

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

FOR PUBLICATION
March 12, 2013
9:05 a.m.

v

BURTON DAVID CORTEZ,

Defendant-Appellant.

No. 298262
Montcalm Circuit Court
LC No. 2009-012502-FH

Advance Sheets Version

ON REMAND

Before: O'CONNELL, P.J., and METER and BECKERING, JJ.

METER, J.

This case is before us on remand from the Michigan Supreme Court. Defendant appeals as of right his convictions by a jury of two counts of being a prisoner in possession of a weapon, MCL 800.283(4). The trial court sentenced him, as a second-offense habitual offender, MCL 769.10, to concurrent prison terms of 24 to 90 months. In a previous opinion, we affirmed defendant's convictions. *People v Cortez*, 294 Mich App 481; 811 NW2d 25 (2011), vacated in part and remanded 491 Mich 925 (2012). Shortly after we decided our previous opinion, the United States Supreme Court decided *Howes v Fields*, 565 US ___; 132 S Ct 1181; 182 L Ed 2d 17 (2012). We are directed on remand to reconsider in light of *Fields* defendant's challenge under *Miranda v Arizona*¹ to the use of his confession at trial. *People v Cortez*, 491 Mich 925 (2012). We once again affirm defendant's convictions.

I. FACTS AND PROCEDURAL HISTORY

We set forth the relevant facts in our previous opinion:

At the time of the incident in question defendant was an inmate at the Carson City Correctional Facility. On July 21, 2009, Michigan Department of Corrections (MDOC) officers discovered two weapons in defendant's cell during a search of a number of inmates' cells. Before trial, defendant moved to suppress

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

a recorded statement taken during an interview with him after the weapons were discovered and in which he admitted possessing the weapons. At issue on appeal is whether the trial court erred by ruling that the MDOC officer who questioned defendant during the interview was not required to provide him with *Miranda* warnings before subjecting him to the questioning and by admitting defendant's incriminating statements at trial. . . .

On July 21, 2009, a "siren drill" was carried out at the prison. Leading up to the drill there had been several assaults and fights involving suspected gang members; weapons were used and there were shots fired by corrections officers from the gun tower. On the morning of the drill, two homemade weapons had been found on an inmate who was a suspected gang member. Prison officials decided to conduct the siren drill to search for more weapons and identify inmates involved in the suspected gang activity.

Pursuant to protocol for the siren drill, all inmates were required to return to their cells for a lockdown, and the corrections officers then searched various cells for contraband. During the drill, an MDOC officer, Lieutenant Robert Vashaw, provided other corrections officers with a list of suspected gang members whose cells were to be searched. Defendant's name was on the list.

MDOC Officer Robert Hanes explained that before a cell is searched, the corrections officers have the inmates step out one at a time, undergo a pat-down search, and then proceed to a day room while their cell[s] [are] searched. According to defendant, about 30 minutes after the drill started, he was asked to leave his cell and was patted down. He was then sent to a day room or activity room.

Officer Hanes searched the area of defendant's cell that was considered to be in defendant's area of control. The cell was basically divided so that defendant, who slept on the bottom bunk, had the left side of the cell and the inmate who slept on the top bunk had the right side of the cell as their areas of control. Officer Hanes found pieces of metal in a trash can on the left side of defendant's cell. He also noticed that a metal shelf was missing from defendant's desk. At that point, Lieutenant Vashaw directed that a thorough search of the cell be conducted. The search revealed a homemade shank, specifically a piece of sharpened metal that was inserted into a white plastic handle. The shank was stuck in the bottom bunk's framework on the [underside] of the bed frame. Officer Hanes turned the shank over to Lieutenant Vashaw and then continued to search the cell. A second shank was found inside a corner of the mattress on the bottom bunk. The second shank was made of a piece of metal wrapped in a bluish cloth and was also turned over to Lieutenant Vashaw.

Lieutenant Vashaw testified that he took control of the shanks, "bagged and tagged" them, and placed them in the Michigan State Police evidence locker. Once the shanks were in the locker, Lieutenant Vashaw no longer had control over them; only the state police had access to them. Lieutenant Vashaw testified

that the two shanks were in the evidence locker when he later interviewed defendant but that the trash can containing the metal pieces may have been in the interview room during the interview. Defendant, on the other hand, testified that the shanks, which had been placed inside tubes, and the trash can, were all in the interview room.

