Circuit Court for Howard County
Case No. C-13-CR-20185

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 602

September Term, 2021

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STATE OF MARYLAND

v.

LARRY LONNELL ROSS, JR.

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Graeff,
Kehoe,
Adkins, Sally D.,
(Senior Judge, Specially Assigned)
JJ.

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Opinion by Kehoe, J.

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Filed: November 12, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. *See* Md. Rule 1-104.

The State has appealed a judgment of the Circuit Court for Howard County that granted Larry Lonnell Ross's motion to suppress a statement made by him to a member of the Howard County Police Department. The State presents one issue:

> Did the suppression court err in granting Mr. Ross's motion to suppress his statement?

Because our answer to this question is yes, we will reverse the judgment of the suppression court.

## BACKGROUND

Our rendition of the facts is derived almost exclusively from the testimony of Detective Jonathan Stem, the lead investigator in Mr. Ross's case and the only witness to testify at the suppression hearing.

On February 19, 2020, members of the Howard County Police Department executed a no-knock search warrant on an apartment in Columbia, Maryland. At 3:50 a.m. on that day, approximately 20 members[1] of the Howard County Police Tactical Section, carrying rifles and dressed in military gear, used an explosive device to blow the front door of the apartment off of its hinges. The SWAT officers then entered the apartment. They found six occupants, all of whom had been asleep: Mr. Ross, Natasha Young, who was the

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[1] Detective Stem's testimony was inconsistent as to the number of SWAT officers involved in the search. The suppression court did not make a specific finding on that issue. Because Mr. Ross prevailed at the hearing, we have used the highest of the several numbers provided by the detective.

leaseholder, and four children aged 3, 5, 14, and 16. Upon securing the area, the SWAT team exited the premises and eight detectives[2] entered, including Detective Stem. It is unclear how many of the officers were present simultaneously, but it appears that, most if not all, of them were in the apartment during the SWAT team-detective switch.

Detective Stem testified that the apartment consisted of a "very small foyer," a hall leading to two bedrooms (and presumably to a bathroom), a living room "which wraps around to a small dining area," and a kitchen, that is accessible from both the foyer and the dining room.

Mr. Ross and Ms. Young were found in one bedroom, along with the 3- and 5-year-old children while the 14- and 16-year-old children were found in the second bedroom. Mr. Ross, Ms. Young, and the two older children were flex-cuffed, and all occupants were moved to the living room and seated. Detective Stem provided Ms. Young with a copy of the signed search warrant and related court papers. He told her that the reason for their intrusion into the home was to conduct a drug investigation pertaining to Mr. Ross. Mr. Ross was seated next to Ms. Young and Detective Stem testified that he deliberately made eye contact with him to ensure his understanding that he was the target of their investigation.

[2] Detective Stem's testimony was also inconsistent as to the number of detectives. The best he could do was "six to eight." The suppression court did not make a specific finding on that issue. Because Mr. Ross prevailed at the hearing, we have used the higher of the numbers provided by the detective.

The other detectives then began to search the apartment while a uniformed officer stood watch over Mr. Ross and the other occupants to provide a "uniformed presence." According to Detective Stem, while Mr. Ross and the other occupants were sitting in the living room, they were capable of looking into the dining area and down the hallway towards the bedrooms, but could not see into the kitchen.

Detective Stem explained that he was the officer supervising the search of the premises, as well as the "seizing officer." Typically, when investigating detectives find what they suspect to be evidence, they leave the evidence as they found it, notify Detective Stem of their discovery, and then a photographer takes a picture of the evidence *in situ*. As the seizing officer, Detective Stem would then collect the evidence after the photograph has been taken for chain of custody purposes. Approximately 45 minutes to an hour after Detective Stem provided copies of the search warrant to Ms. Young, an inspecting officer found narcotics. Detective Stem told the court that typically when evidence is found, the inspecting officer would call for him by saying something like "Detective Stem, come here please." Detective Stem did not detail what the investigating officer expressly said on this

occasion.[3]

For the duration of those 45-60 minutes that the detectives were searching the apartment, Detective Stem testified that he did not hear any detectives communicate with Mr. Ross nor did he communicate with him outside of the presentation of the search warrant. Once the narcotics were found in the kitchen and Detective Stem was called for, Mr. Ross finally spoke up. He inquired generally as to who the officer in charge was. Detective Stem identified himself as the lead investigator, and then Mr. Ross stated "anything you find in here is mine, they didn't have the slightest clue." Detective Stem stated that he said nothing in response to Mr. Ross's statement because he was preoccupied with writing the statement down in his notepad. After another 30 to 45 minutes of searching the apartment, Mr. Ross was placed under arrest for possession of narcotics.

