COURT OF APPEALS
DECISION
DATED AND FILED

December 06, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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Appeal No. 2004AP1956-CR **Cir. Ct. No. 2003CF35**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARQUIS D. HUDSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Reversed and cause remanded*.

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 KESSLER, J. Marquis D. Hudson appeals from a judgment of conviction for robbery with threat of force, use of a dangerous weapon, party to a crime, entered following his guilty plea. Hudson also appeals from an order

denying his motion for modification of sentence. Hudson argues that the trial court should have suppressed incriminating statements he made while an officer conversed with him for approximately forty-five minutes while Hudson was handcuffed and in a squad car, before he was provided with ***Miranda*** warnings.[1] These statements fall into three categories: statements made in response to the officer's inquiries and prodding; statements regarding a gun used in the robbery; and statements overheard by the officer that Hudson made during a telephone call to his fiancé while seated in the squad car. We conclude that the statements Hudson made to his fiancé on the telephone need not have been suppressed. However, we conclude that Hudson's statements in response to the officer's questions and prodding, and the statements regarding the gun, should have been suppressed. Therefore, we reverse and remand for further proceedings consistent with this opinion. Because we reverse the judgment, we do not consider Hudson's arguments with respect to his sentence.

BACKGROUND

¶2 On January 1, 2003, two men entered a liquor store wearing masks. One of the men pointed a gun at employee Nail Mseitif and demanded money. Mseitif gave the men money, and they ran from the store. One of them fired the gun in the store before leaving, but no one was injured.

¶3 The police were summoned by an alarm. Officer Gary Post observed another officer chasing Hudson two blocks away from the liquor store.

[1] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

Hudson was stopped, arrested, and placed in Post's squad car.[2] At no time was Hudson given ***Miranda*** warnings.

¶4 Over the next forty-five minutes, Post and Hudson conversed. At the end of that time, Hudson had identified himself, confessed to the crime, told Post the gun was in a safe place, and provided additional details about the robbery. Hudson's statements to Post are the only statements he made to the police.

¶5 Hudson moved to suppress the statements he made to Post on grounds that the conversation in the car constituted interrogation and Hudson, who had already been arrested and handcuffed, had not been given ***Miranda*** warnings. The trial court conducted an evidentiary hearing. Both Post and Hudson testified.

¶6 Post said that his role at the scene was to wait with Hudson while the detectives completed their investigation. Post testified that he asked Hudson background information, attempting to ascertain Hudson's identity. Post said the two spent approximately forty-five minutes in the car, and that half of that time was spent trying to get Hudson to provide his real name. Post stated that Hudson "wouldn't give us any information, and then he proceeded to give us[3] common last names like Smith and various dates of birth." Each time that Hudson offered a name, Post ran a background check on the name. Each time the name was not on record, Post confronted Hudson. Post explained:

> When he was giving me these various names, they weren't coming back on file. I told him that we're going to be

[2] The details of Hudson's arrest are not in the record. He does not challenge the legality of the arrest.

[3] Although the officer used the word "us," it is undisputed that no other officers were in the squad car at the time.

> finding out who his identity is. He is going to be brought in. He's going to be fingerprinted. There is not going to be a question of us being able to identify him. So by giving these various names, it's just going to create more trouble than he's already in, and so I was asking him why would you do that? Why don't you just give me the correct information because you don't need another charge.

¶7 Post testified that Hudson finally provided his true name around the time that Post and Hudson saw Mseitif emerge from the store. "Mr. Hudson became quite emotional and said that he would tell me his name and I'll tell you what happened, and he began to indicate what went on." On cross-examination, Post acknowledged that he and Hudson discussed the owner. Post testified as follows:

> [POST:] When the owner of the liquor store … came out, Mr. Hudson indicated that he knows the owner.
>
> [DEFENSE COUNSEL:] And did you make a response to that statement?
>
> [POST:] Yes.
>
> [DEFENSE COUNSEL:] What was that?
>
> [POST:] You know the owner?
>
> [DEFENSE COUNSEL:] What did he say then?
>
> [POST:] He said, I should apologize to him. He wouldn't recognize him during this incident. He didn't recognize him because he was wearing the ski mask.
>
> [DEFENSE COUNSEL:] Did you make a comment?
>
> [POST:] You were wearing a ski mask?
>
> [DEFENSE COUNSEL:] What did he say?
>
> [POST:] Yes.

