

COURT OF APPEALS OF MARYLAND

Thomas v. State

429 Md. 246 (2012) · Decided October 26, 2012

SUMMARY

The Maryland Court of Appeals reviews whether statements made by Thomas during a police-station interview were obtained during a custodial interrogation requiring Miranda warnings. The court holds that a suspect’s belief that police may have probable cause to arrest is insufficient by itself to establish custody and concludes that, under the totality of the circumstances, Thomas was not in custody when he confessed. The court therefore determines that the motion to suppress should have been denied.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Battaglia, J.; Bell, C.J.; Greene, J.; Adkins, J.
JURISDICTION	Maryland
DECIDED	October 26, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	The State appealed the circuit court's order suppressing Thomas's statements made during a police-station interrogation without Miranda warnings. The Court of Special Appeals reversed, and the Court of Appeals granted Thomas's petition for certiorari.
STANDARD OF REVIEW	Review of a suppression ruling is limited to the suppression-hearing record. The appellate court accepts the suppression court's first-level factual findings and credibility determinations unless clearly erroneous, views the evidence in the light most favorable to the prevailing party, and independently appraises the constitutionality of the statements by applying the law to the facts.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State v. Thomas

TOPICS

- miranda rights
- suppression of evidence
- criminal procedure
- fifth amendment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a suspect's belief that police have sufficient evidence or probable cause to arrest him renders him in custody for purposes of Miranda.
2. Whether, under the totality of the circumstances, Thomas was subjected to custodial interrogation when he voluntarily went to a police station, was questioned by two plainclothes detectives in an unlocked room, was told he was not under arrest, and confessed before being arrested.

HOLDINGS

1. A suspect's belief that police may have probable cause or sufficient evidence to arrest him is not, by itself, sufficient to establish custody for Miranda purposes. The objective circumstances of the interrogation, rather than the subjective beliefs of the suspect or officers, control.
2. Thomas was not in custody for Miranda purposes when he made the statements. The totality of the circumstances—including his voluntary arrival, lack of physical restraint, the unlocked door, repeated statements that he was not under arrest, and the detectives' unarmed and nonconfrontational manner—would have led a reasonable person to feel free to end the encounter and leave.

KEY QUOTATIONS

“We shall hold that a belief held by a suspect that police may have probable cause to arrest him or her is not sufficient to render the individual in custody for Miranda purposes.” (252)

“Our review of a grant or denial of a motion to suppress is limited to the record of the suppression hearing.” (259)

“Given these facts, even when viewed in the light most favorable to Thomas, a reasonable person in Thomas’s situation would have felt free to end the encounter and leave.” (272)

FACTUAL BACKGROUND

Thomas voluntarily drove to a police station after police asked to speak with him and his wife told him the matter concerned allegations that he had sexually abused their daughter. Two plainclothes, unarmed detectives questioned him for approximately an hour and a half in a room with an unlocked door, told him repeatedly that he was not under arrest, but did not tell him expressly that he was free to leave. Thomas confessed to sexually abusing his daughter and was arrested approximately twenty minutes after the interview ended.

PROCEDURAL HISTORY

Thomas moved to suppress statements he made during an approximately ninety-minute police interview. The Circuit Court for Montgomery County granted the motion, finding that the interview was custodial. The State appealed under Maryland Courts and Judicial Proceedings Article section 12-302(c)(3)(i). The Court of Special Appeals reversed in a reported opinion, and the Court of Appeals affirmed that reversal.

DISPOSITION

CASES CITED

- State v. Thomas, 202 Md. App. 545, 33 A.3d 494 (2011)
- Thomas v. State, 425 Md. 227, 40 A.3d 39 (2012)
- Abeokuto v. State, 391 Md. 289, 893 A.2d 1018 (2006)
- State v. Tolbert, 381 Md. 539, 850 A.2d 1192 (2004)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011)
- Whitfield v. State, 287 Md. 124, 411 A.2d 415 (1980)
- Vines v. State, 285 Md. 369, 402 A.2d 900 (1979)
- Thompson v. Keohane, 516 U.S. 99 (1995)
- Owens v. State, 399 Md. 388, 924 A.2d 1072 (2007)
- Ransome v. State, 373 Md. 99, 816 A.2d 901 (2003)
- Stansbury v. California, 511 U.S. 318 (1994)
- Berkemer v. McCarty, 468 U.S. 420 (1984)
- United States v. Moya, 74 F.3d 1117 (11th Cir. 1996)
- United States v. Woods, 720 F.2d 1022 (9th Cir. 1983)
- United States v. Chee, 514 F.3d 1106 (10th Cir. 2008)
- Locke v. Cattell, 476 F.3d 46 (1st Cir. 2007)
- Commonwealth v. Hilton, 443 Mass. 597, 823 N.E.2d 383 (2005)
- State v. Oney, 187 Vt. 56, 989 A.2d 995 (2009)
- State v. Pinder, 250 Conn. 385, 736 A.2d 857 (1999)
- State v. Smith, 546 N.W.2d 916 (Iowa 1996)
- State v. Isaac, 2004 Ohio 4683
- Buck v. State, 181 Md. App. 585, 956 A.2d 884 (2008)

OPINION

BATTAGLIA, J.

BATTAGLIA, J. In this case, we review the issue of the admissibility of a confession given in the absence of Miranda warnings.¹ Konnyack Thomas, Petitioner, having been contacted by police, agreed to speak with the officers at the station. Prior to his arrival, he spoke with his estranged v/ife who informed Thomas that the police wanted to speak to him about accusations of sexual abuse made by their daughter against Thomas.

When he arrived at the station, Thomas met with two detectives and spoke with them for approximately an hour and a half, during which he confessed to touching his daughter

inappropriately and having intercourse -with her. Thomas was arrested approximately twenty minutes after the interview concluded and was charged in the Circuit Court for Montgom*250ery County with one count of sexually abusing a minor, two counts of second degree rape, and six counts of second degree sexual offense.

