



2013

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Recommended Citation

Dietz, Kristine L. (2013) "Recent Developments: Thomas v. State: A Defendant's Subjective Belief That Law Enforcement Officers Had Probable Cause to Arrest Him Does Not Make His Police Station Interview Custodial for Miranda Purposes; Rather, a Totality of the Circumstances Test Is Used to Determine Custody," *University of Baltimore Law Forum*: Vol. 43 : No. 2 , Article 10.
Available at: <http://scholarworks.law.ubalt.edu/lf/vol43/iss2/10>

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RECENT DEVELOPMENT

THOMAS V. STATE: A DEFENDANT'S SUBJECTIVE BELIEF THAT LAW ENFORCEMENT OFFICERS HAD PROBABLE CAUSE TO ARREST HIM DOES NOT MAKE HIS POLICE STATION INTERVIEW CUSTODIAL FOR *MIRANDA* PURPOSES; RATHER, A TOTALITY OF THE CIRCUMSTANCES TEST IS USED TO DETERMINE CUSTODY.

By: Kristine L. Dietz

The Court of Appeals of Maryland held that a defendant's subjective belief that law enforcement officers had enough evidence for an arrest did not make a police station interview custodial for *Miranda* purposes. *Thomas v. State*, 429 Md. 246, 55 A.3d 680 (2012). Instead, the court employed a totality of the circumstances test to determine if the defendant was in custody during the interview. *Id.* Based on factors such as the length and location of the interview, the number of law enforcement officers involved, the lack of restraint on the defendant, and how he arrived at the interview, the court concluded that the motion to suppress the Defendant's statements should have been denied because he was not in custody at the time of his confession. *Id.* at 252, 260, 55 A.3d at 684, 689.

Law enforcement officers contacted Konnyack Thomas ("Thomas") and asked to speak with him at the police station regarding one of his children. Thomas agreed to meet with them. Prior to his arrival at the station, Thomas' wife advised him that the police wanted to talk to him because his daughter had accused him of sexual abuse. Thomas drove himself to the station and met two plain clothed detectives who took him to the interrogation room. The detectives told him that he was not under arrest and the door to the interrogation room was unlocked; however, they did not specifically tell Thomas that he was free to leave. Thomas sat on a couch in the child interview room and both plain clothed, unarmed detectives sat in front of him. The detectives were polite, courteous, and respectful. After one of the detectives advised Thomas that his daughter told police about a history of sexual abuse, Thomas confessed.

Law enforcement officers arrested Thomas approximately twenty minutes after the interview ended. He was charged in the Circuit Court for Montgomery County with one count of sexual abuse of a minor, two counts of second-degree rape, and six counts of second-degree sexual offense.

Prior to his trial, Thomas filed a motion to suppress the statements he made at the police station, arguing that he should have been given

Miranda warnings when he arrived. The circuit court accepted this argument and suppressed the statements. The State appealed, and the Court of Special Appeals of Maryland reversed the circuit court, finding that Thomas was not in custody when he confessed, and therefore *Miranda* warnings were not necessary. The Court of Appeals of Maryland granted Thomas' petition for a writ of certiorari.

On appeal, the Court of Appeals of Maryland accepts the factual findings and conclusions of the trial court unless clearly erroneous. *Thomas*, 429 Md. at 259, 55 A.3d at 688. However, the Court of Appeals conducts an independent constitutional assessment of the record. *Id.* Accordingly, the court began by asserting that a person in custody must be informed of certain rights before being interrogated so that he or she is not compelled to incriminate him or herself in violation of the Fifth Amendment of the Constitution. *Thomas*, 429 Md. at 259, 55 A.3d at 688 (citing *Miranda v. Arizona*, 384 U.S. 436, 467-68 (1966)).

The court further noted that a totality of the circumstances approach is used to determine custody. *Thomas*, 429 Md. at 259, 55 A.3d at 688 (citing *Thompson v. Keohane*, 516 U.S. 99, 112 (1995)). This approach asks whether a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave. *Id.* The court listed several factors relevant to a totality of the circumstances analysis, including when and where the interview occurred, how long the interview lasted, how many law enforcement officers were present, whether the defendant was physically restrained, and how the defendant arrived at the place of questioning. *Thomas*, 429 Md. at 260, 55 A.3d at 689 (citing *Owens v. State*, 399 Md. 388, 429, 924 A.2d 1072, 1095-96 (2007)).

Contrary to the findings of the circuit court, the Court of Appeals of Maryland held that a confession during a police interview does not, per se, give rise to a custodial interrogation. *Thomas*, 429 Md. at 272, 55 A.3d at 696. Instead, the court indicated that a confession is just one factor that may be considered when determining whether a non-custodial interview transformed into a custodial one. *Id.* Notably, there must be a "fundamental transformation in the atmosphere of the interview" for a confession to trigger *Miranda* and there was no such change in this case. *Id.* at 272, 55 A.3d at 696 (citing *Commonwealth v. Hilton*, 823 N.E.2d 383 (Mass. 2005)).

The Court of Appeals of Maryland also addressed whether law enforcement officers questioned Thomas as a witness or as a suspect. *Thomas*, 429 Md. at 264, 55 A.3d at 691. The court concluded that Thomas' status as a witness or suspect would only be relevant if law enforcement officers communicated it to Thomas because custody determinations are based on the circumstances as they are objectively perceived. *Id.* at 264-65, 55 A.3d at 691. The officers' subjective beliefs

of interviewees are not relevant. *Id.* Thomas' assumption that he was a suspect was based on "uncommunicated thoughts, which cannot form the basis for requiring *Miranda* warnings." *Id.* at 268, 55 A.3d at 693.

In support of this conclusion, the Court of Appeals of Maryland cited Supreme Court case law, which expressly rejected a rule that every suspect who believes that the police have enough evidence to arrest him or her is in custody. *Thomas*, 429 Md. at 267, 55 A.3d at 693 (citing *Howes v. Fields*, 132 S. Ct. 1181 (2012)). The Court of Appeals of Maryland emphasized that courts should strongly rely on the totality of the circumstances when determining whether one is in custody. *Thomas*, 429 Md. at 267, 55 A.3d at 693.

The court then applied the totality of the circumstances test, beginning with what occurred before the interview began. *Thomas*, 429 Md. at 262, 55 A.3d at 690. Although law enforcement officers initiated contact with Thomas, the record reflected that they requested, rather than demanded, his presence at the police station. *Id.* According to the court, this, combined with the fact that Thomas drove himself to the police station, weighed against a finding of custody. *Id.*

The analysis then turned to the nature of the interview itself. The interview took place in the child interview room, which was full of children's toys and a couch. *Thomas*, 429 Md. at 262, 55 A.3d at 690. Further, there were only two officers, both of whom were unarmed, polite, and in plain clothes. *Id.* Finally, law enforcement officers never physically restrained Thomas, they told him multiple times that he was not under arrest, and the door was unlocked. *Id.* at 263-64, 55 A.3d at 690-91. Ultimately, these factors weighed against a finding of coercion or custody. *Id.*

The holding in *Thomas* emphasizes that there is no talisman for determining whether a custodial interrogation occurred, thereby triggering *Miranda*, as neither a confession nor subjective belief of probable cause to arrest is determinative. Practitioners must give due consideration to the totality of the circumstances when determining whether a defendant's *Miranda* rights were violated. It is critical that defense attorneys consider not only the circumstances of the interrogation, but also the circumstances leading up to and following the interrogation when deciding whether to file a motion to suppress a defendant's statement.