¶8 Post testified that after Hudson provided his real name, Post proceeded to obtain additional information from Hudson, such as his address. Post

said that Hudson also talked about having bills and refurbishing a home. Post testified that when Hudson made such statements, Post would "reiterate[] or repeat, [']you have bills[']." Post said he did this to encourage Hudson to keep talking.

¶9 At one point, Hudson told Post that he was not going to answer questions or provide information, but Post proceeded to ask Hudson where the gun was. Post explained that he told Hudson he was concerned that children could find the gun and get hurt. Hudson replied that the gun was "safe." Post then asked about the size of the gun. Hudson indicated that two guns were used, and identified the types of guns.[4]

¶10 Following the discussion of guns, Hudson asked Post for a drink and to make a phone call. With the assistance of another officer, Post got Hudson some water and a cell phone. Post dialed the phone number Hudson provided and held the phone to Hudson's ear while Hudson remained in the backseat of the squad car, handcuffed. Post listened as Hudson told his fiancé "that he was still at the store; that he is with the police for robbing the store, and that--He said he was just trying to do it for them and he blew it."

¶11 Hudson also testified at the motion hearing. Like Post, he testified that Post asked Hudson his name, that Hudson gave false names in response to the questioning, and that this went on for about twenty minutes. Hudson said that Post

[4] The officer testified that he initially asked about one gun, and that Hudson provided information about two guns. However, other testimony refers to only a single gun. Determining whether Hudson and the officer talked about more than one gun is not necessary for this appeal. For purposes of this opinion we will refer to questions about guns, consistent with the officer's testimony.

accused him of lying and said that it would be helpful if Hudson would identify himself. Hudson also stated that the officer helped him call his fiancé.

¶12 Hudson testified that he told the officer he did not have anything further to say to him, and that he felt pressured by the officer to answer questions when the officer stated that Hudson should cooperate. Hudson said the officer asked five to ten questions, such as what did Hudson do with the gun, why did he commit the crime and who was the other man. Hudson said he told Post he had no reason to commit a crime because Hudson was doing carpentry and rehabilitating houses.

¶13 The trial court found Post's testimony more credible than Hudson's and accepted it as true. Based on this testimony, the trial court concluded that Hudson's statements to Post were admissible, with the exception of answers to Post's questions about the types of guns used in the robbery. The trial court analyzed the statements in three categories: (1) initial statements about what occurred during the robbery; (2) the phone call to Hudson's fiancé; and (3) questions about the guns. The trial court concluded that the officer's initial questions about Hudson's identification did not require ***Miranda*** warnings. The trial court further concluded that Hudson's statements about the crime and statements made during his telephone call with his fiancé were voluntary, and that the police officer was simply listening. Finally, the trial court ruled that the police officer was entitled to ask about the location of the gun under the public safety exception to the requirements of ***Miranda***, but should not have asked follow-up questions about the types of guns used. Therefore, the trial court granted the motion to suppress solely with respect to Hudson's testimony about the type of guns used.

¶14 Hudson pled guilty and was sentenced to twenty-five years of imprisonment, consisting of twelve-and-a-half years each of incarceration and extended supervision. He moved for sentence modification; the motion was denied. This appeal followed.

DISCUSSION

¶15 At issue is the admissibility of statements Hudson made in the squad car. Hudson contends that Post's failure to give Hudson ***Miranda*** warnings renders the statements inadmissible. On appeal, we review a trial court's decision on a motion to suppress a confession under a mixed standard of review. ***State v. Turner***, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987). We will sustain a trial court's findings of historical or evidentiary fact unless they are clearly erroneous, but we independently consider whether those facts show a constitutional violation. ***Id.*** Like the Dissent, we conclude that the trial court's determination that the officer was more credible, and that his testimony is an accurate version of what occurred, is not clearly erroneous. Therefore, we will consider in our analysis those facts as testified to by the officer.

¶16 Under ***Miranda***, "statements of the defendant obtained from questions asked while in custody or otherwise deprived of his freedom of action in any significant way could not be used as evidence against him, unless preceded by the *Miranda* warnings." ***State v. Clappes***, 117 Wis. 2d 277, 282, 344 N.W.2d 141 (1984) (emphasis omitted). However, ***Miranda*** does not require the suppression of all statements made in custody before ***Miranda*** warnings are given: "Volunteered statements of any kind are not barred by the Fifth Amendment[.]" 384 U.S. at 478. Thus, ***Miranda*** does not apply to all statements resulting from police contact, but only those "statements resulting from a custodial interrogation

of a defendant." ***State v. Buck***, 210 Wis. 2d 115, 123, 565 N.W.2d 168 (Ct. App. 1997).

