

EXHIBIT A

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No. 23SC81, *Densmore v. People*—Criminal Procedure—Fifth Amendment—*Miranda*—Agent of Law Enforcement.

The supreme court granted certiorari to consider whether *Miranda v. Arizona*, 384 U.S. 436 (1966), applies when a Department of Human Services caseworker conducts a custodial interrogation.

The court concludes that, in determining whether a caseworker acted as an agent of law enforcement in interviewing a person who was in custody, such that *Miranda* warnings were required, courts must consider the totality of the circumstances, including both objective and subjective factors. Applying that standard to the facts presented, the court further concludes that the caseworker who interviewed Petitioner did not act as an agent of law enforcement when she spoke with him and, therefore, she was not required to provide *Miranda* warnings before conducting the interviews.

Accordingly, the court affirms the judgment of the court of appeals division below.

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

2025 CO 6

Supreme Court Case No. 23SC81
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 18CA1304

Petitioner:

Adam Douglas Densmore,

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 consider whether *Miranda v. Arizona*, 384 U.S. 436 (1966), applies when a Department of Human Services caseworker conducts a custodial interrogation. Adam Douglas Densmore urges us to adopt a bright-line rule that whenever a caseworker conducts a custodial interrogation that involves current or unsolved allegations that a reasonable caseworker should know are criminal, *Miranda* applies. Alternatively, he asks us to adopt an objective totality of the circumstances test that does not consider subjective intent.

¶2 We decline both invitations and instead conclude that, in determining whether a caseworker acted as an agent of law enforcement in interviewing a person who was in custody, such that *Miranda* warnings were required, courts must consider the totality of the circumstances, including both objective and subjective factors. Applying that standard to the facts presented here, we further conclude that the caseworker who interviewed Densmore did not act as an agent of law enforcement when she spoke with him and, therefore, she was not required to provide *Miranda* warnings before conducting the interviews.

¶3 Accordingly, we affirm the judgment of the court of appeals division below.

I. Facts and Procedural History

¶4 In February 2017, Densmore lived in Boulder with his thirteen-month-old child and the child's mother, Ashley Mead. After Mead did not arrive for work one day, her employer called the police.

¶5 At this time, Densmore and the child were in Oklahoma, where Densmore was arrested by Oklahoma law enforcement officers. Because Densmore had the child with him when he was arrested and the child had no other adult caregivers, the police called the Oklahoma Department of Human Services (the "Department") and asked the Department to take custody of the child. At that point, Jessica Punches, then a child welfare specialist in the Department's Child Welfare Division, got involved in this matter.

¶6 Punches was not a law enforcement officer, and her job description did not include any specific law enforcement activities or criminal investigations. Rather, her job involved investigating the safety of children and reporting information that could endanger a child's welfare.

¶7 In performing these duties, Punches frequently interviewed people who were incarcerated. When she conducted such interviews, her purpose was to determine what brought a child to the Department's attention and the steps necessary to maintain the child's safety. Thus, when interviewing someone who was incarcerated, she asked questions concerning substance abuse, domestic

violence, family support, discipline, parenting styles, child placement options, and services that the incarcerated parent might need. Ultimately, PUNCHES sought to determine the least restrictive placement for the child, prioritizing placing the child with a family member, if possible, rather than in foster care.

¶8 Consistent with the foregoing, PUNCHES took custody of DENSMORE's child, brought the child to her office, and began seeking an appropriate placement. She also spoke with a detective from the Boulder Police Department. At that point, the detective informed PUNCHES that DENSMORE was being held on a suspected custody violation, MEAD's whereabouts were unknown, and it was unclear whether MEAD was alive.

¶9 PUNCHES then interviewed DENSMORE at the county jail where he was being held. Before this interview, police had twice provided DENSMORE with *Miranda* warnings, and each time, DENSMORE had invoked his right to an attorney. It appears undisputed that PUNCHES did not provide DENSMORE with *Miranda* warnings before beginning her interview. It likewise appears undisputed that no law enforcement officer had asked PUNCHES to interview DENSMORE and that PUNCHES did not offer to interview DENSMORE on behalf of any law enforcement officers. Rather, consistent with her usual practice as a child welfare specialist, her intent was to ascertain information to ensure the safety and appropriate placement of the child.

