UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2231

September Term, 2014

JOHN DAVID DOUGLASS

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Hotten,
Nazarian,

JJ.

Opinion by Hotten, J.

Filed: August 5, 2015

A jury sitting in the Circuit Court for Worcester County found, appellant, John David Douglass, guilty of theft of property having a value of at least $1,000. Appellant presents four questions on appeal, as follows:

> [I]. Did the [circuit] court err in denying [a]ppellant's motion to suppress his statements made in response to custodial interrogation and without *Miranda* warnings?
>
> [II]. Did the [circuit] court commit plain error by permitting the prosecutor to ask [a]ppellant whether the State's main police witness was telling the truth?
>
> [III]. Did the [circuit] court err in excluding testimony concerning the officers' failure to give [a]ppellant *Miranda* warnings?
>
> [IV]. Did the [circuit] court err in refusing to give [a]ppellant's requested jury instruction?

We answer in the affirmative to the fourth question, and, accordingly, reverse judgment of the circuit court.

FACTUAL AND PROCEDURAL HISTORY

This case concerns the theft of a trailer. As appellant raises questions about decisions made during a suppression hearing, and at trial, we will recount the facts of each proceeding separately.

Suppression Hearing

On March 20, 2014, Officer Michael Karsnitz, ("Officer Karsnitz") of the Ocean City Police Department was contacted by another officer to assist in an investigation of a cargo trailer which did not have a VIN number displayed. Through investigation, Officer Karsnitz located a VIN number on the vehicle, and a search of that number indicated that the trailer

had been stolen in Frederick City. Officer Karsnitz identified appellant as a suspect in the theft, and contacted him by phone, asking him to come in to the police station to talk. Appellant agreed, and they scheduled a meeting for April 9, however, appellant had to cancel that meeting, so the two rescheduled to April 10. Appellant drove himself to the police station, arriving a little before 9:00 a.m.

Officer Karsnitz met appellant in the lobby and escorted him into one of the nearby interview rooms. The room was approximately 12 x 12 in size, with two unlocked doors and a table in the middle with two chairs on one side and one chair on the other.

Detective First Class Whitmer[1], ("Detective Whitmer") sat in on the interview, but did not participate. Officer Karsnitz was in his uniform, and Detective Whitmer was wearing a suit. Neither wore their weapons during the interview. Officer Karsnitz told appellant "that no matter what he told [him that day] he would not be placed under arrest, and that he was free to leave whenever he would like." Appellant was not *mirandized*.[2]

[1] Detective Whitmer's first name is not indicated in the transcript.

[2] *See Miranda v. Arizona*, 384 U.S. 436 (1966), in pertinent part:

> We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws. However, unless we are shown other procedures which are at least as effective in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it, the following safeguards must be observed.

(continued...)

Neither Officer Karsnitz nor Detective Whitmer coerced, threatened, or intimidated appellant in any way, and the interview lasted about a half-hour. Officer Karsnitz testified that appellant would have been permitted to use the restroom, but did not recall whether appellant asked to do so during the interview. Officer Karsnitz asked appellant where he

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[2](...continued)

> At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent. For those unaware of the privilege, the warning is needed simply to make them aware of it – the threshold requirement for an intelligent decision as to its exercise. More important, such a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmosphere. . . . Further, the warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.
>
> * * *
>
> The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system – that he is not in the presence of persons acting solely in his interest.
>
> * * *
>
> [T]he right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today.

Id. at 467–69.

had bought the trailer, whether he knew it was stolen, and whether he was aware that he was a suspect in the theft. Appellant testified that he told Officer Karsnitz that he did not steal the trailer and did not know anything about it.

Following the interview, appellant traveled to the police impound lot alone, where he was met by Officer Karsnitz, who helped appellant unload his belongings from the trailer. The two talked generally for about half an hour as they were unloading the trailer. Ultimately, appellant was charged with theft of the trailer by summons.

