Circuit Court for Prince George's County
Case No. CT 15-1238X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 654

September Term, 2017

MAURICE WIGFALL, JR.

v.

STATE OF MARYLAND

Leahy,
Shaw Geter,
Fader,

JJ.

Opinion by Fader, J.

Filed: September 12, 2018

*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 Prince George's County convicted Maurice Wigfall, Jr. of first degree murder, arson, first degree burglary, violating a protective order, and reckless endangerment for the death of Latiqua Cherry, his ex-girlfriend and the mother of his two-year-old daughter. The trial court sentenced Mr. Wigfall to life imprisonment without the possibility of parole for murder and a combined 50 years and 90 days, consecutive to the life sentence, for the other convictions. Mr. Wigfall contends that the trial court erred in: (1) denying his motion to suppress certain statements he made to police on the day of the murder; and (2) not excluding the hearsay testimony of a witness.

We affirm. We hold that the circuit court did not err in admitting Mr. Wigfall's statements because, considering the totality of the circumstances, he was not in custody at the time they were made. We also conclude that the trial court did not err in admitting the witness's testimony under the state of mind exception to the hearsay rule.

BACKGROUND

On the morning of May 17, 2015, Ms. Cherry was found stabbed and burned inside her Oxon Hill apartment. Later that morning, a police detective went to the residence of Mr. Wigfall, who claimed to have been in an on-again-off-again relationship with Ms. Cherry, and asked if he would come to the police station for an interview. Although the officer did not tell Mr. Wigfall why they wanted to speak with him, he agreed to go. Mr. Wigfall rode to the station in the front seat of the detective's cruiser. He was not placed in restraints of any kind then or at any point that day.

The Interrogation

When they arrived at the station, the detectives took Mr. Wigfall to an interview room and interrogated him. Throughout the interrogation, the door remained unlocked and closed. A video recording of the interrogation video depicts the following:

- The video begins at 9:53 a.m., with Mr. Wigfall sitting alone in a relatively small room with a table and three chairs;
- The three detectives in the room at various points in the interrogation were Detectives Dougherty, Bellino, and Brooks. All were in plain clothes and none were armed;
- With the exception of a brief period, discussed in some detail below, in which both Detectives Dougherty and Bellino were present, and periods toward the end in which both Detectives Bellino and Brooks were present, only one officer interviewed Mr. Wigfall at a time;
- Detective Dougherty questioned Mr. Wigfall for a total of 45 minutes between 10:12 and 12:17. Detective Bellino questioned him from 12:17 until 1:05. Detectives Bellino and Brooks questioned him from 1:25 until 1:44. In total, detectives questioned Mr. Wigfall for 1 hour and 52 minutes.

For purposes of our analysis, it is helpful to break the substantive discussion of the interview into four different segments: (1) before 12:15 p.m.; (2) between 12:15 and 12:17; (3) between 12:17 and 1:25; and (4) after 1:25. The first three segments correspond to the periods (1) before, (2) during, and (3) immediately after a brief confrontation between Detective Dougherty and Mr. Wigfall, during which Mr. Wigfall first said he wanted to call his lawyer. The fourth segment begins when the detectives first read Mr. Wigfall his Miranda rights.

Segment (1) Before 12:15 p.m.

During the first segment of the interrogation, which was conducted by Detective Dougherty, Mr. Wigfall provided basic personal information, described his relationship

with Ms. Cherry, and provided an account of his activities during the previous two days. Throughout this segment of the interview, and including segments (2) and (3) as well, Mr. Wigfall periodically asked for or demanded information about what was going on and where Ms. Cherry was. The detectives promised that they would eventually tell him but said that they needed him to give them information first.

Mr. Wigfall informed the detectives that Ms. Cherry had been his girlfriend and was the mother of his child. Although he acknowledged that she had obtained a restraining order against him in February of that year, he claimed that they were "trying to work something out." Mr. Wigfall said that he no longer had a key to Ms. Cherry's apartment, but was on an approved list to pick up keys from the rental office and had done so, on Ms. Cherry's behalf, a month or two earlier.

May 17, the day of the murder and the interrogation, was a Sunday. According to Mr. Wigfall, he had last seen Ms. Cherry the preceding Friday night when he had picked their daughter up from daycare, gone to the CVS pharmacy where Ms. Cherry worked the late shift, given Ms. Cherry some money to get home, and then slept at his parents' house. The next day, Saturday, he took their daughter to attend a baby shower in Camden, New Jersey, returning that evening after dark. He told the detectives that he had called Ms. Cherry from the road on his way back that evening. Mr. Wigfall and his daughter then slept at his parents' house Saturday night.

The next morning—which was the day of the interrogation—he got up and went to the gym around 6 a.m., leaving their daughter at his parents' house. He then came straight

back to his parents' house after the gym. He claimed that he intended to return their daughter to Ms. Cherry later that day.

