UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1694

September Term, 2016

STATE OF MARYLAND

v.

BENJAMIN PEREZ-RODRIGUEZ

Nazarian,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: March 9, 2017

Benjamin Perez-Rodriguez was charged, in the Circuit Court for Montgomery County, with second-degree rape and related offenses. He filed a pretrial motion to suppress statements he made to police during two different interviews that, he alleged, violated his *Miranda* rights.[1] After a hearing, the court found that Mr. Perez-Rodriguez did not knowingly and voluntarily waive his *Miranda* rights during the second interview because, among other reasons, the police did not inform him that he was in custody and the officer advising him of his rights did not ensure that Mr. Perez-Rodriguez understood each right that he was waiving. Based on those findings, the court granted the motion and suppressed the statements Mr. Perez-Rodriguez made during the second interview. The State filed a timely appeal, *see* Md. Code (1973, 2013 Repl. Vol., 2016 Supp.), § 12-302(c)(4) of the Courts & Judicial Proceedings Article, and we reverse.

I. BACKGROUND

In April 2016, Mr. Perez-Rodriguez's niece informed police that he had sexually assaulted her the previous winter, and the Special Victims Investigation Division of the Montgomery Police Department began an investigation. Detective Avilar, a native Spanish speaker, contacted Mr. Perez-Rodriguez, who does not speak English, and asked him to come to the police station to speak with him. Mr. Perez-Rodriguez agreed, and on April 19, 2016 came to the police station as requested. Detective Avilar, acting mainly as a translator, and Officer Christopher Willauer met Mr. Perez-Rodriguez in the lobby and escorted him to the child interview room, where they interviewed him. The child interview

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

room is not an interrogation room—it is a comfortable room with posters on the walls, stuffed animals, and a two-person couch and two cushioned chairs. Once inside, Mr. Perez-Rodriguez sat on the couch and Detective Avilar and Officer Willauer sat, facing him, on the chairs. The door remained unlocked during the interview, and after they finished, Mr. Perez-Rodriguez left the room on his own, followed by Officer Willauer and Detective Avilar, who gave him their cards and said they would contact him later.

On April 28, 2016, Officer Willauer, assisted by Detective Conroy (who also served as translator), interviewed Mr. Perez-Rodriguez a second time. This time, however, they had an arrest warrant for Mr. Perez-Rodriguez in hand and intended to arrest him once the interview was concluded. Rather than conducting the interview in the child interview room, this round of questioning took place in the interrogation room, which contains a table to which officers can handcuff a suspect (although they didn't handcuff Mr. Perez-Rodriguez to it), and two plastic chairs. The door was locked from the outside; Mr. Perez-Rodriguez was not free to leave, but he was not informed that he was under arrest.

Before beginning the interview, Detective Conroy showed Mr. Perez-Rodriguez the Spanish version of the *Miranda* advice form used by the Montgomery County Police Department (the "MCP–50" form) and told Mr. Perez-Rodriguez that he was going to read him his rights. Detective Conroy asked Mr. Perez-Rodriguez if he could read and Mr. Perez-Rodriguez replied, "Yes." The Detective read the form to Mr. Perez-Rodriguez, asked him if he had any questions, which he didn't, and then asked Mr. Perez-Rodriguez to sign the form. During the interview, Mr. Perez-Rodriguez made incriminating

statements regarding the alleged sexual assault. At the conclusion of the interview, Detective Conroy placed Mr. Perez-Rodriguez under arrest.

Mr. Perez-Rodriguez was charged with second-degree rape and related offenses on May 26, 2016. He filed a pretrial motion to suppress statements he made to police during both the April 19 and April 28 interviews. The court held a hearing on the motion on September 23, 2016 and took the matter under advisement. On October 13, 2016, the court issued a memorandum and order denying the motion as to the statements Mr. Perez-Rodriguez made during the April 19 interview, but granting the motion as to the statements Mr. Perez-Rodriguez made during the April 28 interview, finding that Mr. Perez-Rodriguez did not knowingly and voluntarily waive his *Miranda* rights. The State filed this timely appeal.