¶17 In this case, there is no dispute that Hudson was in custody when he spoke with Post, and that no ***Miranda*** warnings were given before or during the time Hudson and Post spoke in the squad car. Nonetheless, the State asserts that Hudson's statements need not be suppressed, and offers three theories in support of its assertion: (1) Post's questions about Hudson's identity were allowed under the "booking exception" to ***Miranda***; (2) Hudson's statements were spontaneous and not provided in response to questioning from Post; and (3) Post's questions about the gun's location were proper under the "public safety" exception to ***Miranda***.[5] We examine each argument in turn. We begin with a discussion of statements Hudson made to the officer, and conclude by addressing statements made to his fiancé.

I. Statements made to the officer in response to inquiries or prodding

A. Questions concerning Hudson's identity

¶18 The State argues that Post was entitled to ask for Hudson's identity consistent with the "routine booking exception" to the requirements of ***Miranda***, which the Wisconsin Supreme Court adopted in ***State v. Stevens***, 181 Wis. 2d 410, 434, 511 N.W.2d 591 (1994), *overruled on other grounds by* ***Richards v. Wisconsin***, 520 U.S. 385 (1997). This exception provides that "questions directed to the defendant about biographical data, such as the defendant's name and

[5] The State does not seek reversal of the trial court's decision to suppress Hudson's responses to Post's questions about the type of guns used.

address, that are not intended to elicit incriminating responses, may be considered routine booking questions that are exempted from the coverage of *Miranda*[.]" ***Stevens***, 181 Wis. 2d at 433 (citing ***Pennsylvania v. Muniz***, 496 U.S. 582, 601 (1990) (Brennan, J., plurality opinion)).

¶19 When ***Stevens*** adopted this exception, it recognized that "[a]lthough at least one court has applied the exception to statements made by a defendant while he was in a police car on his way to the police station, this court will not extend the exception to incriminating questions asked at the time of the arrest." ***Id.*** at 434 (citation omitted). In light of this limitation, which has not been overruled, we conclude that the booking exception does not apply here.[6] Hudson was asked questions at the time of his arrest, in a squad car, at the crime scene. He was not at the police station being booked into the jail. Consequently, the exception does not apply.

[6] In ***State v. Bryant***, 2001 WI App 41, 241 Wis. 2d 554, 624 N.W.2d 865, we stated: "Contrary to Bryant's assertion that the [routine booking] exception only applies when a suspect is asked biographical questions when he or she is being processed for admission to a jail, the exception might apply—subject to the tests discussed in this opinion—whenever biographical information is sought." ***Id.***, ¶14 n.3. We acknowledged that other jurisdictions had applied the exception where a defendant was being questioned during an investigative stop or completing an agency form. ***Id.*** Our observations in ***Bryant*** notwithstanding, we remain bound by our supreme court's explicit statement in ***Stevens*** that the exception in Wisconsin is limited to questions asked during the booking process at the police station. *See* ***State v. Stevens***, 181 Wis. 2d 410, 434, 511 N.W.2d 591 (1994) ("Although at least one court has applied the exception to statements made by a defendant while he was in a police car on his way to the police station, this court will not extend the exception to incriminating questions asked at the time of the arrest." (citation omitted)), *overruled on other grounds by* ***Richards v. Wisconsin***, 520 U.S. 385 (1997).

B. Whether the statements were made in response to interrogation

¶20 We conclude that when Post challenged Hudson's answers about his identity and discussed the crime with Hudson, Post engaged in interrogation. Post was required to give Hudson ***Miranda*** warnings prior to interrogating him.

¶21 The United States Supreme Court in ***Rhode Island v. Innis***, 446 U.S. 291 (1980), addressed for the first time the definition of "interrogation" under ***Miranda***. ***Innis***, 446 U.S. at 297. ***Innis*** concluded:

> *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term "interrogation" under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.... A practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation. But, since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they *should have known* were reasonably likely to elicit an incriminating response.

Id. at 300-02 (emphasis in original; footnotes omitted).

¶22 The Wisconsin Supreme Court subsequently applied the ***Innis*** test in ***State v. Cunningham***, 144 Wis. 2d 272, 423 N.W.2d 862 (1988), concluding that a police officer had engaged in interrogation when he displayed a revolver to the defendant, told him it had been found under the mattress in his bedroom, and then told another officer, "[t]his was apparently what Mr. Cunningham was running into the bedroom for." ***Cunningham***, 144 Wis. 2d at 273-75, 281. ***Cunningham*** discussed the test established in ***Innis***:

> The test is whether an objective observer could foresee that the officer's conduct or words would elicit an incriminating response. Another way of stating the objective foreseeability test is to ask whether the police officer's conduct or speech could reasonably have had the force of a question on the suspect.

