IN THE
INDIANA SUPREME COURT

Supreme Court Case No. 19S-CR-336

State of Indiana,
Appellant (Plaintiff)

–v–

Ernesto Ruiz,
Appellee (Defendant)

Argued: February 21, 2019 | Decided: June 3, 2019

Appeal from the Jackson Circuit Court,
No. 36C01-1510-F4-25

On Petition to Transfer from the Indiana Circuit Court of Appeals
No. 36A01-1714-CR-2999

Opinion by Chief Justice Rush
Justices David and Goff concur.
Justice Massa Concurs in result.
Justice Slaughter dissents, believing transfer should be denied.

Rush, Chief Justice.

If police interrogate someone in custody without providing *Miranda* warnings, the person's interrogated statements are generally inadmissible as evidence against that individual in a criminal trial.

Here, two police officers interrogated Ernesto Ruiz in a secured area at a police station, without providing him *Miranda* warnings. When the State tried to use statements Ruiz made during the interrogation as evidence against him in a criminal trial, he moved to suppress them as inadmissible. The trial court granted the motion.

The State appealed, arguing suppression was contrary to law because Ruiz—although interrogated—was not in custody. Finding substantial, probative evidence that he was in custody, we affirm the trial court's decision.

Facts and Procedural History

In a small, windowless room in a secured area of the Seymour Police Department, two police officers tag-teamed an interrogation of Ernesto Ruiz, who had been accused of a crime. Neither officer gave him *Miranda* warnings, and multiple times the officers told

Ruiz that he was to "sit tight" in the interrogation room.

Later, the State sought to use a video of the interrogation as evidence against Ruiz in a criminal trial. Ruiz moved to suppress it, arguing his statements in the video were inadmissible because they were made during custodial interrogation in the absence of *Miranda* warnings.

The trial court heard evidence on the matter: testimony from the two officers who interrogated Ruiz, and the audio–video recording of the interrogation. The court also heard arguments, which the court considered overnight along with relevant caselaw. The next day, the court heard more testimony and argument, and then granted Ruiz's motion to suppress.

In granting the motion, the court recognized—rightly—that whether Ruiz was in custody turns on objective circumstances.[1] It then determined that the

---

[1] The trial court also rightly recognized that statements made in coercive settings implicate Article 1 of the Indiana Constitution. Ruiz made a similar acknowledgment in his motion to suppress, alleging that his rights under the Indiana Constitution were violated alongside his federal constitutional rights. But Ruiz did not advance any state constitutional arguments separate from those based on the Federal Constitution. While the rights protections of the state and federal constitutions often run parallel, they do not always mirror one another exactly, and they derive from independent sources of authority. For these reasons, claims brought under each charter warrant separate arguments. *See, e.g.*, *Litchfield v. State*, 824 N.E.2d 356, 359–64 (Ind. 2005). *See generally* Jeffrey S. Sutton, 51 Imperfect Solutions: States

environment was "a police setting" in which multiple officers questioned Ruiz in an accusatory and focused way in a room behind several closed doors. The court observed that although Ruiz went to the police station on his own, he "had to be buzzed into the area or taken into the area of a secure room." And although the first officer told Ruiz he could walk out of the interrogation-room door, the court found that statement, in this specific context, would not make a reasonable person feel free to leave. The court emphasized that after the second officer later entered the room, shut the door, and took on the role of interrogator, Ruiz was not told that he could leave or that the first officer's initial statement remained valid.

The State claimed that it could not proceed without the evidence that had been suppressed. For this reason, and since a jury had already been empaneled, the court declared a mistrial.

The State appealed the suppression decision, *see* Ind. Code § 35-38-4-2(5) (2018), and a panel of the Court of Appeals reversed, concluding the interrogation was not custodial, *State v. Ruiz*, No. 36A01-1712-CR-2999, 2018 WL 3543561, at *5 (Ind. Ct. App. July 24, 2018).

---

and the Making of American Constitutional Law (2018). Since Ruiz did not develop any arguments separate from those resting on the Federal Constitution, he waived any right to suppression on independent state-law grounds. *Cf. State v. Timbs*, 84 N.E.3d 1179, 1184 (Ind. 2017), *vacated & remanded by* 139 S. Ct. 682 (2019).

Ruiz petitioned for transfer, which we now grant, vacating the Court of Appeals decision. Ind. Appellate Rule 58(A).

Standard of Review

The State brings this appeal under Indiana Code 35-38-4-2(5), which authorizes the State to appeal an order granting a motion to suppress if the order ultimately prevents further prosecution of at least one charged count. This kind of appeal, we have recognized, is one from a negative judgment. *See, e.g.*, *State v. Brown*, 70 N.E.3d 331, 334–35 (Ind. 2017); *State v. Keck*, 4 N.E.3d 1180, 1183 (Ind. 2014); *State v. Washington*, 898 N.E.2d 1200, 1202–03 (Ind. 2008); *see also State v. Estep*, 753 N.E.2d 22, 24–25, 24 n.5 (Ind. Ct. App. 2001); *State v. Ashley*, 661 N.E.2d 1208, 1211 (Ind. Ct. App. 1995). A negative judgment is the denial of relief to a party on a claim for which that party had the burden of proof. *See Ben-Yisrayl v. State*, 738 N.E.2d 253, 258 (Ind. 2000).

It is true that Ruiz filed the motion to suppress his statements. But no matter Ruiz's burden to support his challenge to the statements' admission,[2] the trial

---

[2] *See United States v. Artis*, No. 5:10-cr-15-01, 2010 WL 3767723, at *4 & n.2 (D. Vt. Sept. 16, 2010) (unreported table decision) (observing lack of clarity in and disagreement over the burden to establish whether the defendant was subjected to custodial interrogation). *Compare United States v. Jorgensen*, 871 F.2d 725, 729 (8th Cir. 1989) (requiring defendant to show custodial interrogation), *United States v. Lawrence*, Nos. 88-2056, -2086, -2087, -2109, -2135, 1989 WL 153161, at *5–6 (6th Cir.

court, in granting his motion, necessarily determined that the State failed to carry its countervailing burden to prove that the statements were admissible. *See Colorado v. Connelly*, 479 U.S. 157, 167–69 (1986); *Lego v. Twomey*, 404 U.S. 477, 488–89 (1972). Specifically, since Ruiz brings his challenge under the Federal Constitution, the State had to show by a preponderance of the evidence that Ruiz voluntarily waived his *Miranda*-protected rights before he made the statements. *See United States v. Charles*, 738 F.2d 686, 696 (5th Cir. 1984), *abrogated on other grounds by United States v. Bengivenga*, 845 F.2d 593, 596–97 (5th Cir. 1988) (en banc); *United States v. Miller*, 382 F. Supp. 2d 350, 362 (N.D.N.Y. 2005); *Smith v. State*, 689 N.E.2d 1238, 1246 & n.11 (Ind. 1997). The State

---

Dec. 18, 1989) (unpublished table decision) (requiring defendant to show by a preponderance of the evidence that he was subjected to custodial interrogation), *United States v. Davis*, 792 F.2d 1299, 1309 (5th Cir. 1986) (requiring defendant to prove "that he was under arrest or in custody"), *and United States v. Peck*, 17 F. Supp. 3d 1345, 1354 (N.D. Ga. 2014) (collecting cases), *with United States v. Dudley*, No. 18-cr-286-WJM, 2019 WL 1403115, at *2 (D. Colo. Mar. 28, 2019) (requiring defendant to present "evidence or allegations sufficient to support a motion to suppress"), *United States v. Miller*, 382 F. Supp. 2d 350, 361–62 (N.D.N.Y. 2005) (requiring defendant to allege custodial interrogation in the absence of *Miranda* warnings), *and United States v. Gilmer*, 793 F. Supp. 1545, 1555 (D. Colo. 1992) (requiring defendant to point to some evidence that his statements were made in violation of his constitutional rights). *See generally United States v. Charles*, 738 F.2d 686, 692 (5th Cir. 1984), *abrogated on other grounds by United States v. Bengivenga*, 845 F.2d 593, 596–97 (5th Cir. 1988) (en banc); *United States v. Crocker*, 510 F.2d 1129, 1135 (10th Cir. 1975), *overruled on other grounds by United States v. Bustillos-Munoz*, 235 F.3d 505, 516 (10th Cir. 2000).

also bore the ultimate burden at trial to prove guilt beyond a reasonable doubt. *See Taylor v. State*, 587 N.E.2d 1293, 1301 (Ind. 1992).

So, since the suppression order rested on the State's failure to carry its burden to prove the statements' admissibility, and that decision precludes the State from further prosecuting a criminal charge, which the State had the burden to prove, the State appeals from a negative judgment. Accordingly, the State must show that the trial court's decision was contrary to law—meaning that the evidence was without conflict and all reasonable inferences led to a conclusion opposite that of the trial court. *See Brown*, 70 N.E.3d at 335; *State v. McCaa*, 963 N.E.2d 24, 29 (Ind. Ct. App. 2012), *trans. denied*. The State cannot make this showing if there is substantial, probative evidence supporting the suppression ruling. *See Brown*, 70 N.E.3d at 335.

Here, the trial court's suppression decision was proper if Ruiz was under custodial interrogation, which triggers *Miranda*. Because the State admits that Ruiz was under interrogation, we focus our review on the trial court's determination that Ruiz was in custody.

The custody inquiry is a mixed question of fact and law: the circumstances surrounding Ruiz's interrogation are matters of fact, and whether those facts add up to *Miranda* custody is a question of law. *See Thompson v. Keohane*, 516 U.S. 99, 112–13 (1995). We defer to the trial court's factual findings, without re-

weighing the evidence; and we consider conflicting evidence most favorably to the suppression ruling. *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). But we review de novo the legal question of whether the facts amounted to custody. *Brown*, 70 N.E.3d at 335.

Discussion and Decision

Under *Miranda v. Arizona*, if Ruiz was under "custodial interrogation," the police were required to give him certain warnings about his rights, and the absence of those warnings precludes the use of his statements to prove guilt. 384 U.S. 436, 444 (1966).

The State acknowledges that Ruiz was under police interrogation but contends that he was not in custody. Custody under *Miranda* occurs when two criteria are met. First, the person's freedom of movement is curtailed to "the degree associated with a formal arrest." *Maryland v. Shatzer*, 559 U.S. 98, 112 (2010) (quoting *New York v. Quarles*, 467 U.S. 649, 655 (1984)). And second, the person undergoes "the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Howes v. Fields*, 565 U.S. 499, 509 (2012).

We hold that the State did not carry its burden here to show that the trial court's ruling was contrary to law. The record includes substantial, probative evidence of circumstances that, taken altogether, met both criteria of *Miranda* custody. We'll address each in turn.

I. The totality of objective circumstances surrounding the interrogation would make a reasonable person feel not free to end the questioning and leave.

Under *Miranda*, freedom of movement is curtailed when a reasonable person would feel not free to terminate the interrogation and leave. *Howes*, 565 U.S. at 509. This freedom-of-movement inquiry requires a court to examine the totality of objective circumstances surrounding the interrogation—such as the location, duration, and character of the questioning; statements made during the questioning; the number of law- enforcement officers present; the extent of police control over the environment; the degree of physical restraint; and how the interview begins and ends. *See id.*; *Oregon v. Mathiason*, 429 U.S. 492, 493 (1977) (per curiam); *United States v. Infante*, 701 F.3d 386, 396 (1st Cir. 2012); *Sprosty v. Buchler*, 79 F.3d 635, 641 (7th Cir. 1996).

Here, the State argues that Ruiz's freedom of movement was not curtailed and thus he was not in custody. The State points to certain evidence in support: Ruiz provided his own transportation to the police station; the first interrogating officer told him, "you don't have to talk to me" and "you can get up and walk out that door at any time"; Ruiz sat near the unlocked interview-room door and had not been arrested; the interrogation lasted less than an hour; and Ruiz left unhindered after it was over.

This evidence does indeed point toward no custody. But substantial, probative evidence in the record points in the opposite direction and supports the trial court's suppression ruling.

To start, the time and place of the interrogation were directed by Detective Greg O'Brien, who showed up at Ruiz's home, informed Ruiz of the allegations against him, explained that he "needed to interview" Ruiz, and "asked him to come up to the police station." Importantly, Detective O'Brien did not inform Ruiz that any other time or place would suffice for the interview. *Cf. Mathiason*, 429 U.S. at 493 (defendant returned officer's phone calls to set up a meeting, and officer asked defendant where it would be convenient to meet).

Ruiz came to the police station shortly after getting dressed. Detective O'Brien then led Ruiz through various sections of the station house: from the lobby through a door that required a key fob to enter; into a secured area containing the police squad room; "up the elevator and the stairs"; through a second keyed door that was propped open; and into a small interview room with no windows and a single door, which the officers closed for the interrogation. Although he was not handcuffed or locked inside the interrogation room, Ruiz was physically and visually cabined to the small compartment with officers positioned near the single, shut door.

Inside the interrogation room, Ruiz was at first alone with Detective O'Brien, who began the questioning. But after about thirteen minutes, Detective

Troy Munson entered, closed the door, and became the primary interrogator. At this time, and through the end of the interrogation, the police outnumbered Ruiz in the room two-to-one.

When Detective O'Brien started to question Ruiz, he told Ruiz—a single time—that he could walk out "that door." But the trial court did not err in concluding that this statement was not enough to make a reasonable person feel free to leave, for three reasons.

First, the officers told Ruiz to "sit tight" multiple times, belying any prior indication that Ruiz was free to go.

Second, the circuitous path by which Detective O'Brien took Ruiz into the interrogation room drew a labyrinthine exit route with many obstructions to egress. One of the doors Detective O'Brien led Ruiz through required a key fob when heading toward the interrogation room. And nobody told Ruiz that it was unlocked going the opposite direction.

Finally, and most importantly, the police significantly undercut any initial message of freedom when they dramatically changed the interrogation atmosphere. Shortly after Detective O'Brien began the interview, a second officer—whom Ruiz had not yet met—entered the interview room; shut the door; and took over as the main, and more aggressive, interrogator. In this way, the police completely recast the interrogation, subverting the force and applicability of

Detective O'Brien's earlier walk-out-that-door statement. And at no point did either officer say anything to preserve that statement's validity.

Other statements the officers said or omitted, along with the character of their questioning, point toward curtailed freedom of movement. Detective O'Brien did not tell Ruiz that he didn't have to respond to other detectives who may question him. Nor did the detectives tell Ruiz that he wasn't under arrest; that he could end the interrogation at any time; or that he was free to leave once Detective Munson suddenly injected himself into the interrogation and began aggressive questioning. *Cf. Luna v. State*, 788 N.E.2d 832, 833 (Ind. 2003) (affirming suppression decision where defendant was told multiple times that he did not have to talk to the police, that he was not under arrest, and that he was free to leave at any time).

The officers did, however, repeatedly tell Ruiz to explain to them what happened, coaxing him to "[t]ell us now so that we know that you're being honest with us and . . . not lying." The officers were explicit that they believed Ruiz had engaged in the accused conduct. And their questions were accusatory—not exploratory, like ones to identify suspects in the early stages of an investigation. Detective Munson emphasized this with deception—saying that the person who made the accusations had passed a lie-detector test.

The questioning was also prolonged, lasting almost an hour. Although the length of an interview,

alone, does not determine whether a person is in custody, the questioning here was sustained and relatively drawn out, especially compared to roadside traffic-stop questioning. *See Berkemer v. McCarty*, 468 U.S. 420, 437–38 (1984). And the officers continued the interrogation past the time they knew Ruiz was supposed to pick up his daughter, telling him to "sit tight" until they were satisfied. Indeed, the interrogation did not end until after the officers had extracted incriminating remarks.

Altogether, the circumstances surrounding the interrogation add up to a situation in which a reasonable person would not feel free to end the interrogation and leave. So, the record supports the conclusion that the curtailment-of-movement criterion was met.

As custody turns on the totality of the circumstances, the conditions bearing on the curtailment-of-movement inquiry also factor into the second custody inquiry: whether the person was subjected to coercive pressures that necessitate *Miranda* safeguards.

II. The station-house interrogation included the coercive pressures that drove *Miranda*.

The second custody criterion asks whether the circumstances exert the coercive pressures that drove *Miranda*. *Shatzer*, 559 U.S. at 112. When the case involves "the paradigm example of interrogating a suspect at a police station," the answer to this question is generally "obvious, in the absence of unusual facts." *United States v. Ellison*, 632 F.3d 727, 729 (1st Cir. 2010); *see Berkemer*, 468 U.S. at 439–40. The answer

is less obvious for situations outside the classic *Miranda* station-house paradigm—such as a traffic or *Terry* stop; or questioning individuals in their usual environment, such as inmates in prison. *Ellison*, 632 F.3d at 729; *see Shatzer*, 559 U.S. at 112; *Berkemer*, 468 U.S. at 439–40.

The State devotes little attention to this specific custody inquiry. But it does argue that Ruiz "was never coerced to cooperate in exchange for freedom." We disagree, as the record includes substantial, probative evidence to the contrary. And overall, the station-house questioning here both resembles the *Miranda* paradigm and exhibits the coercive pressures that *Miranda* targeted.

The interrogation here was not brief roadside questioning, *see Berkemer*, 468 U.S. at 439, or interrogation in the "low atmospheric pressure" of a suspect's typical surroundings, *Ellison*, 632 F.3d at 730. Rather, it took place at the station house in an isolated room—removed from Ruiz's friends, family, and familiar environment, and with multiple officers employing various interrogation tactics for almost an hour, trying to convince their suspect to incriminate himself.

The officers also applied multiple layers of subtly coercive forces that, together and in the absence of *Miranda*'s safeguards, would impair their suspect's free exercise of the privilege against self-incrimination.

First, after the interrogation began, the officers kept Ruiz "off balance" in the already unfamiliar environment. *See Miranda*, 384 U.S. at 455. Detective Munson (whom Ruiz had not yet met) entered the room and assumed the role of main interrogator, with a more aggressive style than that of Detective O'Brien.

Detective Munson then used subterfuge, lying to Ruiz about the accuser having taken a lie-detector test. *See id.* at 448–57 (describing pressures that create coercion, including use of deceptive stratagems). He also counseled Ruiz that the alleged conduct was "not a big deal" but that Ruiz would "look bad" if he wasn't forthcoming about it.

And the officers intimated that Ruiz's fate was in their hands. They suggested that if Ruiz didn't talk right then about what he had done, they would make things worse for him in the future—because they would worry that he wasn't honest and that he had done "something more" than the alleged wrongdoing. *See Illinois v. Perkins*, 496 U.S. 292, 297 (1990) ("Questioning by captors, who appear to control the suspect's fate, may create mutually reinforcing pressures that . . . will weaken the suspect's will . . . .").

