Circuit Court for Montgomery County
Case No. 130702

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 345

September Term, 2018

DA'VAN MOBLEY

v.

STATE OF MARYLAND

Berger,
Friedman,
Beachley,

JJ.

Opinion by Berger, J.

Filed: January 15, 2019

Following a jury trial in the Circuit Court for Montgomery County, Da'Van Mobley ("Mobley"), appellant, was convicted of attempted murder, assault, burglary, and motor vehicle theft. Mobley was sentenced to forty years' incarceration. On appeal, Mobley presents two issues for our review, which we have rephrased as follows[1]:

1. Whether the circuit court erred in declining to instruct the jury on self-defense.

2. Whether the circuit court erred in denying Mobley's motion to suppress.

For the reasons explained herein, we affirm.

FACTS AND PROCEEDINGS

On October 22, 2016, Mobley and Charles Lorenzo Addison ("Addison") spent the night at the townhouse of Janet Kouffour ("Kouffour") in Germantown, Maryland. Mobley and Addison were gone by the time Kouffour woke up the next morning. Mobley mistakenly left his bag at the house. Mobley's bag contained his identification, credit card, and toothbrush.

After Mobley and Addison left, Addison called Kouffour asking whether they misplaced $465 at the townhouse. Kouffour advised Addison that she did not find the

[1] The issues, as framed by Mobley, are as follows:

1. Did the trial court commit reversible error by not instructing the jury on perfect and imperfect self-defense?

2. Did the trial court commit reversible error by denying Mobley's motion to suppress statements in response to custodial interrogations before being informed of his *Miranda* rights?

money. Nevertheless, Addison and Mobley returned to the townhouse to search for themselves. Addison and Mobley drove with their friend, Dajon Morton ("Morton"), who waited in the car with his pit bull.

Upon returning to Kouffour's home, Mobley asked her if she had seen the money. Kouffour's nineteen-year-old son, Agyeman Kouffour ("Mecca"), and friend, Jemelia Tulloch ("Tulloch"), were also in the townhouse. Mobley got "in Jemelia's face and … yelled you and Janet stole my money. Let me check in your … pocket books." Mecca -- who was in his bedroom at the time -- entered the living room area to ask Mobley to leave because Mobley "was being disrespectful to his mother." After Kouffour attempted to escort Mobley outside, Mobley turned and "hog spit" in Kouffour's face. Outraged, Mecca chased Mobley down the stairs to initiate a fight. Kouffour and Tulloch followed them outside to the parking lot where a physical altercation ensued.

Morton testified that he briefly fell asleep while waiting in the car. Morton stated that upon waking up, he saw Mobley "fighting [in the parking lot] with Mecca, Jemelia and his mother." From Morton's viewpoint, the fight was limited to the grass and the street. While Morton admittedly did not pay much attention to the altercation, he did state that it was a "three on one" fight and that one of Mobley's adversaries held a baseball bat.

When asked at trial about the baseball bat, Kouffour testified that she told Tulloch to retrieve the bat from inside the house because, during the fight, she observed Morton order his unleashed pit bull to "sick" Mecca. While Morton denied ordering his pit bull to attack anyone, Morton admitted that the dog ran towards the fight after jumping out of the

car window. Morton picked up and returned the dog to the car before it could attack anyone. The bat was never swung at the dog.

Mecca testified that after Morton returned to the car with the pit bull, Mobley obtained the keys to Kouffour's vehicle and attempted to steal the vehicle. After Mecca realized what was occurring, Mecca opened the car door, grabbed Mobley by the collar, and repeatedly punched Mobley in the face. Kouffour testified that while Mecca was hitting Mobley, she "got in the car … because the car was in drive … [and] tr[ied] to get the car [in] park" to avoid it going "straight through someone's patio."

Although he was outside, Morton testified that he did not witness Mobley's attempt to steal Kouffour's vehicle. He did, however, state that the fight ended without any of the individuals sustaining serious injuries. After the fight ended, Morton saw Mobley run up the stairs to re-enter the house, while Mecca, Kouffour, and Tulloch remained "outside … getting their stuff."[2] Morton then saw the trio re-enter the house, though he did not see Mobley on the stairs with Mecca, Kouffour, or Tulloch. In Morton's view, "the fight ended" before the individuals returned to the house.

Mecca, Kouffour, and Tulloch collectively testified that after returning upstairs, Tulloch put the bat back into Kouffour's bedroom. At that time, Mecca examined his feet because he was barefoot during the altercation. Immediately thereafter, Mobley allegedly

[2] This conflicts with Mecca's testimony that Mobley entered the house after Mecca, Kouffour, and Tulloch. Mecca further testified that after removing Mobley from Kouffour's vehicle, Mobley approached the vehicle that he drove with Morton and Addison.

"burst in with a knife" and attempted to attack Mecca. Kouffour stated that she "threw herself" in front of Mecca. As a result, she was stabbed in the arm by Mobley. After stabbing Kouffour, Mobley stabbed Mecca several times in the neck and ear, causing him to lose a significant amount of blood and fall into a coma. Tulloch testified that after the stabbing, Mobley looked over Mecca and said, "now you all happy[?]" Kouffour then called 911.[3]

Morton testified that he did not witness the stabbing, although he did see Mecca being carried outside. Moreover, Morton did not see Mobley leave the scene. A police officer indicated that Mobley likely fled by jumping from the second-floor balcony.

After fleeing the scene, Mobley stole an unlocked Dodge Caliber that was left with its keys in the ignition. When the owner -- Tyesha Briscoe ("Briscoe") -- returned, she found Officer Shaun Santos who was in route to Kouffour's home to assist with the stabbing. Immediately after informing Officer Santos that her vehicle had been stolen, both Officer Santos and Briscoe observed the vehicle speed past them. Officer Santos initiated pursuit and followed the vehicle until it crashed into a wooded area a few blocks from Kouffour's house. Officer Santos did not see Mobley in the vehicle or near the scene of the accident.

The police formed a perimeter around the wooded area and began searching for the driver of the vehicle with two K-9s. Officer Christopher Jordan noticed that one of the

[3] While Addison and an individual named Marquette were inside the house during the stabbing, neither of them testified at trial.

K-9s "smell[ed] a human scent." The K-9 then proceeded to pull Officer Jordan towards a residential area. The police officers found several people nearby, who informed them that they saw an individual "jumping fences in the back yard." They further pointed in the direction that they saw the individual run. Shortly thereafter, the police found Mobley hiding behind a tree with blood on his shirt.

After finding Mobley, the police officers apprehended and handcuffed him. Mobley told the officers: "I got beat up. Look at my face. I got beat up." Mobley requested that he be taken to the hospital after telling the officers that his "face [and leg] is hurting." The officers did not ask Mobley any questions about the stabbing. Nevertheless, Mobley denied any involvement, stating that "just because there is someone's blood on me doesn't mean I stabbed them." The officers did not advise Mobley of his *Miranda* rights.

Mobley was then transported to the police station and handcuffed to a table in the processing area. Sergeant Mark McCoy sat at the table and informally conversed with Mobley. Mobley asked Sergeant McCoy: "How you know this blood wasn't already on here before I put [the shirt] on?" Sergeant McCoy responded that he did not "even know what's going on" and that he did not "know what they're saying [Mobley] did." Sergeant McCoy and Mobley continued to discuss unrelated personal matters with one another. After a few minutes, their conversation was interrupted by a call that was dispatched over the police radio discussing a hit and run accident. Sergeant McCoy's body camera recorded Mobley tell Sergeant McCoy that he was the driver involved in the hit and run.

Mobley was charged with attempted murder, assault, burglary, motor vehicle theft, and theft of property. Thereafter, Mobley filed a motion to suppress the statements made to Sergeant McCoy, alleging that he was subjected to a custodial interrogation before being advised of his *Miranda* rights. After holding a motions hearing, the Circuit Court for Montgomery County denied the motion to suppress, finding that Sergeant McCoy did not attempt to elicit incriminating responses from Mobley.

The jury trial commenced on August 28, 2017. Before the case was sent to the jury, defense counsel requested a jury instruction on perfect and imperfect self-defense. The court declined to give the requested instructions. The trial judge explained:

* * *

> So there's just no evidence whatsoever that the defendant was not the initial aggressor when they returned to the apartment. There's no evidence that the bat was used in any way against him. There's no evidence that even assuming that it was, that the defendant used any deadly force against that person who may have used the bat. In self-defense, you have to use the defense against the person who is exerting deadly force against you, not someone in the room. So I think that the evidence that's presented here might generate that kind of instruction, but it's not even close to generating self-defense, in my view. So I would consider giving an instruction on the attempted first degree, the attempted second degree, and attempted manslaughter, not based upon imperfect self-defense, but based upon the rule of provocation, which would permit -- it would permit the jury to consider whether or not his action was in response to a legally out of provocation which could be a fight, a mutual fray, an assault, and they could consider that in terms of attempted voluntary manslaughter.
>
> But again, there's just no evidence. It's pure wild speculation for the jury to come to the conclusion that he was attacked in the apartment, that deadly force was used against

> him, that he didn't attempt to retreat, that he used deadly force against the person that was attacking him with deadly force. There [is] no evidence of that. At all.
>
> * * *

Subsequently, the jury found Mobley guilty of attempted murder, assault, burglary, and motor vehicle theft.[4] This appeal followed.

DISCUSSION

I.

Mobley's first contention is that the circuit court erred in denying his request for a jury instruction on self-defense. Mobley argues that he satisfied his burden in producing "some evidence" to satisfy the elements of perfect and imperfect self-defense. We disagree.

Under the Maryland Rules, a circuit court "may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." Md. Rule 4-325(c). We review the circuit court's decision not to give the requested self-defense instruction for abuse of discretion, considering "(1) whether the requested instruction was a correct statement of the law; (2) whether it was applicable under the facts of the case; (3) and whether it was fairly covered in the instructions actually given." *Stabb v. State*, 423 Md. 454, 465 (2011).

Mobley contends that the circuit court erred in finding that he failed to demonstrate that an instruction on self-defense was applicable under the facts of the case. "For an

[4] The State entered a *nolle prosequi* to the theft of property charge.

instruction to be factually generated, the defendant must produce 'some evidence' sufficient to raise the jury issue." *Arthur v. State*, 420 Md. 512, 525 (2011). When the accused asserts an affirmative defense such as self-defense, it is his burden to produce "'some evidence' to support each element of the defense's legal theory before the requested instruction is warranted." *Marquardt v. State*, 164 Md. App. 95, 131 (2005). "Whether the evidence is sufficient to generate the desired instruction is a question of law for the judge." *Roach v. State*, 358 Md. 418, 428 (2000). We view the evidence in the light most favorable to Mobley. *General v. State*, 367 Md. 475, 487 (2002).

In this case, Mobley requested that the circuit court instruct the jury on perfect and imperfect self-defense. The elements of perfect self-defense in Maryland are well established:

> (1) The accused must have had reasonable grounds to believe himself in apparent imminent or immediate danger of death or serious bodily harm from his assailant or potential assailant;
>
> (2) The accused must have in fact believed himself in this danger;
>
> (3) The accused claiming the right of self-defense must not have been the aggressor or provoked the conflict; and
>
> (4) The force used must have not been unreasonable and excessive, that is, the force must not have been more force than the exigency demanded.

Holt v. State, 236 Md. App. 604, 622 (2018) (quoting *State v. Faulkner*, 301 Md. 482, 485-86 (1984)). "Imperfect self-defense, however, requires no more than a subjective honest belief on the part of the [accused] that his actions were necessary for his safety, even

though, on an objective appraisal by a reasonable man, they would not be found to be so." *Id.* (citation and internal quotations omitted).

To establish his subjective belief that he stabbed Mecca out of necessity, Mobley relies solely on the statements he made to the arresting officers. Upon being detained, Mobley told the officers: "I got beat up. Look at my face. I got beat up." Mobley argues that this statement demonstrates that he feared for his life at the time of the stabbing. We disagree. The fact that Mobley "got beat up" provides nothing more than evidence that Mobley was involved in a fight at some point in time. Critically, Mobley did not describe his state of mind to the officers. Indeed, when he was arrested, Mobley asked the officers why they were looking for him because he "didn't do nothing." Mobley further denied any involvement in the stabbing, stating that "just because there is someone's blood on me doesn't mean I stabbed them." Put simply, the record lacks a single shred of evidence showing Mobley's state of mind at the time that the stabbing occurred.

Moreover, we observe that Mobley did not testify as to his state of mind. Although a defendant is not obligated to testify to generate a self-defense instruction, it is fairly typical. *See Martin v. State*, 329 Md. 351, 361 (1993) ("Ordinarily, the source of the evidence of the defendant's state of mind will be testimony by the defendant.").

We are likewise not persuaded by Mobley's reliance on the Court of Appeals' decisions in *Wilson v. State*, 422 Md. 533 (2011), and *Roach v. State*, 358 Md. 418 (2000). In *Wilson*, the defendant was arrested after shooting the victim with the victim's firearm.

422 Md. at 537-38. When asked by the detectives why he shot the victim, the defendant responded:

> I was shook. Like I said, when he pulled his out, I was shook. Honest. Turned like this, smiled. And I ain't his bitch ass. I mean, shit, ***Kill or be killed. You know what I'm saying?*** What you gonna do if somebody pulled a gun on you? Man.

Id. at 543 (emphasis in original). The Court held that this statement was "sufficient to require a jury determination of whether" the defendant had "a subjective belief that he was in immediate danger of death or serious bodily harm." *Id.*

Similarly, in *Roach*, the Court of Appeals held that there was some evidence that the defendant "had a subjective actual belief that his life was in danger[.]" 358 Md. at 432. The Court reached its holding in reviewing the following statement the defendant made to the police:

> I thought that he was going to kill me right there on the scene but I got the gun from him and we was fighting for the gun until somebody said the Police is in the store so he didn't care if the Police was in the store so I hit him with the gun and he start[ed] going across the street me and him so we start fighting again and because of him been drunk he fell over the curb and tried to take the gun and I shot him but I didn't want to because I thought he was going to tried to do something to me …. When I picked up the gun, Reggie's friend grabbed me. Vito yelled "hit him!" He rushed me. I hit him with the gun. We kept struggling. We both continued struggling. We were across the street (George Palmer Highway). He fell at the curb in the parking lot of the Belle Haven Apartments. He tried to get up. I shot him.

Id. at 422-23. The Court noted that the defendant's statement contradicted his testimony at trial that the shooting was accidental. *Id.* at 432. Nevertheless, the Court concluded that

the prior statement to police generated some evidence to warrant an imperfect self-defense instruction. *Id.*

In our view, Mobley's reliance on *Wilson* and *Roach* is misplaced. In those cases, the defendants specifically described their subjective fear of death or bodily harm. *Wilson*, 422 Md. at 543 ("[W]hen he pulled his [gun] out, I was shook."); *Roach*, 358 Md. at 422-23 ("I thought that he was going to kill me right there on the scene[.]"). By contrast, here, the record is devoid of any evidence of Mobley's state of mind. Even if we could reasonably construe Mobley's statements that he "got beat up" and to "[l]ook at my face" as references to his state of mind, there is no evidence that he feared for his life when he stabbed Mecca. The record demonstrates that Mobley sustained his facial injuries during the outdoor altercation with Mecca. Critically, Morton -- the sole witness for Mobley's case -- testified that the altercation ended before Mobley and Mecca returned to the townhouse, where the stabbing occurred. There is simply no evidence of Mobley's state of mind at the time of the stabbing. *See Martin*, 329 Md. at 365 ("Since it is the defendant's subjective belief at the moment that the fatal shot is fired that is relevant and probative, evidence of a prior mental state will not suffice."). The circuit court, therefore, did not err in refusing to instruct the jury on imperfect self-defense.

We further hold that the circuit court did not err in declining to instruct the jury on perfect self-defense because the accused must demonstrate that he "actually believed that [he] was in immediate and imminent danger of bodily harm" to satisfy the elements of perfect self-defense. Maryland Criminal Pattern Jury Instructions 5:07 (2d ed. 2012). As

discussed, *supra*, the record is utterly devoid of any evidence of Mobley's state of mind at the time of the stabbing. As such, Mobley has not satisfied the second element of perfect self-defense.

Even if there is evidence of Mobley's subjective belief, the circuit court did not err in declining to propound the perfect self-defense instruction. Indeed, the record demonstrates that Mobley escalated the altercation to a deadly level when he revealed his knife. *See Thornton v. State*, 162 Md. App. 719, 734 (2005) ("An aggressor is not entitled to a self-defense instruction if he initiated a deadly confrontation or escalated an existing confrontation to that level."), *rev'd on other grounds*, 397 Md. 704 (2007). In his attempt to portray himself as the victim, Mobley contends that Tulloch escalated the fight to a deadly level when she brought the baseball bat "into the fray." We disagree. Indeed, there is no evidence that the bat was ever swung or pointed at Mobley. Rather, the undisputed testimony of Kouffour and Tulloch is that Tulloch retrieved the bat to defend themselves in the event of an impending pit bull attack.

Moreover, even if the presence of the bat escalated the altercation to a deadly level, the altercation ended before anyone returned inside. Critically, Mobley's sole defense witness -- Morton -- testified that the initial "fight ended" before Mobley, Mecca, Kouffour, or Tulloch returned to the townhouse. As such, the stabbing constituted a second altercation rather than what Mobley characterizes as "one continuous fight." Mobley,

therefore, had no right to exercise deadly force when he stabbed Mecca.[5] *See, e.g.*, *Lambert v. State*, 70 Md. App. 83, 94-95 (1987) ("The evidence does not suggest that [the defendant] was under attack or threatened with attack by any members of the crowd at the time he chose to use deadly force on the victim … [because] the fighting between [the defendant] and the victim stopped[.]").

II.

Mobley's final allegation of error is that the motions court improperly denied his motion to suppress. Mobley maintains that he was subjected to a custodial interrogation before being advised of his *Miranda* rights. Consequently, Mobley argues that the statements he made to Sergeant McCoy regarding the vehicle accident were inadmissible. We disagree.

In *Gupta v. State*, 227 Md. App. 718, 746-47 (2016), *aff'd*, 452 Md. 103 (2017), we articulated the following standard of review for *Miranda* issues:

> On review of the circuit court's denial of a motion to suppress, we are limited to the record of the suppression hearing. *Holt v. State*, 435 Md. 443, 457-58 (2013); *Longshore v. State*, 399 Md. 486, 498 (2007). We consider the evidence in the light most favorable to the prevailing party -- in this case the State -- and defer to the circuit court's factual findings unless clearly erroneous. *Gonzalez v. State*, 429 Md. 632, 648 (2012); *Lee v. State*, 418 Md. 136, 148 (2011); *Owens v.*

[5] Mobley further cites to Wayne R. LaFave, Substantive Criminal Law § 10.4 (2d ed. 2003) for the proposition that an initial aggressor must "notify" her adversary of an intent to withdraw from an altercation. Even if Mecca, Tulloch, or Kouffour were initial aggressors, they had no obligation to notify Mobley of their withdrawal because the record clearly shows that the "fight ended." They were under no obligation to withdraw from an altercation that had already ceased.

> *State*, 399 Md. 388, 403 (2007). "We also make our 'own independent constitutional appraisal[]' by reviewing the relevant law and applying it to the facts and circumstances of this particular case." *Hoerauf v. State*, 178 Md. App. 292, 306 (2008) (quoting *Longshore*, 399 Md. at 499).

"The Supreme Court held in *Miranda v. Arizona* that 'the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.'" *Gupta*, 227 Md. App. at 747 (quoting *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)). "As a practical matter, this means that when a suspect is in custody, prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to … an attorney[.]" *Id.* (internal citations and quotations omitted).

"[B]efore a defendant can claim the benefit of *Miranda* warnings, the defendant must establish two things: (1) custody; and (2) interrogation." *State v. Thomas*, 202 Md. App. 545, 565 (2011), *aff'd*, 429 Md. 246 (2012). The defendant bears the burden of proving that he was in custody and that he was interrogated. *Smith v. State*, 186 Md. App. 498, 520 (2009), *aff'd*, 414 Md. 357 (2010). It is undisputed that Mobley was in custody when he made the incriminating statements to Sergeant McCoy. Accordingly, we consider only whether Mobley was interrogated.

In *Drury v. State*, 368 Md. 331, 335-36 (2002) the Court of Appeals explained that "[t]he test to be applied in determining whether the police officer's statements … [were]

tantamount to interrogation is whether the words and actions of the officer were reasonably likely to elicit incriminating responses from [the defendant]." *See also Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) ("[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.").

In our view, Sergeant McCoy's conversation with Mobley did not amount to an interrogation because he did not question Mobley in a manner "reasonably likely to elicit an incriminating response." *Drury*, *supra*, 368 Md. at 341. By contrast, Mobley voluntarily confessed that he was involved in a hit and run. Mobley's voluntary confession is better characterized as a "classic 'blurt,' to which the protections of *Miranda* do not apply." *See Prioleau v. State*, 179 Md. App. 19, 30 (2008), *aff'd*, 411 Md. 629 (2009).

Shortly after handcuffing Mobley to the table in the police station, Sergeant McCoy attempted to place bags over Mobley's hands to preserve physical evidence, e.g., blood on Mobley's hands. Mobley spontaneously shouted: "How you know this blood wasn't already on here before I put it on?" Sergeant McCoy responded that he did "[not] even know what's going on" and that he did "[not] know what they're saying [Mobley] did."

Thereafter, Mobley and Sergeant McCoy "played the ML game" and engaged in informal conversation.[6] While conversing, a dispatch call was transmitted over a police

[6] The game consisted of Sergeant McCoy and Mobley matching the initials, "ML" to the names of celebrities, e.g., "Martin Lawrence" and "Matt Lauer."

radio. Mobley heard an officer state in the radio broadcast that "[t]here were no items of evidence" in connection with a vehicle-related incident. Mobley then exclaimed: "No items in evidence. See[?] Now, I can take the bags off." Sergeant McCoy's body camera captured the following exchange:

> [SERGEANT McCOY]: No. Leave the bags on.
>
> MOBLEY: (Indiscernible) evidence. No items in evidence.
>
> [SERGEANT McCOY]: That's not [in] reference [to] you.
>
> MOBLEY: It is me. The blood was already on these clothes before I put them on.
>
> [SERGEANT McCOY]: What? No. This -- where he is isn't [in] reference [to] you. He's on the hit and run. Were you involved in a hit and run? (Pause.)
>
> MOBLEY: (No audible response).
>
> [SERGEANT McCOY]: No? Okay. (Laughter.)
>
> MOBLEY: Hit and run? Where?
>
> [SERGEANT McCOY]: Over at Shoppers Food Warehouse, I think. No?
>
> MOBLEY: What time was the Shoppers -- what time was the hit and run?
>
> [SERGEANT McCOY]: I don't know.
>
> MOBLEY: What time is it right now?
>
> [SERGEANT McCOY]: It's like quarter of ten.
>
> MOBLEY: Shoppers don't close til 12.
>
> [SERGEANT McCOY]: Okay.

MOBLEY: Can't run in Shoppers.

[SERGEANT McCOY]: A car accident.

MOBLEY: No, it was a hit and run, and -- what's the (indiscernible) police station -- by the -- by the movie theaters?

[SERGEANT McCOY]: We're by the movie theaters, yes.

MOBLEY: Yeah.

[SERGEANT McCOY]: Okay.