Prior to trial, Thomas filed a motion to suppress all of the statements he had made and argued that he had not been given Miranda warnings at the time he arrived at the police station, although he should have been. The circuit court judge agreed and suppressed the statements.

The State appealed, pursuant to Section 12 — 302(c)(3)(i) of the Courts & Judicial Proceedings Article of the Maryland Code (1973, 2006 Repl. Yol.),² and the Court of Special Appeals reversed in a reported *251opinion, *State v. Thomas*, 202 Md.App. 545, 33 A.3d 494 (2011), because they determined that Thomas was not in custody at the time he gave the statements at issue.³ We granted Thomas's Petition for Certiorari, 425 Md. 227, 40 A.3d 39 (2012), to consider the following questions: 1.

Is a person in custody for purposes of Miranda if, prior to questioning inside a police station, police have sufficient evidence to make an arrest and the person knows this, even if the police also tell the person "you are not under arrest"? 2. Did the Court of Special Appeals err when it found that petitioner was not in custody even though at the time petitioner was interrogated by police inside a police station he knew that his wife and daughter had told police that he had been sexually assaulting his daughter, police confronted him with this information, petitioner was noticeably having a "difficult time" prior to questioning, and police never told petitioner he was free to leave or that he did not have to cooperate with them and only told him he was not under *252arrest after petitioner was alone with two detectives in a closed room inside a police station?

We shall hold that a belief held by a suspect that police may have probable cause to arrest him or her is not sufficient to render the individual in custody for Miranda purposes. We shall further hold that the motion to suppress Thomas's statements should have been denied because, given the totality of the circumstances, Thomas was not in custody at the time he made the statements.

During the suppression hearing, the judge viewed a video, as well as admitted its transcript, of the police interrogation and Thomas's statements and heard testimony from Detective Kristie Thorpe, one of the detectives who interrogated Thomas; Thomas also testified on his own behalf. Thereafter, the judge made the following factual findings related to the events preceding Thomas's arrival at the police station:⁴ The facts are in this case as this Court finds them are that the detectives are, called the defendant to the station not to talk about the situation with his daughter.

Notwithstanding, very good detective work initially, told him that he was invited down to the police station. Such invitations generally mean trouble, and this one did. On the way to the police station the Court finds that the defendant's wife talked -with him on the phone and gave him more

information about what this really was about and this was about their daughter [C.] and his alleged sexual abuse of her.

The defendant in this motions hearing took the stand and said that he thought initially that it might be about a runaway son until his wife informed him that it wasn't. Now it's relevant in this case that the defendant, Mr. Thomas, is a sergeant in the United States Army. I think it's a reasonable inference that if the police want to talk to you about your children, and particularly when he finds out *253that it's about his daughter, that a sergeant who is a supervisor in the United States Armed Forces does not want police detectives coming on the base to talk to him about sexually abusing his daughter.

I think it's a reasonable inference. So, certainly, he was going to go down to the police station to talk to them, as opposed to having them come to him. With respect to what occurred when Thomas arrived at the police station, the judge found that the officers informed Thomas that he was not under arrest and the door was unlocked,⁵ but did not tell Thomas he was free to leave: Now, he gets to the police station and the detective tells him the following things.

They greet him and they tell him it is a police station. It "doesn't look like" one, but it's a police station. They tell him, "You are not under arrest," and that the door is unlocked. Now what does that mean? You're not under arrest and the door is unlocked. If he was free to leave and he could get up and walk out if he wanted to, why didn't they just say that?

Why stop by telling him, after telling him the door is unlocked? Now for the record, the Court asked the State's Attorney, and she complied with the request, showed a portion of the CD of the interview. The Court observed that during the course of the interview the defendant is sitting on a sofa and *254he has two detectives sitting in front of him, the one asking most of the questions, Detective Thorpe, who testified here today; and Detective Birch, a male detective, is sitting also in front of him, but just a short, a great, a little further away.

They're polite. They're courteous. They're very respectful. They are detectives wearing plain clothes. But the detective never told him that he was free to leave. The court then identified the "totality of the circumstances" test used to determine whether an individual is in custody for purposes of Miranda and explained that it requires an objective analysis of all the facts particular to the case at hand: Now the State argues that the defendant was free to leave and the Court raises the question what reasonable person in a police interrogation room thinks that they can just get up and walk out?

The Court, the issue is not whether they could, but whether a reasonable person would believe they could. And it's an objective standard as the Court said. Now in an interview of one suspected of a crime by the police will have coercive aspects to it simply by virtue of the fact that they're the

police and they're in the law enforcement system. And the Court said that in a case cited by the State, *Abeokuto v. State*, at 391 Md. 289 [893 A.2d 1018 (2006)].

You know, inherently, if you're being interviewed by the police, and particularly in a police station, there is some coercive aspect to it. The Court, in deciding whether an interrogation is custodial, must consider the totality of the circumstances on a case-by-case basis. Now, obviously, the State wants to argue the facts the way they see them.

The Defense argues the facts the way he sees them and, but the Court must decide what the facts are as the apply, as the law applies to him in this case. And the Court considers all of the facts, not just the facts that the State wants the Court to consider or just the facts that the Defense wants the Court to consider. *255The judge then considered the nature of interrogations that occur at police stations and stated that, although he did not believe the detectives intended to do anything inappropriate, "a system of subterfuge has developed in the law enforcement community with respect to interrogation techniques" and further opined that interrogations occurring at a police station are "inherently custodial" and professed disbelief that a person could confess to a serious crime such as murder or sexual assault and be allowed to leave: The Court does not find that there was any intention by the detectives to do anything improper.

