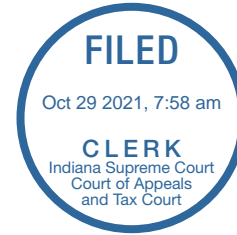


## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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### ATTORNEYS FOR APPELLANT

Theodore E. Rokita  
Attorney General of Indiana

Caryn Nieman-Szyper  
Deputy Attorney General  
Indianapolis, Indiana

### ATTORNEY FOR APPELLEE

Jennifer L. Koethe  
Raleigh, North Carolina

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## IN THE COURT OF APPEALS OF INDIANA

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State of Indiana,  
*Appellant-Plaintiff,*

v.

Christopher Martisa Deal,  
*Appellee-Defendant.*

October 29, 2021

Court of Appeals Case No.  
21A-CR-515

Appeal from the LaPorte Superior  
Court

The Honorable Jaime M. Oss,  
Judge

Trial Court Cause No.  
46D01-2004-MR-3

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Plaintiff, the State of Indiana (State), appeals the trial court's interlocutory Order, concluding that Appellee-Defendant's, Christopher M. Deal (Deal), custodial statement made to the police is inadmissible at trial.
- [2] We affirm.

## ISSUE

- [3] The State presents this court with two issues on appeal, which we consolidate and restate as the following single issue: Whether the trial court erred in finding Deal's custodial statement to the police to be inadmissible when Deal initiated further communication with the officers after he invoked his right to counsel.

## FACTS AND PROCEDURAL HISTORY

- [4] On April 5, 2020, Sirius Scott (Scott) was fatally shot outside his home in Michigan City, Indiana. Scott's girlfriend witnessed the shooting. She explained that when she and Scott exited their apartment and walked toward her vehicle, a silver four-door Ford Fusion approached in the alley behind the residence. When the vehicle came closer, the passenger lifted his upper body outside the vehicle's window and shot in the couple's direction. Scott's girlfriend described the shooter as a younger male, wearing a "hoody." (Appellant's App. Vol. II, p. 14). She advised that the only person she knew who owned a Ford Fusion was Deal—a friend of her child's father.

[5] Police confirmed that Deal had registered a silver four-door Ford Fusion with the Indiana Bureau of Motor Vehicles. After locating the Ford Fusion outside Deal's residence, officers observed a significant dent in the right front quarter panel just above the tire. When officers compared this information with surveillance footage of the alley where the shooting occurred, they discovered a match between the vehicles based on the damage to the right front quarter panel.

[6] On April 7, 2020, two days after the shooting, two Michigan City police detectives interviewed Deal at the police station. The lead detective was seated at a small table facing Deal and had a portfolio folder open on the table. Another detective sat on the side of the table in the interview room. The lead detective started the recorded interview by reading Deal his *Miranda* rights from a form, pausing after each advisement and asking Deal to initial each one on the waiver form, which included Deal's right to talk with an attorney and have his attorney present while being questioned. The lead detective informed Deal, "and very important, you can decide at any time to exercise these rights and not answer any questions or make any statements." (Exh. A). The detective continued by asking Deal, "as he did before," to read the waiver form out loud and to sign at the bottom of the form if he agreed to waive his rights. (Exh. A). Deal signed the form.

[7] After a brief discussion about the cold temperature of the jail, the lead detective mentioned, "before we get into all the nooks and cranny [sic] about my conversations and [] with the prosecutor and all that occurred last night," and

he requested Deal to again explain his version of events on the day of the shooting. (Exh. A). Deal complained that he had already told the lead detective and had written it down, to which the other detective interjected that he had missed it, whereupon the lead detective reiterated his request that Deal explain “how the whole day went down from the time you got up.” (Exh. A). Deal responded, “When do I get my phone call so I may call my attorney? I want my attorney present with me right now.” (Exh. A). The lead detective replied, “Okay,” and began to gather his notes in his portfolio folder. (Exh. A).

[8] As soon as the lead detective began gathering his papers, Deal asked, “could you, [], is you even gonna tell me what the prosecutor even said?” (Exh. A).

The following exchange occurred over the next few minutes:

LEAD DETECTIVE: Well, like he told you he’s gonna talk to you about what happened here and then go from there and of course he will down the road, but like I said if you want an attorney that’s fine we’ll stop and we’ll leave and be done and we’ll part ways. But if you don’t, you don’t and don’t know if you mean what you are saying here or what’s the deal is but.

DEAL: my I (inaudible).

OTHER DETECTIVE: (inaudible) all I was gonna say but it’s up to you ... I want to talk to you but if you don’t want to talk to us that’s fine too.

LEAD DETECTIVE: Yup, absolutely up to you, it is your right, we just went over the form so if you want to stop here, you want your attorney, absolutely. If you want to talk, that’s what I’m here for.

DEAL: How long do, do[es] it take for my attorney to come down here and then we can talk?

LEAD DETECTIVE: Who is your attorney?

DEAL: Elizabeth Flynn. Well I can hire her. All I gotta do is contact her again.

LEAD DETECTIVE: Okay. So you want her present or an attorney present with you before we continue questioning?

DEAL: (sighs)

LEAD DETECTIVE: I just want to make it clear. Yes? No?

DEAL: Um...(pause). How long would I have to wait? I've been up here for 48 hours. I would answer some questions but I ... I've been here for 48 hours already so it's like I might as well have my attorney here.

OTHER DETECTIVE: So we can't speak for Elizabeth Flynn. I don't know her schedule. I don't know if she's working or if she's not working. I don't have a crystal ball to tell you that, you know. If I did, I would. But I don't know if I can.

LEAD DETECTIVE: She may be at home with the COVID, I mean I don't know.

OTHER DETECTIVE: I can't answer that question because I don't know the answer to it; I can't speak for her.

DEAL: Alright. I'll answer some questions.

LEAD DETECTIVE: You will?

DEAL: Yeah.

LEAD DETECTIVE: Ok, let me make this clear so we understand, alright. You talked about Elizabeth Flynn, you talked about attorneys, um sometimes people blurt things out that they're not meaning while we're talking. If that was the case in here.

DEAL: Would I have said that?

OTHER DETECTIVE: Yeah.

DEAL: No, I ...

OTHER DETECTIVE: If that was the case then ok, I'll go with that, but if you're freely and willing to talk with us without a lawyer here because you changed your mind in the last minute then that's fine too. I just want to make sure that we're clear on that.

DEAL: No, I'm not blurting anything out that I don't mean. I just don't, I don't want to be up in here and just like uh she does know more than me so I would just like to have somebody here who knows more than me about the law. That's all that I was saying.

OTHER DETECTIVE: ok.

LEAD DETECTIVE: ok.

DEAL: Can I ask (inaudible)

LEAD DETECTIVE: (inaudible)

OTHER DETECTIVE: If you want if you're serious about wanting a lawyer and you're not just blurting stuff out we can't talk to you. And that's fine. And that's well within your right. You know we're not here to trick you or play games with you. You know, I've got lot of other things to do today too. You know, so it really is up to you. I just want to make sure that I want you to make sure what you want. If you want a lawyer, say "I want lawyer," "I don't want to talk to you guys," whatever; but be clear on what you want. Because it's pretty ambiguous right now. On one hand you're telling us you want to talk to us, you want to answer questions. On the other hand, you're not, so I want to make sure you're clear on what you want to do.

DEAL: Even just at some point me answering questions, ok, can I just stop and be ... like alright I want my lawyer?

OTHER DETECTIVE: Well that's in the rights you signed.

LEAD DETECTIVE: (showing Deal the waiver form) Right here it says you can decide at *any* time to exercise all these rights and not make any statements or answer any questions. Right here. You signed it. That is on the paper. But we need to know if you, if you feel that you want an attorney here with you while you're while you're being questioned, while we're asking these questions. That's fine, but we've gotta stop and leave. If you want to talk to us without an attorney, and you're comfortable with that, that's your decision, not ours. We can talk until you are ready to say I don't want to talk no more. That's up to you as well. So ...

OTHER DETECTIVE: We just need something definitive from you on what you want to do, okay that is less ambiguous. Do you know what ambiguous means?

DEAL: Nah.

OTHER DETECTIVE: It means “unclear.” To put it simply, if you, if you want a lawyer here tell us, we’ll leave. We won’t talk to you. If you want to talk to us without a lawyer here, tell us. We just need something clear on what you actually want. Does that make sense?

DEAL: Yeah, yeah, yeah. That makes sense.

OTHER DETECTIVE: Okay. So I guess, what what do you want?

DEAL: (pause) I want to talk to ya’ll cause I want to see what uh the prosecutor was saying. That’s, I ain’t gonna lie, that’s the real reason why I want to talk to ya’ll but I don’t want to talk to ya’ll and then just, like I said, don’t understand half uh half the stuff that’s going on without my attorney present. So I will answer some questions, I’ll stop whenever I feel like, I don’t, I need my, my lawyer present.

OTHER DETECTIVE: Ok, so What you are telling me if I’m hearing you correctly: you don’t want a lawyer with you now, you want to ask questions, you want to talk to the police.

DEAL: Yeah.

OTHER DETECTIVE: Alright. And if you feel like at some point that you no longer want to talk to the police then you want your lawyer here then you will tell us and then we can stop.

DEAL: yeah.



OTHER DETECTIVE: Does that make sense? Is that what your wishes are?

DEAL: yeah.

OTHER DETECTIVE: yes?

DEAL: Yes.

OTHER DETECTIVE: Ok.

(Exh A 2:42-7:53). Deal then admitted that he drove his brother in his Ford Fusion to Scott's residence and, while he was present at the shooting, he denied pulling the trigger, claiming his brother rolled down the window and fired three rounds in Scott's direction.

[9] On April 7, 2020, the State filed an Information, charging Deal with murder. On February 25, 2021, the State filed a motion *in limine*, requesting a preliminary ruling on the admissibility of Deal's statement to the police. Two days later, after a hearing, the trial court concluded Deal's statement to be inadmissible, finding that the officers unnecessarily prolonged the interrogation under the guise of clarifying Deal's request for counsel and held that the officers obtained Deal's admissions after he invoked his right to counsel in violation of the Fifth Amendment.

[10] On March 1, 2021, the State filed a motion to certify the trial court's Order for interlocutory appeal, and a motion to stay the proceedings pending appeal. The

trial court granted both motions that same day. On April 19, 2021, this court accepted jurisdiction over the interlocutory appeal.

[11] Additional facts will be provided if necessary.

## DISCUSSION AND DECISION

[12] When the State appeals from a negative judgment, it bears the burden to “show that the trial court’s ruling on the suppression motion was contrary to law.”

*State v. Keck*, 4 N.E.3d 1180, 1183 (Ind. 2014) (quoting *State v. Washington*, 898 N.E.2d 1200, 1203 (Ind. 2008)). We evaluate the trial court’s findings of fact deferentially, neither reweighing the evidence nor reassessing the credibility of the witnesses. *Id.* We will affirm if we find within the record “substantial evidence of probative value” to support the judgment. *State v. Quirk*, 842 N.E.2d 334, 340 (Ind. 2006). But we review the trial court’s conclusions of law *de novo*. *Sellmer v. State*, 842 N.E.2d 358, 361 (Ind. 2006).

[13] The State contends that the custodial statement made during Deal’s videotaped interview by the officers is admissible at trial as Deal voluntarily waived his right to counsel after he initiated further conversation with the officers. In response, Deal asserts that he unequivocally invoked his right to counsel and did not thereafter waive this right. Instead, he maintains that the officers ignored his request for an attorney and continued the interrogation in violation of his right to counsel.

[14] As established in *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694, 706–07 (1966), prior to any questioning of a person taken into

custody, “the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed.” If the accused requests counsel, “the interrogation must cease until an attorney is present.” *Edwards v. Arizona*, 451 U.S. 477, 482, 101 S.Ct. 1880, 1883, 68 L.Ed.2d 378, 384 (1981) (quoting *Miranda*, 384 U.S. at 474, 86 S.Ct. at 1628, 16 L.Ed.2d at 723). An accused’s request for counsel, however, must be unambiguous and unequivocal. *Berghuis v. Thompkins*, 560 U.S. 370, 381, 130 S.Ct. 2250, 2259, 176 L.Ed.2d 1098, 1110 (2010). The cessation of police questioning is not required “if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel.” *Davis v. United States*, 512 U.S. 452, 459, 114 S.Ct. 2350, 2355, 129 L.Ed.2d 362, 371 (1994). An accused may waive the right to counsel, if done voluntarily, knowingly, and intelligently. *Miranda*, 384 U.S. at 444, 86 S.Ct. at 1612, 16 L.Ed.2d at 707.

[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights... [He] is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.

*Edwards*, 451 U.S. at 484–85, 101 S.Ct. at 1884–85, 68 L.Ed.2d at 386. Even if an accused elects to waive his rights, such waiver may later be rescinded at any time, and “[i]f the right to counsel or the right to remain silent is invoked at any point during questioning, further interrogation must cease.” *Berghuis*, 560 U.S. at 388, 130 S.Ct. at 2263-64, 176 L.Ed.2d at 1115.

[15] Turning to Deal’s custodial interview, it is clear that he unambiguously and unequivocally invoked his right to counsel. After Deal refused the lead detective’s request to reiterate “how the whole day went down from the time [he] got up,” Deal responded, “I want my attorney present with me right now.” (Exh. A). In observance of *Miranda*, the detectives ended the interview and began to gather the paperwork. Although Deal unambiguously invoked his right to counsel and terminated the questioning, he then, on his own, initiated further conversation with the detectives by asking, “could you, [], is you even gonna tell me what the prosecutor even said.” (Exh. A). *See Edwards*, 451 U.S. at 477 (If the accused on his own initiates further communication, exchanges, or conversations with law enforcement, then the accused may be questioned without further counsel present.) A suspect initiates conversation if he makes a statement that “evince[s] willingness and desire for a generalized discussion about the investigation.” *Oregon v. Bradshaw*, 462 U.S. 1039, 1046 (1983). By inquiring as to the prosecutor’s opinion on his case, the officers could reasonably interpret the question as relating to the investigation and not as a routine question relating to the custodial relationship. *See Bradshaw*, 462 U.S. at 1045 (routine questions relating to the custodial relationship, such as a request

for a drink or water or to use the telephone are inadequate to initiate conversation under *Edwards*).

[16] Nevertheless, even where, as here, the suspect reinitiates conversation, “[t]he initiation of further communication by an accused, standing alone, is not sufficient to establish a waiver of the previously asserted right to counsel.” *Osborne v. State*, 754 N.E.2d 916, 922 (Ind. 2001). “[E]ven if a conversation ... is initiated by the accused, where reinterrogation follows, the burden remains upon the prosecution to show that subsequent events indicated a waiver of the Fifth Amendment right to have counsel present during the interrogation.” *Bradshaw*, 462 U.S. at 1044.

[17] Like the trial court, we cannot conclude that Deal waived his right to counsel; rather, he reaffirmed the exercise of his right several times throughout the interview. *See also Carr v. State*, 934 N.E.2d 1096 (Ind. 2010), *reh’g denied* (persistent resumptions of communications after defendant invoked his right to counsel). After Deal reinitiated communication with the officers, both officers acknowledged Deal’s inquiry about the prosecutor but informed him that it was his choice, “if you want to stop here you want your attorney absolutely. If you want to talk, that’s what I’m here for.” (Exh. A). This precipitated Deal to reaffirm his right to counsel by asking how long it would take for his attorney to come to the station so that they could talk. *See, e.g., Carr*, 934 N.E.2d at 1106 (finding the statement, “Do you have any idea how long it will be before I can see an attorney?” to be a request for counsel). Again, instead of stopping the interview, the officers continued the conversation by requesting Deal’s

attorney's name and asking him again "[s]o you want her present or an attorney present before we continue questioning." (Exh. A). When Deal did not immediately answer, the detective reiterated the question and demanded, "Yes? No?" (Exh. A). For a third time, Deal unambiguously stated, "I might as well have my attorney here." (Exh. A). *See, e.g., Carr*, 934 N.E.2d at 1105 (finding statement, "I'm in a situation where I feel like ... I really need an attorney to ... talk with, and for me" to be unambiguous request for counsel). And again, instead of "scrupulously honor[ing]" Deal's request for an attorney, the detectives started speculating about his attorney's schedule—"I don't have a crystal ball—or about her health—"she may be at home with the COVID"—thereby implying that it might be a considerable length of time before his attorney could be present. *Miranda*, 384 U.S. at 479; (Exh. A). Faced with the fact that he had been in custody for the past 48 hours and was facing even more indeterminate time at the police station, Deal caved, "Alright. I'll answer some questions." (Exh. A). Despite Deal seemingly waiving his right to counsel, the detectives launched into a lengthy diatribe to ensure Deal was firm on his waiver. They reiterated his request for an attorney and alluded to him that "sometimes people blurt things out that they're not meaning." (Exh. A). Deal assured the detectives that he was "not blurting anything out that I don't mean," and again—a fourth time—stated that his counsel "does know more than me so I would just like to have somebody here who knows more than me about the law." (Exh. A). *See, e.g., Carr*, 934 N.E.2d at 1106 (finding the statement, "I just feel like, in this situation as serious as it is, that I need to consult an attorney before I say anything more" to be in invocation of the right

to counsel). Both detectives then proceeded, in turn, to again hammer on the fact that Deal was asking for a lawyer—“that’s well within your right”—while claiming that he was equivocal in his request. (Exh. A). The detectives acknowledged Deal’s right to counsel yet continued the conversation under the guise of ambiguity. In the ensuing exchange, the detectives repeatedly emphasized that “if you want to talk to us without a lawyer here, tell us. We just need something clear on what you actually want.” (Exh. A). Deal eventually consented to answer questions without his lawyer present.

[18] Although Deal re-instigated communications after an unambiguous invocation of his right to counsel, after the conversation commenced again, Deal invoked his right another four times—each time unequivocally. Ultimately, as a direct result of the detectives’ insistence to prolong the conversation in a seeming effort to seek clarification of an unambiguous invocation, Deal waived his right or, at least, uttered an equivocation which would serve to undermine his invocation of the right of counsel. Because of the detectives’ failure to immediately cease further communications following Deal’s several unambiguous and unequivocal invocations of his right to counsel, we cannot give credence to Deal’s final apparent waiver or equivocation as to his right to counsel. We conclude that this attempt by the detectives to establish Deal’s waiver of his unambiguous invocation of his right to counsel is not permitted:

[O]nce a suspect indicated that he is not capable of undergoing [custodial] questioning without advice of counsel, any subsequent waiver that has come at the authorities’ behest, and not at the suspect’s own instigation, is itself the product of the

inherently compelling pressures and not the purely voluntary choice of the suspect.

*Carr*, 934 N.E.2d at 1107 (quoting *Maryland v. Shatzer*, 559 U.S. 98, 104, 130 S.Ct. 1213, 1219, 175 L.Ed.2d 1045, 1053 (2010)). As a result, the trial court did not err by declaring Deal's custodial statement to be inadmissible at trial.

## CONCLUSION

[19] Based on the foregoing, we affirm the trial court's interlocutory Order, concluding that Deal did not waive his right to counsel despite re-instigating communications with the officers.

[20] Affirmed.

[21] Najam, J. concurs

[22] Brown, J. dissents with separate opinion



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IN THE  
COURT OF APPEALS OF INDIANA

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State of Indiana,  
*Appellant-Plaintiff,*

v.

Christopher Martisa Deal,  
*Appellee-Defendant.*

Court of Appeals Case No.  
21A-CR-515

**Brown, Judge, dissenting.**

[23] I respectfully dissent and would reverse the trial court’s ruling that Deal’s custodial statements to the detectives were inadmissible at trial. The United States Supreme Court has held that an accused “having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates further communication, exchanges, or conversations with the police.*” *Edwards v. Arizona*, 451 U.S. 477, 484-485, 101 S. Ct. 1880, 1885 (1981)

(emphasis added). When Deal initially asserted his right to counsel, the lead detective said “Okay” and began to gather his notes in his portfolio folder.

Exhibit A. As the lead detective was gathering his notes and preparing to leave, Deal then reinitiated communication when he asked the detectives whether they were “even gonna tell [him] what the prosecutor even said.” *Id.* Deal’s question to the detectives was one that “evinced a willingness and a desire for a generalized discussion about the investigation. . . .” *Oregon v. Bradshaw*, 462 U.S. 1039, 1045-1046 (1983).

[24] In response to Deal’s question about what the prosecutor had said, the detectives indicated that they would part ways if he wanted an attorney and reiterated Deal’s right to an attorney. At that point, Deal asked how long it would take for his attorney to come down so he could talk with his attorney, the detectives indicated they did not know, Deal stated “I would answer some questions but I . . . I’ve been here for 48 hours already so it’s like I might as well have my attorney here,” but then stated, “Alright. I’ll answer some questions,” the lead detective then asked him “You will,” and Deal answered affirmatively. Exhibit A.

[25] The detectives continued to seek clarification as to whether Deal wished to speak with them. Deal then stated, “I’m not blurting anything out that I don’t mean. . . . I don’t want to be up in here and just like uh she does know more than me so I would just like to have somebody here who knows more than me about the law.” *Id.* The other detective indicated that Deal was being ambiguous, at one point Deal asked if he could stop answering questions, and

the detectives indicated that he could. After further discussion, Deal stated that he wanted to talk to the detectives. The other detective again informed Deal that, if he felt at some point that he no longer wished to talk to them, he could tell them, and they would stop. The other detective asked if that made sense and if that was his wish, and Deal answered affirmatively. Deal then answered the detectives' questions without his attorney present.

[26] In my view, the record demonstrates that the detectives consistently advised Deal of his right to counsel and asked questions to clarify whether he had decided to speak with them. The record further demonstrates that the detectives did not use violence, threats, coercion, or false promises to obtain Deal's waiver of his right to counsel. Accordingly, under the totality of the circumstances, I would conclude that Deal validly waived his right to counsel and reverse the trial court's ruling. *See Minnick v. Mississippi*, 498 U.S. 146, 156, 111 S. Ct. 486, 492 (1990) (noting that "*Edwards* does not foreclose finding a waiver of Fifth Amendment protections after counsel has been requested, *provided the accused has initiated the conversation or discussions with the authorities. . . .*") (emphasis added); *Owens v. State*, 732 N.E.2d 161, 164 (Ind. 2000) (citing *Minnick* and *Edwards* in holding that the defendant's confession was admissible where the detective ceased questioning after the defendant requested a lawyer, the defendant initiated further communication with the detective by asking about his mother and the possible consequences for the victim's murder,

admitted to the crime, and gave a full tape-recorded confession after he was read his *Miranda* rights).<sup>1</sup>

[27] For these reasons I respectfully dissent.

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<sup>1</sup> To the extent the majority cites *Carr v. State*, 934 N.E.2d 1096 (Ind. 2010), *reh'g denied*, I note that in *Carr* the Indiana Supreme Court stated that “the *detective’s ongoing conversation* initiated further custodial interrogation, and the defendant’s subsequent disclosures were not a product of *his own initiation of communication*.” 934 N.E.2d at 1106 (emphases added). Here, it was Deal who reinitiated communication about the investigation with the detectives.