Circuit Court for Anne Arundel County
Case No. C-02-CR-22-001347

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 641

September Term, 2023

JOSE ONAN ALVAREZ-GARCIA

v.

STATE OF MARYLAND

Berger,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.
Dissenting Opinion by Raker, J.

Filed: June 17, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

Following a bench trial in the Circuit Court for Anne Arundel County, Jose Onan Alvarez-Garcia ("Alvarez-Garcia"), appellant, was convicted of first-degree assault, second-degree assault, and wearing and carrying a dangerous weapon with the intent to injure. He was sentenced to ten years of imprisonment, with all but three years suspended, followed by a five-year term of supervised probation. Alvarez-Garcia now challenges the circuit court's denial of his motion to suppress the statements he made to law enforcement officers and appeals his conviction. On appeal, Alvarez-Garcia presents two questions for our review, which we consolidate and rephrase slightly as follows:[1]

[1] Alvarez-Garcia's original questions presented read as follows:

1. Did the lower court err in denying a Motion to Suppress a custodial statement after finding:

   a. That the *Miranda* advisements were sufficient when translated by an uncertified officer who had no formal Spanish language education and who, due to poor translation, informed the arrestee, an immigrant who only speaks Spanish and is unfamiliar with the American legal system, that anything they say "can be used on their court day," rather than the traditional *Miranda* advisement that anything they say "can be used *against* them in court"?

   b. That the *Miranda* waiver was voluntary, knowing, and intelligent, when the arrestee had been improperly advised of his rights, has no English language skills and is illiterate in his native language of Spanish, was inebriated, and the advising officer was aware of his lack of understanding?

> Whether the circuit court erred in denying Alvarez-Garcia's motion to suppress.

For the reasons explained herein, we shall affirm.

FACTS AND PROCEDURAL HISTORY

Alvarez-Garcia was arrested on September 9, 2022 following an incident in Anne Arundel County, the facts of which are set forth in the agreed-upon statement of facts presented at trial:

> On September 9th of 2022, at approximately 2128 hours, officers with the Anne Arundel County Police responded to the area of Charlotte Drive and Jill Lane in Maryland City for a report of assault. Dispatch advised that there was a male slit in the throat and suffering minor injuries. Upon arrival, officers observed several individuals at the intersection, including the victim, Mr. Jerson Daniel Guzman-Garcia. Mr. Guzman-Garcia had a laceration across his throat area. EMS arrived and transported the victim to the fire station for treatment.
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> Witness Danny Surpas told the police that he saw the entire incident. He reported that the two suspects involved were Hispanic males. One was wearing a yellow shirt, blue shorts, and a hat. The second male was wearing a long sleeved blue plaid shirt and black pants.
>
> * * *

> 2. Should this Court direct the Circuit Court to correct the Commitment Record to reflect the oral judgment handed down on May 11, 2023, which included credit for time served?

On January 4, 2024, Alvarez-Garcia filed a motion to correct the Commitment Record in the Circuit Court for Anne Arundel County. The circuit court granted Alvarez-Garcia's motion on January 22, 2024. On February 6, 2024, Alvarez-Garcia withdrew his second argument on appeal concerning the Commitment Record.

> Mr. Surpas stated that the incident stated [sic] when the male in blue got into a verbal argument with the victim. The male in blue pushed the victim and the victim pushed him back. The male in blue then left the area, only to return shortly with the male wearing the yellow shirt. The male in yellow approached the victim with a sharp silver object and lunged at the victim. The victim then grabbed his throat area and the two males [sic] suspects ran towards the community pool area.
>
> Mr. Surpas observed the laceration to the victim's neck. And the victim would have testified at trial that he did not have any injuries to his neck prior to the male in yellow lunging at him. Police units canvassed for possible suspects. Two males matching the description of the suspects were located and a show up was conducted with Mr. Surpas. He positively identified the suspects as the males involved in the assaults.
>
> Police also located a silver box cutter in the chair that the male in blue was sitting in. Both males were placed under arrest. The male in yellow would have been identified at trial as the Defendant, Jose Onan Alvarez-Garcia.

After his arrest, Alvarez-Garcia was transported to the Central Holding and Processing Center located in Annapolis, Maryland, where he was interviewed by Officers Kimberly Callison and Rachel Campos of the Anne Arundel County Police Department. Alvarez-Garcia is a native Spanish speaker with the equivalent of a first-grade education who is illiterate and does not speak any English. Officer Campos served as a translator during the interview. Officer Campos testified that, although she has no formal training in Spanish translation, she has spoken Spanish for 29 years. She learned English and Spanish simultaneously as a child and grew up speaking Spanish in her household with her parents, who are first-generation Americans. Officer Campos also testified that she frequently serves as a translator to assist fellow officers, averaging at least once per month.

At the beginning of the interview, the officers advised Alvarez-Garcia that they were there to "talk about what happened tonight." In response, Alvarez-Garcia told the officers that he would "tell [them] everything that happened." The officers then proceeded to advise Alvarez-Garcia of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). Officer Campos began by asking Alvarez-Garcia to write his name on the Advisement of Rights form, which was printed in English. He wrote his first name but told her that he did not know how to write his last name. Officer Campos then proceeded to advise Alvarez-Garcia of his rights in Spanish. A translation of the statement of rights provided by Officer Campos's reads as follows:[2]

> I'm going to read this Ok? This paper what it says is "I" and there goes your name. I have been advised of my rights. That I'm going to advise you of your rights, I'm Officer Campos. That you have the right not to speak, okay? Everything that you say can be used on the court day. That no one is (unintelligible) and not one is threatening you so that you speak with us. You have the right to speak with an attorney. And if you want an attorney [tell me?] at any time you can say that you want an attorney. If you cannot I mean . . . you don't have money for an attorney you can (unintelligible) by the state.

Officer Campos asked Alvarez-Garcia if he "understood these rights," and Alvarez-Garcia responded in the affirmative. She asked him to indicate his understanding of his rights on the form, providing guidance along the way. One section on the Advisement of Rights form requires the individual completing the form to identify whether they were

[2] This quote and future quotes appear in a translated transcript excerpt of the police interview attached to Alvarez-Garcia's Memorandum of Law in Support of his Motion to Dismiss.

forced or coerced into giving a statement to law enforcement officers. Officer Campos explained this to Alvarez-Garcia, stating: "Now this one says that no one is threatening you, no one is forcing you and no one is convincing something [sic] for you to speak with us. Yes or No?" Alvarez-Garcia responded in the affirmative. Officer Callison requested that Officer Campos "[e]xplain to him this is his way of saying that we're not promising you anything, that he has to check over here 'no.'" Officer Campos did so, and Alvarez-Garcia switched his answer on the Advisement of Rights form to indicate "no." Officer Campos later testified that when Alvarez-Garcia originally answered in the affirmative, she thought "he probably didn't understand what I was trying to explain to him that [sic] the paper said."

The officers also asked Alvarez-Garcia if he was under the influence of alcohol or drugs. He initially answered that he had not been drinking and that he "came from work." Officer Campos responded: "Yes, but you have been drinking?" This time, Alvarez-Garcia responded in the affirmative and confirmed on the Advisement of Rights form that he had been drinking. Officer Campos asked if he was too intoxicated to speak with the officers and Alvarez-Garcia assured them that he was "fine" and "good" to speak with them. After the form was completed, Alvarez-Garcia began to tell the officers about the incident leading to his arrest.

Alvarez-Garcia was charged with first-degree assault, second-degree assault, reckless endangerment, and wearing and carrying a dangerous weapon with the intent to injure. On December 27, 2022, Alvarez-Garcia filed a motion to suppress the statements

he made to the officers during his custodial interrogation.[3] He argued that the *Miranda* advisements he received were not sufficient because he was not advised that anything he said could be used *against* him in court. He also argued that his waiver of his rights was not knowing and voluntary.

The circuit court held a hearing on Alvarez-Garcia's motion to suppress on May 1, 2023. Officer Campos testified at the hearing, detailing the process through which she advised Alvarez-Garcia of his rights. Alvarez-Garcia also testified and stated that he did not remember being advised of his rights. The court concluded:

> The Court in this case does find that the Defendant's statements were voluntarily given. The Court credits Officer Campos's testimony that she explained to the Defendant the *Miranda* rights. The Court finds that Officer Campos's statement, "Everything you say can be used on the court day" is substantially similar to, "Anything you say can be used against you," and does find that on that issue, the Defendant was properly advised of that right.
>
> The Court further finds and does credit Officer Campos's testimony that it was her perception that the Defendant understood the advice that he was being given, that in certain circumstances, where he said "Si" indicating yes, it was not particularly with regard to that. When she asked whether he was being forced or coerced, she didn't perceive, nor did the Court in viewing the Defendant's body language and demeanor on the video, perceive that the Defendant was actually indicating that there was threats or coercion.
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> It certainly did not seem to the Court in viewing the body camera video that – or the recording of the interrogation that that was the case. The Court does consider the fact that Mr. Alvarez-Garcia testified that he is illiterate and is not able to

[3] Alvarez-Garcia also filed a Memorandum of Law in Support of his Motion to Suppress on May 1, 2023.

> read either English or Spanish. But the Court doesn't find, in light of the fact that all of advice was given to him orally, that that was a significant factor in his making the determination.

The circuit court, therefore, denied Alvarez-Garcia's motion to suppress.

Alvarez-Garcia entered a plea of not guilty and waived his right to a jury trial, agreeing to proceed via bench trial based on an agreed-upon statement of facts. The State entered a *nolle prosequi* as to the charge of reckless endangerment. Based on the statement of facts, the circuit court found Alvarez-Garcia guilty of first-degree assault, second-degree assault, and wearing and carrying a dangerous weapon with the intent to injure. The court sentenced him to ten years' imprisonment, with all but three years suspended, followed by a five-year term of supervised probation. This timely appeal followed.

DISCUSSION

Alvarez-Garcia argues on appeal that the trial court erred in denying his motion to suppress the statements he made to Officers Callison and Campos. First, Alvarez-Garcia contends that the officers failed to adequately advise him of his *Miranda* rights because Officer Campos told him anything he said could "be used on the court day" but did not specify that his statements could be used *against* him in court. He also argues that it was improper for Officer Campos, as a law enforcement officer, to serve as a translator during his custodial interrogation. Additionally, Alvarez-Garcia asserts that his waiver was not knowing and voluntary under the totality of the circumstances. For the reasons discussed below, we affirm the judgment of the Circuit Court for Anne Arundel County.

I. Standard of Review

On review of a motion to suppress, this Court "view[s] the evidence adduced at the suppression hearing, and the inferences fairly deducible therefrom, in the light most favorable to the party that prevailed on the motion." *Corbin v. State*, 428 Md. 488, 497–98 (2012) (quoting *Williamson v. State*, 413 Md. 521, 531–32 (2010)). While we defer to the factual findings of the trial court unless clearly erroneous, we "make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *Bailey v. State*, 412 Md. 349, 362 (2010) (quoting *Crosby v. State*, 408 Md. 490, 505 (2009)).

