Circuit Court for Baltimore City
Case Nos.: 119119016 & 119119017

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 303 & 304

September Term, 2021

ANTONIO HUNTER

v.

STATE OF MARYLAND

Reed,
Ripken,
Battaglia, Lynne, A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: January 20, 2022

We are asked to determine whether Antonio Hunter, Appellant, clearly invoked his rights under the Fifth Amendment to the United States Constitution,[1] prior to the time he provided a statement to the police, without an attorney present, within the dictates of *Miranda v. Arizona*, 384 U.S. 436 (1966).[2]

The question before us is:

> Did the court err in denying appellant's motion to suppress his statement to police where, after appellant read aloud from the waiver-of-rights form, "I . . . understand my right and I freely and voluntarily waive my right and agree to talk with the police [without] having an attorney present," and the detective asked him, "Do you agree to that?", he answered "No," and the questioning continued?

For the reasons that follow, we shall hold that Hunter did not clearly invoke his right to refrain to speak to the police without an attorney present and, as a result, we shall affirm his convictions.

Hunter was charged in two separate, identically charged, indictments in Baltimore City related to incidents that occurred on April 17, 2019. In each indictment, Hunter was

[1] The Fifth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, provides: "No person shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . . ." U.S. CONST. amend V.

[2] In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the United States Supreme Court established "procedural safeguards to secure the privilege against self-incrimination[,]" by which a suspect "must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed."

charged with various offenses with respect to two different individuals, to include: robbery with a dangerous weapon, conspiracy to commit robbery with a dangerous weapon, robbery, conspiracy to commit robbery, first-degree assault, conspiracy to commit first-degree assault, second-degree assault, conspiracy to commit second-degree assault, theft, conspiracy to commit theft, use of a firearm in the commission of a crime of violence, conspiracy to use a firearm in the commission of a crime of violence, possession and transport of a handgun, conspiracy to possess and transport a handgun, possession and transport of a handgun in a vehicle on a public road, conspiracy to possess and transport a handgun in a vehicle on a public road, possession of a regulated firearm by a person under the age of twenty-one, and possession of ammunition for a regulated firearm by a person under the age of twenty-one. During the investigation of the offenses, Hunter had been interviewed on April 17 by Detectives Antonio Queen and Eric Hinson of the Baltimore City Police Department and, ultimately, Hunter provided a statement to the police, in which he confessed to his participation in the crimes.

Hunter later moved to suppress the statement that he had given to the police, based on his assertion that he had invoked his right not to speak to the police without an attorney present, under *Miranda*, and that the police had violated those rights by continued questioning.[3] During the hearing on Hunter's motion to suppress, the only

[3] In his brief Hunter acknowledged that, "The only basis on which defense counsel sought to suppress appellant's statement was that he asserted his rights under the Fifth Amendment and the detectives failed to honor that assertion by ceasing questioning" and, (continued . . .)

evidence admitted was a video recording of the interview, marked as Joint Exhibit 1. The video was played during the hearing, and the dialogue among Hunter and the detectives was included in the transcript of the hearing.

During the hearing, the video revealed that the interview began when the detectives entered a room where they found Hunter, asleep in a chair:

> DETECTIVE 1:[4] Yo. Mr. Hunter. Mr. Hunter. Mr. Hunter. Wake up. You was resting good there for a minute.
>
> MR. HUNTER: I was.
>
> DETECTIVE 1: Mr. Hunter - -
>
> MR. HUNTER: Hmm? Hmm?
>
> DETECTIVE 1: What's your favorite football team, man?
>
> MR. HUNTER: The Ravens.

The detectives proceeded to collect some basic biographical information from Hunter:

> DETECTIVE 1: Oh yeah. Antonio Hunter, right?
>
> MR. HUNTER: Yes, sir.
>
> DETECTIVE 1: What's your middle name?
>
> MR. HUNTER: I don't have one.

(. . . continued)
as a result, we shall address only the issue raised under *Miranda v. Arizona*, 384 U.S. 436 (1966).

[4] In the transcript, Baltimore City Detective Antonio Queen is identified as "Detective 1" and Detective Eric Hinson is identified as "Detective 2."

DETECTIVE 1: You don't have a middle name?

MR. HUNTER: Uh-uh.

DETECTIVE 1: Are you a junior?

MR. HUNTER: Uh-uh.

DETECTIVE 1: 2683.

DETECTIVE 2: You got a sister? How do you think the Ravens going to do this year? You know they got rid of Flacco, right?

DETECTIVE 1: What's your date of birth?

MR. HUNTER: 11/22/2000.

DETECTIVE 1: How old are you?

MR. HUNTER: Eighteen.

DETECTIVE 1: Do you got a telephone number you can be reached at?

MR. HUNTER: Huh?

DETECTIVE 1: Telephone number you can be reached at?

MR. HUNTER: My grandmother's and them.

DETECTIVE 1: Do you know what it is?

MR. HUNTER: [omitted].

DETECTIVE 2: Your mother don't have that 209 number no more?

MR. HUNTER: I'm tell you, man, I don't know that number. I don't know.

DETECTIVE 1: How much you weigh?

MR. HUNTER: Like 170. You been calling now?

DETECTIVE 1: No. Do you wear glasses at all?

MR. HUNTER: I used to. I need to get them though. Ouch.

DETECTIVE 1: Are you able to read and write?

MR. HUNTER: Mm-hmm.

