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RECENT DEVELOPMENT

REYNOLDS v. STATE: VOLUNTARY AND INCONSISTENT STATEMENTS MADE BY A DEFENDANT IN VIOLATION OF MIRANDA ARE ADMISSIBLE FOR IMPEACHMENT PURPOSES.

By: Meghan M. McDonald

The Court of Appeals of Maryland held that the trial court did not err in permitting the State to inquire about the Defendant's prior inconsistent statements made to detectives after invoking his *Miranda* protections. *Reynolds v. State*, 461 Md. 159, 188, 192 A.3d 617, 633 (2018). Specifically, the court held that inconsistent statements made by a defendant do not constitute post-*Miranda* silence, but rather, are considered affirmative statements that may be used for impeachment purposes at trial. *Id.* The court further held that the questions posed by prosecutors on cross-examination were not intended to draw meaning from silence, but rather, to prompt an explanation for prior inconsistent statements. *Id.* at 185, 192 A.3d at 632.

On April 14, 2014, Kevin Reynolds ("Reynolds") was arrested in New York for the murder of Wesley King ("King"), who was shot and killed outside of his apartment complex in Montgomery County, Maryland. Following his arrest, Detective Frank Colbert ("Colbert") read Reynolds his *Miranda* rights. When Colbert questioned Reynolds about the murder of King, Reynolds identified himself as Dennis Graham and stated that he had nothing more to say. Detectives continued their questioning and Reynolds informed them that he was likely in the Virgin Islands visiting family at the time of the murder, and that he had never been to Maryland more than passing through.

Prior to the start of trial, the Circuit Court of Maryland for Montgomery County held a suppression hearing to consider the statements Reynolds made during the April 2014 interview. The suppression court ruled that Reynolds invoked his right to remain silent upon his utterance of the words "there's nothing I have to say" during his first interview. The suppression court further held that any questioning after Reynolds invoked his right to remain silent was in violation of *Miranda*, and therefore, inadmissible as substantive evidence. However, the suppression court also held that the statements made were voluntary, and therefore, admissible for impeachment purposes should Reynolds elect to testify at trial.

At trial, Reynolds exercised his right to testify. During his testimony, Reynolds identified himself, admitted to frequently transporting drugs from New York to Maryland for King, and stated that he was in New York at the time of King's murder. On cross-examination, the State posed questions that inquired about the inconsistencies in his statements made during the initial interview and those made during his testimony. Reynolds' counsel moved for

a mistrial, arguing that the State's cross-examination was improper. The trial court denied the motion, but issued a jury instruction limiting prior witness statements to be considered only to aid the jury in determining the witness's credibility.

On January 13, 2015, the jury convicted Reynolds on all counts. Reynolds noted a timely appeal to the Court of Special Appeals of Maryland, challenging the trial court's decision to admit portions of his post-arrest statements. The Court of Special Appeals of Maryland affirmed Reynolds' conviction, holding that the State's use of his inconsistent testimony was not in error, as the questions posed on cross-examination were classic impeachment questions used to point out discrepancies in Reynolds' testimony.

Reynolds filed a timely petition for *certiorari* to the Court of Appeals of Maryland, which was granted. *Reynolds*, 461 Md. at 174, 192 A.3d at 652. The issue before the court was whether Reynolds' right to due process was violated when the trial court allowed the state to cross-examine him regarding statements related to his alibi defense that were elicited after he exercised his right to remain silent. *Id.* Specifically, the court was asked to determine whether the trial court abused its discretion in allowing impeachment questions on cross-examination as an exception to the exclusionary rule. *Id.* at 175-76, 102 A.3d at 626.

In order to determine whether Reynolds's statements were admissible for impeachment purposes, the Court of Appeals of Maryland began by examining the *Miranda* rights, which act as procedural safeguards against compelled self-incrimination. *Reynolds*, 461 Md. at 178, 192 A.3d at 627. The Supreme Court held in *Miranda* that statements obtained from defendants during custodial interrogation were inadmissible as having been obtained in violation of the Fifth Amendment. *Id.* at 177, 192 A.3d at 627. However, later precedent clarified that inconsistent statements elicited in violation of *Miranda* can be used for impeachment purposes, so long as the statements were voluntarily made. *Id.* at 179, 192 A.3d at 628.

With the principle of *Miranda* established, the Court of Appeals of Maryland next examined Supreme Court rulings on post-arrest, post-*Miranda* silence. *Reynolds*, 461 Md. at 182, 192 A.3d at 630. In *Harris* and *Hass*, the Court determined that a voluntary statement obtained in violation of *Miranda* that was inconsistent with a defendant's direct examination at trial, could be used for the purpose of impeachment. *Id.* During their respective trials, each defendant provided direct testimony that contradicted statements made following their arrest. *Id.* The court in each case ultimately determined that impeaching material provides the jury with valuable information in assessing a defendant's credibility and evidence against a defendant should not be exclusively barred when it aids the jury in rendering a fair verdict. *Id.* at 187, 192 A.3d at 632.

In the case at bar, Reynolds provided detectives with statements that were inconsistent with his trial testimony. *Reynolds*, 461 Md. 187, 192 A.3d at 633. During his interview with Colbert, Reynolds identified himself as Dennis

Graham, stated that he had only passed through Maryland, and stated that he was in the Virgin Islands at the time of King's murder. *Id.* At trial, Reynolds identified himself as Kevin Reynolds, admitted to frequently transporting drugs to Maryland for King, and testified that he was in New York at the time of King's murder. *Id.* The court found the circumstances of this case factually on par with those in *Harris*. *Id.*

Reynolds argued that the issue should be examined through the lens of post-*Miranda* silence and not prior inconsistent statements. *Reynolds*, 461 Md. at 176, 192 A.3d at 626. The Court of Appeals of Maryland held that despite Reynolds contention, the issue before the court was not one of post-*Miranda* silence, but instead, revolved around voluntary and inconsistent statements made by a defendant. *Id.* Here, Reynolds voluntarily provided details about his personal life that ran contrary to his trial testimony. *Id.* at 187, 192 A.3d at 633. Therefore, in rendering its conclusion, the court held that the underlying principle in *Harris* was equally applicable to this case, and Reynolds' inconsistent statements could be used directly for impeachment purposes. *Id.*

The Court of Appeals of Maryland held that the State's questioning on cross-examination regarding statements elicited post-*Miranda* were not in violation of Reynolds' right to due process. *Reynolds*, 461 Md. at 188, 192 A.3d at 633. Further, the court affirmed that a statement elicited post-*Miranda* that is inconsistent with a defendant's direct testimony at trial, can be used for the purpose of impeachment. *Id.* This holding allows for prosecutors to pose questions regarding the credibility of a defendant's statement in a manner that is consistent with the truth-seeking purpose of the court. Permitting inconsistent statements to be free of safeguards against self-incrimination emphasizes the importance of balancing the probative value of a defendant's statement with the risk of unfair prejudicial effects.