UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0797

September Term, 2016

LAWRENCE A. COVERDALE

v.

STATE OF MARYLAND

Graeff,
Kehoe,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: May 18, 2017

The appellant, Lawrence A. Coverdale, was convicted at a jury trial in the Circuit Court for Baltimore City of second-degree murder, openly carrying a dangerous weapon, and malicious burning of property. He was sentenced to thirty years in prison for murder, to three years on the carrying conviction, and to one and one-half years for malicious burning, all consecutive. On this appeal he contends:

I. His confession should have been suppressed because of

A. Violation of the requirements of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), and

B. Constitutional and common law involuntariness; and

II. Although admittedly unpreserved, insufficiency of the evidence to support the carrying charge.

Facts and Procedural Background

Shortly before 2:00 a.m. on Friday, August 22, 2014, emergency personnel responded to a fire in the alley between the 4200 blocks of Shamrock Avenue and Parkside Drive in northeast Baltimore City. Burning was a clothed body, later identified as Nathaniel Quarterman. A trail of blood led from the body to the rear of 4201 Shamrock Avenue.

That address is a two-story and basement, brick, end-of-group home. The elevation falls from the street side, where the basement is half above ground level to the rear where the basement is fully above ground level. There is a door from the basement to the rear yard, an open area. At the rear of the first floor level, there is an unroofed porch or deck, but there is no direct access from the porch to the rear yard. The police observed blood dripping from the porch and pooled beneath it.

There are two dwelling units in 4201 Shamrock. The first floor (and presumably the basement) was occupied by the victim, Nathaniel Quarterman; the second floor by a third party. The first floor unit includes a living room and a bedroom. When the police sought entry to 4201 Shamrock, they awakened Coverdale and his fiancé, Sheila Stackhouse, who were asleep in the living room. There was blood splatter in the bedroom.

Coverdale had been living at Quarterman's for about three and a half weeks. On August 9, 2014, he had presented at Johns Hopkins Hospital as the result of having been assaulted at a Code Blue shelter. His injuries necessitated removal of his spleen. He was discharged from the hospital on August 12 with instructions to return on August 22 at 10:00 a.m., for removal of the staples.

Coverdale and Stackhouse were transported to the homicide office. Stackhouse arrived about 3:20 a.m. Coverdale was placed in a holding cell. The lead detective on the investigation, Ray Bennett, arrived at the crime scene at 2:25 a.m. and remained there until the location was secured at 9:18 a.m. He then returned to his office.

Detective Bennett began his interview of Coverdale at 10:49 a.m. It consists of two segments, both of which were recorded in full on audio/video disks. After giving some general background information, Coverdale was read his *Miranda* rights, one by one. As to each of the five cautions, appellant acknowledged that he understood it, both orally, and in writing on a waiver form by writing "Yes" and initialing that affirmation. In addition, he signed with his full signature and dated the waiver, all in red ink.

Basically, Coverdale initially said that he last saw the victim when the latter took his dog for a walk. Appellant also complained that his staples hurt. At 12:36 p.m., Detective Bennett suspended questioning in order to start the process for having Coverdale examined by a medic. After examining appellant in the interview room, the medic concluded that the complaint was due to irritation. But, because Coverdale had requested to be taken to the hospital, Detective Bennett found an officer from the Northeast District to take custody of Coverdale in going to, at, and going back from the hospital. The interview tape was stopped at 13:59 hours.

While appellant was at the hospital, Detective Bennett obtained a warrant for Coverdale's DNA and completed his interview of Stackhouse. Based on Stackhouse's later trial testimony, Bennett learned in the interview that, from the living room, she heard appellant and Quarterman arguing and that Coverdale forced her into the bedroom and showed her Quarterman's dead body. He asked her to help him move the body, but she refused. She saw Coverdale throw the body off of the porch and then pour something on it before it went up in flames. Based on this information, Detective Bennett obtained a warrant for Coverdale's arrest for murder, while he was still at the hospital.

Appellant returned from the hospital at 9:02 p.m.[1] He was placed in the same interview room as earlier. Bennett testified at the suppression hearing that he was explaining the warrant for the DNA search, when Coverdale began to speak rapidly. Bennett told appellant, "'Look,

[1]The hospital record for this outpatient visit is not in the record of this case.

just so you know, all the advice of rights, or the rights that we went over with you earlier, they're still in effect.'" Bennett further testified at the suppression hearing that he said, "You know, the form that we went over, I think I also made mention to him, you know, tried to explain to him that his waiver of rights, or his rights are still in effect just so he was aware. So, this was, if he didn't want to say anything, he didn't have to."

