No.

In the Supreme Court of the United States

CECIL EDWARD ALFORD,

Petitioner,

v.

STATE OF TEXAS,

Respondent.

On Petition for a Writ of Certiorari to the Court of Criminal Appeals of Texas

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Pennsylvania* v. *Muniz*, 496 U.S. 582 (1990), a plurality of this Court recognized an exception to the requirements of *Miranda* v. *Arizona* for self-incriminating testimony elicited in response to "routine booking" questions asked of those in custody. The question presented is:

Whether the "routine booking" exception to *Miranda* applies: (1) unless the officer objectively should have known that his question was likely to elicit an incriminating response, as some courts have held; (2) unless the officer's intent was to elicit an incriminating response, as other courts have held; or (3) to all questions that serve a legitimate administrative function, regardless of whether the officer should have known that the questions would likely elicit an incriminating response, as still other courts, including the court below, have held.

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Texas Court of Criminal Appeals, App., *infra*, 1a-32a, is available at 2012 Tex. Crim. App. LEXIS 245. The opinion of the Second Court of Appeals, App., *infra*, 33a-38a, is available at 333 S.W.3d 358.

JURISDICTION

The judgment of the Texas Court of Criminal Appeals was entered on February 8, 2012. This Court's jurisdiction is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part, that "[n]o person shall * * * be compelled in any criminal case to be a witness against himself."

STATEMENT

1. This case involves an important and recurring question about the scope of the "routine booking" exception to *Miranda* v. *Arizona*, 384 U.S. 436 (1966). In *Miranda*, this Court held that all statements "stemming from custodial interrogation" are inadmissible against a defendant absent "the use of procedural safeguards effective to secure the privilege against self-incrimination." *Id.* at 444. In *Rhode Island* v. *Innis*, 446 U.S. 291, 300-301 (1980),

this Court clarified that custodial interrogation includes not only "express questioning" but also "its functional equivalent," namely words or actions, as opposed to express questions, that the officer should nonetheless know would likely elicit an incriminating response. Exempted from the definition of custodial interrogation, the Court noted, were "words or actions," as opposed to questions, "normally attendant to" the booking process. *Id.* at 301.

Pennsylvania v. *Muniz*, 496 U.S. 582, 600-601 (1990), confirmed *Innis*'s holding that all express questioning constitutes custodial interrogation, even if conducted during the booking process. A four-Justice plurality, however, acknowledged a narrow "booking" exception to *Miranda* for "questions to secure the 'biographical data necessary to complete booking.'" *Id.* at 601 (quoting U.S. Amicus Br. at 12 (quoting *United States* v. *Horton*, 873 F.2d 180, 181 n.2 (8th Cir. 1989))). The plurality nonetheless emphasized that even this narrow booking exception does not apply to "questions * * * designed to elicit incriminatory admissions," *id.* at 602 n.14 (quoting U.S. Amicus Br. at 13), *i.e.*, questions that an officer either intended or should have known were reasonably likely to elicit an incriminating response, *ibid.* (citing *United States* v. *Avery*, 717 F.2d 1020, 1024-1025 (6th Cir. 1983); *United States* v. *Mata-Abundiz*, 717 F.2d 1277, 1280 (9th Cir. 1983); *United States* v. *Glen-Archila*, 677 F.2d 809, 816 n.18 (11th Cir. 1982)).

As the Texas Court of Criminal Appeals observed in this case, although *Muniz* has been understood to have established a routine booking exception, this "Court has provided no definitive guidance on the scope of this exception." App., *infra*, 14a. State and federal courts throughout the Nation thus recognize a booking exception but disagree sharply and widely regarding its scope, producing "booking exception cases around the country [that] are confusing and conflicting." *Id.* at 18a (quoting State C.A. Br. 7). These "diverse interpretations," as the Texas court recognized, provide little consistent guidance as to when *Muniz*'s routine booking exception should apply. *Id.* at 26a. This Court's intervention is therefore needed to resolve a widespread and entrenched conflict regarding a constitutional issue of practical importance.

2. On January 29, 2009, Officer Christopher Ramirez observed petitioner Cecil Alford with an open container of beer in a public area of Fort Worth, Texas. App., *infra*, 3a. After Ramirez questioned petitioner as to whether "he had any narcotics" and informed petitioner that "he was being detained and was not free to leave," petitioner began to run. *Ibid.* Ramirez, with the help of his partner, Officer Jason Caffey, eventually detained petitioner and arrested him for evading arrest. *Id.* at 3a-4a.

Ramirez and Caffey then transported petitioner to the Fort Worth Police headquarters and holding facility. App., *infra*, 4a. After arriving at the facility and removing petitioner from their patrol car,

Ramirez and Caffey searched the back of the car and discovered underneath the seat a computer thumb drive and a clear plastic bag containing pills. *Ibid.* The thumb drive was directly under and in contact with the bag of pills. *Ibid.*

Petitioner was taken inside the holding facility for booking and was approached by Ramirez for questioning. App., *infra*, 4a. Without advising petitioner of his Fifth Amendment rights, Ramirez held up the thumb drive that had been found with the drugs and asked petitioner "what it was." *Id.* at 4a-5a. Petitioner responded, "It's a memory drive." *Id.* at 4a. Ramirez then asked, "Is it yours?" *Ibid.* Petitioner admitted that it was his. *Ibid.*

The thumb drive was then placed with petitioner's personal property. App., *infra*, 6a. The plastic bag containing the pills was placed into evidence to be chemically analyzed. *Id.* at 5a. Testing revealed that the pills contained over four grams of methylenedioxymethamphetamine, a controlled substance more commonly known as "MDMA" or "ecstasy." *Ibid.*

3. The State charged petitioner with possession of a controlled substance. App., *infra*, 5a. Petitioner filed a pretrial motion to suppress, arguing that his responses to Officer Ramirez's questions about the thumb drive were the result of custodial interrogation before petitioner had been advised of

his *Miranda* rights.[1] *Ibid.* At the suppression hearing, Ramirez admitted that petitioner was under arrest when asked about the thumb drive found underneath the drugs. *Id.* at 45a. Nevertheless, the trial court held that Ramirez's questioning was not "custodial interrogation" but rather "a simple book-in inquiry" that served a "housekeeping function." *Id.* at 70a-71a. Focusing on the fact that Ramirez's inquiries were not addressed to an item placed into evidence, the trial court held that petitioner's statements were admissible, notwithstanding *Miranda*. *Id.* at 72a.

4. At trial, in response to questions from the State's attorney, Officer Ramirez related petitioner's answers to his question about owning the thumb drive, providing the only testimony directly linking petitioner to the illegal drugs. App., *infra*, 72a-78a. The State then relied on petitioner's admission when making its closing argument, directing the jury to recall that the police found "the thumb drive of the Defendant right underneath the drugs." *Id.* at 81a. The jury found petitioner guilty of possessing the

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[1] Petitioner invoked the protections of both *Miranda* and Articles 38.22 and 38.23 of Texas's Code of Criminal Procedure. As the Texas Court of Criminal Appeals explained, Article 38.22 requires officers to provide arrestees with warnings during "custodial interrogation" that "are virtually identical to the *Miranda* warnings." App., *infra*, 10a n.8. Article 38.23 contains a blanket exclusionary rule for any evidence "obtained * * * in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America." Tex. Code Crim. Proc. art. 38.23(a).

drugs. *Id.* at 8a. Subsequently, petitioner agreed to withdraw his request for jury sentencing and accepted a plea agreement that provided for a five-year sentence and preserved petitioner's right to appeal the denial of his motion to suppress. *Id.* at 35a.

5. Reviewing petitioner's appeal, the Second Court of Appeals affirmed. App., *infra*, 33a. The Texas Court of Criminal Appeals then granted petitioner's "petition for discretionary review to address his contention[] that the court of appeals erred * * * by affirming the trial court's admission of the statements under the 'booking question exception' to *Miranda*." *Id.* at 2a. The court rejected petitioner's contention and affirmed his conviction.

The court began by observing that lower courts across the nation have "varied widely in their interpretation and application of the [routine booking] exception." App., *infra*, at 19a. The Texas court then noted three prevalent tests that courts both in Texas and "throughout the country" have employed to determine whether certain questions asked during booking fall within the exception. *Id.* at 21a-26a. The court labeled the first two approaches the "should-have-known" and "intent" tests and explained that both entail an examination of context. *Id.* at 21a-22a, 25a-26a. The former focuses on whether an officer, given the circumstances, should have known that his questioning would elicit an incriminating response, *id.* at 21a-22a, while the latter looks to whether the

subjective intent of the officer was to elicit an incriminating response, *id.* at 25a-26a. The third approach, which the court called the "legitimate administrative function" test, asks only whether the question serves a legitimate administrative function. *Id.* at 23a-24a. If it does, the response is admissible, even if the officer should have known that his or her question would likely elicit an incriminating response. *Id.* at 24a.

The court chose the "legitimate administrative function" approach, offering several justifications. App., *infra*, 26a. First, the court suggested that adoption of the "should-have-known" test would "render[] the [routine booking] exception a nullity" because the court believed it would exclude all custodial interrogation from the exception. *Id.* at 27a. It thus concluded that the "legitimate administrative function" test was "a more logical interpretation of the [routine booking] exception." *Id.* at 29a.

The court also posited that its rule "afford[ed] law-enforcement personnel a sphere in which to quickly and consistently administer booking procedures without having to analyze each question to determine if it is likely to elicit an incriminating response." App., *infra*, 29a. Although the court recognized that other courts had found it necessary to review the facts of a given case and determine whether officers knew or should have known that their questions would elicit an incriminating response, *id.* at 21a-22a, the Texas court concluded

that the perceived benefits of an easily administrable rule outweighed those of a more thorough, case-specific evaluation of context, *id*. at 29a.[2]

Applying the "legitimate administrative function" test to the facts of the instant case, the court held admissible petitioner's incriminating statement, linking him to the drugs, because Officer Ramirez's question fell within the routine booking exception. App., *infra*, 32a. It observed that "[t]he government has a legitimate interest in the identification and storage of an inmate's property" and that "property inventory" and storage were required by the Texas Administrative Code. *Id*. at 30a-31a. Thus, the court held, Ramirez's questioning of petitioner about his ownership of the thumb drive was "reasonably related to a legitimate administrative concern" and "the trial court did not err in admitting [petitioner's] statements under the booking-question exception to *Miranda*." *Id*. at 32a.

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[2] Because petitioner did not assert that Officer Ramirez intended to elicit incriminating admissions, the court's discussion focused on comparisons between the "legitimate administrative function" test and the "should-have-known" test, without addressing the "intent" test. App., *infra*, 28a n.27.

REASONS FOR GRANTING THE WRIT

I. There Is A Wide And Persistent Conflict Regarding The Scope Of The Routine Booking Exception To *Miranda*

In *Pennsylvania* v. *Muniz*, a plurality concluded that while "questions to secure the biographical data necessary to complete booking or pretrial services" are custodial interrogation, they are "exempt[] from *Miranda's* coverage." 496 U.S. 582, 601 (1990) (internal quotation marks omitted). And while this Nation's courts have "universally accepted" that there is a routine booking question exception to *Miranda*'s requirements, *Presely* v. *City of Benbrook*, 4 F.3d 405, 408 n.2 (5th Cir. 1993); see also *Thomas* v. *United States*, 731 A.2d 415, 421 (D.C. 1999) (collecting cases), they are deeply divided over the scope of this exception, see App., *infra*, 21a; see also Meghan S. Skelton & James G. Connell, III, *The Routine Booking Question Exception to* Miranda, 34 U. Balt. L. Rev. 55, 78-94 (2004). Indeed, as the Texas Court of Criminal Appeals noted, "booking exception cases around the country are confusing and conflicting." App., *infra*, 18a.

Courts have adopted varying and inconsistent tests to determine whether a particular question falls within the routine booking exception. App., *infra*, 21a-26a. As the court below recognized, there are currently three competing approaches. *Ibid*. The first is the should-have-known test, which

involves "an objective assessment of the likelihood, in light of both the context of the questioning and the content of the question, that the question will elicit an incriminating response." *Hughes* v. *State*, 695 A.2d 132, 138 (Md. 1997). The second approach, by contrast, is an intent test, which "limits the scope of the booking question exception based solely on the actual intent of the police officer in posing the question." *Ibid.* The third approach, adopted by the Texas Court of Criminal Appeals here, is the legitimate administrative function test, which treats as admissible all incriminating statements made by those in custody in response to questions "reasonably related to the police's administrative concerns." App., *infra*, 24a (quoting *Muniz*, 496 U.S. at 601-602).

A. The Should-Have-Known Test

As the Texas Court of Criminal Appeals explained, "Many courts have held * * * that routine administrative questions are not *Miranda* exempt if questioning officers should have known that the question was likely to yield incriminating information." App., *infra*, 21a-22a. Indeed, five United States courts of appeals and twelve state high courts have adopted this objective approach. See *United States* v. *Pacheco-Lopez*, 531 F.3d 420, 423-424 (6th Cir. 2008); *United States* v. *Rodriguez*, 356 F.3d 254, 259-260 (2d Cir. 2004); *United States* v. *Reyes*, 225 F.3d 71, 76-77 (1st Cir. 2000); *United States* v. *Brown*, 101 F.3d 1272, 1274 (8th Cir. 1996); *United States* v. *Mata-Abundiz*, 717 F.2d 1277, 1280 (9th Cir. 1983); *Ares* v. *State*, 937 A.2d 127, 131 (Del.

2007); *State* v. *Rheaume*, 853 A.2d 1259, 1264 (Vt. 2004); *State* v. *Bryant*, 624 N.W.2d 865, 870 (Wis. 2001); *State* v. *Walton*, 41 S.W.3d 75, 84 n.6 (Tenn. 2001); *State* v. *Brann*, 736 A.2d 251, 255 (Me. 1999); *State* v. *Sallis*, 574 N.W.2d 15, 18 (Iowa 1998); *Franks* v. *State*, 486 S.E.2d 594, 597 (Ga. 1997); *Hughes*, 695 A.2d at 138; *Nika* v. *State*, 951 P.2d 1047, 1062 (Nev. 1997), overruled on other grounds by *Leslie* v. *Warden*, 59 P.3d 440 (Nev. 2002); *Commonwealth* v. *White*, 663 N.E.2d 834, 844-845 (Mass. 1996); *Loving* v. *State*, 647 N.E.2d 1123, 1126 (Ind. 1995); *People* v. *Rodney*, 648 N.E.2d 471, 473 (N.Y. 1995); *State* v. *Banks*, 370 S.E.2d 398, 403 (N.C. 1988).[3]

Although the objective approach is relatively straightforward, courts using this approach vary in their formulations. Some courts ask whether the questioning officer "should have known" the question would elicit an incriminating response. See, *e.g.*, *United States* v. *McLaughlin*, 777 F.2d 388, 391-392 (8th Cir. 1985). Other courts ask whether the question is "reasonably likely to elicit incriminating information." *Mata-Abundiz*, 717 F.2d at 1280. Nonetheless, courts following the objective approach evaluate each question on a case-by-case basis because "questions colorably administrative in nature" may nonetheless be "objectively likely to elicit an incriminating response." *State* v. *Rossignol*, 627 A.2d 524, 526 (Me. 1993).

