

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2451

September Term, 2018

JASON SCOTT CARTER II

v.

STATE OF MARYLAND

Fader, C.J.,
Meredith,
Shaw Geter,

JJ.

Opinion by Meredith, J.

Filed: December 13, 2019

*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.

A jury sitting in the Circuit Court for Washington County found Jason Scott Carter II, appellant, guilty of involuntary manslaughter and related offenses, including first- and second-degree assault, five counts of reckless endangerment, and three firearms offenses. In this direct appeal, Carter contends that the circuit court erred in denying his pretrial motion to suppress a statement he made to an investigating detective. Because we conclude that the court did not err, we will affirm.

FACTS AND PROCEDURAL HISTORY

Evidence of the following was introduced at the pretrial hearing on Carter's motion to suppress use of the statements he made to the investigating detective. An audio-video recording and transcript of the interrogation and statements were introduced at the hearing on Carter's motion.

At approximately 4:15 a.m. on May 20, 2017, Eddie Ragland and Jaseye Stephens were shot at the intersection of Noland Drive and Sherman Avenue in Hagerstown. Stephens was injured but survived; Ragland died at the scene. Detective Nick Varner of the Hagerstown City Police Department was assigned as the lead investigator. Because witnesses to the shooting identified Carter as the shooter, police placed Carter under surveillance.

On May 23, 2017, officers arrested Carter at approximately 1 p.m., pursuant to a warrant that had been issued that morning. Carter was taken to police headquarters for questioning. He was placed in an interview room equipped with a recording system, and he was interviewed by Detective Varner, beginning at approximately 2:37 p.m.

At the outset of the interview, Detective Varner advised Carter—who was 18-years-old—of his *Miranda* rights in the following manner:¹

[DETECTIVE VARNER]: Need anything else, Jason, before we start?

[CARTER]: Nah. Can we just hurry up?

[DETECTIVE VARNER]: What's that?

[CARTER]: Can we hurry up?

[DETECTIVE VARNER]: Yeah, we can hurry up. Alright, here's the deal. Are you alright? Do you want it [the leg shackle] turned the other way?

[CARTER]: No, it's fine.

[DETECTIVE VARNER]: I have a warrant for your arrest for a Homicide that happened this weekend. Do you know that? I have, um, an overwhelming . . .

[CARTER]: A warrant?

[DETECTIVE VARNER]: Yeah, I got a warrant for you[r] arrest last night for the Homicide from this weekend in the shooting that you and "Cruddy" went and did. I've got enough information.

[CARTER]: (inaudible)

[DETECTIVE VARNER]: Listen, listen to me. I've got enough information to have gotten that warrant. And I've got enough information to charge you. And I've got enough information to take this the whole way through. I've got your car, the Mercury Mountaineer that you used, coming in right now to be processed. I've got, I've got . . . the incident that

¹ In our quotation of excerpts of the transcript of the interview, we have omitted bracketed notations that purportedly described the non-verbal actions of the parties. For instance, at one point before appellant responded "Yeah" to a question, the transcript includes a bracketed notation stating "[Indicates an affirmative response by a movement of his head in an up/down motion]." We have omitted these editorial descriptions because the motion court was provided the video recording to view for itself.

happened beforehand. I'd like to talk to you about it. **I'd like to talk to you about the investigation. You don't have to talk to me. It's your right. At any point, you can stop talking to me. You don't have to say anything at all. If you don't like my questions or what I'm doing, you don't have to answer them.** The problem is, is that, you're the guy left holding the bag. You understand that? It's not by accident or incident that you're left holding the bag. You're the one in here. Nobody else is in here. Nobody else is arrested. You.

[CARTER]: How is that possible?

[DETECTIVE VARNER]: What's that?

[CARTER]: I said – “How would that be possible?”

[DETECTIVE VARNER]: It is possible. That's what it is right now. I mean, ah, Juwan's in here, but he's leaving cause he was just with you when you were arrested. He's walking out the door. And it's planned that way. Those guys, those guys, they don't do it. They get you to do it. That's how it works. So . . .

[CARTER]: (inaudible)

[DETECTIVE VARNER]: **But once again, I want to talk to you about this. I want to go over this stuff with you. Um, but I want you to understand the gravity of situation that we're talking about.**

[CARTER]: Um-hum.

[DETECTIVE VARNER]: And that's where we're at.

[CARTER]: Yeah.

[DETECTIVE VARNER]: Do you want to hear what I have to say?

[CARTER]: You can talk, but I ain't do nothing.

[DETECTIVE VARNER]: Okay. Alright. Well, we can start with that. But before we do that, **there's forms I've got to go over with you. And like I said, at any point, you, you don't have to talk to me. At any point, you can stop talking. Whatever. If you don't want to answer a question, don't answer a question. Okay?** But at this point, I'm, you

know, I'm asking you to be honest with me about, about this. That's it. You know what I mean?

[CARTER]: Yeah.

[DETECTIVE VARNER]: So [. . .] these are your forms. You ever, you ever gone over these forms before?

[CARTER]: No.

[DETECTIVE VARNER]: Alright. **It's your Miranda form. You know about your Miranda Rights. Once again, that's basically saying you don't got to talk to me or anything like that. If you want to stop talking, you can stop talking to me. And then the second one is just a continuation of that.** Just need you to write your full name up here, your age. I'll go over everything. And then your street address there.

[CARTER]: My middle name and all that?

[DETECTIVE VARNER]: Yeah.

How old are you? Eighteen?

[CARTER]: Yeah.

[DETECTIVE VARNER]: Street address. You say you live there with your mom?

[CARTER]: Yeah.

[DETECTIVE VARNER]: Okay.

[CARTER]: **I just initial this?**

[DETECTIVE VARNER]: **You're going to initial them as I go through them. "I have the right to remain silent." So initial beside it.**

[The video shows Carter writing his initials on the form.]

[DETECTIVE VARNER]: **"Anything I say, can and will be used against me in a court of law."**

[The video shows Carter writing his initials on the form.]

[DETECTIVE VARNER]: **“I have the right to talk to a lawyer and have him present with me while I am being questioned.”**

[The video shows Carter writing his initials on the form.]

[DETECTIVE VARNER]: **“If I cannot afford to hire a lawyer, one will be appointed to represent [sic] before any questioning if I wish.”**

[The video shows Carter writing his initials on the form.]

[DETECTIVE VARNER]: **And then this declaration statement down here says --- “I understand each of these rights which have been explained to me and voluntarily waive them in order that I may talk to you concerning this investigation.” Sign there. You can stop talking to me at any time.**

[The video shows Carter writing his initials on the form.]

[DETECTIVE VARNER]: **You know, you don’t have to answer my questions. And, and we’ll go from there.** And like I said, I just, I’d like to talk to you about what I know. And, and, ah, five, twenty-three, seventeen, HPD. This is me. The second form is because I have you in here on charges. Basically, you’re going to go before a commissioner. You understand that? When you get charges . . . ,

[CARTER]: Who’s that?

[DETECTIVE VARNER]: A commissioner is somebody that sits out at jail. And, ah, you go before him, and they set your bond. They figure out what all your bond is and everything like that. All this form says is basically we’re slowing that process down so that you can talk to me. Then at any time, if you want to speed that process back up, you can stop talking to me. And we’ll get that process going. Do you understand? **And I’ll just read over of it [sic]. And it explains what the commissioner does with you. “You have the right to be taken promptly before a District Court Commissioner.** A commissioner is a judicial officer not connected with the police. A commissioner will do the following --- inform you of each offense you are charged with and the penalties for each offense, provide you with a written copy of the charges against you, advise you of your right to counsel, make a pre-trial release determination, advise you whether []

you have the right to a preliminary hearing before a judge at a later time. **I've been advised and understand my right to be taken promptly before a District Court Commissioner. I freely and voluntarily waive this right and agree to talk with the police. I understand that I can stop talking to the police at any time and be taken before a District Court Commissioner.** Sign here. I'll date and time it. It doesn't changed [sic] the process. We just, you know, we're slowing it down a little bit so you and I can have a conversation.

[The video shows Carter writing initials on the form.]

(Emphasis added.)

At that point, Detective Varner began asking Carter questions about the incident under investigation. The interview wrapped up at approximately 4:13 p.m. During the course of the interview, Carter implicated himself as a shooter in the incident that resulted in the death of Eddie Ragland and injuries to Jaseye Stephens.

After Carter was charged with multiple offenses, his attorney filed a motion pursuant to Maryland Rule 4-252(a), asking the court to suppress the statements he had made during the interview with Detective Varner. In the motion, Carter asserted: "There is scant evidence on the videotaped interrogation that the Defendant comprehended his *Miranda* rights. . . . At no time before the detective directed the Defendant to sign the advice of rights form, did the detective ask the Defendant if he actually understood his *Miranda* rights." In addition to asserting a lack of understanding of his rights, Carter also asserted that he had invoked his right to remain silent at a point during the interview when he answered one of the detective's questions by saying: "It wasn't me. That's all I got to say, it wasn't me."

At the hearing on the motion in the circuit court, defense counsel emphasized that he was not arguing whether there had been a voluntary waiver of *Miranda* rights, stating:

A lot of the prosecutor's argument was [about] things that we're not arguing. We're not arguing that the statement was involuntary. We're not arguing that the waiver was coerced and involuntary. What we're saying is that the waiver was unknowing.

Counsel reiterated that, although one requirement for a valid waiver is that "the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice . . . [w]e're not arguing that." Carter did not testify at the hearing.

The circuit court issued a written ruling, noting that the court had "viewed and considered" the recording of interview, as well as the other exhibits. The court noted that the detective had "read the individual Miranda Rights to the Defendant from the form" before asking Carter to place his initials next to each statement on the form. "The Court concludes that the requirements of Miranda were satisfied. The Detective's procedure was designed to and did convey the requisite advisement of the Defendant's rights." The court noted that Carter was a high school senior who was "on track to graduate on the regular diploma track." The court stated: "The Court finds that the Defendant was mentally capable of understanding his rights and the consequences of waiving them. The Defendant's Miranda Waiver was valid." And, even though defense counsel had emphasized that Carter was *not* arguing that his waiver was not voluntary, the court made a finding "that the Defendant's statements to the Detective were freely and voluntarily made, and not the result of any coercion, threat or promise."

Finally, the court rejected the contention that Detective Varner was required to terminate the questioning when Carter answered one question with the comment “[t]hat’s all I got to say.” The court found that this comment by Carter was “not a clear, unambiguous invocation of Miranda under the totality of the circumstances,” noting that Carter had continued engaging in the conversation immediately after making the comment, and there was “no other indication of a desire to stop the interview” despite the fact that Detective Varner had repeatedly advised Carter that he did not have to talk to him. Consequently, the court concluded that “[t]he continuation of the interrogation was proper.”²

After sentencing, this appeal followed.

STANDARD OF REVIEW

In *Gonzalez v. State*, 429 Md. 632, 647–52, 57 A.3d 484, 493–96 (2012), the Court of Appeals described the standard for appellate review of a denial of a motion to suppress:

When reviewing the denial of a motion to suppress evidence, “we confine ourselves to what occurred at the suppression hearing. 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.” *Lee v. State*, 418 Md. 136, 148, 12 A.3d 1238 (2011) (citations and internal quotation marks omitted). “We defer to the motions court’s factual findings and uphold them unless they are shown to be clearly erroneous.” *Id.* (quoting *State v. Luckett*, 413 Md. 360, 375, n. 3, 993 A.2d 25 (2010)). 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. *Longshore v. State*, 399 Md. 486, 499,

² Carter does not argue this point in his brief.

924 A.2d 1129 (2007) (“Making factual determinations, *i.e.*[,] resolving conflicts in the evidence, and weighing the credibility of witnesses, is properly reserved for the fact finder. In performing this role, the fact finder has the discretion to decide which evidence to credit and which to reject.” (internal citations omitted)). “We, however, make our own independent constitutional appraisal, by reviewing the relevant law and applying it to the facts and circumstances of this case.” *Lee*, 418 Md. at 148–49, 12 A.3d 1238 (quoting *Lockett*, 413 Md. at 375, n. 3, 993 A.2d 25).

DISCUSSION

Carter argues that his waiver of his right to remain silent “was invalid because he had not been fully informed on the right to silence.” He asserts that Detective Varner’s “advice of rights is too permissive and smacks of equivocation.” And, Carter contends, the detective did not “ascertain or confirm that Mr. Carter was knowledgeable with respect to his right to remain silent under *Miranda* [*v. Arizona*, 384 U.S. 436 (1966)] before he waived that right.”

Carter assails the advisement procedure followed by Detective Varner, in which Carter initialed where indicated after Detective Varner read him his rights, but Detective Varner did not also ask him if he actually understood those rights. Carter contends that Detective Varner failed to affirmatively ascertain that he understood his rights under *Miranda*, including his right to remain silent, and that the motion court’s finding that Carter’s waiver of *Miranda* was knowing, voluntary, and intelligent was in error.

We find no merit in Carter’s arguments. The evidence established that Carter was an 18-year-old senior in high school and on track to graduate with a Maryland high school diploma. Carter had never been held back in school, and there was no evidence that Carter was suffering from any mental or cognitive impairment. He was not under the

influence of drugs or alcohol. In denying the motion to suppress, the court noted that Carter filled out the *Miranda* “waiver form himself, in an appropriate, logical and legible manner.”

Under the totality of the circumstances, Detective Varner had no reason to suspect that Carter did not understand the *Miranda* warnings as they were read to him. The record plainly reveals that Carter was told by the detective that this was a serious matter, that the detective had gathered sufficient evidence against him to charge him with homicide, and he wanted him “to understand the gravity of situation that we’re talking about.” But the detective also emphasized multiple times that Carter did not have to talk to him at all and could stop talking at any time.

As the Court of Appeals explained in *Gonzalez, supra*, 429 Md. at 650-51:

No particular wording or “precise formulation” need be used to impart the nature of the Fifth Amendment rights to the suspect. *Duckworth v. Eagan*, 492 U.S. 195, 202, 109 S.Ct. 2875, 106 L.Ed.2d 166 (1989); see *Florida v. Powell*, 559 U.S. 50, [59-60], 130 S.Ct. 1195, 1204, 175 L.Ed.2d 1009 (2010) (“The four warnings *Miranda* requires are invariable, but this Court has not dictated the words in which the essential information must be conveyed.”). Rather, the proper “inquiry is simply whether the warnings reasonably ‘conve[y] to [a suspect] his rights as required by *Miranda*.”” *Duckworth*, 492 U.S. at 203, 109 S.Ct. 2875 (alteration in original) (quoting *California v. Prysock*, 453 U.S. 355, 361, 101 S.Ct. 2806, 69 L.Ed.2d 696 (1981) (per curiam)).

In determining the adequacy of the *Miranda* warnings, we look to the totality of the advisements. *State v. Luckett*, 413 Md. 360, 379–80, 993 A.2d 25 (2010).

Here, we conclude that the advisement given to Carter sufficiently conveyed to him the nature of the rights under *Miranda* that he was giving up. We are satisfied that

the motion court did not err in finding that his waiver was made by a person “capable of understanding his rights and the consequences of waiving them,” and that, “considering the totality of the circumstances, . . . [Carter’s] statements to the Detective were freely and voluntarily made, and not the result of any coercion, threat or promise.” Carter has failed to persuade us that this finding was in error.

Carter cites *Collins v. State*, 14 Md. App. 674, 680 (1972), for the proposition that Detective Varner was required to, but did not, “first ascertain[] that [Carter] did fully understand his rights, and knowingly and intelligently waived them before” proceeding to question him. In *Collins*, after the police officer read *Miranda* warnings to the defendant, the police officer asked the defendant whether or not he understood the warnings. Even though the defendant responded that “he didn’t know,” the officer proceeded to question him. This Court found that questioning should not have occurred until the police officer had first ascertained that the defendant understood the warnings, but that the error in the case was harmless given the other overwhelming evidence. In *Collins*, in contrast to Carter’s case, the police officer was expressly told that the defendant did not understand the *Miranda* warnings. There is no comparable evidence here.

**JUDGMENTS OF THE CIRCUIT
COURT FOR WASHINGTON
COUNTY AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**