VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 28th day of March, 2019.

Present: All the Justices

Rashad Adkins, Appellant,

against Record No. 180485
Court of Appeals No. 0592-17-4

Commonwealth of Virginia, Appellee.

Upon an appeal from a judgment rendered by the Court of Appeals of Virginia.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the Court of Appeals.

On July 14, 2015, Rashad Adkins ("Adkins") was arrested in Fairfax County for a probation violation. When Adkins was searched, police found a .40 caliber firearm, suspected narcotics and counterfeit money in the backpack he was carrying. He was subsequently interrogated by two Fairfax County detectives as part of their investigation regarding the contents of the backpack. Detective Waylon, from the City of Alexandria Police Department also sat in on the interview and recorded it using his cell phone. The Fairfax County detectives read Adkins his *Miranda* rights. A rights waiver form was filled out, indicating that the rights waiver related to an investigation of the crime of "concealed weapon, Felon in Possession of a Firearm."

During the interrogation, Adkins claimed that he did not know how he came to have the backpack. After approximately 17 minutes of questioning, Adkins stated "I don't have no more to say to you." Both the officers and Adkins made a couple of additional comments, but the officers ended the interview within 15 seconds of Adkins' statement. All three detectives then left the interview room and the recording was stopped.

Shortly thereafter, Detective Waylon returned to the interview room accompanied by Detective King, also from the City of Alexandria Police Department. Detective King introduced himself and informed Adkins that he needed to talk to Adkins "about some things." He stated

that, if Adkins did not want to talk to him, that's his "right," but if Adkins didn't talk to him, he had "no choice but to go off of what [he is] hearing." In response, Adkins said "You can go off what you're hearing." Detective King then proceeded to tell Adkins that he knew that Adkins "got into it with somebody and [he] had to defend [him]self." Adkins denied that he was involved in any altercation. The detectives repeatedly suggested that Adkins acted in self-defense and Adkins repeatedly denied that he knew what the detectives were talking about. When asked if he shot "that man," Adkins stated that he didn't kill anybody.

Detective King asked Adkins if he knew Shakkan Elliot-Tibbs ("Elliot-Tibbs"), which Adkins denied. One of the detectives stated that he heard that Elliot-Tibbs had knocked Adkins down. Adkins replied whoever told the detective that was lying, he did not know Elliot-Tibbs and nobody put their hands on him. After approximately 30 minutes, the detectives ended the interrogation.

Adkins was subsequently indicted for first degree murder and use of a firearm in the commission of a felony. Prior to trial, Adkins moved to suppress the statements he made during the interrogation conducted by the City of Alexandria detectives. In his motion to suppress, Adkins argued that his Miranda rights were violated when the detectives continued to interrogate him after he invoked his right to remain silent. Adkins specifically referenced his statement that "I don't have no more to say to you." At the hearing on the motion to suppress, the trial court listened to the audio recording of the interrogation. Additionally, Detective Waylon testified about the interrogation. After considering the parties' arguments, the trial court denied the motion.

At trial, several witnesses testified about the altercation between Elliot-Tibbs and Adkins. All of the witnesses agreed that Elliot-Tibbs and Adkins were arguing. Additionally, there was testimony that Elliot-Tibbs was the aggressor, pushing and, according to at least one witness, punching Adkins. In response, Adkins shot Elliot-Tibbs.

After Adkins presented his defense, the Commonwealth called Detective King as a rebuttal witness. Detective King testified that Adkins repeatedly denied acting in self-defense. He also stated that Adkins had claimed that he did not kill anyone. Detective King noted that when he suggested to Adkins that Elliot-Tibbs was a big guy and that Adkins probably needed to defend himself, Adkins responded by saying that nobody knocked him down or put their hands on him.

After the close of evidence, both parties proffered jury instructions. Adkins argued that, in addition to a self-defense instruction, he was entitled to a voluntary manslaughter instruction that contemplated that Elliot-Tibbs had been killed during mutual combat (the "mutual combat instruction"). The trial court agreed that Adkins was entitled to a self-defense instruction, but refused the mutual combat instruction, noting that there was no "agreement to fight it out."[1]

After deliberating, the jury found Adkins guilty of second degree murder and use of a firearm in the commission of a felony. He was sentenced to forty years for the second degree murder charge and three years for the use of a firearm charge.

Adkins appealed his conviction to the Court of Appeals, arguing, among other things, that the trial court erred in denying his motion to suppress and in refusing to grant the mutual combat jury instruction. In a per curiam order, the Court of Appeals denied his petition for appeal. *Adkins v. Commonwealth*, Record No. 0592-17-4 (December 27, 2017). With regard to the motion to suppress, the Court of Appeals determined that Adkins' statement "I don't have no more to say to you" was not an invocation of his right to remain silent. *Id.* at *3. The Court of Appeals similarly approved the denial of the mutual combat instruction, noting that there was no evidence presented at trial that Adkins and Elliot-Tibbs engaged in mutual combat. *Id.* at *4.