MOBLEY: It was a hit and run and -- across the street from the Shopper neighborhood.

[SERGEANT McCOY]: Okay. But this wasn't [in] reference [to] you. The person that was just on the radio was on a hit and run. That's why I said it wasn't in reference [to] you.

MOBLEY: You just asked me was I involved in a hit and run.

[SERGEANT McCOY]: Well, that's because this call was for a hit and run, okay?

MOBLEY: At Shoppers?

[SERGEANT McCOY]: So -- at Shoppers.

MOBLEY: It wasn't no hit and run at Shoppers though.

[SERGEANT McCOY]: That you were involved in, right?

MOBLEY: Yeah. I was involved in (indiscernible) --

[SERGEANT McCOY]: Okay. But there was one. And that's what I'm saying. This call, when you heard him say no evidence over there, that's what he was talking about. He wasn't talking about you. Does that make sense?

MOBLEY: I know.

[SERGEANT McCOY]: Okay.

MOBLEY: I thought you said it was a hit and run in Shoppers.

[SERGEANT McCOY]: Right.

MOBLEY: I know it wasn't no hit and run in Shoppers. I know for a fact it wasn't a hit and run in Shoppers. You want to know how I know it wasn't a hit and run at Shoppers?

[SERGEANT McCOY]: How?

MOBLEY: Because it was a hit and run that I did.

[SERGEANT McCOY]: Could -- that you did?

MOBLEY: Yeah. In the neighborhood across from Shoppers.

[SERGEANT McCOY]: Okay. So, maybe one of hit -- the hit and run at Shoppers didn't have anything to do with you.

MOBLEY: No.

[SERGEANT McCOY]: Could there be two?

MOBLEY: No.

[SERGEANT McCOY]: No?

MOBLEY: No way.

* * *

MOBLEY: The hit and run that I did was in the neighborhood across from Shoppers.

[SERGEANT McCOY]: Oh, okay. See, I don't even know why you're here.

* * *

Contrary to Mobley's contentions, the record clearly demonstrates that Mobley's confession was not the product of an interrogation. Rather, Mobley made these

incriminating statements voluntarily and without any provocation. After listening to Mobley inquire about the hit and run, Sergeant McCoy repeatedly insisted that the hit and run discussed over the radio dispatch was "not in reference" to Mobley. Moreover, Sergeant McCoy told Mobley several times that he did now know why Mobley was being detained. In short, it is difficult to conceive how Sergeant McCoy could know what to ask Mobley without knowing the reasons for Mobley's detention.[7]

Mobley relies heavily on the fact that Sergeant McCoy asked him: "Were you involved in a hit and run?" At first glance, one might argue that this question was designed to elicit an incriminating response, i.e., whether Mobley was in fact involved in a hit and run. Our task, however, is to consider whether that question was "reasonably likely to elicit an incriminating response … [under] the totality of the circumstances." *Rodriguez v. State*, 191 Md. App. 196, 220-21 (2010). A more in-depth review of the recording makes it clear that Sergeant McCoy did not ask Mobley about the hit and run for the purpose of obtaining an incriminating response. Indeed, Sergeant McCoy never provided Mobley with the opportunity to answer the question. Rather, Sergeant McCoy immediately answered his own question, stating: "No? Okay[,]" followed by laughter.

[7] To the extent that Mobley argues that Sergeant McCoy should have known that his questions were likely to garner incriminating responses because he knew that Mobley was a suspect for stealing a car, we disagree. "[W]e are limited to the record of the suppression hearing." *Gupta*, 227 Md. App. at 746. There is no evidence in the record of the suppression hearing that Sergeant McCoy knew that Mobley was suspected of stealing a car.

After considering the totality of the circumstances surrounding Sergeant McCoy's conversation with Mobley, we cannot conclude that Sergeant McCoy should have known that his questions were reasonably likely to elicit an incriminating response. Accordingly, we hold that Mobley's inculpatory statement did not result from a custodial interrogation in violation of *Miranda*. The circuit court, therefore, did not err in denying Mobley's motion to suppress.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.