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2024 CO 58

**No. 23SC117, *Niemeyer v. People* – Criminal Law – *Miranda* – Custody.**

The supreme court holds that the defendant was in custody when she was interrogated by the police. The police questioned the defendant after her husband suffered a gunshot wound to the head. The defendant was alone, in a closed interrogation room at the police station, late at night; officers restricted her freedom of movement throughout the encounter and affixed bags with zip ties to her hands; and police repeatedly refused her requests to go to the hospital to see her husband.

Thus, despite other facts weighing against custody, under a totality of the circumstances, a reasonable person in the defendant's position would have believed their freedom of movement was restricted to the degree associated with a formal arrest. Therefore, the court reverses and remands.

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

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**2024 CO 58**

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**Supreme Court Case No. 23SC117**  
*Certiorari to the Colorado Court of Appeals*  
Court of Appeals Case No. 18CA1877

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**Petitioner:**

Rachel Ann Niemeyer,

v.

**Respondent:**

The People of the State of Colorado.

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**Judgment Reversed**

*en banc*

September 9, 2024

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**JUSTICE BOATRIGHT** delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE HART, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

**JUSTICE BOATRIGHT** delivered the Opinion of the Court.

¶1 Police questioned Rachel Ann Niemeyer in an interrogation room at the police station after her husband suffered a gunshot wound to the head. Niemeyer made incriminating statements during the interrogation. After the People charged her with murdering her husband, Niemeyer moved to suppress these statements, arguing that they were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). The trial court denied her motion to suppress, determining that she was not in custody when she made the statements. A jury convicted Niemeyer of second-degree murder and other offenses. After the court of appeals affirmed, we granted certiorari to determine whether Niemeyer was in custody when she was questioned by police.<sup>1</sup>

¶2 We hold that Niemeyer was in custody for *Miranda* purposes when she was interrogated at the police station. Therefore, we reverse the judgment of the court of appeals and remand for further proceedings consistent with this opinion.

### **I. Facts and Procedural History**

¶3 On October 4, 2017, Craig police officers arrived at a motel room in response to a 911 call regarding a male with a gunshot wound to the head. Officers found

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<sup>1</sup> We granted certiorari to review the following issue:

1. Whether an accused is in custody where she is intoxicated, without transportation, required to undergo testing, and under the supervision and direction of police who refuse to consider her requests to leave until she submits to testing and interrogation.

Niemeyer crouched in front of her husband, M.F., holding his head. M.F. had suffered a gunshot wound to his right ear and died from his injuries the next day.

¶4 Initially, the officers investigated the incident as an attempted suicide. Officer Roland arrived on the scene and supervised Niemeyer while paramedics treated M.F. and officers processed the scene.<sup>2</sup> Visibly intoxicated and distraught, Niemeyer told Officer Roland that she and M.F. had been drinking for several hours. Niemeyer explained that just prior to the incident, she and M.F. were arguing when M.F. picked up his .22 caliber rifle.<sup>3</sup> Niemeyer told Officer Roland she thought the rifle was unloaded. She said that M.F. asked her to shoot him, and when she refused, M.F. shot himself. Over the next half hour, Niemeyer told Officer Roland that M.F. had frequently threatened suicide, that they were experiencing financial and relationship issues, and that M.F. struggled with alcohol abuse.

¶5 The paramedics transported M.F. to the hospital. Niemeyer asked Officer Roland several times if he could take her to see M.F. because she was too intoxicated to drive. Officer Roland demurred, telling her they would “work on that as soon as we can.” While still at the motel, Officer Roland continued to ask Niemeyer clarifying questions about what happened in the motel room. Another

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<sup>2</sup> Officer Roland’s body-worn camera recorded his interactions with Niemeyer.