Cunningham, 144 Wis. 2d at 278.

¶23 Post's testimony at the motion hearing does not establish precisely when each question was asked and when each answer was given. However, it establishes the following: Post tried for twenty minutes to get Hudson to provide his name, during which time Post told Hudson that his failure to provide an accurate name would only create more trouble for him. Next, Hudson and Post saw the storeowner emerge from the store, and Hudson became upset. Hudson made comments indicating that he knew the owner and had worn a mask, to which Post responded by repeating Hudson's words as questions to Hudson. Hudson made incriminating statements about the crime.[7] Post then asked Hudson about the location of the gun, and the types of guns used in the robbery.

¶24 Although we do not have a precise transcript of every word exchanged, we are satisfied that Post's testimony provides sufficient evidence that the conversation between Post and Hudson was "interrogation." In this case, the officer's conduct and speech "could reasonably have had the force of a question" on Hudson. *See* ***id.*** Because this was interrogation, Hudson should have received

[7] It is unclear from the officer's testimony whether Hudson immediately made incriminating statements, or whether those statements followed Post's repetition of Hudson's statements that he knew the owner. Because we conclude that the majority of time spent in the squad constituted "interrogation" that required ***Miranda*** warnings, our conclusion is not dependent on determining precisely which sentence came first.

Miranda warnings. He did not, and his statements made to the officer must therefore be suppressed.[8]

C. The public safety exception

¶25 The State also argues that Hudson's statements to Post about the location of the gun should be admissible under the public safety exception to ***Miranda***. We reject this argument. First, the State directs us to no authority that this exception applies during an interrogation, and we have concluded that the conversation was indeed interrogation.

¶26 Second, even if the exception can apply to questions posed in the middle of an interrogation for which no ***Miranda*** warnings were given, we conclude that the exception should not be applied here, where there was no urgent need to locate the firearm. The public safety exception is not designed to become a shield for intentional violations of ***Miranda*** rights when no exigent circumstances exist.

¶27 In ***New York v. Quarles***, 467 U.S. 649 (1984), the Supreme Court set forth a "public safety" exception to the requirement that ***Miranda*** warnings be given before a suspect's answers may be admitted into evidence. ***Quarles***, 467 U.S. at 655-60. Under that exception, police are not required to give ***Miranda*** warnings before asking questions "reasonably prompted by a concern for the public safety." ***Quarles***, 467 U.S. at 656. In ***Quarles***, a woman approached two

[8] Our supreme court recently held that "[w]here physical evidence is obtained as the direct result of an intentional *Miranda* violation, we conclude that our constitution requires that the evidence must be suppressed." ***State v. Knapp***, 2005 WI 127, ¶2, __ Wis. 2d __, 700 N.W.2d 899. We do not address the potential applicability of ***Knapp*** to this case, as there has been no motion to exclude physical evidence such as a gun.

police officers, told them she had just been raped, described the suspect, and said that the suspect had just entered a supermarket carrying a gun. ***Id.*** at 651-52. An officer saw Quarles, who matched the woman's description of the suspect, running in the supermarket. ***Id.*** at 652. The officer stopped Quarles, searched him, and found out that he was wearing an empty shoulder holster. ***Id.*** The officer handcuffed Quarles and then asked him where the gun was. ***Id.*** Quarles responded that the gun was "over there." ***Id.*** The officer recovered the weapon, placed Quarles under arrest, and informed him of his ***Miranda*** rights. ***Quarles***, 467 U.S. at 652. The ***Quarles*** court held that the officer did not violate ***Miranda***, because there was an immediate need to determine the location of the missing gun. ***Quarles***, 467 U.S. at 655-59. The Court concluded: "[T]he need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." ***Id.*** at 657.

¶28 Courts in Wisconsin have applied the exception, and have even extended it to include both a private safety situation and the safety of the police. *See* ***State v. Kunkel***, 137 Wis. 2d 172, 189, 404 N.W.2d 69 (Ct. App. 1987) ("The companion to the public safety exception must be a private safety exception, whether labelled [sic] as such or as a 'rescue doctrine.'… [T]he possible imminent loss of the life of a known and identifiable individual is entitled to the same weight as the public safety.").

