No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

BERNARD BRANDON,

PETITIONER

V.

STATE OF CONNECTICUT,

RESPONDENT

_____

ON PETITION FOR A WRIT OF CERTIORARI TO

THE CONNECTICUT SUPREME COURT

_____

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

_____

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217 Conn. 702
Supreme Court of Connecticut.

STATE of Connecticut

v.

Bernard A. BRANDON

(SC 20371)
|
Argued January 20, 2022
|
Officially Released December 30, 2022*

* December 30, 2022, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

Synopsis

Background: Defendant was convicted in the Superior Court, Judicial District of Fairfield, Earl B. Richards, J., of first-degree manslaughter with a firearm. Defendant appealed.

The Supreme Court, Mullins, J., held that defendant was not in custody for *Miranda* purposes during police interrogation at probation office after conclusion of his probation check-in meeting.

Affirmed.

D'Auria, J., filed opinion concurring in part and concurring in judgment, in which McDonald, J., joined.

Ecker, J., filed dissenting opinion in which McDonald, J., joined.

Attorneys and Law Firms

****74** Aaron J. Romano, Bloomfield, for the appellant (defendant).

Timothy F. Costello, senior assistant state's attorney, with whom, on the brief, were Joseph T. Corradino, state's attorney, and David R. Applegate, senior assistant state's attorney, for the appellee (state).

Robinson, C. J., and McDonald, D'Auria, Mullins, Ecker, Keller and Bright, Js.**

** This case originally was argued before a panel of this court consisting of Chief Justice Robinson and Justices McDonald, D'Auria, Mullins, Kahn, Ecker and Keller. Thereafter, Justice Kahn was removed from the panel, and Chief Judge Bright was added to the panel. He has read the briefs and appendices, and listened to a recording of the oral argument prior to participating in this opinion.

Opinion

MULLINS, J.

***706** ****75** The principal issue in this appeal is whether the defendant, Bernard A. Brandon, was in custody when police officers interrogated him in the office of probation following a routine meeting with his probation officer. The defendant appeals from the judgment of conviction, following a jury trial, of manslaughter in the first degree with a firearm in violation of General Statutes § 53a-55a (a).[1] The defendant claims that the trial court improperly denied his motion to ***707** suppress the statements he made during two separately recorded interrogations of him by police officers.[2]

1 The defendant appealed directly to this court pursuant to General Statutes § 51-199 (b) (3).

2 The trial court granted the defendant's motion to suppress the statements that he made during a third interview, on the basis that, after the defendant made statements that were ambiguous as to whether he was invoking his right to counsel, the police did not attempt to clarify those statements and, instead, continued questioning him. See *State* v. *Purcell*, 331 Conn. 318, 321, 203 A.3d 542 (2019) (holding that article first, § 8, of Connecticut constitution requires that law enforcement personnel clarify ambiguous requests for counsel before continuing interrogation).

As to the first interrogation, which occurred on February 16, 2016, sometime between 11 a.m. and noon, at the Bridgeport Office of Adult Probation, the defendant contends that, because the police failed to advise him of his rights pursuant to *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), the interrogation violated his rights under the fifth and fourteenth amendments to the United States constitution. As to the second interrogation, which occurred later on the same day, at approximately 6 p.m., at

the Bridgeport Police Department, the defendant claims that, notwithstanding the fact that the officers had issued *Miranda* warnings at the outset of that interrogation, it was tainted by the alleged illegality of the first interrogation.[3] We disagree. After review, we have determined that the first interrogation was not custodial, and, therefore, that *Miranda* warnings were not required. Consequently, the failure to provide them did not violate the defendant's rights and did not taint the second interrogation. Accordingly, we conclude that the trial court properly denied the defendant's motion ***708** to suppress the statements he made during the two interrogations and, therefore, affirm the judgment of the trial court.

3 The defendant contends that the trial court's denial of his motion to suppress the statements that he made during the first two interviews violated his rights under article first, §§ 8 and 9, of the Connecticut constitution. "[B]ecause the defendant has not provided an independent analysis of his state constitutional claim under *State* v. *Geisler*, 222 Conn. 672, 684–86, 610 A.2d 1225 (1992), we consider that claim abandoned and unreviewable." (Internal quotation marks omitted.) *State* v. *Rivera*, 335 Conn. 720, 725 n.2, 240 A.3d 1039 (2020).

The jury reasonably could have found the following facts.[4] In the afternoon of February 11, 2016, the defendant and the victim, Javoni Patton, were rolling dice ****76** with a number of other persons at an establishment called the Jamaican Gambling Club, near the intersection of Park Avenue and Vine Street in Bridgeport. The defendant believed that the victim was doing well in the games; he estimated that the victim had won $4000 that afternoon. By contrast, the defendant had lost between $400 and $500.

4 We note that "we review the record in its entirety to determine whether a defendant's constitutional rights were infringed by the denial of a motion to suppress." *State* v. *Kendrick*, 314 Conn. 212, 218 n.6, 100 A.3d 821 (2014); see, e.g., *State* v. *Fields*, 265 Conn. 184, 191, 827 A.2d 690 (2003) ("record on review of ruling on pretrial motion to suppress includes evidence adduced at trial"); see also, e.g., *State* v. *Toste*, 198 Conn. 573, 576, 504 A.2d 1036 (1986).

At some point that afternoon, the victim told the defendant that he had just won $20,000 at a casino and had purchased a Mercedes-Benz (Mercedes) with his winnings. The victim then placed a set of Mercedes key fobs on the table. The defendant picked them up and claimed he saw "E55" on the key fobs. When the victim later stated that the Mercedes was an E550, the defendant said he was wrong—it was an E55. They initially wagered $500 over the dispute, which became heated. When they turned the key fobs over, the defendant claimed, they saw "E55" on one side and "E550" on the other. The defendant continued to believe he had won the bet but offered to accept only $100 in payment from the victim. The victim did not pay the defendant any money.

After leaving the club, the victim called the defendant's phone three times, between 8:15 and 8:23 p.m. The defendant told the police that, when he and the ***709** victim spoke over the phone at 8:23 p.m., the victim apologized for his earlier conduct and suggested that they meet for drinks at the Thirty Plus Social Club, a bar known as Robin's, located at the intersection of Connecticut and Stratford Avenues in Bridgeport.

The defendant left the Jamaican Gambling Club sometime around 8:27 p.m. He drove to Robin's, where the victim waited in his Cadillac, which was parked at the intersection between Connecticut and Stratford Avenues. The defendant parked his Audi near the victim's car, after which he and the victim both exited their vehicles. The defendant shot the victim multiple times, hitting him in the chest, the right hand and in the back of both legs. The victim died from the gunshot wound to his chest. The defendant drove away.

Three recorded interviews of the defendant by the police featured heavily in the state's case against him. The first interview took place in the probation office in Bridgeport on February 16, 2016, immediately following the defendant's regularly scheduled meeting with his probation officer. The police conducted the second interview approximately five hours later, in the police station. The third interview took place two days later, in an unmarked police car in a Burger King parking lot. Before trial, the defendant moved to suppress all of the statements he made during the three interviews. Following a hearing on the motion, the trial court denied the motion to suppress as to the first two interviews and granted it as to the third. Subsequently, during trial, defense counsel notified the court that, without waiving the objection to the introduction of the defendant's statements during all three interviews, in light of the court's denial of the motion to suppress the statements that the defendant made during the first two interviews, he would offer the statements made during the third interview in order to provide context for the first two.

***710** The state charged the defendant with murder in violation of General Statutes § 53a-54a (a) and criminal

possession of a pistol or revolver in violation of General Statutes (Supp. 2016) § 53a-217c (a) (1).[5] ****77** Following the trial, the jury found the defendant not guilty of murder but guilty of the lesser included offense of manslaughter in the first degree with a firearm. The state subsequently entered a nolle prosequi as to the charge of criminal possession of a pistol or revolver. The trial court sentenced the defendant to twenty-seven years of incarceration. This appeal followed.

5 The state also charged the defendant with carrying a pistol without a permit in violation of General Statutes (Supp. 2016) § 29-35 (a). After the conclusion of evidence, but prior to jury deliberations, the trial court granted the defendant's motion for a judgment of acquittal as to that charge.

We begin by observing that, because the state does not challenge the trial court's determination that the first interview constituted an interrogation, that question is not before us in this appeal. Our sole task is to resolve whether the defendant was in custody during that interrogation. That is, as we explained, the defendant's challenge to the trial court's denial of his motion to suppress as to both the first and second interviews rests on his assertion that he was in custody during the first interrogation. Accordingly, our conclusion that the trial court correctly determined that the defendant was not in custody during the first interrogation is the dispositive issue in this appeal. The following facts, which either were found by the trial court or are undisputed, are relevant to this issue.[6]

6 See, e.g., *State* v. *Griffin*, 339 Conn. 631, 655 n.12, 262 A.3d 44 (2021) ("Appellate review of the trial court's resolution of a constitutional claim is not limited to the facts the trial court actually found in its decision on the defendant's motion to suppress. Rather, [this court] may also consider undisputed facts established in the record, including the evidence presented at trial." (Internal quotation marks omitted.)), cert. denied, —— U.S. ——, 142 S. Ct. 873, 211 L. Ed. 2d 575 (2022).

On February 16, 2016, the defendant, who was serving probation for a prior domestic violence conviction, ***711** reported to the probation office in Bridgeport for his regularly scheduled meeting with his probation officer, Shavonne Calixte. In order to meet with Calixte, the defendant had to pass through several layers of security. When members of the public enter the building where the probation office is located, they must pass through a metal detector and security check in the first floor lobby in order to access the elevators to the floors occupied by the probation office, which include at least the second and third floors of the building.[7] The offices on the second and third floors are within locked areas; probationers may enter only with the assistance of an escort. The record is silent as to whether a member of the public may leave without the assistance of an escort upon the conclusion of his or her business with the probation office. Although there was testimony at the suppression hearing that a member of the public could not enter the secure areas on the second and third floors of the probation office without being provided with an escort, there was no testimony that egress from those areas is similarly restricted.

7 The record is unclear as to whether the probation office occupies the entire building, or, if it does not, what other agencies or offices share the building with the probation office.

The defendant met with Calixte in a reporting room on the third floor. At the conclusion of their meeting, Calixte told the defendant that some persons who wished to speak with him were waiting on the second floor, in the office of her supervisor, Peter Bunosso.[8] ***712** Although she ****78** could not recall whether she expressly told the defendant that he did not have to meet with the unidentified persons, Calixte was certain that she did not tell him he was obligated to speak to them.[9] She escorted the defendant to the second floor, where they met Bunosso.

8 The record is unclear regarding whether Bunosso informed Calixte in advance about the individuals who were waiting to speak to the defendant and whether he told her that they were members of law enforcement. The testimony of Calixte and Bunosso is somewhat inconsistent on these points.
Calixte testified that she learned about the individuals only at the end of her meeting with the defendant, as she was "wrapping up ...." She also testified that she could not recall whether Bunosso informed her at that time that they were members of law enforcement. All she could say with certainty was that, after the fact, she knew that the individuals who had been waiting to speak to the defendant were police officers.
Bunosso testified that, on February 15, 2016, one day prior to Calixte's meeting with the defendant, he had contacted her to find out the date of the defendant's next meeting. According to Bunosso, during that conversation, consistent with his usual practice in such circumstances, he informed Calixte that the police wished to speak with the defendant afterward. Bunosso also testified that, when the defendant reported for his February 16, 2016 probation meeting, Bunosso informed

Calixte that police officers wished to speak to the defendant after that meeting was finished.

In any event, whether Calixte intentionally withheld information from the defendant or was provided with incomplete information is irrelevant to the question of whether the defendant was in custody in the present case. It is undisputed that Calixte did not inform the defendant in advance that the individuals who waited for him were members of law enforcement. Regardless of who withheld that information from whom, the request to the defendant to meet with the law enforcement officers did not inform him of all the relevant information. In our analysis, we discuss the significance of that failure to inform the defendant of the identity of the individuals waiting to speak with him.

9 At this juncture, the record reveals somewhat ambiguous testimony from Calixte regarding whether, after telling the defendant that the probation meeting was over, she took the additional step of also telling him, in specific terms, that he had a choice whether to attend the meeting. Specifically, during cross-examination at the suppression hearing, Calixte stated that she did not tell the defendant, "you're going to see my supervisor now." Instead, as she recalled:

"[Calixte]: I basically let [the defendant] know the office visit was concluded. We were done, and we were walking downstairs, but, if he had a moment, he [could] speak to someone else who would like to talk to him.

"[Defense Counsel]: Do you recall whether ... you gave [the defendant] any choice to—to not—

"[Calixte]: There's always a choice. *Of course, I gave him a choice.*

"[Defense Counsel]: You told him ... I'm going to take you downstairs now, okay. My supervisor wants to see you, but you don't have to see my supervisor. Is that your recollection?

"[Calixte]: I don't recall. I don't recall." (Emphasis added.)

Although the record reflects that Calixte testified literally that she gave the defendant a choice, because the preceding question was cut off and the follow-up answer to the next question was "I don't recall," there is some ambiguity as to whether Calixte's testimony reflects that she affirmatively told the defendant that he had a choice to attend the meeting. In any event, because the record does not reflect that Calixte in any way coerced the defendant to attend the meeting, her testimony, as a whole, supports our conclusion that the defendant was not forced to attend the meeting.

***713** Bunosso then escorted the defendant to his office, which was within a locked area. Two police officers, Lieutenant Christopher LaMaine and Detective Ada Curet, waited in the office for the defendant. Bunosso did not remain for the interrogation. He removed some work files, left and closed the door behind him. No member of the probation office was present for the interrogation.

LaMaine testified that, on the day of the interrogation, he wore plain clothes and that both his badge and his gun were visible. Curet was dressed similarly, also with a badge and gun visible. Although LaMaine and Curet both had handcuffs, LaMaine was uncertain whether the defendant could see them. Neither of the officers brandished their weapons, used their ****79** handcuffs, or restrained the defendant in any way during the interrogation. The defendant sat closest to the door, and at no time during the interrogation did the officers block the door. No testimony was offered regarding the size of the office.

The interrogation lasted about ninety minutes. LaMaine, who asked most of the questions during the interrogation, began by informing the defendant that he and Curet were "talking to people" who knew the victim. During the first approximately twenty-one minutes of the interrogation, LaMaine elicited the defendant's initial account of the events on the night of the shooting.

Specifically, the defendant told the police that, in the afternoon on the day of the shooting, he and the victim had both been rolling dice at the Jamaican Gambling Club. He admitted that, while there, he and the victim engaged in a heated argument over the particular model ***714** of the Mercedes that the victim claimed to have purchased with money he had won at a casino.

The defendant initially claimed that he left the club before the victim did. He left alone, he said, in his blue 2004 Audi, sometime between 7 and 7:30 p.m. At around 8 p.m., he claimed, he arrived at another gambling establishment, Old Timers, or "Mr. B's," on Stratford Avenue, between Carroll and Wilmot Avenues. He claimed that he parked his car in front of Old Timers and was inside the establishment when emergency vehicles passed by at around 8:36 p.m. Soon afterward, he and some friends walked to a nearby liquor store, Jimmy's Liquors, where one of the group had parked his truck. They got into the truck and, while they were driving around, noticed the taped off area at Robin's. At around that time, a member of the group received a phone call informing him that the victim had been shot. The defendant said that he retrieved his car from the front of Old Timers sometime around 9 p.m., and then drove to his girlfriend's house.

After the defendant provided this account of his movements, LaMaine began questioning him in greater detail regarding the nature of his dispute with the victim at the Jamaican Gambling Club. He asked the defendant to provide details regarding who saw the dispute, how heated it became, and whether it escalated into a physical confrontation. LaMaine then confronted the defendant with the fact that the victim subsequently called him and asked the defendant to meet him at Robin's. The defendant admitted that he received the phone call and acknowledged that the victim had asked to meet there, but the defendant denied that he went "down that way." When LaMaine reminded the defendant that "there's a camera at [the intersection of] Stratford and Hollister," the defendant admitted that he had "most likely" taken a right onto Stratford Avenue from Hollister Avenue and then turned at the intersection ***715** between Stratford and Connecticut Avenues, a route that took him directly past Robin's, which is at the intersection between the two streets. LaMaine then added, "at ... 8:33." When the defendant hesitated, LaMaine said, "I'm just telling you what the camera showed." LaMaine again stated that the defendant turned from Stratford Avenue onto Connecticut Avenue at 8:33 p.m. This time, the defendant said, "I guess so." That admission placed the defendant in front of Robin's at the approximate time of the shooting, albeit only momentarily.

LaMaine pressed the defendant further, obtaining an admission from him that, based on his 8:23 p.m. phone conversation with the victim, the defendant knew, when he drove past Robin's at 8:33 p.m., that the ****80** victim was there. The defendant continued to maintain, however, that he "rolled down through there," and he did not see the victim.

LaMaine then said: "He was parked right there. And you stopped for, well, two minutes, [one and one-half minutes], almost two minutes. You did. And then you continued on. And there's a lot of cameras, both at Stratford and Connecticut [Avenues]. I'm not even talking about the ones we own. There's a lot of cameras, [on] just about every store, building, even Robin's. If you have a chance, [and] you go by, you'll see a camera right there. You'll see a camera. It's on the Stratford [Avenue] side. And then, right next to it, [there] is a place called ... Derek's Auto Parts. It's the building that abuts right up against Robin's. And they have cameras on both sides. Stratford and Connecticut [Avenues]. You can go back, I mean, there's an endless number of cameras. Every store has a camera. ... Yeah. And that's not even counting our good ones. And our cameras are so good [that] we can read license plates, because we know that's why we're going to be using them. So, this is what brings us to you. You went ***716** there. And there's also people in the bar. You've been in that bar. ... So, you know [that] next to the window ... there's a window as big as this ... waist high. And they can see out. ... Now, I'm not going to tell you I know everything that was said. And there was a dispute, and [the victim] was hot. But you and him got into a little thing there. And we just want to hear your side of it."

When the defendant responded, "[y]eah ... on Park Avenue," LaMaine said: "No. ... I'm talking about where he was shot. Maybe he brought a gun. Maybe you took it from him. All I know is that you and him got into a dispute at his car. That's why we're here. Okay. And we want to hear your side of it. *You're not going out of here in handcuffs. Okay. You're not. You're going to walk out of here. Nothing you say is going to get you arrested today.* Okay. We're here to get to the truth, and that's our only job." (Emphasis added.)

Less than thirty seconds later, LaMaine told the defendant that, if he wanted to, he could "walk away right now ...." LaMaine and Curet advised the defendant five additional times that he was free to leave. Most of those warnings were within five minutes after the first advisement. Specifically, in the five minutes after LaMaine first told the defendant that he was not under arrest and was free to leave, he also stated: "[y]ou can leave right now if you want"; "[n]o matter what you say, you're going to walk out of that door"; "[y]ou can walk out right now"; and "[l]ike I said, you're free to go." At a later point in the interrogation, Curet reminded the defendant that he was going to "walk out this door."

Approximately one third of the way through the interrogation, LaMaine began to make clear to the defendant that, if he left without providing the police with information to the contrary, he would remain their prime suspect, and they would likely seek a warrant for his arrest. ***717** He also suggested that, if the defendant provided that information sooner rather than later, his account would likely be deemed more credible. For example, after the fifth time LaMaine advised the defendant that he could leave the interrogation, he also said that, if the defendant left, "we gotta go on the facts we have. There's just the two of you there. ... [S]omehow [the victim] gets shot when it's just the two of you. ... [W]e're probably gonna be writing a murder warrant for you. And, down the road, you might want to say, okay, well, I want to tell my side of the story, like ... he pulled a gun or something. ... But it's ****81** gonna not sound very credible because everybody,

when they're jammed up, says, 'oh, well, let me tell you, this is self-defense, or he pulled a gun.' ... But it just won't be credible because, yeah, everybody comes up with it once they're arrested."

The defendant did not choose to terminate the interrogation or to leave the room after any one of the advisements that he could leave or walk out. Thus, LaMaine continued to press him for information. As part of LaMaine's interrogation strategy, he emphasized the incriminating effect of the video footage, telling the defendant that "the video doesn't lie" and reminding the defendant that, because it was bitterly cold on the night of the shooting, virtually no one else would be captured on the outdoor video footage. At the same time, LaMaine misrepresented what the video footage depicted. For example, LaMaine told the defendant that the video showed the defendant driving away while the victim ran and staggered into the middle of the road, then collapsed almost at the Stratford line. Our review of the record does not reveal any such video footage.

About thirty-five minutes into the interrogation, the defendant abandoned his initial story, beginning with his admission that he had, in fact, stopped at Robin's. LaMaine drew a rough map of the immediate area surrounding ***718** the bar and asked the defendant to indicate where he parked. The defendant pointed to a spot on the map that placed his car immediately behind where the victim's car had been parked, "bumper to bumper," as LaMaine described it. Both LaMaine and Curet then emphasized to the defendant that, according to his current account, he was the only person, other than the victim, in the vicinity when the victim was shot—that meant that he was the one who shot the victim.

At that point, the defendant stated that he was not alone. He now claimed that a person named Outlaw, who also had been gambling at the Jamaican Gambling Club that afternoon, had accompanied him when he left the club. He said that Outlaw rode in the passenger seat. According to the defendant, when he stopped his car at Robin's, Outlaw jumped out of the car, saying that he was going to get money that the victim owed him. At that time, the defendant had opened his door on the driver's side, and cracked a cigar open, emptied it, then rolled a blunt in it. While he was still rolling his blunt, the defendant heard multiple gunshots. Outlaw got back into the car. The defendant dropped him off a short distance from Robin's, on Connecticut Avenue, and then drove away.

Both LaMaine and Curet expressed doubts regarding the veracity of the defendant's story. The officers told him that he had not adequately explained why, if the victim owed Outlaw money, Outlaw had made no attempt to recover the debt while he and the victim were both at the Jamaican Gambling Club, particularly given that the victim had won a significant amount of cash over the course of the afternoon.

Nevertheless, LaMaine then asked the defendant for Outlaw's real name, his address, his phone number, and his physical description. The defendant claimed not to know Outlaw's real name or his address. At LaMaine's ***719** request, the defendant scrolled through his contacts on his cell phone for Outlaw's information, then read the phone number out loud to LaMaine. He also provided the police with a physical description of Outlaw. Although LaMaine and Curet continued to call into question the defendant's account of the events of that evening, the defendant insisted that Outlaw had been present at the scene and had shot the victim. At the end of the interrogation, LaMaine informed the defendant ****82** that, because he had indicated that he communicated with Outlaw on his phone, the police were seizing the defendant's cell phone. Also at the end of the interrogation, the defendant agreed to come to the police station for a second interview, in order to identify Outlaw from photographs drawn from the police department's database. The defendant left the interrogation without being placed under arrest.

The second interrogation took place on the same day, at about 6 p.m., in an interrogation room at the Bridgeport police station. At the outset of the interview, Detective Robert Winkler and Curet advised the defendant of his rights pursuant to *Miranda*. During the second interview, Winkler, LaMaine and Curet obtained some additional details from the defendant. For example, the defendant explained that the initial amount that he and the victim wagered was $500, but, after they discovered that one side of the keys said "E55" and the other side said "E550," the defendant offered to accept $100. He also told the police officers that the coat he was wearing during the interview was the same coat he wore on the night of the shooting.[10] Additionally, he identified a photograph of Troy Lopes as the person known to him as Outlaw. For the most part, however, during the second interview, the police officers asked the defendant to review the account he had provided to them during the first interview. At the end of the ***720** interview, the defendant left without being placed under arrest.

10 Because of the defendant's claim, the officers seized his coat.

Two days after the first two interviews, the defendant initiated the third interview, which took place in an unmarked police car in the parking lot of a Burger King in Stratford. LaMaine and Curet sat in the front seats. The defendant sat in the back seat. The defendant claimed that he feared for his safety because Outlaw had contacted him regarding the defendant's cooperation with the police. When LaMaine and Curet questioned him regarding contradictions in his story implicating Outlaw in the shooting death of the victim, the defendant asked, "[d]o I need to just go get a fucking lawyer?" Rather than clarifying whether the defendant was invoking his right to counsel, LaMaine and Curet continued questioning him. Eventually, the defendant exited the car, thus ending the interview. He left without being placed under arrest.

Prior to trial, the defendant moved to suppress his statements in all three interviews. The defendant argued that the first interview was a custodial interrogation and that the officers violated his rights by failing to provide him with *Miranda* warnings prior to the interview. Relying on his argument that the first interrogation was custodial, the defendant challenged the admission of the second interview on the basis that it violated the rule set forth in *Missouri* v. *Seibert*, 542 U.S. 600, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004). Specifically, in *Seibert*, the United States Supreme Court held that the provision of *Miranda* warnings midstream, after a suspect had provided a confession during a custodial interrogation, violated the constitutional requirements safeguarded by *Miranda*. See id., at 604, 124 S. Ct. 2601 (opinion announcing judgment). The trial court denied the defendant's motion to suppress the statements that he made during his first and second interviews. See footnote 2 of this opinion.

***721** Pertinent to the issues presented in this appeal, the trial court made the following rulings. As to the first interview, the court concluded that, although it was an interrogation, a reasonable person in the defendant's position would not have believed ****83** that he was in custody. In arriving at that conclusion, the court reviewed the totality of the circumstances and emphasized the following: the interrogation lasted only ninety minutes; the police did not physically restrain the defendant at any time and did not brandish their weapons; LaMaine, whose testimony the court credited, characterized the interrogation as cordial; the police told the defendant multiple times that he was free to leave; and, in fact, at the end of the interrogation, the defendant left. As to the second interview, the court explained, because the first interrogation was not custodial, *Seibert* was inapplicable, and, therefore, the defendant's challenge with respect to the second interrogation failed as well.

"[T]he standard of review for a motion to suppress is well settled. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record .... [W]hen a question of fact is essential to the outcome of a particular legal determination that implicates a defendant's constitutional rights, [however] ... our customary deference to the trial court's factual findings is tempered by a scrupulous examination of the record to ascertain that the trial court's factual findings are supported by substantial evidence. ... [When] the legal conclusions of the court are challenged, [our review is plenary, and] we must determine whether they are legally and logically correct and whether they find support in the facts [found by the trial court] ...." (Internal quotation marks omitted.) *State* v. *Jackson*, 304 Conn. 383, 394, 40 A.3d 290 (2012).

This court previously has summarized the principles that govern our review of this issue. "To establish entitlement ***722** to *Miranda* warnings ... [a] defendant must satisfy two conditions, namely, that (1) he was in custody when the statements were made, and (2) the statements were obtained in response to police questioning." *State* v. *Mangual*, 311 Conn. 182, 192, 85 A.3d 627 (2014). "The defendant bears the burden of proving custodial interrogation." (Internal quotation marks omitted.) *State* v. *Jackson*, supra, 304 Conn. at 417, 40 A.3d 290. As we noted, only the question of whether the defendant was in custody during the first interrogation is before us in this appeal.

"Although [a]ny [police] interview of [an individual] suspected of a crime ... [has] coercive aspects to it; *Oregon* v. *Mathiason*, 429 U.S. 492, 495, 97 S. Ct. 711, 50 L. Ed. 2d 714 (1977); only an interrogation that occurs when a suspect is in custody heightens the risk that statements obtained therefrom are not the product of the suspect's free choice. *Dickerson* v. *United States*, 530 U.S. 428, 435, 120 S. Ct. 2326, 147 L. Ed. 2d 405 (2000). This is so because the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements ...." (Internal quotation marks omitted.) *State* v. *Mangual*, supra, 311 Conn. at 191, 85 A.3d 627.