DETECTIVE 1: Right or left hand?

MR. HUNTER: Right.

DETECTIVE 1: Highest level of education?

MR. HUNTER: Hmm?

DETECTIVE 1: Highest level of education?

MR. HUNTER: Like what you - -

DETECTIVE 1: What grade, what grade did you graduate? Last grade you attended?

MR. HUNTER: I ain't um - - the last grade like 8th.

DETECTIVE 1: Did you ever go to high school?

MR. HUNTER: Not yet.

DETECTIVE 1: Okay. So you graduated 8th grade? Are you under the influence of any drugs or alcohol?

MR. HUNTER: Like on drugs?

DETECTIVE 1: Yeah.

MR. HUNTER: Like now?

DETECTIVE 1: Yeah.

MR. HUNTER: Oh, uh-uh.

DETECTIVE 1: What about liquor?

MR. HUNTER: Ouch. No. Uh-uh. I'm completely sober.

DETECTIVE 1: Are you injured in any way?

MR. HUNTER: Hmm?

DETECTIVE 1: Injured? Do you have any injuries? Are you currently employed? Do you have a job?

MR. HUNTER: Uh-uh.

DETECTIVE 1: What's your grandmother's first name?

MR. HUNTER: Brenda.

DETECTIVE 1: What's her last name?

MR. HUNTER: Edmonds.

DETECTIVE 1: Atkins?

MR. HUNTER: Edmonds.

DETECTIVE 1: Does she live on Wilkins Avenue?

MR. HUNTER: Yes, sir.

The questioning paused briefly while Detective Queen appeared to fill out paperwork. Hunter then, inquired about the forms on which Detective Queen was writing:

MR. HUNTER: What's them papers for?

DETECTIVE 1: This is your personal information that we get for anybody that comes in here. So that way, we know who we're talking to and we have a record that we took your information. That's all.

MR. HUNTER: Am I under arrest, I meant?

DETECTIVE 1: Hmm?

MR. HUNTER: You arrest people you bring?

DETECTIVE 1: Yeah, around, I guess.

DETECTIVE 2: One through two.

The detectives then began the process of advising him of his rights:

DETECTIVE 1: All right. So real quick, before we discuss to you while you're here and everything, I have to read you your rights. And the reason I read your rights is cause you have rights just like everyone else and you need to know your rights and I'm going to read them to you.

So with that in mind, this is a blank sheet that we have here that's not filled out. But I want to fill it out. The first thing I'm going to do is put your name on here. Okay. And today's date is the 17th. And the time now is 9:15 and I'm going to write it in military time which is - -

MR. HUNTER: It's 9:00 p.m.?

DETECTIVE 1: Yes.

MR. HUNTER: Dang.

DETECTIVE 1: And we're at - -

MR. HUNTER: It's dark out there.

DETECTIVE 1: All right. So what I need you to do is read question one and when you understand it, write yes and then your initials.

MR. HUNTER: Like - -

DETECTIVE 1: I want you to read it out loud. Do you have a problem reading out loud?

MR. HUNTER: Sometime.

DETECTIVE 2: Would you like us to read it for you?

DETECTIVE 1: Would you prefer me to read it to you?

MR. HUNTER: I got it.

DETECTIVE 1: All right. So read number one for me.

MR. HUNTER: You have the right to remain silent.

DETECTIVE 1: Do you understand what that means?

MR. HUNTER: Mm-hmm.

DETECTIVE 1: That's a yes. And then your initials next to it.

MR. HUNTER: Oh my God.

DETECTIVE 1: Question two, please.

MR. HUNTER: Anything you say may or write may be used against you in a court of law.

DETECTIVE 1: Do you understand that? [The video of the interview reveals that Hunter, in response to the question, shook his head "no."] All right, so basically like if you were to give a statement or make a false accusation or anything like that, we can use that because you told us that.

MR. HUNTER: So put yes?

DETECTIVE 1: If you understand. So I'm giving you an example. I can't tell you what to put. I can only give you an example. If you understand it, write yes. Question three.

MR. HUNTER: You have a right to talk with an attorney before any questions or during any questions.

DETECTIVE 1: Do you understand that? [In the video, Hunter, again, shook his head "no."] So that means that you have the right to speak with a lawyer if you have a lawyer. If you do not have a lawyer, then that leads into the question - -

MR. HUNTER: Put no.

DETECTIVE 1: What you mean? So if you, do you have, no. So it's not saying if you have a lawyer or not. It's saying if you want to talk to a lawyer, you have the right to before you talk to me. Do you understand that?

On the video, Hunter can be seen nodding his head "yes."

DETECTIVE 2: You need to verbally say, yes.

MR. HUNTER: Hmm?

DETECTIVE 2: You need to - - not shake your head.

DETECTIVE 1: Verbally say, yes.

DETECTIVE 2: So say it.

DETECTIVE 1: Do you understand?

MR. HUNTER: Yes.

DETECTIVE 1: Okay. Question four.

MR. HUNTER: If you agree to answer questions, you may stop at any time and request an attorney and no - -

DETECTIVE 1: Further.

MR. HUNTER: - - further questions will be asked of you.

DETECTIVE 1: Do you understand that? [The video reveals that Hunter, again, shook his head "no" in response to the question.] So that means that once we start communicating and talking about why you're here and what you're here for and if you say, well, I want my lawyer or I don't want to talk, we're going to stop talking to you.

MR. HUNTER: Okay, so I put yes.