II. DISCUSSION

The State's sole contention on appeal is that the motions court erred in granting Mr. Perez-Rodriguez's motion to suppress statements he made to police during the April 28 interview.[2] Mr. Perez-Rodriguez counters that the court correctly granted the motion because the State did not meet its burden to prove that he knowingly and voluntarily

[2] The State phrased the Question Presented in its brief as follows:

> Did the lower court err in ruling that Perez-Rodriguez did not knowingly and voluntarily waive his *Miranda* rights because he was unaware that the police intended to arrest him at the conclusion of the interview, and in finding Perez-Rodriguez's statement involuntary because the translating officer did not pause during the advisement to ask if Perez-Rodriguez understood his rights?

waived his *Miranda* rights. In particular, he argues, the police failed to clarify whether Mr. Perez-Rodriguez "had anything more than a first grade education" and did not take sufficient measures to ensure that Mr. Perez-Rodriguez understood his rights. We agree with the State.

We review the ruling of the suppression court based solely on the record developed at the suppression hearing. *Holt v. State*, 435 Md. 443, 457 (2013); *Longshore v. State*, 399 Md. 486, 498 (2007). "We view the evidence and inferences that may be drawn therefrom in the light most favorable to the party who prevails on the motion," *Briscoe v. State*, 422 Md. 384, 396 (2011) (citation omitted), *i.e.*, Mr. Perez-Rodriguez. "We defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous." *Gonzalez v. State*, 429 Md. 632, 647 (2012) (citation omitted). "We, however, make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case." *Lee v. State*, 418 Md. 136, 148–49 (2011) (citation omitted).

The Fifth Amendment to the United States Constitution protects individuals against being compelled to make self-incriminating statements. U.S. Const. amend. V. In *Miranda v. Arizona*¸ 384 U.S. 436, 467 (1966), the United States Supreme Court acknowledged that in-custody interrogation "contains inherently compelling pressures which work to undermine the individual's will to resist and . . . compel him to speak where he would not otherwise do so freely." The Court held that, "[i]n order to combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination, the accused

must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored." *Id.* The procedural safeguards announced in *Miranda* are well-known:

> [A suspect] must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Id. at 479.

Of course, a suspect may waive his or her *Miranda* rights "provided the waiver is made voluntarily, knowingly and intelligently." *Id.* at 444. But the State bears a "heavy burden" to establish, by a preponderance of the evidence, that a suspect waived these rights. *Berghuis v. Thompkins*, 560 U.S. 370, 384 (2010) (quoting *Colorado v. Connelly*, 470 U.S. 157, 168 (1986)). In assessing the validity of a waiver, the court must consider the totality of the circumstances, including the individual's "age, experience, education, background, and intelligence, and … whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Gonzalez*, 429 Md. at 652 (citation omitted). This is a two-step inquiry:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the totality of the circumstances surrounding the interrogation reveals both an uncoerced choice and the requisite level of comprehension

> may a court properly conclude that the *Miranda* rights have been waived.

Id. (internal quotations and citation omitted).

The question here is whether Mr. Perez-Rodriguez voluntarily, knowingly, and intelligently waived his *Miranda* rights. The motions court found that he did not, specifically noting that Mr. Perez-Rodriguez did not know that he was in custody during the interview and that Detective Conroy failed to ensure that Mr. Perez-Rodriguez understood his rights and the consequences of abandoning them:[3]

> [Mr. Perez-Rodriguez] was not told that he was under arrest or that there was an outstanding warrant for his arrest. Nor was [he] handcuffed. Rather, the detectives proceeded to conduct the second interview in much the same manner as the first non-custodial interview, hoping to elicit a more candid statement from [him]. Detective Conroy merely read [Mr. Perez-Rodriguez] his *Miranda* rights without indicating to him in any other way that he was in custody. . . . As [Mr. Perez-

[3] Mr. Perez-Rodriguez claims that the circuit court identified ten reasons for concluding that the State failed to establish that Mr. Perez-Rodriguez validly waived his rights. As we read the court's memorandum and order, though, they really fall into two main categories: (1) Mr. Perez-Rodriguez did not know that he was in custody until well into the April 28 interview; and (2) Detective Conroy did not ensure that Mr. Perez-Rodriguez understood his rights and the consequences of giving them up.

For the sake of completeness, these are the additional reasons to which the court referred: (1) there was ambiguity about Mr. Perez-Rodriguez's level of education; (2) the April 28 interview proceeded in a fashion similar to that of the April 19 interview, where Mr. Perez-Rodriguez was free to leave at the end; (3) Mr. Perez-Rodriguez was not handcuffed during the April 28 interrogation; (4) Mr. Perez-Rodriguez did not have any prior contact with the criminal justice system; (5) the detectives did not clarify how well Mr. Perez-Rodriguez could read and otherwise understand Spanish; (6) contrary to his typical practice, Detective Conroy did not advise Mr. Perez-Rodriguez that he could interrupt at any time if he had any questions; (7) Detective Conroy did not have Mr. Perez-Rodriguez initial each of the particular rights described on the MCP-50 form; and (8) Detective Conroy did not advise Mr. Perez-Rodriguez that signing the MCP-50 served as an acknowledgment of waiver.

Rodriguez] was unaware he was in custody, his apparent waiver of his *Miranda* rights cannot be considered voluntarily and knowingly.

[Mr. Perez-Rodriguez's] understanding of the actual *Miranda* rights also calls into question whether his waiver was voluntary and knowing. In *Gonzalez v. State*, 429 Md. 632, 651 (2012), the Court of Appeals found that, "[e]ven if the warnings themselves pass constitutional muster, the State still must prove, upon proper challenge, that the suspect's waiver of the rights conveyed in those warnings was knowing and voluntary." Moreover, the Court of Special Appeals in *Hale v. State*, 5 Md. App. 326, 329 (1968), determined that the State must show that all warnings required to be given to the accused were given and that the accused, in giving his statement, "understood his rights and knowingly and intelligently waived them." Here, a Spanish-Speaking detective, Detective Conroy, read [Mr. Perez-Rodriguez] his *Miranda* rights in Spanish from the standard MCP 50 form. However, unlike the detective in *Gonzalez* who read each *Miranda* right as an individual question, pausing after each to ensure the defendant understood, and taking the time to discuss if and when the defendant did not, Detective Conroy read the *Miranda* rights as one long, full paragraph, only asking at the end of the recitation whether [Mr. Perez-Rodriguez] understood everything the detective had said.

Gonzalez also illustrates that in evaluating the validity of a *Miranda* waiver, the court must look to such factors as the background, experience, and conduct of the accused in any given case. *Gonzalez*, 429 Md. at 651. No evidence has been presented that [Mr. Perez-Rodriguez] had any prior contact with law enforcement that would indicate he is familiar with *Miranda* rights or the process of waiving these rights. Detective Conroy did not question in depth how well [Mr. Perez-Rodriguez] can read and write Spanish. When asked about his level of education, the transcript of the April 28 interview illustrates [Mr. Perez-Rodriguez] was confused with Detective Conroy's question. [Mr. Perez-Rodriguez] indicated that he thought that his level of education is equivalent to a first year of high school. Rather than inquire further to firmly grasp

> [Mr. Perez-Rodriguez's] level of education, Detective Conroy proceeded to read the recitation of *Miranda* rights.
>
> In *Moran v. Burbine*, 475 U.S. 412, 421 (1986), the Supreme Court found that "the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandoned it." As discussed above, unlike in *Gonzalez*, Detective Conroy read the *Miranda* rights to [Mr. Perez-Rodriguez] as one large recitation, only asking if [Mr. Perez-Rodriguez] understood once the recitation was complete, rather than inquiring after every right individually. In fact, according to Detective Conroy's testimony during the motions hearing, he normally advises suspects that if they have any questions during the advice of rights, to let him know. During this particular interview, however, he did not mention this to [Mr. Perez-Rodriguez]. Detective Conroy did not have [Mr. Perez-Rodriguez] initial any of the rights he was waiving to indicate [Mr. Perez-Rodriguez's] understanding of his waiver, nor did Detective Conroy advise [Mr. Perez-Rodriguez] that [Mr. Perez-Rodriguez's] signing of the MCP 50 form was an acknowledgement of [his] waiver.

We disagree with the motions court's conclusion that Mr. Perez-Rodriguez's waiver was not knowing and voluntary. *First*, a suspect's knowledge that he or she is in custody doesn't bear on the validity of a waiver. Rather, a voluntary waiver is one that is "a free and deliberate choice" and not the product of "intimidation, coercion, or deception." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). The court made no finding, nor did any evidence indicate, that Mr. Perez-Rodriguez was intimidated, coerced, or deceived in any manner that would render his waiver involuntary. To the contrary, Mr. Perez-Rodriguez was never handcuffed, no weapons were drawn, no threats or promises were made, and the Detective's demeanor was "calm and polite."