<sup>3</sup> The rifle had a shorter than standard barrel.

officer approached and asked Niemeyer if she would go to the police station<sup>4</sup> with Officer Roland while they finished processing the scene. A few minutes later, Niemeyer and Officer Roland walked to his squad car, and he directed her to ride in the backseat behind the cage, though he didn't handcuff her. During the drive to the police station, Niemeyer repeatedly asked if she could go to the hospital to see M.F., and each time Officer Roland responded, "We gotta go down to the [police station] first, okay?"

¶6 After arriving at the station, Officer Roland led Niemeyer to an interrogation room, where they were joined by a victim advocate. Shortly after, Officer Roland placed plastic bags on Niemeyer's hands, securing them with zip ties to preserve any potential gunshot residue. Officer Roland told Niemeyer that this was a routine procedure, but he did not seek her consent or explain why he was putting the plastic bags on her hands. Niemeyer tried to take the plastic bags off several times, but Officer Roland and the victim advocate stopped her and told her that she needed to leave them on (e.g., "Nope." or "You gotta leave them on, Rachel.").

¶7 During her conversation with the victim advocate, Niemeyer appeared relaxed and conversational, even laughing a few times. Intermittently, however, she would say that she wanted to go to the hospital and ask when the officers

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<sup>4</sup> In Craig, the police station is known as the "Public Safety Center." We refer to it here as the police station.

could take her there. At one point, Niemeyer expressed frustration at not being able to go see M.F., saying that she wanted to leave the station and go to the hospital on her own. Officer Roland and the victim advocate both deflected her requests — “We’ve got to do this first.” — explaining that they had more procedures to follow at the station but could help her get to the hospital at some point.

¶8 At the end of her conversation with the victim advocate, Niemeyer interjected, “God d\*\*\*. Did I f\*\*\*\*\* shoot him?” The victim advocate told her that was what the hand-bagging test would explain.

¶9 Just before midnight, and approximately an hour after police brought Niemeyer to the station, Detective Rimmer joined her in the interrogation room and dismissed the victim advocate. He removed the bags, swabbed Niemeyer’s hands for gunshot residue, and told her that she was not under arrest and did not need to talk to him. Niemeyer asked again if she could go to the hospital. Detective Rimmer replied, “There’s a couple things I gotta do here first, and then I’ll work on trying to get you up there.” Niemeyer asked to go to the restroom, and police personnel escorted her there and back.

¶10 When Detective Rimmer walked back into the interrogation room, Niemeyer asked, without any prompting, “So what we got going on, did I shoot him?” Detective Rimmer responded, “I don’t know, that’s what I’m here to talk to you about.” For the next twenty-three minutes, Detective Rimmer asked

Niemeyer questions about the incident in the motel room. Niemeyer attempted to explain what happened, at times appearing confused and unsure of the sequence of events. About halfway through the conversation, Niemeyer stated that she and M.F. were both intoxicated and were “playing around” with the rifle, passing it back and forth to each other. Niemeyer stated that M.F. had assured her there were no bullets in the rifle but that the “next thing [she knew] there was blood everywhere.”

¶11 Niemeyer continued to ask Detective Rimmer if she had shot her husband and if he knew what happened. Detective Rimmer either didn’t address her question or replied with a version of, “I don’t know.” And over the course of the interview, Niemeyer uttered several variations of the following: “I think I shot him. . . . How else would it have happened? . . . Did he shoot himself? . . . It was only us two in the room. . . . Did I shoot him? I think I shot him.” In between these statements, she said that she *did not* shoot M.F. and wasn’t sure what had happened. She also asked again if she could go to the hospital, to which Detective Rimmer replied, “Let’s finish up here; let’s get what we need to do here done, okay.”

¶12 Detective Rimmer continued to ask detailed questions about what happened and what Niemeyer remembered. At one point, Niemeyer stated, “Oh my God, I shot him.” Shortly after, Detective Rimmer left the interrogation room.



When he returned three minutes later, he read Niemeyer her *Miranda* rights. She immediately invoked her right to counsel, and Detective Rimmer and Officer Roland arrested her.