Other pressures piled on. The officers said that they "knew" the allegations were true; they engaged in prolonged, persistent, and accusatory questioning that focused on encouraging Ruiz to admit to the officer's description of the wrongdoing; and they instructed Ruiz to stay put in the interrogation room while the time to pick up his daughter passed.

These types of coercive pressures, applied in a station-house interrogation, are precisely what induced *Miranda*'s warning requirements. So, the second custody criterion, like the first, was met.

It is true that a person is not in custody simply because he is questioned at a police station, or because he is an identified suspect, or because he is in a coercive environment. *See Mathiason*, 429 U.S. at 495. And here, certain elements, taken in isolation, may suggest an inference of no custody. But custody depends on the totality of the circumstances surrounding the interrogation. In this case, the totality of the circumstances, supported by substantial, probative evidence in the record, amount to *Miranda* custody. So, the State failed to show that the trial court's suppression ruling was contrary to law.

Conclusion

The Fifth Amendment secures a suspect's right against self- incrimination. And to protect this right from the inherently compelling pressures of custodial interrogation, *Miranda* requires police to provide certain safeguards. Here, the police did not provide those safeguards to Ruiz before interrogating him at the station house.

Because the totality of objective circumstances evidenced on this record supports the trial court's conclusion that the interrogation was custodial, we affirm the suppression of Ruiz's statements.

David and Goff, JJ., concur.
Massa, J., concurs in result.
Slaughter, J., dissents, believing transfer should be denied.

ATTORNEYS FOR APPELLANT
Curtis T. Hill, Jr.
Attorney General of Indiana
Henry A. Flores, Jr.
Laura R. Anderson
Tyler G. Banks
Deputy Attorneys General
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE
Andrew J. Baldwin
Mark E. Kamish
Baldwin Kyle & Kamish, P.C.
Franklin, Indiana

MEMORANDUM DECISION

ATTORNEYS FOR APPELLANT

Curtis T. Hill, Jr.
Attorney General of Indiana

Henry A. Flores, Jr.
Deputy Attorney General
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Andrew J. Baldwin
Franklin, Indiana

Michael J. Kyle
Franklin, Indiana

IN THE
COURT OF APPEALS OF INDIANA

State of Indiana,	July 24, 2018

Appellant-Plaintiff, v. Ernesto B. Ruiz, *Appellee-Defendant.*	Court of Appeals Case No. 36A01-1712-CR-2999 Appeal from the Jackson Circuit Court The Honorable Richard W. Poynter, Judge Trial Court Cause No. 36C01-1510-F4-25

Altice, Judge

Case Summary

[1] The State appeals after the trial court granted Ernesto Ruiz's motion to suppress evidence supporting his charge of Level 4 felony child molesting. The sole issue the State raises is whether the trial court erred in granting the motion to suppress.

[2] We reverse and remand for further proceedings.

Facts & Procedural History

[3] Ruiz was not born in the United States. At the time this case commenced, he had been in the United States for approximately sixteen years, was married, and had a daughter, M.R.

[4] According to the probable cause affidavit, on Thursday, October 1, 2015, M.R.'s nine-year-old

friend M.L. spent the night at M.R.'s house after the two attended a local festival. M.R. fell asleep on the couch in the living room, and M.L. went to sleep in M.R.'s bedroom.

[5] Ruiz returned home from work at around 5:30 a.m. on Friday morning. He entered the bedroom where M.L. was sleeping and asked M.L. for a hug. M.L. obliged.

[6] Approximately twenty minutes later, M.L., unable to return to sleep, went to the living room to see if M.R. was awake. M.L. then walked into the kitchen. Soon after, Ruiz entered the kitchen and again hugged M.L. This time, however, Ruiz took hold of M.L.'s hand and placed it inside of his shorts onto the bare skin of his buttocks. M.L. attempted to pull away but Ruiz told her, "No, [n]o, [i]t's fine." *Appellant's Appendix Vol. 2* at 18. He then placed her hand back on his buttocks. M.L. pulled her hand into the shirt sleeve of her pajamas, but Ruiz grabbed her hand and moved it in a circular motion on his buttocks while making an "aaahhh" noise. *Id.* Ruiz then placed his hands on M.L.'s buttocks, over her clothes, squeezed, and said, "Yeah." *Id.* M.R. awoke, and Ruiz left the kitchen and went to bed. M.L. told M.R. about the incident, but M.R. told her not to tell anyone. M.L. eventually told one of her teachers about the incident.

[7] On October 7, 2015, Detective Sergeant Greg O'Brien of the Seymour Police Department went

to Ruiz's home, advised him of the child molesting allegations, told Ruiz that he "needed to interview him" at the police station, and then left. *Transcript Vol. 1* at 202. Ruiz travelled to the police station on his own and entered the station's unlocked, exterior door that led to a lobby. Detective O'Brien met Ruiz in the lobby and escorted him through a secure door that led to the administration area of the station. Individuals entering this door had to be "buzzed in"; however, there was no impediment to exiting this door. *Id.* at 212. The detective led Ruiz upstairs to an interview room that had one door and no windows. Ruiz was seated in the room near the door, and the door was closed.

[8] The interview began with Detective O'Brien advising Ruiz as follows: "All right. And do you understand that you don't have to talk to me? Do you understand that? You don't have to talk to me. . . . And you understand that you can get up and walk out that door at any time." *Id.* at 215. Ruiz acknowledged that he understood. When asked, Ruiz told the detective that he spoke Spanish and English and that he "[p]retty much" was fluent in English. *Id.* Ruiz was not provided *Miranda* warnings.

[9] Detective O'Brien asked Ruiz general questions about his work, his wife, and his daughter. He then asked Ruiz specific questions about what he was doing on Thursday, October 1, and what transpired with M.L. on the morning of Friday,

October 2. Ruiz initially denied that he hugged M.L.

[10] Approximately thirteen minutes into the interview with Detective O'Brien, Detective Sergeant Troy Munson entered the interview room and introduced himself. He was wearing plain clothes and did not have his firearm. O'Brien and Munson had prearranged that Munson would join the interview. O'Brien continued to question Ruiz, and Ruiz eventually told the detectives that while he was in the kitchen, M.L. "hugged [him], maybe, yeah." *Id.* at 231.

[11] Detective Munson then began to question Ruiz. He did not repeat Detective O'Brien's statements that Ruiz did not have to talk to him or that Ruiz was free to leave the interview room at any time. Detective Munson told Ruiz (falsely), "Just tell us [what happened], but don't lie to us because we've already talked to this girl, [sic] she's already had a lie detector done.[1] Okay? She passed the lie detector test, so we know she's not lying to us . . . ." *Id.* at 242. Ruiz reiterated that the hug with M.L. occurred in the kitchen and added that, during the hug, M.L.'s hand might have slid down and touched his buttocks. At one point during the interview, Detective Munson told Ruiz:

> Now, we're going to, we're going to take a break here. Okay? For just a minute.

---

[1] M.L. had not taken a polygraph test.

> We're going to, we let you sit in here and, and think about some of the stuff we said, but what I want you to realize, Ernesto, is we're not here as your enemies, we're here as the truth. Okay? This isn't like the crime of the century, what she's claiming that had happened, it's not a big deal. But what makes you look bad is if you start to lie about things that we already know to be the truth and we know a lot more things than you think that we know because we, because you're the last that we're interviewing here. Okay? So, I just want you to have the opportunity right now to tell us if there was anything that we've already discussed that you know to not be true and you were just scared to tell us about it, but it's not that big of a deal. Tell us now so that we know that you're being honest with us and you're not, you're not lying. Is there anything that you know that you have told us that is not the truth? Just be honest with us. We don't think you're a bad guy or anything.

Transcript Vol. 2 at 7. Ruiz told Detective Munson that another hug between him and M.L. had occurred.

[12] The detectives left the interview room. When they returned, Detective Munson said to Ruiz: "The results of this, of this investigation so far, okay, clearly indicates [sic] to us, to Officer

O'Brien and myself that something, some kind of touching did occur between you and, and [M.L.]. . . . And, and it was of an inappropriate nature . . . ." *Id.* at 11. The detectives continued to interview Ruiz. The entire interview lasted less than one hour. Ruiz was not restrained during the interview. At the conclusion of the interview, Ruiz left the police station on his own.

[13] Ruiz was charged with Level 4 felony child molesting on October 16, 2015. On December 3, 2017, Ruiz filed a motion to suppress his statements to the detectives. His jury trial began on December 5, 2017. After the jury was sworn, the trial court conducted a suppression hearing and took the matter under advisement. On December 6, 2017, the trial court granted the motion to suppress, stating:

> This is a police setting, this is a secure facility. Yes, [Ruiz] voluntarily went there. But he had to be buzzed into the area or taken into the area of a secure room, the door is shut. Detective O'Brien's [sic] present. He is told, "You can walk out the door," but again, this is where we get into words. This is what concerns me. It's one thing to say, "I can walk out the door." I think most of us here in America that are from here get the context that I'm free to leave. But someone who is not originally from here, this is what caused me concern is that

you've got to be very specific they understand that it means basically you're free to leave. That's where I was really tossing with this issue last night. You know, I don't believe the officers in this case did anything inappropriate as far as ill will, but the issue is objective testing. Would a reasonable person under the circumstances believe they are free to go? And what also causes me concern here is when the second officer comes into the room and shuts the door and introduces himself, again, would a reasonable person in this situation, without being told that "You're free to leave," feel free to leave, and especially when the questioning becomes very focused. And that's what one of the case law cases talks about is basically one of the factors to consider is has the police, have the police focused their investigation solely on this person and communicated that fact to the Defendant. It's not just what you in your heart as an officer know that you're focused on this person, but you have in fact have communicated that fact to the Defendant. There's no doubt in this situation that the Defendant was told that basically, "We believe you did it. We know you did it. We've got proof you did it," you know, "She took a lie detector test. She passed it," you know, "Why would she tell us this?" I mean, it's clearly [sic] the police communicated to

> the Defendant that he was the focus of the investigation. . . .
>
> If the State is going to use multiple officers to interrogate someone it has to be clear that just because the second officer goes into the room or a third or a fourth, that the situation hasn't changed. But when you have a Defendant who is not originally from this country, who is in a room with [a] shut door with two (2) officers present, I believe at this point a reasonable person would not believe they are free to leave. And therefore, I believe Miranda was required.

Id. at 43-44.

[14] The trial court declared a mistrial "giv[en] the lateness of the Motion to Suppress." *Appellant's Appendix Vol. 2* at 13. The State noted that without the suppressed evidence, it could not proceed on the charge. The trial court issued its written order granting the motion to suppress on December 13, 2017. The State now appeals pursuant to Ind. Code § 35-38-4-2(5).[2] Additional facts will be provided as necessary.

---

[2] This statute addresses appeals by the State and provides, in relevant part, that the State is permitted to appeal from "an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution." I.C. § 35-38-4-2(5).

Discussion & Decision

[15] The State argues that the trial court erred when it granted Ruiz's motion to suppress his statements to the detectives. When reviewing a trial court's ruling on a motion to suppress, we must determine whether substantial evidence of probative value supports the trial court's decision. *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). Where a trial court has granted a motion to suppress, the State appeals from a negative judgment and must show that the trial court's grant of the motion was contrary to law. *State v. Carlson*, 762 N.E.2d 121, 125 (Ind. Ct. App. 2002). We will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that of the trial court. *Id.* We will not reweigh the evidence or judge witnesses' credibility, and we will consider only the evidence most favorable to the trial court's ruling. *Id.*

Miranda Rights

[16] A person must be informed of the rights to remain silent and to have an attorney and that what he says may be used against him any time "law enforcement officers question a person who has been 'taken into custody or otherwise deprived of his freedom of action in any significant

way.'"[3] *Luna v. State*, *State*, 788 N.E.2d 832, 833 (Ind. 2003) (quoting *Miranda v. Arizona,* 384 U.S. 436, 444 (1966)). Statements given in violation of *Miranda* are normally inadmissible in a criminal trial. *Morris v. State*, 871 N.E.2d 1011, 1016 (Ind. Ct. App. 2007), *trans. denied*. "*Miranda* warnings do not need to be given when the person questioned has not been placed in custody." *Johansen v. State*, 499 N.E.2d 1128, 1130 (Ind. 1986). In determining whether a person was in custody or deprived of freedom such that *Miranda* warnings are required, "the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Luna*, 788 N.E.2d at 833 (quoting *California v. Beheler*, 463 U.S. 1121, 1125 (1983)). We will make this determination "by examining whether a reasonable person in similar circumstances would believe he is not free to leave." *Id.*; *see also King v. State*, 844 N.E.2d 92, 96-97 (Ind. Ct. App. 2005) ("The test is how a reasonable person in the suspect's shoes would understand the situation."). We will examine all the circumstances surround-

---

[3] "[A] defendant is entitled to the procedural safeguards of *Miranda* only if subject to custodial *interrogation*." *Lawson v. State*, 803 N.E.2d 237, 239 (Ind. Ct. App. 2004) (emphasis added), *trans. denied*. "'Interrogation' is defined as 'express questioning and words or actions on the part of the police that the police know are reasonably likely to elicit an incriminating response from the suspect.'" *Id*. (quoting *White v. State*, 772 N.E.2d 408, 412 (Ind. 2002)). The State appears to concede that the detectives' questions constituted "interrogation."

ing an interrogation, and are concerned with "objective circumstances, not upon the subjective views of the interrogating officers or the subject being questioned." *Gauvin v. State*, 878 N.E.2d 515, 520 (Ind. Ct. App. 2007), *trans. denied*.

> [C]ourts have identified the following factors to be significant in determining whether a person is in custody: whether and to what extent the person has been made aware that he is free to refrain from answering questions; whether there has been prolonged coercive, and accusatory questioning, or whether police have employed subterfuge in order to induce self-incrimination; the degree of police control over the environment in which the interrogation takes place, and in particular whether the suspect's freedom of movement is physically restrained or otherwise significantly curtailed; and whether the suspect could reasonably believe that he has the right to interrupt prolonged questioning by leaving the scene.

Sprosty v. Buchler, 79 F.3d 635, 641 (7th Cir. 1996), *cert. denied* (internal citations omitted).

[17] The crucial question before us is whether Ruiz was "in custody" during the interrogation for purposes of *Miranda*. The State asserts that Ruiz was not in custody when he gave his state-

ments, and, thus, not subjected to a custodial interrogation that would require *Miranda warnings*. According to the State, Ruiz was not in custody because he was not restrained in any way and was free to leave the police station at any time.

[18] Ruiz contends that he was in custody at the time of the interrogation because, under the totality of the circumstances, a reasonable person in his situation would believe "there was a restraint of freedom to the degree associated with a formal arrest." *Appellee's Brief* at 12. In support of his contention, he maintains that he was interrogated by two different police detectives; the second detective's demeanor was "more aggressive," and the second detective did not tell Ruiz that he did not have to speak with him; there was no evidence that Ruiz knew the doors he entered at the police station were unlocked; the detectives used "accusatory questioning"; the detectives told Ruiz that all the evidence pointed to him having committed the crime; and the detectives told Ruiz a lie – that the alleged victim had passed a polygraph test. *Id*.

[19] The facts of this case are quite similar to those in *Luna*, where police asked a molestation suspect to come to the police station to discuss allegations against him. The suspect drove himself to the police station, where he was interviewed in an office, behind closed doors, by two officers. The officers told the suspect that he was free to

leave at any time. After about an hour of interrogation, during which the suspect confessed, he was allowed to go home. Our Supreme Court concluded, "a person who goes voluntarily for a police interview, receives assurances that he is not under arrest, and leaves after the interview is complete has not been taken into 'custody' by virtue of an energetic interrogation so as to necessitate *Miranda* warnings." *Luna*, 788 N.E.2d at 834.

[20] In *Luna*, our Supreme Court relied on *Oregon v. Mathiason*, 429 U.S. 492 (1977). In *Mathiason,* police initiated contact with the defendant who agreed to come to the patrol office. Accompanying the officer into a closed room, the defendant was told he was suspected of committing a burglary but was not under arrest. The police interrogated him rather aggressively and told him (falsely) that his fingerprints were found at the scene of the crime. During a half-hour interview, the defendant gave a recorded confession. He left the police station after the interview. The Supreme Court held that Mathiason was not in custody or otherwise deprived of his freedom of action in any significant way. Specifically:

> Such a noncustodial situation is not converted to one in which *Miranda* applies simply because a reviewing court concludes that . . . the questioning took place in a "coercive environment." Any interview of one suspected of a crime by a police officer will have coercive aspects to

> it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." It was that sort of coercive environment to which *Miranda* by its terms was made applicable, and to which it is limited.

Id. at 495.

[21] Here, Ruiz voluntarily travelled to the police station. He was taken to an interview room in the administrative part of the station, and he was seated near the door. At no point was Ruiz restrained. Before the interview began, Detective O'Brien told Ruiz that he did not have to talk to him, and that he could "get up and walk out [the] the door" to the interview room at any time. *Transcript Vol. 1* at 215. When Detective Munson entered the room, he was wearing plain clothes, and he did not have his firearm. The entire interview lasted less than one hour; Ruiz was not arrested during or immediately after the

interview; and Ruiz was allowed to leave the police station on his own. Ruiz makes much of the facts that he was a suspect, that he was interviewed by two detectives at the same time, that Detective Munson stated (falsely) that the victim had passed a polygraph test, and that Detective Munson's interview style might have been "more aggressive" (*Appellee's Brief* at 12); however, these factors do not, under these circumstances, render the interview a custodial interrogation requiring *Miranda* warnings. *See Mathiason*, 429 U.S. at 495-96 (noncustodial situation not converted to one where *Miranda* applies simply because, absent formal arrest or restraint on freedom of movement, questioning took place in a coercive environment, and, officer's false statement about finding defendant's fingerprints at the scene had "nothing to do with whether [defendant] was in custody for purposes of *Miranda*); *see also Luna*, 788 N.E.2d at 834 (requirement of *Miranda* warnings is not to be imposed simply because the questioned person is one whom the police suspect).

[22] We conclude that based on the totality of the circumstances, a reasonable person in circumstances similar to those Ruiz experienced would believe he or she was free to leave. Thus, because Ruiz was not in custody when he was interrogated by the detectives, *Miranda* did not apply. The trial court's grant of Ruiz's motion to suppress his statements to the detectives was contrary to law.

[23] The trial court erred in granting Ruiz's motion to suppress his statements to the detectives. We reverse and remand for further proceedings.

Najam, J. and Robb, J., concur.

In the
Indiana Supreme Court

State of Indiana, Appellant,	Supreme Court Case No. 19S-CR-336
v.	Court of Appeals Case No. 36A01-1712-CR-2999
Ernesto Ruiz, Appellee.	Trial Court Case No. 36C01-1510-F4-25

ORDER

Appellant's Petition for Rehearing is hereby DENIED.

Done at Indianapolis, Indiana, on 8/23/2019.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur, except Slaughter, J., who votes to grant rehearing.

STATE OF INDIANA	)	IN THE JACKSON CIRCUIT COURT
	) SS:	
COUNTY OF JACKSON)		ANNUAL TERM 2017

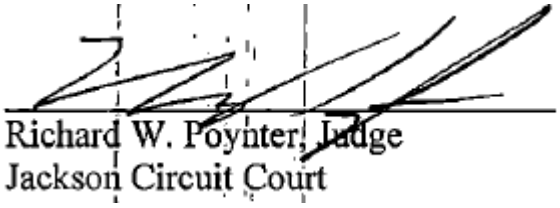
STATE OF INDIANA	CAUSE NO. 36C01-1510-F4-25
VS	
ERNESTO B. RUIZ	

ORDER

On December 4, 2017, the Court conducted a hearing on the Defendant's Motion to Suppress Evidence. The Court after reviewing the evidence, hearing the arguments of counsel and reviewing the case law provided by the parties as well as other case law, on December 5, 2017, the Court announced on the record that the Defendant's Motion to Suppress Statements is hereby GRANTED.

The Court will allow the oral statements made by the Defendant to law enforcement in reference to this cause for impeachment purposes only.

Dated this 13th day of December 2017.



Richard W. Poynter, Judge
Jackson Circuit Court

Distribution:

_____ State of Indiana

_____ Andrew J. Baldwin, Attorney for Defendant

_____ Clerk

In The
INDIANA COURT OF
APPEALS

APPELLATE NO.: 36A01-1712-CR-2999

STATE OF INDIANA)	APPEAL FROM THE
JACKSON VS)	CIRCUIT COURT
ERNESTO B. RUIZ)	TRIAL COURT CAUSE NO:
)	36C01-1510-F4-000025

BEFORE THE HONORABLE RICHARD W. POYNTER, JUDGE

TRANSCRIPT OF JURY TRIAL

HELD ON DECEMBER 5 and 6, 2017

VOLUME 1 of 2

PAGES 1 to 250

ATTORNEYS FOR APPELLANT:	**ATTORNEYS FOR APPELLEE:**
Andrew J. Baldwin **Attorney at Law** **150 North Main Street** **Franklin, IN 46131**	**Indiana Attorney General** **302 West Washington Street** **Fifth Floor**

	Indianapolis, IN 46204

Shelina Stuckwisch
Court Reporter
Jackson Circuit Court

STATE OF INDIAN)	IN THE JACKSON CIRCUIT COURT
) SS:	
COUNTY OF JACKSON)	

STATE OF INDIANA

VS	CAUSE NO. 36C01-1510-F4-000025

ERNESTO B. RUIZ

TRANSCRIPT OF JURY TRIAL

HELD ON DECEMBER 5 and 6, 2017

BEFORE THE HONORABLE RICHARD W.

POYNTER, JUDGE VOLUME 1

Shelina Stuckwisch Court
Reporter JACKSON
CIRCUIT COURT
111 South Main Street
Brownstown, Indiana 47220

an expert in that area and that would be only, I guess my only concern.

MR. KYLE: I think that's bolstering. I think that's absolutely bolstering position. I think that's almost the definition of bolstering.

MR. WALKER: Well, what are you bolstering though? I guess I don't understand that. We're talking about behaviors, we're not saying that it's not a crime or that it's intent for—

THE COURT: Well, my opinion is, State, it's not appropriate, but however, this is a Motion in Limine. If you want to do research tonight and get back with me tomorrow I'll address this issue.

MR. WALKER: Great.

THE COURT: But my inclination is is what the officer's opinion is as far as this "grooming", the issue is the facts are the facts. What was said and what was

done. So that's my opinion as of now, but State, if you want to look into this tonight and come back with me tomorrow and say, "Judge, I've found some law that says you're wrong," I'll be more than happy to revisit this issue.

MR. WALKER: I understand, Your Honor. Thank you.

THE COURT: Okay. Well, let's deal with the Defendant's Motion to Suppress Evidence that was filed with this Court on yesterday, I think, no, two (2) days ago, on the 3rd, it looks like late at night on the 3rd.

Okay. All right. Is it Mr. Kyle? Are you going to do this?

MR. BALDWIN: I'll start it.

THE COURT: Mr. Baldwin.

MR. BALDWIN: Well, I mean, some of this, and Mr. Munson is here in case you want to ask him.

I'm going to make some statements that I think are factually accurate. Thankfully he is here to agree or disagree, if you need to ask him questions. So, basically here's what we have. And I don't know, I know that the State was going to give you the video to watch.

THE COURT: And I told the State to hold off because I didn't want you objecting, so I didn't know what your position was so the State did not give me the video ahead of time.

MR. BALDWIN: Oh, okay. That would've been fine by me, for what it's worth. But, what you're going to find is that our client, the facts are they had gone to his house, the police officers, I think it was Detective Munson had gone to his house-- Oh, it was O'Brien? Okay. One (1) of the two (2) officers goes to the house and then, "Hey, can I talk to you?" and for

whatever reason it didn't happen then, so our client drives to the jail later in the day.

THE COURT: He goes to the jail or to the police department?

MR. BALDWIN: To the police department. I'm sorry.

THE COURT: Okay.

MR. BALDWIN: It's been a long day. All right. So, he goes there and from the deposition testimony we know that it's a secured facility going in, but it's not going out. We don't, at this time we don't have the evidence of what was in the Defendant's mind to what he knew his ability to go in and out were. They are asked, it's Detective O'Brien that is initially in there. What we find out is through, and we've learned this through deposition testimony, is they knew that eventually Detective Munson was going to come into

the interview room and O'Brien brings him in, tells him, you know, asks him, "Tell me about your English. How do you-- Do you understand it?" and he said, "You're free to leave." He says, "You don't have to talk to me." O'Brien. Then he asks him about his level of understanding and he said, you'll have to say it's kind of, pretty good English. It was somewhat non-committal. It lasted about four (4) seconds, five (5) seconds, the asking of, "Tell me about your level of understanding English." It's not a very lengthy, there's not a whole lot, well, none of, "Let me ask you more about this. You said pretty good," or whatever the language was, "Tell me what that means. Tell me what you understand," and that kind of thing. So, there's a very small of that and then he begins asking him questions. He doesn't read him Miranda. And then several minutes pass, and it's a very kind of a

mundane style and just as they had previously discussed prior to the interview taking place, Detective Munson shows up. And I believe when you review the video you'll see it's a more aggressive style. And it's a style that is different and contrasting. Then a couple of things happen that cause the Defense some concern, especially as related to the case law that we will provide to you in a moment. And that is Detective Munson lies to the Defendant about certain things. He tells him, "We've got a polygraph test and she's passed it," and you know, he's listening. Then he says, "She talks to-- And I don't remember if it's Munson or O'Brien, but then somebody says, "She's also admitted that you kissed her."

THE COURT: What now?

MR. BALDWIN: Also she, the purported "victim has said that you kissed her and we know

that," and that is inaccurate. She, in the video, in her video, and again, you won't see her video but I will tell you as an officer of the Court, she never says that on that event that he kissed her. At best they kind of I'd say ask a leading question and she says, "Maybe. I don't remember," but the way it was presented was, "We know that you kissed her. You kissed her. Why would she say these things? Why would she lie? Why would she pass a polygraph?", these types of things and the, "We know that you did it," and these types of things. "We know that you did it." And so, kind of what our argument is, and there's a case called State vs Aynes and it's 715 NE2d 945. It's a very similar set of facts. Of course it's not exact, but the main thrust of that case is when you have somebody come in you don't read Miranda and part of the voluntariness of whether they're free to leave or not. One of the things

that was majorly looked at there is did this turn from a, you know, did it turn into a custodial interrogation and they started accusing, in the Aynes case they started accusing the guy. He came in, it was on a (indiscernible) case. "Hey, you know, come on in. You're free to leave if you want." Actually I don't think that they said he was free to leave, that's one of the distinguishing parts, but in the end they started hammering the guy, you know, "We know you did this," and that type of thing. It turned very, you know, very aggressive. And the Aynes Court said that when you do that, that's non-custodial and they threw out the case. It is custodial, I'm sorry, it is custodial and they threw out the whole thing. And so when we're looking at the facts here, and you know, kind of, one of the things that didn't exist in the Aynes case is the Hispanic part. You know, we're also concerned about

that, that the Spanish language part was just very quickly overlooked. It was like, you know, "Do you speak it?" and up until just now (indiscernible) remember the two (2) or three (3) or four (4) word phrase that Ernesto said, you know, "Yeah, it's okay," or whatever. And even when you are watching Ernesto's video, pay attention to some of the answers he was giving. He's not being responsive to some of the questions. It's like he doesn't really completely understand. There's a few moments of that. And we're concerned that if he didn't understand that, he didn't-- You know, what we should've heard was, if this was truly just a quest for the truth and not trying to intimate him, what we should've heard is, "Listen, I want to make sure, I want to make sure that you understand English and that you're understanding my questions," or "what you're responding is, you know,

what you think that I'm, is proper. Do you think it'd be better to have an interpreter?". That would have been proper. And it also would have been proper, and this is a very big thing to me, when O'Brien says, and I'm sorry to just use last names, when Detective O'Brien says, "You don't have to talk to me," he didn't say, "You don't have to talk to me or Detective Munson when he walks in." He just said, "You don't have to talk to me." And so Detective Munson walks in and he just kind of, he has a very commanding presence and takes over the room and he started asking questions and Detective Munson didn't say, "Hey, by the way, you don't have to talk to me either and you also have the right to leave when I'm here."And all of a sudden it turned, and it's not a terrible video for us, honestly, you know, but it's, it's, we just believe based upon the Aynes case that his Constitutional rights

were violated. He should not, he should've had Miranda read to him, he should've been told about, you know, having an interpreter.

THE COURT: Miranda, Counsel, only applies in two (2) situations, especially in an interrogation. Clearly you have an interrogation, that's clear. The question is do you have custody. That's the issue.

MR. BALDWIN: Right.

THE COURT: If the Defendant was told, "You're free to leave," then where's the custody?

MR. KYLE: Your Honor, may I address that?

THE COURT: All right.

MR. KYLE: A few cases, State vs Aynes, Bean vs State, 973 NE2d 35 and McIntosh vs State, 829 NE2d 531. McIntosh in particular addresses a case where the Defendant is specifically advised that they're free to leave but the Court goes on to say that's

not the only dispositive factor in every situation. It's a totality of the circumstances test that a reasonable person in that situation would actually believe they're free to leave and under arrest. So as the interrogation went on, even though he may have been addressed that he's free to leave at the very beginning, under the totality of the circumstances a reasonable person wouldn't believe when they're being subjected to all of this evidence that they committed a crime and some of this evidence isn't even true, that they aren't free to leave at that point. That being placed in that situation when you're being told evidence against you, that's one of the factors that goes into whether or not somebody's actually in custody. I mean, some of the other factors are the situation, the room, whether the door is shut, whether or not it's a secured facility, whether or not the person actually knew they could

get up and walk out, those are all factors that goes into the determination of whether or not this is custodial. And just simply saying, "You're free to leave," and McIntosh uses some language that that's not the talisman that is the discussion here. It's a totality of the circumstance of what a reasonable person would believe.

MR. BALDWIN: And I would just add to that, I'm sorry, when you see the video he says, "You're free to walk out that door." We're talking about a Hispanic guy and that door there. There's other doors to get out. And I know that sounds silly and I'm not trying to, I'm really not trying to dance here, but we're talking about a guy's rights and we're talking about a guy who is not a natural born citizen here and when he said, "You can walk out that door," what does that mean? Go to the bathroom? And the

one that said it was O'Brien. Munson walks in and he doesn't say, "You can walk out." He's more of a heavy presence. I'm just saying that when he walks in especially, and I'm not trying to, you know, look, I'm not trying to blame these guys for anything, I'm really not, but when he comes in he's a, he is a, he's a, I mean, you know, probably as when you were Prosecutor had to deal with, he's a very, you know, intense guy and that matters, I think, in your analysis. I think that matters.So I'd ask you just to watch it, especially when that happens, knowing that he didn't get read his Miranda rights, he doesn't know he can have a lawyer, that he doesn't speak English, they didn't explore that, all those things. I think, I understand what you're saying and that's my answer to your question. It's all those factors should be factored

in when you decide whether or not he's in custody and plus those cases.

THE COURT: Well, let me ask you, Counsel, you cited some cases. Do you have a case on point that says that lying to a Defendant about evidence somehow changes the scenario from in custody versus out of custody?

MR. KYLE: Not specifically lying, but telling somebody that you have specific evidence that they committed a crime does.

THE COURT: Okay. And what's that case?

MR. KYLE: That's the McIntosh case.

THE COURT: Okay. And what's that cite again?

MR. KYLE: 829 NE2d 531.

THE COURT: 531?

MR. KYLE: Yes, sir.

THE COURT: And that's a Court of Appeals?

MR. KYLE: It is.

THE COURT: Okay.

MR. BALDWIN: I think the Aynes case talked on that.

MR. KYLE: Aynes does that as well. And I, Bean vs State lists a bunch of factors that the 7th Circuit has used and the Court there addresses a list of factors and that cite is 973 NE2d 35.

THE COURT: NE2d 35?

MR. KYLE: Yes, Your Honor.

THE COURT: And that is the Aynes case?

MR. KYLE: Bean. B-E-A-N.

THE COURT: Oka.

MR. KYLE: vs State.

THE COURT: All right. State, do you want to—I know we've got to listen to some evidence here, but State, do you want to say anything?

MR. WALKER: I'll just be kind of brief. It sounds like we've got, the main issue being was he in custodial interrogation. I think the evidence is you're going to see, and I will call the officer briefly. I'm not going to be here forever doing that. But, that he came of his own accord and the door was propped open, he was advised that he could leave. This was not a custodial interrogation. I'm not aware of any case law that says that because one officer is asking a question and then another officer who is big and scary looking comes in and starts asking questions that that suddenly changes to a custodial interrogation and that seems to me what it is. Because Troy came in second somehow it changes from a non- custodial to a custodial interrogation and I don't think that's correct, so frankly, Your Honor, I don't think we have custodial interrogation here. Second, Your Honor, the issue

that has been raised of his ability to speak English, you'll hear that he's been in this country for sixteen (16) years and, Your Honor, I know the Court has heard cases, has heard issues like this before. You can see him on the video, he's responding to questions, he's giving answers, he's thinking about the answers that he's going to give. There's a part in the video where they actually leave the room to let him think. They come back, he's got a different answer. I think that the, and I don't know exactly what Andy is referring to with the non-responsive or confusion, I see a lot of situations where he's obviously thinking about what he's going to say. I don't think that that indicates that he doesn't understand their question. That is something that the Court can glean from context, Your Honor. If you want me to make a record I can call both of these Detectives up—

THE COURT: Well, it's a Motion to Suppress, State, so it's your burden.

MR. WALKER: All right. So I'm going to call Detective Greg O'Brien to the stand.

THE COURT: All right. Please come forward, Detective. Do you solemnly swear or affirm under the penalties

Received: 1/2/2019 3:07 PM

IN THE
INDIANA COURT OF
APPEALS

APPELLATE NO.: 36A01-1712-CR-2999
APPELLATE NO.: 36A01-1712-CR-2999

STATE OF INDIANA	)	APPEAL FROM THE
JACKSON VS	)	CIRCUIT COURT
ERNESTO B. RUIZ	)	TRIAL COURT CAUSE NO:
	)	36C01-1510-F4-000025

BEFORE THE HONORABLE RICHARD W. POYNTER, JUDGE

TRANSCRIPT OF JURY TRIAL

HELD ON DECEMBER 5 and 6, 2017

VOLUME 1 of 2

PAGES 1 to 55

ATTORNEYS FOR APPELLANT:	**ATTORNEYS FOR APPELLEE:**
Andrew J. Baldwin **Attorney at Law**	**Indiana Attorney General**

150 North Main Street **Franklin, IN 46131**	**302 West Washington Street** **Fifth Floor** **Indianapolis, IN 46204**

Shelina Stuckwisch
Court Reporter
Jackson Circuit Court

STATE OF INDIAN)	IN THE JACKSON CIRCUIT
) SS:	
COUNTY OF JACKSON)	

STATE OF INDIANA

VS	CAUSE NO. 36C01-1510-F4-000025

ERNESTO B. RUIZ

TRANSCRIPT OF JURY TRIAL

HELD ON DECEMBER 5 and 6, 2017

BEFORE THE HONORABLE RICHARD W.

POYNTER, JUDGE VOLUME 2

Shelina Stuckwisch Court
Reporter JACKSON
CIRCUIT COURT
111 South Main Street
Brownstown, Indiana 47220

MR. BALDWIN: Just the "Sit tight" business did happen twice and it did happen earlier and it did happen at the end and that's partly the words and partly the attitude of that. When you're saying, "Sit tight" that's the attitude that had to be permeating in that room with everything else going on, so—

THE COURT: Well, let me deal with the easier aspect of this motion. As far as the Defendant not understanding the English language, there's nothing in this video that makes me believe that he did not understand the questions. I think every question he, I believe he was searing for answers at times but it wasn't like, "Okay. Did she touch your butt?", "Well, I ordered pizza." Okay? I mean, the answers were clearly answering the question that he was asked. I don't see anything in there that he didn't understand. I don't think there's a basis to suppress the evidence

on the English barrier. I think the issue does come down to whether or not he was in custody for purposes of Miranda. That's under the Fifth Amendment. There is no Sixth Amendment issue here 'cause Sixth Amendment is post-arrest and when you've been under the thumb of the State. This is a Fifth Amendment right to counsel under the Constitution implied by the Fourteenth Amendment. That's what this is. Of course, Article I of Indiana's Constitution as well. So what we're dealing with here is whether or not there's a Miranda issue. I do want to look at these cases, I don't want to shoot from the hip. I do want to look at if there's any cases out there about the cultural barrier. I don't know if there's anything on there but I want to look at whether or not you have someone from a foreign country or not, if there's an increased burden on the State to clearly advise someone of their

rights. I don't know. I mean, this is an issue I haven't had to look up any time in recent history. I'm going to do some research on my own on this issue, if there's any kind of stricter scrutiny with somebody who's not a natural speaking English speaker, not from this country, whether or not there's a burden on the State to further protect their rights. I don't think there is, but I want to look at the issue, so I do want to look at that issue tonight. I'll make my decision tomorrow morning once I do some research tonight. Counsel, if you want to supplement the record before we bring the Jury in tomorrow, that's fine. If there's anything you want to argue tomorrow morning before I make my decision, you can. Okay? All right.

MR. BALDWIN: Well, hopefully I won't have to.

THE COURT: All right. With that being said, Counsel, I want the Jury here by 8:30. Hopefully, unless there's some preliminary matters we need to address, hopefully we'll get started no later than 9:00 o'clock. Okay? So State, be ready to-- Well, we'll do opening statements and Preliminary Instructions.

MR. BALDWIN: I am sorry to bring this up and this is not, we can deal with this tomorrow morning, but Preliminary Instruction Number 8 is not the current Pattern and so the actual Pattern, I have a Constitutional argument about it. I don't want to, I know it's late but I want to raise that there is a more current Pattern that, especially on this type of case, that is something that's very important. I'm happy to argue it now but I know everybody (indiscernible) and I want to get out of here and all that.

THE COURT: All right. Well, I don't remember what the Pattern number is 'cause I don't—

MR. WALKER: I have it here, Your Honor.

MR. BALDWIN: It's the credibility Instruction.

THE COURT: I know. But I don't know the actual number.

MR. BALDWIN: Oh, I don't either.

THE COURT: I know it's Number 8, but I'm talking about the actual Pattern Number.

MR. BALDWIN: What we'll do, Judge, to make things easier is we will send to the Court and to the State what we believe to be the current Pattern, if that would be helpful and then we can—

THE COURT: Well, what specifically is not the current Pattern?

MR. BALDWIN: The third, where it says, "You should not disregard the testimony of any witness without a reason, without careful consideration of the testimony. You must determine which of the witnesses you will believe and which of them you will disbelieve." The new Pattern, I mean, 'cause that, I think that the problem with that one, why it was changed is it could be considered as lowering the burden of proof to preponderance of the evidence. You either believe this guy or that guy. So now it says something like, "You must determine who you're going to believe. You can believe some of the testimony, none of the testimony, all of the testimony," but it gives you options.

THE COURT: That's the paragraph you're referring to?

MR. BALDWIN: Yes.

THE COURT: Is there anything else?

MR. BALDWIN: No.

THE COURT: Okay. I have the Pattern Instructions, I have my access to WestLaw. I'll look up and if it has changed I don't have a problem changing it.

MR. BALDWIN: Okay.

THE COURT: So, anything else on the Preliminary Instructions other than that paragraph?

MR. BALDWIN: No, Your Honor.

THE COURT: Anything, State?

MR. WALKER: No, Your Honor. I trust that you'll find the most current Pattern and—

THE COURT: Yeah. I mean, it's right there. I've just got to find which Pattern it is. I don't remember. I don't have them all memorized off the top of my head but I'll find it. Okay. All right, Counsel. Enjoy your evening. I'll see you tomorrow morning.

MR. BALDWIN: Thank you.

MR. WALKER: Thank you.

DECEMBER 6, 2017

(OUTSIDE THE PRESENCE OF THE JURY)

THE COURT: All right. Jackson Circuit Court is back on the record on this 6th day of December, 2017. We're here today in the continuation of the Jury Trial involving the State of Indiana vs Ernest B. Ruiz. This is cause number 1510-F4-25. Again the State is represented today by its Deputy Prosecuting Attorney Herbert Walker; Defendant appears in person and with counsel, and of course interpreters are present for the Court as well. The Jury is outside the presence of the courtroom. It's my understanding they're eating some fat-free doughnuts this morning so they're going to have a few moments to eat those doughnuts. Okay.

MR. WALKER: Your Honor, and I apologize, I was discussing something with him. Could I just run and get my file?

THE COURT: That's fine.

MR. WALKER: I'm sorry. Thank you, Your Honor.

THE COURT: And I gave you guys a revised Preliminary 8. They changed that one (1) sentence and you are correct, so—

MR. BALDWIN: Yeah. I was battling that for years 'cause I always felt that that lowered the burden of proof and finally, I'm going to take full credit for it, of course, but it finally changed.

THE COURT: I just wish they'd send out a notice because it's like they think we should just have time to go back and re-read the same things over and over again. It's like, "Why don't you send a notice out – oh by the way, the Preliminary Instruction you've been giving for years has been changed."

MR. BALDWIN: That would be nice. That would be nice for sure.

THE COURT: I guess we have nothing else to do in our day than just go back and reread Jury Instructions all the time, I guess.

MR. BALDWIN: Obviously, you know, it's not like you're up to date at 5:00 at night trying to rule on important evidentiary issues or anything. I mean—

MR. WALKER: Thank you, Your Honor. I'm sorry.

THE COURT: Okay. Let the record reflect again the Jury is outside the presence of the Court. Yesterday we argued some issues on the one Motion in Limine that the Defense filed. The State had concerns about the issue of grooming that, whether or not the officer would be able to testify to grooming and I said

my inclination was not to allow it. State, do you have anything you want to add on that?

MR. WALKER: Your Honor, I do not and I don't, I don't think we're going to pursue that.

DIRECT EXAMINATION OF: GREG O'BRIEN

THE COURT: Okay.

MR. WALKER: I think we're going to-- I just, I don't see the need for it.

THE COURT: Yeah. I just don't think it's relevant in this situation about any grooming issue. The facts are the facts. I just don't see it's relevant here, so I will grant the Defense Motion in Limine as it is written. Okay. As far as the Motion to Suppress, it's your motion. Do you wish to say anything else, Mr. Baldwin, on your motion?

MR. BALDWIN: I might after your ruling.

MR. WALKER: Your Honor, can I have leave just to ask one (1) question of Greg O'Brien? And I, this is, and I ask for this leave because this was a fairly late motion that was filed.

MR. BALDWIN: No problem. That's fine.

MR. WALKER: I just have one (1) question that I want to ask him. I think just one (1).

THE COURT: All right. Come on up here, Mr. O'Brien. I remind you you're still under oath from yesterday when you testified in the hearing. Okay. Go ahead.

GREG O'BRIEN, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testifies and states as follows, to-wit:

DIRECT EXAMINATION

QUESTIONS BY: HERBERT K. WALKER

CROSS EXAMINATION OF: GREG O'BRIEN

Q I want to clarify. When you leave the police department do you have to, is there a person you have to check with before you leave?

A No.

Q Is it like a button that you push?

A You can hit a handicapped button and it'll open the door or push on the door.

Q Okay. Did you see him leave?

A You know, I don't remember.

MR. WALKER: Okay. That's fine. That's all I had to ask. Thank you.

THE COURT: Okay.

CROSS EXAMINATION

QUESTIONS BY: ANDREW BALDWIN

Q But to get into the inner—

MR. BALDWIN: I'm sorry, Judge.

Q But to get into the inner sanctum of where he was interviewed, that's secured.

A Okay. So to clarify, you can walk into the lobby of the police department.

Q Right.

A There's a glass door there that leads to the Administration, Squad Room, the elevators and the stairwell. That door has a key fob on it. But if you hit, when you walk out, I walk out to the lobby, I hit it, that's a handicapped door so if you push it open or hit the button it stays open for like a minute or whatever to come in, so you may not have had to key fob back in. You know, you stand at the door-- I don't remember what I did that morning, or that afternoon.

Q I just wanted, because I think what I understood yesterday, I want to make sure this is accurate, is what you're talking about with the key fob is he couldn't get in without a key fob. Correct?

A Correct.

Q Okay. And so, and nobody told him, from yesterday's testimony, nobody told him that, "If you go out, even though you couldn't come out you can still out," nobody bothered, nobody told him that. Correct?

A Yes.

Q And also that when you said, "You can walk out of that door," you were actually in a room that had a door, a physical door. Correct?

A Correct.

Q And the door that he had initially entered to get into the, from the lobby area into the what I'll call the inner sanctum where all those areas were

that you described that was secured, that was a separate door also.

A Yes. So you would've walked into that glass door into the vestibule. I don't know what you call that area.

Q Right.

REDIRECT EXAMINATION OF: GREG O'BRIEN

A It splits off. We would've gone up the elevator and the stairs. Those doors just open, they're just regular—We would've got off, during the day there is a second Detective Office keyed door, but that door is kept propped open during the day while we're in the office..

Q Right. But—

A ..and then we would've gone into the Detectives' Office.

Q So when you said "that door", you were pointing to the door that was, from the room that he was in..

A Right.

Q ..but you weren't pointing to the door that had been secured when he walked in. Correct?

A Yeah. You wouldn't be able to see it.

Q And lastly-- Let me-- I had one other-- Well, it's escaping me, so I will—

MR. BALDWIN: No other questions.

THE COURT: Okay. Anything else, State?

MR. WALKER: I just want to simplify this.

REDIRECT EXAMINATION

QUESTIONS BY: HERBERT WALKER

Q You've heard the old roach motel ads, "You can check in but can't check out."

A Right.

Q You have, you need a key to get up into the Detectives' area of the..

RECROSS EXAMINATION OF: GREG O'BRIEN

A Right.

Q ..or you've got to be buzzed in but you can walk out?

A Yes.

Q You do not need a key to walk out?

A Correct.

MR. WALKER: That's all I have. Thank you.

MR. BALDWIN: Actually I do remember my question, Judge. I'm sorry.

RECROSS EXAMINATION

QUESTIONS BY: ANDREW BALDWIN

Q You said specifically on the record, if you remember, you said, "You can walk right out that

door." What you didn't say was, "You have the freedom to go home. You have the freedom to go out the secured door that you came in even," you didn't say any of that, you just said, "You can walk out that door."?

A That is correct.

MR. BALDWIN: Okay. No other questions.

THE COURT: All right. Anything else, State, on this?

MR. WALKER: No, Your Honor.

THE COURT: Okay. You may step down. All right. State, do you have any legal argument you want to make as to the Motion to Suppress that you did not make yesterday?

MR. WALKER: Your Honor, the Defense has brought up the Aynes case. I reviewed the Aynes case. I think that if you look at that case, I think if the

Detective, Detective Swain in the Aynes case had done what our Detectives had done, that that, that that statement would have been allowed in. I think that one of the key issues in that was that he was never told he was free to leave. I'd also note, Your Honor, that that particular Sheriff's Department is actually in a jail so it's a little bit different situation than the one we have here. We haven't heard anything from the Defendant in this case, he didn't testify, so we're just kind of speculating as to what he felt at that time. We have no evidence to that effect.

THE COURT: Well, it's an objective test, State, it's not subjective.

MR. WALKER: Sure. That being said, we don't have any evidence other than what we've heard.

THE COURT: Okay.

MR. WALKER: I don't think that this was a custodial interrogation that-- The State's position would be that this is not a custodial interrogation that required Miranda. And I, the Court has already made its, has already made its thoughts known on the issue of the language. I was not able to locate anything, I don't think the other, that Andy or Mike were able to locate anything extra that needed to be done. I think the statement should come in, Your Honor. Thank you.

THE COURT: Is there anything you want to say, Mr. Baldwin?

MR. BALDWIN: Just very briefly. I, I disagree with the way that, and I know he wasn't trying to mischaracterize it, but Detective O'Brien never said he was free to leave, he said, "You can walk out that door," and I think that matters. He didn't say he

was free to leave. There are those cases that we cited that say just because somebody, even if he did say that, that is just a factor, that doesn't mean that a person, a reasonable person would believe that he was free to leave. That's all. Thank you.

THE COURT: Well, I did. I tried to do some research on this issue last night myself. I couldn't really find anything that talked about the immigration issue as far as cultural differences, someone not originally from America understanding the language. Because there's a difference between understanding English and understanding the cultural text of words and that's what concerns me in this situation is when you have someone from another country, particularly a country that doesn't share the rule of law that we have here and we're not, you know, we all know Mexico is not exactly the most Democratic society and rule

of law society. We know that police are, can be corrupt in Mexico. And so, my concern in this situation was would someone from the country of Mexico understand that this is not Mexico in the sense of a police setting as it is in Mexico where I can walk out the door without being shot or beat or whatever. And that's, but I couldn't find anything on that issue, but that was a concern of mine last night when I thought about this issue. 'Cause words do have different contexts, depending on you understanding the culture. I looked at the McIntosh case, I looked at the Aynes case, I looked at some other cases. You know McIntosh, you know, they all basically say the same thing as far as the overall view of a Miranda issue. You know, McIntosh has determined that if someone is in custody for purposes of Miranda the Court of Appeals applies an objective test concerning if a reasonable person under

the same circumstances would believe themselves to be under arrest or not free to resist the police. And of course that's McIntosh, 829 NE2d 531, Court of Appeals 2005. Of course you're not in custody obviously you don't have Miranda issues. That's what the McIntosh case basically holds. And it says, "To determine if someone is in custody we apply an objective test….would believe themselves to be under arrest or not free to resist." That's what McIntosh stands for, but they don't talk about the factors you can consider and I believe that you yesterday, Mr. Baldwin, cited some factors in the case of-- Well, I found one. Gauvin, I think it's Gauvin, G-A-U-V-I-N, vs State of Indiana, 878 NE2d 515 Court of Appeals 2007. And it talks about some factors that were cited and if you go to page, let's see, it's hard to read these when they're like this, what the page is, Your Honor.

MR. KYLE: What was that cite, Your Honor? I apologize.

THE COURT: Huh?

MR. KYLE: What was that cite?

THE COURT: It was 878 NE2d 515. believe this case was cited by one of the other cases, either McIntosh or—You know, I always go into case cite and say, I always look at these things, so I think this case was cited by one of the others but I didn't print it out, so I'm not quite sure how this case was cited, but it talks about factors. It says, "Courts have identified the following factors to be significant to determine whether a person is in custody: Whether and to what extent the person has been made aware that he is free to refrain from answering questions. Whether there has been prolonged, coercive and accusatory questioning. Whether police have employed subterfuge in order to

induce self-incrimination. The degree of police control over the environment in which the interrogation takes place." And in particular, "Whether the suspect's freedom of movement is physically restrained or otherwise significantly curtailed. And, whether the suspect could reasonably believe that he has the right to interrupt the questioning and leave the scene." That's where this case gets fact specific. You know, the situation in this case, one of the things I did note that was different than what was testified to is that the door to the interview room was closed. It was clear on the video that the door was closed to the interview room. This is a police setting, this is a secure facility. Yes, he voluntarily went there. But he had to be buzzed into the area or taken into the area of a secure room, the door is shut. Detective O'Brien's present. He is told, "You can walk out the door," but again, this

is where we get into words. This is what concerns me. It's one thing to say, "I can walk out the door." I think most of us here in America that are from here get the context that I'm free to leave. But someone who is not originally from here, this is what caused me concern is that you've got to be very specific they understand that it means basically you're free to leave. That's where I was really tossing with this issue last night. You know, I don't believe the officers in this case did anything inappropriate as far as ill will, but the issue is objective testing. Would a reasonable person under the circumstances believe they are free to go? And what also causes me concern here is when the second officer comes into the room and shuts the door and introduces himself, again, would a reasonable person in this situation, without being told that "You're free to leave," feel free to leave, and especially when the

questioning becomes very focused. And that's what one of the case law cases talks about is basically one of the factors to consider is has the police, have the police focused their investigation solely on this person and communicated that fact to the Defendant. It's not just what you in your heart as an officer know that you're focused on this person, but you have in fact have communicated that fact to the Defendant. There's no doubt in this situation that the Defendant was told that basically, "We believe you did it. We know you did it. We've got proof you did it," you know, "She took a lie detector test. She passed it," you know, "Why would she tell us this?". I mean, it's clearly the police communicated to the Defendant that he was the focus of the investigation. And so again, I'm tossing all this around in my mind, is this enough at this point, given a series of factors, to consider someone in

custody for purposes of Miranda? And I just really, I really tossed and turned on this last night. But I believe words matter and I believe when the State, and again it is the State's burden, I believe the State has to be very clear with language, that you have to be very specific to someone that they are free to leave the building at any time. I believe those words are important and I believe they need, especially to be communicated by multiple officers. If the State is going to use multiple officers to interrogate someone it has to be clear that just because the second officer goes into the room or a third or a fourth, that the situation hasn't changed. But when you have a Defendant who is not originally from this country, who is in a room with shut door with two (2) officers present, I believe at this point a reasonable person would not believe

they are free to leave. And therefore, I believe Miranda was required. That's where I've come down on this. Like I say, it's a factual call. It's not a, you know, it's not a black and white issue. I have to go with what I believe to be right. So therefore, I'm going to grant the Defense Motion to Suppress the statement as a violation of Miranda.

MR. WALKER: Your Honor—

THE COURT: However—

MR. WALKER: Go ahead.

THE COURT: The State will be allowed to use it for impeachment purposes because I do not believe that this was involuntary by the Defendant. I don't believe there is any basis not to allow the State to use it if the Defendant testifies for impeachment purposes. Okay?

MR. WALKER: Your Honor, the State, this evidence, and I appreciate the thought that you put into this, this evidence is very important to the State's case and so I'm going to have to ask for an Interlocutory Appeal.

THE COURT: Well, the statute, the statutory for a State Appeal, State, is not Constitutional and statutory and unless the State can state that it cannot proceed without the confession then the State has no basis to appeal.

MR. WALKER: The State cannot proceed without the confession. The State cannot proceed without those statements. I can tell you flat out that the statement would almost not--

STATE OF INDIANA)	IN THE JACKSON
)	CIRCUIT COURT
COUNTY OF JACKSON)	
	ANNUAL TERM 2018

STATE OF INDIANA

V.

	CAUSE NO.
ERNESTO B. RUIZ	36C01-1510-F4-25

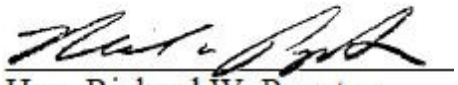
ORDER STAYING PROCEEDINGS

The State of Indiana, by its Deputy Prosecuting Attorney, Joshua K. Scherschel, filed its *Motion to Stay Proceedings*.

Being duly advised, this Court hereby grants said Motion Stays the proceedings in this case, pending resolution of the Petition for writ of certiorari to the Supreme Court of the United States.

The State is under a continuing obligation to inform this court and opposing counsel of any changes in status of the Petition.

SO ORDERED this 8th day of January, 2020.



Hon. Richard W. Poynter
Judge Jackson Circuit Court

Distribution:

Joshua K Scherschel
State of Indiana

Mark Kamisch
Attorney for the Defendant