Officer Vashaw testified that if an inmate is found with dangerous contraband, departmental policy calls for the inmate to be placed in segregation until his misconduct report is heard. On the basis of the items found in defendant's area of control, Officer Hanes prepared a misconduct report, and Lieutenant Vashaw ordered staff to escort defendant to a segregation cell or solitary confinement. While in the segregation unit, an inmate must be handcuffed and escorted by a staff member whenever he leaves segregation.

Approximately an hour to an hour and a half after Officer Hanes found the second shank, Lieutenant Vashaw requested to speak with defendant. Because defendant was already in segregation, he was escorted in handcuffs to the control center to meet Lieutenant Vashaw. According to the lieutenant, he had defendant come to the control center to be interviewed because inmates are often reluctant to speak openly in front of others. Lieutenant Vashaw and defendant then went to a back office for the interview.

According to Lieutenant Vashaw, defendant hesitated to speak at the outset of the interview and initially "denied everything." The lieutenant then told defendant that the evidence the corrections officers had obtained was "pretty damaging" and that two weapons had been found in defendant's area of control. Lieutenant Vashaw said that defendant needed to tell him what was going on inside the prison because violent events had recently occurred; defendant needed to tell him why he was making weapons or was in possession of weapons. The lieutenant testified that he never threatened defendant.

Lieutenant Vashaw further testified that defendant soon started to talk, and the lieutenant brought out a tape recorder. Defendant knew the recorder was running, and he did not hesitate to discuss the matter. On the recording, which was played, in part, for the jury, defendant said that the weapons were his and that gang members had forced him to make them. One weapon was for his own protection, and the other was to be sold. He also admitted selling a third weapon the previous day. Defendant also talked about gangs that operated within the prison. The interview lasted approximately 15 minutes, and defendant never sought to end the interview. After the interview, a staff member escorted defendant back to segregation pursuant to departmental policy.

According to defendant, Lieutenant Vashaw showed him the trash can and both shanks in the interview room. Defendant told the lieutenant that the items were not his, but then the lieutenant told him they could make a deal. Lieutenant Vashaw proposed that defendant either admit possessing the weapons, do his segregation time after his misconduct ticket was heard, and go home as scheduled

in approximately 11 months, or the lieutenant could keep defendant from ever going home. Defendant testified that everything he admitted on the recording was untrue; he just said what he needed to say in order to get out of prison and go home. [*Cortez*, 294 Mich App at 482-487 (footnotes omitted).]

Before trial, defendant moved to suppress his confession on the basis that he was not given *Miranda* warnings. *Id.* at 487. He additionally argued that the admission of his confession would be unfairly prejudicial because his recorded confession mentioned the length of time that he had been in prison as well as his gang activity. *Id.*

At the suppression hearing, Lieutenant Vashaw explained that his purpose in questioning defendant was to obtain information about ongoing prison gang activity. *Id.* at 487-489. The lieutenant was concerned about maintaining prison safety. *Id.* at 489. In response to the prosecution's and the court's questioning, Lieutenant Vashaw denied that the Department of Corrections had any arrangement with the police with respect to conducting interviews of inmates who are suspected of criminal activity. *Id.* at 490-492. He had no contact with any outside police agency before he questioned defendant. *Id.* at 489.

The trial court denied defendant's motion to suppress the confession and overruled his objections to playing the recording for the jury. *Id.* at 492. The trial court concluded that although defendant had been in custody and subjected to interrogation, Lieutenant Vashaw was not acting in the place of a police officer and therefore was not required to give *Miranda* warnings. *Id.* The trial court also recognized that "there were many good, legitimate reasons why the Department of Corrections follows up with an interview of the defendant, relating to the safety and security of the prison, not only corrections officers but also inmates. Also, in [an] effort to find out, not only what is going on, but whether there was a gang problem, and specifically what's going on in that unit." *Id.*

The trial court allowed a shortened version of the recorded interview to be played at trial, without a reference to the length of defendant's sentence. *Id.* at 492-493. The court also gave a limiting instruction. *Id.* at 493.

On appeal, defendant argued that Lieutenant Vashaw was required to give him *Miranda* warnings before questioning him and that, therefore, the admission of his confession at trial violated defendant's Fifth Amendment right against self-incrimination. *Id.* at 493. We applied the "reasonable person" standard and the four factors of the "free to leave" test. *Id.* at 495. We indicated, quoting *Cervantes v Walker*, 589 F2d 424, 428 (CA 9, 1978), that "the language used to summon the individual, the physical surroundings of the interrogation, the extent to which he is confronted with evidence of his guilt, and the additional pressure exerted to detain him must be considered to determine whether a reasonable person would believe there had been a restriction of his freedom over and above that in his normal prisoner setting." *Cortez*, 294 Mich App at 495. We found the question to be a close one but concluded that the circumstances of the questioning did not require the *Miranda* warnings. *Id.* at 504. We concluded that "the questioning was more like general on-the-scene questioning" that was "essential to the

administration of a prison” than custodial interrogation for which *Miranda* warnings are required. *Id.* We found no violation of defendant’s Fifth Amendment rights.² *Id.*

Defendant filed an application for leave to appeal in the Michigan Supreme Court. While his application was pending, the United States Supreme Court decided *Fields*. *Fields* addressed the question of the proper test to apply for determining whether a prisoner is in custody for purposes of *Miranda*. In lieu of granting defendant’s application, the Michigan Supreme Court vacated the part of our opinion addressing the alleged *Miranda* violation and remanded for reconsideration in light of *Fields*. *Cortez*, 491 Mich 925.

II. ANALYSIS

A. STANDARD OF REVIEW

Whether a person is in custody for purposes of the *Miranda* warnings requirement is a mixed question of law and fact that must be answered independently after a review of the record de novo. *People v Coomer*, 245 Mich App 206, 219; 627 NW2d 612 (2001). “[A]n ‘in-custody’ determination calls for application of the controlling legal standard to the historical facts.” *Id.* We review for clear error a trial court’s factual findings regarding the circumstances surrounding the giving of the statement. *Id.*; *People v Tavernier*, 295 Mich App 582, 584; 815 NW2d 154 (2012). We review de novo the trial court’s ultimate decision concerning a motion to suppress. *Id.*

B. PERTINENT LEGAL STANDARDS

Both the state and federal constitutions guarantee that no person shall be compelled to be a witness against himself or herself. US Const, Am V; Const 1963, art 1, § 17. To protect a defendant’s Fifth Amendment privilege against self-incrimination, custodial interrogation must be preceded by advice to the accused 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.” *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). We look at the totality of the circumstances to determine whether a defendant was in custody at the time of the interrogation. *Coomer*, 245 Mich App at 219. “The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned.” *Id.* at 219-220 (citation and quotation marks omitted). “When determining whether a defendant was ‘in custody,’ courts consider both whether a reasonable person in the defendant’s situation would believe that he or she was free to leave and ‘whether the relevant environment present[ed] the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.’” *People v Elliott*, 295 Mich App 623, 632; 815 NW2d 575 (2012), lv gtd 491 Mich 938 (2012), quoting *Fields*, 565 US at ___; 132 S Ct at 1190.

² In our previous opinion, we also rejected defendant’s argument that the admission of the recorded conversation was unfairly prejudicial under MRE 403. *Cortez*, 294 Mich App at 504-506.

C. THE *FIELDS* DECISION

In *Fields*, two sheriff's deputies questioned a Michigan jail inmate, Randall Fields, about alleged sexual conduct with a 12-year-old boy that occurred before his incarceration. *Fields*, 565 US at ___; 132 S Ct at 1185. A deputy led Fields down one floor of the building and through a locked door to a conference room in another section of the facility. *Id.* at ___; 132 S Ct at 1185-1186. The deputies told Fields that he was free to leave and return to his jail cell at the beginning of and during the interview. *Id.* at ___; 132 S Ct at 1186. The deputies were armed, but Fields was not restrained. *Id.* The conference-room door was open at times and closed at times during the interview. *Id.* The questioning began between 7:00 p.m. and 9:00 p.m. and lasted for five to seven hours. *Id.* During the interview, Fields "became agitated and began to yell" when he was asked about the sexual-abuse allegations. *Id.* He ultimately confessed. *Id.* Fields was never given *Miranda* warnings. *Id.*

