Circuit Court for Prince George's County
Case No. CT-16-1361X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 610

September Term, 2019

OLUREMI ADELEYE

v.

STATE OF MARYLAND

Berger,
Arthur,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: August 5, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On October 24, 2016, eight-month-old Enita Salubi died of asphyxiation after her caregiver, appellant Oluremi Adeleye, poured formula and another clear liquid from two eight-ounce bottles into her mouth. During a five-day bench trial in the Circuit Court for Prince George's County, the State played home-security video of the incident and Ms. Adeleye's video-recorded interview with a police detective later that day. The trial court, after making detailed factual findings, convicted Ms. Adeleye of second-degree "depraved heart" murder, first-degree child abuse resulting in death, and second-degree child abuse.

Ms. Adeleye filed this timely appeal.

BACKGROUND

In May 2016, Ms. Adeleye, a mother, grandmother, and experienced child caregiver, became a live-in nanny for the three children of Influence Salubi and Nikia Porter. Ms. Adeleye had been referred to Mr. Salubi and Ms. Porter by a friend after Mr. Salubi asked for a nanny reference. Her duties were to care for a three-year-old girl, a two-year-old boy, and Enita, an infant who was born on February 9, 2016.

During Ms. Adeleye's first few weeks as the new nanny, Mr. Salubi and Ms. Porter often observed her care of the children via cameras that had been set up throughout the house. Ms. Adeleye was aware of the "nanny" cameras. After witnessing and resolving one incident, in which Ms. Adeleye left the children upstairs while she used the downstairs bathroom, Mr. Salubi and Ms. Porter felt comfortable with Ms. Adeleye's care and stopped monitoring the cameras.

According to Ms. Porter, Enita typically drank a full bottle of up to eight ounces of formula over a 15- to 20-minute period. When Ms. Adeleye informed Ms. Porter, during her first and second week as a nanny, that Enita "didn't want to eat," Ms. Porter told Ms. Adeleye that it was "fine" if Enita did not want to eat and that she would "eat when she gets hungry."

In the weeks before Enita's death, Mr. Salubi and Ms. Porter had noticed that the nipples on the child's bottles had been cut to enlarge the opening and increase the flow of fluid. Mr. Salubi confronted Ms. Adeleye about the altered bottles, and she denied enlarging the openings. Mr. Salubi threw out those bottles, purchased new ones with nipples that allowed an age-appropriate flow, and instructed Ms. Adeleye to use the new bottles when feeding Enita.

On the morning of Enita's death, October 24, 2016, Mr. Salubi again noticed that the nipples on the bottles had been altered to enlarge the hole. Ms. Adeleye again denied altering the nipples. Mr. Salubi replaced the bottles and instructed Ms. Adeleye not to use the altered nipples.

That morning, Ms. Porter fed Enita eight ounces of formula before leaving for work. When Ms. Porter and Mr. Salubi left the children in Ms. Adeleye's care, all three children were healthy.

That afternoon, at 4:04 p.m., Ms. Adeleye called Mr. Salubi and informed him that there was "something wrong" with Enita. Mr. Salubi called 911 for help and drove home. Upon arriving home, Mr. Salubi found Ms. Adeleye sitting on the couch with Enita. When Mr. Porter took Enita from Ms. Adeleye, Enita's head and arms fell

backwards. Mr. Salubi saw milk coming out of Enita's mouth and nose. He attempted to suck the milk out of her mouth before beginning CPR compressions. As he performed CPR, more milk came out of Enita's mouth and nose.

Minutes after Mr. Salubi began applying chest compressions, an ambulance arrived. The EMTs found Enita unresponsive and continued applying compressions. As they conducted CPR, more milk came out of Enita's nose and mouth.

The EMTs took Enita to Prince George's Hospital Center. The doctors were unable to revive Enita, and she was pronounced dead at 5:36 p.m.

Officer Denise Shapiro and Sergeant Benjamin Brown, detectives with the Prince George's County Police Department, were notified of an incident involving a deceased baby. After meeting with the family at the hospital, the detectives went to Mr. Salubi's and Ms. Porter's home. They asked Ms. Adeleye, who had remained at home with the other two children, to explain what had happened. Ms. Adeleye told them that at 1:00 p.m. she had fed Enita a bottle, which Enita did not finish, and that Enita took a nap. Ms. Adeleye said that she went to change Enita's clothes and noticed that Enita's head was "wrong." She then called Mr. Salubi.

Sergeant Brown brought Ms. Adeleye to be interviewed at the police station. Officer Shapiro remained at the house and noticed the nanny cameras. She obtained Mr. Salubi's consent to review the recordings.

The video showed that Ms. Adeleye had been resting on the sofa when Enita attempted to get her attention by pulling at her. After a few minutes, Ms. Adeleye retrieved a bottle. According to the pathologist's report, she unscrewed the top of the

nearly full bottle of "approximately six to seven ounces" of formula and poured the formula into "her cupped hand and allowed the liquid to freely flow into the mouth of Enita." She did this for "slightly more than 30 seconds" while Enita flailed her arms and legs. Enita "then fell a short distance to the floor," but Ms. Adeleye did not react to Enita's distress. About one minute later, Ms. Adeleye poured "clear liquid" from another bottle "down the mouth of Enita for about ten seconds." Enita went limp and became unresponsive. Ms. Adeleye wiped at Enita's mouth, bounced Enita on her lap, patted her back, and walked with her.

