

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0885

September Term, 2014

DALE MICHAEL MENTZER

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Rodowsky, J.

Filed: May 4, 2015

*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.

The appellant, Dale Michael Mentzer, was charged with (1) robbery, (2) conspiracy to commit robbery, (3) theft, and (4) conspiracy to commit theft. On February 11, 2014, the Circuit Court for Worcester County denied the appellant's motion to suppress statements that he had made to law enforcement officials. On April 2, 2014, the appellant was convicted of all charges by a jury. On June 9, 2014, the trial court imposed an aggregate sentence of fifteen years' incarceration.¹ Appellant's sole argument is that his custodial statement should be suppressed because, when it was made, his *Miranda* warning was stale.

We find no error and affirm.

Standard of Review

"On appellate review of the grant or denial of a motion to suppress, this Court looks to the record of the suppression hearing. *See White v. State*, 374 Md. 232, 249, 821 A.2d 459, 469 (2003). The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of the testimony must be accepted by this Court unless clearly erroneous. *See Riddick v. State*, 319 Md. 180, 183, 571 A.2d 1239, 1240 (1990). The evidence is to be viewed in the light most favorable to the prevailing party. *See State v. Rucker*, 374 Md. 199, 207, 821 A.2d 439, 444 (2003). We 'undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the facts of the present case.' *See White*, 374 Md. at 249, 821 A.2d at 469 (citing *Riddick*, 319 Md. at 183, 571 A.2d at 1240)."

State v. Tolbert, 381 Md. 539, 548, 850 A.2d 1192, 1197 (2004).

¹Appellant was sentenced to fifteen years for robbery and a concurrent fifteen years for conspiracy to commit robbery. The theft charges merged for the purposes of sentencing.

Facts and Proceedings

On July 23, 2013, at approximately 9:00 a.m., a PNC Bank in West Ocean City, Worcester County, Maryland was robbed. Members of the Maryland State Police Apprehension Team (MSAT) were seeking the suspected robbers. Corporal Richard Lee Hagel, Jr. of the Maryland State Police was assisting MSAT by searching for the suspects' vehicle, a black 1994 Saturn displaying a specific Pennsylvania license plate number. He located the vehicle in the parking lot of the Economy Inn on Route 13 in Salisbury, Maryland and set up surveillance. Mentzer and two other persons left in the vehicle and drove to a nearby convenience store where they were arrested.

The occupants were identified as Samantha Henderson, Decellus Hardy, and the appellant. Corporal Hagel read the group their *Miranda* rights from a card issued by the Maryland State Police.² He then asked each person individually if they understood their rights. All three indicated that they did. Appellant volunteered that he could assist in locating another individual, Heath Derizzo. The time was approximately 9:45 p.m. (Appellant refers to this offer as his first statement).

Appellant was taken directly from the arrest scene to the Wicomico County Sheriff's Office and placed in a holding cell. There is no contention that any promises or threats were made to the appellant at any time or that the appellant was impaired by drugs or alcohol.

²*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

By this point in the evening, Detective Corporal Alex Kagan of the Worcester County Sheriff's Office, who was the primary investigator on the case, had already traveled to the Wicomico County Sheriff's Office. Special Agent Daniel Spotts, with the Baltimore division of the Federal Bureau of Investigation, was also investigating the robbery of the PNC bank. He arrived at the Wicomico County Sheriff's Office at approximately 10:30 p.m.

Just after midnight, the appellant was moved from the holding cell to an interview room where he met with Detective Kagan and Agent Spotts. Neither Agent Spotts nor Detective Kagan re-*Mirandized* the appellant prior to speaking with him. At the suppression hearing, they explained they had been advised that Mentzer was read his *Miranda* rights at the time of arrest. Detective Kagan testified that the conversation was cordial, but that the appellant "initially gave the impression that he wasn't sure why he was there." The interview lasted approximately ninety minutes and was terminated "when [the appellant] stated that he did not wish to speak any further without counsel."

Additional facts will be stated in the discussion.

Discussion

I

The appellant argues that his statements should have been suppressed because the initial *Miranda* warnings had become "stale" by the time he met with Detective Kagan and Agent Spotts. Therefore, he concludes, they were obligated to provide renewed warnings

prior to any questioning. In determining whether an individual who has previously received *Miranda* warnings must be given renewed warnings prior to subsequent questioning, this Court looks to the totality of the circumstances. *Harper v. State*, 162 Md. App. 55, 86, 873 A.2d 395, 413 (2005); *see also Wyrick v. Fields*, 459 U.S. 42, 103 S. Ct. 394 (1982).

Examples of factors to be considered in this assessment are:

"(1) the length of time between the giving of the first warnings and the subsequent interrogation ...; (2) whether the warnings and the subsequent interrogation were given in the same or different places ...; (3) whether the warnings were given and the subsequent interrogation conducted by the same or different officers ...; (4) the extent to which the subsequent statement differed from any previous statements ...; (5) the apparent intellectual and emotional state of the suspect."