¶10 PUNCHES questioned Densmore regarding the child's allergies, her likes and dislikes, how to comfort her, how she was disciplined, parenting techniques, substance abuse, domestic violence, and support systems for the family. PUNCHES also asked Densmore how he ended up in the county where he was arrested and about his travel plans. She asked these questions to try to establish a timeline of what had happened for purposes of her investigation. She further asked Densmore if he knew where Mead was. She did so because if a parent is available, then she would want to place the child with that parent. She also inquired about other family members who could possibly take custody of the child.

¶11 In the course of this conversation, PUNCHES asked Densmore when he last saw Mead. He responded that it was on the previous Sunday, and he noted that he and Mead had gotten into a fight. PUNCHES asked him to tell her about the fight and whether it was physical. Densmore responded that he had slapped Mead. PUNCHES also asked about his relationship with Mead generally.

¶12 PUNCHES inquired about domestic violence in the household because she understood that exposure to domestic violence is a child safety concern. She sought information regarding Densmore's relationship with Mead because she generally wanted to know how individuals in a child's home got along and related to each other, to determine whether there was any danger to the child.

¶13 During Punches's interview of Densmore, a task force officer sat behind Punches, at her request, for her "safety." The officer did not ask Densmore any questions, instruct Punches to ask any questions, or participate in the interview in any way.

¶14 In addition, an audio/video recording system recorded Punches's interview of Densmore, as well as Densmore's interactions with law enforcement officers following that interview. At the conclusion of the interview, it appears that both Punches and an FBI agent obtained discs containing the video recording. It further appears that the recording was subsequently shared with the Boulder Police Department.

¶15 After Punches completed her interview of Densmore, she spoke with an FBI agent who told her that a torso had been found in a dumpster and that he believed it to be Mead's torso. She also spoke with a Boulder detective who informed her that Densmore was being held on suspicion of first degree murder.

¶16 The next day, Punches spoke again with Densmore, this time by telephone. Two of Punches's colleagues also participated in this call, the purpose of which was to conduct a "child safety meeting." It appears undisputed that neither Punches nor either of her colleagues provided Densmore with *Miranda* warnings before this meeting, assuming that a telephonic meeting like this could even be characterized as a custodial interrogation. And, as with the prior interview, the

purpose of this meeting was not to aid in any prosecution, to solve any crimes, or to gather incriminating information; Punches did not make the call on behalf of any law enforcement personnel; and no law enforcement personnel instructed Punches to make this call. Rather, the purpose of the meeting was to discuss with Densmore the facts that he was incarcerated and Punches had not yet found another caregiver, Densmore's admitted substance abuse, and "possible fighting" between him and Mead. Punches also discussed with Densmore his strengths as a parent and the best placement plan for the child.

¶17 In the course of this conversation, Punches again inquired whether there had been any domestic violence between Mead and Densmore. When Densmore responded that there had not been, Punches confronted him with his statement during the initial interview that he had slapped Mead. Punches followed up because, as noted above, she understood that domestic violence in the home was a child safety concern and also because she wanted her two colleagues, who had not been present during her initial interview, to hear the information that she had gathered previously.

¶18 When Punches conducted an investigation like the one in this case, she created a report that she often (although not always) filed with the district attorney. She created such a report here and shared it with the district attorney, although she did not include in her report information regarding the child safety

meeting. She excluded that information because all parties to that meeting had agreed to treat the meeting as confidential. Thus, the child safety meeting was documented only internally at the Department.

¶19 Several months later, a Boulder detective contacted Punches because the detective's copy of the recording of Punches's initial interview with Densmore was not working properly. The detective inquired whether Punches had a working copy and asked for information about her interview with Densmore. Because the Department's records are sealed, Punches was unsure whether it was appropriate for her to share this information without a court order. She therefore asked her supervisor. Her district director responded that she could share the requested information with law enforcement, and Punches did so.

¶20 The People charged Densmore with first degree murder of Mead, tampering with a deceased human body, tampering with physical evidence, and abuse of a corpse. Densmore thereafter moved to suppress the statements that he had made to Punches during her interview of him at the jail and to suppress any testimony regarding the telephonic child safety meeting. Regarding the former, Densmore argued that (1) Punches was acting as an agent of the state when she interrogated Densmore and, thus, all of his statements should be suppressed because they were in violation of *Miranda* and (2) the statements were not voluntary. Regarding the latter, he argued, among other things, that the statements were not voluntary.

