

EXHIBIT B

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2025 CO 7

No. 23SC85, *Fraze v. People*—Criminal Procedure—Miranda—Fifth Amendment—Agent of Law Enforcement.

The supreme court granted certiorari to determine whether a Department of Human Services caseworker is a law enforcement officer under *Miranda v. Arizona*, 384 U.S. 436 (1966), and, if so, whether *Miranda*'s test for custody applies when someone in pretrial detention is questioned about the facts underlying their custody.

Following the principles set forth in *Densmore v. People*, 2025 CO 6, ¶¶ 2, 28, 46, __ P.3d __, also announced today, the court concludes that the Department of Human Services caseworker here was neither a law enforcement officer nor an agent of law enforcement for *Miranda* purposes. Accordingly, *Miranda* does not apply in this case, and, thus, the court need not reach the question of whether *Miranda*'s test for custody should apply when a Department of Human Services caseworker questions someone in pretrial detention about the facts underlying their custody.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 7

Supreme Court Case No. 23SC85
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA35

Petitioner:

Patrick Frazee,

v.

Respondent:

The People of the State of Colorado.

Judgment Affirmed

en banc

February 10, 2025

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JUSTICE GABRIEL delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ, JUSTICE BOATRIGHT, JUSTICE HOOD, JUSTICE HART, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 We granted certiorari to determine whether a Department of Human Services caseworker is a law enforcement officer under *Miranda v. Arizona*, 384 U.S. 436 (1966), and, if so, whether *Miranda*'s test for custody applies when someone in pretrial detention is questioned about the facts underlying their custody. Patrick Frazee urges us to adopt a bright-line rule that Department of Human Services caseworkers must give *Miranda* warnings any time they interrogate someone in custody about current or unsolved allegations that a reasonable caseworker should know are criminal. In the alternative, Frazee argues that, under the totality of the circumstances, the caseworker here was acting as a law enforcement officer or as an agent of law enforcement and, thus, was required to give *Miranda* warnings.

¶2 In *Densmore v. People*, 2025 CO 6, ¶¶ 2, 38, 46, __ P.3d __, which we are also announcing today, we addressed a nearly identical issue and concluded that, under a totality of the circumstances test, the caseworker there was not acting as an agent of law enforcement for purposes of *Miranda* and, thus, *Miranda* did not apply. Guided by the principles announced in *Densmore*, we conclude that Department of Human Services caseworker Mary Longmire likewise was neither a law enforcement officer nor an agent of law enforcement for *Miranda* purposes. Accordingly, *Miranda* does not apply in this case, and we need not reach the

question of whether *Miranda*'s test for custody should apply when a Department of Human Services caseworker questions someone in pretrial detention about the facts underlying their custody.

¶3 We therefore affirm the judgment of the division below, albeit on different grounds.

I. Facts and Procedural History

¶4 Frazee was arrested in connection with the November 22, 2018 murder of his romantic partner, Kelsey Berreth.

¶5 Frazee and Berreth had a daughter who was just over one year old at the time of Berreth's death. On the day of Frazee's arrest, December 21, 2018, the Teller County Department of Human Services (the "Department") received a referral from the Woodland Park Police Department concerning the child. This referral was assigned to Longmire, the child and family services administrator with the Department, and, in this instance, Longmire agreed to serve as a caseworker. The child was brought to the Department's office, and a court granted the Department emergency custody of her.

¶6 That same day, Longmire went to the Teller County jail to meet with Frazee. The purpose of this meeting was to serve Frazee notice of the upcoming shelter care hearing concerning the child, to provide him with information about the

dependency and neglect process, and to inform him that the child was in the Department's custody.

¶7 Several days later, on December 26, Longmire again met with Frazee at the Teller County jail. It is this meeting that is at issue in this case. No law enforcement authorities asked Longmire to conduct this meeting, and she did not notify the local police that she was doing so. The meeting took place the day before a preliminary protective proceeding concerning the child was scheduled to occur. As of this time, Frazee had not yet been formally charged with Berreth's murder. Law enforcement officers had, however, told Longmire what they believed had happened, although they did not provide details and Longmire did not have access to any search or arrest warrants that had been issued in the case.

¶8 Longmire met with Frazee in the jail's video advisement room, which is used for, among other things, video advisements, video court sessions, attorney visits, and other official visits, such as the one at issue here. A deputy brought Frazee into the room, but the deputy did not stay, and Longmire was alone with Frazee during the meeting. Frazee was neither handcuffed nor restrained, nor did Longmire limit his freedom of movement during the meeting. And Frazee was free to leave at any time. Longmire, who was not a law enforcement officer and who had never been trained in law enforcement interrogation techniques, did not provide *Miranda* warnings to Frazee.

¶9 At the outset of the meeting, Longmire explained to Frazee that due to his incarceration, the child did not have an appropriate caregiver and that Longmire had questions for Frazee regarding that issue. Longmire expressly told Frazee that she would understand if there were questions that he did not want to answer due to the allegations against him and the ongoing criminal investigation.

¶10 Longmire further told Frazee that she was there to complete her assessment of the family and to gather information about the child that she needed in order to complete the paperwork for the Interstate Compact on the Placement of Children. In particular, she explained that she “needed to learn about [Frazee’s] background growing up, about [the child’s] development, if she had any medical issues, you know, what was her daily schedule, how was her development, different things like that.” Longmire also asked about Berreth, Frazee’s relationship with her, and the custody arrangement that they had regarding the child, so that Longmire could understand what the child’s daily life was like, whom she was with and when, and her relationship with both of her parents. And Longmire went through a list of fourteen standardized questions that she and her colleagues use to compile a child’s family history and to complete an assessment.

¶11 In response to Longmire’s questions, Frazee described how he and Berreth met, and he provided context and background on their relationship. He also

provided background information on himself, his upbringing, his family, and his childhood, as well as some information on Berreth's relationship with his family.

¶12 In addition, although Berreth was, in fact, deceased by the time of this meeting, Frazee told Longmire where Berreth was living, and he noted that he was not living with her at that time. He then described the custody arrangement that he and Berreth had concerning the child, noting that it was a "split custody" arrangement, which was a then-recent change from their initial arrangement, in which Frazee had had the child during the day while Berreth worked.

¶13 The conversation next turned to the Thanksgiving 2018 time frame, when Berreth went missing. Longmire explained that she wanted to discuss that period in order to determine where the child was, particularly during the time of Berreth's disappearance. This was relevant to the allegation that the child had been exposed to an injurious environment or to violence. Accordingly, Longmire wanted to know the timeline of events involving the child during those several days.

¶14 Frazee explained that he had the child with him the day before Thanksgiving and that he was to return the child to Berreth that day. For several reasons, however, the exchange was delayed, and Frazee ultimately returned the child to Berreth late that evening. The child was to spend Thanksgiving morning with Berreth and Thanksgiving afternoon with Frazee, and in accordance with this plan, Frazee picked up the child on Thanksgiving and took her with him to do

some work, which was not atypical. Thereafter, they went to Frazee's mother's house for Thanksgiving dinner, and they stayed there through the evening.

¶15 Frazee then told Longmire that on the Friday after Thanksgiving, he had several communications with Berreth regarding the exchange of the child. According to Frazee, Berreth told him that she needed to sort some things out, and she asked him to keep the child that day, which he did.

¶16 Frazee claimed that he had telephone calls or exchanged text messages with Berreth the next day (Saturday) and that Berreth again asked him to keep the child. Frazee told Longmire that during a conversation that day, Berreth "lost it," and, thus, Frazee wanted to keep the child "until the storm blew over."

¶17 Frazee further told Longmire that he spoke with Berreth the following day (Sunday), and he and Berreth discussed where their relationship was going. Frazee indicated that they agreed that Frazee would continue to keep the child with him, and he again took her to work. Frazee then noted that he and Berreth exchanged several texts that day, after which he was unable to get a hold of her. Frazee's description of the timeline ended with Frazee indicating that he spoke with Berreth's mother on December 2 and that she said that she had not been able to reach Berreth. Frazee responded that Berreth needed her space.

¶18 The meeting between Longmire and Frazee lasted between sixty and ninety minutes. Longmire described the meeting as professional, and she noted that

Frazee was cooperative and provided a lot of information about the child. At no time during the meeting did Longmire confront Frazee about anything. In her view, she had no information with which to do so.

¶19 After the meeting ended, Longmire documented what she had learned in a Referral/Assessment Summary. Pursuant to a release that Frazee had signed during one of Longmire's two meetings with him, Longmire shared her assessment documentation with both the district attorney's and public defender's offices.

¶20 The criminal case against Frazee proceeded, and prior to trial, the People endorsed Longmire as a witness. Thereafter, Frazee moved to suppress all of the statements that he had made to Longmire at his December 26 meeting with her, arguing that the meeting was a custodial interrogation conducted without the requisite *Miranda* warnings. Frazee thus asserted that the admission of his statements to Longmire would violate his constitutional rights.

¶21 The trial court subsequently conducted an evidentiary hearing on Frazee's motion. At this hearing, Longmire testified to the conversations described above.

¶22 A few days later, the court issued a written order denying Frazee's motion. In support of its ruling, the court began by explaining that *Miranda* is inapplicable unless the suspect is in custody and the statement at issue was the product of a police interrogation. The court next observed that the facts that Frazee was

incarcerated and that the meeting with Longmire took place at the county jail did not necessarily mean that Frazee was in custody. Rather, the court noted that in *People v. Denison*, 918 P.2d 1114, 1116 (Colo. 1996), *People v. J.D.*, 989 P.2d 762, 768 (Colo. 1999), and *People v. Parsons*, 15 P.3d 799, 801-02 (Colo. App. 2000), this court and a division of the court of appeals described the factors that courts should consider in determining whether an inmate, who is already in custody, has been further restricted so as to establish custody for *Miranda* purposes. The court then opined that, by its terms, *Miranda* applies only to actions of law enforcement officials, and the court noted the statutory duties imposed on state human services departments to investigate and act in circumstances like those present here to ensure that the needs of the child are satisfied and to keep the court and the parents apprised as to the status of the matter.

¶23 Applying these principles to the case before it, the court found that Longmire was not a police officer, a peace officer, or a law enforcement officer. To the contrary, her actions in this case were consistent with her duties under the Children's Code, and because a court had placed legal custody of the child with the Department, she was required by law to investigate the matter and to make a recommendation to the court regarding child placement. As a result, in the court's view, Longmire was not acting as an agent of law enforcement but, in fact, was acting independently of law enforcement. In addition, the court found that

although Frazee was in jail, no custodial interrogation had taken place. Based on these findings, the court concluded that Longmire had no legal duty to provide Frazee with a *Miranda* advisement or warning.

¶24 The case proceeded to a jury trial at which Longmire testified regarding her meetings with Frazee. The jury ultimately found Frazee guilty of first degree murder after deliberation, felony murder, three counts of solicitation to commit first degree murder, and tampering with a deceased human body.

¶25 Frazee then appealed, contending, among other things, that the trial court had erred in admitting Longmire's testimony. *People v. Frazee*, No. 20CA35, ¶¶ 1, 38 (Dec. 29, 2022). Specifically, he argued that suppression of his statements to Longmire was required because he had made those statements during a custodial interrogation that Longmire conducted without first providing him with *Miranda* warnings. *Id.* at ¶ 38.

¶26 In a unanimous, unpublished decision, the division disagreed and affirmed the judgment of conviction. *Id.* at ¶¶ 1, 38–52, 115. In so ruling, the division agreed with the trial court that Frazee was not in custody for *Miranda* purposes during Longmire's meeting with him. *Id.* at ¶ 45. Accordingly, the division did not need to consider whether Longmire was acting as an agent of law enforcement during the meeting. *Id.*

¶27 Frazee then petitioned this court for a writ of certiorari, and we granted his petition.

II. Analysis

¶28 We begin by setting forth the applicable standard of review and *Miranda*'s requirements, particularly with regard to when a person other than a law enforcement officer conducts a custodial interrogation. We then apply those principles to the facts now before us.

A. Standard of Review and Applicable Legal Principles

¶29 Our review of a trial court's order regarding a suppression motion involves a mixed question of fact and law. *Densmore*, ¶ 27. We defer to the court's factual findings if they are supported by competent evidence in the record, but we review its legal conclusions de novo. *Id.* Our review of a trial court's ruling on a suppression motion is limited to the record created at the hearing on that motion. *Id.*

¶30 The Fifth Amendment to the United States Constitution protects individuals from compelled self-incrimination. U.S. Const. amend. V. To safeguard this right, *Miranda*, 384 U.S. at 478–79, requires that when an individual is subjected to a custodial interrogation, the interrogator must advise the individual that (1) they have the right to remain silent; (2) anything they say can be used against them in a court of law; (3) they have the right to an attorney's presence; and (4) if they

cannot afford an attorney, then one will be appointed for them prior to any questioning if they so desire. Absent an exception to this rule, unwarned statements made during a custodial interrogation are presumed to be compelled and are inadmissible in the prosecution's case in chief. *Verigan v. People*, 2018 CO 53, ¶ 19, 420 P.3d 247, 251.

¶31 In *Densmore*, ¶ 29, which involved a nearly identical issue to that now before us, we explained that although *Miranda* typically applies to law enforcement officers conducting custodial interrogations, it also applies to non-law enforcement officers acting as agents of law enforcement. We further explained that to determine whether a non-law enforcement officer is acting as an agent of law enforcement in conducting a custodial interrogation, courts consider the totality of the circumstances, including both objective and subjective factors. *Id.* at ¶¶ 29, 33. And we provided a nonexclusive list of factors that courts may consider in determining whether a person, such as a Department of Human Services caseworker, was acting as an agent of law enforcement. *Id.* at ¶¶ 30–32. Such factors include the caseworker's duty to investigate and interview people who may be incarcerated; her authority to apprehend, handcuff, and detain others; her access to police reports and whether she reviewed any police reports before the interrogation at issue; her duty to report information that she learned; her job duties and the purposes of those duties; whether she was under contract with and

paid by the state to perform these duties; whether she investigates crimes; whether her purpose was to obtain incriminating information; whether the police directed, controlled, or participated in her investigation or provided input regarding the questions she should ask the person to be interviewed; and the extent of the investigator's contact with law enforcement officers before she began her investigation. *Id.*

¶32 Those same principles apply here, and with these principles in mind, we turn to the facts of this case.

B. Application

¶33 Applying the above-described factors, we conclude that Longmire was not acting either as a law enforcement officer or as an agent of law enforcement when she spoke with Frazee. Accordingly, she was not required to provide him with *Miranda* warnings before asking him questions.

¶34 Specifically, evidence in the record of the suppression hearing established that Longmire was not a law enforcement officer, and she had no law enforcement training. Moreover, the police did not ask Longmire to meet with Frazee, and she did not advise them that she was doing so. And Longmire did not have access to any police reports or files, although before she met with Frazee, the police had shared with her their belief as to what had happened, albeit without providing details.

¶35 When Longmire then met with Frazee, she did not have the authority to apprehend, detain, or handcuff him, and he was not restrained during his meeting with her. In addition, Frazee could have left at any time, and Longmire advised him at the outset of the meeting that he was free to decline to answer any of her questions, given the circumstances. And no law enforcement officers directed the meeting or scripted the questions that Longmire asked. Indeed, no law enforcement officers participated in or were even present for the meeting.

¶36 Finally, as in *Densmore*, ¶ 36, Longmire's purpose for the interview was not to uncover violations of law, to develop evidence in a criminal case, or to enforce criminal law. Rather, her purpose was to learn about the child's needs, development, and relationships so that she could place the child in an appropriate home and ensure her safety. The fact that Longmire ultimately shared her assessment with the district attorney's and public defender's offices did not change this fundamental purpose of her meeting with Frazee. *See id.* Nor is it dispositive that Longmire was paid by the state. She had a statutory duty to investigate matters related to the child and to report certain information. In doing so, she was not performing a law enforcement function.

¶37 Considering all of these factors in their totality, we conclude, as did the trial court with ample record support, that Longmire was not acting either as a law enforcement officer or as an agent of law enforcement when she met with Frazee.

Accordingly, she had no obligation to provide Frazee with *Miranda* warnings prior to speaking with him.

¶38 In so concluding, and for the reasons set forth in *Densmore*, ¶ 32, we decline to adopt Frazee’s proposed bright-line rule that *Miranda* should apply whenever a caseworker conducts a custodial interrogation that involves current or unsolved allegations that a reasonable caseworker should know are criminal. As we said in *Densmore*, such a rule would, as a practical matter, cover most child welfare interviews that caseworkers conduct of parents in custody, regardless of the circumstances of a particular case, and Frazee has offered no persuasive reason for extending *Miranda* to custodial interrogations conducted by people who are neither law enforcement officers nor agents of law enforcement. *See id.*

¶39 We likewise are unpersuaded by Frazee’s focus on the facts that the police made the initial referral; before Longmire met with Frazee, law enforcement officers had told her what they believed had occurred; and Longmire knew that Frazee was the subject of an active criminal investigation at the time she met with him.

¶40 As to the referral, this is simply one way that a dependency and neglect proceeding begins. *See* § 19-3-501(1), C.R.S. (2024) (authorizing law enforcement officers to refer dependency and neglect matters to the court, which may then designate a county department of human services to conduct an investigation).

¶41 As to the facts that Longmire obtained some information before speaking with Frazee and was aware that an active criminal investigation was ongoing, we decline to conclude that a caseworker's attempt to educate herself about a case before she conducts her investigation, in and of itself, renders her an agent of law enforcement. Rather, as noted above, courts must consider the totality of the circumstances, and the fact that Longmire obtained information before meeting with Frazee, including that he was the subject of a criminal investigation, does not override the myriad factors described above establishing that Longmire was not acting either as a law enforcement officer or as an agent of law enforcement when she spoke with Frazee.

¶42 Finally, we are unpersuaded by Frazee's contention that law enforcement officers provided Longmire with a list of questions to ask Frazee. Although the division below appears to have accepted Frazee's assertion that Longmire took notes on a form provided by the district attorney's office, *see Frazee*, ¶ 44, in our view, and with respect, the record demonstrates otherwise. Specifically, as noted above, Longmire used a standardized list of fourteen questions that the Department employs during such interviews, and the People introduced into evidence at the suppression hearing a blank form containing these standardized questions. The portion of the transcript on which Frazee relies establishes nothing more than that when Longmire could not remember a detail during her testimony,

the People refreshed her recollection with the assessment summary *that she had provided to law enforcement*. At no point did Longmire or the prosecutor state that the district attorney's office had created the assessment form that Longmire was to use. Nor do we perceive anything in the record to support an allegation that law enforcement officials provided such a form to Longmire prior to her meeting with Frazee.

III. Conclusion

¶43 For these reasons, we conclude that Longmire did not act either as a law enforcement officer or as an agent of law enforcement when she met with Frazee. Accordingly, she had no obligation to provide Frazee with *Miranda* warnings before speaking with him. In light of the foregoing, we need not reach the question of whether Frazee was in custody for *Miranda* purposes.

¶44 Accordingly, we affirm the judgment of the division below, albeit on different grounds.