DETECTIVE 1: If you understand. Do you understand?

MR. HUNTER: Yes.

DETECTIVE 1: Okay. Question five.

MR. HUNTER: If you want an attorney and cannot afford to hire one, an attorney will be appointed to - -

DETECTIVE 1: Represent you. Do you know what that means?

MR. HUNTER: No.

DETECTIVE 1: So that's basically the Office of the Public Defender. If you can't afford an attorney, you go to the Office of the Public Defender and they will provide you an attorney free of cost. Have you ever heard of that?

MR. HUNTER: No.

DETECTIVE 1: So that's - - you know when you, you've ever seen someone that goes to court, do you know any friends that have been to court or been to jail and they never had, they can't afford a lawyer, but that have one in court? [Hunter, in the video, shook his head "no."] All right. So basically, it's a free, it's a service that's provided to anyone whose arrested that can't afford an attorney. So you have your own free attorney provided to you by the State. Do you understand?

At this point, Hunter acknowledged that he understood question five and then began reading the final question which is the gravamen of the instant appeal:

MR. HUNTER: Yes. Hmm. I have been adviced [sic] - -

DETECTIVE 2: Advised.

MR. HUNTER: I mean advised and understand my right and I freely and voluntarily waive my right and agree to talk with the police without having an attorney present.

DETECTIVE 1: Do you agree to that?

MR. HUNTER: No.

After Hunter responded, he stared at the paper and the detectives immediately asked if Hunter understood the question:

DETECTIVE 1: Okay.

DETECTIVE 2: Do you understand it?

DETECTIVE 1: First let's, do you understand it?

MR. HUNTER: No.

When Hunter indicated that he had not understood the question, Detective Queen provided an explanation:

> DETECTIVE 1: Okay. So let me read it to you. I have been advised of and understand my rights. I freely and voluntarily waive my rights and agree to talk with the police without having an attorney present. So if you agree to speak with us, that means you do not want an attorney present at this time while you're speaking to us. If you do not agree to speak to us, then you, then you are exercising your rights and then we'll send you on your way and charge you accordingly. That's basically what it's - - so if you agree to talk with us, you'll understand and get a better understanding of why you're here. We'll get some understanding from you.
>
> MR. HUNTER: So I put yes?
>
> DETECTIVE 1: No, you don't - - so if you agree to speak with us, you sign here and then I'm going to so and then my partner is going to sign. If you do not want to talk to us, you do not have to sign it. We'll stop and we'll leave.
>
> DETECTIVE 2: But also, if you do sign, right, one through five still matters.
>
> DETECTIVE 1: Correct.
>
> DETECTIVE 2: So even though it says, I freely and voluntarily waive my rights to speak with the police without having an attorney with me, at any given time during this questioning if you feel as though don't want to talk anymore, you'll just go back to one through five. I believe it's number four, before any questions, or, you know, during any questions, you know, you can stop at any time.
>
> MR. HUNTER: So I put yes.
>
> DETECTIVE 1: No, you just sign your name.
>
> DETECTIVE 2: It's up to you. You sign - -
>
> DETECTIVE 1: If you want to.
>
> DETECTIVE 2: Do you want to do that?

MR. HUNTER: What's going to happen?

DETECTIVE 1: We'll talk to you in reference to why you're here.

DETECTIVE 2: We can't give you that answer. That's something that you have to do. Like so it's either yes, you want to talk to us or no, you don't want to talk to us.

DETECTIVE 1: Right.

MR. HUNTER: So what's better?

DETECTIVE 2: We can't - -

DETECTIVE 1: I can't tell you that.

DETECTIVE 2: We can't advise you on that. This is something you have to decide.

Hunter studied the form. After a few seconds, the colloquy resumed:

DETECTIVE 2: What's your name, Antonio? We're not trying to put you in a trick bag or anything like that, all right?

DETECTIVE 1: Right.

DETECTIVE 2: We're just being honest with you. We keeping it open. As you would say, we keep it above with you, we keep it 100. If you decide to talk to us and you feel as though at any time you don't want to talk to us no more, we'll stop talking. All you got to say is, hey detective, I'm done talking.

Hunter signed the form, during which, the discourse continued:

DETECTIVE 1: You have to sign your full name to that.

MR. HUNTER: Oh my - - I thought - -

DETECTIVE 1: No, you can still - -

MR. HUNTER: Yes.

DETECTIVE 1: No.

MR. HUNTER: In curse [sic]. I'm asking you - -

DETECTIVE 1: However you sign your name.

After Hunter signed the form, Detective Queen asked him to place his initials next to a correction, which Hunter had made on the form:

DETECTIVE 1: And then for the record, you scratched it out, yes; is that correct? You scratched out - -

MR. HUNTER: Oh, oh, it is yes.

DETECTIVE 1: All right.

MR. HUNTER: I didn't know - -

DETECTIVE 1: Right, but you scratched it out. I didn't do that, correct?

MR. HUNTER: So put it on top of it?

DETECTIVE 1: No, I'm just saying, cause you just put your initials next to that, just put you're a-H- next to that where you scratched out so that way we know that you did that and I didn't do that.

MR. HUNTER: I can put it on top of it?

DETECTIVE 1: No, no, you're good. You're good.

MR. HUNTER: So I picked, yes, right?

DETECTIVE 1: Yeah, that's fine. You're fine.

A few moments later, the detectives began interviewing Hunter in earnest, and Hunter gave a statement to the police.

At the hearing on his suppression motion, Hunter's defense counsel argued that Hunter's response of "no" to Detective Queen's question "Do you agree to that?," was unambiguous and "at that point in time according to *Miranda* and its prodigy and even Maryland case law, the interview [wa]s over." The State countered that Hunter's response of "no" should not be viewed in a vacuum and that given the totality of the circumstances leading up to Hunter saying "no," that the response was ambiguous and the detectives appropriately continued the interview after they clarified what Hunter wanted to do.

After viewing the video of the interview during the hearing, Judge Robert Taylor of the Circuit Court for Baltimore City made the following findings:

> All right. This is an interesting case. It presents a close fact - - I think at the end of the day, it presents both a close factual question and a close legal question. What it boils down to the circumstances surrounding his final statement to the police and the question really is, was this a knowing invocation of the right to remain silent or was it ambiguous, rendered ambiguous sort of in context? And so, it's a very fact specific case.
>
> When I watched the advice of rights, the only question that Mr. Hunter doesn't really need help with is, you have the right to remain silent or the only paragraph of the six paragraphs is, you have the right to remain silent. He indicates that he understands that and initials that. For the next one, about any statement you say can be used, will be used against you in court, he asks what he is supposed to write there and he has it explained to him. In the next paragraph about, you have a right to have an attorney present, he's not sure what it means. He has it explained to him. Question four, you have the right to stop questioning at any time. He understands it after he has it explained to him. Question five, you have the right to a Public Defender. Kind of a lengthy explanation to what a court appointed attorney means. He understands it once it's explained to him. Question six, the police actually sort of change the routine a little bit because after it became obvious he needed help, they were explaining the questions to him sort of unprompted. Then we get to question six. He reads it with some

difficulty. And then you agree to speak with us, no. And he looks at them and then he looks down and you can see him going back over the question, again.

* * *

Okay and so, Detective Queen says, do you want to speak to us and he looks up and says, no. And Detective Queen says, okay. And then Mr. Hunter returns to sort of pouring over the document in front of him and Detective Hinson says, do you understand what it means as he's saying that. Detective Queen sort of backs up a step and says, yeah, well first off, do you understand what that means which is sort of the formula they had followed with the other five questions. He indicates that he does not know what it means. And so, the police explain to him and I think they do a pretty accurate description. They don't mislead him as to what his *Miranda* rights are. Sometimes you see this where they'll tell, they'll give them a distorted versions of their rights so essentially invalidate any waiver because they haven't been properly advised. But in this case, the police do give him an accurate description of what exactly that means and they reiterate. You don't have to speak. You can stop when you want to and then when he says, what should I do, we don't have to tell you what to do.

Judge Taylor, then, proceeded to his determination:

And so the question is, does it violate *Edwards*[5] to explain that final statement if the Defendant has said, no under circumstances that where a reasonable police officer might question whether he actually understood what he was invoking or waiving under the circumstances.

I don't, my understanding of the case law, I don't find anything directly on point and since neither of you have presented, I'll assume there isn't anything directly on point there, in there. It's certainly true that police can look to context to help clarify an ambiguous waiver or invocation in the sense of well, he said, maybe, well maybe I shouldn't do this anymore. But

[5] The reference to "*Edwards*" is to *Edwards v. Arizona*, 451 U.S. 477 (1981), in which the Supreme Court held that once a suspect has invoked his right to counsel, it is a violation of *Miranda v. Arizona*, 384 U.S. 436 (1966), to subject him to further interrogation without an attorney present.

> then he goes on to answer a lot of questions and where the police say, well -- where the courts have said, well, it was a maybe and then there were a lot of questions and so, you know, the police are justified in thinking he wanted to talk.
>
> Here, we know the main - - we have a pretty clear, no. And the question is, was *Edwards* violated by saying, do you understand what, what it is you're doing. The consensus is and I agree just looking at the video, this, he wasn't being badgered or pressured into changing his mind. I think the police legitimately were trying to explain this to him and then question is, whether that violates *Edwards* or not.
>
> The ruling of the Court is that it is acceptable under *Edwards*, under these very specific factual circumstances to make that explanation under circumstances where it's clear that the accused did not understand or needed explanation before he understood the first five paragraphs doesn't violate *Edwards* to give that explanation even though the Defendant said, no when asked if he wanted to speak and then returned and was clearly sort of re-reading and trying to figure out what that paragraph meant. And so, the Court will deny the motion to suppress.

After Judge Taylor denied Hunter's motion to suppress, the parties discussed the terms of an agreement, whereby Hunter would enter a conditional guilty plea, pursuant to Rule 4–2421(d).[6] Hunter did enter his plea, after which Judge Taylor ordered a competency evaluation before he would accept the conditional guilty plea.[7]

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[6] Rule 4–242(d), which governs conditional please of guilty, provides:

> (d) **Conditional plea of guilty.** (1) Scope of Section. This section applies only to an offense charged by indictment or criminal information and set for trial in a circuit court or that is scheduled for trial in a circuit court pursuant to a prayer for jury trial entered in the District Court.
>
> (2) Entry of Plea; Requirements. With the consent of the court and the State, a defendant may enter a conditional plea of guilty. The plea shall be in writing and, as part of it, the defendant may reserve the right to appeal

(continued . . .)

Hunter again appeared before Judge Taylor in April of 2021, in light of his having been found competent to stand trial, after earlier having been determined to be incompetent to stand trial. Neither party presented additional evidence, and Judge Taylor, then, revisited his earlier determination:

> Okay. All right. Well, again, in an abundance of caution, I did go back and revise this, because at least one interpretation of the *Hoey*[8] case is you look at *Miranda*, the mental state, *Miranda*, the understanding of rights and sort of take into account the mental state of the person giving the statement at the time.
>
> Although I agree with you [Public Defender], it's - - you know, I'm certainly - - I'm not a psychologist and I don't know what, you know, whether he met any legal definition of competency or incompetence back in April.

(. . . continued)

> one or more issues specified in the plea that (A) were raised by and determined adversely to the defendant, and, (B) if determined in the defendant's favor would have been dispositive of the case. The right to appeal under this subsection is limited to those pretrial issues litigated in the circuit court and set forth in writing in the plea.
>
> (3) Withdrawal of Plea. A defendant who prevails on appeal with respect to an issue reserved in the plea may withdraw the plea.

[7] Hunter underwent two competency evaluations, the first of which occurred in June of 2019, and after which, Hunter was found incompetent to stand trial. Approximately eight months after the first evaluation, a second evaluation was conducted, and Hunter was found competent to stand trial.

[8] The reference to "the *Hoey* case" is to *Hoey v. State*, 311 Md. 473 (1988), in which the Court of Appeals, applying the Supreme Court's decision in *Colorado v. Connelly*, 479 U.S. 157 (1986), held that a suspect's mental impairment alone is not sufficient to render his waiver of *Miranda* rights involuntary.

> One thing I really wanted to do - - I looked at it, because I wanted to refresh my memory about what happened at the proceeding, because it has been two years, and I wanted to look at the evaluation finding him not competent to find out, essentially, why he was found not competent then and what has happened in the interim that he's been restored to competence. And, it frankly, confirms the psychologist's report, the doctors more or less confirmed what I think our consensus had been back in 2019 at the hearing, which is that, you know, Mr. Hunter was having trouble with some of the vocabulary, and with understanding some of the terms and phrases that the policed presented to him.
>
> Again, after - - as you pointed out, [Public Defender], after you have the right to remain silent, for every single entry on the *Miranda* form after that he said to police that he didn't understand the written thing and the police had to explain it to him in simpler terms. And then when we get to the final one about waiving *Miranda*, that's where exactly that confusion came in, because it was unclear whether he was saying no, he didn't understand it or no, he didn't want to talk to the police and they had to go over it again, and explain it to him in very simple terms.
>
> I think that was my ruling before, was that they were - - I did not interpret that as them coercing him into waiving his rights, but rather trying to explain that final entry on the form to him, just as they had had to explain almost all of the prior entries on the form to him, and then him making the decision that he would speak to them.

Judge Taylor, then, discussed the effect of Hunter's competency evaluation on his determination that the detectives had not violated Hunter's *Miranda* rights:

> Having reviewed it and having read the evaluation of Mr. Hunter, I still stand by that. I've considered the factors that I need to consider, the voluntariness, whether the interrogation itself complied with due process and whether the *Miranda* waiver was properly made. He wasn't coerced or tricked into waiving his *Miranda* rights, given his mental state at the time.
>
> Which, again, all I had to go on is really what I'm seeing on the video, but it's supplemented somewhat by what I read in the doctor's report, and so I will affirm my earlier ruling denying the motion to suppress his statement.

> I think he did understand - - he was giving lucid answers. He was, you know, giving his date of birth and spelling his name. You know, he understood what he was being asked once it was put in simple terms and so I find this to have been a voluntary, properly *Mirandized* statement.

Judge Taylor then accepted Hunter's conditional guilty plea and found him guilty of two counts of robbery with a deadly weapon and two counts of conspiracy to use a firearm in the commission of a crime of violence. For each offense, Hunter was sentenced to ten years' imprisonment, six of which were suspended, as well as three years' probation. Judge Taylor ordered that Hunter would serve all four sentences concurrently.[9]

The dialogue on the video, as delineated above, queues up the question Hunter raises as to whether his was an unambiguous invocation of his *Miranda* rights so that the detectives were obligated, under *Edwards v. Arizona*, 451 U.S. 477 (1981), to terminate the interview. The State counters that Judge Taylor correctly ruled that the detectives did not violate *Edwards* by continuing to question Hunter after he answer "no," because, considering the context and totality of the circumstances, Hunter's response was ambiguous.

Our review of a denial of a motion to suppress is based on the evidence developed at the suppression hearing, *Vargas-Salguero v. State*, 237 Md. App. 317, 335 (2018) (citing *Holt v. State*, 435 Md. 443, 457-58 (2013)), and we consider the evidence in the light most favorable to the prevailing party. *Id.* (citing *Gonzalez v. State*, 429 Md. 632,

[9] Hunter timely noted appeals of both of his convictions and subsequently moved to consolidate both cases, which was granted by this Court.

648 (2012)). While we accept the factual findings of the trial court, unless those findings are clearly erroneous, we "make our own independent constitutional appraisal as to whether an action was proper by reviewing the law and applying it to the facts of the case." *Wimbish v. State*, 201 Md. App. 239, 249 (2011) (quoting *Billups v. State*, 135 Md. App. 345, 351 (2000)).

Our independent review of the video recording of the interview leads us to conclude that Judge Taylor's factual findings regarding the interview were not clearly erroneous.

With respect to a review of Judge Taylor's legal determinations, we initially turn to *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), in which the United States Supreme Court established "procedural safeguards" meant to protect a suspect's privilege against self-incrimination, that require police to advise criminal suspects of their rights under the Fifth Amendment before commencing a custodial interrogation. *Id.* at 478-79. If at any time during a custodial interrogation a suspect invokes his right to remain silent or his right to confer with an attorney, the police must end the interrogation. *Miranda*, 384 U.S. at 474.

Subsequently, in *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981), the Court held that once a suspect invokes his right to confer with an attorney, "a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he had been advised of his rights." *Id.* at 484. In other words, once a suspect elects to remain silent or to confer with an attorney, his/her

subsequent statement does not act as a waiver of the right to remain silent or to confer with the police, "unless the accused himself initiates further communications, exchanges, or conversations with the police." *Id.* at 485.

In order to trigger the "'rigid,' prophylactic rule" of *Edwards*, "courts must determine whether the accused actually invoked his right to counsel[,]" according to *Smith v. Illinois*, 469 U.S. 91, 95 (1984). Actual invocation may involve a specter of ambiguity such that a court may consider whether "request for counsel or the circumstances leading up to the request would render it ambiguous[.]" *Id.* at 98.

The Court, in *Davis v. United States*, 512 U.S. 452, 461 (1994), further refined the concept of ambiguity or the lack thereof, when it stated that, "Invocation of the *Miranda* right to counsel 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.'" *Id.* At 459 (quoting *McNeil v. Wisconsin*, 501 U.S. 171, 178 (1991)). The *Davis* Court established the standard for evaluating whether a suspect's invocation regarding counsel is unambiguous: "he must articulate his desire to have counsel present sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney." *Davis*, 512 U.S. at 459. "If the statement fails to meet the requisite level of clarity, *Edwards* does not require that the officers stop questioning the suspect." *Id.* The Court recognized the evaluation of ambiguity rests initially with the interrogating police officer:

> In considering how a suspect must invoke the right to counsel, we must consider the other side of the *Miranda* equation: the need for effective law enforcement. Although the courts ensure compliance with the *Miranda* requirements through the exclusionary rule, it is police officers who must actually decide whether or not they can question a suspect. The Edwards rule—questioning must cease if the suspect asks for a lawyer—provides a bright line that can be applied in the real world of investigation and interrogation without unduly hampering the gathering of information. But if we were to require questioning cease if a suspect makes a statement that *might* be a request for an attorney, this clarity and ease of application would be lost.

Id. at 461. The Court further elucidated best practices regarding clarification after an ambiguous invocation of the right to counsel:

> [W]hen a suspect makes an ambiguous or equivocal statement it will often be good police practice for the interviewing officers to clarify whether or not he actually wants an attorney. . . . Clarifying questions help protect the rights of the suspect by ensuring that he gets an attorney if he wants one, and will minimize the chance of a confession being suppressed due to subsequent judicial second-guessing as to the meaning of the suspect's statement regarding counsel.

Id.

In *Berghuis v. Thompkins*, 560 U.S. 370 (2010), the Supreme Court extended the *Davis* standard to apply to invocations of the *Miranda* right to remain silent. The Court explained that both the right to counsel and the right to remain silent "protect the privilege against compulsory self-incrimination, . . . by requiring an interrogation to cease when either right is invoked[.]" (citations omitted). *Id.* at 381. Thus, the Court reasoned "there is no principled reason to adopt different standards for determining when an

accused has invoked the *Miranda* right to remain silent and the *Miranda* right to counsel at issue in *Davis*." *Id*.

We, in *Angulo-Gil v. State*, 198 Md. App. 124 (2011), have previously considered whether a verbal "no" was sufficient to invoke *Miranda*. In that case, the suspect's "no" was spoken in response to the inquiry "do you wish to make a statement without an attorney present? Do you want to talk to me right now?" *Id.* at 136. We determined that, within the context of the interview, the suspect's "no" was ambiguous. In that case, Angulo-Gil had been indicted on charges of first-degree murder, use of a handgun in the commission of a crime of violence, conspiracy to commit robbery with a deadly weapon, carjacking, and theft.

At the start of the interrogation, a detective explained, in Spanish, Angulo-Gil's rights under *Miranda*, using a form, after which, Angulo-Gil verbally confirmed that he understood his rights and would talk to police. The detective then asked Angulo-Gil to sign the form, thereby confirming in writing that he understood his rights and was willing to waive his right to have an attorney present during the interview. *Id.* at 135-36. Although, Angulo-Gil indicated, by initialing on the form that he understood his rights, when he was asked to indicate on the form that he was willing to waive his right to have an attorney present, he responded in the negative:

> **[Detective]: It says do you wish to make a statement without an attorney present? Do you want to talk to me right now?**
>
> **[Appellant]: No.**

Id. at 136 (alterations and emboldening in original). The detective immediately inquired as to whether Angulo-Gil understood what he was being asked to do:

> **[Detective]: Okay. Do you understand the question?**
>
> **[Appellant]: Yes.**
>
> **[Detective]: Okay. First you tell me yes and now you tell me no. Do you understand what the question is?**
>
> **[Appellant]: Uh-huh. To make a ... a .... a ...**
>
> **[Detective]: That is, do you want to talk to me right now without an attorney present?**
>
> **[Appellant]: [unintelligible] yes I do.**
>
> [Detective]: Okay. Your initials.
>
> [Appellant]: Uh-huh.

