Circuit Court for Carroll County
Case No. 06-K-17-048407

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2659

September Term, 2018

CLIFTON POPE

v.

STATE OF MARYLAND

Graeff,
Beachley,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: December 26, 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.

A jury in the Circuit Court for Carroll County convicted appellant, Clifton Pope, of carjacking, attempted robbery, second-degree assault, theft of property valued between $1,000 and $10,000, and attempted theft of a motor vehicle. The trial court sentenced appellant to a total of twenty years in prison, suspending all but fifteen years. Thereafter, appellant timely noted this appeal, asking us to consider the following questions:

1. Did the circuit court err when it failed to conduct the required inquiry after Mr. Pope requested to discharge his attorney and proceed *pro se*?
2. Did the suppression court err when it denied Mr. Pope's motion to suppress?

For the reasons that follow, we affirm the judgments of the trial court.

FACTS AND LEGAL PROCEEDINGS

Hearing on Motion to Suppress

At approximately 9:00 a.m. on August 29, 2017, eighteen-year-old Natalie Clarke[1] was entering the driver's seat of her Honda Pilot in front of her home on Fallstaff Court in Eldersburg, Carroll County, when a "tall black man" came up behind her and threatened to shoot her if she refused to give him the car keys. He then grabbed Natalie's arm and pulled her out of the car. The man started the car while Natalie pulled on the car door to keep him from shutting it. As they struggled, Meghan Schmidt, Natalie's friend, reached inside the car through the passenger door and yanked the keys from the ignition. Natalie told Schmidt to go inside the house, get her mother, and call the police.

When Natalie's mother, Nicole Clarke, heard screaming outside, she looked out the

[1] Because Natalie Clarke's mother, Nicole Clarke, was also a witness at the suppression hearing and trial, we will hereinafter refer to Natalie Clarke as "Natalie" and her mother as "Clarke," for clarity. We mean no disrespect in doing so.

front door and observed her daughter struggling with a man who was sitting in the driver's seat of the Honda, trying to close the door. Clarke ran outside and placed her body between the car door and the man, yelling at him to get out of the car. The man exited the car, put his hand up, apologized, and walked down the street.

Schmidt called the police, who arrived within minutes and took a description of the man: "a large African American male" with a prominent lower lip, "wearing . . . like a navy blue hoodie and dark sweatpants," with the hood pulled over his head.

Approximately twenty minutes before the incident at the Clarkes' house, Carroll County Sheriff's Office Deputies Nicholas Gange and Peter Trageser responded to the Eldersburg Walmart in response to a call for a shoplifting that had just occurred. The description of the suspect was a "big male. . . . 40 to 50 years old. Slim with a . . . navy blue[] hoodie and black sweatpants," and wearing a baseball hat.

As the officers were leaving the Walmart following their investigation of the shoplifting, they received a call for the carjacking that had just occurred on Fallstaff Court, which was "at most" a half-mile away. Aware that the perpetrator had left the scene of the carjacking on foot, Gange, Trageser, and other officers canvassed the area.

During the canvass, Trageser received a tip that a man matching the general description of both the shoplifter and the carjacker was at a nearby Dunkin Donuts. As he headed in that direction, Trageser observed a man matching the description walking a short distance from the Clarkes' home; there were no other pedestrians on the road. As Trageser approached the man, whom he identified in court as appellant, he saw him throw what

Trageser knew from his training, knowledge, and experience to be a "crack pipe" onto the grass.

Trageser, in a "calm" tone of voice, asked appellant "a couple of questions," including whether he had been "involved in the incident up the street." Appellant, who told Trageser his name was "Samuel Flint," acknowledged that he had been on Fallstaff Court trying to get a ride from two girls. He also admitted that he had been at the nearby Walmart but that his friend had left him there. Trageser detained appellant and transported him to Fallstaff Court so the carjacking victims could potentially identify him as the perpetrator.[2]

At the Clarkes' house, Clarke, Natalie, and Schmidt were asked separately to determine if they could identify appellant as the man who had attempted to take Natalie's car. Appellant, seated in a police car, was still wearing the same clothes Clarke had described to the police, although he had removed the hood, and she was startled that he was bald. Nonetheless, based on the clothing, his build, and her recognition of his distinctive lower lip, Clarke identified appellant as the man who had tried to take her daughter's car. When he saw Natalie, appellant, "without being prompted," stated, "I'm sorry, I was lost and looking for my ride."