Appellant testified and asserted that he did not feel free to leave the interview, and that Officer Karsnitz asked accusatory questions of him. He admitted that Officer Karsnitz told him that he was free to leave. He also asserted that both Officer Karsnitz and Detective Whitmer were wearing weapons during the interview, and that Detective Whitmer had one of his hands resting on his weapon. Appellant also asserted that he was twice refused access to the restroom during the interview. He moved to suppress his statement on the grounds that he was not *mirandized* and that his statement was given during custodial interrogation.[3]

The suppression court specifically credited Officer Karsnitz's testimony that there were no guns present during the interview and that appellant would have been permitted to use the restroom, if he had asked. It also found that there had been no improper threats or coercion of appellant during the interview. The suppression court further opined:

[3] Though not covered at the suppression hearing, appellant made incriminating statements to Officer Karsnitz during the interview.

> As to the issue of whether Miranda was required, that is, whether this [appellant] was in custody, he clearly wasn't in custody. He went there voluntarily. He knew the police wanted to talk to him obviously. He knew the subject they wanted to talk to him about. He knew that he was at least under some suspicion and an investigation was taking place with respect to this matter, and he went anyway. Apparently journeyed all the way from Frederick for purposes of meeting with the police. And then when he found himself running late, it was rescheduled.
>
> There's nothing about the circumstances of the interview. And again, I credit the testimony of this police officer as to the manner in which this interview was conducted. Nor is there anything about the conduct of [appellant] that would suggest that he believed or even reasonably believed – I don't think he believed at all that he was in custody. No reasonable person would think that they were in custody in those circumstances.
>
> The fact that you're aware that the police suspect you of a crime doesn't place you in custody and doesn't require Miranda Warnings. Police officers often – more often than not, it would seem to me, question people who they do believe or suspect in some way have engaged in some criminal activity.
>
> Miranda is not required unless a reasonable person would have thought that they were in custody standing in [appellant]'s shoes or sitting in the [appellant]'s seat on the day this interview took place
>
> The motion to suppress is denied.

Trial

On August 17, 2012, Kelly Jo Springirth ("Ms. Springirth"), reported that a trailer, with the VIN number 4U01C14261A003755 was stolen from her property in Frederick. The trailer was left to her by her father who had purchased it for $5,200. Nearly two years later, on March 20, 2014, Officer Karsnitz responded to a report of a suspicious trailer, which was parked outside of an apartment complex in Ocean City.

The trailer had been spray painted, did not have a license plate, and had ghost images where stickers once were. The VIN plate had been removed from the trailer, but a partial VIN was etched in a discreet location on the trailer. Both parties stipulated that the VIN on the trailer Officer Karsnitz was investigating was the same VIN as Ms. Springirth's trailer. The trailer contained a motorcycle registered to appellant. Officer Karsnitz called appellant and set up a meeting, which had to be postponed one day at appellant's request.

During the interview, appellant admitted to purchasing the trailer from a seller on Craigslist in Frederick, but he could not recall the seller's name, email, phone number, nor the posting to which he had replied. Appellant did not have a title for the trailer, and said he suspected the trailer was stolen and did not care. He denied removing the VIN plate from the trailer and also denied stealing it from Ms. Springirth's property. Appellant used the trailer to move from Frederick to Ocean City.

Appellant testified that he had purchased the trailer for $400 from a seller on Craigslist in April of 2013. He asserted that he had no idea that the trailer was stolen and denied telling Officer Karsnitz that he suspected it was stolen. Appellant testified that he twice asked to use the restroom during the interview, but his requests were denied.

The jury found appellant guilty of theft having a value of at least $1,000, and the circuit court sentenced him to eighteen months' imprisonment with all but six months suspended and three years supervised probation, upon release.

Additional facts shall be provided, *infra*, to the extent they prove relevant in addressing the issues presented.

STANDARD OF REVIEW

We employ the following standard of review where a motion to suppress has been denied:

> In reviewing a circuit court's grant or denial of a motion to suppress evidence, we ordinarily consider only the evidence contained in the record of the suppression hearing. *State v. Tolbert,* 381 Md. 539, 548 (2004); *State v. Rucker,* 374 Md. 199, 207 (2003); *White v. State,* 374 Md. 232, 249 (2003). The factual findings of the suppression court and its conclusions regarding the credibility of testimony are accepted unless clearly erroneous. *Tolbert,* 381 Md. at 548. We review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party. *Id.; Rucker,* 374 Md. at 207; *White,* 374 Md. at 249. We "undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case." *Tolbert,* 381 Md. at 548; *White,* 374 Md. at 249[.]

Prioleau v. State, 411 Md. 629, 638 (2009).

DISCUSSION

I.

Appellant first challenges the suppression court's ruling that *Miranda* did not apply because the interview Officer Karsnitz conducted on April 10 was not custodial interrogation.[4] In order for *Miranda* to apply, the statement which appellant seeks to

[4] *Miranda v. Arizona,* 384 U.S. 436 (1966).

suppress must have been made during custodial interrogation. The Court of Appeals has described the requirements set forth in *Miranda* and its progeny:

> In its landmark decision in *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the Supreme Court held that an individual in custody must be informed of certain rights prior to being interrogated so that he or she is not compelled into incriminating himself or herself in violation of the Fifth Amendment. *Id.* at 467–68, 86 S.Ct. at 1624–25, 16 L.Ed.2d at 720–21; *see also J.D.B. v. North Carolina*, ––– U.S. ––––, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011); *Whitfield v. State,* 287 Md. 124, 131, 411 A.2d 415, 420 (1980) ("In this regard, we observe that statements which are obtained from a defendant during questioning conducted without the benefit of *Miranda* warnings, as concededly occurred here, need only be excluded from evidence if they 'flow from a custodial interrogation within the meaning of *Miranda,*'" quoting *Vines v. State,* 285 Md. 369, 374, 402 A.2d 900, 903 (1979)).
>
> In analyzing whether an individual is in custody for *Miranda* purposes, we ask, under the "totality of the circumstances" of the particular interrogation, "would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane,* 516 U.S. 99, 112, 116 S.Ct. 457, 465, 133 L.Ed.2d 383, 394 (1995); *see also Owens v. State,* 399 Md. 388, 428, 924 A.2d, 1072, 1095 (2007); *Whitfield,* 287 Md. at 141, 411 A.2d at 425. The "totality of the circumstances test" requires a court to examine the events and circumstances before, during, and after the interrogation took place. *Owens,* 399 Md. at 428–29, 924 A.2d at 1095–96; *Whitfield,* 287 Md. at 140–41, 411 A.2d at 425. A court, however, does not parse out individual aspects so that each circumstance is treated as its own totality in the application of the law. Rather, when doing a constitutional analysis, a court must look at the circumstances as a whole. *Ransome v. State,* 373 Md. 99, 104, 816 A.2d 901, 904 (2003) (stating that a court conducting a "totality of the circumstances test" must not "parse out each individual circumstance for separate consideration").[ ]

Thomas v. State, 429 Md. 246, 259-60 (2012). Facts often relevant to an analysis of whether custodial interrogation occurred include:

> 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.

Id. at 260-61 (citation omitted).

Appellant first contends that *Miranda's* protections were applicable to the interview of April 10, 2014, and in support of this position, he specifically points to the fact that Officer Karsnitz questioned him as a suspect in an accusatory manner. Appellant cites our opinion in *Buck v. State*, 181 Md. App. 585 (2008) in support of this assertion. The State responds that an examination of the totality of the circumstances supports the suppression court's ruling.

