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Robinson v. State

Statements Made to Internal Affairs Division of a Police Department Are Discoverable Under Maryland's Version of the *Jencks* Doctrine

By Anabelle Berges

The Court of Appeals of Maryland held that statements made to the Internal Affairs Division of a Maryland police department are in the possession of the prosecution, and therefore discoverable by the defendant for purposes of cross-examination. *Robinson v. State*, 354 Md. 287, 730 A.2d 181 (1999). The court found that statements made by two police officers to the Internal Affairs Division ("IAD"), regarding the incident for which the petitioner was on trial, should have been disclosed to the defense for inspection of any exculpatory or impeaching evidence. The court of appeals also held that the trial judge erred in instructing the jury regarding the credibility of a witness. Through this holding, the court expanded Maryland's version of the *Jencks* doctrine to include IAD statements made by police officers.

The facts of this case were in dispute. The State offered testimony from the two investigating officers that on January 18, 1996, two masked men entered a 7-11 store in Forestville, Maryland, and robbed the store at gunpoint. The officers testified that upon reaching the 7-11 store they saw two masked men, one later identified as Ramone Robinson ("Robinson"), exit the store and enter a vehicle. Officer Smith testified that the vehicle came straight toward him,

at which point he fired in the vehicle's direction. Corporal Hooper testified that shots were fired by the assailants at both police officers and that they returned fire. The police officers both testified that Robinson exited the vehicle with a gun in his hand, screamed, and fired in their direction. The police officers fired back at Robinson, hitting him four times.

Robinson testified that he did not play any part in the robbery of the 7-11 store, but admitted to driving the vehicle involved in the incident. He testified that he was waiting in the vehicle for his friend to come out of the 7-11 store. Robinson stated that shots were fired at him as he drove away from the store, and that he exited the vehicle unarmed with his hands raised.

During cross-examination of the police officers, defense counsel discovered they had given statements to the IAD regarding the incident. Defense counsel then requested the opportunity to determine if the IAD statements contained any exculpatory or impeaching material. After denying the request and conducting an *in camera* review of the statements, the court instructed the jury that the officers were cleared of any wrongdoing, and that the IAD statements contained no exculpatory material. The jury requested the court to define "exculpatory", to which the

court answered "it means free from guilt . . . the opposite of guilty."

Robinson was thereafter convicted of assault with intent to murder, robbery with a dangerous weapon, and other related offenses by a jury in the Circuit Court for Prince George's County. Robinson appealed to the court of special appeals, which affirmed the lower court's decision, holding that "the statement is confidential under state law, and developed for non-prosecutorial purposes, and held by a division of a law enforcement agency that is not working in conjunction with the prosecutor." The Court of Appeals of Maryland granted certiorari.

The court of appeals began its analysis by explaining the current law regarding disclosure of *Jencks/Carr* material. Through *Carr*, Maryland adopted the "underlying principals" of the United States Supreme Court's holding in *Jencks*, recognizing that defense counsel must be afforded the opportunity to effectively cross-examine a witness to determine whether their testimony is inconsistent with prior written statements. *Robinson*, 354 Md. at 300-01, 730 A.2d at 188 (citing *Jencks v. United States*, 353 U.S. 657 (1957); *Carr v. State*, 284 Md. 455, 397 A.2d 606 (1979)). The Supreme Court in *Jencks* held that after the direct

examination of a prosecution witness, defense counsel may request the prosecution to produce all written reports or statements made by the witness regarding their testimony. *Id.* at 301, 730 A.2d at 188.

Following the *Jencks* decision, Congress created the "Jencks Act," 18 U.S.C. § 3500 (1994). *Id.* at 303, 730 A.2d at 189-90. Although Maryland has not wholly adopted the Jencks Act, Maryland courts frequently use it as an analytical guide. *Id.* at 303, 730 A.2d at 190 (citing *Kanaras v. State*, 54 Md. App. 568, 460 A.2d 61 (1983)). The Jencks Act requires that for a witness's statement or report to be discoverable, the following requirements must be shown: (1) the witness must testify on direct examination; (2) defense counsel must request the statement; (3) the statement must qualify as a discoverable statement; (4) the statement must relate to the subject matter of the witness's testimony; and (5) the statement must be in the possession of the prosecution. *Id.* at 319-20, 730 A.2d at 198.

The court of appeals continued its analysis by stating that the only issue in the present case was whether the prosecutor was in possession of the officers' IAD statements, making them discoverable. *Id.* at 304, 730 A.2d at 190. The court noted that many courts have considered the police department to be an arm of the prosecution, therefore requiring prosecutors to sometimes produce written reports or statements in the department's possession. *Id.* However, because of their confidential

nature, jurisdictions are divided on whether the IAD of a police department is part of the prosecutorial "arm." *Id.* at 305, 730 A.2d at 190. In the instant case, the court held that the IAD was part of the police department and, therefore, an arm of the prosecution. *Id.* at 309, 730 A.2d at 192-93. As such, the statements and records were in the possession of the police department, and therefore constructively in the possession of the prosecution. *Id.*

The prosecution argued that because the IAD statements were confidential, it did not have possession of those statements. *Id.* at 306-07, 730 A.2d at 191. In response, the court held that confidentiality, not possession, dictated whether or not the statements were discoverable. *Id.* at 309, 730 A.2d at 192. Moreover, the court must balance the "confidentiality interest... against the confrontation and due process rights of the defendant." *Id.* at 309, 730 A.2d at 193. The court also noted that although the IAD statements were confidential, the defendant's right to due process was fundamental, and therefore more important. *Id.* at 308, 730 A.2d at 192. (citing *Chief, Montgomery County Dep't of Police v. Jacocks*, 50 Md. App. 132, 144, 436 A.2d 930, 936-37 (1981)).

The court next addressed whether or not the trial judge's *in camera* review of the IAD statements was proper. *Id.* at 311-13, 730 A.2d at 193-94. The State, relying on *Zaal v. State*, 326 Md. 54, 602 A.2d 1247 (1992), and the Jencks Act, argued that an *in camera* review is an alternative available to the court

when dealing with confidential records. *Id.* at 311-12, 730 A.2d at 194. The court rejected this argument, stating that *Jencks* and *Carr* held that only defense counsel can properly determine if statements contain inconsistencies for purposes of cross-examination. *Id.* at 312-13, 730 A.2d at 194-95. The court added that because the instant case was largely a credibility battle between Robinson and the police officers, defense counsel had an even greater need for the officers' IAD statements. *Id.* at 313, 730 A.2d at 195. As such, the prosecution had a legal duty to submit the IAD statements to the defense. *Id.* at 313, 730 A.2d at 195.

Finally, in focusing on the trial court's instruction to the jury regarding the IAD statements, the court concluded that it was the jury's task to judge the credibility of a witness. *Id.* "[T]he general rule is that it is error for the court to make remarks in the presence of the jury reflecting upon the credibility of a witness..." *Id.* at 314, 730 A.2d at 195 (citing *Elmer v. State*, 239 Md. 1, 209 A.2d 776 (1965)). Accordingly, the court of appeals determined that the circuit court improperly instructed the jury regarding the officers' wrongdoing and the lack of exculpatory evidence in the IAD statements. *Id.* at 315-16, 730 A.2d at 196. As a result, the court of appeals held that the jury instruction constituted prejudicial error by the trial court. *Id.* at 317, 730 A.2d at 196.

The court's decision highlights the importance for defense counsel to have discovery available in order to effectively cross-examine prosecution

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witnesses and to determine whether any evidence is exculpatory. More importantly, the court of appeals has emphasized the significance of the defendant's due process rights when balanced against the confidentiality of the information sought. This decision has expanded the discovery available to a defendant, and has thus allowed access to certain information that could change the way police officers are cross-examined by defense counsel.