

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.



ATTORNEY FOR APPELLANT

Mark K. Leeman
Leeman Law Office
Logansport, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General
Ellen H. Meilaender
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Axel Domingo Diego,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 31, 2022
Court of Appeals Case No.
22A-CR-331
Appeal from the
Cass Circuit Court
The Honorable
Stephen R. Kitts, II, Judge
Trial Court Cause No.
09C01-1806-FA-1

Vaidik, Judge.

Case Summary

- [1] After making incriminating statements to a detective, Axel Domingo Diego was charged with three child-molesting offenses. He moved to suppress those statements, arguing he was subject to custodial interrogation without being given *Miranda* warnings. The trial court agreed and suppressed the statements. After the State brought an interlocutory appeal and this Court affirmed, our Supreme Court granted transfer and reversed, holding Domingo Diego was not subjected to custodial interrogation and thus the statements should not have been suppressed.
- [2] On remand, the trial court admitted the statements and a jury convicted Domingo Diego of Class A felony child molesting and Class C felony child molesting. He now appeals, again arguing his statements are inadmissible because he was subject to custodial interrogation without being given *Miranda* warnings. Because our Supreme Court has already addressed this argument, we apply the law-of-the-case doctrine and affirm.

Facts and Procedural History

- [3] Our Supreme Court set forth the following facts in its decision on interlocutory appeal:

During the investigation of a possible incident involving child molestation, the Logansport Police Department (“LPD”) contacted Detective Sergeant Troy Munson of the Seymour Police Department (“SPD”) because LPD believed a suspect was

located in SPD's community. After reviewing LPD's interview of the alleged victim, Detective Munson searched SPD's database to locate the home address of the suspect, Axel Domingo Diego. A uniformed officer went to the residence and spoke to Domingo Diego's English-speaking girlfriend, Andrea Martin, who prompted Domingo Diego to come speak with the officer.

Martin translated the conversation with the officer because Chuj was Domingo Diego's primary language. Domingo Diego also spoke some Spanish and English. The officer gave the couple Detective Munson's business card and told Domingo Diego that he needed to go to the police department to find "Mr. Troy."

Domingo Diego and Martin arrived at SPD a few days later—perhaps by appointment. Upon entry into SPD's front lobby, an officer opened a door from the lobby to the rest of the police station and, after the couple moved through the open door, it was shut behind them. The door was secure from the lobby, meaning a person would have to be buzzed through to enter the rest of the police station. A person could freely exit the door to the lobby without assistance, but nobody explained this to Domingo Diego or Martin.

The couple boarded an elevator to the second floor. At some point, Detective Munson met the couple. Detective Munson wore his police badge and carried a gun on his person. Despite Martin's warning that Domingo Diego didn't speak Spanish clearly, Detective Munson told Martin to have a seat outside the room because he had the assistance of a Spanish/English translator.

The interview took place inside Detective Munson's personal office which had two exterior windows and was adorned with family pictures. Munson shut the door and closed the blinds on a window overlooking the rest of the detective division at SPD.

The door was unlocked, but Domingo Diego was seemingly unaware of this. Through the translator, Domingo Diego was advised that he was not under arrest and that he was free to leave anytime. Domingo Diego indicated that he understood and later testified he felt that he could have left in the middle of the interview but chose not to because he was with a police officer. Munson did not read Domingo Diego any *Miranda* warnings.

During the course of the approximately forty to forty-five minute interview, Detective Munson asked Domingo Diego questions about the incident in Logansport. Detective Munson told Domingo Diego he had listened to a recording of the victim's father confronting him about an alleged sexual interaction with the victim and that lying to the detective would make things worse. Though he had only reviewed LPD's interview, the detective also implied to Domingo Diego he had spoken directly with the victim. Thereafter, the detective pressed Domingo Diego on what exactly occurred with the victim and Domingo Diego made several potentially incriminating statements. At the end of the interview, Detective Munson asked if Domingo Diego wanted to write an apology letter to the victim but did not require him to do so. After the interview, Detective Munson wished Domingo Diego and Martin a good day and the couple left the building unaccompanied.

Domingo Diego was charged with Count I, Child Molesting, a Class A Felony, Count II, Child Molesting, a Class A Felony, and Count III, Child Molesting, a Class C Felony. Thereafter, Domingo Diego moved to suppress the statements he made during his interview at SPD on the basis that the interview amounted to a custodial interrogation and the statements were obtained in violation of the Fifth Amendment of the United States Constitution and Article 1, Section 14 of the Indiana Constitution.

