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Miranda: Related Issues: Admissibility of Statements Made During Unreasonable Search or Frisk; Spontaneous Remarks of a Suspect; Giving Proper Miranda Warnings May Remove Effect of Prior Failure to Mirandize a Suspect; Harmless Error Rule on Motions to Suppress Statements on Fifth Amendment Grounds
United States v. James, No. 21-13689, United States Court of Appeals for the Eleventh Circuit (2022).
https://law.justia.com/cases/f...

SUMMARY, FACTS AND PROCEDURAL HISTORY

Defendant appealed his conviction for possession of a firearm by a felon. Specifically, he appealed the denial of his motion to suppress evidence discovered as the result of a search of his person and the statements made following the search. Defendant argued that the police did not have reasonable suspicion to support the search, rendering it illegal, and that the evidence found on his person and resulting statements were poisonous fruits of the illegal search. He also argued that his statements to police resulted from a custodial interrogation started before Miranda warnings were given and should therefore have been suppressed. After review, the court affirmed his conviction.

I. BACKGROUND

A federal grand jury indicted defendant for possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1). He moved to suppress evidence and to dismiss the indictment. He sought the suppression of a firearm found on his person during a pat-down search following a traffic stop and his subsequent statements to police. While he did not contest the basis of the traffic stop or its duration, he argued that the officers did not have reasonable suspicion that he was armed and dangerous and the search of his person was therefore illegal. On this basis, he argued that the firearm and his statements about it were the products of an illegal search. Further, he argued that officers elicited statements from him during a custodial interrogation, prior to administering Miranda warnings to him.

A. Evidentiary Hearing

The district court held an evidentiary hearing on defendant's motion. At the hearing, the government called the two officers who conducted the traffic stop as witnesses and defendant cross-examined them. The court then heard arguments from defendant and the government before denying defendant's motion.

1. Testimony of Officer Blake Russell

Officer Blake Russell testified that from 2018 to 2021, he was assigned to a "hot-spot area" in Mobile. Alabama. On the night of August 14, 2020, Officer Russell pulled over a black Ford Escape for a traffic violation in one of his assigned hot-spot areas. Officer Russell wore a body

camera that recorded the events of the stop and the footage from the camera was shown at the hearing. The footage showed the following events:

After pulling over the black Ford Escape, Officer Russell, along with Officer Jorge Chiang, approached the vehicle. There were three people inside the car—a female driver, a female passenger in the front passenger seat, and defendant in the rear seat of the car. After requesting a license and proof of car insurance from the driver, Officer Russell asked the occupants if there were any weapons in the vehicle. The driver, handing over several documents, responded that there were no weapons in the vehicle. The video showed defendant speaking with Officer Chiang during the initial moments of the stop, showing his hands to Officer Chiang, moving them to his lap, and reaching towards his pockets. Officer Russell again asked whether there were any weapons in the vehicle and defendant responded that he had turned over his pocketknife to Officer Chiang. Defendant provided his identifying information to Officer Russell.

Officer Russell then asked each occupant individually if they had any weapons or narcotics in the
vehicle. The driver admitted that she had an open container in the vehicle. Defendant responded for a second time that he had given his pocketknife to Officer Chiang: "I just gave him my knife, but what I'm trying to see is, y'all got probable cause to search? I don't care. I don't care. Is y'all got probable cause."

The officers asked each occupant to exit the car and sit on the front bumper of the patrol vehicle. When defendant exited the car, Officer Russell informed him that he would pat him down. While James turned to put his hands on the car, he informed Officer Russell that he received a ride from the female occupants to "take this back, somebody left it in my car." Officer Russell handcuffed defendant, proceeded with the pat-down, and located a pistol in James's right pant leg. Officer Russell asked defendant if he had a permit for the gun and defendant responded that he did not. Defendant informed Officer Russell that the pistol was not his and reiterated repeatedly that he was "taking it back." Officer Russell placed James in the back seat of his patrol vehicle. Several minutes later, Officer Russell read James his Miranda rights and questioned him about the firearm. Defendant told Officer Russell that the firearm belonged to his cousin, defendant did not have a pistol permit and he had a prior felony conviction.

At the evidentiary hearing, Officer Russell stated that upon approaching the vehicle, he immediately smelled marijuana, he observed open containers in the front seat, and he noticed the slurred speech and nervous behavior of the occupants. He testified that the occupants were speaking over each other, which he considered might have been an attempt to distract the officers.

As for defendant's behavior, Officer Russell testified that when he asked defendant whether he had any weapons or narcotics, he "hesitated" and questioned whether Officer Russell had probable cause to search. Officer Russell testified that as a result of his training and experience, he interpreted this as a sign that defendant was deceptive or hiding something. Officer Russell explained that he asked defendant and the two females to step out of the vehicle "[f]or officer safety" due to the nervousness of the occupants and because the officers were outnumbered. He decided to pat down defendant because defendant displayed signs of

nervousness and deception and defendant's baggy clothes made it impossible for Officer Russell to tell if he was carrying a weapon. When Officer Russell began the pat down, defendant started apologizing and repeatedly stated that he was trying to "take it back," which Officer Russell took to mean that James was attempting to admit that he was carrying a weapon. Officer Russell stated that defendant cooperated with the officers in providing accurate personal information and showing his hands when the officers approached the vehicle. No marijuana was found in the car or on any of the occupants.