¶13 The People charged Niemeyer with first-degree murder, among other offenses. Before trial, she moved to suppress the statements she made to Detective Rimmer, asserting that they were involuntary and the product of an unwarned custodial interrogation. The trial court denied the motion.

¶14 At trial, Niemeyer testified that she asked Detective Rimmer if she had shot M.F. because she was under the impression that the hand-bagging test would explain what had happened to her husband. She also asserted that at the time of the interrogation, she was in shock and that her statements to Detective Rimmer were unreliable based on the context of the incident. She stated that she did not shoot M.F., but that she also did not remember if she had ever held the rifle or pulled the trigger. A jury found Niemeyer guilty of second-degree murder, second-degree assault, and two counts of prohibited use of a weapon.

¶15 Niemeyer appealed, arguing that the trial court erred in denying her motion to suppress. A split division of the court of appeals affirmed. *People v. Niemeyer*, No. 18CA1877, ¶ 1 (Oct. 27, 2022). The majority held that while a reasonable person in Niemeyer's position would not have considered herself free to leave, her freedom of action was not curtailed to the degree associated with a formal arrest.

*Id.* at ¶¶ 28–29. The majority concluded that, based on the officers’ actions and statements leading up to her arrest, a reasonable person in her position would believe that they would be on their way to the hospital “as soon as the hand-bagging procedure was completed.” *Id.* at ¶ 29. The majority also found that the hand-bagging procedure did not “convert an otherwise noncustodial situation into a custodial one.” *Id.* at ¶ 30. The majority reasoned that even though bagging someone’s hands could suggest that police believed they were involved in a crime, it does not, on its own, “convey the message that the person is under arrest.” *Id.*

¶16 Judge Richman dissented, contending that the police’s actions and statements to Niemeyer demonstrated that they would “not even consider taking her to the hospital until after they completed any number of unspecified, potentially time-consuming tasks.” *Id.* at ¶ 52 (Richman, J., dissenting). Judge Richman also disagreed with the majority’s conclusion regarding the hand-bagging procedure: “[W]e have in this case a situation where the person was forced to keep the bags on her hands against her will and for about an hour.” *Id.* at ¶ 54. Accordingly, Judge Richman asserted that the hand-bagging, the “runaround” by police, and the fact that Niemeyer was alone with Detective Rimmer in an interview room with the door shut all led to the conclusion that Niemeyer was in custody at the time of the interrogation. *Id.* at ¶ 55.

¶17 Niemeyer sought certiorari review from this court, which we granted.

## **II. Analysis**

¶18 We start with the standard of review. Then we discuss what constitutes a custodial interrogation. We next determine that a reasonable person in Niemeyer’s position during the interrogation with Detective Rimmer would have believed they were deprived of their freedom of action to a degree associated with a formal arrest. Thus, Niemeyer’s statements to Detective Rimmer were the product of an unwarned custodial interrogation and should have been suppressed. Last, we determine that the trial court’s error was not harmless.

### **A. Standard of Review**

¶19 A trial court’s custody determination for *Miranda* purposes presents a mixed question of law and fact. *People v. Bohler*, 2024 CO 18, ¶ 17, 545 P.3d 509, 514. We defer to a trial court’s findings of fact if they are supported by competent evidence and rely on undisputed facts in the record, but we apply the law de novo. *Id.* However, we may also independently review recorded statements, including interrogations. *Id.*

¶20 We review trial errors of constitutional dimension under the constitutional harmless error standard. *Hagos v. People*, 2012 CO 63, ¶ 11, 288 P.3d 116, 119. Under this standard, we must reverse unless the error was “harmless beyond a reasonable doubt.” *Id.* (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)). More

specifically, if there is the reasonable possibility that the error might have contributed to a conviction, we reverse. *Id.*

### **B. Custody Determinations Under *Miranda***

¶21 To protect an individual's Fifth Amendment right against self-incrimination, police must provide individuals with certain warnings prior to a custodial interrogation. *Miranda*, 384 U.S. at 444. *Miranda* prohibits the prosecution from introducing statements in its case-in-chief procured by custodial interrogation *unless* the police administer these warnings before the interrogation. *Id.* However, these protections only apply if an individual is in custody at the time of the interrogation. *Effland v. People*, 240 P.3d 868, 873 (Colo. 2010). Here, the parties agree that the police interrogated Niemeyer at the police station. Therefore, our inquiry centers solely on whether she was in custody during the interrogation.

