UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 212

September Term, 2015

STATE OF MARYLAND

v.

TERRANCE J. BROWN

Wright,
Graeff,
Kehoe,

JJ.

Opinion by Graeff, J.

Filed: August 10, 2015

Terrance Brown, appellee, was charged in the Circuit Court for Dorchester County with two counts of first degree murder and related charges.[1] Appellee moved to suppress: (1) evidence recovered during a search of his car; and (2) statements he made to police. After a hearing on March 16, 2015, the court granted appellee's motion to suppress.

On appeal, the State presents the following questions for our review:

> 1. Did the circuit court err in granting [appellee's] motion to suppress evidence recovered from the 1998 Nissan where the police were entitled to search the car pursuant to the *Carroll [v. United States*, 267 U.S. 132 (1925)] doctrine?
>
> 2. Did the circuit court err in granting [appellee's] motion to suppress statements given to police prior to being advised of his *Miranda [v. Arizona*, 384 U.S. 436 (1966)] rights where [appellee] was not subject to custodial interrogation?

For the reasons that follow, we shall reverse the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Trooper Greg Fellon, a member of the Maryland State Police, testified that, at approximately 1:00 a.m. on October 5, 2014, he heard a dispatch broadcast that there had been a shooting at the Elks Lodge in Cambridge, Maryland. He then heard that an unknown person had called 911 to report that he or she was injured, was driving from Cambridge to the Hurlock Village Apartments in Hurlock, and "didn't want to go to jail." Trooper Fellon

[1] Appellee also was charged with two counts of second degree murder, two counts of first degree assault, two counts of second degree assault, two counts of reckless endangerment, and one count each of wearing, carrying, or transporting a handgun, and use of a firearm in the commission of a felony or crime of violence. The charges arose from the deaths of two victims: LeRon Todd and Ashley Cornish.

responded to the Hurlock Village Apartments and parked his car at a business "a couple of hundred feet" from the entrance to the apartments.

Trooper Fellon observed a 1998 Nissan Maxima pull into the apartment complex and park on the left side of the lot. A man exited the vehicle and went inside an apartment building. Trooper Fellon approached the car to identify the remaining occupants. One of the occupants opened the passenger side door to speak to him, and Trooper Fellon observed a "stone colored jacket hanging out the front passenger door" and dried blood in the passenger area. He described the blood as "nickel sized drops maybe ten or less on the seat and floor and I believe there was some on the door."

Trooper Fellon inquired about the person who had been in the empty passenger seat. The occupants told him that they had gone to Cambridge to "pick up T.J. Brown and bring him home to his mother's" house. T.J.'s mother lived in the apartment complex, but they did not know in which apartment. Appellee's mother then pulled into the parking lot, and Trooper Fellon asked her to ask appellee to come outside so that he could talk to him. She agreed, and appellee came out to the parking lot.

When appellee came outside, Trooper Fellon observed that he had was wearing a T-shirt with blood on it, and blood was dripping from his earlobe. An ambulance arrived and emergency responders began examining appellee. When they removed his shirt, Trooper Fellon noticed a "graze to his shoulder blade area and what appeared to be like a through and through" gunshot wound on his upper chest. Appellee told Trooper Fellon that he had been at a party in Cambridge. When he heard gunshots, he ducked and ran. Appellee was taken to the hospital.

Trooper Fellon was in contact with the investigating officers in Cambridge, and he advised about the blood seen in the Nissan and appellee's medical status. After appellee was taken to the hospital, Trooper Fellon secured the Nissan. At 2:13 a.m., the Nissan was picked up and towed to a holding area for the Cambridge Police Department. At that point, Trooper Fellon did not have knowledge that appellee was involved in the Cambridge shooting, and he did not have confirmation that appellee was the 911 caller, but based on information that "there was what they believed to be blood on the inside of the vehicle, blood on the outside of the vehicle [he] figured it was at least connected" to the shooting. When appellee asked Trooper Fellon whether he would be arrested, Trooper Fellon told him no.

Detective Edward Howard, a member of City of Cambridge Police, testified that, at approximately 5:40 a.m. he arrived at the hospital to speak with appellee to get "his side of the events being he was a victim of that shooting." Detective Howard was wearing a visible badge and weapon, and he identified himself as a police officer. Appellee was being discharged, so Detective Howard asked him to come to the police station and give a statement about the shooting. Detective Howard did not advise appellee that he was "free to go," but he made clear to appellee that he was not under arrest. At that point in the investigation, they had not "determined who exactly the shooter was." Detective Howard stated that he had "no intentions of placing [appellee] under arrest." Appellee was not handcuffed or otherwise physically restrained, but he was wearing a hospital shirt and hospital pants.