When appellate courts review the "adequacy of the *Miranda* warnings, we look to the totality of the advisements." *Gonzalez v. State*, 429 Md. 632, 651 (2012) (citing *State v. Luckett*, 413 Md. 360, 379–80 (2010)). The Supreme Court of Maryland has determined:

> [I]f the warnings, viewed in the totality, in any way misstate the suspect's rights to silence and counsel, or mislead or confuse the suspect with respect to those rights, then the warnings are constitutionally infirm, rendering any purported waiver of those rights constitutionally defective and requiring suppression of any subsequent statement.

Luckett, *supra*, 413 Md. at 380. Nevertheless, "[e]ven if the warnings themselves pass constitutional muster," the State must still establish that the appellant's waiver of his *Miranda* rights was knowing and voluntary. *Gonzalez*, *supra*, 429 Md. at 651.

A circuit court's determination that a statement given during custodial interrogation was voluntary "is a mixed question of law and fact that we review *de novo.*" *Brown v. State*, 252 Md. App. 197, 234 (2021) (citing *Buck v. State*, 181 Md. App. 585, 631 (2008)).

"In evaluating the validity of a waiver in a given case, the court must consider the particular facts and circumstances surrounding the case, including background, experience, and conduct of the accused." *Gonzalez*, *supra*, 429 Md. at 651 (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)) (internal quotation marks omitted). Our review is limited to the record of the suppression hearing. *Brown*, *supra*, 252 Md. App. at 234 (citing *Lee v. State*, 418 Md. 136, 148 (2011)).

II. Alvarez-Garcia was properly advised of his *Miranda* rights.

On appeal, Alvarez-Garcia first argues that the trial court erred in denying his motion to suppress because the officers failed to adequately advise him of his rights under *Miranda* and its progeny. The Fifth Amendment to the United States Constitution, made applicable to the States through the Fourteenth Amendment, protects individuals from being compelled to make self-incriminating statements. U.S. Const. amend. V; *Malloy v. Hogan*, 378 U.S. 1, 6–7 (1964). In the seminal case *Miranda v. Arizona*, the United States Supreme Court set forth the following prophylactic warnings that law enforcement officers must convey to an individual before undergoing custodial interrogation:

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

Miranda, *supra*, 384 U.S. at 479.

The United States Supreme Court, however, has "never insisted that *Miranda* warnings be given in the exact form described in that decision." *Duckworth v. Eagan*, 492

U.S. 195, 202 (1989). The Supreme Court clarified in *Miranda* that the warnings articulated in that opinion *or* any "*fully effective equivalent*" may serve as "prerequisites to the admissibility of any statement made by a defendant." *Miranda*, *supra*, 388 U.S. at 476 (emphasis added). As the Supreme Court recognized in *California v. Prysock*:

> This Court has never indicated that the "rigidity" of *Miranda* extends to the precise formulation of the warnings given a criminal defendant. This Court and others *have* stressed as one virtue of *Miranda* the fact that the giving of the warnings obviates the need for a case-by-case inquiry into the actual voluntariness of the admissions of the accused. Nothing in these observations suggests any desirable rigidity in the *form* of the required warnings. Quite the contrary, *Miranda* itself indicated that no talismanic incantation was required to satisfy its strictures.

453 U.S. 355, 359 (1981) (internal citations and quotation marks omitted).

While Alvarez-Garcia was in custody, Officer Campos advised him: "Everything that you say can be used on the court day." Alvarez-Garcia argues that this statement is not a fully functional equivalent of the "traditional" *Miranda* advisement that anything a suspect says can be used *against* them in court. He contends that the "used against" language is a "material aspect" of the advisement of rights required under *Miranda* and that Officer Campos's omission of this language renders the advisements inadequate. Alvarez-Garcia relies on a case from the Court of Appeals of North Carolina as persuasive authority.

In *State v. Ortez*, the Court of Appeals of North Carolina considered whether a Spanish translation of a "waiver-of-rights" form adequately conveyed to Ortez his *Miranda* rights. 631 S.E.2d 188, 243–48 (N.C. Ct. App. 2006). Ortez argued on appeal that the

Spanish translation of the *Miranda* warnings read to him were "inadequate to convey to [him] the substance of his *Miranda* rights" because of the misuse of two Spanish phrases. *Id.* at 244. First, the warnings included the phrase "corte de ley," which has no meaning in Spanish, as the proper translation of "court" is "tribunal de justicia." *Id.* Second, the warnings used the term "interrogatorio," which refers to a more "formal proceeding, such as a court trial" rather than custodial interrogation. *Id.* Ortez also argued that argued that the translating officers' advisement of Ortez's right to a court-appointed attorney was not adequate because the translating officer did not specify that such as attorney "could come without cost to him." *Id.* at 245. The Court of Appeals of North Carolina held that the warnings issued to Ortez were sufficient to adequately convey his *Miranda* rights, concluding:

> In the present case, the warnings read to defendant in Spanish reasonably conveyed to defendant his *Miranda* rights and were therefore adequate . . . . [W]hen defendant was asked in Spanish whether he understood his rights, defendant answered in the affirmative and signed the bottom of the waiver form. Moreover, a *material part* of the *Miranda* warning given—*that anything defendant said could be used against him*—was preserved in the translation.

Id. at 245 (emphasis added).

Alvarez-Garcia uses this holding to support his assertion that individuals subjected to custodial interrogation must be specifically warned that anything they say can be used *against* them—not merely that the individual's statement can be used in court. Our reading of *Ortez* does not lend support to Alvarez-Garcia's argument. The Court of Appeals of North Carolina appropriately recognized in *Ortez* that a "material part" of *Miranda*

warnings requires law enforcement to inform a suspect that anything they say can be used against them in court. Nevertheless, the court never analyzed or otherwise discussed whether use of the phrase "used against you" is required in order to adequately advise a suspect of their *Miranda* rights. Indeed, the court does not place any emphasis whatsoever on the "used against" language.