Following these events, the State charged appellant with carjacking, attempted robbery, second-degree assault, theft of property valued between $1,000 and $10,000, and attempted theft of a motor vehicle, as previously mentioned. Prior to trial, appellant moved

[2] Trageser did not advise appellant he was under arrest, but he handcuffed appellant after the questioning, and he acknowledged that appellant was not then free to leave.

to suppress the statements he made to Trageser on the basis that he had not been properly *Mirandized*[3] despite being in custody. At the suppression hearing, numerous witnesses testified to the above-mentioned facts.

At the close of the suppression hearing, appellant argued that at the time he made his initial statement to Trageser—that he had been involved "in the incident up the street" by attempting to get a ride from two girls—he was in custody and under arrest but questioned without the benefit of *Miranda* warnings, necessitating the suppression of the statement. With respect to the second statement in which he apologized to the carjacking victim, appellant argued that it, too, should be suppressed because it was made while he was handcuffed in the back of a police car, subject to the "the functional equivalent of interrogation."

The prosecutor responded that Trageser's detention of appellant was nothing more than a *Terry*[4] stop to determine if he matched the description of the shoplifting and/or carjacking suspect. When he made his statements to police, appellant was not handcuffed, threatened, or told he was under arrest. Therefore, in the absence of custodial interrogation, *Miranda* warnings were not required. Additionally, the State argued that appellant's apology to Natalie Clarke was spontaneous and not the result of police interrogation or its functional equivalent.

The court ruled that the police officers, having received a detailed description of the

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

[4] *See Terry v. Ohio*, 392 U.S. 1 (1968).

suspect that happened to match appellant, were permitted to conduct a *Terry* stop and indeed, if they had not stopped appellant under the circumstances, "they would have been in dereliction of their duty." With regard to appellant's spontaneous apology, the court found nothing untoward by the police that prompted the statement, nor an obligation on the part of police to expect that appellant would make such a statement.[5] The court therefore denied appellant's motion to suppress.

Trial

At trial, Natalie Clarke, Nicole Clarke, Meghan Schmidt, and Peter Trageser repeated their testimony from the suppression hearing, with Natalie, Clarke, and Schmidt making in-court identifications of appellant as the carjacker. In addition, the State's forensic scientist confirmed that DNA consistent with appellant's profile was recovered from the interior of Natalie's vehicle.

Charles Shaffer, who worked as a greeter at the Eldersburg Walmart, added that on the morning of August 29, 2017, he observed a man pushing a shopping cart loaded with unbagged garments out of the store and into the parking lot. Believing that a theft was occurring, Shaffer put his hand on the cart as the man pushed it toward an occupied Nissan and began loading the items into the car.

The man, whom Shaffer identified in court as appellant, told Shaffer "you do not want to do this," and claimed that his mother had bought the items and he was merely picking them up for her. However, appellant did not produce a receipt. The Nissan's driver

[5] Appellant does not challenge on appeal the trial court's denial of his motion to suppress his apology to the crime victim.

told appellant to remove the garments from the vehicle, after which the Nissan drove away. Appellant then walked away from the scene.

Shaffer called 911, giving a description of the apparent shoplifter as a black male, approximately six feet tall, wearing a dark jacket, black sweatpants, and a baseball cap. Walmart surveillance video was played for the jury, and still photos from the video were entered into evidence.

Appellant elected to testify in his defense, stating that on August 28, 2017, he had stayed up all night "[g]etting high" on heroin and cocaine. The next morning, he "ran into a guy" who offered him a ride so that he could steal items to sell to pay for his next drug fix. The driver dropped him off at a Walmart in Carroll County, but warned that if there was trouble, he would leave appellant there.

When the greeter confronted appellant about the items he had removed from the store, appellant "knew the police was coming so [he] jumped over a fence" and used his "straightshooter" to smoke cocaine.[6] He admitted that he "jumped in the seat" of Natalie's car because he was high and paranoid someone was trying to kill him, but he denied trying to take the car or harm the "little girls." He said that he got out of the car voluntarily and apologized when Clarke came outside and yelled at him. He then entered a nearby yard and "took another hit" before the police pulled up. He remembered telling the police that he had tried to get a ride from two girls down the street and admitting that he had been at the Walmart earlier.