2. Testimony of Officer Jorge Chiang

The government next called Officer Chiang to testify, showing footage from his body camera, which began shortly after defendant turned over his pocketknife to Officer Chiang. The footage was consistent with the footage from Officer Russell's body camera.
After Officer Russell placed defendant in the back of the patrol vehicle, but prior to him receiving Miranda warnings, the footage shows Officer Chiang approaching the vehicle and asking defendant if he called out for him. Defendant responded, "Yes, sir" and Officer Chiang asked defendant, "What's up, man?" Officer Chiang did not provide Miranda warnings to defendant upon approaching the vehicle. Defendant explained to Officer Chiang that his cousin, who defendant believed had a pistol permit, left the pistol in defendant's girlfriend's car. Defendant could not leave the firearm in his girlfriend's car because his girlfriend had two children. Defendant's cousin told James to bring the pistol back to him and, while walking the pistol back to his cousin, James called the female occupants for a ride. Defendant stated that there was "one in the clip" and reiterated that he does not "play with" firearms.

Officer Chiang then asked defendant, "So he let you put yourself in that spot?" Defendant responded that he did not want firearms around him and, because he typically walks from place to place, he did not want to walk around with a firearm on his person. Officer Chiang responded, "Right," and asked defendant why he did not mention the pistol when he turned over his pocketknife. Defendant stated that he knew he was not supposed "to be around them" and that he would go to jail if found with a firearm. Defendant reiterated his explanation for having the gun, his attempts to return it to his cousin, and his understanding that he was not supposed to have it. Officer Chiang asked defendant if the pistol was stolen and defendant stated that he did not know.

On cross-examination, Officer Chiang testified that the area in which he and Officer Russell stopped defendant was a high-crime area known for burglaries but stated that he did not have crime statistics for the area on hand. Officer Chiang did not recall smelling marijuana when he approached the vehicle.

B. District Court's Findings and Rulings

Following argument from defendant and the government, the district court found that the officers had reasonable suspicion to initiate a frisk of defendant's person based on concerns for officer safety. The court summarized its findings:

[T]here was sufficient evidence to support that the officer[s] had reasonable suspicion for the pat-down for officer safety based on the [fact that] the officers were outnumbered, particularly when they approached the car. The defendant had slurred speech. The smell of marijuana. He wouldn't answer the questions. He evasively answered the questions. And then produced that he at least had one weapon. At that point—and also the fact that he was wearing the baggy clothes gave the officer more than what he needed to do an officer safety pat-down to—on him.

The court also found that defendant was in custody the moment that Officer Russell handcuffed him prior to patting him down. However, because the government stated on the record that it would not seek to use defendant's pre-Miranda statement that he did not have a pistol permit, the court ruled that defendant's motion to suppress that statement was moot. Similarly, because the government conceded that defendant's pre-Miranda statement to Officer Chiang that he did not know whether the gun was stolen was not admissible, the court ruled that defendant's motion to suppress that statement was also moot. Finally, the court ruled that defendant's post-Miranda statements to Officer Russell were admissible.

As to the remaining statements, the court ruled that defendant had not made any incriminating statements to Officer Russell prior to receiving the Miranda warnings. Lastly, the court ruled that defendant's statements to Officer Chiang, up until responding to Officer Chiang's question of whether the gun was stolen, were also admissible. The court thus denied defendant's motion.

C. Guilty Plea, Sentencing, and Appeal

Defendant pleaded guilty to possession of a firearm by a felon in violation of 18 U.S.C. § 922(g)(1) reserving his right to appeal the district court's denial of his motion to suppress. The district court sentenced defendant to 37 months' imprisonment, adjusted to 32 months for time served, followed by a three-year term of supervised release. Defendant appealed his conviction, the district court's judgment, and the denial of his motion to suppress.

II. ANALYSIS

On appeal, defendant made two arguments: (1) the officers did not have reasonable suspicion that
defendant was armed and dangerous and thus the Terry frisk was unlawful; and (2) defendant's statements were fruits of an illegal search and violated his Fifth Amendment rights. [Only the court's discussion of the admissibility of the statements made by the defendant are considered here] . . .
* * *
Suppression of James's Statement

Defendant argued that the district court erred in denying his motion to suppress the statements he made to Officer Chiang while seated in the rear of the patrol vehicle before receiving Miranda warnings. Specifically, he argued that, in response to Officer Chiang's questions, he stated that he did not voluntarily produce the firearm when he produced the knife because he was a felon and knew he was not supposed to have a firearm. He argued that suppression of his statements to

Officer Chiang was warranted for two reasons: (1) the statements were made following an illegal frisk; and (2) the statements were obtained in violation of his Fifth Amendment rights.

The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself." In Miranda, the Supreme Court established that statements made during a custodial [The district court found that defendant was in custody for purposes of Miranda when he was handcuffed by Officer Russell. Neither James nor the government argue that this finding was erroneous] interrogation are not admissible at trial unless the defendant was first advised of his rights, including the right against self-incrimination. A person in custody is subject to "interrogation" when they face "express questioning or its functional equivalent." Rhode Island v. Innis, 446 U.S. 291, 300–01 (1980). This includes any "words or actions" by the police "other than those normally attendant to arrest and custody" that the police should have known were "reasonably likely to elicit an incriminating response." Interrogation reflects a "measure of compulsion above and beyond that inherent in custody itself." Id. at 300. A
defendant's volunteered statements are not barred by the Fifth Amendment. Miranda, 384 U.S. at 478. Accordingly, "a district court need not suppress spontaneous remarks that are not a product of interrogation." United States v. Hall, 716 F.2d 826, 830 (11th Cir. 1983).

The court stated that the "simple failure to administer the [Miranda] warnings, unaccompanied by any actual coercion or other circumstances calculated to undermine the suspect's ability to exercise his free will," does not taint the investigatory process to the point that a subsequent voluntary and informed waiver is ineffective. Oregon v. Elstad, 470 U.S. 298, 301 (1985). "[C]ourts are not to presume that the existence of [an] earlier unwarned statement compelled the defendant to give another one, but instead should assume that ordinarily giving proper Miranda warnings removes the effect of any conditions requiring suppression of the unwarned statement." United States v. Street, 472 F.3d 1298, 1313 (11th Cir. 2006).

The court stated that harmless error review applies to decisions denying motions to suppress on Fifth Amendment grounds. United States v. Arbolaez, 450 F.3d 1283, 1292 (11th Cir. 2006). To find that an error was harmless on direct appeal, it must determine that the error was "harmless beyond a reasonable doubt." United States v. Lall, 607 F.3d 1277, 1292–93 (11th Cir. 2010) (quotation marks omitted). In making that determination, it must determine whether there is a reasonable probability that the erroneously admitted evidence "might have contributed to the conviction." Arbolaez, 450 F.3d at 1292–93. Importantly, the improper admission of statements made before an individual received Miranda warnings is harmless where the statements were encompassed by a subsequent, properly admitted statement. Street, 472 F.3d at 1315. The court stated: ["We recognize that harmless error review does not fit neatly with this case. It is difficult to discern whether denial of the motion to suppress made a difference to James's conviction because he pleaded guilty. However, James does not argue on appeal that, but for denial of his motion, he would not have pleaded guilty. Furthermore, even assuming it was
error to admit his statements to Officer Chiang, there was sufficient admissible evidence to convict him of possession of a firearm by a felon; namely, defendant admitted to Officer Russell after receiving Miranda warnings that he was a convicted felon, that he did not have a pistol permit, and that he knew he was not supposed to have a firearm in his possession."]

Defendant challenged the admission of his pre-Miranda statement to Officer Chiang that he did not turn over the firearm at the same time as the pocketknife because he knew, as a felon, he was not supposed to have a firearm. Assuming that admission of this statement was error, the error is harmless. As demonstrated from Officer Russell's body camera footage, James, after receiving his Miranda rights, informed Officer Russell that he was a convicted felon, that he did not have a pistol permit, and that he knew he was not supposed to have a firearm in his possession. Therefore, because the challenged information in defendant's statement to Officer Chiang was also included in defendant's post-Miranda statements to Officer Russell, any error in the admission of his pre-Miranda statements was harmless.

Moreover, based on defendant's post-Miranda statements, there was sufficient evidence to conclude that James was a felon, that he knew of his status of a felon, and that he knowingly possessed a firearm, which is all that is required for the offense of felon in possession of a firearm. See Rehaif v. United States, __ U.S. __, 139 S. Ct. 2191, 2200 (2019). Accordingly, there was no reasonable probability that James's pre-Miranda statements might have contributed to conviction. Arbolaez, 450 F.3d at 1292–93.

Accordingly, the court ruled that the district court did not err in denying defendant's motion to suppress the statements about the firearm made to Officer Chiang.

III. THE COURT'S CONCLUSION ON THE MIRANDA ISSUE

The district court did not err in denying defendant's motion to suppress. Officer Russell's patdown
search was lawful because it was supported by reasonable suspicion that defendant was armed and dangerous. Additionally, even assuming that the trial court erred in failing to suppress some of defendant's pre-Miranda statements, because defendant made the same admissions after receiving Miranda warnings, any such errors were harmless. As such, there was no reasonable probability that the Miranda statements contributed to his conviction.

PRACTICE POINTER

This case presents an application of the Harmless Error Rule. In order to have the benefit of the Rule where a constitutional error has been made, a police officer must act in good faith and not have intentionally engineered the application of the Rule.
More importantly, the objective of officers should always be to scrupulously follow the law and rules pertaining to investigation and not rely upon the possibility of the Harmless Error Rule avoiding what would otherwise be reversible error. Adequate training of officers on the intricacy of interrogation rules and tactics should always be the objective of law enforcement agencies, and
not reliance on the Harmless Error Rule.

Miranda: Interrogation of Foreign Language Defendants; Adequacy of Warnings; Effect of Long-Overnight Interrogation; Re-Advisement of Rights After Pause; Voluntariness
People v. Miranda-Guerrero, No. S118147, Supreme Court of California (2022).
https://law.justia.com/cases/c...

SUMMARY, FACTS AND PROCEDURAL HISTORY

Defendant Victor M. Miranda-Guerrero was charged with six crimes and convicted of five: kidnapping to commit rape, murder, attempted carjacking, assault with intent to commit rape, and receiving stolen property. The jury could not reach a verdict on an additional assault charge, and it was dismissed. Although Miranda-Guerrero pleaded not guilty to all counts, the defense contested only the murder and assault allegations at trial. The jury found true a special circumstance that the murder occurred during the commission or attempted commission of rape, and it returned a death verdict.
* * *
November 1999 Murder of Bridgette Ballas
a. Prosecution Case
On the night of November 26, 1999, Bridgette Ballas went out for drinks with a friend in downtown Huntington Beach. They went to Gallagher's Bar for a while and then walked to Aloha Grill, where they met several other people. Ballas's friend left around 1:00 or 1:30 a.m., but Ballas stayed at the bar. Her friend testified that, at that point, Ballas was not staggering or otherwise showing significant signs of impairment. She told police the next day that Ballas had five or six drinks during the time they were together.

Soon after her friend went home, Ballas left Aloha Grill with a small group of people, including an acquaintance with whom they had been sitting. The group walked a short distance to the house of Jason H., where they continued to hang out and drink. One woman who was part of that group testified that Ballas did not appear drunk and was not stumbling during the walk to Jason's house. Ballas told her at one point that she felt "kind of funny" because she did not know anyone at Jason's, and she left the house after 30 or 40 minutes.

Early in the morning of November 27, Richard B. heard someone scream "Oh my God" three times in quick succession. He looked out his window but did not see anything. When he went outside later that morning, he found Ballas lying partially in the street with her head on the curb. She was between two vehicles. Her pants were pulled down and her shirt was pulled up above her breasts, and she was nonresponsive when Richard tried to speak to her. The location where he found her was about seven-tenths of a mile from Jason's house and about a tenth of a mile from her apartment. He covered her with a blanket and called 911.

Ballas was breathing when Officer Juan Munoz arrived, so Munoz called for medical care. She was taken to Western Medical Center for emergency treatment. At that point, she was in a coma. A CT scan showed swelling of her brain and a blood clot on the left side of her brain, which was then surgically removed by Dr. Israel Chambi. Part of her temporal lobe was removed to provide more space for her brain to swell; it was damaged and soft. Dr. Chambi testified that he believed her injuries were consistent with blunt trauma resulting from likely more than one impact.
The doctor who performed Ballas's autopsy later came to a similar conclusion. Ballas also had an
ear injury that appeared to come from pulling or tugging rather than from blunt trauma. No defensive wounds were found on her body, and no foreign DNA was found under her fingernails.

Small pieces of gravel were found inside Ballas's labia, and several abrasions were found inside her vagina that, in the opinion of the doctor who conducted the sexual assault examination, were consistent with injuries often seen in women who have been forcibly penetrated. Saliva collected from a swab of one of Ballas's breasts matched Miranda-Guerrero's DNA. Despite treatment, she
died after a few days from the severity of the swelling of her brain.

Miranda-Guerrero presented an alternative narrative that Ballas fell down and hit her head on the curb after urinating in the street. Police swabbed an area of the street around where Ballas was found for evidence. Part of a nearby gutter appeared damp in crime scene photographs, but that area was not swabbed. No urine was found on the swabs that were collected.
Over Miranda-Guerrero's motion to suppress statements to the police, several hours of video from his interviews with police were played for the jury, including a portion of interviews in which he told the officers that he had hit Ballas.

b. Defense Case

The theory of Miranda-Guerrero's defense was that the brain injury that killed Ballas resulted from her falling and hitting her head on a curb because she was intoxicated. Defense counsel argued that Miranda-Guerrero had met Ballas after she left a friend's house and that he was walking with her when she stopped to urinate between the two cars where she was found. After urinating, she stood up and fell over. Miranda-Guerrero conceded that he raped her after she was knocked unconscious by the fall.
* * *
The prosecutor's case in aggravation consisted in part of victim impact testimony from Ballas's parents and sisters. The prosecutor also discussed the facts of the circumstances of Ballas's death. Miranda-Guerrero's case in mitigation consisted principally of testimony about his childhood in Mexico and testimony from five psychologists about his cognitive functioning. Miranda Guerrero was one of eight children and grew up very poor. His father drank too much and abused Miranda-Guerrero's mother. Miranda-Guerrero started working at a restaurant when he was about eight years old and left school when he was eleven or twelve.
* * *
Admissibility of Statements to Police

Miranda-Guerrero challenged the admission at his trial of statements he made to police officers during three custodial interrogations, which collectively spanned 12 hours between May 26 and May 29, 2000. He argued that his statements were obtained in violation of Miranda v.
Arizona and that they were involuntary in light of the totality of the circumstances. He expressed particular concern about the effect of admitting statements he made near the end of his second interview, in which he said he may have hit the victim "maybe two times."

THE COURT FOUND NO ERROR

1. Facts

Miranda-Guerrero was arrested early in the morning on May 26, 2000. His first interview began about six hours later. He was interrogated by two detectives of the Huntington Beach Police Department, Dave Dierking and Sam Lopez. Miranda-Guerrero's first question to the officers was whether they spoke Spanish. Early in the interview, before Miranda-Guerrero received his Miranda advisement, Dierking asked in which language he was more comfortable proceeding. Because his response — "maybe more I speak Spanish because maybe I don't understand everything" — indicated that his command of English was uncertain; Lopez served as translator for the remainder of the interrogation.