In our view, *Smith v. State*, 31 Md. App. 106 (1976), is instructive. Although *Smith* does not involve a translation of rights, it does involve an advisement of *Miranda* rights that omits certain words included in "traditional" *Miranda* warnings. The United States Supreme Court asserted in *Miranda* that "[t]he warning of the right to remain silent must be accompanied by the explanation that anything said *can and will* be used against the individual in court." *Miranda*, *supra*, 384 U.S. at 469 (emphasis added). In *Smith*, during the appellant's custodial interrogation, officers advised the appellant that his statement could be "used against [him] in court."[4] *Smith, supra,* 31 Md. App. at 118. On appeal, the appellant argued that this advisement of rights was infirm because the officers did not include language specifying that a suspect's statements "*can and will*" be used against them in court. *Id.*

[4] In *Smith*, law enforcement advised the appellant of his rights in two ways. *Smith*, *supra*, 31 Md. App. at 118. First, officers read off of a card to advise the appellant of his rights. *Id.* The card stated: "If you choose to answer, your answers can be used against you in court." *Id.* Additionally, the "prelude" to a written statement made by appellant contained a similar warning: "If you want to make a statement and answer our questions, anything you do or say can be used against you in a court of law." *Id.* On appeal, the appellant challenged the omission of the terms "and will" in both of these advisements. *Id.*

This Court concluded that "[t]he omission of the words 'and will' in the *Miranda* warnings was not sufficient standing alone, to render the [appellant's] statements inadmissible." *Id.* at 119. We reasoned that "the language used left no uncertainty as to the consequences of" making statements to officers during custodial interrogation. *Id.* at 118 (citing *Craft v. United States*, 403 F.2d 360, 364 (9th Cir. 1968). Accordingly, the appellant was "sufficiently appraised of his rights." *Id.* The State contends that the same principle applies in the present case. We agree.

Similar to the omission of the words "and will" in *Smith*, we conclude that the omission of the words "used against" in the present case does not render an advisement of rights deficient under *Miranda*. As the State aptly emphasizes, advising a suspect that anything he says "can be used on the court day" is sufficient to notify him that his statements can be used by the State in court to establish, beyond a reasonable doubt, that the defendant is guilty of the crimes charged. Despite the omission of the terms "used against," Officer Campos's statement "left no uncertainty as to the consequences" of Alvarez-Garcia making statements to Officers Campos and Callison during his custodial interrogation.

The advisement of rights that Officer Campos issued to Alvarez-Garcia did not in any way narrow or minimize his rights. By contrast, the phrase "can be used on the court day" adequately notified Alvarez-Garcia that any statements made to Officers Campos and Callison could be used by the State in court. As such, Officer Campos adequately advised Alvarez-Garcia of his right to remain silent and the consequences of waiving that right.

Accordingly, we reject Alvarez-Garcia's argument that an advisement of a suspect's right to silence that omits the words "used against" is a misstatement of law rendering the advisement constitutionally infirm.

In sum, Alvarez-Garcia fails to present any Maryland case law to support his argument that *Miranda* warnings are inadequate if law enforcement tells an individual that their statements can be used in court, but fails to specify that those statements can be "used against" them. In our view, requiring such would go strictly against the principle that *Miranda* requires "no talismanic incantation" to "satisfy its strictures." *Prysock*, *supra*, 453 U.S. at 359. We, therefore, conclude that the advisement of rights issued by Officer Campos were fully effective equivalents of the warnings required under *Miranda* and were, therefore, sufficient to advise Alvarez-Garcia of his rights.

III. It was not improper for Officer Campos to serve as a translator during Alvarez-Garcia's custodial interrogation.

Alvarez-Garcia also argues that it was improper for Officer Campos, as a police officer, to serve as a translator during Alvarez-Garcia's custodial interrogation. He asserts that Officer Campos "was not a neutral translator, was not qualified to translate *Miranda*, and was unable to properly translate the advisements" in a manner that allowed Alvarez-Garcia to understand his rights.

In doing so, Alvarez-Garcia bases his argument on this Court's holding in *Soares v. State*, 248 Md. App. 395 (2020). *Soares* similarly involved a police officer serving as a translator to advise a suspect of his *Miranda* rights. *Id.* at 399–401. Although Soares was advised of his right to silence, the officers never asked Soares if he understood his rights

and he never volunteered his understanding. *Id.* at 404–06. The translating officer nevertheless related to a fellow officer that Soares understood his rights, despite Soares never expressing this to the officers. *Id.* Later in the interrogation, Soares asked the officers "if he ha[d] to answer" specific questions or if he could "keep his mouth shut." *Id.* at 407. The officers responded that they had "advised [him] of [his] rights already" but that they were asking him those questions so that they could "move past [him]" in their investigation. *Id.* They proceeded to ask Soares various questions, including questions about his wife's involvement in the crime charged. *Id.* at 408.

This Court ultimately held that the State failed to meet its burden to establish that Soares was "ever fully advised" of his *Miranda* rights and the "implications" of waiving those rights. *Id.* at 417. Although the translating officer recited what this Court deemed to be a "mechanical simple reading" of the suspect's rights, "[t]here were no follow-up questions or inquiries by anyone." *Id.* The officers never asked Soares if he understood his rights and he never otherwise indicated his understanding of his rights. *Id.* at 417. We noted that it is improper for a translating officer to simply "give his opinion as to whether the appellant understood his rights" without any words or actions by the appellant indicating his understanding. *Id.* at 402–03. Whether or not a suspect understands his *Miranda* rights "cannot be delegated to the interpreter." *Id.* at 406. Furthermore, we recognized:

> The satisfaction of *Miranda*'s right to silence is at least a tripartite obligation. There is first the obligation on the State to inform the suspect of the right to silence. That means more than reciting to a defendant the words on a written form. That

> also means imparting to a suspect at least a rudimentary understanding of what that right means and what the suspect can do with it.

