreme Court addressed those Article I, Paragraph 10 principles in the context of juvenile delinquency proceedings, where grand juries are not used and thus there are no indictments to signal when the State represents that it has sufficient evidence to establish a prima facie case. Id. at 177–78. The Court determined there was "no need to tackle that constitutional

question because we are convinced that the Legislature has provided a statutory remedy." Id. at 177.

Relying on the text of the New Jersey Code of Juvenile Justice, N.J.S.A. 2A:4A-20 to -49, the Court reasoned that N.J.S.A. 2A:4A-39[10] "provides essentially the same safeguards to juveniles at every critical stage of the proceedings that Sanchez provides for adults following indictment." P.M.P., 200 N.J. at 178. The Court concluded that "when the Prosecutor's Office initiates a juvenile complaint and obtains a judicially approved arrest warrant, a critical stage in the proceeding has been reached, implicating the juvenile's statutory right to counsel." Ibid.

The filing of a juvenile delinquency complaint and warrant, in other words, is deemed to be the functional equivalent of an indictment for Sanchez purposes, at which point police may not interrogate a juvenile without the consent of counsel. Ibid. By implication, the Court in P.M.P. did not extend that prohibition to an earlier stage of the juvenile justice process, such as a stationhouse interrogation conducted before the juvenile has been formally charged by a complaint and warrant issued by a court officer.

[10] N.J.S.A. 2A:4A-39(a) provides that "[a] juvenile shall have the right . . . to be represented by counsel at every critical stage in the proceeding."

For all practical purposes, M.P. and defense amici ask us to treat a custodial interrogation of a juvenile as a critical stage for purposes of the right to counsel under N.J.S.A. 2A:4A-39(a). We decline to deviate from the rule announced in P.M.P. The Legislature, of course, is free to amend the Code of Juvenile Justice to move the point at which interrogation of a juvenile is prohibited without the consent of counsel. Absent such legislation, we must apply the tipping point fixed by the Supreme Court in P.M.P.

V.

During oral argument, M.P. and defense amici proposed another way to account for the studies on juvenile brain development and comprehension of constitutional rights.[11] They argue there may be a better way to explain to adolescents their constitutional rights at the outset of a stationhouse interrogation and thus urge us to review and revise the Miranda warnings that are administered to minors.

[11] We do not mean to suggest that M.P. and defense amici proposed an alternative to a categorical attorney-appointment rule. Their first-line position remains that parental participation is not sufficient to safeguard the right against self-incrimination and that all minors should be required to consult with counsel before waiving their Miranda rights. M.P. and defense amici nonetheless posit that meaningful improvements can be made in safeguarding juveniles' constitutional rights short of providing them with counsel as a precondition to stationhouse interrogations.

It is interesting to note that although the rules in New Jersey for interrogating juveniles are significantly different from the rules that apply to adults, the text of the warnings themselves—the centerpiece of the landmark Miranda decision—have not been adapted in this State for a juvenile target audience. So far as we are aware, neither the Attorney General nor any county prosecutor has issued or approved a special Miranda waiver form for police to use when interrogating juveniles. The familiar Miranda warnings, in other words, have not been tailored to address the well-recognized differences between adult and juvenile interrogees.

We acknowledge there may well be better ways to explain constitutional rights to adolescents facing the stress of a stationhouse interrogation. By way of example, the warning that anything said can be used against the interrogee "in a court of law" might be enhanced to explain that statements can also be used by police outside the physical confines of a courtroom. We also note the form used in this case does not advise that anything the juvenile says can be used against him or her in deciding which court—Family Part or Criminal Part—will try the case if formal charges are filed. The decision to involuntarily transfer jurisdiction to adult court would subject the adolescent to substantially more severe punishment if convicted than could be imposed upon an adjudication of delinquency if the matter remained in juvenile court.

We decline the invitation to draft a juvenile version of the Miranda warnings, not because the idea of rescripting[12] the warnings for juveniles lacks merit, but rather because any such project would benefit from a collaborative process we cannot provide. The task of recommending and drafting specific revisions to the Miranda warnings to account for juvenile brain science would be better addressed by a committee of experts and stakeholders, providing a forum for a deliberative process.

We note the prosecutor at oral argument was not averse to studying the need for tailored warnings. Relatedly, the Attorney General has played a leadership role on juvenile justice policy issues, promulgating a Directive in 2020 to promote reform. See Directive 2020-12; see also Eleuteri v. Richman, 26 N.J. 506, 516 (1958) ("The judiciary, of course, is not the sole guardian of the Constitution. The executive branch is equally sworn to uphold it."). We nonetheless decline to decide whether and how to initiate any such project involving the judiciary.

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[12] No one is suggesting that police officers should ever tailor Miranda warnings on the fly. Cf. State v. Sims, 466 N.J. Super. 346, 385–86 (App. Div. 2021) (Susswein, J., dissenting) ("One of the hallmarks of Miranda and its progeny is that the familiar five-fold warnings/advisements are essentially scripted. They are not tailored based on subjective determinations made by interrogating officers." (footnote omitted)), rev'd, 250 N.J. 189 (2022).

VI.

We turn next to M.P.'s contention the motion court erred in finding that he knowingly, voluntarily, and intelligently waived his Miranda rights. Because he claims the motion court overlooked or undervalued circumstances that cast reasonable doubt on the validity of the waiver, we recount the facts adduced at the suppression hearing in detail.

A.

Facts Elicited by the State

Detective Hervey Cherilien testified that M.P. had been taken into custody by Newark police at approximately 11:40 a.m. At about 5:00 p.m., he arrived at the ECPO and was shackled to a table in a small interrogation room. When M.P. arrived at the ECPO, he was provided food and a drink. After obtaining information from M.P. on how to contact his mother, A.B., Detective Cherilien traveled to A.B.'s location and transported her to the ECPO. Detective Cherilien told her that M.P. was under arrest for a Newark gun charge. He made no mention of the homicide investigation. At approximately 7:30 p.m., Detective Cherilien placed A.B. in the room with M.P and left. Detective Cherilien testified that it was protocol to record the interaction between parent and child, not only for safety reasons but also in case their

meeting resulted in "anything of substance."[13] The record does not reflect that either A.B. or M.P. were advised their meeting was being audio recorded.

When M.P. saw his mother, the two began to cry and embraced one another. M.P. told her that someone was killed and he was not the shooter. A.B. told him that the group he was with "are not your friends" and that he was "not no gangster." She instructed him to tell the police what happened, and M.P. said, "I can't. They won't let me talk to them. They keep leaving out."

Shortly thereafter, at 7:40 p.m., Detective Cherilien and another detective, Anneesha Ford, entered the room with photos that they had downloaded from Instagram. Detective Cherilien introduced himself and Detective Ford and advised M.P. that he was under arrest by the Newark Police Department for gun possession. But the detectives told M.P. they did not want to question him about the gun charge; instead, they wanted to question him about a murder that occurred on December 8, 2019. Detective Cherilien explained that he first had to read M.P. his rights, which he said, "is going to sound familiar" because M.P. "probably heard it before." The

[13] As it turned out, the verbal interaction between M.P. and his mother was considered substantively by the motion court in rejecting his Miranda contention. As we later explain, we are troubled by a so-called "protocol" that appears to violate the New Jersey Wiretapping and Electronic Surveillance Control Act (Wiretap Act), N.J.S.A. 2A:156A-1 to -37, which generally makes it a crime to electronically eavesdrop on private conversations. See N.J.S.A. 2A:156A-3.

detective read the Miranda rights from a form, asked M.P. and A.B. if they understood them, and instructed both of them to initial each right on the form if they understood it.

As Detective Cherilien was showing them where to sign the Miranda form, A.B. interjected, stating, "[w]ait a minute. When (indiscernible) came here he told me that the person who he (indiscernible) the gun, threatened him to touch the gun. So --." Detective Ford interrupted A.B., telling her, "[o]ne second. Ma'am, because you have right[s], so do we. . . . And we want to make sure that (indiscernible) we talk about is documented properly. Okay?" A.B. gave an indiscernible response, and the discussion continued:

> DET. FORD: -- listen -- listen, I understand that whatever it is that he wants to tell us, for his protect-- and ours, we got to get through this form before moving to all of that. He can say whatever he want[s], you know --
>
> A.B.: Uh-huh.
>
> DET. FORD: -- what I'm saying? We just got to get through this first.
>
> A.B.: Right.
>
> DET. FORD: Okay? Is that fair?
>
> A.B.: Yeah. Go ahead.
>
> DET. FORD: No problem.

Detective Cherilien testified that he believed A.B. was asking "[a]bout a gun," not about M.P.'s rights, and testified the gun had nothing to do with his "goal that day."

Detective Cherilien did not ask M.P. his age because he knew his birth date. Nor did Detective Cherilien ask M.P. if he could read and write or the school grade he was in because the detective "didn't think it was relevant." He described M.P.'s demeanor as "melancholy" and A.B.'s demeanor as "alert." He said neither appeared confused. At 7:46 p.m., M.P. and A.B. both initialed each right on the form.

M.P. admitted to being with the group before and during the shooting, and he identified members of the group in photographs. M.P. explained that another juvenile, N.H., wanted to rob a man in a car, and after having the man exit the car at gunpoint, N.H. shot him as he tried to flee.

During the interrogation, A.B. asked M.P. questions, the first of which was about the gun. Detective Cherilien testified that he did not want her to "take control of the interview," so he "jumped back in" and asked about the photographs he had downloaded from Instagram. A.B. said something to the effect of "shouldn't even be with them hoodlums."

One of the photographs depicted M.P. holding a gun. A.B. said, "[y]ou shouldn't even be holding no gun. You don't even know what you doing," and

"[s]top being a follower." M.P. replied there was no clip in the gun. A.B. asked how one was to know that from the picture, commenting it looked as though he was trying to rob someone. M.P. said he believed the gun was fake "at first." A.B. then expressed concern for her son's safety because N.H. lived next door.

The interrogation ended at 8:57 p.m. Police then transported M.P. to the Newark Police Department.

B.

Defense Expert Dr. Emily Haney-Caron

M.P. offered Dr. Haney-Caron, the director of the Youth Law and Psychology Lab at John Jay College of Criminal Justice, as an expert in adolescent brain development with a specialty in Miranda comprehension. The State stipulated to her expertise and presented no testimony or evidence to rebut her testimony or report.

Dr. Haney-Caron began by discussing the ways in which juveniles are cognitively different from adults. She explained that on average, "academic[-]type skills tend to finish developing around the age of [sixteen]." However, "a number of other cognitive skills . . . have a much slower maturation process." Those skills relate to "abstract reasoning," "processing speed," "general decision-making skills," and "working memory," which refers to the amount of

information one is able to "hold" while manipulating information. These skills, she explained, do not fully develop until the "mid[-twenties]."

With respect to emotional development, Dr. Haney-Caron testified that adolescence is "characterized by intense emotional reactions" and "reactions to more things than adults react to" due to the neurological changes in the adolescent brain. She explained that the prefrontal cortex, which is the part of the brain that manages emotional reactions, does not fully develop until the "mid[-twenties]," and dopamine, which is the neurotransmitter responsible for "reward" and "sensation seeking" behavior, is produced at a higher rate in the adolescent brain. As a result, adolescents are "really primed" to "make decisions based on emotion, to have strong emotional reactions, and to react with emotion in situations where adults would be able to stay calm."

Dr. Haney-Caron further testified that "we would expect" adolescents who experienced "significant trauma" to develop at an even slower rate because "trauma slows down . . . neurological processes." She acknowledged, however, that the relation between trauma and adolescent development "is a still[-]developing area of research," noting the conclusions that one could reach on trauma were limited.

Dr. Haney-Caron testified that psychosocial skills do not fully develop until the mid-twenties. She explained those skills are "really important for

navigating the world around" us. She said those skills include the ability to delay gratification, focus on long-term consequences, weigh costs and benefits, identify good choices, and function independently without influence from others. Dr. Haney-Caron nonetheless acknowledged that these were generalizations and that some youths are able to "function independently at an earlier age."

Dr. Haney-Caron testified that "[a]dolescents on the whole tend to be more suggestible than adults," and that this is "especially true for adolescents with lower IQ's." Adolescents, she explained, are "prone to adopt[] information that [is] presented" by others, including peers, parents and authority figures. Those "who are high in suggestibility have a much greater tendency to" adopt the viewpoint or statements of others "rather than sticking with their own conceptualization."