State v. Diego, 169 N.E.3d 113, 115-16 (Ind. 2021) (citations to the record omitted).

- [4] At the suppression hearing, Domingo Diego argued he was subject to a custodial interrogation, in part because a language barrier existed. He also emphasized that the certified Spanish to English translation of the interview, which had been admitted into evidence, showed the translator made several errors during the interview.
- [5] The trial court granted Domingo Diego’s motion to suppress, relying on a recent Supreme Court opinion, *State v. E.R.*, 123 N.E.3d 675, 683 (Ind. 2019). The State brought an interlocutory appeal, but this Court affirmed. *State v. Domingo Diego*, 150 N.E.3d 715 (Ind. Ct. App. 2020), *aff’d on reh’g*, 159 N.E.3d 629 (Ind. Ct. App. 2020). After considering *E.R.*, we found, “Domingo Diego’s freedom of movement was curtailed to the degree associated with an arrest, and he was subjected to inherently coercive pressures such as those at issue in *Miranda*.” *Id.* at 720. Therefore, “[Domingo Diego’s] statements [were] obtained during custodial interrogation without *Miranda* warnings.” *Id.* at 721.
- [6] Our Supreme Court granted transfer, vacated this Court’s opinion, and reversed the suppression order, finding that “Domingo Diego’s freedom of movement was not curtailed to the degree associated with formal arrest” and he was therefore not subject to custodial interrogation. *Diego*, 169 N.E.3d at 118. In doing so, the Court stated:

Finally, we are mindful—as the dissent and Defendant highlight—that Domingo Diego had limited English proficiency. It is true that the Supreme Court of the United States has included at least one individual characteristic in the list of acceptable considerations for the objective custody test. But even if, as the dissent suggests, [we were] to consider its proposed objective circumstance in our present inquiry, we think that a reasonable officer would not have thought that [Domingo Diego]’s language abilities prevented him from feeling free to leave.

As tempting as it may be to inject a subjective viewpoint into this inquiry, we must consider this purported factor from the objective shoes of a reasonable officer. Contrary to the suggestion that the SPD dispatcher was an unqualified officer in disguise, the transcript of the interview reveals very little meaningful difference between the interpreter’s live translation and an after-the-fact certified forensic transcript translation. Though Domingo Diego had some trouble forming responses and perhaps lacked perfect comprehension of Detective Munson’s questions, the evidence does not suggest that it would have been apparent to a reasonable officer that [Domingo Diego] was not understanding what was being said. So, unlike a situation in which a language barrier presented a high degree of confusion, the transcript reveals a fluid, conversational exchange between all parties involved. Blunt, yes, but coercive, no.

Id. at 119-20 (internal citations omitted).

[7] The case was remanded to the trial court and proceeded to a jury trial in December 2021. The trial court overruled Domingo Diego’s objection and admitted the previously challenged statements. At trial, Domingo Diego again

introduced the certified translation of the interview and emphasized that parts were “loose,” “not consistent,” or simply “inaccurate.” Tr. Vol. IV p. 84.

[8] The jury found Domingo Diego guilty of one of the Class A felonies and the Class C felony but not guilty of the other Class A felony. The trial court imposed an aggregate sentence of thirty-four years.

[9] Domingo Diego now appeals.

Discussion and Decision

[10] Domingo Diego raises only one issue in this appeal: whether his statements to Detective Munson “should have been suppressed because he was subject to a custodial interrogation without receiving his *Miranda* advisements.” Appellant’s Br. p. 36. This is the exact issue presented on interlocutory appeal and decided by our Supreme Court last year. *See Diego*, 169 N.E.3d at 117 (“The question before us today is whether Domingo Diego was ‘in custody’ such that Detective Munson should have read him *Miranda* warnings prior to the interview.”). We therefore agree with the State that under the law-of-the-case doctrine we should hold in accordance with that opinion.

