APPENDIX

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Filed March 27, 2019

OFFICIAL NOTICE FROM
COURT OF CRIMINAL APPEALS OF TEXAS
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3/27/2019 **COA No. 06-18-00016-CR**
PD-1099-18

Ricks, RONNIE, Jr. Tr. Ct. No. 14F1149-005
On this day, the Appellant's petition for discretionary review has been refused

Deana Williamson, Clerk

M. MARK LESHER

TEXARKANA, TX 75504
DELIVERED VIA E-MAIL

Filed August 30, 2018

In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-18-00016-CR

RONNIE RICKS, JR., Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 5th District Court
Bowie County, Texas
Trial Court No. 14F1149-005

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Moseley

MEMORANDUM OPINION

Following a jury trial, Ronnie Ricks, Jr., was convicted of burglary of a habitation with intent to commit a felony[1] and was sentenced to thirty-five years' imprisonment. On appeal, Ricks claims that the trial court erred in allowing the jury to view a silent video recording of a portion of his interview with a police detective regarding Ricks' alleged involvement in the crime. Because the trial court did not err in the admission of the recording, we affirm the trial court's judgment.

I. Background

Ricks, who was a sergeant in the Texas Army National Guard, was in New Boston, Texas, for an Army drill on the weekend of November 15, 2014. Ricks, along with other members of his unit, stayed at a local hotel that weekend. On the evening of November 15, some of the unit members attended a presentation in room 105 of the hotel. Ricks attended the presentation, as did Jane Smith.[2] Following the presentation, unit members held a birthday celebration for Smith, during which Smith, Ricks, and other members of the unit consumed alcohol. Smith testified that she drank a few drinks and felt fine. Then, approximately fifteen minutes after having consumed a drink Ricks made for her, Smith began to feel sick and dizzy, with blurred vision. She described blacking out for a few minutes and then

[1] See TEX. PENAL CODE ANN. § 30.02 (West Supp. 2017).

[2] The victim, who was a member of the Army National Guard unit, was identified at trial as Jane Smith. We, likewise, utilize that pseudonym to protect the victim's identity.

regaining consciousness. When Smith appeared to be intoxicated and sick, one of the unit members escorted her to her room.[3] After handing Smith a wet rag and placing a trash can next to her bed, the escort left Smith's room. Smith went to sleep while fully clothed. At some point after that, Smith realized that her jeans were being pulled down. She recalled that someone was having sexual intercourse with her and that she could not breathe. She did not see who was in the room with her. Smith felt paralyzed and could not move. Eventually, Smith passed out again.

When Smith awoke the following morning, she was sore and believed that she had been sexually assaulted. Smith was upset and contacted a sergeant by email to report the incident. She told the sergeant that the unit member who escorted her to her room the previous evening had sexually assaulted her, since she knew that he had been in her room. During the assault, however, she could not see the person. Smith eventually spoke with a New Boston police officer and reported that she had noticed a ring in her hotel room that did not belong to her. That ring was turned over to the New Boston Police Department. The ring's discovery altered the course of the investigation.[4]

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[3] The unit member who escorted Smith to her room asked another member to contact him by cell phone, to avoid the appearance of impropriety. Phone contact was made approximately five minutes later, and it was reported by the escort that Smith was in her room and that he had returned to his room.

[4] Ricks admitted that his wedding ring was missing.

Jasmine Baker, an investigator with the New Boston Police Department, investigated the reported unauthorized entry into Smith's hotel room and the ensuing sexual assault. After having taken Smith's statement, Baker interviewed the other soldiers who were present in room 105 of the hotel on the evening of the alleged assault, including Ricks. She read Ricks his *Miranda*[5] rights, and he waived those rights. The interview was recorded. Several minutes into the interview, however, Ricks indicated that he wished to terminate the interview. Before the State's introduction of the recorded interview as an exhibit at trial, defense counsel indicated that he had no objections "until it gets down to where he says, he hints that he did not want to talk anymore. That's pretty much right at the end. If you can cut it off there."

The video recording of Ricks' interview continued for approximately ten minutes after Ricks indicated that he did not wish to continue the interview.[6] The State asked that the remainder of the video recording be played to the jury, with the sound muted, for the purpose of showing Ricks' demeanor. The defense objected to this procedure, arguing that the muted video reflected nonverbal communication by Ricks and violated his *Miranda*

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

[6] The majority of this portion of the recording depicts Ricks seated behind the interview table without being questioned.

right to remain silent.[7] The trial court overruled Ricks' objection and determined that the State was entitled to play the muted video depicting Ricks' demeanor.[8] As a result of that ruling, the jury was shown the audio and video portion of the recorded interview to the point that Ricks indicated he no longer wished to speak. The jury was then permitted to view only the video portion of the remainder of the recording.

II. Analysis

A trial court's ruling on the admission of evidence is reviewed for an abuse of discretion and will be upheld "if it is reasonably supported by the record and is correct under any theory of law applicable to the case." *Ramos v. State*, 245 S.W.3d 410, 418 (Tex. Crim. App. 2008) (citing *State v. Dixon*, 206 S.W.3d 587, 590 (Tex. Crim. App. 2006)).

