

NO. _____

IN THE
Supreme Court of the United States

AXEL DOMINGO DIEGO,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE INDIANA SUPREME COURT

APPENDIX

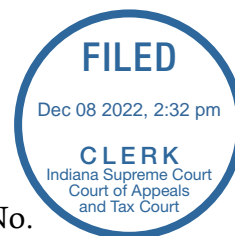
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In the
Indiana Supreme Court



Axel Domingo Diego,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
22A-CR-00331

Trial Court Case No.
09C01-1806-FA-1

Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 12/8/2022.

Loretta H. Rush
Chief Justice of Indiana

All Justices concur, except Goff, J., who votes to grant the petition to transfer.

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Axel Domingo Diego,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 31, 2022

Court of Appeals Case No.
22A-CR-331

Appeal from the
Cass Circuit Court

The Honorable
Stephen R. Kitts, II, Judge

Trial Court Cause No.
09C01-1806-FA-1

Vaidik, Judge.

Case Summary

- [1] After making incriminating statements to a detective, Axel Domingo Diego was charged with three child-molesting offenses. He moved to suppress those statements, arguing he was subject to custodial interrogation without being given *Miranda* warnings. The trial court agreed and suppressed the statements. After the State brought an interlocutory appeal and this Court affirmed, our Supreme Court granted transfer and reversed, holding Domingo Diego was not subjected to custodial interrogation and thus the statements should not have been suppressed.
- [2] On remand, the trial court admitted the statements and a jury convicted Domingo Diego of Class A felony child molesting and Class C felony child molesting. He now appeals, again arguing his statements are inadmissible because he was subject to custodial interrogation without being given *Miranda* warnings. Because our Supreme Court has already addressed this argument, we apply the law-of-the-case doctrine and affirm.

Facts and Procedural History

- [3] Our Supreme Court set forth the following facts in its decision on interlocutory appeal:

During the investigation of a possible incident involving child molestation, the Logansport Police Department (“LPD”) contacted Detective Sergeant Troy Munson of the Seymour Police Department (“SPD”) because LPD believed a suspect was

located in SPD's community. After reviewing LPD's interview of the alleged victim, Detective Munson searched SPD's database to locate the home address of the suspect, Axel Domingo Diego. A uniformed officer went to the residence and spoke to Domingo Diego's English-speaking girlfriend, Andrea Martin, who prompted Domingo Diego to come speak with the officer.

Martin translated the conversation with the officer because Chuj was Domingo Diego's primary language. Domingo Diego also spoke some Spanish and English. The officer gave the couple Detective Munson's business card and told Domingo Diego that he needed to go to the police department to find "Mr. Troy."

Domingo Diego and Martin arrived at SPD a few days later—perhaps by appointment. Upon entry into SPD's front lobby, an officer opened a door from the lobby to the rest of the police station and, after the couple moved through the open door, it was shut behind them. The door was secure from the lobby, meaning a person would have to be buzzed through to enter the rest of the police station. A person could freely exit the door to the lobby without assistance, but nobody explained this to Domingo Diego or Martin.

The couple boarded an elevator to the second floor. At some point, Detective Munson met the couple. Detective Munson wore his police badge and carried a gun on his person. Despite Martin's warning that Domingo Diego didn't speak Spanish clearly, Detective Munson told Martin to have a seat outside the room because he had the assistance of a Spanish/English translator.

The interview took place inside Detective Munson's personal office which had two exterior windows and was adorned with family pictures. Munson shut the door and closed the blinds on a window overlooking the rest of the detective division at SPD.

The door was unlocked, but Domingo Diego was seemingly unaware of this. Through the translator, Domingo Diego was advised that he was not under arrest and that he was free to leave anytime. Domingo Diego indicated that he understood and later testified he felt that he could have left in the middle of the interview but chose not to because he was with a police officer. Munson did not read Domingo Diego any *Miranda* warnings.

During the course of the approximately forty to forty-five minute interview, Detective Munson asked Domingo Diego questions about the incident in Logansport. Detective Munson told Domingo Diego he had listened to a recording of the victim's father confronting him about an alleged sexual interaction with the victim and that lying to the detective would make things worse. Though he had only reviewed LPD's interview, the detective also implied to Domingo Diego he had spoken directly with the victim. Thereafter, the detective pressed Domingo Diego on what exactly occurred with the victim and Domingo Diego made several potentially incriminating statements. At the end of the interview, Detective Munson asked if Domingo Diego wanted to write an apology letter to the victim but did not require him to do so. After the interview, Detective Munson wished Domingo Diego and Martin a good day and the couple left the building unaccompanied.

Domingo Diego was charged with Count I, Child Molesting, a Class A Felony, Count II, Child Molesting, a Class A Felony, and Count III, Child Molesting, a Class C Felony. Thereafter, Domingo Diego moved to suppress the statements he made during his interview at SPD on the basis that the interview amounted to a custodial interrogation and the statements were obtained in violation of the Fifth Amendment of the United States Constitution and Article 1, Section 14 of the Indiana Constitution.

State v. Diego, 169 N.E.3d 113, 115-16 (Ind. 2021) (citations to the record omitted).

- [4] At the suppression hearing, Domingo Diego argued he was subject to a custodial interrogation, in part because a language barrier existed. He also emphasized that the certified Spanish to English translation of the interview, which had been admitted into evidence, showed the translator made several errors during the interview.
- [5] The trial court granted Domingo Diego’s motion to suppress, relying on a recent Supreme Court opinion, *State v. E.R.*, 123 N.E.3d 675, 683 (Ind. 2019). The State brought an interlocutory appeal, but this Court affirmed. *State v. Domingo Diego*, 150 N.E.3d 715 (Ind. Ct. App. 2020), *aff’d on reh’g*, 159 N.E.3d 629 (Ind. Ct. App. 2020). After considering *E.R.*, we found, “Domingo Diego’s freedom of movement was curtailed to the degree associated with an arrest, and he was subjected to inherently coercive pressures such as those at issue in *Miranda*.” *Id.* at 720. Therefore, “[Domingo Diego’s] statements [were] obtained during custodial interrogation without *Miranda* warnings.” *Id.* at 721.
- [6] Our Supreme Court granted transfer, vacated this Court’s opinion, and reversed the suppression order, finding that “Domingo Diego’s freedom of movement was not curtailed to the degree associated with formal arrest” and he was therefore not subject to custodial interrogation. *Diego*, 169 N.E.3d at 118. In doing so, the Court stated:

Finally, we are mindful—as the dissent and Defendant highlight—that Domingo Diego had limited English proficiency. It is true that the Supreme Court of the United States has included at least one individual characteristic in the list of acceptable considerations for the objective custody test. But even if, as the dissent suggests, [we were] to consider its proposed objective circumstance in our present inquiry, we think that a reasonable officer would not have thought that [Domingo Diego]’s language abilities prevented him from feeling free to leave.

As tempting as it may be to inject a subjective viewpoint into this inquiry, we must consider this purported factor from the objective shoes of a reasonable officer. Contrary to the suggestion that the SPD dispatcher was an unqualified officer in disguise, the transcript of the interview reveals very little meaningful difference between the interpreter’s live translation and an after-the-fact certified forensic transcript translation. Though Domingo Diego had some trouble forming responses and perhaps lacked perfect comprehension of Detective Munson’s questions, the evidence does not suggest that it would have been apparent to a reasonable officer that [Domingo Diego] was not understanding what was being said. So, unlike a situation in which a language barrier presented a high degree of confusion, the transcript reveals a fluid, conversational exchange between all parties involved. Blunt, yes, but coercive, no.

Id. at 119-20 (internal citations omitted).

- [7] The case was remanded to the trial court and proceeded to a jury trial in December 2021. The trial court overruled Domingo Diego’s objection and admitted the previously challenged statements. At trial, Domingo Diego again

introduced the certified translation of the interview and emphasized that parts were “loose,” “not consistent,” or simply “inaccurate.” Tr. Vol. IV p. 84.

[8] The jury found Domingo Diego guilty of one of the Class A felonies and the Class C felony but not guilty of the other Class A felony. The trial court imposed an aggregate sentence of thirty-four years.

[9] Domingo Diego now appeals.

Discussion and Decision

[10] Domingo Diego raises only one issue in this appeal: whether his statements to Detective Munson “should have been suppressed because he was subject to a custodial interrogation without receiving his *Miranda* advisements.” Appellant’s Br. p. 36. This is the exact issue presented on interlocutory appeal and decided by our Supreme Court last year. *See Diego*, 169 N.E.3d at 117 (“The question before us today is whether Domingo Diego was ‘in custody’ such that Detective Munson should have read him *Miranda* warnings prior to the interview.”). We therefore agree with the State that under the law-of-the-case doctrine we should hold in accordance with that opinion.

[11] The law-of-the-case doctrine allows appellate courts to decline to revisit legal issues already determined on appeal in the same case and on substantially the same facts, and it may be applied only to those issues actually considered and decided on appeal. *Cutter v. State*, 725 N.E.2d 401, 405 (Ind. 2000). The doctrine exists “to promote finality and judicial economy[,]” *id.*, and applies to

issues that were decided by an interlocutory appeal when the same claims are repeated on appeal from a completed trial, *Harper v. State*, 963 N.E.2d 653, 658 (Ind. Ct. App. 2012), *aff'd on reh'g*, 968 N.E.2d 843 (Ind. Ct. App. 2012), *trans. denied*.

[12] Domingo Diego contends the law-of-the-case doctrine does not apply because “new facts, new research, and new issues [are] presented in this appeal.” Appellant’s Reply Br. p. 5. If new facts are elicited upon remand that materially affect the questions at issue, then the law-of-the-case doctrine does not apply. *Maciaszek v. State*, 113 N.E.3d 788, 792 (Ind. Ct. App. 2018). But that is not the case here.

[13] Domingo Diego argues the Supreme Court did not consider his limited Spanish proficiency or that translation errors occurred during the interview.¹ But these are not new facts. The record before the Supreme Court showed Domingo Diego had limited Spanish proficiency, and the Court referenced this fact several times. *See Diego*, 169 N.E.3d at 115 (noting Domingo Diego spoke “some Spanish” and that detectives were warned he “didn’t speak Spanish

¹ Domingo Diego also highlights that at trial Detective Munson testified they had to go through two locked doors to get to his office, not one locked door as stated at the suppression hearing and in the Supreme Court’s opinion. But Domingo Diego does not argue this is a new fact that would lead us to not apply the law-of-the-case doctrine. Nor do we believe this would have made a difference. Notably, the Supreme Court found the route taken by Domingo Diego and Detective Munson in the police station was one of the factors that supported suppression. *See Diego*, 169 N.E.3d at 118. However, the Court ultimately concluded that the totality of the circumstances showed Domingo Diego’s freedom of movement was not curtailed akin to formal arrest. Given that the Court already weighted this factor in Domingo Diego’s favor and nonetheless ruled against him, we do not believe further evidence would alter this determination.

clearly”). That record also contained evidence of the translation errors. In fact, the exact evidence Domingo Diego points to—a Spanish-to-English certified forensic transcript translation—was in the record at the time of the appeal and referenced in the opinion. *See id.* at 119 (“[T]he transcript of the interview reveals very little meaningful difference between the interpreter’s live translation and an after-the-fact certified forensic transcript translation.”). The Supreme Court’s analysis shows it considered the effect of the language barrier between Domingo Diego and Detective Munson—including Domingo Diego’s limited Spanish and the translation errors—despite its conclusion that no custodial interrogation occurred.

- [14] Domingo Diego also claims there is “new research” showing that “when police interrogate a suspect who struggles with the language used by law enforcement there is a heightened chance” of an “inadvertent confession.” Appellant’s Reply Br. pp. 12, 13.² But again, this is not new information elicited on remand. Domingo Diego did not even mention this research at his trial. Nor do we believe this research shows something the Supreme Court did not know, given that the Court acknowledged the language barrier here in the opinion and has previously emphasized the effect a language barrier can have on judicial proceedings. *See Ponce v. State*, 9 N.E.3d 1265, 1272 (Ind. 2014) (“Courts have long recognized that a foreign language defendant’s capacity to understand and

² Luna Filipovic, *Confession to Make: Inadvertent Confessions and Admissions in the United Kingdom and United States Police Contexts*, 12 *Frontiers in Psychology* 1 (2021).

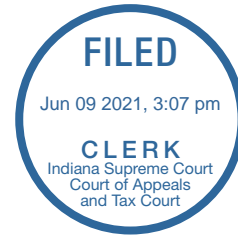
appreciate the proceedings, to participate with his counsel, to confront his accusers, and to waive rights knowingly and intelligently, is undermined without an interpreter actively participating in his defense.” (citation omitted)); *see also Arrieta v. State*, 878 N.E.2d 1238 (Ind. 2008).

[15] Because Domingo Diego is renewing a challenge already addressed by the Supreme Court on interlocutory appeal, and no new facts materially affect the question at issue, we apply the law-of-the-case doctrine and decline to revisit the issue.³

[16] Affirmed.

Crone, J., and Altice, J., concur.

³ To the extent Domingo Diego is asking this Court to “reconsider[]” the Supreme Court’s decision in this case, *see* Appellant’s Br. p. 34, we have no power to do so. *See Culbertson v. State*, 929 N.E.2d 900, 906 (Ind. Ct. App. 2010) (noting that “it is not this court’s role to reconsider or declare invalid decisions of our supreme court”), *trans. denied*.



IN THE
Indiana Supreme Court

Supreme Court Case No. 21S-CR-285

State of Indiana,
Appellant,

—v—

Axel Domingo Diego,
Appellee.

Argued: March 11, 2021 | Decided: June 9, 2021

Appeal from the Cass Circuit Court

No. 09C01-1806-FA-1

The Honorable Stephen Roger Kitts, II, Judge

On Petition to Transfer from the Indiana Court of Appeals

No. 20A-CR-227

Opinion by Justice David

Chief Justice Rush and Justices Massa and Slaughter concur.

Justice Goff dissents with separate opinion.

David, Justice.

Police may not interrogate a person in custody without proper *Miranda* warnings or else the State risks having those custodial statements suppressed in a criminal trial. But not every station house interview implicates *Miranda*. *Miranda* warnings are only required when a person is in custody—i.e. when his or her freedom of movement is curtailed to a level associated with formal arrest and when he or she is under the same inherently coercive pressures in the police station as those at issue in *Miranda v. Arizona*.

Two years ago in *State v. E.R.*, 123 N.E.3d 675, 683 (Ind. 2019), we determined a defendant was subjected to custodial interrogation at a police station house because, based on the totality of objective circumstances, the curtailment of his freedom of movement was akin to formal arrest and he was subjected to overt coercive pressures throughout the interrogation. In the present case, which incidentally involves the same detective and the same police department as in *E.R.*, the trial court found the circumstances amounted to custodial interrogation and suppressed statements made by the defendant during a police interview.

Today, we call on *E.R.* to answer a similar question: Was defendant Axel Domingo Diego’s freedom of movement in this case curtailed to a level akin to formal arrest when he had a free-flowing exchange in a detective’s personal office? We find it was not. We therefore reverse the trial court’s suppression order and remand this matter for further proceedings.

Facts and Procedural History

During the investigation of a possible incident involving child molestation, the Logansport Police Department (“LPD”) contacted Detective Sergeant Troy Munson of the Seymour Police Department (“SPD”) because LPD believed a suspect was located in SPD’s community. After reviewing LPD’s interview of the alleged victim, Detective Munson searched SPD’s database to locate the home address of the suspect, Axel Domingo Diego. A uniformed officer went to the residence and spoke to

Domingo Diego's English-speaking girlfriend, Andrea Martin, who prompted Domingo Diego to come speak with the officer.¹

Martin translated the conversation with the officer because Chuj was Domingo Diego's primary language. Domingo Diego also spoke some Spanish and English. The officer gave the couple Detective Munson's business card and told Domingo Diego that he needed to go to the police department to find "Mr. Troy." Tr. Vol. 2 p. 45.

Domingo Diego and Martin arrived at SPD a few days later—perhaps by appointment. Upon entry into SPD's front lobby, an officer opened a door from the lobby to the rest of the police station and, after the couple moved through the open door, it was shut behind them. The door was secure from the lobby, meaning a person would have to be buzzed through to enter the rest of the police station. A person could freely exit the door to the lobby without assistance, but nobody explained this to Domingo Diego or Martin.

The couple boarded an elevator to the second floor. At some point, Detective Munson met the couple. Detective Munson wore his police badge and carried a gun on his person. Despite Martin's warning that Domingo Diego didn't speak Spanish clearly, Detective Munson told Martin to have a seat outside the room because he had the assistance of a Spanish/English translator.

The interview took place inside Detective Munson's personal office which had two exterior windows and was adorned with family pictures. Munson shut the door and closed the blinds on a window overlooking the rest of the detective division at SPD. The door was unlocked, but Domingo Diego was seemingly unaware of this. Through the translator, Domingo Diego was advised that he was not under arrest and that he was

¹ The parties did not request—and the trial court did not provide—findings of fact in this matter. Our standard of review requires that we consider conflicting evidence in the light most favorable to suppression. *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). We honor this standard throughout this recitation of facts because the testimony of Detective Munson, Domingo Diego, and Martin varies significantly.

free to leave anytime. Domingo Diego indicated that he understood and later testified he felt that he could have left in the middle of the interview but chose not to because he was with a police officer. Munson did not read Domingo Diego any *Miranda* warnings.

During the course of the approximately forty to forty-five minute interview, Detective Munson asked Domingo Diego questions about the incident in Logansport. Detective Munson told Domingo Diego he had listened to a recording of the victim's father confronting him about an alleged sexual interaction with the victim and that lying to the detective would make things worse. Though he had only reviewed LPD's interview, the detective also implied to Domingo Diego he had spoken directly with the victim. Thereafter, the detective pressed Domingo Diego on what exactly occurred with the victim and Domingo Diego made several potentially incriminating statements. At the end of the interview, Detective Munson asked if Domingo Diego wanted to write an apology letter to the victim but did not require him to do so. After the interview, Detective Munson wished Domingo Diego and Martin a good day and the couple left the building unaccompanied.

Domingo Diego was charged with Count I, Child Molesting, a Class A Felony, Count II, Child Molesting, a Class A Felony, and Count III, Child Molesting, a Class C Felony. Thereafter, Domingo Diego moved to suppress the statements he made during his interview at SPD on the basis that the interview amounted to a custodial interrogation and the statements were obtained in violation of the Fifth Amendment of the United States Constitution and Article I, Section 14 of the Indiana Constitution. Finding the facts of this case similar to those considered by this Court in *E.R.*, the trial court granted Domingo Diego's motion to suppress.

The State filed a motion for a discretionary interlocutory appeal under Indiana Appellate Rule 14. The trial court granted the State's motion,

denied Domingo Diego's motion to reconsider, and certified the matter for interlocutory appeal.²

The Court of Appeals affirmed. *State v. Domingo Diego*, 150 N.E.3d 715, 717 (Ind. Ct. App. 2020), *aff'd on reh'g*. After considering our Court's opinion in *E.R.*, the court found, "Domingo Diego's freedom of movement was curtailed to the degree associated with an arrest, and he was subjected to inherently coercive pressures such as those at issue in *Miranda*." *Id.* at 720. Therefore, the court affirmed suppression of the statements because, "[Domingo Diego's] statements were obtained during custodial interrogation without *Miranda* warnings." *Id.* at 721.

On rehearing, the Court of Appeals clarified footnote twelve of its opinion and construed the State's Appellate Rule 14 interlocutory appeal as a discretionary appeal brought pursuant to Indiana Code section 35-38-4-2(6). *State v. Domingo Diego*, 159 N.E.3d 629, 633 (Ind. 2020), *on reh'g*.

The State sought transfer, which we now grant. Ind. Appellate Rule 58(A).

Standard of Review

As the party appealing from a negative judgment, 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

² We note the unfortunate procedural history of this case. The present action was originally filed in Cass Superior Court II, but due to the passing of the presiding judge, a senior judge heard Domingo Diego's motion to suppress. After the senior judge issued an order granting the defendant's motion, the State moved to correct error. While the State's motion was pending, a second senior judge issued an order transferring the case to Cass Circuit Court because the new presiding judge of Cass Superior Court II was the former Cass County elected prosecutor, thus creating a conflict of interest. The Circuit Court denied the State's motion to correct error on the basis that it lacked jurisdiction to review a lateral court's entry. Because the first senior judge's order granting the defendant's motion to suppress stated, "Upon motion, the Court will certify its order for interlocutory appeal," the Circuit Court denied the defendant's motion to reconsider the order granting the State's interlocutory appeal and "merely enforce[d]" the first senior judge's order. Vol. 2 at 54-55.

conclusion opposite that of the trial court.” *E.R.*, 123 N.E.3d at 678-79 (citation omitted). Whether a defendant is in custody is a mixed question of fact and law. *Id.* at 679. The circumstances surrounding the interrogation are matters of fact and “we consider conflicting evidence most favorably to the suppression ruling.” *Id.* (citing *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). “Whether those facts add up to *Miranda* custody is a question of law” which we review de novo. *Id.* (citing *State v. Brown*, 70 N.E.3d 331, 335 (Ind. 2017)).

Discussion and Decision

The question before us today is whether Domingo Diego was “in custody” such that Detective Munson should have read him *Miranda* warnings prior to the interview. “Custody under *Miranda* occurs when two criteria are met. First, the person’s freedom of movement is curtailed to the degree associated with formal arrest. And second, the person undergoes the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.” *E.R.*, 123 N.E.3d at 680 (quotations and citations omitted).

Custody, therefore, is “a term of art that specifies circumstances that are thought generally to present a **serious** danger of coercion.” *Howes v. Fields*, 565 U.S 499, 508, 132 S.Ct. 1181, 1189, 182 L.Ed.2d 17 (2012) (emphasis added). There is no bright line rule requiring *Miranda* warnings be given prior to an interview simply because a particular defendant is questioned in a police station. Indeed, the Supreme Court of the United States has advised:

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."

Oregon v. Mathiason, 429 U.S. 492, 495, 97 S.Ct. 711, 714, 50 L.Ed.2d. 714 (1977) (per curiam); accord *California v. Beheler*, 463 U.S. 1121, 1125, 103 S.Ct. 3517, 3520, 77 L.Ed.2d 1275 (1983) (per curiam).

With this focus, we dispose of today's question under the first of *E.R.*'s two-factor test: the freedom-of-movement inquiry. See *Howes*, 565 U.S. at 509, 132 S.Ct. at 1190 (observing the freedom-of-movement test is a "necessary and not a sufficient condition for *Miranda* custody"). "Under *Miranda*, freedom of movement is curtailed when a reasonable person would feel not free to terminate the interrogation and leave." *E.R.*, 123 N.E.3d at 680 (citation omitted). The benchmark for this inquiry is whether the level of curtailment is akin to formal arrest. *Id.* To make this determination, we examine the totality of objective circumstances surrounding the interrogation, including "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." *Id.*

In *E.R.*, we observed there was substantial, probative evidence that, under the totality of objective circumstances, the defendant in that case was not free to end police questioning and leave the building. *Id.* First, the detective told the defendant he needed to be interviewed at the police station and did not inform him that any other time or place would suffice. *Id.* Second, the detective led the defendant through the lobby to a secured-entry door, to a police squad room, up an elevator and stairs, through a second, propped-open door, and into a small interview room with no windows. *Id.* at 680-81. This effectively "cabined" the defendant into a small compartment with officers positioned near the single door. *Id.* at 681. Third, a second detective entered the room thirty minutes into the interview; police outnumbered the defendant two-to-one. *Id.*

Although the detective told the defendant a single time that he was free to walk out the door, we noted three reasons a reasonable person would not feel free to leave: (1) officers told the defendant to “sit tight” multiple times; (2) officers led the defendant through a labyrinthine route and did not explain security doors were unlocked going in the opposite direction; and (3) there was a dramatic change in the interrogation atmosphere with the arrival of a second officer. *Id.* This, combined with the character of the detectives’ questioning and prolonged interview lasting almost an hour, added up “to a situation in which a reasonable person would not feel free to end the interrogation and leave.” *Id.* at 681-82. In other words, taken together, these factors showed curtailment akin to formal arrest where a reasonable person would not feel free to leave.

The present case admittedly resembles certain circumstances in *E.R.* Like *E.R.*, Domingo Diego and Martin testified that an officer told them Domingo Diego “needed” to come to SPD to talk to “Mr. Troy.” Tr. Vol. 2 at 45. The couple arrived at the police station a few days later, perhaps by appointment.

Next, Domingo Diego and Martin testified to varying degrees that they entered the SPD lobby, went through a door, then to an elevator, rode the elevator up one floor, and were then separated when they met Detective Munson. While perhaps not as labyrinthine as the route described in *E.R.*, evidence favorable to suppression indicates they made this journey with minimal assistance or guidance from SPD personnel.

Finally, though the interview was in Detective Munson’s personal office and not an interrogation room, the door was shut and the blinds to the interior of the building were closed. Domingo Diego was outnumbered two-to-one in the interview by SPD personnel: Detective Munson and a Spanish/English interpreter who was employed by SPD as a dispatcher.

But beyond these aforementioned circumstances, we conclude Domingo Diego’s freedom of movement was not curtailed to the degree associated with formal arrest.

To start, the tone and tenor of the interview was certainly less dramatic than the *E.R.* interrogation. At the start of the interview, Detective Munson informed—and Domingo Diego understood—that he was free to leave at any time. Detective Munson’s interview style remained constant; no additional statements like “sit tight” were made throughout the interview that would have made a reasonable person feel that they could not leave.³ *See id.* at 681. The interview took place in the detective’s personal office with two exterior windows and family photos as opposed to a “standard” interview room with a couch, table, and chairs. The translator was dressed in civilian clothes. Overall, this presented a more casual atmosphere than the pressure cooker present in *E.R.*

Next, Detective Munson asked questions about the incident, truthfully telling Domingo Diego he had listened to a conversation between Domingo Diego and the victim’s father and that lying about the situation wouldn’t help. Although the detective suggested he had personally talked to the victim, he had in fact reviewed the LPD interview of the victim to hear her version of the alleged events. Toward the end of the interview, Munson asked Domingo Diego if he wanted to write an apology letter to the victim but did not require him to do so. Taken as a whole, Detective Munson’s line of questioning was exploratory rather than accusatory or aggressive.⁴ *See id.*

Additionally, at the end of the interview, Detective Munson told Domingo Diego he was not going to jail and wished the couple a good day. Domingo Diego and Martin left SPD unaccompanied. Other than the secure door from the lobby to the rest of the police station, there is no evidence the couple had to overcome additional significant barriers. *See id.*

³ Domingo Diego’s subjective thought that he should stay out of “respect” to authority is irrelevant to our objective review of these factors. *See post* at 5.

⁴ The dissent argues this factor should tip in Domingo Diego’s favor because Detective Munson was a highly experienced detective, was the sole “aggressive” interrogator, and his interview was designed to elicit an incriminating response. *Post* at 4. Our test in *E.R.* accounts for tactics that imply custody—such as multiple “sit tight” commands—simply not present in this case.

at 680-81 (describing entry to a “police squad room”, up a set of stairs after the elevator, and into a windowless room behind a keyed door). This suggests Domingo Diego was not sequestered deep in the building with no hope of independent exit.

Finally, we are mindful—as the dissent and Defendant highlight—that Domingo Diego had limited English proficiency. *See post* at 8. It is true that the Supreme Court of the United States has included at least one individual characteristic in the list of acceptable considerations for the objective custody test. *See J.D.B. v. North Carolina*, 564 U.S. 261, 277, 131 S.Ct. 2394, 2406, 180 L.Ed.2d 310 (2011) (holding “so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test”). But even if, as the dissent suggests, were we to consider its proposed objective circumstance in our present inquiry, we think that “a reasonable officer would not have thought that [Domingo Diego]’s language abilities prevented him from feeling free to leave.” *United States v. Burden*, 934 F.3d 675, 695 (D.C. Cir. 2019); *see also J.D.B.*, 564 U.S. at 277 (declining to find that a child’s age would be determinative or even significant in every case).

As tempting as it may be to inject a subjective viewpoint into this inquiry, we must consider this purported factor from the objective shoes of a reasonable officer.⁵ *J.D.B.*, 564 U.S. at 270, 131 S.Ct. at 2406. Contrary to the suggestion that the SPD dispatcher was an unqualified officer in disguise, *post* at 9, the transcript of the interview reveals very little meaningful difference between the interpreter’s live translation and an after-the-fact certified forensic transcript translation. Though Domingo Diego had some trouble forming responses and perhaps lacked perfect

⁵ The dissent hypothesizes that a language barrier “clearly existed” and that the couple would have been uncomfortable with the translator had they known the individual was a dispatch officer. *Post* at 9-10. This is a dubious proposition given Martin and Domingo Diego’s testimony that Munson never visited their home at all such that he could explain the presence of a Spanish translator or to even recognize the need for an interpreter in the first place.

comprehension of Detective Munson’s questions, “the evidence does not suggest that it would have been apparent to a reasonable officer that [Domingo Diego] was not understanding what was being said.” *Burden*, 934 F.3d at 695. So, unlike a situation in which a language barrier presented a high degree of confusion, *see, e.g., Koh v. Ustich*, 933 F.3d 836, 845-46 (7th Cir. 2019), the transcript reveals a fluid, conversational exchange between all parties involved. Blunt, yes, but coercive, no.

Focusing only on the freedom-of-movement inquiry, we think there is considerable daylight between *E.R.* and the present case that directly undercuts Domingo Diego’s claim of custodial interrogation. The interview took place in Detective Munson’s personal office, not an interview room. The approximately forty-five minute interview — while certainly lengthy — was not particularly hostile; it was exploratory and conversational rather than accusatory. Domingo Diego and Martin left the station unaided, which gives rise to a reasonable inference that Domingo Diego was not cabined into a remote place in the police station. Although blunt, the interview would not have revealed to a reasonable officer that Domingo Diego did not understand what was being said.

True, the couple was told they “needed” to come to the police station, Detective Munson did carry his gun, Domingo Diego was outnumbered in the interview room, and the couple had to move through several barriers. But given the casual atmosphere, exploratory and conversational line of questioning, and relatively unimpeded pathway to the room, the totality of these objective circumstances does not represent a curtailment akin to formal arrest. *See E.R.*, 123 N.E.3d at 683 (observing “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 also Mathiason*, 429 U.S. at 495, 97 S.Ct. at 714 (same) *and Beheler*, 463 U.S. at 1125, 103 S.Ct. at 3520 (same).

Conclusion

We find that the totality of objective circumstances surrounding the interrogation would make a reasonable person feel free to end the

questioning and leave. Thus, the limited curtailment of Domingo Diego's freedom of movement was not akin to formal arrest. We reverse the trial court's suppression order and remand this matter for further proceedings.

Rush, C.J., and Massa and Slaughter, JJ., concur.
Goff, J., dissents with separate opinion.

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Goff, J., dissenting.

Is a *Miranda* warning necessary when a limited-English-speaking suspect, having been summoned to a police station by a fully uniformed officer, endures a prolonged and accusatory interrogation by an armed detective in a visually cabined office with no clear path to the office door and with no knowledge of his ability to freely exit the secured station-house entrance?

Under these facts, I would answer that question in the affirmative. My colleagues on the Court, however, would not. And for that reason, I respectfully dissent.

Discussion

Nearly two years ago, this Court decided *State v. E.R.*, establishing a benchmark for Indiana courts to use in conducting a custody analysis. *See* 123 N.E.3d 675 (Ind. 2019). In that case, two officers questioned the defendant in a secured room at the police station without informing him of his *Miranda* rights. *Id.* at 677. While the officers told E.R. that he could “walk out” of the room “at any time,” we found that statement insufficient “to make a reasonable person feel free to leave.” *Id.* at 681. In support of that conclusion, we first observed that the officers instructed E.R. several times to “sit tight,” effectively contradicting “any prior indication that [E.R.] was free to go.” *Id.* We further noted that “the circuitous path by which” the police led E.R. to the interrogation, and their failure to inform him that he could freely exit the secured door through which he entered, created “a labyrinthine” of “obstructions to egress.” *Id.* Finally, we concluded that “the police significantly undercut any initial message of freedom” when a second officer entered the room and “took over as the main, and more aggressive, interrogator.” *Id.* This evidence, we determined, along with “[o]ther statements the officers said or omitted” and “the character of their questioning,” clearly supported the trial court’s conclusion that the interrogation was custodial. *Id.*

Today, we consider the same question of custody in a case involving the same detective at the same police station conducting an interrogation under strikingly similar circumstances. The Court, however, finds “considerable daylight between *E.R.* and the present case,” *ante*, at 11, ultimately concluding that the circumstances here amount to something less than custodial interrogation.

But the record, in my opinion, paints a different picture, supporting few—if any—distinctions. And to the extent there are factual differences between this case and *E.R.*, those differences, I believe, fall far short of showing that the trial court’s decision was contrary to law. There is, however, one important factor that distinguishes this case from *E.R.*—a factor that bolsters the trial court’s conclusion that police conducted a custodial interrogation: Diego’s limited-English proficiency.

For these reasons, I would affirm the trial court’s order to suppress Diego’s statements to police.

I. The totality of circumstances surrounding the interrogation would have led a reasonable person to conclude that he was not free to leave.

In determining whether a suspect has been subjected to custodial interrogation, courts ask (1) whether police have limited the suspect’s freedom of movement to “the degree associated with a formal arrest,” and (2) whether the suspect undergoes “the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.” *E.R.*, 123 N.E.3d at 680 (citations and quotation marks omitted).

The first prong of this custody analysis—the freedom-of-movement inquiry—asks whether a reasonable person would feel free to terminate and to leave the interrogation. *Id.* This question “requires a court to examine the totality of objective circumstances surrounding the interrogation.” *Id.* These circumstances include “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.” *Id.*

The Court initially acknowledges that this case “resembles certain circumstances in *E.R.*” *Ante*, at 8. These similarities, the Court observes, include instructions from police, on both occasions, that the suspects “needed” to report to the station for questioning; the circuitous paths at the station through which both suspects navigated to reach their interrogators; the enclosed spaces in which both suspects sat for questioning; and the fact that police officers outnumbered each suspect “two-to-one.” *Id.*

But beyond these circumstances, the Court concludes, the similarities between this case and *E.R.* apparently begin to fade. *Id.* at 8. These distinctions, the Court explains, include the interview’s “tone and tenor,” the “exploratory” rather than “accusatory” line of questioning in the detective’s “casual” office, and Diego’s “unaccompanied” and “unaided” release from the station upon conclusion of the interview. *Id.* at 9–10, 11.

As I explain further below, none of these purported distinctions are supported by the record.

A. There’s no meaningful difference in the “tone and tenor of the interview” here and in *E.R.*

“To start,” the Court concludes, “the tone and tenor of the interview” here “was certainly less dramatic than the *E.R.* interrogation.” *Id.* at 9. In support of this proposition, the Court points to the detective’s statement that Diego was “free to leave at any time,” and the fact that the detective never told Diego to “sit tight” (as *E.R.* was instructed). *Id.* I find this conclusion and reasoning problematic for two reasons.

First, the detective’s statement to Diego that he was “free to leave at any time” is **not** a distinction from *E.R.*; it’s a similarity. Indeed, just like the detective here, the “interrogating officer” in *E.R.* told the suspect that he “d[id]n’t have to talk to” him and that he could “get up and walk out that door at any time.” *E.R.*, 123 N.E.3d at 680.

Second, while the detective here never told Diego to “sit tight,” the absence of such a statement doesn’t account for the host of other factors that undercut the detective’s suggestion that Diego was free to go. These factors include the lack of statement to Diego, from anyone at the station, that he could freely exit the secured door through which he first entered; Diego’s separation from his girlfriend, on whom he relied for interpreting; the prolonged and accusatory questioning to which the armed detective subjected Diego; the closed door and closed blinds in the detective’s office; the police workstations just outside the detective’s office; and the officer-interpreter sitting between Diego and the office door.

To be sure, unlike in *E.R.*, no second officer here changed the tenor of the interview by entering the room mid-way through and taking “over as the main, and more aggressive, interrogator.” *E.R.*, 123 N.E.3d at 681. But the absence of this factor, in my opinion, had no effect on the custodial environment in which Diego already found himself. The detective, a highly experienced interrogator with special training in felony sex crimes, served as the sole “aggressive” interrogator from beginning to end, ultimately “subverting the force and applicability” of the free-to-leave statement he made earlier in the interview. *See id.* And at no point during the interrogation did either officer—whether the detective or the interpreter—suggest anything to preserve the statement’s validity.¹ *See id.* *Cf. Luna v. State*, 788 N.E.2d 832, 833, 835 (Ind. 2003) (affirming denial of suppression where officers informed the defendant **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). Finally, while Diego may have understood the detective’s statement that he was free to leave, he also testified to

¹ While the interpreter here may not have been an armed police officer, he **was** a dispatch officer working for the department and there’s nothing apparent from the record that Diego understood any difference in the officers’ authority.

having felt obligated to stay out of “respect” for authority.² Tr. at 63–64, 65.

B. The detective’s line of questioning *was* in fact “accusatory,” not just “exploratory.”

The Court also attempts to distinguish this case from *E.R.* by insisting that the detective’s line of questioning here was merely “exploratory” rather than “accusatory.” *Ante*, at 9. And whereas the interrogating officer in *E.R.* lied to the suspect, the detective here, the Court insists, spoke “truthfully” with Diego. *Id.* I find these conclusions to be demonstrably incorrect.

In *E.R.*, the interrogating officers were “explicit” in their belief that the defendant “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.” 123 N.E.3d at 681. **Similarly**, the detective here stated that he believed—and that the evidence “clearly” showed—that Diego had “some type” of improper contact with the child. Ex. 4, pp. 17–19. On top of that, the detective claimed to have heard a recording of alleged incriminating statements from Diego, and he clearly

² The Court opines that “Diego’s subjective thought that he should stay out of ‘respect’ to authority is irrelevant” to its “objective review” of the circumstances. *Ante*, at 9 n.3. But Diego is far from alone in his sentiment, as courts and commentators alike have pointed out. *See, e.g., Lawrence v. United States*, 566 A.2d 57, 61 (D.C. 1989) (“Implicit in the introduction of the [officer] and the initial questioning is a show of authority to which the **average person** encountered will feel obliged to stop and respond. Few will feel that they can walk away or refuse to answer.”) (quoting 3 Wayne LaFare, *Search and Seizure* § 9.2(h) at 410–11 (1987 and Supp. 1989)) (emphasis added); Marcy Strauss, *Reconstructing Consent*, 92 J. Crim. L. & Criminology 211, 236 (2001) (noting that “obedience to authority is deeply ingrained [and] people will obey authority even when it is not in their own best interest to do so”). *See generally* Roseanna Sommers & Vanessa K. Bohns, *The Voluntariness of Voluntary Consent: Consent Searches and the Psychology of Compliance*, 128 Yale L.J. 1962 (2019) (citing numerous studies). And these authorities speak of your “average person.” How much more would a person who grew up in the shadow of a repressive police force be impacted by a desire to comply with authority? *See generally* Christopher M. Sullivan, *Political Repression and the Destruction of Dissident Organizations: Evidence from the Archives of the Guatemalan National Police*, 68 World Pol. 645 (2016). *See* Ex. 4, p. 5 (noting Diego’s country of origin as Guatemala).

implied that Diego was lying when he denied the accusations. *Id.* at 22. What's more, by his own testimony, the detective's line of questioning was explicitly designed to elicit "an incriminating response" from Diego. Tr. Vol. II, p. 33.

Finally, contrary to the Court's insistence that the detective here spoke "truthfully" with Diego, the evidence shows that the detective deliberately misled him. While stating that the child had "told" him directly in "pretty great detail" what Diego had done, the detective in fact had **never** spoken with the child directly—a point specifically acknowledged by the Court. Ex. 4, p. 17. *See ante*, at 4. Adding to the subterfuge, the detective feigned commiseration with Diego, recognizing that men sometimes act improperly on their sexual impulses. Ex. 4, p. 15. The detective also tried to elicit a confession in the guise of a written apology. *Id.* at 30. "While subterfuge, trickery, and deception" are generally "acceptable interrogation tactics," *Hartman v. State*, 988 N.E.2d 785, 790 (Ind. 2013), the methods used here offer no support for the Court's conclusion that police questioned Diego and spoke with him "truthfully" in a non-custodial setting.

C. The route Diego followed to his interview was no less circuitous than in *E.R.*

Unlike in *E.R.*, the Court observes, the detective here, upon conclusion of the interview, told Diego that "he was not going to jail" and he "wished the couple a good day" as they left the station "unaccompanied." *Ante*, at 9. But this is hardly a distinction. After the interrogation in *E.R.*, the suspect there left the station "unhindered." 123 N.E.3d at 680. And while nothing in *E.R.* suggests that the officers there extended their well-wishes to the suspect at the interview's conclusion, I fail to see how that minor detail makes **any** difference whatsoever. In fact, because the detective told Diego to have a "good day" as he was leaving (*i.e.*, **after** the interview had ended), I question whether such a comment is even relevant to the custody inquiry at all.