Mr. Ross was charged with possession of a controlled dangerous substance with the intent to distribute. Mr. Ross moved to have his statement described in the preceding paragraph suppressed for failure to provide him with the advisements that police must give before engaging in a custodial interrogation. *See Miranda v. Arizona*, 384 U.S. 436, 467

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[3] The exact language used by Detective Stem is as follows:

> State's Attorney: [S]o how would you know that [evidence] was located and photographed?
>
> Detective Stem: They'd yell for me.
>
> State's Attorney: They'd yell, I've got something, basically?
>
> Detective Stem: They'd say Detective Stem, come here please.

(1966). The circuit court granted this motion after the suppression hearing, finding that Mr. Ross was in custody and was subject to the functional equivalent of interrogation, thus requiring the police to provide him his *Miranda* rights.

As to the issue of custody, the suppression court found the following:

> [I]n this Court's opinion[,] with that many officers . . . [coming] into that apartment at 3 o'clock in the morning and presumably there was no way that . . . Mr. Ross could leave. And coupled with the fact that he's in flex cuffs it's no doubt in this Court's mind that Mr. Ross was, in fact, in custody.

As to the issue of interrogation, the suppression court found the following:

> [T]he question becomes now whether there was interrogation or the functional equivalent of interrogation. And Detective Stem testified basically that he said that he was who he was, and he was there to execute a search warrant. And he was talking to Mr. Ross's companion at the time and said that — and she responded that she was the leaseholder. And basically he said that he was here for the Defendant.
>
> Now, when you think about someone coming in your home and using explosives and you've got young children around, it is inconceivable that you feel under that kind of stress and someone saying in front of you — because Detective Stem testified that he was in the same living room area when he was talking to Mr. Ross's companion that he has that search warrant for Mr. Ross.
>
> It's a close call. But this Court when considering the totality of the circumstances, this Court considered that statement as the functional equivalent of interrogation. And, therefore, the detectives were required to afford Mr. Ross his *Miranda* warnings. And I didn't hear any testimony that Mr. Ross was afforded *Miranda* warnings before that statement was made.

As a result of these findings, the suppression court granted Mr. Ross's motion to suppress his statement that "anything you find in here is mine, they didn't have the slightest clue." The State filed this appeal.

## THE STANDARD OF REVIEW

In review of a suppression court's ruling on a motion to suppress evidence, this Court reviews only that evidence which was introduced in the suppression hearing. *Gonzalez v. State*, 429 Md. 632, 647 (2012) (citing *Lee v. State*, 418 Md. 136, 148 (2011)). Further, this Court "view[s] the evidence and inferences that may be reasonably drawn therefrom in a light most favorable to the prevailing party on the motion," which in this case is Mr. Ross. *Id.* Additionally, [t]he credibility of the witnesses [and] the weight to be given to the evidence . . . come within the province of the suppression court." Id. at 647-48 (citing *Longshore v. State*, 399 Md. 486, 499 (2007). In the present case, the suppression court made no explicit or implicit findings as to Detective Stem's credibility.

This Court will "defer to the fact finding of the suppression court and accept the facts as found by that court unless clearly erroneous." *Williams v. State*, 372 Md. 386, 401 (2002) (citing *Wilkes v. State*, 364 Md. 554, 569 (2001)). However, "[i]n determining whether a constitutional right has been violated, we make an independent, *de novo*, constitutional appraisal by applying the law to the facts presented in a particular case." *Id*. (citing *Wilkes*, 364 Md. at 569; *Cartnail v. State*, 359 Md. 272, 283–84 (2000)).

## ANALYSIS

This appeal presents two issues: The first is whether Mr. Ross was in "custody," as that concept has been defined in *Miranda* and subsequent cases. The second is whether Mr. Ross was subject to interrogation or the functional equivalent thereof. The constitutional privilege against self-incrimination protects individuals from compelled self-incrimination at the hands of the state. *Smith v. State*, 186 Md. App. 498, 516 (2009) ("*Smith I*"), *aff'd on other grounds*, 414 Md. 357 (2010) ("*Smith II*") (citing *Oregon v. Elstad*, 470 U.S. 298, 306-07 (1985)). When a person is subject to custodial interrogation without the presence of legal representation, "a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel." *Miranda v. Arizona*, 384 U.S. 436, 475 (1966). Said another way, custodial interrogation absent an express identification of one's rights and waiver and/or sufficient legal representation is presumptively compelled. *See Smith I*, 186 Md. App. at 516-17.

In order for a statement to be suppressed, both elements of custodial interrogation must be demonstrated: custody and interrogation. *Paige v. State*, 226 Md. App. 93, 107 (2015) (citing *State v. Thomas*, 202 Md. App. 545, 565 (2011), *aff'd*, 429 Md. 246 (2012)). If a defendant is in custody and subject to interrogation or the functional equivalent of interrogation, then police officers are required to adequately and effectively apprise the defendant of their Fifth Amendment rights. *Miranda*, 384 U.S. at 467. The burden to prove

that a suspect was subject to custodial interrogation rests with the defendant, and if they can satisfy this burden, the burden shifts to the State to prove that proper *Miranda* protocol was followed prior to any statements being made. *Smith I*, 186 Md. App. at 519.

*Custody*

The suppression court judge concluded that there was "no doubt" that Mr. Ross was in custody for purposes of *Miranda*. The judge found that the number of officers entering Ms. Young's home, the late time at which the raid occurred, and Mr. Ross being flex-cuffed warranted a finding that he was in custody.

As this Court explained in *Smith I,* 186 Md. App. at 528-29*,* the concept of "custody" for purposes of the Fifth Amendment has evolved somewhat after the concept was first enunciated in *Miranda*. In *Miranda*, the Court explained that "custodial interrogation [means] questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 U.S. at 444.

In *California v. Beheler*, the Supreme Court explained that being "in custody" depends on "the ultimate inquiry" of "whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." 463 U.S. 1121, 1125 (1983) (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)). This "formal arrest" language distinguishes custody for purposes of *Miranda* from custody for the purposes of a *Terry* stop, traffic stop, or other similar restrictions on freedom that do not rise to the level of a

formal arrest. *See generally Terry v. Ohio*, 392 U.S. 1 (1968); *State v. Rucker*, 374 Md. 199 (2003).

Courts have also held that someone is "in custody" for *Miranda* purposes when a reasonable person would not feel able to terminate the interrogation and leave, often called the "freedom to move standard." *See, e.g., Owens v. State*, 399 Md. 388, 428 (2007) (citing *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). The standard is an objective one which is governed by the totality of the circumstances surrounding the interrogation in question. *Brown v. State*, 452 Md. 196, 210 (2017). The freedom to move standard is not however the primary consideration when determining whether someone is "in custody," it is merely an additional element to consider in the totality of the circumstances. *See Berkemer v. McCarty*, 468 U.S. 420, 437 (1984). In *Thomas v. State*, the Court of Appeals set out a non-exhaustive list of the inquiries which are often considered in examining the totality of the circumstances:

> when and where [the interrogation] 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.

429 Md. 246, 260-61 (2012) (quoting *Owens v. State*, 399 Md. 388, 429 (2007)). The ultimate inquiry remains whether the individual was formally arrested or had their freedom of movement so restrained so as to be comparable to a formal arrest. With this as background, we turn to the facts presented by the current case.

In arguing that Mr. Ross was not in custody for purposes of the Fifth Amendment, the State directs us to *Smith I.* There are similarities: In *Smith I*, officers executed a search warrant at Smith's apartment and restrained all of the persons present with flex cuffs for the duration of the search. Much like this case, Smith blurted out an incriminatory statement upon discovery of drugs. At this point, the relevant similarities between *Smith I* and the present case as to the custody issue end.

Smith's apartment was searched at 7:45 p.m., not at 3:50 a.m. *Smith I*, 186 Md. App. at 504. There is no evidence in the record of Smith's case that his door was blown down through an explosive breach. The police presence in *Smith I* was not 20 SWAT officers, dressed in combat gear and carrying rifles, followed by 8 detectives; it was 4 detectives. *Id.* at 536. The other persons on the premises when the warrant was executed in *Smith I* were adults and they stayed on the apartment's balcony while the police officers conducted the search. Smith himself was inside the apartment. *Id*. In contrast, Mr. Ross's fellow occupants were seated directly next to him for the duration of the search. Further, four of Mr. Ross's fellow occupants were children, two of whom were flex-cuffed beside him.

Although there are similarities with *Smith I*, the facts of the present case align more closely with those in *Bond v. State*, 142 Md. App. 219 (2002). In that case, the defendant

was accused of stealing one vehicle and damaging two others. *Id.* at 223. At or around midnight on the same night, three police officers appeared at the suspect's trailer home, gained entry into his home through the permission of his 11-year-old nephew, and began to question him as he laid shirtless in his bed. *Id.* at 223-24. The bedroom had only one exit, so Bond had no ability to leave. *Id.* at 224. We concluded that Bond was in custody for *Miranda* purposes based on the highly private location of the interrogation, the time of night when the interrogation occurred, and the number of officers present in the confined space of Bond's bedroom. *Id.* at 233.

In the present case, Mr. Ross and the other occupants were seized in their bedrooms while they were sleeping, the search and detention began at 3:50 a.m., and up to as many as 28 officers were present in the "pretty small apartment" at any one time. Going even further than in *Bond*, the present case also involves an entry into the apartment by an explosive device; officers entering the apartment garbed in combat gear and carrying rifles; Mr. Ross, Ms. Young, and the two older children flex-cuffed for more than an hour; and direct notification from Detective Stem that Mr. Ross was the target of a police investigation.

As this Court explained in *Smith I*:

> The warning mandated by *Miranda* was meant to preserve the privilege during "incommunicado interrogation of individuals in a police-dominated atmosphere." That atmosphere is said to generate inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely. Fidelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but

> only in those types of situations in which the concerns that powered the decision are implicated.

186 Md. App. at 517–18 (cleaned up) (quoting *Illinois v. Perkins*, 496 U.S. 292, 296 (1990)). We conclude without hesitation that the manner in which the search warrant for Ms. Young's apartment was executed would cause significant stress, fear, and intimidation in a reasonable person. This is an equivalent to the "inherently compelling pressures" upon that person "during incommunicado interrogation" in "police-dominated atmosphere[s]." *Id.*

*The functional equivalent of interrogation*

In determining whether a defendant was subject to custodial interrogation for purposes of *Miranda*, the defendant must show they were subject to custody and interrogation, or the functional equivalent thereof. *See Paige*, 226 Md. App. at 107. So, even though Mr. Ross was in custody for *Miranda* purposes, he must also show either that he was interrogated by the police or that he was subject to the functional equivalent of interrogation. He does not assert that he was actually interrogated, his argument is that what occurred in the apartment while the search warrant was executed was the functional equivalent of an interrogation.

As to this issue, the suppression court concluded that "under the totality of the circumstances," the functional equivalent of interrogation occurred when Detective Stem "was talking to Mr. Ross's companion that he has that search warrant for Mr. Ross," when

the latter "was in the same living room area[.]" We do not agree with the suppression court's reasoning.

Interrogation, for purposes of *Miranda*, applies when someone in custody is subject to "either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980). The "functional equivalent" of interrogation applies to "words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Id.* at 301. Acts that are "reasonably likely to elicit an incriminating response" consist of "compelling influences [and] psychological ploys." *State v. Conover*, 312 Md. 33, 45 (1988).

In the present case, Detective Stem testified that Ms. Young identified herself as the leaseholder to the apartment and that he showed her a copy of the search warrant and notified her that the warrant had been issued as part of "a drug investigation involving Mr. Ross." This sort of communication is required upon the execution of a search warrant.[4]

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[4] *See* Md. Code, Crim. Proc. § 1-203(6):

> The executing law enforcement officer shall give a copy of the search warrant, the application, and the affidavit to an authorized occupant of the premises searched or leave a copy of the search warrant, the application, and the affidavit at the premises searched.

*See also* Md. Rule 4-601(e)(2):

> At the time the warrant is executed, the officer executing the warrant shall leave with the person from whom the property was taken or, if that person is not present, an authorized occupant of the premises from which the property

Additionally, Detective Stem's exchange with Ms. Young did not trigger the inculpatory statement by Mr. Ross. He made this statement only after the police found drugs in the kitchen. Detective Stem testified that this occurred "approximately forty-five minutes to an hour" after his conversation with Ms. Young.

In determining whether the suppression court erred in finding that the functional equivalent of interrogation occurred, we review only the facts presented in the suppression hearing. *Gonzalez*, 429 Md. at 632. In the present case, what the inspecting officers in Ms. Young's kitchen actually said when they found drugs is not clear; instead, Detective Stem testified only that inspecting officers typically say something like "Detective Stem, come here please" when they find something noteworthy.