Officer Shapiro informed Detective Brown of what she had seen on the video. Detective Brown asked Ms. Adeleye if she had removed the tops from the bottles, and Ms. Adeleye denied that she had. After Detective Brown informed Ms. Adeleye that the video showed her removing the tops from the bottles, Ms. Adeleye stated that she fed Enita from her cupped hand a little at a time.

Ms. Adeleye was charged with child abuse resulting in death, child abuse in the second degree, and second-degree murder.

At trial, the parties agreed that Enita died after Ms. Adeleye took the top off two bottles to feed her. The medical and forensic evidence established that, when a large amount of fluid was poured into Enita's mouth over a short period of time, some fluid went into Enita's trachea, filling her airways and lungs. Because the child had aspirated the formula, "she was not able to breathe properly or deliver . . . oxygen in the air into the blood or into the body." According to the medical examiner, Enita's "lungs were filled up with this milky fluid which prevented her from breathing" and caused her death.

The State predicated its case on two pieces of evidence: (1) the video of Ms. Adeleye responding to Enita's attempts to get her attention before force-feeding the struggling infant from two different bottles and (2) the police video of Ms. Adeleye denying that she took the tops off two bottles or poured them directly into Enita's mouth. The prosecutor argued that Ms. Adeleye caused Enita's death by pulling her head back and "forcing milk down." Given Ms. Adeleye's childcare experience, the prosecutor argued that her actions and her disregard for the child's physical distress amounted to child abuse by cruel or inhumane physical treatment and second-degree "depraved heart" murder.

Ms. Adeleye admitted that Enita died after she fed her, but denied that she poured fluids down the infant's throat. She maintained that the baby's death was an unexpected and accidental tragedy. She claimed that she poured small amounts of formula into her cupped hand and fed it to the child, with much of it spilling. She contended that she was employing a traditional Nigerian method for feeding infants.

To support this contention, the defense presented several witnesses who had previously employed Ms. Adeleye as a nanny. Three of Ms. Adeleye's former employers, all of whom were of Nigerian descent, testified that they had approved of cupping as a method to feed their infants and that they had seen Ms. Adeleye feed their infants in such a manner. On cross-examination, one of those witnesses, after being shown the video of Ms. Adeleye with Enita, admitted that Ms. Adeleye's actions deviated from the cupping method that she had seen and approved, in which the baby is sat up and, using a cupped hand, "you try to put it in slowly[,]" little by little. When asked whether

what she saw on the video was what she was describing as cupping, the witness answered, "No."

The trial court denied Ms. Adeleye's motions for judgment of acquittal and found that she had acted with an extreme disregard to the life-endangering consequences of her actions. The court found Ms. Adeleye guilty of first-degree physical abuse, child abuse in the second degree, and second-degree murder. The court specifically found that Ms. Adeleye "cause[d] physical injury" to Enita "as a result of cruel and inhumane treatment."

On the charge of first-degree child abuse, the court sentenced Ms. Adeleye to 40 years' imprisonment, with all but 15 years suspended. On the charge of second-degree murder, the court sentenced Ms. Adeleye to a concurrent 30 years, with all but 15 years suspended. Ms. Adeleye's conviction for second-degree child abuse merged with her conviction for first-degree child abuse for purposes of sentencing.

We shall add material from the record in our discussion of the issues raised by Ms. Adeleye.

QUESTIONS PRESENTED

Ms. Adeleye presents the following two questions, which we have reworded and reordered:

1. Did the motions court err in denying Ms. Adeleye's motion to suppress her recorded statements to the police?

2. Was the evidence legally sufficient to sustain the convictions?[1]

In affirming the findings of the circuit court, we first conclude that motions court did not err in denying Ms. Adeleye's motion to suppress. Second, we conclude that there was sufficient evidence to support Ms. Adeleye's convictions.[2]

DISCUSSION

I. Motion to Suppress

Before trial, Ms. Adeleye had moved to suppress her statements to the police. The circuit court denied Ms. Adeleye's motion. On appeal, Ms. Adeleye renews her challenge, arguing that she did not knowingly waive her *Miranda* rights because she "spoke only broken English."

We reject her contention for two reasons. First, we conclude that she was not "in custody," for purposes of *Miranda*, when she made the statements that the court admitted at trial; hence, she was not yet entitled to *Miranda* advisements. Second, we conclude

---

[1] Ms. Adeleye asked:

1. Is the evidence sufficient to sustain the convictions?

2. Did the motions court err in denying the motion to suppress Appellant's statement?

[2] The State argues that we cannot review the motions court's decision, because Ms. Adeleye has not obtained transcripts of the interviews or a video recording of the second interview, on October 25, 2016. We are unpersuaded. At trial, the State did not use any portion of the second interview. Consequently, we don't need a transcript or recording of that interview. The State did play parts of the first interview, on October 24, 2016, but we can adequately review what occurred from viewing the video, which Ms. Adeleye has obtained.

that, even if she was "in custody" at the time when she received the *Miranda* advisements, she was capable of understanding them and of waiving her rights.[3]

A. Suppression Record

The court held a suppression hearing to determine the admissibility of the statements that Ms. Adeleye made to the police on October 24 and 25, 2016. At the outset of the hearing, counsel for Ms. Adeleye sought to exclude evidence of her statements to police on both days, arguing that the statements resulted from a custodial interrogation conducted without a valid *Miranda* waiver. During the hearing, the court supplied an interpreter for Ms. Adeleye.

Detective Brown testified that, when he responded to the Salubi-Porter house to assist in what initially was a death investigation, Ms. Adeleye was identified as a witness who "had care and custody of the child that day." Because "formal interviews are done at the station to be audio and video recorded[,]" and because other investigators were on the scene and were interviewing the child's parents, Detective Brown asked Ms. Adeleye if she would "come to the police station for an interview." He told her that she was not under arrest. She agreed to go.

At around 10:00 p.m., Detective Brown drove Ms. Adeleye to the police station in an unmarked police car. She was not restrained in the car.

[3] Ms. Adeleye argues that the court erred in not suppressing the statements that she made on both October 24, 2016, and October 25, 2016. At trial, however, the State did not offer any of the statements that Ms. Adeleye made on October 25, 2016. Consequently, we need not decide whether the court ought to have suppressed any of those statements.

En route, Ms. Adeleye told Detective Brown that she was from Nigeria. When they arrived at the police station, the detective attempted to obtain a Nigerian interpreter, but was informed that none were available. Detective Brown testified that he inquired about whether an interpreter was available "just to be safe."

Ms. Adeleye spoke to Detective Brown in English and never asked for an interpreter. When Detective Brown asked whether Ms. Adeleye could read and write in English, she said yes, but maybe not big words.

Detective Brown began the interview at 10:57 p.m. He testified that he did not give *Miranda* advisements, because Ms. Adeleye "was not under arrest." Detective Brown also testified that he told Ms. Adeleye "multiple times" that she was free to leave. The door to the interview room was not locked. The detective was wearing a shirt and tie, not a police uniform.

Approximately 30 minutes into the interview, Detective Brown spoke to Officer Shapiro, who informed him that Ms. Adeleye may have force-fed Enita. At that point, Detective Brown determined that Ms. Adeleye was "potentially a suspect." The detective testified that, although Ms. Adeleye "was still not in custody[,]" he "felt it right to go ahead and read her the Advice of Rights and Waiver form just to be safe." He recounted that at 11:40 p.m., he "went back in" and gave Ms. Adeleye a copy of "the Prince George's County Police Department Advise of Rights and Waiver form."

Detective Brown testified that he "read the entire form" out loud to Ms. Adeleye, from "top to bottom." They reviewed each question "distinctly." He testified that if Ms. Adeleye had a question at any point, he would make his "best attempt" to clarify any

confusion before moving on. He further testified that, because there were times when they may have had trouble understanding each other, he "went into greater detail with explaining things and trying to break it down so she could understand." The detective "would not move on until [he] knew she had a good understanding of what [they] were talking about." Detective Brown advised Ms. Adeleye that she did not have to talk to him any longer if she did not want to. He asked whether she understood. If she did understand, he asked to put her initials on the form and "check yes." Ms. Adeleye signed the form and agreed to continue talking.

Detective Brown testified that Ms. Adeleye first denied that she had taken the top off the bottles or that she had poured formula down Enita's throat. Ms. Adeleye then admitted to taking the top off the bottle to put formula in her hand to feed the baby from her hand, but denied feeding the baby a second bottle or taking the top off of the second bottle. The motions court observed these portions of the interview by watching a recording of it.

The detective did not recall Ms. Adeleye asking to leave or to stop at any point during the interview. He drove her home after the interview ended. He asked Ms. Adeleye if she could come back the next day to continue talking after the autopsy had been completed.

At the suppression hearing, Detective Ruben Paz, the lead homicide detective assigned to the case, testified that Ms. Adeleye came to the police station, on her own, the following day, October 25, 2016. She was interviewed by Detective Paz and Officer Hassan Odeyemi, who speaks Ms. Adeleye's native language, Yoruba, and was available

to translate for Ms. Adeleye. At the suppression hearing, Detective Paz testified that, by that point, Ms. Adeleye was a suspect in a homicide. During that interview, Detective Paz testified, Ms. Adeleye was not free to go, but was not under arrest.[4]

Detective Paz testified that he reviewed the *Miranda* advisements in English, relying on, but not reading from, a "short form" card, while simultaneously showing Ms. Adeleye the signed form used by Detective Brown the previous day. Detective Paz did not ask any questions about Ms. Adeleye's education or her ability to read, write, and answer questions. According to Detective Paz, he asked Ms. Adeleye whether she understood the rights, but did not ask her to complete a new form and did not ask whether she was willing to sign a waiver or to answer his questions. Detective Paz testified that he did not ask Officer Odeyemi to read Ms. Adeleye her rights in Yoruba because she did not request translation and he "could clearly tell she spoke enough English to understand what [he] was saying."

Detective Paz conducted the interview in English. Officer Odeyemi did not translate everything. According to the detective, Ms. Adeleye began telling her story "in English completely," and it was not until about halfway through the three-hour interview that Ms. Adeleye first "turned to Officer Odeyemi and asked him something in Yoruba."

[4] As previously mentioned, we need not decide whether the court ought to have suppressed any of the statements that Ms. Adeleye made on October 25, 2016, because the State did not offer any of them at trial. We recount the events of October 25, 2016, because they provide some context for evaluating whether Ms. Adeleye was subjected to a custodial interrogation on October 24, 2016, and whether she had the capacity to understand *Miranda* advisements.