According to Fields, one of the deputies swore at him, told him to sit, and said that "if [he] didn't want to cooperate, [he] could leave." *Id.* Although Fields told the deputies "several times during the interview that he no longer wanted to talk" to them, he did not ask to return to his cell. *Id.* After the interview, Fields waited 20 minutes for an officer to be summoned to take him back to his cell. *Id.* Fields arrived at his cell long after his usual bedtime. *Id.*

Fields was charged with criminal sexual conduct. *Id.* He unsuccessfully moved in the trial court to suppress his confession on the basis that he had been subjected to custodial interrogation without *Miranda* warnings. *Id.* Fields was convicted of third-degree criminal sexual conduct and sentenced to 10 to 15 years' imprisonment. *Id.* We affirmed his conviction and the Michigan Supreme Court denied leave to appeal. *Id.*; *People v Fields*, unpublished opinion per curiam of the Court of Appeals, issued May 6, 2004 (Docket No. 246041); *People v Fields*, 471 Mich 933 (2004).

The United States District Court for the Eastern District of Michigan granted Fields's petition for a writ of habeas corpus. *Fields*, 565 US at ___; 132 S Ct at 1186. The United States Court of Appeals for the Sixth Circuit affirmed, reasoning that a prisoner is in custody within the meaning of *Miranda* if he or she has been taken aside and questioned about events that occurred outside the prison walls. *Id.* at ___; 132 S Ct at 1186-1187. The Sixth Circuit's determination that Fields was in custody for purposes of *Miranda* was based on three factors: (1) Fields's imprisonment, (2) the fact that the questioning was conducted in private, and (3) the fact that the questioning involved events outside the prison. *Id.* at ___; 132 S Ct at 1189.

The United States Supreme Court reversed. *Id.* at ___; 132 S Ct at 1194. In addition to correcting the Sixth Circuit's interpretation of Supreme Court precedent, the Court rejected the proposition that the three factors cited by the Sixth Circuit were sufficient to create a custodial situation for purposes of *Miranda*. *Id.* at ___; 132 S Ct at 1187-1189.

The *Fields* Court initially indicated that, in assessing the question of custody, a court must consider all the circumstances surrounding the interrogation in order to determine whether a reasonable person would have felt that he or she was not free to end the interrogation and leave. *Id.* at ___; 132 S Ct at 1189. Relevant factors include the location of the questioning, its

duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning. *Id.*

The Supreme Court then clarified that an inmate's imprisonment alone is not sufficient to constitute custody for *Miranda* purposes. *Id.* at ___; 132 S Ct at 1190. The Court cautioned that restraint on a person's freedom of movement is just the first step in the custody analysis. *Id.* at ___; 132 S Ct at 1189. Courts must also ask "whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*." *Id.* at ___; 132 S Ct at 1190. The *Fields* Court cited *Maryland v Shatzer*, 559 US 98, ___; 130 S Ct 1213, 1223-1226; 175 L Ed 2d 1045 (2010), for the proposition that the rule in *Edwards v Arizona*, 451 US 477; 101 S Ct 1880; 68 L Ed 2d 378 (1981), limiting the state's ability to initiate additional questioning after a suspect invokes his or her right to counsel, does not apply "when there is a sufficient break in custody between the suspect's invocation of the right to counsel and the initiation of subsequent questioning." *Fields*, 565 US at ___; 132 S Ct at 1190. The *Fields* Court noted that, according to *Shatzer*, a break in custody can happen while a prisoner is serving his or her sentence. *Id.* The *Fields* majority concluded that, by extension, "[i]f a break in custody can occur while a prisoner is serving an uninterrupted term of imprisonment, it must follow that imprisonment alone is not enough to create a custodial situation within the meaning of *Miranda*." *Id.*

The Court examined the relative coerciveness of an interrogative setting as perceived by a free person compared to a prisoner and articulated three meaningful distinctions. *Id.* at ___; 132 S Ct at 1190-1191. First, the initial shock that a recently arrested person might feel during an interrogation is not likely to be experienced by a prison inmate when the inmate is questioned:

[Q]uestioning a person who is already serving a prison term does not generally involve the shock that very often accompanies arrest. In the paradigmatic *Miranda* situation—a person is arrested in his home or on the street and whisked to a police station for questioning—detention represents a sharp and ominous change, and the shock may give rise to coercive pressures. A person who is "cut off from his normal life and companions," *Shatzer*, [559 US] at ___, 130 S. Ct., at 1220, and abruptly transported from the street into a "police-dominated atmosphere," *Miranda*, 384 U.S., at 456, 86 S. Ct. 1602, may feel coerced into answering questions.

By contrast, when a person who is already serving a term of imprisonment is questioned, there is usually no such change. "Interrogated suspects who have previously been convicted of crime live in prison." *Shatzer*, 559 U.S. at ___, 130 S. Ct., at 1224. For a person serving a term of incarceration, we reasoned in *Shatzer*, the ordinary restrictions of prison life, while no doubt unpleasant, are expected and familiar and thus do not involve the same "inherently compelling pressures" that are often present when a suspect is yanked from familiar surroundings in the outside world and subjected to interrogation in a police station. *Id.*, at ___, 130 S. Ct., at 1219. [*Fields*, 565 US at ___; 132 S Ct at 1190-1191.]

Second, a prisoner is unlikely to agree to talk to the police in the hopes that the prisoner will be able to go home if he or she cooperates. *Id.* at ___; 132 S Ct at 1191. “[W]hen a prisoner is questioned, he knows that when the questioning ceases, he will remain under confinement.” *Id.* Third, a prisoner “knows that the law enforcement officers who question him probably lack the authority to affect the duration of his sentence” or lack the power to give the prisoner early release on parole. *Id.* In contrast, a person who is not incarcerated might feel compelled to talk out of fear of reprisal for remaining silent or out of hope for lenient treatment. See *id.* The *Fields* majority concluded that “service of a term of imprisonment, without more, is not enough to constitute *Miranda* custody.” *Id.*

The Supreme Court also rejected the Sixth Circuit’s emphasis on the fact that the inmate was questioned in private:

Taking a prisoner aside for questioning—as opposed to questioning the prisoner in the presence of fellow inmates—does not necessarily convert a noncustodial situation . . . to one in which *Miranda* applies. When a person who is not serving a prison term is questioned, isolation may contribute to a coercive atmosphere by preventing family members, friends, and others who may be sympathetic from providing either advice or emotional support. And without any such assistance, the person who is questioned may feel overwhelming pressure to speak and to refrain from asking that the interview be terminated.

By contrast, questioning a prisoner in private does not generally remove the prisoner from a supportive atmosphere. Fellow inmates are by no means necessarily friends. On the contrary, they may be hostile and, for a variety of reasons, may react negatively to what the questioning reveals. In the present case, for example, would respondent have felt more at ease if he had been questioned in the presence of other inmates about the sexual abuse of an adolescent boy? Isolation from the general prison population is often in the best interest of the interviewee and, in any event, does not suggest on its own the atmosphere of coercion that concerned the Court in *Miranda*. [*Id.* at ___; 132 S Ct at 1191-1192 (citation and quotation marks omitted).]

The *Fields* Court also stated that imposing additional restraints on a prisoner’s freedom of movement, such as an armed escort to the interview room, does not necessarily suggest custodial interrogation. *Id.* at ___; 132 S Ct at 1192. The Court stated that “such procedures are an ordinary and familiar attribute of life behind bars. Escorts and special security precautions may be standard procedures regardless of the purpose for which an inmate is removed from his regular routine and taken to a special location.” *Id.*

With respect to the subject matter of the questioning, the *Fields* majority concluded that the distinction between events occurring inside the prison and events occurring outside the prison is not significant for purposes of determining whether a suspect is in custody:

Finally, we fail to see why questioning about criminal activity outside the prison should be regarded as having a significantly greater potential for coercion than questioning under otherwise identical circumstances about criminal activity

within the prison walls. In both instances, there is the potential for additional criminal liability and punishment. If anything, the distinction would seem to cut the other way, as an inmate who confesses to misconduct that occurred within the prison may also incur administrative penalties, but even this is not enough to tip the scale in the direction of custody. [*Id.*]

In sum, “[t]he threat to a citizen’s Fifth Amendment rights that *Miranda* was designed to neutralize is neither mitigated nor magnified by the location of the conduct about which questions are asked.” *Id.* (citation and quotation marks omitted).