¶21 The trial court ultimately denied both of Densmore's motions, principally reasoning that Punches's purpose in interviewing Densmore was to develop a safety plan and placement options for the child. In support of this determination, the court found that it was the Department's regular practice to interview a child's biological parents when the Department took custody of the child and, thus, Punches had a purpose other than to aid law enforcement in investigating this case. Accordingly, the court concluded that Punches was not acting as an agent of law enforcement when she conducted the interview and, therefore, the interview did not fall within the purview of the Constitution. In light of this ruling, the court did not need to decide whether Densmore's statements were voluntary.

¶22 As to the telephonic child safety meeting, the court similarly found that the meeting's purpose was to discuss with Densmore the Department's allegations, to obtain his thoughts regarding the child's placement, and to find the least restrictive environment for the child. The purpose of the meeting was not to aid law enforcement, which did not participate in the meeting, and, thus, Punches and her colleagues were not acting as agents of law enforcement during the meeting. As a result, the court concluded that, like Punches's initial interview, this meeting did not implicate constitutional protections, and the court again did not need to determine whether Densmore's statements were voluntary.

¶23 The case proceeded to a jury trial, and, at trial, the court admitted some of Densmore's statements to PUNCHES. The jury convicted Densmore as charged, and he appealed, arguing, as pertinent here, that the trial court had erred in denying his motions to suppress his statements to PUNCHES.

¶24 In a unanimous, unpublished opinion, a division of the court of appeals affirmed. *People v. Densmore*, No. 18CA1304, ¶ 106 (Nov. 23, 2022). In so ruling, the division observed that *Miranda* applies to a custodial interrogation conducted by a person other than a law enforcement officer when that person acts as an agent of law enforcement. *Id.* at ¶ 28. This is to prevent law enforcement officers from circumventing *Miranda* by directing third parties to act on their behalf. *Id.* The division then applied a totality of the circumstances test to determine whether PUNCHES had acted as an agent of law enforcement. *Id.* at ¶ 31. In applying this test, the division considered, among other things, that (1) PUNCHES was a government employee; (2) her job duties all related to child welfare and family reunification; (3) she confirmed that she was not a law enforcement officer and did not investigate crimes; (4) the fundamental purpose of her investigations was not to obtain incriminating information; (5) there was no evidence that the police directed, controlled, or participated in her investigation; (6) she had not consulted or coordinated with law enforcement personnel regarding the questions to ask Densmore; (7) she had had only brief contact with law enforcement officers before

beginning her investigation; (8) no evidence showed that she had reviewed any police reports or other materials related to the criminal investigation; (9) she had a duty to report information that may endanger a child's welfare; (10) she did not provide a report to prosecutors in every case; and (11) she did not have the authority to apprehend, detain, or handcuff individuals. *Id.* at ¶¶ 32–35. Considering these factors in their totality, the division concluded that Punches was not acting as an agent of law enforcement when she spoke with Densmore in this case. *Id.* at ¶ 36. The division thus determined that the trial court had correctly denied Densmore's motions to suppress his statements to Punches. *Id.* at ¶ 37.

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

II. Analysis

¶26 We begin by setting forth the applicable standard of review and *Miranda*'s requirements. We then address the law that applies when a person other than a law enforcement officer conducts a custodial interrogation. We end by applying these legal principles to the facts now before us.

A. Standard of Review and Governing *Miranda* Principles

¶27 Our review of a trial court's order regarding a motion to suppress evidence involves a mixed question of fact and law. *People v. Cline*, 2019 CO 33, ¶ 13, 439 P.3d 1232, 1236. We defer to a trial court's factual findings if they are

supported by competent evidence in the record, but we review de novo the court's legal conclusions. *Id.* Our review of a trial court's ruling on a motion to suppress is limited to the record created at the suppression hearing. *People v. Thompson*, 2021 CO 15, ¶ 16, 500 P.3d 1075, 1078.

¶28 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.

B. Custodial Interrogations by Non-Law Enforcement Officers

¶29 Although *Miranda* typically applies to law enforcement officers conducting custodial interrogations, we have opined that it also applies to “civilians acting as agents of the state in order to prevent law enforcement officials from circumventing the *Miranda* requirements by directing a third party to act on their

behalf.” *People v. Robledo*, 832 P.2d 249, 250 (Colo. 1992). To determine whether a civilian is acting as an agent of law enforcement in conducting a custodial interrogation, a court must consider the totality of the circumstances. *Id.* Although our case law has not compiled an exhaustive list of factors that a court must consider, we have provided guidance.

¶30 In *Robledo*, for example, we considered whether a counselor at a juvenile detention center acted as an agent of law enforcement in speaking with a detained juvenile. *Id.* In that context, we deemed relevant the counselor’s duty to investigate and interview juveniles to determine whether they qualified for home monitoring; the counselor’s authority to apprehend, handcuff, and detain juveniles under certain circumstances; his access to police reports and the fact that he had reviewed the incarcerated juvenile’s police report before meeting with the juvenile; the counselor’s duty to report information that he learned and that might cause or had caused bodily injury to another; and the fact that the counselor was under contract with and was paid by the state to perform these duties. *Id.* at 251.

¶31 Nothing in *Robledo*, however, suggested that these factors are the exclusive factors that courts are to consider in determining whether a civilian is acting as an agent of law enforcement when conducting a custodial interrogation. To the contrary, we emphasized that courts are to consider the totality of the circumstances. *Id.* at 250. Accordingly, in our view, the division below did not err

in also considering factors such as the investigator's job duties and the purposes of those duties; whether the investigator was a law enforcement officer who investigates crimes; whether the investigator's purpose was to obtain incriminating information; whether the police directed, controlled, or participated in her investigation or gave input regarding the questions the investigator should ask the person to be interviewed; and the extent of the investigator's contact with law enforcement officers before she began her investigation. *Densmore*, ¶¶ 32–35. All of these factors contribute to an assessment of the totality of the circumstances.

¶32 We believe—and therefore reaffirm—that the foregoing totality of the circumstances approach is a workable one that appropriately considers the facts of each particular case. We thus decline to adopt *Densmore*'s proposed bright-line rule that whenever a caseworker conducts a custodial interrogation that involves current or unsolved allegations that a reasonable caseworker should know are criminal, *Miranda* applies. 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 *Densmore* 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.

¶33 We likewise decline *Densmore*'s invitation to limit the factors that a court may consider to objective ones, excluding subjective factors such as the intent of

the interrogator. Neither *Robledo* nor any other case of which we are aware expressly limits the agency determination to an assessment of objective factors, and we believe that such an approach would, in some cases, preclude consideration of relevant facts, contrary to a totality of the circumstances analysis.

¶34 Accordingly, we reaffirm the totality of the circumstances approach that we adopted decades ago in *Robledo* and decline to limit the factors that a court may deem relevant in a particular case.

C. Application

¶35 Applying the foregoing principles to the facts before us, we conclude that Punches was not acting as an agent of law enforcement when she interviewed Densmore here. To be sure, Punches, like the counselor in *Robledo*, was paid by the state and had duties to investigate and interview individuals and to report certain information that she had learned (albeit not necessarily for law enforcement purposes). Unlike in *Robledo*, however, no evidence was presented that Punches had the authority to apprehend, detain, or handcuff individuals. Nor did she have access to or review any police reports or other materials related to the criminal investigation involving Densmore before speaking with him.

¶36 In addition, although the police were aware that Punches was interviewing Densmore, they did not direct her to do so. Nor did they direct or control her investigation or coordinate with her regarding questions that she was to ask

Densmore. And Punches did not intend through her questioning to assist law enforcement in investigating any crimes or to obtain incriminating information. Rather, her purpose was to gather information to ensure the child's welfare and to find a safe placement for the child. The fact that Punches sometimes shared her report with the district attorney and did so here did not change her role or purpose in interviewing Densmore. Nor did her role or purpose in performing her duties change when, several months after her initial interview and child safety meeting with Densmore, she shared requested information with a Boulder detective.

¶37 We also note that although a task force officer was present during the initial interview, it appears undisputed that he was present at Punches's request and solely for her safety and that he did not participate in any way in the interview. And although law enforcement officers obtained the recording of Punches's initial interview of Densmore, the record does not establish that the interview was recorded to gather incriminating information.

¶38 Considering all of these facts in their totality, we conclude that Punches was not acting as an agent of law enforcement when she interviewed Densmore and, thus, she had no obligation to provide *Miranda* warnings prior to conducting that interview.

¶39 We are not persuaded otherwise by Densmore's reliance on *Estelle v. Smith*, 451 U.S. 454 (1981), and *Mathis v. United States*, 391 U.S. 1 (1968).

¶40 *Estelle*, 451 U.S. at 467, concerned whether the government could introduce, at the penalty phase of a capital trial, unwarned statements that an in-custody defendant had made to a psychiatrist during a court-ordered competency evaluation. There, although the psychiatrist was initially designated by the court to conduct a neutral competency evaluation, he subsequently went beyond merely reporting to the court on the question of the defendant's competence and testified for the prosecution at the penalty phase of the trial on the issue of the defendant's future dangerousness. *Id.* In these circumstances, the Court concluded that the psychiatrist's role had changed and that he had essentially become an agent of law enforcement. *Id.*

¶41 As Densmore contends, *Estelle* involved statements made to a person other than a law enforcement officer without the benefit of *Miranda* warnings, and the same is true here. Unlike here, however, the psychiatrist in *Estelle* had spoken to the defendant in the context of, in direct connection with, and for the purpose of a pending criminal proceeding. Accordingly, it is not clear to us that *Estelle* is on point, as Densmore argues. Regardless, in the time since *Estelle* was decided, the Supreme Court has observed that its "opinion in *Estelle* suggested that [its] holding was limited to the 'distinct circumstances' presented there." *Penry v. Johnson*, 532 U.S. 782, 795 (2001). Indeed, the Court has noted that it "[has] never extended

Estelle's Fifth Amendment holding beyond its particular facts.” *Id.* We therefore decline to apply *Estelle* to the very different factual setting now before us.

¶42 In *Mathis*, 391 U.S. at 2-4, 3 n.2, an in-custody defendant had made unwarned statements to an Internal Revenue Service agent as part of what the Government deemed a “routine tax investigation.” The defendant contended that the statements were inadmissible under *Miranda*. *Id.* at 3. The Government responded that *Miranda* was inapplicable because (1) the questions were asked as part of a “routine tax investigation” that might not have resulted in a criminal prosecution and (2) the defendant was not incarcerated by the agent questioning him but was imprisoned for a different purpose. *Id.* at 4.

¶43 The Court agreed with the defendant, concluding that the distinctions between the case before it and *Miranda* were “too minor and shadowy” to justify departing from *Miranda*. *Id.* In support of this conclusion, the Court began by acknowledging that tax investigations could be initiated for the purpose of civil proceedings rather than criminal prosecutions and that, to this extent, tax investigations differ from investigations of some other crimes. *Id.* The Court went on to note, however, that tax investigations frequently lead to criminal prosecutions, as had occurred in the case before it. *Id.* Indeed, the full-fledged criminal investigation in the matter before the Court began just days after the agent’s last visit to question the defendant. *Id.* In these circumstances, the Court

declined to conclude that tax investigations are immune from *Miranda's* requirements, as the Government there had argued. *Id.*

¶44 Although we acknowledge that there are some parallels between the interviews at issue in *Mathis* and the meetings at issue here, we conclude that the tax investigation in *Mathis* differs in material ways from the kind of child welfare investigation that occurred in this case. The purpose of the agent's investigation in *Mathis* was to enforce federal tax laws, whether through civil or criminal proceedings. *Id.* Accordingly, the investigation served a predominantly law enforcement purpose. Here, in contrast, Punches conducted her investigation to determine how to care for and where to place Densmore's child while Densmore was in custody, Mead's whereabouts were unknown, and the child had no other caregivers. As a result, Punches's investigation was not aimed at uncovering violations of law, developing evidence in a criminal case, or enforcing criminal law, even if her investigation ultimately uncovered facts that subsequently became relevant in the criminal investigation concerning Densmore.

¶45 Moreover, in a case like this, child welfare specialists like Punches serve a critical role that is entirely separate and distinct from any criminal proceedings, namely, ensuring child safety and finding an appropriate placement for a child. In our view, such facts make Punches's involvement in this case materially

different from that of the Internal Revenue Service agent in *Mathis*. *Mathis* is therefore distinguishable from the case now before us.

III. Conclusion

¶46 For these reasons, we conclude that when determining whether a Department of Human Services caseworker acted as an agent of law enforcement in interviewing a person who was in custody, such that *Miranda* warnings were required, courts must consider the totality of the circumstances, including both objective and subjective factors. Applying this approach to the facts now before us, we further conclude that Punches did not act as an agent of law enforcement when she interviewed Densmore and, therefore, she was not required to provide *Miranda* warnings before conducting the interviews. As a result, the division below correctly upheld the trial court's order denying Densmore's motions to suppress.

¶47 Accordingly, we affirm the division's judgment.