In *Miranda*, the United States Supreme Court defined a custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into

custody or otherwise deprived of his freedom of action in any significant way." *Miranda* v. *Arizona*, supra, 384 U.S. at 444, 86 S.Ct. 1602. Subsequently, the court has significantly narrowed the meaning of a restraint on freedom of action or movement. See, e.g., C. Weisselberg, "Mourning *Miranda*," 96 Cal. L. Rev. 1519, 1540–42 (2008). In *California* v. *Beheler*, 463 U.S. 1121, 103 S. Ct. 3517, 77 L. Ed. 2d 1275 (1983), the court limited the category of restraints on freedom of movement to those "of the degree associated ****84** with a formal arrest." Id., at 1125, 103 S. Ct. 3517. The court has rejected the proposition that an interrogation of a suspect in a police station, an office of probation, or ***723** even of an incarcerated person in a prison, is necessarily custodial. See, e.g., *Howes* v. *Fields*, 565 U.S. 499, 502, 132 S. Ct. 1181, 182 L. Ed. 2d 17 (2012) (prison); *Maryland* v. *Shatzer*, 559 U.S. 98, 112–13, 130 S. Ct. 1213, 175 L. Ed. 2d 1045 (2010) (prison); *Minnesota* v. *Murphy*, 465 U.S. 420, 433, 104 S. Ct. 1136, 79 L. Ed. 2d 409 (1984) (office of probation); *Oregon* v. *Mathiason*, supra, 429 U.S. at 495, 97 S.Ct. 711 (police station). Rather, the paramount consideration for whether a suspect is in custody is whether the circumstances can "fairly be characterized as the functional equivalent of formal arrest"; *Berkemer* v. *McCarty*, 468 U.S. 420, 442, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984); or, put another way, "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*."[11] *Howes* v. *Fields*, supra, at 509, 132 S.Ct. 1181.

11 Any doubt regarding whether the court in *Howes*, by referring to the "type of station house questioning at issue in *Miranda*"; *Howes* v. *Fields*, supra, 565 U.S. at 509, 132 S.Ct. 1181; referred to an inquiry as to whether the petitioner was restrained to a degree associated with a formal arrest is resolved by referring to the *Miranda* decision itself, which summarized the circumstances of the petitioners in the cases that were before the court in that appeal. Specifically, Ernesto Miranda was arrested, then taken to the police station, where he was interrogated. *Miranda* v. *Arizona*, supra, 384 U.S. at 491, 86 S.Ct. 1602. Although Michael Vignera was not arrested prior to the start of his interrogation, he was initially picked up by the police, brought in for questioning, placed under formal arrest during the course of the interrogation, then transferred to another precinct, where the interrogation continued. Id., at 493, 86 S.Ct. 1602. Carl Calvin Westover was arrested, placed in a lineup, booked, and then detained and interrogated over the course of two days. Id., at 494–95, 86 S.Ct. 1602. Finally, Roy Allen Stewart was arrested at his home, consented to a search of the home, jailed (along with his wife and three other persons who were visiting his home at the time), and interrogated over the course of five days. Id., at 497, 86 S.Ct. 1602.

"As used in ... *Miranda* [and its progeny], custody is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion. [Id., at 508–509, 132 S. Ct. 1181]. In determining whether a person is in custody in this sense ... the United States Supreme Court has adopted an objective, reasonable ***724** person test ... the initial step [of which] is to ascertain whether, in light of the objective circumstances of the interrogation ... a reasonable person [would] have felt [that] he or she was not at liberty to terminate the interrogation and [to] leave. ... [Id., at 509, 132 S. Ct. 1181]. Determining whether an individual's freedom of movement [has been] curtailed, however, is simply the first step in the analysis, not the last. Not all restraints on freedom of movement amount to custody for purposes of *Miranda*. [Accordingly, the United States Supreme Court has] decline[d] to accord talismanic power to the freedom-of-movement inquiry, *Berkemer* [v. *McCarty*, supra, 468 U.S. at 437, 104 S.Ct. 3138], and [has] instead asked the additional question [of] whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*. ... *Howes* v. *Fields*, supra, [565 U.S. at] 509, 132 S.Ct. 1181." (Citations omitted; footnote omitted; internal quotation marks omitted.) *State* v. *Mangual*, supra, 311 Conn. at 193, 85 A.3d 627.

In other words, "[o]nce the scene is set and the players' lines and actions are reconstructed, the court must ****85** apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest." (Internal quotation marks omitted.) *J. D. B.* v. *North Carolina*, 564 U.S. 261, 270, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011). Put simply, it is not enough that a reasonable person under the circumstances would not have thought that he was free to leave. As one court has explained, "[u]nder *Berkemer* [v. *McCarty*, supra, 468 U.S. 420, 104 S.Ct. 3138], the question [in a custody inquiry] is *not* whether a reasonable person would believe he was not free to leave, [but] rather whether such a person would believe he was in police custody of the degree associated with formal arrest." (Emphasis in original; internal quotation marks omitted.) *Bates* v. *United States*, 51 A.3d 501, 510 n.22 (D.C. 2012). "Any lesser restriction ***725** on a person's freedom of action is not significant enough to implicate the core fifth amendment concerns that *Miranda* sought to address." *State* v. *Mangual*, supra, 311 Conn. at 194–95, 85 A.3d 627.

In *Mangual*, this court identified the following, non-exhaustive list of factors to consider in evaluating the totality of the circumstances to determine whether a defendant has satisfied his burden of establishing that he was in custody for purposes of *Miranda:* "(1) the nature, extent and duration of the questioning; (2) whether the [defendant] was handcuffed or otherwise physically restrained; (3) whether [law enforcement] officers explained that the [defendant] was free to leave or not under arrest; (4) who initiated the encounter; (5) the location of the interview; (6) the length of the detention; (7) the number of officers in the immediate vicinity of the questioning; (8) whether the officers were armed; (9) whether the officers displayed their weapons or used force of any other kind before or during questioning; and (10) the degree to which the [defendant] was isolated from friends, family and the public." Id., at 197, 85 A.3d 627.

With these principles in mind, we examine the totality of the circumstances to determine whether the defendant was in custody during the first interrogation. It is undisputed that the defendant was neither handcuffed nor placed under formal arrest at any point prior to or during the first police interrogation. Thus, the question is whether the police otherwise restrained him to a degree associated with a formal arrest; that is to say, was his restraint the functional equivalent of a formal arrest? Assessing all the circumstances, we conclude that a reasonable person would not have believed that he was restrained to such a degree.

It is undeniable that the defendant was questioned in a coercive environment. Two armed police officers ***726** conducted the interrogation in a secured area in the probation office, immediately after the defendant had finished his required meeting with his probation officer. Additionally, it appears that no one told the defendant that the individuals waiting to speak to him were police officers. During the interrogation, the officers made it clear to the defendant that he was their prime suspect. Finally, at the end of the interrogation, the officers seized the defendant's cell phone.

As we explained in our review of the controlling principles, however, a coercive environment, without more, does not establish that an interrogation was custodial.[12] The United States Supreme ****86** Court has stated ***727** that "[a]ny 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 [that] 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." *Oregon* v. *Mathiason*, supra, 429 U.S. at 495, 97 S.Ct. 711. The ultimate inquiry in a custody determination is always "whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." (Internal quotation marks omitted.) *Yarborough* v. *Alvarado*, 541 U.S. 652, 662, 124 S. Ct. 2140, 158 L. Ed. 2d 938 (2004). Our review of the facts persuades us that the coercive elements of the interrogation were offset by other factors and did not rise to the degree of restraint associated with a formal arrest.

12 Two premises underlying the dissent's argument are contrary to the legal principles that govern the custody analysis. First, the dissent presumes that, because there were some coercive aspects of this interrogation, the defendant was in custody. Second, the dissent devotes little of its analysis to the ultimate inquiry of whether there was a formal arrest or restraint to a degree associated with a formal arrest and, instead, treats the initial inquiry, whether a reasonable person would have felt free to leave, as sufficient to establish that the defendant was in custody. Essentially, the dissent inappropriately collapses the free to leave inquiry with the restraint to the degree associated with a formal arrest inquiry. See, e.g., *Berkemer* v. *McCarty*, supra, 468 U.S. at 435–37, 440, 104 S.Ct. 3138 (declining to accord free to leave inquiry "talismanic power" and holding, instead, that *Miranda* safeguards are triggered when suspect's freedom is curtailed to degree associated with formal arrest); *People* v. *Begay*, 325 P.3d 1026, 1029–30 (Colo. 2014) ("Under the [f]ourth [a]mendment, a seizure occurs when a reasonable person would not have felt free to leave or otherwise terminate an encounter with law enforcement. ... [W]hat constitutes custody for *Miranda* is narrower than what constitutes a seizure .... [T]he [*Miranda*] question is *not* whether a reasonable person would believe he was not free to leave, but rather whether such a person would believe he was in police custody of the degree associated with a formal arrest." (Citations omitted; emphasis in original; internal quotation marks omitted.)); see also, e.g., 2 W. LaFave et al., Criminal Procedure (4th Ed. 2015) § 6.6 (c), pp. 810–11.

The dissent's discussion of the police officers' threats to arrest the defendant at some point in the future illustrates these flaws in its analysis. The dissent claims: "It cannot seriously be maintained that a threat by the interrogating officers to arrest a suspect in the near future, but not right now, unless the suspect remains and answers questions will have no significant impact on the person's perception that he is truly free to leave." Although such threats may

> have an effect on a reasonable person's perception that he is free to leave, overemphasizing those threats suggests that the answer to the free to leave prong of the custody inquiry is dispositive of the question of whether the restraint on the defendant was to the heightened degree necessary for custody. Concluding that the defendant was restrained to a degree associated with a formal arrest because the officers threatened to seek a warrant for his future arrest simply cannot be squared with the facts that he was not ordered to report to the meeting, he was told repeatedly that he could leave, he was not handcuffed or otherwise physically restrained, the interrogation was cordial, and the officers allowed him to scroll through his phone during the interrogation. Indeed, in this particular case, at no point during the interview did either LaMaine or Curet suggest that the defendant would be placed under arrest as an immediate and direct consequence of terminating the interview. In fact, they made the opposite quite clear. Specifically, LaMaine told the defendant, "[n]othing you say is going to get you arrested today," and that, if he wanted to, he could "walk away right now ...." They informed the defendant—seven separate times—either that he was free to leave or that he was not under arrest. Those advisements weigh heavily against a conclusion that a reasonable person would have felt that he was restrained to a degree associated with a formal arrest.

In summary, we conclude that, notwithstanding the coercive elements of the interrogation, the following facts demonstrate that the defendant was not restrained ***728** to the degree associated with ****87** a formal arrest and, therefore, was not in custody during the interrogation. The record does not reveal that Calixte ordered the defendant to meet with the police officers. Instead, according to Calixte's uncontroverted testimony at the suppression hearing, following the conclusion of the defendant's mandatory meeting with her, she informed the defendant that, "if he had a moment," he could meet with "someone else" who wished to speak with him. The defendant did not introduce any evidence that he objected to the meeting, told Calixte that he did not have time, or asked her if he was obligated to go despite her clear statement that their mandatory meeting was over. The defendant could have left. He did not. There is no indication in this record that Calixte would not have honored the defendant's request if he said he did not have a moment and declined to attend the meeting.

Simply being on probation is insufficient to render any request from one's probation officer coercive. See, e.g., *United States* v. *Ruggles*, 70 F.3d 262, 265 (2d Cir. 1995) (considering fact that probation officer did not tell defendant that he was obligated to speak with law enforcement officers as weighing against conclusion that defendant was in custody), cert. denied, 516 U.S. 1182, 116 S. Ct. 1284, 134 L. Ed. 2d 229 (1996). As we explain hereinafter, in order to support his claim that his status as a probationer created a level of coercion that compels the conclusion that he was in custody, the defendant had to demonstrate that Calixte ordered him to attend the meeting.[13] He failed to make that showing.

13 The dissent acknowledges that the defendant failed to produce any evidence either that Calixte ordered the defendant to attend the meeting with the police officers or that she threatened him with a violation of probation if he refused. Contrary both to applicable precedent and the allocation of the burden of proof, the dissent reasons that, because the record is ambiguous as to whether Calixte informed the defendant that he was not required to attend, we should infer that a reasonable person in the defendant's position would have believed that she commanded him to attend the meeting. As we explained, the defendant bears the burden of proving custody. *State* v. *Jackson*, supra, 304 Conn. at 417, 40 A.3d 290. It defies logic, when confronted with an ambiguous record, to draw the inference favorable to the party who bears the burden of proof.

Furthermore, controlling precedent is clear—because "the [s]tate could not constitutionally carry out a threat to revoke probation for the legitimate exercise of the [f]ifth [a]mendment privilege," in the absence of an order from his probation officer, a probationer's fear of revocation of probation for "refusing to answer questions calling for information that would incriminate [him or her] in separate criminal proceedings" is unreasonable and, therefore, does not support the inference that the probationer was coerced. *Minnesota* v. *Murphy*, supra, 465 U.S. at 438, 104 S.Ct. 1136. Following *Murphy*, the United States courts of appeals have held that, without more, the mere fact that a probation officer requested a defendant to attend a meeting with law enforcement officers does not render an interrogation custodial. Compare *United States* v. *Cranley*, 350 F.3d 617, 618–19 (7th Cir. 2003) (interrogation by federal agent at probation office, arranged by probation officer, was not custodial), with *United States* v. *Ollie*, 442 F.3d 1135, 1138, 1140 (8th Cir. 2006) (defendant was in custody when parole officer ordered him to report for questioning by police chief in police station, and parole officer testified that defendant's failure to comply would have been violation of parole).

***729** In fact, after Calixte told him that the mandatory meeting was over, and that he could meet with the waiting

persons "if he had a moment," the defendant accompanied Calixte to meet with the unidentified persons. Upon seeing that the individuals who were waiting for him were members of law enforcement, the defendant elected to remain in Bunosso's office. The defendant **88 did not end the ninety minute interrogation, notwithstanding the repeated reminders from the police officers that he was free to leave and was not under arrest. The officers did not handcuff the defendant, physically threaten him, or attempt to physically restrain him or otherwise restrict his movement. The tone of the interrogation was not hostile. Although the officers seized his cell phone at the end of the interrogation, the defendant was able to freely use his phone during the interrogation, specifically, when, midway through the interrogation, he accessed, from his cell phone contacts, the phone number for "Outlaw," the man he accused of committing the crime. Finally, at *730 the end of the interrogation, the defendant left without being placed under arrest and agreed to meet with the officers again, later that same day, at the police station. Our review of the various *Mangual* factors only fortifies our conclusion that the defendant was not restrained to a degree associated with a formal arrest. We discuss those various *Mangual* factors in greater detail individually.[14]

14 Contrary to the dissent's suggestion, we do not apply these factors as a mechanical test, the satisfaction of which automatically satisfies custody. Indeed, as we pointed out, we have little difficulty applying the general principles laid out by the United States Supreme Court and concluding that the defendant has not demonstrated that the circumstances here rose to the level of restraint associated with a formal arrest. Still, we find that reviewing the *Mangual* factors helps to provide a more fulsome examination of the circumstances of the first interrogation.

Turning to the first *Mangual* factor, we begin with the trial court's finding that the tone and tenor of the interrogation were cordial. The trial court stated, during the suppression hearing, that it had reviewed the audio and video recordings of the three interrogations. The court's factual finding, therefore, is based on its own review of the evidence, as well as its finding that LaMaine's testimony that the first interrogation was cordial was credible. We defer to the credibility findings of the trial court. See, e.g., *Jones* v. *State*, 328 Conn. 84, 101, 177 A.3d 534 (2018).

Moreover, to the extent that the trial court's finding regarding the tone of the interrogation is predicated on its own review of the audio recording of the first interview, that finding is equally entitled to deference. See, e.g., *State* v. *Griffin*, 339 Conn. 631, 669, 262 A.3d 44 (2021) ("[a] trial court's findings are entitled to deference, even if they are predicated on documentary evidence that this court is equally able to review for itself on appeal"), cert. denied, —— U.S. ——, 142 S. Ct. 873, 211 L. Ed. 2d 575 (2022); see also, e.g., *731 *State* v. *Lawrence*, 282 Conn. 141, 157, 920 A.2d 236 (2007) ("it would be improper for this court to supplant its credibility determinations for those of the fact finder, regardless of whether the fact finder relied on the cold printed record to make those determinations").

Consistent with the trial court's finding, we note, from our own review of the recording of the first interrogation, that at no point during that interrogation did either of the police officers raise their voices. Courts have noted that such a tone and tenor weigh against a conclusion that a defendant was in custody. See, e.g., *United States* v. *Guerrier*, 669 F.3d 1, 5–6 (1st Cir. 2011) (in concluding that interview in unmarked police car with parole officer and two members of law enforcement was not custodial, "relatively calm and nonthreatening" nature of questioning weighed against finding that defendant was in custody); see also, e.g., *United States* v. *Edrington*, 851 Fed. Appx. 574, 577 (6th Cir. 2021) ("consensual tone and tenor of the **89 meeting [with the defendant's probation officer and federal agents] weigh[ed] against a finding of custody" (internal quotation marks omitted)).

The duration of the interrogation, ninety minutes, also weighs against a conclusion that the defendant was in custody in the present case. Indeed, this court has concluded that an interview of two and one-half hours did not "necessitate the conclusion that a reasonable person would believe [the defendant] could not leave, particularly in light of the repeated reminders he received that he was free to leave at any time." *State* v. *Pinder*, 250 Conn. 385, 414, 736 A.2d 857 (1999). Other courts also have considered an interview of this length to weigh against a conclusion that a defendant was in custody. See, e.g., *Stechauner* v. *Smith*, 852 F.3d 708, 715–16 (7th Cir.) (ninety minute interview "was relatively short"), cert. denied, —— U.S. ——, 138 S. Ct. 194, 199 L. Ed. 2d 130 (2017); *732 *United States* v. *Galceran*, 301 F.3d 927, 931 (8th Cir. 2002) ("the ninety-eight minute length of the interview [did] not indicate police domination"). But see, e.g., *United States* v. *FNU LNU*, 653 F.3d 144, 154–55 (2d Cir. 2011) (although court ultimately concluded that defendant was not in custody, interview's duration of ninety minutes was among factors that weighed in favor of finding of custody). The

duration of the interrogation was the same as that of the detention. Accordingly, the sixth *Mangual* factor, the length of the detention, also weighs against concluding that the defendant was in custody. See *State* v. *Pinder*, supra, at 414, 736 A.2d 857.

We next consider the second, seventh, eighth and ninth *Mangual* factors, which, when viewed together, weigh against a conclusion that the defendant was restrained to a degree associated with a formal arrest. There were only two police officers in the interrogation room. The defendant was neither handcuffed nor physically restrained in any way. There is also no evidence that, if the defendant had sought to move, the officers would have restricted his movement. In fact, the defendant sat closest to the door. As we observed, there was no testimony regarding the size of the office. Nor was there testimony as to whether the door was locked. There was no evidence regarding where the officers were in relation to the defendant, other than that they were farther away from the door than the defendant. It was the defendant's burden to establish those facts in support of his claim. He failed to present any evidence that the circumstances within the room created an atmosphere similar to that associated with the station house interrogations at issue in *Miranda*. Although both officers were armed, were equipped with handcuffs, and wore visible badges, neither of them physically threatened the defendant, used force, handcuffed him, or brandished their weapons.[15]

15 We fully appreciate that there may be circumstances in which the presence of two law enforcement officers could weigh in favor of finding that a defendant was in custody. As with every factor in the custody inquiry, however, the defendant bears the burden of proving that the number of officers present weighs in favor of a custody finding. The defendant has not, however, demonstrated that the room was particularly small, that the officers flanked him, stood over him, or sat overly close to him, or that the two officers somehow used their numbers to restrict his movements in any way. In the absence of any such showing, we conclude that the rather routine number—two law enforcement officers—weighs against a conclusion that the defendant was in custody. See, e.g., *United States* v. *Woody*, 45 F.4th 1166, 1175 (10th Cir. 2022) (presence of two officers, without more, was insufficient to demonstrate that reasonable person would not have felt free to decline to speak with officers); *State* v. *Castillo*, 329 Conn. 311, 333, 186 A.3d 672 (2018) (rejecting defendant's contention that presence of three officers in his living room weighed in favor of concluding that he was in custody).

***733** ****90** Turning to the third *Mangual* factor, we consider it significant that, in the present case, after the first twenty-one minutes of the interrogation, LaMaine and Curet repeatedly advised the defendant that he was free to leave and that he was not under arrest. Courts have held that these advisements weigh heavily against the conclusion that a defendant was in custody for purposes of *Miranda*. See, e.g., *Howes* v. *Fields*, supra, 565 U.S. at 515, 132 S.Ct. 1181 ("[m]ost important, [the defendant] was told at the outset of the interrogation, and was reminded again thereafter, that he could leave and go back to his cell whenever he wanted"); *United States* v. *Roberts*, 975 F.3d 709, 716 (8th Cir. 2020) (informing suspect that he is free to terminate interview is "powerful evidence that a reasonable person would have understood that he was free to terminate the interview" (internal quotation marks omitted)), cert. denied, —— U.S. ——, 141 S. Ct. 2822, 210 L. Ed. 2d 942 (2021); *United States* v. *Martinez*, 795 Fed. Appx. 367, 371 (6th Cir. 2019) ("[w]hether investigators inform a suspect that he is free to leave or to refuse to answer questions is the most important consideration in the *Miranda* custody analysis"); *United States* v. *Ollie*, 442 F.3d 1135, 1138 (8th Cir. 2006) (Advisement provided to the defendant, that he was not under arrest, somewhat mitigated custodial ***734** nature of the interview, but "an explicit assertion that the person may end the encounter is stronger medicine. Such a statement provides an individual with a clear understanding of his or her rights and generally removes any custodial trappings from the questioning.").

Despite those repeated advisements, the defendant chose to remain. Indeed, not once during the interrogation did the defendant ask to leave. See, e.g., *State* v. *Lapointe*, 237 Conn. 694, 727, 678 A.2d 942 (defendant's failure to ask to leave weighed against finding of custody), cert. denied, 519 U.S. 994, 117 S. Ct. 484, 136 L. Ed. 2d 378 (1996). We agree with the United States Court of Appeals for the Eighth Circuit, which observed: "Against a backdrop of repeated advice that he was free to terminate the interview, [a defendant's] decision not to terminate the interview and to allow the interview to proceed to its closing suggests an exercise of free will, rather than restraint to a degree associated with formal arrest." *United States* v. *Czichray*, 378 F.3d 822, 829 (8th Cir. 2004), cert. denied, 544 U.S. 1060, 125 S. Ct. 2514, 161 L. Ed. 2d 1109 (2005).

Certainly, if LaMaine had informed the defendant at the outset of the interrogation that he was not under arrest or that he was free to leave, these advisements would have weighed even more heavily in favor of concluding that the defendant was not in custody.[16] By the ***735** ****91** time that LaMaine first informed the defendant that he was free to leave, the defendant already had implicated himself by claiming, in direct contradiction to his earlier representations, that he drove past the crime scene within minutes of the shooting. We appreciate that the provision of these advisements would have been even more effective had the police officers given them at the start of the interrogation. The timing of these advisements in the present case, however, does not eliminate the powerful effect of LaMaine's direct advisements: "[y]ou can walk away right now if you want"; "[y]ou can leave right now if you want"; "[n]othing you say is going to get you arrested today"; and "[y]ou're free to go." Under most circumstances, it would be difficult to conclude that a reasonable person, upon hearing those words, would nonetheless feel restrained to a degree associated with a formal arrest.

16 We disagree with the dissent's suggestion that the delay in advising the defendant that he was free to leave and was not under arrest until after he had incriminated himself is somehow analogous to the midstream *Miranda* warnings condemned in *Missouri* v. *Seibert*, supra, 542 U.S. at 604, 124 S.Ct. 2601 (opinion announcing judgment), and that the police officers' advisements to the defendant that he was free to leave therefore have no place in the custody analysis in the present case because they "fail to convey to a suspect that he has a choice regarding his participation in the interrogation." The dissent has cited no support for this proposition. Our case law supports the opposite conclusion. Two cases in particular are instructive.

In *State* v. *Pinder*, supra, 250 Conn. 385, 736 A.2d 857, this court rejected the defendant's claim that the admission of inculpatory statements he made to polygraph examiners violated his fifth amendment right against self-incrimination under *Miranda*. Id., at 408, 736 A.2d 857. Specifically relevant to the present case, the defendant in *Pinder* contended that, after he told examiners that he had assisted the victim in committing suicide, he was in custody for purposes of *Miranda*. See id., at 414, 736 A.2d 857. This court rejected that argument, emphasizing that the examiners did not, in response to the defendant's inculpatory statement, "[alter] the circumstances of their interviews of the defendant in such a way that his initial noncustodial status became custodial." (Internal quotation marks omitted.) Id., at 415–16, 736 A.2d 857; see also *State* v. *Lapointe*, supra, 237 Conn. at 727, 678 A.2d 942 (defendant's statements implicating himself in crime did not render interviews custodial because police did not alter circumstances of interviews following his admissions).

Similar to *Pinder* and *Lapointe*, in the present case, the police officers did not alter the circumstances of the interview following the defendant's incriminating statements. In fact, they informed him that he was free to leave or that he was not under arrest—seven times. The dissent's argument that, after he made incriminating statements, the defendant may not have felt free to leave because, in effect, the cat was out of the bag, misses the point of the custody inquiry. The question is not whether the defendant deemed it a good strategic decision to leave. Rather, the question is whether a reasonable person in the defendant's position would have believed that his freedom of movement was constrained to the degree associated with a formal arrest.

Indeed, we note that, although the provision of these advisements weighs heavily against concluding that a ***736** defendant was in custody for purposes of *Miranda*, the failure to provide them, or, as in the present case, a delay in providing them, does not necessitate the opposite conclusion. This court has, in fact, recognized that, as long as the facts demonstrate that a reasonable person in the defendant's position would understand that his meeting with law enforcement is consensual, a defendant need not be "expressly informed that he [is] free to leave" in order for a court to conclude that the defendant has failed to prove that an interrogation was custodial. *State* v. *Greenfield*, 228 Conn. 62, 72 n.10, 634 A.2d 879 (1993); see, e.g., id., at 71–72 n.10 634 A.2d 879 (although police did not expressly inform defendant that he was free to leave, trial court could reasonably have found, given facts of case, that defendant understood that meeting was consensual); see also, e.g., *United States* v. *Ingino*, 845 Fed. Appx. 135, 138 n.1 (3d Cir. 2021) ("[a]lthough the [state] troopers did not explicitly tell [the defendant] he was 'free to leave,' they did not have to speak magic words for it to be clear that he was not under arrest and was free to leave").

Drawing the conclusion that an interrogation was custodial from the failure to advise—or, in the present case, a delay in advising—a defendant that he is free to leave or not under arrest misunderstands the two-pronged nature of the *Miranda* custody inquiry. As the United States Supreme Court has explained, to establish custody, a defendant must prove ****92** both that a reasonable person would not have felt free to terminate the interview or to leave; see

Yarborough v. *Alvarado*, supra, 541 U.S. at 663, 124 S.Ct. 2140; and that "there is a formal arrest or restraint on [the] freedom of movement of the degree associated with a formal arrest." (Internal quotation marks omitted.) Id., at 662, 124 S.Ct. 2140. Accordingly, establishing that a reasonable person would not have felt free to leave is a necessary, but not a sufficient, condition to satisfy the defendant's burden of proving that his interrogation ***737** was custodial. See, e.g., *Howes* v. *Fields*, supra, 565 U.S. at 509, 132 S.Ct. 1181 ("[o]ur cases make clear ... that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody" (internal quotation marks omitted)); see also, e.g., *State* v. *Powers*, 203 Vt. 388, 405, 157 A.3d 39 (2016) (observing, in context of interrogation in probation office, that fact that probationer was not free to leave was necessary, but not sufficient, condition of custody).

Indeed, the cases in which courts have concluded, notwithstanding law enforcement officers' statements to a defendant that he was free to leave, that a defendant was subjected to custodial interrogation, typically have involved extreme circumstances that compelled the conclusion that the defendant was in custody; none of which exist in the present case.[17] See, e.g., *United States* v. *Newton*, 369 F.3d 659, 675–77 (2d Cir.) (defendant was in custody, despite being told that he was not under arrest, when he was handcuffed after six law enforcement ***738** officers entered his apartment and he remained handcuffed during entire interrogation), cert. denied, 543 U.S. 947, 125 S. Ct. 371, 160 L. Ed. 2d 262 (2004); see also, e.g., *United States* v. *McKany*, 649 Fed. Appx. 553, 554–55 (9th Cir. 2016) (defendant was in custody at time of interrogation, notwithstanding being told he was free to leave or to terminate interview, when law enforcement officers entered his home at 6:30 a.m. in full tactical gear and with weapons drawn, fourteen officers were ultimately involved in executing search warrant, and defendant was handcuffed and escorted to bathroom prior to interrogation and then isolated from others during interrogation).

17 The dissent asserts that "free to leave advisements must be assessed in light of the surrounding circumstances ...." Footnote 11 of the dissenting opinion. We agree and have done so. The dissent's attempt to deem the advisements in the present case ineffectual, however, cannot be squared with even the precedent it cites for that proposition. Specifically, the decisions cited by the dissent illustrate that the circumstances in the present case do not involve the type of extreme circumstances under which courts have concluded that, notwithstanding law enforcement officers' advisement to a defendant that he was free to leave, the interrogation was nevertheless custodial. See *United States* v. *Hashime*, 734 F.3d 278, 284 (4th Cir. 2013) (The defendant was in custody despite being told by the police that he was free to leave, when the defendant "had awoken at gunpoint to a harrowing scene: his house was occupied by a flood of armed officers who proceeded to evict him and his family and restrict their movements once let back inside. Throughout the interrogation, [the defendant] was isolated from his family members, with his mother's repeated requests to see him denied."); *United States* v. *Craighead*, 539 F.3d 1073, 1078, 1087–89 (9th Cir. 2008) (defendant was in custody despite being told that he was free to leave when eight armed law enforcement officers wearing flak jackets, some of whom unholstered their weapons, executed search warrant for defendant's home while defendant was interrogated in storage room with closed door, guarded by law enforcement officer).

In the present case, at the end of the interrogation, consistent with the repeated advisements that he was free to leave, the defendant left without being placed under ****93** arrest. This fact weighs against the conclusion that the defendant was restrained to the degree associated with a formal arrest. See, e.g., *United States* v. *Galceran*, supra, 301 F.3d at 931 ("[l]ack of arrest is a 'very important' factor weighing against custody"). The United States Supreme Court has explained why this particular factor is relevant to the custody inquiry: the "release of the [suspect] at the end of the questioning" is one of the factors relevant to the determination of how a suspect would have gauged his freedom of movement—that factor, therefore, bears on whether a reasonable person would have felt free to leave during the interview. *Howes* v. *Fields*, supra, 565 U.S. at 509, 132 S.Ct. 1181; see also, e.g., *Oregon* v. *Mathiason*, supra, 429 U.S. at 495, 97 S.Ct. 711 (defendant was not in custody when, "[a]t the close of a [one-half hour] interview [the defendant] did in fact leave the police station without hindrance"). Indeed, this court also has considered the fact that a defendant was permitted to leave at the conclusion of an interrogation as a factor weighing against a finding that the defendant was in custody. ***739** *State* v. *Lapointe*, supra, 237 Conn. at 727, 733–34, 678 A.2d 942 (fact that defendant was allowed to leave upon completion of interviews, which lasted for more than eight hours, weighed against finding of custody).[18]

18 We acknowledge the tension with placing significant weight on this factor given that a suspect may not know at the outset of or during a particular interrogation whether he will be permitted to leave at the end of the

> interrogation. However, both the United States Supreme Court and this court have considered this factor in the totality of the circumstances that bear on a custody determination. Thus, although we do not place great weight on this factor, we nevertheless consider it in accordance with long-standing, established precedent in this area.

Because the police initiated the encounter, the fourth *Mangual* factor weighs modestly in favor of a conclusion that the defendant was in custody. Its weight is undercut, however, by the defendant's acquiescence to the meeting. Specifically, although the police initiated the encounter by making arrangements with the probation office and no one informed the defendant in advance that the individuals waiting for him were members of law enforcement, the defendant was not ordered to meet with them, and, when he discovered that the individuals were police officers, he chose to stay. Calixte testified that, although she could not recall the precise words she used, she disagreed that the substance of what she said to the defendant was: "[C]ome with me, you're going to see my supervisor now." Instead, she testified that she "basically let him know the office visit was concluded. We were done, and we were walking downstairs, but, if he had a moment, he [could] speak to someone else who would like to talk to him." The defendant accompanied Calixte, then Bunosso, to Bunosso's office, where LaMaine and Curet waited. There is no evidence in the record that the defendant objected to accompanying Calixte to Bunosso's office.

What is clear on this record is that Calixte did not order the defendant to meet with the individuals who ***740** waited for him. The lack of coercion in the language that Calixte used to ask the defendant if he was willing to attend the meeting supports the conclusion that a reasonable person in the defendant's position would not have felt restrained to a degree associated with a formal arrest.[19] ****94** See, e.g., *Howes* v. *Fields*, supra, 565 U.S. at 514, 132 S.Ct. 1181 (language used to summon defendant is significant in custody analysis); see also, e.g., *United States* v. *Ruggles*, supra, 70 F.3d at 265 (probation officer's failure to tell defendant that he was obligated to speak with law enforcement officials weighed against concluding that defendant was in custody). We believe that the language that Calixte used to frame the defendant's options more than offsets the failure to inform him that the individuals waiting for him were members of law enforcement. See, e.g., *United States* v. *Edrington*, supra, 851 Fed. Appx. at 577 (probation officer's lie in summoning defendant to interrogation with federal agents "weigh[ed] only modestly in favor of custody" (internal quotation marks omitted)); see also, e.g., *United States* v. *Guerrier*, supra, 669 F.3d at 4–6 (defendant was not in ***741** custody when members of law enforcement "camped outside" probation officer's office during defendant's regular meeting but defendant "expressed no qualms about talking with them").[20]

19 We disagree with the defendant's contention that, because Calixte was his probation officer, even if she expressly told him he had a choice, the "choice" would be meaningless due to her authority over him and the possible "repercussions" of making a wrong choice. (Internal quotation marks omitted.) First, we note that Calixte testified that, before she informed the defendant that there were people waiting to speak to him, if he had time, *she told him that their mandatory meeting was finished*. Second, as we explain in this opinion, in *Minnesota* v. *Murphy*, supra, 465 U.S. 420, 104 S.Ct. 1136, the United States Supreme Court rejected the proposition that the pressure associated with the mere possibility of revocation of probation is "comparable to the pressure on a suspect who is painfully aware that he literally cannot escape a persistent custodial interrogator." Id., at 433, 104 S. Ct. 1136. As we also explain in this opinion, courts applying *Murphy* have concluded that the threat of revocation of probation weighs in favor of finding that a defendant was in custody only when the probation officer has ordered or directed the defendant to report to an interrogation. See, e.g., *United States* v. *Ollie*, supra, 442 F.3d at 1138–40. The defendant presented no evidence that Calixte ordered him to meet with anyone after his meeting with her had ended or that she threatened to report that he had violated his probation if he refused to do so.

20 We note that, in support of his claim that he was in custody during the first interview, the defendant also relies on the fact that LaMaine and Curet misrepresented the evidence against him during the interrogation. The United States Supreme Court has stated, however, that deceptive interrogation tactics have no bearing on the *Miranda* custody analysis. Specifically, in *Oregon* v. *Mathiason*, supra, 429 U.S. 492, 97 S.Ct. 711, the United States Supreme Court observed that the Oregon Supreme Court had found that a police officer's false statement that the defendant's fingerprints had been discovered at the scene of the crime contributed to the coercive environment of the interview for purposes of *Miranda*. Id., at 495, 97 S. Ct. 711. The United States Supreme Court resoundingly rejected that proposition, explaining: "Whatever relevance this fact may have to other issues in the case, it has nothing to do with whether [the defendant]

was in custody for purposes of the *Miranda* rule." Id., at 495–96, 97 S.Ct. 711.

The fifth *Mangual* factor, the location of the interview, also provides some support for the defendant's contention that he was in custody. As we observed, the questioning took place inside the building where the probation office is located. In arguing that he was in custody during the interrogation, the defendant relies on both the secure nature of the building and the requirements imposed on him as a probationer, namely, that he was required to meet with his probation officer and to comply with her orders.

Regarding the secure nature of the building, we already noted that, although the record is clear that, in order to enter the building, as well as the individual secured areas, the defendant needed to be escorted, the defendant failed to demonstrate, as was his burden, that there were any limitations placed on his ability to leave the secured areas of the building or the building itself. That is, there is no ****95** evidence in the record that the defendant had to be escorted out of the secured areas or out of the building itself. Nor did the defendant produce ***742** any evidence regarding the size of Bunosso's office, or the size and structure of the surrounding area.[21]

21 The dissent states that, "based on the undisputed facts regarding the extent of security in the building, specifically, the requirement of an escort from the entrance of the building to the defendant's meeting with Calixte and the fact that Calixte escorted the defendant to Bunosso's office, a reasonable person in the defendant's position would have believed that he could not leave without assistance." Footnote 7 of the dissenting opinion. The record is silent as to whether he could leave the building unescorted. Presumably, either Calixte or Bunosso could have resolved this question if the defendant had asked them. He did not. Accordingly, notwithstanding the dissent's assertion, we are neither making any factual findings nor "conclud[ing] with certainty" that the defendant was not able to leave the building unescorted. (Emphasis omitted.) Id. Instead, we allocate the burden where it belongs—with the defendant. He did not establish that he was unable to leave without an escort. The lack of clarity in the record does not redound to his benefit in our assessment of whether he was in custody.

Although the defendant's status as a probationer who was questioned in the probation office may have contributed to the coercive aspects of the interrogation, it does not transform a noncustodial interrogation into a custodial one. This precise contention has already been addressed by the United States Supreme Court and has been expressly rejected by that court and nearly every other court that has addressed this issue. In *Minnesota* v. *Murphy*, supra, 465 U.S. 420, 104 S.Ct. 1136, the United States Supreme Court considered the significance, in the *Miranda* custody analysis, of the locus of an interrogation in a probation office. See id., at 431–34, 104 S. Ct. 1136. The court began by emphasizing the narrow scope of the concept of custody for purposes of *Miranda*. That is, in the absence of a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest," a suspect is not in custody for purposes of *Miranda*. (Internal quotation marks omitted.) Id., at 430, 104 S. Ct. 1136. The court likened a probationer's obligation to appear and be truthful to that of a grand jury witness. Id., at 431, 104 S. Ct. 1136. The grand jury witness, the court observed, is subject to more intimidating pressure than a probationer, yet the court has never held that ***743** *Miranda* warnings must be provided to a grand jury witness. Id. The mere concern that terminating the interview may result in the revocation of probation, the court added, does not render the interview custodial. See id., at 433, 104 S. Ct. 1136. That type and level of pressure are "not comparable to the pressure on a suspect who is painfully aware that he literally cannot escape a persistent custodial interrogator." Id. Finally, the court observed that, because a probationer attends meetings regularly, over time, a probation office, in contrast to a police station, constitutes familiar surroundings and that familiarity provides some insulation from the "psychological intimidation" that characterizes a custodial interrogation. Id.

In the wake of *Murphy*, the vast majority of decisions from United States courts of appeals considering whether an interrogation conducted in a probation office or involving a probation or parole officer was custodial have answered that question in the negative. See, e.g., *United States* v. *Edrington*, supra, 851 Fed. Appx. at 576–78 (defendant was not in ***744** custody when probation officer directed him to report to probation office, where defendant was interrogated for fifteen to twenty minutes by federal agents); *United States* v. *Ingino*, supra, 845 Fed. Appx. at 137–38 (defendant ****96** was not in custody during thirty minute interrogation in probation office by two state troopers, following mandatory meeting with probation officer, when defendant was told he was not under arrest and troopers did not use overt coercion); *United States* v. *Guerrier*, supra, 669 F.3d at 4–6 (defendant was not in custody when he was interrogated by two law enforcement officers for twenty to twenty-five minutes in unmarked police car, in presence of parole officer, following regularly scheduled meeting with parole officer);

United States v. *Aldridge*, 664 F.3d 705, 709, 711–12 (8th Cir. 2011) (defendant was not in custody when ordered by probation officer to report to courthouse, where he agreed to be questioned by federal agents, and trial court did not clearly err in finding that defendant acquiesced to questioning); *United States* v. *Rainey*, 404 Fed. Appx. 46, 55–56 (7th Cir. 2010) (defendant was not in custody when probation officer and detective brought defendant to probation office, then detectives interrogated her for sixty to ninety minutes), cert. denied sub nom. *Cobb* v. *United States*, 562 U.S. 1236, 131 S. Ct. 1512, 179 L. Ed. 2d 335 (2011), and cert. denied, 563 U.S. 950, 131 S. Ct. 2127, 179 L. Ed. 2d 917 (2011); *United States* v. *Cranley*, 350 F.3d 617, 618–19 (7th Cir. 2003) (interrogation by federal agent in probation office was not custodial); *United States* v. *Howard*, 115 F.3d 1151, 1154–55 (4th Cir. 1997) (defendant was not in custody when federal agents met him at airport, and he agreed to accompany them to probation office for questioning, insofar as, although there was no indication that defendant was told he was free to leave or not under arrest, agents did not handcuff or otherwise restrain defendant or restrict his use of phone); *United States* v. *Ruggles*, supra, 70 F.3d at 264 (defendant was not in custody when probation officer scheduled same day meeting at probation office upon request of federal agent, and defendant was told "that he was free to leave, that he was not under arrest, and that he did not have to speak" to law enforcement officials).

Notwithstanding this overwhelming majority of cases, the dissent relies on the only two decisions in which courts concluded that the nexus between a defendant's interrogation and his probation status demonstrated that he was in custody for purposes of *Miranda*. Each case is easily distinguishable from the present case. Both relied on the fact that the defendant's failure to report for questioning would have resulted in a violation of probation. See ***745** *United States* v. *Barnes*, 713 F.3d 1200, 1204–1205 (9th Cir. 2013) (defendant was in custody when federal agents interrogated him during specially scheduled, mandatory parole meeting at probation office); *United States* v. *Ollie*, supra, 442 F.3d at 1138–40 (defendant was in custody when parole officer ordered him to report for questioning by police chief in police station, defendant testified that he felt obligated to follow parole officer's order, and defendant did not acquiesce to questioning, insofar as his failure to comply would have been violation of parole).

In contrast to both *Barnes* and *Ollie*, in the present case, the defendant was not ordered to meet with law enforcement officers for questioning, and the questioning occurred only after his mandated meeting with his probation officer had ended. Indeed, there is no evidence in the present case that Calixte ever directed the defendant to attend the meeting or that she told the defendant that his probation would be violated if he refused to attend the meeting. Accordingly, we conclude that a reasonable person, under those circumstances, would not have believed that refusing to meet with the police officers would result in a violation of his probation.

****97** One of the leading cases in this area, *United States* v. *Cranley*, supra, 350 F.3d 617, shares many factual circumstances with the present case. The court in *Cranley* concluded that, although the interrogation of the defendant, a probationer, occurred in a coercive atmosphere—the probation office—the interrogation was not custodial. Id., at 618–19. The defendant's terms of probation required him to report to his probation officer as directed, for both scheduled and unscheduled meetings, and to provide truthful responses to inquiries by his probation officer. Id., at 618. At the request of a federal agent, the defendant's probation officer scheduled a meeting with the defendant, so that the agent could question the defendant regarding several guns that the ***746** agent had traced to the defendant. Id. The probation officer was present during the one hour interrogation. Id., at 619. As in the present case, the interrogation took place in a secure area. Id. Subsequently, the agent met for a second time with the defendant in the same location, this time outside the presence of the probation officer and for at least ninety minutes. Id. At the conclusion of both interviews, the defendant was permitted to leave. See id.

The court recognized that the atmosphere in the probation office was coercive; see id.; but concluded that the facts of the case, as we have summarized them in the preceding paragraph, lacked the "usual indications of police custody ...." (Citations omitted.) Id., at 620. The court also noted that, like the defendant in the present case, the defendant in *Cranley* failed to establish the character of the building, that is, whether the probation office shared the building with other offices unrelated to law enforcement, which would "mut[e] the impression that the probation service is a branch of the state correctional authority," or, by contrast, with a courthouse, a jail or police station. Id., at 619–20. The court in *Cranley* considered it significant that the defendant had not asked whether he was under arrest or free to leave. See id., at 620. Had he done so, the court stated, "we would know from the answer whether he was in custody." Id. Given these gaps in the record, the court concluded, *Minnesota* v. *Murphy*, supra,

465 U.S. at 433, 104 S.Ct. 1136, and the "long list of cases" applying *Murphy*, controlled and precluded a conclusion that the defendant was in custody. *United States* v. *Cranley*, supra, 350 F.3d at 620.

A comparison of the facts of the present case and those presented in *Cranley* demonstrates that the facts in *Cranley* weighed more heavily in favor of a finding of custody than those in the present case. Specifically, in *Cranley*, there was no indication that the defendant was ever informed either that he was free to leave or ***747** that he was not under arrest. In fact, the court noted that, before one of the two meetings, the probation officer reminded the defendant of his obligation to answer questions truthfully. Id., at 619.

Regarding the absence, in the record, of any evidence that the defendant had been told he was free to leave or was not under arrest, the court observed that the defendant could have "asked the [federal] agent, when the questioning got hot, '[a]m I under arrest or am I free to leave?' Had he done that we would know from the answer whether he was in custody. His failure to ask, given the location of the interview and the absence of the usual indications of police custody, precludes a finding of custody, in light of such cases as *Minnesota* v. *Murphy*, [supra, 465 U.S. at 433, 104 S.Ct. 1136]; *United States* v. *Humphrey*, [34 F.3d 551, 554 (7th Cir. 1994)]; *United States* v. *Hayden*, 260 F.3d 1062, 1066–67 (9th Cir. 2001) [cert. denied, 534 U.S. 1151, 122 S. Ct. 1117, 151 L. Ed. 2d 1011 (2002)]; ****98** *United States* v. *Howard*, [supra, 115 F.3d at 1154–55]; *United States* v. *Nieblas*, 115 F.3d 703, [704–705] (9th Cir. 1997); and *United States* v. *Ruggles*, [supra, 70 F.3d at 264–65], all closely in point." *United States* v. *Cranley*, supra, 350 F.3d at 620.[22]

22 Two additional differences between the present case and *Cranley* further demonstrate that the defendant's interrogation was less coercive than that of the defendant in *Cranley*. Unlike the interrogation in the present case, the first interrogation in *Cranley* was conducted during the defendant's scheduled meeting with his probation officer. See *United States* v. *Cranley*, supra, 350 F.3d at 618–19. Therefore, unlike the circumstances in the present case, in *Cranley*, the probation officer required the defendant to attend the meeting with the federal agent. See id., at 618. Additionally, because the probation officer is the person charged with ensuring that a probationer adheres to the terms of supervised release—one of which, as the defendant in *Cranley* was reminded, is to answer any inquiries truthfully—a reasonable person in that defendant's position would view the probation officer's presence as increasing the pressure not only to answer questions, but also to answer them truthfully during an interrogation. In the present case, Calixte's absence during the defendant's interrogation by LaMaine and Curet decreased the coercive aspects of the questioning.

***748** In the present case, the defendant contends that the seizure of his cell phone demonstrates that the tenth *Mangual* factor, the degree to which he was isolated from friends, family and the public, weighs in favor of finding that he was in custody. We disagree. The defendant's reliance on this argument fails because he did not establish that the cell phone was seized prior to the final few minutes of the interrogation, when LaMaine announced the seizure. In fact, the record demonstrates that halfway through the interrogation, upon LaMaine's request, the defendant searched his phone for information on Outlaw. There is no evidence that the defendant was prevented from using the phone in his possession to send text messages to anyone or even to call anyone. The evidence in the record demonstrates that it was not until the end of the interrogation that LaMaine informed the defendant that, because he had provided Outlaw's phone number from his contacts on his cell phone, and because he had communicated with Outlaw on the phone, they were seizing the phone as part of the ongoing investigation. The defendant's suggestion that the deprivation of his phone supports his contention that a reasonable person would not have felt free to leave under those circumstances is belied by the fact that, within minutes after the seizure, he left.

Despite our conclusion that the seizure of the defendant's cell phone does not weigh in favor of finding that he was in custody, we recognize that many aspects of the tenth *Mangual* factor weigh in favor of a finding that the defendant was in custody. Specifically, the police officers chose the probation office as the location of the interrogation. Therefore, to the extent that the interrogation took place in a secure area, the police took actions that resulted in the defendant's being isolated during the interrogation. The weight of these facts is offset, however, by two other facts. First, the defendant was familiar with the probation office. Second, the ***749** defendant failed to introduce evidence regarding the character of the building—whether the probation office occupied the entire building or shared space with other offices unrelated to law enforcement. See id., at 619–20 (relying on defendant's failure to establish character of building where probation office was located in analysis and concluding that interview was noncustodial).

In summary, evaluating the totality of the circumstances, we conclude that the defendant has failed to establish both that a reasonable person in his position would not have felt free to leave and, most important, **99 that there was a restraint on his freedom of movement of the degree associated with a formal arrest. The defendant was not ordered to meet with the police officers; nor was his probationary status threatened. The officers used no physical force or restraint. The defendant failed to establish that he was unable to leave the office without assistance, and he failed to prove that the officers denied him access to his phone prior to its seizure in the final moments of the interrogation. He was told repeatedly that he was not under arrest and was free to leave, yet the defendant continued to talk freely with LaMaine after being so advised. And the defendant did leave—without being placed under arrest.

Accordingly, we conclude that the trial court correctly determined that the defendant was not in custody during the first interview. Because the defendant's challenge to the trial court's denial of his motion to suppress the statements that he made during the second interview is predicated on his claim that he was in custody during the first interview, that challenge fails as well. Indeed, because the first interview was not custodial, the trial court correctly concluded that *Missouri* v. *Seibert*, supra, 542 U.S. 600, 124 S.Ct. 2601, was inapplicable to the second interview. See id., at 604, 124 S. Ct. 2601 (opinion announcing judgment) (identifying issue presented as testing of "a police protocol for custodial interrogation that calls for *750 giving no warnings of the rights to silence and counsel until interrogation has produced a confession"); *United States* v. *Familetti*, 878 F.3d 53, 62 (2d Cir. 2017) (declining to reach defendant's claim based on *Seibert* because defendant "was not subject to a [prewarning] custodial interrogation").

The judgment is affirmed.

In this opinion ROBINSON, C. J., and KELLER and BRIGHT, Js., concurred.

D'AURIA, J., concurring in part and concurring in the judgment.

I concur in the court's judgment affirming the trial court's judgment of conviction and in most of the majority's opinion and analysis. In particular, I conclude that, under federal constitutional law, the defendant, Bernard A. Brandon, has not met his burden of demonstrating that he was "in custody" during any part of the interrogation conducted by two police officers, Lieutenant Christopher LaMaine and Detective Ada Curet, at the office of the defendant's probation officer. See, e.g., *State* v. *Mangual*, 311 Conn. 182, 192 n.9, 85 A.3d 627 (2014) ("[t]he defendant bears the burden of establishing custodial interrogation").

I write separately for two reasons. First, although we consistently have stated that the custodial determination is made considering " 'the totality of the circumstances' "; *State* v. *Edwards*, 299 Conn. 419, 428, 11 A.3d 116 (2011); in my view, that does not mean that a defendant cannot be in custody during one or more parts of the interrogation and not during others. In the present case, I believe there were two distinct parts of LaMaine and Curet's interrogation of the defendant—one that occurred before and the other that occurred after the defendant was advised that he was free to leave—and our review should examine the totality of each part of the interrogation. Second, I continue to *751 believe that trial courts, appellate courts and parties are not served well by talismanic recitations of multifactor tests that this and other courts have announced for the purpose of measuring constitutional questions. The present case is a good example.

As to the first reason why I write separately, I note that a defendant may not be in custody at the beginning of a police **100 interrogation but may be determined to be in custody as the interrogation progresses. See, e.g., *Reinert* v. *Larkins*, 379 F.3d 76, 79 (3d Cir. 2004) (holding that defendant, while being transported in ambulance in presence of police officer, was not in custody when he made first statement but was in custody when he made second statement), cert. denied sub nom. *Reinert* v. *Wynder*, 546 U.S. 890, 126 S. Ct. 173, 163 L. Ed. 2d 201 (2005); see also *United States* v. *Martinez*, 602 Fed. Appx. 658, 659 (9th Cir. 2015) (holding that District Court improperly suppressed statements defendant made to police during first minute and forty-six seconds of interrogation because defendant was not in custody during that time). There is no reason that the opposite cannot be true: an interviewee may be met with circumstances that could constitute custody at the beginning of an interrogation, which might progress to a point where he might feel free to leave or he consents to further interrogation. Thus, at times, the issue of custody might call for a statement-by-statement examination, considering the circumstances at the time of each statement that the defendant seeks to suppress. See, e.g., *United States* v. *Thompson*, 976 F.3d 815, 824 (8th Cir. 2020) (determining custody based on relevant factors at time each statement was made during course of single traffic

stop); *Locke* v. *Cattell*, 476 F.3d 46, 52 (1st Cir.) (dividing interrogation into two parts and deciding custody for each part separately), cert. denied, 552 U.S. 873, 128 S. Ct. 177, 169 L. Ed. 2d 121 (2007).

***752** Upon my review of the record in the present case, I find there to be two distinct parts to the interrogation at issue, each requiring separate examination: the first twenty-one minutes before LaMaine advised the defendant that he was not under arrest and could leave, and the remainder of the interrogation. Neither the trial court nor the majority makes this distinction, which, in my opinion, is critical to the custody analysis in this case. Specifically, I agree with the majority, for the reasons it states, that the defendant was not in custody during the second portion of the interrogation. I cannot fully agree with the majority's analysis regarding the first part of the interrogation, however, because, in my view, several of the factors that it considers in "the totality of circumstances" have little or no relevance to the question of custody at that time.

It is undisputed that, from the time he arrived at the interrogation room, accompanied by Peter Bunosso, the supervisor of the defendant's probation officer, until the twenty-one minute mark of the interrogation, the defendant was given no *Miranda*[1] warnings and was never advised that he was free to leave or that he would not be arrested at the end of the interrogation. During those twenty-one minutes, in response to the officers' questioning, the defendant indicated that he had received a phone call from the victim on the night in question and acknowledged that the victim had asked to meet at a social club known as Robin's. The defendant denied that he went "down that way," however. The defendant then admitted that he had "most likely" driven a route that took him directly past Robin's at approximately 8:33 p.m. on the night of the murder. That admission placed the defendant momentarily in front of Robin's at the approximate time of the shooting. The defendant also acknowledged that, when he drove past ***753** Robin's, he knew the victim was there. The defendant continued to maintain, however, that he "rolled down through there" and did not see the victim. Although the defendant ultimately made more inculpatory statements, ****101** both after being told he could leave the interrogation at any time and during his second interview at the police station, the statements just recounted were themselves inculpatory and were ultimately used against the defendant at trial.

1 See *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

I consider the question of whether the defendant was in custody during the first twenty-one minutes of the interrogation a much closer question than whether he was in custody during the balance of the interrogation. In fact, I would have my doubts that the defendant was not in custody during those first twenty-one minutes were it not for the abundant federal case law holding that probation status does not create the level of coercion required to transform a noncustodial interrogation into a custodial one unless the defendant's probation officer orders him to attend an interview with the police or threatens that his probation would be violated if he refused the meeting. See, e.g., *Minnesota* v. *Murphy*, 465 U.S. 420, 426, 435, 104 S. Ct. 1136, 79 L. Ed. 2d 409 (1984). In light of this case law, I agree with the majority that the defendant was not in custody during the first twenty-one minutes of the interrogation. Specifically, I ultimately agree with the majority that the defendant did not sustain his burden of demonstrating that he was ordered, directed, or threatened to report to an interrogation. Without such evidence, and consistent with the great weight of federal case law, I cannot conclude that the defendant's status as a probationer establishes that he was in custody even before he was advised that he was free to leave at the twenty-one minute mark of the interrogation. In addition to the defendant's failure to offer any evidence that he was threatened or ordered to attend the interrogation, I ***754** believe the following facts, as discussed by the majority, along with facts the defendant did not prove, demonstrate sufficiently for me that the defendant was not restrained to the degree associated with a formal arrest during the first twenty-one minutes of the interrogation.

First, the defendant failed to offer any evidence that he objected to accompanying his probation officer, Shavonne Calixte, to Bunosso's office to meet the police officers.[2] Moreover, the tone and tenor of the ****102** interrogation were cordial, the defendant was not handcuffed or physically restrained, and the police officers did not physically threaten him, use force, or brandish their weapons.

2 Nevertheless, I note that I agree with the dissent in that I would not rely on Calixte's testimony describing how she escorted the defendant to her supervisor's office as in any way supporting a finding that the defendant "chose," voluntarily, either to meet or remain with the officers. The issue of whether Calixte informed the defendant that he had a choice to attend the interrogation was

hotly disputed at trial; Calixte's testimony was at best ambiguous on this issue, and the trial court made no findings on this issue. The trial court, which heard her testimony, was best suited to assess her credibility and whether her testimony was purposefully evasive. It is not for this court to assess witness credibility or to find facts. Both the majority and the dissent recount Calixte's testimony at length, and so I will not repeat it here. To the extent the majority suggests that we may review the record as a whole, including Calixte's testimony, and conclude that the defendant voluntarily chose to attend or remain in the meeting, I disagree. The trial court did not make any findings about whether the defendant had a "choice" to meet with the officers; nor did it specifically credit Calixte's testimony. The majority apparently considers itself free to "review the record in its entirety to determine whether a defendant's constitutional rights were infringed by the denial of a motion to suppress. *State* v. *Kendrick*, 314 Conn. 212, 218 n.6, 100 A.3d 821 (2014); see, e.g., *State* v. *Fields*, 265 Conn. 184, 191, 827 A.2d 690 (2003) (record on review of ruling on pretrial motion to suppress includes evidence adduced at trial); see also, e.g., *State* v. *Toste*, 198 Conn. 573, 576, 504 A.2d 1036 (1986)." (Internal quotation marks omitted.) Footnote 4 of the majority opinion. But this is true only for undisputed facts established in the record. See *State* v. *Edmonds*, 323 Conn. 34, 39, 145 A.3d 861 (2016); see also *State* v. *Castillo*, 329 Conn. 311, 340, 186 A.3d 672 (2018) (*D'Auria, J.*, dissenting).

Nevertheless, in reaching this conclusion, I note that I do not agree that all of the factors that the majority ***755** addresses are relevant to determine the issue of custody during the first twenty-one minutes of the interrogation. This, in turn, leads to the second reason why I write separately—to once again caution that I see danger in our overreliance on multifactor tests for undertaking such a " 'slippery' " task as measuring whether an individual is in custody. *State* v. *Mangual*, supra, 311 Conn. at 193, 85 A.3d 627;[3] see also ****103** ***756** *State* v. *Januszewski*, 182 Conn. 142, 158, 438 A.2d 679 (1980) ("[w]hat constitutes police custody for purposes of the *Miranda* warnings is not always self-evident") (overruled in part on other grounds by *State* v. *Hart*, 221 Conn. 595, 605 A.2d 1366 (1992)), cert. denied, 453 U.S. 922, 101 S. Ct. 3159, 69 L. Ed. 2d 1005 (1981). Although a list of factors can be useful as an issue spotting exercise, and reviewing courts (including this one) always note that the list is "nonexclusive," in practice, courts and litigants are inclined to use the factors as a checklist or as a point of comparison between the present case and cases in which a court has held that the defendant was or was not in custody based on particular facts. A too "heavy focus on enumerated ***757** factors, or comparisons to other precedents, may eclipse the ultimate inquiry before the court, which is case specific: whether a reasonable person in the defendant's position would believe that there was a restraint on [his] freedom of movement of the degree associated with a formal arrest." (Internal quotation marks omitted.) *State* v. *Castillo*, 329 Conn. 311, 341, 186 A.3d 672 (2018) (*D'Auria, J.*, dissenting).

3 One device that courts and counsel should employ to guard against overreliance on multifactor tests is to look back to the derivation of the test to see if it is truly applicable. Undertaking that examination in the present case reveals that the usefulness of the *Mangual* factors as a whole in these circumstances is debatable. In *Mangual*, this court explained that the ten factors it listed were the result of "[a] review of ... cases from this state, as well as federal and sister state cases involving the interrogation of a suspect *during a police search of his residence* ...." (Emphasis added.) *State* v. *Mangual*, supra, 311 Conn. at 196–97, 85 A.3d 627. Thus, these factors were developed from case law addressing whether a defendant was in custody when interrogated during a police search of his or her residence. Whether reasonable persons in that circumstance would feel free to leave their homes, or to tell the police to leave, is at least a somewhat different inquiry than an inquiry into whether custodial interrogation existed at a police station or a probation office. Less than one decade later, however, it is not clear to me that we have given any thought to whether each *Mangual* factor has any relevance to other alleged custodial circumstances or whether we have instead transformed those factors into a test that must be applied to all determinations of custody, regardless of the circumstances. See, e.g., *State* v. *Arias*, 322 Conn. 170, 177–79, 140 A.3d 200 (2016) (applying *Mangual* factors to determine if defendant was in custody when interrogated at police station); *State* v. *Garrison*, 213 Conn. App. 786, 810–11, 814–27, 278 A.3d 1085 (applying *Mangual* factors to determine custody when defendant was interrogated at hospital), cert. granted, 345 Conn. 959, 285 A.3d 52 (2022); *State* v. *Chankar*, 173 Conn. App. 227, 237–38, 162 A.3d 756 (applying *Mangual* factors to determine custody when defendant was interrogated at cemetery), cert. denied, 326 Conn. 914, 173 A.3d 390 (2017); *State* v. *Cervantes*, 172 Conn. App. 74, 87–88, 158 A.3d 430 (applying *Mangual* factors to determine custody when defendant was interrogated inside police vehicle), cert. denied, 325 Conn. 927, 169 A.3d 231 (2017). However, some of the *Mangual* factors that are clearly relevant to evaluating custody when a

defendant is interrogated inside his or her home—such as the number of officers present for the interrogation—appear to me often to be irrelevant when a defendant is interrogated at a police station, where, regardless of the number of officers present for the interrogation, the defendant could not leave without passing by numerous officers.

This further supports my caution against the use of multifactor tests. Many of this court's multifactor tests are simply a result of this court's having broadly surveyed—indeed, truly listing—the factors that have been determinative in prior cases. *State* v. *Geisler*, 222 Conn. 672, 610 A.2d 1225 (1992), is perhaps the classic example in our jurisprudence. In *Geisler*, in establishing a multifactor test for claims brought under the state constitution, we noted that, in some prior cases, one of the dispositive factors was relevant federal precedent, but in other prior cases, one of the dispositive factors was public policy concerns. See id., at 684–85, 610 A.2d 1225. Forever since, both federal precedent and public policy concerns have become part of the multifactor test, which, now, in my opinion, seems to focus more on the number of factors satisfied than on which factors are actually relevant to the circumstances at issue. See *Connecticut Coalition for Justice in Education Funding, Inc.* v. *Rell*, 295 Conn. 240, 401 n.2, 990 A.2d 206 (2010) (*Zarella, J.*, dissenting) ("question[ing] [*Geisler*'s] legitimacy on the ground that it is no more than a checklist from which to select [various interpretive] tools and that it provides no guidance as to the significance of selecting any particular method in any particular case" (internal quotation marks omitted)). Other examples abound. See, e.g., *State* v. *Victor O.*, 301 Conn. 163, 174, 20 A.3d 669 ("[r]ecognizing the indefiniteness inherent in applying [the] multifactor approach [under the test set forth in *State* v. *Porter*, 241 Conn. 57, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998)], we observed that [t]he actual operation of each factor, as is the determination of which factors should be considered at all, depends greatly on the specific context of each case" (internal quotation marks omitted)), cert. denied, 565 U.S. 1039, 132 S. Ct. 583, 181 L. Ed. 2d 429 (2011); *State* v. *Williams*, 204 Conn. 523, 540, 529 A.2d 653 (1987) (setting forth multifactor test for determining prejudice caused by prosecutorial impropriety after reviewing various factors that have been dispositive in prior cases); see also *Neil* v. *Biggers*, 409 U.S. 188, 199–200, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972) (employing multifactor test for determining reliability of identification despite use of suggestive procedures during confrontation procedure based on factors that have been relevant in prior cases).

In my view, the trial court's and the majority's reliance on certain of the *Mangual* factors illustrates not only the limits of a multifactor test but also the need to conduct our custody analysis on a statement-by-statement basis. Rather than look at the factors truly relevant to the circumstances at issue, both the trial court and the majority rely heavily on a survey of all of these factors. Although many of the factors that the majority relies on in holding that, as a whole, the defendant was not in custody during the entirety of the police interrogation also weigh in favor of holding that he failed to meet his burden of showing that he was in custody during both the first twenty-one minutes of the interrogation and the remainder of the interrogation, not all factors apply to both analyses. For example, I find the majority's reliance on certain factors—such as the number of times the defendant was told he was free to leave (seven), the fact that the interview lasted only ninety minutes and that he was ultimately not arrested after that interview—to be irrelevant to the question of whether he was in custody during the first twenty-one minutes of the interrogation. I address each of these factors in turn.

I agree with the majority that the fact that the defendant was advised—and advised repeatedly—that he was free to leave the interrogation room weighs heavily against the defendant's being in custody for the second portion of the interrogation. The defendant continued to answer questions despite being told he was free to ***758** leave and not under arrest. But he was never told this during the first twenty-one minutes of the interrogation. If conditions or circumstances were such that we might conclude that a defendant was in custody ****104** early in the interrogation, a belated advisement that he could leave of his own free will would not, in my view, cure the earlier custodial circumstance. See *People* v. *Barritt*, 325 Mich. App. 556, 570, 574–75, 926 N.W.2d 811 (2018) (holding that defendant was in custody when majority of questioning occurred before police told defendant he was not under arrest), appeal denied, —— Mich. ——, 928 N.W.2d 224 (2019). Thus, in my view, the officers' belated statements that the defendant was not under arrest and free to leave the interrogation have no weight in our custody determination regarding the first twenty-one minutes of the interrogation.

Nor does the fact that the interrogation lasted "only" ninety minutes warrant much, if any, emphasis in analyzing whether the defendant was in custody during the first twenty-one minutes. Although the duration of the interrogation might, in some cases, assist a court in determining the custody question, including whether the interview was fleeting or lasted what

anyone might objectively consider to be a "long" time, this factor seems to serve only as a comparator among reported decisions. I submit that it is used as such because it lends itself to an objective number, which is easy to compare to the case at hand. "That courts and litigants will seek to highlight or explain away certain factors, or compare and contrast the relevant factors in one case to those considered in another case, is a predictable result of court developed multifactor tests, including the *Mangual* factors for measuring custody." *State* v. *Castillo*, supra, 329 Conn. at 341, 186 A.3d 672 (*D'Auria, J.*, dissenting).

For example, the majority concludes that this factor does not weigh in favor of custody because this court previously has held that a defendant was not in custody ***759** despite a two and one-half hour interrogation. See *State* v. *Pinder*, 250 Conn. 385, 414, 736 A.2d 857 (1999). Because, however, a suspect in most instances does not know when the interrogation will end and does not know the length of other interrogations that were determined to be custodial or noncustodial in reported cases, we cannot credit the objectively reasonable person in the defendant's circumstances with such knowledge, and, thus, this fact is of very limited use in measuring whether the defendant was restrained to the degree associated with a formal arrest. See *United States* v. *Griffin*, 922 F.2d 1343, 1348 (8th Cir. 1990) ("[t]he length of the interrogation has been a[n] ... undeterminative factor in the analysis of custody"). Moreover, to the extent that this factor shows that the interrogation at issue did not last an objectively long time as a whole, this evidence is irrelevant to whether the defendant was in custody during the first twenty-one minutes of the interrogation when he had no knowledge of how much longer the interrogation would last. Thus, this factor plays no role in my determination of whether the defendant has met his burden of showing that he was in custody during the first twenty-one minutes of the interrogation. Nevertheless, the absence of this factor does not undermine my agreement with the majority that the defendant has failed to satisfy this burden.

Similarly, regardless of the fact that the defendant was not told that he was free to leave or was not under arrest during the first twenty-one minutes of the interrogation, the fact that he was not arrested at the end of the interrogation adds nothing to support a determination that he was not in custody during the first twenty-one minutes of the interrogation. Even if he is not arrested at the end of an interrogation, a defendant has no idea during the interrogation if he will be arrested. The only definitive way he will know if he is under ***760** arrest is either at the end of the interrogation, when the police officers decide ****105** whether to arrest him, or if he tries to leave before the interrogation is over. Even if that were minimally relevant to whether the circumstances of the interrogation as a whole were akin to an arrest,[4] I fail to see how this factor shines any light on the question of whether the circumstances of the interrogation were akin to a formal arrest during the first twenty-one minutes of the interrogation.

4 The majority likewise questions the relevance of this factor: "We acknowledge the tension with placing significant weight on this factor given that a suspect may not know at the outset of or during a particular interrogation whether he will be permitted to leave at the end of the interrogation. However, both the United States Supreme Court and this court have considered this factor in the totality of the circumstances that bear on a custody determination. Thus, although we do not place great weight on this factor, we nevertheless consider it in accordance with long-standing, established precedent in this area." Footnote 18 of the majority opinion; see *Howes* v. *Fields*, 565 U.S. 499, 509, 132 S. Ct. 1181, 182 L. Ed. 2d 17 (2012).

Nevertheless, I agree with the majority that the defendant has not sustained his burden of proving that he was in custody either during the first twenty-one minutes or during the second portion of the interrogation.

Accordingly, I respectfully concur in part.

ECKER, J., with whom McDONALD, J., joins, dissenting. The majority concludes that the defendant, Bernard A. Brandon, was not in custody during his first police interrogation for purposes of *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), even though the interrogation immediately followed a mandatory meeting with the defendant's probation officer, the interrogation was conducted by two armed police officers in a closed room inside a locked area of the probation building in which the defendant was not permitted to move about unescorted, and the police threatened to arrest the defendant if he refused ***761** to cooperate with their investigation. I cannot agree. In my view, the defendant's first interrogation took "place in a police-dominated atmosphere containing [inherent] pressures [that, by their very nature, tend] to undermine the individual's [ability to make a free and voluntary decision as to whether to speak or remain silent]";

(internal quotation marks omitted) *State* v. *Mangual*, 311 Conn. 182, 196, 85 A.3d 627 (2014); which is precisely the type of coercive environment that makes *Miranda* warnings necessary.

The fundamental flaw in the majority opinion is its failure to conduct the required analysis with due consideration for the single most important lesson of *Miranda* and its progeny, which is that modern interrogation techniques can purposefully and deliberately be employed—as they were in the present case—to create intense psychological pressure intended to overbear a suspect's will and to induce him to make self-incriminating statements. See, e.g., *Berkemer* v. *McCarty*, 468 U.S. 420, 433, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984) ("[t]he purposes of the safeguards prescribed by *Miranda* are to ensure that the police do not coerce or trick captive suspects into confessing ... [and] to relieve the inherently compelling pressures generated by the custodial setting itself, which work to undermine the individual's will to resist" (emphasis omitted; footnote omitted; internal quotation marks omitted)). The majority focuses far too narrowly on the supposed absence of physical restraints imposed on the defendant and correspondingly understates the very real psychological effect that the interrogating officers' pressure tactics had on the defendant. ****106** In the process, the majority loses sight of "the coercive pressure that *Miranda* was designed to guard against ...." *Maryland* v. *Shatzer*, 559 U.S. 98, 112, 130 S. Ct. 1213, 175 L. Ed. 2d 1045 (2010); see also *J. D. B.* v. *North Carolina*, 564 U.S. 261, 279, 131 S. Ct. 2394, 180 L. Ed. 2d 310 (2011) (recognizing ***762** importance of "internal" or "psychological" impacts on suspect's perception in determining whether suspect is in custody for purposes of *Miranda* (internal quotation marks omitted)); *Arizona* v. *Fulminante*, 499 U.S. 279, 287, 111 S. Ct. 1246, 113 L. Ed. 2d 302 (1991) ("coercion can be mental as well as physical" (internal quotation marks omitted)).

In short, the majority's custody analysis loses sight of the primary and essential purpose that *Miranda* was designed to serve and the evils it was intended to prevent. That purpose is to protect prophylactically against the coercive pressures that often arise in the specific context of police interrogations. Custody is "the touchstone for application of [the *Miranda*] warning requirement"; *United States* v. *Newton*, 369 F.3d 659, 671 (2d Cir.), cert. denied, 543 U.S. 947, 125 S. Ct. 371, 160 L. Ed. 2d 262 (2004); not because it has independent constitutional significance in this context, but because the United States Supreme Court has identified it as "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, 508–509, 132 S. Ct. 1181, 182 L. Ed. 2d 17 (2012). Thus, *Miranda* warnings are not required only when a suspect has been placed under formal arrest, but also when the circumstances under which the interrogation occurs give rise to the "coercive pressure [that] is *Miranda*'s underlying concern ...." *United States* v. *Newton*, supra, at 671; see *United States* v. *Griffin*, 922 F.2d 1343, 1349 (8th Cir. 1990) ("[the] indicia of custody [factors] relate to the specific police practices employed during questioning [that] tend to either mitigate or aggravate an atmosphere of custodial interrogation"). Because I do not believe that the majority opinion fulfills the promise of *Miranda* and its progeny, I respectfully dissent.

The following facts are relevant to the analysis. The defendant was on probation at the time of his interrogation ***763** and, as a condition of his probation, was required "to cooperate with his probation officer[s]" and to "follow their directions ...." On February 16, 2016, the defendant attended a mandatory meeting with his probation officer, Shavonne Calixte, at the Office of Adult Probation located in Bridgeport (probation building). The probation building is a secure facility, guarded by uniformed judicial marshals. Visitors must pass through a metal detector and security checkpoint on the first floor to access the second and third floors, which are occupied by the probation department. The offices on the second and third floors are within locked areas, and probationers may enter only with the assistance of an escort.

The defendant met with Calixte in a reporting room on the third floor of the probation building. At the conclusion of their meeting, Calixte informed the defendant that, "if he had a moment, he can speak to someone else who would like to talk to him." Calixte did not tell the defendant who wanted to talk to him or that he had a choice to decline to attend the meeting.[1] Calixte ***764** escorted the defendant to ****107** the second floor, where she was met by her supervisor, Chief Probation Officer Peter Bunosso.

1 The trial court did not find that Calixte informed the defendant that he had a choice to decline to attend the meeting in her supervisor's office, and the record reasonably cannot be construed to support such a finding. At the suppression hearing, Calixte testified that she "basically let [the defendant] know the office visit was concluded. We were done, and we were walking downstairs, but, if he had a moment, he can speak to someone else who would like to talk to him." The

following exchange then occurred between Calixte and defense counsel:

"[Defense Counsel]: Do you recall whether or not you gave [the defendant] any choice to ....

"[Calixte]: There's always a choice. Of course, I gave him a choice.

"[Defense Counsel]: You told him ... I'm going to take you downstairs now, okay. My supervisor wants to see you, but you don't have to see my supervisor. Is that your recollection?

"[Calixte]: I don't recall. I don't recall."

By far the most reasonable construction of Calixte's testimony, viewed in its entirety, is that she could not recall whether she informed the defendant that the downstairs meeting was not mandatory. Immediately following her mid-question declamation, in which she cut off counsel to explain that there is "always" a choice, Calixte was asked directly if she told the defendant that "[m]y supervisor wants to see you, *but you don't have to see my supervisor*." (Emphasis added.) Her answer: "I don't recall." Indeed, she emphasized that she did not recall what she told the defendant by repeating the concession twice. As discussed in more detail later in this opinion, in the absence of an advisement that the meeting was optional and that there would be no adverse consequences for declining to attend, a reasonable person in the defendant's position would not have believed that he had a voluntary choice to refuse to comply with Calixte's suggestion.

Bunosso escorted the defendant to Bunosso's office, which was located within a locked and secured area. Two armed police officers, Lieutenant Christopher LaMaine and Detective Ada Curet, were waiting for the defendant inside. Bunosso did not advise the defendant that he did not have to attend the meeting or that he was not required to answer the police officers' questions. Indeed, Bunosso did not converse with the defendant at all. Instead, Bunosso removed some work files and closed the door behind him, leaving the defendant alone in a closed room with two armed police officers in a locked area of the probation building.

LaMaine and Curet were wearing plain clothes, with their badges and guns visibly displayed. The officers did not brandish their weapons or physically restrain the defendant, but they also did not tell him that he was free to leave at the beginning of the interrogation or advise him of his *Miranda* rights.

During the first twenty-one minutes of questioning, LaMaine informed the defendant that, on the basis of witness statements and the victim's cell phone records, the police knew that the defendant had engaged in a heated argument with the victim on the night of the murder and that the victim had called the defendant and arranged to meet him at an establishment called Robin's. LaMaine also told the defendant that security ***765** camera footage in the area depicted the defendant's vehicle driving to Robin's and stopping there for one and one-half to two minutes at the time that the victim was killed. Faced with this alleged evidence, the defendant confessed that he had had an argument with the victim, that the victim had called and asked to meet him at Robin's, and that the defendant had driven by Robin's at the approximate time of the shooting, but the defendant denied that he had stopped and talked to the victim. Thus, prior to being advised that he was not obligated to answer the police officers' questions or that he was free to leave, the defendant provided the police with strong evidence, out of his own mouth, that implicated himself in the victim's murder.

After the defendant's inculpatory admissions, LaMaine told the defendant for the first time that he could "walk away right now if [he] want[s]" and that "nothing [he] ****108** say[s] is going to get [him] arrested today ...." LaMaine also informed the defendant, however, that he was the prime, indeed the only, suspect in the victim's murder because he had been alone outside with the victim on the bitterly cold night that the victim was killed. According to LaMaine, the police had acquired security footage that portrayed the defendant driving away as the victim staggered out of a vehicle suffering from a gunshot wound.[2] LaMaine advised the defendant ***766** that now was the time for him to tell his version of events because it would not be deemed credible if he waited until later. LaMaine told the defendant that he "can walk out right now" but cautioned that, "if you do, we gotta go on the facts we have. There's just the two of you there. We know that as a fact because this isn't June. This was a zero degree night. There's two of you, and, like I said, there's witnesses there. So, we can basically say that, you know, somehow he gets shot when it's just the two of you. Yeah, we're probably gonna be writing a murder warrant for you. And down the road, you might want to say, 'okay, well, I want to tell my side of the story, like he pulled a gun or something.' And not that you can't. You're gonna. But it's gonna not sound very credible because everybody when they're jammed up says, 'oh well, let me tell you, it was self-defense, or he pulled a gun.' Right, you know. Everybody does. So, we're saying, if that's what happened, tell us now because it's kind of credible now. We'll say [the defendant] was cooperative, he met with us voluntarily, he told us this, and we'll check it out. But, you know, later on you're gonna, you're gonna come up with that story later

on. I know that. But it just won't be credible because, yeah, everybody comes up with it once they're arrested. So, we're not here to, you know, put any pressure on you. You're, like I said, ***767** free to go, you can walk out now. I think these guys, they don't have any questions for you. But, God, how does that look if you're us?"

2 No such evidence was adduced at trial, and it appears that LaMaine lied to the defendant regarding the existence of the evidence to induce a confession. I recognize that, in *Oregon* v. *Mathiason*, 429 U.S. 492, 97 S. Ct. 711, 50 L. Ed. 2d 714 (1977), the United States Supreme Court held that such factual misrepresentations have "nothing to do with whether [a defendant] was in custody for purposes of the *Miranda* rule." Id., at 496, 97 S.Ct. 711. But see id., at 497, 97 S. Ct. 711 (Marshall, J., dissenting) (recognizing that defendant would not feel free to leave during questioning "after being told by the police that they thought he was involved in a burglary and that his fingerprints had been found at the scene"). I am, of course, "bound to accept the law as formulated by the Supreme Court of the United States" to resolve the defendant's federal constitutional claim; (internal quotation marks omitted) *State* v. *Dickson*, 322 Conn. 410, 472 n.11, 141 A.3d 810 (2016) (*Zarella*, *J.*, concurring in the judgment), cert. denied, —— U.S. ——, 137 S. Ct. 2263, 198 L. Ed. 2d 713 (2017); and, therefore, I am required to agree with the majority that LaMaine's factual misrepresentations during the first interrogation have no bearing on the *Miranda* custody analysis. But see footnote 6 of this opinion. My own view is that we know a great deal more about false confessions today than we did forty-five years ago, and Justice Marshall's dissent in *Mathiason* has been proved prescient. As I explained in my concurring and dissenting opinion in *State* v. *Griffin*, 339 Conn. 631, 262 A.3d 44 (2021), cert. denied, —— U.S. ——, 142 S. Ct. 873, 211 L. Ed. 2d 575 (2022), "lying to suspects about evidence against them contributes to false confessions" by making suspects "feel trapped by the inevitability of evidence against them." (Internal quotation marks omitted.) Id., at 730–31, 262 A.3d 44 (*Ecker, J.*, concurring in part and dissenting in part). Because such deceptive interrogation tactics contribute to the coercive nature of an interrogation, they should factor into the custody analysis.

LaMaine explicitly threatened to arrest the defendant soon thereafter. A few minutes after suggesting that it was now or never to give his version of events, LaMaine ****109** told the defendant that, "honestly, if we leave it like this, we're gonna write a murder warrant for you, and, if it was your buddy, because someone was with you, tell us. But you're by yourself. It's two of you. I got two guys that are hot, that ... had a couple drinks, that agreed they're gonna meet, that are the only people there. And one of them was shot. How do you explain it? Try." When the defendant did not offer an explanation, LaMaine repeated the point again, saying that, "[i]f we leave here with this story, we're gonna write a murder warrant for you. Period." Curet added, "[w]e have no choice."

At this point in the interview, the defendant changed his story, explaining that he was not alone in the car, as he previously had stated, but was accompanied by a passenger named Outlaw, who shot and killed the victim. According to the defendant, Outlaw was in the passenger seat when he stopped at Robin's. Outlaw exited the car and spoke to the victim, shots were fired, and then Outlaw jumped back into the car. The defendant drove away and dropped Outlaw off on Connecticut Avenue in Bridgeport shortly after the shooting.

LaMaine and Curet pressed the defendant for details regarding Outlaw's identity, explaining that they had to prove a case against Outlaw and that, if they could not do that, then the defendant was "the one going" and was not going to "walk ...." The defendant began searching his cell phone for Outlaw's contact information. The defendant provided LaMaine and Curet with Outlaw's phone number and physical description and ***768** informed them that Outlaw previously had been convicted in connection with a shooting. LaMaine and Curet continually questioned the credibility of the defendant's account of events for the next forty minutes, but the defendant maintained that Outlaw had been present at the scene and had shot the victim. At the conclusion of the interrogation, which lasted approximately ninety minutes from start to finish, LaMaine and Curet seized the defendant's cell phone and arranged to meet him at the police station later that evening to identify Outlaw from photographs.

The defendant subsequently was arrested and charged with the victim's murder, in violation of General Statutes § 53a-54a, among other crimes. Prior to trial, the defendant moved to suppress, among other things, the statements he made during the first interrogation, arguing in pertinent part that his statements were procured in violation of *Miranda*. The trial court denied the defendant's motion, finding that, although the defendant was subject to interrogation for purposes of *Miranda*, the defendant was not in custody because he was never handcuffed or physically restrained, the police officers did not brandish their weapons, the tone of

the interrogation was cordial, and the defendant was informed multiple times that he was free to leave. The defendant's statements were admitted into evidence at his jury trial, and the defendant was convicted of the lesser included offense of manslaughter in the first degree with a firearm, in violation of General Statutes § 53a-55a (a).

The sole issue on appeal is whether the defendant was in custody during the first interrogation and, as such, entitled to *Miranda* warnings. As we previously have explained, the term "custody" in the context of *Miranda* and its progeny "is a term of art that specifies circumstances that are thought generally to present a serious danger of coercion." (Internal quotation marks ***769** omitted.) *State* v. *Mangual*, supra, 311 Conn. at 193, 85 A.3d 627, quoting *Howes* v. *Fields*, supra, 565 U.S. at 508–509, 132 S.Ct. 1181. The custody inquiry is important "because the coercion inherent in custodial interrogation blurs the line between ****110** voluntary and involuntary statements" and "heightens the risk that statements obtained therefrom are not the product of the suspect's free choice." (Internal quotation marks omitted.) Id., at 191, 85 A.3d 627. The court in *Miranda* was concerned with protecting criminal defendants from "the incommunicado nature of [police] interrogations" and the concomitant "psychological pressure"; *United States* v. *LeBrun*, 363 F.3d 715, 722 (8th Cir. 2004), cert. denied, 543 U.S. 1145, 125 S. Ct. 1292, 161 L. Ed. 2d 105 (2005); which "work to undermine the individual's will to resist and to compel him to speak [when] he would not otherwise do so freely .... By adequately and effectively appris[ing] [a suspect] of his rights and reassuring the suspect that the exercise of those rights must be fully honored, the *Miranda* warnings combat [the] pressures inherent in custodial interrogations ... [and] enhance the trustworthiness of any statements that may be elicited during an interrogation." (Citations omitted; internal quotation marks omitted.) *State* v. *Mangual*, supra, at 191, 85 A.3d 627; see *J. D. B.* v. *North Carolina*, supra, 564 U.S. at 269, 131 S.Ct. 2394 ("the physical and psychological isolation of custodial interrogation can undermine the individual's will to resist and ... compel him to speak [when] he would not otherwise do so freely" (internal quotation marks omitted)).

Courts have struggled to define the "slippery" concept of custody. *Oregon* v. *Elstad*, 470 U.S. 298, 309, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985). The federal cases since *Miranda* have articulated an objective, two part analysis, known as the "reasonable person test ...." (Internal quotation marks omitted.) *State* v. *Mangual*, supra, 311 Conn. at 193, 85 A.3d 627. First, the court must ***770** ascertain whether, "in light of the objective circumstances of the interrogation ... a reasonable person [would] have felt [that] he or she was not at liberty to terminate the interrogation and [to] leave." (Citation omitted; internal quotation marks omitted.) Id., quoting *Howes* v. *Fields*, supra, 565 U.S. at 509, 132 S.Ct. 1181. Determining "whether there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest"; (internal quotation marks omitted) *Maryland* v. *Shatzer*, supra, 559 U.S. at 112, 130 S.Ct. 1213; "is simply the first step in the analysis, not the last." *Howes* v. *Fields*, supra, at 509, 132 S.Ct. 1181. This is because the restraint on the suspect's freedom of movement does not, standing alone, demonstrate that the suspect is subject to the type of coercive "concerns that powered [*Miranda*] ...." Id., at 514, 132 S. Ct. 1181.[3] Thus, if the freedom of movement prong is satisfied, a court must examine the second prong of the reasonable person test, which asks "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *State* v. *Mangual*, supra, at 193, 85 A.3d 627, quoting *Howes* v. *Fields*, supra, at 509, 132 S.Ct. 1181. "Only if the answer to this second question is yes was the person in custody for practical purposes ... and entitled to the full panoply of protections prescribed by *Miranda*." (Internal quotation ****111** marks omitted.) *State* v. *Mangual*, supra, at 194–95 n.12, 85 A.3d 627.

3 For example, a suspect may not be free to walk away from an interrogation conducted in his or her own home, or while incarcerated, or during the course of a traffic stop or other lawful detention. See *United States* v. *Faux*, 828 F.3d 130, 135–36 (2d Cir. 2016) (recognizing that suspect might not feel free to leave or terminate interrogation conducted in his or her own home, but nonetheless not all in-home interrogations are custodial for purposes of *Miranda*); see also *Maryland* v. *Shatzer*, supra, 559 U.S. at 113–14, 130 S.Ct. 1213 (same for interrogation of prison inmate); *Berkemer* v. *McCarty,* supra, 468 U.S. at 437, 104 S.Ct. 3138 (same for interrogation during traffic stop).

The majority states that I have "inappropriately collapse[d] the free to leave inquiry with the restraint to the degree associated with a formal arrest inquiry." ***771** Footnote 12 of the majority opinion. To the contrary, I am fully aware that the free to leave inquiry is only the first step in a two part analysis. The second part of the analysis, as I state in the preceding paragraph and reference throughout this opinion, asks "whether the relevant environment presents the same

inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Howes* v. *Fields*, supra, 565 U.S. at 509, 132 S.Ct. 1181.[4] Indeed, the second part of the custody inquiry is critical to my analysis because it identifies precisely the issues that I believe are overlooked by the majority. As *Howes* and other cases explain, the second question is necessary because *Miranda* is concerned with a *particular kind of coercion*—the coercive pressures created by "interrogations that take place in a police-dominated atmosphere containing [inherent] pressures [that, by their very nature, tend] to undermine the individual's [ability to make a free and voluntary decision as to whether to speak or remain silent] ***772** ...." (Internal quotation marks omitted.) *State* v. *Mangual*, supra, 311 Conn. at 196, 85 A.3d 627. The second inquiry is necessary because the circumstances triggering *Miranda* will not necessarily be present merely because the interrogation is conducted in a location that coincidentally happens to restrict the suspect's freedom of movement. See footnote 3 of this opinion. *Miranda*, in sum, is implicated when the police have not formally arrested a suspect but nonetheless employ interrogation practices, whether physical or psychological, that deliberately generate the same kind of coercive pressures as would an actual arrest.

4 Ironically, it is the majority that collapses the custody inquiry and that fails to attend to the second part of the two part analysis prescribed by *Howes*. In lieu of asking whether the circumstances surrounding the interrogation present the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*, the majority skips that inquiry and substitutes a different one. The substitute, which is repeated with talismanic reverence dozens of times by the majority, disregards the coercive pressures prong and focuses solely on whether the defendant was subjected to restraint to a degree associated with a formal arrest. The majority's analytical shortcut results in a tautology by asking the ultimate question first. A reviewing court cannot determine whether the restraint on a suspect's freedom of movement rose to the level of a formal arrest without first asking whether the pressures brought to bear on a suspect were the same type of coercive pressures against which *Miranda* was designed to protect. Stated simply, the "restraint to a degree associated with a formal arrest" inquiry is the end product of the two part analysis, not the predicate question. To determine whether a suspect was restrained to the degree associated with a formal arrest, a reviewing court must ask whether the totality of the circumstances (physical *and* psychological) would combine (1) to lead a reasonable person in those circumstances to believe that he was not free to leave or terminate the interrogation, and (2) to give rise to the same type of inherently coercive pressures as the station house questioning at issue in *Miranda*.

The in-custody inquiry is flexible and fact intensive. Indeed, we have emphasized that there is "no definitive list of factors" because the custody analysis must, by necessity, "be based on the circumstances of each case ...." (Internal quotation marks omitted.) *State* v. *Mangual*, supra, 311 Conn. at 196, 85 A.3d 627. That having been said, the analysis is conducted with attention "to those kinds of concerns" at the heart of *Miranda*, namely, *Miranda*'s "expressed concern with protecting defendants against interrogations that take place in a police-dominated atmosphere ****112** containing [inherent] pressures [that, by their very nature, tend] to undermine the individual's [ability to make a free and voluntary decision as to whether to speak or remain silent] ...." (Internal quotation marks omitted.) Id. We have identified the following nonexclusive list of factors (*Mangual* factors) to guide the custody analysis: "(1) the nature, extent and duration of the questioning; (2) whether the suspect was handcuffed or otherwise physically restrained; (3) whether officers explained that the suspect was free to leave or not under arrest; (4) who initiated the encounter; (5) the location of the interview; (6) the length of the detention; (7) the number of officers in the immediate vicinity of the questioning; (8) whether the officers were armed; (9) whether the officers displayed their weapons or ***773** used force of any other kind before or during questioning; and (10) the degree to which the suspect was isolated from friends, family and the public." Id., at 197, 85 A.3d 627.

It is vital to keep in mind that *Mangual* never intended to formulate a rote checklist for mechanical application in every case. The foregoing factors are not exhaustive, and "a heavy focus on enumerated factors, or comparisons to other precedents, may eclipse the 'ultimate [custody] inquiry' before the court, which is case specific ...." *State* v. *Castillo*, 329 Conn. 311, 341, 186 A.3d 672 (2018) (*D'Auria*, *J.*, dissenting); see also *J. D. B.* v. *North Carolina*, supra, 564 U.S. at 270–71, 131 S.Ct. 2394 ("[r]ather than demarcate a limited set of relevant circumstances, we have required police officers and courts to examine all of the circumstances surrounding the interrogation ... including any circumstances that would have affected how a reasonable person in the suspect's position would perceive his or her freedom to leave" (citation omitted; internal quotation marks omitted)).

In my view, the majority's mechanical application of the *Mangual* factors obscures the proper analysis with respect to

the defendant's custodial status.[5] For this ***774** reason, I see no need to respond point by point to the majority's conclusion regarding each factor, and doing so would serve only to replicate what I consider to be a flawed methodology. With respect to the factors that are relevant to this case, I ****113** believe the majority improperly assesses their weight and importance in deciding the ultimate issue, namely, whether a reasonable person in the defendant's position would have believed that his freedom of movement had been restrained to the degree associated with a formal arrest.

5 The majority denies applying the *Mangual* factors in a "mechanical" fashion; footnote 14 of the majority opinion; but I find that the majority's rote recitation of each *Mangual* factor, followed by a conclusion as to whether that individual factor is "the functional equivalent of a formal arrest," obscures and frustrates the goal of determining whether these factors—in their totality—combine "to present a serious danger of coercion" for purposes of *Miranda*. (Internal quotation marks omitted.) *State* v. *Mangual*, supra, 311 Conn. at 193, 85 A.3d 627. Although some of the *Mangual* factors standing alone may be insufficient to establish that a suspect was in custody, it is important to remember that the factors are not exclusive, none of the factors stands in isolation, and the essential issue remains a wholistic assessment of the nature and degree of coercive pressure that a reasonable person would have felt under the circumstances.

Numerous courts and commentators have cautioned against the dangers that attend the mechanical application of multifactor tests. "Although multifactor tests are ubiquitous, they are imperfect. ... When judges excessively rely on multifactor tests ... there is a risk of mechanical jurisprudence," which "may unduly restrict judges from tailoring their analysis to the case." C. Guthrie et al., "Blinking on the Bench: How Judges Decide Cases," 93 Cornell L. Rev. 1, 41 (2007); see, e.g., *Daniels* v. *Essex Group, Inc.*, 937 F.2d 1264, 1271 (7th Cir. 1991) (observing that Seventh Circuit has declined to adopt multifactor test in Title VII sexual harassment cases because of "the potential for a mechanical application that overlooks or underemphasizes the most important features of the harassment inquiry").

First, although the tone of the interrogation was cordial, the iron fist beneath the velvet glove was palpable. The interrogating officers made it clear that the defendant was the prime, if not the only, suspect in the victim's murder; indeed, they told him that his arrest was both inevitable and forthcoming unless he remained in the room and answered their questions. The United States Supreme Court has observed that an "officer's subjective view that the individual under questioning is a suspect ... bear[s] [on] the question whether the individual is in custody for purposes of *Miranda*" if the information is "communicated or otherwise manifested to the person being questioned ...." *Stansbury* v. *California*, 511 U.S. 318, 324, 114 S. Ct. 1526, 128 L. Ed. 2d 293 (1994). Although "[e]ven a clear statement from an officer that the person under interrogation is a prime suspect is not, in itself, dispositive of the custody issue, for some suspects are free to come and go until the police decide to make an arrest," the communication of such information may "affect how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of ***775** action." (Internal quotation marks omitted.) Id., at 325, 114 S. Ct. 1526. Stated another way, in the present case, the officers' statements to the defendant that he was the sole and primary focus of their murder investigation "would have affected how a reasonable person in [the defendant's] position would perceive his or her freedom to leave." Id.; see *United States* v. *Griffin*, supra, 922 F.2d at 1348 ("[a]lthough custody is not inferred from the mere circumstance that the police are questioning the one whom they believe to be guilty, the fact that the individual has become the focus of the investigation is relevant to the extent that the suspect is aware of the evidence against him and this awareness contributes to the suspect's sense of custody" (internal quotation marks omitted)); see also *State* v. *Castillo*, supra, 329 Conn. at 348, 186 A.3d 672 (*D'Auria*, *J.*, dissenting) ("[a]n officer stating that he believes that the suspect committed a crime and has evidence to prove it may lead a person in the suspect's position and hearing those allegations to conclude that the officer will not permit him to leave").

The pressure on the defendant to remain in the room and to answer the officers' questions was increased exponentially when LaMaine told him that, not only was he the prime suspect in the victim's murder, but a warrant for his arrest would be forthcoming if he did not provide his side of the story to the interrogating officers.[6] LaMaine's statements to the defendant were threats of arrest, plain and simple, and they must be considered ***776** as part of the in-custody analysis to determine ****114** whether the defendant was subjected to pressures that deprived him of a meaningful choice about whether to speak or remain silent. "[N]umerous courts have indicated that whether law enforcement officers threatened arrest or other penalties to induce cooperation is an important element to assess in evaluating whether a defendant was in custody." *United States* v. *Blakey*, 294 F. Supp. 3d 487, 494

(E.D. Va. 2018); see id., at 494–95 (citing cases); see also, e.g., *United States* v. *DiGiacomo*, 579 F.2d 1211, 1214 (10th Cir. 1978) (holding that defendant was in custody for *Miranda* purposes, in part because he "was told he could be arrested and jailed that evening" if he did not meet and cooperate with officers). Threats of arrest are relevant because "[o]ne of the primary concerns motivating the *Miranda* protections is the danger of coercion [that] results from the interaction of custody and official interrogation. ... This danger is manifest, for instance, [when] the defendant feel[s] compelled to speak by the fear of reprisal for remaining silent or in the hope of more lenient treatment should he confess." (Citations omitted; internal quotation marks omitted.) *United States* v. *Blakey*, supra, at 494; see also *Illinois* v. *Perkins*, 496 U.S. 292, 297, 110 S. Ct. 2394, 110 L. Ed. 2d 243 (1990) ("[q]uestioning by captors, who appear to control the suspect's fate, may create mutually reinforcing pressures that the [c]ourt has assumed will weaken the suspect's will").

6 LaMaine admitted at the suppression hearing that he did not, in fact, have probable cause to obtain a warrant for the defendant's arrest at the time of the first interrogation. True or false, the threats of arrest plainly were intended to have a coercive effect on the defendant's choice to terminate the interview. See, e.g., *United States* v. *LeBrun*, supra, 363 F.3d at 721 (deceptive interrogation tactics are relevant to custody analysis if "a reasonable person would perceive the coercion as restricting his or her freedom to depart"); see also *Berkemer* v. *McCarty*, supra, 468 U.S. at 442, 104 S.Ct. 3138 ("the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation").

Second, although the defendant was not handcuffed or physically restrained, it is undisputed that his freedom of movement was severely restricted. The record does not reveal whether the door to the interrogation room was locked, but it is clear that the area of the building in which the defendant was questioned was locked and that the defendant was not free to move about the building without an escort.[7] The fact that the ***777** defendant had been escorted to a restricted, locked and secured area, not accessible to the public, where he was left in the immediate control of armed police officers and then systematically questioned for ninety minutes about his alleged involvement in a recent murder, when considered in combination with the other factors discussed in this opinion, indicates that the defendant's freedom of movement had been restrained to the degree associated with a formal arrest. See, e.g., ****115** *United States* v. *Byram*, 145 F.3d 405, 409 and n.1 (1st Cir. 1998) (defendant "unquestionably [was] subject to deliberate custodial interrogation" because he was "already in custody, was taken to a separate room in the courthouse, left effectively in [a police officer's] immediate control, and then questioned systematically about his role in a criminal episode"); *United States* v. *Hartwell*, 296 F. Supp. 2d 596, 606–607 (E.D. Pa. 2003) (defendant was subject to custodial interrogation because he "was in a small private room, surrounded by two [Transportation Security ***778** Administration] agents and a police officer blocking the exit, and had just produced a suspicious item that he had been exceedingly reluctant to reveal"), aff'd, 436 F.3d 174 (3d Cir.), cert. denied, 549 U.S. 945, 127 S. Ct. 111, 166 L. Ed. 2d 255 (2006). As the Fifth Circuit Court of Appeals has explained, "[i]nterrogations in public settings are less [police-dominated] than [station house] interrogations; the public nature reduces the hazard that officers will resort to overbearing means to elicit incriminating responses and diminishes the individual's fear of abuse for failure to cooperate." *United States* v. *Chavira*, 614 F.3d 127, 135 (5th Cir. 2010); see *Berkemer* v. *McCarty*, supra, 468 U.S. at 438, 104 S.Ct. 3138 ("exposure to public view both reduces the ability of an unscrupulous policeman to use illegitimate means to elicit self-incriminating statements and diminishes the [suspect's] fear that, if he does not cooperate, he will be subjected to abuse"). When a defendant is questioned by multiple police officers in a private, secured area, confronted with inconsistencies in his story, and accused "of being untruthful, all while [the officers] deliberately [withheld] *Miranda* warnings because [he] had not yet confessed to a crime," such questioning "bear[s] [all] the hallmarks of traditional custodial interrogation ...." *United States* v. *Chavira*, supra, at 135.

7 The majority states that the defendant failed to fulfill his burden of establishing that he was in custody, in part because there is no evidence in the record that "there were any limitations placed on [the defendant's] ability to leave the secured areas of the building or the building itself." The assertion is arguable but very weak. The undisputed evidence in the record established that the area of the building in which the interrogation took place was locked, secured, and required an escort. At the end of the interrogation, moreover, LaMaine can be heard asking "if Pete's there," presumably referring to whether Peter Bunosso, the Chief Probation Officer, could escort the defendant out of the secured area of the building. I am unaware of anything in the record that would support a contrary factual determination. Arguably, in the absence of a specific finding by the trial court on this issue, the record does not permit us to conclude *with certainty*

> that, although the defendant clearly was required to be escorted to his meeting, he was not required to be escorted out of the building after his meeting ended. See, e.g., *Small* v. *Commissioner of Correction*, 286 Conn. 707, 716, 946 A.2d 1203 (2008) ("[w]hen the record on appeal is devoid of factual findings ... it is improper for an appellate court to make its own factual findings"), cert. denied sub nom. *Small* v. *Lantz*, 555 U.S. 975, 129 S. Ct. 481, 172 L. Ed. 2d 336 (2008). But, based on the undisputed facts regarding the extent of security in the building, specifically, the requirement of an escort from the entrance of the building to the defendant's meeting with Calixte and the fact that Calixte escorted the defendant to Bunosso's office, a reasonable person in the defendant's position would have believed that he could not leave without assistance.

Last, but by no means least, the defendant was a probationer, and the interrogation took place in a physical setting that highlighted the coercive nature of his probationary status. LaMaine and Curet initiated the interrogation at the probation building following the defendant's mandatory meeting with his probation officer. "[W]hen the confrontation between the suspect and the criminal justice system is instigated at the direction of law enforcement authorities, rather than the suspect, custody is more likely to exist." *United States* v. *Griffin*, supra, 922 F.2d at 1351. As the majority recognizes, the location of the interview, in the probation office, "provides ***779** some support for the defendant's contention that he was in custody." Further support can be found in the inherent psychological pressures faced by a suspect whose liberty already has been restricted by the constraints associated with probation and who faces further restraints, such as revocation of probation and incarceration, if he does not comply with the directives of his probation officer. See, e.g., *J. D. B* v. *North Carolina*, supra, 564 U.S. at 279, 131 S.Ct. 2394 (in determining whether suspect was in custody, court must consider "[the] 'internal' or 'psychological' impact on perception"); *United States* v. *Axsom*, 289 F.3d 496, 500 (8th Cir. 2002) ("[i]n deciding whether a person was 'in custody,' we must examine both the presence and extent of physical and psychological restraints placed [on] the person's liberty during the interrogation").

To understand the psychological pressures felt by a probationer in the defendant's position, I begin by reviewing the nature and function of probation, which is a penal status intended by design to be coercive. "[P]robation is, first and foremost, a penal alternative to incarceration .... [P]robationers ... do not enjoy the absolute liberty to which every citizen is ****116** entitled, but only ... conditional liberty properly dependent on observance of special [probation] restrictions." (Internal quotation marks omitted.) *State* v. *Faraday*, 268 Conn. 174, 180, 842 A.2d 567 (2004). Probationers are not in custody by virtue of their status; nor are they at liberty to exercise their will like free citizens. Probationers agree to a set of standard conditions of probation and, in some cases, additional conditions imposed by the probation officer or the court. For example, all probationers are instructed to "refrain from violating any criminal law of the United States, this state or any other state ...." General Statutes § 53a-30 (a) (7); see, e.g., *State* v. *Lopez*, 341 Conn. 793, 795–96, 268 A.3d 67 (2022). At times, the conditions of probation ***780** may require the probationer to "[s]ubmit to a search of [his] person, possessions, vehicle or residence when the [p]robation [o]fficer has a reasonable suspicion to do so." (Internal quotation marks omitted.) *State* v. *Moore*, 112 Conn. App. 569, 574, 963 A.2d 1019, cert. denied, 291 Conn. 905, 967 A.2d 1221 (2009). Additional conditions may also be imposed. See, e.g., *State* v. *Imperiale*, 337 Conn. 694, 707, 255 A.3d 825 (2021) ("the Office of Adult Probation properly may impose conditions of probation that place significant restrictions on a probationer's liberty during the term of his or her probation, if such restrictions are reasonably necessary"); *State* v. *Johnson*, 75 Conn. App. 643, 652, 817 A.2d 708 (2003) ("[p]ostjudgment conditions imposed by adult probation are ... part of an administrative function that [§ 53a-30] expressly authorizes as long as it is not inconsistent with any previously court-imposed condition"); see also General Statutes § 53a-30 (a) (17) ("the court may ... order that the defendant ... satisfy any other conditions reasonably related to the defendant's rehabilitation").

A probationer who is found to be in violation of probation may have his probation revoked and be ordered to serve the unexecuted portion of his sentence in jail. See, e.g., *State* v. *Fagan*, 280 Conn. 69, 105, 905 A.2d 1101 (2006) (observing that revocation proceeding may "requir[e] an end to the conditional freedom obtained by a defendant at a sentencing that allowed him or her to serve less than a full sentence" (internal quotation marks omitted)), cert. denied, 549 U.S. 1269, 127 S. Ct. 1491, 167 L. Ed. 2d 236 (2007). The probation revocation hearing offers less protection to probationers than a criminal proceeding. See *State* v. *Faraday*, supra, 268 Conn. at 183, 842 A.2d 567 ("[A probation] revocation proceeding ... is not a criminal proceeding. ... It therefore does not require all of the procedural components associated with an adversar[ial] criminal proceeding." ***781** (Internal quotation marks omitted.)); see also *Gagnon* v. *Scarpelli*, 411 U.S. 778, 782,

93 S. Ct. 1756, 36 L. Ed. 2d 656 (1973) ("[p]robation revocation, like parole revocation, is not a stage of a criminal prosecution"). "This is because it is well established that a probation revocation proceeding is not a criminal proceeding but is instead more akin to a civil proceeding." (Internal quotation marks omitted.) *State* v. *Dudley*, 332 Conn. 639, 648, 212 A.3d 1268 (2019). At a revocation proceeding, the state must prove each alleged violation of probation only by a preponderance of the evidence (rather than beyond a reasonable doubt); see, e.g., *State* v. *Esquilin*, 179 Conn. App. 461, 470–71, 179 A.3d 238 (2018); and the rules of evidence do not apply to such proceedings. See Conn. Code Evid. § 1-1 (d) (4); see also *State* v. *Maietta*, 320 Conn. 678, 691, 134 A.3d 572 (2016) (recognizing that relevant hearsay evidence is admissible at probation revocation hearing within discretion of trial court); *State* v. *Jacobs*, 229 Conn. 385, 392, 641 A.2d 1351 (1994) (observing "that, ****117** unlike criminal trials, in which the exclusionary rule typically applies, in probation revocation hearings, the exclusionary rule typically does not apply").

In light of the restrictions imposed on a probationer's liberty and the severe repercussions for noncompliance with the conditions of probation, a probationer is likely to interpret any instruction or guidance from a probation officer as mandatory and feel pressured to comply with the officer's requests, even if they are not compulsory. See *Fare* v. *Michael C.*, 442 U.S. 707, 722, 99 S. Ct. 2560, 61 L. Ed. 2d 197 (1979) (observing that probationers may develop "a relationship of trust and cooperation" with their officers); *People* v. *Elliott*, 494 Mich. 292, 315, 833 N.W.2d 284 (observing that "inherently compelling pressures" exist in relationship between parolee and parole officer and "that both parolees and probationers are under heavy psychological pressure ***782** to answer inquiries made by their supervising officers" (internal quotation marks omitted)), cert. denied, 571 U.S. 1077, 134 S. Ct. 692, 187 L. Ed. 2d 559 (2013); *State* v. *Roberts*, 32 Ohio St. 3d 225, 230, 513 N.E.2d 720 (1987) (stressing heavy psychological pressure to answer questions posed by probation officer, who is figure of authority and trust).[8] In my view, a probationer in the defendant's position would have perceived Calixte's escorted trip to the office of her supervisor at the conclusion of his mandatory probation meeting as a compulsory requirement, rather than a voluntary option.

[8] As a separate matter, I have serious concerns about the role that the Office of Adult Probation played in the interrogation of the defendant. Probation officers act under the auspices of the Judicial Branch in requiring the defendant to submit to the conditions of probation. See *State* v. *Jacobs*, supra, 229 Conn. at 393, 641 A.2d 1351 ("the probation process operates as an arm of the judiciary, not of the police or prosecution"); *State* v. *Fuessenich*, 50 Conn. App. 187, 199, 717 A.2d 801 (1998) ("when a probation officer demands a probationer's compliance with a condition of probation, he or she is acting as a representative of the [J]udicial [B]ranch and not as a police officer"), cert. denied, 247 Conn. 956, 723 A.2d 813, cert. denied, 527 U.S. 1004, 119 S. Ct. 2339, 144 L. Ed. 2d 236 (1999). Because probation officers are representatives of the Judicial Branch, rather than law enforcement, their involvement in actively facilitating police access to probationers, within the probation office itself, for the purpose of furthering a criminal investigation threatens to impair the public perception of their neutrality.

The majority concludes that the defendant voluntarily chose to attend the meeting in the office of Calixte's supervisor because he failed to produce any evidence that Calixte issued a direct order or threatened to initiate proceedings to violate his probation if he refused to attend. I see no reason why the defendant should be required to produce affirmative evidence of a direct order or threat to satisfy the in-custody requirement. The issue is not whether Calixte expressly ordered or threatened the defendant to coerce him to attend the interrogation but whether a reasonable person in the defendant's position would have perceived Calixte's request as an order under all of the surrounding circumstances, ***783** such that refusal to comply could result in violation of the defendant's probation. The record is devoid of any evidence that Calixte ever informed the defendant that there would be no adverse consequences if he declined to attend the meeting in her supervisor's office. Given the absence of such an advisement, the pervasive restrictions on liberty imposed by the conditions of probation, and the additional physical and psychological restraints operative in the probation building following the defendant's mandatory probation meeting, I believe that a reasonable person in the defendant's position would ****118** have perceived Calixte's request as a command. By focusing on the absence of evidence of an explicit order or threat, rather than on how Calixte's statements would have been perceived by a probationer in the defendant's position, the majority misapprehends the nuanced and fact intensive nature of the *Miranda* custody inquiry.[9]

[9] The majority states that the record is ambiguous "as to whether Calixte informed the defendant that he was not required to attend" the meeting and that "[i]t defies logic,

when confronted with an ambiguous record, to draw the inference favorable to the party who bears the burden of proof." Footnote 13 of the majority opinion. The record may be ambiguous regarding Calixte's precise statements to the defendant, but the record is unambiguous with respect to the conditions surrounding the defendant's interrogation, including the fact that the defendant was escorted to a locked and secured area of the building —where he was not permitted to move about freely and where he was questioned in a closed room by two armed police officers. These facts, when considered in combination with the other psychological factors at play in the probation context, clarify any ambiguity in the record regarding whether a reasonable person in the defendant's position would have believed that he had a real and meaningful choice to attend the meeting in the office of Calixte's supervisor.

The majority relies on *Minnesota* v. *Murphy*, 465 U.S. 420, 438, 104 S. Ct. 1136, 79 L. Ed. 2d 409 (1984), to conclude that the defendant's fear of revocation of his probation was unreasonable "because 'the [s]tate could not constitutionally carry out a threat to revoke probation for the legitimate exercise of the [f]ifth [a]mendment privilege' ...." Footnote 13 of the majority opinion. Critical to the United States Supreme Court's holding in *Murphy* was the fact that the conditions of probation at issue in that case did not require the probationer to answer the probation officer's questions. See *Minnesota* v. *Murphy*, supra, at 438, 104 S.Ct. 1136. The federal courts of appeals have recognized that the rule articulated in *Murphy* is not controlling when a probationer is required as a condition of probation to comply with a probation officer's directives and answer questions truthfully. Under those circumstances, it is reasonable for a probationer to believe that the refusal to answer questions would result in a revocation of probation. See *McKathan* v. *United States*, 969 F.3d 1213, 1228 (11th Cir. 2020) (concluding that reasonable person on federal supervised release would understand that he could be punished for his "refusal to answer his probation officer's questions" and, therefore, that petitioner's statements were obtained in violation of fifth amendment); *United States* v. *Saechao*, 418 F.3d 1073, 1078–1079 (9th Cir. 2005) (rejecting government's claim that "a probationer is subject to threat of penalty only when the state *explicitly* announces that it will impose a penalty for the invocation of his [f]ifth [a]mendment rights" and concluding that probationer's statements were involuntary because he "was required, as a condition of his probation, to 'promptly and truthfully *answer all* reasonable inquiries' " (emphasis in original)). Because the defendant in the present case was required as a condition of his probation "to cooperate with his probation officer[s]" and to "follow their directions," it would have been objectively reasonable for a person in the defendant's position to fear revocation of his probation.

***784** Given that a reasonable person in the defendant's position would have believed that he was required as a condition of his probation to meet and cooperate with LaMaine and Curet, just as he was required to meet and cooperate with his probation officer under threat of revocation of probation, I find the analysis of the Eighth Circuit Court of Appeals in *United States* v. *Ollie*, 442 F.3d 1135 (8th Cir. 2006), to be instructive. In that case, the defendant, Johnny Lee Ollie, Jr., was on parole when he was instructed by his parole officer to meet with the police following his regularly scheduled parole meeting. Id., at 1136. The court found that "Ollie neither initiated contact with the ... police nor voluntarily acquiesced to questioning." Id., at 1138. The court reasoned that "Ollie's conduct revealed little more than an absence of resistance" and that it was "clear ... that ... Ollie was responding to pressure." Id. Because the failure to attend the meeting ****119** could have resulted in the revocation of Ollie's parole; id.; the court noted that "a reasonable person in ... Ollie's position would have been extremely reluctant either to refuse ***785** the interview or to terminate it once it began." Id., at 1140. This one factor, "[a]bove all else," led the court to conclude that the "the failure to advise ... Ollie of his rights pursuant to *Miranda* requires the suppression of his initial oral confession ...." Id., at 1140.

Similarly, in *United States* v. *Barnes*, 713 F.3d 1200 (9th Cir. 2013), the Ninth Circuit Court of Appeals held that the defendant, Michael D. Barnes, was in custody for purposes of *Miranda* because he "did not appear voluntarily but rather was told to appear for a meeting with his parole officer under threat of revocation of parole." Id., at 1204. The meeting did not occur on its usual day or location in the lobby of the parole building but, rather, "Barnes was searched and escorted into the interior of the building through an electronically locked door." Id., at 1203. Behind the locked door were "two [Federal Bureau of Investigation (FBI)] agents waiting to question [Barnes]" about a drug transaction. Id. "The FBI agents directly confronted Barnes with evidence of guilt [for approximately ten to twenty minutes] before administering the *Miranda* warnings." Id., at 1204. The court determined that Barnes was in custody and entitled to *Miranda* warnings at the commencement of the interrogation, even though "he was not handcuffed, arrested, or physically intimidated in any way," because Barnes "was in a police-dominated, confined

environment in which his presence was mandated by his parole terms ....” Id., at 1204.

I find the logic and reasoning of *Ollie* and *Barnes* persuasive. The defendant did not voluntarily appear at the meeting with LaMaine and Curet and affirmatively consent to answer their questions. Instead, he was under extreme “pressure resulting from a combination of the surroundings and circumstances”; id., at 1204–1205; not the least of which was the looming prospect of revocation of his probation if he refused to comply. Accordingly, the failure to issue *Miranda* warnings necessitates ***786** the suppression of the defendant's inculpatory admissions during his first interrogation.

The fact that LaMaine told the defendant that he was free to leave does nothing to alter my conclusion regarding the defendant's custodial status. Indeed, a more careful analysis of LaMaine's ostensibly liberatory comments demonstrates that they actually conveyed a strongly coercive message. To begin with, the defendant was not informed that he could “walk out” of the room until twenty-one minutes into the interrogation, after he already had implicated himself in the victim's murder. This delay is significant.[10] The practice of ****120** questioning a suspect first, and then advising him that he is free to leave after eliciting a confession, is similar to the “question first” practice expressly denounced in the *Miranda* context in *Missouri* v. *Seibert*, 542 U.S. 600, 611–13, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004) (opinion announcing judgment). In *Seibert*, the United States Supreme Court held that the “police protocol for custodial ***787** interrogation that calls for giving no warnings of the rights to [remain silent] and [to] counsel until interrogation has produced a confession” was unconstitutional. Id., at 604, 124 S. Ct. 2601. The manifest intent of the question first practice “is to get a confession the suspect would not make if he understood his rights at the outset; the sensible underlying assumption is that with one confession in hand before the warnings, the interrogator can count on getting its duplicate, with trifling additional trouble.” Id., at 613, 124 S. Ct. 2601. Midstream *Miranda* warnings typically are constitutionally ineffective because they fail “to convey a message that [the suspect] retained a choice about continuing to talk.” Id., at 617, 124 S. Ct. 2601. Likewise, I believe that midstream advisements regarding a suspect's freedom to leave, after a confession already has been elicited through persistent questioning, fail to convey to a suspect that he has a choice regarding his participation in the interrogation.

10 The majority dismisses the delay on the basis of *State* v. *Pinder*, 250 Conn. 385, 736 A.2d 857 (1999), and *State* v. *Lapointe*, 237 Conn. 694, 678 A.2d 942, cert. denied, 519 U.S. 994, 117 S. Ct. 484, 136 L. Ed. 2d 378 (1996), but the majority's reliance on these cases is misplaced. See footnote 16 of the majority opinion. *Pinder* and *Lapointe* stand for the proposition that a defendant's inculpatory admissions do not transform a noncustodial interrogation into a custodial interrogation for purposes of *Miranda*. The issue in the present case is not whether the defendant's inculpatory admissions transformed a previously noncustodial interrogation into a custodial one; the issue is whether the interrogation was custodial from the outset and whether the officers' advisements that the defendant was free to leave, given twenty-one minutes after the commencement of the interrogation and *after* eliciting inculpatory admissions from the defendant, would have led a reasonable person in the defendant's position to believe that he was not in custody. The majority has cited no authority for its conclusion that such advisements have a “powerful effect” despite their significant delay, and I have found no authority to support that counterintuitive supposition. Permitting free to leave advisements to have a nunc pro tunc powerful effect would allow interrogating officers to inoculate themselves against the administration of *Miranda* warnings simply by waiting until after a suspect has made damaging admissions to inform him that he is free to leave.

Additionally, and perhaps most troubling, is the fact that LaMaine's statements regarding the defendant's freedom to leave were not without restriction—the defendant was told repeatedly that he was free to leave, *but, if he chose to do so, he would be arrested for the victim's murder*.[11] This is the very opposite of a ***788** voluntary choice: the defendant was explicitly advised that his only chance of avoiding arrest was to cooperate and tell the police his side of the story. The nature and extent of LaMaine's threats of arrest, which I have described in detail, are precisely the type of coercive interrogation tactic that is intended to overbear a suspect's will and to elicit a confession. See, e.g., *United States* v. *Johnson*, 351 F.3d 254, 261, 263 (6th Cir. 2003) (“[p]olice promises of leniency and threats of prosecution can be objectively coercive,” particularly if they cannot be “lawfully executed”); ****121** cf. *State* v. *Griffin*, 339 Conn. 631, 711–12, 262 A.3d 44 (2021) (*Ecker*, *J.*, concurring in part and dissenting in part) (recognizing that there is nothing improper about giving “[a defendant] an accurate statement of the law, consistent with the known facts of the [crime],” but that falsehoods intended

to misrepresent law are coercive), cert. denied, —— U.S. ——, 142 S. Ct. 873, 211 L. Ed. 2d 575 (2022).[12]

11 Even unqualified free to leave advisements must be assessed in light of the surrounding circumstances and are ineffective if those circumstances would lead a reasonable person to believe otherwise. See, e.g., *State* v. *Mangual*, supra, 311 Conn. at 204 n.16, 85 A.3d 627 ("advising the suspect that he was not under arrest and was free to leave was insufficient to support a conclusion that he was not in custody for purposes of *Miranda*"); see also *United States* v. *Hashime*, 734 F.3d 278, 284 (4th Cir. 2013) ("[E]ven to the extent that law enforcement told [the defendant] that he did not have to answer questions and was free to leave, that by itself does not make the interrogation [noncustodial]. Although a statement that the individual being interrogated is free to leave may be highly probative of whether, in the totality of the circumstances, a reasonable person would have reason to believe he was in custody, such a statement is not talismanic or sufficient in and of itself to show a lack of custody." (Internal quotation marks omitted.)); *United States* v. *Craighead*, 539 F.3d 1073, 1088 (9th Cir. 2008) ("The mere recitation of the statement that the suspect is free to leave or terminate the interview ... does not render an interrogation [noncustodial] per se. We must consider the delivery of these statements within the context of the scene as a whole.").

12 As I stated previously in this opinion, LaMaine admitted at the suppression hearing that he did not, in fact, have probable cause to arrest the defendant at the time he threatened to obtain an arrest warrant during the first interrogation. See footnote 6 of this opinion. Again, whether the threat was true or a ploy does not make a difference in the present analysis, in the sense that the issue is whether the defendant would have reasonably *perceived* the threat to be true. See id. Nonetheless, I cannot disregard entirely the fact that LaMaine himself manifestly believed that it was necessary to exert psychological pressure on the defendant to persuade him to remain in the room and talk, by communicating to the defendant false information about the strength of the evidence and his vulnerability to arrest. The point is not that the information was false but that the interrogating officer, by making it a theme of the interrogation, evidently found it necessary to influence the defendant's decision making.

The majority relies heavily on the officers' "free to leave" commentary as a significant indicator that a reasonable person in the defendant's position would have believed that he was, in fact, free to terminate the interrogation ***789** and to request an escort out of the building. I believe, to the contrary, that the comments conveyed—and were intended to convey—precisely the opposite meaning to the defendant. Because the defendant was told that he could not end the interrogation without suffering a significant adverse consequence (arrest for the victim's murder), LaMaine's statements taken as a whole actually exacerbated, rather than mitigated, the coercive nature of the police-dominated environment. See *United States* v. *DiGiacomo*, supra, 579 F.2d at 1214; *United States* v. *Blakey*, supra, 294 F. Supp. 3d at 494; see also, e.g., *United States* v. *Czichray*, 378 F.3d 822, 825 (8th Cir. 2004) (threats of arrest are relevant to custody analysis), cert. denied, 544 U.S. 1060, 125 S. Ct. 2514, 161 L. Ed. 2d 1109 (2005); *State* v. *James B.*, 129 Conn. App. 342, 347, 19 A.3d 264 (same), cert. denied, 302 Conn. 910, 23 A.3d 1248 (2011).

The majority acknowledges that threats of arrest "may have an effect on a reasonable person's perception that he is free to leave" but concludes that the threats of arrest in the present case would not have led the defendant to believe that he "was restrained to a degree associated with a formal arrest" because the defendant was told he would be arrested in the *future* but was not under arrest *now*. Footnote 12 of the majority opinion. The majority's conclusion regrettably sanctions yet one more transparent ploy for the police to evade the requirements of *Miranda*: simply inform the suspect that, if he chooses to remain silent, his freedom will end tomorrow rather than today. By approving this technique, the majority ignores the plain fact that an explicit threat of an impending future arrest will dilute or even altogether eradicate the significance of advisements that a person is free to leave. Its claim is unsupported by case law and contrary to common sense. It cannot seriously be maintained that a threat by the interrogating officers to arrest a suspect in the near future, but ***790** not right now, unless the suspect remains and answers questions will have no significant impact on the person's perception that he is truly free to leave. In addition to the other factual circumstances discussed at length in this opinion, the interrogating officers informed the defendant that they had sufficient evidence ****122** to arrest him for the victim's murder and that they would procure an arrest warrant if he terminated the interrogation or refused to tell his side of the story. Given the officers' use of "incriminating information *against* [*the defendant*]" and threats of arrest to "leverage their authority over [him]," I believe that a reasonable person in the defendant's position would have perceived his freedom of action to have been restricted to the degree associated with a formal arrest. (Emphasis in original.) *United States* v.

Panak, 552 F.3d 462, 469 (6th Cir. 2009). Accordingly, the defendant's inculpatory admissions in his first interrogation should have been suppressed.

The state appears to argue that the admission of the defendant's statements in his first interrogation, if improper, was harmless because the defendant's statements in his second interrogation, which was preceded by *Miranda* warnings and in which the defendant made the same inculpatory admissions, properly were admitted into evidence. I cannot agree. As I previously explained, in *Missouri* v. *Seibert*, supra, 542 U.S. at 600, 124 S.Ct. 2601, the United States Supreme Court held that the police could not evade the requirements of *Miranda* by engaging in the "question first" stratagem of eliciting an unwarned confession before administering *Miranda* warnings, and then eliciting the same confession again, unless "a reasonable person in the suspect's shoes would ... have understood [the *Miranda* warnings] to convey a message that [he or] she retained a choice about continuing to talk." Id., at 617, 124 S. Ct. 2601 (opinion announcing judgment). The court in *Seibert* enumerated five nonexclusive factors to determine whether the bifurcated procedure will pass ***791** constitutional muster in any particular case: "[1] the completeness and detail of the questions and answers in the first round of interrogation, [2] the overlapping content of the two statements, [3] the timing and setting of the first and the second, [4] the continuity of police personnel, and [5] the degree to which the interrogator's questions treated the second round as continuous with the first." Id., at 615, 124 S. Ct. 2601; see *State* v. *Donald*, 325 Conn. 346, 360 n.8, 157 A.3d 1134 (2017) (acknowledging that *Seibert* was "plurality" opinion but nonetheless adopting its analysis to assess admissibility of second warned confession).

I conclude that the *Miranda* warnings administered prior to the defendant's second interrogation were constitutionally ineffective under *Seibert*. The defendant's second interrogation was comparable in length to the first interrogation and occurred approximately five hours later at the Bridgeport police station. The interrogating officers, Curet and Detective Robert Winkler, treated the second interrogation as a mere continuation of the first. Indeed, at the commencement of the second interrogation, Winkler informed the defendant that they were just seeking to "continue the conversation that [the defendant] had" earlier that day "to work out a couple more details on this." As the majority recognizes, "[f]or the most part ... during the second [interrogation], the police officers asked the defendant to review the account he had provided to them during the first [interrogation]." Under these circumstances, the second interrogation clearly was not "distinct from the first, unwarned and inadmissible [interrogation]," and should have been suppressed.[13] ****123** *Missouri* v. *Seibert*, supra, 542 U.S. at 612, 124 S.Ct. 2601 (opinion announcing judgment).

13 The state also argues that the admission of the defendant's statements during the first interrogation "was harmless because the defendant's statements during [that interrogation] did not amount to a confession." The exclusionary rule, of course, is not limited to outright confessions of guilt. See *Miranda* v. *Arizona*, supra, 384 U.S. at 476, 86 S.Ct. 1602 ("The warnings required and the waiver necessary in accordance with [*Miranda*] are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by a defendant. No distinction can be drawn between statements [that] are direct confessions and statements [that] amount to 'admissions' of part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner; it does not distinguish degrees of incrimination."). The present case illustrates the harmful effects that can result from incriminating statements short of a full confession. The state's case against the defendant was not strong—there were no eyewitnesses to the victim's murder or any physical or forensic evidence implicating the defendant in the crime. In my view, the defendant's admission that he had had a heated argument with the victim, drove to meet the victim, and was present when the victim was shot and killed likely had a profound impact on the jury and contributed to its guilty verdict. Under these circumstances, the admission of the defendant's statements cannot be deemed harmless beyond a reasonable doubt. See, e.g., *State* v. *Mangual*, supra, 311 Conn. at 214, 85 A.3d 627 (state bears burden of proving that violation of defendant's *Miranda* rights was harmless beyond reasonable doubt, and erroneous admission of statements procured in violation of *Miranda* is not harmless if it "may have had a tendency to influence the judgment of the jury" (internal quotation marks omitted)).

***792** Taken together, the circumstances surrounding the questioning of the defendant do not permit me to conclude that the defendant voluntarily subjected himself to a ninety minute police interrogation at the end of his mandatory probation meeting. It is especially troubling that the majority reaches the opposite conclusion with no suggestion of disapproval as to the coercive and deceptive interrogation methods employed by the police officers in this case. Indeed, it appears to normalize deliberate and strategic coercion and

manipulation as a feature of police interrogation by explicitly acknowledging that "[i]t is undeniable that the defendant was questioned in a coercive environment" but concluding that "a coercive environment, without more, does not establish that an interrogation was custodial." Text accompanying footnote 12 of the majority opinion. The coercive pressures applied to the defendant in the present case far exceeded those that are inherent in the power differential between interrogator and suspect. See, e.g., *Oregon* v. *Mathiason*, 429 U.S. 492, 495, 97 S. Ct. 711, 50 L. Ed. 2d 714 (1977) (recognizing that "[a]ny interview of one ***793** suspected of a crime by a police officer will have coercive aspects to it"). The pressures felt by the defendant were not merely the result of coercion in the air—the ambient and unavoidable dynamics inherent in the power imbalance that exist any time armed police officers interrogate a private individual. Instead, the coercion was deliberately created and directly applied to the defendant, with the intent to manipulate and pressure him to confess to the crime under investigation. It is not too much to require police officers, at the very least, to advise a suspect of his constitutional rights, as prescribed by *Miranda* and its progeny, before undertaking such an interrogation. Our decision today gives police officers an incentive to evade the requirements of *Miranda* merely by telling a suspect that he is free to leave but explaining why doing so will result in his arrest.

The simple truth is that such methods ultimately do great harm to the very legal order put forward to justify those methods in any given case. No public good is served when we reward official coercion accomplished by sly techniques designed to evade constitutional principles. Our approval ****124** of such methods reflects badly on the criminal justice system and, over time, erodes public confidence in the fairness and legitimacy of the process. The only positive news is that it remains an open question whether the state constitution provides broader prophylactic protection in this context. See *State* v. *Purcell*, 331 Conn. 318, 321, 203 A.3d 542 (2019) (adopting "a more protective prophylactic rule" for *Miranda* rights under state constitution). Because the defendant did not raise an independent state constitutional claim on appeal, we must leave the resolution of that issue for another day. See footnote 3 of the majority opinion.

For the foregoing reasons, I believe that the defendant was in custody at the time of his first interrogation and entitled to the full panoply of protections prescribed ***794** by *Miranda*. Because the defendant's inculpatory statements should have been suppressed, I respectfully dissent.

All Citations

217 Conn. 702, 287 A.3d 71

STATE OF CONNECTICUT

NO. FBT-CR16-0290067-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	J.D. OF FAIRFIELD
V.	:	AT BRIDGEPORT
BERNARD A. BRANDON	:	JULY 19, 2019

PRESENT: HON. EARL B. RICHARDS, III, JUDGE

JUDGMENT

Upon the information of C. Robert Satti, Jr., Supervisory Assistant State's Attorney for the Judicial District of Fairfield, charging the said BERNARD A. BRANDON with the crimes of MURDER, CRIMINAL POSSESSION OF A PISTOL OR REVOLVER, and CARRYING A PISTOL WITHOUT A PERMIT, the defendant appeared with his attorney, Joseph G. Bruckmann, Public Defender. The defendant subsequently waived a hearing in probable cause and was put to plea. The defendant, for his plea, said "NOT GUILTY" and elected to be tried by a jury.

An appearance was later filed on the defendant's behalf by attorney John R. Gulash.

An amended information was filed on May 14, 2019 by David R. Applegate, Assistant State's Attorney for the Judicial District of Fairfield, charging the said BERNARD A. BRANDON with the crimes of MURDER and CARRYING A PISTOL WITHOUT A PERMIT. A separate amended information was filed charging the defendant with the crime of CRIMINAL POSSESSION OF A PISTOL OR REVOLVER.

Following the conclusion of evidence but prior to deliberations beginning, the defense made an oral motion for acquittal as to both counts of the amended information. The court (E. Richards, J.) denied the motion as to the MURDER charge, but granted the motion as to the CARRYING A PISTOL WITHOUT A PERMIT charge.

A second amended long form information was filed on May 29, 2019 by David R. Applegate, Assistant State's Attorney for the Judicial District of Fairfield, charging the said BERNARD A. BRANDON with the crime of MURDER.

A full hearing was held and the case was committed to the jury who returned a verdict of NOT GUILTY to the MURDER charge, but a verdict of GUILTY to the lesser included offense of MANSLAUGHTER IN THE FIRST DEGREE WITH A FIREARM. Said verdicts were accepted and ordered recorded by the court. It is therefore considered by the court that BERNARD A. BRANDON is GUILTY of the crime of MANSLAUGHTER IN THE FIRST DEGREE WITH A FIREARM in violation of section 53a-55a (a) of the Connecticut General Statutes.

The court thereupon sentenced the defendant to be committed to the custody of the Commissioner of Correction for a term of TWENTY-SEVEN (27) YEARS JAIL [FIVE (5) YEARS mandatory minimum] on the MANSLAUGHTER IN THE FIRST DEGREE WITH A FIREARM count. The state's attorney entered a *nolle prosequi* as to the CRIMINAL POSSESSION OF A PISTOL OR REVOLVER count. The defendant is to stand committed until he has complied with the judgment.

By the Court,

Ernest C. Robear

Ernest C. Robear, Esq.
Deputy Chief Clerk

NO: FBT-CR16-0290067-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF FAIRFIELD
v.	:	AT BRIDGEPORT, CONNECTICUT
BERNARD BRANDON	:	MAY 14, 2019

BEFORE THE HONORABLE EARL B. RICHARDS, III, JUDGE
AND JURY

A P P E A R A N C E S :

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THE COURT: Good morning, ladies and gentlemen. We're here for argument regarding the suppression hearing that was held yesterday. The defendant is up. Is there anything we need to address before the parties argue, defense or state?

ATTY. APPLEGATE: The state, Your Honor, did submit two long form Informations as Your Honor had requested yesterday. So we have the amended long form Information that has the -- the first and third count, the murder and the pistol without a permit charge. And then I submitted another Information with the same docket number. I just labeled it with a Sub 2, amended long form Information Sub 2. And that has the criminal possession of a pistol or revolver.

THE COURT: All right.

ATTY. APPLEGATE: So we broke it up into two Informations. I understand Your Honor wanted to bifurcate that for the purposes of --

THE COURT: Yeah. If it comes to pass -- in the event of -- and obviously it's discretionary on the part of the state. If it comes to pass that the state wishes to pursue the criminal possession of a firearm of a convicted felon the Court is prepared at the appropriate time to instruct the jury they have one final duty to undertake after they've come to a guilty verdict on the pistol without a permit. And

that will be the issue of whether the defendant was a convicted felon while he possessed that pistol. Obviously, if there's a stipulation to that effect, I'll read the stipulation into the record in front of the jury. But before that -- and that only -- that depends on a number of eventualities that may or may not come to pass.

ATTY. APPLEGATE: Right.

THE COURT: So I think that it's prudent to do it to resolve this matter in a way agreed to by the parties and not mentioning the defendant's previous felony record in front of the jury because obviously that would risk, you know, prejudicing them -- unduly prejudicing them against the defense. So the Court is prepared to adopt the agreement of the parties in this regard.

ATTY. APPLEGATE: Also, Your Honor, I drafted a memo, which I provided a copy of it to Attorney Gulash, regarding something that we discussed in chambers, some information that come to light that the State found out about yesterday and immediately disclosed to the Court and to the defense.

THE COURT: Right. It could be -- the information, and it'll be part of the record, could be described as exculpatory. The State, in my mind, is while under an ongoing duty to provide defense with all the exculpatory information should be lauded

for being forthright in this regard. And even though it's -- it's just doing its duty as a prosecutor, I still think that there's some -- well, I'll leave my comments at that.

Anything else you want to add, Counsel?

ATTY. GULASH: Just briefly, Your Honor. Also, the -- the State brought to our attention that in the resubmitted Information there had been a -- I guess --

THE COURT: Oh, the --

ATTY. GULASH: -- we can refer to it as a Scribner's error in terms of all along we were aware of the alleged time of the incident being 8:35 P.M. and the State saw that it had been incorrectly listed at 10:35 and so that's been corrected. We understand it to have been a typo error in drafting the original Information.

The only other thing, Your Honor, is that I indicated yesterday that I intended to file as exhibits for this proceeding, and I have provided the Court with a copy of the two warrants that I had mentioned yesterday, one of which is the warrant for the seizure of the telephone and the other is for the seizure of the telephone records.

So if there is no objection, I would be asking that they be marked as exhibits for the proceeding. Copies have been reviewed by the State prior to my

providing them to the clerk.

THE COURT: All right. Insofar, the request is granted absent -- does the State wish to be heard?

ATTY. APPLEGATE: No. We actually also put in this -- the DVD that has the three interviews on it. So I'd ask that all these items, Attorney Gulash's items and mine by marked today.

THE COURT: All right.

ATTY. GULASH: And --

THE COURT: So ordered.

ATTY. GULASH: And, Your Honor, we further understand based upon at least in conference discussions that the Court is going to defer for the time being any ruling subject to further review by the Court. And just kind of a gentlemen's agreement at the present time that there would be no effort by the State to offer evidence derived from the telephone until further ruling by the Court.

THE COURT: If there is --

ATTY. GULASH: Yup.

THE COURT: -- obviously, you indicated that --

ATTY. GULASH: Yup.

THE COURT: -- you were going to object to any evidence and if there's an issue and the State wishes to -- if the State wishes to get it -- the phone admitted into evidence the Court will look at it at this time. But this time my understanding is the

Court -- that the State is not trying to offer the actual phone or the contents of the phone into evidence but that may change. Is that correct?

ATTY. APPLEGATE: That is correct, Your Honor.

THE COURT: All right.

ATTY. GULASH: All right. And that -- other than that, Your Honor, Counsel's prepared to argue.

THE COURT: All right. It's defense's motion so I'll hear -- and the burden -- so I'll hear the defense and then the state.

ATTY. GULASH: Yes, Your Honor. Your Honor, I know the Court has had the benefit of both the memos that have been provided by both counsel, and largely have made our, for lack of a better word, substantive case law cites and argument there and I think I'm going to confine my remarks mainly to what I understand is really a fact-based determination by the Court here, fact-based, but based upon what the applicable case is. And I know that there would be, to a large extent, reliance on both sides on -- on the *Mangual*, I guess, is the proper pronunciation of the case, Your Honor.

So, knowing it's largely fact-based, essentially the Court is going to be considering whether or not the objective circumstances what a reasonable person in the defendant's position would have -- would have believed was in the functional equivalent police

custody. I don't think realistically, although if the Court invites argument I'll go there, but I think that it certainly was an interrogation respective of, you know, the starting with the first some, you know, hour and a half to the second one of two years, the third one a half hour or so. And I think the pivotal issue is really -- is going to be the analysis of the -- the factual record -- the extended factual record and the question of custody.

Your Honor, that -- and then to a large extent probably the very, very big part of the evidence in relation to hopefully in sustaining my burden of proof is the exhibit containing the various interviews, the first of which being the most important in connection with the Court's overall analysis. And to a certain extent the Court, depending on the Court's ruling, needn't to spend a lot of time on -- on the second and third.

But what I'd like to do, Your Honor, is in terms of identifying what I really know, or at least in using *Mangual* as my guy in that, you know, the Court talks in terms of that the -- you know, the first initial inquiry by the Court of this free to leave inquiry by the Court and ultimately again whether or not a reasonable person in the defendant's position would believe that there was a restraint on his freedom of movement to the degree associated with a

formal arrest.

And then the Court goes into really suggested, almost like an identification case, Your Honor, factors that well, no one being dispositive and there less not being exclusive, but factors that over the years have at least been the focal point of other courts in relation to assessing the question of -- of custody.

And I would submit, Your Honor, that -- that in relation to those that are identified as ones of particular concern to -- to appellate courts the -- I think in this case defense is on the winning end, so to speak. But -- but prior to that, it doesn't appear that there's a great deal of stock attached to either to what the subjective view of the police involved, you know, as in them expressing opinion as far as they're concerned. They're sure the person's free to leave. Or even the other side of that in hearings where a particular person that expresses an opinion, whether it be by testimony of their belief that they shouldn't, but rather the Court's really looking at it from the perspective of an objective -- objective reasonable person based upon the circumstances that are apparent in a particular case.

That in that regard, Your Honor, we'll start with saying a key factor is whether or not it was contact initiated by the police or not. So at least

a factor here, that on the winning side, so to speak, the defense, is that this is definitely conduct initiated by the police. Initiated by the police in what I would -- so we start out at least as far as that being here. The functional equivalent of somebody really being caught by surprise somewhat disarming atmosphere another factor for the Court to consider. And as in the manner in which the police initiated that contact, as in, Your Honor, that somebody in the somewhat friendly confine, somewhat friendly in the sense of routine probation meeting in the -- I use the words, and the Court can describe based upon the factual record here, but certainly a rather structured environment, you know, between metal detectors, guards, locked access to an inner area, one inner area where one would normally meet with one's probation officer. You know, it was described as some sort of a meeting room, you know, cubicles but a meeting room, you know, behind a locked door on the third floor, to then being directed to go with her to another location in another locked area on the second floor and with -- but I think the record is clear that although, first of all, the officer certainly knows that she didn't express any opinion about that he, you know, shouldn't go with her or that didn't have to go with her, but rather directed to come with him as best as

she can recall. But all she really knew was to see the chief.

The chief in turn was aware that the defendant was a person of interest in connection with an investigation. How much detail, he couldn't really recall. But his general recollection was a person of interest, something had been set up in advance, and not just a, you know, 30 seconds before but rather something had been set up before, at least a day before to his recollection. No effort to educate the other probation officer as to -- and the police officer indicated he certainly -- he doesn't remember giving any directives but he certainly wouldn't have given a lot of detail because maybe misinformation could've been conveyed.

But in any event, in this particular case, and we're talking about particular facts and circumstances in given case, a person is being directed by a probation officer the Court can assess whether or not a probation officer based upon just judicial knowledge of the status of a probation officer I will -- I will use the word, and it's, you know, subject to debate, as to whether or not one is in more of a context of your wish is my command atmosphere of probation in general.

There was evidence elicited that the person not only has an array of standard conditions that are

part of probation, namely doing as a probation officer says it can be translated too, but certainly has a -- in relation to a probation officer a not the same rights that he might have in connection with, you know, just certainly regular civilians; can go to your house, you tell me where you're residing now, you -- you know, what your phone is, remaining in contact, coming for appointments, can be directed to counseling, can be directed to further action, can initiate revocation proceedings by making applications to the Court, that I use maybe the more extreme thing of whether or not, you know, you own your probation officer. I think maybe a kind of way of saying it is, you know, your wish is my command atmosphere that exists.

And we are in that more formal context now of within the interior of a probation office and whether or not your wish is my command is a more realistic way to apprise the situation from an objective perspective and a probationer's dutiful compliance with probation officers. That probation officer's dutiful compliance with directives by her supervisor, her immediate supervisor, a person who I think in excess of 20 years owed in the department, a head of her unit, directing her to -- to bring him down. And then that person certainly not -- and he was very candid with me -- he certainly didn't take it upon

himself to advise Mr. Brandon as to what Mr. Brandon's separate rights might be as it relates to the people that he doesn't know anything about we can -- we can infer at that time, opens the door and basically go on in and closes the door behind.

That -- so in factors again, I think the defense is on the winning end from the perspective of an atmosphere that's much, much more akin to a police department. And the -- the courts have certainly been mindful, Your Honor, of -- of that -- the initiated by police and where that initiation takes place, you know, that that initiation taking place in a police department. Here, when -- when you look at -- so no permission requested, no -- nothing provided by probation. And certain working hand in glove with probation, I think also was established that this isn't just like, you know -- it's an -- it's an ongoing relationship between the police department. You know, as in the information that they would share, assisting them in their investigative efforts, including accommodating police in allowing the police to come to this inner sanctum atmosphere to conduct what I would argue is certainly an interrogation.

No limits on how long they're going to be in there within the office in the probation department. No further, I'll say, comfort for lack of a better word. At least somebody's got a preexisting

relationship which is the probation officer present in the room, but rather the officers and segregated in that sense.

The -- the other thing, Your Honor -- and not a show of force in the sense that there's any suggestion that, you know, guns ablazing and putting a gun to someone's head, but another factor that is identified in the circumstances is that two officers who admit that within this atmosphere are armed, that they have cuffs, that they have badges, that one is sitting alone aside of the person, the other person in front of them with the door closed as far as we understand behind that in an area that we know is locked from the general public. As again, objectively, that's an atmosphere where the probationer has -- has at least or would know, you know, hey I can just -- not only can I, you know, I can just leave here anytime but I can -- you know, whether or not it then -- we go into whether at a point in time it -- it is a somewhat accusatory process. The Court is aware -- and again, you have a benefit of the tape here -- it was a good 20 minutes into this and a substantial gathering information, as at least I've outlined in my memo, Your Honor, a substantial outline well beyond simply hey, where do you live, you know, what's going on, how do you know this guy, but getting -- getting into the substance

and becoming somewhat confrontational and accusatory.

Another circumstance, a factor that the Court and I think consistent with other -- other cases analyzing similar custodial questions is that here I'm sure the State will place a great deal emphasis on this thing about free to leave. And it's -- it's a -- free to leave is one thing and it's -- it's -- free to leave is one thing. And whether free to leave is really what's being said here is another. The Court is -- it's whether or not someone is being told basically you're -- you're free to leave here, you know, essentially without any repercussions as opposed to the further in this case -- I've seen it analyzed, Your Honor, along the lines of at the point where the police start using terms like free to leave or Mirandizing, whether that in fact further plants in the person's mind a custodial setting.

So here you got kind of the worse of both word -- worlds. On the one hand, the -- the technical words of that we're not going to arrest you here today, basically no matter what you tell us here today, you're going to walk out of here today. But that, Your Honor, being inextricably intertwined with but basically if you do, okay, you're going to get arrested, you're hitting the jackpot, you're facing 60 years, okay, this is -- you're just a -- you just a -- probation for two years but this is -- so, you

know, if we don't hear it now, if we don't hear the truth now those -- that's what's going to happen. And whether or not those words, as I said, that the words that the State could normally and reasonably argue are evidence of someone's freedom to leave and would be conveying a freedom to leave in this particular case under these particular facts and particular circumstances in the context of what that's going to mean to this defendant only adds to the custodial atmosphere of -- of the situation that presented in this particular case. That an acquiescence to implied directives is what I would argue is more the situation here, as in implied directive of probation, hey you come with me to see my supervisor, supervisor here, these guys want to talk to you and -- and so acquiescence in the light of the subsequent and to say faulty advisement.

In this regard, Your Honor, I think it's very significant to -- on this particular record that Lieutenant -- Lieutenant LaMaine -- why bother to advise him in the second one. He's not in custody. Well, I can understand in a police station, you know, the -- these aren't his words per se, Your Honor -- but acknowledging that but for the difference in locations that that advisement probably an individual there is going to maybe have less of a feeling that he could really leave then in a probation department.

And my response, I suppose to the Court, rhetorically, is how's it any different. You've got not just law enforcement officers. Okay. So, it's not ten officers as some of the cases have in, for example, coming to someone's house, you know, there are ten police officers there. But a number of officers, combined with for all you and I know, but reasonable to infer, numerous probation officers who at least an objective assessment here do tend to work hand in hand with the police here. And whether or not that's essentially the same atmosphere, de facto atmosphere, that the courts have reviewed as being relevant to the Court's analysis in -- you know, for example, the courts -- defendants can be in custody in his own home, okay, but that an encounter with police is generally less likely because -- to be custodial when it occurs in a suspect's home. To the contrast here, then one could say that in this context at least it has a greater indicia of custody.

Right. Here, we have what's a conversion of what might be a slightly more friendly encounter with a semi law enforcement person into a police dominated taking over for probation in probation's own office. And again, the -- you know, the lack of familiarity with that surrounding in the context of being questioned by police officers in that -- in that

surrounding. Again, I hardly see -- I would argue a distinction of difference to say without a difference -- to saying it's -- it's less custodial than a police department.

I mentioned, Your Honor, this whole free to leave and Your Honor has the benefit of the tape. and if I'm misstating it I think I've -- at least I've -- I've referenced interestingly because there was nothing until gathering a certain amount of information and some courts have analyzed it from the kind of, you know, catch and release, I think I've heard the words where you kind of -- you have this -- you gather enough information, you realized you've gathered information that is now somewhat damaging. At that point in time you're advising the person of their being free to leave. Or at that point in time Mirandizing them, cat's already out of the bag.

I won't -- I won't spend a lot of time, Your Honor, on the issue of taint and untainted, because as I said, I'm focusing really primarily on that -- on that first interview as opposed to a whole separate analysis of what happens at the police department after 6 o'clock. But -- and whether or not I've in any way misstated it. But I referenced I, I think -- let's say it's about 20 -- 20 minute point that they first talk in terms of this context of this I'll call it a limited ability to leave but

that all as part and intertwined therein is that they then get into this whole thing about as, you know, as -- as to what's going to happen. I mean, what will inevitably happen if -- if he leaves there without telling them more.

The -- the other factor, Your Honor, as to the clearly establishing an opinion to him that what he's told them so far is a lie and further bolstering that if he leaves that he's in -- that -- trouble, he's in further trouble. So whether or not that during the course of the -- the interview telling him that he's basically a culpable participant. And again, to what extent, from an objective perspective, that factor, okay, bolsters the argument of custodial.

The -- it's an interesting analysis, Your Honor. The -- giving notice and the failure of where one could say well they don't have to give a notice, then the failure to give a notice, why should that have any significance, other than for the Court to analysis -- analyze as in for the -- a factor of deliberately, like a scheme so to speak, of an atmosphere where there's a better chance of being able to get away with not giving a notice by taking what they recognize they probably should've as the police department and whether it becomes their preference probation where there's a better chance of essentially tricking the person. Factor into the

mix, Your Honor, here as to the level of experience of the officers with their extra training in relation to interrogative techniques as to whether or not it's one thing as in -- I'm certainly well aware of police engaging arouse and they can -- and they can engage in conduct of actual deception of attempting to provide more information they really have, as opposed to a developed ability to keep somebody there, a developed ability to without pulling out their gun to be able to subtlety establish the constraints of -- of the functional equivalent of forcing someone to stay in a room of knowing what to say, what buttons to push in an atmosphere chosen by them that accomplishes that result and whether or not in fact based upon assessing the level of experience of these two particular officers in this particular case on that particular day as to not only working together as a team, both having the extended extra experience in interrogation with, not only their years of experience, but as to the roles that they serve in their particular department.

A small solace that you're -- you're free to leave now and be more formally in custody and arrested in the very near future based on what you'd be kind of forcing us to do by your leaving now with the current state of an incomplete, not telling us the truth status. The -- to the extent -- and by no

means at least in my memo, Your Honor, did I at least suggest by my memo that the only times that they used the language as to what the consequences would be were to those that was specifically cited. And the Court has the benefit of the -- the other.

But -- but to jump way ahead for a moment, Your Honor, and that is that -- but even better expresses the -- I suppose the subtlety of creating an atmosphere that is custodial in nature is -- and just by analogy -- in the very last one, and I pointed out I think to the Court yesterday, and that is that -- that on the question of do I need a lawyer. Well, you only need a lawyer if telling the truth is going to hurt you. If you -- and so what I'm saying is in a very subtle way but throughout the interview here is this, I'll say, a certain excretion of --

THE COURT: And that was a comment that Detective LaMaine indicated that he made to the defendant during the third interview, is that correct?

ATTY. GULASH: During the third interview. The one that was initiated by the defendant in that case, okay. But based upon security concerns in relation to being confronted by the person who he had named that he -- the person he had named in talking to the police. But what I meant is it's not a matter of taking those words in the isolated vacuum of away

from the context in which they are inextricably intertwined in the course of this interview.

And, Your Honor, I think that -- that it ultimately does lead the Court to be able to conclude that in this particular instance the defendant -- if I can just -- objective analysis that the objective circumstances present in this case a reasonable person in the defendant's position would have believed he was in police custody of the degree associated with a formal arrest.

And -- and I therefore respectfully ask Your Honor consistent with *Mangual* -- and I think the Court is also very much aware of another case that was relied on heavily by the defendant was the *Seibert* case, United States Supreme Court case. Your Honor has --

THE COURT: *Missouri v. Seibert*.

ATTY. GULASH: That's right, Your Honor.

THE COURT: All right.

ATTY. GULASH: And I think, you know, we have very now the situation here. I know that to the State -- and I won't make this a boring legal argument as much as it's primarily a factual argument, but in terms of I think that all this can be very strongly differentiated from, you know, the one and I think we both admit to the State there aren't a whole lot of just pure -- I'll say there are

the pure probation officer cases, and that I think is the *Murphy* case, *Minnesota v. Murphy*. And this is hardly a *Minnesota v. Murphy* situation. In terms of there's much, much more direct hand in hand, hand in glove coordinated police and basically simply moving the detective bureau down to 1 Lafayette Square on this particular day to accomplish the result in a -- in that police friendly, not probationer friendly atmosphere.

I made an analogy, Your Honor, to -- no, never mind. I have it in there, you know, that there's a line of cases, the *Garrity* and the -- the police officers, sanitation workers, that kind of being stuck in the Hobson's choice and to what extent he's in a -- a somewhat coerced custodial setting by virtue of being trapped by that Hobson's choice created by the police. Leave and you're getting arrested. Stay and -- and kind of remain in our custody for the time being and continue this interview and you got a shot of not being arrested by staying here.

With that, Your Honor, if the Court has any questions as far as the record goes. Thank you.

THE COURT: All right. Counsel.

ATTY. APPLEGATE: Thank you, Your Honor. Your Honor, if it pleases the Court, the State has the burden of showing that this was voluntary in terms of

due process. And I know Attorney Gulash didn't address that but as it's my burden I'll go forward on that very quickly.

And Courts have considered factors such as the age of the accused, the length of the detention, repeated and prolonged nature of questioning and whether there was any use of physical punishment, such as the deprivation of food and sleep. And in this case the defendant was 32 years old. He had had a number of encounters with the criminal justice system, specifically he had five prior arrests that had resulted in convictions, several of them were felonies. He was well aware of how the system worked. He was in fact on probation at the time.

The detention in that. First, which the State obviously argues is not custodial but the police are meeting with him for about 90 minutes in a very cordial setting. The police were sitting. The defendant initially was standing when he was introduced and he was given an opportunity to sit down. At no point was he handcuffed. At no point were weapons brandished. And the defendant was able to leave, which he did in fact leave after the conclusion of that first interview. And in fact, went to the police department voluntarily that night, which I think speaks volumes with respect to the voluntariness of this encounter with police.

And in terms of the defendant's ability to understand what was going on, I think the tapes really do speak for themselves. They are in evidence now. And the defendant was very much responsive to the questions that were being asked to the point where he even kind of changed his story as the police confronted him with a number of facts.

Now, addressing arguments that have been raised by the defense here. I would argue that the first argument that Attorney Gulash made that an objective reasonable person based upon circumstances of particular cases is what determines the -- whether an encounter is custodial in nature. And the State obviously agrees with that but we would put a strong focus on the *Northrop* case that the defense really didn't address. That's 213 Connecticut at 415, N-O-R-T-H-R-O-P. And a reasonable person would feel free to leave if he is repeatedly told that he could do so.

I know I mentioned that in my papers but I'll reiterate it here because I think that's an important point. The defendant is told multiple times during that first encounter that he is free to leave. And I know it wasn't done at the outset of that interview but I would even argue the police are not trying to elicit anything incriminating from the defendant during the first few minutes of that interview.

They're just trying to establish a rapport. They're asking him some very basic questions about whether he knew Jovan Patton (sic), about where he had been that night and as soon as the interview starts to heat up a little bit, let's say, as soon as it becomes a little bit more hostile toward the defendant, Lieutenant LaMaine makes it very clear to the defendant that he is in fact free to leave and that the police merely want to hear his side of the story. And then to Lieutenant LaMaine's credit, he reminds the defendant of the fact every few minutes for the remainder of that 90 minute interview the fact that the defendant is free to leave.

Now, addressing the argument that Attorney Gulash made that this quote/unquote your wish is my command atmosphere at probation. The courts have addressed that issue and that argument. But I'm not aware of any cases, and I haven't seen them cited, where a court found that custody, even absent an express statement that one is free to leave, should be found in a case like this just because it's conducted let's say at the probation office. And I'll come back to that in a moment.

But this argument that courts have been mindful that probation -- that a probation office is akin to a police department. I just didn't find any case law on that. I'm not -- I'm not seeing that. I think

it's a persuasive argument that Attorney Gulash made. It's just -- it hasn't persuaded any courts that I've seen so far.

The -- and in this case, I think it bears noting that the defendant was moved from his -- his actual probation officer's office where the probation meeting with Probation Officer Calixte initially occurred to another office within the same building. It kind of separates it from that probation interview. In other words, the defendant did have a number of conditions as defense mentioned that were imposed upon and to coordinate with probation. And the fact that he is moved from that one office on the third floor and brought to the second floor and given another date to come back is a clear signal to him that your probation meeting is over. And I think that's an important distinction. There's no one from probation that's in that room. So it would be reasonable for the defendant to conclude that if I don't talk to these Bridgeport investigators I'm going to be violated. I think that that's -- that's not what our facts show here.

This -- the argument that Attorney Gulash makes that you're free to leave, but if you do you'll likely get arrested, it wouldn't be in the context of probation. In other words, it wouldn't be like if you do this you're not cooperating with probation.

It would be more in the context of if you leave here then we're not finding out the whole picture and you might get arrested down the road. And again, I -- I want to address some of the case law that was cited by the defense, but I'll come back to that in a moment.

And the next point that the defense made was why do the advisement the second time at the prob -- at the police department and not do it at the -- at the probation office. And I think Lieutenant LaMaine addressed that well. First he said the police station creates these other issues for us in terms of case law that -- that we're in a better position if we Mirandize them. But the -- the second point that Lieutenant made -- Lieutenant LaMaine made, which I think was a very honest answer I would submit to the Court, is that they were hoping for a confession during that second interview.

They had gathered some ammunition for the defendant at the time of his first interview and during the few hours in between where they started doing some follow up. They were looking at surveillance. They wanted to come at him with everything that they had in terms of information available to them during that second interview and really confront him, which is what they did. That's a two hour interview and for the second half of that

interview when Lieutenant LaMaine comes back into the room it's really just confronting the defendant with fact after fact. They knew they were going to do that. They were hoping to get a confession. And they felt like if we give the Miranda warnings at the outset we won't have to stop and then Mirandize the defendant during it in which case we might lose the flow here or we might shut him down. So if we Mirandize him from the start, then we're in a better position as the interview progresses.

The State is certainly not conceding that he needed to be Mirandized during that second interview because I -- the State's position would be that he was free to leave during that second interview as well. He was not under arrest. He was not placed in formal custody.

So this probation office versus police station; Attorney Gulash argued that it's a distinction without a difference. And I would cite to *Minnesota v. Murphy*. And I know that the defense has tried to distinguish the Minnesota Murphy case -- versus Murphy case. That's 465 U.S. 420. But I would mention two things; one, not every encounter at a police station is custodial. There are situations where the police can have a consensual interview in a police department. And again, going back to that *Northrop* case that I cited earlier, one way to do

that effectively is to tell a person repeatedly, look, you're not under arrest. You can walk out that door.

THE COURT: What was the cite of *Northrop*, Counsel?

ATTY. APPLEGATE: The *Northrop* was 213 Connecticut at 415. Now, with respect to *Minnesota v. Murphy*, the defense tries to distinguish that case by arguing that the questioning here was done by the police and not by the probation officer. But I think that actually cuts in favor of the State, because in the *Minnesota v. Murphy* case the defendant had a condition of probation that required him to be truthful when being asked questions by the probation officer. But that really didn't bother the U.S. Supreme Court. Here, there's -- there's not that extra element. Here, there was nothing requiring the defendant in terms of the terms of his probation to sit down and engage in that interview with the Bridgeport police.

In the defendant's argument in their papers is that they ask that our state constitution provide greater protection then the federal counterpart. And essentially, I would see that as a concession that *Murphy* is on point but that the defense is asking the Court to ignore the precedent and to take an independent state constitutional course here, which

is -- that's their language, independent state constitutional course here. And certainly, we're asking the Court not to do that. We're asking the Court not to legislate today from the bench and to provide greater protections than either the State of Connecticut or the federal government has given defendants thus far.

Now, moving back to kind of addressing Attorney Gulash's argument. The -- the State agrees wholeheartedly with the defense that these are very skilled investigators. Lieutenant LaMaine and Detective Curet did a nice job in that interview of putting the skills to work that they had learned over the course of a number of trainings. They developed an ability to keep someone there. And the defense raises that as if that's a bad thing in terms of the state's argument. And I would argue that that is not a bad thing.

Their training, and Lieutenant LaMaine talked about this on the stand, was to show empathy, to make a connection and to really engage an interviewee. That's how you make them stay in the room. And he did this all awhile by balancing the fact that he was telling the defendant you can go. You can leave. You're -- we're not holding you here. You're not under arrest but we want to talk to you, we want to hear your side of the story. And I think that to try

and put kind of a nefarious spin on it isn't really fair. That's the police officer's job. So they try to do it in a consensual atmosphere. That's why Lieutenant LaMaine chose probation. He wanted somewhere safe. There were concerns. They had never met the defendant before. You know, by the third interview they were more comfortable with him. They were willing to do it in a motor vehicle, in a police department but on that first interview they don't know how the defendant is going to react.

And if you stop him on the street or in his home -- the lieutenant made a very good point. If we show up at his door and we do this, he brings us into his living room, worst case scenario is he disappears somewhere in the house, says he's got to go to the bathroom. And the police wanted to have more control. But that doesn't -- that doesn't necessarily equate to we wanted to take him into custody. It's just we wanted it to be a little bit more on our terms.

And what I would submit to the Court is that the reason that the defendant stayed, even though he knew objectively any reasonable person would've known being told repeatedly that he could go, the reason that he stayed was because he wanted to tell his side of the story. And that's accredited to the police officers because they did their job. So this wasn't

the Hobson's choice that's being described here where the defendant says, you know, I'm in trouble if I stay but I'm in even more trouble if I don't stay. This was -- the defendant is laid out all of his options here but he wants to tell his story.

Now, in terms of distinguishing some of the other case law. There's the -- defendant cites to *Florida v. Bostick*, B-O-S-T-I-C-K, 501 U.S. 429, in his papers. Now, *Bostick* the -- they say that the quote/unquote crucial inquiry in terms of whether an encounter with the police is custodial is did the police communicate that the person was not at liberty to ignore the requests from the police and go about his business. And communicate, that can be an oral communication as we have here, an express oral communication.

In our case, the police expressed to the contrary, you are free to leave. But communicate could also be kind of the body language of the police, blocking a door. You see that in -- in some of the cases where an interview was found to be custodial where did the police communicate to this person that you're not at liberty to leave.

And in this case I would say it was just the opposite. Their words rang true. They didn't in any way try to stop the defendant in any of the three interviews from leaving. They just got him to talk,

which is what their job was. And again, I hope that Your Honor interprets it the same way, that that's not something that we should put a negative spin on. That's -- and it's quite -- conversely, it's their job. That's what they're supposed to do.

Now, another point to distinguish *Bostick*. One of the things that troubled the Supreme Court in *Bostick* was that encounter took place on a bus. The defendant, unlike here, did not otherwise want to get off of that bus. So in other words, the police come on to that bus, there's a very strong decent that wanted the -- that wanted firmer action taken against the police that felt that the police had come in kind of guns ablazing in that case. Whereas, the *Bostick* court -- the majority court actually just remanded it back for some findings of fact.

But they did talk about this one factor, that the defendant was on a bus and he was intending to go on a trip somewhere. And so for the police to come on and say listen, you're free to leave but we're going to search your bag if you stay, didn't really -- that was more of the Hobson's choice. He had somewhere he had to be and he had to take that bus to get there so he was left with a very difficult choice. Whereas here, the defendant is leaving his probation meeting where I'm sure there's nothing that most probationers want more than to get out of that

building when they're done with the probation meeting, which is very different from *Bostick*. And again, that was one of the points that the -- the *Bostick* court considered.

Another case that the defense relied on was *United States versus Faux*, FAUX. That's 828 F. 3d 130. It's a Second Circuit case from 2016. And at page 134 of that decision they explained some of the facts. *Faux* was the subject -- her home was the subject of a search warrant. She was never told that she was free to leave, that she could refuse to answer questions or that her participation in this was voluntary. Conversely, her movements were shadowed throughout her home, even including her going to the bathroom, while that search warrant was being executed. And 20 minutes into the interview she was told that she wasn't under arrest. That's 20 minutes of them questioning her with difficult questions she's finally told that she's not under arrest. And the Second Circuit held that it may have been -- that they walked a tight rope, I believe was the language that they used. But that a reasonable person would've understood that he or she was not in custody. And I understand there's a distinction between the home and -- and anywhere else. The home is where you're supposed to feel most secure. But again, it's a totality of the facts that courts are

to look at.

The defense also relies on the case of *United States versus Hanson*. That's H-A-N-S-O-N. 237 F. 3rd 961. That's an Eighth Circuit case from 2001. And it's one of the cases where an interview was found to be custodial and a confession was suppressed. In that, there was one agent who sat across from the defendant and the other stood in a corner and the defendant was told he could leave but that if he didn't cooperate he would do federal time in prison. So the defense is arguing that these are similar facts to -- to our case.

The holding in the case was that it was an intimidating environment in a small closed off room and that the defendant was in custody. But, and this is a big but, that case was overruled by a case called *U.S. versus LeBron*. And the defense says that that was overruled on separate grounds, and that's partially true but it was overruled on the standard that was applied to decide whether there was custody. The Eighth Circuit later said that they were reading too much into these facts and that they should've -- and again, overruled *Hanson*, that they shouldn't have disregarded the district's courts findings of fact regarding the custody determination. So it wasn't overruled completely on a different issue. It was very much on the issue of how custody is determined.

And that's the one case where an encounter was in fact suppressed even though the police were telling somebody that they were free to leave.

Now, in our case what I would argue to the Court is that these weren't hallow words as in the *Hanson* case. When -- when Lieutenant LaMaine was telling the defendant he was free to leave it was genuine. The defendant was in fact free to leave. And the only -- and in the three interviews where he's interviewed the only time that he actually takes advantage of that is the third interview and the police make no effort to stop him. They put him in the back of a car that he's not locked in and it's an unmarked police car. And he says, we can listen to it on the tape. And again, that speaks for itself. He says, you know what, maybe I should just get a lawyer and he gets out of the car and he leaves. They make no effort to stop him.

And I would submit to the Court, the evidence here shows that's just what they would've done in the first interview if at any point the defendant had gotten up and said I'm done and walked out. But that's not what happened. And again, I would submit the reason for it isn't some kind of coercive tactic, but rather what the State argued earlier, effective interviewing techniques of engaging the defendant and making it so that he wants to tell his story. And

there's nothing nefarious about that.

THE COURT: Anything else?

ATTY. APPLEGATE: No, Your Honor.

ATTY. GULASH: Just -- can I just say one thing, Your Honor? My -- my response would be the following. You see that door there? You're free to walk out that door right now, you're free to walk out that door but I just want you to know before you walk out that door there's a 3,000 foot drop right outside that door and that's the only door out of this room. But you're free to go. You can go right now. Free to go. Walk through that door. But I just want to let you know in advance, if you step out that door it's a 3,000 foot drop, okay.

And -- and I would submit to you Your Honor and that -- by analogy, incredibly skilled, yes and it is subtle but it is as coercive creating a -- it is very subtly and effectively creating as custodial environment as if it was a 3,000 foot drop when you walked out that one door in that room right now if you choose to go right now.

THE COURT: All right.

ATTY. GULASH: Thank you, Your Honor.

THE COURT: Thanks. Thank you, Attorney Gulash, for a very pressing argument. And thank you, Attorney Applegate, for an equally persuasive argument. The Court is ready to rule.

THE COURT: The Court is ready to rule. The following is pertinent to a resolution of this case. February 11th, 2016 a person by the name of Jovani Patton was shot multiple times with a firearm in front of a social club in Bridgeport -- or on Connecticut and Stratford Avenue in Bridgeport, Connecticut. Shortly after being shot, Mr. Patton died from his wounds.

Bridgeport police identified the defendant as one of the last people the victim spoke with before he died. Bridgeport police learned the defendant was going to meet with his probation officer on February 16th, 2016 at the Office of Adult Probation. On that date, police informed the defendant they wish to speak with him. The meeting lasted approximately 90 minutes and was audio-recorded by Bridgeport detective or lieutenants LaMaine and Curet.

During the meeting, the defendant described his interaction with Mr. Patton on February 11th, 2016. When questioned by police as to whether he was present when the shooting occurred, Detective LaMaine (sic) stated you are not going out of here in handcuffs, you can walk away right now if you want. The defendant remained in the room and continued to speak with the police. Throughout the remainder of the interview, the defendant was reminded by detectives he was free to leave at any time. At the

end of the meeting the defendant before leaving agreed to meet with the police later to discuss the matter further.

On June -- on -- at 6 P.M. on February 16th, 2016 the defendant voluntarily went to the Bridgeport Police Department as agreed to earlier that day. This conversation was audio and video recorded. Before the interview commenced the detectives reviewed and the defendant filled out and signed his Notice of Rights form. During the interview, the defendant reiterated his version of events that he gave the detectives earlier. He also continued to maintain his innocence but claimed to have seen another individual shoot the victim. The defendant was permitted to leave but agreed to speak with the police at a later time.

On February 18th, 2016 the defendant contacted the same police Bridgeport detectives complaining he had been threatened by the person he had implicated in the Patton shooting on February 16th, 2016. Detectives LaMaine and Curet again met with the defendant, this time in a parking lot in Stratford, Connecticut. This interview, which was audio-recorded, lasted about one hour. Approximately 20 minutes into the interview the defendant mentioned he might be better off getting an attorney but he continued to answer questions asked by the

detectives. The meeting concluded with the defendant asserting that he will get a -- that he will get an attorney.

The defense argues, pursuant to *Miranda v. Arizona*, 384 U.S. 436, that his three statements to police were obtained in violation of his right against self-incrimination and his right to assistance of counsel. More succinctly, the defense argues in his brief that the defendant's statements to the police during the first interview at probation were made under circumstances amounting to custodial interrogation. Therefore, the defense opines that since these original statements are inadmissible subsequent defense statements with the police should also be suppressed.

It is well established that the State may not use statements stemming from custodial interrogation unless it demonstrates the use of procedural safeguards effected to secure the privilege against self-incrimination. Again, *Miranda v. Arizona* at 384 U.S. 486. Two threshold conditions must be satisfied to invoke these warnings; first, the defendant must've been in custody; and second, the defend -- the defendant must've been subject to police interrogation.

Interrogation is defined as questioning by actions or words on the part of the police, that the

-- that the police knew, or should have known, were likely to elicit an incriminating response from the defendant. In this regard, the Court looked at *State v. Edwards* at 325 Connecticut 97 at 116 (2017).

During the 2011 -- 2011 -- the February 11th, 2016 interview of the defendant at the police station -- or at the Office of the Adult Probation Bridgeport police interviewed the defendant for approximately 90 minutes. They questioned the defendant regarding his past relationship with Mr. Patton. They questioned him regarding his spatial and temporal proximity to the homicide. These questions were clearly designed to elicit an incriminating response from the defendant and as such the trial court agrees with the defense that the questioning here was equivalent to interrogations -- interrogation for the purposes of *Miranda*.

The inquiry however does not end here. The trial court must also make a determination as to whether the defendant was in custody while being interrogated. It is well established the defense bears the burden to show that he was in -- the defendant was in custody. Again, *State v. Edwards* at 325 Connecticut 97, 110 (2017). A person is in custody for purposes of *Miranda*, or the facts are such the reasonable person in the position -- in the defendant's position would believe that there was a

restraint on his freedom of movement to the degree associated with a formal arrest. Any lesser restriction on a person's freedom of action is not sufficient enough to implicate his Fifth Amendment rights. *State v. Chankar* at 173 Connecticut Conn. App. 227 at 237, which is a 2017 case.

The non-exclusive factors to be considered in determining whether a defendant is in custody are as follows. The Court is to consider the nature and duration of the questioning, whether the defendant was handcuffed or physically restrained, whether the police explained to the defendant whether he was free to leave or not under arrest, the location of the interview, the length of the detention, the number of the officers present at the questioning, whether the police were armed or brandished their weapons, the degree to which the defendant was isolated from his friends and family. These factors, as articulated by the defense and the state, are factors that were articulated in a case of *State v. Mangual* at 311 Connecticut 182.

Applying these factors to the present case the trial court concludes that a reasonable person in the defendant's position would not believe he is in custody. It is important to note that the trial court reviewed all audio and audio visual evidence that has been submitted as court exhibits in this

case. It is important to note that during the first meeting, which lasted only 90 minutes according to Detective -- 90 minutes. According to Detective LaMaine, which the Court considers a credible witness, the defendant was never handcuffed or physically restrained in any way. The police never brandished or -- brandished their weapons or displayed any weapons. And Detective LaMaine characterized the encounter as cordial. The defendant was never told he was under arrest. In fact, the police indicated approximately 11 times during this interview that the defendant was free to leave. Finally, the defendant did leave the probation office and later called police to set up another meeting.

Under the totality of circumstances articulated under *Mangual*, the defense has not sustained its burden on the issue of custodial -- of custody and thus this motion to suppress the defendant's statement to the police on February 11th, 2016 is denied.

On the second interview, which took place at approximately 6 P.M. on February 16th, 2016, the defendant voluntarily went to the Bridgeport Police Department for a follow-up interview. The entire conversation was audio and video recorded. The police reviewed the defendant's constitutional rights

and the defendant signed a Notice of Rights form.

During this interview the defendant reiterated his previous story and maintained his innocence. The defense appears to concede that the *Miranda* warnings were properly administered in this case. The defendant's principle objection here arises under the belief that since he was under custodial interrogation in the first interview that all information pre and post *Miranda* are -- should be inadmissible and citing the case of *Missouri v. Seibert* at 542 United States 600 (2004).

The defendant's reliance on *Seibert* in this case however is misplace -- misplaced because it is factually distinct from the case at bar. In *Seibert*, the defendant was formerly arrested but not Mirandized during which time she gave incriminate -- made incriminating statements. The police later Mirandized her. The U.S. Supreme Court held that in the event of a formal arrest, i.e., custodial interrogation, information obtained by the police is inadmissible even if the defendant is Mirandized later in the investigative process. Here, since the defendant's statements in the first interview were not the result of a formal arrest or custodial interrogation the trial court does not feel that *Seibert* is applicable.

On the issue of the third interview, which

occurred on February 18th, 2016, the defense met -- the defendant met with the Bridgeport police a third time. The defendant informed the police that he had been threatened by the person he had implicated in the shooting of Jovani Patton. Approximately 20 minutes into the interview the defendant mentioned his possible need to get a lawyer. The police questioning, however, continued without any questions asking the defendant to clarify his request for an attorney.

The defense claims that since his response to the police questioning during this third interview -- strike that -- the defense -- the defendant claims that his response to police questioning during this third interview are inadmissible because they were not -- because they were -- they were obtained in violation of *State v. Purcell* at 331 Connecticut 318, which is a 2019 case. In this regard, the trial court agrees with the defense.

It is established law that if a suspect makes an equivocal statement to police that can be arguably construed as a request for counsel the interrogation and questioning must cease, except for narrow questions designed to clarify earlier statements and the -- regarding the -- and the suspects desire for counsel. Here, the defendant asked the police do I need a lawyer, and at another time during the

interview he states I guess I need a lawyer. The Court feels that under *Purcell* the police action here violated the defendant's right to counsel and as such the Court will suppress all statements made to the defendant -- or made -- or emanating from the defendant after he mentions a desire to have an attorney in this third interview.

All right.

ATTY. APPLEGATE: Thank you, Your Honor.

ATTY. GULASH: Yeah. Can I just ask one question? And it's not -- it just to do with a -- it was just more of a fact finding and it may not even have been a fact finding. In the very beginning of Your Honor's decision that on a date -- this is about the probation office -- I don't think you made -- I don't think you were making a finding -- that they only learned on that date that he had his interview but just that they met with him on that date. In other words that --

THE COURT: I just said that. Yeah. No, they -- they met with him on that date on -- I said police learned -- my -- my recollection of the testimony was they learned that he would be -- from Detective LaMaine was they learned that he would be at -- through their interview and investigation that he would be at the Office of Adult Probation on February 11th, 2016.

ATTY. GULASH: 16. But I thought that your finding suggested that they learned on the 16th he's be there on the 16th. And I would simply ask that if -- on at some time prior to the 16th they learned he would be there on the 16th and then they met with him on the 16th. That was the only to where I think --

THE COURT: No, I was just -- maybe I was unclear. But again, so the record is clear -- and I didn't state the date where -- when they learned it --

ATTY. GULASH: Right.

THE COURT: -- I just stated that the police learned that the defendant was going to meet with his probation officer on February 16th, 2016.

ATTY. GULASH: And it's --

THE COURT: Which I believe that was correct.

ATTY. GULASH: Right. Well, that clarification -- it wasn't clear to me whether you were making that finding or whether --

THE COURT: Not on February 11th. No, but I made the --

ATTY. GULASH: Okay.

THE COURT: I -- I don't know what date they actually made that decision. I just know that they learned at some date subsequent to February 11th, 2016 that Mr. -- that your client would be at the -- the Department of Adult Probation on February 16th,

2016.

ATTY. GULASH: That was my only comment, Your Honor.

THE COURT: All right. Anything else?

ATTY. APPLEGATE: No, Your Honor.

ATTY. GULASH: No, Your Honor.

THE COURT: All right. Insofar then as the final issue regarding the cellphone is concerned, we will -- the Court will reserve judgment on that until such time it becomes relevant. My understanding is that the State has not decided whether it's going to offer it or not at this time and because of -- is that -- that's correct, Counsel?

ATTY. APPLEGATE: That is correct, Your Honor.

THE COURT: And you're reserving your right to offer it if -- at a later date if you feel it is appropriate.

ATTY. APPLEGATE: The only thing that we intend to offer is the second interview and there's discussion about the contacts. That -- that discussion is what we intend to offer. We're not offering anything from the extraction of the telephone.

THE COURT: All right. And Attorney Gulash, my understanding is you're not objecting to that or you -- as being part -- at the very least as being part --

ATTY. GULASH: Not as part of the -- the seizing of the phone issue.

THE COURT: Seizing of the phone.

ATTY. GULASH: No. Simply it's still tied into the --

THE COURT: All right.

ATTY. GULASH: -- the alleged statement.

THE COURT: You might make some other arguments regarding the statement. You're going to reserve your arguments regarding the statements and the inadmissibility of those statements. And the Court will reserve decision in regards to the inadmissibility of those statements at a later time. But insofar as the -- the statements as -- you're not objecting to those -- arguing that the statements came from the phone --

ATTY. GULASH: Right.

THE COURT: -- and therefore the subjects are subject to the fruit of the poisonous tree.

ATTY. GULASH: Right. I agree that at the moment, Your Honor, it would not appear that there's anything being offered from the phone, so for the time being it's academic.

THE COURT: At the time being?

ATTY. GULASH: That the issue of the phone is academic.

THE COURT: It's academic. All right. Well --

ATTY. GULASH: You know, subject to further disclosures and we'll bring it to the Court's attention.

THE COURT: All right. All right. So that will conclude the suppression hearing argument for the day. The next issue will be scheduling and charge. Obviously, we're starting evidence on Friday. We have reviewed the state's intended order of witnesses for Friday. The State's ready to go forward on Friday. Then we --

ATTY. APPLEGATE: Your Honor --

THE COURT: -- will go through Monday, Tuesday, Wednesday, Thursday, Friday. I suggest because it is the start of a long holiday weekend we will recess early on that day at 1, 2 o'clock. Obviously, the Court's tentative schedule will be subject to the witness requirements and -- and the witness needs of the exigencies of the parties.

I suggest that we have a status conference Thursday morning, just a quick --- about 10:30, 11. I'd like to take a look at the charge and discuss any other motions that the parties anticipate coming -- coming of fruition during the trial so that we can perhaps either resolve them or at least direct the Court's attention to the issues that need the Court's review. All right. Anything else?

ATTY. APPLEGATE: No, Your Honor.

ATTY. GULASH: Not from defense, Your Honor.

ATTY. APPLEGATE: No, Your Honor.

THE COURT: All right. We're going to recess subject to adjourn. Recess.

(WHEREUPON, court adjourned).

NO: FBT-CR16-0290067-T	:	SUPERIOR COURT
STATE OF CONNECTICUT	:	JUDICIAL DISTRICT OF FAIRFIELD
v.	:	AT BRIDGEPORT, CONNECTICUT
BERNARD BRANDON	:	MAY 14, 2019

C E R T I F I C A T I O N

I hereby certify the electronic version is a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Fairfield, Bridgeport, Connecticut, before the Honorable Earl B. Richards, III, Judge, on the 14th day of May, 2019.

Dated this 27th day of November, 2019 in Bridgeport, Connecticut.

_____
Jennifer Ocasio
Court Recording Monitor

NO: FBT-CR16-0290067-T	:	SUPERIOR COURT
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BERNARD A. BRANDON	:	MAY 13, 2019

BEFORE THE HONORABLE EARL B. RICHARDS, III, JUDGE
AND JURY

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THE COURT: Good morning, ladies and gentlemen. We're here continuing with the case of *State versus Brandon*. The parties are present. There have been several motions. The most important for today's purposes is the Motion to Suppress filed by the defense. My understanding the parties are prepared to go forward with that Motion to Suppress, is that correct?

ATTY. GULASH: We are, Your Honor.

THE COURT: All right. So the issue is, my understanding, three interviews that were conducted by the Bridgeport Police Department in relation to the murder of Jovani Patton. Those interviews were conducted by police with the defendant, Bernard Brandon. There was one interview that was conducted at his probation office. There was a second interview that was conducted, I believe, at the police station. And the third interview that was requested by Mr. Brandon was conducted in a public parking lot. Does that basically set the stage?

ATTY. APPLEGATE: Yes, Your Honor.

ATTY. GULASH: Yes.

THE COURT: All right.

ATTY. GULASH: Yes.

THE COURT: So it's -- the issue's going to be I believe the -- whether these interviews were the results of impermissible police conduct, just solely

Q -- Officer Calixte. How are you?
A Good. How are you?
Q Good. Just a few questions.
A Sure.
Q In terms of during your time as a police -- not as a police officer -- probation officer have you had occasion to work with the police in relation to the police wanting to meet with someone after you were done with him, so to speak, at your office?
A On occasion.
Q Okay. So basically on occasion as in at your office at adult probation?
A And let's be clear, not in my office. It was in the probation building --
Q Right.
A -- but never really in my office.
Q All right. And at least at the probation building, that's located over on Lafayette Circle, is that correct?
A Yes, sir.
Q Okay. And at least as you can describe for the Court, the -- the main as in where the secretaries and the waiting room for that probation office is on what floor?
A The main floor is the second floor where most of the clients wait. And at the time, when I saw this particular defendant he met with me on the third floor.
Q Okay. So let's start --
THE COURT: What's the address of this --

THE WITNESS: Yes. One Lafayette Circle in Bridgeport.

Q Okay. So 1 Lafayette Circle. That building, as far as you know, people enter through the first floor. Is that correct?

A Correct.

Q And there are marshals that guard that area. In other words, someone has to actually go through a metal detector and a security check downstairs; correct?

A Correct.

Q So that's on the -- in the lobby of your building?

A Yes, sir.

Q Right? And to the best of your knowledge, back then in 2016 that procedure existed as --

A Yes.

Q -- in the formality of going to the building, right?

A Yes.

THE COURT MONITOR: Will you step back please?

ATTY. GULASH: Yes.

THE COURT MONITOR: Thank you.

Q Going in to a building, having to be checked by marshals.

A Correct.

Q Uniformed marshals, State of Connecticut marshals, right?

A Correct.

Q Okay. A metal detector?

A Correct.
Q Correct? And that was just to even gain access to that second floor lobby area where people who then check-in, is that --
A Correct.
Q -- your understanding?
A Correct. Yes.
Q Okay. An elevator then that gets them to the second floor if they get past security, right?
A Correct.
Q Okay. So in other words, the second floor the individual then can't just go right to your office. That's -- that's a locked area to get into the inner sanctum, so to speak --
A Yes.
Q -- correct?
A Correct.
Q Okay. In other words, that the -- so they wait and/or essentially escorted into the passed locked doors in order to get into the general area where other probation officers have their offices, right?
A Correct.
Q Okay. And I think you indicated that in your case that was having to go up a -- a third floor?
A Yes.
Q So in other words, the second floor is where they check in?

A Correct.

Q Right? But they then -- in your case your office was on the third floor, right?

A Correct.

Q So -- so then a probationer would have to then go to the third floor. And there's a locked door on the third floor before they get into the offices on the third floor, is that correct?

A Correct. Correct.

Q I'm sorry?

A Correct.

Q Okay. So that you, the probation officer, would have to come out, open the door from the inside to permit them access into that back probation offices --

A The waiting -- the reporting rooms they're called. Yes.

Q The reporting rooms, right?

A Correct.

Q So then they would go with you in the reporting room and that's what happened here where you met with him on the third floor, right?

A Correct.

Q Okay. Now, there came a time where you -- and I'll ask you more detail in a minute -- where you finished your meeting with him, gathered the information you needed from him that day, right?

A Correct.

Q Now, is it your recollection that you had no idea until he left -- until sometime after leaving your office with you that -- that someone else in your office, namely your supervisor, wanted you to bring him there? I'll go back a step. Did there come a time after your meeting with him that you escorted your probationer, namely Mr. Brandon, to meet with the chief probation officer, Mr. Bunosso?

A Correct. I escorted him downstairs but I believe he did not meet with my supervisor directly.

Q Okay. So -- so at least as far as you -- you escorted him downstairs?

A Correct.

Q Right? Okay. And going downstairs to an area downstairs that was again behind the locked door; correct?

A Correct.

Q Okay. And you took him in there through -- behind the locked door?

A Correct.

Q And you brought him at least in the direction of your supervisor, Mr. Bunosso?

A Correct.

Q Okay. And when did you recall getting any directive to you to bring him down to Mr. Bunosso? Do you know?

A From what I remember, as I stated, I believe right before -- like right before -- as the meeting was wrapping up I was made aware.

Q Okay.

A And when I walked downstairs he was -- the client was walking with me, the defendant was walking with me. And it's standard procedure, we just let them know that this is what's going on and he willingly walked with me to the next floor.

Q Okay. Well, when -- when you say willingly, I assume you told him you were taking him to go see the supervisor?

A Correct.

Q Okay. As in notwithstanding hey, you can go home now but I'd like you to see my supervisor but you're -- come with me, you're going to see my supervisor now.

A I did not say it in that term. From what I under -- from what I remember --

Q Okay.

A -- I basically let him know the office visit was concluded. We were done and we were walking down stairs but if he had a moment he can speak to someone else who would like to talk to him.

Q Do you recall whether or not you gave him any choice to -- to not --

A There's always a choice. Of course I gave him a choice.

Q You told him, Mr. Brandon, I'm going to take you downstairs now, okay. My supervisor wants to see you but you don't have to see my supervisor. Is that your recollection?

A I don't recall. I don't recall.

upon the commencement of this taped interview with Mr. Brandon, right?

A Yes.

Q Okay. And do you recall who closed the door?

A It was probably Officer Bunosso but I can't say. It wasn't --

Q So --

A It wasn't us.

Q At least your best recollection is he was directed into the room, the door is then closed behind him and your interview begins?

A Yes.

Q Right? Okay. Now, at least your -- I'll jump ahead for a minute. And now we're going to later in the day, right? At the Bridgeport Police Department some time like 6ish in the -- 6 in the early evening, right?

A Yes.

Q Okay. Now, you weren't present when any advisement was actually given; correct?

A That's correct.

Q Okay. So that interview commenced with both Detective Curet and a Detective Winkler, right?

A That's correct.

Q Okay. And at least you understood the two of them -- we'll start with Curet back in February of 2016, how many years did she have in the department?

A She came on in 1983 so a lot.

CONDITIONS OF PROBATION
JD-AP-110 Rev. 7-11
Gen. Stat. 53a-29, 30, 31, 32, 33, 217c, 54-108, P.A. 11-155

STATE OF CONNECTICUT
COURT SUPPORT SERVICES DIVISION - ADULT PROBATION
SUPERIOR COURT

www.jud.ct.gov

Name of Probationer	Period of probation	Date	CMIS case number
Geographical Area number/Judicial District at	Name of Judge		Docket number

Notice to Person under Probation Supervision

As of the above date, you are on probation by order of the Superior Court for the above Period of Probation.

At any time during the period of probation, the court may change or add conditions of probation. The court may also extend the period of probation. If you violate any of the conditions of your probation the court may issue a warrant for your arrest, revoke your probation and require you to serve the sentence imposed or impose a shorter sentence. If you were convicted of certain class C or D felonies or an unclassified felony and your sentence is probation for more than 2 years, or if you were convicted of a class A misdemeanor or class B misdemeanor and your sentence is for more than 1 year, your probation officer will file a report with the court not later than 60 days before you complete 2 years of probation for a felony or 1 year of probation for a misdemeanor. This does not apply to you if you are on probation for another offense for a longer period of time than your probation on this docket. The probation officer will recommend that you either stay on probation or that your probation end. The Court Support Services Division - Adult Probation may require you to follow any or all conditions which the court could have imposed which are not inconsistent with any condition actually imposed by the court. These conditions may include anything reasonably related to your rehabilitation.

During the period of probation you must follow these conditions:

1. Do not violate any criminal law of the United States, this state or any other state or territory.

2. Report as the Probation Officer tells you, tell your probation officer immediately if you are arrested and, if you are incarcerated, report to the Probation Officer immediately after you are released.

3 . Keep the Probation Officer informed of where you are, tell your probation officer immediately about any change to your legal name, address, telephone number, cell phone number, beeper number, employment and allow the Officer to visit you as he or she requires.

4. Do not leave the State of Connecticut without permission from the Probation Officer.

5. Agree to return (waive extradition) from any other state, territory or jurisdiction.

6. Do not operate a motor vehicle in the State of Connecticut if your license has been suspended.

7. Submit to any medical and/or psychological examination, urinalysis, alcohol and/or drug testing, and/or counseling sessions required by the Court or the Probation Officer.

8. If the court ordered you to make restitution, make your payments according to the schedule set by the Court or Probation Officer.

9. If you are on probation for a felony conviction, or a conviction of illegal possession (General Statutes sections 21a-279(c)), criminally negligent homicide (53a-58), assault in the third degree (53a-61), assault of a victim age 60 or older in the third degree (53a-61a), threatening (53a-62), reckless endangerment in the first degree (53a-63), unlawful restraint in the second degree (53a-96), riot in the first degree (53a-175), riot in the second degree (53a-176), inciting to riot (53a-178) or stalking in the second degree (53a-181d), you must not possess, receive or transport any firearm or dangerous instrument as those terms are defined in Section 53a-3 of the Connecticut General Statutes.

10. You must give a blood or other biological sample for DNA analysis to determine your identification characteristics as directed by the Court Support Services Division if you are on probation for conviction of a criminal offense against a victim who is a minor, a nonviolent sexual offense or a sexually violent offense, as those terms are defined in section 54-250 of the Connecticut General Statutes (see the other side of this form for a copy of those definitions) or for a felony, and you were not sentenced to a term of confinement OR if you are under the supervision of the Judicial Branch, including Probation, for conviction or having been found not guilty by reason of mental disease or defect in any other state or jurisdiction of a felony or of any crime, the essential elements of which are substantially the same as a criminal offense against a victim who is a minor, a nonviolent sexual offense or a sexually violent offense, as those terms are defined in section 54-250 of the Connecticut General Statutes (see the other side for a copy of these definitions). If you refuse to give a sample it is a class D felony.

11. If you are placed on electronic monitoring as a condition of your probation your presence may be detected in shelters or other places which may have monitoring devices installed. Notice of your presence in those shelters or other places may be sent to your Probation Officer.

12. Submit to a search of your person, possessions, vehicle or residence when the Probation Officer has a reasonable suspicion to do so.

13. If a violation of probation warrant is issued, or if you are arraigned following an arrest without a warrant, and the probationary period is interrupted, the conditions of your probation will remain in effect unless a Judge orders differently.

14. Court Ordered Special Conditions:

15. Probation Officer Ordered Special Conditions:

I have read and the Probation Officer has reviewed with me the conditions of probation. I understand them and I will follow them.

Signed *(Probationer)*	Probation Officer - Witness	Date

Distribution: Original - Probation Officer Copy - Probationer