STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 27, 2001
v	No. 216577 Wayne Circuit Court
ROLONDO S. CAMPBELL, Defendant-Appellant.	LC No. 98-005310

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendant Rolondo S. Campbell was charged with possession of marijuana, MCL 333.7403(2)(d); MSA 14.15(7403)(2)(d) and carrying a concealed weapon, MCL 750.227; MSA 28.424. After a two-day bench trial defendant was convicted only of the carrying a concealed weapon charge. Defendant was sentenced to three months' probation. He now appeals as of right. We affirm.

Defendant was stopped by police for a cracked windshield and an air freshener hanging on the rear view mirror. Unable to provide police with his driver's license, vehicle registration, or proof of insurance, defendant was ordered out of the vehicle and placed under arrest. A search of defendant's person located a baggy of marijuana. As an officer removed the baggy from defendant's pocket, the officer asked, "What's this?" Defendant replied that the marijuana was for his personal use. Defendant was placed in the back of the patrol car.

Police then searched the vehicle, locating a loaded handgun under the passenger seat. An officer secured the handgun and placed it in the trunk of the patrol car. As the officer got into the patrol car, defendant stated "Come on man." The officer replied, "What do you mean, come on man?" Defendant then stated "That's for my protection, I have a shop, I need protection." Defendant was not read his *Miranda*[1] rights until he was subsequently interviewed at the police station.

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

The trial court found defendant's statement about the marijuana inadmissible on the ground that the statement was the product of a custodial interrogation and defendant had not been read his *Miranda* warnings. However, the trial court found defendant's second statement, concerning the handgun, admissible on the ground that it was entirely voluntary.

Defendant's only claim on appeal concerns his second statement. Defendant contends that this statement was also secured in violation of *Miranda* and was therefore inadmissible. We disagree.

We first note that defendant neither moved to suppress this statement in the trial court nor objected to its admission at trial. Accordingly, this issue was not preserved for appeal and to avoid forfeiture defendant must show: (1) that an error occurred; (2) that the error was plain, i.e., clear or obvious; and (3) that the plain error affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Grant*, 445 Mich 535, 548-549 ; 520 NW2d 123 (1994). If defendant satisfies these requirements, this Court must "exercise its discretion in deciding whether to reverse." *Carines, supra* at 763. Reversal is warranted only when a plain, unpreserved error results in an actually innocent defendant being convicted or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence. *Id*. at 763-764; *Grant, supra* at 549-550.

"The failure to give *Miranda* warnings prior to a statement made during a custodial interrogation renders the statement inadmissible for purposes other than impeachment." *People v Raper*, 222 Mich App 475, 479; 563 NW2d 709 (1997). We have elaborated on the concept of custody as follows:

> To determine whether a defendant was in custody at the time of the interrogation, we look at the totality of the circumstances, with the key question being whether the accused reasonably could have believed that he was not free to leave. The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned. [*People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999) (citations omitted).]

Meanwhile, "[i]nterrogation refers to express questioning and to any words or action on the part of police that the police should know are reasonably likely to elicit an incriminating response from the subject." *Raper, supra* at 479. However, statements made voluntarily by persons in custody do not fall with the purview of *Miranda*. *Id.*

It is uncontroverted that defendant was in custody when the statement at issue was made. Therefore, we must first determine if an interrogation occurred. Defendant suggests that he was interrogated because the officer expressly questioned him by stating, "What do you mean, come on man?" However, as explained in *People v O'Brien*, 113 Mich App 183, 193; 317 NW2d 570 (1982), a police officer's question, prompted by a defendant's volunteered remark, does not require defendant's responsive statement to be suppressed at trial. We find that the officer's response to defendant's volunteered remark, "Come on man," did not constitute custodial interrogation. See *People v Leffew*, 58 Mich App 533, 537; 228 NW2d 449 (1975).

Defendant also appears to contend that even if the officer did not expressly question defendant, the officer committed the functional equivalent when he seized the handgun from defendant's car, walked by defendant sitting in the back of the patrol car, and placed the handgun in the trunk of the patrol car. In *People v Benjamin*, 101 Mich App 637, 647-649; 300 NW2d 661 (1980), we addressed a similar situation and held that the police did not interrogate a defendant and were not required to give *Miranda* warnings after they "removed the knives from defendant's purse and held them up to her." We reasoned that the "isolated act of holding up the knives in front of defendant was *not* a practice which the officer should have known would be reasonably likely to elicit an incriminating response. Defendant's response was an unforeseeable result of the brief, unembellished gesture . . . ." *Id.* at 649 (emphasis in original; footnote omitted). Likewise, we find that the actions of the officer in the instant case were not designed to elicit a response from defendant.

Defendant's one truly cognizable argument is that his statement regarding possession of the handgun must be excluded because it followed his statement regarding the marijuana, which was found to be secured in violation of *Miranda*. Defendant relies on *People v Blackburn*, 135 Mich App 509; 354 NW2d 807 (1984). In *Blackburn*, police responded to the scene of a shooting. The defendant and several other individuals were present. One officer informed everyone that they would need to remain at the murder scene until questioned as to what happened, then asked if anyone present knew where the gun was. The defendant stood up and stated "I'll save everybody a lot of trouble. I'm the one that did it." *Id.* at 516. Police arrested the defendant and on the way to the patrol car he continued to make incriminating statements, stating "I'm the one who did it. I'm the one who shot him." *Id.* The defendant was only advised of his *Miranda* rights as he was booked at the police station.

This Court found that given the officer's specific instruction that the individuals could not leave until they gave statements, the defendant was in custody for the purposes of *Miranda* at the time the officer asked his question concerning the murder weapon. *Id.* at 518. The defendant's initial statement, his admission that he shot the victim, was accordingly suppressed on the ground that he could not reasonably have believed that he was free to leave until someone responded to the officer. *Id.* at 519. The defendant's subsequent volunteered statements were then excluded as "fruit of the poisonous tree." *Id.* This Court noted that in determining whether to suppress the statements because they were tainted by antecedent police misconduct, the question to be answered was whether there existed any causal connection between the failure to give *Miranda* warnings and the subsequent statements. *Id.* This Court stated:

> Utilizing this approach, we conclude that evidence of all of the statements given by defendant before he was given *Miranda* warnings must be suppressed. The time span between the initial statement given without the benefit of *Miranda* warnings and the statements made on the way to and in the patrol car was slight. Although these subsequent statements were not the product of interrogation but, rather, were volunteered, defendant having already admitted to the shooting, could well have believed that it was pointless not to speak freely." [*Id.* at 519-520.]

Here, unlike *Blackburn*, we find no causal connection. Although the trial court appropriately suppressed defendant's incriminating statement concerning his marijuana use, the

officer's failure to advise defendant of his *Miranda* rights before eliciting that statement was wholly unrelated to defendant's subsequent volunteered statement regarding the handgun. In *Blackburn* the defendant's statements were similar in nature, if not repetitive, and related to the singular offense to which defendant openly confessed in response to a police question. This Court's conclusion that the defendant may have believed it was pointless not to continue speaking about that one offense into which the police had inquired is accordingly understandable. Here, however, while in response to questioning defendant had made an admission concerning his marijuana possession, nothing suggested that the police sought information concerning the unrelated offense of carrying a concealed weapon. We conclude that defendant's unsolicited incriminating comments relevant to this separate and distinct latter offense were not tainted by the police conduct related to the investigation of the former offense.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy