No. ____

In the
Supreme Court of the United States

ANGEL LEE RANKIN,

PETITIONER,

v.

THE STATE OF TEXAS,

RESPONDENT.

On Petition for a Writ of Certiorari from the Court of Criminal Appeals for the State of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether the Court of Appeals Erred in Affirming the Trial Court's Denial of Ms. Rankin's Motion to Suppress Because She was in Law Enforcement's Custody for the Purposes of *Miranda* and Not Given the Proper Warnings.

Whether the Court of Appeals Erred in Affirming the Trial Court's Jury Verdict that the Evidence Factually and Legally Did Not Support the Finding that Ms. Rankin Did Not Act Under the Influence of Sudden Passion.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings before this court are as follows:

Angel Lee Rankin.

The State of Texas.

LIST OF PROCEEDINGS

209TH DISTRICT COURT, HARRIS COUNTY, TEXAS
Trial Court Case No. 1325037
THE STATE OF TEXAS v. RANKIN, ANGEL LEE
Judgement Dated 2/27/2019 Trial Court Opinion is Not Reported

COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON
Case No. 01-19-00156-CR
ANGEL LEE RANKIN V. THE STATE OF TEXAS
Opinion Issued 12/29/2020 Trial Court's Judgment AFFIRMED.
Rankin v. State, 617 S.W.3d 169, 188 (Tex. App. 2020).

COURT OF CRIMINAL APPEALS OF TEXAS
Case No. PD-0073-21
IN THE MATTER OF RANKIN
Judgment Dated 2/24/2021 Appellant's Petition for Discretionary Review REFUSED
In re Rankin, No. PD-0073-21, 2021 Tex. Crim. App. LEXIS 173 (Crim. App. Feb. 24, 2021).

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner respectfully requests that a Writ of Certiorari be issued to review the 209th District Court, Harris County, Texas's denial of her motion to suppress, the jury verdict that found that the evidence was insufficient to find she acted under sudden passion, and the Court of Appeals of Texas, First District's opinion affirming the Trial Court's opinion.

OPINIONS BELOW

The February 24, 2021 decision from the Court of Criminal Appeals of Texas can be found at *In re Rankin*, No. PD-0073-21, 2021 Tex. Crim. App. LEXIS 173 (Crim. App. Feb. 24, 2021). No published opinion accompanies this decision.

The December 29, 2020 decision from The Court of Appeals of Texas, First District, Houston can be found at *Rankin v. State*, 617 S.W.3d 169, 188 (Tex. App. 2020) and is reproduced in the Appendix ("Pet. App. 1a-56a") at Pet. App. 1a-56a.

The February 27, 2019 decision from the 209th District Court, Harris County, Texas is Not Reported and is reproduced in the Appendix at Pet. App. 57a-64a.

BASIS FOR JURISDICTION IN THIS COURT

The Court of Appeals of Texas, First District affirmed the decision of the 209th District Court, Harris County, Texas on December 29, 2020. (Pet. App. 1a-2a). This Court has jurisdiction pursuant to statutory provisions 28 U.S.C. § 1254(1) to review on

writ of certiorari the decision of the Court of Appeals of Texas, First District. The Court of Criminal Appeals of Texas refused the Petitioner's Petition for Discretionary Review on February 24, 2021, making jurisdiction proper under 28 U.S.C. § 1257(a). This matter brings questions of law and fact that remain unsettled.

The Supreme Court has granted writ of certiorari in criminal cases where the Trial Court may have prejudicially erred, where the petitioner's *Miranda* rights were in question, and where the Court of Appeal's judgment is vital to the administration of federal criminal laws. *Stutson v. United States*, 516 U.S. 193, 194 (1996); *Mathis v. United States*, 391 U.S. 1, 3 (1968); *Carbo v. United States*, 364 U.S. 611, 612 (1961). For instance, in *Stutson v. United States*, this Court granted writ of certiorari because the Trial and Courts of Appeals failed to consider potentially pertinent matters that were important to the petitioner's defense. 516 U.S. at 194. Likewise, in *Mathis v. United States*, this Court granted a writ of certiorari because the Government implicated petitioner's Miranda rights in the evidence admitted against the petitioner. 391 U.S. at 3.

Additionally, in *Carbo v. United States*, this Court granted writ of certiorari due to the case's pertinence to the "effective administration of criminal justice," requiring this Court's adjudication. 364 U.S. at 612. Here, the first question is whether the Trial Court erred in denying Ms. Rankin's Motion to Suppress because she was not in custody when she

made the state she sought to suppress, and Court of Appeals of Texas, First District erred in affirming that decision.

Furthermore, the second question is whether the Court of Appeals of Texas, First District erred in affirming the Trial Court's jury verdict by failing to consider pertinent matters regarding the application of the sudden passion defense to her case.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. V.

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Tex. Const. art. I, § 10

> In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of

> the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger.

STATUTORY PROVISIONS INVOLVED

Tex. Penal Code § 9.02

> It is a defense to prosecution that the conduct in question is justified under this chapter.

Tex. Penal Code § 9.31

> (a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force. The actor's belief that the force was immediately necessary as described by this subsection is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the force was used:

> (A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;
>
> (B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or
>
> (C) was committing or attempting to commit aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery;

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a violation of a law or ordinance regulating traffic at the time the force was used.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c);

(3) if the actor consented to the exact force used or attempted by the other;

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor; or

(5) if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was:

(A) carrying a weapon in violation of Section 46.02; or

(B) possessing or transporting a weapon in violation of Section 46.05.

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34.

(e) A person who has a right to be present at the location where the force is used, who

has not provoked the person against whom the force is used, and who is not engaged in criminal activity at the time the force is used is not required to retreat before using force as described by this section.

(f) For purposes of Subsection (a), in determining whether an actor described by Subsection (e) reasonably believed that the use of force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Tex. Penal Code § 9.32

(a) A person is justified in using deadly force against another:

(1) if the actor would be justified in using force against the other under Section 9.31; and

(2) when and to the degree the actor reasonably believes the deadly force is immediately necessary:

(A) to protect the actor against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

(b) The actor's belief under Subsection (a)(2) that the deadly force was immediately necessary as described by that subdivision is presumed to be reasonable if the actor:

(1) knew or had reason to believe that the person against whom the deadly force was used:

(A) unlawfully and with force entered, or was attempting to enter unlawfully and with force, the actor's occupied habitation, vehicle, or place of business or employment;

(B) unlawfully and with force removed, or was attempting to remove unlawfully and with force, the actor from the actor's habitation, vehicle, or place of business or employment; or

(C) was committing or attempting to commit an offense described by Subsection (a)(2)(B);

(2) did not provoke the person against whom the force was used; and

(3) was not otherwise engaged in criminal activity, other than a Class C misdemeanor that is a

violation of a law or ordinance regulating traffic at the time the force was used.

(c) A person who has a right to be present at the location where the deadly force is used, who has not provoked the person against whom the deadly force is used, and who is not engaged in criminal activity at the time the deadly force is used is not required to retreat before using deadly force as described by this section.

(d) For purposes of Subsection (a)(2), in determining whether an actor described by Subsection (c) reasonably believed that the use of deadly force was necessary, a finder of fact may not consider whether the actor failed to retreat.

Tex. Penal Code § 19.02

MURDER. (a) In this section:

(1) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.

(2) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or

another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.

(b) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

STATEMENT OF THE CASE

A. Concise Statement of Facts Pertinent to the Questions Presented.

The Incident In Question

Petitioner Angel Rankin ("Petitioner" or "Ms. Rankin") is a Texas mother whose car broke down on a trip to a gas station. (Pet. App. 2a). To help her "jump start" the vehicle, Ms. Rankin called her 13-year-old daughter M.R. and her boyfriend Steven Willis. (Pet. App. 2a). After calling Willis repeatedly to respond, he arrived with Ms. Rankin's daughter in her Oldsmobile Cutlass and helped her push her disabled car into a nearby parking lot. (Pet. App. 2a). Because of a previous accident, Ms. Rankin could not unlatch the car's hood without using a knife. (Pet. App. 2a). While Willis retrieved the jumper cables, Ms. Rankin took a knife out of the knife kit she kept in the car to unlatch the hood. (Pet. App. 2a). However, once Ms. Rankin left the car, her daughter M.R. witnessed a tense situation beginning to unfold. (Pet. App. 2a).