Nor are we persuaded that the waiver was involuntary because the police waited to arrest Mr. Perez-Rodriguez until after he made a statement, even with an arrest warrant for him in hand. "Police officers, charged with investigating crimes and bringing perpetrators to justice, are permitted to use a certain amount of subterfuge, when questioning an individual about his or her suspected involvement in a crime." *Ball v. State*, 347 Md. 156, 178 (1997). "It is only where police conduct 'overbear[s the accused's] will to resist and bring[s] about confessions not freely self-determined . . . . that the confession will be suppressed." *Id.* at 179 (quoting *Rowe v. State*, 41 Md. App. 641, 645 (1979)). Here, Mr. Perez-Rodriguez does not claim, nor do the facts support, that his statements were induced or coerced in any manner. Indeed, this case stands in stark contrast to those in which Maryland courts have found a *Miranda* waiver not to be voluntary. *Cf. Hill v. State*, 418 Md. 62, 82 (2011) (police officer informed defendant that the victim's family did not want to see defendant get in trouble but they wanted an apology); *Stokes v. State*, 289 Md. 155, 162 (1980) (police promised defendant they would not arrest and charge his wife as a co-defendant if he told them where illicit drugs were hidden); *Hillard v. State*, 286 Md. 145, 153 (1979) (police promised to help defendant if he made a statement); *Bellamy v. State*, 50 Md. App. 65, 77–78 (1981) (police officer told defendant that he would talk to the State's Attorney about releasing the defendant's fiancée from custody if he made a statement), (*departed from by Wright v. State*, 307 Md. 552 (1986), *abrogated on other grounds by Price v. State*, 405 Md. 10 (2008)). We hold that the State met its burden to establish that Mr. Perez-Rodriguez's waiver was voluntary.

Second, we hold as well that the State established, by a preponderance of the evidence, that Mr. Perez-Rodriguez knowingly waived his *Miranda* rights. In order for a waiver to satisfy the "knowing" component of a valid waiver, it must be "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Burbine*, 475 U.S. at 421. As the motions court aptly noted in its memorandum and order, in evaluating the validity of a waiver, the court must consider the background, experience, and conduct of the accused. *Gonzalez*, 429 Md. at 651 (citation omitted). But we disagree with the motions court that these considerations weigh against the State in establishing that Mr. Perez-Rodriguez's waiver was valid: the record reveals that Mr. Perez-Rodriguez is thirty-one years old, has a family, can read and understand Spanish, and has held a job. Although there may have been some confusion about his education level,[4] he stated that he could read Spanish, and there was no indication that he had trouble understanding Spanish or that he lacked the capacity to understand his rights and the consequence of waiving them. Indeed, Maryland courts have deemed a waiver valid under far more suspect circumstances, such as when an individual is intoxicated or is a minor with no prior experience with the criminal justice system. *See Hof v. State*, 337

[4] When asked what level of education he had, Mr. Perez-Rodriguez responded "primero básico," which Mr. Perez-Rodriguez argues in his brief could mean either that he completed the first year of high school or only finished first grade. He contends that Detective Conroy should have clarified what Mr. Perez-Rodriguez meant by "primero básico" and that without such clarification there was no way to know his level of understanding. But as discussed above, Mr. Perez-Rodriguez stated that he could read Spanish, and the record contained no indication that he lacked the capacity to understand the *Miranda* rights or the consequences of waiving them.

Md. 581, 620 (1995) (a suspect's mental impairment from drugs and alcohol does not "per se" render his statements involuntary); *McIntyre v. State*, 309 Md. 607, 625 (1987) (fifteen-year-old with no prior exposure to the criminal justice system voluntarily, knowingly, and intelligently waived his *Miranda* rights); *Rodriguez v. State*, 191 Md. App. 196, 225 (2010) (defendant's statements were voluntary even though defendant was acting "antsy," "nervous [and] kind of flighty," and appeared to be under the influence of drugs); *Buck v. State*, 181 Md. App. 585, 638–39 (2008) (defendant's post-*Miranda* statements were voluntary despite defendant taking several medications for depression and acting strangely and erratically); *Harper v. State*, 162 Md. App. 55, 85 (2005) (defendant's intoxicated mental state did not, in itself, render his statements involuntary).

We also disagree with the motions court's comparison of this case to *Gonzalez*. In that case, the defendant spoke some Spanish but his first language was Mixtec, an indigenous language spoken in a particular region of Mexico. *Gonzalez*, 429 Md. at 637. The officer who advised Mr. Gonzalez of his *Miranda* rights, however, spoke to him almost exclusively in Spanish and only used the Mixtec words for "court" and "attorney" after Mr. Gonzalez indicated that he did not understand those words in Spanish. *Id.* Because of the language barrier, the officer paused after each sentence, making sure that Mr. Gonzalez understood each right before continuing to the next one, and also ensured that Mr. Gonzalez understood the acknowledgment of the waiver before he signed the waiver form. *Id.* at 643. The Court of Appeals held that the waiver was knowingly given, specifically noting

that the tempo and substance of Mr. Gonzalez's responses indicated that he fully understood the officer's questions. *Id.* at 659.

Here, unlike in *Gonzalez*, there was no need for Detective Conroy to go over the advisement in such a painstaking manner because there was no such language barrier or confusion. And although, as discussed above, there may have been some confusion about Mr. Perez-Rodriguez's education level, there was no indication that he lacked the capacity to understand his *Miranda* rights or the consequences of waiving them. Moreover, Mr. Perez-Rodriguez's possible lack of experience with our criminal justice system and lack of education do not render his waiver invalid *per se*. Indeed, the defendant in *Gonzalez* was barely eighteen years old, uneducated, and a recent immigrant to the United States with no prior contact with our criminal justice system. *Id.* at 657.

It's true that Detective Conroy delivered the *Miranda* warnings in a continuous paragraph rather than stopping for separate assent to each element. Even so, we are not persuaded that the State failed to meet its burden. Before beginning the questioning, Detective Conroy asked Mr. Perez-Rodriguez whether he understood and could read Spanish. Mr. Perez-Rodriguez said that he could, and the record reveals no reason to doubt that he understood. Moreover, Detective Conroy asked Mr. Perez-Rodriguez twice whether he understood his *Miranda* rights before the interview began:

> [Detective Conroy]: OK, uh, I am going to read you your rights here. [U/I] this here. You can uh, read with me if you want. OK? You have the right now or at any other moment, to remain uh … silent. Anything you say can be used against you.
>
> [Mr. Perez-Rodriguez]: OK.

> [Detective Conroy]: You have the right to have a licensed attorney before and during any interrogation. You will be provided a licensed attorney if you cannot pay for one. You have the right to be presented quickly before a District Court commissioner, who is a judicial official without connection to the police. The commissioner will inform you about each of the crimes you, you are accused of and the corresponding penalties to each crime. You will be provided a written copy of the charges you are accused of. They will inform you of your right to have an attorney, make a determination about your arrest before trial, and will inform you if you have the right to have a preliminary hearing in front of a judge later on. Have you understood everything that I have just said to you?
>
> [Mr. Perez-Rodriguez]: Yes.
>
> [Detective Conroy]: OK. And I am going to give you a copy of everything, OK?
>
> [Mr. Perez-Rodriguez]: Mhm.
>
> [Detective Conroy]: Can you sign here? That is just to say that I am giving you a copy.
>
> [Mr. Perez-Rodriguez]: [U/I] there?
>
> [Detective Conroy]: OK, so, did you understand everything?
>
> [Mr. Perez-Rodriguez]: Yes.

To be sure, Detective Conroy could have asked Mr. Perez-Rodriguez if he understood each right individually before moving to the next one. But that form of inquiry is a not prerequisite for a valid waiver. *See Gonzalez*, 429 Md. at 650 ("No particular wording or 'precise formulation' need be used to impart the nature of the Fifth Amendment rights to the suspect.") (citation omitted). Nor was Detective Conroy required to obtain a written waiver from Mr. Perez-Rodriguez, as the motions court suggests, or obtain his

initials by each right, or obtain a signature acknowledging his waiver of rights. *See North Carolina v. Butler*, 441 U.S. 369, 375–76 (1979) (holding that an express waiver of *Miranda* rights is not required and a waiver can be implied provided the circumstances indicate a knowing and voluntary relinquishment of rights). "Rather, the proper inquiry is simply whether the warnings reasonably conve[y] to [a suspect] his rights as required by *Miranda*." *Gonzalez*, 429 Md. at 651 (internal quotations and citation omitted). We conclude that those rights were reasonably conveyed, and that based on Mr. Perez-Rodriguez's acknowledgment that he could read and understand Spanish, as well as his responses to Detective Conroy's questions and his acknowledgement that he understood his rights, Mr. Perez-Rodriguez waived his rights knowingly.

Based on the totality of the circumstances, we hold that the State met its burden to establish by a preponderance of the evidence that Mr. Perez-Rodriguez voluntarily, knowingly, and intelligently waived his *Miranda* rights.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. MONTGOMERY COUNTY TO PAY COSTS.