UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0898

September Term, 2015

LARRY WINSLOW

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Woodward, J.

Filed: June 10, 2016

Larry Winslow, appellant, was indicted in the Circuit Court for Baltimore County on charges of robbery with a dangerous weapon and the use of a firearm during the commission of a crime of violence, along with several related offenses.[1] Appellant subsequently filed a motion to suppress his confession, which the court denied. Pursuant to Md. Rule 4-242(d), appellant entered a conditional plea of guilty on the charge of robbery with a dangerous weapon and the charge of use of a firearm during the commission of a crime of violence. The court sentenced appellant to five years' imprisonment, without parole, on the firearm offense, and to a concurrent term of five years' imprisonment for armed robbery.

On appeal, appellant raises the following question: Did the trial court err in denying appellant's motion to suppress?

Finding no error, we shall affirm the judgments of the circuit court.

SUPPRESSION HEARING

The evidence presented at the suppression hearing shows that on June 12, 2014, Miguel Ramos and his wife, Micaela Flores, exited their vehicle near McDowell Lane in Lansdowne, Baltimore County. Ramos was carrying his wife's purse, which contained her Verizon cell phone. They were approached by two individuals who demanded the purse, one of whom pointed a handgun at them. Ramos handed over the purse, and the suspects fled.

The stolen cell phone remained active for a week following the robbery. Detective Timothy Zombro of the Baltimore County Police Department subpoenaed the records of the

[1] In total, appellant was charged with two counts of robbery with a dangerous weapon, two counts of robbery, two counts of first degree assault, two counts of theft under $1,000, two counts of use of a firearm during the commission of a crime of violence, one count of possession of a firearm by a person previously convicted of a disqualifying crime, and one count of possession of a firearm by a person previously convicted of a crime of violence.

stolen cell phone, which showed that, following the robbery, the phone had been used to make calls. The detective contacted individuals who had received calls from the stolen cell phone, and they identified appellant as the individual who had called them.

Appellant was subsequently arrested in Baltimore City on an unrelated charge. Detective Zombro, along with two other officers from the Baltimore County Police Department, transported appellant from the Baltimore City Detention Center to the police station for questioning regarding the robbery. While in transit, Det. Zombro read appellant his *Miranda* rights[1] from the Baltimore County Police Form 14. Appellant indicated to the detective that he could not read, but he stated that he understood his rights as the detective had read them to him. Appellant initialed each section of the *Miranda* [2] form, "LL". When the detective asked appellant why he used the initials "LL" (since appellant's initials are "LW"), appellant responded, "oh, they call me 'Little Lar.'" Appellant then signed the form with his full name. Appellant agreed to waive his rights and was questioned during the ride to the police station.

Appellant admitted to Det. Zombro that he and his friend, Rashid, robbed the victims at Lansdowne, and that Rashid pointed the gun at the victims and took the pocketbook and cell phone from them. Upon arrival at the police station, the officers removed appellant's handcuffs and offered appellant a snack, a drink, and two cigarettes, which he smoked. Appellant was placed in an interview room where the detective reviewed the *Miranda* waiver

[2] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

form with appellant again. Det. Zombro then discussed the information that appellant provided in the car, and asked appellant if he would like to write a statement. Appellant agreed, but he indicated that "he didn't write too well." Appellant began to write the statement and asked the detective how to spell "phone." At that point, the detective offered to have appellant dictate the statement, and the detective would write it for him. When the statement was complete, Det. Zombro read the statement back to appellant. Appellant then signed the statement, as did the detective and his partner.

The defense called Dr. Michael O'Connell, an expert in forensic psychology. Dr. O'Connell testified that appellant completed the eighth grade with special education services. He stated that appellant receives Supplemental Security Income (SSI) for a diagnosis of mental retardation, and that appellant's finances are managed by a family representative. Dr. O'Connell determined that appellant has a very low IQ and that his verbal abilities, reasoning, judgment, working memory, and his ability to pay attention and process information were "low" or "extremely low."

Dr. O'Connell also administered a test for *Miranda* comprehension, and found that appellant demonstrated a lack of understanding of his rights. Although he understood that he did not have to speak to police, appellant, according to Dr. O'Connell, did not realize that his statements to police could be used against him. Dr. O'Connell determined that appellant had a high level of suggestability, which, coupled with the over-confidence that individuals with learning deficits commonly use to compensate for their shame over their intellectual deficits, would make it difficult for appellant to assertively declare his lack of understanding.

Ultimately, Dr. O'Connell opined that appellant did not validly waive his *Miranda* rights. In rebuttal, the State called Dr. Brian Zimnitzky, an expert in forensic psychiatry, who also administered the *Miranda* comprehension test to appellant. Dr. Zimnitzky testified that he read appellant each enumerated *Miranda* right and asked appellant to explain what he understood the right to mean. He stated that appellant explained his understanding of his right to remain silent as, "I have the right to say nothing. Not to tell them nothing. Right means do the right thing. And when they ask me something I ain't gotta say nothing." When asked to describe his understanding of "anything you say can be used against you in court," appellant responded, "anything I say I can be charged for it. Admitting to something and I, and they can hold me accountable for it." With respect to his understanding of his right to an attorney, appellant explained that he understood that to mean, "I can have a lawyer before I say anything," and "they will give you a lawyer if you can't afford.[3] If given the lawyer you don't pay for it." Appellant understood his right to stop questioning to mean, "I, I can stop talking. Not say nothing else to the police. When they ask me questions I can stop." Dr. Zimnitzky scored appellant at a 9 out of a possible 10 points on the *Miranda* comprehension test, which placed appellant above the mean for adult offenders sampled.

Appellant moved to suppress his statement to police on the ground that he was unable to understand and appreciate his rights at the time he gave his statement. The court denied the motion to suppress, finding that appellant demonstrated a sufficient level of

[3] Dr. Zimnitzky asked appellant what "afford" meant, and appellant responded, "if you can pay for it."

understanding of his rights, and holding that he had waived those rights knowingly and voluntarily.

STANDARD OF REVIEW

In considering the denial of a motion to suppress evidence, we review only the record of the suppression hearing. *State v. Nieves*, 383 Md. 573, 581 (2004) (citation omitted). "'We defer to the motions court's factual findings and uphold them unless they are shown to be clearly erroneous.'" *Gonzalez v. State*, 429 Md. 632, 647 (2012) (quoting *Lee v. State*, 418 Md. 136, 148 (2011)). "The credibility of the witnesses, the weight to be given to the evidence, and the reasonable inferences that may be drawn from the evidence come within the province of the suppression court." *Gonzalez*, 429 Md. at 647-48. This Court then makes its "own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts" of the case. *Gonzalez*, 429 Md. at 648 (citations omitted).

DISCUSSION

Appellant argues that his statement should have been suppressed because, due to his diagnosed intellectual limitations, "he could not have understood that he was waiving his right to counsel and his Fifth Amendment privilege when he confessed to the police." The State responds that the "[e]vidence at the suppression hearing supported the suppression court's factual determination that, despite his intellectual deficiency, [appellant] understood his *Miranda* rights sufficiently to be able to waive them knowingly. We agree with the State.

"Perhaps nothing is more recognized in the realm of constitutional criminal procedure than the notion that once a suspect is in 'custody,' agents of law enforcement must advise the

suspect of his *Miranda* rights before engaging in 'interrogation,' should the state wish to admit the resulting statements against the suspect at trial." *Owens v. State*, 399 Md. 388, 427 (2007) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)), *cert. denied*, 522 U.S. 1144 (2008). *Miranda* warnings protect one's privilege against self-incrimination, a privilege guaranteed by the Fifth Amendment to the U.S. Constitution and applicable to the states through the Fourteenth Amendment. *See Malloy v. Hogan*, 378 U.S. 1, 6 (1964).

An individual may waive his or her *Miranda* rights, "provided the waiver is made voluntarily, knowingly and intelligently." *Moran v. Burbine*, 475 U.S. 412, 421 (1986) (citations and internal quotation marks omitted). There are two distinct dimensions to the waiver inquiry:

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

Id.; *accord McIntyre v. State*, 309 Md. 607, 615 (1987) (stating that whether there has been an effective waiver depends upon the "totality of the circumstances surrounding the interrogation").

In the present case, Det. Zombro provided appellant with *Miranda* warnings prior to questioning him in the police vehicle, and again, upon arrival at the police station, prior to completing the written statement. On both occasions, appellant stated that he understood

those rights. He gave no indication that he was unable to understand his rights due to his intellectual disabilities. Appellant initialed each of the sections of the warning form and then signed the form. Appellant never stated that he did not want to speak to the police or answer questions. Moreover, there was no evidence that appellant's statement was the result of inducement or coercion, and appellant cites to no evidence that would support a finding that his waivers were not voluntary.

On these facts, we find *Greenwell v. State*, 32 Md. App. 579 (1976), to be instructive. There, Greenwell was given *Miranda* warnings on multiple occasions, prior to his questioning by police, and before confessing to a double murder. *Id*. at 586. Evidence was introduced at the suppression hearing from two expert witnesses who had evaluated Greenwell, both of whom determined him to be in the "dull normal range in intelligence tests, and as functionally illiterate." *Id.* at 588. One expert concluded that Greenwell had the capacity to understand the *Miranda* warnings, while the other expert found that, although some of Greenwell's responses to *Miranda* comprehension questions were acceptable, others were not. *Id*. at 588-589. This Court accorded significance to Greenwell's understanding of his right to remain silent, which he explained to mean, "You can keep your mouth shut." *Id*. at 589. Despite the conflicting expert testimony, we held that "the evidence, taken as a whole, preponderated in favor of the admissibility of the appellant's statements." *Id*.

Here, appellant claims that by virtue of his intellectual limitations, he could not have knowingly and intelligently waived his *Miranda* rights. In support of this contention, appellant relies on the expert testimony of Dr. O'Connell, who testified to appellant's low

IQ, mental disability, and poor testing results on the *Miranda* comprehension test, and opined that appellant could not validly waive his *Miranda* rights. However, as aptly explained by Dr. Zimnitsky, who also administered the *Miranda* comprehension test to appellant, more important than looking at appellant's test scores, "is to look at what the quality of the statements that he had made…. they speak for themselves."

The suppression court found that appellant understood, at the time he gave his statement, that he had a right not to say anything at all; that he had a right to a lawyer; that if he chose to give a statement, that it could be used against him; and that if he wanted to stop at any time from giving the statement, that he could do so. The suppression court acknowledged that "[e]ven a person with intellectual limitations can have a level of understanding under a given set of circumstances," and the court found that appellant "demonstrated this level of understanding."

We are persuaded that, under the totality of the circumstances, appellant understood his *Miranda* rights before speaking to the detective; he waived those rights in writing and by giving a statement to police; and he made a knowing and voluntary decision to do so. Accordingly, the suppression court properly denied appellant's motion to suppress.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED; APPELLANT TO PAY COSTS.