> "Q [by the State]. And did the defendant understand what you were saying to him?
>
> "A. Yes.
>
> "Q. And how do you know that?
>
> "A. He replied in the affirmative. [H]e replied that it was fine, or something to that effect."

When, at about 10:30 p.m., Bennett told Coverdale that he was being charged with murdering Quarterman, appellant's body language and demeanor changed. He asked for a cigarette and Bennett "took the gamble of finding him a cigarette." Coverdale proceeded to tell his version of the events.

He said that Quarterman had called Sheila Stackhouse a "bitch." Appellant picked up a hammer and threw it at Quarterman, striking him in the head. As the victim fell, his head struck the dresser.[2] Coverdale admitted throwing the body over the porch, dragging it down the alley, finding paint, pouring it on the body, and igniting it.

[2]At the trial an Assistant Medical Examiner testified that Quarterman had six blunt force lacerations of the skull, underlying three of which, in particular, were "depressed skull fractures that were very consistent with a rounded object, something that we very commonly see with hammer strikes."

The hearing on appellant's motion to suppress was held on January 19, 2016. The State introduced the transcript and compact disk recording of that session of the interview that took place after Coverdale returned from the hospital, but did not introduce a transcript or compact disk of the morning interview session. On January 20, the court denied suppression. Trial of the charges commenced. That trial, however, ended in a mistrial.

At the retrial on February 3-5, 2016, the compact disks of both segments of the interview by Detective Bennett were put in evidence and played in relevant part for the jury. Guilty verdicts resulted in the convictions described *supra*.

Additional facts will be stated as necessary to the discussion of the issues.

Discussion

I

A

Adopting the argument raised by trial counsel, Coverdale, on this appeal, contends that Detective Bennett violated his *Miranda* rights by failing to obtain a second written waiver of each of the five cautions before undertaking a resumption of questioning after appellant returned from the hospital. There was no violation.

In *State v. Tolbert*, 381 Md. 539, 850 A.2d 1192, *cert. denied*, 543 U.S. 852, 125 S. Ct. 263 (2004), the defendant contended that he should have been re-advised of his *Miranda* rights when his status changed from noncustodial to custodial, after a lapse of some two and one-half hours. The Court, citing *Wyrick v. Fields*, 459 U.S. 42, 103 S. Ct. 394 (1982), concluded "that a totality of the circumstances approach was the proper one to determine whether an

individual knowingly and intelligently waived his *Miranda* rights and thus whether renewed warnings are required[.]" *Tolbert*, 381 Md. at 552, 850 A.2d at 1199.

The *Tolbert* Court also reviewed favorably *State v. McZorn*, 288 N.C. 417, 219 S.E.2d 201 (1975), *death sentence vacated*, 428 U.S. 904, 96 S. Ct. 3210 (1976), which identified certain non-exclusive factors in the totality of circumstances "'which determine whether the initial warnings have become so stale and remote that there is a substantial possibility the individual was unaware of his constitutional rights at the time of the subsequent interrogation[.]'" *Tolbert*, 381 Md. at 553, 850 A.2d at 1200 (quoting *McZorn*, 288 N.C. at 434, 219 S.E.2d at 212). Here, there is no substantial possibility that Coverdale was unaware of his rights when he confessed because Bennett, only a relatively few minutes before, had reminded appellant that all of the rights that had been reviewed on the waiver form were still in effect and Coverdale said that he understood.

Even if we assume, *arguendo*, that the shorthand reference to the earlier waiver is ineffective as a renewal of the waiver, it does not follow that the original waiver was no longer effective. It was taken approximately eleven and one-half hours before the confession started. *Tolbert* favorably cited *People v. Dela Pena*, 72 F.3d 767, 769 (9th Cir. 1995), for the holding that "*Miranda* warnings given at night were effective the following day, approximately fifteen hours later, and defendant's subsequent custodial status was not the 'determining factor' in the analysis." *Tolbert*, 381 Md. at 550, 850 A.2d at 1198.

In *United States v. Bell*, 740 A.2d 958 (D.C. App. 1999), the defendant was arrested at 10:30 a.m., given *Miranda* warnings at 4:20 p.m., and thereafter questioned in a "continuing

context," 740 A.2d at 966, for approximately ten hours. The court saw "nothing in the record … to suggest that the *Miranda* waiver did not retain its efficacy[.]" *Id.*

The District of Columbia court cited, *inter alia*, the cases set forth below.