Upon exiting Ms. Rankin's Cutlass, parked across the street from the parking lot, M.R heard "yelling" and witness Willis behaving "very aggressively." (Pet. App. 3a). Ms. Rankin had known that Willis had an "attitude." (Pet. App. 3a). While Ms. Rankin questioned Willis on his delayed arrival and communication, Willis grew increasingly "frustrated." Eventually, Ms. Rankin told Willis to stop his assistance, but that Willis could not leave in her. (Pet.

App. 3a). Immediately after Ms. Rankin's statement, Willis lunged at Ms. Rankin and grabbed her. (Pet. App. 3a). Upon seeing her mother in peril, M.R. "turned around and ran to get" a bat from their apartment. (Pet. App. 3a). Willis, exclaimed "Bitch, I'll kill you!" as he began to choke Ms. Rankin. (Pet. App. 3a). Willis choked Ms. Rankin for 30 seconds. (Pet. App. 3a). Ms. Rankin begged Willis to release his grip on her neck and "cried out to God" because she felt she "was about to die." (Pet. App. 3a).

Although continuing to struggle with Willis, Ms. Rankin had kept her knife in her hand. (Pet. App. 3a). Upon breaking free of Willis's grapple, Ms. Rankin "called out for help from God," "took the knife," and "poked him once to get him off of" her. (Pet. App. 3a). After Ms. Rankin "poked" Willis, he let her go and got into her Cutlass. (Pet. App. 3a). Ms. Rankin sat in her car and cried while Willis walked away. (Pet. App. 3a). While attempting to leave, Willis parked the vehicle, exited it, and walked behind the car before dropping to the ground. (Pet. App. 4a). When she noticed Willis's fall, Ms. Rankin ran over to him, put him into the Cutlass, and called 911. (Pet. App. 4a). As Willis was unresponsive, Ms. Rankin decided she could get to the hospital faster than waiting for the ambulance and "took off" with Willis. (Pet. App. 4a).

Once Ms. Rankin arrived at the hospital, hospital workers performed CPR on Willis to attempt to resuscitate him. (Pet. App. 4a). A police officer sitting at the front desk of the hospital asked Rankin, "Who did this?" (Pet. App. 4a). She responded, "I did." (Pet. App. 4a). Houston Police Department Detective A. Hernandez arrived at the hospital to investigate

Willis's injuries. (Pet. App. 4a). Police took Ms. Rankin's cell phone, identification, and other personal items from her. (Pet. App. 5a). Ms. Rankin then met with Detective Hernandez, who did not advise her of her constitutional rights under *Miranda v. Arizona* before questioning her about the incident. (Pet. App. 5a).

Ms. Rankin explained what had happened but omitted that Willis had choked her because she was "afraid that once he got out of the hospital if they were to arrest him, he was going to come hurt [her]." (Pet. App. 5a). Detective Hernandez called the District Attorney's Office to discuss what had occurred, but the Office declined to charge Ms. Rankin. (Pet. App. 5a). But the Office and Detective Hernandez were both suspicious of the story Ms. Rankin provided. (Pet. App. 5a). After the discussion, Detective Hernandez "contacted the Homicide Division and requested investigators come to the hospital." (Pet. App. 5a). Ms. Rankin cooperated with the other officer's search signing consent forms authorizing officers to search and seize her car and the Cutlass. (Pet. App. 5a). Detective Hernandez then handcuffed Rankin under Houston Police Department policy, requiring officers to handcuff all persons transported for security. (Pet. App. 5a).

Once at the Police Department, Officer R. Lujan met with Ms. Rankin. (Pet. App. 6a). Officer Lujan told Ms. Rankin that she was there voluntarily and he only wanted information about the incident. (Pet. App. 6a). Officer Lujan did not read her Miranda warnings before taking her statement. (Pet. App. 6a). Ms. Rankin repeated her story that she told Detective

Hernandez but once again omitted details. (Pet. App. 6a). After giving her statement, the officers returned her purse and identification and took her home. (Pet. App. 6a). Willis died from his injuries. (Pet. App. 6a).

B. Procedural History

On January 31, 2012, Angel Rankin was indicted for unlawfully, intentionally, and knowingly causing the death of Steven Willis. (Pet. App. 6a). Before trial, Ms. Rankin filed a motion to suppress statements made during custodial interrogation. (Pet. App. 6a). Detective Hernandez and Officer Lujan testified at the suppression hearing. (Pet. App. 6a). The trial court denied the motion. (Pet. App. 6a). The trial court judge stated: "at this time I'll find that the statement, although it did not comply with Miranda, that Ms. Rankin was not under arrest or part of custodial interrogation, and that it was voluntarily made." (Pet. App. 6a). The jury convicted Rankin of murder, rejected her claim of sudden passion, and assessed punishment at 15 years' confinement in the Institutional Division of the Texas Department of Criminal Justice.

Ms. Rankin appealed the trial court's decision to the Court of Appeals of Texas, First District. (Pet. App. 2a). Arguing that the trial court erred in denying her motion to suppress, Ms. Rankin also challenged the legal and factual sufficiency of the evidence to support the rejection of her self-defense and sudden passion defenses. (Pet. App. 2a). On December 29, 2020, the Court of Appeals affirmed the trial court's decision. (Pet. App. 2a). On January 28, 2021, Ms. Rankin filed a Petitioner's Petition for Discretionary Review with the Court of Criminal Appeals of Texas.

On February 24, 2021, the Court of Criminal Appeals of Texas refused the Petitioner's Petition for Discretionary Review.

This Petition for Writ of Certiorari followed.

REASONS TO GRANT THIS PETITION

I. The Trial Court Abused its Discretion When it Denied Ms. Rankin's Motion to Suppress Because She was in Custody for Purposes of Miranda and was Not Given Proper Warnings.

The Trial Court erred when it admitted Ms. Rankin's statements because she made these statements while she was in custody, failing to give her the warnings required by *Miranda*. The Texas Code of Criminal Procedure provides that statements made during a custodial interrogation are not admissible unless the accused received the warnings provided in Article 15.17 or Article 38.22 of the Texas Code of Criminal Procedure, which incorporate the *Miranda* warnings before making the statement. *See Ruth v. State*, 645 S.W.2d 432, 435 (Tex. Crim. App. 1979) (Custodial interrogation means, "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*.") (emphasis in original); *Miranda v. Arizona*, 384 U.S. 436, 444 (1966); *Turner v. State*, 685 S.W.2d 38, 41 (Tex. Crim. App. 1985); *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980) ("For *Miranda* purposes, the term interrogation refers to any words or action on the part of the police, other than those normally attendant on arrest and custody, "that the police should know are reasonably likely to elicit an incriminating response from the suspect."); see also *Miranda*, 384 U.S. at 475.

In Texas law, custody is established if the manifestation of probable cause, combined with other circumstances, "would lead a reasonable person to believe that he is under restraint to the degree associated with an arrest." *Dowthitt v. State*, 931 S.W.2d 244, 255 (Tex. Crim. App. 1996). Probable cause to arrest arises when "reasonably trustworthy information" is "sufficient to warrant a prudent man in believing that the person of interest committed an offense, or was in the process of committing an offense." *Parker v. State*, 206 S.W.3d 593, 596 (Tex. Crim. App. 2006).

When analyzing whether a suspect was in custody, courts should not contract the Fifth Amendment protection against self-incrimination to expand the Fourth Amendment investigative detention scope. *See Bates v. State*, 494 S.W.3d 256, 283 (Tex. App.—Texarkana 2015, pet. ref'd) (Burgess, J., concurring) ("[C]ontracting *Miranda's* definition of restraint custody in order to accommodate expansion of investigative detention under *Terry* would effectively allow Fourth Amendment reasonableness to invade into the Fifth Amendment's restraint custody analysis."); *see also Terry v. Ohio*, 392 U.S. 1, 29 (1968). Conversely, Fifth Amendment rights do not arise if the person is only subject to a non-custodial investigative detention. *Herrera v. State*, 241 S.W.3d 520, 526 (Tex. Crim. App. 2007); *see also Crain v. State*, 315 S.W.3d 43, 49 (Tex. Crim. App. 2010) ("A fourth amendment 'investigative detention occurs when a person yields to the police officer's show of authority under a reasonable belief that he is not free

to leave.'"); *see* U.S. Const. amend. V. "However, the mere fact that an interrogation begins as noncustodial does not prevent custody from arising later; police conduct during the encounter may cause a consensual inquiry to escalate into custodial interrogation." *Dowthitt*, 931 S.W.2d at 255. A formal arrest is not necessary for *Miranda* rights to arise. *Ussery v. State*, 651 S.W.2d 767, 770 (Tex.Crim.App.1983); *Newberry v. State*, 552 S.W.2d 457, 461 (Tex. Crim. App. 1977) ("It is not necessary that [the] accused be under formal arrest prior to the interrogation for *Miranda* rights to arise."). Once a person's freedoms are restricted to render them in custody, an officer's obligation to administer *Miranda* warnings attach. *Stansbury v. California*, 511 U.S. 318, 322 (1994); *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam).

In *Dowthitt*, the Texas Court of Criminal Appeals recognized four general situations where an investigation may constitute custody for purposes of Miranda:

> (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.

Dowthitt, 931 S.W.2d at 255.

The first three situations require the restriction on a suspect's freedom of movement reach a degree associated with an arrest instead of investigative detention. *State v. Saenz*, 411 S.W.3d 488, 496 (Tex. Crim. App. 2013); *see Mims v. State*, 607 S.W.3d 419, 425 (Tex. App. 2020), *petition for discretionary review refused* (Nov. 18, 2020). "The fourth situation requires an officer's knowledge of probable cause to be manifested to the suspect." *Id.*; *see also Stansbury*, 511 U.S. at 322; *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (per curiam); *Mathiason*, 429 U.S. at 495.

Moreover, a "pivotal admission [can] establish custody." *Dowthitt*, 931 S.W.2d at 256 (citing *Ruth*, 645 S.W.2d at 432); *Estrada v. State*, 313 S.W.3d 274, 296 (Tex. Crim. App. 2010). For example, in Ruth, the appellant accompanied the victim to the hospital after being shot. *Ruth*, 645 S.W.2d at 432. At the hospital, an officer approached the appellant and asked what happened. *Id.* The appellant told the officer, "I shot him[,] but it was an accident." *Id. at 434.* The appellant then refused to answer any other questions. *Id.* The district court admitted the appellant's refusal into evidence. *Id.* The Texas Court of Criminal Appeals held that the appellant's refusal was inadmissible because the appellant was in custody from the moment he admitted to the shooting, and *Miranda* governed any subsequent statements. *Id.* at 436. The court reasoned that the "appellant's

statement that he had shot the victim immediately focused the investigation on him and furnished probable cause to believe that he had committed an offense." Once probable cause was established, the continued interrogation of the suspect was custodial. *Id.*

Furthermore, "an officer's views concerning the nature of an interrogation, or beliefs concerning the potential culpability of the individual being questioned, may be one among many factors that bear upon the assessment whether that individual was in custody*, but only if the officer's views or beliefs were somehow manifested to the individual under interrogation and would have affected how a reasonable person in that position would perceive his or her freedom to leave." Estrada*, 313 S.W.3d at 294 (citing *Stansbury*, 511 U.S. at 325) (emphasis added). The ability to end the interrogation and to leave the police station must be reasonable to the appellant under the circumstances the statement was made. *Estrada v. State*, 313 S.W.3d 274, 295 (Tex. Crim. App. 2010) ("In addition to this, we note that the police told appellant several times that he was free to leave, that appellant also acknowledged that he came to the station voluntarily and did not "have to be [t]here anymore," and that appellant stated several times that he wanted to leave and go home."): s*ee Dowthitt,* 931 S.W.2d at 254; *State v. Carroll,* 645 A.2d 82, 88 (N.H. 1994) (defendant's statement that he "want[ed] to go home" suggests "that the defendant himself believed that he could have left if he so chose"). In *Estrada*, the appellant went to the police

station voluntarily to deny that he murdered his girlfriend, only to later confess to attacking her in the interrogation. *Estrada*, 313 S.W.3d at 290. Though he was a "central figure" in the case, the appellant did not confess to the killing before arriving at the police station. *Id.* at 289. The court found that because officers told the appellant that he was free to leave and asked for a ride home, the statement was not custodial for purposes of *Miranda*. *Id.* at 295.

Miranda protected Ms. Rankin because her statement to the police officer at the hospital was enough to establish custody. *Ruth*, 645 S.W.2d at 435. Like the appellant in *Ruth*, Ms. Rankin's pivotal admission at the hospital was enough to established custody, especially since she was potentially handcuffed after making the incriminatory statement. *Ruth*, 645 S.W.2d at 435; (Pet. App. 5a). Ms. Rankin, when asked by the hospital's police officer "who did this to him," she responded that "[she] did." (Pet. App. 5a). From that moment onward, Ms. Rankin knew that she had confessed to stabbing Steven Willis, and could reasonably understand that she would be unable to leave the hospital. *Ruth*, 645 S.W.2d at 434. After law enforcement arrived, Ms. Rankin told Officer Hernandez that she was the person that stabbed Steven Willis. (Pet. App. 5a). She consented to the police seizing her cars and was handcuffed and taken to the Police Department. (Pet. App. 5a). Like the appellant in *Ruth*, Ms. Rankin reasonably could understand that she was in custody and would not be able to leave the station voluntarily. *Ruth*, 645 S.W.2d at 346. Accordingly, Ms. Rankin entered law

enforcement's custody once she admitted responsibility for the complainant's condition and subsequently handcuffed.

Furthermore, once Ms. Rakin was handcuffed, whether at the hospital or to be transported to the Police station, her freedom of movement was restrained to the degree associated with a formal arrest because of the underlying circumstances. *Dowthitt,* 931 S.W.2d at 254. Steven Willis was in critical condition upon arrival at the hospital, and Ms. Rankin admitted responsibility for the complainant's condition. (Pet. App. 5a). When the hospital's officer elicited the inculpatory statements from Angel, a reasonable person in her position would have believed that she was in custody, especially after being handcuffed. *State v. Ortiz*, 382 S.W.3d 367, 377 (Tex. Crim. App. 2012); *see Dowthitt,* 931 S.W.2d at 254; *Estrada*, 313 S.W.3d at 294 ;(Pet. App. 5a). At trial, the officers maintained that Angel was free to leave during their investigation. (Pet. App. 6a). But, while Ms. Rankin was at the hospital, her belongings were taken, her cars were seized, and she was handcuffed. (Pet. App. 5a). A reasonable person would be likely to infer from these actions that they were in law enforcement's custody, as their possessions had been deprived and their freedom constrained. See *Oritz*, 382 S.W.3d at 377. Although Ms. Rankin was not formally arrested, these facts go beyond that of a temporary investigation. *Estrada*, 313 S.W.3d at 294.

Additionally, the facts of this case go beyond that of typical investigative detention because the

officers had probable cause to arrest Ms. Rankin. *Ruth*, 645 S.W.2d at 436. After Ms. Rankin's admission, the hospital officer immediately focused his investigation on her and furnished probable cause to believe that she had committed an offense. (Pet. App. 4a, 5a). The officers manifested knowledge of probable cause towards Ms. Rankin once she was told she could not leave the hospital until police arrived and handcuffing her. (Pet. App. 5a). To hold otherwise would imply that officers did not have sufficient information to believe an offense had been committed when: (1) Angel admitted responsibility for the complainant's injuries; (2) when Angel's story did not add up with medical personnel's assessment—according to Officer Hernandez; (3) when Officer Hernandez believed there was probable cause to arrest; (4) when the Homicide Division was called; (5) when Angel was placed in handcuffs and transported to give a recorded statement; and (6) when Officer Lujan interrogated Ms. Rankin without *Miranda* warnings. (Pet. App. 4a, 5a, 6a). "These circumstances combine to lead a reasonable person to believe that [their] liberty was compromised to a degree associated with formal arrest." *Ortiz*, 382 S.W.3d at 373. Therefore, the trial court erred in denying Ms. Rankin's motion to suppress because she was in custody for purposes of *Miranda* and not given proper warnings prescribed by Article 38.22.

Also, the Court of Appeals erred in relying on *Estrada* in denying Ms. Rankin's appeal. The appellant in *Estrada* was under the submission of committing the offense before arriving at the Police

Department voluntarily. *Estrada*, 313 S.W.3d at 290. The appellant later confessed to attacking the victim while being interrogated. *Id.* Unlike the appellant in *Estrada*, Ms. Rankin had already admitted to stabbing Steven Willis before being transported to the Homicide Division by police. (Pet. App. 5a). The court in Estrada found that because the petitioner could have asked to leave, the statement was voluntary and that *Miranda* did not apply. Ms. Rankin, however, had had her belongings taken, her car seized and had been handcuffed before even arriving at the police station. (Pet. App. 5a).

Moreover, the circumstances surrounding the nature of the statements made in Estrada and Ms. Rankin's case are significantly different, and the Court of Appeals erred in applying Estrada's reasoning to Ms. Rankin's case. *Rankin v. State*, 617 S.W.3d 169, 179 (Tex. App. 2020). To hold otherwise would enable the State to discharge its burden by only stating that an individual is not in custody when the facts and circumstances would convince a reasonable person otherwise. *Miranda*, 384 U.S. at 475 ("Since the State is responsible for establishing the isolated circumstances under which the interrogation takes place and has the only means of making available corroborated evidence of warnings given during incommunicado interrogation, the burden is rightly on its shoulders."). Hence the Court of Appeals erred in affirming the trial court's decision. Accordingly, this Court should grant this Petition to see that justice is served.

II. The Evidence is Legally and Factually Insufficient to Support the Jury's Finding that Ms. Rankin Did Not Commit the Offense Under the Influence of Sudden Passion.

The Court of Appeals erred in holding that the evidence of the jury's finding that Ms. Rankin was not under the influence of sudden passion was legally and factually sufficient. In Texas, a defendant convicted of murder may argue that the offense was committed under the influence of sudden passion. *Trevino v. State*, 100 S.W.3d 232, 237 (Tex. Crim. App. 2003). Sudden passion is an "excited and agitated mind" at the time of the offense, "caused by provocation by the victim, arising from an adequate cause." *Rayme v. State*, 178 S.W.3d 21, 28 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd); Tex. Pen. Code § 19.02(a)(2).

The sudden passion defense involves four elements. First, the defendant must have "acted under the immediate influence of terror, anger, rage, or resentment." *Wooten v. State*, 400 S.W.3d 601, 604-605 (Tex.Crim.App. 2013). Second, the sudden passion must have been induced by some provocation by the victim, and "that such provocation would commonly produce such passion in a person of ordinary temper." *Id.* Third, the defendant must have committed the murder "before regaining his capacity for cool reflection. *Id.* Fourth, there must have been a causal connection between the provocation, the defendant's sudden passion, and the homicide. *Beltran v. State*, 472 S.W.3d 283, 294 (Tex.Crim.App. 2015) (reversing conviction on the ground that Beltran was entitled to

an instruction on sudden passion), *citing Wooten v. State*, 400 S.W.3d 601, 604-605 (Tex.Crim.App. 2013).

"Sudden passion' means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation." Tex. Penal Code §19.02(a)(2). "Adequate cause' means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection." Tex. Penal Code §19.02(a)(1); *see also Moncivais v. State*, 425 S.W.3d 403, 407 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd). After the provocation, the immediacy of action is essential to establish if the defendant acted under the influence of sudden passion. *Havard v. State*, 800 S.W.2d 195, 217 (Tex.Crim.App. 1989) (op. on reh'g) ("Testimony that the defendant became enraged, resentful or terrified immediately prior to the shooting adequately indicates such a state of mind."); *McGee v. State*, 473 S.W.2d 11, 14 (Tex.Crim.App. 1971) ("In most cases where this Court has reversed for failure to charge on murder without malice, there was evidence of immediate acts of the deceased that enraged the mind of the accused.").

Texas courts have found that killings that have occurred in the middle of fights qualify for the sudden passion defense when justified by the attendant circumstances. *Beltran v. State*, 472 S.W.3d 283, 287 (Tex. Crim. App. 2015); *Trevino v. State*, 100 S.W.3d 232, 233 (Tex. Crim. App. 2003). For instance, in Beltran, the appellant was sexually assaulted by the

complainant, who was killed in the ensuing fight. *Beltran*, 472 S.W.3d at 287. The appellant was "panicked" by the complainant, who pushed the appellant's face into a pillow in an attempt to get him to quiet down. *Id.* In a "haze," the appellant held on to the complainant to prevent him from continuing the attack as another party stabbed him to death. *Id.* The Court found that the appellant was entitled to a sudden passion instruction because the appellant's testimony established the causal connection between the terror of the sexual assault, the provocation, and the resulting homicide. *Id.* at 295.

Likewise, the appellant in *Trevino*, a man who killed his wife in a shootout, had additional evidence establishing the killing occurred under sudden passion provided through his sister's testimony. *Trevino v. State*, 100 S.W.3d 232, 233 (Tex. Crim. App. 2003). The complainant was killed when she fired a gun at the appellant, scaring him, causing him to shoot her "three times." *Id.* at 241. The appellant's sister, testified that she found the appellant "looked shocked," that "he had 'a thousand-yard stare, which, [she found] symptomatic of battle fatigue or post-traumatic stress disorder.'" *Id.* at 239. Though the trial court thought the appellant's testimony was weak and impeached, the court found these circumstances justified a sudden passion jury instruction and affirmed the Court of Appeals that had reversed the trial court. *Id.* at 238, 243. ("[A] sudden passion charge should be given if there is some evidence to support it, even if that evidence is weak, impeached, contradicted, or unbelievable.")

The Court of Appeals of Texas, First District erred in finding that the evidence was legally and factually sufficient for the jury to find that Ms. Rankin did not act under sudden passion because she acted under the terror of Steven Willis's attack. *Beltran*, 472 S.W.3d at 294. Justice Keyes highlights in her dissent that Ms. Rankin's and M.R.'s testimony establishes that Ms. Rankin acted under immediate passion. (Pet. App. 50a). This passion was the "terror, anger, rage, or resentment" regarding Steven Willis. *Id.* (citing *Beltran*, 472 S.W.3d at 294). Justice Keyes argues that the evidence supports Willis provoked Ms. Rankin, who acted under that provocation, and committed the offense before regaining her capacity for cool reflection. (Pet. App. 50, 51). Justice Keyes also found a causal connection between the provocation, the passion, and the final offense. *Id.* Yet, this connection between being provoked and choked was not sufficient for the majority. (Pet. App. 30a).

The majority found that Ms. Rankin had time for cool reflection as "she 'call[ed] out for help from God,' despite losing her breath from Willis's chokehold." (Pet. App. 26a, 27a). The dissent and other Texas cases would hold that this is "these [including the Petitioner's call for God's help] are exactly the type of facts that [this Court] has described as proof of sudden passion—not its direct opposite." *See Beltran* 472 S.W.3d at 293-295; *Trevino*, 100 S.W.3d at 234-235, 239-241; (Pet. App. 55a). Like the appellant in *Beltran*, Ms. Rankin's actions were affected by extreme duress. 472 S.W.3d at 294. Willis choked Ms. Rankin, who she feared considerably. *Id.*; (Pet. App. 5a) ("She did not, however, tell Detective Hernandez that Willis had choked her because she

was 'afraid that once he got out of the hospital, if they were to arrest him, he was going to come hurt [her].'"). Furthermore, similar to the appellant in *Trevino*, Ms. Rankin was despondent after stabbing Willis, crying in her car as he walked away. (Pet App. 4a, 27a). Like, *Trevino*, law enforcement also scrutinized Ms. Rankin's testimony finding it to be "inaccurate." *Trevino*, 100 S.W.3d at 238; (Pet. App. 6a). But similarly, M.R.'s testimony shows that Ms. Rankin was provoked by Willis's physical threat, a threat her daughter "went to find a bat" to counteract. (Pet. App. 3a). In each of these proceedings, the court of appeals found that a sudden passion jury instruction, even if the testimony is "weak." *Trevino*, 100 S.W.3d at 238; *see Beltran*, 472 S.W.3d at 294. As a result, the Court of Appeals decision is an error and cannot stand. Thus, this Court should grant this Petition in the interests of justice and promoting consistent application of the sudden passion defense in Texas law.

CONCLUSION

For the foregoing reasons, this Petition for a writ of certiorari should be granted.

Respectfully submitted,

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