[11] The law-of-the-case doctrine allows appellate courts to decline to revisit legal issues already determined on appeal in the same case and on substantially the same facts, and it may be applied only to those issues actually considered and decided on appeal. *Cutter v. State*, 725 N.E.2d 401, 405 (Ind. 2000). The doctrine exists “to promote finality and judicial economy[,]” *id.*, and applies to

issues that were decided by an interlocutory appeal when the same claims are repeated on appeal from a completed trial, *Harper v. State*, 963 N.E.2d 653, 658 (Ind. Ct. App. 2012), *aff'd on reh'g*, 968 N.E.2d 843 (Ind. Ct. App. 2012), *trans. denied*.

[12] Domingo Diego contends the law-of-the-case doctrine does not apply because “new facts, new research, and new issues [are] presented in this appeal.” Appellant’s Reply Br. p. 5. If new facts are elicited upon remand that materially affect the questions at issue, then the law-of-the-case doctrine does not apply. *Maciaszek v. State*, 113 N.E.3d 788, 792 (Ind. Ct. App. 2018). But that is not the case here.

[13] Domingo Diego argues the Supreme Court did not consider his limited Spanish proficiency or that translation errors occurred during the interview.¹ But these are not new facts. The record before the Supreme Court showed Domingo Diego had limited Spanish proficiency, and the Court referenced this fact several times. *See Diego*, 169 N.E.3d at 115 (noting Domingo Diego spoke “some Spanish” and that detectives were warned he “didn’t speak Spanish

¹ Domingo Diego also highlights that at trial Detective Munson testified they had to go through two locked doors to get to his office, not one locked door as stated at the suppression hearing and in the Supreme Court’s opinion. But Domingo Diego does not argue this is a new fact that would lead us to not apply the law-of-the-case doctrine. Nor do we believe this would have made a difference. Notably, the Supreme Court found the route taken by Domingo Diego and Detective Munson in the police station was one of the factors that supported suppression. *See Diego*, 169 N.E.3d at 118. However, the Court ultimately concluded that the totality of the circumstances showed Domingo Diego’s freedom of movement was not curtailed akin to formal arrest. Given that the Court already weighted this factor in Domingo Diego’s favor and nonetheless ruled against him, we do not believe further evidence would alter this determination.

clearly”). That record also contained evidence of the translation errors. In fact, the exact evidence Domingo Diego points to—a Spanish-to-English certified forensic transcript translation—was in the record at the time of the appeal and referenced in the opinion. *See id.* at 119 (“[T]he transcript of the interview reveals very little meaningful difference between the interpreter’s live translation and an after-the-fact certified forensic transcript translation.”). The Supreme Court’s analysis shows it considered the effect of the language barrier between Domingo Diego and Detective Munson—including Domingo Diego’s limited Spanish and the translation errors—despite its conclusion that no custodial interrogation occurred.

[14] Domingo Diego also claims there is “new research” showing that “when police interrogate a suspect who struggles with the language used by law enforcement there is a heightened chance” of an “inadvertent confession.” Appellant’s Reply Br. pp. 12, 13.² But again, this is not new information elicited on remand. Domingo Diego did not even mention this research at his trial. Nor do we believe this research shows something the Supreme Court did not know, given that the Court acknowledged the language barrier here in the opinion and has previously emphasized the effect a language barrier can have on judicial proceedings. *See Ponce v. State*, 9 N.E.3d 1265, 1272 (Ind. 2014) (“Courts have long recognized that a foreign language defendant’s capacity to understand and

² Luna Filipovic, *Confession to Make: Inadvertent Confessions and Admissions in the United Kingdom and United States Police Contexts*, 12 *Frontiers in Psychology* 1 (2021).

appreciate the proceedings, to participate with his counsel, to confront his accusers, and to waive rights knowingly and intelligently, is undermined without an interpreter actively participating in his defense.” (citation omitted); *see also Arrieta v. State*, 878 N.E.2d 1238 (Ind. 2008).

[15] Because Domingo Diego is renewing a challenge already addressed by the Supreme Court on interlocutory appeal, and no new facts materially affect the question at issue, we apply the law-of-the-case doctrine and decline to revisit the issue.³

[16] Affirmed.

Crone, J., and Altice, J., concur.

³ To the extent Domingo Diego is asking this Court to “reconsider[]” the Supreme Court’s decision in this case, *see* Appellant’s Br. p. 34, we have no power to do so. *See Culbertson v. State*, 929 N.E.2d 900, 906 (Ind. Ct. App. 2010) (noting that “it is not this court’s role to reconsider or declare invalid decisions of our supreme court”), *trans. denied*.