In *Buck*, police investigators showed up at Buck's home unannounced, knowing he would be home alone, and asked him to go to the police station to talk about a recent murder. *Id.* at 625. Police drove Buck to the station in their vehicle, a thirty-minute drive. *Id.* For the six-hour period Buck was with police, he was never out of a detective's sight. *Id.* Police continued to interrogate Buck on the drive back to his home. *Id.* Buck was also accompanied by a detective during two smoke breaks, and was questioned during the second break. *Id.* at 625-26. In addition, Buck was asked accusatory questions, provided a DNA

sample, and was asked to identify the murder weapon from a photograph. *Id.* at 626. At three different times during the encounter, Buck was told he was not under arrest and was free to leave. *Id.* Following questioning, Buck was returned to his house and arrested twenty minutes later. *Id.* at 625. Prior to this encounter, Buck had spoken to police on the street and overheard a policeman comment to another "I think we got him," meaning that the officer thought Buck was the perpetrator. *Id.* at 622.

We noted that where an officer articulates to a defendant his belief that the defendant committed the crime, our inquiry becomes whether a reasonable person in that situation would feel free to leave the interview. *Id.* at 622. We relied upon the Supreme Court's decision in *Stansbury v. California*, 511 U.S. 318, 325 (1994) which held:

> *An officer's knowledge or beliefs may bear upon the custody issue if they are conveyed, by word or deed, to the individual being questioned. Those beliefs are relevant only to the extent they would affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her "freedom of action."* Even a clear statement from an officer that the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until the police decide to make an arrest. The weight and pertinence of any communications regarding the officer's degree of suspicion will depend upon the facts and circumstances of the particular case. In sum, an officer's views concerning the nature of an interrogation, or beliefs concerning the potential culpability of the individual being questioned, may be one among many factors that bear upon the assessment whether that individual was in custody, but only if the officer's views or beliefs were somehow manifested to the individual under interrogation and would have affected how a reasonable person in that position would perceive his or her freedom to leave. . . .

Buck, 181 Md. App. at 623-24 (emphasis in original). We held that the above circumstances, coupled with Buck's knowledge that the police believed that he committed the murder, were sufficient to demonstrate custody for *Miranda* purposes. *Id.* at 627.

As noted above in *Stansbury*, "[e]ven a clear statement from an officer that the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until the police decide to make an arrest." 511 U.S. at 325. Appellant's assertion that the interrogation became custodial when Officer Karsnitz told him he was a suspect in the trailer's theft is an oversimplification. Rather, that factor is but one consideration in examining the totality of circumstances involved in our analysis of whether appellant was in custody when he was questioned. In conducting that analysis, we utilize the factors listed above in *Thomas.*

The interrogation occurred at the police station at the behest of Officer Karsnitz, with appellant arriving on his own. The meeting had been re-scheduled to accommodate appellant. The interview lasted a half-hour, far less than the six hours in *Buck*. There were two officers present in the interview room, neither were wearing weapons, and the doors of the room were closed but unlocked. Officer Karsnitz informed appellant that he was suspected of the theft of the trailer, that he was free to leave at any time and would not be arrested. Appellant was neither threatened nor coerced in any way. After the interview, appellant was permitted to leave freely, and met Officer Karsnitz at the police impound lot where the two unloaded the contents of the trailer. Officer Karsnitz and appellant had a

conversation at that time which was unrelated to the trailer's theft. Appellant freely departed.

Appellant's contention that he was denied access to the restroom was specifically rejected by the suppression court. The suppression court found Officer Karsnitz's testimony that appellant would have been permitted to use the restroom, if he asked, to be persuasive. As we stated in *Charity v. State*, 132 Md. App. 598, 605-06 (2000), our view of the evidence in the light favorable to the State as the prevailing party on the motion, "we treat [appellant's] testimony as it it had never been given." Accordingly, this does not weigh in our analysis here.

Of the above factors, only Officer Karsnitz's informing appellant that he was a suspect and the location of the interview weigh in favor of finding custody. All other factors demonstrate that appellant was not in custody for *Miranda* purposes. Accordingly, we are persuaded that a reasonable person in appellant's position would have felt free to terminate the interview and leave. Therefore, we hold that the suppression court did not err in denying appellant's motion to suppress.

II.

Second, appellant urges us to hold that the court committed plain error in permitting State to ask him on cross-examination whether Officer Karsnitz had lied on the stand about what he had said during the interview. Appellant admits that this issue was not objected to at trial.

We have described the nature of our review of unpreserved issues:

> The failure to object before the trial court generally precludes appellate review, because "[o]rdinarily appellate courts will not address claims of error which have not been raised and decided in the trial court." *State v. Hutchinson,* 287 Md. 198, 202 (1980); *see also* Md. Rule 8-131(a). "[I]t is the extraordinary error and not the routine error that will cause us to exercise the extraordinary prerogative [of reviewing plain error]." *Williams v. State,* 34 Md. App. 206, 212 (1976) (Moylan, J., concurring). "Plain error is 'error which vitally affects a defendant's right to a fair and impartial trial [,]' " and an appellate court should " 'intervene in those circumstances only when the error complained of was so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial.' " *Richmond v. State,* 330 Md. 223, 236 (1993) (quoting *State v. Daughton,* 321 Md. 206, 211 (1990), and *Trimble v. State,* 300 Md. 387, 397 (1984), *cert. denied,* 469 U.S. 1230 (1985)). "[P]lain error review tends to afford relief to appellants only for 'blockbuster [ ]' errors." *United States v. Moran,* 393 F.3d 1, 13 (1st Cir., 2004) (quoting *United States v. Griffin,* 818 F.2d 97, 100 (1st Cir.1987)).
>
> In assessing whether to note, and perhaps to correct, an unpreserved issue, "[t]he touchstone remains our discretion." *Williams, supra,* 34 Md. App. at 212; *see also, e.g., Claggett v. State,* 108 Md. App. 32, 40 (1996); *Stockton v. State,* 107 Md. App. 395, 396-98 (1995); *Austin v. State,* 90 Md. App. 254, 268 (1992).

Martin v. State, 165 Md. App. 189, 195-96 (2005). Moreover, Maryland Rule 8-131(a) provides:

> **Generally.** The issues of jurisdiction of the trial court over the subject matter and, unless waived under Rule 2-322, over a person may be raised in and decided by the appellate court whether or not raised in and decided by the trial court. Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.

As appellant admits that this issue is not preserved for our review, we decline to exercise our discretion to review it here.

III.

The following exchange occurred during Officer Karsnitz's cross-examination:

> [APPELLANT'S COUNSEL]: [appellant] did not have an attorney present during the interview?
>
> [OFFICER KARSNITZ]: No. He never requested one.
>
> [APPELLANT'S COUNSEL]: You did not read him his Miranda Warnings? You didn't tell him about his right to have an attorney?
>
> [OFFICER KARSNITZ]: No, I did not.
>
> [STATE]: Objection, Your Honor. It's not an issue before this jury.
>
> THE COURT: The objection is sustained.

Appellant here argues that the court erred in sustaining the State's objection, contending that the failure to issue *Miranda* warnings was an issue before the jury, which went to the issue of the voluntariness of his pre-trial statement. The State responds that the court was within its discretion to sustain the objection because the question that appellant's counsel asked presupposed that appellant had a right to an attorney to be present during the interview, and the suppression court ruled that he had no such right.

The Court of Appeals has described a court's discretion to admit evidence:

> The question of admissibility of evidence is to be determined by the trial judge under Md. Rule 5–104(a), taking into consideration Md. Rules 5–401 through 5–403. *See Smith v. State*, 371 Md. 496, 504 (2002)

> (summarizing the rules to the extent that "evidence that is not relevant to a material issue is inadmissible," and that evidence "even if relevant, [ ] may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury") (citations omitted); *Merzbacher v. State*, 346 Md. 391, 404 (1997) (stating that "the admission of evidence is committed to the considerable and sound discretion of the trial court") (citations omitted); *Nance v. State*, 331 Md. 549, 558 n. 3 (1993) (noting that questions of admissibility are for the court to determine, "including whether evidence is admissible generally and substantively or only for a limited purpose such as impeachment [. . .]") (citations omitted); Lynn McLain, *Md. Rules of Evidence* 206 (2d ed.2002) (highlighting that admissibility is determined by the trial judge, upon consultation of Rules 5–401 through 5–403).

Thomas, 429 Md. at 96. "It is frequently stated that the issue of whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court, and that the abuse of discretion standard of review is applicable to the trial court's determination of relevancy." *Burris v. State*, 206 Md. App. 89, 143 (2012) *rev'd on other grounds*, 435 Md. 370 (2013).

"Under Maryland's common law, a confession is presumptively inadmissible unless it is shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary." *Hof v. State*, 337 Md. 581, 595 (1995) (citation and internal quotations omitted). The Court of Appeals has described the nature of a voluntariness determination:

> The trial court makes the threshold voluntariness determination, a mixed question of law and fact. Examining the totality of the circumstances, it assesses whether the confession was voluntarily made. If the trial court determines that the statement was not made voluntarily, it will declare it inadmissible. That completely resolves the issue; it never becomes one for the

> jury. If, on the other hand, the court finds the statement voluntary, it will admit it and its voluntariness then becomes an issue which the jury must ultimately resolve.

Id. at 605 (internal citations omitted).

In the case at bar, appellant's counsel asked a combined question: "You did not read him his Miranda Warnings? You didn't tell him about his right to have an attorney?" As noted above, appellant's counsel did have the right to inquire into the voluntariness of appellant's statements to Officer Karsnitz during the interview, and the issue of whether appellant was read his *Miranda* warnings is relevant to that determination. *See id.* at 596. Here, the difficulty is that appellant's counsel asked if appellant was *mirandized* in combination with the question "You didn't tell him about his right to have an attorney?" which does assume that appellant *had* a right to an attorney because he was in custody for *Miranda* purposes. This question would have been confusing to jurors because it presupposes that appellant should have been *mirandized*, which could have unduly influenced the jury. *See* Maryland Rule 5-403 ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); *Gray v. State*, 137 Md. App. 460, 483 (2001) ("the court may decline to admit evidence that has some probative value, and thus is relevant, when the evidence could confuse or sidetrack the jury."), *rev'd and remanded on other grounds*, 368 Md. 529 (2002) . Furthermore, the form of the question

took the determination of whether appellant should have been given *Miranda* warnings from the province of the jury. Accordingly, we hold that the circuit court did not err in sustaining the State's objection to appellant's counsel's question because the question invaded the jury's province and could have confused or misled the jury.

IV.

At the close of evidence, appellant requested that the court instruct the jury regarding the voluntariness of his statement to Officer Karsnitz. The court declined to do so, noting:

> [Appellant] simply says in his testimony that twice I asked to use the bathroom and was told no or words to that effect.
>
> [Appellant] has not said in any way how that circumstance or his physical comfort in any way bore or was related to the fact that he continued to speak with the police officer and made whatever statement the jury finds that he made.
>
> So I don't think that the evidence is such that the issue of voluntariness of the statement is raised at all. The Court declines to instruct the jury on that point.

Appellant asserts that there was evidence on voluntariness generated at trial, and that the court should have agreed to give Criminal Pattern Jury Instruction 3:18,[5] as appellant

[5] You have heard evidence that the defendant made a statement to the police about the crime charged. [You must first determine whether the defendant made a statement. If you find that the Defendant made a statement, then you must decide whether the State has proven] [The State must prove] beyond a reasonable doubt that the statement was voluntarily made. A voluntary statement is one that under all circumstances was given freely.

(continued...)

requested. The State contends that "evidence did not generate a question regarding the voluntariness of [appellant's] statement."

[5](...continued)
[[To be voluntary, a statement must not have been compelled or obtained as a result of any force, promise, threat, inducement or offer of reward. If you decide that the police used [force] [a threat] [promise or inducement] [offer of reward] in obtaining defendant's statement, then you must find that the statement was involuntary and disregard it, unless the State has proven beyond a reasonable doubt that the [force] [threat] [promise or inducement] [offer of reward] did not, in any way, cause the defendant to make the statement. If you do not exclude the statement for one of these reasons, you then must decide whether it was voluntary under the circumstances.]]

In deciding whether the statement was voluntary, consider all of the circumstances surrounding the statement, including:

(1) the conversations, if any, between the police and the defendant;

(2) [whether the defendant was advised of [his] [her] rights;]

(3) the length of time that the defendant was questioned;

(4) who was present;

(5) the mental and physical condition of the defendant;

(6) whether the defendant was subjected to force or threat of force by the police;

(7) the age, background, experience, education, character and intelligence of the defendant;

[(8) whether the defendant was taken before a district court commissioner without unnecessary delay following arrest and, if not, whether that affected the voluntariness of the statement;]

(9) any other circumstances surrounding the taking of the statement.

If you find beyond a reasonable doubt that the statement was voluntary, give it such weight as you believe it deserves. If you do not find beyond a reasonable doubt that the statement was voluntary, you must disregard it.

The Court of Appeals has outlined the standard of appellate review of jury instructions:

> We review whether a trial court abused its discretion in refusing to offer a jury instruction under well-defined standards. A trial court must give a requested jury instruction where '(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given.' *Dickey v. State,* 404 Md. 187, 197–98 (2008); *see also* Md. Rule 4–325(c). We review a trial court's decision whether to grant a jury instruction under an abuse of discretion standard. *See, e.g., Thompson v. State,* 393 Md. 291, 311 (2006).

Cost v. State, 417 Md. 360, 368-69 (2010). The Court of Appeals has described the nature of an inquiry into voluntariness:

> The critical focus in an involuntariness inquiry is the defendant's state of mind. Whether the defendant's incriminating statement was made voluntarily or involuntarily must depend upon that defendant's mental state at the time the statement was made. That question, which is one of fact and subjective in nature, must be determined by a consideration [of a defendant's] acts, conduct and words.

Hof, 337 Md. at 619 (citations and internal quotation omitted). To generate an issue:

> a defendant needs only to produce "some evidence" that supports the requested instruction:
>
> > *Some evidence* is not strictured by the test of a specific standard. It calls for no more than what it says—"some," as that word is understood in common, everyday usage. It need not rise to the level of "beyond reasonable doubt" or "clear and convincing" or "preponderance." The source of the evidence is immaterial; it may emanate solely from the defendant. It is of no matter that the self-defense claim is overwhelmed by evidence to the contrary. If there is any evidence relied on by the defendant which, if believed, would support his claim [. . .] the defendant

> has met his burden. Then the baton is passed to the State. It must shoulder the burden of proving beyond a reasonable doubt to the satisfaction of the jury [the specific facts stated in the instruction].

Bazzle v. State, 426 Md. 541, 551 (2012) (quoting *Dykes v. State*, 319 Md. 206, 216-17 (1990) (emphasis in original).

Here, appellant contends that there was much evidence at trial which specifically addressed the issue of voluntariness. He specifically points to testimony regarding: the circumstances of the interview at the police station, how appellant arrived at the station, the layout of the room where the interview occurred, where the men sat during the interview, how the officers were dressed, whether weapons were present, whether appellant would be arrested that day, the interview's length, and whether appellant was free to leave during the interview. Further, appellant testified that he twice asked to use the bathroom and was denied access. Each of these pieces of evidence goes directly to the issue of the voluntariness of appellant's statement to Officer Karsnitz. The evidence does, indeed, constitute "some evidence" sufficient to generate an instruction on voluntariness. In addition, the requested instruction was a correct statement of the law, and it was not fairly covered anywhere else in the instructions actually given. Accordingly, we reverse.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY IS REVERSED. CASE REMANDED TO THAT COURT FOR NEW TRIAL. COSTS TO BE PAID BY WORCESTER COUNTY.