> "*United States v. Andaverde*, 64 F.3d 1305, 1313 (9th Cir. 1995) ('one day interval between *Miranda* warning and waiver, and … statement to [officer] was not unreasonable'), *cert. denied*, 516 U.S. 1164, 116 S. Ct. 1055, 134 L. Ed. 2d 199 (1996); *Martin v. Wainwright*, 770 F.2d 918, 930-31 (11th Cir. 1985) (new *Miranda* warning not required where one week interval between waiver and confession where defendant indicated he still understood his rights at time of confession), *modified*, 781 F.2d 185, *cert. denied*, 479 U.S. 909, 107 S. Ct. 307, 93 L. Ed. 2d 281 (1986); *Biddy v. Diamond*, 516 F.2d 118, 121-22 (5th Cir. 1975) (admission of statement despite 12-day interval between *Miranda* warning and statement where detectives did not repeat warnings but confirmed that defendant understood her rights), *cert. denied*, 425 U.S. 950, 96 S. Ct. 1724, 48 L. Ed. 2d 194 (1976)."

Id.

In the matter before us, there was no *Miranda* violation.

B

1

On this appeal, the emphasis of Coverdale's argument for suppression of his confession departs markedly from the *Miranda* argument advanced by his counsel at trial. Appellant now asserts that "[b]efore confession, [he] spent over nineteen hours in custody with little food, water, or rest and in such pain he had to go to the hospital." Brief of Appellant at 3 (bold type and capital letters modified). The State submits that this argument was not advanced by appellant below so that it is not preserved.

The preservation requirements are well stated in *Southern v. State*, 140 Md. App. 495, 780 A.2d 1228 (2001), *rev'd on other grounds*, 371 Md. 93, 807 A.2d 13 (2002).

> "The failure to raise a suppression issue before the hearing court amounts to a waiver to seek relief upon appellate review. *See Nye v. State*, 49 Md. App. 111, 116-17, 430 A.2d 867 (1981). Moreover, the motion to suppress must be presented with particularity in order to preserve an objection. *See, e.g., Jackson v. State*, 52 Md. App. 327, 332, 449 A.2d 438, *cert. denied*, 294 Md. 652 (1982) ('If a hearing is granted but the defendant presents no grounds to support the motion, his failure "amounts" to waiver.')
>
> "Indeed, '[a] party must bring his argument to the attention of the trial court with enough particularity that the court is aware first, that there is an issue before it, and secondly, what the parameters of the issue are. The trial court needs sufficient information to allow it to make a thoughtful judgment.' *Harmony v. State*, 88 Md. App. 306, 317, 594 A.2d 1182 (1991)."

Id. at 505, 780 A.2d at 1234.

Our review of the record does not disclose appellant's ever having argued to the circuit court that, due particularly to hunger, "his will ha[d] been overborne and his capacity for self-determination critically impaired." *Culombe v. Connecticut*, 367 U.S. 568, 602, 81 S. Ct. 1860, 1879 (1961).

2

If we assume, *arguendo*, that involuntariness based on physical discomfort and on deprivation of food, water and rest has been preserved, then Coverdale argues that our review must be made on the entire record. He cites, *inter alia*, *Leuschner v. State*, 45 Md. App. 323, 413 A.2d 227 (1980), *vacated*, 451 U.S. 1014, 101 S. Ct. 3001, *reaffirmed upon reconsideration*, 49 Md. App. 490, 433 A.2d 1195, *and cert. denied*, 291 Md. 778 (1981), where this Court said:

> "And as we conduct our independent review of the record, mandated by the Supreme Court, see *Walker v. State*, 12 Md. App. [684,] 694, 280 A.2d 260 [(1971)], we are not restricted to that which is revealed at the suppression hearing prior to admission of the confession but may and should review the record in its entirety from stem to stern."

Id. at 350, 413 A.2d at 243. *But see Lee v. State*, 418 Md. 136, 148, 12 A.3d 1238, 1245 (2011) ("In undertaking our review of the suppression court's ruling [on the voluntariness in fact of a confession], we confine ourselves to what occurred at the suppression hearing.").

We shall accept, *arguendo*, appellant's contention that our review must be based on the entire record. In the context of the instant matter, that means that the record includes not only the trial testimony but also the compact disk of the morning session of Coverdale's interrogation. It was placed in evidence in its entirety at trial, although only the *Miranda* waiver portion was played for the jury.