Id. at 416.

This Court also concluded that Soares's inquiry as to whether he could "keep his mouth shut" later in the interrogation served as "stark proof of his earlier lack of understanding" of the advisement of rights. *Id.* at 417. Additionally, we held that that the officers failed to honor Soares's invocation of his right to silence when he asked this question, improperly continuing to question him in the interest of "mov[ing] past [him]" in their investigation. *Id.* at 418.

We, therefore, concluded that the circuit court erred in denying Soares's motion to suppress. *Id.* Our holding in *Soares*, however, was not based on the fact that a law enforcement officer served as a translator during a suspect's custodial interrogation. To be sure, our opinion does provide some guidance on the limited role of an interpreter and the importance of neutrality. *Id.* at 401–03. Moreover, we emphasized various factors "[f]urther complicating the distinctive communicative murkiness" of Soares's interrogation, including the "level of the appellant's education (elementary school)" and the "less than ideally neutral status of the present interpreter (a fellow policeman)." *Id.* at 415. This Court, however, did not hold that Soares was not adequately advised of his rights simply because a police officer served as an interpreter during his custodial interrogation.

We further conclude that *Soares* is not analogous to the case before us here. Alvarez-Garcia never invoked his right to silence. By contrast, he explicitly articulated his

understanding of his rights to Officers Campos and Callison and proceeded to answer their questions. While the translating officer in *Soares* independently evaluated the suspect's understanding of his rights, Officer Campos explicitly asked Alvarez-Garcia if he understood his rights and he responded in the affirmative. In our view, *Soares* is easily distinguishable and does not in any way substantiate Alvarez-Garcia's argument that the use of a police officer as a translator is *per se* improper.

Indeed, the Supreme Court of Maryland has affirmed a circuit court's denial of a motion to suppress where the *Miranda* warnings were issued to a defendant by a police officer serving as a translator. In *Gonzalez v. State*, the Supreme Court considered whether the State met its burden to prove by a preponderance of the evidence that officers adequately advised Gonzalez, a non-English speaker, of his *Miranda* rights. *Gonzalez*, *supra*, 429 Md. at 647–57. Gonzalez's native language was Mixtec, an indigenous language spoken in regions of Mexico, though he also spoke some Spanish. *Id.* at 637. During his custodial interrogation, a law enforcement officer fluent in Spanish served as a translator. *Id.* at 637–38. Although the officer did not speak any Mixtec, he issued Gonzalez an advisement of his rights in a combination of Spanish and phonetic pronunciations of certain Mixtec words such as "court" and "attorney" -- the Spanish terms of which Gonzalez did not understand. *Id.* at 641–42. The advisement of rights portion of the interview was not recorded, nor was the first part of the interview in which Gonzalez answered the officers' questions. *Id.* at 639. The second portion of the interrogation, however, was recorded. *Id.*

Because the advisement of rights was not recorded, the suppression court focused on the testimony of Trooper Torres, the translating officer. *Id.* at 649. Trooper Torres "explained in detail how he advised [Gonzalez] of the *Miranda* rights in Spanish, how [he] obtained the Mixtec translation of certain words . . . and how [Gonzalez] indicated eventually that he understood each warning contained on [the Advisement of Rights] form." *Id.* He also testified that he asked Gonzalez if he understood after each line of the translated *Miranda* warnings and "would rephrase each *Miranda* right and warning until he was satisfied that [Gonzalez] understood." *Id.* at 641–42. The officer's testimony was also corroborated by the audio recording of the second portion of the police interview during which Gonzalez "answer[ed] questions in Spanish appropriately and without hesitation." *Id.* at 649.

The suppression court found the officer's testimony to be "truthful and persuasive," and the Supreme Court determined that this credibility determination was "virtually unassailable," recognizing:

> Consequently, we, as the reviewing court, must accept as fact (as obviously did the suppression court) Trooper Torres's testimony concerning his impressions of Petitioner's comprehension of not only the Spanish language, but also the trooper's phonetic pronunciation of the Mixtec words for "court" and "attorney." Indeed, the suppression court found that Petitioner "could sufficiently understand Spanish in order to waive his rights under *Miranda*." Implicit in that finding, moreover, is the suppression court's predicate (albeit unexpressed) finding that Petitioner sufficiently comprehended the *Miranda* warnings so as to enable him to make a valid waiver of the rights described therein.

Id. at 652–53.

The Supreme Court ultimately concluded that the officers adequately advised Gonzalez of his *Miranda* rights and that his waiver of his right to silence was knowing and voluntary. *Id.* at 657–60. The Court also emphasized that its "conclusion that witness testimony may be sufficient to establish the adequacy of *Miranda* warnings delivered in a foreign language, without an audiotape or a transcript of the advisement, finds support in the decisions of other state supreme and federal courts." *Id.* at 654; *see also United States v. Abdi Wali Dire*, 680 F.3d 446, 470 (4th Cir. 2012); *Perri v. Director, Dep't of Corrections*, 817 F.2d 448, 453 (7th Cir. 1987); *Commonwealth v. Colon-Cruz*, 562 N.E.2d 797, 803 (Mass. 1990).