Mr. Wigfall entered the interview room without his cellphone.[1] At 11:01 a.m., Detective Dougherty left the interview room to look for the phone so that Mr. Wigfall could look up Ms. Cherry's mother's phone number. After he later returned without the phone, Detective Dougherty explained that the officer who had the phone was on his way back to the station with it.[2] A few minutes later, after another short break, Detective Dougherty returned and handed Mr. Wigfall his phone, which Mr. Wigfall—at Detective Dougherty's request—then used to look up phone numbers for Ms. Cherry and Ms. Cherry's mother. Mr. Wigfall also showed Detective Dougherty the record of his last call to Ms. Cherry; the two exchanged possession of the phone several times, looking at pictures, phone numbers, and records of calls.

When Detective Dougherty then started to leave the interview room with the phone, Mr. Wigfall questioned whether the detective needed to take it. Detective Dougherty

[1] From comments made during the interview, it appears that another officer obtained the phone when he was at Mr. Wigfall's parents' house. We have not been provided with any explanation of how or when that officer obtained possession of it but neither the record nor the arguments of counsel provide any suggestion that it was taken from him involuntarily. Viewing the facts in the light most favorable to the State, as we must do, we do not draw any inference adverse to the State from the fact that Mr. Wigfall was without his phone during the initial portion of the interview.

[2] At one point while they were still waiting for Mr. Wigfall's phone to be delivered, Mr. Wigfall asked who would be taking him home. Detective Dougherty said that he would, and Mr. Wigfall asked if they could go. When Detective Dougherty pointed out that they were still waiting for his phone, Mr. Wigfall let the matter drop.

responded that he was not allowed to leave the phone in the room, but that he would let Mr. Wigfall make a call soon. Detective Dougherty then left, with the phone.

Segment (2) Between 12:15 and 12:17 p.m.

Detective Dougherty returned to the interview room with Mr. Wigfall's cellphone and asked Mr. Wigfall to again look up the phone number for Ms. Cherry's mother. Mr. Wigfall declined and said that he wanted to call his lawyer "because y'all not telling me what's going on or nothing. I'm already dealing with a case." When Detective Dougherty demanded the phone back, Mr. Wigfall declined and a brief struggle ensued in which Mr. Wigfall tried to keep the cellphone as Detective Dougherty, who insisted that Mr. Wigfall was "not allowed to have property in here," demanded it and tried to retrieve it from him physically. Mr. Wigfall, who remained seated as Detective Dougherty stood over him, indicated that if he was not allowed to have property in there, and they were not going to tell him what was going on, he was "ready to leave."

Over the course of the next minute, Mr. Wigfall repeatedly expressed frustration that he was not being told what was going on, demanded that Detective Dougherty "tell me something," and said that he wanted his lawyer and was ready to go.[3] Detective Dougherty continued to promise that they would tell Mr. Wigfall what was going on and continued to ask for the phone. When Mr. Wigfall expressed concern that the detectives might be

[3] Mr. Wigfall said that he had another case and that his lawyer from that other case had told him not to say anything "'til after we call him." The detectives did not ask Mr. Wigfall any questions about the other case.

"trying to put something else on me," Detective Dougherty told him that "[n]obody put anything on you."

As this back-and-forth continued, Detective Bellino entered, moved toward the middle of the room, relieved Detective Dougherty, and took over the interview. Detective Dougherty did not return.

Segment (3) Between 12:17 and 1:25 p.m.

Once Detective Dougherty left the room, the atmosphere relaxed immediately. Detective Bellino moved a chair that had been next to Mr. Wigfall to the center of the room and apologized for the interaction with Detective Dougherty. Detective Bellino allowed Mr. Wigfall to keep his cellphone with him.[4] He also told Mr. Wigfall (1) that he was not under arrest and was "free to go at any time," (2) that he would tell him what was going on, but first wanted to ask Mr. Wigfall questions about Ms. Cherry and the last couple of days, and (3) that they did not know where Ms. Cherry was. Mr. Wigfall stayed.

Upon further questioning by Detective Bellino, Mr. Wigfall reviewed both his background and relationship with Ms. Cherry and the events of the prior two days, providing information consistent with what he had previously told Detective Dougherty, but including a few additional details. During the course of the questions, Detective Bellino noticed that Mr. Wigfall's cellphone indicated that the last call between him and Ms. Cherry had been on Friday, not Saturday, evening. Mr. Wigfall maintained that the last time he saw her was Friday evening, but that they had spoken by phone on Saturday

[4] Mr. Wigfall had his cellphone with him from that point until, near the end of the interrogation (in segment (4)), he consented to allow the detectives to search it.

evening as well. Mr. Wigfall also acknowledged that his activity that morning had deviated somewhat from his normal routine, which was to go to the gym late at night, either before or after "mess[ing] around" with Ms. Cherry.

Mr. Wigfall admitted to ups and downs in his relationship with Ms. Cherry, including physical altercations. He acknowledged having "fattened her lip" on one occasion and that she might have received bruises from their altercations, but he claimed that they were attempting to repair the relationship.

At 1:05, Detective Bellino told Mr. Wigfall that he was going to step out of the room and that when he returned he was "going to finally explain everything to you." When Mr. Wigfall asked if he would then be "free to go," Detective Bellino responded that he was "free to go right now if you want." Mr. Wigfall then asked for, and received, one more assurance that he would be told what was going on when Detective Bellino returned.

When Detective Bellino did not return for another 17 minutes, Mr. Wigfall stood up, took his cellphone, and walked out of the interview room through the unlocked door. According to a stipulation of counsel at the suppression hearing, Mr. Wigfall then ran into the detectives in the hallway and accused them of lying to him when they told him that they would give him information. Detective Bellino agreed to do so and they both returned to the interview room, now accompanied by Detective Brooks as well.

Segment (4) After 1:25 p.m.

When they re-entered the interview room at 1:25 p.m., Detective Bellino read Mr. Wigfall his *Miranda* rights for the first time. He also reiterated that Mr. Wigfall was "not under arrest and you're free to go." He then informed Mr. Wigfall that Ms. Cherry had

been found dead in her apartment that morning. Detective Bellino noted that they "naturally" wanted to "talk to you first," and then told Mr. Wigfall that there were problems with his alibi because witnesses had identified him in the vicinity of Ms. Cherry's apartment that morning. Mr. Wigfall denied that he had been there.

The remainder of the video, none of which was played for the jury at Mr. Wigfall's trial, includes:

- Detective Bellino confronted Mr. Wigfall with a statement by "foster care people" that he had threatened to kill Ms. Cherry, which Mr. Wigfall acknowledged but passed off as "just talk."

- Detective Brooks stressed the importance of eliminating Mr. Wigfall as a suspect and confirming his story as to his whereabouts between when he returned from New Jersey the night before and that morning.

- The detectives told Mr. Wigfall that they intended to get a search warrant for his car to determine whether there was any evidence in it, if he did not consent to a search.

- Detective Bellino asked Mr. Wigfall if he would consent to searches of his phone and vehicle and to provide a DNA sample, and Mr. Wigfall agreed. Before signing the consent forms, Mr. Wigfall asked if he could call his lawyer.[5] From the video, it appears that Mr. Wigfall made an unsuccessful attempt to place a phone call before then signing the forms.

- The detectives expressed to Mr. Wigfall their determination to find out who killed Ms. Cherry, their "hope" that it was not Mr. Wigfall, and their intent to find him later if they discovered that it was him ("I hope you [are] not involved because I sure do not want to be kicking your mother's door in at 3 o'clock in the morning looking for you.").

- Mr. Wigfall stated multiple times that he was ready to go. The detectives never told Mr. Wigfall that he could not leave and on at least one occasion Detective Bellino expressly confirmed that he was "free to go." Each time,

[5] Mr. Wigfall said he wanted to call his lawyer out of concern for the other case he had. Detective Brooks told him that he did not care about the other case because he "work[ed] murder" and was only concerned about Ms. Cherry.

however, they continued to ask questions and Mr. Wigfall continued to respond.

- When, at 1:43, Mr. Wigfall asked if they had a suspect, Detective Brooks responded, "Everybody is a suspect until we determine nobody else is. Nobody is under arrest, including yourself, but everybody is suspect." After Mr. Wigfall responded, "[i]t feels like it," the detective told him that he had "more freedom walking around" the station than most people get.

- At 1:49, Mr. Wigfall said he was "ready to go home." The detectives agreed to get him a ride home and they left the room.

The Suppression Motion

Mr. Wigfall moved to suppress those portions of his May 17 interview that followed the incident in which Detective Dougherty attempted to take his phone, and Mr. Wigfall first mentioned his counsel, at 12:15. He argued that from that point on, the interview was custodial and that once he invoked his right to counsel the continued questioning violated his Fifth Amendment right against self-incrimination under *Miranda v. Arizona*, 384 U.S. 436 (1966). The State responded that the interview was not custodial and, as a result, *Miranda* did not apply. Accordingly, the State contended, the detectives were under no obligation to stop questioning Mr. Wigfall when he asked for counsel or stated that he was ready to leave.

Neither party presented any testimony at the hearing on the suppression motion. Instead, the evidence was limited to the recording of the interrogation, summarized above, and a stipulation among counsel as to the following:

- On the morning of the interrogation, a detective went to Mr. Wigfall's residence, told him there was an investigation going on, asked if he would be willing to come to the police station, and he agreed;

- He rode to the station in the front seat of the cruiser, was never placed in handcuffs, and was never told that he had to go to the station;
- Once he arrived at the station he was placed in the interview room;
- He was never placed in a holding cell;
- The interview room was left unlocked throughout the interview;
- None of the officers who came into the interview room was armed;
- Mr. Wigfall left the interview room twice. The first time, he ran into Detective Bellino in the hallway, accused Detective Bellino of lying to him by not telling him what was going on, and then they all returned to the room when Detective Bellino agreed to talk with him;
- The second time, after Mr. Wigfall had been asked to provide consent to search his phone, Mr. Wigfall said he wanted to leave and so he and the detectives left the room. In the hallway, Mr. Wigfall asked "some questions about his phone and the process of downloading it." Mr. Wigfall then consented to the search and "agree[d] to go back in the room to finish up the consents for his phone and his vehicle."

The suppression court denied the motion to suppress. The court made the following pertinent findings of fact:

- There was no evidence that Mr. Wigfall "was ever placed in handcuffs or that his movements were restrained or controlled by others in any manner."
- Detectives Dougherty and Bellino "were in and out of the interview room at various points discussing a wide variety of topics with the Defendant." During that time, the detectives repeatedly told Mr. Wigfall "that he was free to leave at any point" and that they would "take [Mr. Wigfall] home whenever he was ready."
- Mr. Wigfall "was given access to his cell phone during this period."
- After the "disagreeable exchange" between Mr. Wigfall and Detective Dougherty from 12:15 to 12:17, Detective Bellino "reiterated to [Mr. Wigfall] that he was free to go at any point."
- Mr. Wigfall indicated he was ready to leave and then actually "left the interview room on his own volition." However, "after discussions with the

police outside of the room, [Mr. Wigfall] reentered on his own accord and continued talking to the police."

- Mr. Wigfall came voluntarily to the police department.
- At the conclusion of the interview, Mr. Wigfall left the police department "on his own accord" and "ultimately was not charged or arrested in this matter until September [2015]."

Based on these findings, the court concluded that "at no point did [Mr. Wigfall] reasonably believe that he was in custody" and, as a result, his interrogations "were noncustodial and not in violation of *Miranda v. Arizona*."

Trial

The State produced evidence that Ms. Cherry died as a result of nine stab wounds in her neck and that her body was then burned. When firefighters arrived on the scene, the deadbolt on Ms. Cherry's front door was still engaged and the hard-wired smoke alarm in the apartment ceiling had been disconnected and hidden in the bathroom closet. Investigators found evidence that an accelerant had been used in setting the fire; police later found a gas can in a shed behind Mr. Wigfall's residence.

When police searched Mr. Wigfall's car, they found a folding knife, but tests for blood and DNA related to the crime were all negative. In Mr. Wigfall's residence, police found a $50,000 term life insurance policy for Ms. Cherry with Mr. Wigfall listed as the sole beneficiary. The policy was obtained electronically in February of that year, the day after Ms. Cherry had obtained a protective order against Mr. Wigfall. Although the policy was purportedly obtained by Ms. Cherry, the application listed Mr. Wigfall's home address and phone number, and an e-mail address that appeared to be his as well.

At trial, the State played six excerpts of Mr. Wigfall's May 17 interrogation. These included three excerpts from segment (1) of the interrogation, which Mr. Wigfall had not moved to suppress. The remaining three excerpts, all from segment (3), took place while Mr. Wigfall was in possession of his phone. The State also introduced, without objection, an audio recording of another interview with Mr. Wigfall, which occurred at his parents' home two days after the first interview. During that interview, Mr. Wigfall again claimed to have spoken with Ms. Cherry from the road the night before she was murdered. He also admitted to having taken down the smoke detector in her apartment, although he claimed to have done so to keep it from "chirping."

The State also introduced evidence obtained pursuant to a search warrant for Mr. Wigfall's cellphone records, which showed that Mr. Wigfall's phone: (1) made 73 "data transactions," including Facebook updates and e-mail, between midnight and 6 a.m. on the day of the murder, a period when Mr. Wigfall had claimed to be asleep; (2) was in the vicinity of his home from midnight until approximately 4:40 a.m.; (3) was in the vicinity of Ms. Cherry's apartment from approximately 4:45 until 4:52 a.m.; and (4) was in the vicinity of Mr. Wigfall's gym from approximately 5:54 until 6:02 a.m.

Two witnesses testified about threats Mr. Wigfall had purportedly made against Ms. Cherry. First, Janice Washington, Ms. Cherry's social worker, testified over defense objection that Ms. Cherry had told her that the relationship with Mr. Wigfall had become violent and that Mr. Wigfall had threatened to "kill her and no one would know it was him." Second, Shaunte Chambers testified that in April, one month before the murder, she had overheard Mr. Wigfall say that "he was tired of" his "baby mother and that he wanted

her gone." She also overheard him say he was going to set his baby mother's house on fire.

DISCUSSION

I. THE SUPPRESSION COURT DID NOT ERR IN DENYING THE MOTION TO SUPPRESS.

When reviewing a ruling on a motion to suppress evidence, we defer to the lower court's findings of fact unless they are clearly erroneous, only consider the facts presented at the motions hearing, and view those facts in the light most favorable to the prevailing party. *Holt v. State*, 435 Md. 443, 457 (2013); *Belote v. State*, 411 Md. 104, 120 (2009). The suppression court's legal conclusions are reviewed de novo, and we "mak[e] our own independent constitutional evaluation as to whether the officer's encounter with the defendant was lawful." *Sizer v. State*, 456 Md. 350, 362 (2017). The State bears the burden of proving the admissibility of the statements. *Smith v. State*, 186 Md. App. 498, 519 (2009), *aff'd*, 414 Md. 357 (2010).