However, a system of subterfuge has developed in the law enforcement community with respect to interrogation techniques. The defendant was not at the station for a social visit. The detectives wanted to make this prosecution. They told the defendant he was not under arrest and the door was unlocked. It's a scary thought to think that in this community a citizen can walk into a police station, confess to a violent crime and then they are free to leave.

The State argues that a man who goes in and says that I was, I sexually abused my daughter can just leave. And that flies in the face of reason that you could go in and confess to a murder and just walk out of the station, you're not under arrest and you're not, and you're not in custody. Now interrogations in police stations are inherently custodial whether they are coercively so or whether it's to the extent that it's violative of the requirements of *Miranda* is what these cases are all about.

And that's why the Court must consider each factual situation on its own legs. Each of the cases cited by counsel, both the State and the Defense, if you look at the facts, they're all different and that's why the cases are at the Appellate Court and that's why the opinions read as the way they do, read the way they do. Each case is different and this one is also.

Now interrogations of suspects in police stations are distinguishable from police encounters on the street. And there is a number of cases where police officers have *256encountered people on the sidewalk, say "can I talk to you" or want to question an individual and the individual keeps walking and says "I don't have to talk to you" or something of this nature.

I don't know of any cases, as I said earlier, where a person just gets up and just walks out of a police station or feels that he can. What reasonable person would think that? The judge then made additional findings of fact with respect to the interview room and the nature of the questions being asked, finding, specifically, that there were two detectives in the room, that the door was unlocked, that Thomas was told he was not under arrest but was not told he was free to leave, and that the questioning was designed to gather evidence rather than "to find out what happened": Now, the Court considers the facts in this case further as follows.

The defendant was being interviewed in the police station. The defendant was in a police interview room with two detectives, notwithstanding the fact that the door was unlocked as the defendant was told. He was also told that he was not under arrest. He was not told that he was free to leave.

The Court also considers that the questions that were being asked were specific not so much as to find out what happened. These questions weren't to find out what happened, simply to find out what happened. These questions were being asked to gather evidence. That's what the detectives were doing, they were gathering evidence. What did you do? Where was she touched?

When did it start? How many times did you do it? And the argument is that Miranda warnings should not have been given? Parenthetically maybe a lawyer could have helped this family and this case, the State and the community. Given the facts in this case, that the State believes and it appears are strong facts, given the facts in this case, maybe a lawyer would have worked out a reasonable plea bargain for the *257defendant and maybe this entire family would have been helped.

The judge then expressed skepticism regarding the State's arguments supporting the introduction of the statements, indicating that the detectives wanted to "get this guy for committing a horrible crime and they used this technique." The court noted that it believed Miranda warnings are frequently not given because those being interviewed request an attorney after being advised of their rights and police are prevented from getting further information: The State claims that what they want to do is help the family.

Well, maybe the family could have been helped by the legal community as opposed to, unfortunately we all know, and it's not necessary for me to go into it, what happened to this family and what will happen to this family after that, close parentheses.

The State has the burden to prove by a preponderance of the evidence that this was not a custodial interrogation, that those things that the State argues were accurate, that the defendant was free to leave and this was just a nice little conversation sitting on a nice, looks like soft, comfortable sofa sitting back just talking. They weren't sitting back just talking.

They were building a case. And they weren't trying to find out — This wasn't a whodunit. This was "You did it," we want to know what you did, when you did it, how many times you did it.

Now law enforcement in this case would have been better served if the defendant had been read his Miranda rights and the court talks about that in *Argueta v. State*, which is at 136 Md.App.

273 [764 A.2d 863 (2001)]. At the end of the day, this query remains, what is wrong with giving people their Miranda rights? And I'll tell you what's wrong with it. As soon as defendants are given their Miranda warnings, they often lawyer up. And when they lawyer up, they don't get the information that the detectives want to get. *258As I said before, I don't find that there was any intention by these detectives to do anything improper.

They were, they wanted to do what detectives do and what, you know, prosecutions in the system does. They wanted to get this guy for committing a horrible crime and they used this technique. If they weren't going to give him, tell him completely what was going on, why did they tell him partially? Now when the officer took the stand, and this was very telling, and I don't want to misquote her, but there was some suggestion in the beginning that she told him some certain things that she didn't tell him.

Mr. Gambrell argues that they probably usually tell them that they are free to leave, but she didn't do it this time. She just told him that the door was unlocked and why do that? Why say the door is unlocked if he's — why not just say "You're free to go, you're not in custody"?

The court then granted the Motion to Suppress, reasoning that no reasonable person would feel free to leave the room after confessing: Well, at the end of the day, guess what? He was in custody. He was placed under arrest. And he was placed under arrest based upon the information that he had given to them without the benefit of Miranda warnings and he was in custody.

This was a custodial interrogation. That no reasonable person would have thought they could get up and walk out of that room after they confessed to committing a violent crime. That is just completely unreasonable to think that anybody would think they could go into a police station, sit down in an interrogation room, admit a violent crime and they're free to leave.

And I don't think any lawyer in this room really believes that a person can go in a police station and confess to a violent crime and say, "I'll see you later." That just isn't going to happen. It doesn't happen in the real world. And the technique of doing that ought to be stopped and this *259message is sent.

The motion to suppress that statement is granted. Our review of a grant or denial of a motion to suppress is limited to the record of the suppression hearing. The first-level factual findings of the suppression court and the court's conclusions regarding the credibility of testimony must be accepted by this Court unless clearly erroneous.

The evidence is to be viewed in the light most favorable to the prevailing party. We "undertake our own independent constitutional appraisal of the record by reviewing the law and applying it to the

facts of the present case.” *State v. Tolbert*, 381 Md. 539, 548, 850 A.2d 1192, 1197 (2004) (internal citations omitted).

In its landmark decision in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the Supreme Court held that an individual in custody must be informed of certain rights prior to being interrogated so that he or she is not compelled into incriminating himself or herself in violation of the Fifth Amendment. *Id.* at 467-68, 86 S.Ct. at 1624-25, 16 L.Ed.2d at 720-21; see also *J.D.B. v. North Carolina*, — U.S.—, 131 S.Ct.

