No. 10-680

In the

Supreme Court of the United States

CAROL HOWES,
Petitioner,

v.

RANDALL LEE FIELDS.
Respondent.

ON PETITIONER FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Elizabeth L. Jacobs
Attorney for Respondent
615 Griswold, Suite 1126
Detroit, Michigan 48226
(313) 962-4090

QUESTIONS PRESENTED

I. Whether this Court's clearly established precedent holds that a prisoner is "in custody" for purposes of *Miranda* when he is removed from the general prison population, subjected to further restrictions on his freedom of movement and is interrogated about conduct occurring outside the prison and unrelated to the reason for his incarceration?

PARTIES TO THE PROCEEDING

All parties to the proceedings are listed in the caption. The Petitioner is Carol Howes, warden of a state correctional facility. The Respondent is Randall Fields, an inmate.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes

Rules

OPINIONS BELOW

The opinion of the Court of Appeals affirming federal habeas relief, *Fields v Howes*, is reported below at 617 F3d 813 (6th Cir, 2010). Pet. App. 2a-30a. The Opinion and Order of the United States District Court for the Eastern District of Michigan granting habeas relief is unpublished. Pet. App. 32a-51a.

The Michigan Supreme Court decision denying the application for leave to appeal, *People v Fields*, is reported at 472 Mich. 938, 698 NW2d 394 (2005). Pet. App. 52a. The decision of the Michigan Court of Appeals affirming Fields' conviction is unpublished. Pet. App. 53a-62a.

JURISDICTION

Respondent accepts Petitioner's statement of jurisdiction. Jurisdiction is based on 28 USC 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Self-Incrimination Clause of the Fifth Amendment states in pertinent part:

No person ... shall be compelled in any criminal case to be a witness against himself...

The statute involved is 28 USC 2254(d) which provides:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to a judgement of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim

> (1) resulted in a decision that was contrary to or involved an unreasonable application of clearly established Federal law, as determined by the Supreme Court of the United States; or.
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceedings.

INTRODUCTION

While Respondent was serving a 45-day sentence on a disorderly conduct conviction, deputies extracted an inculpatory statement from him regarding conduct occurring outside the prison without first advising him of his *Miranda* rights. *Miranda v Arizona*, 384 U.S. 436 (1966). The interrogation occurred under circumstances where Respondent was deprived of his freedom of movement in a significant way and it was taken under conditions in which a reasonable person would have believed that he was not free to leave, thus making the advice of rights mandatory. The relevant decision is *Mathis v United States*, 391 U.S. 1 (1968). The *Mathis* Court held that "nothing in the *Miranda* opinion ...calls for a curtailment of the warnings to be given based on the reason why the person is in custody."

Petitioner contends that there are two reasons for granting a writ of certiorari in this case. These are that 1) this Sixth Circuit Court of Appeals decision conflicts with a decision from the Second Circuit; and 2) the state court decision was not contrary to or an unreasonable application of clearly established supreme court law because *Mathis v United States* did not establish a bright-line test for determining when the advice of rights under *Miranda* must be given to inmates.

Randall Fields responds that the petition for certiorari filed in this case should be denied because it does not meet the "compelling reasons" standard found in Supreme Court Rule (SCR) 10. That rule offers a non-exclusive list of reasons that would earn the adjective "compelling". First, there is no conflict among the Circuits because the Second Circuit case involves the taking of a statement under circumstances that would not require the advice of rights under *Miranda.* Second, the Sixth Circuit did not make new law or impose a new obligation on the States and on the Federal government that was not already in existence. The bright line rule is based on well-established legal principles. Third, there no United States Supreme Court decisions that makes an exception of the *Miranda* requirement when a prison inmate is interrogated by officers concerning conduct that occurred outside the prison and is unrelated to the offense on which he is serving a sentence.

Because Respondent's case is controlled by the firmly established law found in *Mathis* and

Miranda, the decision by the state court was in fact contrary to and an unreasonable application of those two cases. The United States District Court's did not err in granting the conditional writ. Likewise, the Sixth Circuit Court of Appeals did not err in affirming the lower court's decision. The Petitioner has not shown a compelling reason for granting a writ of certiorari.

COUNTER STATEMENT OF THE CASE

After a jury trial, Randall Fields was convicted of two counts of criminal sexual conduct in the third degree. He was sentenced to 10-15 years in prison.

A. Pre-trial and Trial Proceedings

On December 23, 2001, Sheriff's deputies, not deputies who staffed the jail, took a statement from the Respondent while he was serving time on a 45-day misdemeanor conviction. They failed to advise him of his Miranda rights before questioning him. The statement was used against the Respondent at the preliminary examination stage through the testimony of Detective Batterson. Prior to trial, the Defense moved to quash the Information because the bindover to the trial court was based on the illegally seized statement and also moved to exclude the statement from trial.

An evidentiary hearing was held at which the Respondent testified that he was incarcerated on a disorderly conduct conviction. When the deputies interrogated him, he knew he could not freely leave the room. He was not advised of his *Miranda* rights. He was frightened of Detective Batterson. He did not know how to get back to his cell from the conference room and the door was locked. (Pet. App. Transcript of Hearing 67a-93a. Both men were armed. (Pet. App. Transcript of Hearing 74a-75a).

Respondent estimated that the interrogation lasted about five hours. It ended three hours after he would normally be asleep. This also meant that he missed taking his medication at 10:00pm. The petitioner had a kidney transplant and needed to take Prograf (sp) and Cellcept, which are anti-rejection drugs and also Paxil, a medication for depression. Upon returning to his cell, Respondent was told that he could not be given these medications because it was too close in time to his 5:00am meds. (Pet. App. Transcript of Hearing 78a-80a). When defendant asked to leave it took 20 minutes for a corrections officer to arrive to return him to his cell and during that time he was still being questioned. (Pet. App. Transcript of Hearing 89a, 92a-93a).

The trial court in making its decision on the motion also relied on Deputy Batterson's testimony offered at the preliminary examination. (Res. App. Suppression Motion Transcript 3a-4a)

Batterson testified that he had Defendant's jailers take him out of his cell and bring him to a conference room on a different floor in the main part of the Sheriff's Department, away from the jail. He was dressed in jail oranges. The detective admitted that the Defendant could not have just gotten up and walked out of the room. He would have had to wait until a corrections officer came to escort him back to the cell. He admitted that he never advised Respondent of his rights under *Miranda*. (Res. App. Preliminary Examination Transcript 16a-18a).