¶29 While we recognize the continuing validity of the public safety exception, it does not apply here. Post's questions about the location of the gun occurred only after Hudson had been apprehended, taken to the squad car, arrested, handcuffed, questioned about his identity for twenty minutes, and encouraged to provide details of the crime. Unlike ***Quarles***, the circumstances in

this case do not suggest that there was an immediate need to locate the missing gun. There was no evidence that Hudson had the gun on his person, or that there was any danger that Hudson would recover the gun.

¶30 The State argues that there was an immediate need to find the gun because it was likely hidden in a public area frequented by children. The State offers no factual basis to support this assertion. There is no evidence that any of the officers involved believed there was a public safety need to immediately locate the gun. If they had believed that, they would have asked Hudson about the gun as soon as he was stopped and handcuffed, and objective facts (such as the presence of a gun in a supermarket in ***Quarles***) would support the reasonableness of that belief.

¶31 The fact that the investigating detectives did not ask about the gun or instruct Post to do so suggests they did not believe there was an immediate public or private safety need. Under the State's reasoning, echoed by the Dissent at ¶39, even where there are no specific facts to support the fear, *any* unrecovered gun that may have been left in a public place presents a sufficient safety concern to justify questioning without ***Miranda***. ***Quarles*** did not announce such a broad rule. In summary, the facts in this case are significantly different than those that justified the application of the public safety exception in ***Quarles*** and its progeny. We conclude the exception does not apply here.

II. Statements Hudson made to his fiancé on the telephone

¶32 Our conclusion that Hudson's statements must be suppressed does not apply to all statements he made inside the vehicle. A majority of this panel[9] concludes that Hudson's statements during the telephone call to his fiancé were voluntary, spontaneous statements not subject to the ***Miranda*** warnings requirement.[10] Hudson asked to make the call with no prompting from the officer.

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[9] Judges Wedemeyer and Curley join in this portion of the opinion.

[10] The author of this opinion concludes that the statements made on the telephone, during the forty-five minute period of custody in the squad car, are not sufficiently attenuated from the ongoing ***Miranda*** violation so as to render them voluntary. Although an illegal interrogation does not render all future confessions involuntary, *see* ***U.S. v Bayer***, 331 U.S. 532, 541 (1947) (after a suppressed confession, a later confession "voluntarily given after fair warning" is admissible), under these facts, Hudson's statements should be suppressed.

In a similar case, ***Autry v. Estelle***, 706 F.2d 1394 (5th Cir. 1983), an officer overheard a defendant make incriminating statements to his mother over the telephone several hours after the defendant's illegal interrogation. ***Id.*** at 1397. The court observed: "[T]he measure of whether Autry's conversation with his mother was 'tainted' by his earlier suppressed statement is whether it was 'sufficiently an act of free will to purge the primary taint' of the suppressed statement." ***Id.*** at 1404 (citations omitted.) The court concluded that the statements could be admitted, despite the fact that they followed an illegal interrogation, reasoning:

> [S]ome six hours had passed before the telephone call during which Autry was allowed to sleep in his cell. Autry requested permission to telephone his mother. The accidentally overheard phone comments were not merely voluntary, they were volunteered. The salient facts are that Autry's conversation was not the product of resumed custodial interrogation, nor was it directed to any custodian. Hence, such cases as … where the taint of one interrogation was held to have carried over to a later interrogation, are not applicable.

Id.

Unlike the defendant in ***Autry***, the defendant here made the incriminating statements in the middle of an illegal interrogation. The taint of the illegal interrogation was insufficiently attenuated to make Hudson's statements to his fiancé voluntary. Hudson's statements to his fiancé in this case occurred within the forty-five minute period during which Hudson's ***Miranda*** rights had already been, and continued to be, violated. During that period of time, Hudson remained in the backseat of the squad car, handcuffed. At no time was he alone, outside the presence of the officer. There was no warning of the consequences of his statements. There was

(continued)

Hudson knew the officer could overhear his statements because the officer was holding the cell phone to facilitate the call as Hudson was still handcuffed. The officer did not question or prod Hudson during the telephone conversation. Consequently, the statements Hudson made during the telephone conversation were properly admitted. *See* ***Miranda***, 384 U.S. at 478 ("Volunteered statements of any kind are not barred by the Fifth Amendment[.]"). *See also* ***Clappes***, 117 Wis. 2d at 282.

By the Court.—Judgment and order reversed and cause remanded.

Not recommended for publication in the official reports.

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neither sufficient time nor space between the constitutional violation and the "voluntary" statement to reasonably infer that Hudson made a knowing and voluntary decision to make the damaging statements. The author of this opinion concludes that the statements Hudson made on the telephone in the middle of his illegal interrogation are "statements resulting from a custodial interrogation of a defendant." *See* ***State v. Buck***, 210 Wis. 2d 115, 123, 565 N.W.2d 168 (Ct. App. 1997). As such, they should be suppressed.

¶33 WEDEMEYER, P.J. (*concurring in part; dissenting in part*). I concur with the majority opinion as to part II of the majority opinion with respect to the statements Hudson made to his fiancé on the telephone. The majority holds, and I agree, that the trial court did not err in denying the motion to suppress the statements Hudson made while talking to his fiancé on the telephone.

¶34 I respectfully disagree with the majority opinion's conclusion that the trial court erred in not suppressing the other statements Hudson made to the officer. I would affirm the trial court on these other statements as well, for the reasons that follow. As noted, our review on motions to suppress is mixed: we will not disturb a trial court's findings unless they are clearly erroneous, and we review independently whether a defendant's constitutional rights have been violated. ***State v. Noble***, 2002 WI 64, ¶32, 252 Wis. 2d 206, 646 N.W.2d 38. Here, it is undisputed that Hudson was in custody and had not been read his ***Miranda*** rights when Officer Post was with him in the police car. The question is whether the time Hudson spent in the police car with Post constituted an "interrogation" or simply voluntary conversation.

¶35 During that forty-five minute period of time, several conversations took place. The trial court found that all of Hudson's statements, except specific questions about the guns, were admissible. My review demonstrates that the trial court's findings were not clearly erroneous, and those facts as applied to the pertinent law, should have resulted in the trial court's determination being affirmed by this court.

¶36 The first discussion between Post and Hudson involved a request for Hudson's correct name. Unlike the cases referred to in the majority, this interaction should be interpreted to fall under the "booking exception" to the ***Miranda*** warning requirements. This case did not involve a situation where Hudson's name itself or his address was incriminating information. This case did not involve a situation where the officer was attempting to obtain incriminating information cloaked by the "booking exception." As determined by the trial court, Post was simply trying to ascertain Hudson's correct name and address. Under the circumstances of this case, that information was not incriminatory and, therefore, the booking exception should apply to those statements. Under those facts, the background questions, even when asked while in the police car, do not violate the purpose or spirit of the ***Miranda*** requirements and should be extended to apply here.

¶37 The next category of statements involved statements made after Hudson saw the victim emerge from the store. Hudson spontaneously started to tell Post what had happened. Hudson began making statements and Post simply repeated part of what Hudson had just said to "keep Hudson talking." The trial court found that these statements need not be suppressed because they were not solicited as a part of an interrogation, but rather voluntarily made. According to Post, Hudson made these statements freely, of his own accord, and without pressure or coercion from Post. In fact, Hudson made these incriminating statements without Post asking him any direct questions regarding the robbery.

¶38 The trial court found Post's version of what happened more credible than Hudson's version. There is nothing in the record to convince us that the trial court's credibility call was erroneous. Thus, in reviewing this case, we defer to the credibility determination of the trial court. After all, the trial court had the

opportunity to observe the witnesses' demeanors, and assess truthfulness. I conclude that the trial court's findings on credibility are not clearly erroneous. Without any direct questioning or pressure to answer questions, the trial court determined that Hudson's statements were made voluntarily and therefore not subject to ***Miranda*** warnings. I would affirm the trial court's determination in that regard.

¶39 Finally, with respect to the statements regarding the gun, I would affirm the trial court's decision. The initial statement as to where the gun was should be admitted under the public safety exception to the ***Miranda*** requirements. *See* ***New York v. Quarles***, 467 U.S. 649, 656 (1984). I do not agree that the brief delay in asking about the gun negates the public safety exception in this case.

¶40 The remaining questions about the gun should not have been asked until after Hudson had been provided ***Miranda*** warnings. The questions no longer related solely to a public safety exception but, rather, tread into the area of soliciting incriminating information, which could be used against Hudson later. Therefore, the trial court correctly suppressed the subsequent questions about the types of gun used.

¶41 In sum, then, I would affirm the trial court's decision on the motion to suppress. I also conclude that the trial court did not erroneously exercise its sentencing discretion. Given the majority's resolution of the motion to suppress, however, the sentencing issue need not be addressed. Based on the foregoing, I respectfully dissent from part I of the majority's opinion.