Circuit Court for Montgomery County
Case No.: C-15-CR-23-000445

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2101

September Term, 2023

HECTOR JOCKSAN ZELAYA-REYES

v.

STATE OF MARYLAND

Nazarian,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 4, 2025

On October 13, 2023, following trial in the Circuit Court for Montgomery County, a jury found Hector Jocksan Zelaya-Reyes, appellant, guilty of robbery.[1] On January 2, 2024, the court sentenced him to three years' imprisonment with all but eighteen months suspended, and ordered five years of supervised probation.

Appellant noted an appeal and presents us with the following question for our review: "Did the circuit court err in denying [appellant's] motion to suppress his statements?" For the reasons that follow, we answer that question in the negative and affirm the judgment of the circuit court.

BACKGROUND

Facts of the Offense

Because this appeal is limited to consideration of the propriety of the suppression court's ruling, the underlying facts of the offense are largely immaterial. We therefore provide a brief recitation of the facts for context. On February 3, 2023, at around 1 p.m., a ride-sharing service driver picked up a passenger, who the jury later determined to be appellant, in Silver Spring, Maryland.[2] The passenger directed the driver to some apartments on Weeping Willow Drive, about 10-12 minutes away. Upon arrival, in

[1] In his interview with police, Mr. Zelaya-Reyes spelled his middle name, "Jokson." We have adopted the "Jocksan" spelling as reflected in the docket entries for consistency.

[2] Because the passenger was wearing a hat, a hooded sweatshirt, and a mask, the driver could only see his eyes and eyebrows and therefore could not identify appellant as the passenger.

response to the driver telling the passenger that the fare was $7, the passenger asked the driver if he had change for $100. When the driver told the passenger that he did not have change for $100, the passenger produced a pistol from his backpack, told the driver not to look at him, threatened him with his life if he did not cooperate, and demanded money. After the driver handed over about $250 in cash, the passenger fled.

Through a subsequent investigation the police learned the cell phone number used to hail the ride-sharing driver. From there, the police developed appellant as a suspect in the robbery. After obtaining an arrest warrant, the police arrested appellant on March 28, 2023, and interviewed him at the police station. During that interview, appellant made several incriminating statements.[3]

Motion to Suppress

Prior to trial, appellant sought to suppress evidence of incriminating statements he made to the police on the basis that the police had violated his rights under *Miranda*[4] by not terminating all questioning after he asserted his Fifth Amendment right to remain silent during a custodial interrogation. On October 2, 2023, the court held a hearing on appellant's motion. The only witness was Detective Brad Schmidt of the Montgomery County Police Department, one of the police detectives who interviewed appellant.[5] A

[3] We describe the police interview of appellant in greater detail below.

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

[5] Detective Guzman also took part in the interview of appellant, but he did not testify during the hearing on appellant's motion to suppress evidence.

copy of the video recording of appellant's interview was also admitted into evidence.

Upon learning of appellant's arrest, Detective Schmidt proceeded to the police station where he reviewed appellant's rights with him and completed an advice of rights form. The State played substantial portions of the recorded interview for the court.[6]

During appellant's interrogation, Detective Schmidt confronted appellant with information he had learned during his investigation that led him to connect appellant to the robbery, and ultimately to seek appellant's arrest. Despite being confronted with that information, which included his cell phone number and email address, appellant initially denied any knowledge of the robbery. Eventually, however, appellant admitted that he took the driver's money but denied that he used a firearm in so doing.

At several points during the interview, appellant told the detectives to "just take [him] to jail." Appellant asserts that his requests to be taken to jail amounted to an unambiguous and unequivocal assertion of his Fifth Amendment right to remain silent, which in turn required the police to terminate the interview. Appellant sought to suppress inculpatory statements he made after he allegedly invoked his right to remain silent. To

[6] In addition, a copy of the transcript of the interview was admitted into evidence during the hearing. For many of appellant's responses to the questions asked of him by the detectives, the transcript of the suppression hearing reports "unintelligible." The transcript of the interview itself contains far fewer instances where appellant's statements were reported as "unintelligible." Between the two documents, it appears that an accurate recounting of the interview is part of the record. With one minor exception, the parties do not claim otherwise. The actual video recording of the interview, although admitted into evidence and played during the suppression hearing, is not a part of the appellate record.

give context to appellant's statements, we recount in some detail what occurred during appellant's police interview.

The Interview

Detective Schmidt began the interview by explaining that appellant's name "came up" during his investigation into the February 3, 2023 robbery of a taxi driver. After appellant asked why his name came up, Detective Schmidt said, "That's why I'm trying to give you the opportunity to talk about." When Detective Schmidt asked if appellant remembered where he was on February 3, appellant first responded that he was working at his construction job, but he later stated that he did not know if he was working that day.

Detective Schmidt then proceeded to explain to appellant how his name had come up during his investigation. The detective explained that he had learned that the day before the robbery, appellant had obtained a "fake number" from Inteliquent.[7] He said that he had sent a subpoena to Inteliquent, and the company responded with information confirming that someone from TextNow "rented the number out the day of the robbery." Further, TextNow provided the email address, the first and last name, and the IP address connected to the rented phone number. The detective told appellant that on the "day of the robbery,

[7] Inteliquent is a telecommunications company that provides Voice over Internet Protocol (VoIP) services, which allows users to make and receive calls using the internet rather than traditional phone lines. A VoIP number is a "real," but virtual, phone number not tied to a specific phone line; it is hosted in the cloud. Because the assigned VoIP number is not tied to a user's primary phone number, it can be used to mask a user's identity. *What Is a Virtual Phone Number and How Does It Work?* FORBES.COM, https://perma.cc/4H3M-BMGU (last accessed May 30, 2025).

this person gets this number, gets the account set up, about three hours later, plus or minus a few, they call for the . . . [t]axi," which took the passenger to Weeping Willow Drive. In response, appellant stated that he had a job and did not need to rob anyone, and in an apparent explanation for why his email address might have been connected to the phone number used to hail the taxi, he said that "[s]omebody been using my stuff, man."

Detective Schmidt informed appellant that, in response to his subpoena, TextNow reported that the rented phone number was registered to Hector Zelaya, who provided jocksanreyes77@gmail.com as an email address. In addition, the detective told appellant that the TextNow account created on the day of the robbery was cancelled the next day. Appellant responded that the information was "weird" because he had not "used that email" but utilized another email address, jokson78@gmail. The detective then asked if appellant had this other email address set up on his phone, and appellant responded, "I don't think so[,]" indicating that he only used the email address for his "apps like Instagram, stuff like that."

Detective Schmidt then asked appellant if he used "Cash App," to which appellant said, "No." This prompted the detective to inform appellant that he knew that appellant had a Cash App account registered under his name, phone number, and an email address similar to the one provided toTextNow.

The detective also informed appellant that, pursuant to a search warrant for his cell phone, the detective had obtained cell phone location information from appellant's cell phone service provider, T-Mobile, which showed appellant's phone's presence, at relevant

times, at both the location of the ride-share pickup and the robbery on Weeping Willow Drive. The detective specifically informed appellant that "phones don't lie."

Detective Schmidt continued, "if you robbed the guy because you needed money for the pills, or you're having problems at home, you needed rent money, I get it. I'm just trying to find out . . . why you did this to that guy. That guy had a panic attack and almost died because you pointed your gun right in his face." Detective Schmidt continued, "This is what [the driver] told me. . . . It was a $7 fare, you got out there, you asked to break change for a hundred. And you pulled out your gun, put it right in his face, and said you were going to kill him." In the face of these accusations, appellant repeatedly denied pointing a gun at anyone. The following colloquy ensued:

> Appellant: I don't even got a gun.
>
> Detective: Why did you do that to that man?
>
> Appellant: I don't got a gun. I didn't put nobody to nobody's gun. I didn't put no --
>
> Detective: Well, did he lie to me, did you not have a gun, did you just threaten him? Did you pull out a knife?
>
> Appellant: No.
>
> Detective: There's two sides to every story. That's why I'm trying to get yours.

The detectives then reiterated the evidence they had pointing to appellant's involvement in the robbery, with Detective Guzman explaining that "we make mistakes in life all the time" but "[d]enial or a lie sometimes is a lot worse than the actual truth."