Still, the Court concludes that the couple's departure from the station "unaided" leads to a "reasonable inference" that they were "not cabined

into a remote place in the police station” and suggests that the path to and from the interview was not so labyrinthine as the one in *E.R. Ante*, at 11. But this conclusion, in my opinion, stands on questionable grounds. To begin with, the Court describes no meaningful difference between the detective’s personal office (replete with “exterior windows and family photos”) and a standard interrogation room (containing “a couch, table, and chairs”). *See id.* at 9. Second, this is the **same** police department as in *E.R.* And while it’s certainly possible that Diego took an alternative path to the interview room, the record suggests that the route he followed was no less circuitous than in *E.R.*³ Soon after arriving at the station, police-department personnel buzzed Diego and his girlfriend through a secure door which shut behind them. From there, the couple made their way down a hallway to an elevator, which took them to the second floor. Upon their exit from the lift, the detective met them in a common area before separating the couple and leading Diego through the “bullpen” of detective desks to his own office. *Compare* Tr. Vol. II, pp. 19, 32, 48–49, 60–61, 64 (testimony relating the couple’s route), *with E.R.*, 123 N.E.3d at 680–81 (describing E.R.’s path through the station to the interview room). And although the parties here dispute whether police escorted Diego and his girlfriend at any point, the couple, according to the detective’s own admission, clearly needed directions to exit the building upon the interview’s conclusion. *See* Tr. Vol. II, p. 22. This evidence, in my opinion, including the couple’s need for directional guidance, fully undermines the Court’s conclusions.

In the end, the Court acknowledges that the detective here “did carry his gun,” that “Diego was outnumbered in the interview room,” and that “the couple had to move through several barriers to reach the interview room.” *Ante*, at 11. Nevertheless, the Court concludes, “the totality of th[e] objective circumstances do not represent a curtailment akin to formal arrest.” *Id.* I disagree, and would find that the circumstances here—

³ And the Court seems to acknowledge this, finding “no evidence the couple had to overcome **additional** significant barriers.” *See ante*, at 9 (emphasis added).

strikingly similar to those in *E.R.* — clearly point to a finding of custody, showing that the trial court’s suppression order was not contrary to law.

D. Diego’s limited-English proficiency adds another factual layer to support a finding of custody.

As documented above, there are several factors here that, taken together, lead me to conclude that police subjected Diego to custodial interrogation: the premise that police “needed” to question Diego at the station, the lack of a clear statement from police-department personnel that Diego could freely exit the secured door through which he entered, Diego’s separation from his girlfriend on whom he relied for interpreting, the visually cabined space in which the armed detective conducted the interrogation, the police workstations just beyond the detective’s office, the officer-interpreter sitting between Diego and the office door, the subterfuge and accusatory line of questioning directed at Diego from the detective, and Diego’s need for directions on how to exit the building upon conclusion of the interview.

But that’s not all. There’s another important factor distinguishing this case from *E.R.* — a factor which only bolsters the trial court’s conclusion that police conducted a custodial interrogation: Diego’s limited-English proficiency. *See* Tr. Vol. II, pp. 7–8 (prosecutor acknowledging that there was not “a language barrier in [*E.R.*] as there apparently is here”).

When conducting a custody inquiry, courts often consider a suspect’s “individual characteristics,” including, for example, a suspect’s age. *United States v. Burden*, 934 F.3d 675, 694 (D.C. Cir. 2019) (cleaned up) (citing *J.D.B. v. North Carolina*, 564 U.S. 261, 275 (2011)). *See also* *B.A. v. State*, 100 N.E.3d 225, 232 (Ind. 2018). Beyond this trait, “English language capabilities might have an objectively discernible relationship to a reasonable person’s understanding of his freedom of action that would bear on the custody analysis for purposes of *Miranda*.” *Burden*, 934 F.3d at 695 (internal quotation marks omitted). Recognizing this relationship, some courts factor language barriers into the custody inquiry. *See, e.g., Thatsaphone v. Weber*, 137 F.3d 1041, 1045 (8th Cir. 1998) (explaining that “the ultimate issue is whether a reasonable police officer conducting [an]

otherwise noncustodial interview would have given *Miranda* warnings because he realized that the questioning would be perceived by [the suspect] as custodial due to his limited English language skills”); *United States v. Kim*, 292 F.3d 969, 977 (9th Cir. 2002) (weighing the suspect’s limited-English proficiency as one of several circumstances that bore on her ability to understand whether she was a criminal suspect).

Here, a language barrier clearly existed between Diego and his interrogator. *See* Tr. Vol. II, p. 18 (detective acknowledging that he “picked up” early on that there was “a language barrier” between him and Diego). And during the interview, Diego had no assistance from his girlfriend, who spoke not only English and Spanish but also Diego’s native language, Chuj. While the dispatch-officer-turned-interpreter seems to have spoken fluent Spanish, there’s no evidence that he was qualified—let alone certified—to interpret under the circumstances. *See Ponce v. State*, 9 N.E.3d 1265, 1268 (Ind. 2014) (“Ensuring **competent** interpretation services is ‘an essential component of a functional and fair justice system.’”) (quoting ABA Standards) (emphasis added). Because “untested and untrained interpreters often deliver inaccurate, incomplete information to [persons] with limited English proficiency,” the practice of “simply providing ‘any’ interpreter upon request” is often “insufficient.” *Id.* at 1269 (internal quotation marks omitted). *See also* Ind. R. Evid. 604 (“An interpreter [at trial] must be qualified and must give an oath or affirmation to make a true translation.”). Given our precedent on the importance of a qualified interpreter, and given the officer-interpreter’s inability to speak Diego’s native language, I would find the trial court’s suppression order defensible.

To be sure, when the detective asked Diego and his girlfriend if they were comfortable with him “get[ting] a Spanish translator” for the interview, the couple responded in the affirmative. Tr. Vol. II, p. 18. But had they known that the “translator” was a dispatch officer whom the detective had admittedly used only “four or five times” in the past for

such work, *see id.* at 21–22, 32, it’s questionable whether they would have consented to the detective’s proposal.⁴

Considering his limited-English abilities, and given his separation from the one person he trusted to accurately interpret for him, Diego “could well have assumed” that he “was a criminal suspect” in custody at the police department. *See Kim*, 292 F.3d at 977 (finding a custodial interrogation warranted *Miranda* warnings where the suspect communicated poorly in English, was separated from her English-speaking son, and was subjected to a “full-fledged interrogation” for “at least 30 minutes before an interpreter arrived and another 20 minutes once the interpreter joined the interrogation”). *Cf. Burden*, 934 F.3d at 695, 696 (holding that “a reasonable officer would not have thought that [the suspect’s] language abilities prevented him from feeling free to leave” where there was no evidence that the suspect failed to understand the purpose of the interview “or somehow believed he could not leave an interview” to which he agreed “by phone and shown up for of his own accord”); *Thatsaphone*, 137 F.3d at 1046 (holding that suspect’s limited-English skills did not turn a short, otherwise non-custodial police interview into a custodial interrogation requiring *Miranda* warnings where the suspect responded affirmatively multiple times that he could speak and understand English, responded coherently in English, rarely used an interpreter at the suppression hearing, and used both colloquial and sophisticated English terms throughout the proceedings).

⁴ The Court dismisses the existence of a language barrier as mere “hypothesi[s]” and characterizes as “dubious” any reluctance the couple may have had with using the dispatch officer as an interpreter. *Ante*, at 10 n.5. But this overlooks the prosecutor’s acknowledgment and the detective’s testimony at trial. *See Tr.* at 7–8 (prosecutor acknowledging that there was not “a language barrier in [E.R.] as there apparently is here”); *id.* at 18 (detective acknowledging that he “picked up” early on that there was “a language barrier” between him and Diego). And regardless of any conflict in testimony from Diego and his girlfriend, it was the detective himself who recognized the need for an interpreter. *See id.* at 18.

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

The second inquiry to a custodial analysis “asks whether the circumstances exert the coercive pressures that drove *Miranda*.” *E.R.*, 123 N.E.3d at 682. The answer to this question, while perhaps less clear in the context of a traffic stop or a *Terry* stop, is generally “obvious” when “the case involves the paradigm example of interrogating a suspect at a police station.” *Id.* (citations and quotation marks omitted).

The Court declined to reach this stage of analysis, having resolved the issue under the freedom-of-movement inquiry. *Ante*, at 7. Because the totality of objective circumstances surrounding the interrogation would have, in my opinion, led a reasonable person to conclude that Diego was not free to leave, I pick up where the Court left off in its analysis.

The interrogation here, the evidence clearly shows, “was not brief roadside questioning or interrogation in the low atmospheric pressure of a suspect’s typical surroundings.” *See E.R.*, 123 N.E.3d at 682 (cleaned up). To the contrary, Diego’s interview “took place at the station house in an isolated room—removed from [his girlfriend] and familiar environment, and with [one] officer[] employing various interrogation tactics for almost an hour, trying to convince [Diego] to incriminate himself.” *See id.* What’s more, as noted above, the detective misled Diego by telling him that the victim had explained to him, in “pretty great detail,” what Diego had done to her. *Ex. 4*, p. 17. The detective expanded on this skullduggery by trying to sympathize with Diego, telling him that he understood men sometimes act improperly on their sexual impulses. *Id.* at 15–16. The detective also asserted that he had heard a recording of incriminating statements Diego had allegedly made and that he believed Diego was lying when he denied the accusations. *Id.* at 16–19.

In short, the detective here, as in *E.R.*, “engaged in prolonged, persistent, and accusatory questioning that focused on encouraging [Diego] to admit to [his] description of the wrongdoing” and he “applied multiple layers of subtly coercive forces that, together and in the absence

of *Miranda*'s safeguards, would impair [Diego's] free exercise of the privilege against self-incrimination." See 123 N.E.3d at 682, 683.

Conclusion

Our law-enforcement officers play a critical role in keeping us safe. And their jobs, no doubt, are incredibly difficult. But for well over fifty years, our courts have clearly established that statements made during a custodial interrogation may not be admitted as evidence unless the suspect received an adequate *Miranda* warning. The expedient of this warning, so ubiquitous and "so simple" in its application, ensures a privilege "fundamental to our system of constitutional rule." *Miranda*, 384 U.S. 436, 468 (1966). And the specificity of this warning "benefits the accused and the State alike," outweighing any burden on law-enforcement agencies by reducing unnecessary disputes over the suppression of otherwise probative evidence at trial. *Berkemer v. McCarty*, 468 U.S. 420, 430 (1984) (internal quotation marks omitted).

These principles, I believe, extend to a custodial interrogation of a suspect with limited-English proficiency. So, upon electing to interrogate such a suspect, a prudent officer, in my opinion, should consider whether the suspect's language barrier might reasonably bear on the suspect's understanding of his freedom of action. See *Burden*, 934 F.3d at 695. If so, a *Miranda* warning would greatly assist a judge tasked with ruling on the admissibility of any statements made during the interview.

Under these facts, and absent such a warning, I cannot find the trial court's suppression order contrary to law.

OPINION ON REHEARING



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IN THE
COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Plaintiff,

v.

Axel Domingo Diego,
Appellee-Defendant.

November 5, 2020

Court of Appeals Case No.
20A-CR-227

Interlocutory Appeal from the Cass
Circuit Court

The Honorable Stephen Roger
Kitts, II, Judge

The Honorable Leo T. Burns,
Senior Judge

Trial Court Cause No.
09C01-1806-FA-1

Bailey, Judge.

Case Summary

- [1] The State seeks rehearing of our decision in *State v. Domingo Diego*, 150 N.E.3d 715 (Ind. Ct. App. 2020). In that opinion, we affirmed the trial court’s order granting Axel Domingo Diego’s (“Domingo Diego”) motion to suppress his statement to the police because the statement was obtained during custodial interrogation without Miranda warnings. 150 N.E.3d at 721. In the course of so holding, we stated in a footnote:

The State may appeal the grant of a motion to suppress evidence in a criminal case “if the ultimate effect of the order is to preclude further prosecution of one (1) or more counts of an information or indictment.” I.C. § 35-38-4-2(5). Although the State has not alleged that it cannot further prosecute Domingo Diego without his statement to police, it apparently made that determination, and “it is not within our purview to second-guess” it. *State v. Wroe*, 16 N.E.3d 462, 465 (Ind. Ct. App. 2014), *trans. denied*.

Id. at 719 n.12.

- [2] The only issue the State raises in its request for rehearing is whether we incorrectly presumed that it brought this appeal of the order suppressing Domingo Diego’s statement pursuant to subsection 5 of Indiana Code Section 35-38-4-2 rather than subsection 6, which allows discretionary interlocutory appeals.
- [3] We grant the motion for rehearing in order to clarify the basis for the State’s appeal, we affirm our initial opinion in all other respects, and we remand to the trial court for any further proceedings in conformity with this opinion.

Facts and Procedural History

- [4] The trial court granted the State’s request to certify for appeal its order granting the motion to suppress. In that request and in its Notice of Appeal and motion seeking this Court’s acceptance of its interlocutory appeal, the State did not specify any statutory basis for the appeal; rather, the State asserted that it appealed “from an interlocutory order, accepted by discretion pursuant to Appellate Rule 14(B)(3).”
- [5] In support of its motion seeking this court’s permission to appeal, the State maintained that its interlocutory appeal “should be granted in this case because the order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; the State will suffer substantial injury if the order is erroneous; and because the State’s remedy by appeal is indisputably inadequate.” Motion for Interlocutory Appeal at 2. The State asserted that there are “critical factual differences between this case and the case of *State v. Ruiz*, 123 N.E.3d 675 (Ind. 2019), ... rendering the trial court’s reliance on *Ruiz* incorrect,” but it did not specify any such factual differences. *Id.* at 3. The State also asserted that a defendant’s incriminating statements are “particularly important in the context of a child molestation case, where the charges rest primarily on the testimony of a child witness with little other corroborating evidence available.” *Id.* And the State asserted that an appeal following an acquittal would be inadequate because “the doctrine of double jeopardy will prevent the State from being able to re-try [the defendant] even if the appellate courts hold that the evidence was wrongly excluded.” *Id.*

[6] In its petition for rehearing, the State now asserts that it brings this appeal as an interlocutory appeal under subsection 6 of Indiana Code Section 35-48-4-2, rather than under subsection 5 as we presumed in footnote 12 of our initial opinion. The State asserts that the suppression of the defendant’s statement “does not constitute a judicial admission that the State cannot prosecute further without the suppressed statement, and this Court’s opinion affirming the suppression order does not prevent the State from moving forward with its prosecution when jurisdiction reverts back to the trial court.” Pet. for Reh’g. at 7-8.

Discussion and Decision

[7] It is well-settled that the State may only appeal in a criminal case when the legislature has granted it specific statutory authority to do so. *E.g., State v. Brunner*, 947 N.E.2d 411 (Ind. 2011) (“Indiana has a strict historic precedent that criminal appeals by the State are statutorily defined.”). The legislature has expressly enumerated the criminal appeals the State may take in Indiana Code Section 35-38-4-2. *Id.* Subsection 5 of that statute provides that the State may appeal “[f]rom an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution of one (1) or more counts of an information or indictment.” Ind. Code § 35-38-4-2. Subsection 6 of the statute authorizes the State to appeal

(6) [f]rom any interlocutory order if the trial court certifies and the court on appeal or a judge thereof finds on petition that:

(A) the appellant will suffer substantial expense, damage, or injury if the order is erroneous and the determination thereof is withheld until after judgment;

(B) the order involves a substantial question of law, the early determination of which will promote a more orderly disposition of the case; or

(C) the remedy by appeal after judgment is otherwise inadequate.

Id.

[8] Unless the State asserts otherwise, we presume it appeals an order granting a motion to suppress because the ultimate effect of the order is to preclude further prosecution, per subsection 5 of Indiana Code Section 35-38-4-2. *See State v. Aynes*, 715 N.E.2d 945, 948 (Ind. Ct. App. 1999) (“[B]y initiating an appeal from a motion to suppress evidence, the State necessarily represents to the trial and appellate courts that it cannot prosecute the defendant without the suppressed evidence.”). Since the State did not state a statutory basis for its appeal in this case, we correctly presumed in our initial decision that the State appealed pursuant to subsection 5. *Id.*

[9] If the State intended to appeal the suppression order under subsection 6, it was required to clearly state as much in its Notice of Appeal. Its failure to do so made its Notice of Appeal deficient. The State cites *State v. Peters*, 637 N.E.2d 145, 147 (Ind. Ct. App. 1994), in which we allowed the State to proceed with a discretionary interlocutory appeal when it cited in support only the appellate

rule and not the statute. However, *Peters* did not involve an appeal of a suppression order to which more than one subsection of the statute could be applicable. Where more than one subsection of the statute authorizing appeal may be applicable, the Notice of Appeal must state the specific subsection under which the State appeals.

[10] The State’s Notice of Appeal also is deficient under Indiana Appellate Rule 14(B)—and subsection 6 of the statute, which tracks the language of Rule 14(B)—regarding discretionary appeals. When seeking permission to bring such an appeal,

[i]t is not enough to merely parrot the language of the rule; rather, the motion should set forth in express terms one or two important questions of law and explain in detail why resolving these limited questions on appeal now could resolve the entire case. This is so because discretionary interlocutory appeals are narrow exceptions to the final judgment rule.... “The obvious purpose of the final judgment rule and the strict limitation of interlocutory appeals is to prevent the needless and costly delay in the trial of lawsuits which would result from limitless intermediate appeals.” [*Thompson v. Thompson*, 259 Ind. 266, 269, 286 N.E.2d 657, 659 (1972).] ... For this reason, neither the trial courts nor the appellate courts are inclined to grant discretionary interlocutory appeals because of the concern of piecemeal litigation. Thus the potential appeal must be a way to resolve all or most of a pending litigation.

24 George T. Patton, Jr., *Indiana Practice, Appellate Procedure* § 5.7 (3d ed. 2019); *see also, e.g., Rausch v. Finney*, 829 N.E.2d 985, 986 (Ind. Ct. App. 2005) (denying request for discretionary interlocutory appeal where “the information

provided to the court by the parties does not make the showing required for discretionary interlocutory review under Appellate Rule 14(B)”), *trans. denied*.

[11] Here, the State did not state in express terms a “substantial question of law.” Ind. Appellate Rule 14(B). It asserted that there are “critical factual differences between this case and the case of *State v. Ruiz*, 123 N.E.3d 675 (Ind. 2019), ... rendering the trial court’s reliance on *Ruiz* incorrect,” Motion for Interlocutory Appeal at 3, but it did not specify any such factual difference, and it did not explain in any detail why resolving that issue would “promote a more orderly disposition of the case,” Ind. Appellate Rule 14(B). While the State contended that a remedy by appeal of a final judgment of acquittal would be inadequate because, even if the State was successful on that appeal, the doctrine of double jeopardy would bar it from retrying Domingo Diego, that is true of any appeal of an acquittal. *See Beattie v. State*, 924 N.E.2d 643, 648 (Ind. 2010) (“Once a jury acquits a defendant on a criminal charge, the State’s right to appeal is limited to questions of law, and even if successful in such an appeal, the State is barred from retrying the defendant on the charge.”). The State also stated that the excluded incriminating statement was “powerful” and “important” in the context of a child molestation case to corroborate a child witness, but, again, that is true in any child molestation case. The State cited no reason why the excluded evidenced was uniquely important in this particular criminal case.

[12] Since the State’s Notice of Appeal was deficient because it failed to cite a specific statutory basis for its appeal and failed to make the required showing for a discretionary interlocutory appeal under Ind. Appellate Rule 14(B) and

Indiana Code Section 35-38-4-2(6), the motions panel arguably erred when it granted the motion for interlocutory appeal. However, while “[i]t is well-established that we may reconsider a ruling by our motions panel,” we are reluctant to overrule the motions panel except in rare circumstances. *Wise v. State*, 997 N.E.2d 411, 413 (Ind. Ct. App. 2013); *see also Estate of Mayer v. Lax, Inc.*, 998 N.E.2d 238, 245 (Ind.Ct.App.2013), *trans. denied*. We decline to do so here. However, we admonish the State in future criminal appeals to state the specific statutory basis for its appeal, including statutory subsections if applicable, and provide a detailed explanation of what makes the particular case at issue appropriate for a discretionary appeal, including any relevant facts.

[13] We grant the motion for rehearing in order to clarify that the State’s appeal is a discretionary interlocutory appeal brought pursuant to subsection 6 of Indiana Code Section 35-38-4-2. We affirm our initial opinion in all other respects, and we remand to the trial court for further proceedings in conformity with this opinion.

Baker, Sr. J., concurs.

Vaidik, J., concurs in result with separate opinion.

IN THE
COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Plaintiff,

v.

Axel Domingo Diego,
Appellee-Defendant.

Court of Appeals Case No.
20A-CR-227

Vaidik, Judge, concurring in result.

[14] I concur in the majority’s decision to grant rehearing and remand for trial. I write separately to address Domingo Diego’s argument that the State should not be allowed to appeal a suppression order under Indiana Code section 35-38-4-2(6). We have never explicitly addressed this issue, but the language of subsection (6) is clear: the State may appeal “any interlocutory order”—including a suppression order—if it can satisfy the requirements of Indiana Appellate Rule 14(B) (which are incorporated in subsection (6)). It does not say “any interlocutory order other than a suppression order.” Therefore, if the State can satisfy the requirements of Appellate Rule 14(B), it can appeal a

suppression order under subsection (6). The State properly followed this procedure here.¹

[15] Domingo Diego argues “all orders appealable under Subsection (5) would necessarily qualify for appeal under Subsection (6)” and therefore allowing the State to appeal suppression orders under subsection (6) would render subsection (5) “meaningless.” Appellee’s Opp. to Reh’g p. 7. There are two problems with this argument. First, subsection (5) gives the State an absolute right to appeal if it is willing to make a judicial admission that the suppression order precludes further prosecution. Subsection (6), on the other hand, only allows the State to appeal if it gets permission from both the trial court and the appellate court. Either court could deny that permission. As such, no suppression order would “necessarily qualify for appeal” under subsection (6). Only subsection (5) guarantees the State an appeal, so the provision retains independent significance.

[16] Second, Domingo Diego seems to assume that the State could use the subsection (6) procedure to avoid making a judicial admission that a suppression order precludes further prosecution. That is, Domingo Diego apparently believes that if the State represents in a motion under subsection (6)

¹ It is true that the State did not cite subsection (6) in either its motion to the trial court or its motion to this Court. However, both motions discussed the grounds for appeal set forth in subsection (6) and Appellate Rule 14(B). Moreover, the fact that the State requested permission to appeal at all was a clear indication it was proceeding under subsection (6), not subsection (5), since the State does not need court approval to appeal under subsection (5). That said, when the State decides to proceed under subsection (6), the better practice is to expressly invoke that provision in its motions to the trial court and the appellate court.

that the suppression order precludes further prosecution, that representation would not be a binding judicial admission, as it would be in an appeal under subsection (5). That belief is mistaken. Whether made in an appeal under subsection (5) or in a motion under subsection (6), a representation by the State that a suppression order precludes further prosecution would constitute a judicial admission. To be clear, I highly doubt the State will make such a representation in motions under subsection (6), given its right to appeal under subsection (5). But if the State does so, gets permission to appeal, and then loses the appeal, it will be bound by that representation, and the charges at issue will have to be dismissed, just as when it loses an appeal under subsection (5).

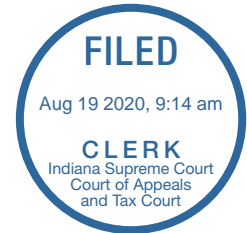
[17] For these reasons, I concur in the result reached by the majority.

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IN THE
COURT OF APPEALS OF INDIANA

State of Indiana,
Appellant-Plaintiff,

v.

Axel Domingo Diego,
Appellee-Defendant.

August 19, 2020

Court of Appeals Case No.
20A-CR-227

Interlocutory Appeal from the
Cass Circuit Court

The Honorable Stephen Roger
Kitts, II, Judge

The Honorable Leo T. Burns,
Senior Judge

Trial Court Cause No.
09C01-1806-FA-1

Bailey, Judge.

Case Summary

[1] The State of Indiana (“State”) brings this interlocutory appeal of the trial court order granting Axel Domingo Diego’s (“Domingo Diego”) motion to suppress the recordings of his interrogation by police. The only restated issue on appeal is whether *Miranda* warnings were unnecessary because Domingo Diego was not in custody during his interrogation.

[2] We affirm.

Facts and Procedural History

[3] On June 26, 2018, following an interrogation of Domingo Diego, the State charged him with child molesting, as a Class A felony.¹ On March 12, 2019, the State filed an amended information charging Domingo Diego with two counts of child molesting, as Class A felonies, and one count of child molesting as a Class C felony.² On May 24, Domingo Diego filed a motion to suppress his statement to police. The trial court held a hearing on the motion to suppress on October 31, 2019. Evidence of the following facts was submitted at that hearing.³

¹ Ind. Code § 35-42-4-3(a)(1).

² I.C. § 35-42-4-3(b).

³ In accordance with the applicable standard of review, discussed in more detail below, we consider the evidence—including conflicting evidence—most favorable to the trial court’s suppression ruling. *E.g.*, *State v. Ruiz*, 123 N.E.3d 675, 679 (Ind. 2019).

- [4] In June 2018, officers with the Logansport Police Department called Detective Sergeant Troy Munson (“Det. Munson”) with the Seymour Police Department (“SPD”) and asked for his assistance in locating and interviewing Domingo Diego, who they believed was living in Seymour and who they suspected of molesting a child. The Logansport Police Department shared with Det. Munson a police report and forensic interview in which a child, “C.,” accused Domingo Diego of molesting her. After Det. Munson watched the forensic interview, he located Domingo Diego’s address in the SPD computer system.
- [5] On June 19, 2018, an officer from SPD⁴ arrived at Domingo Diego’s home, and Domingo Diego’s long-time girlfriend, Andrea Martin (“Martin”), opened the door. The officer was in “uniform,” Tr. V. II at 59, and he was wearing a police badge and a gun. The officer asked to speak with Domingo Diego. When Domingo Diego arrived at the door, the officer stated that he would like to speak with Domingo Diego “about an incident that had occurred in Logansport.” *Id.* at 18. The officer stated that Domingo Diego “needed” to go to the police station so that Det. Munson could speak with him. *Id.* at 47. The officer gave Domingo Diego Det. Munson’s business card and a date and time to go to Det. Munson’s office at the SPD station. Martin, who speaks Spanish, English, and Chuj, translated the officer’s statements for Domingo Diego, who speaks Chuj, Spanish, and only a little English.

⁴ Det. Munson testified that he was the SPD officer who went to Domingo Diego’s house that day, but Domingo Diego and Andrea Martin testified that it was another, unknown police officer.

[6] On June 21, Domingo Diego and Martin arrived at the SPD police station and asked for Det. Munson. SPD personnel opened a secured door for Martin and Domingo Diego, and it was shut behind them. No one informed Martin or Domingo Diego that they could leave through the secure door without assistance. Martin and Domingo Diego were directed to an elevator, which they took to the second floor. On the second floor, Det. Munson came out of his office into the common area to greet Martin and Domingo Diego. Det. Munson wore plain clothes but carried a gun, and he was accompanied by an SPD dispatcher, in plain clothes, who also worked as an English/Spanish translator. Det. Munson asked Martin to wait in another room while he interviewed Domingo Diego, and he informed Martin and Domingo Diego that the SPD English/Spanish translator (“the translator”) would assist with the interview.

[7] Det. Munson, the translator, and Domingo Diego entered Det. Munson’s office. Det. Munson closed the door to the office and the blinds to the windows between his office and the common area. Det. Munson sat behind his desk, Domingo Diego sat in a seat in front of the desk, and the translator sat in the seat between Domingo Diego and the door to the office. Det. Munson informed Domingo Diego that he was “not under arrest,” and that he was “free to leave anytime [he] want[ed] to go.” State’s Ex. 4 at 3. Det. Munson asked Domingo Diego if he understood and Domingo Diego nodded his head.

State's Ex. 3, Part I,⁵ at 00:46. However, Det. Munson did not tell Domingo Diego that he did not have to answer Det. Munson's questions. Det. Munson proceeded to question Domingo Diego, through the translator, for approximately forty minutes. Det. Munson did not at any time provide Domingo Diego with *Miranda* warnings.

[8] At various points throughout the interrogation, Det. Munson stated that he believed Domingo Diego had sexual contact with the child, "C."⁶ He also indicated several times that he believed Domingo Diego's denials were lies.⁷ Det. Munson also made statements stating it was understandable if Domingo Diego had sexual contact with C.⁸ Det. Munson stated that C. was "saying with ... with pretty great detail about what happened between the two of you."

⁵ The CD containing the audio-visual recording of the June 21, 2019, interrogation was divided into two separate parts.

⁶ For example, Det. Munson stated "something happened between you and [C.]. It may not have been to the extreme that Miguel had said [i.e., that Domingo Diego raped C.], but tell me what actually happened between you and [C.]." Ex. 4 at 14.

⁷ Det. Munson stated that he had listened to a recording of a conversation in which C.'s father had accused Domingo Diego of raping C. and then stated, "[L]ying to me only makes things worse," Ex. 4 at 14. Det. Munson also stated, "Hey look, Axel, you don't, you don't need to lie to me. You don't need to be afraid of me for any reason or [sic] whatsoever," *id.* at 22.

⁸ For example, Det. Munson stated to Domingo Diego,

Okay, so we understand that sometimes guys, they get horny. ... So, sometimes what happens is ... is guys just make a mistake and when they make that mistake is, what they do is, there happens to be whoever's there, they end up touching them or whatever they need to do to satisfy themselves, but it's not so much that they want to be with a child, it's just that they want to release this sexual tension. ... So, I'm wondering if, if maybe that's not what happened here, 'cause I think you're a pretty good guy. But I'm, I'm thinking to myself, you know, did you do something ...

Ex. 4 at 15-16.

Ex. 4 at 17.⁹ He informed Domingo Diego, “the evidence in this case ... clearly shows that you had some type of contact with [C.’s], um ... her vaginal area, her butt, and her breast area.” *Id.* at 19. Det. Munson asked Domingo Diego, “So you just ... basically touched her vagina and touch[ed] her breast area. Is that correct?” *Id.* Det. Munson continued, “[C.] told me^[10] about a situation where um, your, your penis had been touching, your bare penis had been touching her butt. Um, did you actually stick your penis inside of her butt or was it just, did you just rub it on the outside of her butt?” *Id.* Det. Munson stated to Domingo Diego, “Uh, and then how many times do you think your hand ... now, you know as well as I do, it wasn’t when you were just playing around,” and then asked, “How, how many times do you think your hands just kind of touched her breasts or touched her vagina?” *Id.* at 24.

[9] After asking Domingo Diego if he knew that what happened with C. was “wrong” and whether Domingo Diego felt “sorry about doing it,” Det. Munson asked Domingo Diego if he “would like to write [C.] an apology” that Det. Munson could give to her. *Id.* at 30. When Domingo Diego hesitated, Det. Munson stated, “Well, what I’m just saying, it may help, it may let this little girl know that, ‘Hey, I was wrong and I’m sorry’ and then she can put [it] behind her.” *Id.* at 31. Det. Munson stated to the translator, “Hey, he doesn’t

⁹ We note that the written transcript with translation of the June 21 interrogation, State’s Exhibit 4, sometimes mislabels who is speaking, as compared to the audio-visual recording in State’s Exhibit 3.

¹⁰ Det. Munson did not talk to C. directly; rather, he reviewed the recording of her interview with police.

have to, I’m just saying I think it’d be a good idea.” *Id.* At the conclusion of the interrogation, Det. Munson told Domingo Diego, “You’re free to go” but “[d]on’t have any more contact with that family.” *Id.* at 33.

[10] Following the hearing on Domingo Diego’s motion to suppress his statement to police, the trial court issued its December 20, 2019, order granting the motion. After noting that the parties did not request findings and conclusions pursuant to Indiana Trial Rule 52, the court noted, “The facts in this case regarding defendant’s statement to police are similar to the facts considered by the [Indiana] Supreme Court in *State of Indiana v. Ernesto Ruiz*.^[11]” Appellant’s App. V. 2 at 40. The trial court concluded that the *Ruiz* case “controls this case” and Domingo Diego’s statement cannot be used against him. *Id.* The State now brings this interlocutory appeal.¹²

Discussion and Decision

Standard of Review

[11] The State is appealing a negative judgment, i.e., the order suppressing Domingo Diego’s statement. When the State appeals from a negative judgment, it

¹¹ 123 N.E.3d 675 (Ind. 2019).

¹² The State may appeal the grant of a motion to suppress evidence in a criminal case “if the ultimate effect of the order is to preclude further prosecution of one (1) or more counts of an information or indictment.” I.C. § 35-38-4-2(5). Although the State has not alleged that it cannot further prosecute Domingo Diego without his statement to police, it apparently made that determination, and “it is not within our purview to second-guess” it. *State v. Wroe*, 16 N.E.3d 462, 465 (Ind. Ct. App. 2014), *trans. denied*.

must show that the trial court's grant of the motion was contrary to law. 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. We will not reweigh the evidence nor judge witnesses' credibility and will consider only the evidence most favorable to the trial court's ruling.

State v. Janes, 102 N.E.3d 314, 317 (Ind. Ct. App. 2018) (citations omitted). We will not reverse the trial court's ruling on suppression if it is supported by substantial evidence of probative value. *Id.*

Custodial Interrogation

[12] Suspects under custodial interrogation must be given *Miranda* warnings; that is, pursuant to *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), individuals in custodial interrogation must be told that they have “a right to remain silent, that any statement [they do] make may be used as evidence against [them], and that [they have] a right to the presence of an attorney.” *See also State v. Ruiz*, 123 N.E.3d 675, 677 (Ind. 2019). However, when an individual is not in police custody, he or she is not entitled to *Miranda* warnings before police questioning. *Id.*

[13] In the instant case, it is undisputed that the SPD did not give Domingo Diego *Miranda* warnings before interrogating him on June 21, 2019; therefore, whether Domingo Diego's statement are admissible at his criminal trial depends upon whether Domingo Diego was in “custody” during the police interrogation. The custody inquiry is a mixed question of fact and law: the circumstances surrounding the interrogation are matters of fact that we review with deference,

and whether those facts amount to *Miranda*-type custody is a question of law that we review de novo. *Ruiz*, 123 N.E.3d at 679.

[14] An individual is in police “custody” when two factors are met: (1) the person’s freedom of movement is curtailed to the degree associated with a normal arrest, and (2) the person undergoes the same inherently coercive pressures as the type of station-house-questioning at issue in the *Miranda* case. *Id.* at 680.

Ultimately, we must determine whether “[t]he totality of objective circumstances surrounding the interrogation would make a reasonable person feel not free to end the questioning and leave.” *Id.* In making that determination, the court may consider such circumstances as “the location, duration, and character of the questioning; statements made during the questioning; the number of law-enforcement officers present;... and how the interview begins and ends.” *Id.* The court may also consider such factors as:

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.

State v. O.E.W., 133 N.E.3d 144, 154 (Ind. Ct. App. 2019), *trans. denied*.

[15] Applying the above factors to this case, it is clear that the trial court’s order suppressing Domingo Diego’s statement to police is supported by substantial evidence of probative value. Domingo Diego’s freedom of movement was curtailed to the degree associated with an arrest, and he was subjected to inherently coercive pressures such as those at issue in *Miranda*. The police determined and controlled the environment in which the interrogation took place, i.e., Domingo Diego was removed from his girlfriend and placed in a closed room in a police station with an SPD employee sitting between Domingo Diego and the closed door. Although Domingo Diego was told he was not under arrest and was free to leave, he was also told that he “needed” to be there to answer Det. Munson’s questions. Tr. V. II at 47. He was never told that he was free to refuse to answer Det. Munson’s questions, nor was he told that he could leave through the secured police station door without police assistance.

[16] Furthermore, Domingo Diego was subjected to prolonged questioning that lasted approximately forty minutes; the questioning was “sustained and drawn out” as compared to brief “roadside traffic-stop questioning.” *Ruiz*, 123 N.E.3d at 681. And Det. Munson’s questioning was persistent and accusatory: he repeatedly stated as fact that Domingo Diego had engaged in sexual contact with C., he repeatedly accused Domingo Diego of lying when Domingo Diego denied such activity, and he repeatedly asked questions that “focused on encouraging [Domingo Diego] to admit to [Det. Munson’s] description of the wrong-doing.” *Id.* at 682. Det. Munson even went so far as to attempt to get

Domingo Diego to write out a confession, in the guise of a letter apologizing to C. for having sexual contact with her.

- [17] The trial court did not err in finding that the facts in this case, like those in *Ruiz*, supported an order suppressing the defendant's statement. The State asks that we credit Det. Munson's conflicting testimony; however, that is simply a request that we reweigh evidence and witness credibility, which we may not do. *Janes*, 102 N.E.3d at 317; *see also Ruiz*, 123 N.E.3d at 679.

Conclusion

- [18] The trial court did not err when it granted Domingo Diego's motion to suppress his statement to police because the statement was obtained during custodial interrogation without *Miranda* warnings.
- [19] Affirmed.

Vaidik, J., and Baker, S.J., concur.

STATE OF INDIANA)
) SS:
COUNTY OF CASS)

IN THE CASS SUPERIOR COURT 2

TERM 2019

STATE OF INDIANA

VS.

CAUSE NO. 09D02-1806-FA-000001

AXEL DOMINGO DIEGO

Order Granting Defendant's Motion to Suppress Evidence

The Court heard testimony from witnesses and argument of counsel. Neither party requested Findings of Fact and Conclusions of Law pursuant to Trial Rule 52. The facts in this case regarding the defendant's statement to police, are similar to the facts considered by the Supreme Court in *State of Indiana v. Ernesto Ruiz*. Therefore, the Court concludes that the holding by the Supreme Court in *Ruiz* controls this case and finds that the defendant's statement cannot be used against him. The defendant's Motion to Suppress Evidence is hereby granted.

Upon motion, the Court will certify its order for interlocutory appeal.

ALL OF WHICH IS ORDERED

Dec 20, 2019

FILED
IN CASS SUPERIOR COURT 2

DEC 20 2019

Beth Liming
CLERK OF THE CASS SUPERIOR COURT 2

Leo T. Burns
Leo T. Burns, Senior Judge
Cass Superior Court II

Exhibit No. _____

STATE OF INDIANA VS. AXEL DOMINGO DIEGO
09-DO2-1806-FA000001

Abbreviations:

MV1 = Male Voice 1
 MV2 = Male Voice 2
 (UI) = Unintelligible
 (PH) = Phonetic
 [] = Translator's Notes
Italics = Originally spoken in English

Abreviaturas:

[Voz Masculina 1]
 [Voz Masculina 2]
 (U/I) = Ininteligible
 [Fonético]
 Anotaciones del Traductor
Letra cursiva = Dicho en inglés en la versión original

Certification

I, Claudia Rubio Samulowitz, certified by the Administrative Office of the U.S. Courts and by the State of Indiana, hereby declare that this thirty-three (33) page document is a true and correct transcript and Spanish to English translation of the original recording provided to me by the Cass County Prosecutor's Office.

The transcript and translation are accurate to the best of my ability and they reflect as faithfully as possible: False starts, speech interruptions, poor grammar used by the speakers, repetitions, unfinished sentences and foul language. I further certify that I am neither counsel for, related to, nor employed by any of the parties. I have no financial or other interest in the outcome of any action related to this Forensic Transcript Translation.