A. Whether an Individual Is in *Miranda* Custody Requires an Objective Inquiry, Based on the Totality of the Circumstances, to Determine Whether a Reasonable Person Would Have Felt at Liberty to Terminate the Interrogation and Leave.

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court "adopted a set of prophylactic measures to protect a suspect's Fifth Amendment right [against compelled self-incrimination] from the 'inherently compelling pressures' of custodial interrogation." *Maryland v. Shatzer*, 559 U.S. 98, 103 (2010) (quoting *Miranda*, 384 U.S. at 467). A statement made during a custodial interrogation is inadmissible against a criminal defendant unless the State establishes that the defendant "voluntarily, knowingly and

intelligently" waived his rights. *Miranda*, 384 U.S. at 444; *see also J.D.B. v. North Carolina*, 564 U.S. 261, 269-70 (2011). For *Miranda* rights to apply, the suspect must be both in custody and subject to interrogation. *See, e.g.*, *Hoerauf v. State*, 178 Md. App. 292, 314-18 (2008). It is the "'inherent compulsion' that is brought about by the combination of custody and interrogation [that] is crucial for the attachment of *Miranda* rights." *Id.* at 317 (quoting *Marr v. State*, 134 Md. App. 152, 173 (2000)).

Because there is agreement that Mr. Wigfall's May 17 statements were made during an interrogation and that he was not informed of his *Miranda* rights until after making the statements at issue, the critical question is whether Mr. Wigfall's interrogation was custodial. If it was, his statements should have been suppressed. If it was not, *Miranda* did not apply and there was no problem with their admission. *Cooper v. State*, 163 Md. App. 70, 93 (2005) ("Without the presence of both custody *and* interrogation, the police are not bound to deliver *Miranda* warnings and obtain a proper waiver of the rights to silence and counsel before questioning a suspect.").

The Court of Appeals recently summarized the state of the law with respect to determining whether an interrogation is custodial for *Miranda* purposes:

> A determination of whether an individual is in *Miranda* custody is an objective inquiry based on the totality of the circumstances. . . . In deciding whether an individual is in custody for purposes of *Miranda*, we must determine, in light of "the objective circumstances of the interrogation," whether a "reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave." . . . . Thus, we determine an individual's freedom of movement objectively in light of the totality of circumstances of the situation, taken as a whole.

Brown v. State, 452 Md. 196, 210-11 (2017) (internal citations omitted). Although there is no finite set of factors relevant to a determination of custody, facts often relevant are:

> 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 211 (quoting *Thomas v. State*, 429 Md. 246, 260-61 (2012)). The *Miranda* requirement "become[s] applicable as soon as a suspect's freedom of action is curtailed to a 'degree associated with formal arrest.'" *Id.* at 211-12 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 440 (1984)).

Notably, however, "[n]ot all restraints on freedom . . . constitute custody for *Miranda* purposes." *Brown*, 452 Md. at 211. Thus, "the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest *or restraint on freedom of movement of the degree associated with a formal arrest.*" *Id.* (quoting *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)) (emphasis added in *Brown*); *see also California v. Beheler*, 463 U.S. 1121, 1124 (1983) (per curiam) (*Miranda* warnings are only required "where there has been such a restriction on a person's freedom as to render him 'in custody'") (quotation omitted).

B. Based on the Totality of the Circumstances, Mr. Wigfall's Interrogation Was Not Custodial.

Although some of the relevant factors weigh in favor of a conclusion that Mr. Wigfall was in custody, others—which we ultimately find more compelling—point to the opposite conclusion. Based on the totality of the circumstances, we hold that Mr. Wigfall's interrogation was not custodial.

Among the factors favoring a conclusion that Mr. Wigfall's interrogation was custodial are the location and length of the interrogation. The interrogation took place in a relatively small interview room in a police station and police questioned Mr. Wigfall for nearly two hours spread out over the course of nearly four hours. *See, e.g.*, *Robinson v. State*, 419 Md. 602, 615-16 (2011) (finding interrogation custodial in part because suspect was held in a holding cell for five hours, questioned for two hours, and told she was not free to go until after giving the statement at issue). Although relevant, neither this location nor this duration is dispositive. *See, e.g.*, *Beheler*, 463 U.S. at 1124-25 (finding interrogation in the "coercive environment" of a police station was not custodial where there was no "formal arrest or restraint on freedom of movement" and the defendant was released following the interrogation and not arrested until five days later); *Abeokuto v. State*, 391 Md. 289, 333 (2006) (holding that interrogation was not custodial even though it took place in a police station and the defendant had been with the police "for a total of 11 hours before the questioning at issue took place").

The portion of the interrogation that most strongly supports Mr. Wigfall's claim is the brief exchange in which Detective Dougherty attempted to retrieve Mr. Wigfall's phone

from him. Detective Dougherty's stated reason for doing so was that Mr. Wigfall was not supposed to have "property" in the interview room. During the exchange, Detective Dougherty hovered over Mr. Wigfall for a brief period of time while attempting to take away his phone. Importantly, however, the tone of that brief interaction was quickly reversed by the intervention of Detective Bellino, who relieved Detective Dougherty, allowed Mr. Wigfall to keep his phone, and immediately and repeatedly told Mr. Wigfall that he was not under arrest and was free to go. Mr. Wigfall did not make any statements in between the incident with Detective Dougherty and Detective Bellino's assurances.

We also recognize that there were several occasions on which Mr. Wigfall said he was ready to leave and wanted to talk with his lawyer, but the officers did not stop questioning him. However, none of the officers ever told Mr. Wigfall that he could not leave, nor did they stop him from doing so. To the contrary, they told him that he was free to leave. Moreover, until very late in the interrogation, nearly all of his statements that he was ready to go—along with his statements that he wanted his lawyer—were tied expressly to frustration that he was not being given information. The detectives persuaded him to stay by promising him that they would eventually give him information, after he answered more questions. That he stayed thus appears to have been primarily a result of his desire to find out what the officers would tell him.

Other factors favor a conclusion that Mr. Wigfall's interrogation was not custodial. Only one detective at a time questioned Mr. Wigfall for the majority of the interrogation and none of them was armed or in uniform. For the most part, the officers questioned Mr. Wigfall in a polite, professional, non-threatening, and non-accusatory tone. Mr. Wigfall

was not handcuffed or otherwise restrained in his movements in any way or at any time before, during, or after the interrogation. The door to the interview room was unlocked, albeit closed, throughout the entire interrogation, a fact Mr. Wigfall was obviously aware of when he got up and walked out. And although Mr. Wigfall was eventually told he was a suspect, that was only in the context of being told that "everybody" was. More importantly, that information came only at the end of the interview and only after Mr. Wigfall had already made all of the statements that were introduced at trial and had been read his *Miranda* rights.

Moreover, on multiple occasions—the first occurring at 12:17—the detectives told Mr. Wigfall that he was not under arrest and was free to go at any time. Also, Mr. Wigfall was in possession of his phone from 12:17 until, near the end of the interrogation, he consented to allow the detectives to search it. *See United States v. LeBrun*, 363 F.3d 715, 722 (8th Cir. 2004) (recognizing that the cellphone in the suspect's possession provided "a line of communication between himself and the outside world and to some extent mitigated the incommunicado nature of interrogations with which the *Miranda* Court was concerned and the psychological pressure associated with being isolated in an interview room"); *State v. Bartelt*, 895 N.W.2d 86, 94-95 (Wis. Ct. App. 2017) (observing that the fact that the defendant was allowed to retain his cellphone was a factor weighing against custody), *aff'd*, 906 N.W.2d 684 (Wis. 2018). And, perhaps most tellingly of all, Mr. Wigfall did actually get up and walk out of the interview room—through the unlocked door, with his cellphone—when he became frustrated that the police were not giving him the information

he wanted. He then returned to the interview room, voluntarily, when they promised to tell him what was going on.

The events surrounding the interrogation also weigh against a conclusion that Mr. Wigfall was in custody. Although Mr. Wigfall was asked to come in for questioning, and was transported there by the police, he went voluntarily and he rode, unrestrained, in the front seat of the police cruiser. The circumstances surrounding his arrival at the interrogation are thus neutral. When the interrogation was over, however, the police drove him home; he was not arrested until September, more than three months later. The circumstances surrounding his departure thus clearly weigh against a conclusion that he was in custody.[6]

Considering all of these factors together, we conclude that a reasonable person in Mr. Wigfall's position would have believed that he was free to break off the interrogation and leave when he made the statements at issue. In reaching that conclusion, we find it

[6] The Supreme Court has identified whether the defendant is permitted to leave at the conclusion of an interrogation as a factor in determining whether the interrogation was custodial, *e.g.*, *Howe v. Fields*, 565 U.S. 499, 509 (2012), and this Court has recognized that "there is rarely custody when the person questioned leaves the interrogation unencumbered, only to be arrested at a later time," *Minehan v. State*, 147 Md. App. 432, 442 (2002); *see also Cummings v. State*, 27 Md. App. 361, 378 (1975) ("It is almost universally the law that where a suspect is not arrested and is allowed to remain free following the interview, the interrogation is deemed to have been non-custodial."). Here, where Mr. Wigfall was permitted to leave and then not arrested for months, this factor weighs strongly against a finding of custody. Although we consider this after-the-fact factor in our analysis, as precedent requires, we question its value in providing a court with assistance "in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning" while it was occurring. *Brown*, 452 Md. at 211.

particularly compelling that when Mr. Wigfall came to doubt that he was going to get answers from the detectives, he actually did get up, gather his cellphone, and walk out the door of the interview room.[7]

We agree with the State that *Abeokuto* is instructive.[8] There, the Court of Appeals held that Mr. Abeokuto's interrogation was not custodial even though he was first held for two-and-a-half hours in a small locked room at the missing persons unit before being taken by police car to the homicide unit, and made to wait another three hours before being questioned for approximately an hour-and-a-half in an interrogation room with an open door. 391 Md. at 330-32. The Court opined that although "some circumstances hint[ed] at restraint or coercive elements," other factors, including that Mr. Abeokuto "agreed to wait in the interview room" and answered questions "cooperatively," showed that he "was not in custody or otherwise deprived of his freedom of action in any significant way during the relevant questioning by police before his arrest." *Id.* at 332-34.

By contrast, cases in which interrogations were found to be custodial have generally involved significantly more coercive elements than existed here. In *Brown*, for example, the Court of Appeals held that an interrogation was custodial when the defendant was taken

[7] Mr. Wigfall also got up to leave a second time, when the detectives were asking for his consent to search his phone, and was allowed to do so. According to the stipulation between counsel at the suppression hearing, a conversation then followed in the hallway about the process by which his phone would be searched if he gave his consent. He agreed to the search and returned with the detectives to the interview room.

[8] The admissibility of Mr. Abeokuto's statement was one of many issues in *Abeokuto*. Although five of the seven judges joined opinions dissenting in part from aspects of the decision relating to sentencing, all seven joined the part of the opinion determining that Mr. Abeokuto's interrogation was not custodial. *Id.* at 332-34.

by a detective, with his "acquiescence," directly from the hospital where he was being treated for gunshot injuries to the police station. 452 Md. at 212. The detective, who arrived at 5:30 a.m., advised Mr. Brown that he had been sent to "obtain" him, transported him in the rear seat of a police cruiser while Mr. Brown was still dressed in "hospital garb with his head still bandaged," and told Mr. Brown that his car had been "towed to the police station because of dried blood on the passenger side." *Id.* Mr. Brown was then escorted through a non-public entrance to the police station to an isolated interrogation room. And when the interrogation was completed, he was arrested. *Id.*

Under those circumstances—and, importantly, construing all facts and inferences in favor of Mr. Brown, who had prevailed in the circuit court, *id.* at 208—the Court concluded that a reasonable person in Mr. Brown's position would have felt "inhibited from simply leaving the presence of the police." *Id.* at 214; *see also Robinson*, 419 Md. at 615-16 (finding custody where suspect was placed in the back of an unmarked police car, with her hands bagged so that they could later be tested for gunshot residue, transported to the homicide unit, photographed, held for five hours in a holding cell, questioned for two hours, and then told that she was not free to go until after she gave a statement); *Bond v. State*, 142 Md. App. 219, 223-24, 233-34 (2002) (finding an interrogation custodial when "several . . . uniformed police officers" went to defendant's trailer late at night, blocked his only exit by standing in the doorway to his bedroom, and questioned him in that "highly private location" while he was "in bed with his shirt off").

And in *Buck v. State*, 181 Md. App. 585 (2008), on which Mr. Wigfall relies, this Court held that a five-hour interrogation at the police station was custodial when, among

other things, (1) Mr. Buck knew that he "was being interrogated as a suspect, not a witness"; (2) Mr. Buck "was not allowed to move about unescorted and was at all times being watched"; (3) the police drove him to the station; (4) he was asked accusatory questions; and (5) by police design, Mr. Buck was arrested 20 minutes after being returned home from the interview. *Id.* at 624-27.

Mr. Wigfall is correct that the circumstances of his interview share some similarities with Mr. Buck's, including that both defendants were interrogated in a police station, both were transported there by the police, neither was physically restrained, and both were questioned by only one or two officers at a time. However, unlike here, Mr. Buck's freedom of movement was significantly restricted; he was "never let out of a detective's sight" and was "escorted closely at all times" from when officers picked him up until they returned him home approximately six hours later. *Id.* at 625. Moreover—and critical to this Court's conclusion—Mr. Buck knew, before questioning, that "police had targeted him as the murderer" based on their discussions in his presence. *Id.* Police compounded that by asking him "accusatory questions." *Id*. at 626. Further, the detectives admitted that the only reason that they did not formally place him under arrest at the station was because they had promised him they would not do so if he came with them voluntarily. *Id.* at 605. Instead, after "going through the motions of taking [him] home," they formally arrested him 20 minutes later. *Id.* at 603. This Court found that the officers had taken "special care" to try to "create an interrogation that could be labeled non-custodial" before they formally arrested Mr. Buck, but that a reasonable person in Mr. Buck's position would not

have felt free to leave. *Id.* at 627. Here, there is no indication that the detectives were engaged in similar conduct.

In sum, considering the totality of the circumstances, we conclude that a reasonable person in Mr. Wigfall's situation would have felt that he was able to terminate the interrogation and leave.

II. THE TRIAL COURT DID NOT ERR IN ADMITTING MS. WASHINGTON'S HEARSAY STATEMENTS.

Mr. Wigfall's second argument is that the trial court erred in admitting testimony of Janice Washington, Ms. Cherry's social worker, regarding statements that Ms. Cherry made to her that, in turn, conveyed statements that Mr. Wigfall had made to Ms. Cherry. Specifically, after Ms. Washington testified that Ms. Cherry had sounded "fearful" during a telephone conversation they had three days before the murder, she was permitted to testify that Ms. Cherry "had told me she was fearful because she had just gotten threatened by Maurice." Ms. Washington then elaborated: "She told me that he would . . . kill her and no one would know it was him." The trial court later gave the jury the following limiting instruction:

> And finally, you have heard evidence through the testimony of Janice Washington that the defendant told Latiqua Cherry that he was going to kill her and that no one would know that it was him.
>
> You may only use this statement to determine if Latiqua Cherry was in fear of the defendant at the time that the statement was made. You may not and must not consider this evidence for any other purpose.

The State contends that (1) Ms. Washington's testimony was properly admitted under the hearsay exception for statements of the declarant's state of mind, and (2) any error was harmless. We agree with the State.

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 5-801(c). Hearsay is generally inadmissible unless it falls within one of the specific exceptions approved by the Maryland Rules. Rule 5-802. "[I]n deciding whether a hearsay exception is applicable, we review the trial judge's ruling for legal error rather than for abuse of discretion; that is because hearsay is never admissible on the basis of the trial judge's exercise of discretion." *Thomas v. State*, 429 Md. 85, 98 (2012).

Ms. Washington's testimony involved two levels of hearsay: (1) Mr. Wigfall's statement to Ms. Cherry; and (2) Ms. Cherry's statement to Ms. Washington about Mr. Wigfall's statement. The first level of hearsay, Mr. Wigfall's statement, was admissible as the statement of a party opponent. Rule 5-803(a)(1).

The State contends that Ms. Cherry's statement to Ms. Washington was also admissible as "[a] statement of the declarant's then existing state of mind . . . offered to prove the declarant's then existing condition . . . ." Rule 5-803(b)(3). Under this exception, "[d]irect assertions by the declarant as to the declarant's state of mind" are "admissible to prove that the declarant had that particular state of mind . . . and therefore also had it at the time relevant to the case." *Edery v. Edery*, 193 Md. App. 215, 234 (2010) (quoting 6A McLain, MARYLAND EVIDENCE 803(3):1 at 198-99 (2001)). Expressions of fear fall within the scope of this Rule. *Figgins v. Cochrane*, 174 Md. App. 1, 32-33 (2007); *see*

also Copeland v. State, 196 Md. App. 309, 315 (2010) (allowing officer to testify about threats the defendant made to the victim, as relayed to the officer by the victim, under the state of mind hearsay exception); *Case v. State*, 118 Md. App. 279, 283-85 (1997) (evidence that victim had made statements that indicated her fear of appellant were relevant and admissible on issue of whether victim's death was an accident or a homicide). We conclude that Ms. Cherry's statement that she was fearful of Mr. Wigfall because he had threatened her constituted a statement of her then-existing state of mind for purposes of the exception.

Of course, to be admissible, Ms. Cherry's state of mind must also have been relevant and not unduly prejudicial. *Banks v. State*, 92 Md. App. 422, 434 (1992). We agree with the State that Ms. Cherry's state of mind—her fear resulting from Mr. Wigfall's death threat—was relevant at least to counter the suggestion that Mr. Wigfall and Ms. Cherry were in the process of getting back together. The trial court thus did not err in admitting Ms. Washington's statement.

Moreover, even if we agreed with Mr. Wigfall that the trial court had erred in admitting this statement, we would find that error harmless because: (1) the court provided a limiting instruction that the testimony could only be considered as to Ms. Cherry's state of mind, and not any other issue; (2) the evidence against Mr. Wigfall was otherwise overwhelming;[9] and (3) the jurors also heard testimony from Shaunte Chambers, who told

[9] The evidence against Mr. Wigfall included: (1) although he denied being anywhere near Ms. Cherry's apartment at the time of the murder, cellphone records place him near there at that time; (2) he admitted to having removed the smoke detector in the

them that she overheard Mr. Wigfall say that "he was tired of" his "baby mother," "that he wanted her gone," and that "he was going to set the house on fire." It was Ms. Chambers's testimony, which was both directly from Mr. Wigfall and, with its reference to the fire, much more closely connected to the actual circumstances of the murder, which the State emphasized in closing argument and which was presumably most damaging to Mr. Wigfall.

In sum, we hold that the circuit court did not err in declining to suppress the portion of Mr. Wigfall's statements that followed his invocation of the right to counsel or in admitting Ms. Washington's hearsay testimony.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

apartment; (3) because the door was locked when the firefighters arrived, the perpetrator likely had a key, which Mr. Wigfall had previously possessed; (4) he had sent a text threatening to kill Ms. Cherry in February; (5) the day after she obtained the protective order, a $50,000 life insurance policy was taken out in Ms. Cherry's name using Mr. Wigfall's address, phone number, and e-mail address and naming Mr. Wigfall as the sole beneficiary; and (6) Ms. Chambers overheard Mr. Wigfall saying he would kill Ms. Cherry and set her apartment on fire.