Mr. Salubi testified that he, like Ms. Adeleye, was originally from Nigeria, where there are hundreds of local dialects, but the official and common language is English. He explained that, unlike Ms. Adeleye, neither he nor Ms. Porter spoke Yoruba. Mr. Salubi testified that Ms. Adeleye's employment interview was conducted in English. According to both Mr. Salubi and Ms. Porter, Ms. Adeleye spoke only English to the family, and English is the only language spoken in the Salubi-Porter home. According to Mr. Salubi, Ms. Adeleye carried a bag containing a Bible and other literature, both of which were in English.

In support of suppressing her statements on both days, counsel for Ms. Adeleye argued that she was "never free to leave in either" interview and that she is so "extremely unsophisticated" and limited in her understanding of English that she could not understand or validly waive her *Miranda* rights. Counsel pointed to the testimony from Mr. Salubi and Ms. Porter that they gave her only "[t]he most rudimentary tasks" that excluded preparing food for and bathing the children, that Ms. Adeleye watched only "basic" videos in English, and that she did not drive, take the bus, or do her own banking.

The circuit court denied Ms. Adeleye's motion to suppress both statements. The court found that Ms. Adeleye was not "in custody" before Detective Brown informed her of her rights under *Miranda*. The court also found that Ms. Adeleye understood English and was able to understand her rights under *Miranda*, as Ms. Porter, Mr. Salubi, and their children spoke to Ms. Adeleye only in English.

The court found that, during the interview on October 25, 2016, Detective Paz had ensured that Officer Odeyemi, who spoke Yoruba, was available for Ms. Adeleye to rely

on if she needed a translation. The court further found that Ms. Adeleye did rely on Officer Odeyemi as needed during the interview. Thus, the court found that Ms. Adeleye was "properly advised of her rights" and that, based on the "totality of the circumstances," she "waived and intended to relinquish" her rights when she voluntarily gave her statements to the detectives.

B. The Motions Court Properly Denied Ms. Adeleye's Motion to Suppress

In reviewing the denial of a motion to suppress evidence, we "confine ourselves to what occurred at the suppression hearing." *Gonzalez v. State*, 429 Md. 632, 647 (2012). "We view the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion, here, the State." *Id.* In so doing, we defer to the motions court's factual findings unless they are clearly erroneous. *Id.* We "make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case." *Id.* at 648.

On appeal, Ms. Adeleye poses the limited question of whether she had a sufficient understanding of English to comprehend the rights that she was waiving. Therefore, we begin by reviewing the relevant rights established by the Fifth Amendment of the United States Constitution, applicable to the State through the Fourteenth Amendment, and further articulated by *Miranda v. Arizona*, 384 U.S. 436 (1966), and its progeny.

The Fifth Amendment to the United States Constitution, guarantees that "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend V. The "'privilege against self-incrimination' . . . applies to individuals

who are subjected to custodial interrogation by law enforcement officials." *Madrid v. State*, 247 Md. App. 693, 715 (2020), *aff'd* 2021 WL 2885923 (Md. July 9, 2021).

Miranda established that the State "may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless [the State] demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." *Miranda v. Arizona*, 384 U.S. at 444. Under these procedural safeguards, an accused must be "adequately and effectively apprised" (*id*. at 467) of the following rights:

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

Id. at 479.

After a person is apprised of the rights under *Miranda*, he, she, or they "may knowingly and intelligently waive these rights and agree to answer questions or make a statement." *Id.*

Miranda warnings—and thus a valid *Miranda* waiver—are required only "'where a suspect *in custody* is subjected to interrogation.'" *See Rodriguez v. State*, 191 Md. App. 196, 216 (2010) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980)) (emphasis added). "[S]tatements obtained from defendants during custodial interrogation or conditions that created similar circumstances, without the full warning of constitutional rights, and a waiver of those rights, [are] inadmissible as having been obtained in

violation of the Fifth Amendment privilege against self-incrimination." *Reynolds v. State*, 461 Md. 159, 177 (2018).

Therefore, before we consider whether Ms. Adeleye validly waived her *Miranda* rights, it makes sense, first, to determine whether Ms. Adeleye was "in custody" when she was interviewed by the police. Because the State introduced statements only from the interview on October 24, 2016, we confine the analysis to the question of whether she was "in custody" on that date.

1. Pre-*Miranda* Custody

Miranda's protections apply "as soon as a suspect's freedom of action is curtailed to a 'degree associated with formal arrest.'" *Brown v. State*, 452 Md. at 212 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)). But because "[n]ot all restraints on freedom . . . constitute custody for *Miranda* purposes[,]" the burden is on the defendant asserting a *Miranda* violation to establish that she was in custody when the challenged interrogation occurred. *Id.* The "determination of whether an individual is in *Miranda* custody is an objective inquiry based on the totality of the circumstances," in which we determine "whether a 'reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.'" *Brown v. State*, 452 Md. at 210 (alteration in original) (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). In our analysis, we consider

> when and where [the interrogation] occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness.

> Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Brown v. State, 452 Md. at 211 (quoting *Thomas v. State*, 429 Md. 246, 260-61 (2012)) (citations omitted). *See also Howes v. Fields*, 565 U.S. 499, 509 (2012) (identifying factors relevant to *Miranda* custody, including "the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning") (citations omitted).