Detective Guzman noted that appellant had his "reasons for doing what [he] did," and said that he and his partner were not "here to judge [him]." Detective Guzman continued:

> All [we] want to know is, ["]hey, I fucked up.["] Are you sorry for what you did? . . . Look at me. That goes a long way apologizing to somebody. If you had this man right across from [you] right now, would you be -- could you tell him[,] ["]I'm sorry["]? Do you regret what you did? . . . Hector, did you regret what you did? That's huge. That's very important. Because some of these victims, that's all they want to hear because, guess what, they don't know what's going on. They don't know what's going on in your life. You understand what I'm saying?

Appellant did not respond. The interview continued:

> Detective: All the evidence is right there, so there's no need in denying it. There's no need in denying it. Were you high when you did this?
>
> Appellant: (No answer heard.).
>
> Detective: Hector.
>
> Appellant: What?
>
> Detective: Were you high when you robbed this guy? It's a simple yes or no, Hector. Huh?
>
> Appellant: (No answer heard.).
>
> Detective: Come on, raise your head up man. I'm being respectful to you, the least you could do is just be respectful to us. That's all I ask of you. Were you high when you did this?
>
> Appellant: I don't know what you're talking about. I don't know. It sounds good what you're saying.
>
> Detective: No. No. No, those are the facts, Hector. Those are the facts, man. Imagine someone doing that to one of your loved ones, whether it's your aunt, uncle, your cousin, they're driving. These guys are out there. They're just trying to make a living. That's all they're trying to do. That's it. But yet again, we're not here to judge you, man.

Immediately after Detective Guzman stated that the detectives were not "here to judge," appellant made his first reference to jail:

> Appellant: It's time to put me in jail. That's all.
>
> Detective: Hector, look at me.
>
> Appellant: That's all you here for.
>
> Detective: Look at me.
>
> Appellant: You ain't right, and you're not here to judge me -- just going to judge me.

Detective Guzman then explained that the detectives were "just doing [their] job" and that they did not place appellant in this situation, but noted that it would go "a long way" if he admitted his mistake, and sought help for his drug problem, if necessary:

> This is just my job, but what I'm trying to get you to do is just man up. This is how you grow up, and if you got a drug problem then get some help. There's help available, and it seems like you got a drug problem. And one of my main things is if you're sorry man, if you regret what you did.

Appellant responded, "Right, come on bro. Let's get this over and done with. I'm tired." The following exchange then occurred where appellant referenced jail a second and third time:

> Detective: So why did you do it? Were you hurting for money to buy, to pay like my partner said?
>
> Appellant: Come on, let's go. I don't want to even be here. Just take me to jail, bro. That's all I'm asking you.
>
> Detective: So -- so why did you do it?
>
> Appellant: Whatever, bro.
>
> Detective: But why did you do it?

Appellant: Whatever bro. Just take me to fucking jail if you want to put me in jail.

The interview continued:

Detective: Do you have any remorse at all? Do you feel bad about what you did? Are you sorry? What do you want me to tell the victim? Hey, it wasn't a real gun, he apologizes.

Appellant: He didn't put nobody, no. No.

Detective: Well then tell me your side of it.

Appellant: No.

Detective: That's why we're here to talk about. We're not going to get this opportunity tomorrow or five hours from now; we're here now to talk about that. Now's your chance.

Appellant: I don't hurt nobody.

Detective: Not just that -- but if it wasn't a real gun, then we need to go because we're about to go do a search warrant at your house where you live at.

Appellant: Yes, but I don't have no gun. I don't have -- you can go -- you can just --

Detective: So there wasn't a gun that you pulled out?

Appellant: No gun. No gun.

Detective: So you didn't have a gun.

Appellant: I don't have a gun at all.

Detective: So you just threatened that you had a gun; is that what you're telling us?

Appellant: No. No, what I'm saying, I don't got a gun. I don't got a gun. I don't like guns.

Detective: So why would this guy say that you pointed a gun at him, man?

Appellant: I don't know. He probably just wanted to get more -- I don't know.

Detective: Get more what? The guy, like you said, he almost freaking had a heart attack because --

Appellant: I don't know, man. I did not have -- I don't have --

Detective: Like I said, I just want to make sure whether it was a real gun or not. That's all we want to know because we also want to know. That's why we're asking who lives over there.

Appellant: I'm sorry brothers, but I'm going to sleep. I don't know what you're saying. I don't know nothing.

Detective: You don't know nothing?

Appellant: I just want to go wherever you want to take me after this.

Detective Schmidt then informed appellant that there was a "SWAT team on standby outside your house" and asked if there were any children inside the house before "we send [the SWAT team] in there busting down the door[.]" The detective noted that he had to send the team because the victim "told us you had a gun, so we've got to go through all this stuff."

When pressed if a "freaking drug problem" was "what caused this whole nonsense," appellant referenced jail a fourth time, responding, "Take me to fucking jail. That's it, bro." After Detective Guzman responded that he was "trying to find peace for this freaking victim, man, who almost had a freaking heart attack. I told you once -- [,]" Appellant interrupted and again stated, "I don't have a gun." When the detective asked if appellant "just made [the victim] believe" he had a gun, appellant responded that he did not "know what [the detective was] talking about."

Detective Guzman then offered another basis why law enforcement knew that appellant was the robber. The detective stated that appellant's DNA was found in the back seat of the ride-share vehicle. The detective continued that "we're trying to get an understanding as to [why] you did what you did." Appellant responded, "If you know, if it was me okay . . . why you asking me when you know everything."

The detective explained that he wanted to understand appellant's motive, and the exchange between the detectives and appellant continued. During the following exchange, appellant referenced jail a fifth and sixth time:

Appellant: -- why you asking me when you know everything?

Detective: We're trying –

Appellant: Bro, why you asking me?

Detective: Do you feel any remorse?

Appellant: You asking me, bro? Why you asking me?

Detective: No, as to why.

Appellant: Why you asking me? You know the answer. You know everything so.

Detective: No. No, but do you feel any remorse, man. So you don't care that you almost gave this guy heart attack?

Appellant: I don't.

Detective: So you just don't care, wow.

Appellant: I'm not saying that, bro.

Detective: That's what I'm asking you man. We're here adults.

Appellant: I care for everybody.

Detective: Okay, obviously not for this fucking guy.

Appellant: I never like to see nobody hurt. That's it.

Detective: So your intentions were not to hurt him that day. Your intentions was just to put fear, get the money for the drugs, and roll out.

Appellant: No. No.

Detective: Huh?

Appellant: Bro, just take me wherever you want to take me, bro.

Detective: Hector, we're trying to understand, bro.

Appellant: All right, you understand, bro.

Detective: We're trying to understand.

Appellant: You know all the answers right here, you know, and the guy got answers. That's it. All right, you got me. You got me. You got me. That's it. Take me to jail.

Detective: So no remorse? I'm going to call the victim today. What am I supposed to tell him.

Appellant: Just take me to jail. He's paying for what he did -- that, you can tell him that.

Detective: He's paying for what he did.

Appellant: Yes.

Detective: He gave you a ride.

Detective: That's all he was doing, my brother.

Detective: Trying to make a living. That's why being sorry and apologetic and being, you know, remorseful is a huge thing.

Appellant: Come on man, just take me. Where you want - take me, bro.

Detective: It's a huge thing.

Appellant: Come on, bro. Just take me bro. Take me somewhere bro. I don't want to be here, bro.

Detective: So you don't feel sorry.

While the video recording of appellant's interview is not part of the appellate record, the parties agree that, after the detective said "So you don't feel sorry[]" appellant got up, banged his hands on the table, and in an emotional outburst said: "Bro, of course I feel sorry, man. Of course I fucking feel sorry, bro. It's this fucking -- damn bro -- damn -- get me the fucking help then."

The following then transpired:

Appellant: Get me the fucking help.

Detective: Okay. Okay.

Appellant: This fucking (unintelligible: 00:41:53). I'm tired of this shit. I want the fuck out. Do what the fuck, yo.

Detective: Okay.

Appellant: I'm happy. I'm happy y'all fucking got me because you know what, I want to get clean. I'm glad I'm in jail, yes.

Detective: Okay. Then we're going to get you some help. Hector, there's drugs --

Appellant: Hey, I'm serious, bro. You got me, okay. I'm so happy I'm -- thank God, because if I would be home, I would be popping more in, fucking (unintelligible: 00:42:25) my whole life. I want to have kids. I want to have my house. I want to have my car.

The Suppression Court Ruling

At the conclusion of the hearing held on October 2, 2023, the court denied appellant's motion to suppress on the basis that it did not believe that appellant had clearly and unambiguously invoked his right to remain silent within the meaning of the relevant case law. Accordingly, the suppression court ruled that the continued custodial police

questioning was not prohibited, and therefore appellant's incriminating statements would not be suppressed. In relevant part, the suppression court said:

> With respect to the invocation of the right to remain silent, I did review the video before we came. I've seen it again. I've reviewed the transcript. And I noted the statements that defendant made, such as, "You're here to put me in jail. That's all you're here for." I think he says, at some point, "You ain't right. You're not here to judge me. Just take me to jail," or "It's time to take me to jail." You know, I think that, and I'm looking at not just those statements but the entirety of the circumstances in the interrogation.
>
> I agree with the State that the statements, of course, have to be considered in the context. And I do view many of those statements as an expression of what he believed the intentions of or motives of the police were. Though it is, I have no doubt that the defendant didn't want to be there. I think that was very clear that he didn't want to be there. And became more clear as time went on that he didn't want to be there. But I can't find that his statements were a clear and unambiguous invocation of his right, Fifth Amendment right to remain silent.

DISCUSSION

Standard of Review

In *Madrid v. State*, 474 Md. 273 (2021), the Supreme Court of Maryland succinctly set forth the well-established standard of review for motions to suppress:

> Our review of a grant or denial of a motion to suppress is limited to the record of the suppression hearing. The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of testimony must be accepted by this Court unless clearly erroneous. The evidence is to be viewed in the light most favorable to the prevailing party. We undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case. . . . [A]n appellate court reviews without deference a trial court's ultimate determination as to whether *Miranda* was violated and reviews for clear error the trial court's underlying findings of fact.

Id. at 309 (citations omitted) (quotations omitted).

Miranda

The Fifth Amendment to the U.S. Constitution provides, in relevant part, that "no person shall be compelled in any criminal case to be a witness against himself. . . ." In the watershed case of *Miranda v. Arizona*, the United States Supreme Court recognized that a "police-dominated atmosphere" can be inherently coercive and potentially work to "undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." 384 U.S. at 445, 467 (1966). "[T]o combat these pressures and to permit a full opportunity to exercise the privilege against self-incrimination," the Supreme Court established the following well-known and prophylactic warnings that police are required to convey to a suspect before a 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.

Id. at 467, 479.

Once advised, a criminal defendant has a choice; he may waive these rights and make a statement to law enforcement, or, conversely, he may "invoke" these "constitutional safeguards." *Reynolds v. State*, 461 Md. 159, 178 (2018). "[I]f 'the right to remain silent is invoked at any point during questioning, further interrogation must cease.'" *Madrid v. State*, 247 Md. App. 693, 716 (2020) (quoting *Berghuis v. Thompkins*, 560 U.S. 370, 388 (2010)). "In the event that officers continue to question [the] individual, any evidence flowing therefrom is illegally obtained and thus subject to exclusion as fruit

of the unlawful conduct." *Reynolds*, 461 Md. at 178.

Unambiguous Invocation of Miranda

The Supreme Court of the United States has made clear that an invocation of the right to remain silent must be unambiguous and unequivocal. *Berghuis*, 560 U.S. at 381-82; *see also Williams v. State*, 445 Md. 452, 475 (2015).[8] Reviewing courts use an objective standard to evaluate whether a reasonable police officer would have understood, under the circumstances of the interrogation, that the suspect invoked their right to silence. *Williams*, 445 Md. at 475.

Appellant's Contention

Appellant asserts that his various statements to the effect that he wanted to be taken to jail, amounted to an unambiguous invocation of his *Miranda* right to remain silent. Those statements, as quoted in his opening brief, included: "just take me to jail. That's all I'm asking you"; "Just take me to fucking jail if you want to put me in jail"; "I'm sorry brothers, but I'm going to sleep. I don't know what you're saying. I don't know nothing"; and "Take me to fucking jail. That's it." (Tr. 26).