Motion to Suppress

To invoke his *Miranda* rights, a suspect must state his desire "with sufficient clarity" that the statement would be understood by a reasonable police officer under those same circumstances as an invocation. *Commonwealth v. Hilliard*, 270 Va. 42, 49 (2005). Whether a suspect's statement is sufficient to invoke his *Miranda* rights involves an objective inquiry. *Id.* Such an inquiry requires the reviewing court to consider more than just the statements made by the suspect, it must also consider the context in which those statements were made. *Midkiff v. Commonwealth*, 250 Va. 262, 267 (1995).

The Court has recognized that a suspect may invoke his right to remain silent and terminate questioning by simply stating "I do not want to answer any more questions." *Id.* at 267 (citing *Akers v. Commonwealth*, 216 Va. 40, 46 (1975)). Here, Adkins' statement "I don't have no more to say to you" is not quite so eloquent, but it clearly conveys the same sentiment. *See Davis v. United States*, 512 U.S. 452, 459 (1994) (recognizing that a defendant need not "speak

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[1] The trial court did grant a voluntary manslaughter instruction related to an intentional killing "committed while in the sudden heat of passion upon reasonable provocation."

with the discrimination of an Oxford don" to invoke his *Miranda* rights). Further, the context in which the statement was made supports the conclusion Adkins had invoked his right to remain silent. Notably, the Fairfax County detectives ended the interrogation within 15 seconds of Adkins' statement, indicating that they understood Adkins' statement as an invocation of his right to remain silent.[2]

Once Adkins invoked his right to remain silent, the Commonwealth was prohibited from interrogating him unless Adkins voluntarily reinitiated the interrogation or a significant period of time passed. *See Michigan v. Mosley*, 423 U.S. 96, 106 (1975) (holding that a suspect's invocation of his right to remain silent requires police to immediately cease questioning him about any crimes for a significant period of time). Here, it is undisputed that Adkins did not reinitiate the interrogation.[3] Further, the short period of time between Adkins' invocation and Detective King's reinitiation of the interrogation can hardly be considered "significant." *See Id.* (referring to a 2-hour period as being a significant period of time). Therefore, the trial court erred in denying Adkins' motion to suppress. As the Commonwealth relied on Adkins' statements to undermine his claim that he was acting in self-defense, it cannot be said that

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[2] When determining whether an invocation of *Miranda* rights was "unambiguous" and "unequivocal," *Davis v. United States*, 512 U.S. 452, 462 (1994), a court does not limit itself "to consideration of only the words spoken," but instead considers all "pre-request circumstances [that] are relevant to determining the clarity of the request." *Stevens v. Commonwealth*, 283 Va. 296, 303-04 (2012). Stated another way, the interpretation given to the statement turns on the context in which the statement is made. In this case, Adkins's statement, "I don't have no more to say to you" has been interpreted to essentially mean "I am invoking my right to remain silent" because the context does not reasonably support any other interpretation. However, depending on the circumstances, this same statement could also be interpreted to mean "I've told you everything I know about this subject, and there's no more for me to say about it." In such a situation, the suspect would not be invoking his right to remain silent but instead would merely be implying that saying more would just be an exercise in repeating himself.

[3] *Green v. Commonwealth*, 27 Va. App. 646 (1998), the case upon which the Court of Appeals and the Commonwealth rely is wholly inapposite. The defendant in *Green* was interrogated about several crimes and invoked his right to remain silent. Unlike the present case, however, he expressly limited the scope of his invocation to questioning about only a single crime. *Id.* Here, Adkins did not limit the scope of his invocation.

permitting this evidence was harmless error.[4] Accordingly, Adkins' conviction is reversed and the matter remanded to the Court of Appeals with instructions to remand to the trial court for re-trial if the Commonwealth be so advised.

Jury Instruction

The denial of the mutual combat jury instruction could arise again on retrial, therefore it is necessary to also address that issue. "[T]he matter of granting and denying instructions does rest in the sound discretion of the trial court." *Cooper v. Commonwealth*, 277 Va. 377, 381 (2009). "[A]n instruction is proper only if supported by more than a scintilla of evidence." *Commonwealth v. Sands*, 262 Va. 724, 729 (2001). When determining whether the evidence is sufficient to support an instruction, the reviewing court views the facts "in the light most favorable to the proponent of the instruction." *Cooper*, 277 Va. at 381.

The Court has recognized that not every fight is mutual combat; where one party assaults another, "the ensuing struggle cannot be accurately described as a mutual combat." *Harper v. Commonwealth*, 165 Va. 816, 820 (1936). Here, the record demonstrates that Adkins and Elliot-Tibbs were engaged in an argument and then Elliot-Tibbs became the sole aggressor. Even viewed in the light most favorable to Adkins, there was no evidence presented to indicate that Adkins and Elliot-Tibbs were engaged in mutual combat. Accordingly, on this record, the trial court did not err in refusing to instruct the jury on mutual combat.

This order shall be certified to the Court of Appeals and the Circuit Court for the City of Alexandria.

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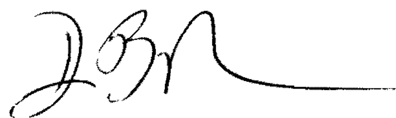

Clerk

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[4] Indeed, the Commonwealth agreed at oral argument that if the Court determines that Adkins' statements should have been suppressed, allowing Detective King to testify about those statements was not harmless error.