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[3] The Third Circuit, in an unpublished opinion, agreed with this test. See *United States* v. *Carvajal-Garcia*, 54 F. App'x 732, 738 (3d Cir. 2002) (unpublished).

When determining whether the officer "should have known that a question was reasonably likely to elicit an incriminating response," some courts consider the questioning officer's knowledge or experience to be relevant. *United States* v. *Disla*, 805 F.2d 1340, 1347 (9th Cir. 1986) (internal quotation marks omitted); *United States* v. *Doe*, 878 F.2d 1546, 1551 (1st Cir. 1989); *McLaughlin*, 777 F.2d at 391-392. For example, in a case where the questioning officer had found cocaine in an apartment, the court concluded the officer "should have known that" asking whether the defendant owned the apartment in question "was reasonably likely to elicit an incriminating response." *Disla*, 805 F.2d at 1347. That was because "the question as to where [the defendant] lived was related to an element (possession) of the crime that [the officer] had reason to suspect [the defendant] committed." *Ibid.* Indeed, under this approach, "where a purportedly routine booking question provides some proof of an element of the crime for which the suspect is arrested, the booking question exception will be less likely to apply." *Hughes*, 695 A.2d at 140.

B. The Intent Test

"By contrast," as the opinion below pointed out, "many courts have interpreted *Muniz*'s 'designed to elicit' language as precluding only questions that were, in fact, intended to elicit incriminating information." App., *infra*, 25a-26a. Indeed, four United States courts of appeals and five state high courts have adopted the subjective test. See *United*

States v. *Virgen-Moreno*, 265 F.3d 276, 293-294 (5th Cir. 2001), cert. denied, 534 U.S. 1095 (2002); *United States* v. *D'Anjou*, 16 F.3d 604, 608-609 (4th Cir.), cert. denied, 512 U.S. 1242 (1994); *United States* v. *Parra*, 2 F.3d 1058, 1068 (10th Cir. 1993); *United States* v. *Sweeting*, 933 F.2d 962, 965 (11th Cir. 1991); *Dixon* v. *Commonwealth*, 149 S.W.3d 426, 433 (Ky. 2004); *State* v. *Chrisicos*, 813 A.2d 513, 515-516 (N.H. 2002); *Gilbert* v. *State*, 951 P.2d 98, 112 (Okla. Crim. App. 1997); *Allred* v. *State*, 622 So. 2d 984, 987 (Fla. 1993); *People* v. *Fognini*, 265 N.E.2d 133, 134 (Ill. 1970).

Most courts adopting this approach trace it to footnote fourteen in *Muniz*, in which the plurality said "the police may not ask questions, even during booking, that are *designed to elicit* incriminatory admissions." *Muniz*, 496 U.S. at 602 n.14 (emphasis added); see, *e.g.*, *Velasquez* v. *Lape*, 622 F. Supp. 2d 23, 24 (S.D.N.Y. 2008). These courts read "designed to elicit" to mean that the routine booking exception applies unless the officer asks questions that are subjectively intended to elicit an incriminating response. See, *e.g.*, *Virgen-Moreno*, 265 F.3d at 293-294. But see p. 18-19, *infra* (explaining that "designed to elicit" also includes an objective inquiry).

While most courts adopting this approach require direct evidence of the questioning officer's intent, see, *e.g.*, *Parra*, 2 F.3d at 1068; *State* v. *Jones*, 656 A.2d 696, 701 (Conn. App. Ct. 1995), some courts have used a modified version that considers whether a reasonable person would conclude that a particular

question was designed to elicit an incriminating response, see, *e.g.*, *Commonwealth* v. *Chadwick*, 664 N.E.2d 874, 876 (Mass. App. Ct. 1996); *Blain* v. *Commonwealth*, 371 S.E.2d 838, 841 (Va. Ct. App. 1988); cf. *Traylor* v. *State*, 596 So. 2d 957, 966 n.17 (Fla. 1992) (adopting the same analysis on state constitutional grounds).

C. The Legitimate Administrative Function Test

The final approach is the one adopted by the Texas Court of Criminal Appeals below and the D.C. Circuit. App., *infra*, 23a-24a; *United States* v. *Gaston*, 357 F.3d 77, 81-82 (D.C. Cir. 2004). Under the legitimate administrative function approach, the "court must examine whether, under the totality of the circumstances, a question is reasonably related to a legitimate administrative concern." App., *infra*, 30a. The D.C. Circuit read *Muniz* to hold that "officers asking routine booking questions 'reasonably related to the police's administrative concerns' are not engaged in interrogation within *Miranda's* meaning." *Gaston*, 357 F.3d at 81. And because these questions are not custodial interrogation, the court continued, officers need not "give *Miranda* warnings." *Ibid.* Thus, the only question for the court to consider is whether the question is reasonably related to the police's administrative concerns.

The Texas court largely agreed with the D.C. Circuit, concluding that "'questions that are asked for record-keeping purposes only' and are 'reasonably

related to the police's administrative concerns * * * fall outside the protections' of *Miranda*." App., *infra*, 13a (quoting *Muniz*, 496 U.S. at 601-602).[4] The Texas court explained, "[T]he *Muniz* plurality held that questioning Muniz about his 'name, address, height, weight, eye color, date of birth, and current age' was *Miranda* exempt because these questions were 'reasonably related to the police's administrative concerns.'" *Id.* at 13a-14a (citing *Muniz*, 496 U.S. at 601-602). These questions are exempt from *Miranda*, the court continued, because "[r]outine booking questions are, by definition, questions normally attendant to arrest and custody and do not, by their very nature, involve the psychological intimidation that *Miranda* is designed to prevent. At the same time, they serve a legitimate administrative need." *Id.* at 13a (internal quotation marks omitted). Therefore, the Texas court held, as long as the booking question is reasonably related to administrative concerns, it is exempt from *Miranda*. *Id.* at 26a.

In sum, federal courts of appeals and state high courts across the country are deeply conflicted in their understanding and interpretation of the

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[4] The Seventh Circuit may also agree. When discussing the exception, it said, "[Q]uestions reasonably related to the police's administrative concerns do not constitute interrogation under *Miranda*." *United States* v. *Knope*, 655 F.3d 647, 652 (7th Cir. 2011), cert. denied, 132 S. Ct. 1060 (2012). But in the same opinion, the court said, "There is no evidence that [the officer] was seeking an admission when she asked the [booking question]," suggesting the subjective approach. *Ibid.*

routine booking question exception to *Miranda*. In one camp are five federal courts of appeals and twelve state high courts using the objective approach. In the other camp are four federal courts of appeals and five state high courts using the subjective approach. And in the third camp are the Texas Court of Criminal Appeals and the D.C. Circuit, which remain outliers in their use of yet another approach—the legitimate administrative function test.[5]

Because of the tripartite split and the confusion within jurisdictions, which is long-standing and shows no sign of abating, petitioner respectfully submits that this Court's review is warranted.

II. The Decision Below Was Wrong

The "legitimate administrative function" test adopted by the Texas Court of Criminal Appeals is not supported by this Court's decisions and, in fact, is flatly inconsistent with them.

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[5] The conflict and confusion does not end there. Just as the Texas Court of Criminal Appeals noted that Texas courts had "varied widely in their interpretation and application of the exception," App., *infra*, 19a, courts in other jurisdictions have had great difficulty achieving coherence and consistency, see, *e.g.*, *Timbers* v. *Commonwealth*, 503 S.E.2d 233, 237 (Va. Ct. App. 1998) ("Virginia courts have discussed (1) the subjective intent of the police, (2) the objective likelihood of self-incrimination, and (3) an objective evaluation of the manifestation of the officer's intent.") (internal citations omitted).

When the police "ask questions of a suspect in custody without administering the required warnings, *Miranda* dictates that the answers * * * be excluded from evidence at trial in the State's case in chief." *Oregon* v. *Elstad*, 470 U.S. 298, 317 (1985). This Court made clear in *Rhode Island* v. *Innis* that "the term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." 446 U.S. 291, 300-301 (1980). *Innis* thus confirmed that interrogation includes all "express questioning" and also "words or actions on the part of the police * * * that the police should know are reasonably likely to elicit an incriminating response." *Ibid.* What it does not include are "words or actions" (as opposed to express questions) "normally attendant to arrest and custody." *Ibid.*

Ten years later, in *Pennsylvania* v. *Muniz*, 496 U.S. 582 (1990), this Court confirmed that direct questions asked during booking amount to custodial interrogation. In that case, a police officer had asked a suspect during booking a series of seven questions that concerned the suspect's "name, address, height, weight, eye color, date of birth and current age." *Id.* at 586. Five justices—the four constituting the plurality and Justice Marshall in dissent—agreed that these questions constituted custodial interrogation, even though they occurred during booking. See *id.* at 601; see also *id.* at 608-609

(Marshall, J., dissenting) (agreeing that direct questioning during booking constitutes custodial interrogation but declining to recognize an exception to *Miranda* for routine booking questions). The plurality went on to recognize a narrow exception to *Miranda* for "routine booking question[s]" that "secure the *biographical* data necessary to complete booking or pretrial services." *Id.* at 601 (emphasis added) (internal quotation marks omitted).

The Court nonetheless made clear that "[r]ecognizing a 'booking exception' to *Miranda* does not mean * * * that any question asked during the booking process falls within that exception. Without obtaining a waiver of the suspect's *Miranda* rights, the police may not ask questions, even during booking, that are designed to elicit incriminatory admissions." *Muniz*, 496 U.S. at 602 n.14 (internal quotation marks omitted). The Court then cited for support three decisions, one each from the Sixth, Ninth, and Eleventh Circuits. *Ibid.*

Those lower court opinions, in turn, make clear that questioning "designed to elicit incriminatory admissions," *Muniz*, 496 U.S. at 602 n.14, includes not only questions that the officers "*intended* to induce incriminating responses," *United States* v. *Glen-Archila*, 677 F.2d 809, 816 (11th Cir. 1982) (emphasis added), but also those that are "*reasonably likely* to elicit an incriminating response," *United States* v. *Avery*, 717 F.2d 1020, 1025 (6th Cir. 1983) (emphasis added); see also *United States* v. *Mata-Abundiz*, 717 F.2d 1277, 1280 (9th Cir. 1983) (holding that if the booking questions

are "reasonably likely to elicit an incriminating response in a particular situation, the exception does not apply").

The objective part of this inquiry is consistent with the objective tests this Court has established for other exceptions to *Miranda*. The Court recently held, for example, that an objective test determines whether the "primary purpose" of an interrogation is to enable police to meet an ongoing emergency, which would exempt the questions from *Miranda*. *Michigan* v. *Bryant*, __ U.S. __, 131 S. Ct. 1143, 1156 (2011). "[T]he relevant inquiry is not the subjective or actual purpose of the individuals involved in a particular encounter, but rather the purpose that reasonable participants would have had, as ascertained from the individuals' statements and actions and the circumstances in which the encounter occurred." *Ibid.* Likewise, for the purposes of *Miranda*, "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." *Stansbury* v. *California*, 511 U.S. 318, 323 (1994) (per curiam); see also *Ashcroft* v. *al-Kidd*, __ U.S. __, 131 S.Ct. 2074, 2085 (2011) (holding that "an objectively reasonable arrest and detention of a material witness pursuant to a validly obtained warrant cannot be challenged as unconstitutional on the basis of allegations that the arresting authority had an improper motive"); *Missouri* v. *Seibert*, 542 U.S. 600, 611-612 (2004) (holding that "[t]he threshold issue when

interrogators question first and warn later" is "whether it would be reasonable to find that in these circumstances the warnings could * * * effectively advise the suspect that he had a real choice about giving an admissible statement at that juncture"); *New York* v. *Quarles*, 467 U.S. 649, 656 (1984) (holding that the public safety exception to *Miranda* should be determined without regard to the "motivation of individual officers in such a situation").

Innis and *Muniz* together thus establish a narrow booking exception, the former for *words and actions* during booking and the latter for *questions* during booking. The latter exception, which is the only one applicable here, does not apply to questions "designed to elicit incriminatory admissions," *Muniz*, 496 U.S. at 602 n.14, *i.e.*, questions intended or objectively likely to elicit an incriminating response.

The "legitimate administrative function" test adopted by the court below is flatly inconsistent with this approach, as it rejects any inquiry into whether a question asked during booking was intended or objectively likely to elicit an incriminating response. This test asks only whether the question might serve some legitimate administrative purpose. Indeed, rather than respect the narrow booking exception established by *Muniz*, the Texas court created a very broad and manipulable exception to *Miranda*—one that would permit the introduction of any response to any question that served a legitimate administrative purpose of the police, without regard to the consequences or import of the suspect's

response. The rule does not limit itself to "biographical" booking questions of the sort in *Muniz*—and in fact was applied in this case to a question regarding personal property—and explicitly does not contain the safeguard described in *Muniz* for questions that are designed to elicit incriminating admissions.

In fact, under the rule adopted below, police presumably could have asked petitioner whether the pills in the clear bag, which had not yet been tested for narcotics, belonged to him. Even if the police should have known that such a question could lead to an incriminating response, asking about personal property that is not obviously contraband presumably serves a legitimate administrative function.

The court below nonetheless declined to apply the objective test to the booking question at issue because it believed such a test would render the booking exception a "nullity." App., *infra*, 27a. This is based on a misapprehension of the nature and scope of the booking exception. Normally, answers to any and all questions asked during custodial interrogation are inadmissible if not preceded by *Miranda* warnings. *Elstad*, 470 U.S. at 317. An exception exists for routine "booking questions" so long as they are not designed, *i.e.*, intended or objectively likely, to elicit an incriminating response. See *Muniz*, 496 U.S. at 602 n.14. That exception simply does not exist for non-booking questions. Answers to questions asked during custodial interrogation, but outside of the booking context, are

generally inadmissible absent *Miranda* warnings regardless of whether the question was intended or likely to elicit an incriminating response.[6] Thus, examining whether a question during booking was designed to elicit an incriminating response determines whether the booking exception applies; it does not render that exception a nullity.

The Texas court was also wrong to assert that the "legitimate administrative function" test should be used for the sake of administrative convenience. See App., *infra*, 29a. First, this rationale overstates the administrative burden of applying the objective test, which, as discussed, is routine and familiar to police for the purposes of other exceptions to *Miranda*. See pp. 19-20, *supra*. Second, the court overestimates the ease with which its test could be applied since there is no clear category of questions that serve a "legitimate administrative function" in all booking contexts. Finally, because there is no clear distinction between questions that serve an administrative function and those that elicit incriminating information, the Texas court's test furthers the interest of administrability at too great an expense to the Fifth Amendment rights of those in police custody. Surely, protecting petitioner's constitutional right against self-incrimination outweighs the police's interest in mere recordkeeping and inventorying. Cf. *Vlandis* v. *Kline*, 412 U.S. 441,

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[6] There is an exception to *Miranda*, of course, for "questions reasonably prompted by a concern for the public safety," *Quarles*, 467 U.S. at 656, but that exception is not at issue here.

451 (1973) (holding that "[t]he State's interest in administrative ease and certainty cannot" outweigh the requirements of Due Process); *Stanley* v. *Illinois*, 405 U.S. 645, 656 (1972) ("[T]he Constitution recognizes higher values than speed and efficiency.").

In short, the test adopted by the Texas court does not comport with the narrow construction of the booking exception established by *Muniz* and should not be permitted to stand.

III. This Case Presents An Important And Recurring Question Of Constitutional Law And Is An Ideal Vehicle For Its Resolution

This case presents a question of constitutional law that has important legal and practical ramifications. The scope of the routine booking exception implicates the important policy interests underlying the Fifth Amendment's protection against compelled self-incrimination. It also determines the applicability of *Miranda* in common, routine interactions between the police and suspects in their custody. Indeed, all across the country, individuals are arrested and processed by the police every day, and many—if not most—are subjected to pre-*Miranda* booking questioning. See Charles D. Weisselberg, *Mourning* Miranda, 96 Cal. L. Rev. 1519, 1558-1559 (2008). The widespread confusion and conflict among the lower courts regarding the scope of the exception for routine booking questions, therefore, is of no small consequence and calls for resolution in order to adequately protect suspects'

Fifth Amendment rights. Moreover, clarifying the scope of the exception will assist law enforcement agencies across the country in administering their booking procedures so as to balance their investigative interests with the important constitutional rights enjoyed by persons in their custody.

This issue is ripe for review, and this case affords a perfect vehicle through which to resolve the long-standing conflict among the lower courts. The facts in the case are undisputed and the issues of law have been argued, considered and squarely decided in the courts below. This petition thus affords the Court an ideal opportunity to bring needed clarity to an area of law that is of practical importance to both police and citizens whom they detain.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MAY 2012

IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. PD-0225-11

CECIL EDWARD ALFORD, Appellant

v.

THE STATE OF TEXAS

February 8, 2012, Filed

PRIOR HISTORY:
ON APPELLANT'S PETITION FOR DISCRETIONARY REVIEW FROM THE SECOND COURT OF APPEALS TARRANT COUNTY

JUDGES: ALCALA, J., delivered the opinion of a unanimous Court.

OPINION BY: ALCALA

OPINION

Appellant, Cecil Edward Alford, challenges the court of appeals's holding that the trial court properly admitted appellant's un-*Mirandized* [1] custodial

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

statements made in response to "questioning attendant to an administrative 'booking' procedure." *Alford v. State*, 333 S.W.3d 358, 361 (Tex. App.--Fort Worth, 2010) (mem. op.). We granted appellant's petition for discretionary review to address his contentions that the court of appeals erred (1) by applying an abuse-of-discretion standard in reviewing the trial court's ruling that the questioning did not offend Texas Code of Criminal Procedure arts. 38.22, § 3(a)(2)[2] and 38.23(a);[3] and (2) by affirming the trial court's admission of the statements under the "booking question exception" to *Miranda* because "the officer's questions--unlike routine booking questions--

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[2] Art. 38.22 § 3(a)(2) provides, in relevant part, "No oral or sign language statement of an accused made as a result of custodial interrogation shall be admissible against the accused in a criminal proceeding unless . . . prior to the statement," the accused is given the warning in art. 38.22 § 2(a), which includes that (1) the accused has the right to remain silent; (2) any statement he makes may be used against him; (3) he has the right to a lawyer; (4) he has the right to an appointed lawyer if he cannot employ one; and (5) he has a right to terminate the interview at any time. *See* TEX. CODE CRIM. PROC. art. 38.22 §§ 2(a) & 3(a)(2).

[3] Art. 38.23(a) provides, "No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case." TEX. CODE CRIM. PROC. art. 38.23(a).

were reasonably likely to elicit incriminating responses." We conclude that an appellate court must generally review *de novo* whether a question comes within the booking-question exception to *Miranda*, and that the court of appeals did not err by affirming the trial court's admission of appellant's statements under that exception. We affirm.

I. Background

A. Facts

At the beginning of his shift on January 29, 2009, Officer Ramirez of the Fort Worth Police Department inspected his patrol car and found no contraband in it. That evening, he was dispatched to investigate a report of a person with a weapon.[4] When he arrived at the location, he observed appellant getting out of a car with an open beer in his hand. He approached appellant and advised him that it was illegal to have an open container in public near a school. He asked appellant "some basic questions," including whether "he had any narcotics or anything on him," which appellant denied. When he asked appellant specifically about drugs and weapons, appellant became nervous and "started backing up a little bit." He advised appellant that he was being detained and was not free to leave, but appellant "took a couple of steps back" and then began running. A chase ensued. With the assistance of his partner, Officer Caffey,

[4] He confirmed that no one else had been in the patrol car since he had inspected it.

Officer Ramirez was able to detain appellant. He arrested appellant for evading arrest or detention. *See* TEX. PEN. CODE § 38.04.

While transporting appellant to jail, Officer Caffey noticed that appellant "was laying over on the seat kind of squirming around." When he asked appellant what he was doing, appellant responded that "his side was hurting," but he refused medical attention. Upon arrival, the officers escorted appellant out of the back seat and then, pursuant to department procedure, searched the back seat. From underneath the back seat, they recovered a clear plastic bag with pills inside and, directly under the bag, a computer flash drive, which is also referred to as a "thumb" drive. Once they had collected those items, the officers escorted appellant to the booking area where arresting officers routinely complete required paperwork and facility personnel conduct a pre-incarceration search.

According to Officer Ramirez, as facility personnel searched appellant during the booking process, "I took the thumb drive that was located in the back seat and held it up and I asked him what it was." Appellant responded, "It's a memory drive," and Officer Ramirez followed up with, 'Is it yours?'" Appellant confirmed that it belonged to him, and Officer Ramirez placed it with appellant's other personal property. [5] Appellant had not yet been

[5] The booking search also revealed $317 on appellant's person, which was collected as evidence.

advised of his rights under *Miranda* or Texas Code of Criminal Procedure article 38.22 § 2(a). *See* TEX. CODE CRIM. PROC. art. 38.22.

Officer Ramirez requested "criminal analysis" of the unknown substance found in the patrol car. Testing revealed that the substance was over four grams of methylenedioxymethamphetamine, commonly known as "MDMA" or "ecstasy." Appellant was charged by indictment of possession of a controlled substance of four grams but less than 400 grams. *See* TEX. HEALTH & SAFETY CODE § 481.116(d).

B. Pretrial Motion to Suppress Evidence

Appellant filed a pretrial motion to suppress his responses to Officer Ramirez's questions regarding the flash drive. At the pretrial hearing on the motion, he argued that Officer Ramirez's questioning constituted custodial interrogation and that, because no warnings had been issued, appellant's responses were inadmissible under Texas Code of Criminal Procedure articles 38.22 and 38.23. *See* TEX. CODE CRIM. PROC. arts. 38.22 & 38.23. The State responded that the questioning comprised only "questions that are generally asked at book-in" in order to properly manage personal property and were not interrogation. Officer Ramirez testified that his department has a "standard procedure" in handling individuals' personal property and that department members must "follow procedures as far as finding out what property belongs to the individual so it can be tied with their personal property." He explained that with "[w]allets, watches, any type of personal

property," they must confirm that it belongs to a suspect by asking, "'Is this your property?' That way we can put that into their personal property. We don't want to put something that's not theirs into property." If it does belong to a suspect, "then it goes into the personal property to the Mansfield [facility] law enforcement personnel," who are contracted by the Fort Worth Police Department to handle "book-in, handling, and holding" of inmates.

Officer Ramirez testified that, upon arriving at the jail, he asked appellant "questions in reference to the thumb drive" in order "to establish if it was his property." After confirming that the item did belong to appellant, he gave it to facility personnel, who then "placed it in [appellant's] personal property." He confirmed that the thumb drive was not collected as evidence and that he never saw it again.

The trial court denied the motion and admitted appellant's statements. Although the trial judge did not enter written findings of fact and conclusions of law, he did make oral findings and conclusions on the record.[6] In rendering his ruling, he observed that

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[6] Although art. 38.22 § 6 requires that the trial court enter written findings of fact and conclusions of law, we have held that a trial court satisfies that requirement if it "dictates its findings and conclusions to the court reporter, and they are transcribed and made a part of the statement of facts, filed with the district clerk and made a part of the appellate record." *Murphy v. State*, 112 S.W.3d 592, 601 (Tex. Crim. App. 2003); *see also Parr v. State*, 658 S.W.2d 620, 623 (Tex. Crim. App. 1983). The findings "need not be made with minute specificity as to every alleged and

certain law-enforcement procedures serve "a housekeeping function in which questions and answers are necessary in order to routinely process the prisoner." He determined that Officer Ramirez's subjective intent in asking the questions was the "best evidence" of whether the questioning constituted interrogation, noting that "when [appellant said], 'It's mine,' [Officer Ramirez] didn't say, 'Oh, well, never mind,' this is no longer personal property. This is going to the crime lab for fingerprints. . . . This is going to the computer lab to be analyzed." He emphasized that the drive was placed in appellant's property "never to be seen again." He concluded,

> For purposes of 38.22 I find as a matter of fact and law, he was in custody. I'm simply

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hypothetical possibility for physical or mental coercion, but need only be sufficient to provide the appellate court and the parties with a basis upon which to review the trial court's application of the law to the facts." *Nichols v. State,* 810 S.W.2d 829, 831 (Tex. App.--Dallas 1991, pet. ref'd). In this case, the findings contained in the record are sufficient to enable the parties to fully address, and the appellate courts to review, the trial court's ruling and, therefore, satisfy art. 38.22. *See Alford*, 333 S.W.3d at 360 (noting that the trial court found that the exchange involved "'two quick questions that resulted in someone's personal property being placed in the personal property bag.'").

> finding it was [sic] [7] a custodial interrogation. It was normal processing. Based on the totality of the book-in, I find it's not normal interrogation. . . . it was two quick questions that resulted in someone's personal property being placed in the personal property bag. And, therefore, those two statements, within a very narrow context, are admissible and do not violate *38.22*. If they don't violate 38.22, then as a matter of law, they can't violate 38.23.

At trial, the State introduced the statements to help establish appellant's knowledge and possession of the controlled substance. The jury ultimately convicted appellant, and he was sentenced to five years' confinement.

On direct appeal, appellant contended, in a single issue, that the trial court erred in admitting his oral statement "which was not preceded by any rights advisements or a waiver of rights." *Alford*, 333 S.W.3d at 360. He argued that "Officer Ramirez's questions were designed to elicit incriminating information" and that they "constituted custodial interrogation." *Id.* at 360-61. The court of appeals

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[7] It is readily apparent from the context of all of the trial judge's statements that he intended to say that although appellant was in custody at the time of questioning, the trial judge was finding that the questioning was not custodial interrogation.

noted that "questioning attendant to an administrative 'booking' procedure does not generally require *Miranda* warnings." *Id.* at 361. It concluded that, given the facts of the case, "the information adduced by Officer Ramirez was produced from administrative questioning" and held that "the trial court did not abuse its discretion by concluding that Alford's statements were made during normal processing." *Id*. We granted review to determine whether the trial court erred in admitting the statements under the booking-question exception to *Miranda*.

II. Applicable Law

A. General Standard of Review

In reviewing a trial court's ruling on a *Miranda*-violation claim, an appellate court conducts a bifurcated review: it affords almost total deference the trial judge's rulings on questions of historical fact and on application of law to fact questions that turn upon credibility and demeanor, and it reviews *de novo* the trial court's rulings on application of law to fact questions that do not turn upon credibility and demeanor. *Ripkowski v. State*, 61 S.W.3d 378, 381-82 (Tex. Crim. App. 2001) (citing *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997)). The decision as to whether custodial questioning constitutes "interrogation" under *Miranda* is a mixed question of law and fact, and we defer to the trial court's fact findings that turn on an evaluation of credibility and demeanor. *See id*. If credibility and demeanor are not necessary to the resolution of an issue, whether a set of historical facts constitutes custodial interrogation

under the Fifth Amendment is subject to *de novo* review because that is an issue of law: it requires application of legal principles to a specific set of facts. *See id.*; *see also Riley v. United* States, 923 A.2d 868, 883-84 (D.C. Cir. 2007), cert. denied, 555 U.S. 830 (2008) ("[W]e review *de novo* whether the defendant's rights were 'scrupulously honored' and whether the police conduct constituted 'interrogation' because these are questions of law."). The parties dispute what standard of review applies to the appellate review of the booking-question exception to *Miranda*, and we decide that matter later in this opinion.

B. Custodial Interrogation and the Booking-Question Exception to *Miranda*

In *Miranda v. Arizona*, the Supreme Court held that "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 against self-incrimination." 384 U.S. 436, 444 (1966).[8] This is

[8] On appeal, appellant alleges violations of arts. 38.22, § 2(a) and 38.23(a), arguing that the officer's questioning constituted "custodial interrogation" under § 2(a), as defined by *Miranda*. Appellant's arguments, however, do not distinguish between the requirements in the Texas Code of Criminal Procedure and *Miranda* and focus solely on judicial interpretation of "custodial interrogation" as used in *Miranda*. We limit our analysis accordingly. *See Herrera v. State*, 241 S.W.3d 520, 526 (Tex. Crim. App. 2007) ("The warnings provided in Section 2(a) are virtually identical to the *Miranda* warnings" and "are required only

because "the coercion inherent in custodial interrogation blurs the line between voluntary and involuntary statements, and thus heightens the risk that an individual will not be accorded his privilege under the Fifth Amendment not to be compelled to incriminate himself." *Id.* at 439.

The Court later elaborated upon the meaning of "interrogation" under *Miranda* in *Rhode Island v. Innis*, explaining that the term refers to (1) express questioning and (2) "any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." 446 U.S. 291, 301 (1980). The *Innis* test "focuses primarily upon the perceptions of the suspect, rather than the intent of the police" in determining whether the suspect was coerced to provide incriminating information while in custody. *Id.*; *Illinois v. Perkins*, 496 U.S. 292, 296 (1990). But "any knowledge the police may have had concerning the unusual susceptibility of a defendant to a particular form of persuasion" may be relevant in determining what the police knew or should have known in asking a question. *Innis, 446 U.S. at 302 n.8*.[9]

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when there is custodial interrogation" as construed in *Miranda*.).

[9] We refer to the *Innis* test as the "should-have-known test."

The Court has since identified certain types of questions that are "normally attendant to arrest and custody" that are not, therefore, subject to the should-have-known test. *See, e.g., South Dakota v. Neville,* 459 U.S. 553, 564 n.15 (1983). It has held, for example, that in the context of a DWI arrest, "a police inquiry of whether the suspect will take a blood-alcohol test is not an interrogation within the meaning of *Miranda*" because such a question, the Court concluded, is "normally attendant to arrest and custody." *Id*.[10]

A four-justice plurality has also explicitly recognized, as a type of question "normally attendant to arrest and custody," a "routine booking question exception" to *Miranda* that "exempts from [*Miranda*]'s coverage questions to secure the biographical data necessary to complete booking or pretrial services."[11] *Pennsylvania v. Muniz*, 496 U.S.

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[10] *See also Jones v. State*, 795 S.W.2d 171, 172 (Tex. Crim. App. 1990) ("[W]e hold the police questioning incident to the videotaped sobriety test was 'activity normally attendant to arrest and custody' of a DWI suspect, not 'interrogation.'"); *McGinty v. State*, 723 S.W.2d 719, 722 (Tex. Crim. App. 1986) (holding that refusal to submit to breathalyzer test did not result from custodial interrogation).

[11] Four justices concurred on other grounds (concluding that the responses at issue were nontestimonial) without explicitly addressing the existence of a booking exception. *See id*. at 608 (Rehnquist, C.J., concurring) (deciding it was "unnecessary to determine whether the questions fall within the 'routine booking question' exception to *Miranda*

582, 600-02 (1990) (Brennan, J., plurality op.) (internal quotation marks omitted). It explained that questions that are asked "for record-keeping purposes only" and are "reasonably related to the police's administrative concerns . . . fall outside the protections" of *Miranda*. *Id*. at 601-02. Routine booking questions are, by definition, questions normally attendant to arrest and custody and "do not, by their very nature, involve the psychological intimidation that *Miranda* is designed to prevent. At the same time, they serve a legitimate administrative need." *United States v. Doe,* 878 F.2d 1546, 1551 (1st Cir. 1989) (internal citations omitted). State and federal courts have uniformly recognized the *Muniz* plurality opinion as establishing such an exception, including this Court. *See Cross v. State*, 144 S.W.3d 521, 525 n.5 (Tex. Crim. App. 2004).[12]

1. Questions reasonably related to administrative concerns

The *Muniz* plurality held that questioning Muniz about his "name, address, height, weight, eye color,

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Justice Brennan recognizes"). Justice Marshall concurred and dissented. *id*. at 608 (Marshall, J., concurring and dissenting).

[12] *See also Presley v. City of Benbrook*, 4 F.3d 405, 408 n.2 (5th Cir. 1993) ("In the wake of *Muniz*, it has been universally accepted by courts, both federal and state, that a routine booking question exception to the Fifth Amendment exists."); *Thomas v. United States,* 731 A.2d 415, 421 (D.C. Cir. 1999) (collecting cases).

date of birth, and current age" was *Miranda* exempt because these questions were "reasonably related to the police's administrative concerns." *Muniz*, 496 U.S. at 601-02. However, the Court has provided no definitive guidance on the scope of the exception. State and federal courts, including Texas's intermediate courts, have since undertaken to identify what routine custodial questions are reasonably related to a legitimate administrative concern so to potentially fall within the exception's parameters. *See Townsend v. State*, 813 S.W.2d 181, 186 (Tex. App.--Houston [14th Dist.] 1991, pet. ref'd) (holding that questions regarding suspect's name, address, weight, height, place of employment, or physical disabilities "normally attendant to arrest and custody").[13] Conversely, courts have held that questions that do not reasonably relate to a legitimate administrative concern are not "booking questions" within the exception. *See Branch v. State*, 932 S.W.2d 577, 581 (Tex. App.--Tyler 1995, no pet.) (asking defendant "where he had been going at the time he was pulled over, when and what he had last eaten, and whether he had drunk an alcoholic

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[13] *See also United States v. D'Anjou*, 16 F.3d 604, 609 (4th Cir. 1994) (questions regarding suspect's nationality and address); *United States v. Dougall*, 919 F.2d 932, 935 (5th Cir. 1990) (name, social security number, birth date, birth place, height, weight, and address); *United States v. Washington*, 462 F.3d 1124, 1133 (9th Cir. 2006) (gang moniker and gang affiliation); *United States v. Snow*, 82 F.3d 935, 943 (10th Cir. 1996) (fingerprinting and signing the fingerprint card).

beverage . . . went beyond the scope of that normally attending arrest and custody and amounted to custodial interrogation").[14]

2. Booking questions "designed to elicit incriminatory admissions" not *Miranda*-exempt

A primary dispute between the parties concerns a footnote at the end of the plurality opinion in *Muniz*, in which Justice Brennan stated that

> recognizing a "booking exception" to [*Miranda*] does not mean, of course, that any question asked during the booking process falls within that exception.

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[14] *See also Sims v. State*, 735 S.W.2d 913, 918 (Tex. App.--Dallas 1987, pet. ref'd) (questions as to what and when appellant last ate and asking appellant to state the date, day, and time were interrogation); *United States v. Downing*, 665 F.2d 404, 405 (1st Cir. 1981) (inquiring about purpose of keys retrieved from appellant's pocket and location of airplane that directly led to discovery of incriminating evidence); *United States v. Mata-Abundiz*, 717 F.2d 1277, 1280 (9th Cir. 1983) (inquiring into defendant's citizenship ten days after initial arrest and after "a true booking had already occurred" and done by officer from agency that did "not ordinarily book suspects" alien); *United States v. Guess*, 756 F. Supp. 2d 730, 742 (E.D. Va. 2010) (asking whether defendant owned a vehicle not a booking question because not necessary to "fill out appropriate booking paperwork or comply with required booking procedures"); *Hughes v.* State, 695 A.2d 132, 141 (Md. 1997) (questions as to appellant's "narcotics or drug use" not administrative).

> Without obtaining a waiver of the suspect's [*Miranda*] rights, the police may not ask questions, even during booking, that are designed to elicit incriminatory admissions.

Muniz, 496 U.S. at 602, n.14 (Brennan, J., plurality op.) (internal quotations and citations omitted). The meaning of this footnote and how courts are to apply it has been the subject of debate among courts throughout the country. *See* Meghan S. Skelton&James G. Connell, III, *The Routine Booking Question Exception to* Miranda, 34 U. Balt. L. Rev. 55, 78-94 (2004) (examining varying judicial interpretation of booking-question exception post-*Muniz*).

Appellant proposes that we apply the should-have-known test in deciding the admissibility of booking questions. He contends that the footnote implies that, even though a question may reasonably relate to an administrative concern and is, therefore, technically a "booking question," the evidence is inadmissible "when an officer should know that his question is reasonably likely to elicit an incriminating response from the suspect." He argues that a booking-question exception that is unlimited by an objective should-have-known standard is inconsistent with cases from Texas courts of appeals and federal courts that have subjected booking questions to the should-have-known test and "encourages law enforcement officers to violate the rights of accused persons by simply recasting incriminating questions as 'booking questions.'" In his

view, an objective should-have-known test must also apply because consideration of an officer's subjective intent and good faith is inconsistent with the Supreme Court's rejection of subjective inquiries in other areas of criminal law.[15]

The State counters that appellant's interpretation "reduces the booking exception to a nullity" and would unduly burden booking officers, who require a clear rule to enable efficient and consistent processing of arrestees.[16] Instead, it proposes its own objective test based on its interpretation of the plurality's "designed to elicit" language: A reviewing court must objectively "examine the questions as an abstract matter to determine whether it belongs in the universe of booking questions." It concludes that booking questions are "always proper" and, therefore, whether the exception applies "is an abstract issue that is unrelated to the facts of the arrest." Under this standard, what an officer knew or should have known in a particular case is wholly irrelevant.

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[15] Appellant cites several areas of law requiring objective judicial inquiry, including search-and-seizure law, *Brady* analysis, and the public-safety exception to *Miranda*. *See Michigan v. Bryant*, 131 S.Ct. 1143, 1156 n.7, 179 L. Ed. 2d 93 (2011) (discussing Court's rejection of subjective inquiries in other criminal-law contexts).

[16] The State cites Supreme Court precedent describing the need for clarity of constitutional rules and ease of application. *See*, *e.g.*, *Minnick v. Mississippi*, 498 U.S. 146, 151 (1990); *Davis v. United States*, 512 U.S. 452, 460-62 (1994).

Alternatively, it argues that "the only way to preserve something of the booking exception is to employ a subjective review of the officer's motivation."

a. Case law supports both parties' positions

i. Texas case law

The State accurately observes that "booking exception cases around the country are confusing and conflicting." Texas case law is no exception. Although this Court has acknowledged the existence of a booking-question exception, we have not yet provided specific guidance on the subject, particularly post-*Muniz*. In *Cross v. State*, we stated, in a footnote, "Questions normally attendant to arrest, custody, or administrative 'booking' procedure do not constitute 'interrogation' for purposes of *Miranda*," without further elaboration. 144 S.W.3d at 525 n.5.

We also briefly discussed the issue in *Ramirez v. State*, in which we determined that questions asked during the booking process regarding the appellant's gang affiliation were reasonably related to an administrative concern for facility-personnel and inmate safety, but we did not address the issue of whether the question was likely to elicit an incriminating response. *Ramirez v. State*, No. AP-75,167, 2007 Tex. Crim. App. Unpub. LEXIS 610 (Tex. Crim. App. Dec. 12, 2007) (not designated for publication), *cert denied, Navarro-Ramirez v.* Texas,

555 U.S. 831, *46 (U.S. 2008).[17] This appears to be the only case in which this Court has directly analyzed and applied the booking-question exception, but, as an unpublished opinion, it has no precedential value. *Id.*; *see also* TEX. R. APP. P. 77.3 ("Unpublished opinions have no precedential value and must not be cited as authority by counsel or by a court."). Furthermore, *Ramirez* does not address the *Muniz*-plurality "design" language nor does it explain the standard of review applicable in determining whether a question properly fits within the exception. *Id.* at *43-47.

Texas courts of appeals have varied widely in their interpretation and application of the exception. At least one intermediate court has, like *Ramirez*, affirmed the trial court's admission of an appellant's

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[17] In that case, the appellant complained that booking questions as to his gang affiliation were interrogation under *Miranda*. *Ramirez*, No. AP-75,167, 2007 Tex. Crim. App. Unpub. LEXIS 610, at *43. The booking officer testified that "he routinely asks prisoners about their gang affiliation '[s]o that we won't put them with a rival gang if they are gang-related' because 'a fight would happen' and '[s]omebody would get hurt.'" *Id.* at *46. We concluded that the question "was one normally attendant to the administrative booking procedure and was necessary to secure the safety of inmates and employees at the county jail." *Id.* Citing Cross and *Muniz*, we held that, because the inquiry was "a routine booking question as opposed to a custodial interrogation," *Miranda* warnings were not required. *Id.* at *45-46.

statements during the booking process regarding his gang affiliation. *Pierce v. State*, 234 S.W.3d 265, 272 (Tex. App.--Waco 2007, pet. ref'd). However, that court implied that its holding was conditioned on "the absence of evidence that the offense for which Pierce was in custody was gang-related," suggesting that the inquiry is not purely abstract and unrelated to the facts of the offense. *Id*. Yet other intermediate courts have exempted from *Miranda* booking questions that were related to the offense for which an appellant was in custody, suggesting that an appellate court merely determines whether a question reasonably relates to a legitimate administrative concern without consideration of the facts.[18] Still others have implicitly subjected a booking question to the should-have-known test in deciding the admissibility of booking statements.[19] And another has considered

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[18] *See Smith v.* State, No. 01-09-00263-CR, 2010 Tex. App. LEXIS 8182, *10 (Tex. App.--Houston [1st Dist.] Oct. 7, 2010, no pet.) (mem. op., not designated for publication) (asking suspect whether he owned car that officer knew had been used in robbery was *Miranda* exempt because "attendant to an administrative 'booking' procedure).

[19] *See Salazar v. State, No. 03-08-00164-CR, 2009 Tex. App. LEXIS 8316, *6-7 (Tex. App.--Austin Oct. 29, 2009, pet. ref'd)* (mem. op., not designated for publication) (noting that questions that "police should know are reasonably likely to elicit an incriminating response" constitute interrogation and holding that officer's administrative question admissible because it "could not be considered reasonably likely to elicit an incriminating response.").

only whether the officer actually intended to elicit an incriminating response. [20] As a result, both appellant's and the State's assertions find support in our State's jurisprudence.[21]

ii. Case law from other jurisdictions

The conflict within Texas's booking-exception case law also exists within other states' and federal case law on the subject. Many courts have held, as appellant advocates, that routine administrative questions are not *Miranda* exempt if questioning officers should have known that the question was

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[20] *See Dickson v. State*, No. 05-03-01284-CR, 2005 Tex. App. LEXIS 4151, *14-15 (Tex. App.--Dallas May 27, 2005, no pet.) (mem. op., not designated for publication) (while executing search warrant on residence, officer asked appellant his "real name" and confirmed that his address was the residence being searched; affirmed because question was one "normally attendant to arrest and custody and was not intended to elicit an incriminating response.").

[21] Although the above-cited unpublished cases have no precedential value, we cite them, not as authority, but merely to demonstrate the conflict among the intermediate courts. *See* TEX. R.APP. P. 77.3; *see also Mays v. State*, 318 S.W.3d 368, 379 (Tex. Crim. App. 2010) (citing unpublished opinions, not as authority, but merely to demonstrate how this Court and other courts have interpreted and applied constitutional law).

likely to yield incriminating information.[22] Several of these courts have reached this conclusion--as appellant seems to have--by simply reading out any distinction between the *Muniz*-footnote "design" language and the *Innis* test, applying the latter to all custodial inquiries regardless of their potential administrative function. *See Hughes*, 695 A.2d at 139-40 (applying *Innis* test, but noting that some courts "have defined the routine booking question exception in the language of *Muniz*, but have then employed the *Innis*-based standard as if the two formulations were interchangeable").[23]

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[22] *See, e.g., United States v. Rodriguez*, 356 F.3d 254, 260 (2d Cir. 2004) (determining whether officers "knew or should have known that evidence for an eventual prosecution would emerge" from administrative questioning); *United States v. Pacheco-Lopez*, 531 F.3d 420, 423-24 (6th Cir. 2008) ("This 'booking exception' to *Miranda* requires the reviewing court to carefully scrutinize the facts, as [e]ven a relatively innocuous series of questions may, in light of the factual circumstance and the susceptibility of a particular suspect, be reasonably likely to elicit an incriminating response.") (internal quotations omitted); *Mata-Abundiz*, 717 F.2d at 1280 ("If the [routine booking] questions are likely to elicit an incriminating response in a particular situation, the exception does not apply. . . . The test is objective. The subjective intent of the agent is relevant but not conclusive.").

[23] *See also People v. Rodney*, 648 N.E.2d 471, 474, 624 N.Y.S.2d 95 (N.Y. 1995) (exception inapplicable "if the questions, though facially appropriate, are likely to elicit incriminating admissions because of the circumstances of

Still, myriad other courts have interpreted *Innis* and *Muniz*, either explicitly or implicitly, as creating an exception to *Miranda* requirements wholly independent of a should-have-known inquiry. In *United States v. Gaston*, for example, the accused was present when officers arrived at a house to execute a search warrant. 357 F.3d 77, 81 (D.C. Cir. 2004), *cert denied*, 541 U.S. 1091 (2004). Officers detained appellant, and as they commenced their search, an officer asked appellant for "his name, address, date of birth, and social security number" without *Mirandizing* him. *Id.* Appellant provided the address of the home being searched and indicated that he co-

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the particular case," but citing *Muniz*-plurality footnote); Thomas, 731 A.2d at 423 n.12 (noting that "[t]he articulation of the relevant test in *Hughes* and *Rodney* [*supra*] differs somewhat from the *Muniz* plurality's 'designed to elicit incriminatory admissions,' but is consistent with the Supreme Court's observation in [*Innis*] that 'a practice that the police should know is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation.'"); *United States v. Reyes*, 225 F.3d 71, 76-77 (1st Cir. 2000) ("Although phrased in terms of the officer's intention, the inquiry into whether the booking exception is thus inapplicable is actually an objective one: whether the questions and circumstances were such that the officer should reasonably have expected the question to elicit an incriminating response."); *United States v. Brown*, 101 F.3d 1272, 1274 (8th Cir. 1996) (citing *Muniz* footnote, but applying *Innis* test); *United States v. Minkowitz*, 889 F. Supp. 624, 627-28 (E.D.N.Y. 1995) (same).

owned the house. *Id*. Holding the response admissible, the D.C. Circuit explained that

> officers asking routine booking questions "reasonably related to the police's administrative concerns" are not engaged in interrogation within *Miranda*'s meaning and therefore do not have to give *Miranda* warnings. Gaston's address and ownership interest in the house also related to "administrative concerns." The questions dealt as much with record-keeping as the similar booking questions asked in *Muniz*.

Id. (quoting *Muniz*, 496 U.S. at 601-02*)*. Therefore, despite that the questions were likely to elicit an incriminating response given the circumstances surrounding the questioning, their legitimate administrative function rendered them *Miranda* exempt. *See id*.[24]

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[24] *See also United States v.* Gotchis, 803 F.2d 74, 79 (2d Cir. 1986) ("since procurement of employment data would in most instances be as innocent and as useful for purposes of booking and arraignment as procurement of data about a suspect's marital status, we decline to create an exception forbidding routine questions about employment when the defendant is suspected of intent to distribute drugs."); *United States v. Blackwood*, 904 F.2d 78 (D.C. Cir. 1990) (not designated for publication), *cert. denied, Crossfield v. United States*, 498 U.S. 906 (U.S. 1990) (rejecting appellants' argument "that in the unique context of a 'crack house' arrest, otherwise routine questions concerning an arrestee's place of residence

By contrast, many courts have interpreted *Muniz's* "designed to elicit" language as precluding only questions that were, in fact, intended to elicit incriminating information. *See United States v. Virgen-Moreno*, 265 F.3d 276, 293-94 (5th Cir. 2001) (observing that "questions designed to elicit incriminatory admissions are not covered under the routine booking question exception," holding that record "obviously" revealed that agents' otherwise routine booking questions were actually intended to elicit incriminating information), *cert denied*, 534 U.S. 1095 (2002).[25] One federal court explained that

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should not be excepted from *Miranda* because they are likely to elicit incriminating information" because the "questions were of a type ordinarily innocent of any investigative purpose").

[25] *See also United States v. Carmona*, 873 F.2d 569, 573 (2d Cir. 1989) (no error where questions not "intended . . . to elicit a confession or incriminating information. The police meant only to gather ordinary information for administrative purposes."); *Nicholas v. Goord*, 430 F.3d 652, 680 (2d Cir. 2005) (Lynch, J., concurring) ("questions aimed at eliciting identifying or 'pedigree' information [are] permitted without warnings, even though the answers to such questions may become evidence either of the particular crime for which the suspect was arrested, or of some past or future crime not yet under investigation."); *United States v. Broadus*, 7 F.3d 460, 464 (6th Cir. 1993) (routine booking questions are not interrogation "absent evidence that the police used the booking questions to elicit incriminating statements from the defendant") (internal quotations omitted); *Timbers v. Commonwealth*,

judicial inquiry as to whether a question is "a disguised attempt at an investigatory interrogation" is "not meaningfully different" from the language "in footnote 14 in *Muniz*, which speaks of questions that are 'designed to elicit incriminating admissions.'" *Velasquez v. Lape*, 622 F. Supp. 2d 23, 24 (S.D.N.Y. 2008) (internal citations omitted). Under this standard, a routine booking question is admissible subject only to a finding that the questioner actually possessed an interrogative intent.

C. Exception Applies if Question Reasonably Relates to a Legitimate Administrative Concern Regardless of What Officer Should Have Known

After considering the diverse interpretations of the booking-question exception, we conclude that, in deciding the admissibility of a statement under the exception, a trial court must determine whether the question reasonably relates to a legitimate administrative concern, applying an objective standard. An appellate court reviews this determination *de novo*, as its resolution generally will not turn on an evaluation of credibility and demeanor. *See Guzman*, 955 S.W.2d at 89 ("[A]ppellate courts may review *de novo* 'mixed

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503 S.E.2d 233, 238 (Va. App. 1998) (booking exception inapplicable when officer's question was "designed to elicit" incriminating statements: officer "did not confront appellant in the holding cell to clarify an ambiguity in her statements made during booking; rather, he sought to investigate what he believed to be false information.").

questions of law and fact'" if resolution of those questions does not turn "on an evaluation of credibility and demeanor."). [26] However, if a determination requires resolution of disputed facts, an appellate court must defer to the trial court's findings as to those facts if supported by the record and review *de novo* whether the question was, objectively, reasonably related to an administrative interest. *See id.*

1. Determining whether a question is, objectively, a booking question without imposing a should-have-known standard gives Supreme Court precedent effect and avoids an absurd result

We decline to adopt appellant's proposed application of the exception because, as the State observes, it renders the exception a nullity: It subjects all custodial questions, "booking" or otherwise, to the should-have-known test. Under appellant's application, therefore, no exception actually exists. What would be the purpose of asking whether a question is a "booking question" if, regardless of the answer, admissibility of the response ultimately turns on whether the question was reasonably likely to elicit an incriminating response? This is an absurd reading of *Muniz*, which

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[26] *See also United States v. Gaston*, 357 F.3d 77, 87 (D.C. Cir. 2004) (Rogers, J., concurring) (noting that reviewing court "must scrutinize the administrative need for the questions, applying an objective standard").

cannot reasonably be interpreted as intending to negate, in a single footnote in the analysis, the exception it had set forth in that same analysis.

Furthermore, appellant's interpretation disregards language in *Innis*, which expressly excluded from the definition of custodial interrogation questions that are "normally attendant to arrest and custody." *Innis*, 446 U.S. at 301. That language gave rise to the booking-question exception by indicating that routine administrative questions necessary for booking processing do not constitute interrogation, regardless of whether police should know that such questions are reasonably likely to elicit incriminating information.[27] *See id.*; *see also*

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[27] Appellant does not assert that Officer Ramirez actually intended to elicit incriminating admissions in questioning appellant. We, therefore, do not reach the question as to whether there is any limitation to the booking exception when an officer's actual intent was to elicit incriminating admissions through questions characterized by the officer as booking questions. *See*, *e.g.*, *United States v. Parra*, 2 F.3d 1058, 1068 (10th Cir. 1993) (officer did "not question Sotelo to obtain general booking information. Rather, he questioned Sotelo about his true name for the direct and admitted purpose of linking Sotelo to his incriminating immigration file."); *see also Corbin v. State*, 85 S.W.3d 272, 280 (Tex. Crim. App. 2002) (Cochran, J., concurring) (quoting WAYNE R. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT § 6.6(a), at 706 (3d ed. 1996) (noting that, with invocation of emergency doctrine, "it is essential that courts be alert to the possibility of subterfuge, that is a

Velasquez v. Lape, 622 F. Supp. 2d 23, 33 (S.D.N.Y. 2008) (declining to interpret that language in *Innis* as "meaningless surplusage" and rejecting defendant's argument that "the only logical interpretation of this [language] is that un-*Mirandized* routine pedigree questioning is permitted because, ordinarily, such questions are not reasonably likely to elicit an incriminating response.") (emphasis deleted).

2. Administrative efficiency and safety

In addition to being a more logical interpretation of the exception, we agree with the State that limiting judicial analysis to determining whether a question is, objectively, reasonably related to a legitimate administrative concern has the added benefit of affording law-enforcement personnel a sphere in which to quickly and consistently administer booking procedures without having to analyze each question to determine if it is likely to elicit an incriminating response. This standard will enable officers to obtain information that will help ensure the safety of facility personnel and other inmates, as well as the suspect. *See United States v. Reyes*, 225 F.3d 71, 77 (1st Cir. 2000) (observing that, although suspects "sometimes feel tempted to lie about even such basic" biographical information, courts cannot ask law-enforcement agents to "forego

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false claim of such a purpose where the true intent is to seek evidence of criminal conduct.")).

all routine procedures and detain an individual without knowing anything about him, not even what to call him in the jail log.").

3. Applicable standard of review

We conclude that a trial court must examine whether, under the totality of the circumstances, a question is reasonably related to a legitimate administrative concern. An appellate court generally reviews *de novo* the objective reasonableness of a question's stated administrative purpose, but defers to the trial court's resolution of disputed facts. *See Guzman, 955 S.W.2d at 89*. If a question lacks a legitimate administrative purpose, the appellate court should apply the *Guzman* bifurcated standard of review to determine the admissibility of the response under the general should-have-known test for custodial interrogation. *See id.*; *Ripkowski*, 61 S.W.3d at 381-82.

III. Analysis

Turning to the facts of this case, we must decide whether Officer Ramirez's question regarding ownership of the flash drive was, objectively, reasonably related to a legitimate administrative interest.

The government has a legitimate interest in identification and storage of an inmate's property. Accordingly, the Texas Administrative Code requires that "[u]pon intake, a file on each inmate shall be established," which "shall include inmate property inventory." 37 TEX. ADMIN. CODE § 265.4(a)(11). The

Code then provides that "[t]he receiving officer shall carefully record and store the inmate's property as it is taken." *Id*. at § 265.10; *see also Gaston*, 357 F.3d at 82 ("In order to comply with [Fed. R. Crim. P.] Rule 41, the officers sought to find out who owned the house."). The Supreme Court has also held, in the Fourth Amendment context, that "it is reasonable for police to search the personal effects of a person under lawful arrest as part of the routine administrative procedure at a police station house incident to booking and jailing the suspect." *Illinois v. Lafayette*, 462 U.S. 640, 643 (1983).[28]

In this case, the record undisputedly shows that, as appellant was being booked into the jail, Officer Ramirez asked appellant if the non-contraband item discovered in the patrol car belonged to him. Upon

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[28] The Court explained that

> A range of governmental interests supports an inventory process. It is not unheard of for persons employed in police activities to steal property taken from arrested persons; similarly, arrested persons have been known to make false claims regarding what was taken from their possession at the station house. A standardized procedure for making a list or inventory as soon as reasonable after reaching the station house not only deters false claims but also inhibits theft or careless handling of articles taken from the arrested person.

Lafayette, 462 U.S. at 646. It concluded that "[e]xamining all the items removed from the arrestee's person or possession and listing or inventorying them is an entirely reasonable administrative procedure." *Id*.

confirming that it did, Officer Ramirez gave the item to facility personnel, who placed it with appellant's personal property for safekeeping. Based on our *de novo* review of the record, we find that the totality of the circumstances objectively show that Officer Ramirez's questions were reasonably related to a legitimate administrative concern. *See Muniz*, 496 U.S. at 601-02.

IV. Conclusion

We hold that the trial court did not err in admitting appellant's statements under the booking-question exception to *Miranda*. Therefore, we affirm the judgment of the court of appeals.

Filed: February 8, 2012

Publish

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-09-00246-CR

CECIL EDWARD ALFORD A/K/A CECIL E. ALFORD, **APPELLANT**

V.

THE STATE OF TEXAS, **STATE**

FROM THE 372ND DISTRICT COURT OF TARRANT COUNTRY

MEMORANDUM OPINION[1]

I. Introduction

Appellant Cecil Edward Alford a/k/a Cecil E. Alford appeals from the trial court's denial of his motion to suppress. We affirm.

[1] *See* Tex. R. App. P. 47.4.

II. Factual and Procedural History

Fort Worth Police Officers Christopher Ramirez and Jason Caffey were investigating a report of a person with a weapon when Officer Ramirez saw Alford with an open beer in a public area near a school. Officer Ramirez approached Alford and began questioning him. When he asked Alford about drugs and weapons, Alford appeared nervous and started to back away. Officer Ramirez told Alford that he was being detained and was not free to leave. Alford ran, and the officers chased him.

After the officers apprehended Alford, they handcuffed him, patted him down for weapons, placed him in the back of the patrol car, and transported him to jail. During the trip, Officer Caffey noticed Alford laying over the seat and "squirming around." When asked about his behavior, Alford responded that his side hurt. Upon arrival at the jail, the officers removed Alford and then searched the backseat area. They discovered a plastic bag with pills[2] and, under the bag, a silver and blue flash drive.

During the intake process, Officer Ramirez held up the flash drive and asked Alford what it was and if it was his. Alford replied that it was a memory drive and that it belonged to him. The flash drive was given to enforcement personnel, who then placed it with Alford's personal property.

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[2] Subsequent testing confirmed that the pills contained more than seven grams of 3,4-methylenedioxy methamphetamine (Ecstasy).

The State charged Alford with possession of a controlled substance of four grams or more but less than 400 grams. Prior to trial, the trial court held a hearing outside the presence of the jury to consider Alford's objections to the admissibility of his statements about the flash drive. Officer Ramirez testified that after "the Miranda" he asked Alford whether the flash drive was his in order to ascertain if the flash drive was part of Alford's personal property. He further stated that the police have to "follow procedures as far as finding out what property belongs to the individual so it can be tied with their personal property." The trial court overruled Alford's objections, finding that, although Alford was in custody at the time of the questions, the questions were booking questions rather than custodial interrogation.[3]

During trial, Officer Ramirez added that he had thoroughly inspected the interior of the patrol car earlier in the day, that it had been clean, and that no one had been in the back seat before Alford. At the close of evidence, the jury found Alford guilty of possession of a controlled substance. The following day, the parties agreed to a plea agreement, which provided for a five-year sentence and the right to appeal. The trial court accepted the agreement and sentenced Alford to five years' confinement. This appeal followed.

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[3] The trial court stated, "[T]he record in front of me is that it was two quick questions that resulted in someone's personal property being placed in the personal property bag."

III. Discussion

In his sole issue, Alford argues that the "trial court erred in admitting incriminating [oral] statements made by [Alford] in response to custodial interrogation which was not preceded by any rights advisements or a waiver of rights."

A. Standard of Review

We review a trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex. Crim. App. 1997). We give almost total deference to a trial court's rulings on questions of historical fact and application-of-fact-to-law questions that turn on an evaluation of credibility and demeanor, but we review de novo application-of-law-to-fact questions that do not turn on credibility and demeanor. *Amador*, 221 S.W.3d at 673; *Estrada v. State*, 154 S.W.3d 604, 607 (Tex. Crim. App. 2005); *Johnson v. State*, 68 S.W.3d 644, 652–53 (Tex. Crim. App. 2002).

B. Analysis

Alford asserts that Officer Ramirez's questions were designed to elicit incriminating information and that because he was under arrest at the time he made the statements, the questions constituted custodial interrogation. He also argues that because he was subject to custodial interrogation, the trial court's admission of the statements in evidence

violated articles 38.22 and 38.23 of the code of criminal procedure. *See* Tex. Code Crim. Proc. Ann. arts. 38.22, 38.23 (Vernon 2005).

Under both the federal and state constitutions, questioning attendant to an administrative "booking" procedure does not generally require *Miranda* warnings. *See Pennsylvania v. Muniz*, 496 U.S. 582, 584, 601, 110 S. Ct. 2638, 2641, 2650, 110 L. Ed. 2d 528 (1990) (holding that officer asking arrestee for his name, his address, and similar basic information did not trigger *Miranda* requirements because such questions "fall within a 'routine booking question' exception which exempts from *Miranda's* coverage questions to secure the biographical data necessary to complete booking or pretrial services") (internal quotation omitted); *Cross v. State*, 144 S.W.3d 521, 524 n.5 (Tex. Crim. App. 2004) ("Questions normally attendant to arrest, custody, or administrative 'booking' procedure do not constitute 'interrogation' for purposes of *Miranda* . . . ."); *Smith v. State*, No. 01-09-00263-CR, 2010 WL 3928485, at *4 (Tex. App.—Houston [1st Dist.] Oct. 7, 2010, no pet. h.) (mem. op., not designated for publication) (admitting in evidence answer to intake questions establishing that defendant resided with and was married to the owner of the car used in the crime for which defendant was charged). Based on the particular facts of this case, we conclude that the information adduced by Officer Ramirez was produced from administrative questioning. Therefore, we hold that the trial court did not abuse its discretion by concluding that Alford's statements were made during normal processing and, thus, did not invoke

article 38.22 and, by extension, article 38.23 of the code of criminal procedure. Accordingly, we overrule Alford's sole issue.

IV. Conclusion

Having overruled Alford's sole issue, we affirm the trial court's judgment.

BOB MCCOY, JUSTICE

PANEL: LIVINGSTON, C.J., MCCOY and

MEIER, JJ.

DELIVERED: December 2, 2010

REPORTER'S RECORD

VOLUME 4 OF 6 VOLUMES

TRIAL COURT CAUSE NO. 1145099D

THE STATE OF TEXAS

vs.

CECIL EDWARD ALFORD

IN THE 372ND JUDICIAL DISTRICT COURT
TARRANT COUNTY, TEXAS

TRIAL ON MERITS

On the 15th day of July, 2009, the following proceedings came on to be heard in the above-titled and numbered cause before the Honorable Scott Wisch, Judge Presiding, and a jury, held in Fort Worth, Texas, reported by machine shorthand utilizing computer-aided transcription.

Jana Kay Bravo, CSR
Deputy Official Court Reporter
372nd Judicial District Court
Tarrant County, Texas

[Excerpt Begins at Page 11 of the Transcript – Hearing on Petitioner's Motion to Suppress]

THE COURT: All right. For the limited purpose of potential legal issues relating to a very limited part of this witness's testimony, state your full legal name. And I'll conduct a hearing in order to respond to the limine motion and verbal request of making a ruling on admissibility of certain of those statements. Is that what I understand this is about?

MR. HARRIS: Yes, Your Honor.

THE COURT: Don't mess with that. You're supposed to just swing it. But that's why you swing it forward and swing it back. If you try to push this, it's just like a piece of rope instead of microphone stand. Be very careful.

(Discussion off the record)

THE WITNESS: On the record. State your legal name, please, for the court reporter.

THE WITNESS: Christopher Anthony Ramirez.

THE COURT: So bypassing anything other than necessary for legal purposes, you can cut to the chase on the issue of those statements.

MR. HARRIS: Okay. All right. May I proceed, Judge?
(Motion hearing outside presence of jury commences)

CHRISTOPHER RAMIREZ, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. Officer Ramirez, where do you work?

A. Fort Worth Police Department.

Q. And how long have you worked there?

A. Four-and-a-half years.

Q. Now, were you working on January the 29th of 2009?

A. Yes, sir.

Q. And after around 9:45 to 10:00 p.m., were you working at that time as well?

A. Yes, sir.

Q. Did you take Cecil Alford into custody on that day?

A. Yes, sir.

Q. And upon getting him back to the police station or, I guess, to the jail; is that correct?

A. Yes, sir.

Q. You took him to the jail. Upon getting him back at the jail, was there property that was recovered?

A. Yes, sir.

Q. And can you tell the Court what those items were?

A. A clear plastic baggie with pills inside, and a blue-and-silver memory drive, flash memory drive for a computer.

THE COURT: Just so I'm clear, like a thumb drive with USB port?

THE WITNESS: Yes, sir.

Q. (By Mr. Harris) So you collected those two items and a clear plastic baggie with pills, correct?

A. Yes, sir.

Q. What is the standard procedure in reference to personal property by an individual with y'all's department?

A. Personal property, if it's on that person or it's not like a backpack or something like that, it goes in their personal property, which is handled by the Mansfield staff at 350 West Belknap.

Q. And do you all have to follow procedures as far as finding out what property belongs to the individual so it can be tied with their personal property?

A. Yes, sir. We have to make sure it is by asking, "Is this your property?" That way we can put that into their personal property. We don't want to put something that's not theirs into property.

Q. And did you ask the Defendant upon getting back to the jail questions in reference to the thumb drive?

A. Yes, to establish if it was his property.

Q. And can you tell the Court what you asked?

A. I asked him, I held the thumb drive up to where he could see and asked him what it was, and he explained to me what it was. He said it was a memory drive for a computer.

Q. And did you ask him any follow-up questions?

A. Yes, and asked him if it was his.

Q. And how did he respond?

A. Yes.

Q. At that point what did you do?

A. I took the thumb drive and I handed it over to Mansfield law enforcement personnel, and they placed it in his personal property.

Q. So that thumb drive was not collected as evidence?

A. No.
MR. CUNNINGHAM: Judge, I'm going to object. Unless the officer actually saw it placed in the property room or back in his personal property, we would object to the hearsay with regard to what happened because, obviously, he didn't see it.

THE COURT: Did you actually see the people, Mansfield staff at 350 put this in a personal property bag or --

THE WITNESS: Yes, sir. There's a little window when you hand it to them, they open it up, they put it in there, they seal it up.

THE COURT: And you were actually standing there when it happened or were you just told that is what they were going to do?

THE WITNESS: Yes, sir. I handed it right there and they did it right then and there.

THE COURT: Your objection is overruled.

Q. (By Mr. Harris) That thumb drive was not collected in reference to evidence in this case; is that correct?

A. No.

MR. HARRIS: At this time the State would pass the witness. I'm sorry, Judge, may I ask one additional question?

THE COURT: Yes.
Q. (By Mr. Harris) And that's standard procedure and standard questions that you ask on collecting property for personal effects of individuals?

A. Yes, sir. Wallets, watches, any type of personal property, ask them if this is yours, if they say, yes, it is theirs, claim it as their own personal property, it goes into their personal property which can be collected as soon as they are released from jail.

MR. HARRIS: At this time, pass the witness.

CROSS-EXAMINATION

BY MR. CUNNINGHAM:

Q. Officer, so I'll understand, this was, in fact -- my client was under arrest, was he not?

A. Yes.

Q. And at the same time that you produced the thumb drive was the same time you produced the drugs; is that correct?

A. No.

Q. According to your police statement, that's how it's referred in your police statement. Is the police statement incorrect?

A. No, sir. I asked him -- I held the drugs up, but I didn't ask him about the thumb drive until afterwards.

Q. But in the same period of time, right?

A. No, sir. It wasn't until after he was already inside the vestibule and the Miranda, being searched that I asked him about the thumb drive.

Q. Let's do it this way. You're saying that at that point in time, even though that would normally be evidence -- let me back up, I'm sorry. Let's do it this way. At the time that you arrested the Defendant, you had not found any drugs on him, correct?

A. I didn't search him, sir. I did not find any.

Q. You did not find any?

A. I didn't search him.

Q. Did some other officer search him?

A. Yes, sir.

Q. To your knowledge, nothing was found; is that correct?

MR. HARRIS: Object to hearsay.

MR. CUNNINGHAM: No, he can tell us --

THE COURT: It's just like the evidence, personal property bag, he's watching what happened, he can say what he saw. If it happened later, then it's hearsay.
THE WITNESS: I didn't watch the search process. I had just got done with a pretty lengthy pursuit, so the officers were searching and I was just riding second person.

Q. (By Mr. Cunningham) Then who found the -- I'm sorry, I didn't mean to interrupt you. Who found the flash drive?

A. Officer Caffey.

Q. Okay. So when you --

A. -- and myself.

THE COURT: Okay. Hold on. Just so we get this straight for the long term. You make sure the question is over, and you --

MR. CUNNINGHAM: I apologize, Judge.

THE COURT: And you make sure the question is over before you answer, even if you think it's a yes and no. She can't type in stereo. So make sure he's through,

pause, answer, be sure to wait for the next question. Just don't talk over each other.

Q. (By Mr. Cunningham) Officer, the flash drive we're talking about, you didn't find it; is that correct?

A. I was there when it was found. We were together, escorting him out of the --

Q. So then you saw where it came from?
A. I saw where it was.

Q. That's what I'm asking.

A. Yeah, I saw where it was found.

Q. And at that time he's already inside the police station?

A. No. We're walking him in there.

Q. So what I'm trying to ascertain, Officer, is, at that point in time he's arrested, correct?

A. Yes.

Q. And did you ask -- did anybody while you were there ask him any questions about the controlled substance?

A. No.

Q. Nobody asked anything at all about that?

A. I believe Officer Caffey might have asked him.

Q. Well, you were there. You testified that you were there when you walked him in.

A. Well, I was there, but I wasn't listening absolutely to everything that was said.

Q. All right, Officer. So you did not find the flash drive; is that correct?
A. I was right there when the seat was lifted up.

THE COURT: The question has been asked and answered, Counsel, for purposes of this hearing.

Q. (By Mr. Cunningham) How close was he -- he had actually gotten in the building whenever you approached him concerning the flash drive?

A. Yes, he was already inside.

Q. Do you know where the flash drive was found?

A. Yes, sir.

Q. Were you present when the flash drive was found?

A. Yes, sir.

Q. Did you see them find it?

A. Yes, sir.

Q. Was it with the drugs?

A. Yes, sir.

Q. That is to say in the same general vicinity?

A. Yes, sir.

Q. So then under those circumstances that would certainly appear to be evidence, would it not?

A. No, sir.

Q. You don't consider that evidence?

A. No, sir. It wasn't narcotics or anything like that.

Q. I see. Thank you, Officer.

MR. CUNNINGHAM: That's all the questions I have, Judge. Our objection, Your Honor, goes to --

THE COURT: Hold on a minute. Let's find out. What I want to ask, did you inventory his property to ask is this -- who does this flash drive belong to, is this your property, personal property?

MR. HARRIS: Yes.

THE COURT: And he says yes.

MR. HARRIS: Yes.

THE COURT: Do you want to go into the what is it or just that he claimed ownership or both?

MR. HARRIS: I'm sorry?

THE COURT: Are you going to ask him, "Not only is this your property, but what is it?"

MR. HARRIS: No. Just as far as this is a thumb drive that he did collect and that the Defendant made a statement to the police officer claiming ownership of that thumb drive.

THE COURT: Well, here's the two statements that I recall. He's going through property. He holds it up and says, "What is this?" The Defendant says, "It's a memory drive for my computer. It's a memory drive for a computer." "Is it yours?" "Yes." Puts it in terms of personal property.

MR. HARRIS: That's what I wanted to go into, what is it and is it yours.

THE COURT: That's what they're offering. What is your objection to those two specific statements?

MR. CUNNINGHAM: Very well, Your Honor. I object as follows: Violates Rule 38.22 and 38.23 of the Texas Code of Criminal Procedure because what the officer is doing, in effect, he's using this as evidence, even though they're not going to offer it as evidence, they want to show the flash drive was his, it's related to the

drugs, and, therefore, it must, in fact, be his. That constitutes custodial interrogation with any kind of circumstances that both the question and the answer are not admissible under 38.22 and .23.

THE COURT: What's your response to the objection that it's de facto custodial interrogation?

MR. HARRIS: Well, then interrogation would be as to the offense, the charged offense in this case. He's asking the standard book-in -- questions that are generally asked at book-in as far as to make sure that this Defendant has his property logged in correctly. So, and the questions that the officer did ask him were in response or to solicit information as to make sure that the property is logged in correctly for the Defendant's personal effects rather than as to the offense of asking him questions --

THE COURT: And let me say this. From both of your viewpoints, I know you're trying to keep this short because there's a jury back there, but in the form of -- hold on a second. Will you step outside just a second?

(Witness exits courtroom)

THE COURT: This conversation takes place at 350 West Belknap, which is in the basement, which is the preliminary booking area of the Fort Worth Police Department. Prisoners are brought there, booked, they're charged, they're taken to Mansfield, and

actually Mansfield keeps the property because that's the jail they stay at. Everyone agree to that?

MR. CUNNINGHAM: Yes.

MR. HARRIS: Well --

THE COURT: Well, The general area. Used to be the city-county jail, and they split it.

MR. CUNNINGHAM: Right.

THE COURT: So my question is, for the record, where, if you can agree, if not, where was this thumb drive seized? How many people were around it? I don't know anything to know -- I don't have enough information to make a ruling because I don't know anything other than there's a thumb drive in the jail that was seen. I heard something about a car. I don't have a record adequate enough to know if this is a book-in or -- I don't know anything about this thumb drive from either side's viewpoint. So before I rule on this, I'll hear this record. I'll listen to whatever else there is in the trial, but I'm not going to rule on the objection until I hear a contextual record on which to place the circumstances as to what happened at the police station. Y'all follow where I'm going?

MR. CUNNINGHAM: Yes, Your Honor.

THE COURT: I mean, you're trying to say -- it's trying to link to the evidence if it really is evidence of the crime. Well, I don't know if it is or not, as opposed to if

it was a comb in his pocket. "Is this your comb?" or a comb -- there's a jacket, "Is this your jacket?" at one extreme, and at the other end is, "Are these your 454 baggies of crack?" They don't ask him when they open the trunk. They ask him after he's arrested and been booked. So I don't know where it is between those extremes because I don't have enough record here to understand the context. And, quite frankly, I don't know if that goes to either of your benefit for --

MR. CUNNINGHAM: That's -- I'm sorry, Judge. That's exactly what I'm driving at with regard to their normal book-in procedures. I understand that they find on his person and ask is this yours, sure. I mean, that's the standard book-in procedure. But that is not what we have here. Here we have a situation where, by their own testimony, they supposedly find that in he back seat of the police car next to the drugs. And they wait till they get him inside, and now all of a sudden they're going to say, "Is this yours?"

THE COURT: Okay. So let me just say this. The back seat of a police car, meaning like shoved under the back seat like when a prisoner is transported?

MR. HARRIS: Judge, may I bring the witness back out to develop the record?

THE COURT: Well, it might be simpler to do than for me to wait --

MR. HARRIS: That's what --

THE COURT: Because I hear about a car just pulled over, there's a car with a thumb drive and a bag of drugs laying on the floorboard under the driver's feet or under the back passenger's feet or under nobody's feet because there isn't any passenger and he's standing by a car, so if you want to develop the record more, likewise you'll have an opportunity to do the same. Are y'all both agreeable to that?

MR. CUNNINGHAM: Yes.

MR. HARRIS: Yes, Your Honor.

THE COURT: Then bring the witness back in. And I'll give you the ruling at the end of this hearing since I will have information, hopefully with the context with which to do this. But in all fairness to both of you, you both have read the report. You've both referred to them. You both know what happened and you've both infringed on making the assumption that I do too and I don't --

MR. CUNNINGHAM: I'm sorry, Your Honor. You're right, Judge.

REDIRECT EXAMINATION

BY MR. HARRIS:

Q. Officer Ramirez, you're one and the same Officer Ramirez that just testified; is that correct?

A. Yes, sir.

Q. Let me call you back in and let's just develop this record a little bit further. You arrested the Defendant on January the 29th of 2009; is that correct?

A. Yes.

Q. Where did you take him?

A. 350 West Belknap.

Q. What is 350 West Belknap?

A. It is our holding facility where we take all of our prisoners to that are arrested on Fort Worth charges.

Q. What did you do once you got him there?

A. Opened up the back seat or let him out of the back seat and exited the vehicle.

Q. And when you say let him out of the back seat, is this the back seat of your --

A. Back seat of my marked patrol car, yes.

Q. At the time that you let him out of the back seat, what did you do?

A. I brought him towards the back of the car so we could check the inside of the vehicle.

Q. And did y'all do that?

A. Yes, we did.

Q. Y'all did that immediately upon removing him from the back seat of the car?

A. Immediately every time.

Q. And what did you find when you checked the vehicle?

A. We located a small, clear baggie containing pills inside of it and a memory drive.

Q. And where did you locate that at?

A. It was sort of in the middle of where the two seats are but closer to the passenger side door.

Q. When you're talking about middle and passenger side door, are you talking about the very back seat of your patrol car?

A. The very back seat, underneath the seat.

Q. And when you say underneath the seat, can you describe just for the Court's purposes, is it on top of it or is it tucked in or where was it located?

A. The back seat in the Fort Worth police vehicles, it could be taken out. So we lifted the back seat up and directly on the back part of the car where the seat

would sit. It's right there where the passenger would sit.

Q. And on the side -- I'm sorry, I might be a little confused as far as the -- when you talk about the back seat, are you talking about a seat that you can just lift up?

A. Yes, the seat itself.

Q. And did you lift that seat up and search?

A. Yes, sir.

Q. And what did you see when you did that?

A. We located the clear plastic bag with pills in it and the thumb drive.

Q. And where was that at?
A. In the middle of the -- underneath the seat in the middle of the seat area.

THE COURT: Like halfway between the two doors?

THE WITNESS: Yes, sir.

THE COURT: Like the center where the transmission would have been in an old car?

THE WITNESS: Yes, sir, right there.

Q. (By Mr. Harris) Okay. Gotcha. Okay. So it"s not like a bench-style seat where you have to lift up the whole bench, but it"s in the middle area where it's sectioned off; is that correct?

A. No. It is a bench seat where you lift it up. It"s one black seat like this right here. And when you lift the whole thing up, what it sits on is where we found it.

Q. And did you collect that at that point?

A. Yes, we collected it.

Q. And what did you do next?

A. We took that into possession, along with a thumb drive, and took him into jail with that property.

Q. Okay. Did you immediately take him into the jail with the property?

A. Yes, directly in the jail. He kind of pushed it a little bit and didn"t want to go inside after he saw that we did have the pills –

MR. CUNNINGHAM: Object, Judge, as to his speculation as to why and under what circumstances. He's offering an opinion as to what –

THE COURT: Well, I"ll let him describe what was readily visible and the observations he saw, but don't guess what he's thinking. If you can describe his

reactions to any external stimulus, visual or verbal, that you observed.

THE WITNESS: Yes, sir.

THE COURT: He was able to see or hear what anyone in his position would have been able to see. But don't guess on what he's thinking.

Q. (By Mr. Harris) Did the Defendant appear to recognize the thumb drive and the bag that you collected?

MR. CUNNINGHAM: Again, that calls for speculation on this officer's part as to what my client did or did not know.

THE COURT: For purposes of this hearing, I'll allow that. But in the presence of the jury, I won't allow that question to be asked that way, what his reaction was on hearing or seeing stimulus, but not to speculate to what he did or didn't do.

Q. (By Mr. Harris) After you collected those items, how did the Defendant react?

A. He reacted startled, really nervous is what it appeared to look like.

Q. And you stated that you took him into the jail; is that correct?

A. Yes, sir.

Q. Book-in process?

A. Yes.

Q. And at that point did you ask him any questions?

A. We filled out the initial sheet of paper, and then he goes to be searched by Mansfield law enforcement personnel. That's where I asked him.

Q. Do you recall or remember what floor?

A. It's the ground floor. It's just one floor.

Q. And about how long was the Mansfield, whenever they searched him, about how long after y'all had gotten there with the search team?

A. About five minutes.

Q. And at this point you're asking him a particular question; is that correct?

A. Yes, sir. Roughly three minutes after we had gotten inside of the building.

Q. And what did you ask him?

A. I asked him -- I held up the thumb drive and I asked him what it was.

Q. And then the rest of your testimony, as mentioned earlier, you testified just a moment ago in reference to the rest of that conversation; is that correct?

A. Yes, sir.

MR. HARRIS: At this time, the State would pass the witness.

THE COURT: All right. Additional cross?

MR. CUNNINGHAM: Yes, Your Honor.

RECROSS-EXAMINATION

BY MR. CUNNINGHAM:

Q. Officer Ramirez, the thumb drive that you found at the scene, was it in close proximity to the drugs?

A. Yes, sir.

THE COURT: What does that mean in English? If you will clear that up for me.

Q. (By Mr. Cunningham) You said that the drugs were underneath the seat; is that correct?

A. Yes, sir.

Q. Was the thumb drive also underneath the seat?

A. Yes, it was underneath the seat.

Q. Was it within, let's say, two to three feet of the drugs that you found?

A. Yes.

MR. CUNNINGHAM: Thank you. That's all I have, Judge.

THE COURT: So I understand both were found under the seat when you removed the seat?

THE WITNESS: Yes, Your Honor.

THE COURT: And how far apart were they? Show me with your hands how far apart, the drive and the bag.

THE WITNESS: They were touching.

THE COURT: So they were not two or three feet, they were immediately adjacent to each other?

THE WITNESS: Yes, sir.

THE COURT: Okay. Any redirect?

MR. HARRIS: No redirect from the State, Judge.

THE COURT: And, lastly, this thumb drive, it was placed in his personal property and you never saw it again after that?

THE WITNESS: Yes. I never saw it again after that.

THE COURT: Y'all have any other questions based on --

MR. CUNNINGHAM: Just one very quickly.

FURTHER RECROSS-EXAMINATION

BY MR. CUNNINGHAM:

Q. Officer Ramirez, do you have a copy of the book-in report? Does it show whether or not it was placed in his property?

A. We do not have copies of that as officers. We don't get copies of that. Only if we book it in to our property room and hand it off that way because then we get the personal property.

Q. So then I take it if they booked -- if it was placed in his property, it would certainly show up in the book-in report; is that correct?

A. I don't know, sir. I don't deal with that.

Q. Under normal procedures?

A. No, sir. Mansfield takes care of the property that's going to be released to -- back to the arrested person after he gets out of jail.

Q. So you don't know if it was booked in or not, if it was held as evidence?

A. If it was held as evidence, I would have tagged it as evidence.

Q. So if it wasn't held as evidence, you don't know what happened to it other than it appeared at the book-in; is that correct?

A. No --

Q. As his property, I'm saying.

A. It goes into his property, and when he's released from jail, he gets a bag that has been sealed by Mansfield jailers at the door that contains all of his property.

Q. I understand that. But what I'm really asking you, Officer, is to your knowledge with regard to that, the last time you saw it was when it was handed to the jailer there at the Mansfield facility; is that correct?

A. Yes, sir. I saw it in the bag with his property.

Q. But if that is the case, do they keep a record of what they keep in? For example, there was $317 that they found.

A. That's what we found, sir, and we take possession of that.

Q. So you kept the money?

A. We booked it, yes, sir, we did.

Q. That's what I mean. So you considered that to be evidence?

A. Yes, sir.

Q. But you didn't consider the flash drive to be evidence?

A. No, sir. That's personal property, sir.

Q. Was the money his personal property?

A. No, sir. That was pending seizure, sir.

Q. Did they ever file a seizure to your knowledge?

A. I couldn't tell you, sir. It's another department.

MR. CUNNINGHAM: That's all, Judge.

THE COURT: Just so this record is clear and I'm clear, Mansfield jail staff, who were contracted by the City of Fort Worth to house prisoners, are actually on site at 350 to take prisoners from Fort Worth directly there, and they're responsible for the person after you give them over?

THE WITNESS: Yes, Your Honor.

THE COURT: They're likewise responsible for any personal property?

THE WITNESS: Yes, Your Honor.
THE COURT: And the reason it's bagged, they don't have to come back to Fort Worth when they get released. If they make bail or if the charges are dropped, they're released directly from the Mansfield jail facility.

THE WITNESS: Yes, Your Honor.

THE COURT: Not through Fort Worth PD?

THE WITNESS: Yes, Your Honor.

THE COURT: They might end up coming to county for charges filed, but you lose contact and control the minute that Mansfield person accepts that person?

THE WITNESS: Yes.

THE COURT: So any records or property inventory sheets or any of that, that's a Mansfield jail function as far as their contract to keep up with the prisoners?

THE WITNESS: Yes, sir, strictly Mansfield.

THE COURT: So they don't forward you copies of what they do?

THE WITNESS: No, sir, they don't.

THE COURT: And, of course, vice versa?

THE WITNESS: Yes, sir. They don't.

THE COURT: I'm clear. Anything else from either side?

MR. HARRIS: Not from the State, Judge.

THE COURT: Okay. Then you can stand back out.

(Witness exits courtroom)

THE COURT: Okay. Anything else either side wants to argue for the record?

MR. HARRIS: I'm sorry, Judge?

THE COURT: Any further objections or argument on the issue of the statement about the thumb drive, any additional objections other than 38.22 and 38.23?

MR. CUNNINGHAM: No objection other than those two, Your Honor.

THE COURT: Okay. Any additional argument that you haven't already made prior to the record being extended asking the circumstances under which these items were obtained and processed?

MR. CUNNINGHAM: The only thing I can point out, Judge, is the testimony that they found the thumb drive in close proximity, in fact, touching. It seems to me that that would affect -- constitute evidence as far as it goes. And the attempt to get around 38.22 and

.23 by saying, "Oh, no, we just did what we normally do when we book a prisoner." And we feel it's in violation of 38.22.

THE COURT: Okay.

MR. HARRIS: We would just renew our argument, Judge, and say that if that thumb drive were evidence or appeared to be evidence at the time, they would have gone on and logged it into evidence. This is the mere book-in process. That's what the question was in reference to, and that's what the Defendant responded to. The thumb drive was not logged in as evidence or seized as evidence for purposes of the offense or asking questions in reference to the offense in order to make sure that the Defendant received all of his property back upon release. And this was conducted by Mansfield. And the question was asked by our officer, and we would argue that this is not a violation of 38.22 or 38.23 in reference to this officer not questioning the Defendant in reference to the offense. And the purpose of that question was not in reference to the offense.

MR. CUNNINGHAM: If that is their position, Your Honor, there is no relevance. It is not evidence, it has nothing to do with this case, why should it come in at all? There's no relevance.

THE COURT: That's a different objection, Counsel.

MR. CUNNINGHAM: I understand.

THE COURT: This is a statutorily -- statute based on the constitutional rulings.

MR. CUNNINGHAM: I understand. I'm raising that issue as well.

THE COURT: Well, I'll carry that one based on the record, which is simply whether the statement is personal, not whether it's admissible, two different issues. Well, you know, the question, quite frankly, isn't whether it's evidence or not, whether it should be evidence or not, because, quite frankly, there's all kinds of arguments that can be made in both directions. But since no one apparently thought to see what the contents of the thumb drive were, didn't treat it like a driver's license next to the baggage, which is in the name of the person. I don't know if it's of evidentiary value or not, in and of itself or independent of its presence next to a controlled substance. But the issue for the Court is whether this is a custodial interrogation, whether the statement is admissible, not whether the thumb drive is admissible. So the circumstances of custodial interrogation depend on the totality of the circumstances surrounding the question and whether someone should or should not have recognized a thumb drive as being potential evidentiary value in the modern age, the same as documents are in the ancient age I grew up in. If it was treated as personal property, if he was booked and a simple book-in inquiry asked about the thumb drive as if it were a comb or a jacket or a pair of shoes, it was placed in personal property, not preserved, not analyzed. Whether that could or should have

happened as a part of cautious police work or careful investigation or creative thinking, the issue is just whether the statement and the interrogation -- was is interrogation or was it book-in. The law is clear if you book someone, you ask, What's your name and address? Do you take medications? Is this your $1.87? Correct. Is this your change? Is this your money?

That's not interrogation. And, quite frankly, it's not necessarily related to any particular offense. It's related to interrogation versus processing or housekeeping. There's a term of art the Supreme Court uses. But it basically means a housekeeping function in which questions and answers are necessary in order to routinely process the prisoner. And in light of the fact the best evidence that it's not interrogation is a matter of common sense. It's when he says, "It's mine," he didn't say, "Oh, well, never mind," this is no longer personal property. This is going to the crime lab for fingerprints. This is going to the crime lab. This is going to the computer lab to be analyzed to see if there's donuts. The intent in the processing are the best evidence as far as common sense because it was put in his property and never to be seen again. I'm assuming; is that correct?

MR. HARRIS: Yeah.

THE COURT: State hasn't gone to retrieve that. You're not trying to offer that as evidence as far as the thumb drive. I believe the statement, though, what is this, is this yours, and personal property, yes, it does have evidentiary value, just as it does if a person

leaves the prison and lies about their identity, and that becomes consciousness of guilt at a trial, that they give a fake name as they're being booked has evidentiary value. But based on the record before me, I don't see this as being a product of custodial interrogation. For purposes of 38.22 I find as a matter of fact and law, he was in custody. I'm simply finding it was a custodial interrogation. It was normal processing. Based on the totality of the book-in, I find it's not normal interrogation. Whether it should have been something else, whether it should have been addressed earlier, the record in front of me is that it was two quick questions that resulted in someone's personal property being placed in the personal property bag. And, therefore, those two statements, within a very narrow context, are admissible and do not violate 38.22. If they don't violate 38.22, then as a matter of law they can't violate 38.23. So you want a running objection to those statements?

MR. CUNNINGHAM: I do, Your Honor. And I'll likely be making the relevance issue at the time.

THE COURT: Yeah, and the relevance issue, you can make that objection when they go into it, and hear that. Does anyone want to go to the bathroom, get coffee? Is your other witness here?

MR. HARRIS: Yes, sir.

[Excerpt from trial transcript beginning at page 71 of the Transcript]

Q [By Mr. Harris]. After the Defendant was placed in the car, where did you take him?

A [By Offier Ramirez]. We transported him to 350 West Belknap.

Q. What's that?

A. That's the Fort Worth police headquarters and jail. It's a holding facility.

Q. And do you recall how long it took you to get there?

A. I can't recall how long it took.

Q. Once you got there, what did you do next?

A. Once we got there, we advised the dispatcher that we had arrived, and we exited our vehicle, placed our weapons in a secure area, and get the AP, arrested person out of the back of the vehicle.

Q. Did you do that in this case?

A. Yes, sir.

Q. What do you do after you get them out of the vehicle?

A. We immediately check the back seat as soon as we clear him from the back seat.

Q. And did you do that in this case?

A. Yes, sir, we did.

Q. Did you find anything upon checking the back seat?

A. Yes, sir, we did.

Q. What did you find?

A. We located a bag, a clear plastic bag with pills inside of it.

Q. And what else did you find?

MR. CUNNINGHAM: Again, Judge, we would object as to relevance.

THE COURT: Overruled.

MR. CUNNINGHAM: Note our exception.

Q. (By Mr. Harris) What else did you find, Officer?

A. We found a small silver-and-blue memory flash drive.

Q. And where were those items located?

A. They were underneath the back seat on the -- where the seat would go.

Q. Okay. And when you say where the seat would go, where are you talking about?

A. Well, in the marked Fort Worth police units, the back seat itself, the cushion, it lifts up and can be taken completely out of the vehicle, which means the metal portion which the cushion rests on, that's where it was.

Q. And how close in proximity was the thumb drive to where the bag was?

A. It was directly under the bag.

Q. What did you do at that time upon seeing them?

A. We collected them.

Q. And where was the Defendant at this time?

A. He was probably two feet away.

Q. Once you collected that, what did you do with the Defendant?

A. We took him into the vestibule, which is the entrance for the jail.

Q. Okay. What takes place in the vestibule?

A. We fill out required paperwork, and that's basically a waiting area that the prisoners go through for the Mansfield law enforcement officers to search. They

form a line, and then the next in line goes in and they get searched, and then they go get placed in a cell, and then the next in line goes in, gets searched and do the same thing.

Q. And when they get searched, do they get a more thorough search?

A. Lockdown.

Q. Because they're going into a more secure lockdown facility?

A. Yes, sir.

Q. Now, when you were out there and you noticed the items, who else was out there with you?

A. Officer Caffey.

Q. He was your partner working with you?

A. Yes, sir.

Q. And he also saw all of this?

A. Yes, sir.

Q. Once you got the Defendant in through the book-in process, what did you do?

A. As he was being searched, I took the thumb drive that was located in the back seat and I held it up and I asked him what it was.

MR. CUNNINGHAM: Again, Judge, we would object as to relevancy.

THE COURT: All right. Reconsidering the whole record, overruled.

Q. (By Mr. Harris) And did he respond when you asked him that question?

A. Yes, sir, he did. He said it's a memory drive.

Q. And what was the next question you asked him?

A. I said, "Is it yours?"

Q. And why did you ask him that?

A. Well, if it's his and it's his personal property, then it goes into the personal property to the Mansfield law enforcement personnel.

Q. When you say Mansfield law enforcement personnel, they're contracted to handle the book-in process with the Fort Worth Police Department?

A Yes, sir, book-in, handling and holding.

Q. And did he respond to that questions?

A. Yes, sir. He said it was his.

MR. HARRIS: At this time the State would pass the witness.

[Excerpt from trial transcript beginning at page 181]

STATE'S CLOSING ARGUMENT

MR. HARRIS: May it please the Court, Counsel. Members of the jury, remember when I talked about what your job as a jury is, to render a verdict based solely on the law and evidence, not the law and the evidence of this is what I saw on TV, not the law and evidence of this is what I read in the newspaper. And each of you made me that promise, and that's why you're sitting in here, because you said that you could follow the law, the law which the Judge gave to you that will be handed down to you as you get ready to walk back there. Now I want to address just a few things about what the defense attorney, Mr. Cunningham, told you. Fingerprints. Okay. What did Officer Ramirez state? It was in a sandwich bag. You can take this back there. Using your common sense and reasoning, can you retrieve a fingerprint off of this old, wrinkled-up bag? It's just another little rabbit trail for you to run down. I encourage you, whenever you make your decision, you get to use your reasoning and common sense. We don't ask you to leave that on the other side. That's what you get to take back there whenever you determine whether the State's proven its case beyond a reasonable doubt. I want you to look at

this. These weren't in this packaging at the time they were in this bag. What is this? When these aren't in this package, this is money. The Defense said, "Well, why wouldn't he toss it. He had every opportunity --

MR. CUNNINGHAM: Objection, Your Honor. Nobody testified that's money. In fact, they testified that's drugs.

MR. HARRIS: May I finish my argument?

THE COURT: Well, I'm going to sustain his objection.

MR. HARRIS: Using your reasoning and common sense, drugs and the sale of drugs is money.

THE COURT: Time out. I will tell the jurors the evidence comes from the witness stand. You may draw any reasonable conclusions or logical deductions from the evidence, but what the lawyers say isn't evidence. This is argument. You may continue.

MR. HARRIS: I mean, this is the equivalent of money. Why would someone throw money away? You're going to try to hold on to it as long as you can until you realize, "I'm kind of in a situation now." I mean, you're not going to ditch this, especially you're going to try to hold on to this as long as you can. You get to use your common sense and reasoning when making that determination. You get to, as we talked earlier, listen to those officers' testimony and judge their credibility. Now, the Defense brought up about a pat-down and search, and you got to hear that. There's a thing called

the Constitution that's great for all of us and protects all of us. And one part of that Constitution is we're protected from unreasonable search and seizures. You don't get to just go up and start digging in my pocket. These officers did exactly what legally they were supposed to do. Now, there's a -- they can do a pat-down, and if there's an instance of a weapon where they feel a bulge, a hard object that they feel could be used as a weapon against them, yes, that's for their safety. And it's very brief. They have a limited amount of time to do that. But as far as going and digging in someone's pockets, no matter if you think they're in a drug area or you think that they might have some drugs on them, you don't get to do that. That's why we have search warrants. Now, once they go and get processed in and booked in, of course, they get to do an inventory of all of the valuables and what all everyone has on them, so it goes into their personal effects.

Now, someone asked you about this. We have to prove possession, the Defendant had care, custody, control, or management, either of those. That's what we've got to prove to you, and all of the other elements that you heard about. You get to use your common sense and reasoning when making that. But remember what Officer Ramirez stated whenever they went in there. Starting out, they evaluate, they look in the back of that car. They check it. Because you know what, what's most important to them is their safety. If some sort of object is back there or someone leaves an object back there for someone else to pick up later, they're going to make sure that while they're sitting there

driving, that they're not getting hit on the back of the head or that someone else will be able to use something against them.

So it's very important, your common sense and reason tells you they probably take that pretty serious. I'm sure they also take pretty serious that they don't want someone to, "Hey, you know something, we got drugs. Let's just put it on whoever was in there." As Officer Ramirez and Officer Caffey told you, they go through with their processes that they go through, and they look and clear out that back area after everyone rides. And in this case, they hadn't transported anyone that day until this guy. What they state, they searched it beforehand and nothing was back there. Using your common sense and reasoning, isn't it interesting that they find the thumb drive of the Defendant right underneath the drugs? What does the Defendant state? "Well, that's my thumb drive. It holds memory." You get to use your common sense and reasoning. It's underneath the drugs. Use your common sense and reasoning whenever you look at that.

Now, whenever we talked about intent and how the State proves that, remember how we stated you get to look at the actions of someone before, during, and after the offense? Well, what do we know that the Defendant did before? Well, he rolls up to this area with the open container drinking Milwaukee's best. When the officer sees him, what does he do? The officer talks to him and says, "Hey, just to let you know" -- And he's in full uniform. Says, "Hey, hold on.

You understand the area that you're in. Hold on." And now that he's got this open container out in this school zone, "Hold on, you're being detained." And what does the Defendant do?

MR. CUNNINGHAM: I'm going to object, Your Honor. This was not in a school zone. No evidence it was in a school zone.

THE COURT: Well, you'll recall the evidence what the officer said about the circumstances, and you'll make a decision from the evidence, not the characterizations given by Counsel.

MR. HARRIS: Remember the officer stated that it was prohibited where he had this alcohol in public. What does the Defendant do? As the officer tries to talk to him, Officer Ramirez, he started to back up, started to look around, his eyes were moving, started to look a little nervous. And what did he do? He bolted. He took off. Evidence of guilt? Well, you get to make that determination. But I would suggest that you do look at that. Why was he running? Okay. Once they actually get him, and Officer Ramirez told you they chased him down, and once they actually do stop him, what happens next? They get him under arrest. He dives down there, gets down, they get him under arrest and take him back. Where do they take him? Take him over to the jail. All right. What's found once he leaves? Once they do what they normally do, their standard procedure, what they do for their own safety and what they do to make sure there's nothing back there, immediately after they pull him out, what do

they find? They find his thumb drive and they find these drugs. Remember this is what it was in. Not this. This. Not these little baggies, but in this. Folks, it's pretty straightforward. I'm not going to waste all of my time that the Judge allows for us going through and repeating things. But one thing I also want to draw to your attention to is this. The law doesn't reward people for just ditching. Hey, I don't have it, I'm not in possession of those drugs. That's not how the law is set up. You can have care, custody and control. I can ditch something and I can come right back to it later on. Or I can just be in control of it, and due to unfortunate circumstances, I no longer have it, I'm still in care, custody, or control of it, or management. And that's what we're going to ask, that you go back there and use your reasoning and common sense, and you make a reasonable decision that you find this Defendant guilty because he is guilty of possession of a controlled substance of four grams or more but less than 400 grams. Thank you.