¶22 A person is in custody if a reasonable person in the same position would think their freedom of action was curtailed to a degree associated with a formal arrest. *People v. Cline*, 2019 CO 33, ¶ 17, 439 P.3d 1232, 1237. Courts evaluate the totality of the circumstances to determine whether an individual was in custody. *People v. Willoughby*, 2023 CO 10, ¶ 21, 524 P.3d 1186, 1191. This assessment considers the objective circumstances of the interrogation rather than the subjective beliefs of the officers or the defendant. *People v. Davis*, 2019 CO 84, ¶ 19,

449 P.3d 732, 738. In making this determination, courts may consider the following non-exhaustive factors:

- (1) the time, place, and purpose of the encounter;
- (2) the persons present during the interrogation;
- (3) the words spoken by the officer to the defendant;
- (4) the officer's tone of voice and general demeanor;
- (5) the length and mood of the interrogation;
- (6) whether any limitation of movement or other form of restraint was placed on the defendant during the interrogation;
- (7) the officer's response to any questions asked by the defendant;
- (8) whether directions were given to the defendant during the interrogation; and
- (9) the defendant's verbal or nonverbal response to such directions.

*People v. Matheny*, 46 P.3d 453, 465–66 (Colo. 2002). No single factor is determinative, and courts may consider any number of them when making a custody evaluation. *Willoughby*, ¶ 21, 524 P.3d at 1192. With this framework in mind, we turn to the case at hand.

### **C. Application of the *Matheny* Factors**

¶23 We now consider whether Niemeyer was in custody for *Miranda* purposes during the interrogation. We first discuss the *Matheny* factors that weigh against a finding of custody before turning to those that weigh in favor of custody. Upon review of the totality of the circumstances, we conclude that Niemeyer was in custody during the interrogation with Detective Rimmer.

¶24 As a threshold matter, because Niemeyer was under police supervision from the moment officers arrived on the scene until her arrest at the station, we will evaluate the entirety of her encounter with the police.

### **1. Factors Weighing Against Custody**

¶25 We first consider the circumstances that weigh against a finding of custody: the words spoken by the officers to the defendant; the officers' tone of voice and general demeanor; and the length and mood of the interrogation. We discuss each of these factors in turn.

#### **a. Words Spoken by the Officers to Niemeyer**

¶26 Open-ended questions posed by officers and long-form narrative responses by defendants weigh against custody. *See, e.g., Willoughby*, ¶ 31, 524 P.3d at 1193. Here, when Officer Roland arrived on the scene, he asked Niemeyer open-ended questions about what had transpired. Niemeyer responded in narrative form, often volunteering significant detail beyond the scope of the initial question. Similarly, Detective Rimmer asked Niemeyer open-ended questions throughout the interrogation, and she again responded in narrative form. Moreover, as soon as he entered the interrogation room, Detective Rimmer told Niemeyer that she was not under arrest. This weighs against custody. *Cf. id.* at ¶ 28, 524 P.3d at 1192 (stating that, when officers told Willoughby three times that he was under arrest,

this significantly weighed in favor of custody because courts “place great weight on whether police tell a suspect that they are under arrest”).

### **b. Officers’ Tone of Voice and General Demeanor**

¶27 Interrogations held in measured, conversational tones weigh against a finding of custody. *Davis*, ¶¶ 33–34, 449 P.3d at 741. Here, both Officer Roland and Detective Rimmer largely maintained a calm and informal demeanor throughout the encounter. Both officers kept a conversational tone, often sympathizing with Niemeyer at different times during the evening. Although Officer Roland did sternly rebuke Niemeyer when she tried to remove the bags from her hands, their interactions remained cordial otherwise. Detective Rimmer remained calm and measured at all times; when Niemeyer first asked him if she had shot M.F., he evenly replied, “I don’t know, that’s what I’m here to find out.”