Consistent with the Fifth Amendment[9] guarantee that "'[n]o person . . . shall be compelled

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[7] Although the State argues that this objection has not been preserved for appellate review, it is evident from the context of the discussion between defense counsel, the State, and the trial court that Rick's objection was based on his right to remain silent.

[8] The trial court stated that it was "going to overrule the objection and find that he's been advised that he's entitled to leave." The trial court continued, "The Court's also going to find the state's entitled to continue to play video of his demeanor at the time, but not the audio that accompanies it, since he's indicated he wishes to have no further conversations."

[9] U.S. CONST. amend. V.

in any criminal case to be a witness against himself,' . . . law enforcement officials, before questioning a person in custody, must inform him that he has the right to remain silent and that any statement he makes may be used against him in court." *Id*. (footnote omitted) (citing *Dickerson v. United States*, 530 U.S. 428 (2000); *Miranda*, 384 U.S. at 444). "If a person in custody does invoke his Fifth Amendment right to remain silent, then the admissibility in court of statements obtained thereafter depends on whether the person's right was 'scrupulously honored.'" *Id*. (quoting *Michigan v. Mosley*, 423 U.S. 96, 104 (1975)). *Miranda* does not, however, protect a statement that is not the result of custodial interrogation. *See Miranda*, 384 U.S. at 444; *Arthur v. State*, 216 S.W.3d 50, 56 (Tex. App.—Fort Worth 2007, no pet.).

Custodial interrogation, as defined by the Supreme Court, is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 444. A determination of whether a person is in custody for *Miranda* purposes is based on a "reasonable person" standard. *Herrera v. State*, 241 S.W.3d 520, 525 (Tex. Crim. App. 2007). Consequently, "A person is in 'custody' only if, under the circumstances, a reasonable person would believe that his freedom of movement was restrained to the degree associated with a formal arrest." *Dowthitt v. State*, 931 S.W.2d 244, 254 (Tex. Crim. App. 1996). As stated in *Dowthitt*, there are four general situations which may constitute custody:

> (1) when the suspect is physically deprived of his freedom of action in any significant way, (2) when a law enforcement officer tells the suspect that he cannot leave, (3) when law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted, and (4) when there is probable cause to arrest and law enforcement officers do not tell the suspect that he is free to leave.

Id. at 255. Here, Ricks voluntarily submitted to questioning and was then permitted to leave. When Ricks showed up for questioning, Baker informed him that he was not detained or under arrest. Baker specifically asked Ricks if he was willing to talk with her, and he indicated that he would do so. After Ricks informed Baker that he no longer wished to speak, she informed him that he was free to leave at any time and that she was not holding him against his will. Baker then accompanied Ricks to the door. It was only then, however, that Ricks decided to remain seated for a while. After several more minutes, and some intervening conversation between Ricks and Baker, Ricks indicated that he wished to leave, and he did leave.

These circumstances indicate that Ricks was not in custody for purposes of *Miranda*. Ricks was not physically deprived of his freedom in any significant way, having been questioned on a voluntary basis for less than one hour. Ricks was told that he was free to leave at any time and that he

was not being held against his will. He was never informed that he could not leave. Baker, therefore, did not "create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted." *Id*. And, regardless of whether Baker had probable cause to arrest Ricks, she informed Ricks that he was free to leave at any time, and he did leave. We, therefore, conclude that Ricks was not in *Miranda* custody during Baker's station-house questioning as displayed to the jury. *See California v. Beheler*, 463 U.S. 1121, 1122–25 (1983) (per curiam) (defendant was not in custody when he voluntarily came to police station, gave a statement after brief questioning, and then was allowed to return home); *Oregon v. Mathiason*, 429 U.S. 492, 493–95 (1977) (per curiam) (suspect who voluntarily came to police station, was immediately informed that he was not under arrest, participated in a short interview, and left the police station without hindrance was not in custody); *Meek v. State*, 790 S.W.2d 618, 622 (Tex. Crim. App. 1990) (defendant not in custody when he came to station voluntarily, was permitted to go unaccompanied to his car during interviews, and "a few hours" later was allowed to leave unhindered); *Brossette v. State*, 99 S.W.3d 277, 281–82 (Tex. App.—Texarkana 2003, pet. dism'd) (defendant not in custody at time of statement when he voluntarily came to the police station, gave a statement, was not handcuffed or restrained in any way, and left after giving the statement); *Bates v. State*, 15 S.W.3d 155, 158 (Tex. App.—Texarkana 2000, pet. ref'd) (interrogation not controlled by *Miranda* when suspect voluntarily followed officer to station, was informed by officer that he was free to leave, and

was permitted to leave after interview).