The trial court denied the motion to exclude the statement.

At trial Detective Batterson on cross examination admitted that the interrogation started at either 7pm or 9pm and lasted until 1:00am or 2:00am. The Respondent was never advised of his *Miranda* rights. The supposed confession occurred near the end of that time period. (Pet. App. 123a-124a). Earlier in the interrogation, the defendant became upset. The Deputy told him he could leave but never got someone to take him back to his cell. (Pet. App. Trial Transcript, Batterson pp 122a-126a).

Deputy Dale Sharp testified that he was in training with Detective Batterson. He remembers that the interrogation started probably at 6:00pm in the evening and lasted about 7 hours. (Pet App. Trial Transcript, Sharp 129a, 132a-134a). Mr. Fields was never told that he could refuse to talk with the Detectives. (Pet. App. Trial Transcript, Sharp 134a-135a).

B. State Appellate Proceedings

On May 6, 2004, the Michigan Court of Appeals in a per curiam opinion affirmed Respondent's convictions. (Pet. App. 53a). The Court stated:

> Here defendant was unquestionably in custody, but on a matter unrelated to the interrogation. Although, defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because *Miranda* warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement.

(Pet. App. 56a).

On December 9, 2004, the Michigan Supreme Court denied leave to appeal stating that it was not persuaded that the questions presented should be reviewed by the Court. One Justice would have

granted leave to appeal. (Pet. App. 52a).

C. Federal Habeas Review

Randall Fields filed a petition for a writ of habeas corpus in the United States District Court for Eastern District of Michigan. On February 9, 2009, a district court judge issued a conditional writ of habeas corpus. (Pet. App. 32a). On August 20, 2010, the United States Court of Appeals for the Sixth Circuit affirmed the decision of the district court. (Pet. App. 1a).

Other facts will be referred to in the body of the arguments and are incorporated into this Statement by reference

REASONS FOR DENYING THE WRIT

I.

CERTIORARI SHOULD NOT BE GRANTED WHERE THERE IS NO CONFLICT AMONG THE CIRCUITS AND WHERE THE SIXTH CIRCUIT'S DECISION RESTS ON CLEARLY ESTABLISHED SUPREME COURT LAW APPLIED APPROPRIATELY TO THE FACTS OF THE CASE.

The Supreme Court in *Mathis v United States*, 391 U.S. 1 (1968), held that when law enforcement officials seek to question an inmate about conduct occurring outside the prison and unrelated to the reason he is in custody, and if they remove him from the general prison population, they must advise the inmate of his *Miranda* rights. *Miranda v Arizona*, 384 U.S. 436 (1966). In arriving at its decision, the *Mathis* Court rejected the Government's attempt to narrow the scope of *Miranda*:

> The Government also seeks to narrow the scope of the *Miranda* holding by making it applicable only to questioning one who is 'in custody' in connection with the very case under investigation. There is no substance to such a distinction, and in effect it goes against the whole purpose of the *Miranda* decision which was designed to give meaningful protection to Fifth Amendment rights.

Id. at 4. The Court called making a distinction based on why the suspect was incarcerated or who incarcerated him as "too minor and shadowy to justify a departure from the well considered conclusions of *Miranda* with reference to warnings to be given to a person held in custody." *Id.*

The *Mathis* Court also cited with approval the broad definition of custody found in *Miranda*:

> ...we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized.

Mathis, 381 US at 5 quoting from *Miranda, supra* at 478. Thus nothing in *Miranda* calls for curtailment of the warnings solely because one is already in custody. *Mathis, supra* at 4-5.

Recently in *Maryland v Shatzer*, ___ U.S. ___, 130 S.Ct. 1213, 1224 (2010), the Court reaffirmed this holding when it found that sequestering an inmate away from the general prison population created the very scenario in which *Miranda* sought to provide protection.

In order to protect the right against self-incrimination, both the *Mathis* Court and the *Miranda*

Court felt that only the advice of rights would dispel the coercion inherent in an in-custody setting. The coercive effect of the penal environment does not disappear just because one is serving time. On the contrary, one of the most important aspects of that environment is to coerce the prisoner to obey without question the rules of the prison. Surely it is just as important, if not more important, to advise and remind an inmate that he really is free to decide whether he wants to talk with law enforcement officials. Moreover, most inmates find out fairly quickly that once incarcerated, they no longer have Fourth Amendment rigths. Therefore , an inmate-suspect must be advised that his Fifth Amendment rights are still available despite his condition as a prisoner.

In this case, the Sixth Circuit Court of Appeals correctly held that the Michigan Court of Appeals' decision that this un-Mirandized, in-custody Respondent's statement was voluntary, was contrary to and an unreasonable application of *Mathis v United States*.

A. There is no conflict among the Circuits where the cases Petitioner relies upon are not factually similar to the instant case nor to *United States v Mathis*.

Under SCR 10(a), a conflict among the Circuits on the same issue is a factor to consider in deciding whether to grant a petition for a writ of certiorari. In support of its petition, the State of Michigan offers several cases from different circuits to show that there is a SCR 10(a) conflict among them. But the cases it relies upon are neither analogous to the facts of this case nor to the facts in *Mathis v United States*, 391 U.S. 1 (1968).

Significantly for this discussion, the *Miranda* Court itself recognized three situations in which the advice of rights would not be required. First, the suspect must be in custody because by its very nature custodial interrogation is inherently coercive. It isolates and pressures the individual even without employing brutality or the third degree. It exacts a heavy toll on individual liberty and trades on the weakness of individuals. *Miranda, supra* at, 449-450, 455; *Dickerson v United States*, 530 U.S. 428, 435 (2000). If there is no custody, *Miranda* does not apply. Second, *Miranda* was not applicable to on-the-scene questioning. "General on-the-scene questioning as to facts surrounding a crime...is not affected by our holding." 384 U.S. at 477. Third, and most obvious, where the

individual voluntarily initiated contact with the authorities, *Miranda* is not applicable because "Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected by our holding... . *Id* at 478.

The *Mathis* Court, decided four years after *Miranda,* was aware of those exceptions and did not expand the requirement that rights be given to those situations where the rights were already recognized not to be applicable. It merely addressed the "in custody" requirement and found that it was satisfied where the inmate was serving time on an unrelated conviction and was removed from the general prison population for questioning. These factors made the encounter coercive requiring that his Fifth Amendment rights be protected.

The cases upon which Petitioner relies fall into one of the above three categories, but none present, as does Respondent's facts and circumstances, a purely *Mathis*-type case.

In the first category of cases, in which the defendant was **not in custody**, *United States v Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999), falls. Ozuna was being questioned by customs and immigration agents as he was trying to enter the United States. The Sixth Circuit held that routine questioning did not require the advice of rights. Some further restriction on one's freedom was necessary before *Miranda* applied. This was a non-inmate and a not-in-custody case.

The second category of cases involves **inmate-initiated** conversations. In *United States v Willoughby*, 860 F.2d 15, 24 (2nd Cir. 1988), the inmate was talking voluntarily to an old girl friend who had, unbeknownst to him, agreed to wear a wire. The Second Circuit relied upon the fact that the conversation was voluntary to affirm the conviction. In *Leviston v Black*, 843 F.2d 302 (8th Cir. 1988), the defendant while incarcerated on a misdemeanor called the police and asked to speak to officers about a robbery. Likewise, in *United States v Turner*, 28 F.3d 981, 983 (9th Cir. 1994), the defendant, in jail on unrelated state charges, called the postal agent and asked him questions about the investigation and then answered a few himself. The Ninth Circuit found that the conversation was voluntary and that Turner was not in custody for *Miranda* purposes.

The third category concerns cases where prison guards are conducting **on the scene**

questioning. Into this category falls *Cervantes v Walker*, 589 F.2d 424, 427 (9th Cir. 1978). During a routine search of prisoner's belongings, an officer found marijuana. He found the inmate in the prison library and spontaneously asked "What's this?" The Ninth Circuit in finding *Miranda* inapplicable held that incarceration does not *ipso facto* make an interrogation custodial when one is already incarcerated.

Similarly in *United States v Conley*, 779 F.2d 970, 973 (4th Cir. 1985), an inmate, possibly injured during an assault, was in a conference room waiting to see medical staff. The prisoner initiated the conversation with the guard by asking, "What's going on?" The Fourth Circuit agreed with *Cervantes* that a prison inmate is not automatically in custody within the meaning of *Miranda*.

> ... otherwise [requiring warnings] would seriously disrupt prison administration by requiring, as a prudential matter, formal warnings prior to any of the myriad informal conversations between inmates and prisoners which may touch on past or future criminal activity and which may yield potentially incriminating statements useful at trial.

The Court also noted that such a requirement would provide greater protection to prisoners than to their non imprisoned counterparts.

Likewise, in *Garcia v Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994), an officer observed a fire in a cell. He removed the inmate, doused the flames, and then asked Garcia why he set the fire. Pursuant to *Cervantes*, the *Garcia* Court found that *Mathis* did not impose a per se rule because inmates would have greater rights than non-inmates and because the inmates freedom of movement was not further diminished (reasonable person standard); *United States v Scalf*, 725 F2d 1272, 1275 (10th Cir. 1984)(*Miranda* did not apply to on the scene questioning of an inmate after the inmate was locked in his own cell and the officer stood outside it and asked about the assault).

There is one last category of distinct cases and this one was not discussed in *Miranda*. It contains those cases where the inmate is in custody serving a sentence and is questioned about conduct occurring outside the prison and unrelated to the offense on which time is being served. *Mathis* is the archetype for this fourth category. In *Mathis*, the defendant was interrogated by agents of the IRS while he was serving time in a state institution. Without benefit of *Miranda* warnings, the

agents obtained the defendant's written consent to extend the statute of limitations, a sure sign the agents were interested in a prosecution. They then proceeded to ask incriminating questions of Mathis. The Court found that this was not just a routine tax investigation. It also found unpersuasive the argument that because the interrogating officers had not jailed the defendant, *Miranda* did not apply. In rejecting the latter argument, the Court specifically noted that such a distinction went against the whole purpose of *Miranda.*

> In speaking of 'custody' the language of the Miranda opinion is clear and unequivocal:
>
> > 'To summarize, we hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized.' 384 US at 478.

Mathis at 5.

The Petitioner cites to three other cases which at first blush appear to fall into this last category in that the inmates to be interrogated were in-custody serving time on other offenses: *Alston v Redman*, 34 F.3d 1237 (3rd Cir. 1994), *United States v Menzer*, 29 F.3d 1223 (7th Cir. 1994), and *Georgison v Donelli,* 588 F.3d 145 (2nd Cir. 2009). But as will be shown these cases are easily distinguishable from Respondent's and should more properly be placed in one of the other three categories.

In *Alston v Redman*, the inmate was actually advised of his rights before two separate interrogations. But in between the two, he met with a public defender and signed a document stating that he would only be interviewed with a lawyer present. There is some question about whether this document was ever transmitted to the warden. So the major issue here was the admissibility of the second statement under *Edwards v Arizona*[1]. Thus the inmate was in custody and was read his rights. *Miranda* was complied with.

In the second case, *United States v Menzer*, the inmate was in prison on an unrelated crime. He was at a facility where it was generally understood that one did not have to meet with law

---

1 451 US 477 (1981).

enforcement officers. Before the meeting, the officers faxed the inmate the questions they would ask so that the defendant could decide if he wanted to meet with them. They also told him he was free to leave at any time, that he could terminate the interview at any time, and that the door to the interview room was not locked. The Seventh Circuit affirmed the conviction. This inmate was in a sense empowered by the lengths the officers went to assure that their meeting was a voluntary meeting to start with. Apparently, he could even have refused to meet with them by fax. Thus, although the meeting was not initiated by the inmate, the above described circumstances can only lead to the conclusion that the inmate entered into the meeting knowingly and voluntarily. A voluntary statement is a well-recognized *Miranda* exception.

It is the third case, *Georgison v Donelli*, upon which Petitioner most heavily relies for this Court to make a finding that there is a conflict among the Circuits. Georgison was in prison on a robbery conviction when detectives came to the facility to interview him about a three-year old assault charge. As in *Menzer*, there was no requirement at the facility that inmates speak with law enforcement personnel. The corrections officer asked Georgison if he was willing to talk with police detectives. He consented. The interview was held in the visitors room of the prison. The corrections officer waited outside the room while the conversation occurred. The *Miranda* rights were not administered. During the interview, the inmate unknowingly made some admissions. He was offered the opportunity to become "a rat" to which he took umbrage. He immediately terminated the interview and walked out of the room. The Second Circuit held that the interview was not an in-custody interview.

> ...we conclude that the coercion inherent in custodial interrogation, which was of concern in *Miranda*, simply was not present here. There was no 'measure of compulsion above and beyond that inherent in custody itself,' ... Georgison was not 'subjected to restraints comparable to those associated with a formal arrest,' ....

Georgison at 157 (internal citations omitted). In rejecting Georgison's argument that there was a per se rule, the Second Circuit relied on *Illinois v Perkins*, 496 U.S. 292 (1990). But that case involved an unsuspecting inmate chatting away with an undercover officer. The *Mathis* rule depends on the inmate knowing that he is being interrogated by officers. That is part of the coercive atmosphere.

The Second Circuit found *Miranda* inapplicable because there were no restrictions on the inmate's freedom over and above ordinary prison confinement, he consented to the interview, and the interview was conducted in a visiting room. Thus there was no coercive pressure brought to bear that tended to undermine Georgison's will or to compel him to speak. This was supported by the fact that Georgison left the visiting room at a time and in a manner of his own choosing. *Georgison* really belongs in the first category of cases where the suspect consents to the interview.

The circumstances of Respondent's case place him firmly in the fourth category. Respondent was serving time on a misdemeanor conviction. Testimony elicited from Detective Batterson at the preliminary examination was relied upon by the trial court in its decision on the motion to suppress the statement. Batterson testified that he had Defendant's jailers take him out of his cell and bring him to a conference room on a different floor in the main part of the Sheriff's Department, away from the jail. He was dressed in jail oranges. The detective admitted that Defendant could not have just gotten up and walked out of the room. He would have had to wait until a corrections officer came to escort him back to the cell. (Res. App. Preliminary Examination Transcript 12a-18a).

At the evidentiary hearing on the motion to suppress the statement, Defendant testified that knew he could not freely leave the room. He was frightened of Detective Batterson. He did not know how to get back to his cell from the conference room and the door was locked. (Pet. App. Transcript of Hearing 67a-77a). Both Batterson and Detective Sharp were armed. (Pet. App. Transcript of Hearing 74a).

The Defendant estimated that the interrogation lasted about seven hours. When defendant asked to leave it took 20 minutes for a corrections officer to arrive to return him to his cell and during that time he was still being questioned. (Pet. App. Transcript of Hearing pp 89a-93a).

The session ended at least three hours after he would normally be asleep. He was concerned during the interrogation that he had missed taking his medication at 10:00pm. The petitioner had a kidney transplant and needed to take Prograf (sp) and Cellcept, which are anti-rejection drugs and also Paxil, a medication for depression. Upon returning to his cell, he was told that he could not be

given these medications because it was too close in time to his 5:00am meds. (Pet. App. Transcript of Hearing 77a-80a).

At trial Detective Batterson on cross examination admitted that the interrogation started at either 7pm or 9pm and lasted until 1:00am or 2:00am. The supposed confession occurred near the end of that time period. Earlier in the interrogation, the defendant became upset. The Deputy told him he could leave but never got someone to take him back to his cell. (Pet. App Trial Transcript, Batterson 122a-126a).

Deputy Dale Sharp, in training with Detective Batterson, remembered that the interrogation started probably at 6:00pm in the evening and lasted about 7 hours. (Pet. App Trial Transcript, Sharp 127a-130a). Defendant was not told that he could refuse to talk with the Detectives. (Pet. App. Trial Transcript, Sharp 135a).

These facts support not only a finding of coercion where *Georgison* does not, but also a finding that the requirements of *Miranda* applied. Unlike Georgison, the Respondent was removed from his normal surroundings and taken to an area of the Sheriff's Department with which he was not familiar. Unlike Georgison, he was never informed by anyone that he could refuse to talk with detectives. Unlike Georgison, the people interrogating him were armed. Unlike Georgison, he was not interrogated in a visitor's room. Unlike Georgison, he could not get up and leave and his request to end the interrogation was not honored. Unlike Georgison, he was in danger of organ rejection if he didn't take his meds on time.

Prison visiting rooms are large. They are also much more open than an interrogation room. Except for the outside walls of a visiting room, the other are glassed so that guards can observe what is transpiring in the room. Thus the inmate is not hidden away from the prison population and may experience a greater sense of relief at not being cooped up. This is a much less coercive environment than an interrogation room or the conference room in a different area of the Sheriff's Department.

The description of the conference room is not much different from a standard interrogation room, except for the large conference table and the wipe board. Respondent was still removed from

the general prison population. He was still in a room at the mercy of his interrogators. His freedom of movement was restricted to that one room and he knew he could not leave that room without an officer escorting him back to his cell. He knew in fact that there was at least one, if not two, locked doors through he would have to pass to get back to his cell. If it had been possible to leave that room under his own steam, could he even find his way back to his cell from the unfamiliar place he was now in? What would happen if he was found wandering that section of the Sheriff's Department? Would he be accused of attempting to escape? Or would he just receive an "out-of-place" ticket? Even if the door to the conference was unlocked so Respondent could leave that room under his own steam, would the interrogating officers report that he was loose?

Petitioner contends that the case at bar is factually distinct from *Mathis* because Mr. Fields is highly educated, he was aware that a criminal matter was being investigated, and repeatedly told that he could leave the interview whenever he wished. (Pet. Brief 30). While Mr. Fields is educated, he has never been to law school. His area of expertise is social work, not law. There were no facts from which to infer what Mathis' education level was. He was educated enough to have the kind of tax problems that interest the IRS. There is no *Miranda* exception for people that are college graduates. Respondent was not repeatedly told he could leave the room. He, in fact, knew he was not free to leave with a locked door separating him from the rest of the jail. When he did finally ask to leave, it took 20 minutes for a deputy to arrive to escort him back to his cell, a time period in which Respondent was still being questioned.

The facts relevant to whether the advice of rights must be given are the same here as they were in *Mathis*. The inmate was being questioned about criminal conduct unrelated to the reason that landed him behind bars in the first place. He had been removed from the general prison population. His freedom of movement was further restricted during the time of the interrogation.

In the three cases Petitioner contends are *Mathis*-type cases, the *Miranda* Court itself said that the warnings would not be applicable. In one, *Miranda* rights were given. In the second, *Menzer*, the officers did everything they could to make the meeting with the inmate as non-coercive as

possible. As the court noted there were no added impositions on his freedom of movement nor any measure of compulsion beyond his imprisonment. *Menzer* at 1232. In the third case, *Georgison*, the location of the conversation was in a less coercive atmosphere than the prison proper because the room was frequented by the non-inmate public and the inmate was told he did not have to talk to the officers and was asked by corrections officer, not the interrogators, if he would consent to the interview. These cases offered by the Petitioner are just not on point with the case before this Court.

Randall Fields did not volunteer his confession nor was he subjected to on-the-scene questioning, two situations to which *Miranda* does not apply. His freedom of movement was been further restricted when he was removed to a conference room. He was not informed that he could refuse to speak with the officers. Thus he did not consent to the interrogation. He was in-custody for *Miranda* purposes.

The cases cited by Petitioner do not support the argument that there is a conflict among the Circuits. These cases only serve to highlight how egregious and objectively unreasonable was the decision of the Michigan Court of Appeals.

B. The Sixth Circuit Court of Appeals decision falls squarely within clearly established Supreme Court law. The bright line rule imposes no new legal obligation on the States and on the Federal government.

The Anti-Terrorism and Effective Death Penalty Act (AEDPA) amended the habeas statute found at 28 USC 2254. Subsection (d) of the statute states, in pertinent part, that an application for a writ of habeas corpus challenging a state court conviction may only be granted if the petitioner shows that the proceeding

> 1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States;

Under this section of the statute, it is up to the Court to determine if a particular decision has really announced a new rule or whether it simply applied "a well-established constitutional principle to govern a case which is closely analogous to those which have been previously considered in the prior case law." *Williams v Taylor*, 529 U.S. 362, 381 (2000). Rules which break new ground or impose

new obligations on the States or on the Federal government fall outside the rubric of "clearly established Federal law." Thus the *Williams* Court noted that if the Supreme Court "has not broken sufficient legal ground to establish an asked-for constitutional principle, the lower federal courts cannot themselves establish such a principle... ." *Id.*

In the case at bar, Petitioner argues that a bright line rule as applied to the question of Mirandizing prisoners is not clearly established federal law. However, the bright line rule is based on the well established legal principle announced in *Mathis* and imposes no new obligation on the States or the Federal government that it did not have before the decision in the instant case. An inmate removed from the general population and questioned about conduct occurring outside the prison must be advised of his rights ever since the decision in *Mathis, supra.*

To illustrate its argument, Petitioner cites to *Carey v Musladin*, 549 U.S. 70 (2006), and *Wright v Van Patten*, 552 U.S. 120 (2008) to argue that the Sixth Circuit went beyond the right created by this Court's clearly established law. But Petitioner will find little support in those cases where principles expressed by this Court were modified by the Courts of Appeals to apply to the case before them.

In *Musladin*, the Ninth Circuit, relying on *Estelle v Williams*, 425 U.S. 501 (1976)(defendant forced to wear prison garb by the State denied a fair trial), held that where family members wore buttons with photos of the deceased at defendant's murder trial he was denied due process. In reversing this decision, the Supreme Court noted that the *Estelle* case applied only to government-sponsored conduct, not to private conduct.

In *Wright*, this Court reversed a Seventh Circuit decision which had extended the holding in *United States v Cronic*, 466 U.S. 648 (1984)(Prejudice prong of *Strickland* not applicable to complete absence of counsel) to instances where counsel is physically absent but participates via speakerphone. This Court noted that no precedent addressed the presence of counsel over a speakerphone.

Here, no principle had to be modified or extended by the Sixth Circuit to reach the decision

it did. The *Mathis* Court's holding that prisoners were in custody for *Miranda* purposes has been clearly established Supreme Court law since 1968. In arriving at its decision, the *Mathis* Court rejected the Government's attempt to narrow the scope of *Miranda*:

> The Government also seeks to narrow the scope of the Miranda holding by making it applicable only to questioning one who is 'in custody' in connection with the very case under investigation. There is no substance to such a distinction, and in effect it goes against the whole purpose of the *Miranda* decision which was designed to give meaningful protection to Fifth Amendment rights.

Id. at 4. The Court went on to note that nothing in *Miranda* calls for curtailment of the warnings solely because one is already in custody. *Id.* at 4-5.

As the majority of the panel in Circuit Court pointed out in its opinion in this case, a bright line rule only makes it easier to apply the clearly established Federal law. Pet App. 18a-20a. So not every bright line rule is new law.

In this case, the State courts had before it a case in which the prisoner was clearly in custody and yet it refused to follow the dictates of *Miranda* and *Mathis*. The Petitioner cannot point to any clearly established Supreme Court law which would permit such an omission. The State court's refusal to follow clearly established Supreme Court law was contrary to and an unreasonable application of the holdings in *Mathis* and *Miranda.*

In this case, the Sixth Circuit Court of Appeals made no extension of existing law to reach the decision it did. It simply applied *Mathis* and found that the state court decision was contrary to it.

C. Even without resort to a bright line rule, the Respondent's conviction must still be vacated under 28 USC 2254(d)(2) because the State court decision was based on an unreasonable determination of the facts in light of the evidence presented to it.

The State court's decision also resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings. 28 USC 2254 (d)(2). This latter subsection, does not contain the limiting language of subsection (d)(1) in regard to "clearly established Federal law as determined by the Supreme Court of the United States."

The Sixth Circuit's decision can be affirmed under the former subsection as well as the latter because regardless of any bright line rule, on the fact of this case *Mathis* required that Respondent be advised of his rights before he was interrogated.

Whether a person is in custody for Miranda purposes is a mixed question of law and fact. Custodial interrogation means "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in **any** significant way." *Miranda*, 384 US at 444. (Emphasis added). On this issue, the only relevant inquiry is whether a reasonable person in the suspect's position would have felt that he was free to leave. *Yarborough v Alvarado*, 541 U.S. 652, 662-663 (2004); *Berkemer v McCarty*, 468 U.S. 420, 442 (1984). This is an objective test based on the circumstances of the interrogation. *Stansbury v California*, 511 U.S. 318, 322-324 (l994). A state court determination as to whether a suspect was "in custody" for *Miranda* purposes is not entitled to the statutory presumption of correctness on federal habeas corpus review. It is a mixed question of law and fact warranting independent review. *Thompson v Keohane*, 516 U.S. 99 (1995).

In the case at bar, the trial court, which improperly put the burden of proof on defendant, held that because the officers told defendant he was free to leave, he was not in custody for *Miranda* purposes. (Res. App. Transcript of Decision on Defendant's Petition to Quash the Information and Suppress the Statement 8a). The Michigan Court of Appeals described the facts of the case as follows:

> At trial, Deputy Batterson testified that he removed defendant from his cell, where he was jailed on domestic assault, and led him to a conference room. He told defendant that he wanted to speak with him in regard to the victim whom defendant indicated he knew. The interview began around 7:00 or 9:00 p.m. and ended around midnight. Defendant was not read his *Miranda* rights, but Deputy Batterson told him he was free to leave the conference room and return to his jail cell. Deputy Batterson told defendant that there had been allegations of a sexual nature involving the victim. Defendant stated that he was a fatherly figure to the victim. Although defendant did not initially acknowledge any sexual relations, he ultimately stated that he had oral sex with the victim and masturbated him.

(Pet. App. State Court of Appeals Opinion 54a-55a).

The state appellate court concluded:

> Here, defendant was unquestionable in custody, but on a matter unrelated to the interrogation. Although defendant was not read his *Miranda* rights, he was told that he was free to leave the conference room and return to his cell. Defendant never asked to leave. Because Miranda warnings were not required, the trial court did not err in denying defendant's motion to suppress his statement.

(Pet. App. State Court of Appeals Opinion 56a). This finding was an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.

In analyzing the facts of this case, it is clear that the encounter was neither voluntary nor was it on-the-scene questioning. Fields was clearly in custody at the time of the interrogation and not just because he was serving time on a disorderly conduct conviction. For *Miranda* purposes, he was further deprived of his freedom of movement in a significant way. The detectives had him removed from his cell and removed from the jail area. He was taken to another floor and through a locked set of doors and deposited in the administrative area of the Sheriff's Department. This occurred in the evening. The detectives stayed well past midnight and well past the time at which the Petitioner would have gone to sleep. The interrogation lasted between 5-7 hours, an extraordinary length of time. Voluntary, enjoyable social gatherings don't even last that long. (Counter Statement of Facts 5-6).

Fields could not freely leave the location he was in with the two detectives. He would have needed an escort to return to his cell. The statement that he could leave the conference room was not honored when he did try to leave. He had become upset and asked to leave, but the detectives neither got him an escort nor left the room. Questioning was done for the purpose of obtaining incriminating statements. His admissions only occurred near the end of a five to seven-hour interrogation period. (Counter Statement of Facts 6).

Most significantly on the issue of whether defendant felt free to leave is the fact that the time for taking his anti-rejection medicine had passed and yet the defendant did not feel he could leave the interrogation room to take these important medications. (Counter Statement of Facts 5).

The two detectives held the defendant for seven hours, until they got the incriminating

statement that they came for. They removed the defendant from his cell. They isolated him from the other prisoners. They did this at a time and in a location where there would be less foot traffic. They did this at a time and for a length of time during which the defendant would not be as mentally alert as his interrogators. They created a coercive atmosphere. The constitutionally mandated *Miranda* warnings were not given.[2]

The instant case falls squarely within the ambit of *Mathis* because the defendant was in custody at the time he was interrogated and he was removed from the general prison population. The State court's determination of the facts was unreasonable in light of this evidence.

---

2 *Dickerson v United States, supra.*

CONCLUSION

The petition for a writ of certiorari should be denied and the decision of the Sixth Circuit Court of Appeals should be affirmed.

Alternatively, if this Court grants the petition in Sheets v Simpson, Case No. 10-458 and is inclined to grant the petition in this case, Respondent asks that his case not be held in abeyance but that this Court accept a merits brief and allow oral argument

Respectfully submitted,

ELIZABETH L. JACOBS
Attorney for Respondent
615 Griswold, Ste 1125
Detroit, Michigan 48226
(313) 962-4090
elzjacobs@aol.com

DATED: December 15, 2010

RESPONDENT'S APPENDIX INDEX

24604 9

STATE OF MICHIGAN

39TH JUDICIAL CIRCUIT COURT, LENAWEE COUNTY

THE PEOPLE OF THE STATE OF MICHIGAN,

v

File Nos. 02-9738 FC
02-9739 FH
02-9749 FC
02-9750 FC

RANDALL LEE FIELDS,

Defendant.

DEFENDANT'S PETITION TO QUASH
INFORMATION AND SUPPRESS STATEMENT

BEFORE THE HONORABLE HARVEY A. KOSELKA, CIRCUIT JUDGE

Adrian, Michigan - Monday, October 21, 2002

APPEARANCES:

For the People: MISS LAURA J. SCHAEDLER (P32303)
Assistant Prosecuting Attorney
425 N. Main Street
Adrian, MI 49221
517-264-4640

For Defendant: MISS KAREN L. TATE (P38596)
Public Defender
123 Chestnut Street
Adrian, MI 49221
517-263-7660

RECORDED BY: Patricia J. Szymanski, CER-3118
Certified Electronic Reporter

TABLE OF CONTENTS

WITNESSES: PAGE

NONE

EXHIBITS:

NONE

Adrian, Michigan

Monday, October 21, 2002 - 11:35 a.m.

[Tape 1; 10-21-02; 11:35:20]

THE COURT: Eleven o'clock call. People versus Fields.

MISS SCHAEDLER: My half's here.

THE COURT: Keep going. Can I have the rest of them please?

COURT REPORTER: I'm sorry.

MISS SCHAEDLER: Your Honor, I haven't seen Miss Tate. I don't know if she's--

DEPUTY CHRYST: She's in the hallway.

(At 11:36 a.m., Miss Tate and Dofendant Fields enter the courtroom.)

THE COURT: Would counsel identify themselves for the record please?

MISS SCHAEDLER: Laura Schaedler on behalf of the People.

MISS TATE: Karen Tate on behalf of Mr. Fields, your Honor.

THE COURT: The record should show that Mr. Fields is there. Miss Tate, you may proceed.

MISS TATE: Your Honor, in this particular case, I know it wasn't before this Court, there was some testimony taken earlier in regards to what occurred when Officer

Batterson took Mr. Fields out of his cell and took him out to a front conference room out--out of the jail part of the sheriff's department into the main office section of the sheriff's department. And Mr. Batterson indicates that my client made certain statements at that time. It is our position that those statements should be suppressed at the trial in this matter as being in violation of my client's constitutional rights because--

[Tape 1; 10-21-02; 11:37:57]

THE COURT: Was he being questioned by the officer at the time?

MISS TATE: Yes, he was being questioned by the officer, specifically being taken out to be questioned by the officer on these events, and that's what he was being questions about was these events.

THE COURT: Anything further on this issue?

MISS TATE: And he was not mirandized.

THE COURT: Anything further on this issue?

MISS TATE: No, your Honor.

THE COURT: Ms. Schaedler

MISS SCHAEDLER: Your Honor, the defendant was incarcerated at that time on a case unrelated to this matter, in fact, in a domestic assault. And I believe if the Court reviewed our answer and the two cases cited in that answer, you have to show not only that he was incarcerated and being

questioned, but rather that there's a nexus between the incarceration and the interview, and there was none. He was in jail on a domestic assault. They removed him and took him to a conference room in the office part of the jail, and pursuant to those two cases, we are not required to read Miranda to him, and they have to show more than just he wasn't mirandized. They have to demonstrate that it wasn't an involuntary interview; and as a matter of fact, the most recent case law puts the onus on them; and they haven't demonstrated that.

[Tape 1; 10-21-02; 11:38:09]

THE COURT: The incarceration was something totally unrelated to these people, the victims in this case.

MISS SCHAEDLER: That's correct. It's on a domestic assault involving someone who lived in his home and actually a co-defendant in many of these cases.

THE COURT: Ms. Tate, we're back to your court.

MISS TATE: Your Honor, we've cited various case law. We believe the prosecutor's wrong in what she's stating. One of the cases she cited involved a gentleman who was taken out of a cell to be questioned about a case in which he was not a suspect, never became a suspect. He was a witness. He later on went on the stand and testified untruthfully on the stand and was then prosecuted for perjury. That's unrelated to this particular case.

Under this particular case, my client was taken out of the cell 'cause he was in a cell there, and it wasn't a custodi--it wasn't an interrogation in his cell as it was in another case cited by the prosecution. This he was taken out, taken to another place where he was not simply allowed to leave. He had to call for assistance to leave. He was questioned. You can't say just because somebody's arrested and we want to question you, you're not entitled to Miranda. In this case, he was taken out to the front of the jail, he was placed under questioning by the officer about this specific incident. He was entitled to his Miranda Rights. He was entitled to know he could terminate this questioning at any time. He was not afforded those rights, so we believe the matter should be suppressed. We have cited our case law, and I believe ours is appropriate, your Honor.

[Tape 1; 10-21-02; 11:39:38]

THE COURT: Ms. Schaedler, do you expec--do you challenge the factual basis set forth by Miss Tate in her claim, that he was actually taken out for the purpose--taken out of his cell, taken to the front of the--taken someplace else in the jail to be questioned about the events of this particular crime?

MISS SCHAEDLER: No, I do not. He was taken through J door. I think the Judge is acquainted with J door. He was told that he could leave at any time and that he would be

taken back to his cell. And I think the two cases that we cite very clearly indicate that that's not a problem, that you can do that. One, she does indicate correctly that it was on a case where he would have been a witness as it related to an unrelated event, and the other one as to a--an event that did involve him, one was to perjury and one was to one involving him specifically, and both of them talk about the fact that the mere happenstance that he's under custody, and they don't make a distinction about whether it's in a different part of the jail or whether it isn't as long as he has the right to end the interview, which he did, and that was testified to.

[Tape 1; 10-21-02; 11:40:49]

MISS TATE: Your Honor, we would simply cite the Court to the cases of *Roark* in which he was taken--my client's different from that and was taken to a place; also the case of Maves where we've got a police dominated atmosphere. He is sitting there in this conference room saying, oh, when you're ready to leave, you can leave; but it's been testified he would've had to--they had to call assistance to him to let him leave. He couldn't just get up and walk out of this conference room, you know, and it was a totally police dominated atmosphere. It was totally for purposes of questioning on this--these particular incidents and these two cases that we are talking about, actually four files. And we believe you can't just say, well, he's arrested on something

else, so we've got a free shot at him, we don't have to give him Miranda or anything else. We believe he should have been mirandized in this case.

[Tape 1; 10-21-02; 11:41:37]

THE COURT: All right. In this particular case he was free to leave, he was told that he was free to leave, and granted it might have taken a couple of minutes for that to be done. He knew that he could do this. The defendant does have the burden on this. The motion is denied.

MISS SCHAEDLER: Thank you, your Honor.

MISS TATE: Thank you, your Honor.

THE COURT: Anything else, Miss Tate?

MISS TATE: Nothing further, your Honor.

(At 11:42 a.m., proceedings concluded.)

[Tape 1; 10-21-02; 11:42:05]

STATE OF MICHIGAN)
) ss
COUNTY OF LENAWEE)

I certify that this transcript, consisting of 8 pages, is a complete, true and correct transcript of the proceedings and testimony taken in this case on Monday, October 21, 2002.

Dated: April 18, 2003

Patricia J. Szymanski, CER-3118
Rex B Martin Judicial Building
425 North Main Street
Adrian, MI 49221
(517) 264-4746

42

STATE OF MICHIGAN

2-A JUDICIAL DISTRICT COURT, LENAWEE COUNTY

02-978 FC

ORIGINAL

THE PEOPLE OF THE STATE OF MICHIGAN,

v

RANDALL LEE FIELDS,

Defendant.

File Nos. 02-0451-FY
02-0452-FY
02-0453-FY
02-0454-FY
02-0661-FY

CONTINUATION OF PRELIMINARY EXAMINATION

BEFORE THE HONORABLE NATALIA M. KOSELKA, DISTRICT JUDGE

Adrian, Michigan - Tuesday, March 12, 2002

APPEARANCES:

For the People: MISS LAURA J. SCHAEDLER (P32303)
Rex B Martin Judicial Building
425 North Main Street
Adrian, MI 49221
(517) 264-4640

For the Defendant: MISS KAREN L. TATE (P38596)
123 Chestnut Street
Adrian, MI 49221
(517) 263-7660

RECORDED BY: Patricia J. Szymanski, CER-3118
Certified Electronic Reporter

TABLE OF CONTENTS

THE COURT: You may call your next witness.

MISS SCHAEDLER: We would call Deputy Batterson to the stand.

THE COURT: You want to raise your hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

DEPUTY BATTERSON: I do.

DAVID BATTERSON

called by the People at 3:18 p.m., sworn by the Court, testified:

DIRECT EXAMINATION

BY MISS SCHAEDLER:

Q Would you please state your full name and place of employment for the record?

A David Batterson, Lenawee County Sheriff's Department.

Q And Deputy Batterson, as a result of your employment, did you have reason to come in contact and interview a Randall Lee Fields?

A Yes, I did.

Q And was he incarcerated at that time?

A Yes, he was.

Q And did you read him his Miranda Rights prior to the discussion?

A I did not.

Q Had he been read his Miranda Rights?

A No. He was in custody on an unrelated matter.
Q Okay, and as it relates to the interview that you had, was he free to get up and leave the interview room?
A Yes, he was.
Q As it relates to that, did he at some point acknowledge to you that he had had sexual relations--

MISS TATE: Objection, Your Honor. First of all, the mere fact he may have, y'know, we're trying to say this guy was free--he's an arrest--he's under arrest, he's in the jail, but he's free to leave when he wants. Y'know, obviously this is an impermissible statement, and second, they cannot establish the elements of the crime at preliminary exam based upon statements and non-direct evidence. First, we believe it's inadmissible, and he had no Miranda Rights given to him. He was not free to leave. Obviously you're in a custodial setting when you're in a jail and an officer comes to talk with you, and you can say, well, oh yeah, he could've left the room at any time. I don't believe that quite makes the standard, Your Honor.

MISS SCHAEDLER: I believe it does, Your Honor. I believe the case law supports the fact that when they're--even if they're incarcerated when they're not incarcerated on the particular charge involved that they're in a separate room and they have the right to say they want to go back to their cell that they can be considered--that the statement is admissible,

number one. And number two, it does--it does not have to--as long as we've established a corpus through the testimony of Mr. Bice, we can use the statement of Mr. Fields.

THE COURT: From what I remember of the law too, this--if he was able to leave and he just started talking about something and he could go--he could have stopped and said he wouldn't talk about anything. I'm going to allow the prosecutor to proceed.

MISS SCHAEDLER: Thank you, Your Honor.

BY MISS SCHAEDLER:

Q During the course of that interview, did Mr. Fields acknowledge that he'd in fact had sexual contact with Mr. Bice?

A Yes, he did.

Q And when did he indicate that this sexual contact began?

A In August of 2001.

Q Okay, and what kind of details was he able to give to you?

A He stated that in August 2001 Travis Bice was in his bedroom masturbating with a tool, and he aided him in masturbating Travis Bice with that tool.

Q Okay, and subsequent to the August 2001 event where there was the masturbation with the tool, did Mr. Bice indicate whether or not he'd ever had sexual contact with Mr. Bice?

A Prior to that he stated that he did not, but he did observe Travis Bice having--

Q Subsequent, the question is.
A Oh, I'm sorry.
Q Subsequent to the August 2001 event where Mr. Fields assisted Mr. Bice in masturbating, did Mr. Fields acknowledge having had sexual contact with Mr. Bice?
A No, he did not.
Q He never acknowledged having sex with Mr. Bice after the August 2001 date?
A Oh, yes, he did. I'm sorry, I didn't understand your question.
Q And what if anything did he acknowledge?
A He stated that in September of 2001 he had oral sex with Travis Bice where he placed his penis in Travis Bice's mouth and Travis Bice placed his penis in his mouth, and they performed oral sex on each other.
Q Is that the only time he indicated there was ever oral sex?
A No, there was another incident in November in Toledo, Ohio.
Q Okay, and was there any other incident that he described to you as having taken place here in the County of Lenawee?
A No.
Q How did he describe his relationship with this young man?
A They were friends, and he was more a father-type figure offering advice and counsel to Travis Bice.
Q And that was from Mr. Fields himself?
A Yes.

MISS SCHAEDLER: I have no further questions.

THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MISS TATE:

Q You indicated that Mr. Fields was in jail on a separate matter, is that correct?

A Yes, that's correct.

Q And you pulled him out of his--had the jailers take him out of his cell and bring him to a room to be talked--to talk with you, correct?

A Yes, I requested that he--

Q Where was this room located that you discussed with him these incidents?

A This is the conference room in the main portion of the sheriff's department. It's away from the jail area.

Q Okay, you're talking about where the offices and things are.

A Yes.

Q Basically if I'm not mistaken, that's just off Larry Richardson's office.

A Yes.

Q Would he be ab--did you tell him he could get up and leave any time he wanted?

A I did.

Q What would have been the process he would have had to go through to get up and leave?

A Just request that he'd like to leave, and at that point I would have had a corrections officer take him back to his cell.

Q Could he have just got up and walked out of the room at any time he wanted?

A Not at that point, no. He would have had to remain until a corrections officer came to escort him back to the cell.

Q So he wasn't just free to get up and walk out of the room at any point in time?

A No. It's not a secure area.

Q And I would assume--was he wearing the usual chains and stuff when he was over there, or was he over there--

A No, he was not.

Q Okay, was he wearing the jail oranges?

A Yes.

Q And you did not at any time or point give him his Miranda Rights?

A No, I did not.

Q The only thing you told him if you want to leave, you can leave.

A That's correct.

MISS TATE: Nothing further, Your Honor.

MISS SCHAEDLER: I have nothing further at this time, Your Honor.

THE COURT: All right, thank you. You may step

down.

(At 3:24 p.m., witness steps down.)

MISS TATE: Your Honor, we would renew our objection to the use of the statements.

THE COURT: All right.

(At 3:24 p.m., Miss Schaedler confers with Deputy Batterson.)

MISS SCHAEDLER: One moment, Your Honor.

THE COURT: Okay.

(At 3:24 p.m., Miss Schaedler continues to confer with Deputy Batterson.)

MISS SCHAEDLER: Your Honor, we would call to the witness stand Walter Dudock.

MR. DUDOCK: Where?

MISS SCHAEDLER: Right up there.

DEPUTY PAYNE: Right up here.

THE COURT: You want to raise your hand please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

MR. DUDOCK: Yeah.

WALTER ANDREW DUDOCK

called by the People at 3:25 p.m., entered the courtroom, sworn by the Court, testified:

DIRECT EXAMINATION

BY MISS SCHAEDLER: