UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1423

September Term, 2014

WALTER D. POWERS

v.

STATE OF MARYLAND

Hotten,
Nazarian,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 31, 2015

Appellant, Walter Powers, was convicted by a jury in the Circuit Court for Howard County of armed robbery, robbery, assault in the first degree, assault in the second degree, related firearm offenses and theft under the value of $1000. In this appeal, he presents one question for our consideration: Did the trial court err in denying appellant's motion to suppress his statement?

We shall hold that the trial court did not err and shall affirm.

I.

Inasmuch as the only issue in this appeal concerns the statement appellant made to Detective Jeremy Terry of the Howard County Police Department during the execution of a DNA warrant, we will set out only those facts relevant to the appeal issue. On a rainy evening on December 7th, 2012, Radulan Rasalingam was the sole employee working at the Shell gas station on Waterloo Road in Ellicott City, Maryland. At approximately 11:30 p.m., Radulan closed the store and began walking toward his car located in the back parking lot. When he got to his car, Radulan was approached by a masked individual wearing socks on his hands. The individual pointed a gun at Radulan and forced him back toward the store. While making off with cash, cigarettes and some of Radulan's property, the robber discarded the socks on the ground of the parking lot. The police retrieved the socks, and the crime lab tested them for DNA evidence. Consequently, the Howard County Police Department identified appellant as a suspect in the robbery.

On May 16th, 2013, Detective Terry and other officers of the Howard County Police Department set up a surveillance of appellant's vehicle. At 6:30 a.m., some officers spotted appellant outside in the neighborhood. The officers detained appellant until Detective Terry arrived on the scene.

Detective Terry informed appellant that the officers possessed a warrant to obtain his DNA. Detective Terry advised Powers that he was not under arrest, but that he was not free to leave until after the DNA warrant had been executed. Appellant demanded to see the warrant and inquired as to whether it was signed by a judge. Detective Terry showed appellant the judge's signature and explained that the warrant was "in reference to a[n] armed robbery from December where an individual discarded socks they were using as gloves when they fled the scene . . . ." Appellant then stated, "Come on, man, you know DNA don't hold up in the weather." The admissibility of this statement is the primary issue in this appeal. Detective Terry did not ask appellant any follow-up questions.

Using a buccal swab, Detective Terry took a DNA sample from appellant. Detective Terry asked appellant if he wanted to discuss the incident further, and appellant declined. One of the officers next asked if he could search appellant's vehicle, and appellant refused. The officers then told appellant he was free to leave, and the officers left.

On May 30, 2013, appellant was charged in connection with the robbery, and the Grand Jury for Howard County indicted appellant of said charges. Appellant filed in the Circuit Court for Howard County a motion to suppress his statement to Detective Terry. At

the motion hearing, appellant argued that Detective Terry should have given him his warnings pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), because appellant was in custody, not free to leave and subjected to interrogation at the time he made the statement. The court denied appellant's motion, holding that Detective Terry's description of the incident was a "function really of the [appellant's] questions of [Detective Terry] as to what was going on and whether the judge had signed the warrant." Further, the court concluded that appellant was neither in custody, nor subjected to interrogation at the time he made the incriminating statement.

Appellant proceeded to trial before a jury in the Circuit Court for Howard County. The jury convicted appellant of armed robbery, robbery, assault in the first degree, assault in the second degree, use of a firearm in the commission of a felony, theft under the value of $1000 and possession of a regulated firearm after having been convicted of a crime of violence. The court sentenced appellant to a term of incarceration of thirty-five years.

This timely appeal followed.

II.

Before this Court, appellant argues that the trial court erred when it denied his motion to suppress the statement he made to Detective Terry. First, appellant contends he was "unquestionably" in custody at the time he made the statement, arguing that in administering a buccal swab, Detective Terry deprived appellant of his freedom in a significant way. Thus,

argues appellant, the DNA warrant was tantamount to an arrest warrant. Second, appellant contends that Detective Terry subjected him to the functional equivalent of interrogation. Appellant maintains that Detective Terry knew or should have known that his description of the incident, under the circumstances, would have elicited an incriminating response. Appellant asserts that Detective Terry should have read him his *Miranda* warnings and that his statement made in the absence of such warnings should not have been admitted into evidence.

The State argues that the trial court did not err in denying appellant's motion to suppress. First, the State contends that appellant was not in custody when he made the incriminating statement. The State notes that Detective Terry informed appellant that he was not under arrest, but that he may not leave until after the officers had executed the DNA warrant. Further, the State maintains that appellant's temporary detention during that time did not constitute custody for *Miranda* purposes. Second, the State contends that Detective Terry did not subject appellant to interrogation, either by express questioning or by its functional equivalent. The State argues that Detective Terry's communication with appellant was not reasonably likely to elicit an incriminating response. The State points out that Detective Terry, after describing the incident, did not invite a response from appellant. Appellant was not unusually susceptible to persuasion, as he declined to speak with the officers and understood that they needed a warrant to search his vehicle or extract his DNA. The State emphasizes that Detective Terry never placed appellant in an interview room,

confronted him with any evidence of the crime, or discussed the investigation with him. According to the State, *Miranda* warnings were not required, and the trial court admitted appellant's inculpatory statement into evidence properly.

III.

In reviewing the denial of a motion to suppress, ordinarily this Court is limited to the record of the suppression hearing. *Thomas v. State*, 429 Md. 246, 259 (2012). This Court accepts the suppression court's factual findings and conclusions regarding the credibility of testimony unless clearly erroneous. *Id.* To the extent that the suppression court's factual findings are "1) ambiguous, 2) incomplete, or 3) non-existent," this Court "will accept that version of the evidence most favorable to the prevailing party." *Morris v. State*, 153 Md. App. 480, 489-90 (2003). We "undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case." *Thomas*, 429 Md. at 259.

IV.

This case hinges on the threshold applicability of *Miranda v. Arizona*, 384 U.S. 436 (1966). We concern ourselves solely with *Miranda*'s relevance, rather than with the satisfaction or violation of its requirements.

The Fifth Amendment to the U.S. Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself . . . ." U.S. CONST. amend. V. The Supreme Court of the United States has held that the privilege against compelled self-incrimination extends to custodial interrogation settings. *See Miranda*, 384 U.S. at 444 ("[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination."). Thus, a defendant claiming entitlement to *Miranda* warnings must establish the two sub-elements — that of custody and interrogation. *Smith v. State*, 186 Md. App. 498, 518 (2009), *aff'd*, 414 Md. 357 (2010).

As we shall explain *infra* in further detail, we hold that the trial court did not err in declining to suppress appellant's statement and in finding no *Miranda* violation because appellant had not been subjected to interrogation by the police. Therefore, we shall assume, without deciding, that appellant was in custody when he made the incriminating statement to Detective Terry. Our analytical focus and discussion will be limited to whether Detective Terry, in referencing the armed robbery while executing a DNA warrant, subjected appellant to interrogation within the meaning of *Miranda*.

The Supreme Court of the United States has defined "interrogation" under *Miranda* as either express questioning or its functional equivalent. *Rhode Island v. Innis*, 446 U.S. 291, 300-01 (1980). The functional equivalent of express questioning encompasses "any

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.

Detective Terry's statement to appellant was not reasonably likely to elicit an incriminating response. After the officers detained appellant, appellant initiated conversation by demanding to see the warrant and inquiring as to whether it was signed by a judge. Detective Terry showed appellant the judge's signature and provided appellant with some basic information contained in the warrant. Detective Terry did not display for appellant the discarded socks from the crime scene, nor did he discuss with appellant the gathering of DNA from the socks. He did not ask appellant any questions designed to solicit an incriminating response. Appellant was not unusually susceptible to persuasion, as he declined to discuss the incident with the officers, denied the officers permission to search his vehicle and later testified that he did "paralegal work." We hold that Detective Terry did not subject appellant to interrogation under *Miranda*. Appellant's statement made to Detective Terry "was a classic 'blurt,' to which the protections of *Miranda* do not apply." *Prioleau v. State*, 411 Md. 629, 645 (2009).

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