[6] He acknowledged that he had thrown the glass smoking device on the ground when he saw the police approaching.

DISCUSSION

I.

Appellant first contends that the trial court erred in failing to conduct the inquiry required by Maryland Rule 4-215 when he sought to discharge his attorney and proceed as a self-represented litigant. At a pre-trial hearing, appellant's attorney raised the issue of appellant's desire to discharge him and the possibility that appellant might not be mentally competent to stand trial. The trial court indicated it would address the issue of the discharge of the attorney once competency had been determined. Although defense counsel withdrew the suggestion of incompetency during appellant's next court appearance, appellant claims that the trial court did not revisit his expressed desire to discharge counsel and represent himself, which necessitates the vacation of his convictions and a remand for a new trial.

At this February 28, 2018 pre-trial hearing, defense counsel advised the court that he and appellant "had some difficulties communicating," due, in part, to a prior gunshot wound appellant had suffered to his head, which gave defense counsel some concern about appellant's mental health and his "ability to process things clearly." Counsel therefore expressed a desire to have appellant evaluated, with the possibility of pursuing a plea of not criminally responsible.

In addition, counsel informed the court that appellant wished to fire him and proceed "on his own." The court permitted appellant to expound on his reasons for the request, and appellant told the court that he believed his attorney to be "very unprofessional" and "negative" about his prospects of prevailing at trial and that counsel put "too much stress"

on him. The prosecutor expressed doubt that appellant could make the decision to discharge counsel until he had a competency evaluation.

The court explained to appellant that his competency to stand trial would have to be addressed before the case could move forward. Regarding dismissal of his attorney, the court advised appellant:

> Now, I hear what you are saying about your dissatisfaction with [defense counsel]. But I must tell you, [defense counsel] has practiced before this Court for about 20 years. What you have described is not the individual that the Court has come to know. I say that to you only because, while you may be looking for a ray of hope, attorneys are charged with dealing with reality. And I don't know the specifics of this case at all, but I will tell you that is a -- it is the duty of a lawyer to be realistic in their assessment of a case in so advising you. It is not to be your cheerleader. It is to speak to you frankly about the way that this case will likely be resolved.
>
> Now, again, I am not saying about the specific conversations you have had with [defense counsel]. All I would say to you is that the fact that you are not satisfied with the news he is delivering you, he may just be the bearer of bad news. And you know the old statement: Don't kill the messenger of bad news.
>
> But, again, I don't know anything about your case, so I don't know that that is, in fact, the case. I would ask you to leave open the possibility that that is exactly what is happening here.
>
> There is another issue that -- well, before I get to the other issue, let me say when the issue of your competency is raised, not only can you not defend yourself because there has to be proof that you are competent to do that, but you must be competent to fire your lawyer. Now, if you are competent, you have a right to fire your lawyer even if your belief in what he is doing for you is not well founded. That is your choice under the Constitution to represent yourself. *But we are not at that stage yet because the Court has to have evidence of the fact that you are competent to make that decision in going forward.*
>
> There is another issue that has to be dealt with, and that is at the time of the events that are being alleged, were you criminally responsible for your acts? There is a very specific legal test that the mental health evaluators will

look for. But essentially it means if you weren't in your right legal mind at the time that this occurred, then that may be a defense in your case. That may be the light at the end of the tunnel that you were kind of talking about. Okay? We don't know that at this point.

The important thing here is that these steps have to be taken in order. The first and the primary step is to determine is there evidence in this case that would indicate that you are competent to go forward or not competent. You may think, well, of course, I have just talked to you in open court. You know I am competent. But competency is a different evaluation than just you and I having a conversation. Okay?

So the Court is bound to have you be evaluated. I don't like the delay any more than you do in this case. *I will tell you that if this evaluation comes back and says that you are competent to move forward, then at the next proceeding if you still want to do that, you have a right to fire your attorney.* You don't necessarily have a right to another attorney through the Public Defender's Office, but you could represent yourself. That is not a course of action I think you should undertake lightly because while you had many experiences in your life, I am sure that defending yourself pursuant to rules that are contained in these books, of which you have no knowledge, is not one of them.

