IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ARTHUR ERIC MAGAÑA,
Appellant.

No. 2 CA-CR 2022-0033
Filed January 4, 2023

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.19(e).

Appeal from the Superior Court in Pinal County
No. CR201602956
The Honorable Kevin D. White, Judge

AFFIRMED

COUNSEL

Kris Mayes, Arizona Attorney General
Alice Jones, Acting Deputy Solicitor General/Chief of Criminal Appeals
By Amy M. Thorson, Assistant Attorney General, Tucson
Counsel for Appellee

Rosemary Gordon Pánuco, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Vice Chief Judge Staring and Judge Brearcliffe concurred.

E P P I C H, Presiding Judge:

¶1 Arthur Magaña appeals from his convictions and sentences for first-degree murder and armed robbery. He contends the trial court erred in denying his motion to suppress incriminating statements he made to his accomplice while in police custody because the statements were involuntary and not knowingly made. For the following reasons, we affirm Magaña's convictions and sentences.

Factual and Procedural Background

¶2 In reviewing a motion to suppress, we solely consider evidence presented at the suppression hearing, viewing it in the light most favorable to sustaining the trial court's ruling. *State v. Fristoe*, 251 Ariz. 255, ¶ 2 (App. 2021). In November 2016, W.M. was found shot to death in a truck. Law enforcement officers followed footprints from the truck to a house where they located sixteen-year-old Magaña and his accomplice, Gustavo O., who was also under eighteen. Magaña and Gustavo were arrested and transported to the sheriff's office.

¶3 After being informed of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), Magaña stated that he did not want to speak with law enforcement without an attorney present. The detective immediately ceased questioning and subsequently moved Magaña into a room with Gustavo. The room was monitored via video and audio recording and, therein, Magaña and Gustavo discussed the murder of W.M., with Magaña stating that he had fired shots into the back of W.M.'s head.

¶4 After a five-day jury trial, Magaña was convicted as described above. He was sentenced to life imprisonment with the possibility of release after twenty-five years for first-degree murder, to be served concurrently with an eighteen-year prison term for armed robbery. This appeal followed. We have jurisdiction pursuant to article VI, § 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Discussion

¶5 On appeal, Magaña argues the trial court erred in denying his motion to suppress because his statements were involuntary and not knowingly made due to his youth and police conduct. The state counters that the court did not err in denying the motion because there was no coercive police conduct. We review for an abuse of discretion a court's rulings on the voluntariness of a defendant's confession and on a motion to suppress. *State v. Newell*, 212 Ariz. 389, ¶ 22 & n.6 (2006). We review due process claims de novo. *State v. O'Dell*, 202 Ariz. 453, ¶ 8 (App. 2002); *see also State v. Strayhand*, 184 Ariz. 571, 587 (App. 1995) (conviction founded upon involuntary confession violates due process).

¶6 Before trial, Magaña moved to suppress his incriminating statements asserting that he was "too young to understand his rights under *Miranda*," that law enforcement had violated the Federal Juvenile Delinquency Act regarding his detention, *see* 18 U.S.C. § 5033, and that officers had "created an atmosphere in which [he] felt compelled to discuss the facts of the case because it was a formal interview room." After a suppression hearing, the trial court denied Magaña's motion to suppress. The court concluded Magaña's statements were voluntary because they,

> were not made during custodial interrogation; there were no promises, threats, force or coercion of any kind used to make these minors make these statements to each other; and . . . there's no indication that [Gustavo] was acting as an agent of the State and attempting to elicit statements from [Magaña].

¶7 Magaña asserts this ruling was an abuse of discretion. He contends that as a juvenile, he was "incapable of making rational decisions or understanding the consequences of talking [to Gustavo] in that room even though the police weren't in there" and that the police "took advantage" of him to obtain a confession in violation of his due process rights by placing him in a monitored room with Gustavo, knowing they would talk to each other. In support of his argument, he relies on *Roper v. Simmons*, 543 U.S. 551 (2005), and *Miller v. Alabama*, 567 U.S. 460 (2012), two

United States Supreme Court cases recognizing developmental differences between adults and juveniles.[1]

¶8 Confessions must be given voluntarily, knowingly, and intelligently. *State v. Knapp*, 114 Ariz. 531, 538 (1977); *In re Andre M.*, 207 Ariz. 482, ¶ 12 (2004). A confession is presumed involuntary and if a juvenile confesses, the greatest care must be taken to assure voluntariness. *In re Timothy C.*, 194 Ariz. 159, ¶¶ 13, 16 (App. 1998). It is the state's burden to show by a preponderance of the evidence that a confession was voluntarily made. *State v. Jimenez*, 165 Ariz. 444, 448-49 (1990). Courts consider the totality of the circumstances to determine the voluntariness of a confession and "must consider that juveniles may be more susceptible to certain police tactics than adults and as such their will may be more easily overborne." *State v. Huerstel*, 206 Ariz. 93, ¶¶ 50 & 57 (2003); *Andre M.*, 207 Ariz. 482, ¶ 11 (factors relevant to voluntariness of juvenile confession include age, education, intelligence, advice of rights, length of detention, parental presence, and use of physical force); *Jimenez*, 165 Ariz. at 449 ("inherently coercive factors" such as police interrogation room, focus on defendant as the "prime suspect," transport to station are considered in totality of circumstances); *see also State v. Carrillo*, 156 Ariz. 125, 137 (1988) (objective evaluation of police conduct must account for defendant's mental condition).

¶9 Coercive police activity is a necessary predicate to an involuntary confession. *Colorado v. Connelly*, 479 U.S. 157, 165-67 (1986); *State v. Amaya-Ruiz*, 166 Ariz. 152, 164 & 166 (1990) (defendant must show "coercive police conduct, rather than internal compulsion, induced his confession"); *Timothy C.*, 194 Ariz. 159, ¶¶ 1-2, 14 (twelve-year-old's involuntary confession must result from coercive state action). "Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." *Connelly*, 479 U.S. at 164.

¶10 As the trial court correctly observed, no evidence was presented at the suppression hearing to support that Magaña was coerced by the state. At the time of his statements, Magaña was in custody but was

[1]To demonstrate his immature brain development consistent with *Roper* and *Miller*, Magaña cites the testimony of Dr. Garbarino, an expert who testified in mitigation at sentencing. However, as Magaña acknowledges, we only consider the evidence presented at the suppression hearing, *Newell*, 212 Ariz. 389, ¶ 22, at which Garbarino did not testify.

not being interrogated by police. *See id.* There was no evidence that Gustavo was acting as an agent of the state or had been asked at any point to obtain statements from Magaña. *See State v. Fulminante*, 161 Ariz. 237, 246 (1988) (confession made in casual conversation to non-state agent voluntary); *cf. State v. Martinez*, 221 Ariz. 383, ¶ 31 (App. 2009) (private citizen not state agent if no governmental knowledge or acquiescence). Moreover, there was no evidence that Magaña's statements, which were not elicited by the police, were the result of threats, intimidation, deception, or use of force by anyone. *See State v. Tucker*, 157 Ariz. 433, 445 (1988) (police misconduct must exist for involuntary confession); *see also Connelly*, 479 U.S. at 166 (even the "most outrageous behavior by a private party seeking to secure evidence against a defendant" does not violate due process).

¶11 To the extent Magaña argues his confession was involuntary because the officers "took advantage" of his youth by putting him in the interview room with Gustavo, the totality of the circumstances do not support this assertion. Prior to his statements, Magaña was advised of his rights in an age-appropriate manner and was not denied a parent during police questioning. *See Andre M.*, 207 Ariz. 482, ¶¶ 11, 18-19 (lack of parental presence and age-appropriate *Miranda* advisement factors in finding juvenile confession involuntary). He was also on juvenile probation at the time of his arrest. *See Huerstel*, 206 Ariz. 93, ¶ 58 (considering juvenile's previous experience with police in voluntariness). The evidence at the suppression hearing showed that Magaña and Gustavo were put in the interview room together because there were no juvenile holding cells and only one room had the capacity for both video and audio monitoring, which was needed to maintain security while the lengthy booking process was being completed. *Cf. State v. Allen*, 253 Ariz. 306, ¶¶ 22-24 (2022) (defendant's statements to another suspect in police interview room admissible—police "interview rooms generally contain recording equipment").

¶12 Although Magaña asserts his mental state was impaired by lack of sleep and his emotional state given that he was placed in the interrogation room for hours between the time of his arrest and his booking the next morning, he was not being questioned that entire time and was permitted to sleep. *See State v. Doody*, 187 Ariz. 363, 369 (App. 1996) (thirteen-hour interrogation of seventeen-year-old did not render confession involuntary); *State v. Anderson*, 197 Ariz. 314, ¶ 35 (2000) (confession voluntary where no evidence presented of sleep deprivation during police interviews). And again, Magaña's incriminating statements were made in conversation with Gustavo, not in response to police

questioning. *See Connelly*, 479 U.S. at 164 (coercive state action required for involuntary confession). Viewed in totality, the evidence from the suppression hearing supports the trial court's conclusion that the confession was voluntary.

Disposition

¶13 For the foregoing reasons, we affirm Magaña's convictions and sentences.