Appellee consented to go with Detective Howard to the station and "at no time put up any fight or refused to go with [him]." Detective Howard drove appellee to the station in the rear passenger seat of his marked police vehicle, where "we place all persons whether they're a victim being transported, detained or arrested." Detective Howard advised appellee that the police had transported his vehicle to the Cambridge Police Department because "there was dried blood on the passenger side." Appellee expressed concern about how he would get home, and Detective Howard "assured him that the proper arrangements would be made." When they arrived at the station, Detective Howard walked with appellee up the stairs to meet the lead detective. Appellee complained of "being in . . . a little bit of pain from the gunshot wounds, but other than that he seemed fine."

Detective Corporal Christopher Flynn, the lead investigator and a member of the City of Cambridge Police, was the on-call detective who responded to the scene of the shooting. After learning that appellee was at the hospital, he contacted Detective Howard and told him to go to the hospital to interview appellee about how he sustained his injuries. Detective Flynn had no information about the circumstances of the shooting at that time and assumed that appellee was a potential victim.

When Detective Howard took appellee to the police station, appellee was escorted to an interview room, which Detective Flynn described as an "approximately eight by twelve room. It's got a two way glass, table, couple of chairs." Appellee was wearing "hospital garb," and he had a bandage on his head. Appellee told Detective Flynn that he had been shot three times. Detective Flynn could smell alcohol on appellee, but "he didn't seem like he was intoxicated." Detective Flynn told appellee that he "was there to find out

how he got injured, his side, you know, what had happened earlier that evening." Appellee seemed willing to speak with Detective Flynn. Aside from Detective Flynn, who was not armed, no other officer was in the room during the interview, other than officers bringing in food and water for appellee upon his request. At that point, appellee had not been given his *Miranda* rights.

Appellee told Detective Flynn that he "was talking to a girl up front of the Club. He said five or six shots were fired. He ran toward Cross Street where he had parked his car. And from there he got in his car and drove to Hurlock. Called for an ambulance." After appellee indicated that he ran toward Cross Street, Detective Flynn began to suspect, based upon the direction that the shooter could be seen running in the surveillance video, that appellee might be the shooter. Detective Flynn explained that only two people ran toward Cross Street in the surveillance video, "the guy who did the shooting and the guy who shot the guy that did the shooting." Prior to appellee stating that he ran toward Cross Street, it did not occur to Detective Flynn that appellee could be a suspect rather than a victim. After appellee's statement, he "kind of went from a victim to a suspect, but at that point [Detective Flynn] didn't believe we had enough to charge [appellee]." Because Detective Flynn "couldn't positively say which was which [he] just felt it better to go ahead and *Mirandize* [appellee] at that point."

Detective Flynn explained to appellee: "I have to advise you of your rights." Appellee responded: "Advise me of what? What, I'm under arrest?" Detective Flynn told

appellee that he was not under arrest. After Detective Flynn explained to appellee his rights, the following colloquy ensued:[2]

> [APPELLEE:] So will I (inaudible) the lawyer to do?
>
> [DET. FLYNN:] I can't tell you whether you want a lawyer or not.
>
> [APPELLEE:] No. I said, was I supposed to just say I want a lawyer at this point? I'm just saying.
>
> [DET. FLYNN:] What do you mean?
>
> [APPELLEE:] Well, you say you have the –
>
> [DET. FLYNN:] You have the right to have a lawyer.
>
> [APPELLEE:] How am I going to get a lawyer? Where am I going to get one from this time of night?
>
> [DET. FLYNN:] Well, you're probably not. I don't know.

The interview continued and appellee subsequently gave a written statement, signed at 6:53 a.m., consistent with his pre-*Miranda* statement. Shortly thereafter, appellee was arrested.

At some point, Detective Flynn advised officers to tow the Nissan in order to secure it. Sometime thereafter, police sought and received a warrant authorizing the search of appellee's apartment in Hurlock Village, the Nissan, and appellee's person. The warrant was executed on October 5, 2014, in phases: at 10:40 a.m., the residence; and at 1:30 p.m., the car.

[2] The transcript of the recorded interview indicates that the date of the interview was October 4, 2014, however, the interview was recorded in the early morning hours of October 5, 2014.