Because Ricks was not in *Miranda* custody at the time of Baker's questioning, the questioning was not controlled by *Miranda*. *Miranda*, 384 U.S. at 478 (volunteered statements not barred by Fifth Amendment); *Camarillo v. State*, 82 S.W.3d 529, 535 (Tex. App.—Austin 2002, no pet.) (voluntary oral statement admissible if it does not "stem from custodial interrogation"); *Lam v. State*, 25 S.W.3d 233, 239 (Tex. App.—San Antonio 2000, no pet.) (*Miranda* does not apply to voluntary statements resulting from non-custodial interrogation); *see Bates*, 15 S.W.3d at 159 ("Mere recitation of *Miranda* warnings is more indicative of proper cautiousness than it is of an officer's intent to arrest."). Consequently, the trial court did not err in admitting the muted video recording.

III. Conclusion

We affirm the trial court's judgment.

Bailey C. Moseley
Justice

Date Submitted: August 23, 2018
Date Decided: August 30, 2018

Do Not Publish

Filed November 7, 2017

CASE NO. 14F1149-005 **COUNT SINGLE**
INCIDENT NO./TRN: 9028245693

THE STATE OF TEXAS	§	IN THE 5TH DISTRICT
V.	§	COURT
RONNIE RICKS JR.	§	BOWIE County, Texas
State ID No.: TX08282030	§	

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	Date Judgment entered:
HON. **BILL MILLER**	11/3/2017
Attorney for State:	Attorney for Defendant
MICHAEL SHEPHERD	**MARK LESHER**

Offense for which Defendant Convicted:
BURGLARY OF A HABITATION WITH INTENT TO COMMIT A FELONY

Charging Instrument:	Statute for Offense:
INDICTMENT	**30.02 Penal Code**

Date of Offense:
11/15/2014

Degree of Offense:	Plea to Offense:
1ST DEGREE FELONY	**NOT GUILTY**

Verdict of Jury:	Findings on Deadly Weapon:
GUILTY	**N/A**

Plea to 1st Enhancement Paragraph:	Plea to 2nd Enhancement Habitual Paragraph:
N/A	**N/A**

Findings on 1st Enhancement	Plea to 2nd	Findings on 2nd Enhancement/Habitual Paragraph:
N/A		**N/A**

Punished Assessed by:	Date Sentence Imposed:
JURY	**11/3/2017**
	Date Sentence to Commence: **11/3/2017**

Punishment and Place of Confinement:	**35 YEARS INSTITUTIONAL DIVISION, TDCJ**

THIS SENTENCE SHALL RUN **CONCURRENTLY**

☐ Sentence of Confinement Suspended, Defendant Placed on Community Supervision for N/A.

Fine:	Courts Cost:	Restitution:
$**N/A**	**$534.00**	**$N/A**

Restitution Payable to:
☐ **VICTIM** ☐ **AGENCY/AGENT (**See below)

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was **N/A.**

If the Defendant is to serve sentence in TDCJ, enter incarceration periods in chorological order.

From **12/13/2014** to **12/17/2014**

From **11/2/2017** to **11/3/2017**

Time Created: From to From to From to

If Defendant is to serve in county jail or is given credit toward fine and costs, enter days credited below.

N/A/ DAYS **NOTES: N/A**

All pertinent information, names, and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in County, Texas. The State appeared by her District Attorney.

Counsel/Waiver of Counsel (select one)

☒ Defendant appeared in person with Counsel.

☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The **INDICTMENT** was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury head the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and **ORDERED** it entered upon the minutes of the Court.

Punishment Assessed by Jury/ Court/ No election (select one)

☒ **Jury.** Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

☐ **Court.** Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.
☐ **No Election.** Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and **ORDERS ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

☒ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, **Institutional Division, TDCJ**. The Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the . Once there, the Court

ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **County Jail-Confinement/Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of County, Texas on the date the sentence is to commence. Defendant shall be confined in the County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the . Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court **ORDERS** Defendant to proceed immediately to the Office of the County. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution/Suspension of Sentence (select one)

☒ The Court **ORDERS** Defendant's sentence EXECUTED.

☐ The Court **ORDERS** Defendant's sentence of confinement SUSPENDED. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the

terms and conditions of community supervision is incorporated into this judgment by reference.

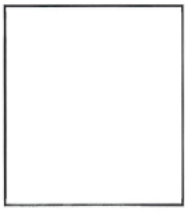
The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

Signed and entered on November 6, 2017.

/s/ BILL MILLER
JUDGE PRESIDING

Clerk:



Right Thumbprint

FINGERPRINT EXHIBIT, CCP 42.02, SEC. 1(23)

CAUSE NO. 14F1149-005

THE STATE OF TEXAS	IN THE DISTRICT/ COUNTY OF
VS.	BOWIE COUNTY, TEXAS

RONNE RICKS
Defendant (Print)

/s/
Defendant Signature

The Fingerprint shown in a print of the above named defendant's right thumb taken by the undersigned in open court.

James Prince, Sheriff

Bowie County, Texas By: /s/ Deputy

Exhibit "A"
Fingerprint Exhibit to Judgment