Without direct citation to authority, appellant flatly asserts that "[a] suspect's request during questioning to be taken to jail is an unambiguous assertion of the right to remain silent." While appellant provides no authority directly standing for that proposition, he divines it from a footnote in the District of Columbia Court of Appeals case of *Dorsey*

[8] This is also true for the invocation of the right to counsel. *Davis v. United States*, 512 U.S. 452, 459 (1994).

v. United States, 60 A.3d 1171, 1188-89 n. 27 (D.C. Ct. App. 2013). Although the suppression court in *Dorsey* found that "Dorsey's first unambiguous invocation of his Fifth Amendment right to cut off all questioning and remain silent occurred when he asked at around 11:10 p.m. on Saturday night to be taken back 'now' to the cellblock and allowed to sleep[,]" after having previously made similar requests, the propriety of that ruling was not at issue on appeal. *Id*. at 1188. Rather, the issue on appeal was whether, after Dorsey had returned to his cell, he had validly waived his rights when he asked for a second meeting with detectives seven hours later. *Id*. at 1189. The court held that "the detectives violated *Edwards*[9] by continuing to press Dorsey to confess after he invoked his right to counsel." *Id.* at 1199. Therefore, *Dorsey* hardly stands for the proposition that appellant attributes to it.

The State's Contention

The State notes that appellant's reliance on *Dorsey* is misplaced and argues that courts interpreting "variations of a request to be taken to jail, however, generally have determined that this assertion, by itself, is not an unambiguous and unequivocal invocation of the right to remain silent." The State directs our attention to a number of cases in support of its position. For example, in *Ridley v. State*, 725 S.E.2d 223, 227-28 (Ga. 2012), the Georgia Supreme Court found that the following exchange did not amount to an unambiguous invocation of *Miranda* rights:

[9] *Edwards v. Arizona*, 451 U.S. 477 (1981).

Ridley:	I'm upset because I'm getting locked up. You take me on to jail.
Detective:	No, just listen to me.
Ridley:	I don't want to – no – no nothing. Take me on to jail.
Detective:	We have a certain way we had to do it, okay? Do you mind if I just go ahead and do my job?
Ridley:	Yeah.
Detective:	Why?
Ridley:	Because you can take me on to jail.
Detective:	Well, we will.
Ridley:	And let me try to doggone try to talk to somebody about this – all this mess I'm in.

Id. at 227.

To like effect, in *Quisenberry & Williams v. Commonwealth*, 336 S.W.3d 19 (Ky. 2011), Williams asserted that his statement during questioning that "[y]'all just need to go on and take me to jail[,]" amounted to an invocation of his *Miranda* right to remain silent, thereby requiring the officers to cease their interrogation. *Id*. at 33. The Supreme Court of Kentucky disagreed, noting that, "[e]ven if that *might* be what Williams meant to say, however, those remarks were far from unambiguous." *Id*. The court explained that Williams's statements "could just as well have been a concession of his predicament, a 'You've got me; you might as well take me to jail.'" *Id.*

In *State v. Markwardt*, 742 N.W.2d 546 (Wisc. App. 2007), after the police "kept repeatedly catching [the defendant] in either lies or at least differing versions of the events[]," she said: "Then put me in jail. Just get me out of here. I don't want to sit here

anymore, alright. I've been through enough today." *Id*. at 556. Ultimately, the court found that the defendant's statements did not amount to an unambiguous and unequivocal invocation of the right to remain silent because her statements were capable of more than one interpretation. The court stated: "A reasonable interpretation of Markwardt's comments could be that she was invoking her right to remain silent. However, an equally reasonable understanding of her comments could be that she was merely fencing with [the police detective] as he kept repeatedly catching her in either lies or at least differing versions of the events." *Id*.

In addition, the State directs our attention to the following out of state cases where courts held that a suspect's request to be taken to jail did not amount to an unambiguous and unequivocal invocation of *Miranda* rights: *State v. Flack*, 541 P.3d 717, 731 (Kan. 2024) (holding that defendant "did not invoke his right to remain silent by repeatedly suggesting he be taken to jail" because his '"take me to jail' comments lead to multiple interpretations—rendering his communication unclear"); *Bullitt v. Commonwealth*, 595 S.W.3d 106, 116-17 (Ky. 2019) (holding the defendant's statement—"[I]f I'm going to jail, I'm saying, let's go, you know, that's all I'm saying, sir. I'm innocent, I'm innocent."—did not unambiguously invoke the right to silence); *State v. Cummings*, 850 N.W.2d 915, 926 (Wis. 2014) (holding that, in context, "[T]ake me to my cell. Why waste your time?," was not an unequivocal invocation of *Miranda*); *State v. Waloke*, 835 N.W.2d 105, 112 (S.D. 2013) (holding that defendant did not invoke her right to silence by stating, "officers should just take her to jail" as she did not explicitly say she wanted to remain

silent or did not want to speak with police anymore); *DeWeaver v. Runnels*, 556 F.3d 995, 1002 (9th Cir. 2009) (holding that "[t]he state appellate court could properly conclude . . . that a reasonable officer in the circumstances would not have understood" defendant's request to be "taken back to jail" to be "an invocation of the right to silence"); and *People v. Davis*, 208 P.3d 78, 118 (Cal. 2009) (holding defendant's statement—"Well then book me and let's get a lawyer and let's go for it, you know"—was a challenge to interrogators that defendant employed as interrogation technique, not a means to invoke right to counsel or silence).

There Is No Miranda Violation

We find the cases cited by the State persuasive and hold that appellant did not unequivocally invoke his right to remain silent.

We first reject appellant's statement that "[a] suspect's request during questioning to be taken to jail is an unambiguous assertion of the right to remain silent." We are aware of no authority for such a blanket proposition. To the contrary, as outlined above, the weight of authority seems to point in the opposite direction.

In this case, appellant initially waived his *Miranda* right to remain silent by speaking with the detectives during the interview. The question becomes, therefore, whether appellant subsequently invoked his *Miranda* rights somewhere along the way. As noted earlier, such an invocation of rights can only be accomplished with an unequivocal and unambiguous statement to that effect.

The United States Supreme Court explained its rationale for requiring an unambiguous and unequivocal invocation of *Miranda* rights, as follows:

> If an accused makes a statement concerning the right to counsel "that is ambiguous or equivocal" or makes no statement, the police are not required to end the interrogation, or ask questions to clarify whether the accused wants to invoke his or her *Miranda* rights. . . . A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that "avoids difficulties of proof and . . . provides guidance to officers" on how to proceed in the face of ambiguity.

Berghuis, 560 U.S. at 381 (quoting *Davis*, 512 U.S. at 461-62, 458-59) (internal citation omitted). The Court noted the practical concern that "[i]f an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequence of suppression 'if they guess wrong.'" *Berghuis*, 560 U.S. at 382 (quoting *Davis*, 512 U.S. at 461). Moreover, although the Court explained that it "will often be good police practice" for officers to ask clarifying questions, the Court "decline[d] to adopt a rule requiring officers" to do so. *Davis*, 512 U.S. at 461. "If the suspect's statement is not an unambiguous or unequivocal request . . . , the officers have no obligation to stop questioning him." *Id.* at 461-62.

In this case, as in *Ridley*, *Quisenberry*, and *Markwardt*, *supra*, appellant never clearly and unequivocally stated that he wanted to remain silent. Moreover, his "take me to jail" statements were susceptible to more than one inference. To be sure, his statements could be viewed as an invocation of the right to halt questioning and remain silent. But the statements could equally be viewed as an expression of frustration borne out of the

increasing realization that the police had substantial evidence of his guilt, and that they were there solely to put him in jail. *See Quisenberry*, 336 S.W.3d at 33. In addition, in the context of this lengthy interrogation, the statements could be understood to be verbal jousts with the police like those described in *Markwardt*, 742 N.W.2d at 556.

We hold that, in light of the context of the statements made during the interview, none of appellant's "take me to jail" statements amounted to a clear assertion of his *Miranda* right to remain silent as those statements were subject to multiple interpretations. As a result, the police were permitted to continue questioning him and his incriminating statements were not required to be suppressed.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED.

APPELLANT TO PAY COSTS.