Id. at 134-36 (alterations and emboldening in original).

Angulo-Gil moved to suppress his statements, based on his assertion that although he had orally agreed to waive his rights, his subsequent "no" invalidated the initial waiver and the detective was required, under *Miranda* and *Edwards*, to end the interview, rather than pose "clarifying" questions. *Id.* at 136. The State opposed the motion, arguing that Angulo-Gil, prior to his negative response, had verbally indicated that he would speak with the detective without an attorney present, which rendered the "no" ambiguous and that, as a result, the detective had properly, under *Davis*, asked clarifying questions to determine whether Angulo-Gil was actually invoking his rights. *Id.* at 136. The court,

having found that Angulo-Gil's "no" was ambiguous, given that he had previously stated that he was willing to speak to the detective, denied the motion to suppress. *Id.* at 136.

In affirming the trial court's denial of the motion to suppress, we determined that the detective had appropriately used clarifying questions after Angulo-Gil's "no":

> [A] review of the transcript reveals that the questioning was limited to clarification as to whether appellant understood his *Miranda* rights, all of which took place before any discussion regarding the criminal acts took place. Given the fact that appellant was being questioned in Spanish and the detective was unsure as to whether appellant understood what was being said to him, it was reasonable for him to ask "questions to clarify the defendant's intent as to his desire to talk with the Detective without counsel."

Id. We also emphasized that the wording of the question to which Angulo-Gil had answered "no," may have resulted in confusion on his part:

> When reading the interview transcript, patently, appellant could have been confused by the two-part question by the detective, which asked both if he wanted to make a statement and whether he wanted to talk with him. After appellant replied, "no," he was asked by the detective if he understood the question; appellant's response indicates that he believed he was being asked to make a statement.

Id.

The application of the tenets of *Angulo-Gil* as well as *Miranda* and its progeny, *Edwards*, and *Davis*, yields the conclusion that Judge Taylor correctly determined that the officers' clarifying questions were reasonable. In this case, it had been necessary for the detectives to explain the form *Miranda* statements, after Hunter had read them,

thereby establishing a pattern of clarification. Having established a pattern of asking Hunter whether he understood what he had just read and, in response to his having indicated that he did not, providing additional explanation, Officer Queen, then, subsequent to Hunter's reading of the final statement, asked "Do you agree to that?" Hunter replied "no." The detective, who had established a pattern of reading, inquiring into the suspect's understanding, and providing an explanation for clarification, could have reasonably interpreted Hunter's answer to the final statement to have been a reflexive response, rather than reasoned. It was reasonable for the detectives to respond, as had the detective in *Angulo-Gil*, to clarify whether Hunter had invoked his right to terminate the interview, by asking if he had understood what he had just read.

As a result, we hold that Hunter's response of "no" was an ambiguous invocation of his *Miranda* rights to counsel and to remain silent, in the context of the rights advisement and the clarifying statements that preceded the final statement.

Support for our conclusion from a sister jurisdiction can be found in *Edmonds v. State*, 840 N.E. 2d 456 (Ind. Ct. App. 2006). In that case, Edmonds was interviewed by police after she had been placed under arrest in connection with a robbery. *Id.* at 458-59. Prior to beginning the interrogation, the police reviewed Edmonds' *Miranda* rights with her, using a "Rights Form," which "consisted of an advisement of rights section and a waiver of rights section. The advisement of rights section contained five sentences that were to be initialed[.] The waiver portion . . . contained five questions that were to be

answered either 'yes' or 'no.'" *Id.* at 459. After being advised of her rights, Edmonds proceeded to the waiver portion of the form:

> Edmonds answered "yes" to questions one and two, indicating that she had been read her constitutional rights and that she understood them. Question number three stated, "Do you wish to have an attorney at this time?" This question should be answered "no" in order to waive the right to an attorney. After question three was read to Edmonds, she initially wrote "yes."

Id. (internal citations omitted). In response, the police officers asked clarifying questions, Edmonds changed her answer to "no," and the interview proceeded with Edmonds having given an inculpatory statement to the authorities. *Id.*

Edmonds moved to suppress her statement, arguing that the police should have ceased the interview when she responded "yes" to the question regarding the right to counsel. *Id.* During the hearing, one detective testified that in his experience, "some people get complacent and just automatically put yes as the answer to question number three when they really do not want an attorney at that time." *Id.* The second detective testified that he "had witnessed times in his career when people have mistakenly answered yes to question three on the Rights Form." *Id.* The trial court denied Edmonds' motion to suppress. *Id.*

The Court of Appeals of Indiana affirmed, concluding that "because of Edmonds' actions and demeanor up to that point, the detectives had an objective, good faith question as to whether Edmonds really intended to answer "yes." *Id.* at 460. The Court

explained that the manner in which the interview had unfolded up to the point that Edmonds had answered "yes" to question three "cast doubt on the legitimacy of her request for an attorney," and the police were not required to stop questioning her. *Id.* at 461.

Such is the case here: the rights advisement had progressed with Hunter having read each statement on the waiver form and Detective Queen having responded by asking a version of "Do you understand that?" Prior to the purported invocation of his *Miranda* rights, Detective Queen had to explain each statement to Hunter, after Hunter had queued up an ambiguous response. With respect to the final statement, such was the same pattern, so that the detectives possessed a "good faith" basis for believing Hunter gave an ambiguous response.

We also find succor in our holding in the various cases cited by Hunter in support of his arguments, those being *People v. Flores*, 462 P.3d 919 (Cal. 2020), *Medina v. Singletary*, 59 F.3d 1095 (11th Cir. 1995), and *State v. Pitts*, 936 So.2d 1111 (Fla. Dist. Ct. App. 2006).

In *Flores*, a suspect in a murder moved to suppress the confession that he had given to police based on his assertion that he had clearly invoked his *Miranda* rights when he responded "no" to the question "do you want to take a few minutes and talk a little about that?" *Flores*, 462 P.3d at 956. Following an evidentiary hearing, the trial court ruled that Flores' "no" was ambiguous because it was spoken in response to the officer's ambiguous question, "do you want to take a few minutes to talk a little bit about

that?" *Id.* at 957. Flores was convicted of murder.

On appeal, the Supreme Court of California determined, "[s]everal circumstances, taken together, lead us to conclude that this is a case in which the officer acted reasonably in clarifying defendant's intent." *Id.* at 958. Those circumstances included the ambiguity of the officer's question, the fact that Flores had, the previous day, waived his rights and participated in an interview regarding the murders, as well as Flores' demeanor immediately preceding his purported invocation of his *Miranda* rights. *Id.* at 958-60. With respect to Flores' behavior prior to the purported invocation, the Court stated that "[t]he dissonance between defendant's seemingly bemused demeanor and his spoken response is confusing; the combined effect is murky and unclear." *Id.* at 959. Therefore, the Court explained, "[a] reasonable officer, having just asked a badly framed question, might legitimately wonder whether this response was rooted in some misunderstanding of the officer's intended meaning." *Id.* In the present case, Hunter's demeanor of befuddlement regarding each of the questions would have required an inquiry as to whether he understood the statement and his response thereto.

In *Medina*, the United States Court of Appeals for the Eleventh Circuit, considered, as part of its review of the denial of a petition for a writ of habeas corpus, whether "no" was a clear invocation of the right to remain silent. *Medina*, 466 So. 2d at 1100. Medina had spoken freely with a detective during a preliminary, unrecorded interview regarding his role in a murder. Upon the completion of the preliminary interview, the police initiated a second interview, which was to be recorded. After the

recorded interview began, Medina answered "no" when he was asked if he wanted to talk at that time. *Id.* at 1102. The detective "immediately asked 'You don't want to talk to us or you do want to talk to us?'" *Id.* Medina, then, indicated that he was willing to talk, and the interview continued. *Id.*

The Eleventh Circuit Court of Appeals concluded that Medina's "no" was not a clear invocation of his right to remain silent, because, prior to his "no," "Medina had talked freely and at length . . . . Medina did not object to having the tape recorder started, [and] made no objection to further conversation[.]" *Id.* at 1104. As was the case in *Flores*, Medina's purported invocation of his *Miranda* rights occurred during his second interview with police. Just as in *Medina*, where the context of the interview governed the responses of the police officers, so is the same true in the instant case.

Finally, in *Pitts*, a man suspected to have participated in the murder of two men, had been questioned by police during an extended non-custodial interview in which he had discussed his role in the murders. *Pitts*, 936 So. 2d at 1120. After Pitts was placed under arrest and advised of his rights, Pitts agreed to provide a statement, which was to be audio-recorded. *Id.* At the outset of the recorded interview, Pitts was, once again, apprised of his *Miranda* rights and indicated that he understood his rights. *Id.* When Pitts was asked, "Okay, having these rights in mind, do you wish to talk to me now?" he answered, "No sir." *Id.* at 1120-21. In response, the officer sought clarification by asking "You don't wish to talk to me?" and "I'm sorry, do you wish to talk to me now? And tell your side of the story?" *Id.* at 1121. Pitts then indicated that he was willing to talk and

subsequently gave a statement to police regarding his role in a double murder. *Id.* The trial court, however, suppressed Pitts' statement, ruling that he had unambiguously invoked his *Miranda* rights.

Florida's intermediate appellate court, the District Court of Appeal, held that Pitts' "no" was ambiguous, "[w]hen viewed in the context of Pitts' immediately preceding agreement to talk with the officers[.]" *Id.* at 1130. The Florida appellate court, as had the courts in *Flores* and *Medina*, looked to Pitts' conduct immediately prior to his purported invocation of his rights and determined that it rendered his response of "No sir," ambiguous: "[g]iven the uncertainty arising from the circumstances leading up to the initiation of the taped interview, the officers were justified in seeking to clarify Pitts' intentions. In such circumstances, clarifying the intentions of the suspect is both warranted and necessary." *Id.* at 1131.

The methodology employed by the Florida appellate court, was not, as Hunter would have us conclude, only applicable in a particularized set of circumstances. Rather, the Florida appellate court, as had the courts *Angulo-Gil*, *Edmonds*, *Flores*, and *Medina*, determined what had preceded the verbal "no" constituted sufficient circumstances for the police officers to clarify what "no" meant. Applying that logic to the facts in this case, the detectives in the instant case, having had to provide additional explanation regarding the contents of the *Miranda* waiver form, found it advisable to again clarify the final statement on the form in order to elucidate Hunter's response.

In conclusion, Judge Taylor did not err when he denied the motion to suppress

statements Hunter had made during the interview with police, because Hunter had failed to clearly invoke his *Miranda* rights. Hunter's convictions are affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.