### **c. Length and Mood of the Interrogation**

¶28 Shorter interrogations are more akin to investigatory stops and weigh against custody. *Davis*, ¶ 36, 449 P.3d at 741. And while we have declined to set forth a strict time limitation, encounters less than thirty minutes weigh against custody, while those closer to or exceeding ninety minutes weigh in favor of custody. *Willoughby*, ¶ 33, 524 P.3d at 1193.

¶29 Here, Detective Rimmer’s interrogation lasted less than thirty minutes, but Niemeyer was in the interrogation room for closer to ninety minutes and under

police supervision for nearly two hours before her arrest. On their own, these facts lean in favor of custody. *See Cline*, ¶ 31, 439 P.3d at 1239 (finding that Cline’s entire encounter with police, which lasted over ninety minutes, was relevant to a custody determination even though the actual interrogation was brief). However, the encounter’s length must be considered along with the overall mood of the interrogation.

¶30 Interrogations that are aggressive or accusatory weigh in favor of custody, whereas those that are informal and conversational weigh against custody. *Davis*, ¶¶ 33–34, 449 P.3d at 741. Here, when the interrogation with Detective Rimmer started, Niemeyer calmly described the earlier events of the day. As they began to discuss what happened in the motel room, Niemeyer became increasingly distressed and sobbed at times. Detective Rimmer responded in a measured manner, never escalating the mood of the interrogation. Even when Niemeyer repeatedly stated that she thought she had shot M.F., Detective Rimmer remained even-tempered; he never accused her of shooting M.F. Instead, he merely continued asking clarifying questions. *Cf. People v. Klinck*, 259 P.3d 489, 494 (Colo. 2011) (noting that nonconfrontational questions weigh against custody).

¶31 To be sure, a defendant’s emotional distress can signify custody, and Niemeyer was distraught at times. *See Effland*, 240 P.3d at 875 (weighing the



defendant's distress in favor of a finding of custody). But Detective Rimmer's calm responses, coupled with the overall mood of the interrogation, minimizes this fact.

¶32 As discussed above, based on the total amount of time Niemeyer was under police supervision, we find that the length of the encounter leans in favor of custody. However, we believe that the calm, nonconfrontational mood of the interrogation slightly outweighs these facts. Thus, we conclude that on balance, this factor weighs against custody.

## **2. Factors Weighing in Favor of Custody**

¶33 Now we turn to those factors that weigh in favor of Niemeyer being in custody at the time of the interview: the time, place, and purpose of the encounter; the persons present during the interrogation; limitations of the defendant's movement or other forms of restraint; the officers' response to any questions asked by the defendant; directions given to the defendant during the interrogation; and the defendant's verbal or nonverbal response to those directions.

### **a. Time, Place, and Purpose of the Encounter**

¶34 Encounters that take place at night weigh in favor of custody, as do those that occur in a "police-dominated" location. *See Willoughby*, ¶ 23, 524 P.3d at 1192 (stating that daylight encounters weigh against custody); *Cline*, ¶ 21, 439 P.3d at 1238 (stating that a "police-dominated" location weighs in favor of custody). Officer Roland transported Niemeyer to the police station around 11 p.m., and the

interrogation began just before midnight in an interrogation room. These facts weigh in favor of custody.

¶35 As to purpose, there is a wide spectrum of encounters that police may have with the public. The dispatch of police in response to a crime weighs in favor of custody. *Effland*, 240 P.3d at 875 (concluding that the purpose of the encounter was to investigate a suspect in a criminal investigation, which weighed in favor of custody). Conversely, the dispatch of police for the general public welfare or safety weighs against custody. *Bohler*, ¶ 21, 545 P.3d at 515 (concluding the context of a welfare check weighs against custody).