After some preliminary questions, the detectives asked Miranda-Guerrero how long he had been in the United States. He said he had been in the country two or three years. Lopez then gave him an advisement as to his Miranda rights. The full transcript of the advisement is reproduced below as it appeared in the exhibits used at Miranda-Guerrero's trial. The statements in brackets are translations included in the trial court's exhibit that it used to evaluate whether Miranda-Guerrero's statements should be suppressed.

[LOPEZ]: Okay. Lo voy hacer dos modos, Ingles y Espanol, okay? You have the right to remain silent. Entiendes eso? [Do you understand that?]
"[MIRANDA-GUERRERO]: Of course.
"[LOPEZ]: Anything you say may be used against you in court. Entiendes eso?
"[MIRANDA-GUERRERO]: Si, si antes estaba en la corte? [If, if I was in court before?]
"[LOPEZ]: Todo que usted me dice, lo puedo usar en corte contra used. [Everything that you say may be used in court against you.]
"[MIRANDA-GUERRERO]: Yeah.
"[LOPEZ]: Okay, primero Ingles y entonces Espanol, okay? [First English and then Spanish.] Usted tiene el derecho . . . usted tiene el derecho, uh . . . [You have the right . . . you have the right, uh . . .] or, or you have the right to remain silent. Anything you say may be used against you in court. You have the right to the presence of an attorney before and during any questioning. If you cannot afford an attorney, one will be appointed for you free of charge before any questioning if you want.

"De primero. Usted tiene el derecho para meser [sic] silencio. [First of all, you have the right to remain silent.] Usted no tienes que decir nada si quieres. Entiendes eso? Porque aqi [sic] en este los Estados Unidos tene [sic] derechos. Todo que usted me dice, lo puedo user . . . usar en corte contra used [sic] Entiendes eso? [You do not have to say anything if you want. Do you understand that? Because here in the United States you have rights. Everything that you tell me can be used, used in court against you. Do you understand that?] Okay.

"Usted tiene el derecho a tener un abogado. Y si no tienes dinero para un abogado, el corte de [sic] da uno gratris [sicde costa. Entiendes eso? Eh, eh . . . usted tiene el derecho obtener un abogado durante unos . . . unas preguntas. Entiendes eso? Si o no? Digame si. [You have the right to have an attorney. If you do not have money for an attorney, the court will provide one free of charge. Do you understand that? Eh, eh . . . you have the right to obtain an attorney during the, the questions. Do you understand? Yes or no? Tell me . . . yes.]

"[MIRANDA-GUERRERO]: Mm hm.
"[LOPEZ]: Okay, porque es importante [because it's important].
"[DIERKING]: Just so I know, I speak a little, is that a si or no?
"[MIRANDA-GUERRERO]: Yeah.
"[LOPEZ]: Si. Si no tienes dinero por un abogado, el corte te da una gratis de costa. Entiendes eso? El corte te da uno. Entiendes eso? [If you do not have money for an attorney, the court will give you one free of charge. Do you understand that? The court will give you one. Do you understand that?]
"[MIRANDA-GUERRERO]: Mm hm.
"[LOPEZ]: Entonces con estos derechos en mento, quieres hablar con nosotros . . . sobre los cargos? [Then, with these rights in mind, do you want to talk with us . . . about the charges?]
"[MIRANDA=GUERRERO]: Pues no se . . . como de que? [Well, I don't know . . . like about what?]
"[LOPEZ]: Si o no? Quires [sic] hablar sobre los cargos? Quires [sichablar con nosotros? [Yes or no? Do you want to talk about the charges? Do you want to talk with us?]
"[MIRANDA-GUERRERO]: Pues si pe [Well yes, but]
"[LOPEZ]: Okay.
"[DIERKING]: Okay, do you understand those? Okay? Now you, you sorta indicated that you were just walking?"

The interview proceeded for about two hours without further advisement. As the parties agreed during the superior court's hearing on Miranda-Guerrero's suppression motion, the officers did not inform him of any rights he may have had under the Vienna Convention on Consular Relations, and "the subject of consular consultations did not come up."

Miranda-Guerrero's second interview began when Dierking and Lopez woke him up shortly after midnight that evening. At the start of the interview, Lopez asked Miranda-Guerrero the following question: "Te acuerdas cuando hablamos de los derechos? Que tienes . . . permanecer silencio y todo eso." The superior court's exhibit indicates that Lopez's Spanish was deficient, but it translates his question as "Do you remember when we talked about the rights? That you have . . . to remain silent and all that." Miranda-Guerrero replied "Umhmm." Lopez then asked in Spanish if Miranda-Guerrero wanted to talk to them again with those rights in mind. He said yes, and the interview proceeded.

The third interview was conducted two days later. At the beginning of the interview, Lopez read Miranda-Guerrero's rights to him from a card on which they were correctly translated into Spanish. He had Miranda-Guerrero read the card as well.

Although various statements Miranda-Guerrero made during his interviews were introduced at trial, the most incriminating statement regarding his murder charge came during the second interrogation. Miranda-Guerrero's explanation of the circumstances of Ballas's death changed over the course of his interviews. He claimed at first that he had never seen Ballas, then that he was walking with her on the night she died but that he left before she was hurt, and eventually that she fell and hit her head, the position he maintained at trial. At the end of his second

interview, which spanned more than seven hours, he told the officers that he may have hit Ballas twice. On further questioning, he said he could not recall any other details with certainty. Asked when he hit her, he said, “Maybe when she had fallen down .... Maybe ... maybe that’s when maybe I . ..when maybe I hit her. Because I hadn’t remember [sic] that I had hit her.” Asked if he now remembered hitting her, he responded, “Well . . . you’re saying (I did). But I ....Really, I .... Well, I haven’t remembered, but ... but like, like, you’d say that (...?) ... no, no, no.” When the officers asked again if he remembered hitting Ballas, he responded, “No man. But if I hit her maybe it was two. But no, I don’t remember.”

