Circuit Court for Dorchester County
Case No. C-09-17-000183

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1826

September Term, 2017

JOANNE OMESHA ANDERSON

v.

STATE OF MARYLAND

Graeff,
Shaw Geter,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Moylan, J.

Filed: August 17, 2018

The appellant, Joanne Anderson, was convicted in the Circuit Court for Dorchester County by Judge Raymond Beck, on an agreed statement of facts, of 1) obstruction and impeding justice pursuant to Maryland Code, Criminal Law Article, Sect. 9–306 and 2) making a false statement to a police officer pursuant to Criminal Law Article, Sect. 9–501. Judge Beck imposed consecutive sentences totaling one year, with all but two days suspended and one year's probation.

The appellant's single contention is that, at a pre-trial suppression hearing, Judge Brett W. Wilson failed to suppress an incriminating statement the appellant made to the police without having been given her warnings pursuant to Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

On December 16, 2016, Detective Stephen Hackett of the Cambridge Police Department was called to 706 Hewlett Street where he received from the appellant a report of a rape perpetrated on her by a man she identified by name and further description. Voluntarily going to the police department, along with her brother, the appellant, as a rape victim, gave a statement to the police on December 16. The circumstances of that interview do not concern us.

Detective Hackett subsequently conducted an investigation of the accused rapist. His investigation indicated that the suspect was definitely "somewhere else" and could not have been in the appellant's apartment at the time she alleged the rape had occurred. Detective Hackett deemed it necessary to reinterview the appellant to probe more precisely into the details of her story. The appellant voluntarily returned to a police station for a

second interview on December 19. As that second interview got under way, however, it was largely an attack on the police by the appellant for their indiscretion in having come to her house on Monday, when her grandmother was present, rather than on Sunday. It was in the course of that exchange, unconnected to the alleged rape, that the damaging blurt occurred that became the subject of the suppression motion.

BY DETECTIVE HACKETT:

Q. Okay, Ms. Anderson.

A. Why of all days did you all come get me today? You all didn't come get me yesterday, the day before.

Q. So Sunday, today is Monday. We work Monday through Friday. So sorry we didn't come to you earlier but today was the first day we could get to you, okay?

A. Then you all come to my house.

Q. Well –

A. And my grandmom's looking.

Q. – this is pretty serious.

A. Coming down there, got my brother coming down there.

Q. This is pretty serious.

A. Fuck.

Q. This is pretty serious.

A. **Yeah, it's pretty serious because I lied on the man, okay.**

Q. Well, that's what we're trying to get to the bottom of.

> A. Okay. You can throw it out, because I don't want to (unintelligible), you can throw it out.

(Emphasis supplied).

That is a quintessential blurt. We explain. The appellant complains that that incriminating admission came out without her having been given the required antecedent Miranda warnings. The State's response is that Miranda was not applicable and, therefore, did not have to be satisfied. Both parties are right that the question before us is the threshold issue of Miranda's applicability. The further delving into applicability, however, is out of focus. Both parties are erroneously focusing on the threshold requirement of Miranda custody, whereas they should be focusing on the threshold requirement of Miranda interrogation.

Let us back up to get perspective. When the Supreme Court promulgated Miranda v. Arizona in 1966, the now legendary Miranda catechism was not constitutional per se. It was simply a set of judicially-created prophylactic rules intended to implement and to safeguard something that was constitutional, to wit, the Fifth Amendment Privilege Against Self-Incrimination. Unless the privilege itself is applicable, its implementing rules are not applicable. To establish the applicability of the privilege, one claiming the privilege must prove the presence of all six of its elements. In the context of confession law, the critical one of those elements almost always turns out to be the element of compulsion.

To prove that element, Miranda gave the criminal defendant the benefit of a bright-line shortcut. As Miranda itself held, "[C]ustodial interrogation is inherently coercive." 384 U.S. at 534. To prove compulsion, therefore, a defendant need only prove 1) custody and

2) interrogation. In Cummings v. State, 27 Md. App. 361, 366–67, 341 A.2d 294, cert. denied, 276 Md. 740 (1975), this Court explained:

> The constitutional distillate of Miranda is that self-incrimination flowing from a custodial interrogation is, ipso facto, compelled self-incrimination because of the inherent coercion—the inherent compulsion—of the custodial interrogation environment. In the custodial interrogation situation, therefore, the constitutionally damning element of compulsion can only be extirpated by the elaborate prophylactic process of warning and waiver prescribed by Miranda as the required compulsion antidote. Absent the compulsion, there is no need for the antidote.

(Emphasis supplied).

This Court's statement to that effect in Reynolds v. State, 88 Md. App. 197, 594 A.2d 609 (1991), was formally adopted by the Court of Appeals as the opinion of that Court's Reynolds v. State, 327 Md. 494, 511, 610 A.2d 782 (1992):

> Miranda announced a bright line formula that the combination of custody and interrogation will be deemed to be presumptively coercive. It is, therefore, custodial interrogation that gives rise to the presumption of compulsion and brings into play the therapeutic, implementing rule of Miranda. Absent the combination of both custody and interrogation, there is no presumption of compulsion and there is, therefore, no call for Miranda's implementing countermeasures.

88 Md. App. at 209 (emphasis supplied).

Ciriago v. State, 57 Md. App. 563, 574, 471 A.2d 320, cert. denied, 300 Md. 152, 476 A.2d 721 (1984), expressed the same thought:

> The issues of custody and interrogation take on significance because of the pivotal jurisdictional holding in Miranda that "custodial interrogation is inherently coercive." That "bright line" ruling is indispensable to constitutional consideration, because without the establishment of compulsion (now by virtue of the "bright line" short cut), the gears of the Fifth Amendment privilege are not engaged. There is no privilege against inadvertent self-incrimination or even stupid self-incrimination, but only

> against compelled self-incrimination. If there is custody and if a statement is in response to interrogation, there is thereby established the element of compulsion which is the jurisdictional predicate for further constitutional analysis.

(Emphasis supplied). See also Smith v. State, 186 Md. App. 498, 517, 974 A.2d 991 (2009) ("If the defendant can prove the two sub-elements of 1) custody and 2) interrogation, the defendant has, for all intents and purposes, ipso facto established the necessary element of compulsion without any further proof being required." (Emphasis supplied).), aff'd, 414 Md. 357, 995 A.2d 685 (2010).

The Twin Requirements of Custody And Interrogation

The proof of Miranda applicability is, therefore, a two-pronged affair. Cummings, 27 Md. App. at 367, squarely held:

> A court must ask:
>
> 1. Was there **CUSTODY**?
>
> 2. Was the statement under scrutiny made in response to **INTERROGATION**?

(Emphasis supplied).

Smith, 186 Md. App. at 518, reaffirmed:

> The other elements of the privilege generally not being in issue, the establishment of compulsion establishes the privilege. Once the Fifth Amendment privilege is applicable, then (but only then) are the implementing rules of Miranda applicable. In short, a criminal defendant claiming that Miranda is applicable (and that it, therefore, must be satisfied) must establish the two sub-elements of
>
> 1. CUSTODY, and
>
> 2. INTERROGATION

> as those two terms of art have been fleshed out by the extensive body of Miranda caselaw.

(Emphasis supplied)

A Spontaneous Blurt Negates Interrogation

In looking at the "interrogation" prong of Miranda's two-pronged test for "compulsion," as something separate and distinct from the "custody" prong, the starting point for analysis is the Supreme Court decision of Rhode Island v. Innis, 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). Thomas Innis was unquestionably in custody when he made the incriminating admission at issue in the case. He had been arrested. He was handcuffed. He was seated in the caged-in rear section of a police car as he was being transported to the police station by two uniformed officers.

His incriminating statement, however, was an unsolicited blurt from the back seat. It was held by the Supreme Court that the failure of the police to have given Innis any Miranda warnings was not a reason to suppress the statement because Miranda did not apply. Of the two requirements for Miranda applicability, the custody requirement was unquestionably satisfied but the interrogation requirement was not. A spontaneous blurt is not considered to be a product of interrogation.

Maryland has consistently followed suit. See Jezic, Woodward, Graeff, Molony, Law of Confessions (2017–2018 Ed.), Sect. 9:4 "Blurts and other volunteered responses," pp. 432–39.

> Spontaneously, volunteered statements from suspects in custody are generally admissible without the administration of Miranda warnings. In Miranda itself, the Supreme Court remarked that "[v]olunteered statements

> of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding today." Thus, the Court of Special Appeals has held that a suspect is not subject to interrogation when he interrupts the officer's reading of the Miranda rights to state 'I did not rape that girl. She gave it to me voluntarily.'

Id. at 433 (citing Richardson v. State, 6 Md. App. 448, 451, 251 A.2d 924 (1969)).

In Fenner v. State, 381 Md. 1, 18, 846 A.2d 1020 (2004), the questioning of a defendant by a judge in a bail review hearing was deemed to be not a Miranda interrogation.

> Questions posed to an arrestee by a judge regarding matters relevant to bail, asked in the setting of a bail review hearing, do not normally amount to an "interrogation" requiring that the arrestee be again advised of his Miranda rights in order that his responses may be later admitted into evidence at his merits trial.

(Footnote omitted).

In Costley v. State, 175 Md. App. 90, 98, 926 A.2d 769 (2007), the defendant, in the course of a non-interrogatory conversation with an officer, blurted out, "I'm glad that b[****] is dead." The Court of Special Appeal held that this was not interrogation and that Miranda did not apply. Id. at 107 ("[T]here was nothing in Cpl. Pearre's conversation with appellant that 'should have made the officer aware that his questions would likely elicit an incriminating response.'"). See also Bowers v. State, 298 Md. 115, 129, 468 A.2d 101 (1983); Gaynor v. State, 50 Md. App. 600, 605–06, 440 A.2d 399 (1982); Grymes v. State, 202 Md. App. 70, 99–100, 30 A.3d 1032 (2011); Hunter v. State, 110 Md. App. 144, 164, 676 A.2d 968 (1996).

Our ultimate exemplar of a spontaneous and unsolicited blurt, however, is found in Ciriago v. State, 57 Md. App. 563, 471 A.2d 320 (1984). Ciriago, who had been badly

injured in an overturned automobile, was under arrest and was in a hospital room under police guard. Miranda's custody requirement was solidly satisfied. As two officers entered Ciriago's hospital room to interview him, one of them, Detective Fink, was in plain clothes. As Officer Williams started to explain the officers' purpose in being there, Ciriago, drawing immediate significance from the fact that Detective Fink was not in uniform, interrupted the explanation with the observation directed at Fink, "You're not a traffic cop, so I guess I am under arrest." To that, Detective Fink responded that Ciriago was not under arrest. Ciriago shot back with his now legendary blurt.

> "Don't bullshit a bullshitter, because if I was a cop and you had that much 'shit' in your car, you would be under arrest."

57 Md. App. at 574 (footnote omitted). The Court of Special Appeals did not hesitate to hold:

> Is that a blurt? *Is that a blurt!* It is the quintessential blurt. It is the Taj Mahal of blurts.

Id. (Emphasis supplied).

This was not the product of interrogation. Miranda, therefore, did not apply. The incriminating blurt was received into evidence. If the blurt in this case, "I lied on the man," was not the Taj Mahal of blurts, it was at the very least the Temple of Angkor Wat. We hold that in this case Miranda v. Arizona was not violated because Miranda v. Arizona did not apply. It did not apply not because its custody requirement was necessarily lacking but because its interrogation requirement was indisputably lacking.

JUDGMENTS AFFIRMED; COSTS TO BE PAID BY APPELLANT.