3

Our assumption that the record is enlarged does not result in suppression of the confession for involuntariness. Appellant points out that he was in custody for over nineteen hours before confessing, but he was actually questioned for only a little over two hours of that time. The morning session did not begin until 10:49 a.m., almost eight hours after appellant was taken into custody. Questioning was basically suspended about 12:36 p.m. when attention was diverted to getting Coverdale medical attention. He left for the hospital about 2:00 p.m. and did not return until about 9:00 p.m.

The tape of the evening session started at 10:07 p.m., showing appellant resting with his head in his arms on the interrogation room table. When the police later entered, Detective

Bennett told Coverdale that the rights that they went over on the form were still in effect. The latter responded, "Alright" when Bennett said, "I just want to make sure that you're perfectly clear on that." The DNA swabs were taken after the search warrant was explained. Then Coverdale's outer clothing was confiscated, and he was furnished substitute garb. Twenty-three minutes into the session Bennett told appellant that he was being charged with Quarterman's murder. In less than four minutes, Coverdale started his statement. What transpired in that period is set forth below.

"Mr. Coverdale: Why I'm gonna be charged with his murder?

"Det. Bennett: Remember what I told you earlier, okay. There's a lot of things that didn't make sense. A lot of things that didn't add up.

"Mr. Coverdale: Oh my God.

"Det. Bennett: Okay. We were trying to give you the opportunity to tell your side of the story.

"Mr. Coverdale: I told you everything I know.

"Det. Bennett: Okay. Unfortunately that's not everything. Okay.

"Mr. Coverdale: Everything I recall, that's everything I know.

"Det. Bennett: But, but I'm telling you that's not everything. With everything that we've got and everything that we've been told and everything that we found clearly as you can see states attorney's office believes it's enough to get a warrant.

"Mr. Coverdale: I don't believe this.

"Det. Bennett: Okay. Alright, so what's gonna happen now is that they're gonna, we're gonna call a wagon for you and they're gonna take you over to Central Booking. Okay.

"Mr. Coverdale: I don't believe this.

"Det. Bennett: I mean is there something to tell us now is the time to get it off your chest. If … if … if … shit went bad, shit went bad. And I'm telling you once you leave here that's it.

"Mr. Coverdale: Can I please have a cigarette please.

"Det. Bennett: I'll, I'll go get you a cigarette, okay. And find you something to ash in alright. Just use this a little bit okay.

"Det. Reichenberg: You got one in with you Ray?

"Det. Bennett: It should be on my desk cause I (inaudible) got a cigarette.

"Det. Reichenberg: On your desk?

"Det. Bennett: Yeah. (inaudible).

"Det. Reichenberg: Yeah.

"Det. Bennett: (inaudible).

"Det. Reichenberg: Said he look for a lighter for you bud. You want me to stay in here with you Ray?

"Det. Bennett: Yeah.

"Det. Reichenberg: Okay.

"Det. Bennett: Yep, that's good.

"Det. Reichenberg: Find another chair.

"Det. Bennett: Uh huh.

"Mr. Coverdale: (inaudible).

"Det. Bennett: I know we all make mistakes okay. We're only human. I understand that, I understand that. Cause there's a side of the story that you need to tell and now's the time to tell it.

> "Mr. Coverdale: The man call my girl a bitch. He just doing it everytime she go somewhere he's always fucking with her. And I took my hammer and I threw it at him. I didn't know it was gonna hit him in his head."

When Coverdale gave his statement, he was forty-three years old. He is six feet two inches tall and weighed about 228 pounds. As found by the suppression court, he had prior experience consisting of fifteen convictions between Maryland, Delaware and New York.

Despite his staples, Coverdale, with his fiancé, walked for twenty-five minutes, each way, on August 21, 2014, the day before the murder, to a job site where he put in a day's labor doing household and yard work. That evening they drank alcoholic beverages and ate.

On this appeal, Coverdale would have us rule that his confession was involuntary because he was hungry. At the end of the morning session, while waiting to be taken to the hospital, Coverdale asked if he could get something to eat, "[s]ome potato chips or something." Bennett offered what "was supposed to be his snack for the day." Coverdale initially declined ("Ah man I don't want a take from you guys"). Bennett said, "It's all good" and gave appellant four crumb cakes.

At the beginning of the evening session, appellant asked, "Is there anywhere I can get something to eat cause I hadn't had nothing all day?" Bennett, however, continued to elicit Coverdale's assurance that he was aware of his *Miranda* rights. Then matters progressed as above described. After confessing, appellant asked, "[I]s there anyway you'll give me something to eat, some water please?" Detective Bennett replied:

> "I'll get you a bottle of water. Um, I don't think I have anything left to eat. Um, like I said then I gave you um that was kind like my lunch/dinner that I still haven't gotten yet. So but I'll get you a bottle of water, okay."

After appellant received a bottle of water, he was alone for approximately ten minutes, during which he read the charging document, was crying, banging his head with his hand, and resting his head on the table. Detective Bennett returned with a package of Doritos, saying, "Like I say you got me, you ate me out of all my food but I got that out the vending machine for you." The tape continued to roll, showing that Coverdale did not attack the Doritos ravenously, but ate one occasionally between bemoaning of his fate.

Cases cited to us by appellant, in which missed meals were referred to as a factor in involuntariness, presented much stronger facts for suppression than are present here. In *Payne v. Arkansas*, 356 U.S. 560, 78 S. Ct. 844 (1958), the defendant was arrested at 11:00 a.m. on the fifth of the month, was given two sandwiches about 1:00 p.m. on the sixth, given breakfast on the seventh, and confessed on the afternoon of the seventh. The Court then addressed "an even more vital matter." *Id.* at 564, 78 S. Ct. at 848. The confession had been coerced by the threat of mob violence.

The defendant in *Walker v. State*, 12 Md. App. 684, 280 A.2d 260 (1971), was arrested shortly after 9:00 p.m. on February 2, 1970, interrogated beginning at 9:00 a.m. on the third, and completed his statement at 11:50 a.m. at which time he was given two buns. He had had nothing to eat or drink in the preceding fourteen to fifteen hours. Walker, however, was a fifteen-year-old boy of dull intelligence who was held incommunicado during that period.

In *Lee v. State*, 418 Md. 136, 12 A.3d 1238 (2011), the Court observed:

> "We cannot help but note, nonetheless, that Petitioner did not testify at the suppression hearing. Therefore, we do not have even his word that Detective[] Schrott['s] improper comment overbore his will and produced his confession."

Id. at 160, 12 A.3d at 1253. So here. Coverdale never said that missing breakfast and dinner overbore his will.

We conclude from our independent constitutional review that there was no due process violation.[3]

II

Maryland Code (2002, 2012 Repl. Vol.), § 4-101(c)(2) of the Criminal Law Article (CL) provides in relevant part:

> "(2) A person may not wear or carry a dangerous weapon … openly with the intent or purpose of injuring an individual in an unlawful manner."

The proscribed conduct is openly carrying a dangerous weapon, with the requisite intent, not its use. *See Chilcoat v. State*, 155 Md. App. 394, 412, 843 A.2d 240, 250-51, *cert. denied*, 381 Md. 675, 851 A.2d 594 (2004); *Thomas v. State*, 143 Md. App. 97, 123, 792 A.2d 368, 383, *cert. denied*, 369 Md. 573, 801 A.2d 1033 (2002).

Here, Coverdale, in a rage, may have let fly with the hammer as soon as he grasped it. After the initial blow, the hammer may or may not have landed within arm's reach of Quarterman's body so that appellant may or may not have carried it in order to use it to pound Quarterman's skull. One can only speculate. Thus, the evidence was legally insufficient to convict under CL § 4-101(c)(2).

[3]Appellant also claims that the State violated the rule of *Hillard v. State*, 286 Md. 145, 406 A.2d 415 (1979), when Detective Bennett said, just prior to the confession, that that was the time for Coverdale to tell his side of the story. We discern no promise or inducement. The charging document was issued, and appellant was about to be taken to Central Booking. If Coverdale wanted something included in Bennett's report, that was the time to say so.

Under those circumstances, our review is not precluded by appellant's failure to preserve the issue in the trial court. *See Moosavi v. State*, 355 Md. 651, 736 A.2d 285 (1999). Two reasons underlie the *Moosavi* rule. First, as a matter of judicial economy, review at this time avoids a post conviction proceeding. *Id.* at 661-62, 736 A.2d at 290-91. Second, a conviction under an entirely inapplicable statute results in an illegal sentence, an issue that can be raised at any time. *Id.*

The State argues that there was sufficient evidence, asserting that this case is like *Harrod v. State*, 65 Md. App. 128, 499 A.2d 959 (1985). The cases are substantially dissimilar. Harrod carried a hammer from a bedroom into the room where the victim was before throwing it at her. Thereafter he reentered the bedroom, returning with a knife with which he threatened the victim.

For these reasons, we shall reverse the open carrying conviction.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED ON COUNT 2 (OPEN CARRYING). IN ALL OTHER RESPECTS, THE JUDGMENT IS AFFIRMED.

COSTS TO BE PAID NINETY PERCENT BY THE APPELLANT AND TEN PERCENT BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.