About three hours of video from the interviews were played during the trial. The prosecutor discussed Miranda-Guerrero’s statements and changing story, emphasizing them particularly in rebuttal to the defense’s closing argument. As he told the jury, “[i]t took hours and hours and hours of questions.... He didn’t admit anything.” The prosecutor pointed out that the first thing Miranda-Guerrero said when asked if he knew what had happened to Ballas, at a time when he was still denying that he had ever seen her, was “[p]erhaps she was killed.” “What innocent person in the position of the defendant would ever say that?” he asked. “He repeatedly tells the police he never saw her fall,”the prosecutor said. “And then only four hours into the second interview, six hours total, he finally tells the police the truth. And he tells the police, perhaps he hit her twice.

2. Miranda Analysis

The Fifth Amendment to the United States Constitution provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” To safeguard a suspect’s Fifth Amendment privilege against self-incrimination from the “inherently compelling pressures” of the custodial setting (Miranda, supra, 384 U.S. at p. 467), the high court adopted a set of prophylactic measures requiring law enforcement officers to advise a suspect of his right to remain silent and to have counsel present prior to any custodial interrogation (id. at pp. 444–445). “A suspect who has heard and understood these rights may waive them,” but the prosecutor “ ‘bears the burden of establishing by a preponderance of the evidence that the waiver was knowing, intelligent, and voluntary under the totality of the circumstances.’ ” (People v. Leon (2020) 8 Cal.5th 831, 843 (Leon).) “The totality approach permits — indeed, it mandates — inquiry into all the circumstances surrounding the interrogation,” including the defendant’s “age, experience, education, background, and intelligence,” and “whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.” (Fare v. Michael C. (1979) 442 U.S. 707, 725.) “A statement obtained in violation of a suspect’s Miranda rights may not be admitted to establish guilt in a criminal case.” (People v. Jackson (2016) 1 Cal.5th 269, 339.) When evaluating the admissibility of a defendant’s statements on appeal, we accept the trial court’s resolution of disputed facts if supported by substantial evidence, and we independently determine from the undisputed facts and the facts properly found by the trial court whether the statements were illegally obtained. (Ibid.) Miranda-Guerrero challenges the adequacy of the Miranda advisory and waiver only with respect to the first two of his three interviews, although he also challenges the voluntariness of his statements from the third interview.

Miranda-Guerrero did not argue before the trial court that his Miranda rights were violated due to a lack of English comprehension. But the record raises some question about whether his English fluency was adequate for him to understand his rights when he was advised of them in English. His response to the warning that what he said could be used against him—"if, if I was in court before?"— indicated that he did not grasp that relatively straight forward admonition. At several points, he struggled with questions put to him in English, for instance responding "Uh, it's where?" when asked with whom he lived, and answering "My brother?" when asked if he had ever had problems with women. When Dierking thanked him for cooperating with the officers during the first interview and said that the case would be given to the district attorney, Miranda-Guerrero admitted to Lopez that he didn't understand what Dierking had said. When asked where he first saw [a companion], he answered,"Oh because, because she's angry and because she said it." At some points, however, Miranda-Guerrero did respond appropriately and was able to ask clarifying questions.

We need not decide whether the Miranda advisement given in English was sufficient. Recognizing the language barrier, Lopez advised Miranda-Guerrero in Spanish as well. Some translation difficulties made the Spanish advisement suboptimal; it is not clear why the officers, who had access to a printed card with properly translated Miranda advisements, chose to advise Miranda-Guerrero at the first interview with a Spanish translation developed on the fly. However, we conclude that under the totality of the circumstances, the Spanish admonition adequately informed Miranda-Guerrero of his rights.

As to the right to remain silent and the right to court appointment of counsel, Lopez's Spanish advisement was sufficient. He explained that Miranda-Guerrero had the right to silence, that he did not have to say anything if he did not want to, and that whatever he said could be used against him. He instructed Miranda-Guerrero twice that he had the right to a court-appointed attorney if he could not pay for counsel, and he took steps to phrase the right in clear and simple terms.

It is a closer question whether Lopez adequately advised Miranda-Guerrero of his right to consult with an attorney prior to his interrogation and to have an attorney present throughout the interview. Miranda admonitions require no "talismanic incantation," but they must contain each of the mandatory warnings, either as the high court set them out in Miranda itself or by some "'fully effective equivalent.'" (California v. Prysock (1981) 453 U.S. 355, 359–360 (per curiam), quoting Miranda, supra, 384 U.S. at p.476.) Notifying a suspect that he or she has the right to a court-appointed attorney without explaining that this includes the right to have an attorney present before and during any custodial interviews is an insufficient admonition. (Duckworth v. Eagan (1989) 492 U.S. 195, 205.)

According to the translation in the superior court's exhibit, Lopez instructed Miranda-Guerrero that "you have the right to obtain an attorney during the, the questions." He did not specify which "questions" he was referring to, and nothing else in the advisement explained that Miranda-Guerrero's right to an attorney applied not just during court proceedings, but before and during any interrogation. Nor did Lopez take any steps to clarify the ambiguous admonition, instead immediately asking Miranda-Guerrero to declare whether he understood the right.

In context, however, it would be reasonable for a suspect in Miranda-Guerrero's position to presume that "the questions"to which Lopez referred were the questions that the detectives were about to ask him. And while Miranda-Guerrero may not have understood every aspect of the Miranda advisement he was given in English, the full and accurate recitation of his rights in English may have helped clarify any ambiguity about what questions Lopez was referencing in the Spanish admonition. Perhaps most significantly, Miranda-Guerrero agreed at the beginning of
the third interview that the rights he was advised of then—which included the right to have counsel present, explained multiple times and in accurate Spanish—were the same as the rights the detectives had discussed with him during the first interview. Considering the totality of the circumstances, we conclude that the admonition at the first interview was adequate to advise Miranda-Guerrero of his right to the presence of an attorney during the interrogation.
Miranda-Guerrero argues that even if he was adequately advised of his rights, he did not understand or waive them. He says he did not understand his rights because his initial response when asked if he understood them was "Mm hm" rather than something more affirmative. But when advised of his rights at the third interview, Miranda-Guerrero clearly indicated not only that he understood his rights, but that they were the same rights of which he had been advised at the first interview. Miranda-Guerrero similarly says he did not waive his rights because his initial response when asked if he wanted to talk to the detectives was "Pues si pe—," which the court's transcript translates as "Well yes, bu—."But he proceeded immediately to speak with the officers, answered their questions without hesitation, and said nothing "'that could be construed as an invocation of his'" Miranda rights. (People v. Flores (2020) 9 Cal.5th 371, 417.) Under these circumstances, we cannot conclude that his initial answers when asked at the first interview if he wanted to talk, standing alone, are sufficient to show he did not understand or waive his rights. (See ibid. ["'A suspect's expressed willingness to answer questions after acknowledging an understanding of his or her Miranda rights has itself been held sufficient to constitute an implied waiver of such rights.'"].)

Miranda-Guerrero also argues that the totality of the circumstances suggests he did not knowingly and intelligently waive his rights, notwithstanding the proper advisement, because of his relative youth and limited education, his lack of experience with the American legal system, and his difficulty understanding English. As noted, he also claims he did not sufficiently express to the officers that he understood his rights because he answered "Mm hm" rather than something more affirmative when first asked whether he understood the advisement at his initial interview.

Miranda-Guerrero was 22 years old at the time of his police interviews, and he had left school when he was eleven or twelve. In Leon, we upheld the waiver of a defendant of similar age who had failed sixth grade, "consistently performed in the borderline range on intelligence tests," whose "knowledge of the legal system came mainly from Mexican soap operas," and who answered "'uhm-hm'"when first asked if he understood his rights. (Leon, supra, 8 Cal.5th at pp.840–841.) Certain aspects of the record in Leon were more indicative of a knowing and intelligent waiver than the evidence before us here. In particular, the Spanish advisement in that case was given from a pre-printed form, and the interviewer, a native Spanish speaker, took care to give the advisement in a Spanish dialect with which the defendant was familiar. (Id. at p.840.) But there are additional, affirmative indications in this case that Miranda-Guerrero

understood the advisement he was given. Most notably, Miranda-Guerrero made clear at the start of the third interview that his understanding of the rights Lopez read him then from an accurately translated Spanish-language form was the same as his understanding from the first interview. We conclude that under these circumstances Miranda-Guerrero's waiver at the first interview was knowing and intelligent.

The Attorney General does not dispute that Miranda-Guerrero was not fully advised of his rights at the beginning of the second interview; the sole admonition provided was the question, in what the translator termed deficient Spanish, "Do you remember when we talked about the rights? That you have ... to remain silent and all that." However, no readvisement was required. Readvisement is not necessary following a valid admonition and waiver when the "subsequent interrogation is reasonably contemporaneous." (People v. Spencer (2018) 5 Cal.5th 642, 668.) "In determining whether a subsequent interrogation is reasonably contemporaneous, we consider the totality of the circumstances. Relevant considerations include: '1) the amount of time that has passed since the initial waiver; 2) any change in the identity of the interrogator or location of the interrogation; 3) an official reminder of the prior advisement; 4) the suspect's sophistication or past experience with law enforcement; and 5) further indicia that the defendant subjectively understands and waives his rights.'" (Ibid., quoting People v. Smith (2007) 40 Cal.4th 483, 504.)

We have held that interrogations taking place as long as 40 hours after a Miranda warning and waiver do not require readvisement when conducted by the same officers in the same location with an experienced defendant who "evinced no reluctance to be interviewed." (People v. Williams (2010) 49 Cal.4th 405, 434–435.) Miranda-Guerrero did not have experience with the criminal justice system at the time of his interviews, and he expressed some hesitation about proceeding when he was advised of his Miranda rights at the first interview. But his second interview took place fourteen hours after the first interview, in the same location and with the same detectives. He was also reminded, albeit briefly, of the original Miranda admonition at the beginning of the second interview. Considering all of the circumstances, we conclude that no readvisement was required at the second interview.

3. Voluntariness Analysis

Miranda-Guerrero also argues that his statements to officers were involuntary because the officers' methods were coercive, because he was not advised of his consular rights under the Vienna Convention, and because of his personal characteristics, including his limited education, inexperience with the criminal justice system, and lack of English proficiency. Under our precedents, his confession was not involuntary.

Involuntary statements to police are inadmissible for all purposes. (People v. Peevy (1998) 17 Cal.4th 1184, 1193.) Statements are involuntary when they are not the product of "'a rational intellect and free will.'" (People v. Maury (2003) 30 Cal.4th 342, 404, quoting Mincey v. Arizona (1978) 437 U.S. 385, 398.) To use a defendant's statements to police at trial, the prosecutor must prove by a preponderance of the evidence that they were voluntary. (People v. Peoples (2016) 62 Cal. 4th 718, 740 (Peoples).) On appeal, the voluntariness of the statements "is reviewed

independently in light of the record in its entirety, including 'all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.'" (People v. Benson (1990) 52 Cal.3d 754, 779.) We 'examine the uncontradicted facts surrounding the making of the statements to determine independently whether the prosecution met its burden.' (Maury, at p.404.) When testimony in the record is conflicting, we 'must accept that version of events which is most favorable to the People, to the extent that it is supported by the record.' (Ibid.)

"[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary'... ." (Colorado v. Connelly (1986) 479 U.S. 157, 167.) Coercion is not limited to physical abuse; it may involve "more subtle forms of psychological persuasion." (Id. at p.164.) These techniques include "repeated suggestion and prolonged interrogation." (People v. Hogan (1982) 31 Cal.3d 815, 843. . . . They also include deprivation of sleep and food (Greenwald v. Wisconsin (1968) 390 U.S. 519, 521 (per curiam)), as well as "deception or communication of false information" (Hogan, at p.840).

If coercive police conduct is present, we evaluate the totality of the circumstances to determine whether a defendant's statements were freely given. (People v. Maury, supra, 30 Cal.4 that p. 404.) Factors that we consider include the coercion discussed above, as well as "the length of the interrogation and its location and continuity, and the defendant's maturity, education, and physical and mental health." (Peoples, supra, 62 Cal. 4th at p.740.) A defendant's "inexperience" and "low intelligence" may weigh against a finding of voluntariness, as do"deprivation and isolation imposed on [the] defendant during his confinement." (People v. Neal (2003) 31 Cal.4th 63, 68).

Miranda-Guerrero asserts that several circumstances of the second interview raise concerns about the voluntariness of his confession at the end of that interview. The officers began interviewing him just after midnight, and the interrogation continued for more than seven hours until Miranda-Guerrero said he might have hit Ballas twice. Miranda-Guerrero notes that he "showed some signs of fatigue" (Peoples, supra, 62 Cal.4th at p.741), telling the detectives at one point that he was "very sleepy." Further, the officers repeatedly emphasized Miranda-Guerrero's isolation and referred to the absence of any relationships in Miranda-Guerrero's life and the distance from his family as reasons why he might have attacked Ballas. In repeated accusations over the course of the night, the officers asserted dozens of times that he "beat," "hit,"or "punched" Ballas.

While these aspects of the second interrogation of Miranda-Guerrero are relevant, they ultimately do not distinguish this case from prior cases in which we have declined to find involuntary a confession given in response to overnight questioning. In Peoples, for instance, we affirmed a finding of voluntariness in a case involving a twelve-hour overnight interview in which the police questioned the defendant "constantly for the first 10 hours of the interview." (Peoples, supra, 62 Cal.4th at p.739.) An expert testified in that case that "the detectives used coercive techniques ... over 50 times during the 12-hour interrogation." (Id. at p.740.) The interview in Peoples was both longer and more coercive than Miranda-Guerrero's second interview. Moreover, as in Peoples, Miranda-Guerrero "was given numerous breaks, drinks, and food," and the officers "never offered him leniency for his confession and never

threatened a harsher penalty if he remained silent." (Id. at p.741.) The defendant in Peoples also showed considerably greater signs of exhaustion than Miranda-Guerrero—"sweating, pulling out his hair, rubbing his skin, twitching his facial muscles, grinding his teeth, and at times appearing to fall asleep." (Id. at p.739.

* * *

THE COURT'S CONCLUSION ON THE ADMISSIBILITY OF DEFENDANT'S STATEMENTS

Considering the totality of the circumstances and our independent review of the video of Miranda-Guerrero's interrogation, we cannot conclude that his confession during his second custodial interview was involuntary.

Furthermore, the first and third interviews exhibited few of the troubling features of the second interview. The first interview took place at 8:00a.m. and lasted just over two hours. The third took place several days later at 10:00 a.m. and also lasted only a few hours. The questioning during the first interview was not aggressive or coercive, and while there were periods of insistent questioning in the third interview, they were relatively brief. We therefore conclude that Miranda-Guerrero's statements from the first and third interviews were voluntarily given as well.

PRACTICE POINTER

Interrogation of defendants who have limited English language poses special problems for law enforcement. It is best to have such individuals interrogated by officers who are fluent in the defendant's language. In many cases this is not possible or limited.

In this case the officers were mindful of the special challenges that exist in interrogating foreign language suspects. These challenges should be treated as special cases, and every attempt should be made to have interpreters available for such cases, especially homicide cases where the need for skillful interrogation of suspects is most important

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