She opined that adolescents are also more likely than adults to exhibit compliant behavior. "Compliance is related to suggestibility," she explained, in that it refers to acting in a way that conforms with other's expectations, regardless of whether the actor believes the expectation is "the right choice." She explained compliance differs from suggestibility in that it does not refer to adopting another's view, but rather to acting in a way that is expected.

"Adolescents are more likely to be compliant than adults," she opined, because they lack "independent functioning" and they "operate in a context where" multiple authority figures dictate their actions. Adolescents thus "learn that compliance is something that [is] prized and that [it is] a way to navigate situations." She also testified that "people of color, and particularly [B]lack people, are more likely to engage in a compliant manner . . . when interacting with police" because they tend to have "a reduced belief that the police will . . . honor their rights if they . . . try to assert them."

Dr. Haney-Caron testified that the information she was providing on juvenile brain development was based on scientific studies that were widely accepted in the scientific community. She stated the "science on adolescent development is extremely robust," as there are now "decades of neuroscience research" based on behavioral science and imaging technology of the brain.

With respect to an adolescent's ability to understand Miranda rights, Dr. Haney-Caron noted "[t]here is great variation" in the way jurisdictions word the Miranda rights; thus, the research has to be considered with that in mind. Some jurisdictions, she noted, draft them at a third-grade comprehension level, while others draft them at a postgraduate level. Where they are written for someone with a comprehension level above the fifth grade, Dr. Haney-Caron

opined, "we would expect that the language is too complex for many justice[-]involved youth to be able to understand."

She added that according to the research, two-thirds of adolescents "have deficits in their basic understanding of one or more rights," noting that ninety-four percent of adolescents "have deficits in their appreciation of at least one right." Younger youths and youths with "lower IQ's" lack "the maturity needed to be able to grasp the really complex concepts in the rights."

She explained that some researchers believe having a parent present is beneficial to adolescents, but some studies have shown the opposite is true. She opined that parents often allow their children to independently function in the interrogation room, thus affording them "no protection." She stated that when parents participate in the process, most encourage their children to waive their rights. She said it is "extremely rare for a parent . . . to encourage their youth" to assert their rights. Thus, Dr. Haney-Caron opined, parental presence "often . . . has very little impact," and when it does have an impact, it is usually "in favor of a youth making an . . . unknowing or unintelligent waiver . . . because a parent is putting pressure on the youth to . . . waive" without "doing anything to enhance the youth's understanding of what a waiver means." A main reason for this effect, she explained, is that parents

themselves also have a poor understanding of Miranda rights and the consequences of waiver.

Dr. Haney-Caron testified there are a number of circumstances that increase the likelihood an adolescent would make an unknowing waiver. First, she explained, police may provide a "kind of preamble . . . that makes it sound as if the . . . rights and the subsequent waiver are a formality," or "just paperwork to be completed," which the youth need not "really focus on." She added that youth who tend to be "high in compliance will be especially susceptible to" viewing the rights as a mere formality.

A second risk factor for poor understanding occurs when the officer reads the rights quickly. This not only adds to the notion that they are a mere formality, she explained, but also decreases the chance that the youth will comprehend the meaning and significance of the rights. She testified that when police read the rights to youth, on average, they recall only about half of their content one minute later. She continued that Attention-Deficit/Hyperactivity Disorder (ADHD) "is a risk factor . . . for poor understanding and appreciation" because youths with ADHD have difficulty focusing.

Third, Dr. Haney-Caron said occurrences that heighten the emotional state of the incident will negatively affect a youth's ability to understand the

rights. She testified that experts refer to a heightened emotional state as a "hot context." She explained that teens experience more hot contexts than adults because they tend to be more emotional. She opined, "that has a big impact on their decision-making, even more than it w[ould] for an adult."

With respect to M.P. specifically, Dr. Haney-Caron testified that she interviewed him for "about three and a half hours" and his mother for "an hour and ten minutes." She also reviewed his police records, a transcript and video recording of his interrogation, and his health and school records. M.P. did not report any prior involvement with the legal system. A.B. said that police had been to their home on one prior occasion to question M.P., but she did not believe they had arrested him. However, his records showed that he was arrested two months prior to the incident at issue here and was given Miranda warnings at that time. Dr. Haney-Caron testified that the discrepancy did not surprise her because it was "not uncommon for youth or for their parents to misunderstand the nature of a police contact." His prior arrest did not "shape [her] conclusions" because research showed that prior involvement with the criminal justice system does not improve understanding of Miranda rights.

Dr. Haney-Caron testified that M.P. had a number of traumatic experiences throughout his life. A.B. had told Dr. Haney-Caron that M.P. had

witnessed a murder in his home when he was a young child, was bullied regularly at school, and witnessed domestic violence in his home.

M.P.'s health records showed that in addition to ADHD, he had been treated for oppositional defiance disorder, bipolar disorder, and insomnia. His school records showed that he had received special education services since elementary school and has "significant deficits in academic skills." The records also showed he has an IQ score of seventy-three, which is considered "borderline" and consistent with "really, really substantial deficits" that would impair "advanced cognitive skills," "decision-making," and "executive functioning."

Dr. Haney-Caron administered an "abbreviated standardized test of intelligence." M.P. scored seventy-seven, which was effectively "equivalent" to his previous score, as the four-point difference was within the margin of error. His score placed him in the sixth percentile, which means that ninety-four percent of his peers scored higher. His "verbal comprehension score" was seventy-six, suggesting he "has particular deficits in . . . verbal reasoning," which refers to his ability to "tak[e] in . . . written or auditory information and . . . us[e] that information." His "perceptual reasoning score" was eighty-three, which was within the "low/average range." Thus, Dr. Haney-Caron testified she would expect his low IQ to inhibit his ability to conduct "complex

thinking," "process[] information quickly," "hold[] information in working memory," "weigh[] information to make a decision," and "think through options."

Dr. Haney-Caron also administered a "Wide Range Achievement Test," which is a standardized measure of academic achievement. That test includes "word reading" (the ability to "decode language on the page"), "sentence comprehension" (the ability to decipher meaning from a written sentence), math, and spelling. M.P. scored below "grade level in every academic domain."

To test M.P.'s suggestibility, Dr. Haney-Caron administered the "Gudjonsson Suggestibility Scale," which, she said, is "the most common measure of suggestibility used in the field." His score "indicated that he was much more suggestible" than "the vast majority of police detainees." Thus, in the context of questioning, he was "more likely" to "integrate [information that was suggested to him] into his own understanding." Similarly, Dr. Haney-Caron used the "Gudjonsson Compliance Scale" and found that M.P. was in the "very highly compliant range compared to . . . other youth involved in the legal system."

With respect to the interrogation, Dr. Haney-Caron testified that the incident was "very clearly a hot context" for M.P. She noted the video

recording showed that he "immediately became extremely emotionally distraught" when A.B. entered the room. He "started crying so hard that it was difficult for him to speak." Dr. Haney-Caron also noted that A.B. scolded him and pressured him to speak with the police, which "seemed to increase" M.P.'s "emotional response." While noting A.B.'s reaction was common for parents in her situation, Dr. Haney-Caron believed it had the effect of influencing M.P.'s decision to waive his rights. Additionally, she opined M.P.'s emotional response likely inhibited his ability to comprehend and appreciate his rights.

Dr. Haney-Caron added there were other factors that, in her opinion, likely inhibited M.P.'s ability to understand and appreciate his rights, including: (1) Detective Cherilien prefacing the Miranda warning by stating that M.P. was probably familiar with them; (2) reading through the rights at a faster pace than he had used in speaking with M.P.; and (3) refusing to answer A.B.'s question until after M.P. had waived his rights. Together, Dr. Haney-Caron opined, these circumstances conveyed the notion that the rights were a mere formality and that M.P. was expected to waive them so they could move on to substantive questioning.

Dr. Haney-Caron suggested that if M.P. had had a question, Detective Ford's response to A.B.'s question would have discouraged him from asking it. She also testified that the manner in which Detective Cherilien read the rights

did not provide M.P. time to process and understand them nor the consequences of waiving them.

Dr. Haney-Caron also performed a "Miranda Rights Comprehension Index" (MRCI), which measured M.P.'s capacity to understand Miranda rights. She testified this test was widely used in the field. M.P. showed "some deficits in his understanding" of some rights and "adequate understanding of others." He performed "very poorly" on the part of the test that asked him whether different variations of the rights (i.e., reworded versions) were the same. His performance on that part of the test, however, was not consistent with his performance on other portions of the test, prompting Dr. Haney-Caron to disregard that score in her overall assessment because she lacked confidence in its reliability.

M.P.'s performance on the appreciation part of the test was "quite strong" with respect to all but one of the rights. On the comprehension aspect of the test, "there were a number of vocabulary words" that he understood and a number of words that he did not understand. Thus, despite his higher score on the appreciation section, his performance on the vocabulary and comprehension sections showed that he had deficits in his understanding because "the understanding of Miranda vocabulary [is] sort of . . . a prerequisite for having a knowing understanding."

Dr. Haney-Caron also testified that she expected M.P.'s "understanding and appreciation of the rights would be substantially lower during the interrogation" because, unlike the "hot context" of a police interrogation, she conducted the MRCI in a much less stressful environment. Dr. Haney-Caron gave him "as much time as he wanted to think through each question before providing an answer," which, she noted, was significantly different from what had occurred in the interrogation room where he was "clearly, visibly emotionally distraught" and Detective Cherilien had advised him of the rights and expected him to comprehend them in "just about [thirty] seconds."

Dr. Haney-Caron further opined that A.B.'s presence did not mitigate those risk factors for an invalid waiver because she "strongly pushed [M.P.] to waive his rights," did nothing to educate him about his rights, and "seem[ed] to heighten [M.P.'s] emotional reaction" with her own emotionally charged response. Dr. Haney-Caron concluded that A.B.'s presence "was itself a risk factor for an unknowing and unintelligent waiver."

C.

The Motion Court's Decision

The motion court found that the totality of circumstances established beyond a reasonable doubt that M.P. had made a knowing, intelligent, and voluntary waiver of his rights, and thus, his statement was admissible as

evidence. The court explained that M.P. was "detained in a clean, well-lit room for a reasonable period of time." He had been provided food and drink and was not questioned until his mother arrived. M.P. and A.B. both said that they understood his rights, and neither asked any questions related to those rights. Throughout the interrogation, neither asked for a lawyer or for questioning to stop. The interrogation was not "repeated or prolonged," and there was "no evidence that physical punishment or mental anguish was an issue."

The motion court found that M.P.'s and A.B.'s conversation before the Miranda warnings were administered, see supra note 13, showed a "willingness" and "desire" to talk to police to explain M.P.'s participation in the crime "in the hopes . . . of receiving favorable treatment." The motion court also found that while A.B. questioned M.P. during the interrogation, "her interjections sought to clarify [and] lessen culpability." The court found that her behavior did not rise to the level of the parent's conduct in A.S., where the interrogee's mother acted as another interrogator and not as an assistant to the defendant. See 203 N.J. at 150. The motion court concluded that M.P. "was at all points in the interview speaking freely," and that nothing A.B. said sought to "compel M.P. to continue talking."

The motion court recognized that the detectives did not provide M.P and his mother an opportunity to confer in private after advisement of the Miranda rights in accordance with the guidance provided in A.A. See 240 N.J. at 358–59. The motion court concluded the failure to provide that opportunity did not require suppression. It reasoned that A.A. was decided after M.P.'s interrogation took place and the Supreme Court did not suggest that portion of its decision should apply retroactively.

With respect to Dr. Haney-Caron's testimony, the court found her to be a credible witness. The court also noted the State had not presented evidence from which the court could find that her opinion was not supported by "accepted scientific standards or practices," referring to the Frye[14] standard for admission of expert testimony. In finding Dr. Haney-Caron's testimony credible, the motion court noted she candidly "acknowledged test results that work[ed] both in favor of and against the juvenile's interest." The motion court found she also testified that M.P. "was shown to have the capacity to understand the Miranda warnings," even though he read at a fifth-grade level.

[14] Frye v. United States, 293 F. 1013, 1014 (D.C. Cir. 1923). The Daubert standard has since replaced the Frye standard in criminal cases. State v. Olenowski, 253 N.J. 133, 139 (2023); see Daubert v. Merrell Dow Pharms., Inc., 509 U.S 579, 593–95 (1993) (discussing the methodology-based reliability standard for expert testimony). Because the State now acknowledges that Dr. Haney-Caron's testimony should have been admitted, we offer no view on whether her opinion satisfies the Daubert standard.

The motion court nonetheless concluded that Dr. Haney-Caron's testimony was inadmissible under N.J.R.E. 702 because it did not concern a subject matter that is beyond the ken of an average factfinder. The motion court further reasoned that IQ test scores, participation in special education classes, and literary and developmental delays "are not dispositive in determining whether a Miranda waiver was knowing and involuntary" and that the effect of those personal characteristics is not beyond the ken of the average factfinder. The motion court further found that "Dr. Haney-Caron's evaluation [was] not conclusive, based on her own testimony and her ultimate opinion." Thus, the motion court concluded, her "opinion is simply not necessary when compared to the video evidence and the detective's testimony."

The motion court added that even if Dr. Haney-Caron's testimony was admissible, her opinion would not change the court's conclusion that M.P. knowingly and voluntarily waived his rights. The motion court stressed, "there is nothing in . . . the video [of the interrogation] that suggests that those concerns were present on that night."

VII.

The scope of our review of a suppression hearing is limited. See State v. Handy, 206 N.J. 39, 44–45 (2011). We "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by

sufficient credible evidence in the record." Id. at 44 (quoting State v. Elders, 192 N.J. 224, 243 (2007)). "An appellate court 'should give deference to those findings of the trial judge which are substantially influenced by his [or her] opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" Elders, 192 N.J. at 244 (quoting State v. Johnson, 42 N.J. 146, 161 (1964)).

In State v. Hubbard, our Supreme Court explained:

> [W]hen the evidence consists of testimony of one or more witnesses and a videotaped recording of a statement by a witness or a suspect, an appellate court is obliged to review the entire record compiled in the trial court to determine if the factual findings are supported by substantial credible evidence in the record. State v. Locurto, 157 N.J. 463, 470–71 (1999). The appellate panel may reference a videotaped statement to verify a specific finding. It may not substitute its interpretation of events.
>
> [222 N.J. 249, 269 (2015).]

See also State v. Hagans, 233 N.J. 30, 38 (2018) (noting "a trial court's fact-finding based solely on a video recording is disturbed only 'when factual findings are so clearly mistaken—so wide of the mark—that the interests of justice demand intervention.'" (quoting State v. S.S., 229 N.J. 360, 381 (2017))).

In contrast to the deference we owe to a trial court's factual and credibility findings, we review a trial court's legal conclusions de novo. S.S.,

229 N.J. at 380. Because issues of law "do not implicate the fact-finding expertise of the trial courts, appellate courts construe the Constitution, statutes, and common law de novo—with fresh eyes—owing no deference to the interpretive conclusions of trial courts, unless persuaded by their reasoning." Ibid. (internal quotation marks omitted) (quoting State v. Morrison, 227 N.J. 295, 308 (2016)); see also Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (noting that appellate courts are not bound by a trial court's interpretations of the "legal consequences that flow from established facts"). In the event of a mixed question of law and fact, we review a trial court's determinations of law de novo but will not disturb a court's factual findings unless they are "clearly erroneous." State v. Marshall, 148 N.J. 89, 185 (1997).

VIII.

As we have noted, the State acknowledged at oral argument that the motion court should not have excluded Dr. Haney-Caron's testimony. In view of the State's current position, we need not recount and apply the legal standards for admitting expert testimony. We nonetheless add that as a general proposition, it rests within the discretion of the trier of fact to determine the weight to accord an expert's opinion. State v. Frost, 242 N.J. Super. 601, 615 (App. Div. 1990). So too, the trier of fact is free to accept some portions of an

expert's opinion and reject others. Sipko v. Koger, Inc., 251 N.J. 162, 188 (2022). In this instance, the motion court found Dr. Haney-Caron's testimony to be credible. The court did not give specific reasons for discounting some of her opinions while accepting others.

Most significantly, the motion court discounted Dr. Haney-Caron's unrebutted testimony concerning M.P.'s intellectual challenges and educational deficits, concluding that her "opinion is simply not necessary when compared to the video evidence and the detective's testimony." We agree with the motion court that evidence pertaining to M.P.'s personal characteristics "are not dispositive in determining whether a Miranda waiver was knowing and voluntary." See State v. Carpenter, 268 N.J. Super. 378, 384–86 (App. Div. 1993). Indeed, under the totality-of-the-circumstances test, no single factor is necessarily dispositive. Cf. Hreha, 217 N.J. at 384 (noting "the presence of even one of those factors [in the list of relevant circumstances] may permit the conclusion that a confession was involuntary").

We nonetheless believe that when determining whether the State has proven the waiver of rights was knowing, intelligent, and voluntary beyond a reasonable doubt, M.P.'s undisputed cognitive limitations and mental conditions must be accounted for in addition to the circumstances outwardly displayed in the video. A recording of the interrogation showing a suspect's

willingness to talk to police—while highly relevant—may not tell the whole tale because the video may not reveal an interrogee's underlying deficits that inhibit an adequate understanding of constitutional rights. The ultimate fact-sensitive issue, we stress, is whether M.P. actually knew, understood, and voluntarily waived his rights, not just whether he appeared to be willing, if not eager, to speak to police.

The prosecutor contends that by relying on personal characteristics, such as IQ and educational background, M.P is attempting to turn Miranda into an unworkable subjective doctrine. The State asserts in its appellate brief that, "[t]he Miranda test is objective and doesn't account for a suspect's non-noticeable personal characteristics. Unless a limitation is noticeable, police shouldn't be required to grill a juvenile suspect about his intellectual capabilities before questioning him."

But the critical issue here is not what police knew about M.P. and whether they could be expected to know about his intellectual and educational challenges. Rather, we reiterate and stress, the critical issue is whether, considering the totality of the relevant circumstances, M.P. knowingly, intelligently, and voluntarily waived his constitutional right against self-incrimination. We reject the notion that a reviewing court can disregard

circumstances deemed relevant under the case law on the grounds those circumstances were not known by or "noticeable" to police.

The law is well settled that intelligence and education, for example, are relevant factors. See Nyhammer, 197 N.J. at 402. Those circumstances remain relevant notwithstanding they may not manifest outwardly during an interrogation. It also bears noting that reviewing courts do not employ a purely objective test when determining whether the State proved voluntariness beyond a reasonable doubt. As our Supreme Court plainly stated, "we evaluate the voluntariness of the confession from the juvenile's perspective." Q.N., 179 N.J. at 174 (emphasis added); see also L.H., 239 N.J. at 42 (noting the totality-of-the-circumstances analysis takes into consideration not just the "details of the interrogation" but also the "characteristics of the accused" (quoting Dickerson, 530 U.S. at 434)). We therefore believe the motion court should have considered the unrebutted defense testimony regarding M.P.'s personal intellectual, educational, and cognitive limitations.

We add that in support of its conclusion that Dr. Haney-Caron's testimony was unnecessary and inconclusive, the motion court noted M.P.'s score on the MRCI showed an adequate level of understanding of some rights. As we have noted, we respect a trier of fact's discretion to accept some portions of an expert's testimony and discount other portions. But here, the

motion court offered no reason to rely only on part of the MCRI test to support its conclusion that M.P. understood his rights. In any event, and at the risk of stating the obvious, the State bears the burden of proving M.P. understood the full panoply of his constitutional rights for his waiver to be valid. Proof that he adequately understood some concepts, but not others, is insufficient to establish a knowing and voluntary waiver beyond a reasonable doubt.

IX.

We next consider M.P.'s contention that the detectives did not afford him an opportunity to consult privately with his mother after the Miranda warnings were administered. Rather, their "private" consultation—which was electronically recorded and considered by the motion court as evidence of voluntariness—occurred before the detectives administered the Miranda warnings.

In A.A., the Court held:

> The protections outlined in Presha remain good law. To reinforce them and avoid what took place here, we add the following guidance. The police should advise juveniles in custody of their Miranda rights—in the presence of a parent or legal guardian—before the police question, or a parent speaks with, the juvenile. Officers should then give parents or guardians a meaningful opportunity to consult with the juvenile in private about those rights.
>
> [240 N.J. at 358.]

The Court explained:

> That approach would enable parents to help children understand their rights and decide whether to waive them—as contemplated in Presha. If law enforcement officers do not allow a parent and juvenile to consult in private, absent a compelling reason, that fact should weigh heavily in the totality of the circumstances to determine whether the juvenile's waiver and statements were voluntary.
>
> [Id. at 359 (emphasis added).]

We add that a private consultation between parent and interrogee before the Miranda waiver colloquy is not a substitute for a consultation after the Miranda warnings have been administered. We cannot assume that parents know the Miranda rights—and thus can discuss them intelligently with their children—before those rights are recited by police. Indeed, any such assumption would violate the gravamen of the per se rule announced in Miranda.

The Court in A.A. made it abundantly clear that "[t]he police should advise juveniles in custody of their Miranda rights . . . before . . . a parent speaks with[] the juvenile." Id. at 358 (emphasis added). We add to that unambiguous guidance that parent-child consultations before the Miranda warnings are read might unwittingly undermine, rather than safeguard, children's constitutional rights if parents advise and encourage their children to

speak to police without themselves understanding the right against self-incrimination and the ramifications of submitting to interrogation.

In the present matter, the motion court did not consider the timing of the parent-child consultation as weighing against a determination that M.P. knowingly, intelligently, and voluntarily waived his right to remain silent. The motion court instead ruled that A.A. was inapplicable because the stationhouse interrogation in this case predated A.A. As an alternative, the motion court found the indicia of M.P.'s desire to speak to police before the warnings were administered rendered any A.A. issue immaterial. But that alternative rationale begs the question. As we have noted, it would be problematic if the decision to waive Miranda rights was a fait accompli before the warnings were administered.[15]

The State argues the motion court was correct because A.A. created a new rule of law that ought not be given retroactive effect. We are not persuaded by the State's prospectivity argument. As our Supreme Court explained in State v. Feal:

> A case announces a new rule of law for retroactivity purposes if there is a "sudden and generally unanticipated repudiation of a long-standing practice."

[15] A.B. instructed her son: "These people mean nothing to you. You have to tell the truth," and "[y]ou tell them everything you -- you tell them what happened. You hear me?"

> State v. Purnell, 161 N.J. 44, 53 (1999) (quoting State v. Afanador, 151 N.J. 41, 58 (1997)). A new rule exists if "it breaks new ground or imposes a new obligation on the States or the Federal Government . . . [or] if the result was not dictated by precedent existing at the time the defendant's conviction became final." State v. Lark, 117 N.J. 331, 339 (1989) (quoting Teague v. Lane, 489 U.S. 288, 301 (1989)).
>
> [194 N.J. 293, 308 (2008) (alteration and omission in original).]

The guidance provided in A.A. was a logical extension of Presha. Furthermore, as the State acknowledges, the Court did not create a per se rule requiring police to allow for the interrogee and parent to consult privately after the warnings are read but before Miranda rights are waived. Instead, the pronouncement in A.A. was stated as "guidance" as to what police "should" do. 240 N.J. at 358.

Relatedly, the Court held that the failure to provide an opportunity for private consultation after Miranda warnings are administered is a relevant circumstance that "should weigh heavily" in a reviewing court's totality-of-the-circumstances analysis. Id. at 359. The Court did not suggest, much less hold, that any such failure automatically triggers the exclusionary rule as if, for example, the police had omitted a warning. Identifying a particular factor to be considered as part of an inherently holistic test hardly "breaks new ground." See Teague, 489 U.S. at 301. To the extent A.A. amplified the existing

totality-of-the-circumstances test, rather than mandated a new rule of police procedure, its rationale should be given retroactive effect. See Feal, 194 N.J. at 308.

Nor are we persuaded by the State's argument that M.P. "likely would have given the statement even if he had consulted with his mother after his Miranda rights were administered." In view of the proof-beyond-a-reasonable-doubt standard that undergirds the Miranda waiver analysis, we decline to embrace any such speculation; although, as we have noted, it certainly is possible the decision to speak with police was settled given A.B.'s instruction to M.P. during their private conversation. See supra note 15. But in any event, the State's argument misses the point. Under A.A., the failure to provide an opportunity for post-advisement consultation between juvenile interrogee and parent is a factor to be considered as part of the totality-of-the-circumstances calculus. That factor is applicable in this case.

For the reasons we have explained, the pre-warning discussion between M.P. and A.B. did nothing to alleviate the concerns raised in A.A. Accordingly, we hold the timing of the private consultation in this case "weigh[s] heavily" against a finding the waiver of rights was knowing, intelligent, and voluntary. A.A., 240 N.J. at 359.

We would be remiss if we did not express our deep concern that the "private" consultation between M.P. and his mother appears to have been surreptitiously recorded. The record shows the police used electronic means to listen in on a closed-door conversation at which they were not physically present. The prosecutor thereafter relied on the content of that electronically recorded conversation to support its argument that M.P. wanted to speak to police. The motion court, in turn, relied on that conversation to support its finding that both M.P. and his mother wanted to relate information to the detectives concerning M.P.'s role in the shooting episode.

In A.A., the Court carefully explained that "[i]f legitimate security concerns require the police to observe a private consultation, the police can monitor the interaction without listening to the words spoken between parent and child." Ibid. (emphasis added). Unless M.P. and his mother were advised that the content of their conversation was being audio recorded—which the electronic recording does not reflect—the eavesdropping that occurred in this case would seem to violate the Wiretap Act. See supra note 13. If M.P. and his mother were aware their conversation was being audio-recorded and that its content would be shared with law enforcement, then that conversation was not private, defeating the purpose of the consultation contemplated in A.A.

M.P did not argue to the motion court that the subsequent interrogation was tainted by unlawful electronic eavesdropping. Nor has M.P. raised this issue on appeal. See State v. Aloi, 458 N.J. Super. 234, 243 n.6 (App. Div. 2019) (noting an issue not briefed on appeal is deemed waived (citing Jefferson Loan Co. v. Session, 397 N.J. Super. 520, 525 n.4 (App. Div. 2008))). In these circumstances, we choose not to address whether M.P.'s statement should be suppressed pursuant to the Wiretap Act's strictly enforced exclusionary rule.[16] See State v. Sugar, 84 N.J. 1, 12–15, 25–27 (1980) (addressing the remedy for eavesdropping on an attorney-client conversation); see also State v. Worthy, 141 N.J. 368, 389 (1995) (holding the inevitable-discovery exception does not apply to the Wiretap Act's exclusionary rule); State v. K.W., 214 N.J. 499, 511 (2013) (noting the "holding [in Worthy] seemingly encompassed a rejection of the independent-source exception as well"). We nonetheless expect that the Attorney General and county prosecutors will review juvenile interrogation "protocols" to ensure

[16] The Wiretap Act provides in pertinent part: "Any aggrieved person . . . may move to suppress the contents of any intercepted wire, electronic or oral communication, or evidence derived therefrom, on the grounds that . . . [t]he communication was unlawfully intercepted." N.J.S.A. 2A:156A-21. If the motion is granted, "the entire contents of all intercepted wire, electronic or oral communications obtained during or after any interception which is determined to be in violation of this act . . . , or evidence derived therefrom, shall not be received in the trial, hearing or proceeding." Ibid.

compliance with the Wiretap Act while implementing the guidance provided in A.A.

X.

We turn next to M.P.'s contention that the detectives improperly minimized the significance of the Miranda warnings. M.P. argues that when A.B. attempted to ask a question during administration of the warnings, Detective Ford interrupted her and suggested that police had rights too and that they had to "get through" the list of warnings before addressing her question. M.P. argues the detective's response downplayed the significance of the rights and intimated that the procedure was a mere formality. M.P. also argues, based on Dr. Haney-Caron's expert opinion, the detective's response to A.B.'s attempt to ask a question made it less likely that M.P. would feel comfortable making any inquiries, particularly in light of his compliant nature.

The State disputes that Detective Ford's response to A.B.'s question suggested that the process was a mere formality and that police had rights equivalent to M.P.'s rights. The State argues Detective Ford's response "merely pointed out that the police have an interest—indeed, a constitutional obligation—that M.P. [be] fully advised of his rights before saying anything."

What police tell suspects during the Miranda waiver colloquy beyond reading verbatim from a form must be parsed closely. See supra note 12

(Miranda warnings are essentially scripted and should not be amended "on the fly"). An interrogating officer's impromptu response to a question can be problematic if it could reasonably be construed to contradict, deprecate, or undermine the Miranda warnings. See, e.g., O.D.A.-C., 250 N.J. at 421–23 (listing examples of improper comments in relation to the Miranda warnings).

We hold it was inappropriate for Detective Ford to tell A.B. and her son that police also have "rights." We do not mean to suggest that interrogating officers do not have a keen interest in taking steps to make certain that incriminating statements will be admissible. Police without question have a legitimate interest in carefully documenting that Miranda rights were properly waived before engaging in a substantive conversation about the criminal conduct under investigation. That governmental interest, however, ought not be characterized as a "right" that is somehow akin to the interrogee's constitutional rights.

We assume Detective Ford meant to convey that she and Detective Cherilien had an obligation—as distinct from a "right"—to ensure the Miranda waiver form was completed before they addressed A.B.'s question regarding the gun M.P. possessed. Detective Ford's subjective intent, however, is irrelevant. What matters is what she said and the impact her impromptu remark had on M.P.'s understanding of his own rights.

Viewed in context, we do not believe Detective Ford's brief remark suggested that the officers had a right to pose questions to M.P., which would, in turn, intimate that M.P. could not stop the interrogation without running afoul of the detectives' putative right to question him. The conversation immediately after Detective Ford's ill-advised remark shows her focus was on the need to "get through this form before moving to all that."

Putting aside whether the tone of that comment implied the waiver process is a mere formality—which we address momentarily—we are satisfied Detective Ford did not suggest the officers had rights that weigh against M.P.'s rights. Rather, as the ensuing colloquy made clear, the detective's off-hand remark was made in the context of briefly postponing a substantive discussion of the crime, not facilitating police questioning about it. We therefore conclude the detective's fleeting remark about police rights, while inappropriate, had a negligible effect on M.P.'s understanding of his own right to remain silent or the validity of his waiver.

Nor are we are persuaded by M.P.'s argument that the detectives minimized the significance of the Miranda warnings and the consequences of waiving them. We acknowledge that saying "we got to get through this form" is not the best way to demonstrate the importance of an interrogee's constitutional rights. But while that phrasing might suggest to some the

process is a mere "formality," the fact remains police must proceed step by step through a printed form. We add that the detective's fleeting "get through" remark occurred while M.P. and A.B. were signing the form after the detectives had recited the warnings. Viewed realistically and in context, that remark did not inappropriately deprecate the Miranda warnings.