And you may remember from history that Abraham Lincoln once said that a person who represents himself has a fool for a client. It was a pretty wise statement. [Defense counsel] knows his way around the courtroom. He knows the rules of evidence, he knows the law. I would urge you to try to work through with him the disagreements that you are having. But that decision is really for another day.

What the Court has to do today is to sign an order that will have you evaluated. And then the Court will essentially bring you back. *And if you are competent to proceed, then we will be right where we are today and we can pick up and go.*

(Emphasis supplied).

The court signed an order committing appellant to the Maryland Department of Health for an examination to assess his criminal responsibility at the time of the alleged offense as well as his competency to stand trial. The court then announced its intent to set

the matter for another hearing in approximately thirty days, telling appellant, "we will deal again with the issue of your present desire to fire [defense counsel] if that is still your intention." The same day, appellant filed a written plea asserting lack of criminal responsibility and incompetency to stand trial based on his inability to understand the nature of the proceedings against him and to assist in his defense.

After a March 5, 2018 examination, a psychologist from the Office of Court-Ordered Evaluations and Placements opined that further evaluation by the Department of Health would be required, and the court ordered same. On May 3, 2018, the Department of Health filed its forensic opinion that, despite being bipolar and intoxicated on cocaine and heroin at the time of the alleged offenses, appellant was able to appreciate the criminality of his behavior and was competent to stand trial.

At the start of the August 8, 2018 motions hearing, defense counsel notified the court that appellant "wanted to talk to the Judge before we proceeded any further." Noting that this request was "a little unusual," the court asked the prosecutor if he had any objection. The prosecutor responded, "No, Your Honor. I think last time we were here Mr. Pope raised some issues of . . . of the counsel. And just to make sure the record is clear, if he has anything about that, we could address it."

Based on the Department of Health evaluation, defense counsel withdrew the incompetency and not criminally responsible pleas, and appellant was given the opportunity to address the court. Notwithstanding his court appearance in February 2018, appellant claimed to have been deprived of his legal rights by having been "locked up a year now" and never having been summoned to court to "waive my Hicks or anything of

that nature." The court reminded appellant that the delay had been related to issues with his mental health but that the matter would proceed.

The court then asked appellant, "Is there anything else that you want to tell me?" and appellant answered, "No, Your Honor." The court turned to defense counsel, inquiring, "[W]hat are specifically the issues that are being raised today?" Counsel responded that he planned to argue two suppression motions and a motion to sever the shoplifting charges from the carjacking charges. Neither appellant nor his attorney raised any issue regarding the dismissal of counsel, and the court moved on and asked the prosecutor to call his witnesses for the suppression motions. Defense counsel continued to represent appellant during the motions hearing and throughout trial. Appellant now argues that the trial court erred by failing to rule on his request to discharge counsel.

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant the right to counsel. *Lopez v. State*, 420 Md. 18, 33 (2011) (quoting *Parren v. State*, 309 Md. 260, 262 (1987)). These constitutional guarantees encompass not only the right to assistance by an attorney but also the right of a defendant to reject counsel and represent himself. *Id*. (quoting *Parren*, 309 Md. at 263). But a criminal defendant may exercise his "right to self-representation only if he knowingly, intelligently, and voluntarily waives his right to counsel." *Fowlkes v. State*, 311 Md. 586, 589 (1988) (citing *Parren*, 309 Md. at 266).

Md. Rule 4-215 implements the constitutional mandates for waiver of counsel and provides in section (e):

> If a defendant requests permission to discharge an attorney whose appearance has been entered, the court shall permit the defendant to explain the reasons for the request. If the court finds that there is a meritorious reason for the defendant's request, the court shall permit the discharge of counsel; continue the action if necessary; and advise the defendant that if new counsel does not enter an appearance by the next scheduled trial date, the action will proceed to trial with the defendant unrepresented by counsel. If the court finds no meritorious reason for the defendant's request, the court may not permit the discharge of counsel without first informing the defendant that the trial will proceed as scheduled with the defendant unrepresented by counsel if the defendant discharges counsel and does not have new counsel. If the court permits the defendant to discharge counsel, it shall comply with subsections (a)(1)-(4) of this Rule if the docket or file does not reflect prior compliance.

The requirements of Rule 4-215 are considered mandatory so as "to protect the fundamental rights involved, to secure simplicity in procedure, and to promote fairness in administration." *Parren*, 309 Md. at 280. "[S]trict compliance" with the Rule is mandated, and "a trial court's departure from the requirements of Rule 4-215 constitutes reversible error." *Pinkney v. State*, 427 Md. 77, 87-88 (2012) (internal citations omitted).

Pursuant to Rule 4-215(e), when a defendant requests permission to discharge his attorney, the court must first allow the defendant the opportunity to explain why he wants to discharge the attorney. "Although the trial judge need not engage in a full-scale inquiry pursuant to Rule 4-215," the record must indicate that the court at least considered the defendant's reasons for requesting his attorney's dismissal before rendering a decision. *Hawkins v. State*, 130 Md. App. 679, 686 (2000) (quoting *Williams v. State*, 321 Md. 266, 273 (1990)). After hearing the defendant's explanation, the court is first tasked with determining whether the request is supported by meritorious reasons. *Dykes v. State*, 444 Md. 642, 652 (2015). After making that determination, the court must advise the defendant

appropriately and take further action as required by the Rule. *Id.* at 652-53.

Here, appellant's statements during the February 28, 2018 hearing would have triggered Rule 4-215 and required the court to inquire into the reasons for his request to discharge his attorney and determine if the request was meritorious. The court, however, properly determined that it was not then able to decide the merits of appellant's request to discharge his attorney because defense counsel had already raised the possibility of appellant's incompetence to stand trial and assist in his own defense; appellant concedes as much in his brief. *See State v. Renshaw*, 276 Md. 259, 267 (1975) ("The record must show that the defendant is competent to waive the right to counsel[.]"); *State v. Muhammad*, 177 Md. App. 188, 257 (2007) ("Competence to decide to represent oneself is the same thing as competence to stand trial.").

When the record fails to show that a defendant is competent and "the accused cannot waive the right to counsel, or has not effectively done so, the court must take steps to insure that the accused is represented by counsel even if he professes his unwillingness to have a lawyer." *Renshaw*, 276 Md. at 268 (citing *McCloskey v. Director, Patuxent Institution*, 245 Md. 497, 504 (1967)). Here, when appellant's competence to stand trial was raised at the February 28, 2018 hearing, appellant could not waive his right to counsel, and the court was obligated to maintain his representation. The court advised appellant that, by the time of the next hearing, "if you are competent to proceed, then we will be right where we are today," that is, back at the beginning of any Rule 4-215 inquiry. The court also explained that after the competency determination, "we will deal again with the issue of your present desire to fire [defense counsel] *if that is still your intention*." (Emphasis added).

By the next hearing on August 8, 2018, appellant had been found competent to stand trial, and he was, for the first time, also competent to waive his right to counsel. Despite expressing a desire to speak to the court, and the prosecutor's statement to the court that appellant previously had raised some issues with regard to counsel, appellant made no motion to discharge counsel. And, when specifically asked by the court, "Is there anything else that you want to tell me?" appellant answered, "No, Your Honor." Neither did defense counsel raise any stated desire by appellant to discharge him when the court asked counsel what issues he planned to raise at the hearing.

We have acknowledged that "a Rule 4-215(e) inquiry is not mandated unless counsel or defendant indicates that the defendant has the '*present intent* to seek a different legal advisor.'" *Holt v. State*, 236 Md. App. 604, 616 (2018) (quoting *State v. Davis*, 415 Md. 22, 33 (2010)). At the first opportunity appellant legally could have moved to discharge counsel, he failed to do so. Therefore, he did not indicate a present intent to discharge counsel, and the trial court did not err in failing to make further inquiry on the record relative to a Rule 4-215 motion.

II.

Appellant also asserts that the trial court erred in denying his motion to suppress the inculpatory statement he made to Trageser relating to the attempted carjacking. In his view, his statement that he tried to get a ride from two girls, in response to Trageser's question whether he was involved in the "incident up the street," was the result of custodial interrogation without the benefit of required *Miranda* warnings.

Our review of a trial court's denial of a motion to suppress is ordinarily limited "to

information contained in the record of the suppression hearing and not the record of the trial." *State v. Collins*, 367 Md. 700, 706-07 (2002). When, as here, the motion to suppress has been denied, we consider the facts "in the light most favorable to the State as the prevailing party on the motion." *Dashiell v. State*, 374 Md. 85, 93 (2003) (quoting *Collins*, 367 Md. at 707).

"We 'do not engage in *de novo* fact finding.' Instead, we 'extend great deference to the findings of the motions court as to first-level findings of fact and as to the credibility of witnesses, unless those findings are clearly erroneous.'" *Padilla v. State*, 180 Md. App. 210, 218 (2008) (first quoting *Haley v. State*, 398 Md. 106, 131 (2007); then quoting *Brown v. State*, 397 Md. 89, 98 (2007)). "[A]s to the ultimate conclusion of whether an action taken was proper, we must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case." *Collins*, 367 Md. at 707.

Because evidence obtained from a criminal suspect resulting from custodial interrogation in the absence of *Miranda* warnings is generally inadmissible, "the first issue in any *Miranda* violation case is 'whether the questioned party was in custody.'" *Craig v. State*, 148 Md. App. 670, 686 (2002) (quoting *Hill v. State*, 89 Md. App. 428, 431 (1991)). We determine whether a person is in custody for purposes of *Miranda* "objectively in light of the totality of circumstances of the situation, taken as a whole." *Brown v. State*, 452 Md. 196, 210-11 (2017).

"Not all restraints on freedom . . . constitute custody for *Miranda* purposes." *Id*. at 211 (citing *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984)). "[A] legally authorized detention or seizure of the person in the context of . . . a *Terry* stop [does] not amount to

custody within the contemplation of *Miranda*." *Reynolds v. State*, 88 Md. App. 197, 210 (1991), *aff'd*, 327 Md. 494 (1992).

Under *Terry* and its progeny, police may, under appropriate circumstances and in an appropriate manner, conduct a brief investigatory stop for questioning limited to the purpose of the stop if "there is a reasonable and articulable suspicion that the person is involved in criminal activity." *Nathan v. State*, 370 Md. 648, 660 (2002). If the officer does nothing more, the person is not in custody. *See State v. Rucker*, 374 Md. 199, 217-18 (2003) (holding that three uniformed officers speaking to Rucker in a public parking lot concerning suspected drug possession and blocking in his car on one side was a "brief, investigatory stop" and "not custodial for purposes of *Miranda*").

The seizure of appellant rose only to the level of a *Terry* stop—investigatory in nature and brief in duration. Trageser received a tip that a man fitting the description of both the carjacker and the shoplifter was in the vicinity of the Clarkes' house. He observed appellant a short time later, the lone pedestrian within a half-mile of the crime scenes. Moreover, appellant matched the description of the perpetrator of both crimes. Under these circumstances, it was entirely reasonable for Trageser to stop appellant and ask him "a couple" non-coercive questions about the "incident up the street," having reasonable suspicion that appellant had been involved in criminal activity.[7]

[7] In addition to his suspicion that appellant may have been involved in the recent crimes, Trageser saw appellant throw to the ground what he knew to be, from his training and experience, a crack pipe. Therefore, he also had reasonable suspicion that appellant had committed another crime, possession of drug paraphernalia.

Appellant was stopped on a public street during daylight hours and his detention lasted for only a short period of time. There were only two officers at the scene, and only one asked any questions, speaking in a "calm" voice. Neither officer brandished a weapon or displayed any show of force, and appellant was not placed in handcuffs or otherwise restrained until after the questions were asked. Considering the totality of the circumstances, appellant was not then in custody, and *Miranda* warnings were not required at that time.[8] We therefore find no error in the court's failure to suppress the statement appellant made during his initial encounter with Trageser.

JUDGMENTS OF THE CIRCUIT COURT FOR CARROLL COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.

[8] That Trageser considered appellant a suspect and stated that appellant was not free to leave has "no bearing on the custody issue because [Trageser] did not communicate those views to appellant." *Conboy v. State*, 155 Md. App. 353, 372 (2004).