"The test to be applied in determining whether the police officer's statements and exhibition of the physical evidence was tantamount to interrogation is whether the words and actions of the officer were reasonably likely to elicit incriminating responses from petitioner." *Drury v. State*, 368 Md. 331, 335–36 (2002). A simple statement of fact from one police officer to another, even in the suspect's presence, is not usually enough to constitute the effective equivalent of an interrogation. For example, in *Rhode Island v. Innis*, after Innis had invoked his right to remain silent and while he was being transported

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was taken (A) a copy of the search warrant and application, (B) a copy of the supporting affidavit, except an affidavit that has been sealed pursuant to section (d) of this Rule, and (C) a copy of the inventory.

to a police station, he overheard a discussion between police officers regarding the dangers that the as yet unrecovered murder weapon posed to the students of a nearby school. 446 U.S. 291 (1980). Innis then made an inculpatory statement. *Id.* at 295. The Supreme Court held that the discussion between the officers was not the effective equivalent of an interrogation for purposes of *Miranda*:

> [I]t cannot be fairly concluded that the respondent was subjected to the "functional equivalent" of questioning. It cannot be said, in short, that Patrolmen Gleckman and McKenna should have known that their conversation was reasonably likely to elicit an incriminating response from the respondent. . . .
>
> *The case thus boils down to whether, in the context of a brief conversation, the officers should have known that the respondent would suddenly be moved to make a self-incriminating response.* Given the fact that the entire conversation appears to have consisted of no more than a few off hand remarks, we cannot say that the officers should have known that it was reasonably likely that Innis would so respond. . . .

*Id.* at 302–03 (footnotes omitted, emphasis added).

The Court of Appeals reached a similar conclusion in *Vines v. State*, 285 Md. 369, (1979). In that case, Vines declined to speak to police after receiving the *Miranda* advisements. About 30 minutes later, an officer took Vines to another room for him to complete a "narcotic addict form." On the same table was contraband seized from Vines' home as a result of the execution of a search warrant. *Id.* at 372. In concluding that what occurred was not the functional equivalent of interrogation, the Court stated that: "[a] statement obtained without giving the *Miranda* warnings and according the defendant the prescribed rights is inadmissible only if it is the result of 'questioning' or 'interrogation.'

[T]he courts have had little difficulty characterizing police activity as 'interrogation' when a statement is responsive to police inquiries which on their face call for an answer." *Id.* at 369 (quoting C. McCormick, EVIDENCE 329 (Cleary 2d ed. 1972)).

Finally, the Court of Appeals' "functional equivalent of interrogation" analysis in *Smith II* is instructive.[5] In that case, as part of its investigation of a crack cocaine distribution ring, police executed a search warrant on Smith's apartment. After they discovered a plastic bag of what appeared to be crack cocaine, an officer testified that he "walked by Smith and showed Mr. Smith what it was and basically . . . made an announcement to the other officer that we were going to arrest" everyone who was in the apartment, including Smith. The officer testified that, when he made that statement, he was aware that one of the other persons present in the apartment was Smith's girlfriend. 414 Md. at 363. Seconds after the officer had made his pronouncement, Smith stated "it is all mine." *Id.* The same officer testified that Smith "made the admission because he saw that the police were going to arrest his girlfriend and he wanted to protect her." *Id.* (cleaned up).

In explaining why Smith had not been the subject of a functional equivalent of interrogation, the Court of Appeals began with the premise that "the critical inquiry is whether the police officer, based on the totality of the circumstances, knew or should have known that the words spoken or actions taken were reasonably likely to elicit an

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[5] The Court of Appeals assumed for purposes of analysis that Smith was in custody for *Miranda* purposes. 414 Md. at 360–61.

incriminating response." *Id.* at 366 (quoting *Prioleau v. State*, 411 Md. 629, 643 (2009) (cleaned up)). The Court continued:

> In the present case, we are not persuaded that Corporal Peter should have known that his action and words would likely evoke an incriminating response from Smith. It was not reasonably foreseeable that Smith would admit ownership of the drugs in response to Corporal Peter's announcement to arrest everybody and his display of the drugs, anymore than it was reasonably foreseeable that Smith would blurt out a confession to exonerate his girlfriend. . . . He did not stop in front of Smith in order to elicit a statement from him; rather, Corporal Peter walked past Smith, and as he continued walking, he announced to other officers present to place everybody under arrest. The corporal's actions did not demonstrate conduct calculated to elicit an incriminating statement.
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> Corporal Peter testified that his purpose in showing Smith the drugs was to inform him of why he was being arrested and that he ordinarily shows all suspects the contraband recovered during a drug arrest. This testimony was not rebutted. In addition, Corporal Peter testified that there were no attempts by the police to question Smith about any of the evidence recovered as a result of the search. Moreover, according to the corporal, his announcement to place everyone under arrest was not directed at Smith, but rather was an instruction to his fellow officers to arrest all individuals on the premises.

414 Md. at 367–68.

Returning to the case before us, Detective Stem testified that one of the other detectives called out "Detective Stem, come here please" or something similar. The words were clearly not directed at Mr. Ross. There was nothing in the statement that identified what Detective Stem's interlocutor was referring to. A brief, non-factual, neutrally-worded request from one police officer to another, even if it is audible to a suspect, is not the type of statement that can be interpreted as being "reasonably likely to elicit a response" from a third party.

In arguing otherwise, Mr. Ross emphasizes the actions taken by the police while executing the search warrant, including "the violent entry into the home; the overwhelming police presence; the presentation of the search warrant; the placing of zip-tie restraints on the children with their arms behind their backs and placing them next to him for nearly an hour; and gathering incriminating evidence in front of him[.]" These aspects of the case clearly troubled the suppression court and are the basis for our conclusion that the court was correct when it concluded that Mr. Ross was in custody for the purposes of *Miranda.* But being in custody in the context of the Fifth Amendment (which Mr. Ross was) does not mean that any communication between one police officer and another constitutes the effective equivalent of an interrogation. *See*, *e.g.*, *Innis,* 446 U.S. at 302–03. Nor does being in custody for Fifth Amendment purposes mean that every communication between an officer and the suspect is the functional equivalent of interrogation. *See, e.g.*, *Vines*, 285 Md. at 378; *Prioleau*, 411 Md. at 643 (The question "What's up, Maurice?" was a greeting and not the functional equivalent of interrogation, even though it elicited an inculpatory response.); *State v. Conover*, 312 Md. 33, 42 (1988) (Furnishing a suspect a copy of the statement of charges after he had invoked his right to remain silent was not the effective equivalent of interrogation.).

Mr. Ross's final argument is that he was subjected to the functional equivalent of interrogation because the police "gather[ed] incriminating evidence in front of him." We are aware that marshalling evidence in the presence of an accused can be the functional equivalent of an interrogation for *Miranda* purposes. *See, e.g., Drury v. State*, 368 Md. 331

(2002). In *Drury*, after Drury's arrest but before he was given his Miranda advisements, a police officer informed him that he had been brought in for questioning. The officer then showed Drury items recovered from the crime scene and told him that they would be sent to a crime lab for fingerprint processing. 368 Md. at 334. The Court stated:

> It appears to us that the only reasonable conclusion that can be drawn from the foregoing facts is that the officer should have known, in light of his having told petitioner that he was being brought in for questioning, that putting the evidence before petitioner and telling him that the items were going to be fingerprinted was reasonably likely to evoke an incriminating response from him. The only plausible explanation for the officer's conduct is that he expected to elicit a statement from petitioner.

*Id.* at 337.

In the present case, there is no evidence in the record to support Mr. Ross's argument. We will assume for purposes of analysis that Detective Stem or another officer placed the seized evidence on the dining room table and that Mr. Ross could see it. In *Drury*, the Court found that the defendant was subjected to the functional equivalent of interrogation based on the officer's words and actions. 368 Md. at 337. The "critical inquiry is whether the police officer, based on the totality of the circumstances, knew or should have known that the words spoken or actions taken were reasonably likely to elicit an incriminating response." *Smith II*, 414 Md. at 722. There were no words spoken to Mr. Ross or further actions taken by the officers to elicit an incriminating statement, as in *Drury*. That he happened to see an officer processing contraband seized during the search is not enough

for us to conclude that what the police did was reasonably likely to induce Mr. Ross to make an inculpatory statement. *See Vines*, 285 Md. at 378.

Based upon our independent review of the record developed at the suppression hearing and after giving deference to the factual findings made by the suppression court, we conclude that, although Mr. Ross was in custody for Fifth Amendment purposes, he was neither interrogated nor subjected to the functional equivalent of interrogation. Therefore, we must reverse the judgment of the circuit court.

**THE JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY IS REVERSED. THIS CASE IS REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS. APPELLEE TO PAY COSTS.**

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0602s21cn.pdf