We are more concerned that M.P. took almost no time to process the information and contemplate the meaning of the warnings. That is problematic, especially considering that M.P. has a history of ADHD. Furthermore, the problem was compounded by the fact that M.P. and his mother did not consult privately to consider the warnings that had just been administered. These interrelated circumstances, viewed collectively and in light of M.P.'s intellectual and cognitive limitations, support his argument that he did not comprehend his right against self-incrimination and the implications of waiving that right.

We note that the motion court did not make a specific finding with respect to the amount of time M.P. took to consider the warnings and waive his rights. Based on our own review of the video, we view this circumstance as militating against a finding that M.P. knowingly, intelligently, and voluntarily waived his rights.

XI.

We next address M.P.'s contention the motion court failed to consider that his mother did not help him understand his rights and the consequences of waiving them but rather encouraged, if not outright instructed, him to speak with police even before the Miranda warnings were administered. As we have explained, our Supreme Court has made clear that a parent may advise his or her child to cooperate with police without running afoul of the child's constitutional right to remain silent. See A.S., 203 N.J. at 148. We accept the motion court's finding that A.B. advised her son to speak with police to tell them that although he witnessed the murder while holding a gun, he was not the shooter.

M.P. also argues that his mother aided police in questioning him, "berated" him by calling him stupid and a liar and threatened to call child welfare authorities. The State disputes that A.B.'s questioning during the interrogation rose to the level of aiding the officers in their investigation, distinguishing this case from A.S., where the court suppressed a fourteen-year-old's statement based in part on her mother's questioning during the interrogation. See 203 N.J. at 141–42, 149–52. The State argues that, unlike the parent in A.S., A.B. did not accuse her son of committing the crime under investigation—here, murder. On the contrary, the State argues—and the

motion court found—she encouraged him to be truthful seeking to lessen his culpability for that crime by placing blame on other participants.

We emphasize that our Supreme Court in Presha did not suggest that the presence of a parent invariably eliminates the coercion inherent in a stationhouse interrogation any more than reading the Miranda warnings invariably accomplishes that objective. See id. at 147. There is no categorical rule that if a parent participates in the interrogation, any resulting statement is automatically deemed to be voluntary and admissible. Presha, in other words, did not displace the totality-of-the-circumstances test. Ibid.

Indeed, in A.A., the Court acknowledged that a parent's participation may have the opposite effect of the one contemplated in Presha. The Court commented:

> What took place here upended the model envisioned in Presha. Instead of serving as a buffer to help a juvenile understand his rights, the child's mother unwittingly assisted the police and helped gather incriminating evidence. That runs counter to principles in our jurisprudence set forth in S.H.,[17] Presha, and A.S.
>
> [A.A., 240 N.J. at 358.]

We agree with the State that A.B.'s conduct immediately before and during the interrogation was not as problematic as the conduct that occurred in

[17] State in Int. of S.H., 61 N.J. 108 (1972).

A.A. and A.S. Even so, the record clearly shows that A.B. posed questions to her son, prompting him to acknowledge he engaged in criminal conduct. We defer to the motion court's finding that her questions were intended to help him by eliciting the limited role he played in the shooting. But even accepting that she acted with the interests of the juvenile in mind, we conclude she was not merely an advisor and did not serve as a "buffer" during the interrogation process. See A.S., 203 N.J. at 148. Accordingly, her participation does not support the motion court's ultimate finding that M.P. knowingly, intelligently, and voluntary waived his right to remain silent.

XII.

Finally, by way of summation, we list the relevant circumstances arrayed on both sides of the scales. We accept the motion court's important finding that neither M.P. nor his mother ever indicated a desire to stop the interrogation. We deem it significant the motion court found, based on its review of the video, that M.P. wanted to speak to police and that he and his mother wanted to explain his limited role in the murder as compared to the culpability of others. Although we accept that finding, we stress that proof M.P. wanted to speak to police—while clearly probative of voluntariness—does not necessarily establish that he knew and understood his right against self-incrimination.

Proof of voluntariness is analytically distinct from proof of knowledge in applying the "knowing, intelligent, and voluntary" test for waiving constitutional rights. See State v. Gerald, 113 N.J. 40, 109 (1988) (noting arguments that a Miranda waiver was "not knowing and intelligent" and was "not voluntary" were "distinct claims"). We add the electronic recordation of his pre-interrogation conversation with his mother shows that M.P. expressed his willingness and desire to speak with police before he was read his rights.

We also accept the motion court's findings that M.P. was provided food and drink and the interrogation was not prolonged. Those circumstances provide support for the motion court's conclusion that M.P. knowing, intelligently, and voluntarily waived his right against self-incrimination.

However, we believe the motion court did not adequately consider circumstances that militate against a finding that the waiver of Miranda rights was valid. Notably, the motion court did not consider M.P.'s visibly emotional reaction to his mother's presence—crying on her shoulder when she entered the interrogation room. Nor did the motion court address the fact that Detective Cherilien did not provide M.P. time to process the information relayed in the Miranda warnings. Relatedly, the motion court discounted the detectives' failure to provide M.P. and his mother an opportunity to privately discuss the rights prior to waiving them.

Those circumstances are intertwined and must be viewed collectively. The video clearly shows M.P. took very little time—without speaking to his mother and under the watchful gaze of the police interrogators—to initial the individual rights and sign the form after it was read to him. The waiver process that occurred in this case stands in stark contrast to the private parent-child consultation interlude recommended by the Supreme Court in A.A.

Furthermore, the speed with which M.P. waived his constitutional rights must be viewed in context with his intellectual deficits and, in our view, weighs heavily against the State. See A.A., 240 N.J. at 359. We deem it to be especially significant that the motion court did not account for undisputed facts concerning M.P.'s personal characteristics, including his borderline IQ, his history of receiving special education services, his ADHD diagnosis and other mental conditions that affect his cognitive ability, and his fifth-grade reading level.

In the final analysis, we conclude the motion court's finding that M.P. knowingly, intelligently, and voluntarily waived his Miranda rights is not supported by sufficient credible evidence in the record. See Handy, 206 N.J. at 44. Considering all relevant circumstances, we do not believe the State carried its heavy burden of proving a valid waiver of constitutional rights

beyond a reasonable doubt. We therefore reverse the motion court's ruling that M.P.'s statement is admissible at trial.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION