No. _____

In The
Supreme Court of the United States

CAROL HOWES,
Petitioner,

v.

RANDALL FIELDS,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Michael A. Cox
Attorney General

B. Eric Restuccia
Michigan Solicitor General
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
restucciae@michigan.gov
(517) 373-1124

Brian O. Neill
Assistant Attorney General
Appellate Division
Attorneys for Petitioner

QUESTION PRESENTED

Whether this Court's clearly established precedent under 28 U.S.C. § 2254 holds that a prisoner is always "in custody" for purposes of *Miranda* any time that prisoner is isolated from the general prison population and questioned about conduct occurring outside the prison regardless of the surrounding circumstances.

PARTIES TO THE PROCEEDING

The Petitioner is Carol Howes, Warden of the Lakeland Correctional Facility in Coldwater, Michigan. Petitioner was Respondent-Appellant in the United States Court of Appeals for the Sixth Circuit.

The Respondent is Randall Fields, a prisoner at the Lakeland Correctional Facility currently serving a sentence of 10-to-15 years' imprisonment as the result of his State convictions for third-degree criminal sexual conduct. Respondent was Petitioner-Appellee in the United States Court of Appeals for the Sixth Circuit.

TABLE OF CONTENTS

PETITION APPENDIX INDEX

TABLE OF AUTHORITIES

Page

Cases

Statutes

Rules

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit decision affirming federal habeas relief, *Fields v. Howes*, is reported at 617 F.3d 813 (6th Cir. 2010). Pet. App. 2a-30a. The United States District Court for the Eastern District of Michigan decision granting federal habeas relief is an unpublished opinion filed February 9, 2009. Pet. App. 32a-51a.

The Michigan Supreme Court decision denying application for leave to appeal, *People v. Fields*, is reported at 472 Mich. 938; 698 N.W.2d 394 (2005). Pet. App. 52a. The Michigan Court of Appeals decision affirming Fields's convictions of two counts of third-degree criminal sexual conduct is an unpublished decision filed May 6, 2004. Pet. App. 53a-62a.

JURISDICTION

The opinion of the Sixth Circuit affirming federal habeas relief was filed August 20, 2010. This Court has jurisdiction to review this petition for writ of certiorari pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED

The Self-Incrimination Clause of the Fifth Amendment to the United States Constitution provides:

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

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104-132, 104, 110 Stat. 1214, 1219, codified at 28 U.S.C. § 2254, provides in relevant part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment 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

In this habeas case, the Sixth Circuit has created a new "bright-line" test for questioning prisoners under *Miranda*. Now, whenever a suspect who is incarcerated is questioned away from the general prison population about conduct that occurred outside the prison, the *Miranda* warnings must be given regardless of the surrounding circumstances or whether the coercive pressures that *Miranda* was crafted to protect against are present. Pet. App. 7a-13a.

Rather than acknowledging this as a new rule, the Sixth Circuit instead declares its approach was clearly established by this Court 42 years ago in *United States v. Mathis*.[1] Applying its new rule, the Sixth Circuit has now granted habeas relief to State prisoners in Michigan and Ohio because the State courts determined that the *Miranda* warnings were not necessary after considering the circumstances surrounding the questioning.

The State of Michigan asks this Court to grant certiorari and reverse for three reasons.

First, *Mathis* fails to establish such a bright-line rule. Shortly after *Miranda* was decided, the government argued that its holding should never apply to individuals serving a prison sentence for an unrelated offense because they are not being held in custody for the purposes of questioning. While *Mathis* held that *Miranda* applies to prisoners, it did not hold that *Miranda* warnings must always be given when a

[1] *Mathis v. United States*, 391 U.S. 1 (1968).

prisoner is questioned away from the general prison population.

Second, the Sixth Circuit's decision conflicts with the decision of other Circuits on the same important matter. S. Ct. Rule 10(a). Indeed, no circuit has ever read *Mathis* as establishing such a bright-line rule. In fact, in direct conflict with this case, the Second Circuit has denied habeas relief on a similar set of facts because there is no clearly established precedent from this Court creating such a rule.

Third, habeas relief may not be granted under AEDPA unless the State court's decision was contrary to or an unreasonable application of this Court's clearly established precedent. Contrary to the express language of the statute and this Court's prior holdings, the Sixth Circuit has created a new rule and then granted habeas relief because the Michigan courts failed to apply that rule. A new rule cannot provide the basis for habeas relief.

Finally, the State of Michigan would note that the State of Ohio is similarly seeking certiorari in *Simpson v. Jackson*, 615 F.3d 421 (6th Cir. 2010), (No. 10-458), a habeas case in which the Sixth Circuit employs the same erroneous analysis of *Mathis* and erroneous application of the AEDPA standard.

STATEMENT OF THE CASE

Following a jury trial in the Lenawee County Circuit Court, Randall Fields was found guilty of two counts of third-degree criminal sexual conduct for sexual abuse of a thirteen-year-old child.[2]

A. The Facts Surrounding Fields's Confession

Lenawee County Michigan Sheriff's Deputy David Batterson received a complaint alleging that Fields had engaged in sexual conduct with a minor. At that time, Fields was serving an unrelated 45-day sentence for disorderly conduct. Therefore, Deputy Batterson went to the Sheriff's Department where Fields was being held to investigate the accusation.

Fields was escorted from his cell in the holding area to a conference room in the administrative area of the Sheriff's Department. Pet. App. 67a-69a (State hearing on admissibility of statement, June 21, 2002, pp. 6-7).[3] He was neither shackled nor handcuffed. Pet. App. 71a-72a (State hearing, p. 9). The door to the conference room was not locked and, in fact, was left open during part of the interview. Pet. App. 70a-71a (State hearing, p. 8).[4]

---

[2] Mich. Comp. Laws § 750.520d.

[3] This was not an interrogation room, but a well-lit conference room containing a conference table, chair, desk, and wipe-board. Pet. App. 87a-88a (State hearing, p. 23).

[4] The majority opinion misconstrues Fields's testimony to mean that the door to the conference room was locked. Pet. App. 3a. Fields's actual testimony was that the door separating the jail from the administrative offices was locked, not the door to the conference room in which he was interviewed. Pet. App. 71a-72a (State hearing, p.9).

Upon his arrival, Fields was not given *Miranda* warnings, but was told that "I could leave whenever I wanted to." Pet. App. 70a-71a (State hearing, p. 8). Deputy Batterson informed Fields that he was investigating a criminal sexual conduct case involving the victim. Pet. App. 109a-110a (State trial, October 22, 2002, Vol. I of II, p. 94); Pet. App. 72a-73a (State hearing, p.10). Fields, who holds a bachelor's degree in psychology and a master's degree in counseling, indicated that the victim visited his house frequently and that he was like a father-figure to him. Pet. App. 110-112a (Vol. I, pp. 95-96); Pet. App. 80-82a (State hearing, pp. 17-18).

The first several hours of the interview involved a general discussion about Fields and the victim. Pet. App. 125a-126a (Vol. I, p. 107). Approximately halfway through the interview, Deputy Batterson confronted Fields with the allegations. Pet. App. 80a-81a (State hearing, p. 17). Fields denied the accusations and attempted to present a timeline of events to Deputy Batterson. Pet. App. 70a-71a, 106a (State hearing, pp. 8, 38).

According to Deputy Batterson, at one point Fields got out of his chair and began yelling at him. Deputy Batterson told Fields that he could return to his cell because he was not going to tolerate being talked to that way. Pet. App. 125a-126a (Vol. I, p. 107). Fields confirmed this incident, though he claimed Deputy Batterson told him to "sit my f---ing ass down" and that "if I didn't want to cooperate, I could leave." Pet. App. 71a, 88a-93a (State hearing, pp. 8, 24-27). Fields did not ask to return to his cell, but instead sat

back down and continued the interview. Pet. App. 125a-126a (Vol. I, p. 107); Pet. App. 92a-93a (State hearing, p. 27). Fields acknowledged that he believed a jailer would have taken him back to his cell if he had asked. Pet. App. 92a-93a (State hearing, pp. 27). After several hours, Fields admitted to engaging in oral sex with the victim and manually masturbating the victim. Pet. App. 112a-114a, 124a-126a (State hearing, pp. 97-98, 106-107).

Defense counsel filed a motion to suppress this confession, arguing that Fields was subjected to a custodial interrogation without being provided his *Miranda* warnings. At the evidentiary hearing in the State trial court, Fields claimed that he did not feel free to leave the interview despite being told that he could do so. Pet. App. 70a-72a (State hearing, pp. 8-9). He claimed that he felt intimidated by the fact the interviewing officers were armed, though he admitted that he was never threatened or assaulted in any way. Pet. App. 73a-74a, 97a-100a (State hearing, p. 11, 31-32). Ultimately, the trial court determined that Fields was not in custody for purposes of *Miranda* and therefore his statements were admissible.

B. Direct Review in the State Courts

Fields filed an appeal of right in the Michigan Court of Appeals claiming that his statements were inadmissible because he had not been given his *Miranda* warnings before questioning. Although Fields was incarcerated at the time of questioning, it was on an unrelated matter, no greater restraints were imposed in relation to the questioning, and he was repeatedly told that he was free to end the interview.

The State court reasoned that because Fields was free to return to the jail and was questioned on a matter unrelated to his incarceration, there was no obligation to provide him warnings under *Miranda*:

> 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.]

The Michigan Supreme Court denied Fields's application for leave to appeal. Pet. App. 52a.

C. Habeas Review in the Federal Courts

Fields filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 claiming that his Fifth Amendment right against self-incrimination was violated. The District Court granted habeas relief, concluding that the State courts had unreasonably applied this Court's holding in *Mathis v. United States*:

> Although some federal circuit courts have restricted *Mathis*, . . . this Court is bound by clearly established federal law as determined by the Supreme Court. . . . The Supreme Court determined in *Mathis* that the petitioner was "in

> custody" and entitled to *Miranda* warnings before a federal agent interrogated him about an offense unrelated to the one for which he was incarcerated. The court of appeals' decision was contrary to and an unreasonable application of *Mathis*. [Pet. App. 43a.]

As the district court noted, and as discussed further below, other courts that have considered questioning of suspects incarcerated on an unrelated matter have declined to find a bright-line rule within *Mathis* and have applied a context-specific custody analysis as traditionally used in *Miranda* cases. Therefore, the State of Michigan appealed, arguing that it was not an objectively unreasonable application of clearly established federal law for the State courts to also interpret *Mathis* in this way.

The Sixth Circuit affirmed, but used a different rationale. First it misinterpreted *Mathis*, imputing a bright-line test that is far broader in scope than the language of *Mathis* permits. It then concluded that the Michigan court's adjudication was *contrary to Mathis*:

> The central holding of *Mathis* is that a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i.e. questioned in a manner likely to lead to self-incrimination, about conduct occurring outside of the prison.
>
> * * *

> The critical issue in this inquiry becomes whether the prisoner is isolated from the general prison population for questioning.
>
> * * *
>
> *This bright line approach* will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation, away from the general prison population. [Pet. App. 10a, 19a, 20a (emphasis added).]

Writing separately, Judge McKeague indicated his disagreement with the majority, but was bound by the Sixth Circuit's decision in *Simpson*, 615 F.3d at 421, issued only weeks before this opinion:

> In particular, in contrast to the majority and *Simpson*, I do not believe that *Mathis* obviates the need for the context-specific custody analysis clearly established by *Miranda* and its progeny. Moreover, I do not agree with the majority that *Mathis* established a bright line test to the effect that, "[a] Miranda warning *must* be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison." [Pet. App. 22a.]

The State of Michigan now petitions this Court for certiorari because the Sixth Circuit's opinion: (1) is

contrary to this Court's clearly established precedent; (2) creates a conflict with decisions of other circuits on the same important matter; and (3) fails to properly apply the AEDPA standard of review.

REASONS FOR GRANTING THE PETITION

I. This Court's clearly established precedent does not hold that *Miranda* warnings are automatically required any time a prisoner is questioned away from the general prison population.

In *Miranda v. Arizona*, this Court held that the Fifth Amendment privilege against self-incrimination also protects individuals from the "informal compulsion exerted by law-enforcement officers during in-custody questioning."[5] Accordingly, once in custody, a suspect must be advised of certain rights prior to questioning.[6] Unless these rights are knowingly, intelligently, and voluntarily waived, any incriminating responses to police-initiated questioning are inadmissible.[7]

The procedural safeguards outlined in *Miranda* are only required where the suspect is "in custody."[8] The test for determining whether a person is in custody for purposes of *Miranda* is context-specific: "first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt that he or she was not at liberty to terminate the interrogation and leave."[9] A reviewing court "must examine all of the circumstances surrounding the interrogation," and the initial custody

---

[5] *Miranda v. Arizona*, 384 U.S. 436, 464 (1966).

[6] *Miranda*, 384 U.S. at 478.

[7] *Miranda*, 384 U.S. at 478.

[8] *See Rhode Island v. Innis*, 446 U.S. 291, 300 (1980); *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977).

[9] *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).

determination depends on the objective circumstances rather than the subjective beliefs of the suspect.[10]

In *Mathis v. United States*, this Court addressed whether *Miranda* warnings apply to a suspect who was incarcerated on an unrelated matter.[11] The defendant in *Mathis* was interviewed by an I.R.S. agent regarding information in his tax returns. He was not advised that his answers could form the basis of a criminal prosecution nor given the *Miranda* warnings. Based in part on his incriminating statements, the defendant was subsequently convicted of criminal tax violations. On appeal, the defendant argued that admission of his statements violated *Miranda*. This Court agreed and reversed, holding the defendant was entitled to *Miranda* warnings.

Critically, however, neither the government nor the defendant challenged whether the defendant was in custody within the meaning of *Miranda* during his interview with the I.R.S. agent. Rather, the government argued that *Miranda* should not apply at all to suspects incarcerated on an unrelated matter because they were not being held for the purpose of questioning. In rejecting this argument, this Court explained that prisoners were also given the protections 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

---

[10] *Stansbury v. California*, 511 U.S. 318, 322 (1994).

[11] *Mathis*, 391 U.S. at 1.

> 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. We find nothing in the *Miranda* opinion which calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody.[12]

Thus, in a case where custody was conceded, the Court declined to curtail the application of *Miranda* to prisoners. Nothing in *Mathis*, however, provides any greater protection to prisoners nor sets forth any new test for determining custody.

Nevertheless, in the present case the Sixth Circuit erroneously concluded that *Mathis* forecloses the fact-specific custody analysis traditionally used in *Miranda* cases. The Sixth Circuit was simply wrong when it held: "The central holding of *Mathis* is that a *Miranda* warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated . . . about conduct occurring outside of the prison." Pet. App. 10a. Using this mistaken analysis, the Sixth Circuit erroneously concluded that it was contrary to clearly established federal law, Pet. App. 10a-14a, 20a, even though the Michigan courts looked to the circumstances surrounding Fields's interview in determining that the

---

[12] *Mathis*, 391 U.S. at 4-5.

Miranda warnings were not required – Fields was told he was free to leave at any time. Pet. App. 56a.

Mathis does not establish such a bright-line rule. Rather, as the concurring opinion in the Sixth Circuit correctly observes, *Mathis* simply involved the government's claim that *Miranda* should not apply to prisoners. Pet. App. 22a-23a. *Mathis* rejected that argument but this Court did not establish a bright-line rule that prisoners are always "in custody" for *Miranda* purposes and that *Miranda* warnings are mandated anytime a prisoner is questioned away from the general prison population. Indeed, there is nothing in *Mathis* to suggest the rather peculiar conclusion that prisoners would have greater protection under *Miranda* than the general public.[13]

In support of its broad interpretation of *Mathis*, the Sixth Circuit relied on this Court's recent decision *Maryland v. Shatzer*.[14] The issue in *Shatzer* was whether a lapse in custody of more than two years was sufficient to vitiate a suspect's invocation of his right to counsel during questioning.[15] While not a *Miranda* case, part of the analysis was whether the suspect was in custody. And in that regard, this Court noted that "no one questions that Shatzer was in custody for *Miranda* purposes[.]"[16]

---

[13] Citizens are routinely questioned at a police station rather than on the street. Though no longer in the general population, there has never been a bright-line rule that such questioning always amounts to a custodial interrogation without any consideration of the surrounding circumstances.

[14] *Maryland v. Shatzer*, __ U.S. __; 130 S. Ct. 1213 (2010).

[15] *Shatzer*, 130 S. Ct. at 1217.

[16] *Shatzer*, 130 S. Ct. at 1224.

Relying on this lack of dispute over custody, the Sixth Circuit in this case erroneously concluded that the "unambiguous conclusion" in *Shatzer* is that a suspect is in custody for purposes of *Miranda* any time he is removed from his normal life in prison and taken to an isolated area or conference room. Pet. App. 10a, 18a ("a *Miranda* warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated").

But as the Sixth Circuit concurring opinion correctly points out, just as in *Mathis*, the fact that custody was not at issue in *Shatzer* does not establish that there is clear precedent holding that *Miranda* warnings are required anytime a prisoner is questioned away from the general prison population.[17] Pet. App. 23a.

In fact, far from supporting the majority's view, *Shatzer* underscores its error. First, rather than recognizing a clearly established rule that a prisoner is entitled to *Miranda* warnings when questioned outside of the general prison population, this Court stated that "We have never decided whether incarceration constitutes custody for *Miranda* purposes, and have

[17] Even assuming that *Shatzer* does establish such a bright-line rule, habeas relief would still be inappropriate because it was decided after this case became final and cannot be retroactively applied. *See Teague v. Lane*, 489 U.S. 288 (1988). *Mathis* was the existing precedent at the time of the decision and no court has culled this bright-line rule from its holding.

indeed explicitly declined to address the issue."[18] An open question cannot form the basis of clearly established federal law for purposes of AEDPA.[19]

Moreover, *Shatzer* goes on to explain that the issue of whether incarceration amounts to custody for purposes of *Miranda* "depends upon whether it exerts the coercive pressure that *Miranda* was designed to guard against."[20] Rather than recognizing any bright-line rule, the Court reiterated that *Miranda* is driven by its purpose requiring a fact-specific analysis:

> Our cases make clear, however, that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody. We have declined to accord it "talismanic power," because *Miranda* is to be enforced "only in those types of situations in which the concerns that powered the decision are implicated."[21]

The purpose of *Miranda* is to protect against the inherent coercive pressure created by custody.[22] Where the suspect is already incarcerated, however, much of

---

[18] *Shatzer*, 130 S. Ct. at 1224. *See also Illinois v. Perkins*, 496 U.S. 292, 299 (1990)("The bare fact of custody may not in every instance require a warning even when the suspect is aware that he is speaking to an official, but we do not have occasion to explore that issue here").

[19] *See Wright v. VanPatten*, 552 U.S. 120, 125 (2008); *Carey v. Musladin*, 549 U.S. 70, 76 (2006).

[20] *Shatzer*, 130 S. Ct. at 1224.

[21] *Shatzer*, 130 S. Ct. at 1224.

[22] *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984).

the inherent pressure (armed officers, shackles, bars, and restriction on movement) is routine. A prisoner is also aware that he is being held pursuant to a conviction, not an external police investigation. Absent some other form of coercion such as imposing greater restrictions, a prisoner understands that refusing to cooperate with an external investigation simply means remaining in routine custody until the end of the prisoner's sentence. While easy to administer, a bright-line rule basing custody solely on where the prisoner is questioned without regard to any additional coercive pressure does not serve the purposes of *Miranda*.[23]

Indeed, shortly after *Shatzer* was decided, Justice Souter wrote for the First Circuit in denying a defendant's claim that incarceration automatically equals custody for *Miranda* purposes.[24] Writing for that court, Justice Souter explained that the restrictions placed on a prisoner's freedom of movement "do not necessarily equate his condition during any interrogation with *Miranda* custody."[25] In fact, Justice Souter relied on the discussion in *Shatzer* to reject reading *Mathis* as having created a bright-line rule:

> [In *Mathis*, the] Court acknowledged *Miranda*'s applicability to questioning "'when an individual is taken into custody

---

[23] Unlike television portrayals, many prison cells are completely enclosed and do not have an open barred wall facing the general population. Questioning a prisoner in an open conference room is arguably less coercive than several officers questioning the prisoner in a small enclosed cell.

[24] *United States v. Ellison*, Case No. 09-1234, 2010 U.S. App. LEXIS 7814 (1st Cir. Apr. 15, 2010).

[25] *Ellison*, at *6.

> or otherwise deprived of his freedom by the authorities in any significant way,'" *id*. at 5 (quoting 384 U.S. at 478), but did not say whether the interview with Mathis fell within *Miranda* because of his incarceration or because of some other deprivation that was significant in the circumstances. Although it did not address *Mathis*, the Court's opinion in *Shatzer* forecloses Ellison's reading of the case for the former proposition.[26]

The limited application of *Mathis* is apparent if not from the opinion itself, then certainly from this Court's repeated and express observation that it has never established the parameters of custody under *Miranda* in the prison setting.

II. The Sixth Circuit's interpretation of *Mathis* creates a split among the circuits.

Mathis was decided 42 years ago. Since then, no other circuit has interpreted its holding to create the bright-line rule now adopted by the Sixth Circuit. In fact, in a materially indistinguishable case, the Second Circuit in *Georgison v. Donelli* held exactly the opposite,[27] denying habeas relief because there is no clearly established Supreme Court precedent creating a per se rule.

---

[26] *Ellison*, at *7.

[27] *Georgison v. Donelli*, 588 F.3d 145 (2d Cir. 2009).

A. The Sixth Circuit's decision directly conflicts with a decision from the Second Circuit in *Georgison*.

As in this case, the defendant in *Georgison v. Donelli* was incarcerated for an unrelated offense when he was taken to a visitor's room for an interview with the police.[28] He was not given his *Miranda* warnings, but was asked if he was willing to speak with the officers. During that interview, he was confronted with an accusation regarding an assault and he made several incriminating statements.

The defendant claimed that his statements should have been excluded because he was not given the *Miranda* warnings prior to questioning. On direct review, the State courts denied this claim reasoning that he was not in custody for purposes of *Miranda* because no greater restrictions were placed on his freedom over and above ordinary prison confinement.[29]

On habeas review, the defendant claimed that the State courts' decision was contrary to *Mathis* – the same basis upon which habeas relief was granted in this case. Unlike this case, however, the Second Circuit denied habeas relief under AEDPA, finding no bright-line rule in this Court's precedent. "Because the per se rule urged by Georgison is not clearly established

---

[28] *Georgison*, 588 F.3d at 150.

[29] *Georgison*, 588 F.3d at 152.

federal law, the state courts here did not unreasonably decline to apply it."[30]

As discussed above, the purpose of *Miranda* is to guard against the inherent coercive force of custody, not to impose pro forma procedures where no such pressure exists. Rather than reading a bright-line rule into *Mathis*, the Second Circuit concluded that "the coercion inherent in custodial interrogation, which was of concern in *Miranda*, simply was not present here."[31] In reaching this conclusion, the court engaged in the fact-specific custody analysis traditionally used in *Miranda* cases:

> There was no "measure of compulsion above and beyond that inherent in custody itself," *Rhode Island v. Innis*, 446 U.S. 291, 300, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980), and Georgison was not "subjected to restraints comparable to those associated with a formal arrest," [*Berkemer v. McCarty*, 468 U.S. 420, 441 (1984).] There was no coercive pressure that tended to undermine Georgison's will or to compel him to speak. This is supported by the fact that Georgison felt free to refuse to answer questions and to end the interview of his own volition. It is also apparent that Georgison left the

---

[30] *Georgison*, 588 F.3d at 156, citing *Musladin*, 549 U.S. at 77. The Second Circuit even noted that since 1987, "the Supreme Court has cast serious doubt on the existence of a per se or bright-line rule that would require *Miranda* warnings in the prison setting. *Georgison*, 588 F.3d at 156.

[31] *Georgison*, 588 F.3d at 157.

> visiting room at a time and in a manner of his choosing, demonstrating that he knew he was "at liberty to terminate the interrogation and leave." See [*Thompson v. Keohane*, 516 U.S. 99, 112 (1995).] At no time was Georgison restrained during questioning, which took place in a visitors' room and not in a cell or interrogation room which might be capable of a more profound custodial atmosphere.[32]

Thus, in direct conflict with the present case, *Georgison* concludes that *Mathis* does not clearly establish a bright-line rule for determining custody, and instead applies the fact-specific custody analysis traditionally used in *Miranda* cases.

B. No other Circuit has interpreted *Mathis* to establish the bright-line rule adopted by the Sixth Circuit.

Moreover, a review of the other circuits that have examined *Miranda* as it applies to incarcerated prisoners demonstrates that the Sixth Circuit's decision conflicts with the decisions of the other circuits.

In *Cervantes v. Walker*, a habeas case from the Ninth Circuit, officers found marijuana during a routine search of a prisoner's belongings.[33] A sheriff's deputy took the box of marijuana to the prisoner

---

[32] *Georgison*, 588 F.3d at 157.

[33] *Cervantes v. Walker*, 589 F.2d 424, 427 (9th Cir. 1978).

sitting in the prison library and asked, "What's this?" to which the prisoner replied, "That's grass, man."[34] He was subsequently convicted of possessing marijuana.

The prisoner sought habeas relief, arguing that his status as an inmate combined with the deputy's questions amounted to custodial interrogation entitling him to the *Miranda* warnings. The Ninth Circuit disagreed, holding that under the circumstances, *Miranda* warnings were not required. First, the court rejected the argument that *Mathis* creates a per se rule requiring *Miranda* warnings. Such an interpretation "would not only be inconsistent with *Miranda* but would torture it to the illogical position of providing greater protection to a prisoner than to his non-imprisoned counterpart."[35]

Having rejected a per se rule, the Ninth Circuit turned to what the appropriate inquiry should be. After all, the traditional test of whether a person would feel free to leave does not fit with a prison setting where prisoners would arguably never feel free to leave. Beginning with the concept of restriction on movement, the court reasoned that the level of increased restrictions placed on a prisoner provides an appropriate framework for determining *Miranda* custody in a prison setting:

> The concept of "restriction" is significant in the prison setting, for it implies the need for a showing that the officers have

---

[34] *Cervantes*. 589 F.2d at 427.

[35] *Cervantes*, 589 F.2d at 427.

> in some way acted upon the defendant so as to have "deprived [him] of his freedom of action in any significant way." . . . In the prison situation, this necessarily implies a change in the surroundings of the prisoner which results in an added imposition on his freedom of movement. Thus, restriction is a relative concept, one not determined exclusively by lack of freedom to leave. Rather, we look to some act which places further limitations on the prisoner.[36]

Thus, the Ninth Circuit reconciled *Miranda* and *Mathis* by framing the analysis as the extent to which a reasonable prisoner would believe his freedom of movement had been further diminished.[37] In this regard, the court identified four factors to consider: (1) the language used to summon the prisoner; (2) physical surroundings of the interrogation; (3) the extent to which officials confront the individual with evidence of guilt; and (4) whether officials exerted any additional pressure to detain the individual.[38] Applying these factors to Cervantes's case, the court determined that *Miranda* warnings were not required.[39]

Similarly, in *United States v. Conley*, a Fourth Circuit case, an incarcerated defendant was questioned

---

[36] *Cervantes*, 589 F.2d at 428 (citation omitted).

[37] *Cervantes*, 589 F.2d at 429. *See also United States v. Turner*, 28 F.3d 981, 983 (9th Cir. 1994)("to determine whether *Miranda* warnings were necessary in a prison setting, 'we look to some act which places further limitations on the prisoner'").

[38] *Cervantes*, 589 F.2d at 428.

[39] *Cervantes*, 589 F.2d at 429.

about the death of another prisoner while awaiting medical treatment.[40] He was subsequently convicted of murder and claimed that his statements were inadmissible because he had not been given *Miranda* warnings prior to questioning. In rejecting this claim, the Fourth Circuit stated that an inmate is not entitled to *Miranda* warnings "merely by virtue of his prisoner status" and interpreted the clear holding of *Mathis* to apply the *Miranda* analysis to prisoners rather than to create any bright-line rule regarding custody.[41] As in *Cervantes*, the court reasoned that the freedom-of-movement test does not serve the purposes of *Miranda* in the prison setting:

> A rational inmate will always accurately perceive that his ultimate freedom of movement is absolutely restrained and that he is never at liberty to leave an interview conducted by prison or other government officials. Evaluation of prisoner interrogations in traditional freedom-to-depart terms would be tantamount to a *per se* finding of "custody," a result we refuse to read into the *Mathis* decision.[42]

Finding the analysis in *Cervantes* persuasive, the Fourth Circuit engaged in an analysis of the circumstances surrounding the questioning and ultimately concluded the defendant was not subject to

---

[40] *United States v. Conley*, 779 F.2d 970 (4th Cir. 1985).

[41] *Conley*, 779 F.2d at 972.

[42] *Conley*, 779 at 973.

greater restriction amounting to "custody" for purposes of *Miranda*.[43]

This reasoning in *Cervantes* and *Conley* has been the general understanding of *Mathis* among the circuits.

For example, in *United States v. Menzer*, a Seventh Circuit case, the defendant claimed that his statements to officers during an interview in the administrative area of the prison were inadmissible under *Mathis* as he had not been given the *Miranda* warnings.[44] Rather than finding a bright-line rule in *Mathis*, the Seventh Circuit concluded the defendant was not in custody under the totality of the circumstances because there was no added imposition on his freedom of movement nor any measure of compulsion above and beyond imprisonment.[45]

Likewise, in *United States v. Scalf*, the Tenth Circuit concluded that the district court did not err in applying the test in *Cervantes* in examining whether *Miranda* was required to a prisoner who was questioned while incarcerated.[46] And in *Garcia v. Singletary*, the Eleventh Circuit concluded that "[a]fter reviewing the relevant law, we find the reasoning employed in *Cervantes* and *Conley* highly persuasive."[47]

---

[43] *Conley*, 779 F.2d 974.

[44] *United States v. Menzer*, 29 F.3d 1223 (7th Cir. 1994).

[45] *Menzer*, 29 F.3d at 1232.

[46] *United States v. Scalf*, 725 F.2d 1272, 1275 (10th Cir. 1984).

[47] *Garcia v. Singletary*, 13 F.3d 1487, 1491 (11th Cir. 1994).

No circuit other than the Sixth Circuit has interpreted *Mathis* to establish a bright-line rule requiring the provision of the *Miranda* warnings before interrogating an incarcerated person.[48] In fact, prior to *Simpson* and this decision, the Sixth Circuit in *United States v. Ozuna* acknowledged that "prisoners are not free to leave their prisons, but *Miranda* warnings need not precede questioning until there has been 'a restriction of [the prisoner's] freedom over and above that of his normal prisoner setting.'"[49] In *Ozuna*, the defendant was returned to U.S. customs after being denied entry into Canada. He was questioned for over an hour about his citizenship and itinerary during which he made several incriminating statements. The Sixth Circuit concluded that *Miranda* warnings were not required, however, because the defendant was not in custody for purposes of *Miranda*. Like prisoners, the court reasoned, there is an expected restraint on freedom associated with travel to another country that does not in itself automatically amount to custody.[50]

---

[48] *See United States v. Willoughby*, 860 F.2d 15, 24 (2d Cir. 1988) although the defendant was a prisoner and not free to leave the facility, "there was nothing in the circumstances that suggested any measure of compulsion above and beyond that confinement"); *Alston v. Redman*, 34 F.3d 1237, 1245 (3d Cir. 1994)("while *Miranda* may apply to one who is in custody for an offense unrelated to the interrogation, incarceration does not *ipso facto* render an interrogation custodial"); *Leviston v. Black*, 843 F.2d 302, 304 (8th Cir. 1988)("[w]hile *Miranda* may apply to one who is in custody for an offense unrelated to the interrogation . . . incarceration does not *ipso facto* render an interrogation custodial").

[49] *United States v. Ozuna*, 170 F.3d 654, 658 (6th Cir. 1999), citing *Cervantes*, 589 F.2d at 428.

[50] *Ozuna*, 170 F.3d at 658-659.

Here, the majority opinion dismisses all of these cases as factually distinct. Pet. App. 11a-12a6. But this truly misses the point. While these cases are not binding on the State courts, they are highly relevant to a determination of what constitutes clearly established federal law. Where no other circuit has interpreted *Mathis* to establish the bright-line rule now created by the Sixth Circuit, it simply cannot be the case that the State courts were "objectively unreasonable" for failing to do so.

III. Rather than applying the clearly established precedent of this Court as required by the AEDPA, the Sixth Circuit has created a new constitutional rule on collateral review.

Only "clearly established Federal law, as determined by the Supreme Court of the United States" may form the basis for a grant of habeas relief to a State prisoner under 28 U.S.C. § 2254(d)(1).[51] A federal habeas court "operates within the bounds of comity and finality if it applies a rule 'dictated by precedent existing at the time the defendant's conviction became final.'"[52] A rule that "'breaks new ground or imposes a new obligation on the States or the Federal Government' falls outside this universe of federal law."[53] And such is the case here.

---

[51] *Williams v. Taylor*, 529 U.S. 362, 379 (2000).

[52] *Williams*, 529 U.S. at 381, quoting *Teague*, 489 U.S. at 301.

[53] *Williams*, 529 U.S. at 381. *See also Knowles v. Mirzayance*, 129 S. Ct. 1411, 1419 (U.S. 2009)("it is not 'an unreasonable application of clearly established Federal law' for a state court to decline to apply a specific legal rule that has not been squarely established by this Court"); *Wright*, 552 U.S. at 125; *Musladin*, 549 U.S. at 76-77.

Contrary to the Sixth Circuit decision, neither *Mathis* nor *Shatzer* stand for the proposition that "[a] *Miranda* warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison." Pet. App. 10a. No case from this Court has ever established such a rule. Nor does the majority opinion identify any other circuit that has interpreted *Mathis* or *Shatzer* in this way. The only case with such a holding is *Simpson*, 615 F.3d at 421, a decision released by the Sixth Circuit a few weeks before the present one.[54]

On the other hand, the numerous cases cited by the State demonstrate that other circuits have not read *Mathis* to eliminate the context-specific custody analysis traditionally used in *Miranda* cases. While these cases are not binding on the State courts, they demonstrate that it was not an objectively unreasonable application of clearly established federal law for the State courts to consider the totality of the circumstances surrounding Fields's confession.[55]

Rather than addressing the difficult question of how it could be objectively unreasonable for the State courts to apply the same reasoning as so many other

---

[54] The State of Ohio has filed a petition for certiorari in *Simpson*. Case No. 10-458.

[55] While the majority is correct that clearly established Federal law is limited to the holdings of this Court, Pet. App. 7a, the reasoning employed by courts of appeal are persuasive on the issue of whether a State court's decision was contrary to or an unreasonable application of this Court's precedent. *See Price v. Vincent*, 538 U.S. 634, 643 n2 (2003).

courts, the majority simply declares the State court adjudication "contrary to" its interpretation of *Mathis*. Pet. App. 7a.

A State court's adjudication is contrary to clearly established federal law if it arrives at a conclusion opposite to that of the Supreme Court on a question of law or decides a case differently on a set of materially indistinguishable facts.[56] Here, the majority found "the material facts in this case are indistinguishable from *Mathis*." Pet. App. 11a. Because custody was not at issue in *Mathis*, however, only a general recitation of events was provided. To read the general background of any case as setting forth a binding factual paradigm under which other cases are automatically decided would, as in this case, erroneously lead to the creation of numerous unintended bright-line rules.

Moreover, the facts in this case are quite distinct from *Mathis*. The interviewed prisoner in this case was not only highly-educated and familiar with the criminal justice system, he was aware that a criminal matter was being investigated and was repeatedly told that he could leave the interview whenever he wished. Further, unlike *Mathis*, Fields began yelling at the Deputy during the interview and was warned that if he did not calm down he would be returned to his cell. Instead of returning to his cell, Fields sat back down and voluntarily continued the interview – and that was before his confession. Pet. App. 125a-126a (Vol. I, p. 107); Pet. App. 70a, 88a-93a (State hearing, pp. 8, 24-27).

---

[56] *Williams*, 529 U.S. at 413.

This is not a case in which the State courts ruled differently than this Court on a set of materially indistinguishable facts. Rather, it is a case in which the Sixth Circuit has improperly used habeas review as a vehicle for creating a new rule. Indeed, the majority even sets forth policy prospectively supporting the adopting such a rule:

> This *bright line approach* will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation away from the general prison population. Furthermore, law-enforcement officials will have clearer guidance for when they must administer Miranda warnings prior to a prison interrogation. [Pet. App. 20a (emphasis added).]

Mathis was decided in 1968. If, as the Sixth Circuit suggests, this bright-line approach has been clearly established federal law for the last 42 years, there would be no need to extol the virtues of what this approach "will" be.[57]

A bright-line rule such as that created by the Sixth Circuit is not the clearly established precedent of

---

[57] The issue in this case is what clearly established Federal law is, not what it should be. Nonetheless, the rule suggested by the Sixth Circuit does not serve the purposes of *Miranda* particularly well. The "bright line" established by the majority is one of physical location, as if coercive pressure cannot be exerted within a prisoner's cell but is always present outside the general prison population. Courts are not relieved of context-specific inquiries into questioning within a cell, and are presented with a fertile ground for new litigation: what constitutes the general population.

this Court and, therefore, cannot serve as the basis for granting federal habeas relief under AEDPA. It was neither contrary to nor an unreasonable application of this Court's clearly established precedent to engage in the traditional *Miranda* analysis rather than applying the bright-line rule adopted by the Sixth Circuit. Accordingly, the State of Michigan requests that this Court grant certiorari and reverse.

CONCLUSION

WHEREFORE, the State of Michigan requests that this Court grant certiorari, reverse the Sixth Circuit, and hold that Respondent Fields was not subject to custodial interrogation, that *Miranda* warnings were not required, and therefore his statements were properly admitted.

Alternatively, the State of Michigan requests this petition be held pending the resolution of the State of Ohio's petition in *Simpson v. Jackson*, 615 F.3d 421 (2010); Case No. 10-458.

Respectfully submitted,

Michael A. Cox
Attorney General

B. Eric Restuccia
Michigan Solicitor General
Counsel of Record
P. O. Box 30212
Lansing, Michigan 48909
restucciae@michigan.gov
(517) 373-1124

Brian O. Neill
Assistant Attorney General
Appellate Division

Attorneys for Petitioner

Dated: November 2010

PETITION APPENDIX INDEX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 09-1215

RANDALL LEE FIELDS,
Petitioner - Appellee,

v.

CAROL HOWES,
Respondent - Appellant.

FILED
Aug 20, 2010
LEONARD GREEN, CLERK

Before: CLAY and MCKEAGUE, Circuit Judges; POLSTER, District Judge.

JUDGMENT

On Appeal from the United States District Court for the Eastern District of Michigan at Detroit.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the district court's conditional grant to Randall Lee Fields of a petition for a writ of habeas corpus under 28 U.S.C. § 2254 is hereby AFFIRMED.

ENTERED BY ORDER OF THE COURT

s/Leonard Green
Leonard Green, Clerk

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206

File Name: 10a0254p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

RANDALL LEE FIELDS, *Petitioner-Appellee*,	)	
v.	)	No. 09-1215
CAROL HOWES, *Respondent-Appellant*.	)	

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 06-13373—Victoria A. Roberts, District Judge.

Argued: March 5, 2010

Decided and Filed: August 20, 2010

Before: CLAY and McKEAGUE, Circuit Judges;
POLSTER, District Judge.*

---

*The Honorable Dan Aaron Polster, United States District Judge for the Northern District of Ohio, sitting by designation.

COUNSEL

ARGUED: Brian O. Neill, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellant. Elizabeth L. Jacobs, Detroit, Michigan, for Appellee.
ON BRIEF: Brian O. Neill, OFFICE OF THE MICHIGAN ATTORNEY GENERAL, Lansing, Michigan, for Appellant. Elizabeth L. Jacobs, Detroit, Michigan, for Appellee. Randall Lee Fields, Detroit, Michigan, pro se.

POLSTER, D. J., delivered the opinion of the court, in which CLAY, J., joined. McKEAGUE, J. (pp. 16-22), delivered a separate concurring opinion.

OPINION

DAN AARON POLSTER, District Judge. Appellant appeals the district court's conditional grant of the petition of writ of habeas corpus pursuant to 28 U.S.C. §2254. The district court found that the Michigan Court of Appeals unreasonably applied established federal law in determining that a confession made by Appellee was properly admitted into evidence. For the following reasons, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Appellee Randall Lee Fields was incarcerated at the Lenawee County Sheriff's Department for disorderly conduct on December 23, 2001, when a corrections officer escorted him from his cell to a locked conference room in the main area of the sheriff's department. Fields was not advised of where he was being taken or for what purpose.

He was wearing an orange jumpsuit, but was not handcuffed or otherwise chained.

In the conference room, Fields was questioned by Deputy David Batterson and Deputy Dale Sharp about his relationship with Travis Bice, whom Fields had met when Bice was a minor. The questioning commenced between 7:00 p.m. and 9:00 p.m. and lasted for approximately seven hours. Fields was not read his Miranda rights but was told that if he did not want to cooperate he was free to leave the conference room at any time. Leaving the locked conference room would have taken nearly twenty minutes, as a corrections officer would have had to have been summoned to return Fields to his cell.

Fields did not ask for an attorney or to go back to his cell. However, he told the officers more than once that he did not want to speak with them anymore. At one point in the interview, Fields became angry and started yelling. Deputy Batterson testified that he told Fields he was not going to tolerate being talked to like that and that Fields was welcome to return to his cell. Additionally, Deputy Sharp testified that Deputy Batterson told Fields that if he continued to yell the interview would be terminated. Fields testified that he was told to "sit my fucking ass down" and that "if I didn't want to cooperate, I could leave." (Dist. Ct. Doc. 15 at 24.)

During the interview, Deputy Batterson told Fields that there had been allegations of a sexual nature involving Bice. Fields initially did not acknowledge any sexual relationship with Bice, but he eventually admitted to masturbating Bice and engaging in oral sex with him on at least two occasions. Prior to trial in the Lewanee County Circuit Court, the trial judge denied Fields' motion to suppress these statements. At trial, over the renewed objection of defense counsel, Deputy Batterson testified to

Fields' jailhouse admissions. Fields was ultimately convicted of two counts of third degree criminal sexual conduct and was sentenced on December 5, 2002, to a prison term of ten to fifteen years.

Fields filed an appeal of right in the Michigan Court of Appeals on three grounds. The ground relevant to the instant appeal asserted that "[t]he trial court violated Mr. Fields' due process rights by admitting his alleged custodial statement where Mr. Fields was in custody in the county jail and the Lenawee County sheriff interrogated him for as much as 7 hours without providing *Miranda* warnings." (See Dist. Ct. Doc. 35 at 2.) The Michigan Court of Appeals affirmed the trial court, holding that because Fields "was unquestionably in custody, but on a matter unrelated to the interrogation" and "was told that he was free to leave the conference room and return to his cell ... [but] never asked to leave ... Miranda warnings were not required ..." *People v. Fields*, No. 246041, 2004 WL 979732, at *2 (Mich. App. May 6, 2004). The Michigan Supreme Court denied Fields leave to appeal the Michigan Court of Appeals' decision. *People v. Fields*, 689 N.W.2d (Mich. 2004) (table).

Fields then filed a pro se petition, pursuant to 28 U.S.C. §2254, for a writ of habeas corpus on the same grounds as his direct appeal to the Michigan Court of Appeals. The district court conditionally granted Fields's habeas petition, holding that the state court unreasonably applied *Mathis v. United States*, 391 U.S. 1 (1968) and that the state court's error was not harmless. Appellant Carol Howes, Warden of the Lakeland Correctional Facility in Coldwater, Michigan, has appealed the district court's decision.

II. STANDARD OF REVIEW

The district court's grant of a writ of habeas corpus is reviewed de novo. *Miller v. Webb*, 385 F.3d 666, 671 (6th Cir. 2004). Findings of fact are reviewed for clear error unless the district court's decision is based on the transcripts from the petitioner's state court trial, in which case the findings of fact are reviewed de novo. *Wolfe v. Brigano*, 232 F.3d 499, 501 (6th Cir. 2000). Questions of law and mixed questions of law and fact are also reviewed de novo. *Ruelas v. Wolfenbarger*, 580 F.3d 403, 408 (6th Cir. 2009).

III. ANALYSIS

Appellant argues that the district court misinterpreted and erroneously applied 28 U.S.C. §2254(d) by determining that the state court adjudication was objectively unreasonable.[1]

28 U.S.C. §2254(d)(1), which is part of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), provides that:

---

[1]Appellant also argues that the district court erred by providing a defendant greater federal constitutional protection in a state court than in the majority of federal circuits and in using §2254(d) to limit state jurisprudence by ruling that the state appellate court's legal conclusions must directly derive from Supreme Court holdings. These arguments are immaterial. If the state court's decision was contrary to, or involved an unreasonable application of, clearly established federal law as determined by the Supreme Court, Fields is entitled to habeas relief.

> d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment 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.

28 U.S.C. §2254(d)(1).

The district court made no findings of fact because the parties agreed there were no factual disputes. Thus, we are left to examine, de novo, whether the Michigan Court of Appeals' decision was contrary to, or an unreasonable application of, clearly established federal law.

A state court decision is contrary to clearly established federal law as determined by the Supreme Court if: (1) the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law; or (2) the state court confronts a set of facts that are materially indistinguishable from a Supreme Court decision and nevertheless arrives at a result different from Supreme Court precedent. *Williams v. Taylor*, 529 U.S. 362, 406 (2000); *Thaler v. Haynes*, __ U.S. __, 130 S. Ct. 1171, 1173-74 (2010). A state court unreasonably applies clearly established federal law if the state court identifies the correct governing legal rule from the Supreme Court's cases but unreasonably applies it to the facts of the state prisoner's case. *Thaler*, 130 S. Ct. at 1173-74. A state

court's application of federal law must be "objectively unreasonable" to be an unreasonable application of federal law under §2254(d)(1). *Williams*, 529 U.S. at 409; *McDaniel v. Brown*, __ U.S. __, 130 S. Ct. 665, 673 (2010). Critically, "an unreasonable application of federal law is different from an incorrect application of federal law." *Williams*, 529 U.S. at 410 (emphasis in original); *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). Nevertheless, if the Supreme Court has not "broken sufficient legal ground to establish [a] ... constitutional principle, the lower federal courts cannot themselves establish such a principle with clarity sufficient to satisfy the AEDPA bar" under either the contrary to or unreasonable application standard. *Williams*, 529 U.S. at 381.

The Fifth Amendment provides that no person "... shall be compelled in any criminal case to be a witness against himself ..." U.S. CONST. amend. V. In *Miranda v. Arizona*, 384 U.S. 436, 444-45 (1966), the Supreme Court held that this privilege against self-incrimination applies to a criminal suspect subjected to custodial interrogation. Specifically, statements taken during a custodial interrogation cannot be admitted to establish the guilt of the accused unless the accused was provided a full and effective warning of his rights at the outset of the interrogation process and knowingly, voluntarily and intelligently waived his rights. *Id*. Custodial interrogation is "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." *Id*.

Miranda only applies if the suspect was (1) interrogated while (2) in custody. *See e.g.*, *Rhode Island v. Innis*, 446 U.S. 291, 300 (1980) ("It is clear therefore that the special procedural safeguards outlined in *Miranda* are required not where a suspect is simply taken into custody,

but rather where a suspect in custody is subjected to interrogation"). Interrogation under *Miranda* is "express questioning or its functional equivalent" that law enforcement officers "should know [is] reasonably likely to elicit an incriminating response." *Id*. at 301-02. Appellant does not dispute that the two law enforcement officials' seven hour questioning of Fields constituted an interrogation. Therefore, we must only determine whether Fields was in custody for purposes of *Miranda*.

"Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.'" *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977). "Although the circumstances of each case must certainly influence a determination of whether a suspect is in custody for purposes of receiving of *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983) (quoting *Mathiason*, 429 U.S. at 495).

In *Mathis v. United States*, 391 U.S. 1 (1968), the Supreme Court held that "nothing in the Miranda opinion ... calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." While the petitioner in *Mathis* was serving time in a state prison for an unrelated conviction, an IRS agent questioned him about tax refunds he had claimed on his individual income tax returns. The agent did not read the petitioner his Miranda rights prior to obtaining documents and oral statements subsequently used to convict the petitioner of two counts of knowingly filing a false claim. At trial, the district court denied the petitioner's attempts to suppress the evidence elicited by the revenue agent. On appeal, the circuit court affirmed the district court.

The Supreme Court reversed the lower courts, finding that the petitioner was entitled to receive a Miranda warning prior to questioning by the government agent. Specifically, the Supreme Court rejected the respondent's contentions that *Miranda* did not apply because: (1) the questions asked were part of a routine civil, rather than criminal, tax investigation; and (2) the petitioner was in jail for a separate offense than that for which he was being questioned. The respondent's first contention was rejected because, as occurred with the defendant in *Mathis*, civil tax investigations frequently lead to criminal prosecutions. In rejecting the second distinction, the Supreme Court found that requiring Miranda warnings only where questioning occurs in connection with the case for which a suspect is being held in custody "goes against the whole purpose of the Miranda decision which was designed to give meaningful protection to Fifth Amendment rights." *Id*. at 4.

The central holding of *Mathis* is that a Miranda warning is required whenever an incarcerated individual is isolated from the general prison population and interrogated, i.e. questioned in a manner likely to lead to self-incrimination, about conduct occurring outside of the prison. In the instant case, the district court determined that the Michigan Court of Appeals unreasonably applied *Mathis* by concluding that the investigators need not have provided Miranda warnings to Fields because the interrogation was unrelated to the crime for which he was being held in custody. Though we agree with the district court's decision, we believe that the Michigan Court of Appeals' decision was contrary to, as opposed to an unreasonable application of, *Mathis*. In its opinion, the Michigan Court of Appeals explicitly stated that Fields "was unquestionably *in custody*, but on a matter unrelated to *the interrogation*," yet still concluded that Miranda warnings were not required. *People v. Fields*, No. 246041,

2004 WL 979732 at *2 (Mich. App. May 6, 2004) (emphasis added). The Michigan Court of Appeals did not cite *Mathis* nor any case relying upon *Mathis* in its decision. However, the material facts in this case are indistinguishable from *Mathis*. In both cases, the imprisoned suspect was interrogated about a matter unrelated to his offense of incarceration. Yet, while the Supreme Court in *Mathis* held that the suspect was entitled to a Miranda warning prior to interrogation, the Michigan Court of Appeals ruled that a Miranda warning was not required. The Michigan Court of Appeals therefore arrived at a conclusion contrary to clearly established federal law.

Appellant contends that federal law does not necessarily require Miranda warnings any time an incarcerated individual is questioned about a subject unrelated to the offense of incarceration. As there was no Sixth Circuit decision on point at the time of briefing,[2] Appellant cites numerous cases from other Circuits to support its position.

However, these cases are readily distinguishable from Mathis and do not provide persuasive authority to this case, which may explain why none of them were cited by the Michigan Court of Appeals. Four cases[3] involved on-

---

[2]The only Sixth Circuit case cited by Appellant, *United States v. Ozuna*, 170 F.3d 654 (6th Cir. 1999), involved questioning that did not take place in prison.

[3]*Cervantes v. Walker*, 589 F.2d 424 (9th Cir. 1978) (inmate questioned about marijuana discovered during standard search of belongings); *United States v. Scalf*, 725 F.2d 1272 (10th Cir. 1984) (inmate questioned in his cell immediately after stabbing another inmate); *Garcia v.*

the-scene questioning by prison officers concerning an offense committed in the jail itself. *See Miranda*, 384 U.S. at 477 ("General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding"). Five cases[4] involved voluntary confessions made by individuals who were not interrogated in isolation.[5]

Singletary, 13 F.3d 1487 (11th Cir. 1994), *cert. denied*, 513 U.S. 908 (1994) (inmate questioned after corrections officer extinguished fire in inmate's cell); *United States v. Conley*, 779 F.2d 970 (4th Cir. 1985), *cert. denied*, 479 U.S. 830 (1986) (inmate questioned in aftermath of murder of fellow inmate while waiting for medical treatment in conference room).

[4]*Flittie v. Solem*, 751 F.2d 967 (8th Cir. 1985), *cert. denied*, 479 U.S. 830 (1986) (incriminating statements made to informant visiting inmate in visitor's room of prison); *United States v. Willoughby*, 860 F.2d 15 (2d Cir. 1988), *cert. denied*, 488 U.S. 1033 (1989) (same); *Leviston v. Black*, 843 F.2d 302 (8th Cir. 1988), *cert. denied*, 488 U.S. 865 (1988) (inmate initiated police inquiry and two interviews), *United States v. Turner*, 28 F.3d 981 (9th Cir. 1994), *cert. denied*, 513 U.S. 1158 (1995) (inmate called postal inspector on telephone); *United States v. Menzer*, 29 F.3d 1223 (7th Cir. 1994), *cert. denied*, 513 U.S. 1002 (1994) (inmate advised that officer was coming to speak with him, questions were sent beforehand, appearance was voluntary and took place in an unlocked room with windows facing the general prison administrative area).

[5]Also inapposite is *Alston v. Redman*, 34 F.3d 1237 (3d Cir. 1994), *cert. denied*, 513 U.S. 1160 (1995), where the defendant, who while in pretrial detention signed an undelivered form letter invoking his right to counsel, was

Because Fields was removed from the general prison population for interrogation about an offense unrelated to the one for which he was incarcerated, *Mathis* is the applicable law. None of the cited appellate cases, all of which were decided subsequent to *Mathis*, erode its essential holding: Miranda warnings must be administered when law enforcement officers remove an inmate from the general prison population and interrogate him regarding criminal conduct that took place outside the jail or prison.

The Michigan Court of Appeals correctly determined that Fields was "unquestionably" in custody and was subject to interrogation. Fields was taken from his prison cell to a conference room without explanation. The conference room was locked. Though told that he could leave at any time, exiting the conference room was a lengthy process that required a corrections officer to be summoned. Thus, Fields faced the type of "restraint on freedom of movement" necessary to be deemed in custody. *See Mathiason*, 429 U.S. at 495. Furthermore, Fields was questioned for approximately seven hours. The subject of the questioning was his sexual relationship with a minor, which was not related to his offense of incarceration. This was assuredly an interrogation as it was express questioning that was reasonably likely to elicit an incriminating response. See *Rhode Island v. Innis*, 446 U.S. 291, 301-02 (1980).

Despite properly determining that Defendant was in custody and subject to interrogation, the Michigan erroneously concluded that "there must be some nexus

---

questioned three days later at a police station after being read and then waiving his Miranda rights. It is unclear to the Court how this case supports Appellant's argument.

Between [the elements of custody and interrogation] in order for *Miranda* to apply." *Fields*, 2004 WL 979732, at *2. The Michigan Court of Appeals relied upon *People v. Honeyman*, 546 N.W.2d 719, 723 (Mich. Ct. App. 1996), which created the "nexus" test without citation to federal authority. *Fields*, 2004 WL 979732, at *2 n.3. However, *Miranda* and its progeny only require a finding of custodial interrogation; there is no nexus requirement. *See Miranda*, 384 U.S. at 444 ("the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege of self-incrimination"); *Thompson v. Keohane*, 516 U.S. 99, 104 (1995) (" ... the *Miranda* Court held, suspects interrogated while in police custody must be told they have a right to remain silent, that anything they say may be used against them in court, and that they are entitled to the presence of an attorney ...") (emphasis added). Thus, the Michigan Court of Appeals erred first by searching for a nexus between custody and interrogation and then by finding that, because Defendant was in custody "on a matter unrelated to the interrogation," Defendant wasn't "in custody for the purpose of determining whether Miranda warnings were required." *Fields*, 2004 WL 979732, at *2.

Any doubt that Fields was in Miranda custody is erased by both this Court's recent decision in *Simpson v. Jackson*, __ F.3d __, No. 08-3224, 2010 WL 2771861 (6th Cir. July 13, 2010), and the Supreme Court's opinion in *Maryland v. Shatzer*, __ U.S. __, 130 S. Ct. 1213 (2010). As an initial matter, it should be noted that although *Simpson* was argued after our case and both opinions were written concurrently, the *Simpson* decision was issued prior to this opinion. We are therefore bound by its ruling. Because *Simpson* only briefly discussed the Miranda

custodial interrogation issue, we are including a detailed explanation of our ruling.

In *Simpson*, the incarcerated appellant, on separate occasions, made incriminating statements to police officers questioning him about a crime unrelated to his offense of incarceration. The appellant was not read his Miranda rights on either occasion. The statements were then used as evidence to support criminal charges against the appellant. The appellant moved to suppress these statements at trial, but the state trial judge denied the motion and admitted his statements. The appellant was subsequently convicted. On direct appeal, the Court of Appeals of Ohio upheld the appellant's conviction. The appellant then petitioned for a writ of habeas corpus pursuant to 28 U.S.C. §2254, which was dismissed by the district court. The appellant appealed the dismissal to our court. The panel reversed the district court's dismissal and granted the appellant's petition, holding that the state court's decision was contrary to factually indistinguishable Supreme Court precedent. Specifically, the panel found "no relevant factual distinction between *Mathis* and the circumstances of [the appellant's statements]." *Simpson*, 2010 WL 2771861, at *18.

In both our case and *Simpson*, "as in *Mathis*, state agents unaffiliated with the prison isolated an inmate and questioned him about an unrelated incident without first giving Miranda warnings." *Id*. Moreover, the state court judges in both cases, without even citing *Mathis*, ruled that statements obtained from such questioning was admissible. And in both cases, the failure to heed *Mathis* and forego the issuance of Miranda warnings was

"improper" and "any resulting statements [should have been] suppressed" by the trial court. *Id.*[6]

In *Maryland v. Shatzer*, the Supreme Court found an incarcerated prisoner subjected to questioning on an unrelated crime to be in custody for Miranda purposes.[7] The *Shatzer* defendant, who was serving a sentence for an unrelated child-sexual-abuse offense, was questioned at the correctional institution by a detective on August 7, 2003, regarding allegations he had sexually abused his son. Before any questions were asked, the defendant was read his Miranda rights. Mistaking the detective for an attorney, the defendant waived his rights. However, once the detective explained he was there to question the defendant about the allegations that he abused his son, the defendant declined to speak to the detective without an attorney present and was released back into the general prison population. Approximately two-and-a-half years later, on March 2, 2006, a new detective visited the defendant, who had been transferred to a different facility, to question him about the same allegations of abusing his son. The defendant was read his Miranda rights, and a written waiver of these rights was obtained. The defendant was questioned for approximately thirty minutes in a maintenance closet. He never requested an

---

[6]The panel in *Simpson* noted that the state court had relied on *Cervantes v. Walker*, *supra*, but readily distinguished that case because the prisoner was being questioned about something that happened in prison. *Simpson*, 2010 WL 2771861, at *17 n.7.

[7]Though *Shatzer* was decided subsequent to both the Michigan Court of Appeals' decision and briefing of the instant appeal, we questioned counsel about this case during oral argument.

attorney be present or referred to his prior refusal to answer questions.

Five days later, the detective returned to the correctional facility with another detective to administer a polygraph examination to the defendant. The defendant was read his Miranda rights, and a written waiver was again obtained. When the detectives began questioning the defendant, he became upset and incriminated himself by saying "I didn't force him." *Id*. at 1218. He then requested an attorney, ending the interrogation.

At trial, the defendant moved to suppress the incriminating statements made in 2006 based on his invocation of his Miranda rights in 2003. The trial court denied his motion to suppress, reasoning that there was a break in custody between 2003 and 2006, and therefore, the 2006 waiver of his Miranda rights superseded the defendant's request for an attorney in 2003. The defendant was subsequently found guilty of sexual child abuse of his son. The Court of Appeals of Maryland reversed and remanded, and the Supreme Court of the United States granted a writ of certiorari.

Holding that a break in custody of more than two weeks terminates an invocation of Miranda protections, the Supreme Court reversed the judgment of the Court of Appeals of Maryland and remanded the matter. The Court's opinion discussed whether incarceration necessarily constitutes custody, which it had "never decided ... and [had] indeed explicitly declined to address..." *Id*. at 1224. Concluding that "all forms of incarceration" satisfy the restraint on freedom of movement analysis of custody, the Court nevertheless held that "lawful imprisonment imposed upon conviction of a crime does not create the coercive pressures identified in *Miranda*" and therefore Miranda rights are not triggered

simply because an individual is incarcerated. *Id*. That is, Miranda custody requires both a restraint on movement, which is always satisfied by incarceration, and coercive pressure.

Critically for the pending appeal, the Court noted that "[n]o one questions that Shatzer was in custody for Miranda purposes during the interviews with Detective Blankenship in 2003 and Detective Hoover in 2006." *Id*. A prisoner is in custody when he is removed from his "normal life" by being taken from his cell to an isolated area, such as a closet or conference room, for the purpose of interrogation. *Id*. at 1225. Once the prisoner is then released back into the general prison population, away from his interrogators, he is no longer in custody.

Thus, faced with a factual scenario of an inmate being removed from his cell and being interrogated about an unrelated crime, the Supreme Court expressed no doubt that a Miranda warning was required. The question facing the Court was whether the inmate's 2003 invocation of his Miranda rights precluded law enforcement from soliciting a Miranda warning in 2006 and interrogating the inmate again. The Supreme Court's unambiguous conclusion that the *Shatzer* defendant was in Miranda custody on both occasions serves to bolster our determination regarding Fields.

Moreover, in finding that the defendant in *Shatzer* was in custody, the Supreme Court did not address the physical circumstances of the interrogation, such as whether the interrogation room was windowless, whether the defendant was handcuffed, whether the defendant was told he could stop the interrogation or the length of the interrogation. The Court's approach, combined with the holding in *Simpson*, provides us the necessary guidance to formalize a bright line test for determining whether

Miranda rights are triggered for an incarcerated individual. A Miranda warning must be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison.

The critical issue in this inquiry becomes whether the prisoner is isolated from the general prison population for questioning. "Miranda ... was designed to guard against ... the 'danger of coercion [that] results from the interaction of custody and official interrogation.'" *Id*. at 1224 (citing *Illinois v. Perkins*, 496 U.S. 292, 297 (1990)) (emphasis in *Shatzer*, brackets in original). While locking doors or handcuffing the inmate enhances the potential for coercion, isolation is perhaps the most coercive aspect of custodial interrogation. Assuming the inmate is indeed undergoing interrogation, being placed in a room, apart from others within the prison population, sequesters the prisoner with his accusers in the type of scenario for which *Miranda* seeks to provide protection. *See Id*. at 1224. Moreover, "[w]hen a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of that separation is assuredly dependent upon his interrogators." *Id*. at 1225 n.8 (emphasis removed from original). The sense of control exercised by interrogators over the prisoner in determining the length of the prisoner's removal from his normal life further reinforces the element of coercion. A prisoner may feel he has no choice but to cooperate and provide the exact answers his interrogators seek to elicit, regardless of the potential for incrimination. We believe a reasonable person in an inmate's position would view such interrogation conducted in isolation as coercive, thus necessitating a Miranda warning. *See Berkemer v. McCarty*, 468 U.S. 420, 442 (1984) (in determining custody, the court must assess "how a reasonable man in the suspect's situation would have understood his situation").

This bright line approach will obviate fact-specific inquiries by lower courts into the precise circumstances of prison interrogations conducted in isolation, away from the general prison population. Furthermore, law-enforcement officials will have clearer guidance for when they must administer Miranda warnings prior to a prison interrogation.

The Michigan Court of Appeals' conclusion that, although Fields was in custody, interrogation without a Miranda warning was permissible because the questioning concerned an unrelated matter contradicts clearly established federal law as determined by the Supreme Court in *Mathis*. In order for habeas relief to be warranted, however, we must also determine if the admission of Fields' involuntary confession was harmless error. *Arizona v. Fulminante*, 499 U.S. 279, 308 (1991). An error that "'had substantial and injurious effect or influence in determining the jury's verdict,'" is not harmless. *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993) (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946). Even if there is only "grave doubt about whether a trial error of federal law has substantial and injurious effect or influence in determining the jury's verdict, that error is not harmless." *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995) (internal quotation omitted). Moreover, "the risk that the confession is unreliable, coupled with the profound impact that the confession has upon the jury, requires a reviewing court to exercise extreme caution before determining that the admission of the confession at trial was harmless." *Fulminante*, 499 U.S. at 296.

There is no question that the failure to suppress Fields' confession was not harmless error. In fact, Appellant has not even challenged this portion of the district court's ruling. Fields was convicted of two counts of third-degree criminal sexual conduct. As noted by the

district court, the critical evidence against Fields was his confession and the victim's testimony. The victim, however, recanted his testimony on several occasions, including telling two law enforcement officers and at least three other individuals that the sexual conduct with Petitioner never occurred. Accordingly, Fields' confession must have heavily influenced the jury's decision. The district court therefore correctly concluded that the trial court's error was not harmless and that, consequently, habeas relief was merited because the Michigan Court of Appeals' decision contradicted federal law as established by the Supreme Court.

IV. CONCLUSION

For the reasons discussed *supra*, the district court's conditional grant of the petition of writ of habeas corpus pursuant to 28 U.S.C. §2254 is hereby **AFFIRMED**.

CONCURRENCE

McKEAGUE, Circuit Judge, concurring. I agree that the outcome of this case is controlled by this court's prior decision in *Simpson v. Jackson*, No. 08-3224, 2010 WL 2771861 (6th Cir. July 13, 2010). However, I write separately because I disagree with both *Simpson's* and the majority's interpretation of two Supreme Court cases: *Mathis v. United States*, 391 U.S. 1 (1968) and *Maryland v. Shatzer*, – U.S. –, 130 S. Ct. 1213 (2010). In particular, in contrast to the majority and *Simpson*, I do not believe that *Mathis* obviates the need for the context-specific custody analysis clearly established by *Miranda* and its progeny. Moreover, I do not agree with the majority that *Mathis* established a bright line test to the effect that, "[a] Miranda warning *must* be given when an inmate is isolated from the general prison population and interrogated about conduct occurring outside of the prison." Majority Op. at 13 (emphasis added). Instead, applying the context-specific *Miranda* custody analysis under the deferential review mandated by AEDPA, I believe that the proper course of action in this case would be to reverse the district court and uphold the state court's determination.

I read *Mathis* as standing for a narrower proposition than does the majority. The Court in *Mathis* addressed the government's argument that it should: "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." 391 U.S. at 4. The Court found that there was "nothing in the Miranda opinion which call[ed] for a curtailment of the warnings to be given persons under interrogation by

officers based on the reason why the person is in custody." *Id*. at 4-5. Therefore, *Mathis* holds that *Miranda* applies to a person interrogated while in prison on charges unrelated to the investigation for which he is interrogated, but it does not establish that such a person is automatically in custody or entitled to *Miranda* warnings anytime he is interrogated away from the general prison population. Instead, this determination depends on the context–specific analysis of whether the inmate is deemed to be "in custody"; *i.e.*, whether he was subject to the sort of isolation and coercive influence that trigger the need for *Miranda* warnings.[1] Therefore, I would not read the "essential holding" of *Mathis* to be that "Miranda warnings must be administered when law enforcement officers remove an inmate from the general prison population and interrogate him regarding criminal conduct that took place outside the jail or prison." Majority Op. at 9.

---

[1]Furthermore, while *Mathis* did find that "the courts below were wrong in permitting the introduction of petitioner's self-incriminating evidence given without warning of his right to be silent and right to counsel," the opinion does not provide the facts surrounding the interrogation. 391 U.S. at 5. Instead, it merely notes that petitioner was "interviewed" while in a penitentiary. *Id*. at 4 n.2. Clearly, applying the context-specific analysis articulated in *Miranda* and its progeny, there are circumstances in which a prisoner interrogated while incarcerated on separate charges would not be "in custody." There are also circumstances in which a prisoner would be "in custody." The facts of *Mathis*, as set forth in the opinion, simply do not provide a basis on which to draw a bright line – presumably because that was not the issue presented to the Court (the government sought to make *Miranda* applicable "only to questioning one who is

Furthermore, I also do not read *Shatzer* as broadly as does the majority here. Admittedly, *Shatzer* does state that: "[n]o one questions that Shatzer was in custody for Miranda purposes during the interviews with Detective Blankenship in 2003 and Detective Hoover in 2006." 130 S. Ct. at 1224. However, the fact that no one questioned whether *Shatzer* was in custody, does not mean (or clearly establish) that anytime an inmate is removed from the general prison population and interrogated he is "in custody" for *Miranda* purposes. Instead, it only means that the parties, unlike the government in this case, did not make an issue of the "in custody" requirement in relation to those specific interrogations.

Consequently, instead of adopting a bright line rule governing the interrogation of those already in prison and mandating that we find that Fields was in custody, I believe that the normal, context–specific analysis articulated in *Miranda* and its progeny applies here and that this analysis should determine whether Fields was in custody for *Miranda* purposes. In speaking of "custody," the language of the *Miranda* opinion indicates 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." *Miranda v. Arizona*, 384 U.S. 436, 478 (1966). However, as the Court's "make clear . . . the freedom-of-movement test identifies only a

---

'in custody' in connection with the very case under investigation"). Therefore, I would not read the opinion as establishing the bright line rule that the majority does, especially given the Court's instructions that ""*Miranda* is to be enforced 'only in those types of situations in which the concerns that powered the decision are implicated.'" *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984).

necessary and not a sufficient condition for *Miranda* custody" and "*Miranda* is to be enforced 'only in those types of situations in which the concerns that powered the decision are implicated.'" *Shatzer*, 130 S. Ct. at 1224 (quoting *Berkemer*, 468 U.S. at 437). The Court noted in *Berkemer* that:

> The purposes of the safeguards prescribed by Miranda are to ensure that the police do not coerce or trick captive suspects into confessing, to relieve the inherently compelling pressures generated by the custodial setting itself, which work to undermine the individual's will to resist, and as much as possible to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary.

Id. at 433 (internal citations and quotations omitted). Indeed, under the *Miranda* custody test: "[t]wo discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99 (1995); *see also Yarborough v. Alvarado*, 541 U.S. 652, 663 (2004) ("Our more recent cases instruct that custody must be determined based on how a reasonable person in the suspect's situation would perceive his circumstances."); *Stansbury v. California*, 511 U.S. 318, 322-23 (1994) (per curiam) (noting that courts "must examine all of the circumstances surrounding the interrogation" and that "the initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being

questioned"). Consequently, the *Miranda* custody analysis in this case is shaped by the circumstances surrounding Fields' interrogation, including the fact that Fields was already incarcerated on separate charges and, therefore, that he lived in prison. See *Shatzer*, 130 S. Ct. at 1224 (noting that "[i]nterrogated suspects who have previously been convicted of crime live in prison" and that "incarceration pursuant to a conviction" is a prisoner's "normal life" and, thereby, recognizing that the prison setting is not inherently coercive).

Turning to the particulars of this case, the Michigan Court of Appeals was the last state court to issue a reasoned opinion considering this issue. That court noted that the fact that "a defendant is in prison for an unrelated offense when being questioned does not, without more, mean that he was in custody for the purpose of determining whether Miranda warnings were required." *People v. Fields*, 2004 WL 979732, *2 (Mich. Ct. App. May 6, 2004) (citation omitted). The court also noted that:

> [D]efendant 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.

Id. Obviously or "unquestionably," Fields was in custody in the sense that he was incarcerated on a matter unrelated to the interrogation. However, this does not mean that he was "in custody" for purposes of the *Miranda* and, indeed, the Michigan Court of Appeals went on to describe the fact

that Fields would have felt free to terminate the interview and leave, which is critical to the *Miranda* custody determination. *Id*. In particular, even though Fields was interrogated in a separate conference room, he was told that he was free to leave the conference room and return to his cell; consequently, the Michigan Court of Appeals concluded that Fields was not subject to the sort of coercion necessary to trigger *Miranda* warnings because he was not in custody for purposes of *Miranda*.[2]

We view this determination under AEDPA which, to grant relief, requires that we find the state court's decision to be "contrary to, or involve[] an unreasonable application of, clearly established Federal law" as established "by the Supreme Court." 28 U.S.C. § 2254(d)(1). A state-court decision is "contrary to" clearly established federal law if: (1) the state court applies a rule that contradicts the governing law set forth by the Supreme Court in its cases, or (2) the state court confronts a set of facts that are materially indistinguishable from those presented in a Supreme Court decision and nevertheless arrives at a result different from Supreme Court precedent. *Williams*, 529 U.S. at 405-06. In order to constitute an "unreasonable application" of clearly established federal law, a state court's application of federal law to the facts of the case must be "objectively unreasonable." Id. at 409; see also *Renico v. Lett*, – U.S. –, 130 S. Ct. 1855, 1862 (2010). The Supreme Court has stressed that "the most important point is that an unreasonable application of federal law is different from an incorrect application of federal law." *Id*.

---

[2]The Michigan Court of Appeals did not mention *Mathis* because it did not need to: *Mathis* merely instructed courts to apply Miranda in this context, which the Michigan Court of Appeals did.

at 410 (emphasis in original); *see also Alvarado*, 541 U.S. at 665 (conducting AEDPA review in the *Miranda* custody context and noting that: "We cannot grant relief under AEDPA by conducting our own independent inquiry into whether the state court was correct as a *de novo* matter. '[A] federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the state-court decision applied [the law] incorrectly.'").

As discussed above, the Michigan Court of Appeals' decision has not been shown to be contrary to clearly established Supreme Court precedent. That court did not apply a rule that contradicts the governing law set forth by the Supreme Court in its cases; instead, it applied the correct, context-specific *Miranda* custody test. Nor did the Michigan Court of Appeals arrive at a result different from Supreme Court precedent on a set of facts that are materially indistinguishable from a Supreme Court decision. Furthermore, while a close call, I cannot say that the Michigan Court of Appeals' decision applying the context-specific *Miranda* custody analysis is objectively unreasonable. The Michigan Court of Appeals provided the specific factual context surrounding the investigation:

> 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.

Fields, 2004 WL 979732 at *1. As noted above, the Michigan Court of Appeals found the fact that Fields was told that he was free to leave to be critical.

It is true that Fields had to leave his cell, and was escorted through a separate door into a conference room in a separate building, and that he was questioned at length.[3] However, Fields was a prisoner. So, the fact that he had to be escorted to the conference room, and could leave and return to his cell at any time, but only with an

---

[3]The parties agreed to the facts surrounding the interrogation. (R. 19 at 4-9.) In particular, in order to get to the conference room, Fields had to pass through a separate door and Fields was not told he could terminate the questioning at any time, but he was told he could leave at any time and that he would be taken back to the cell. (*Id.*; R. 20-3 at 5, 14.) Fields had to pass through the "J door," which is the door that divides the jail from the Sheriff's Department. (R. 15 at 7.) The conference room where he was interrogated was just beyond the J door. Furthermore, Fields testified that the interview began at around 8:00 p.m. or 8:30 p.m. and ended around 1:30 a.m. or 2:00 a.m.

Fields also testified that he was told at one point to "sit my fucking ass down" and that "if I didn't want to cooperate, I could leave." (R. 15 at 24.) However, this statement makes it clear that continuation of the interview was up to Fields, and it would have indicated to a reasonable person that he was free to terminate the interview and leave. Consequently, it shows the absence of the type of coercive pressures relevant to the Miranda custody inquiry. Indeed, Fields testified that he "assumed" that if he asked to go back to his cell, he would be escorted back to his cell. (R. 15 at 27.)

escort, were normal, routine features of his life as an inmate. While he did have to pass through the J-door, and the conference room was in a separate part of the building, the state court rightly noted that the fact that Fields was told he could leave at any time is of critical significance.[4] This, along with the fact that Fields was already accustomed to incarceration and its accompanying restraints, demonstrate that there were objective circumstances creating an interrogation environment in which a reasonable person, already imprisoned on separate charges, "would have felt free to terminate the interview and leave." *Alvarado*, 541 U.S. at 654-55.

In short, while the majority's bright line rule frees the courts from the task of scrutinizing individual cases to try to determine whether the suspect already incarcerated on separate charges was in custody for *Miranda* purposes, I do not believe that it is appropriate for this court to fashion such a rule under the constraints imposed by the AEDPA. Instead, we should apply the context-specific analysis articulated in *Miranda* and its progeny to determine whether Fields was "in custody." Under these circumstances, because "fair-minded jurists could disagree over whether [Fields] was in custody," the state court's decision that Fields was not in custody was not objectively unreasonable. *See id*. at 664. However, since we are bound by *Simpson*, I concur.

---

[4]It also distinguishes this case from the concern in *Shatzer*, where the Court noted that, "[w]hen a prisoner is removed from the general prison population and taken to a separate location for questioning, the duration of that separation is assuredly dependent upon his interrogator," because Fields controlled the duration of his stay. 130 S. Ct. at 1225 n.8.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDALL LEE FIELDS,

Petitioner, Case Number: 2:06-CV-13373

v. HON. VICTORIA A. ROBERTS

CAROL HOWES,

Respondent.
_____/

JUDGMENT

In accordance with the Opinion and Order Conditionally Granting Petition for Writ of Habeas Corpus, judgment is entered in favor of the Petitioner.

David Weaver
Clerk of the Court

By: S/Carol A. Pinegar
Deputy Court Clerk

Dated: 2/9/09

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDALL LEE FIELDS,

Petitioner, Case Number: 2:06-CV-13373
HON. VICTORIA A. ROBERTS

v.

CAROL HOWES,

Respondent.
_____/

OPINION AND ORDER CONDITIONALLY GRANTING PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Randall Lee Fields is currently incarcerated at the Lakeland Correctional Facility in Coldwater, Michigan. He has filed a *pro se* petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, challenging his convictions for two counts of third-degree criminal sexual conduct. For the reasons set forth below, the Court conditionally grants the petition.

I.

Petitioner's convictions arise from the sexual assault of Travis Bice. The Michigan Court of Appeals summarized the facts adduced at trial and leading to Petitioner's convictions as follows:

> The victim testified that he met defendant when he was approximately twelve years old through defendant's nephew whom the

> victim met on a school bus. Defendant lived across the street from the victim. The victim also met James Philo, another adult, at defendant's house. After the victim started "hanging out" with defendant, Philo moved into defendant's house and the three of them spent time together watching television and sometimes pornographic films. The victim described one instance when, after consuming alcohol and smoking marijuana, the defendant and Philo went into the bedroom where defendant performed oral sex on the victim. Philo also placed his mouth on the victim's penis. The victim testified that defendant performed oral sex on him on two separate occasions. Deputy Batterson testified that while defendant was in custody on an unrelated domestic abuse matter, he was questioned about his relations with the victim. Defendant provided a statement that corroborated the victim's testimony but added that on one occasion he engaged in oral sex with Philo and the victim in a motel in Toledo, Ohio and that he masturbated the victim on two other occasions.

People v Fields, No. 246041, slip op. at 1 (Mich. Ct. App. May 6, 2004).

The Court will discuss additional relevant facts below.

II.

Following a jury trial in Lenawee County Circuit Court, Petitioner was convicted of two counts of third-

degree criminal sexual conduct. On December 5, 2002, he was sentenced to ten to fifteen years' imprisonment.

Petitioner filed an appeal of right in the Michigan Court of Appeals, raising the following claims:

I. The trial court violated Mr. Fields' due process rights by admitting his alleged custodial statement where Mr. Fields was in custody in the county jail and the Lenawee County sheriff interrogated him for as much as 7 hours without providing *Miranda* warnings.

II. Defendant was denied his due process right to a fair trial where he was on trial for criminal sexual conduct and the prosecutor elicited other acts evidence through witness testimony contrary to mre 404(b), because there was no logical relevance and it was more prejudicial than prohibitive.

III. The trial court clearly erred in finding that as a matter of law there were substantial and compelling reasons to depart from the statutory sentencing guidelines and abused it's sentencing discretion when imposing a sentence of 120 months to 180 months in prison, where the guidelines range called for a sentence of 45 to 75 months.

The Michigan Court of Appeals affirmed the convictions. *People v. Fields*, No. 246041 (Mich. Ct. App. May 6, 2004).

Petitioner filed an application for leave to appeal in the Michigan Supreme Court, raising the same claims raised in the court of appeals. The Michigan Supreme Court denied leave to appeal. *People v. Fields*, No. 126431 (Mich. Dec. 9, 2004).

Petitioner then filed the pending petition for a writ of habeas corpus. He raises the same claims raised on direct appeal in state court.

III.

A.

Petitioner's claims are reviewed against the standards established by the Antiterrorism an Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (AEDPA). This Act "circumscribe[d]" the standard of review federal courts must apply when considering applications for a writ of habeas corpus raising the question of effective assistance of counsel, as well as other constitutional claims. See *Wiggins v. Smith*, 539 U.S. 510, 520 (2003).

As amended, 28 U.S.C. § 2254(d) imposes the following standard of review for habeas cases:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment 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 proceeding.

28 U.S.C. § 2254(d). Therefore, federal courts are bound by a state court's adjudication of a petitioner's claims unless the state court's decision was contrary to or involved an unreasonable application of clearly established federal law. *Franklin v. Francis*, 144 F.3d 429, 433 (6th Cir. 1998). Mere error by the state court will not justify issuance of the writ; rather, the state court's application of federal law "must have been objectively unreasonable." *Wiggins v. Smith*, 539 U.S. at 521 (quoting *Williams v. Taylor*, 529 U.S. 362, 409 (2000)) (internal quotes omitted). Additionally, this Court must presume the correctness of state court factual determinations. 28 U.S.C. § 2254(e)(1) ("In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct."); see also *Austin v. Jackson*, 213 F.3d 298, 300 (6th Cir. 2000) ("All factual findings by the state court are accepted by this Court unless they are clearly erroneous.").

The United States Supreme Court has explained the proper application of the "contrary to" clause as follows:

> A state-court decision will certainly be contrary to [the Supreme Court's] clearly established precedent if the state court applies a rule that contradicts the governing law set forth in our cases. . . .
>
> A state-court decision will also be contrary to this Court's clearly established precedent if the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from [the Court's] precedent.

Williams, 529 U.S. at 405-06.

The Supreme Court held that a federal court should analyze a claim for habeas corpus relief under the "unreasonable application" clause of § 2254(d)(1) "when a state-court decision unreasonably applies the law of this Court to the facts of a prisoner's case." *Id.* at 409. The Court defined "unreasonable application" as follows:

> [A] federal habeas court making the "unreasonable application" inquiry should ask whether the state court's application of clearly established federal law was objectively unreasonable. . . .
>
> [A]n unreasonable application of federal law is different from an incorrect application of federal law. . . . Under § 2254(d)(1)'s "unreasonable application" clause, then, a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly

> established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.

Id. at 409, 410-11. *See also Dorchy v. Jones*, 398 F.3d 783, 787-88 (6th Cir. 2005); *McAdoo v. Elo*, 365 F.3d 487, 493 (6th Cir. 2004); *Rockwell v. Yukins*, 341 F.3d 507, 512 (6th Cir. 2003) (en banc).

B.

In his first habeas claim, Petitioner argues that admission of his confession was improper because it was coerced. Petitioner argues that police failed to advise him of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), before interrogating him for seven hours.

Petitioner claims that his statement to police was improperly admitted at trial because it was involuntarily made. Petitioner argues that his statement was involuntary because police failed to end the interrogation when Petitioner asked to leave and Petitioner was not read his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966). The trial court conducted a hearing to determine the voluntariness of Petitioner's statement to police. Following the hearing, the trial court determined that Petitioner, although in custody on another charge, was informed that he was free to leave to interrogation room and that he knew he was free to leave and could exercise that right at any time. There was no dispute that Petitioner was not informed of his *Miranda* rights.

The last state court to issue a reasoned opinion regarding this claim, the Michigan Court of Appeals, addressed this claim at length, holding, in pertinent part:

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. He also stated that he witnessed oral sex between the victim and Philo. He stated that this occurred in the bedroom of his home in September. He also spoke of another incident involving himself, the victim and Philo at a Toledo, Ohio motel. With regard to *Miranda*[] warnings generally, this Court has long held:

> *Miranda* warnings are necessary only when the accused is interrogated while in custody, not simply when he is the focus of an investigation. Custodial interrogation is "'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.'" [*People v Herndon*, 246 Mich. App. 371, 395; 633 N.W.2d 376 (2001) (footnotes omitted).]

But with regard to interrogation of a defendant who is in custody on an unrelated matter, this Court has more recently held:

> "[I]n addition to the elements of 'custody' and 'interrogation,' there must be some nexus between these elements in order for Miranda to apply." That a defendant is in prison for an unrelated offense when being questioned does not, without more, mean that he was in custody for the purpose of determining whether *Miranda* warnings were required. [*Id*. at 396, quoting *People v Honeyman*, 215 Mich. App. 687, 694; 546 N.W.2d 719 (1996)].

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.

Fields, slip op. at 2-3.

The procedural safeguards imposed by *Miranda* are designed "to safeguard the uncounseled individual's Fifth Amendment privilege against self-incrimination . . . while in police custody." *Thompson v. Keohane*, 516 U.S. 99, 107 (1995). Custody is determined by examining whether a reasonable person in the suspect's position would believe that he or she was free to leave. *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984). *See also Standbury v. California*, 511 U.S. 318, 323 (1994) ("[T]he initial determination of custody depends on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned.").

In *Mathis v. United States*, 391 U.S. 1 (1968), the Supreme Court discussed whether *Miranda* warnings are required when a suspect is incarcerated on an unrelated charge. An Internal Revenue agent interviewed Mathis regarding federal charges while Mathis was serving a state sentence. At the subsequent federal trial, Mathis attempted to suppress his statement to the governmental agent on the ground that the agent had not read the *Miranda* warnings to him before interrogating him. The District Court rejected this argument, and the Court of Appeals affirmed Mathis' convictions. The Supreme Court, however, held that *Miranda* called for reversal. The Government argued that *Miranda* warnings were unnecessary because Mathis was in custody on an entirely separate offense and was not placed in custody by the officer who questioned him. The Supreme Court, however, stated that this distinction was "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* at 4. The Supreme Court found "nothing in the *Miranda* opinion which calls for a curtailment of the warnings to be given persons under interrogation by officers based on the reason why the person is in custody." *Id*. At 4-5.

> A rule that persons in prison are in custody and must be advised of their rights prior to questioning is fully consistent with the logic underlying *Miranda* and *Mathis*. *Miranda* established a prophylactic rule intended to ensure that suspects are not coerced into confessing. *See Berkemer*, 104 S. Ct. at 3147; see also *Henry*, 447 U.S. at 273-74, 100 S. Ct. at 2188. The rule was designed for situations believed to be intrinsically coercive and susceptible of abuse. *See Miranda*, 384 U.S. at 467, 86 S. Ct. at 1624 ("inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely"); *see also Minnesota v. Murphy*, 465 U.S. 420, 104 S. Ct. 1136, 1144, 79 L. Ed. 2d 409 (1984). Prison is certainly a "police dominated" surrounding that is inherently coercive. *See Berkemer*, 104 S. Ct. at 3150, 3150 n. 28. *Miranda* recognized the powerful psychological effect on a person confined, alone with his interrogator, which often induces the individual to reach for aid. 384 U.S. at 448-55, 86 S. Ct. at 1614-17. This powerful influence is certainly present when the individual is confined in prison. *See Henry*, 447 U.S. at 273-74, 100 S. Ct. at 2188. Furthermore, the coercion inherent in custodial interrogation derives in large part

> from the knowledge of the accused that he cannot escape his interrogator, and that the questioning can continue until the desired answer is obtained. *See Miranda*, 384 U.S. at 468, 86 S. Ct. at 1624; *see also Murphy*, 104 S. Ct. at 1145-46. In *Murphy*, the Court discussed the situation where "a suspect ... is painfully aware that he literally cannot escape a persistent custodial interrogator." 104 S. Ct. at 1146. It would be hard to conceive of a situation where the accused was less able to escape his interrogator than in a prison setting.

U.S. v. Cadmus, 614 F. Supp. 367, 372 (D.C. N.Y. 1985).

Although some federal circuit courts have restricted *Mathis*, *see*, *e.g.*, *Cervantes v. Walker*, 589 F.2d 424, 427 (9th Cir. 1978), this Court is bound by clearly established federal law as determined by the Supreme Court. 28 U.S.C. § 2254(d)(1); *King v. Trippett*, 192 F.3d 517, 523 n. 2 (6th Cir. 1999). The Supreme Court determined in *Mathis* that the petitioner was "in custody" and entitled to *Miranda* warnings before a federal agent interrogated him about an offense unrelated to the one for which he was incarcerated. The court of appeals' decision was contrary to and an unreasonable application of *Mathis*.

In support of his claim that *Mathis* does not require *Miranda* warnings where a prisoner is questioned regarding a crime unrelated to that for which he is incarcerated, Respondent cites a handful of cases. The two cited Sixth Circuit cases are inapposite to the pending case. First, in *United States v. Ozuna*, 170 F.3d 654 (1999), the Court of Appeals addressed whether customs inspectors should have given *Miranda* warnings prior to questioning defendant as he tried to enter the country at

the United States/Canadian border. The Court noted in dicta that in determining whether a suspect is in custody, particular attention must be paid to surrounding circumstances. *Id.* at 658, n.3. The Court noted that the Ninth Circuit Court of Appeals has held that prisoners "are not free to leave their prisons, but *Miranda* warnings need not precede questioning until there has been a 'restriction of [the prisoner's] freedom over and above that of his normal prisoner setting.'" *Id.*, *quoting Cervantes v. Walker*, 589 F.2d 424, 428 (9th Cir. 1978). The Court of Appeals' citation to *Cervantes* was dicta and certainly did not and could not overrule the Supreme Court's decision in *Mathis*. Thus, while the citation to *Cervantes* indicates some disagreement with *Mathis* it is not an invitation to disregard *Mathis*.

Second, Respondent cites the Sixth Circuit's decision in *United States v. Salvo*, 133 F.3d 943 (6th Cir. 1998). In *Salvo*, the government challenged a district court's suppression of defendant's statements to FBI agents. The statements were made during a search of his residence by the agents, who did not read him his *Miranda* rights prior to taking his statement. The Court of Appeals held that the statement was not properly suppressed because the defendant was not in custody at the time he was questioned and, therefore, *Miranda* warnings were not required. In determining that defendant was not in custody, the court considered the totality of the circumstances presented. None of those circumstances is similar to those at issue here, that is, none involved a defendant who was clearly already in custody when questioned on an unrelated charge. Thus, while *Salvo* may be instructive regarding in custody determinations for non-prisoners, it does not bear upon the claim at issue in this case and does not narrow the Supreme Court's holding in *Mathis*.

Mathis clearly states that *Miranda* warnings are required when a suspect is in custody regardless of the reason why the suspect is in custody. The Michigan Court of Appeals' conclusion that investigators were not required to advise Petitioner of his *Miranda* rights because his custody was unrelated to the crime under investigation is an unreasonable application of *Mathis*. The Court's inquiry, however, does not end there. Admission of an involuntary confession is subject to harmless-error analysis. *Arizona v. Fulminante*, 499 U.S. 279, 308 (1991).

In a habeas corpus proceeding, to determine whether a constitutional trial error is harmless, a federal court must decide whether the error "'had substantial and injurious effect or influence in determining the jury's verdict.'" *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993), *quoting Kotteakos v. U.S.*, 328 U.S. 750, 776 (1946). "This standard reflects the 'presumption of finality and legality' that attaches to a conviction at the conclusion of direct review." *Calderon v. Coleman*, 525 U.S. 141, 145 (1998), *quoting Brecht*, 507 U.S. at 633. "It protects the State's sovereign interest in punishing offenders and its good-faith attempts to honor constitutional rights, . . . while ensuring that the extraordinary remedy of habeas corpus is available to those whom society has grievously wronged." *Id.* (internal quotations omitted).

If a federal judge in a habeas proceeding "is in grave doubt about whether a trial error of federal law has substantial and injurious effect or influence in determining the jury's verdict, that error is not harmless. And, the Petitioner must win." *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995) (internal quotation omitted). The Court may not grant habeas corpus relief if it concludes that "the state court simply erred in concluding that the State's errors were harmless; rather habeas relief is appropriate only if the [state court] applied the harmless-

error review in an 'objectively unreasonable' manner." *Mitchell v. Esperanza*, 540 U.S. 12, 18 (2003).

In considering whether the admission of a coerced confession was harmless, "the risk that the confession is unreliable, coupled with the profound impact that the confession has upon the jury, requires a reviewing court to exercise extreme caution before determining that the admission of the confession at trial was harmless." *Fulminante*, 499 U.S. at 296.

> A confession is like no other evidence. Indeed, "the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him . . . [T]he admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have a profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so." *Bruton v. United States*, 391 U.S. at 139-140, 88 S. Ct. at 1630 (White, J., dissenting). . . . While some statements by a defendant may concern isolated aspects of the crime or may be incriminating only when linked to other evidence, a full confession in which the defendant discloses the motive for and means of a crime may tempt the jury to rely upon that evidence alone in reaching its decision.

Id.

In *Fulminante*, the Supreme Court held that the admission of defendant's confession was not harmless

error. Fulminante was convicted of murdering his 11-year-old stepdaughter. Police lacked any physical evidence connecting Fulminante to the crime. He was ultimately prosecuted only after authorities learned that, while incarcerated on an unrelated charge, he confessed to the killing to an inmate, Anthony Sarivola, a former police officer who was working as a paid informant for the FBI. Following his release from prison, Fulminante also confessed to Sarivola's wife. Both confessions were admitted at trial.

The Supreme Court held that the first confession was coerced. The Court further held that the admission of a coerced confession is subject to the harmless-error analysis, and, after evaluating the evidence presented, that it was not harmless error in this case. *Id*. at 306-09, 295- 302. In reaching this conclusion, the Supreme Court considered three main factors. First, absent the confessions, it was unlikely Fulminante would have been prosecuted because the physical evidence from the scene and other circumstantial evidence would have been insufficient to convict. *Id*. at 297. The prosecutor acknowledged the importance of the confession in both his opening and closing statements. Second, the jury's assessment of the reliability of Sarivola's wife's testimony regarding the second confession may have been influenced by the existence of the first, coerced confession. Absent testimony regarding the first confession, jurors may have been more skeptical of Sarivola's wife's testimony, particularly because she had a motive to lie in that both she and her husband received significant benefits for their testimony. *Id*. at 298-99. Finally, admission of the first confession led to the admission of other prejudicial evidence against Fulminante. *Id*. at 300. Based upon the foregoing, the Court concluded that the admission of Fulminante's first, coerced confession was not harmless error.

In this case, there were essentially two pieces of evidence against Petitioner: the victim's testimony and Petitioner's confession. The victim, Travis Bice's testimony, however, was far less clearly incriminating than the Michigan Court of Appeals' summary of testimony would indicate. In the time leading up to trial, Bice told at least five individuals, including two law enforcement officers, that the sexual conduct with Petitioner never occurred. During his direct examination, Bice refused to describe for the jury what he understood "oral sex" to mean. Following a brief recess, the prosecutor asked the trial court judge if her examination of Bice could resume outside the presence of the jury because she believed Bice was going to recant his testimony. The trial court judge instead recessed for lunch. Following lunch, Bice continued his testimony. At that point, Bice did not recant and, in fact, incriminated Petitioner.

Considering that a "defendant's own confession is probably the most probative and damaging evidence that can be admitted against him," *id*. at 296, that the evidence against Petitioner was far from overwhelming, and that the victim recanted his allegations several times, the Court is in "grave doubt" about whether admission of the coerced confession had "substantial and injurious effect or influence in determining the jury's verdict." *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995) (internal quotation omitted). Accordingly, the error was not harmless and the Court grants habeas corpus relief on this claim.

C.

Petitioner next argues that the trial court erred in admitting other act evidence regarding uncharged sexual relations he had with the victim and in admitting testimony that another adult, James Philo, who lived at Petitioner's house, also engaged in sexual acts with the

victim. The Michigan Court of Appeals held that the testimony was properly admitted as part of the *res gestae* of the offenses. The court noted that the testimony demonstrated how Petitioner fostered a relationship between himself and the victim and Philo and the victim and concluded that "[t]hese acts were so blended with the crimes defendant was charged with that they incidentally explained the circumstances of those crimes." *Fields*, slip op. at 4.

The United States Supreme Court has declined to hold that the admission of similar "other acts" evidence is so extremely unfair that its admission violates fundamental conceptions of justice. *See Dowling v. United States*, 493 U.S. 342, 352-53, 110 S. Ct. 668, 674-75 (1990). Although the Supreme Court has addressed whether prior acts testimony is permissible under the Federal Rules of Evidence, *see Huddleston v. United States*, 485 U.S. 681, 108 S. Ct. 1496 (1988), it has not explicitly addressed the issue in constitutional terms. Therefore, "[t]here is no clearly established Supreme Court precedent which holds that a state violates due process by permitting propensity evidence in the form of other bad acts evidence." *Bugh v. Mitchell*, 329 F.3d 496, 512 (6th Cir. 2003). Consequently, there is no Supreme Court precedent that the state court decisions could be deemed "contrary to" under 28 U.S.C. § 2254(d)(1). *Id*. at 513. Petitioner's challenge to the admission of the prior bad acts evidence, therefore, does not warrant habeas relief.

D.

Finally, Petitioner argues that the trial court failed to set forth any substantial and compelling reasons for departing from the sentencing guidelines. The guidelines range was 45 to 75 months, and Petitioner was sentenced to 120 to 180 months.

Under Mich. Comp. Laws § 769.34(3), a trial court must provide substantial and compelling reasons for departing from state sentencing guidelines. "In conducting habeas review, a federal court is limited to deciding whether a conviction violated the Constitution, laws, or treaties of the United States." *Estelle v. McGuire*, 502 U.S. 62, 68 (1991). Whether a sentencing court had substantial and compelling reasons for departing from the sentencing guidelines is a matter of state law. *Howard v. White*, 76 Fed. Appx. 52, 53 (6th Cir. 2003) (holding that a state court's application of sentencing guidelines is a matter of state concern only); *see also McPhail v. Renico*, 412 F. Supp. 2d 647, 656 (E.D. Mich. 2006); *Robinson v. Stegall*, 157 F. Supp. 2d 802, 823 (E.D. Mich. 2001); *Welch v. Burke*, 49 F. Supp. 2d 992, 1009 (E.D. Mich. 1999). Thus, this claim is not cognizable on federal habeas review.

IV.

The Court concludes that the Michigan Court of Appeals' decision that Petitioner's confession was properly admitted was an unreasonable application of *Mathis v. United States*, 391 U.S. 1 (1968). The Court further finds that the error was not harmless.

Accordingly, **IT IS ORDERED** that the petition for a writ of habeas corpus is **CONDITIONALLY GRANTED**.

Unless a date for a new trial is scheduled within ninety days, Petitioner Fields must be unconditionally released.

S/Victoria A. Roberts
Victoria A. Roberts
United States District Judge

Dated: February 9, 2009

The undersigned certifies that a copy of this document was served on the attorneys of record and Randall Lee Fields by electronic means or U.S. Mail on February 9, 2009.

s/Carol A. Pinegar
Deputy Clerk

Order Michigan Supreme Court
Entered: December 9, 2004 Lansing, Michigan

126431

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

RANDALL LEE FIELDS,
Defendant-Appellant.

SC: 126431
COA: 246041
Lenawee CC:
02-009738-FC;
02-009749-FC

_____/

On order of the Court, the application for leave to appeal the May 6, 2004 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

KELLY, J., would grant leave to appeal.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the court.

December 9, 2004 s/Corbin R. Davis
Clerk

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,	UNPUBLISHED May 6, 2004
v	
	No. 246041
RANDALL LEE FIELDS,	Lenawee Circuit Court LC No.
Defendant-Appellant.	02-009738-FC

Before: Wilder, P.J. and Hoekstra and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of third-degree criminal sexual conduct (multiple variables), MCL 750.520d.[1] The trial court sentenced him to concurrent terms of ten to fifteen years in prison. Defendant appeals as of right his convictions and sentences. We affirm.

I. Basic Facts

The victim testified that he met defendant when he was approximately twelve years old through defendant's nephew whom the victim met on a school bus. Defendant lived across the street from the victim. The victim also met James Philo, another adult, at defendant's house. After

---

[1] Defendant was charged with three counts.

the victim started "hanging out" with defendant, Philo moved into defendant's house and the three of them spent time together watching television and sometimes pornographic films. The victim described one instance when, after consuming alcohol and smoking marijuana, the defendant and Philo went into the bedroom where defendant performed oral sex on the victim. Philo also placed his mouth on the victim's penis. The victim testified that defendant performed oral sex on him on two separate occasions. Deputy Batterson testified that while defendant was in custody on an unrelated domestic abuse matter, he was questioned about his relations with the victim. Defendant provided a statement that corroborated the victim's testimony but added that on one occasion he engaged in oral sex with Philo and the victim in a motel in Toledo, Ohio and that he masturbated the victim on two other occasions.

II. Defendant's Statement

Defendant first argues that the trial court erred in admitting a statement that defendant made while jailed on an unrelated matter. We disagree.

We review a trial court's findings of fact in a suppression hearing for plain error; but we review de novo the trial court's ultimate ruling on the motion. *People v Beuschlein*, 245 Mich App 744, 748; 630 NW2d 921 (2001). The trial court did not make any findings of fact because the parties agreed that the facts were undisputed.

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. He also stated that he witnessed oral sex between the victim and Philo. He stated that this occurred in the bedroom of his home in September. He also spoke of another incident involving himself, the victim and Philo at a Toledo, Ohio motel.

With regard to *Miranda*[2] warnings generally, this Court has long held:

> *Miranda* warnings are necessary only when the accused is interrogated while in custody, not simply when he is the focus of an investigation. Custodial interrogation is "'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.'" [*People v Herndon*, 246 Mich App 371, 395; 633 NW2d 376 (2001) (footnotes omitted).]

But with regard to interrogation of a defendant who is in custody on an unrelated matter, this Court has more recently held:

---

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

> "[I]n addition to the elements of 'custody' and 'interrogation,' there must be some nexus between these elements in order for *Miranda* to apply." That a defendant is in prison for an unrelated offense when being questioned does not, without more, mean that he was in custody for the purpose of determining whether *Miranda* warnings were required. [Id. at 396, quoting People v Honeyman, 215 Mich App 687, 694; 546 NW2d 719 (1996)].[3]

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.

III. Other Acts

Defendant also argues that the trial court erred in admitting other acts evidence. We disagree.

We review a trial court's decision to admit evidence for an abuse of discretion. *People v Aguwa*, 245 Mich App 1, 6; 626 NW2d 176 (2001). "An abuse of discretion is found only if an unprejudiced person, considering the facts

---

[3] On appeal, defendant suggests that these cases hold no precedential value because this Court reached its decision in *Honeyman* "without citation to authority" and "created the 'nexus' theory (continued…)

on which the trial court acted, would say that there was no justification or excuse for the ruling made." *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).
To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal. MRE 103(a)(1); *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). A criminal defendant may obtain relief from an unpreserved error if the error is plain and affected substantial rights in that it affected the outcome of the proceedings, and it either resulted in the conviction of an innocent person or seriously affected the fairness, integrity or public reputation of the proceedings. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002).

Because this evidence was either objected to on a basis other than that argued on appeal or was not objected to at all, it is reviewed for plain error. Defendant objected to evidence that the victim also engaged in oral sex with Philo in defendant's presence based on relevance, not MRE 404(b). Defendant objected to evidence that he had oral sex with the victim in a hotel in Toledo, Ohio stating that the act was "outside the jurisdiction of the Court. It's more prejudicial than probative." Defendant did not object when Deputy Batterson testified that defendant masturbated the victim and engaged in oral sex with Philo. Defendant

---

(…continued)
out of whole cloth." According to MCR 7.215(C)(2), "A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis." Moreover, one of the reasons this Court publishes opinions is if it "establishes a new rule of law." MCR 7.215(B)(1). Thus, the fact that this Court created the "nexus theory" in *Honeyman* does not cause the opinion to lack precedential effect.

also did not object when the victim testified that defendant used alcohol and marijuana with him.

There was no plain error in the admission of this evidence. The prosecution did not offer this evidence as 404(b) evidence, but rather, as part of the whole story surrounding the criminal acts for which defendant was charged. The evidence was admissible as part of the res gestae of the offenses, independent of MRE 404(b). *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996); *People v Coleman*, 210 Mich App 1, 5; 532 NW2d 885 (1995). "'Evidence of other criminal acts is admissible when so blended or connected with the crime of which [the] defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime.'" *Sholl*, *supra*, quoting *State v Villavicencio*, 95 Ariz 199, 201; 388 P 2d 245 (1964). Here, defendant fostered a relationship between himself and the victim as well as between Philo and the victim. The three spent time together on several occasions watching television and pornographic films. On occasion, defendant offered the victim alcohol and marijuana. It was under these circumstances and on more than one occasion that defendant had sexual relations with the victim and/or Philo had sexual relations with the victim in defendant's presence. These acts were so blended with the crimes defendant was charged with that they incidentally explained the circumstances of those crimes. Therefore, the trial court did not err in admitting this evidence.[4]

---

[4] Defendant also briefly mentions Deputy Batterson's testimony that "[Defendant] was incarcerated on an unrelated matter--." Defendant objected to this testimony and the trial court sustained the objection. The trial court instructed the jury to disregard evidence that was stricken during trial. Therefore, there was no plain error.

IV. Sentencing

Defendant also argues that the trial court erred in finding "there were substantial and compelling reasons to depart from the statutory sentencing guidelines and abused its discretion when imposing a sentence of 120 months to 180 months in prison where the guidelines range called for a sentence of 45 to 75 months."

At the sentencing hearing, the trial court stated:

> In this case since I reviewed the pre-sentence report, I reviewed your description of the offense, as I reviewed the testimony that was given, this happened so repeatedly, you took advantage of this young man with another, I think the sentencing guidelines are totally inadequate. I think that you are a danger to our youth. If you are released, I think that you will repeat. I'm convince[d] that is – that you will.

On the sentencing information report departure evaluation, the trial court wrote:

> The following aspects of this case led me to impose a sentence outside the recommended range:
>
> Repeatedly this defendant sexually abused this minor child victim and encouraged and aided another to abuse this child, all over an extended period of time.
>
> In order to enable him to do this, defendant deceived the victim's family and enticed and

> took him to locations where he was separate from those who could counsel and assist him.
>
> Defendant is a person who, when free, will repeat this criminal conduct.

Generally, upon conviction of a felony committed after January 1, 1999, a trial court must impose a sentence within the recommended range of accurately scored sentencing guidelines. MCL 769.34(1), (2); *People v Hegwood*, 465 Mich 432, 438-439; 636 NW2d 127 (2001). A trial court may depart from the guidelines recommended range only "if the court has a substantial and compelling reason for that departure and states on the record the reasons for departure." MCL 769.34(3); *Hegwood*, *supra* at 439-440. "A substantial and compelling reason must be "objective and verifiable"; must "'keenly' or 'irresistibly' grab our attention"; and must be "of 'considerable worth' in deciding the length of a sentence." *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003), quoting *People v Fields*, 448 Mich 58, 62, 67; 528 NW2d 176 (1995).

MCL 769.34(3)(b) provides: "The court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight."

Defendant argues that the fact that defendant "repeatedly . . . abused this minor child victim and encouraged and aided another to abuse this child, all over an extended period of time" is not a valid reason for departure because it was already taken into account by the sentencing guidelines. Although defendant's prior and concurrent offenses and his continuing pattern of criminal

behavior were taken into account in offense variable (OV) 13 concerning defendant's continuing patter of criminal behavior, the facts that defendant's relationship with the victim extended over a period of time and that defendant encouraged and/or aided Philo's abusive relationship with the victim were not taken into account. This is a substantial and compelling reason for departure because it aggravated the circumstances surrounding defendant's criminal conduct.

Defendant also argues that the fact that defendant deceived the victim's family and enticed and took him to discreet locations is also not a valid reason. Although we agree that the nature of the crime necessitates deception, the fact that defendant "enticed" the victim with alcohol and marijuana is a substantial and compelling factor that was not otherwise accounted for.

We agree with defendant that the fact that defendant is a danger to youths is not a valid factor for the purpose of departure. The youthfulness of the victim was taken into account by OV 10 concerning the vulnerability of the victim. Speculation that defendant will be a danger to other youths, although very likely the case, is not objective and verifiable. We also agree that the trial court's speculation that defendant "will repeat" is not objective and verifiable.

Keeping in mind that the trial court is entitled to some deference because of its "familiarity with the facts and its experience in sentencing, [and because] the trial court is better situated than the appellate court to determine whether a departure is warranted in a particular case," *Babcock*, *supra* at 268-269, we conclude that while some of the trial court's factors were not valid reasons for departure, others were. When a trial court provides multiple substantial and compelling reasons for

departure from the guidelines range, some of which are not substantial and compelling, our Supreme Court has instructed us to "determine whether the trial court would have departed and would have departed to the same degree on the basis of the substantial and compelling reasons alone." *Babcock*, *supra* at 260. Here, the trial court stated: "I will point out that if the appellate court decides that I was incorrect in my decision regarding the guidelines, the sentence would still be 10 to 15 years." Thus, the trial court made clear that it would depart to the same degree even if we remanded for corrections. Accordingly, we affirm defendant's sentence.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Kirsten Frank Kelly

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF LENAWEE

THE PEOPLE OF THE
STATE OF MICHIGAN

V FILE NO. 02-9738-FC
02-9739-FH
02-9749-FC
02-9750-FC

RANDALL LEE FIELDS

Defendant.
_____/

MIRANDA HEARING

BEFORE THE HONORABLE TIMOTHY P. PICKARD,
CIRCUIT JUDGE

Adrian, Michigan – Friday, June 21, 2002

APPEARANCES:

For the People: MS. LAURA J. SCHAEDLER
(P32303)
Assistant Prosecuting Attorney
425 North Main Street
Adrian, MI 49211
(517) 263-010

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

REPORTED BY: Sally L. McFeters, CSR 2317
Certified Shorthand Reporter

TABLE OF CONTENTS

[Page 3]

Adrian, Michigan

Friday, June 21, 2002 - 8:40 a.m.

PROCEEDINGS

THE COURT: Miss Schaedler and Miss Tate?

MS. SCHAEDLER: Yes, your Honor.

THE COURT: People versus Fields.

MS. SCHAEDLER: Ready.

THE COURT: This is the date and time set for a Miranda hearing. I guess I do have a question here, and that is: Does this hearing apply to all the files here, or does this just apply to one particular file, or --

MS. TATE: To all files, your Honor.

THE COURT: To all files? Okay. Thank you. Miss Tate, you're the one who filed the motion. You're asking that this, that the bind-over be quashed and that certain statements be suppressed. Is that correct?

MS. TATE: That is correct, your Honor.

THE COURT: All right. Do you want to --

MS. TATE: Okay. Specifically --

THE COURT: -- state your position to the Court?

MS. TATE: My position is this: My client was taken from the jail, where he was incarcerated on a

[Page 4]

different charge, over to the section of the Sheriff's Department that's administrative section, to a conference room. He was, at that point in time -- first of all, he was in custody when he was in jail. He was moved from --

THE COURT: What was he in jail for?

MS. TATE: What was the charge?

MS. SCHAEDLER: Disorderly conduct.

DEFENDANT FIELDS: Disorderly conduct.

MS. TATE: Disorderly conduct. It was an unrelated charge.

THE COURT: Um-hmm.

MS. TATE: He was in jail for an unrelated charge. He was taken from his cell, taken out of the jail section of the Sheriff's Department into the conference room in the administrative section of the Sheriff's Department. He was not read his Miranda rights.

The officer indicates that while he told him he could leave any time he wanted, the officer also indicated he could not just get up and leave. They would have had to have somebody come and get him to have him leave. That my client was intimidated by this process. He was the focus, and they were looking at him in investigating a crime. He should have been read his Miranda rights at that point in time. He was not.

[Page 5]

He gave an -- ended up giving what he determined to be an involuntary statement to Mr. Batterson. We believe the statement and everything deriving from that statement should be suppressed at this point in time, your Honor.

THE COURT: All right. Do you want to call your client to the stand then?

MS. TATE: I would call Mr. Fields to the stand --

THE COURT: All right.

MS. TATE: -- your Honor.

I believe we could probably stipulate that there was only one statement given.

MS. SCHAEDLER: Correct.

'

THE COURT: You want to raise your right hand, please? Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth?

DEFENDANT FIELDS: I do.

THE COURT: Please have a seat.

RANDALL LEE FIELDS

called by the Defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. TATE:

Q Would you state your full name for the record,

[Page 6]

Mr. Fields?

A Randall Lee Fields.

Q Mr. Fields, was there a time in December of 2001 when you were incarcerated in the Lenawee County Jail?

A Yes.

Q And I believe you indicated earlier that was for disorderly. Is that correct?

A That's correct.

Q And you would agree that that's unrelated to the charges you were charged with at this point in time. correct?

A That is correct.

Q Mr. Fields, was there a time when you came into contact with Deputy Batterson?

A Yes. December --

Q When was that?

A December the 23rd.

Q And could you describe for the court what occurred when you first came in contact with him?

A Umm --

Q Specifically, you were in your cell at the jail. What-- how did you come to come out of there?

A I came out of my cell, and I believe it was with Dusty.

Q Who's Dusty?

A Doug. I can't tell you his last name. He's a guard.

Q One of the jailers at the jail?

[Page 7]

A Yes. And they walked me --

Q Is that a yep, a yes, or what?

A Yes. And they walked me over to the J door on the second floor, walked me through the J door --?

Q Now, the J door, is that the door that connects -- that's the dividing line, the lock that divides between the jail and the Sheriff's Department itself?

A Yes, it is.

Q Okay. And then what happened?

A And then I went into the conference room. Okay? The guard left me at that door, and I went into the conference room with Mr. Batterson and Mr. Sharp

Q. Now, was -- this conference room, was that still part of the jail itself?

A No, it is not.

Q What floor was your cell on at the jail?

A The third floor.

Q And what floor is the J door on?

A The second floor.

Q So they had to take you out of your cell, down a floor, and over to another door?

A Yes.

Q And this conference room, is this just shortly outside of the J door.

A Yes.

[Page 8]

Q Okay.

A You make a right turn, and it's to the right.

Q Okay. You go down a short hall, make a right turn, turn and you're there?

A That is correct.

Q Now, was the door to the conference room open or shut during your discussions with Mr. Batterson?

A Part of the time it was open; part of the time it was shut.

Q What were your feelings when you came into that room? What was your understanding of the situation as you came, walked through the J door and came into the room?

A I was told I was being interviewed.

Q Did anyone tell you you were the focus of a criminal investigation at that point?

A No.

Q And when you got to the room, was anything said to you?

A That Mr. Batterson did say that I could get up and leave whenever I wanted to. However, when we got into a more-involved discussion, I tried to draw a

time line on the blackboard for him, showing him the events that occurred, and I was told to -- that that was not fucking important, and I needed to just take a seat, and if I did not want to cooperate, I needed to go back to my cell.

Q What were your feelings at the start of this interview as

[Page 9]

to whether or not you could actually freely leave that place?

A I knew that I could not freely leave. I was well aware of that.

Q Did anyone ever discuss with you what's called the Miranda rights, your right to remain silent?

A No, I was never read my Miranda rights.

Q So you are sitting here today in an orange jump suit with handcuffs and ankle cuffs and that on. Did you have those on at the time?

A I don't believe so.

Q At this -- what were your feelings as far as your freedom to leave the situation?

A There was no freedom to leave. I mean, I was trapped. I couldn't -- even if I would have gotten up and left, I wouldn't have known how to get back to the jail. The door was locked, so there was no place for me to go.

Q Okay. You said the door was open part of the time, shut part of the time. What do you mean?

A The J, the J door was locked --

Q Okay.

A -- between the jail and the Sheriff's Department, so there would have been no place for me to go.

Q Do you think Mr. -- if you tried to get -- did you believe -- in your mind at that time, did you have any

[Page 10]

belief as to whether or not Mr. Batterson would have allowed you to leave the room?

A I'm quite sure they would not have allowed me to leave the room.

Q Is that what you believed at the time?

A That is what I believed at the time; that is what I still believe.

Q Now, what type of questions were asked of you? Just-- you don't have to get specific, just the general nature of the questions.

A They were questions regarding a criminal sexual conduct case, and I was told -- I was never told that I was under investigation; I was told this was an interview.

Q What do you understand an interview to be?

A An interview to me would be to sit down and talk to someone.

Q For what purpose?

A To gain information. The end result of this was this was an interrogation, the way it was written up in the police report.

Q Okay. But we're trying to get your understanding of the situation at the time.

A My understanding of it was I was being interviewed. That is what I was told.

Q And what type, as what type of a situation you were being

[Page 11]

interviewed as?

A I was being interviewed on a CSC charge.

Q That was being leveled against you? Against someone else?

A I was never told it was leveled against me. I was never told that it was against me whatsoever.

Q Well, what was your understanding of it? Why were they talking to you?

A They were trying to gain information regarding Travis Bice and Tristen Jennings.

Q Did anyone --

A And Mr. Batterson said that I was being -- he was asking me -- told me that he had interviewed both of these boys, which later we found out was not even the case, but said that he had interviewed both of these boys, and that he wanted to talk to me about whether or not I had any involvement with these boys.

Q At any point in time, did you feel intimidated by the situation?

A Oh, very. I was intimidated through the whole thing.

Q Can you describe to the Court what made you feel intimidated?

A They both had their guns. You know? The door was locked -- or shut, then it was open. I mean, the only thing that made me feel comfortable was the fact that

[Page 12]

they would go get me a drink of water. But I got cotton mouth so bad because I was scared. I mean --

Q Why were you scared?

A Because I didn't have I didn't even know why I was there for sure. You know? And then I was told that they had interviewed both of these boys. Well, later we find out that one of those boys was never even interviewed.

Q Well, what you find out later is irrelevant. I want to know --

A Okay.

Q -- what you were thinking at this point in time.

A Fear. They still had their guns, both of them, Mr. Batterson and Mr. Sharp.

Q Why did their guns make you feel scared?

A Telling me I can get up and go free, but, yet, they had to have their guns. That doesn't tell me there's any freedom. I mean, you don't see an officer in the jail with a gun.

Q Had you ever been in that interview room prior to this date?

A No, never. I had never been on that side of the Sheriff's Department.

Q What were your thoughts as far as your ability to get back into the jail in a timely -- a quick, timely manner?

A I didn't have one.

[Page 13]

Q What do you mean, "didn't have one"?

A I didn't have a thought about it because I didn't even know where I was at.

Q You knew you had walked from the jail. Correct?

A I knew I had walked from the jail, I had walked through the J door, because the door has a "J" on it.

Q Okay.

A Okay? But to get back in there, I walked part of the way down the hall because I thought that's where I was supposed to go to get into that door, and that was not even the case.

Q When was this that you walked partway down the hall?

A When I -- when I -- on our way back, which was about 1:30 in the morning.

Q Okay. Did you feel comfortable when this questioning was going on?

A No.

Q What were your feelings while all of this was going on?

A Mr. Sharp never said much. Mr. Batterson made me feel threatened.

Q Okay. What did he do to make you feel threatened?

A Used a very sharp tone, "I've done this for many times. You can't pull the wool over my eyes. I know you're a liar." Those kinds of statements to make me feel like I was just, you know -- no matter what I said, it wasn't

[Page 14]

going to matter.

And then when I tried to show them on a time line what was going on, I was told to sit my ass down, it didn't fucking matter. And it was like where does this information come from? You know? If you want my information, then why aren't you willing to let me share this information?

Q All right. Was that the only time he used profanity?

A Yes.

Q Other than that, he did not use it?

A He didn't use profanity other than that one time.

Q Did you form a belief as to whether or not you had an option to talk to him or not talk to him?

A I didn't have an option. I did not feel that I had an option.

Q Why did you feel that way?

A Because I -- here I am isolated into an area where I had no idea how to get back. When I left that room, even when we left the room, I started walking down the hall much farther than what that door even was because I didn't know where I was walking to. I think it was from about 8:30 until 1:30, 2:00 in the morning before I ever got back to my cell.

Q So they came to get you somewhere around 8:30?

A Yeah, it was around eight -- it was during visiting

[Page 15]

hours, I know that, because they told me this is a heck of a time to be doing this, during visiting hours.

Q Who's "they"?

A Kurt, and I don't know Kurt's last name, and Dusty, and I don't know his last name.

Q Are they both jailers?

A They're both jailers, officers of the jail.

Q Okay. What did you infer from their statement that this was a heck of a time to be doing this?

A They didn't have enough staff, that it was coerced (sic) some time to be doing it. It was December the 23rd, and I think that was a weekend. I'm not real sure. If it wasn't a weekend, it was a Friday. But it was on December the 23rd that it occurred.

And then Mr. Batterson told me he would be back the next day to follow up with me to get the rest of any information to close. And then he never showed back up, and I never seen him again until January 22nd when he came to my house to arrest me.

Q At the time you were in the jail, what was your normal time you would typically go to sleep when you were in the jail at that time?

A Well, I would normally get my meds at 10:00 and normally go to bed about 11:00, 10:30.

Q So this -- so your interview ended a couple, three hours

[Page 16]

after you would have normally gone to sleep in your cell?

A That's correct. And I missed all my meds that I take that evening.

Q Okay. So when he had you with him, you missed your medications.

A Yes.

Q -- as well?

A Yeah, that's correct.

Q What kind of medications did you miss?

A Prograf, Cellcept, Paxil.

Q What are those for?

A. Prograf and Cellcept are anti-rejection medications because I've had a kidney transplant. Paxil is an anti-depressant. My stool softeners. I'm trying to think what else I take at night.

Q But your whole 10 o'clock dosages --

A All of my 10 o'clock meds --

Q -- of medications --

A were not given to me because, when I got back to the jail, they said it was too close to getting my 5 a.m. dose, so they would not give them to me.

MS. TATE: Okay.

Nothing further, your Honor.

THE COURT: Miss Schaedler?

[Page 17]

CROSS-EXAMINATION

BY MS. SCHAEDLER:

Q You indicated that you were never told what this investigation or interview was about. Is that correct?

A I was told that it was an interview to gain information regarding Travis and Tristen and if I've had any involvement with them.

Q Sexual involvement?

A Yes.

Q So you were aware that it was about your sexual involvement with people who were under the age of 16?

A I was not told that in the beginning. That was the question I was asked. I was not told that until almost halfway through the interview. I was told that both of these boys had been interviewed, which later we found out was not true.

Q Now, Mr. Fields, you have a nursing degree. Is that correct?

A That's correct.

Q You're a registered nurse?

A That is correct.

Q You have a Bachelor's Degree in Nursing?

A No, I do not. I have a Bachelor's Degree in Psychology.

Q And an Associate's Degree in Nursing?

A Nursing, that's correct.

[Page 18]

Q You also have a Master's Degree in Counselling?

A That is correct.

Q You're a fairly bright fellow. Is that correct?

A Okay.

Q No, is it correct or isn't it?

A I guess that would depend on who was the interpreter of that.

Q You. Aren't you a fairly bright fellow?

A Yes, I am.

Q You were charged in 1994 with four counts of assault and battery on young children that you had been taking care of and taking -- and using their Social Security money, weren't you?

A No, I was not.

Q You weren't charged with four counts of assault and battery in 1994?

A I was charged with one count of Social Security -- or one count of assault in 1994, and it was on Albert Looby (phonetical), and I did serve 30 days in jail for it.

Q Do you remember four counts that were dismissed?

A There were three counts dismissed.

Q So that would make four that you were charged with?

A I was not taking social Security money from any of them. None of those boys were on social security.

Q In nineteen --

[Page 19]

A So I'm not sure where you're getting your information from.

Q Sir, in 1990, were you charged with furnishing alcohol to a minor?

A Yes.

Q And did you plead to that?

A Yes.

Q And did you do time then?

A Pardon me?

Q Did you do time in jail then?

A No.

Q Did you do time in 1994 as a result of the assault --

A Thirty days.

Q And did you do time in 1998 on the trespassing charge?

A No.

Q Did you do time on the domestic assault in 2000?

A It was not caused -- charged as a domestic assault; it was charged as a disorderly conduct.

Q In 2000?

A There was -- no, it was dropped.

Q So it was charged as domestic assault in 2000?

A It was dropped.

Q Listen carefully to the question, Mr. Fields. Answer the question. Were you charged with domestic--

Q I was charged, and it was dropped because of drugs that

[Page 20]

were involved by the Plaintiff. Is that what you're asking me?

Q Were you charged with domestic assault again in 2001?

A Yes.

Q And was that reduced down to a disorderly?

A Yes.

Q And did -- how many days were you -- that was, actually took place in October. Is that correct?

A No, it took place in December.

Q The assault took place in December?

A No, the sentence did.

MS. TATE: Your Honor, at this point I'm going to object. I don't get the relevancy of what he's been charged with and what's occurred with these charges.

THE COURT: Ms. Schaedler?

MS. SCHAEDLER: I think, under the totality of the circumstances, your Honor, part of what the Court is going to be looking -- should be looking at is whether or not he's had any contact with the system, whether he's brand new to the system, whether he's been in and out of the system,

whether he has any clue about the system, because it has everything to do with whether or not this was a voluntary confession.

MS. TATE: Your Honor, if she wants to talk about whether or not he's been interviewed, he was taken

[Page 21] of 39

to jail, interviewed in jail, interviewed at home, interviewed -- whatever, that's fine. But to just say he's been charged, you can be charged without ever having contact till you're charged.

THE COURT: The totality of the circumstances are the totality in this particular case, Ms. Schaedler.

MS. SCHAEDLER: I'm sorry. What?

THE COURT: The totality of the circumstances that the court has to look at are the totality of the circumstances that arise in this case.

MS. SCHAEDLER: Fine.

THE COURT: None of the others.

Q (BY MS. SCHAEDLER): When the officer that you referred to as Dusty came to get you at your, at your cell on the 23rd, was it in the evening of the 22nd or the evening of the 23rd?

A It was the evening of the 23rd.

Q Okay. And when he came to your cell, did you not inquire as to -- obviously, you feel pretty comfortable with these folks; you call them by their first names?

A Everyone does.

Q Do you feel comfortable with these fellows?

A. Fairly well, yes.

Q And when they came to your cell and they said, "We're going some place," did you ask where you're going?

[Page 22]

A I was not told.

Q Did you ask --

A No --

Q -- where you were going?

A -- I did not. You do not need to raise your voice at me.

THE COURT: All right. Just a moment. You're here to answer questions. If you don't want to answer the questions as they're asked to you, you can leave. Do you understand that? This is your motion to have this quashed.

DEFENDANT FIELDS: I understand --

THE COURT: So --

DEFENDANT FIELDS: -- but she doesn't have to yell at me. I mean, this is a repeat of what we went through in District Court.

THE COURT: Sir, I'm the person that's conducting this hearing in this case, and I'll decide whether the voices are too loud or not too loud. I want you to answer the questions as they're asked.

DEFENDANT FIELDS: Okay.

THE COURT: Do you understand that?

DEFENDANT FIELDS: That's fine.

THE COURT: Do you understand that?

DEFENDANT FIELDS: Yes.

THE COURT: All right. Thank you.

[Page 23]

You may proceed.

Q (BY MS. SCHAEDLER): You didn't ask where you were going?

A No, I did not.

Q Would it be safe to say that you were fairly trusting that they weren't taking you anyplace terrible?

A No, it -- actually, it was -- I thought I was just I didn't know where I was going; no one ever said where I was going.

Q Okay. But you didn't ask. Is that --

A No, I did not.

Q So you weren't worried about where you were going?

A I felt like I was in a safe environment.

Q You went through J door. Did you still feel like you were in a safe environment?

A I asked where I was going when I got to J door.

Q And did they tell you?

A No.

Q Now, this conference room that you talked about, it's a fairly big room, isn't it?

A It's not real large, but it's not small, either.

Q It has a conference table?

A There's a conference table, I believe, and a desk and a white board and some chairs around the table.

Q Okay. Well lit?

A Yes.

[Page 24]

Q Did anybody physically touch you or harm you while you were in this room?

A No.

Q Did anybody threaten you, verbally say, "If you don't tell us, we're going to do something terrible to you"?

A The only threat I received was when I was told to sit my fucking ass down.

Q And those were the words that were used?

A Yes, they are.

Q And were you also told at that point that, if you didn't want to talk anymore, you could go back to your cell?

A I was told, if I didn't want to cooperate, I could leave.

Q Okay. And when you did get ready to leave, how long did it take the jailers to come get you?

A About 20 minutes.

Q Twenty minutes. Isn't it in fact true that part of the struggle was that Deputy Batterson said that the time line you wanted to put on the board wasn't relevant to the matter at hand?

A Deputy Batterson did not say that to me.

Q Deputy Sharp?

A Neither one of them.

Q And what kind of a time line did you want to give them?

A I was trying to draw them a time line of events.

Q What kind of events?

[Page 25]

A Because they kept trying to accuse me of having sexual activity with Tristen Jennings.

Q And you were denying that?

A I denied it.

Q And prior to that point, had you been comfortable? Had you been made comfortable in this room?

A It was -- I was not uncomfortable in this room, other than the things that they were saying to me --

Q Well--

A -- and the fact that I had no access to leave that room.

Q Did they tell you that they would have a jailer come get you and take you back to your cell any time you wanted to?

A No, I was not told that. I was told I could get up and leave whenever I wanted.

Q Well, how did you get there?

A By a jailer.

Q And didn't it occur to you that, since you were in custody, that that's exactly how you would get up and leave is that they would have a jailer come get you?

A I didn't know whether they would do that or if they would take me back themselves.

Q You had been in jail at that point on more than one occasion. Is that correct?

A I had been in jail twice up until that time. That was

[Page 26]

the second time I was in jail.

Q You're not generally allowed to just roam around Lenawee County Jail on your own, are you?

A No, I never have.

Q So wouldn't it make sense to you, since you had that experience, that in fact you would have been escorted just like you were escorted through J door and into this conference room?

A That makes common sense.

Q So when they said that you were free to leave and you get up -- could get up and go and all you had to do was tell them you wanted to go, in your mind, did you understand that to mean that somebody would come get you and take you back to your cell?

A But that doesn't give me freedom to just get up and walk away.

Q I understand it doesn't --

A So, no.

Q The question is this, sir, not whether you had freedom to get up and walk away, but did you understand that what that meant was that a jailer would come get you and --

A No --

Q -- take you back to your cell?

A I did not understand that.

Q You didn't?

[Page 27]

A No.

Q Why not? That's how you got there.

A Because I did not know if a jailer would take me back or if one of those gentlemen would take me back.

Q But you understood that, if you asked, one of them or a jailer would take you back to your cell?

A I assumed that.

Q And you believed that to be true?

A I assumed that.

Q Did you ever ask to go back to your cell?

A No, not until the end.

Q And you were taken back to your cell?

A I was continued to be questioned While I was waiting for the jailer to come back.

Q Did you ever say, "I don't want to talk "anymore"?

A A couple of times, yes.

Q Okay. And did they continue even though you --

A Yes --

Q -- said that?

A --they did.

Q Okay. Did you ever ask for an attorney?

A I was never told I could have one.

Q Sir, did you ever ask --

A I --

Q -- for an attorney?

[Page 28]

A -- have never been arrested for a felony, so, no --

Q sir --

A -- I did not ask for an attorney.

Q Sir, you have had your rights read to you on more than a few occasions, haven't you?

A I have had my rights read to me once.

Q Once?

A One time.

Q You were arraigned in District Court on your disorderly charge, weren't you?

A Yes, I was.

Q You were read your rights, weren't you?

A No, I was not.

Q You were never read your rights?

MS. TATE: I'm going to object at this point in time. District Court does not read Miranda rights to people. They read a totally separate and distinct group of rights, such as right to an attorney, but they also say right to have a trial and other rights.

THE COURT: Are you giving testimony, Miss Tate?

MS. TATE: No, but I was objecting, your Honor.

THE COURT: What is --

MS. TATE: You need the basis of my objection.

THE COURT: -- the basis of the objection, Miss

[Page 29]

Tate?

MS. TATE: Basically, the basis is she's assuming that the rights given in District Court are different -- or are the same rights as would be given under Miranda rights.

THE COURT: I think she's just asking questions.

You may ask the questions, Ms. Schaedler.

Q (BY MS. SCHAEDLER): You were arraigned on a domestic -- were you ever arraigned on the domestic assault in 2000?

A Yes.

Q And were you read your rights to have a trial?

A I was given a piece of paper to sign.

Q And did it have your rights on it?

A Yes.

Q And did it tell you that you could have an attorney?

A Yes.

Q Did it tell you that you could remain silent?

A Yes.

Q It told you about your right to have a trial?

A Yes.

Q Did you have that same form in 2001?

A No.

Q Were you read your rights in 2001 at the time that you were arraigned?

[Page 30]

A In District Court?

Q Yes.

A I don't remember.

Q Okay. Did you sign a form in 1994 on your assault charge?

A I don't remember.

Q Do you remember being arraigned on your assault charge?

A I remember it. It was almost ten years ago.

Q Were you read your rights then?

A I don't remember.

Q Do you remember if you were ever read your rights, you signed a waiver of rights, when you were charged --

MS. TATE: I'm going to --

THE COURT: counsel, come back in chambers, please.

You may step down.

(At 9:10 a.m., conference in chambers.)

(At 9:12 a.m., court reconvenes, all parties present.)

MS. TATE: Mr. Fields (indicating).

THE COURT: You're still under oath.

Miss Schaedler, you may proceed.

MS. SCHAEDLER: Thank you.

Q (BY MS. SCHAEDLER): Were you offered food or water during the course of this interrogation?

[Page 31]

A I was offered water.

Q And were you given water when you requested it?

A Yes, I was.

Q Were you ever denied water when you requested it?

A No, I was not.

Q Did anybody threaten you with physical harm?

A No, I was not threatened.

Q Did anybody threaten you or your family with physical harm?

A My family was not present; it was just me.

Q Was your family ever threatened?

A I have no idea.

Q Did these officers ever threaten to harm your family if you didn't continue the interview or speak with you?

A No, they did not.

Q Did they ever strike you?

A No, they did not.

Q Did they ever lay hands on you?

A No, they did not.

Q Other than the language you've just indicated earlier about when you tried to do a time line, in general, did they use bad language or threatening language towards you?

A No.

Q Would you say that the interview was conducted in a

[Page 32]

conversational way, or was it all questions that you answered, or did you ask questions, and were you an – were your questions answered when you asked?

A I asked questions, and my questions were answered. They asked questions, and their questions were answered.

Q Were you ever promised anything during the course of this, if you said this or did that, that you would get a lighter sentence or they wouldn't charge you?

A Yes, I was.

Q And what was the promise that was made?

A I was told that, if I would tell the truth and be honest, that I would get very little time, I might not get any time at all, that they realize that I had been through some of these behaviors in the past, that the Courts are much easier on people if they have a previous history, and that was told to me by Mr. Batterson.

Q Did he promise that or just suggest that, if you were truthful, it might go better?

A He told me it would happen that way.

Q And --

A He told me they followed his recommendations almost all the time.

Q He told you that?

A Yes, he did.

Q Did he tell you you wouldn't be charged?

[Page 33]

A No, he did not.

Q So the statement you gave him that night was truthful?

A Which statement are you referring to?

Q All of it.

A No, it is not. There are many statements in that police report that are not true. There are many statements that were given that are not included. The statements on the 22nd, there is no write-up for it that I have seen.

Q On the 22nd or the 23rd?

A The 22nd of January, when he arrested me, because he again talked to me at that time, and at that time we talked in the same, exact room.

Q At the time you were --

A That he had told me that I was arrested, and he did read me my rights, on January the 22nd.

Q Thank you. Mr. Fields, on the 23rd, when you had this conversation with him, you were told, if you were truthful and honest with him, that it would go better with the court and you might not get as much jail time. Did you give him truthful statements as it related to Mr. DuDock and Mr. --

A I did not talk to him about --

MS. TATE: I'm going to object to –

A -- Mr. DuDock --

MS. TATE: -- the relevancy of whether the

[Page 34]

statements given are truthful or not truthful. I believe that's irrelevant as to whether or not they were coerced. He, basically –

THE COURT: Well, there was a question that was asked him about January 22nd. Is it January 22nd or December?

DEFENDANT FIELDS: That's the day I was arrested. He came back to see me a month later at my home and arrested me.

THE COURT: I see.

DEFENDANT FIELDS: I was interviewed --

THE COURT: All right. I understand. So on January the 22nd --

DEFENDANT FIELDS: Is the day I was arrested.

THE COURT: -- you were arrested, and you were read some rights at that time. Is that correct?

DEFENDANT FIELDS: He did read me my rights at that time.

THE COURT: And at that time did you give a statement to him?

DEFENDANT FIELDS: I talked to him again that day, but --

THE COURT: Was that at your house?

DEFENDANT FIELDS: No, that was in J room.

THE COURT: All right.

[Page 35]

DEFENDANT FIELDS: And there were no –

THE COURT: Did you sign a waiver of rights at that time?

DEFENDANT FIELDS: No, I did not.

THE COURT: All right. But he did explain your rights to you?

DEFENDANT FIELDS: He did read me my rights on that day.

THE COURT: And at that point you made a statement. Is that correct?

DEFENDANT FIELDS: Yes, but it was never documented, or, at least, I never got a copy of it.

THE COURT: What were the statements that you gave to him?

DEFENDANT FIELDS: He asked me about any events with Travis, with Tristen, if there was anything new, had I had sex with anybody in the previous -- during the week of time that I was out of jail. I'm trying to think what else he asked me.

I talked to him about Travis and the PlayStation that he had stolen from my house and that that's what had initiated most of the stuff, but I have not seen any of this stuff ever put into writing, and I don't know if it ever was.

THE COURT: All right. And then you had

[Page 36]

another interview on January 23rd?

DEFENDANT FIELDS: No. I was in jail then.

THE COURT: All right.

DEFENDANT FIELDS: This was January 22nd.

THE COURT: Okay. Thank you.

DEFENDANT FIELDS: That's the night they arrested me.

THE COURT: All right.

Miss Schaedler, you may continue.

MS. SCHAEDLER: She's raised an objection as to my question about the interview on the 23rd, whether or not in fact the items, the information he gave references sexual activity with Travis --

THE COURT: I see.

MS. SCHAEDLER: and Tristen was truthful.

MS. TATE: Your Honor, we would object. Whether truthful or not truthful is irrelevant for the purposes of this hearing.

THE COURT: True.

MS. TATE: This hearing is to determine whether or not it was given voluntarily.

THE COURT; True.

Q (BY MS. SCHAEDLER): Based on the information that Deputy Batterson gave you, were the statements you made as it related to Travis Bice voluntary? You wanted to benefit

[Page 37]
from his promise?

A I don't know that I wanted to benefit from any promise; I don't know that I wanted to dis-benefit

from it. You know? There are true statements in the police report and there are false statements in the police report as it was written.

Q But the statements that you gave to him on --

A They are partially written true --

THE COURT: Just a minute.

A -- partially --

THE COURT: Just a minute.

A -- written false.

THE COURT: Just a minute, Mr. --

MS. TATE: Your Honor, I renew my objection in regards --

THE COURT: We're going to take this one at a time. First of all, the question wasn't even finished before you started to answer. So before you answer the question, you let her finish her question.

Before you make an objection, let her finish her question.

MS. TATE: Okay.

THE COURT: Miss Schaedler, ask the question.

MS. SCHAEDLER: Thank you.

Q (BY MS. SCHAEDLER): So the statements you made to him,

[Page 38]

after he had indicated that being truthful would be helpful to your situation, were made in a voluntary fashion by you? You volunteered to make those?

A I made no statements until after the time line was refused, because we finished with

The COURT: That wasn't the question.

A -- the --

THE COURT: Sir--

A -- time line --

THE COURT: Sir--

A -- before

THE COURT: Sir--

A -- we --

THE COURT: Mr. Fields, stop. When I tell you to stop, you –

Take him away. We're not going to finish this hearing this morning.

(At 9:40 a.m., proceedings concluded.)

[Page 39]

CERTIFICATE

STATE OF MICHIGAN)
) SS.
COUNTY OF JACKSON)

I certify that this transcript, consisting of 39 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on June 21, 2002.

August 15, 2004 /s/ Sally L. McFeters
Sally L. McFeters, CSR 2317
Certified Shorthand Reporter

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE
COUNTY OF LENAWEE

PEOPLE OF THE STATE OF MICHIGAN

V FILE NO. 02-9738-FC
02-9739-FH
02-9749-FC

RANDALL LEE FIELDS

Defendant.
_____/

JURY TRIAL – VOLUME I OF II

BEFORE THE HONORABLE HARVEY A. KOSELKA,
CIRCUIT JUDGE

Adrian, Michigan – Tuesday, October 22, 2002

APPEARANCES:

For the People: MS. LAURA J. SCHAEDLER
(P32303)
Assistant Prosecuting Attorney
425 North Main Street
Adrian, MI 49211
517.263.0100

For the Defendant: MS. KAREN L. TATE (P38596)
123 Chestnut Street
Adrian, MI 49221
517.263.7660

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

TRANSCRIBED BY: Mary Kay Shoemaker, RMR, CSR
2669
Certified Court Reporter

[Page 94]

to tell the truth, the whole truth, and nothing but the truth so help you God?

DEPUTY BATTERSON: Yes, sir, I do.

MS. TATE: Your Honor, just for the record we continue our objection that was addressed earlier this week.

THE COURT: I don't think that's necessary, but the record will so show.

DEPUTY DAVID BATTERSON

Having been called at about 2:03 p.m. by the People, sworn by the Court, testified:

DIRECT EXAMINATION

BY MS. SCHAEDLER:

Q 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 that employment did you have reason to come in contact with and interview Randall Fields?

A Yes, I did.

Q And with regard to that interview, did that involve a relationship with Travis Bice?

A Yes, it did.

Q And when did that interview take place?

A It took place at the Lenawee County Sheriff's Department in December of 2001, the exact day I do not recall.

[Page 95]

Q Okay. And when you were -- was there any other person present besides yourself and Mr. Fields?

A Yes, there was, Deputy Sharp.

Q And is he also with the sheriff's department?

A Yes, he is.

Q Okay. And how did you commence that interview?

A Mr. Fields was incarcerated on an unrelated matter

MS. TATE: Objection, Your Honor.

THE COURT: That objection is good.

BY MS. SCHAEDLER (Continuing):

Q Just talk about the interview.

A Okay. I interviewed him at the Lenawee County Sheriff's Department in the conference room.

Q And during the course of that interview or at what point in that interview if at all did you ever explain to him why you were there?

A Sometime around the initial conversation I explained to him that I wanted to speak with him in regards to a subject, Travis Bice.

Q And as you related to him that you wanted to talk to him about Travis Bice, did he indicate that he was acquainted with or knew a Mr. Bice?

A Yes, he did.

Q And how did he indicate to you that he knew Mr. Bice?

A He told me that Travis Bice was a neighbor of his, teenage

[Page 96]

boy, and frequented his house regularly.

Q And how did he describe his relationship with Travis?

A As more of a fatherly figure.

Q And he used that term?

A I recall, yes, he did.

Q And did you indicate to him that there had been allegations by Mr. Bice of a sexual nature regarding himself and Mr. Bice?

A Yes, I did.

Q And did he initially acknowledge that?

A No, he did not initially acknowledge that.

Q Okay. And did you continue to interview him?

A I did.

Q And did he ultimately indicate to you that there had been a relationship?

A Yes, he did.

Q And during the course of that acknowledgement what did he have to say to you about what had taken place between he and Mr. Bice or the details of that?

A He advised me that he had in fact had oral sex with Travis Bice at his home in Tipton in Lenawee County and had also masturbated him.

Q Okay. So he had masturbated him in what way?

A On one occasion Mr. Fields told me that Travis was in Mr. Fields' bedroom masturbating with some type of sex aide.

[Page 97]

Mr. Fields went into the bedroom, took over masturbating Travis Bice. I believe that was one of the first incidents he alluded to.

Q And were the two of them alone at that time?

A I believe so, yes.

Q And he indicated that that was one of the first sexual encounters he had with Travis?

A That he himself had had. He advised me that he had witnessed another between he and another subject that lived in the house.

Q Okay. And that would be Mr. Philo?

A Yes.

Q You indicated that he had also indicated that he had oral sex with Travis?

A That's correct.

Q And did he describe for you what he meant by oral sex?

A He placed his penis in Travis Bice's mouth and vice versa, Travis Bice placed his penis in Mr. Fields' mouth, and they performed oral sex on each other.

Q And did he indicate to you on how many occasions that would happen?

A Two to three as I recall.

Q And did he tell you what time frame that would have happened in?

A I believe around August of 2001 into the month of November of

[Page 98

the same year, possibly the beginning of December of the same year, '01.

Q And did he indicate -- you indicated that he had acknowledged that he had had sexual -- oral sex with Travis on three occasions. Did he indicate whether or not he had performed it on three occasions and Travis had also performed it on him on those three occasions or --

A The incidents that he spoke of were mutual. I don't know if it was three where they had each performed oral sex on each other. I recall one specifically.

Q Okay. Was he able to time frame any of those or give any special --

A He was. He was able to put a month to it.

Q Okay. And which one was he able to put a month to?

A If I could refer to my report I will be able to give you that month.

Q Please.

A In the month of September 2001 they performed oral sex on each other, and Mr. Fields spoke of another incident that occurred in Toledo at a motel.

MS. TATE: Objection, Your Honor.

MS. SCHAEDLER: Your Honor, under Garr I believe it's admissible.

MS. TATE: We're talking about something outside of the jurisdiction of this Court. It's more prejudicial than

[Page 99]

probative. Anything at issue --

THE COURT: I think we can bring in the entire conversation he had at that time. Objection is overruled.

MS. SCHAEDLER: Thank you.

THE WITNESS: Mr. Fields spoke of an incident that occurred in Toledo at a motel that he, Mr. Jimmy Philo, and Travis were at, and that was in the month of November of 2001 where they all performed oral sex upon each other.

BY MS. SCHAEDLER (Continuing):

Q Okay. So he was able to tell you about a time in September when they performed mutual acts of oral Sex on each other?

A That is correct.

Q And that time in September had taken place at the home on Monroe Road in Tipton?

A Yes, that is correct.

Q County of Lenawee?

A Yes.

Q And then another time that would have happened out of this jurisdiction?

A That is correct.

Q One time where he says he masturbated him with his hand?

A Yes. And I believe there was another incident of masturbation.

Q Okay. Did he give any specific -- he indicated that this started sometime in September of 2001, August to

[Page 100]

(Tape 1, October 22, 2002; 14:10:17)

September of 2001. Did he indicate where in this time line the first masturbation took place?

A That would have been August of 2001 in Mr. Fields' bedroom.

Q And then he described the event in September of 2001 with mutual oral contact?

A Yes, that's correct.

Q And then the event in the motel in Toledo?

A Yes.

Q He indicated that on a whole this would have happened approximately three times?

A Three to four, yes.

Q Three to four times. And was he able to give you anything more specific? You have one in September, one at the motel in Toledo, and then you have and he was talking when he said three to four times, the mutual oral sex would have taken place three to four times?

A Right, that is correct.

Q Okay. And did he describe any of those other --

A Well, I'm sorry, I think I misunderstood your question. Did you say oral sex three to four times?

Q That's correct.

A I believe oral sex would have been twice, masturbation would have been twice, a total of four sexual encounters.

Q So you would have two events of oral sex where they

[Page 101]

mutually --

A Yes.

Q -- performed it on each other, and one happened in Toledo and one happened in Michigan?

A That is correct.

Q And then you'd indicated two counts or two times that he would have masturbated him?

A Yes, in Lenawee County.

Q Was that consistent with the statement -- first of all, did you talk to Travis Bice first or Randy first?

A I spoke with -- excuse me, with Randy first.

Q So when you went to talk to Travis Bice, you already had Mr. Fields' confession --

A That is correct.

Q -- in hand?

A Yes, I did.

Q Okay. So he originally told you that nothing happened?

A That is correct.

Q And did you tell him that you knew better?

A Yes. We're speaking of Travis now?

Q Yes.

A Yes, that's correct. Initially he said that nothing happened, and then he told the whole story.

Q Then you indicated but wait a minute, this is what I have from Mr. Fields?

[Page 102]

A Right.

Q After you confronted him with what Mr. Fields had said, what if anything was he able to say to you?

A He confirmed the statements that Mr. Fields had given to me that in fact they had had oral sex and there was some masturbation involved also.

Q Did he indicate that there was more than one occasion of oral sex in the State of Michigan?

A As I recall yes, two, possibly three.

Q Did he acknowledge the event in Toledo?

A I would have to refer to my report if I could --

Q Please do.

A -- briefly. Yes, he did in fact confirm that in a statement to me that there was a sexual encounter in Toledo in a motel.

Q Did he ever acknowledge that he had performed oral sex on Randy Fields?

A Yes, he did.

Q Now, you heard him here today, he indicates that never happened.

A I did.

Q Did you ever tell him or threaten him or in any way suggest to him that if he weren't telling the truth you were gonna -- or if he didn't tell about what happened between he and Randy you were going to take him to jailor he was going to get in trouble?

[Page 103]

A Absolutely not.

Q Now, today we took a break, you spent some time with Travis?

A I did.

Q How long have you been a deputy?

A I've been a deputy a year, I've been a police officer for eight.

Q And how many criminal sexual contacts have you tried or have you investigated in that -- those nine years?

A Several.

Q Okay. And is this the first time you've ever had a victim recant --

A No, it is not.

Q -- or not tell you the truth when you first talk to them?

A No, it is not.

Q Okay. So today when Travis got all with doubt, didn't want to talk to the judge or the jury, was that news to you?

A No, it was not.

MS. TATE: Your Honor, I would have to object. She's asking for speculation and expertise he does not have.

THE COURT: I think the objection -- well, that question and answer can stand. Let's move on.

BY MS. SCHAEDLER (Continuing):

Q Did you at any time during the break threaten that if he didn't come in and tell about sex with Randy or that if he didn't continue to tell about sex with Randy that he was in

[Page 104]

trouble?

A Absolutely not.

Q Did you in any way attempt to coerce him other than to tell the truth?

A No.

Q I mean, did you coerce him to tell the truth? That was a poor question.

A No, there was no coercion.

Q What exactly have you done with him since this -- the break that we took?

A We ate lunch together.

Q Did you also have a time when you talked to Tristan, Tristan Jennings?

A Yes.

Q And did Tristan Jennings acknowledge to you contact with --

MS. TATE: Objection, Your Honor, this is irrelevant. It' s not within the scope of 404(b).

THE COURT: That objection is good.

MS. SCHAEDLER: I'll move on.

I have nothing further of this witness at this time, Your Honor.

CROSS-EXAMINATION

BY MS. TATE:

Q Officer Batterson, you indicated that you basically took Mr. Fields into a room at the sheriff's department, correct?

[Page 105]

A That's correct.

Q Was that the conference room there?

A Yes.

Q What time of day or night did this interview take place?

A Without being totally accurate I would estimate around 7 to 9 p.m. I don't recall, it's been several months.

Q Is that when it started, between 7 and 9 p.m.?

A As best I can recall.

Q When did this interview actually end?

A Sometime after midnight.

Q Would that be approximately 1-2 in the morning, something in there it ended?

A Approximately.

Q Could it have been later than 2:00 that it ended?

A I don't believe so.

Q Did you ever give Mr. Fields any of what's termed Miranda warnings during this interview?

A No, I did not.

Q Didn't tell him he had a right to an attorney?

A No, I didn't.

Q Didn't tell him he had a right not to talk to you if he wanted to?

A I told him he was free to leave the conference room at any time.

Q Did he ever ask to leave the conference room?

[Page 106]

A No, he did not.

Q And through this multiple hour interview about what time did these supposed confessions come out of Mr. Fields?

A Near the end I would say.

Q So, before maybe 1 or 2 in the morning he had not confessed anything, correct?

A Well, I couldn't say that.

Q But before 1 or 2 he had not talked about having any sexual relationship with Mr. Bice; is that correct?

A I don't recall exactly when the admissions were made. I know they were not made in the initial part of the interview.

Q Did you provide Mr. Fields with any food or water during this interview?

A I don't believe so. It was certainly offered on more than one occasion. He may have been provided with a beverage, I don't recall, but it was offered to him.

Q So you're saying all these statements that he did this occurred towards the end of the interview, correct?

A Sometime toward -- it was not in the initial phases. If you wanted a --

Q Was he denying --

A -- a time I couldn't give you a good representation.

Q Was he denying these actions at the initial stages of the interview?

A In the initial stages he did.

[Page 107]

Q So for a period of a few hours he denied any contact, correct?

A Well, no, I wouldn't say that's correct. We didn't specifically focus the entire time on the subject of Mr. Bice. We spoke about other things, his life, family issues that he had. So the entire interview was not focused on the incident with Travis Bice.

Q Did you ever yell at Mr. Fields and tell him to shut up and sit down at one point?

A No, I did not.

Q You never said that to him?

A I told him that he could leave. He jumped up at a certain point in the interview and began yelling and screaming at me, and I stood up and told him that

he was welcome to go back to his cell, that I was not going to tolerate being talked to like that.

Q Did you get somebody to take him out of the room?

A No, he didn't want to leave. He sat back down, he calmed back down, continued the conversation.

Q So at least at part of the interview he was getting upset and aggravated with you; is that correct?

A Actually just for a brief moment, maybe two minutes.

MS. TATE: Nothing further, Your Honor.

THE COURT: Ms. Schaedler?

MS. SCHAEDLER: Nothing further of this witness.

[Page 108]

THE COURT: You may step down. You may call your next witness.

MS. SCHAEDLER: We would call Deputy Sharp. We would ask that he remain available as a witness though.

THE COURT: Raise your right hand, please. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

DEPUTY SHARP: I do.

THE COURT: Please be seated.

DEPUTY DALE SHARP

Having been called at about 2:21 p.m. by the People, sworn by the Court, testified:

DIRECT EXAMINATION

BY MS. SCHAEDLER:

Q Scoot right up to that microphone. Deputy, please state your full name and place of employment for the record.

A Deputy Dale Sharp, Lenawee County Sheriff's Department.

Q And how long have you been a deputy?

A Three years at the Lenawee County Sheriff's Department.

Q Have you been a deputy someplace other than that or an officer?

A That's right.

Q And where was that?

A Wayne County Sheriff's Department.

Q And how long were you with Wayne County?

[Page 109]

A Approximately five years.

Q And did you become involved in the interview and investigation of a criminal sexual conduct involving Randall Fields?

A Yes, I did.

Q And with regard to that, were you with Deputy Batterson when Mr. Fields was being interviewed?

A Yes, I was.

Q And did you participate in that interview?

A I just sat in basically.

Q Okay. So you didn't speak or --

A No, I did not.

Q Is it usual that you would have two officers present?

A Um, I was Deputy Batterson's FTO, that's the -- why there was two of us.

Q Okay. So you were the field training officer --

A That's correct.

Q -- for Deputy Batterson?

A That's correct.

Q And your obligation is to observe his behavior and make sure it's appropriate?

A That's correct.

Q Okay. And on this particular occasion do you remember being in the conference room at the sheriff's department?

A Yes, I do.

[Page 110]

Q And about approximately what time did you and Deputy Batterson take Mr. Fields into that room if you recall?

A I would have to refer back to the report. I would say it was in the late afternoon, probably about 6:00 in the evening.

Q And how long did the interview last?

A Approximately seven hours.

Q Is that an unusually long time for an interview?

A No, it's not.

Q During that period of time did Deputy Batterson at any time yell at Mr. Fields?

A No, he did not.

Q Did he ever threaten Mr. Fields?

A No, he did not.

Q Did he ever offer him food or water?

A Yes, he did.

Q Was that offer ever accepted?

A Yes, it was.

Q Okay. Do you recall what was served to Mr. Fields?

A Mr. Fields was given a glass of water or a styrofoam cup of water.

Q Did Mr. Fields ever ask to leave?

A No, he did not.

Q Was there ever a time that he was asked to leave?

A Um, Deputy Batterson mentioned to Mr. Fields -- Mr. Fields -- let me start over. Mr. Fields got angry at one point during

[Page 111]

the interview, stood up and started pointing his finger at the chalkboard saying those dates can't be right, those dates can't be right. And Deputy Batterson stood up and said if you continue to yell, you know, we can terminate this interview if you would like to and I can call a correctional officer at that time to come get you. At that time Mr. Fields sat back down and continued the interview.

Q As his field training officer did you observe anything that the deputy would have done that would of been contrary to appropriate protocol?

A No, I did not.

Q Were you also present when Deputy Batterson would have interviewed Travis Bice?

A Yes, I was.

Q And did that take place before or after you spoke with Mr. Fields?

A It was after.

Q Did he at any time threaten Travis Bice?

A No, he did not.

Q Did he ever tell him that if he was lying he was gonna go to jail?

A No, he did not.

Q Did Mr. Bice initially acknowledge these events took place with Mr. Fields?

A He was hesitant.

[Page 112]

Q Did that seem unusual to you?

Q No, not for a person of that age who, you know, that's pretty traumatic I would say. So it would be normal I would say.

MS. SCHAEDLER: I have nothing further at this time.

CROSS-EXAMINATION

BY MS. TATE:

Q You indicated the seven hour interview is not unusual, to interview somebody for seven hours; is that correct?

A That's correct.

Q How many seven hour interviews have you actually conducted in your career?

A That I have?

Q Yes.

A That would be the first one I would say.

Q How many have you actually observed in your career, seven hour interviews?

A That I have?

Q Yeah.

A I would say that's the first one.

Q That's the first one you've been involved in and the first one you've seen, but it's not unusual, correct? Is that what you're saying today?

A I would say based on Mr. Fields' --

Q I'm asking you the first one you've seen, the first one you're involved in, that makes it not unusual, correct? Is

[Page 113]

that what you're saying?

A Based on the schools I've been -- the school I went to after the fact I would say --

Q I'm asking based on your experience is it unusual?

A Based on what you've just said?

Q Yeah. Yeah.

A No.

Q Okay. You've never done it before and you've never seen it done, so it's not unusual, correct?

MS. SCHAEDLER: Your Honor, that doesn't make it usual or unusual.

THE COURT: I think that's correct. I just don't under --

MS. TATE: Well, he's saying based on his experience that's not unusual to have a seven hour interview, and I just want to clarify that he's only done it this one time.

THE COURT: He said that.

MS. TATE: Okay.

BY MS. TATE (Continuing):

Q Is it unusual to conduct an interview until maybe midnight, 1-2 in the morning?

A No.

Q How many of those have you been involved in?

A How many of those?

A Yeah, interviews that extended to 1-2 in the morning have you

[Page 114]
been involved in?

A I would say a couple.

Q How many years have you been an officer?

A Eight years.

Q So two in eight years you've been involved in; correct?

A That's correct.

Q Other than Mr. Fields, how long ago was the last one?

A Last one besides Mr. Fields, I would say maybe three months ago or so.

Q So there was one after Mr. Fields, correct?

A I would say a couple after Mr. Fields.

Q Were there any before Mr. Fields's interview that extended that far into the morning hours?

A No.

Q Now, was Mr. Fields ever told he could talk to an attorney about this?

A No.

Q Was he ever told he didn't have to talk to you?

A He said, Deputy Batterson, that he could leave at any time during the interview.

Q Was Mr. Fields ever told he did not like to talk with you?

A He said he was free to leave at any time, ma'am.

Q I'm asking specifically was he told not that he could leave, but was he told he did not have to talk with you?

A No, he was not.

[Page 115]

MS. TATE: Nothing further, Your Honor.

THE COURT: Ms. Schaedler?

MS. SCHAEDLER: I have nothing further of this witness.

THE COURT: You may step down. You may call your next witness.

MS. SCHAEDLER: Your Honor, we have no further witnesses at this time.

THE COURT: Tristan Jennings and I believe Jimmy Philo are endorsed on one of the Informations.

MS. SCHAEDLER: They're endorsed as witnesses to be available. Mr. Philo -- may we approach?

THE COURT: Let me ask, do you want them produced?

MS. TATE: I will be calling Mr. Jennings, Your Honor. Mr. Philo, yeah, he doesn't need to be produced.

MS. SCHAEDLER: We will be producing him tomorrow would be my guess, Your Honor.

THE COURT: Are you resting?

MS. SCHAEDLER: At this time we are.

MS. TATE: May we approach, Your Honor?

THE COURT: Certainly.

(Bench conference as follows:)

MS. TATE: I guess my question is if she's waiving his production today --

MS. SCHAEDLER: I'm not waiving his production. If you want me to produce him, I'll produce him.