STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 31, 2012
v	No. 302821 Saginaw Circuit Court
JEFFREY MONTREAL CURRY, Defendant-Appellant.	LC No. 06-027797-FC

Before: FITZGERALD, P.J., and MURRAY and GLEICHER, JJ.

GLEICHER, J. (*concurring in part and dissenting in part*).

I concur with the majority's conclusion that the trial court properly declined to suppress defendant's statements made following administration of the *Miranda* warnings.[1] I write separately to express respectful disagreement with the majority's analysis of the admissibility of defendant's pre-*Miranda* statements. I explained the legal basis for my disagreement with the majority in the separate opinion I filed when this Court originally affirmed defendants' convictions. *People v Curry*, unpublished per curiam opinion of the Court of Appeals, issued March 12, 2009 (Docket No. 279254) (GLEICHER, J., concurring in part and dissenting in part). In that opinion, I expressed my belief that pursuant to *Oregon v Elstad*, 470 US 298; 105 S Ct 1285; 84 L Ed 2d 222 (1985), defendant's initial responses to custodial questioning should have been excluded from evidence.

On remand, the majority holds that because the police "did not use physical violence or threat of force" to obtain defendant's first statement, it was not subject to suppression. *Ante* at 4. Citing *United States v Patane*, 542 US 630, 641; 124 S Ct 2620; 159 L Ed 2d 667 (2004) (plurality opinion), the majority suggests that admission of defendant's pre-*Miranda* statements would violate the Fifth Amendment only if the statements had been "actually coerced." *Ante* at 3. *Patane*, however, does not govern this issue – *Miranda* does. The question presented in *Patane* was whether "a failure to give a suspect the warnings prescribed by *Miranda v Arizona* . . . requires suppression of the *physical fruits* of the suspect's unwarned but voluntary statements." *Patane*, 542 US at 633-634 (emphasis added). The United States Supreme Court upheld the introduction of physical evidence (a Glock pistol) found after the defendant answered a

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

detective's questions during a custodial interrogation conducted without benefit of *Miranda* warnings. The Court explained that the "Self-Incrimination Clause . . . is not implicated by the admission into evidence of the physical fruit of a voluntary statement." *Id.* at 636.

The admission of defendant's initial statements violated *Miranda*'s directive that "the accused must be adequately and effectively apprised of his rights and the exercise of those rights must be fully honored." *Miranda*, 384 US at 467. "[U]nwarned statements made during a custodial interrogation are not admissible, regardless of whether the statements were voluntary or whether a constitutional violation occurred." *United States v Crowder*, 62 F3d 782, 786 (CA 6, 1995). Here, the police questioned defendant before administering the *Miranda* cautions. Defendant sought to preclude the introduction of his unwarned statements, not their fruits. Nothing in *Patane* alters the rule succinctly summarized in *Elstad*: "When police ask questions of a suspect in custody without administering the required warnings, *Miranda* dictates that the answers received be presumed compelled and that they be excluded from evidence at trial in the State's case in chief." *Elstad*, 470 US at 317. Although defendant waived his Fifth Amendment rights after the police provided him with the *Miranda* cautions, I continue to believe that his initial statements should have been suppressed. But because no evidence supports that the police engaged in a deliberate strategy to withhold *Miranda* warnings until a confession issued, and defendant's post-*Miranda* statements were voluntary, I agree that the second statements were properly admitted.

/s/ Elizabeth L. Gleicher