Circuit Court for Baltimore City
Case No. 116202008

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1839

September Term, 2017

KEITH JONES

v.

STATE OF MARYLAND

Wright,
Graeff,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: August 13, 2019

*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. Md. Rule 1-104.

In this appeal, we are asked by appellant, Keith Jones, to hold that incriminating statements made by him while in police custody were the product of the functional equivalent of interrogation, and thus inadmissible in his trial before a jury in the Circuit Court for Baltimore City. Jones, convicted by the jury of possession of cocaine, now argues that the motions court erred in denying his motion to suppress the statements which, he asserts, were made in violation of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).[1]

DISCUSSION

Because Jones raises only a challenge to the admissibility of his statement, our factual reference is limited to the evidence adduced at the suppression hearing. We review a circuit court's denial of a motion to suppress on "'only the evidence contained in the record of the suppression hearing[.]'" *Gupta v. State*, 452 Md. 103, 129 (2017) (quoting *Rush v. State*, 403 Md. 68, 82-83 (2008)). The suppression court's factual findings, including "'its conclusions regarding the credibility of testimony[,] are accepted unless clearly erroneous.'" *Id.* (quoting *Rush*, 403 Md. at 83). The evidence and all inferences reasonably drawn therefrom are viewed "in the light most favorable to the prevailing party." *Id*. (internal quotations and citation omitted). However, we review the suppression court's legal conclusions *de novo* by undertaking our own "independent constitutional appraisal of the record by reviewing the law and applying it to the facts …." found by the suppression court. *Id*. (internal quotations and citation omitted). Moreover, a defendant

---

[1] Jones was sentenced to a one-year term of incarceration.

must show that he was in custody and subject to interrogation as a condition of entitlement to the protection of *Miranda*. *State v. Thomas*, 202 Md. App. 545, 564-65 (2011). *See also Moody v. State*, 209 Md. App. 366, 380 (2013) (the burden of showing custody and interrogation lies with the movant).

The suppression hearing

Officer Jason Blanchard of the Baltimore City Police Department was the sole witness at the suppression hearing. He testified that, while in uniform and accompanied by other officers, he was driving an unmarked van on Aiken Street on July 4, 2016. As he observed Jones approaching a group of three people, he drove the van to "within a couple feet" of the group. Seeing what he believed to be suspicious activity between Jones and a female in the group, Blanchard stopped the van. He observed that the female had money in one hand and small objects in the other and appeared to be trying to give the money to Jones. At that point, Jones made brief eye contact with Blanchard. Thereafter, the group quickly dispersed. Believing he was interrupting a hand-to-hand drug transaction, Blanchard opened the door to step out of the van. As Blanchard opened the door, Jones ran past him into an alley behind the houses on Aiken Street. Blanchard gave chase.

Blanchard found Jones hiding in a bush in a yard behind one of the houses, against a chain fence. Jones complied with Blanchard's direction to come over the fence and back into the alley, where Blanchard secured him in handcuffs for the officer's safety. Within "a minute or two," another officer, Sergeant Anthony Maggio, searching the area where

Jones had been hiding, found a clear plastic bag with 23 gel caps of suspected heroin.[2] The parties agree that Jones was then arrested and in custody.

Blanchard testified that a search of Jones incident to the arrest disclosed a car key. A car was parked nearby,[3] in front of the house on Aiken Street, behind which Jones had been found hiding. When the keys were retrieved from his pocket, Jones looked at the car directly in front of them and told Blanchard that it was his car and asked that it not be towed. When advised that the car would be subject to a drug dog scan, Jones told the officers that there was cocaine in the car.

After the drug dog alerted on the car, a search of the car revealed two clear bags of cocaine located in the driver's side door. The officers did not advise Jones of his Miranda rights during the incident, nor did they ask any questions of him regarding the incident.

Thus, the challenge before us is whether, on the evidence developed at the suppression hearing, Jones' statements about ownership of the car and its contents were admissible. More to the point, Jones argues that Blanchard's advice that the car would be towed, implicating expense to Jones, and that a drug dog had been called to sniff the car was, in his words, the "functional equivalent" of interrogation. He posits that Blanchard's comments, which Jones concedes were not questions, were "likely to elicit an incriminating

[2] Jones was charged with possession of heroin, but acquitted of that charge.

[3] On direct examination, Blanchard testified that the car was "[m]aybe 7, 8 yards away." However, when later questioned by the court, Blanchard testified that "[i]t's probably 10, 15 feet away from us[.]" Blanchard also testified that there were "maybe 15, 20 cars" that were also on the street in that area.

response." In denying the motion, the court found that Jones' statements were not the product of interrogation and characterized each of his statements as a voluntary "blurt."