2394, 180 L.Ed.2d 310 (2011); *Whitfield v. State*, 287 Md. 124, 131, 411 A.2d 415, 420 (1980) (“In this regard, we observe that statements which are obtained from a defendant during questioning conducted without the benefit of Miranda warnings, as concededly occurred here, need only be excluded from evidence if they ‘flow from a custodial interrogation within the meaning of Miranda,’ ” quoting *Vines v. State*, 285 Md. 369, 374, 402 A.2d 900, 903 (1979)).

In analyzing whether an individual is in custody for Miranda purposes, we ask, under the “totality of the circumstances” of the particular interrogation, “would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.” *Thompson v. Keohane*, 516 U.S. 99, 112, 116 S.Ct. 457, 465, 133 L.Ed.2d 383, 394 (1995); see also *Owens v. State*, 399 Md. 388, 428, 924 A.2d, 1072, 1095 (2007); *Whitfield*, 287 Md. at 141, 411 A.2d at 425.

The “totality of *260the circumstances test” requires a court to examine the events and circumstances before, during, and after the interrogation took place. *Owens*, 399 Md. at 428-29, 924 A.2d at 1095-96; *Whitfield*, 287 Md. at 140-41, 411 A.2d at 425. A court, however, does not parse out individual aspects so that each circumstance is treated as its own totality in the application of the law.

Rather, when doing a constitutional analysis, a court must look at the circumstances as a whole. *Ransome v. State*, 373 Md. 99, 104, 816 A.2d 901, 904 (2003) (stating that a court conducting a “totality of the circumstances test” must not “parse out each individual circumstance for separate consideration”).⁶ In *Owens v. State*, 399 Md. 388, 924 A.2d 1072 (2007), one of our recent cases, we relied on our decision in *Whitfield v. State*, 287 Md. 124, 411 A.2d 415 (1980), in which we explicitly delineated those facts and events that are often relevant to this analysis.

We noted that a court should consider the length and location of the interview, the number of police involved, restraint on the suspect, how the defendant got to the interview, and whether the suspect was arrested after the interview concluded: when and where it 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 *261officers.

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. *Owens*, 399 Md. at 429, 924 A.2d at 1095-96, quoting *Whitfield*, 287 Md. at 141, 411 A.2d at 425. These facts, of course, are not exhaustive, but do give a roadmap for a court to follow.

The suppression judge, however, while acknowledging the totality test, did not follow the roadmap provided in *Whitfield* and *Owens*. Rather, the judge based his conclusion that Thomas was initially in custody on the bases that Thomas was at the police station and that he later confessed. If confession is the trigger for custody, however, then each person who confesses in a police station must have been given Miranda warnings per se, which is without basis in Miranda jurisprudence.

See *United States v. Chee*, 514 F.3d 1106, 1114 (10th Cir.2008) (stating, in the course of considering whether Chee's confession at a police station rendered him in custody, that "[n]o Supreme Court case supports [the] contention that admission to a crime transforms an interview by the police into a custodial interrogation" (internal quotation marks and citations omitted)); see also *Locke v. Cattell*, 476 F.3d 46, 53 (1st Cir.2007) (stating that a confession does not automatically turn an interview into a custodial interrogation, when considering whether Locke was in custody after he confessed to a robbery while being interviewed at the police station); *Commonwealth v. Hilton*, 443 Mass. 597, 823 N.E.2d 383, 397 (2005) (stating that the defendant, who had confessed while at a police station being interviewed, was not in custody thereafter, because there was no "fundamental transformation in the atmosphere" of the interview) (internal quotations and citations omitted); *State v. Oney*, 187 Vt. 56, 989 A.2d 995, 999-1000 (2009) ("A non-custodial situation does not become custodial automatically because the interviewee has confessed to a crime....

A confession is just one of the circumstances to consider in evaluating whether a reasonable person would feel free to leave."). *262In the present case, the trial court's fact-finding was severely truncated by the judge's impressions of the context of the interview and the confession. *Whitfield*, however, dictates that fact-finding, in Miranda circumstances, should follow the formula applied by the Court of Special Appeals in the instant case.

With respect to what occurred before the interview began, our intermediate appellate court found that Thomas had driven himself to the police station: Here, a police officer called [Thomas] and asked if he could "come down to the [police] station," telling him that it had to do with one of his children. [Thomas] agreed and drove himself to the police station.

Although the police initiated the contact, the record reflects that the police requested [Thomas]'s presence rather than demanded it, and [Thomas] drove himself to the police station. These facts do not suggest police coercion or restraint. Indeed, by driving himself, [Thomas] had the ability to drive himself home if he had decided to end the interview and leave.

The circumstances preceding the interview weigh against a finding of custody. Thomas, 202 Md.App. at 570, 33 A.3d at 509. With respect to nature of the interrogation room, the Court of Special Appeals also noted that Thomas was interviewed in the police station, and that the interview room was adorned with children's toys and a couch: [T]hat the questioning of [Thomas] occurred in a police station is a factor to consider, but it is not determinative.

Moreover, we note that the interview here occurred in a child interview room, with teddy bears and a couch. This room, which Detective Thorpe characterized as one that did "not look like a police facility," was not, by itself, intimidating. Id. at 571-72, 33 A.3d at 510. Our brethren further found that there were only two officers present, both of whom were not in uniform, did not have weapons, and were "polite," "courteous," and "respectful." *263 We turn next to the manner in which the interview was conducted.

The trial court found, and the record reflects, that the officers were "polite," "courteous," and "respectful." This weighs in favor of a finding that [Thomas] was not in custody. See *State v. Smith*, 546 N.W.2d 916, 924 (Iowa 1996) (court looks to "whether a confrontational and aggressive style is utilized in questioning, or whether the circumstances seem more relaxed and investigatory in nature").