Applying these standards, we ask whether, before receiving *Miranda* advisements, a reasonable person in Ms. Adeleye's circumstances would have felt "at liberty to terminate the interrogation and leave" the interview. *See Thompson v. Keohane*, 516 U.S. at 112; *Brown v. State*, 452 Md. at 210. Our "lodestar" for this objective inquiry is whether Ms. Adeleye "was subjected to an environment containing the inherently compelling pressures of custodial interrogation, which powered the Court's decision in *Miranda*." *Brown v. State*, 452 Md. at 212 (citing *Berkemer v. McCarty*, 468 U.S. at 437).

We conclude that Ms. Adeleye was not "in custody" at any point during the interview on October 24, 2016. She voluntarily went to the police station to answer questions at a time when she was merely a witness in a death investigation, albeit one important enough to be put "on the record" in a "formal" interview. Because she could

not drive, she accepted Detective Brown's offer and rode to the police station in the front seat of his unmarked car. Although the door to the interrogation room was closed, it was unguarded and unlocked. She was not in custody merely because the consensual interview took place at the police station. *See Brown v. State*, 452 Md. at 215.

Before the interview began, Detective Brown told Ms. Adeleye "multiple times" that she was free to leave, a factor that carries significant weight in *Miranda* custody jurisprudence. *Cf. Brown v. State*, 452 Md. at 204, 218 (holding that suspect was in custody after being picked up at a hospital following treatment for a gunshot wound, by investigating officer who took him to police station without telling him he was free to go). Ms. Adeleye was not physically restrained at any time. She retained her personal belongings, including her purse and cell phone, so that she was not "cut off from the outside world." *Cf. United States v. LeBrun*, 363 F.3d 715, 722 (8th Cir. 2004) (explaining that retaining a cellphone as "a line of communication between himself and the outside world . . . . to some extent mitigated the incommunicado nature of interrogations with which the *Miranda* Court was concerned and the psychological pressure associated with being isolated in an interview room").

The environment was not the type of highly-coercive setting described in *Miranda*. *See Howes v. Fields*, 565 U.S. at 508-09 (suggesting that beyond a "freedom-of-movement inquiry," courts should consider "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*"). Only Detective Brown, wearing a shirt and tie, questioned Ms. Adeleye. He addressed her respectfully and matter-of-factly, without raising his voice,

accusing her, or otherwise challenging her. Throughout his pre-*Miranda* questioning, Detective Brown explained that he was trying to find out what happened that day when Enita was in her care, while pointing out that there had not yet been an autopsy and that cause of death had not been determined. When Ms. Adeleye became emotional, he acknowledged that she was upset.

After learning that the home video showed Ms. Adeleye force-feeding the baby, Detective Thomas's questioning reflected a more targeted line of inquiry. But even though Ms. Adeleye had become a suspect in a potential homicide case, the detective was not obligated to tell her so, and he did not. *See Minehan v. State*, 147 Md. App. 432, 442 (2002) (explaining that "police do not violate *Miranda* by telling the accused he or she is only a witness, when, in fact, the person is a suspect."); *see also California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam) (stating that *Miranda* warnings are not required simply because a person is a suspect).

Instead, without revealing what he had learned from Detective Shapiro, Detective Brown focused on details relevant to the reported force-feeding, including whether there were any problems with the bottles, whether she gave the baby "just one bottle," how many ounces she gave the baby, and whether Ms. Adeleye held the baby while feeding her. Although the detective eventually informed Ms. Adeleye that "there was a video" and continued questioning her for another ten minutes, he did not reveal to Ms. Adeleye what the video showed or otherwise challenge her answers until after the *Miranda* advisements and waiver. In these circumstances, even if a reasonable person would

understand that her actions were the focus of police investigation, we cannot say that she would have felt compelled to continue the interview.

Ms. Adeleye's subsequent conduct also suggests that she chose to continue talking to the detective, as she waived her *Miranda* rights and agreed to continue the interview. Indeed, the next day, she voluntarily returned to the station on her own for additional questioning.

Evaluating these factors in their totality, with no one factor viewed in isolation, *see Thomas*, 429 Md. at 260, we agree with the State that a reasonable person in Ms. Adeleye's circumstances would have felt that she could terminate the interview. She was not in custody, for *Miranda* purposes, at any time during the interview on October 24, 2016.[5]

2. *Miranda* Waiver Inquiry

Assuming for the sake of argument that Ms. Adeleye was "in custody" when Detective Brown advised her of her *Miranda* rights, we reject her contention that she was incapable of understanding the advisements. Because she adequately waived her *Miranda* rights, we would uphold her conviction even if she were in custody.

The *Miranda* waiver inquiry "has two distinct dimensions." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). "First, the relinquishment of the right must have been

[5] Detective Brown did not give Ms. Adeleye the *Miranda* advisements until approximately 30 minutes after Ms. Adeleye became a suspect. But because Ms. Adeleye was not "in custody" at the time, *Miranda* warnings were not required. In any event, Ms. Adeleye does not argue on appeal that the circuit court erred in admitting any statements made before she received the *Miranda* warnings.

voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception." *Id*. "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." *Id*. "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.* (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)). "This approach requires an examination of 'all the circumstances surrounding the interrogation,' including the individual's 'age, experience, education, background, and intelligence, and . . . whether [s]he has the capacity to understand the warnings given [her], the nature of [her] Fifth Amendment rights, and the consequences of waiving those rights.'" *Gonzalez v. State*, 429 Md. at 652 (quoting *Fare v. Michael C.*, 442 U.S. at 725).

Ms. Adeleye argues that her *Miranda* waiver was invalid because, she says, she did not understand English well enough to comprehend the *Miranda* advisements and waive her rights. The motions court determined that Ms. Adeleye understood the advisements given in English and knowingly waived her *Miranda* rights. The suppression record supports that ruling.

In *Gonzalez v. State*, 429 Md. 632, 639 (2012), the *Miranda* warnings were given in Spanish, but the defendant's native language was the indigenous "dialect Mixtec Alto." *Id*. at 639. The advising police officer testified that he could complete the *Miranda* advisements in English within one minute, but that in this case he reviewed them with the

suspect over the course of 22 minutes. *Id*. at 644-45. During the advisements, the officer answered numerous questions posed by Gonzalez, consulted with the sister of Gonzalez's "confederate" regarding translations for "court" and "attorney," and used phonetic language to communicate those words to Gonzalez. *Id*. at 642-43.

Applying the *Miranda* standards, the Court of Appeals concluded that Gonzalez comprehended the advisements well enough to make a valid waiver. *Id.* at 652. After consulting with a speaker of Spanish and Mixtec Alto, the officer had used "the phonetic spelling of what he understood to be the Mixtec words for 'court' and 'attorney[,]'" which "sufficiently conveyed to [Gonzalez], based on his reaction to the trooper's pronunciation, the meaning of" those important words. *Id*. at 653.

Although Gonzales had a Mixtec interpreter at trial, the Court of Appeals was unpersuaded that he could "not sufficiently comprehend the *Miranda* warnings and make a knowing waiver of the *Miranda* rights." *Id*. at 658. The Court pointed out that the judge who provided an interpreter at trial "did not have the benefit of listening to the audiotaped interrogation, which demonstrates [Gonzalez's] ability to understand and answer questions posed in Spanish." *Id.*

Here, the suppression record is stronger than the record in *Gonzalez*, because, unlike the court in *Gonzalez*, the motions court in this case could review the advisements and waiver, which were given in English, as well as the video-recording showing the full advisements and interview. As the *Gonzalez* Court pointed out, these factors aid appellate review by allowing us to see and understand what both the advising officer and

the interrogee said and did before she signed the *Miranda* waiver.[6] In further contrast to *Gonzalez*, there is no dispute in this case that the *Miranda* advisements given during the interview on October 24, 2016, were constitutionally adequate in that they contained the necessary information about Ms. Adeleye's rights.

Here, the video of the interview and the suppression hearing testimony supply sufficient evidence to support the waiver finding. Ms. Adeleye is from Nigeria, where the official language is English, even though the language spoken in her native region is Yoruba. On October 24, 2016, she had been living in the United States for at least four years. Five months earlier, in May 2016, Ms. Adeleye interviewed in English with Mr. Salubi for this nanny position. She worked for and lived with the Salubi-Porter family, a household in which everyone spoke English and no other language to her and to each other. Neither Ms. Porter, nor Mr. Salubi, nor the children speak Yoruba.

Ms. Adeleye communicated with Detective Brown entirely in English throughout their interaction on October 24, 2016, beginning at the Salubi-Porter residence. She never asked for an interpreter or otherwise indicated that she did not understand what Detective Brown was saying. To the contrary, the video shows that Ms. Adeleye's responses to the questions posed in untranslated English "were immediate and without

[6] The dissent in *Gonzalez* maintained that, because there was no record of "what [Gonzalez] was told with regard to his rights, the suppression court could not have, and should not have, concluded that the warnings were constitutionally adequate or that [Gonzalez's] waiver of the right was intelligently and knowingly done." *Gonzalez v. State*, 429 Md. at 671 (Bell, C.J., dissenting). By contrast, we have the record here.

hesitation[,]" suggesting that she fully understood Detective Brown's questions. *See Gonzalez v. State*, 429 Md. at 659.

When Detective Brown asked Ms. Adeleye whether she understood each warning, she affirmatively stated that she did and initialed the form next to the correct paragraph. As the detective was reading the *Miranda* advisements, she asked questions in English. After he responded in English, she indicated that she understood his answer, verbally or by nodding her head, before marking the *Miranda* form.

The following day, when Ms. Adeleye voluntarily returned for a second interview, a Yoruba-speaking officer was available to translate if requested by Ms. Adeleye. Yet she did not request translation of the *Miranda* waiver that she had signed the previous day, and it was not until about halfway through the three-hour interrogation that she asked for any translation from English.

The motions court had the benefit of watching the videos of the two interviews. Based on our review of the hearing testimony, we are satisfied that Ms. Adeleye did not have a language barrier that impaired her comprehension of the *Miranda* advisements. Even if she was in custody after being informed of her *Miranda* rights, the evidence supports the motions court's determination that Ms. Adeleye understood the *Miranda* advisements well enough to make a knowing waiver of her *Miranda* rights.

Because Ms. Adeleye was not in custody during pre-*Miranda* questioning, and because she understood and validly waived her *Miranda* rights before the post-*Miranda* questioning, the motions court did not err in admitting evidence of her statements on October 24, 2016.

II. Sufficiency Challenges

Ms. Adeleye challenges the sufficiency of the evidence to establish the required *mentes reae* for her child abuse and murder convictions. Quoting *Morrissette v. United States*, 342 U.S. 246, 251 (1952), she argues that "a defendant must be 'blameworthy in mind' before [s]he can be found guilty[,]" and that her "[m]istake or . . . error in judgment" did not establish the requisite "'concurrence of an evil-meaning mind with an evil-doing hand'" necessary to support any criminal liability in this case.

Based on the law and record discussed below, we conclude the evidence is sufficient to support the child abuse and second-degree murder convictions.

A. Standard of Review

When addressing a sufficiency challenge to a criminal conviction, this Court asks "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *McClurkin v. State*, 222 Md. App. 461, 486 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). "In applying that standard, we give 'due regard to the [fact-finder's] findings of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *McClurkin v. State*, 222 Md. App. at 486 (quoting *Harrison v. State*, 382 Md. 477, 488 (2004)). On appeal, we will not "retry the case" or "re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Smith v. State*, 415 Md. 174, 185 (2010). Consequently, the dispositive issue is not "whether the evidence *should have* or *probably would have* persuaded the majority of fact finders but

only whether it *possibly could have* persuaded *any* rational fact finder." *Fraidin v. State*, 85 Md. App. 231, 241 (1991) (emphasis in original); *accord Stanley v. State*, 248 Md. App. 539, 564-65 (2020).

B. Child Abuse Convictions

First- and second-degree child abuse are statutory crimes that are distinguished by the severity of the harm sustained by the victim. *See* MPJI-Cr 4:07 & 4:07.1. First-degree child abuse, in violation of Md. Code (2002, 2012 Repl. Vol.), § 3-601(b)(1)(i) of the Criminal Law Article ("Crim. Law"), criminalizes "abuse" caused by a person with "custody or responsibility for the supervision of a minor" if the abuse "results in the death of the minor[.]" Second-degree child abuse in violation of Crim. Law § 3-601(d)(1)(i) criminalizes abuse, regardless of the severity of the resulting physical harm. Under this statutory scheme, "[a]buse" is defined to "mean[] physical injury sustained by a minor as a result of cruel or inhumane treatment or as a result of a malicious act under circumstances that indicate that the minor's health or welfare is harmed or threatened by the treatment or act." Crim. Law § 3-601(a)(2).

Although "child abuse," as defined, encompasses "physical injury sustained by a minor as a result of cruel or inhumane treatment[,]" Crim. Law § 3-601(a)(2), the meaning of "cruel or inhumane treatment" is not defined by statute. Instead, that standard has been judicially construed to have "a settled and commonly understood meaning." *Bowers v. State*, 283 Md. 115, 126 (1978). "The word 'inhuman,' a variant of 'inhumane,' is defined by [Webster's Third New International Dictionary] as 'lacking the qualities of mercy, pity, kindness, or tenderness: cruel, barbarous, savage[.]'" *Id*. at 125.

"Black's Law Dictionary (4th ed. 1968) defines the term 'cruelty' as 'the intentional and malicious infliction of physical suffering upon living creatures, particularly human beings; . . . applied to the latter, the wanton and unnecessary infliction of pain upon the body.'" *Id*. at 125-26.

The mens rea of child abuse "does not involve an accused's subjective belief." *Fisher v. State*, 367 Md. 218, 270 (2001). Rather, child abuse is a "general intent crime, and its mens rea requires only intentionally acting or failing to act under circumstances that objectively meet the statutory definition of abuse." *Id.* "The injury must be intentional in the sense that it is non-accidental[.]" *Id.* at 279.

In challenging her convictions for first- and second-degree child abuse, Ms. Adeleye contends that the State "failed to show that Enita sustained physical injury as a result of cruel or inhumane treatment or malicious acts" in which she "intentionally engaged in a method of feeding the child that was inappropriate."

The trial court found that Ms. Adeleye intended her acts, which amounted to cruel or inhumane treatment that caused Enita's death. Specifically, the court determined that Ms. Adeleye inflicted cruel or inhumane treatment by quickly pouring the contents from two bottles into the infant's mouth, while disregarding the immediate physical distress that the child showed by flailing her arms and legs and falling limp to the floor. Moreover, the trial court found that, as an experienced infant caregiver, Ms. Adeleye knew that force-feeding a full bottle "caused a very high risk to the life of" an eight-month-old.

The evidence supports these factual findings. Testimony by Mr. Salubi and Ms. Porter established that Enita's bottles had been altered to increase the flow rate. Ms. Adeleye knew that Mr. Salubi had twice replaced those bottles to prevent her from feeding Enita too quickly. Disregarding the parents' repeated instructions about feeding Enita from bottles that allowed her to suck and swallow safely at a slower rate, Ms. Adeleye removed the top from Enita's bottle and poured six to seven ounces into the baby's mouth without stopping to let her breathe.

In the video of the incident, the child tries to rouse Ms. Adeleye from her reclining position on the sofa. Ms. Adeleye responds to Enita only after the baby makes several attempts to gain her attention. She picks up Enita and briefly offers her a nearly full bottle. She unscrews the top of the bottle, removes it, holds the child's mouth open, pins her in a prone position, and pours nearly all of the liquid into the child's mouth, without stopping for more than twenty seconds. The child flails her arms and kicks, but Ms. Adeleye continues to pour the liquid until the child falls to the floor. While the child is aspirating fluid from the first bottle into her airways and lungs, Ms. Adeleye picks up a second bottle, removes the top, repeats the restraint, and pours fluid from that bottle into the child's mouth for approximately ten seconds, again ignoring the child's flailing and kicking.

This evidence supports the trial court's finding that Ms. Adeleye's "actions were not accidental or inadvertent" and that she "intended to quickly pour the formula into the mouth of Enita[.]" The same evidence is sufficient to refute Ms. Adeleye's defense that

she was trying to feed the child by using the "cupping" method described by her former employers.

Collectively, this evidence also supports the trial court's determination that Ms. Adeleye's treatment of Enita was "cruel or inhumane," in that she intentionally inflicted "physical suffering" in a "wanton and unnecessary" manner that was "lacking the qualities of mercy, pity, kindness, or tenderness." *See Bowers v. State*, 283 Md. at 125-26. The evidence is therefore sufficient to sustain the convictions for first-degree child abuse resulting in death and second-degree child abuse resulting in physical injury.

C. Depraved-Heart Murder Conviction

Ms. Adeleye contends that there was insufficient evidence to support her conviction for second-degree murder under Crim. Law § 2-204. Ms. Adeleye argues that the evidence does not show that Enita's death resulted from her intentional actions, but rather that the "fatal injuries were the result of a tragic accident or mistake." Ms. Adeleye further argues that the State "presented no evidence" that she had either "the specific intent to kill Enita" or "intended to inflict bodily harm so severe that Enita would probably die."

The State, though, did not advance a second-degree murder conviction under the theory that Ms. Adeleye had the specific intent to kill or inflict severe bodily harm on Enita. Rather, the State prosecuted the case solely under the depraved-heart modality of second-degree murder. For the reasons that follow, we conclude that the State presented evidence sufficient to uphold Ms. Adeleye's conviction of depraved-heart murder.

Second-degree murder is a killing "accompanied by any of at least three alternative *mentes reae*:

> [(1)] killing another person (other than by poison or lying in wait) with the intent to kill, but without the deliberation and premeditation required for first degree murder; [(2)] killing another person with the intent to inflict such serious bodily harm that death would be the likely result; and [(3)] what has become known as depraved heart murder[.]

Burch v. State, 346 Md. 253, 274 (1997); *accord Kouadio v. State*, 235 Md. App. 621, 628 (2018).

Depraved heart murder is a killing resulting from "'the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not.'" *Robinson v. State*, 307 Md. 738, 744 (1986) (quoting *Debettencourt v. State*, 48 Md. App. 522, 530 (1981)); *accord Burch v. State*, 346 Md. at 274; *Kouadio v. State*, 235 Md. App. at 628.

To convict a defendant of depraved heart murder, the State has the burden of proving that (1) the defendant caused the victim's death; (2) that the defendant's conduct "created a very high degree of risk to the life" of the victim; and (3) "that the defendant, conscious of such risk, acted with extreme disregard of the life endangering consequences." MPJI-Cr 4:17.8(A). "[A]s long as the conduct demonstrates an extreme indifference to the value of human life, it does not matter whether the conduct that caused the death was performed with [or without] an intent to injure." Comment to MPJI-Cr 4:17.8. Thus, a defendant may be guilty of depraved-heart murder, if the "injury is intentionally inflicted, without intent to kill, and the victim subsequently dies as the result of the injury[.]" *Robinson v. State*, 307 Md. 738, 746 (1986).

Here, the evidence supports the trial court's finding that Ms. Adeleye's treatment of Enita was not the result of a singular "error in judgment," as Ms. Adeleye insists, but was instead the result of Ms. Adeleye's intentional conduct, in which she acted with extreme disregard of the very high degree of risk to Enita's life.

Ms. Adeleye, as an experienced child-care provider, would have been aware of the risk of pouring six to seven ounces of formula into the infant's mouth within twenty to thirty seconds. Beyond what she knew from experience, Ms. Adeleye knew that Enita's parents had repeatedly warned against feeding their daughter too quickly and insisted that Ms. Adeleye use the nipples that they deemed suitable for Enita. This evidence supports the trial court's factual finding that Ms. Adeleye knew that delivering fluid as quickly as she did would overwhelm the baby's ability to swallow, creating a risk of asphyxiation with potentially lethal consequences, yet she intentionally disregarded this risk.

Additionally, Ms. Adeleye's actions after she force-fed Enita support the trial court's inference that she showed consciousness of guilt. Ms. Adeleye disregarded Enita as the child flailed and kicked while being force-fed. After unsuccessfully attempting to revive Enita, Ms. Adeleye finally called for help from Mr. Salubi, but lied about the circumstances under which the child became unresponsive. When the police asked what happened, she denied responsibility and downplayed her actions, falsely claiming that the child had refused to eat and that she did not take the tops off the bottles. When she did admit to taking the tops off of the bottles, Ms. Adeleye continued to claim that she had fed Enita in the "cupping" method and that Enita drank from her hand. This evidence

supports the trial court's findings that Ms. Adeleye's trial testimony was "inconsistent with the video recording[,]" "incredible[,]" and indicative of her "consciousness of guilt."

Collectively, this evidence is sufficient to support the trial court's findings that Ms. Adeleye deliberately committed what she knew to be a dangerous act, with reckless indifference as to whether Enita was harmed. The evidence showed that Ms. Adeleye intended to engage in the reckless, life-endangering act that caused Enita to asphyxiate and that Ms. Adeleye acted with "wanton unconcern and indifference as to whether" her conduct caused harm. Therefore, there was sufficient evidence to support Ms. Adeleye's conviction for depraved heart murder.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.