In our review of a denial of a motion to suppress a statement, we engage a two-step process, asking first "was the defendant in custody" and, if so, "was his statement the product of interrogation." *See State v. Thomas*, *supra*. Here, by any definition, Jones was in custody, as the State concedes. He had been confronted, chased, detained, handcuffed, and was clearly under the direction of the arresting officers. Therefore, our consideration turns to whether the comments made by Blanchard were the functional equivalent of interrogation.

In support of his argument that Blanchard's comments were the functional equivalent of interrogation, Jones refers us to *Rhode Island v. Innis*, 446 U.S. 291 (1980), wherein the court noted:

> [T]he *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police … that the police should know are reasonably likely to elicit an incriminating response from the suspect. The latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police….

446 U.S. at 300-01 (footnotes omitted).

Complementing that standard, the Court of Appeals said in *Blake v. State*, 381 Md. 218 (2004) that "interrogation means more than direct, explicit questioning and includes the functional equivalent of interrogation." 381 Md. at 233 (citing *Drury v. State*, 368 Md. 331 (2002)).

It is important, on these facts, to place the comments of both Jones and Blanchard in proper context. To be clear, there were two separate statements "blurted" to Blanchard – Jones' identification of his car and his admission of the presence of cocaine in the car. Jones, in his brief, describes the discussion concerning the latter statement as follows: "Once [Jones] said that the car was his, Blanchard told him that officers were going to have a drug dog examine it. Only then did [Jones] tell the officers there was cocaine in the car." The State, on the other hand, asserts that "Blanchard never mentioned towing Jones's car before Jones identified his car and stated that there was cocaine in it."

The motions court appeared to be more concerned with Jones' unsolicited claim of ownership of the vehicle and undertook its own examination of Blanchard for clarification:

> THE COURT: How far was Ford [sic] automobile from that location where you put handcuffs on [Jones]?
>
> [BLANCHARD]: It's literally parked right in front of that house.
>
> * * *
>
> THE COURT: Where was he when he says, "That's my car"?
>
> [BLANCHARD]: Standing halfway in between both.
>
> THE COURT: Where?
>
> [BLANCHARD]: So there's a field where they tore down houses right beside that first house --
>
> THE COURT: He just out of the clear blue said, "That's my car"?
>
> [BLANCHARD]: Yes. When I grabbed the keys out --
>
> THE COURT: Where was he when you grabbed the keys out?

[BLANCHARD]: We're standing right in that field in between the front yard and, well, the front of the house and the rear of the house.

THE COURT: When you grabbed the keys out, how far were you from the car?

[BLANCHARD]: It's right in front -- we're looking right at the car right --

THE COURT: A foot, 5 feet, 10 feet?

[BLANCHARD]: It's probably 10, 15 feet away from us, right in front of us looking directly at the car in front of us.

THE COURT: So you took the keys from him?

[BLANCHARD]: Right.

THE COURT: And you had no conversation with him before then?

[BLANCHARD]: With him, no; beforehand ….

* * *

[BLANCHARD]: I did not ask him where his car was, anything of that nature.

THE COURT: He just said, "That's my car"?

[BLANCHARD]: To the best of my knowledge, yes. I didn't ask. I never asked where your house is, where your, you know, is that your house, is that your car. That's something I don't do.

Presented only with Blanchard's testimony, the motions court[4] resolved the factual discrepancy:

> I deny the motion for the following reasons…. The police officer testified that he saw what he believed to [be] a hand-to-hand drug transaction. The Defendant, when he saw the officer get out of the car and coming toward him, runs. He chases him, they look for him, they find him laying down in a yard behind a house. Okay. They handcuff him.

[4] The motion to suppress and trial were heard on the same day by the same judge.

> Sergeant Maggio, this is according to the testimony of this officer, Officer Blanchard, found drugs in the area where the Defendant was lying down. That's circumstantial evidence that those drugs belonged to him. There's a blurt that "That's my car," after he takes the keys out. The officer said he didn't ask him where his car was or where is his car; that's what he said.
>
> I don't know of any particular case that says that I should infer that he asked him that. Later on, at some point, he says there's drugs in the car, another blurt according to the testimony that I've heard.
>
> For the reasons that I've just mentioned, for those findings of fact, I deny your motion.

We find nothing in this record that supports a conclusion that Blanchard's comments constitute the functional equivalent of interrogation. Jones' words, "that's my car" were, as described by the motions court, a blurt. As Judge Moylan observed in *Ciriago v. State*, 57 Md. App. 563, 574 (1984), "[t]here is no privilege against inadvertent self-incrimination or even stupid self-incrimination, but only against compelled self-incrimination." As we exercise our own independent judgment, we agree with the motions court that Jones' inculpatory comments were blurts, not responses to the functional equivalent of interrogation.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS ASSESSED TO APPELLANT.