Only two officers were present during the questioning, and they both were unarmed and dressed in plain clothes. These facts weigh against a finding that the questioning was conducted in a coercive manner. See id. (noting cases finding custody where numerous officers were present and some visibly armed, but no custody where only two officers were present). Thomas, 202 Md.App. at 572, 33 A.3d at 510.

With respect to the level of restraint involved in the interview, the intermediate appellate court found that Thomas was never physically restrained and the officer repeatedly told him he was not under arrest,⁷ even after he confessed: *264 With respect to whether there was "the presence of actual physical restraint... or things equivalent to actual restraint," Owens, 399 Md. at 429, 924 A.2d 1072 (quoting Whitfield, 287 Md. at 141, 411 A.2d 415), that factor also weighs against a custody finding.

[Thomas] was never physically restrained, and there was no armed guard at the door. Although the two officers sat between [Thomas] and the door, the officers were unarmed and never indicated that they would stop [Thomas] from leaving.

In fact, they specifically advised that the door was unlocked. Moreover, [Thomas] was told, on several occasions, that he was not under arrest. Detective Thorpe so advised [Thomas] at the beginning of the questioning. Toward the end of the questioning, when [Thomas] sought to clarify that he was not under arrest, but he was going to jail, Detective Thorpe stated: "I don't like to lie to people, so what I will tell you is that you're not going to jail tonight.

Is there a possibility that you will in the near future? There is a possibility." Thomas, 202 Md.App. at 572-73, 33 A.3d at 510. With respect to whether Thomas "was being questioned as a suspect or a witness", Owens, 399 Md. at 429, 924 A.2d at 1096, the court noted that Thomas was informed by his wife before he got to the police station that he was under investigation for sexual abuse, and thus was aware he was a suspect, but the court did not make a determination as to whether this weighed for, weighed against, or was not relevant to a custody determination: Another factor to consider in the custody analysis is " 'whether the defendant was being questioned as a suspect or as a witness.' " Owens, 399 Md. at 429, 924 A.2d 1072 (quoting Whitfield, 287 Md. at 141, 411 A.2d 415).

This *265 factor is relevant, however, only if it is communicated to the suspect because "custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." Stansbury, 511 U.S. at 323, 325, 114 S.Ct. 1526.

Here, [Thomas] knew, before arriving at the police station, based on his conversation with his wife, that he was being investigated for sexually abusing his daughter. At the beginning of the interview, [Thomas] advised the officers that he knew he was there to talk about his daughter, stating that it was "kind of hard to talk about." Detective Thorpe told [Thomas] that they had spoken with C., and she told them "some things that have been going on for quite some time between you and her." [Thomas] then admitted to touching and abusing his daughter.

Thomas, 202 Md.App. at 573-74, 33 A.3d at 511. Our brethren also noted that Thomas admitted to sexually abusing his daughter, and that the trial court found this factor to be of great importance: The circuit court considered as a strong factor in favor of finding custody that [Thomas] not only knew he was a suspect, but he actually admitted sexually abusing his daughter.

The court stated that "no reasonable person would have thought they could get up and walk out of that room after they confessed to committing a violent crime." Thomas, 202 Md.App. at 575, 33 A.3d at 511. The court noted that some appellate courts take the position that a confession does not automatically convert an noncustodial interview into a custodial one, stating that a confession was a factor to be considered, but it was not dispositive.

Thomas, 202 Md.App. at 575-76, 33 A.3d at 512-13. With respect to the instant case, the court determined that, since there was no change in the atmosphere of the interrogation after Thomas

confessed, and “none of the objective circumstances of the interrogation changed,” Thomas’s confession did not render him in custody: Here, early on in the interview, [Thomas] admitted to engaging in sexual conduct with his 14-year-old daughter.

Although this was an admission to a serious crime, none of the objective circumstances of the interrogation changed as a result of [Thomas]’s inculpatory remarks. [Thomas]’s incriminating statements did not render the interrogation custodial. *Id.* at 577, 83 A.3d at 513.

Finally, with respect to what occurred after the interview concluded, the Court of Special Appeals noted that Detective Thorpe did not intend to place Thomas under arrest at the beginning of the interview, but her intention changed and Thomas was arrested twenty minutes after the questioning was concluded: In this case, [Thomas] was arrested twenty minutes after the questioning was concluded.

As explained below, however, this did not transform the questioning into custodial interrogation. The Supreme Court of Connecticut has stated that, although the failure to arrest a suspect supports a finding of no custody, the reverse may not be true; that the defendant was arrested after the interrogation does not necessarily mean that he or she was in custody during the interrogation.

State v. Pinder, 250 Conn. 385, 736 A.2d 857, 876 (1999). * * * Detective Thorpe testified, without contradiction, that when she began the interview, she did not intend to place [Thomas] under arrest. Her intentions changed “toward the end of the interview,” when [Thomas] told her that he “wasn’t coping well,” and she “became concerned about his safety.” Although Detective Thorpe’s subjective intent is not a factor, it is consistent with the manner of the questioning here.

[Thomas]’s arrest under the facts of this case *267 should be given neutral status; it does not weigh in favor of or against a finding of custody. *Thomas*, 202 Md.App. at 577-78, 33 A.3d at 513. Turning, now, to the questions at hand, we note that, initially, Thomas asks that we adopt a presumption that an individual is in custody when “police have sufficient evidence to make an arrest prior to questioning; the person knows this before being questioned; and the questioning then takes place away from public view inside a police station.” Essentially, he is stating that he was in custody because he believed that police had enough evidence to arrest him.

The State responds by noting that the presumption of custody Thomas is requesting would be akin to a categorical rule that every suspect who believes police have enough evidence to arrest him or her is in custody. The State argues that the Supreme Court explicitly rejected a categorical rule in *Howes v. Fields*, — U.S.—, 132 S.Ct. 1181, 182 L.Ed.2d 17 (2012), in which the Court reiterated that a trial court should have considered all the facts surrounding an interrogation of a prison inmate to determine if the interrogation was custodial or not.

With respect to the first issue presented by the presumption Thomas requests, it is clear that his assumptions regarding the state of the evidence against him is irrelevant in a *Miranda* analysis.

Stansbury v. California, 511 U.S. 318, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994) (per curiam).

In *Stansbury*, the Supreme Court considered whether it was appropriate for the California Supreme Court to have considered the interrogating officer's subjective beliefs regarding *Stansbury's* culpability. The Supreme Court held that it was not, stating that, "[o]ur decisions make clear that the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned." *Id.* at 323, 114 S.Ct. at 1529, 128 L.Ed.2d at 298 (emphasis added).

See also *United States v. Moya*, 74 F.3d 1117, 1119 (11th Cir.1996) ("The test is objective: the actual, subjective beliefs of the defendant and the interviewing officer on whether the defendant was free to leave are irrelevant.").

The instant case is, however, even more attenuated than whether Thomas's assumed there was enough evidence against him — he presumed that the officers believed they had probable cause to arrest him. Even assuming that Thomas's assumption was relevant, his belief was predicated upon uncommunicated thoughts, which cannot form the basis for requiring Miranda warnings, as the Supreme Court recognized in *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct.

3138, 82 L.Ed.2d 317 (1984). In *Berkemer*, the Court was concerned with whether the roadside detention and questioning of a driver violated Miranda. The Court held that it was irrelevant that the officer "apparently decided as soon as [McCarty] stepped out of his car that he would be taken into custody and charged with a traffic offense," because the officer never communicated the decision to the defendant.

Id. at 442, 104 S.Ct. at 3151, 82 L.Ed.2d at 336. The Court explicitly rejected McCarty's argument that once the officer had probable cause to arrest him, he was in custody, stating that, [t]he threat to a citizen's Fifth Amendment rights that Miranda was designed to neutralize has little to do with the strength of an interrogating officer's suspicions. And, by requiring a policeman conversing with a motorist to constantly monitor the information available to him to determine when it becomes sufficient to establish probable cause, would be extremely difficult to administer.

Id. at 435 n. 22, 104 S.Ct. at 3148 n. 22, 82 L.Ed.2d at 331 n. 22. The same holds true in the present case. Whether police officers have sufficient evidence to arrest, or believe they do, is irrelevant to a Miranda determination. *United States v. Woods*, 720 F.2d 1022, 1031 (9th Cir.1983) ("[W]hether or not the police have probable cause for arresting the suspect, has no relevance as to when the person's right to receive warnings attaches." (internal citation and quotation marks omitted)). *269 Thomas, nevertheless, asserts, in his second question, that an analysis of all the factors surrounding his interrogation supports that he was subjected to custodial interrogation as soon as he entered the police station: key factors that point to petitioner being in custody include: 1) prior to questioning, petitioner was aware that the police had been told by his wife and daughter

that he had been sexually assaulting his daughter, thus he knew they had sufficient evidence to arrest him before he even said one word; 2) petitioner was questioned inside a police station interview room with two detectives seated between himself and a closed door; 3) the detectives never once told petitioner he was free to leave or did not have to cooperate; 4) police confronted petitioner with the evidence they had against him, his daughter's own words to them; and 5) he was actually placed under arrest shortly after the interrogation ended.

The State counters that the Court of Special Appeals correctly determined that Thomas was not in custody for the duration of his interview, highlighting that Thomas voluntarily came to the police station, was told he was not under arrest, was told the door was unlocked, was confronted with officers who were not in uniform or armed, and was left alone for a period of time.

A custody determination for Miranda purposes is factually intensive, given that the facts and circumstances surrounding each interrogation a court is asked to analyze will vary from case to case. *Whitfield*, 287 Md. at 139, 411 A.2d at 424. Rarely will one fact pattern be replicated from case to case, but analyses of similar factual patterns may provide the fodder for informed discussion.

One case with a factual pattern similar to the instant case is that of *United States v. Chee*, 514 F.3d 1106 (10th Cir.2008), in which the Court of Appeals for the Tenth Circuit considered whether Chee was in custody when he voluntarily came to the police station to discuss a firearm that he had found in a car he bought at a government auction; the police, however, *270 quickly began asking him about an alleged sexual assault they believed he committed.

Id. at 1110-11. Chee was lead by two investigators into an office, the door to which had been closed but not locked, to be questioned and was repeatedly told he was not under arrest and could go. The officers were not dressed in uniform, did not have guns or handcuffs visible, and never physically restrained Chee.

The tone of the questioning was calm and polite and did not change after he confessed to raping a woman. *Id.* at 1114. The interview lasted approximately an hour, during which Chee also wrote a letter of apology to the victim, at the investigators' suggestion, and provided a DNA sample. *Id.* at 1111. Chee was allowed to leave the police station after the interview concluded, but was, thereafter, arrested⁸ and charged with aggravated sexual abuse while in Indian country, Sections 1153(a) and 2241(a)(1) of Title 18 of the United States Code, and subsequently was convicted, after having unsuccessfully moved to suppress his statements.

Id. The Tenth Circuit affirmed, reasoning that Chee was not in custody when he confessed because the tone of the interview was non-confrontational, the interview was relatively short, and he had voluntarily come to the station. That court also discounted Chee's argument that once he confessed, he was in custody, stating, "[n]o Supreme Court case supports [the] contention that

admission to a crime transforms an interview by the police into a custodial interrogation.’ ” Id. at 1114, quoting *Locke v. Cattell*, 476 F.3d 46, 53 (1st Cir.2007).

Likewise, in *State v. Isaac*, Greene App. no. 2003-CA-91, 2004 Ohio 4683, 2004 WL 1949429, the Ohio intermediate appellate court also applied the totality of the circumstances test to facts similar to those now before us and determined that Isaac was not in custody when he confessed.

In the case, Isaac had driven himself to the interview at the police station, *271 which lasted about two hours and was conducted by two detectives. Isaac was seated in an interrogation room, but was not restrained in any way, and the door, although it was closed, was not locked.

The detectives told Isaac he was not under arrest and was free to go, the tone of the interview was relaxed and non-confrontational, and Isaac was left alone for periods of time. Isaac, 2004 Ohio 4683, at P23-P24, 2004 WL 1949429. While speaking with the detectives, Isaac confessed to having sexual contact with a ten-year-old child, and he was arrested following interrogation.

After unsuccessfully moving to suppress the statements he made at the police station as violative of his Miranda rights, he plead no contest to three counts of forcibly raping a child under ten years of age and was sentenced to three concurrent life sentences. Id. at PS-PS.

On appeal, the Ohio intermediate appellate court, inter alia, affirmed the denial of his motion to suppress. The court held that the aforementioned facts dictated a finding that Isaac was not in custody, stating that, “a reasonable person in Defendant’s position during this police interview would have understood he was free to walk away from the questioning by police and leave, despite being at the police station.” Isaac, 2004 Ohio 4683 at P25, 2004 WL 1949429.

Moreover, that court rejected Isaac’s assertion that once he confessed, he was in custody, stating, “[t]he mere fact that Defendant confessed to the crime during the interview, leading to his arrest at the conclusion of the interview, does not convert a non-custodial interview into one which is custodial.” Isaac, 2004 Ohio 4683 at P26, 2004 WL 1949429.

The courts in both *Ghee* and *Isaac* analyzed the introduction of the defendants’ statements from the outset of the interviews and then again when they confessed. In the present case, Thomas, however, only argues that he was in custody when he arrived at the police station, the salient facts of which are: that Thomas drove himself to the interrogation; that the interrogation took place at the police station; that the questioning was conducted in a small room filled with children’s toys, a couch, and two chairs by two officers who were *272 unarmed and not in uniform; that Thomas was seated, unrestrained, on the couch and was informed that the door to the room was unlocked, even though it was kept closed; and that the police told him numerous times that he was not under arrest, including at the outset of the interview.

Given these facts, even when viewed in the light most favorable to Thomas, a reasonable person in Thomas's situation would have felt free to end the encounter and leave. To be sure, the police never told Thomas "you are free to go." They did, however, tell him he was not under arrest, repeatedly, and that the door to the room was unlocked. Thomas also came to the police station of his own volition, even after being told the true nature of the conversation that was to occur.

He was not physically restrained, nor did the detectives interfere with Thomas's movements, although they were seated between him and the door. When all these factors are considered, we conclude, along with our brethren on the Court of Special Appeals, that, although the police never uttered the talismanic words "you are free to go," that Circuit Court judge erred in granting the Motion to Suppress.

Were Thomas to be asserting that his confession to inappropriate touching rendered him in custody, which he apparently does not, his arguments would still be disposed of under the rationale of Chee and Isaac. In addition to the fact that a confession does not, per se, render an individual in custody, once Thomas confessed the atmosphere in the room never changed, as was noted by the Court of Special Appeals.

See *Commonwealth v. Hilton*, 443 Mass. 597, 823 N.E.2d 383, 397 (2005) (stating that the important inquiry concerning confessions and Miranda is whether there was a "fundamental transformation in the atmosphere" of the interview). Thomas's admission to sexual offense involving his daughter did not render him in custody, just as Chee's admission to rape and Isaac's admission to forcible child rape did not render them in custody.

Thomas, however, cites *Buck v. State*, 181 Md.App. 585, 956 A.2d 884 (2008), to support his argument that he was in custody. In *Buck*, police officers wanted to question Buck regarding a murder that had occurred. *Id.* at 597, 956 A.2d at 891. They met him on the street and spoke with him about the murder, and one officer called his supervisor and informed him that "I think we got him." *Id.* The police came to Buck's house several days after this encounter on the street and asked him to come with them to the police station, but told him that he was not under arrest and was free to go.

Id. at 598, 956 A.2d at 891-92. Buck agreed to accompany them to the station house and, upon arriving, was lead to a secure part of the building for questioning. *Id.* at 599, 956 A.2d at 892. Buck was not permitted to walk around unescorted and was placed in an interrogation room containing only two chairs and a table. His interview lasted for five hours; when he asked to take a cigarette break, Buck was accompanied by an officer.

Id. After his break, Buck agreed to give a DNA sample and, shortly thereafter, confessed to the murder. *Id.* at 600-01, 956 A.2d at 893. The Court of Special Appeals held that Buck's statements

at the police station should have been suppressed because Buck was in custody and Miranda warnings were not given to him.

The court based this determination on the length of the interview, that the police confronted Buck with their suspicions that he was the murderer, that the police told him he was a suspect in the murder, and that he had been taken to the police station by the police. *Id.* at 624-25, 956 A.2d at 907-08. Buck is distinguishable from the instant case for many reasons, but certainly on the bases that five hours elapsed before Buck's confession and Buck's conduct was controlled by the officers even before he arrived at the police station.

Here, Thomas says as soon as he walked in to the police station he was in custody, requiring Miranda warnings. He was not. JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED. PETITIONER TO PAY COSTS IN THIS COURT AND THE COURT OF SPECIAL APPEALS. *274BELL, C.J., and GREENE, J., dissent. ADKINS, J., concurs and dissents.. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct.

1602, 16 L.Ed.2d 694 (1966). Under *Miranda*, police are required, prior to any custodial interrogation, to inform a suspect that he or she has a right to remain silent, that any statement he or she does make can be used as evidence against him or her, and that he or she has the right to the presence of an attorney, either retained or appointed. *Id.* at 467-69, 86 S.Ct. at 1624-25, 16 L.Ed.2d at 720-21..

Section 12-302(c) provides, in relevant part: (c) Criminal case. — In a criminal case, the State may appeal as provided in this subsection. (3)(i) In a case involving a crime of violence as defined in § 14-101 of the Criminal Law Article, and in cases under §§ 5-602 through 5-609 and §§ 5-612 through 5-614 of the Criminal Law Article, the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the Constitution of the United States, the Maryland Constitution, or the Maryland Declaration of Rights. (ii) The appeal shall be made before jeopardy attaches to the defendant.

However, in all cases the appeal shall be taken no more than 15 days after the decision has been rendered and shall be diligently prosecuted. (iii) Before taking the appeal, the State shall certify to the court that the appeal is not taken for purposes of delay and that the evidence excluded or the property required to be returned is substantial proof of a material fact in the proceeding.

The appeal shall be heard and the decision rendered within 120 days of the time that the record on appeal is filed in the appellate court. Otherwise, the decision of the trial court shall be final. (iv) Except in a homicide case, if the State appeals on the basis of this paragraph, and if on final appeal the decision of the trial court is affirmed, the charges against the defendant shall be dismissed in the case from which the appeal was taken.

In that case, the State may not prosecute the defendant on those specific charges or on any other related charges arising out of the same incident. (v) 1. Except as provided in subsubparagraph 2 of this subparagraph, pending the prosecution and determination of an appeal taken under paragraph (1) or (3) of this subsection, the defendant shall be released on personal recognizance bail.

If the defendant fails to appear as required by the terms of the recognizance bail, the trial *251court shall subject the defendant to the penalties provided in § 5-211 of the Criminal Procedure Article. 2. A. Pending the prosecution and determination of an appeal taken under paragraph (1) or (3) of this subsection, in a case in which the defendant is charged with a crime of violence, as defined in § 14-101 of the Criminal Law Article, the court may release the defendant on any terms and conditions that the court considers appropriate or may order the defendant remanded to custody pending the outcome of the appeal.

B. The determination and enforcement of any terms and conditions of release shall be in accordance with the provisions of Title 5 of the Criminal Procedure Article. (vi) If the State loses the appeal, the jurisdiction shall pay all the costs related to the appeal, including reasonable attorney's fees incurred by the defendant as a result of the appeal.. Thomas, in his brief before the Court of Special Appeals, also raised the issue of whether his statements should have been suppressed because they were made in reliance on a promise and were, thus, made involuntarily.

The Court of Special Appeals declined to address this issue, however, because, "with no factual findings by the circuit court on the issue of voluntariness, the record is not adequate for review of the issue by this Court." State v. Thomas, 202 Md.App. 545, 581, 33 A.3d 494, 515 (2011). This issue was not presented in Thomas's Petition for Certiorari and we do not consider it..

We, like our colleagues on the Court of Special Appeals, shall refer to the minor victim only by her first initial, C.. The dissent authored by Chief Judge Bell makes much of the fact that both parties, in their briefs, state that the outer door to the area in which the interrogation rooms were located had to have been opened with a key card when the detectives walked with Thomas into the interrogation room.

Essentially, that dissent is arguing that Thomas was, in fact, locked in the interrogation room because one needed a key to exit the outer door, even if the door to the actual interrogation room was unlocked. This is problematic for two reasons.

First, neither party asserts that a key card was needed to exit the outer door. More importantly, however, the trial judge's findings of fact are completely devoid of any mention of the outer door being locked, and the only statements regarding doors made by that judge were that they were unlocked.. Much of Thomas's brief is devoted to the type of parsing out that is inappropriate in utilizing the "totality of the circumstances" test.

Thomas, for example, refers to *Alvarado v. Hickman*, 316 F.3d 841 (9th Cir.2002) to argue that his being interviewed as a suspect indicates he was in custody, but he does not analyze the totality of the circumstances in *Hickman*; rather, he focuses exclusively on the issue of whether the person being interviewed was a suspect.. Chief Judge Bell, in his dissent, argues that the officer's conduct during the interview somehow contradicts their statements that Thomas was not under arrest, because "the petitioner was told that going free was not an option." That dissent, however, mischaracterizes the interaction between the detective and Thomas in an attempt to shoehorn the facts of this case into its theory.

After finishing writing his letter to his daughter, Thomas asked, "So how long before it officially happens?" The officer replied, "Let me ask you a question. If you went out of here tonight and you went home, are you going to be okay? Yeah, I don't think so." Thomas responded, "I don't think so." The officer then asked Thomas, "Would you prefer to just get this over with?" Thomas answered, "No, what I prefer is for it not to happen, I know that's not an option," to which the officer replied, "No, it's not." Contrary to Chief Judge Bell's dissent, this exchange does not contradict the officers' earlier statements that Thomas was not under arrest.

The officer asked Thomas whether he would prefer to be arrested that night or not. Thomas stated that he would prefer that he never be arrested, to which the officer replied that was not going to happen. All this exchange indicates is that Thomas would be arrested at some point in the future. It does not indicate that he was to be immediately taken into custody.

Regardless of the distinction, however, the above-quoted exchange happened, even by the dissent's admission, at the end of the *264interview, after he had confessed, both orally and in writing. Even if we were to accept the dissent's view that this interaction was an objective circumstance that would indicate to a reasonable person that he or she was not free to leave, and thus render Thomas in custody, it would not mandate the suppression of any evidence, as the exchange occurred after the incriminating statements were given..

Neither the Circuit Court, *United States v. Chee*, 514 F.3d 1106 (10th Cir.2008), nor the District Court, *United States v. Chee*, 2:05 CR 773, 2006 WL 2355837 (D.Utah August 15, 2006) identified precisely how much time elapsed between Chee's interview and his arrest.