¶36 The purpose of the encounter here doesn't neatly fall onto either side of the spectrum. At first, officers were dispatched in response to a potential crime. Once they arrived on the scene, the purpose changed to the investigation of an attempted suicide. And once Niemeyer asked Detective Rimmer if she had shot her husband ("So what we got going on, did I shoot him?"), the purpose of the encounter shifted yet again. Though the purpose of the encounter changed throughout the evening, its timing and place—at night and in a police interrogation room—tip the scale in favor of custody.

#### **b. Persons Present During the Interrogation**

¶37 When a defendant is alone with police during an encounter or there is a lack of a "representative or neutral party" during an interrogation, that weighs in favor

of custody. *Willoughby*, ¶ 26, 524 P.3d at 1192 (quoting *People v. Padilla*, 2021 CO 18, ¶ 23, 482 P.3d 441, 447). Niemeyer was alone with Detective Rimmer during the entirety of the interrogation. In fact, after the victim advocate asked if he should stay in the room, Detective Rimmer dismissed him. These facts weigh in favor of custody.

### **c. Limitations Placed on Niemeyer's Movements and Other Forms of Restraint**

¶38 If an officer unholsters a gun or uses physical restraint to detain a citizen, the encounter is more likely to be deemed custodial. *People v. Breidenbach*, 875 P.2d 879, 886 (Colo. 1994). More specifically, physical restraints like handcuffs are typically associated with formal arrest and indicate custody. *Cline*, ¶ 18, 439 P.3d at 1237. And beyond physical restraints, other limitations on a suspect's movement during an interrogation can also indicate custody. *Willoughby*, ¶ 36, 524 P.3d at 1194. For example, an interrogation that takes place in a small room with a closed door can be an indicator of custody. *People v. Minjarez*, 81 P.3d 348, 356 (Colo. 2003).

¶39 Here, the nature of the limitations on Niemeyer's movements evolved throughout her encounter with police. When Officer Roland arrived on the scene, he restricted Niemeyer's movements—initially so first responders could tend to M.F. and later so officers could process the scene. The ongoing emergency dictated

the need for Officer Roland's actions. *See Bohler*, ¶¶ 30, 33, 545 P.3d at 516–17 (stating that officer requests related to safety are not indicative of custody).

¶40 Next, Officer Roland drove Niemeyer to the station in his police car, where she rode uncuffed in the backseat. As soon as they arrived at the police station, Officer Roland escorted Niemeyer to the interrogation room and placed plastic bags over her hands, securing them with zip ties. Niemeyer attempted to take the bags off several times, yet Officer Roland, the victim advocate, and Detective Rimmer all stopped her from doing so. When Niemeyer complained of her discomfort with the bags, the officers indicated that she had no choice but to keep them on. Niemeyer said several times that she was uncomfortable and wanted to remove the bags, at one time exclaiming, “these are driving me crazy. . . . I just want to go see my husband.”

¶41 Certainly, the use of zip ties here doesn't equate to handcuffs: Niemeyer's hands were not bound together, and she could still move her arms freely. However, when coupled with the plastic bags, they still qualify as physical restraints. Moreover, the officers placed these restraints on Niemeyer's hands as soon as she arrived at the police station, prevented her from removing them, and kept them on her hands for close to an hour until Detective Rimmer removed them when the interrogation began.

¶42 Niemeyer's movements were also curtailed while she was in the interrogation room: Detective Rimmer closed the door before starting the interrogation, and she was escorted at all times throughout the police station. And, due to her intoxication, Niemeyer could not transport herself to the hospital. *Cf. Willoughby*, ¶ 36, 524 P.3d at 1194 (stating that where the defendant freely paced around his apartment smoking a cigar during an interrogation, it strongly weighed against custody). Therefore, the limitations placed on Niemeyer's movements and the presence of the plastic bags on her hands weigh in favor of custody.

#### **d. Officers' Response to Niemeyer's Questions**

¶43 Shortly after first responders transported M.F. to the hospital, Niemeyer began asking Officer Roland when he could take her there. Later, while at the station, she repeatedly asked Officer Roland and Detective Rimmer if she could go to the hospital and what they knew about M.F.'s condition. Neither Officer Roland nor Detective Rimmer heeded her requests, instead responding with variations of "We've got to do this first" and "I'll work on trying to get you up there." A reasonable person would expect an update on transportation at some point during their encounter with police. Thus, a reasonable person in Niemeyer's position could conclude, based on the officers' response, that their freedom of action was curtailed. Therefore, this factor weighs in favor of custody.

### **e. Directions Given to Niemeyer**

¶44 Commands from officers weigh in favor of custody. *Bohler*, ¶ 32, 545 P.3d at 517. But requests from officers to move a defendant out of harm's way or for safety reasons do not rise to the level of commands. *See id.* Niemeyer was under police supervision from the time officers arrived on the scene until her arrest. As soon as he arrived at the motel, Officer Roland gave Niemeyer numerous directions to secure the scene and to transport her to the police station. These initial directions fall much closer to "requests" than commands, as they were intended to keep Niemeyer safe and allow officers and first responders to do their jobs.

¶45 However, these directions became "commands" when Officer Roland placed the bags on Niemeyer's hands in the interrogation room. Officer Roland did not ask permission to do so and kept Niemeyer from removing the bags several times. Detective Rimmer also directed Niemeyer to keep the bags on her hands. And, both officers were stern and authoritative when instructing her not to remove them.

### **f. Niemeyer's Response to the Officers' Directions**

¶46 Last, a defendant's full compliance with officer directions indicates custody. *See id.* at ¶ 34, 545 P.3d at 517. Niemeyer complied with all of Officer Roland and Detective Rimmer's directions while under police supervision. Though she did

try to take the plastic bags off her hands and expressed frustration that the police would not take her to the hospital, she otherwise obeyed instructions despite her strong desire to see her husband. This signifies that police were depriving her of her freedom of movement and weighs in favor of custody.

### **3. Evaluating the *Matheny* Factors**

¶47 Now, we will evaluate the totality of the circumstances. As discussed, we recognize that the following facts weigh against a finding of custody: (1) Detective Rimmer told Niemeyer she was not under arrest, and both officers asked her open-ended questions to which she provided long-form narrative responses; (2) officers maintained a calm and informal demeanor throughout the encounter with Niemeyer; and (3) the interview lasted less than thirty minutes, and the mood of the interrogation remained relaxed and conversational even in the face of Niemeyer's distress.

¶48 Conversely, the following facts weigh in favor of finding that Niemeyer was in custody: (1) the interrogation took place at the police station, in a closed interrogation room, near midnight; (2) Niemeyer was alone in the interrogation room with Detective Rimmer; (3) police placed bags on Niemeyer's hands and secured them with zip ties, and they restricted her movements in the police car and at the station; (4) Niemeyer repeatedly asked to go to the hospital to see her husband, but the police demurred her every request; (5) officers commanded

Niemeyer to keep the bags on her hands; and (6) despite a strong desire to go to the hospital, Niemeyer complied with all of the officers' directions.

¶49 After reviewing the totality of circumstances, we conclude that a reasonable person in Niemeyer's position would consider themselves to be deprived of their freedom of action to a degree associated with a formal arrest. While numerous facts weigh in favor of custody, we find the following to be the most salient: (1) Niemeyer was alone, late at night, in an interrogation room with a detective at the police station; (2) she continuously asked, for over ninety minutes, to be taken to the hospital to see her husband (who at the very least had a severe head injury), but officers refused to take her there and repeatedly rebuffed her requests ; and (3) officers restricted her freedom of movement throughout the encounter and affixed bags with zip ties to her hands while in the interrogation room. Importantly, Niemeyer wasn't merely asking to go home, or simply to be released; she was asking to go to the hospital to be with her husband, who had been shot in the head. Keeping a person at the police station and refusing to take them to see their severely injured spouse is strongly indicative of custody. And while zip-tied bags are not handcuffs, they imply formal arrest more so than if Niemeyer had sat in the interrogation room entirely unrestrained. Coupled with the fact that she was alone with Detective Rimmer in the interrogation room late at night and had no other means of transportation, these conditions demonstrate that the police



effectively prevented Niemeyer from leaving in a way that restricted her freedom of action to a degree associated with a formal arrest. Thus, we conclude that Niemeyer was in police custody at the time of her interrogation with Detective Rimmer. Therefore, because Niemeyer was subjected to custodial interrogation without receiving the requisite *Miranda* warnings, the trial court should have granted her motion to suppress.

#### **D. The Trial Court's Suppression Ruling Did Not Constitute Harmless Error**

¶50 Even though we have determined that Niemeyer's statements during the interrogation were improperly admitted, this does not end our inquiry. We still must apply the constitutional harmless error standard to determine whether the trial court's error was "harmless beyond a reasonable doubt." *Hagos*, ¶ 11, 288 P.3d at 119 (quoting *Chapman*, 386 U.S. at 24). Under this standard, if there is a reasonable possibility that the error might have contributed to the conviction, we must reverse. *Id.*

¶51 The People contend that any error was harmless because Niemeyer's statements were cumulative of other evidence. Specifically, the People argue that circumstantial evidence—i.e., Niemeyer's initial statements to Officer Roland at the scene; the manner in which M.F. was shot; and the victim advocate's testimony that Niemeyer admitted to him that she pulled the trigger—mirrored evidence from the interrogation. The People also argue that Niemeyer's testimony at trial

corroborated the prosecution's theory of the case, and that her statements to Detective Rimmer would have been admitted as impeachment evidence. We disagree.

¶52 After reviewing the record, we conclude that the statements made by Niemeyer during the interrogation constituted the bedrock of the prosecution's case. The prosecution introduced Niemeyer's admissions to Detective Rimmer as essential to its argument during opening statements—"You will hear her say that she is the one that shot him."—and continued this theme throughout the trial. Thus, the prosecution layered the remainder of its evidence atop the critical fact that Niemeyer confessed to police on the night of the incident: Her incriminating statements laid the foundation for the rest of the case.

¶53 More importantly, at no point aside from the interrogation did Niemeyer affirmatively say that she had shot M.F. It was only in her interrogation with Detective Rimmer that Niemeyer stated several times that she believed she *may* have shot M.F., culminating in her affirmative statements that she *did* shoot M.F. No other evidence admitted was nearly as inculpatory as Niemeyer's statements to Detective Rimmer.

¶54 Additionally, the People's argument that Niemeyer's testimony at trial renders the statements cumulative is misplaced. Quite the opposite: Niemeyer's testimony *contradicted* her admitted statements to Detective Rimmer. On the

stand, she stated several times that she did not shoot M.F. She explained that the discrepancy in her statements existed because she was in shock that night, confused as to what had happened, and was “not mentally there.”

¶55 Finally, the People’s claim that Niemeyer’s statements to Detective Rimmer would have been admitted regardless as impeachment evidence based on her testimony is flawed. While we cannot speculate as to Niemeyer’s state of mind, she may very well have testified precisely *because* the statements were admitted into evidence—not in spite of them. If the statements had been suppressed, she might not have felt compelled to testify. And if she had not testified, there would have been no opportunity for impeachment.

¶56 Thus, we conclude that there is at least a reasonable possibility that the trial court’s error contributed to Niemeyer’s conviction. *Id.* As a result, we must reverse.

### **III. Conclusion**

¶57 We hold that Niemeyer was in custody at the time of the interrogation with Detective Rimmer, and her statements should have been suppressed. Therefore, we reverse the judgment of the court of appeals and remand for further proceedings consistent with this opinion.