The Translation could not always reflect the poor grammar used in the original language, which is indicated by [sic] notations.

| Line No. | Voice ID | Transcription | Translation |
|----------|----------|---|---|
| 1. | MV1 | Hi! Oh, I guess I was wrong, they're here. Hi! I don't need you in there, what's your name? | Hi! Oh, I guess I was wrong, they're here. Hi! I don't need you in there, what's your name? |
| 2. | FV | Andrea. | Andrea. |
| 3. | MV1 | Andrea? Cool. Andrea, I'm going to have you sit right over here. I have Armando here, who's going to help me translate. We shouldn't be too long okay? | Andrea? Cool. Andrea, I'm going to have you sit over here. I have Armando here, who's going to help me translate. We shouldn't be too long okay? |
| 4. | FV | All right. Okay... | All right. Okay... |
| 5. | MV1 | Hey, Axel do you understand most of what I'm saying? [UI] Come on in here man, are you all right? Yeah? Okay. This is Armando - Armando this is Axel. Okay, so, uh, did you have to work today Axel? | Hey, Axel do you understand most of what I'm saying? [UI] Come on in here man, are you all right? Yeah? Okay. This is Armando - Armando this is Axel. Okay, so, uh, did you have to work today Axel? |
| 6. | MV2 | Yes, I'm not working... | Yes, I'm not working... |
| 7. | MV1 | Oh, you're not working now? | Oh, you're not working now? |
| 8. | MV2 | Yeah, I'm coming here, so... [chuckles] | Yeah, I'm coming here, so... [chuckles] |
| 9. | MV1 | Oh, okay – did... did you just move here? From Logansport? | Oh, okay – did... did you just move here? From Logansport? |
| 10. | MV2 | Yes. | Yes. |
| 11. | MV1 | Or... or... okay. So, how long have you been here? | Or... or... okay. So, how long have you been here? |
| 12. | MV2 | Yes... After like one year and half [sic] | Yes... After like one year and half [sic] |
| 13. | MV1 | You've been here about a year and a half? | You've been here about a year and a half? |
| 14. | MV2 | Yes | Yes |
| 15. | | [UI - VOICES OVERLAP] | [UI - VOICES OVERLAP] |
| 16. | MV1 | Oh, okay. Uh, it doesn't matter you can sit wherever you want. Okay Axel, I want you to understand something - (you tell him this in | Oh, okay. Uh, it doesn't matter you can sit wherever you want. Okay Axel, I want you to understand something - (you tell him this in |

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| | | Spanish [UI]) - you are not under arrest. | Spanish [UI]) -you are not under arrest. |
| 17. | MV3 | Él quiere que entiendas algo, que no estás bajo detenido, no estás arrestado. | He wants you to understand something, that you are not under detained, you're not under arrest. |
| 18. | MV1 | Okay? you are free to leave anytime you want to go. | Okay? you are free to leave anytime you want to go. |
| 19. | MV3 | Tú eres libre de irte a cualquier hora que tú quieras. | You are free to leave anytime you want to. |
| 20. | MV2 | Uh-hum | Uh-hum |
| 21. | MV1 | Do you understand that? | Do you understand that? |
| 22. | MV3 | ¿Si entiendes? | You do understand? |
| 23. | MV1 | Okay. I just... I just want to talk to you about this case. Um... you lived at... You lived up at Logansport at some point? | Okay. I just... I just want to talk to you about this case. Um... you lived at... you lived up at Logansport at some point? |
| 24. | MV3 | Él quiere hablar contigo debajo de un caso y él quiere saber... ¿tú vivites [sic] en Logansport en algún tiempo? | He wants to talk to you under a case and he wants to know... did you live in Logansport at some time? |
| 25. | MV2 | Sí, yo viví// | Yes, I lived // |
| 26. | MV1 | Now, did you live there with family or, or what?// | Now, did you live there with family or, or what?// |
| 27. | MV3 | ¿Vivías con familia o con quién vivías? | Did you live with family or with whom did you live? |
| 28. | MV2 | Vivía con familias, vivía solo, vivía con// | I lived with families, I lived alone and I lived with // |
| 29. | MV3 | Okay. | Okay. |
| 30. | MV2 | // junto con mis hijos, pues, con mi esposa. | //along with my children, well, with my wife. |
| 31. | MV3 | Okay, he said he lived with a family or at times he lived, he lived alone, or with his// | Okay, he said he lived with a family or at times he lived, he lived alone, or with his// |
| 32. | MV1 | Oh, okay. | Oh, okay. |
| 33. | MV3 | // with his family. | // with his family. |
| 34. | MV1 | When... when did you first get to Logansport? Where did you live... first moved to Logansport? | When... when did you first get to Logansport? Where did you live... first moved to Logansport? |
| 35. | MV3 | ¿Cuándo // llegates [sic] a Logansport? | When // did you arrive at Logansport? |
| 36. | MV1 | Sorry about that. | Sorry about that. |
| 37. | MV3 | //¿Cuándo movistes [sic]? | // when did you move? |

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| 38. | MV2 | ¿Cuándo llequé allí a Logansport? | When did I arrive here, in Logansport? |
| 39. | MV3 | Uh-hum | Uh-hum |
| 40. | MV2 | Uh, mucho tiempo. Ahí pasé como... como nueve años pasé ahí en Logansport. | Em... a long time. There, I spent like... I spent like nine years there, in Logansport. |
| 41. | MV3 | Okay, ¿llegastes en [sic] Logansport hace nueve años? | Okay, did you arrive on Logansport nine years ago? |
| 42. | MV2 | Aha. | Uh-huh. |
| 43. | MV3 | About nine years ago. | About nine years ago. |
| 44. | MV1 | Oh, okay, been a long time then. Okay and then, you've only been... You moved away about a year-and-a-half ago? You moved from Logansport to here, about a year-and-a-half ago? | Oh, okay, been a long time then. Okay and then, you've only been... You moved away about a year-and-a-half ago? You moved from Logansport to here, about a year-and-a-half ago? |
| 45. | MV3 | ¿Y hace cuánto tiempo te juites [sic] de Logansport, hace como un año y medio? o// | And how long ago did you leave Logansport, about a year-and-a-half ago, or//? |
| 46. | MV2 | ¿Que me fui para allá? | That I went over there? |
| 47. | MV3 | Que te vinites [sic] para acá. | That you came over here. |
| 48. | MV2 | Ah, como... como año y medio. El... el año pasado, me vine en noviembre. | Oh, like... like a year and a half. Uh... last year, in November. |
| 49. | MV3 | Okay about a year-and-a-half. Last year in November he moved, he says. | Okay about a year-and-a-half. Last year in November he moved, he says. |
| 50. | MV1 | Oh, okay, okay. Last year in November? So, not even a year ago, then. | Oh, okay, okay. Last year in November? So, not even a year ago, then. |
| 51. | MV3 | ¿No tiene un año? | Not even a year? |
| 52. | MV1 | No, hace... como un año pa'trás, [sic] pues// | No, like... a year ago// |
| 53. | MV3 | Okay | Okay |
| 54. | MV2 | //hace... ¿cómo te dijera? Este... tamos [sic] en dos mil... | // it'd be... how can I say this? Um... This is two thousand... |
| 55. | MV1 | Two Novembers ago! | Two Novembers ago! |
| 56. | MV3 | ¿Hace dos noviembres? | Two Novembers ago? |
| 57. | MV2 | Ajá. | Uh-huh. |
| 58. | MV1 | Oh, okay, okay. Why did you come to Seymour? | Oh, okay, okay. Why did you come to Seymour? |
| 59. | MV3 | ¿Por qué te venistes [sic] pa acá? | Why did you come here? |

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| 60. | MV2 | Porque me dijeron que aquí había más trabajo. [CHUCKLES] | Because I was told there was more work here. [CHUCKLES] |
| 61. | MV3 | Oh, okay. 'Cuz he was told there was more work here. | Oh, okay. 'Cuz he was told there was more work here. |
| 62. | MV1 | Yeah, okay. What did you do up in Logansport? | Yeah, okay. What did you do up in Logansport? |
| 63. | MV3 | ¿Qué hacías allá en Logansport? | What were you doing there in Logansport? |
| 64. | MV2 | Trabajaba ahí en... construcciones... | I was working there... in construction... |
| 65. | MV3 | Okay | Okay |
| 66. | MV1 | Oh, construction? | Oh, construction? |
| 67. | MV2 | Ajá. | Uh-huh. |
| 68. | MV3 | Oh, okay. And you are from Guatemala originally, is that right? Are... is that where you're from? | Oh, okay. And you are from Guatemala originally, is that right? Are... is that where you're from? |
| 69. | MV3 | ¿De dónde eres tú, de originalmente...? | Where are you from, from originally...? |
| 70. | MV2 | Sí, de Guatemala. | Yes, from Guatemala. |
| 71. | MV1 | Yeah? Okay. Um, okay so when you were in Logansport, at some point you evidently lived with Miguel. Is Miguel your cousin? | Yeah? Okay. Um, okay so when you were in Logansport, at some point you evidently lived with Miguel. Is Miguel your cousin? |
| 72. | MV2 | Mhm. | Mhm. |
| 73. | MV1 | Miguel's your cousin, is that right? Okay. | Miguel's your cousin, is that right? Okay. |
| 74. | MV2 | Sí, él es... | Yes, he is... |
| 75. | MV1 | You understand that? | You understand that? |
| 76. | MV2 | Yes. | Yes. |
| 77. | MV1 | Okay. Okay. | Okay. Okay. |
| 78. | MV2 | Sí, él es mi primo// | Yes, he's my cousin// |
| 79. | MV1 | And then// Okay. And then, um... his wife... What... what's his wife's name? | And then// Okay. And then, um... his wife... What... what's his wife's name? |
| 80. | MV3 | ¿Y cómo se llama su esposa de Miguel? | What's Miguel's wife's name? |
| 81. | MV2 | Ana. Ana Miguel. | Ana. Ana Miguel. |
| 82. | MV3 | Ana. | Ana. |
| 83. | MV1 | Ana? And then who else lived there? | Ana? And then who else lived there? |
| 84. | MV3 | ¿Y quién más vivía ahí, en la casa? | And who else lived there, in the house? |
| 85. | MV2 | Ella y... con sus dos hijos. | She and... with her two children. |

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| 86. | MV3 | Mmm... Her and... and // | Mmm... Her and... and // |
| 87. | MV2 | Un niño y una niña. | A boy and a girl. |
| 88. | MV3 | Okay, her and a boy and a girl. | Okay, her and a boy and a girl. |
| 89. | MV1 | Okay, Claudia? | Okay, Claudia? |
| 90. | MV2 | ¿Claudia? | Claudia? |
| 91. | MV1 | Claudia, ajá. | Claudia, uh-huh. |
| 92. | MV2 | Claudia y Nicolás. | Claudia and Nicolas. |
| 93. | MV3 | Claudia and Nicolas. | Claudia and Nicolas. |
| 94. | MV1 | Okay. Did you have a son that lived there? | Okay. Did you have a son that lived there? |
| 95. | MV3 | ¿Tenías tú algún hijo que vivía allí? | Did you have a son that lived there? |
| 96. | MV2 | Sí, tenía a mi hijo. Vivía conmigo. | Yes, I had my son. He lived with me. |
| 97. | MV3 | Okay he said, he had his son with him. | Okay he said, he had his son with him. |
| 98. | MV1 | Okay, okay. What's his... what's his... is it Randy? | Okay, what's his... what's his... is it Randy? |
| 99. | MV2 | Ajá. | Uh-hum. |
| 100. | MV1 | [Chuckling] Randy is his name? Not a Guatemalan name is it? What did you come up with that name at? [VOICES OVERLAP] All right, is here with you now do you have Randy with you here at Seymour or no? | [Chuckling] Randy is his name? Not a Guatemalan name is it? What did you come up with that name at? [VOICES OVERLAP] All right, is here with you now do you have Randy with you here at Seymour or no? |
| 101. | MV3 | ¿Randy está contigo aquí en Seymour? | Is Randy with you here in Seymour? |
| 102. | MV2 | Sí. | Yes. |
| 103. | MV1 | Oh, okay. How old is Randy? | Oh, okay. How old is Randy? |
| 104. | MV3 | ¿Cuántos años tiene Randy? | How old is Randy? |
| 105. | MV2 | Tiene cinco años. Ya va a cumplir seis años. | He's five. He's going almost six. |
| 106. | MV3 | Five, going on to six. | Five, going on to six. |
| 107. | MV1 | Okay... is he the little boy, is he the little boy I saw when I was at the house the other day? | Okay... is he the little boy, is he the little boy I saw when I was at the house the other day? |
| 108. | MV2 | Yes. | Yes. |
| 109. | MV1 | Okay... Is he going to start school this year? | Okay... Is he going to start school this year? |
| 110. | MV2 | This... | This... |
| 111. | MV1 | The coming up? | The coming up? |
| 112. | MV2 | Ajá. | U-hu. |
| 113. | MV1 | Is he gonna go to Brown? | Is he gonna go to Brown? |
| 114. | MV2 | Uh, no... for the church, uh... | Uh, no... is for the church, uh... |

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| 115. | MV1 | Oh! | Oh! |
| 116. | MV2 | San Ambrosio. | San Ambrosio. |
| 117. | MV1 | St. Ambrose. Oh, okay, good, good! Does he speak pretty good... Does he speak English at all, or does he just... little bit? | St. Ambrose. Oh, okay, good, good! Does he speak pretty good... Does he speak English at all, or does he just... little bit? |
| 118. | MV2 | Yes, he speaks a lot, more... more English// | Yes, he speaks a lot, more... more English// |
| 119. | MV1 | More English? Oh, Okay, alright, so is... is his mom here too? Or are you and the mom not together? | More English? Oh, Okay, alright, so is... is his mom here too? Or are you and the mom not together? |
| 120. | MV3 | ¿Dónde está su mamá de él? | Where's his mother of his? |
| 121. | MV2 | Está aquí. Es la que vino conmigo ahorita. | She's here. She's the one who came with me now. |
| 122. | MV1 | Oh! Is that your wife? | Oh! Is that your wife? |
| 123. | MV2 | Sí. | Yes. |
| 124. | MV1 | Oh! Okay, okay. [Chuckles] all right, no problem. How long have you guys been married? | Oh! Okay, okay. [Chuckles] all right, no problem. How long have you guys been married? |
| 125. | MV3 | ¿Cuánto llevan casados? | How long have you been married? |
| 126. | MV2 | No estamos ya casados, pero... ya llevamos como siete años// | We're not married yet, but... for about seven years, we've been// |
| 127. | MV3 | ¿Juntos? Okay | Together? Okay |
| 128. | MV2 | //siete años o [sic] ocho años. | //siete años or eight years. |
| 129. | MV3 | They're not legally married, but they've been seven or eight years together. | They're not legally married, but they've been seven or eight years together. |
| 130. | MV1 | Oh! Together seven or eight years. Now, did she live with Miguel too? Up there? | Oh! Together seven or eight years. Now, did she live with Miguel too? Up there? |
| 131. | MV3 | ¿Ella vivió allá contigo, con Miguel? | Did she live with you there, with Miguel? |
| 132. | MV2 | Ella pasó conmigo allá también// | She stayed there with me too// |
| 133. | MV1 | Okay. What's her name Adriane, Adriana? | Okay. What's her name Adriane, Adriana? |
| 134. | MV2 | Andrea. | Andrea. |
| 135. | MV1 | Andrea, Andrea, okay. Do you have any other kids? Just... just Randy, or..? | Andrea, Andrea, okay. Do you have any other kids? Just... just Randy, or..? |
| 136. | MV2 | Emmm, apenas este, había nacido mi otra hija, la chiquita. | Ummm, just em... my other daughter, the youngest one, had just been born |
| 137. | MV3 | Mhm. | Mhm |

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| 138. | MV2 | Ya lleva un año, ahorita. Ya cumplió un año. | She's a year old, now. She already turned one year old. |
| 139. | MV3 | Okay. He has a baby daughter that's a year old. | Okay. He has a baby daughter that's a year old. |
| 140. | MV1 | Oh, okay. | Oh, okay. |
| 141. | MV2 | Y [vivimos] con otra más pequeñita, ahorita. De cinco mes [sic] | And [we live] with a younger on, now. She's five months old. |
| 142. | MV3 | And a five-month baby. | And a five-month baby. |
| 143. | MV1 | Oh, yeah. A boy, girl? | Oh, yeah. A boy, girl? |
| 144. | MV2 | A girl. | A girl. |
| 145. | MV1 | The little one? It's a girl? Okay, what are their names? | The little one? It's a girl? Okay, what are their names? |
| 146. | MV2 | Ummm, la otra [se] llama María y la otra es Ana. | Ummm, the other one's name is Maria and the other one is Ana. |
| 147. | MV3 | Maria and Ana. | Maria and Ana. |
| 148. | MV1 | Okay. Okay. So, when you guys lived with Miguel, you know what the address was you guys lived at? | Okay. Okay. So when you guys lived with Miguel, you know what the address was you guys lived at? |
| 149. | MV3 | ¿Te sabes la dirección de cuando vivías allá con Miguel? | Do you know the address where you were living over there with Miguel? |
| 150. | MV2 | Ajá, parece que es 3025 Summit. | Uhu... I think it's 3025 Summit. |
| 151. | MV3 | ¿Samuel? | Samuel? |
| 152. | MV2 | Summit, Su... Su... Summit. Summit. | Summit, Su... Su... Summit. Summit. |
| 153. | MV1 | ¿Summit? | Summit? |
| 154. | MV3 | U-hu. 3025 Summit. | U-hu. 3025 Summit. |
| 155. | MV1 | 3025 Summit? Okay. Now was this a big house a little house? Or... | 3025 Summit? Okay. Now was this a big house a little house? Or... |
| 156. | MV3 | ¿... casa grande, pequeña...?// | ... big house, little...?// |
| 157. | MV2 | Umm... un poco grande, no mucho... | Em... a somehow big, not much... |
| 158. | MV3 | Oh, okay. | Oh, okay. |
| 159. | MV1 | Pretty big? How many bedrooms were in there? | Pretty big? How many bedrooms were in there? |
| 160. | MV2 | Tres, tres cuartos. | Three, three rooms. |
| 161. | MV3 | Three bedrooms. | Three bedrooms. |
| 162. | MV2 | Three bedrooms? Okay. So, tell me about the layout of the house. Like, where did you, where did you and your wife and your ch... your boy sleep? | Three bedrooms? Okay. So, tell me about the layout of the house. Like, where did you, where did you and your wife and your ch... your boy sleep? |
| 163. | MV3 | Él dice que le platiques un poquito más de la casa. ¿Dónde durmían [sic] tú, tu esposa y tu hijo? | He's saying he wants you to talk a little bit more about the house. Where did you sleep... you, your wife and your son? |

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| 164. | MV2 | Em... ahí, como nomás tenía mi hijo ahí, el Randy... ahorita// | Um.. there, as I just had mi son there, Randy... right now// |
| 165. | MV3 | Uh-huh. | Uh-huh. |
| 166. | MV2 | Ellos nos habían dado un cuarto así, en// ellos están en un cuarto así y nosotros así, a la mitad... | They had given us a room like that, in// they are in a room like this and we [were] like this, in the middle... |
| 167. | MV3 | Okay. Okay. ¿Y quién? dice ellos, ¿quién, tu primo? | Okay, okay. And who? You say them, who, your cousin? |
| 168. | MV2 | Ajá, mi primo [UI] | Aha, my cousin [UI] |
| 169. | MV3 | Okay. Yeah, they gave them a room right in the middle. He's saying that his cousin was in the room on the side, so he and his wife and Randy were in the// | Okay. Yeah, they gave them a room right in the middle. He's saying that his cousin was in the room on the side, so he and his wife and Randy were in the// |
| 170. | MV1 | And then, who stayed in the other bedroom? | And then, who stayed in the other bedroom? |
| 171. | MV3 | ¿Y quién se quedaba en el otro cuarto? | And who was staying in the other room? |
| 172. | MV2 | Oh, tenía otro, otro familiar de ellos. | Oh, there was another, another one of their relatives. |
| 173. | MV3 | Okay. | Okay. |
| 174. | MV2 | De, de su esposa. Ellos ya no son mis familiares míos – de su esposa de mi primo. | Of his, of his wife's. They are not related to me – but to my cousin's wife. |
| 175. | MV3 | Okay. | Okay. |
| 176. | MV2 | Familiares de ella. | Her relatives. |
| 177. | MV3 | Okay. In the other room, relatives from Mom's side lived in that other room. | Okay. In the other room, relatives from Mom's side lived in that other room. |
| 178. | MV1 | Okay | Okay. |
| 179. | MV3 | Not his relatives, but relatives from the other side. | Not his relatives, but relatives from the other side. |
| 180. | MV1 | Okay. Where... where did Claudia stay? Where did she sleep? | Okay. Where... where did Claudia stay? Where did she sleep? |
| 181. | MV3 | Y Claudia, ¿dónde se durmía [sic] ella? | And Claudia, where did she sleep? |
| 182. | MV2 | Con su mamá. | With her mother. |
| 183. | MV3 | With, with mom. | With, with mom. |
| 184. | MV1 | With her mom? Oh, okay. Now, when you worked there, you worked construction, up in Logansport... | With her mom? Oh, okay. Now, when you worked there, you worked construction, up in Logansport... |