Prior to trial, appellee filed a motion to suppress all items recovered pursuant to the search warrant and his statements to police. With regard to his statements, appellee argued that, under the totality of the circumstances, a reasonable person in his position would not have felt free to leave, and therefore, he was in *Miranda* custody during the entire police interview and any statements given before he was advised of his *Miranda* rights should be suppressed. He also argued that, the statements that he gave after he was advised of his rights should be suppressed because his question about the practicality of securing an attorney, and Detective Flynn's response, rendered his subsequent waiver invalid. With regard to the search of the vehicle, appellee argued that the application for the search warrant did not establish probable cause and was so deficient that the good faith exception did not apply.

The State argued that appellee was not in *Miranda* custody prior to being advised of his rights, and that his question about the availability of an attorney was not an unequivocal invocation of the right to counsel, nor was Detective Flynn's response misleading. With respect to the search warrant, the State argued that, although it admittedly was "thin," it was sufficient to provide a substantial basis for the issuing judge to find probable cause, and in any event, the officers acted in good faith reliance on the judicially executed warrant. Moreover, the State argued, the police had probable cause to believe that the Nissan contained evidence related to the shooting, and therefore, they were authorized under the *Carroll* doctrine to search the car without a warrant.

On March 19, 2015, after the hearing, the court issued a written order granting appellee's motion to suppress the evidence obtained as a result of the search of the Nissan[3] and his oral and written statements to police "during what amounted to a custodial interrogation." With regard to the statements, the court explained:

> WHEREAS the [c]ourt finds that with regard to the interrogation of the Defendant, the exchange between the Defendant and the detective contained on pages 10 and 11 of the interview transcript (Defendant's exhibit 4) indicates that the Defendant noted an interest in having an attorney, which should have caused the detective to inquire further as to the potential demand for an attorney.

The court made no explicit findings with regard to appellee's statements prior to being given the *Miranda* warnings.

With regard to the search of the Nissan, the court stated:

> WHEREAS the [c]ourt finds it unnecessary to address the initial impoundment of the Defendant's car, as the [c]ourt finds that there was not a substantial basis for the issuance of the search and seizure warrant, which granted police access to the Defendant's car and residence. Further, the [c]ourt recognizes the existence of a good faith exception, which allows police the ability to rely on a defective warrant in certain circumstances, but notes that it too has exceptions. One such exception is where, "the warrant was based on an affidavit that was so lacking in probable cause as to render official belief in its existence entirely unreasonable." *Agurs v. State*, 415 Md. 62, 78 (2010) (quoting *Patterson v. State*, 401 Md. 76, 104 (2007) (internal citations omitted)). In the instant case, the search warrant was insufficient to establish a nexus between the crime being investigated and the Defendant. If, as it appears, the search warrant was authored in the mid-morning hours of October 5, 2014, there was much more information known to police at that time that could have been included in the application and affidavit. The [c]ourt notes that in the affidavit, the author refers to the Maryland State Police stopping a suspect vehicle, which indicates to the [c]ourt that there must have been some reasonable suspicion regarding the car's involvement

[3] The court also granted appellee's motion to suppress evidence obtained from a residence located at 510 South Main Street, Apartment 2, Hurlock, Maryland. The State does not challenge the exclusion of the evidence recovered from the apartment.

in the homicide, but that information was not articulated in the warrant application.

STANDARD OF REVIEW

"In reviewing the ruling on a motion to suppress evidence, we consider only the evidence contained in the record of the suppression hearing." *Bost v. State*, 406 Md. 341, 349 (2008). In making our ruling, we "review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party" – in this case, appellee – but we "do not engage in *de novo* fact-finding." *Id.*; *Haley v. State*, 398 Md. 106, 131 (2007). "Instead, we 'extend great deference to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous.'" *Padilla v. State*, 180 Md. App. 210, 218, *cert. denied*, 405 Md. 507 (2008) (quoting *Brown v. State*, 397 Md. 89, 98 (2007)). With respect to the ultimate decision whether a constitutional right has been violated, however, we apply a *de novo* standard of review. *Coley v. State*, 215 Md. App. 570, 576 (2013). The suppression court's legal determinations, unlike its factual findings, are paid no deference on review. *See Wilkes v. State*, 364 Md. 554, 569 (2001) ("We will review the legal questions *de novo* and based upon the evidence presented at the suppression hearing and the applicable law, we then make our own constitutional appraisal."). Thus, in this case, we determine whether the evidence was seized in violation of the Fourth Amendment and whether appellee was subjected to custodial interrogation under *Miranda* applying the de novo standard of review. *See Davis v. State*, 426 Md. 211, 219 (2012) (appellate court affords no deference to the hearing court in determining whether the evidence at issue was seized in accordance

with the Fourth Amendment); *Buck v. State*, 181 Md. App. 585, 609 (2008) (When the issue on appeal involves custody for *Miranda* purposes, "we accept the factual findings of the court, unless clearly erroneous, but determine de novo the constitutional significance of those findings, i.e., whether on the facts as found, the defendant was or was not 'in custody.'").

DISCUSSION

I.

Evidence Recovered From the Vehicle

The State contends that the circuit court erred in granting appellee's motion to suppress the evidence recovered from the car.[4] It does not challenge the court's ruling that the search pursuant to the warrant was invalid. Rather, the State argues, relying on evidence that was not included in the search warrant, that the search was supported by probable cause to believe that the Nissan contained evidence relating to the Cambridge shooting, and therefore, the search was valid pursuant to the *Carroll* doctrine exception to the warrant requirement. *See, e.g.*, *Herbert v. State*, 136 Md. App. 458, 487 (2001) (even if a search warrant is ruled invalid, the "State may still, as a fallback position, rely on one or more exceptions to the warrant requirement as alternative ways of salvaging the search in question."). The State contends that the circuit court erred in not considering its argument in this regard.

[4] The search of the Nissan resulted in the seizure of a black/charcoal gray zip-up hooded sweatshirt and suspected human blood, which was swabbed for analysis.

Appellee contends that the circuit court properly granted his motion to suppress. He asserts that the police did not have probable cause to search his car, but rather, they had "merely reasonable suspicion" that the car would contain evidence of a crime, which is insufficient to uphold a warrantless search. Appellee states: "Central to the constitutional application of the automobile exception to the warrant requirement is the presence of probable cause *before* the automobile is seized and searched," and here, the "police seized appellee's car before the police had probable cause to believe it contained evidence of a crime." In that regard, he asserts that the only information the police had specific to the vehicle at the time it was seized was the presence of dried blood droplets in the car, and there "was no evidence adduced at the motions hearing regarding where appell[ee] was located in the car relative to the blood or whether the dried blood appeared old or fresh." That information, argues appellee, "may have provided reasonable suspicion but not probable cause that the car contained evidence of the shooting."

The Fourth Amendment to the United States Constitution[5] and Article 26 of the Maryland Declaration of Rights[6] prohibit unreasonable searches and seizures. *See Jones*

[5] The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

[6] Article 26 provides:

(continued . . .)

v. State, 407 Md. 33, 51 (2008). Although the Fourth Amendment typically requires that a warrant be secured before a search is conducted, pursuant to the *Carroll* doctrine, "one of the classically recognized exceptions to the warrant requirement," *Pyon v. State*, 222 Md. App. 412, 428 n.3 (2015), a warrantless search of an automobile is reasonable if the police have probable cause to believe that "a crime-connected item is within the car." *State v. Wallace*, 372 Md. 137, 146 (2002), *cert. denied*, 540 U.S. 1140 (2004). *Accord Nathan v. State*, 370 Md. 648, 665-66 (2002) ("Police officers who have probable cause to believe that there is contraband or other evidence of criminal activity inside an automobile that has been stopped on the road may search it without obtaining a warrant."), *cert. denied*, 537 U.S. 1194 (2003).

There is no dispute here that the police, armed with probable cause, can search a vehicle under the *Carroll* doctrine after the vehicle has been towed to the police station. *See Chambers v. Maroney*, 399 U.S. 42, 52 (1970) (once the police obtained probable cause and could permissibly search the vehicle under the *Carroll* doctrine at the scene, probable cause "still obtained at the station house" after the vehicle was towed, and it was constitutionally permissible to continue the search without a warrant). *Accord Texas v. White*, 423 U.S. 67, 68 (1975) (per curiam) (pursuant to *Chambers*, "police officers with

(. . . continued)
That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

MD. DECL. RIGHTS, art. 26.

probable cause to search an automobile at the scene where it was stopped could constitutionally do so later at the station house without first obtaining a warrant"); *Smith v. State*, 161 Md. App. 461, 480-81 (2003) (*Chambers* permitted a warrantless *Carroll* search even after a vehicle is moved from the scene).

The issue that is contended here is whether the police had probable cause to believe that items connected with criminal activity would be found in the vehicle. "Probable cause is defined as 'a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Kamara v. State*, 205 Md. App. 607, 630 (2012) (quoting *Agurs*, 415 Md. at 76 (2010)). It is "merely a practical, common sense determination, given the totality of the circumstances, that 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Coley*, 215 Md. App. at 577 (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). As the United States Supreme Court has noted:

> [T]he probable-cause standard is a "'practical, nontechnical conception'" that deals with "'the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.'" []*Gates*, 462 U.S. [at] 231 [] (quoting *Brinegar v. United States*, [338 U.S. 160,] 175-176 [(1949)]; *see, e.g., Ornelas v. United States*, 517 U.S. 690, 695, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996); *United States v. Sokolow*, 490 U.S. 1, 7-8, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989). "[P]robable cause is a fluid concept —turning on the assessment of probabilities in particular factual contexts— not readily, or even usefully, reduced to a neat set of legal rules." *Gates*, 462 U.S., at 232, 103 S.Ct. 2317.

Maryland v. Pringle, 540 U.S. 366, 370-71 (2003).

As explained below, based on our *de novo* review, we conclude that the police possessed probable cause to believe that evidence connected to criminal activity would be found in the vehicle. The police had been advised of a shooting occurring in Cambridge,

and shortly thereafter, an injured person called 911 to report that he was traveling from Cambridge to the Hurlock Village Apartments, and he "didn't want to go to jail." Trooper Fellon then saw a 1998 Nissan Maxima enter the Hurlock Village Apartments, and when he approached, he saw what he believed to be dried blood in the passenger area. Trooper Fellon ultimately spoke to appellee, who was the passenger in the car, and he observed that appellee had been shot and was bleeding. Appellee told Trooper Fellon that he had been at a party in Cambridge when people began shooting.

Based on this evidence, that there had been a shooting in Cambridge, that an injured person told the 911 operator that he was going from Cambridge to the Hurlock Village Apartments and he did not want to go to jail, that appellee's vehicle arrived the Hurlock Village Apartments shortly thereafter, and that blood was seen in the car, the police had probable cause to believe that the vehicle contained evidence related to the Cambridge shooting. Accordingly, the court erred in suppressing the evidence recovered from the car.

II.

Appellee's Statements to Police

The State next argues that the court erred in granting appellee's motion to suppress the statements he gave to the police prior to being advised of his *Miranda* warnings, asserting that appellee "was not in custody for purposes of *Miranda*, and he had not invoked his rights either to an attorney or to remain silent." Because appellee was not subject to

custodial interrogation at the time he made his initial statements, the State asserts, the court erred in suppressing those statements.[7]

Appellee contends that the circuit court correctly granted his motion to suppress his statements because he was subjected to custodial interrogation without being advised of his *Miranda* rights. He asserts that the "totality of the circumstances in this case abundantly supports the motions judge's determination that appellee was subject to custodial interrogation from the moment Detective Flynn began speaking with him at the police station." In support, he states that appellee was

> taken directly from the hospital while still in hospital garb while complaining of the pain from three gunshot wounds to the police station after being awake all night by a uniformed officer in a marked police cruiser where two other detectives were waiting outside for him to escort him directly to an interrogation room.

Under these circumstances, he argues, "it is clear that a reasonable person would not feel free to leave."

As this Court explained in *State v. Thomas*, 202 Md. App. 545, 565 (2011), *aff'd*, 429 Md. 246 (2012):

> The Fifth Amendment to the United States Constitution, which applies to the States pursuant to the Fourteenth Amendment, *Maryland v. Shatzer*, 130 S. Ct. 1213, 1219 (2010), provides that "[n]o person . . . shall be compelled in a criminal case to be a witness against himself." U.S. Const. amend. V. In *Miranda*[, 384 U.S. 436], the United States Supreme Court adopted a set of prophylactic measures to protect a suspect from the "inherently compelling pressures" of custodial interrogation. *Shatzer*, 130 S. Ct. at 1219 (quoting *Miranda*, 384 U.S. at 467).

[7] The State does not challenge the court's ruling suppressing statements that appellee gave after he was advised of his rights and asked about the availability of an attorney.

Pursuant to *Miranda* and its progeny, the police are required, when they detain a person for questioning in a custodial setting, to inform the person of several rights including

> the right to remain silent, that anything the person says may be used in evidence, that the person has a right to consult with an attorney before responding to questioning, and that an attorney will be appointed if the person is indigent. . . . [A]n inculpatory statement elicited in violation of that requirement is inadmissible in the State's case-in-chief. *See Dickerson v. U.S.*, 530 U.S. 428, 120 S. Ct. 2326, 1147 L.Ed.2d 405 (2000).

Phillips v. State, 425 Md. 210, 212 (2012).

The *Miranda* requirements, however, apply only to custodial interrogation. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401-02 (2011). This Court has explained that, "before a defendant can claim the benefit of *Miranda* warnings, the defendant must establish two things: (1) custody; and (2) interrogation." *Thomas*, 202 Md. App. at 565. *Accord Smith v. State*, 186 Md. App. 498, 518 (2009), *aff'd*, 414 Md. 357 (2010). The burden of "showing the applicability of the *Miranda* requirements," i.e., that there was custody and interrogation, is on the defendant. *Smith*, 186 Md. App. at 520.

Here, there is no question that appellee was interrogated. The question is whether appellee was "in custody" when he gave his initial statements. This inquiry is an objective one. *Norwood v. State*, 222 Md. App. 620, 635 (2015). The United States Supreme Court has stated that

> "custody" is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. In determining whether a person is in custody in this sense, the initial step is to ascertain whether, in light of "the objective circumstances of the interrogation" a "reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." And in order to determine how a suspect would

> have "gauge[d]" his "freedom of movement," courts must examine "all of the circumstances surrounding the interrogation."

Howes v. Fields, 132 S. Ct. 1181, 1189 (2012) (citations omitted).

Although the inquiry begins with a determination whether a reasonable person would have thought he was free to leave the police encounter, that is, however, merely the first step. *Id.* "Not all restraints on freedom of movement amount to custody for purposes of *Miranda*." *Id.* Thus, if a person would not have thought he was free to leave, the next question is whether a reasonable person would understand that his freedom of action is restricted to a degree associated with a formal arrest. *See Shatzer*, 130 S. Ct. at 1219 ("To determine whether a suspect was in *Miranda* custody[,] we have asked whether 'there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'") (quoting *New York v. Quarles*, 467 U.S. 649, 655 (1984)); *State v. Rucker*, 374 Md. 199, 211 (2003) ("Custody exists [where] there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest.") (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)) (per curiam); *Smith*, 186 Md. App. at 533, 535 ("That a detainee may not feel 'free to leave' . . . is not a talisman for determining *Miranda's* applicability," but rather, the test is "'whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.'") (quoting *Rucker*, 374 Md. at 210).

In determining whether a suspect is in custody, the court must consider "multiple factors . . . considering the totality of the circumstances" surrounding the interrogation. *Norwood*, 222 Md. App. at 635. These factors include:

> "[W]hen and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restraint such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning[,] whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning."

Thomas, 429 Md. at 260-61 (quoting *Owens v. State*, 399 Md. 388, 429 (2007)).

Here, considering the totality of the circumstances, we conclude that appellee was not in custody when he made his initial statement. Although Detective Howard drove appellee to the police station where the interview took place, appellee consented to accompany Detective Howard to the station. Detective Howard expressly told appellee that he was not under arrest, and appellee was never handcuffed or physically restrained in any way. A single police officer drove appellee to the station, where Detective Flynn, who was not in uniform or armed, interviewed him. Appellee was told that the police wanted to hear from him what happened, and they did not communicate to appellee that he was considered a suspect. *See Thomas*, 202 Md. App. at 573 (whether the defendant was being questioned as a suspect or as a witness is relevant only if it is communicated to the defendant that he is a suspect). Detective Flynn stated that appellee was willing to speak with him, and he explained his version of events.

In addition to those circumstances, when Detective Flynn realized that appellee possibly was the shooter, rather than merely a victim, he told appellee that he was going to

advise him of his rights. Appellee's response indicated surprise that he might be under arrest. Although appellee's subjective perception is not dispositive, it bolsters the conclusion that, until that point, a reasonable person would have understood that he was not under arrest, but rather, was free to terminate the questioning and leave.

Accordingly, because the portion of the interview that occurred prior to Detective Flynn advising appellee of his rights was not the product of a custodial interrogation, appellee's pre-*Miranda* statements were admissible. The circuit court erred in suppressing the statements.

JUDGMENT REVERSED. COSTS TO BE PAID BY APPELLEE.