State v. Tolbert, 381 Md. 539, 552, 850 A.2d 1192, 1200 (2004) (quoting *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)). Viewing the evidence in the light most favorable to the State, the record does not demonstrate that renewed *Miranda* warnings were required in this case.

The appellant acknowledges that the length of time between the *Miranda* warnings and the subsequent questioning was relatively brief; approximately two hours and fifteen minutes. This falls well short of those instances where we have found delay to be a factor in favor of requiring renewed warnings. *See Brown v. State*, 6 Md. App. 564, 252 A.2d 272 (1969) (in excess of twelve hours elapsed between the time of the initial *Miranda* warnings and the ultimate inculpatory statement); *Franklin v. State*, 6 Md. App. 572, 252 A.2d 487 (1969) (questioning took place two days after initial *Miranda* warnings were given). Indeed,

this Court has found longer delays than two and one-quarter hours insufficient to require providing renewed warnings. *See Smith v. State*, 20 Md. App. 577, 586, 318 A.2d 568, 575 (1974) (renewed warnings not required where, "approximately 4½ hours," elapsed "between the administration of the warnings ... and the commencement of the preparation of the statement[.]"); *Collins v. State*, 52 Md. App. 186, 191, 447 A.2d 1272, 1276 (1982) (renewed warnings not required where, "the ultimate statement was made within 5½ hours from the original taking of the appellant into custody[.]").

Moreover, the interview had lasted only ninety minutes when it was terminated by the appellant's indication that he did not wish to speak any further without counsel. While a great deal of information is communicated to an individual who is advised of his or her *Miranda* rights, the primary tenets of those warnings are the right to remain silent and the right to an attorney. By communicating to Detective Kagan and Agent Spotts that he did not wish to speak further without counsel, and thereby bringing an end to the questioning, the appellant effectively exercised both of those rights. The prophylactic purpose of the staleness limitation clearly was not violated here.

Appellant contends that the change of location, and the change in the identity of the officers, from the time of the initial *Miranda* warnings to the subsequent questioning resulted in such a "lack of continuity" as to require that he be given renewed warnings. We do not agree.

Mentzer observes that the *Miranda* warnings and the subsequent questioning did not take place at the same location. *Cf. Brown*, 6 Md. App. at 567, 252 A.2d at 274 (renewed warnings were necessary where, *inter alia*, defendant was transported fifty miles from the scene of the initial interrogation and advisement of rights.). Here, Mentzer was arrested, and *Mirandized*, on the parking lot of the Route 13 Eagle Express Mart at 1312 N. Salisbury Blvd. in Salisbury. The nearby intersection with Route 13 is Bridgeview Street. He was transported to the Wicomico County Sheriff's Office at 401 Naylor Mill Road. The presiding judge at the suppression hearing has served for decades as a Judge of the First Judicial Circuit which includes the adjoining counties of Worcester and Wicomico. A judge can take judicial notice of local geography. *See Minor v. State*, 334 Md. 707, 717-18, 641 A.2d 214, 219 (1994) (citing *Dean v. State*, 205 Md. 274, 107 A.2d 88 (1954)). Google Maps measures the automobile travel distance between the point of arrest and the Sheriff's Office at 2.8 miles, with an estimated travel time of six minutes. There is no basis for concluding that the act of transporting the appellant from the place of arrest to the Sheriff's Office could have "caused him to forget the rights of which he had been advised and which he had understood moments before." *Wyrick*, 459 U.S. at 49, 103 S. Ct. at 397.

In the instant matter, the *Miranda* warnings and the subsequent questioning were conducted by different officers, from different law enforcement agencies. Corporal Hagel, who placed the appellant in custody and gave the *Miranda* warnings, was with the Maryland

State Police. The appellant was interviewed by Detective Kagan, a member of the Worcester County Sheriff's Office, and by F.B.I. Special Agent Spotts. A change in the identity of the officers is well recognized as a factor that weighs in favor of requiring renewed *Miranda* warnings. However, this Court has also recognized that the weight of this factor is not as great where, as here, it is clear that all of the law enforcement officials were acting in concert and investigating the same incident. *See Tolbert*, 381 Md. at 555, 850 A.2d at 1201 ("Although Detective Johns and Corporal White were with different police departments, they were working on the same case."); *Collins*, 52 Md. App. at 191, 447 A.2d at 1276 ("While it is true that the ultimate information was given to Trooper Thomas rather than Trooper Hornung, it is clear from the record that the officers were cooperating in the investigation and we see no need for Trooper Thomas to have reiterated the *Miranda* warnings.").

Based on the totality of the circumstances, we conclude that renewed *Miranda* warnings were not required in this instance.

**JUDGMENT OF THE CIRCUIT
COURT FOR WORCESTER
COUNTY AFFIRMED.**

**COSTS TO BE PAID BY THE
APPELLANT.**