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| 185. | MV3 | ¿Cuando tabas [sic] allá, con... estabas en construcción, en Logansport? | When you were over there... were you in construction, in Logansport? |
| 186. | MV2 | Ajá. | Uh-huh |
| 187. | MV1 | So, when you were staying with Miguel, did you work construction while you were staying with Miguel? | So, when you were staying with Miguel, did you work construction while you were staying with Miguel? |
| 188. | MV3 | ¿Cuando trabajabas con Miguel, trabajabas en la construcción? ¿Cuando vivías con Miguel? | When you were working with Miguel, did you do construction work... when you lived with Miguel? |
| 189. | MV2 | Ajá. | Uhu. |
| 190. | MV3 | ¿Sí? | Yes? |
| 191. | MV2 | Sí. | Yes. |
| 192. | MV1 | So, did you work day shift? Obviously, I mean, most construction doesn't work at night. You worked during the day? | So, did you work day shift? Obviously, I mean, most construction doesn't work at night. You worked during the day? |
| 193. | MV2 | Ajá, de día, pues. | Uhu, well, during the day. |
| 194. | MV3 | Okay – day shift. | Okay – day shift. |
| 195. | MV1 | Day shift? Did, did, did your wife work at nights? Or, what did your wife do while you lived up there? | Day shift? Did, did, did your wife work at nights? Or, what did your wife do while you lived up there? |
| 196. | MV3 | ¿Tu esposa trabajaba en la noche, o qué es lo que hacía ella cuando estaban allá? | Did your wife worked night shift or what did she do when you were there? |
| 197. | MV2 | Ella no trabajaba// | She didn't work// |
| 198. | MV3 | Okay. He just was going to school. | Okay. He just was going to school. |
| 199. | MV2 | //porque, ella estaba estudiando// | // because she was going to school// |
| 200. | MV3 | Okay | Okay |
| 201. | MV2 | //ella iba un rato a... cuando yo llegaba del trabajo ella iba un rato en la escuela. | //she would be gone for a while... when I got home from work, she headed to school for a while. |
| 202. | MV3 | Okay. She was unemployed, she was in school. When he came from work, she would leave to school | Okay. She was unemployed, she was in school. When he came from work, she would leave to school. |
| 203. | MV1 | Go to school? Okay, what was she studying? | Go to school? Okay, what was she studying? |
| 204. | MV3 | ¿Y qué es lo que estudiaba ella? | And what is it that she was studying? |
| 205. | MV2 | Ella terminó su <u>High School</u> . | She finished her high school. |
| 206. | MV3 | Okay. She finished high school. | Okay. She finished high school. |
| 207. | MV1 | Hum! Good, how come she speaks such good English? | Hum! Good, how come she speaks such good English? |

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| 208. | MV3 | Sí, por qué habla ella muy, mucho inglés? | Yes, why does she speak very, a lot of English? |
| 209. | MV2 | Porque toda su vida aquí ha estudiado. | Because she has studied here her whole life. |
| 210. | MV3 | Okay. She's been here all her life. She stud... she studied here all her live. | Okay. She's been here all her life. She stud... she studied here all her live. |
| 211. | MV1 | Oh, good! So, she went, she went to school here and everything. Elementary school and everything? | Oh, good! So, she went, she went to school here and everything. Elementary school and everything? |
| 212. | MV3 | ¿Ella fue [a] la primaria y todo aquí? | She went to elementary and all that here? |
| 213. | MV2 | Sí. | Yes. |
| 214. | MV3 | Oh, okay. | Oh, okay. |
| 215. | MV1 | Okay, that's good. Alright so, I understand that... tell me what, what it was like between you and Claudia. tell me about your relationship with Claudia. | Okay, that's good. Alright so, I understand that... tell me what, what it was like between you and Claudia. tell me about your relationship with Claudia |
| 216. | MV3 | Okay. Él quiere que le platiques un poco de tu relación con Claudia. Él quiere saber cómo era su relación entre ustedes. | Okay. He wants you to tell him a little bit about your relationship with Claudia. He wants to know what your relationship was like. |
| 217. | MV2 | Pues, yo... nos llevábamos bien, primero. Jugábamos cuando llegábamos del trabajo y como su mama de ella trabaja en la noche, entonces ella está este... pues, en la casa pa' que se duerme [sic]. Y ellos estaban pues, cuando yo llegaba y entonces, yo jugaba con ellos// | Well, I... at first we got along fine. We played when we got home from work and as her mom used to worked at night, then she is um... um... at the house to sleep. And they were there when I arrived and then, I'd play with them// |
| 218. | MV3 | Okay. | Okay. |
| 219. | MV2 | //ellos les gusta mucho jugar. | //they like to play a lot. |
| 220. | MV3 | Okay. He says that um... they really// | Okay. He says that um... they really// |
| 221. | MV2 | ¡Ajá! un rato nomás, jugábamos con ellos. | Uh-huh! We'd just play with them for a while. |
| 222. | MV3 | Okay. He says that they got along pretty well. Uh, when he came from work, mom was usually at work, so he would hang out and play, play around with them. | Okay. He says that they got along pretty well. Uh, when he came from work, mom was usually at work, so he would hang out and play, play around with them. |
| 223. | MV1 | Uh-hum. Okay, with Claudia and who else? Uh, Randy... | Uh-hum. Okay, with Claudia and who else? Uh, Randy... |

| | | | |
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| 224. | MV2 | Randy, and Claudia, and Nicolas. | Randy, and Claudia, and Nicolas. |
| 225. | MV1 | Okay. So, I understand Miguel came down and talk to you about what's going on. Is that correct? | Okay. So, I understand Miguel came down and talk to you about what's going on. Is that correct? |
| 226. | MV3 | Él entiende que Miguel vino y, vino acá pa [sic] Seymore a platicar contigo de lo que está pasando. | He understands that Miguel came and, he came over to Seymore to talk to you about what's going on. |
| 227. | MV2 | Sí. Sí vino a hablar conmigo. | Yes. He did come to talk to me. |
| 228. | MV1 | Okay, what can you tell me about that? | Okay, what can you tell me about that? |
| 229. | MV3 | ¿Y qué le puedes platicar tú a él de eso? | And what can you tell him about that? |
| 230. | MV2 | Pues en eso, aquél vino pues, que... pues yo también me sorprendió bastante. Cuando él vino, él me habló primero, que necesito hablar contigo, bueno, ta [sic] bien, pues aquí te espero, me avisas cuando vienes. Ta [sic] bien. Vino él conmigo a hablar, pero, lo que él me salió pues, que venía, que, que cuando yo estaba ahí, pues que, que le violé pues, a su hija. | Well, that he came so, that... I was very surprised too. When he came, he talked to me first, he said I need to talk to you, well, that's fine. So, that's fine, I'll wait for you here, then, let me know when you're coming. All right! He came to talk to me, but what he came up with was that he came, that, that when I was there, well that I had raped... his daughter. |
| 231. | MV3 | Okay. | Okay. |
| 232. | MV2 | Y eso me noqueó bastante pues, mucho a mí, porque... que yo la verdad, yo no sé pues, yo no... yo nunca sé pues, que si algo había hecho yo a su hija. Yo por mí, pues no, no, eso no es lo que yo estaba buscando. | And that, well, it shocked me badly, really badly because... the truth is, well, I don't know, I don't... well, I never know, if I had done anything to his daughter. As far as I know, well no, no.... that's not what I was looking for. |
| 233. | MV3 | Okay. So, he says that Miguel came and, called him up first, to say hey! I want to speak with you, I'm gonna come up there. He told him that's fine, call me when you're on your way here. When he got here, he accused him of raping his daughter// | Okay. So, he says that Miguel came and, called him up first, to say "hey! I want to speak with you, I'm gonna come up there," he told him "that's fine, call me when you're on your way here." When he got here, he accused him of raping his daughter// |
| 234. | MV1 | Uh-huh | Uh-huh |
| 235. | MV3 | // and that, he says that he was very surprised because of that accusation. | // and that, he says that he was very surprised because of that accusation. |

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| 236. | MV1 | Okay. Okay. | Okay. Okay. |
| 237. | MV3 | And he said it hurt him a lot to know that he was being accused of that. | And he said it hurt him a lot to know that he was being accused of that. |
| 238. | MV2 | Now, it's... something, something happened though between you and Claudia. It may not have been to the extreme that Miguel had said but tell me what actually happened between you and Claudia. | Now, it's... something, something happened though between you and Claudia. It may not have been to the extreme that Miguel had said, but tell me what actually happened between you and Claudia. |
| 239. | MV3 | Dice que algo pasó entre tú y Claudia. Dice que tal vez no fue el [sic] extremo como él, que ta [sic] diciendo que la violates [sic] pero él quiere saber qué pasó entre tú y Claudia. | He's saying that something happened between you and Claudia. He's saying that maybe it wasn't to the extreme as he, that he's saying that you raped her, but he wants to know what happened between you and Claudia. |
| 240. | MV2 | Pues es de lo que... yo no entiendo también, ¿no? Porque, me dicen que, que la violé pues, a ella, pero, eso no, no es verdad y lo que me dicen pues, que sí, que la niña dice pues que sí la violé a ella, pero como le digo, pues yo, nomás que cuando estuviera jugando con ellos pues, puede que cuando juego con ellos, se esconden o se tiran encima de mí, o, o a veces los quito a ellos. A lo mejor, la toqué a ella pues, en sus partes. A lo mejor es ella pues, a lo mejor es lo que ella quiere decir, pues, que// | Well, that's what... I don't understand either, right? Because they're telling me that I raped her, well, but that's not, not truth and what they are telling me is that yes, that the girl says that yes, that I did rape her. But as I'm telling you, well I, maybe when I was playing with them, maybe when I play with them, they hide or they throw themselves on me, or... or sometimes I move them away. Well, maybe I touch her then, in her private parts. Well, maybe that's what she, what she means, well, that// |
| 241. | MV3 | Okay | Okay |
| 242. | MV2 | //yo pienso, pues, que a lo mejor es esto, que, quiere decir que la violé a ella o la toqué a ella. | //I think that, well, maybe that's it, what, what she means when she says that I raped her or I touched her. |
| 243. | MV3 | Okay, he says he's not sure why that's uh, why, they're saying that, but that he thinks... he's thinking that maybe when he... they used to play around uh, with each other. He's thinking that maybe that's what she's trying to say, that when they were playing around, you know, and maybe she threw... she fell on top of | Okay, he says he's not sure why that's uh, why, they're saying that, but that he thinks... he's thinking that maybe when he... they used to play around uh, with each other. He's thinking that maybe that's what she's trying to say, that when they were playing around, you know, and maybe she threw... she fell on top of |

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| | | him and maybe he would have pushed her away. He says maybe that's why somehow touched her, as he was probably pushing her away or something like that. | him and maybe he would have pushed her away. He says maybe that's why somehow touched her, as he was probably pushing her away or something like that. |
| 244. | MV1 | Okay, um... ex-explain to him that, uh, Miguel -I don't know if he knows this or not but - Miguel recorded the conversation that you had, that he had with you about this. | Okay, um... ex-explain to him that, uh, Miguel -I don't know if he knows this or not but - Miguel recorded the conversation that you had, that he had with you about this |
| 245. | MV3 | Okay. Él quiere decirte que Miguel, de hecho, grabó la conversación que tuvo contigo. | Okay. He wants to tell you that as a matter of fact, Miguel recorded the conversation he had with you. |
| 246. | MV1 | And that I've heard that conversation. | And that I've heard that conversation. |
| 247. | MV3 | Y él escuchó esa conversación. | And he has heard that conversation. |
| 248. | MV1 | So, understand ly-lying to me only makes things worse. Okay? | So, understand ly-lying to me only makes things worse. Okay? |
| 249. | MV3 | Él quiere que entiendas que echando mentiras sólo hace las cosas peor. | He wants you to understand that lying only makes things worse. |
| 250. | MV1 | So// | So// |
| 251. | MV2 | Es lo que le dije a Miguel también, que, que sí, o sea, la toqué a ella, pues, pero no. Yo pues, en mi mente nunca está, no estuvo eso pues, de que, que le voy a hacer algo a ella. | That's what I told Miguel too, that yes, I mean, well, I touched her, but no. That I, that doing something to her is never in my mind, well, it never was. |
| 252. | MV3 | Okay. He says that he did admit to Miguel that he touched her// | Okay. He says that he did admit to Miguel that he touched her// |
| 253. | MV1 | Uh-huh. | Uh-huh. |
| 254. | MV3 | //but, that it wasn't in his mind to do so. | //but, that it wasn't in his mind to do so. |
| 255. | MV1 | Okay. So, um... You said that you would come home and sometimes you would play with her, and you would, you would be alone with her and the other kids. Is that correct? | Okay. So, um... You said that you would come home and sometimes you would play with her, and you would, you would be alone with her and the other kids. Is that correct? |
| 256. | MV3 | Dice que tu llega... que tú dijistes [sic] 'orita [sic] que llegabas del trabajo y que ella estaba eh... que tú jugabas con ellos y que ellos estaban solos. ¿Es correcto eso? | He says that you arrive... that you just said that you came from work and that she was uh... that you played with them and that they were alone. Is that right? |
| 257. | MV2 | Yeah. | Yeah. |

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| 258. | MV1 | Okay, um... and you know, I understand and don't think that we're – we're not here to call you a pedophile, do you know, you know how to say that in Spanish? | Okay, um... and you know, I understand and don't think that we're – we're not here to call you a pedophile, do you know, you know how to say that in Spanish? |
| 259. | MV3 | Yeah. Okay, he says... él dice que... que quieres [sic] que entiendas que no él no tamos [sic] aquí para decirte que eres un depredador. No... no, no es lo que te queremos decir. | Yeha. Okay. He says... he says that... that you want you to understand that he doesn't we're not here to tell you that you're a predator. No... no, no, that's not what we want to say to you. |
| 260. | MV1 | Okay, so we understand that sometimes guys, they get horny. | Okay, so we understand that sometimes guys, they get horny. |
| 261. | MV2 | Uh-hum. Enten... Él entiende que nosotros, como hombres, pues a veces nos ponemos calientes, nos ponemos cachondos | Uh-hum. Unders... He understands that we, as men, sometimes we get horny, we get raunchy. |
| 262. | MV1 | And we understand that sometimes when guys get horny, there isn't an adult around or a girlfriend or wife or whatever to release that sexual tension. | And we understand that sometimes when guys get horny, there isn't an adult around or a girlfriend or wife or whatever to release that sexual tension. |
| 263. | MV3 | Él dice que hay veces que, nosotros como hombres, no hay un adulto o alguien como para sacar esa ansiedad que siente uno cuando uno se calienta. | He's saying that there are times that, we as men, there is not an adult or somebody to release that anxiety with, when someone feels he's getting horny. |
| 264. | MV1 | So, sometimes what happens is... is guys just make a mistake and when they make that mistake is, what they do is, there happens to be whoever's there, they end up touching them or whatever they need to do to satisfy themselves, but it's not so much that they want to be with a child, it's just that they want to release this sexual tension. | So, sometimes what happens is... is guys just make a mistake and when they make that mistake is, what they do is, there happens to be whoever's there, they end up touching them or whatever they need to do to satisfy themselves, but it's not so much that they want to be with a child, it's just that they want to release this sexual tension. |
| 265. | MV3 | Uh-huh. Él dice que hay veces que entiende que, que no hay alguien con que nosotros podemos como que sacar esa calentura y que, tal vez hay por ahí alguien con que nosotros, como que nos queremos | Uh-huh. He's saying that there are sometimes that he understands that, that there's nobody we can release that horniness [with] and that maybe there's someone around that we, like we want to make them pay, but not |

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| | | desquitar, pero no como un daño de hacerlo a alguien, a un niño, pero sino nomás como para sacar eso, esa ansiedad, esa cal... se siente uno cachondo. | as we wanted to do harm to someone, to a child, but just to release that, that anxiety, that horn... one feels raunchy. |
| 266. | MV1 | So, I'm wondering if, if maybe that's not what happened here, 'cause I think you're a pretty good guy. But I'm, I'm thinking to myself, you know? did you do something... would you ever wanted hurt Claudia? | So, I'm wondering if, if maybe that's not what happened here, 'cause I think you're a pretty good guy. But I'm, I'm thinking to myself, you know, did you do something... would you ever wanted to hurt Claudia? |
| 267. | MV3 | Él dice que él entiende que... que tú eres un buen hombre. Um, él entiende que... que... que... ¿alguna vez tú tratates [sic] de, um, lastimar a Claudia? | He's saying that he understands that... that you are a good man. Um... he understands that...that ... that... did you ever try to, um... hurt Claudia? |
| 268. | MV2 | No [UI] yo nunca... | No [UI] I never... |
| 269. | MV3 | He says no. | He says no. |
| 270. | MV1 | No. Do you love her? | No. Do you love her? |
| 271. | MV3 | ¿La quieres, la amas? | Do you love her, do you love her?* |
| 272. | MV2 | Son mis primos, como yo digo que, que por la misma razón que fui con... con su esposa a vivir allá porque al Miguel lo agarraron, él estuvo como dos años de cárcel// | As I'm saying, they're my cousins... that's the same reason I went to live over there with... with his wife, because Miguel was arrested. He was incarcerated for about two years// |
| 273. | MV3 | Uh-hum | Uh-hum |
| 274. | MV2 | //y, pues ella ya no podía pagar ya pues sus... biles [sic], su renta y entonces me llamaron, que necesito que me ayude// | // and, well, she couldn't afford paying for her... bills anymore, her rent and then they call me [saying] I need you to help me// |
| 275. | MV3 | Okay. He says that// | Okay. He says that// |
| 276. | MV2 | //por la misma razón que fui con ellos, y bueno, pues mi intención, pues es de ayudarme con ellos, entre familia, para... | // for the same reason I went with them, and well, my intention, well, is to help each other, among family, for... |
| 277. | MV3 | Okay, but when you asked about if he would ever hurt her he said no, they're his... they're his... ¿primos, dijistes [sic]? They're his cousins. One of the reasons why he was there to help him out// | Okay, but when you asked about if he would ever hurt her he said no, they're his... they're his... cousins, you said? They're his cousins. One of the reasons why he was there to help him out// |
| 278. | MV1 | Uh-huh | Uh-huh |

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| 279. | MV3 | //because apparently, Miguel was incarcerated for two years and they asked him if he could come and// | //because apparently, Miguel was incarcerated for two years and they asked him if he could come and// |
| 280. | MV1 | Oh, okay, so you wanted to help them out. That's good. Um... Can you give me any reason why she would... she would say that you had some type of sexual contact with her? | Oh, okay, so you wanted to help them out. That's good. Um.. Can you give me any reason why she would... she would say that you had some type of sexual contact with her? |
| 281. | MV3 | ¿Puedes darle tú una razón por qué, la cuestión de que ella dijera [sic] que hubo un contacto sexual, o sea, hay alguna razón por lo que// | Can you give him a reason why, the issue that she said that there was sexual contact. That is, any reason why// |
| 282. | MV2 | Pues yo, yo nomás lo que, como ella también está creciendo ella, yo he visto que con sus otros primos – él tiene otro hermano que, que llegaban allí// | Well I, what I just, since she is growing too, I've seen that with her other cousins – he has another brother that, that they came over// |
| 283. | MV3 | Uh-huh | Uh-huh |
| 284. | MV2 | //ju... jugaban pues, a eso, que son novios, que... se tocan, que se...// | // they... they played as if, that they are boyfriend and girlfriend... that they touch each other, that they...// |
| 285. | MV3 | Okay, y// | Okay, and// |
| 286. | MV2 | //que se quieren besar y // | // that they want to kiss each other and// |
| 287. | MV3 | //y ¿cuántos años tiene este primo? | //and how old is this cousin? |
| 288. | MV2 | Igual, él tiene como... casi la misma edad que ella. No, no... nomás lo calculo – no... no sé bien cuántos años. | The same, he's almost... almost the same age. No, no... I'm just estimating – I don't ... I don't know for sure how old. |
| 289. | MV2 | Okay. He said that maybe because there's a... there was a little cousin that used to go there around the same age as her. They used to play "boyfriend and girlfriend", kiss each other and touch each other. | Okay. He said that maybe because there's a... there was a little cousin that used to go there around the same age as her. They used to play "boyfriend and girlfriend", kiss each other and touch each other. |
| 290. | MV1 | Uh-huh. Well, no, I mean she's saying with... with pretty great detail about what happened between the two of you. | Uh-huh. Well, no, I mean she's saying with... with pretty great detail about what happened between the two of you. |
| 291. | MV3 | Ella está diciendo con gran detalle lo que pasó entre ella y tú. | She's saying what happened between her and you, with great detail. |

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| 292. | MV2 | Bueno, ella parece lo que... les voy a decir lo que pasó, pues, que, que fue lo mismo que le... que le dije a Miguel, porque me dice que - sí la hicistes [sic] daño. Pues yo dije, le dije al juez que, que a lo mejor sí le toqué a ella sus partes, no más lo que ella está diciendo pues, que [voices overlap] sus partes. Pero, de hacerle más daño a ella, no porque pos [sic] yo sé pues bien las consecuen... que me puede pasar. No, yo mejor me alejaba de ella... y yo... | Well, it seems that what she... I'm going to tell you what happened. Well, that... that it was the same that I told Miguel, because he told me - yes, you hurt her. Well I said, I told the judge that maybe I touched her private parts. Not more of what she's saying then, that [voices overlap] her private parts. But, about doing more harm to her, no, because I'm well aware of the consequen... of what may happen to me. No, I'd rather stay away from her... and I... |
| 293. | MV3 | Okay. Okay. Deja le explico eso a él. He... he did say that he like, like he wou... like he says again, he did tell Miguel that he did touch her, but never, didn't ever do anything else. Um... | Okay, okay. Let me explain that to him. He... he did say that he like, like he wou... like he says again, he did tell Miguel that he did touch her, but never, didn't ever do anything else. Um... |
| 294. | MV1 | Okay. So, did you just touch her on her vagina area and her breasts? | Okay. So, did you just touch her on her vagina area and her breasts |
| 295. | MV3 | Okay. ¿En dónde la tocastes, [sic] en su vagina, en sus pechos? | Okay, where did you touch her, her vagina, her breasts? |
| 296. | MV2 | En sus pechos de ella. | Her breasts. |
| 297. | MV3 | In her breasts. | In her breasts. |
| 298. | MV1 | Her breast. And, and her, and her vagina area? | Her breast. And, and her, and her vagina area? |
| 299. | MV2 | Pero... | But... |
| 300. | MV3 | ¿Y su gina [sic] también? | And her "gina" too? |
| 301. | MV2 | No, no. O sea que... más bien digo sí, pues. Porque donde agarro a ella, cuando... digo yo, cuando estamos jugando a veces la agarro a ella hasta ahí, a lo mejor// | No, no. I mean that ... well yes, okay. Because where I grab her when... I mean, when we're playing, sometimes I grab her even from there, maybe// |
| 302. | MV3 | Uh-huh | Uh-huh |
| 303. | MV2 | //es por eso [que] dije también que, es lo que ella dice, también// | //that's why I said too that it is what she said, too// |
| 304. | MV3 | Well, he first said no, and then, he said "well, maybe yeah, and maybe when I'm playing around with her, and maybe that's what she means, that I touched her there" | Well, he first said no, and then, he said "well, maybe yeah, and maybe when I'm playing around with her, and maybe that's what she means, that I touched her there" |

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| 305. | MV1 | Okay. So yeah, just tell... we just tell him we need to figure this out because the evidence in this case, in this case, clearly shows that you had some type of contact with her, um... her vaginal area, her butt, and her breast area. | Okay. So yeah, just tell... we just tell him we need to figure this out because the evidence in this case, in this case, clearly shows that you had some type of contact with her, um... her vaginal area, her butt, and her breast area. |
| 306. | MV2 | Okay. Dice que hay que averiguar todo esto bien, porque el caso indica que sí hubo un tipo de contacto en sus pechos, su vagina y su, su trasero de atrás, su, su, atrás. Entonces, hay que averiguar esto bien. | Okay. He says that we need to figure it all well, because the case does indicate that there was some type of contact with her breasts, her vagina, her rear from behind, her... her, behind. So, we have to figure it all out. |
| 307. | MV1 | Okay, so... did you, did you rape her? | Okay, so... did you, did you rape her? |
| 308. | MV3 | ¿La vio// | Did you ra//? |
| 309. | MV1 | Did you have sexual intercourse with her? | Did you have sexual intercourse with her? |
| 310. | MV3 | ¿La violastes [sic]? ¿Tuvites [sic] sexo con ella? | Did you rape her? Did you have sex with her? |
| 311. | MV1 | Okay. Okay. So, you just, you just basically touched her vagina and touch her breast area. Is that correct? | Okay. Okay. So, you just, you just basically touched her vagina and touch her breast area. Is that correct? |
| 312. | MV3 | Eh, ¿solamente le tocaste su vagina y sus pechos, eso es correcto? | Uh, you just touched her vagina and her breasts, is that correct? |
| 313. | MV1 | Okay. Now tell me, she told me about a situation where um, your, your penis had been touching, your bare penis had been touching her butt. Um, did you actually stick your penis inside of her butt or was it just, did you just rub it on the outside of her butt? Her bare butt. | Okay. Now tell me, she told me about a situation where um, your, your penis had been touching, your bare penis had been touching her butt. Um, did you actually stick your penis inside of her butt or was it just, did you just rub it on the outside of her butt? Her bare butt. |
| 314. | MV3 | Okay. E... lla nos dijo que en un momento tu, tu, tu pene descubierto [sic] ... le tocaste su trasero de ella. Él quiere saber si solamente lo tocastes así o... o... o... o lo metistes [sic]... | Okay. She told us at at some moment you, you, your exposed penis... you touched her rear of hers. He wants to know if you only touched it like that or... or you stuck it inside... |
| 315. | MV2 | Nomás... [UI] pues, que un... un día me la agarré a ella así, pues, enfrente de mí. A lo mejor eso es lo | I just... [UI] well, that a... one day I grabbed her like this, then, in front of me. Maybe that's what she's saying, |

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| | | que ella dice, pero... ¿cómo diría? De meterle a ella... no, eso sí no. | but... how can I say this? To stick it inside her... no, no way. |
| 316. | MV3 | Okay, he says that there were, there was a day where he did grab her from, put her in front of him that but that he's not sure. He never stick [sic] nothing in. | Okay, he says that there were, there was a day where he did grab her from, put her in front of him that but that he's not sure. He never stick [sic] nothing in. |
| 317. | MV1 | Okay. Well if he didn't stick his penis in, did he just, did he rub it on the outside of her butt and maybe that's what she's talking about? | Okay. Well if he didn't stick his penis in, did he just, did he rub it on the outside of her butt and maybe that's what she's talking about? |
| 318. | MV3 | U-huh. Um, si no le metistes [sic] tu... tu... tu pene... este, tal vez se lo rociastes [sic] por ahí. ¿Será lo que ella quiere decir [sic]? | U-hum. Um... if you didn't stick your... you... your penis...um... maybe you sprayed it over there. Would that be what she meant? |
| 319. | MV2 | A lo mejor eso es lo que ella quiere decir. | Maybe that's what she meant. |
| 320. | MV3 | Okay, maybe that's what she's trying to say. | Okay, maybe that's what she's trying to say. |
| 321. | MV1 | Okay. Where, where was he at when that happened? Where were they at when that happened?// | Okay. Where, where was he at when that happened? Where were they at when that happened?// |
| 322. | MV3 | Eh, ¿dónde estabas tú cuando// | Uh, where were you when//? |
| 323. | MV1 | //[where] in the house. | //[where] in the house. |
| 324. | MV3 | En la casa. ¿Dónde estabas tú cuando pasó esto? | At the house. Where were you when this happened? |
| 325. | MV2 | Pues esto... después pasa... emm... pasa pues en... en todas partes de la casa, ¿cómo te dijera? Este, a veces cuando estoy con ellos en la sala o en la cocina. | Well this.... it just happens... um... it happens, well in... all over the house. How could I say this? Um... sometimes when I'm with them in the living room or in the kitchen... |
| 326. | MV3 | He says it happens all over the house, maybe when I'm in the living room or the kitchen. | He says it happens all over the house, maybe when I'm in the living room or the kitchen. |
| 327. | MV1 | Okay. Living room or the kitchen, living room or kitchen? | Okay. Living room or the kitchen, living room or kitchen? |
| 328. | MV3 | ¿En la sala o en la cocina? | In the living room or in the kitchen? |
| 329. | MV2 | Es lo que... | That's what... |
| 330. | MV1 | You said both, living room, kitchen. | You said both, living room, kitchen. |
| 331. | MV3 | Uh-huh. | Uh-huh. |
| 332. | MV2 | [Voices overlap] Pues es donde juego con ellos así, pues. En la sala o en la cocina. | [Voices overlap] Well, it's where I play with them like that. In the living room or in the kitchen. |

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| 333. | MV3 | Okay, he says that's where I used to usually play around with them - in the living room or the kitchen. | Okay, he says that's where I used to usually play around with them - in the living room or the kitchen. |
| 334. | MV1 | So, was, was [sic] her pants down? | So, was, was [sic] her pants down? |
| 335. | MV3 | Cuando pasó eso de tu pene, ¿sus pantalones de ella estaban bajados? | When this thing with your penis happened, were her pants downed? |
| 336. | MV2 | Ummm, lo que [voices overlap]// | Umm, what happ... [voices overlap]// |
| 337. | MV1 | Had they come down? | Had they come down? |
| 338. | MV2 | //o su camisa... de ella pues, se sube para arriba cuando yo la agarro a ella, nomás la... [UI] creo. Su camisa de ella es la que, se sube pues, aquí arriba. | //or her shirt... well, her shirt comes up when I grab her, just the... [UI] I think. Her shirt is the one that comes up so, up here. |
| 339. | MV3 | He says that his shirt... her shirt was all the way up. | He says that his shirt... her shirt was all the way up. |
| 340. | MV1 | Okay. | Okay. |
| 341. | MV3 | Up to like here, he pointed. | Up to like here, he pointed. |
| 342. | MV1 | In the back? | In the back? |
| 343. | | Could her pants 've been down in the back, a bit? | Could her pants've been down in the back, a bit? |
| 344. | MV3 | Y sus pantalones, tal vez tuvieran [sic] un poco bajo? | And her pants, maybe they were a bit low? |
| 345. | MV2 | Tal vez, [sic] no me daba cuenta, pues [UI] | Maybe, well, I wouldn't notice [UI] |
| 346. | MV3 | He says maybe, but I wasn't aware of that. | He says maybe, but I wasn't aware of that. |
| 347. | MV1 | Okay. So, why did he position her then in front of him, like that? | Okay. So, why did he position her then in front of him, like that? |
| 348. | MV3 | Entonces ¿tú por qué la pusicionastes [sic] enfrente de ti, de esa manera | Then why did you posed her in front of you, like that? |
| 349. | MV2 | Pues, en donde más, más jugábamos, pues, con ellos, cuando se escondían y... [UI] pues, cuando... a veces me echo a correr con ella, la agarro a ella así, enfrente mío// | Well, where we played the most... the most, with them, when they hid and... [UI] then, sometimes... when I take off running with her, I grab her like this, in front of me// |
| 350. | MV3 | Okay. Well, maybe because whenever they would play he would run... she would run around and he would grab her in front of him. Grab her around here. | Okay. Well, maybe because whenever they would play he would run... she would run around and he would grab her in front of him. Grab her around here. |

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| 351. | MV1 | Okay. But she's saying that you actually rubbed your penis on her bare bottom. | Okay. But she's saying that you actually rubbed your penis on her bare bottom. |
| 352. | MV3 | Pero ella está diciendo que tú le rociastes [sic] tu pene en su trasero descubierta [sic], que no tenía nada ella aquí, su trasero, eso estaba descubierta [sic]. Ella estaba diciendo que tú pusistes [sic] tu pene por ahí, en esa área de su trasero. | But she's saying that you sprayed your penis in her bare rear. That she didn't have anything here, her rear, that was bare. She was saying that you put your penis around there, in that area of her rear. |
| 353. | MV2 | Pero no... no... | But no... no |
| 354. | MV1 | Hey, look, Axel, you don't, you don't need to lie to me. You don't need to be afraid of me for any reason or whatsoever. And I understand, if you just got horny and you just rubbed your penis on her backside. What I'm concerned with is, is that all that happened, or did you actually stick your penis inside of her butt? | Hey, look, Axel, you don't, you don't need to lie to me. You don't need to be afraid of me for any reason or whatsoever. And I understand, if you just got horny and you just rubbed your penis on her backside. What I'm concerned with is, is that all that happened, or did you actually stick your penis inside of her butt? |
| 355. | MV3 | Okay, Axel. Dice que no le mientas, por favor. Que hables, hables bien claro. Él, él dice que él entiende que hay veces que se pone uno caliente. El entiende eso. Solamente lo que quiere saber es que si solamente le pusistes [sic] tu..... su pene por ahí por su trasero o si hubo algo más. Tal vez lo haigas [sic] metido, él es lo que él quiere saber. | Okay, Axel. He's asking not to lie to him, please. For you to talk, to be really clear. He, he's saying that he understands that sometimes one gets horny. He understands that. He only wants to know if you just put your... his penis over there on her rear or if there was something else. Maybe you stuck it in, that's what we he wants to know. |
| 356. | MV2 | Sí, nada más [UI] este, me [UI] pues... y como dice él, pues... pues... si le eh... me... ¿cómo te digo, pues? Le puse el pene encima de ella, pero, nomás así pero no...// | Yes. Um... just [UI], I [UI] well... and as he's saying, well... well... uh.... I did ... well, how can I say this? I put my penis on top of her, but I... just like that but it didn't... |
| 357. | MV1 | Okay | Okay. |
| 358. | MV2 | //hacerle daño a ella más. | // to hurt her more. |
| 359. | MV3 | Okay, so, he said he did, he did admit to putting his penis by her// | Okay, so, he said he did, he did admit to putting his penis by her// |
| 360. | MV1 | Okay. | Okay. |
| 361. | MV3 | //but, that nothing else. He would have never hurt her. | //but, that nothing else. He would have never hurt her. |
| 362. | MV1 | Okay. Did you put it by her butt? | Okay. Did you put it by her butt? |

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| 363. | MV3 | ¿Por su... por su ano... por su... por su cola? | By her... by her anus... by her... by her tail? |
| 364. | MV1 | Or her vagina? | Or her vagina? |
| 365. | MV2 | No, arriba... arriba. | No, up... up. |
| 366. | MV3 | ¿O por su vagina? | Or by her vagina? |
| 367. | MV2 | No, [UI] ahí no... | No, [UI] not there... |
| 368. | MV3 | Okay, arriba... ¿a dónde? | Okay, up... where? |
| 369. | MV1 | En su culo, en su culo de ella... aquí, pero arriba. | In her ass, in her ass... here, but up here. |
| 370. | MV3 | Okay, he, so he says right above her ass. | Okay, he, so he says right above her ass. |
| 371. | MV1 | Okay. Were you just horny? | Okay. Were you just horny? |
| 372. | MV3 | ¿Estabas caliente? | Were you horny? |
| 373. | MV2 | Pues, [UI – chuckles] | Well, [UI – chuckle] |
| 374. | MV1 | Yeah, and your wife wasn't there. | Yeah, and your wife wasn't there |
| 375. | MV3 | ¿Y tu esposa no estaba ahí? | And your wife wasn't there? |
| 376. | MV2 | No, estaba ahí. | No, she was there. |
| 377. | MV3 | The wife wasn't there. | The wife wasn't there. |
| 378. | MV1 | Okay, okay. Did you ever put it in her vagina? | Okay, okay. Did you ever put it in her vagina? |
| 379. | MV3 | ¿Algún momento [lo] pusistes [sic] en su... vagina, en su panocha? | Was there a moment, did you put it in her... vagina, in her cooter? |
| 380. | MV2 | Esa fue la... me acuerdo de eso, que fue la... ¿cómo se llama? La primera vez y la última que no// | That was the... I remember that, that it was the... what's it called? The first and the last time that I didn't// |
| 381. | MV1 | Okay | Okay. |
| 382. | MV2 | Ya después de ahí, ya... ya no. Fue como, yo también pues tuve miedo y no... mejor me alejaba de ella, o sea// | After that, not... not any more. It was like, I was also afraid and no... I'd rather get away from her, I mean// |
| 383. | MV3 | Okay | Okay. |
| 384. | MV2 | //ya no salía con ellos pues. Nomás poco tiempo ya después nos salimos otra vez de la casa. | //well, I didn't go out with them anymore. Just a little while later we left the house again. |
| 385. | MV3 | Okay. So, he says umm... never by, by the vagina. That uh, he got scared and he said that that was the last time – first and last time and that's when they, just little bit after that, they moved away. | Okay. So, he says umm... never by, by the vagina. That uh, he got scared and he said that that was the last time – first and last time and that's when they, just little bit after that, they moved away. |
| 386. | MV1 | Okay, okay... so just happened that one time? | Okay, okay... so just happened that one time? |

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| 387. | MV3 | ¿Solamente esa vez? | Just that time? |
| 388. | MV2 | Mhm... | Mhm... |
| 389. | MV3 | Yeah. | Yeah. |
| 390. | MV1 | Okay. Umm, so... um.... She talks about that, when you were done, that her, her back, first, back of her shirt was little wet. So, did you come a little bit? | Okay. Umm, so... um.... She talks about that, when you were done, that her, her back, first, back of her shirt was little wet. So, did you come a little bit? |
| 391. | MV3 | Mhm. Ella dice que, que cuando acabastes [sic], que - que su camisa atrás estaba un poquito mojada. Él quiere saber si te... si se te salieron tus mecos ¿Te venistes [sic]? | Mhm. She says that when you finished, that-that the back of her shirt was a little bit wet. He wants to know if... if your baby gravy came out Did you come? |
| 392. | MV2 | Aja... Como uno de caliente, pues se... sale. Pues este... un poquito... | U-hu... as one is horny, well... it comes out. Well um... a little... |
| 393. | MV3 | Okay, he says he was very horny and a little bit came out. | Okay, he says he was very horny and a little bit came out. |
| 394. | MV1 | Okay, but that's the only time? | Okay, but that's the only time? |
| 395. | MV3 | ¿Fue la única vez? | Was it the only time? |
| 396. | MV2 | Sí, fue la única vez// | Yes, it was the only time. |
| 397. | MV1 | Uh, and then how many times do you think your hand... now, you know as well as I do, it wasn't when you were just playing around. Say that. | Uh, and then how many times do you think your hand... now, you know as well as I do, it wasn't when you were just playing around. Say that. |
| 398. | MV3 | Dice que él entiende que tú también entiendes que no solamente fue cuando estabas jugando. | He says he understands that you also understand that it didn't just happen when you were playing |
| 399. | MV1 | How, how many times do you think your hands just kind of touched her breasts or touched her vagina? | How, how many times do you think your hands just kind of touched her breasts or touched her vagina? |
| 400. | MV3 | Uh, ¿cuántas veces tú crees que más o menos tu mano le tocó sus pechos o su vagina? | Uh, about how many times do you think your hand touched her breasts or her vagina? |
| 401. | MV2 | No sé, como unas...// | I don't know, maybe...// |
| 402. | MV1 | Did you actually stick your finger in her vagina? | Did you actually stick your finger in her vagina? |
| 403. | MV3 | ¿Le metites [sic] el dedo en su vagina? | Did you stick your finger in her vagina? |
| 404. | MV2 | No. | No. |

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| 405. | MV1 | Just, just rubbed it?// | Just, just rubbed it?// |
| 406. | MV3 | Solamente// | Just...// |
| 407. | MV1 | ... just kind of rubbed it with your finger? | ... just kind of rubbed it with your finger? |
| 408. | MV3 | Solamente// | Just...// |
| 409. | MV2 | Nomás fuera de su camisa de ella, pues. Que me llega a la mano. | Well, just outside her shirt. Where my hand reached. |
| 410. | MV3 | Okay, just where his hand reached, uh, above her shirt. So, ¿fue como así, o le metites [sic] tú el dedo? | Okay, just where his hand reached, uh, above her shirt. So, was it like that or did you stick your finger? |
| 411. | MV1 | No, nomás, así como afuera. | No, just like that... outside |
| 412. | MV3 | ¿En su vagina? | In her vagina? |
| 413. | MV2 | Ei. | Yeah. |
| 414. | | Just right outside her vagina. | Just right outside her vagina. |
| 415. | MV1 | Okay, okay. But underneath her shorts. | Okay, okay. But underneath her shorts. |
| 416. | MV3 | Pero ¿por dentro de sus "chores" [ph]? | But, inside her shorts? |
| 417. | MV2 | No, fuera de su, su camisa nomás. | No, outside her... her shirt... only. |
| 418. | MV3 | Outside of her shirt - outside her pants. | Outside of her shirt - outside her pants. |
| 419. | MV1 | Okay, so you just rubbed her vagina on the outside of her pants. | Okay, so you just rubbed her vagina on the outside of her pants. |
| 420. | MV3 | ¿Solamente le rociastes [sic] su vagina por fuera de sus pantalones? | Did you just spray her vagina over her pants? |
| 421. | MV2 | Aja. | U-hu. |
| 422. | MV1 | Did she seem to like that? | Did she seem to like that? |
| 423. | MV3 | Y ¿[a] ella le gusto eso? | And did she like it? |
| 424. | MV1 | Pues digo, como ellos juegan mucho en eso y prácticamente... pues cada vez que yo llego pues, y, luego ella va, como que ella buscando eso pues... eso, pues, que, de jugar como en eso, de besarse, de...// | As I said, as they play like that a lot and practically... well, every time that I arrive and then she goes, like she's looking for that so... that, well, like playing like that, to kiss, to... // |
| 425. | MV3 | Oh, okay. He says that um... he's not sure, that every time that he would come-come home, she would try to look for him, so, because they used to// | Oh, okay. He says that um... he's not sure, that every time that he would come-come home, she would try to look for him, so, because they used to// |
| 426. | MV1 | [You] think maybe she liked it. | [You] think maybe she liked it. |
| 427. | MV3 | ¿Tú crees que le haiga [sic] gustado? | Do you think she liked it? |

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| 428. | MV2 | Sí, yo creo que// | Yes, I think that // |
| 429. | MV1 | Yeah. | Yeah. |
| 430. | MV3 | He says yes. | He says yes. |
| 431. | MV2 | //de tocar ella, en ese momento, ya después ella ya no vuelve... después de que... ya después, cuando la mojé en [la] camisa, ya no... ya nunca más se acercó, pues. | // touching her, at that moment, after that, she doesn't come back anymore... after... after that, when I got her shirt wet, she didn't.... she didn't come close anymore, so. |
| 432. | MV1 | Would, would she// | Would, would she// |
| 433. | MV3 | He said, he said// | He said, he said// |
| 434. | MV1 | Oh, okay, go ahead. | Oh, okay, go ahead. |
| 435. | MV3 | He said that after that happened, after he got her shirt wet// | He said that after that happened, after he got her shirt wet// |
| 436. | MV1 | Yeah | Yeah |
| 437. | MV3 | //she never came back around. | //she never came back around. |
| 438. | MV1 | Okay. So, how many times – I cut you off – how many times [do] you think you just rubbed her vagina on the outside? | Okay. So, how many times – I cut you off – how many times [do] you think you just rubbed her vagina on the outside? |
| 439. | MV3 | Dice que te interropteó [sic], pero ¿cuántas veces, más o menos le tocatas [sic] por fuera su vagina? | He says he interrupted you, but, how many times, approximately, did you touch the outside of her vagina |
| 440. | MV2 | Como unas// | About// |
| 441. | MV1 | Two or three? | Two or three? |
| 442. | MV2 | //de tocarle ahí, como tres veces o, tres, cuatro veces. | //touching her there, like three times or three, four times. |
| 443. | MV3 | Touching her three to four times. | Touching her three to four times. |
| 444. | MV1 | Okay, and would you, would you just touch her vagina, or you mean touch her three or four times you touch her vagina and touch her breast? | Okay, and would you, would you just touch her vagina, or you mean touch her three or four times you touch her vagina and touch her breast? |
| 445. | MV3 | Eh, dice que ¿solamente su vagina tres, cuatro veces? ¿O su vagina y también sus pechos? | Uh, he's saying that just her vagina, three, four times? Or her vagina and her breasts too? |
| 446. | MV2 | Uh, también sus pechos, ya... | Uh, her breasts too, already... |
| 447. | MV3 | Em... Her breasts as well. | Um... Her breasts as well. |
| 448. | MV1 | Okay. Now, on her breasts, did you go underneath her shirt, or it'd be on top of her shirt, or... | Okay. Now, on her breasts, did you go underneath her shirt, or it'd be on top of her shirt, or... |
| 449. | MV3 | Okay. En sus pechos, ¿era por dentro de su camisa o por fuera? | Okay. On her breasts. From inside or outside her shirt? |
| 450. | MV2 | No, por fuera de su camisa. | No, from outside her shirt. |

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| 451. | MV3 | Outside of her shirt. | Outside of her shirt. |
| 452. | MV1 | Okay. Now would she normally just be laying down in the... in the living room or, when that happened, or... | Okay. Now would she normally just be laying down in the... in the living room or, when that happened, or... |
| 453. | MV3 | Y cuando esto pasaba, ¿ella estaba acostada en la sala, o, o dónde? | And when that happened, was she laying down in the living room, or where? |
| 454. | MV2 | Lle-llegaba ella pues, conmigo, ahí en la sala, donde estaba, llegaba allí... en la sala. | She ca-came to me, there, in the living room, where I was. She came there... in the living room. |
| 455. | MV3 | She would come around, in the living room. | She would come around, in the living room. |
| 456. | MV1 | Okay. Would it, would it usually be like you guys were playing and then it would lead to you rubbing her vagina and rubbing her breasts. | Okay. Would it, would it usually be like you guys were playing and then it would lead to you rubbing her vagina and rubbing her breasts. |
| 457. | MV3 | ¿Y cómo empezaba todo? ¿Empezaban jugando y luego ya pasaba esto, o..? | And how would everything start? You started playing and then that happened, or..? |
| 458. | MV2 | Eh, empezábamos jugando, pues. Le digo, como ahí, este... la, la primera vez pues que, que yo me acuerdo, pues. Cuando, cuando comenzó esto con ella, pues yo, yo no pensaba pues, en eso. Estaba, este, una vez este, en el <i>basement</i> de... de la casa// | Uh, so we started playing. I'm telling you, like over there, um... the, the first time that I remember, when, when, when this thing with her started, well, I, I wasn't thinking on that, on that. Once, I was, um, in the basement of... of the house// |
| 459. | MV3 | Uh-huh | Uh-huh |
| 460. | MV2 | Yo tengo una batería así para música y la estaba tocando. Tocando eso y cuando ella llegó, pues, a, a mí y me dijo pues, que ella quería este, tocar también y yo dije ta [sic] bien, siéntate. Pero [clears throat] ella después ya llegó, que, diciéndome que... que agarra, que agarrara pues, sus manos de ella, que le enseñara cómo era y, y pues ella agarra mis manos, pues, y fue la primera vez que empecé a tocarla a ella, que agarré sus... sus pechos de ella. | I have some drums there to play music and I was playing them. I was playing them and when she came, well, she told me that she wanted to um, to play too and I said fine, sit down. But [clears throat] then she came telling me that... asking me to grab-to hold her hands, to teach her how to play and then she holds my hands and that was the first time that I started touching her, that I touched her... her breasts. |
| 461. | MV3 | Okay// | Okay// |

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| 462. | MV2 | Y ya, después de eso, como dos, una, no una vez pasó eso y ya después, ella me empezó a buscar y en la sala pues, ya llegaba ella conmigo ahí para// | And then, after that, about two, no, no, it happened once and then after that, she started looking for me and in the living room, she got there with me to// |
| 463. | MV3 | Okay. So, he says that they usually would start playing around, that there was a different location where he was in the basement playing his battery, his drum set// | Okay. So, he says that they usually would start playing around, that there was a different location where he was in the basement playing his battery, his drum set// |
| 464. | MV1 | Uh-huh | Uh-huh |
| 465. | MV3 | //and that she want... she came down and she wanted to know how to play// | //and that she want... she came down and she wanted to know how to play// |
| 466. | MV1 | Uh-huh | Uh-huh |
| 467. | MV3 | And then uh... he was teaching her and that's when he first touched his-her breasts. | And then uh... he was teaching her and that's when he first touched his-her breasts. |
| 468. | MV1 | Okay. He started rubbing them? | Okay. He started rubbing them? |
| 469. | MV3 | ¿Solamente como tocándole así por encima? | Just like touching her like over her clothes? |
| 470. | MV1 | Was she like, sitting on your lap or..? | Was she like, sitting on your lap, or..? |
| 471. | MV3 | Y ella, cuando pasó eso de la batería, ella estaba en tu, en tu... | And she, when this thing with the drums happened, was she on your, on your... |
| 472. | MV2 | No, ella estaba sentada en la... en la silla. | No, she was sitting on the... on the chair. |
| 473. | MV3 | ¿De la batería? Uh, she was sitting in [sic] the, in [sic] the battery... uh... drum set chair. | The drum set's chair? Uh, she was sitting in [sic] the, in [sic] the battery... uh... drum set chair. |
| 474. | MV2 | U-hu. | U-hu. |
| 475. | MV1 | Okay. Now, would you usually masturbate while that... while you were doing that or play with yourself in any way? | Okay. Now, would you usually masturbate while that... while you were doing that or play with yourself in any way? |
| 476. | MV3 | ¿Y cuando tú tocabas a ella, tú te masturbabas, te chaqueteabas tú, o..? | And when you touched her, did you masturbate? would you jerk off, or..? |
| 477. | MV2 | Umm... | Umm... |
| 478. | MV3 | He says no | He says no |
| 479. | MV1 | Okay. So, did she ever touch your penis with her hand? | Okay. So, did she ever touch your penis with her hand? |

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| 480. | MV3 | ¿Y algún día ella te, te tocó tu pene con su mano? | And did she ever touch your, your penis with her hand? |
| 481. | MV2 | No. | No |
| 482. | MV3 | [UI] | [UI] |
| 483. | MV1 | How about with her mouth? | How about with her mouth? |
| 484. | MV3 | ¿Con su boca? | With her mouth? |
| 485. | MV2 | No. | No. |
| 486. | MV1 | No? Okay. So, the one time, you say just one time it happened where you, you humped her from behind and you got, and you ejaculated a little bit on her back. | No? Okay. So, the one time, you say just one time it happened where you, you humped her from behind and you got, and you ejaculated a little bit on her back. |
| 487. | MV3 | So, él dice que solamente pasó una vez, onde [sic] tú la agarrates [sic] por enfrente de ti, tú tabas [sic] atrás, te salieron tus mecos, y tú la tabas [sic] tocando... | So, he says that it only happened once, where [sic] you grabbed her in front of you, you were behind, your baby juice came out and you were touching her... |
| 488. | MV1 | That was just one time? | That was just one time? |
| 489. | MV3 | ¿Solamente pasó una vez? | Did it happen just once? |
| 490. | MV2 | Sí, nomás una vez. | Yes, just once. |
| 491. | MV1 | What, what room were you guys in when that happened? | What, what room were you guys in when that happened? |
| 492. | MV3 | ¿En qué cuarto estaban cuando eso pasó? | In what room were you when that happened? |
| 493. | MV2 | Estábamos en la cocina. | We were in the kitchen. |
| 494. | MV3 | In the kitchen. | In the kitchen. |
| 495. | MV1 | In the kitchen? Was she standing up? | In the kitchen? Was she standing up? |
| 496. | MV3 | ¿Estaba ella parada? | Was she standing up? |
| 497. | MV2 | Sí, estaba ella parada. | Yes, she was standing up? |
| 498. | MV1 | So, like bent over? Was she just kind of bent over? | So, like bent over? Was she just kind of bent over? |
| 499. | MV3 | ¿Estaba como un poco agachada o parada? | Was she crouching a little or standing up? |
| 500. | MV2 | Un poquito agachada [UI] | Crouching a little [UI] |
| 501. | MV3 | A little bit bending over, not sitting... not straight. | A little bit bending over not sitting... not straight. |
| 502. | MV1 | Okay, okay. Alright, anything else ever happened between you guys? | Okay, okay. Alright, anything else ever happened between you guys? |
| 503. | MV3 | ¿Alguna otra cosa que pasó entre ustedes dos? | Anything else that happen between the two of you? |
| 504. | MV2 | No, nomás ese. Eso fue lo que pasó. | No, just that. That's what happened. |

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| 505. | MV3 | Okay. He says no, that's just the only thing that happened. | Okay. He says no, that's just the only thing that happened. |
| 506. | MV1 | Do you, do you know that that, do you know that's wrong to do that? | Do you, do you know that that, do you know that's wrong to do that? |
| 507. | MV3 | ¿Tú sabes que eso está mal, hacer eso? | Do you know that that is wrong, to do that? |
| 508. | MV2 | Sí...// | Yes...// |
| 509. | MV1 | Do you... do you feel sorry about doing it? | Do you... do you feel sorry about doing it? |
| 510. | MV3 | ¿Te sientes un poco... lastimado porque hicistes [sic] eso? | Do you feel a little... hurt for having done that? |
| 511. | MV2 | Ahorita, sí. Cuando vinieron pues, a hablar conmigo y... no, no, no está bien, pues. | Now, I do. When they came to, to talk to me and... no, no, it's not right, so. |
| 512. | MV3 | He says honestly yes. I've noticed that since you spoke to him he knows it wasn't right. | He says honestly yes. I've noticed that since you spoke to him he knows it wasn't right. |
| 513. | MV1 | Okay. Ask him, does he know how to write. | Okay. Ask him, does he know how to write. |
| 514. | MV3 | ¿Sabes escribir, tú? | Do you know how to write? |
| 515. | MV1 | Ask him if he would like to write Claudia an apology. | Ask him if he would like to write Claudia an apology. |
| 516. | MV3 | ¿Quieres escribirle a Claudia una carta, pidiéndole disculpa [sic], pidiéndole un [sic] perdón? | Do you want to write a letter to Claudia, apologizing, asking her for a pardon? |
| 517. | MV2 | Sí. | Yes. |
| 518. | MV3 | Uh-hum. | Uh-hum. |
| 519. | MV1 | I can give it to her. | I can give it to her. |
| 520. | MV3 | Él se la puede dar a ella. | He can give it to her. |
| 521. | MV1 | You want to tell her you're sorry? | You want to tell her you're sorry? |
| 522. | MV2 | Si aceptan, voy. Pues yo, yo la verdad no, hasta me siento pues, apenado de que... Pues yo pienso estaría mejor, pues que, que no nos, que no nos, que no... que no, no mencionen pues, mi nombre con ella, o que no digan, no digan nada, pues// | If they accept it, I'll go. Well, I, the truth is I, don't... I even feel like, embarrassed of... Well, I think it would be better that, like, that we don't, that we don't, that you don't... that you don't mention it, my name to her or that you don't say, don't say anything, like// |
| 523. | MV3 | So, ¿quieres escribir la carta, sí o no? | So, do you want to write the letter, yes or no? |
| 524. | MV2 | // así pues. Si ella está afectada de eso, quizás solo así. Me puede olvidar, pues, que// | // well, like that. If she's affected because of that, maybe that's the way. She may forget me, so, that// |

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| 525. | MV3 | Uh-huh. He says maybe... he's not sure because he, he feels very ashamed. That he, he rather maybe not know that, know his name anymore. So, ¿tú quieres escribirle la carta o no? | Uh-huh. He says maybe... he's not sure because he, he feels very ashamed. That he, he rather maybe not know that, know his name anymore. So, do you want to write a letter to her or not? |
| 526. | MV2 | Es que a veces que, que, que la otra vez, que, que pasaba ahí y no me... ellos ya no pues, quieren verme, ya no// | What happens is that, that the other time that, that I was passing by and they didn't... they don't want to see me anymore, not anymore// |
| 527. | MV3 | Okay. He says there was other times where [sic] he would go up there and they didn't wanna see him anymore. | Okay. He says there was other times where [sic] he would go up there and they didn't wanna see him anymore. |
| 528. | MV1 | Okay. Well, what I'm just saying, it may help, it may let this little girl know that "Hey, I was wrong and I'm sorry" and then, she can put her behind her. | Okay. Well, what I'm just saying, it may help, it may let this little girl know that "Hey, I was wrong and I'm sorry" and then, she can put her behind her. |
| 529. | MV3 | Okay, dice que tal vez escribiéndole una carta, uh, le puede ayudar a ella, diciéndole sabes que, me pidió un perdón y ya lo va a dejar atrás..." este... So, tú quieres escribirle una carta, ¿sí o no? | Okay, he says that maybe writing a letter to her, uh, it can help her, telling her you know, he asked me for a pardon and he's going to leave that behind... So, you want to write her a letter, yes or no? |
| 530. | MV1 | Hey, he doesn't have to, I'm just saying I think it'd be a good idea. | Hey, he doesn't have to, I'm just saying I think it'd be a good idea. |
| 531. | MV3 | Uh-hum. Dice que no necesitas, pero él dice que fuera [sic] una buena idea escribirle un perdón, o sea... | Uh-hum. He says you don't need to, but he says it be a good idea to write her a pardon, I mean... |
| 532. | MV1 | [It's] up to you. | [It's] up to you. |
| 533. | MV3 | Esa es tu decisión. | That's your decisión. |
| 534. | MV2 | Eh... yo, no, no, no creo. | Uh... I don't, don't, don't think so. |
| 535. | MV3 | ¿No? | No? |
| 536. | MV2 | Yo creo que ta, ta [sic] mejor así. | I think that it's, it's better this way. |
| 537. | MV3 | He says no// | He says no// |
| 538. | MV1 | Okay | Okay |
| 539. | MV3 | //he says he thinks// | //he says he thinks// |
| 540. | MV2 | //ya no, ya no voy allí tampoco. Ya no// | //not anymore, I don't go there anymore. Not anymore// |
| 541. | MV3 | He says// | He says// |
| 542. | MV2 | //paso, ahí// | //to come around there// |

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| 543. | MV3 | He says he's not gonna come around there anymore. | He says he's not gonna come around there anymore. |
| 544. | MV1 | Okay. Would you ever do this with... have you ever done this with any other child? | Okay. Would you ever do this with... have you ever done this with any other child? |
| 545. | MV3 | ¿Con cualquier otro niño uh... has hecho esto? | With any other child uh... have you done this? |
| 546. | MV2 | No. Ese... eso fue pues como... te digo ella también me provocaba y todo eso// | No. That... that was well like... I'm telling you, she'd also provoked me and all that// |
| 547. | MV3 | Okay// | Okay// |
| 548. | MV2 | //y pasó pero// | //and it happened, but// |
| 549. | MV3 | Okay. He says that// | Okay. He says that// |
| 550. | MV3 | // la verdad no, no, no// | //the truth, no, no, no// |
| 551. | MV2 | //no con otro... okay. Not with any other child, he says that she would be the only one that would come around and provoke him. | //not with another ... okay. Not with any other child, he says that she would be the only one that would come around and provoke him. |
| 552. | MV1 | Like, you think she - when you say provoke him, you mean just, she's the only one that kind of got you sexually aroused? | Like, you think she - when you say provoke him, you mean just, she's the only one that kind of got you sexually aroused? |
| 553. | MV3 | Uh, tú dices como provocar. ¿Fue la única que ella como que te calentaba? ¿Era la única persona que ella...? | Uh, you're saying provoking. Was she the only one that would kind of get you horny? Was she the only person that she...? |
| 554. | MV2 | Uh-hum... [UI] | Uh-hum... [UI] |
| 555. | MV3 | He says yes. | He says yes. |
| 556. | MV1 | Yeah. | Yeah. |
| 557. | MV2 | Que, como yo le digo, que a ella le gusta. Jugaban pues, de eso. Hasta ella, pues me abrazaba, que, quiere besarme, que ella decía que yo soy su novio de ella. | Like, I'm telling you, that she likes it. Well, they would play that game. She would like, hug me, that, she wanted to kiss me. She said I was her boyfriend. |
| 558. | MV3 | Okay. He says yeah, that, that she'd come around and hug him and try to kiss him and she would say that he was her boyfriend. | Okay. He says yeah, that, that she'd come around and hug him and try to kiss him and she would say that he was her boyfriend. |
| 559. | MV1 | Oh, so, it kind of, it aroused you sexually. | Oh, so, it kind of, it aroused you sexually. |
| 560. | MV3 | Y eso como que te calentaba un poquito. | And that like, kind of got you a little horny. |

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| 561. | MV2 | Ei, era eso, es lo que le pasa a uno, pues. | Yeah, that was it. That's what happens. |
| 562. | MV3 | Okay. He says yeah, that's what happens to him. | Okay. He says yeah, that's what happens to him. |
| 563. | MV1 | Okay, alright. Well, thank you for coming in. | Okay, alright. Well, thank you for coming in. |
| 564. | MV3 | Dice que gracias por [voices overlap]// | He says thank you for [voices overlap]// |
| 565. | MV2 | You're free to go. | You're free to go. |
| 566. | MV3 | //que tú te puedes ir, que, que gracias por venir, okay?// | //that you may go, thank you for coming, okay?// |
| 567. | MV1 | Okay? Don't have any more contact with that family, though. | Okay? Don't have any more contact with that family, though. |
| 568. | MV3 | Ya no tengas más contacto con esa familia. | Don't have any more contact with that family. |
| 569. | MV2 | No, ya no. | No, I won't. |
| 570. | MV1 | Okay? | Okay? |
| 571. | MV2 | No, pues ya... después de lo que pasó, dicen, pues ya, de por sí nunca los miraba, pues, nomás porque esa vez me pidieron favor y... | No, well that... after what happened, they say, well already. If I already didn't see them, but, just because they ask me that time and... |
| 572. | MV3 | He says he never really saw them, that they just asked him to come around// | He says he never really saw them, that hey just asked him to come around// |
| 573. | MV1 | Oh, okay. Well, don't call them or anything// | Oh, okay. Well, don't call them or anything// |
| 574. | MV3 | Ya no hables con ellos// | Don't talk to them anymore// |
| 575. | MV2 | Si, ya... | Yes, it's over... |
| 576. | MV1 | //it's okay. | //it's okay. |
| 577. | MV1 | Do you understand that? | Do you understand that? |
| 578. | MV2 | Okay. | Okay. |
| 579. | MV3 | ¿Sí entiendes eso? | Do you understand that? |
| 580. | | [Voices fade down] – [End of recording] | [Voices fade down] – [End of recording] |