Gonzalez is instructive and analogous to the case at issue. Both cases involve the use of law enforcement officers as translators to advise suspects of their *Miranda* rights while under custodial interrogation. Both translating officers asked the individuals being questioned whether they understood their rights, and both individuals answered in the affirmative. Furthermore, the records in both cases illustrate the individuals' understanding of their rights. While the translated advisement of rights in *Gonzalez* was not videotaped or audio recorded, the translating officer gave detailed testimony about the issuance of the suspect's *Miranda* warnings and the efforts he took to ensure the suspect's understanding. In the case before us, the record includes not only Officer Campos's testimony but a video recording of the entire police interview. Officer Campos's testimony is corroborated by the recording, documenting her efforts to adequately convey to Alvarez-Garcia his rights and to confirm his understanding of those rights. Like the Court in *Gonzalez*, we conclude

that the trial court's credibility determination of Officer Campos's testimony is "virtually unassailable." *Gonzalez*, *supra*, 429 Md. at 652.

Despite these similarities, Alvarez-Garcia presents multiple arguments asserting that *Gonzalez* is distinguishable. He also misconstrues our holding in *Gonzalez* and suggests that translations of *Miranda* warnings are only adequate where the translating officer takes some sort of "additional steps" to ensure that the suspect understands their rights. Alvarez-Garcia insists that Officer Campos "made no efforts" to clarify his rights "when he appeared to not understand" them. He also argues that Officer Campos's "cursory" question asking Alvarez-Garcia if he understood his rights was "a far cry" from the translating officer's "painstaking" efforts to ensure the suspect's understanding of his rights in *Gonzalez.*

We are not persuaded by this argument. Nothing in the Supreme Court's holding in *Gonzalez* requires an officer translating *Miranda* warnings into a suspect's native language to take some sort of elusive "additional steps" to ensure the suspect's understanding. Although the State bears the burden of establishing that a suspect has "full awareness of both the nature of the right[s]" and the consequences of waiving those rights, law enforcement officers are not required to follow a specific script or formula to confirm that an individual understands their rights after being issued *Miranda* warnings. *Id.* at 652 (quoting *Moran v. Burbine*, 475 U.S. 412, 421 (1986)). Officer Campos asking Alvarez-Garcia "do you understand?" after advising him of his rights is no less effective than the officer's approach in *Gonzalez*. Notably, what is critical is that Alvarez-Garcia responded

in the affirmative, indicating he understood his rights, completed the Advisement of Rights form accordingly, and proceeded to answer the officers' questions.

Alvarez-Garcia also argues that, while the officer in *Gonzalez* was fluent in Spanish, "Officer Campos had only spoken Spanish casually in her childhood home." Although Officer Campos testified that she spoke Spanish in her home when she was growing up, nothing in the record suggests she is not fluent or that she only speaks Spanish "casually." She has been speaking Spanish for 29 years and testified that she serves as a translator to assist her fellow officers at least once per month. We agree with the trial court that nothing in the recording or transcript indicates that Alvarez-Garcia had any trouble understanding Officer Campos. Notably, Alvarez-Garcia did not testify at the suppression hearing -- nor does he argue on appeal -- that he had difficulty understanding Officer Campos's translation of his rights or subsequent questions during his custodial interrogation.

In our view, *Gonzalez* is analogous and persuasive. We, therefore, reject Alvarez-Garcia's contention that it is improper for a law enforcement officer to serve as a translator while a suspect is undergoing custodial interrogation. Accordingly, the trial court did not err in denying Alvarez-Garcia's motion to suppress based on the fact that Officer Campos served as a translator during his custodial interrogation.

IV. Alvarez-Garcia's waiver of his *Miranda* rights was knowing and voluntary under a totality of the circumstances.

Alvarez-Garcia's final argument on appeal contends that his waiver of his rights was not knowing and voluntary. An individual's waiver of rights is valid "[o]nly if the totality of the circumstances surrounding the interrogation reveals both an uncoerced

choice and the requisite level of comprehension[.]" *Lee*, *supra*, 418 Md. at 150 (quoting *Moran*, *supra*, 475 U.S. at 421) (internal quotation marks omitted). There exists a presumption that the individual did not waive their rights, and the State bears the heavy burden of establishing by a preponderance of the evidence that the individual's waiver was knowing, intelligent, and voluntary. *North Carolina v. Butler*, 441 U.S. 369, 373 (1979); *McIntyre v. State*, 309 Md. 607, 614–15 (1987). Nevertheless, "in at least some cases waiver can be clearly inferred from the actions and words of the person interrogated." *Butler*, *supra*, 441 U.S. at 373.

Our determination of whether an individual's waiver of their rights was knowing and voluntary is twofold:

> 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.

Gonzalez, *supra*, 429 Md. at 652 (quoting *Moran*, *supra*, 475 U.S. at 421). Our inquiry on appeal requires us to consider various factors such as the individual's "age, experience, education, background, and intelligence[.]" *Id.* (quoting *Fare v. Michael C.*, 442 U.S. 707, 725 (1979)). This Court must determine whether the individual had "the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights." *Id.*

Alvarez-Garcia contends that his waiver of his rights was not knowing or voluntary because he was "unaware of what his rights were." Alvarez-Garcia argues that, due to the allegedly infirm advisement of rights from Officer Campos, he could not have waived his rights because he did not have an adequate understanding of the rights nor the effect of waiving those rights. As we noted previously, we conclude that Alvarez-Garcia was adequately advised of his rights. The translated advisement provided by Officer Campos was a fully effective equivalent of the prophylactic warnings outlined in *Miranda.* Additionally, as demonstrated in *Gonzalez,* it is not *per se* improper for a law enforcement officer such as Officer Campos to serve as a translator during a suspect's custodial interrogation. Moreover, nothing in the record suggests that Alvarez-Garcia had any difficulty understanding Officer Campos's Spanish translation during the advisement of rights or the subsequent interview. In fact, Alvarez-Garcia affirmed his understanding of his rights to Officer Campos even before the officers began questioning him.

Alvarez-Garcia also argues that "his waiver was not free of governmental coercion." He contends that Officers Campos and Callison "blatantly directed [him] to complete the waiver [form] in the manner they deemed to be proper, capitalizing on his lack of understanding and his state of inebriation." Specifically, Alvarez-Garcia highlights the interaction between himself and the officers when completed the section of the Advisement of Rights form regarding force and coercion. The record indicates that Alvarez-Garcia initially answered in the affirmative when the officers described the inquiry as follows: "No one is forcing you and no one is convincing something [sic] for you to speak with us.

Yes or no?" Officer Campos testified at the suppression hearing that when Alvarez-Garcia originally answered in the affirmative, she thought "he probably didn't understand what I was trying to explain to him that [sic] the paper said."

In our view, the wording of the initial question could easily confuse any listener, no matter the language in which the question was posed. It is unclear if the "correct" answer would be "Yes, correct, no one is forcing me" or "No, no one is forcing me." It is not uncommon for any one of us to encounter a similarly befuddling question in daily life. For example, we may be seated in a public place and have a stranger ask us: "Do you mind if I take this seat?" Technically speaking, if you were comfortable with the stranger sitting with you, the correct answer would be: "No, I do not mind, please go ahead." Nevertheless, we may make a common linguistic mistake and instead tell the stranger: "Yes, please go ahead."

An interrogation, like any conversation, is a fluid process whereby any party -- the interrogator or the suspect -- may display momentary confusion as to the wording of a question. Indeed, this is one of the myriad of reasons why this Court considers a totality of the circumstances when determining whether a suspect's waiver of their right to silence was knowing and voluntary. Notably, the trial court did not consider this interaction in isolation. Based on Officer Campos's testimony and the video recording of the police interview, the trial court concluded that Officer Campos "didn't perceive, nor did the Court in viewing the Defendant's body language and demeanor on the video, perceive that the Defendant was actually indicating that there was threats or coercion." Our review of the

record leads us to the same conclusion. Alvarez-Garcia did not hesitate to change his answer on the Advisement of Rights form after the officers clarified the meaning of the question regarding coercion. Moreover, Alvarez-Garcia did not testify at the suppression hearing and further fails to specify on appeal as to how he was forced or coerced by law enforcement during his custodial interrogation.

Furthermore, we reject Alvarez-Garcia's argument that his consumption of alcohol prior to his arrest impacted his ability to knowingly and voluntarily waive his *Miranda* rights. The Supreme Court of Maryland has recognized that "evidence of mental impairment from drugs or alcohol does not *per se* render a confession involuntary, and that a court may admit a confession into evidence if it concludes that it was freely and voluntary made despite evidence of mental impairment." *Hof v. State*, 337 Md. 581, 620 (1995). *See also Harper v. State*, 162 Md. App. 55, 85 (2005) (holding that the appellant's waiver of his *Miranda* rights was knowing and voluntary despite being intoxicated at the time he made statements to law enforcement); *Bryant v. State*, 229 Md. 531, 536 (1962) (holding that "the fact that the appellant was probably under the influence of narcotics at the time of the confession . . . does not of itself make the confession not free and voluntary").

Officers Callison and Campos specifically recognized that Alvarez-Garcia had been drinking and asked him whether or not he was too intoxicated to speak with them. He insisted he was "fine" and "good" before the officers proceeded with their questioning. Based on our review of the record -- including testimony presented at the suppression hearing and the video recording of Alvarez-Garcia's police interview -- there is no

indication that Alvarez-Garcia was so intoxicated as to render his statements to the officers involuntary.

Alvarez-Garica also raises other factors relevant to our analysis. Alvarez-Garcia is recent immigrant who is illiterate, speaks little English, and has a low level of education. The circuit court considered these factors at the suppression hearing and ultimately concluded that these factors did not impact the court's conclusion that Alvarez-Garcia was knowing and voluntary "in light of the fact that all of advice was given to him orally." We reach the same conclusion here. Officer Campos verbally delivered a clear advisement of rights to Alvarez-Garcia in his native tongue and asked him to affirm his understanding of his rights. As such, Alvarez-Garcia's literacy, language skills, and educational level do not compel this Court to conclude his waiver was involuntary. Additionally, although Alvarez-Garcia is a recent immigrant with little knowledge of the United States legal system, this does not render his statements involuntary. *See Madrid v. State*, 474 Md. 273 (2021) (discussing *Gonzalez*, *supra*, and noting that a "defendant's waiver was not rendered unknowing by the circumstance that the defendant was eighteen years old, uneducated, and a recent immigrant to the United States unfamiliar with the criminal justice system in this country").

Finally, Alvarez-Garcia's testimony that he did not remember being advised of his *Miranda* rights is not dispositive on appeal. The Supreme Court of Maryland considered a similar argument in *Madrid v. State*, *supra*, 474 Md. at 325–28. The appellant, Madrid, similarly argued that he did not remember law enforcement officers advising him of his

rights. *Id.* at 326. The Supreme Court emphasized that the appellant never testified "that he did not *understand* his rights." *Id.* (emphasis added). The Court also noted that a video recording of the appellant's police interview "plainly showed that Detective Cruz gave the *Miranda* advisement and Madrid responded that he understood his rights." *Id.* The Supreme Court determined:

> Madrid gave no indication in the recording that he was confused or did not understand anything Detective Cruz had explained to him. Madrid replied in the affirmative when Detective Cruz asked him if he understood the rights that had just been read to him. And, in the answers Madrid gave to questions posed immediately before and immediately after the *Miranda* advisement, Madrid responded appropriately, giving no indication that he was having any difficulty understanding the detective's statements.

Id. (quoting *Madrid v. State*, 474 Md. App. 693, 717 (2020)).

The instant case is strikingly similar to *Madrid.* Although Alvarez-Garcia testified that he did not remember being advised of his rights, he never testified that he did not understand his rights. As we have repeatedly emphasized in this opinion, Alvarez-Garcia affirmed to Officer Campos that he understood the advisement of rights provided to him. He then proceeded to answer the officers' questions and exhibited no difficulty understanding Officer Campos's questions or responding accordingly.

The United States Supreme Court has established that, "[w]here the prosecution shows that a *Miranda* warning was given and that it was understood by the accused, an accused's uncoerced statement establishes an implied waiver of the right to remain silent." *Berghuis v. Thompkins,* 560 U.S. 370, 384 (2010). We conclude that the State met its

burden to establish by a preponderance of the evidence that law enforcement officers issued an adequate *Miranda* warning and that Alvarez-Garcia understood his rights. Alvarez-Garcia's uncoerced answers to Officers Callison and Campos's questions constitutes an implicit waiver of his right to remain silent. Based on our review of the record, we conclude that Alvarez-Garcia's waiver was voluntary under the totality of the circumstances.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

Circuit Court for Anne Arundel County
Case No. C-02-CR-22-001347

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 641

September Term, 2023

JOSE ONAN ALVAREZ-GARCIA

v.

STATE OF MARYLAND

Berger,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Dissenting Opinion by Raker, J.

Filed: June 17, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

Raker J., Dissenting.

I respectfully dissent. The *Miranda* warnings given in this case were not the functional equivalent of the traditional and required *Miranda* advisement. As the majority notes, if the warnings given to a suspect in any way misstate the suspect's rights or are misleading or confusing with respect to those rights, then "the warnings are constitutionally infirm, rendering any purported waiver of those rights constitutionally defective and requiring suppression of any subsequent statement." *State v. Luckett*, 413 Md. 360, 380 (2010). The warnings in this case were constitutionally defective, and I would reverse and remand for a new trial in which appellant's statement to the police must be suppressed.

The "traditional" *Miranda* warnings require as follows:

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

Miranda v. Arizona, 384 U.S. 436, 479 (1966). Appellant was not warned that anything he said could be used against him in a court of law. He was warned that "everything that you say can be used on the court day." Crucially, this advisement omits the concept that anything appellant said could be used *against* him by the State, as opposed to used in his defense.

I recognize that, for the *Miranda* warnings to be sufficient, there need not be any "talismanic incantation" of the *Miranda* warnings. *California v. Prysock*, 453 U.S. 355, 359 (1981). The warnings must merely reasonably convey to the suspect his rights.

Duckworth v. Eagan, 492 U.S. 195, 203 (1989). We have held, for instance, that the warning "your answers can be used against you" is the functional equivalent to "anything you say can and will be used against you." *Smith v. State*, 31 Md. App. 106, 118 (1979).

Yet, one of the most crucial concepts that must be conveyed is that the statements made can be used against a defendant in an adversarial manner. Indeed, our sister courts have held that *Miranda* advisements that misstate or mistranslate portions of the traditional advisement are permissible provided that they maintain the crucial piece: that what the suspect says can be used against him. *State v. Ortez*, 631 S.E.2d 188, 245 (N.C. Ct. App. 2006) ("Moreover, a material part of the Miranda warning given—that anything defendant said could be used against him—was preserved in the translation.").

The majority notes, correctly, that the court in *Ortez* did not analyze or otherwise discuss whether the words "used against you" are an essential part of that crucial advisement (as opposed to simply "used"). But we are called to do so today.

I would hold that the words "used against you" convey an important concept that the word "used" does not. "Used against you" informs a suspect succinctly that the statements he makes may be used *but not by him and not to his benefit*. An inculpatory statement made by a suspect will be admissible later against him in court. Md. Rule 5-803(a)(1). An exculpatory statement made by a suspect ordinarily will not be admissible. *Muir v. State*, 64 Md. App. 648, 656 (1985) (explaining that, while an inculpatory post-arrest statement made to the police will be admissible *against* the defendant, an exculpatory

post-arrest statement will be inadmissible when offered *for* the defendant under the hearsay rule).

The *Miranda* warnings in this case missed that crucial nuance. "Everything that you say can be used on the court day" implies that the defendant would have a right to the use of his statement. It implies that the statements can be used for any purpose. The warning given here substantially changes the incentive structure of the rights. If it were the case that "everything that you say can be used on the court day" by anyone (including the defendant) for any purpose (including bolstering the defendant's assertions of innocence), then suspects would have an incentive to speak and give exculpatory statements which they could later use at trial. But this is not the reality. By leaving out the words "against you," the officers implied a right and an incentive that did not exist. They did not adequately convey the consequences of appellant's decision.

The majority reasons that, by advising the suspect that "[e]verything that you say can be used on the court day," the officers amply warned appellant that what he said could be used by the State. If everything can be used (without any limitation), the majority reasons, then it can be used by the State to establish, beyond a reasonable doubt, that the defendant was guilty of the crimes charged. I agree that the warning adequately conveyed the fact that the State could use appellant's statements. But what the majority misses is that the *Miranda* warnings do not just convey the potential use of the statements by the State; the warnings, as ordinarily given, tell the suspect that any statements will not be used for

his benefit. In my view, this notion (that the use is *against* the speaker) is important in calculating whether one should speak or remain silent.

For the above-stated reasons, I would hold that the motion court erred in not suppressing appellant's statements to the police and I would reverse the judgments below.