The Supreme Court concluded its analysis of the appropriate standards by stating, in part:

When a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation. These include the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted. An inmate who is removed from the general prison population for questioning and is thereafter . . . subjected to treatment in connection with the interrogation that renders him “in custody” for practical purposes . . . will be entitled to the full panoply of protections prescribed by *Miranda*.” [*Id.* (citations and some quotation marks omitted).]

The Supreme Court determined that Fields was not in custody for purposes of *Miranda*. *Id.* The Court recognized the factors that militated in favor of a custody finding, such as the facts that Fields did not initiate or consent to the interview, the interview lasted five to seven hours and past Fields’ regular bedtime, the deputies were armed, and one of them used a sharp tone and profanity. *Id.* at ___; 132 S Ct at 1192-1193. However, these factors were outweighed by other circumstances suggesting that Fields was not in custody when he was questioned. *Id.* at ___; 132 S Ct at 1193. Fields was told at the outset, and again during the interview, that he could return to his cell whenever he wanted. *Id.* He was not physically restrained and was not uncomfortable in the conference room. *Id.* Fields was offered food and water, and at times the conference-room door was open. *Id.* “All of these objective facts are consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave.” *Id.*, quoting *Yarborough v Alvarado*, 541 US 652, 664-665; 124 S Ct 2140; 158 L Ed 2d 938 (2004). The *Fields* majority concluded: “Taking into account all of the circumstances of the questioning—including especially the undisputed fact that respondent was told that he was free to end the questioning and return to his cell—we hold that respondent was not in custody within the meaning of *Miranda*.” *Fields*, 565 US at ___; 132 S Ct at 1194.

D. APPLICATION OF *FIELDS*

Defendant argues that *Fields* supports his position that he was in custody for purposes of *Miranda* when Lieutenant Vashaw questioned him. Defendant emphasizes that he was segregated from the general prison population, handcuffed, and confined in an office, which constituted more restrictive circumstances than the restrictions associated with his prison routine. In addition, defendant emphasizes that he did not volunteer to talk to the officers and that he was not told that he did not have to talk to them. He also notes that, unlike the mitigating circumstances in *Fields*, he was restrained, the door to the room was closed, and he was not told

that he could return to his cell if he did not want to answer questions. Defendant contends that the totality of the circumstances establishes that he was in custody for purposes of *Miranda*.

We disagree. Although *Fields* alters our earlier analysis of the custody issue, it does not compel a different result.

Fields instructs that security precautions that are undertaken do not affect the custody analysis if the precautions are routinely employed when an inmate is transferred from place to place within the prison or when away from the prison population. *Id.* at ___; 132 S Ct at 1192. The record established that the security precautions employed were standard prison procedures that are routinely employed when weapons are found in an inmate's cell. See *Cortez*, 294 Mich App at 485, 501, 503.³ These were conditions and restraints to which defendant would have been subjected as a matter of prison policy regardless of the interview. See *Fields*, 565 US at ___; 132 S Ct at 1193 (“under no circumstances could he have reasonably expected to be able to roam free”). Thus, the custody analysis is not impacted by the security precautions undertaken. Also in accordance with *Fields*, the fact that defendant was questioned about a matter involving his conduct in prison, as opposed to his conduct outside prison, is not a relevant consideration. *Id.* at ___; 132 S Ct at 1192.

Admittedly, a relevant distinction between *Fields* and this case is that unlike *Fields*, defendant was not told that he was free to end the questioning and return to his cell. However, other coercive aspects of the interrogation that existed in *Fields* are absent here. Unlike *Fields*, who was questioned for up to seven hours late into the night, defendant's interview lasted only 15 minutes. *Cortez*, 294 Mich App at 486. Lieutenant Vashaw stated that defendant “did not hesitate to discuss the matter” even when he was aware that a tape recorder was running. *Id.* There was no evidence that defendant's sleep schedule was interrupted or that he was made uncomfortable. Lieutenant Vashaw testified that he never threatened defendant and the trial court found the lieutenant to be credible. *Id.* at 486, 492.

Additionally, we agree with the observation of the *Fields* majority that a prisoner's removal from the general population might lessen the coercive aspect of the interview. See *Fields*, 565 US at ___; 132 S Ct at 1191-1192. Defendant was questioned about gang activity inside the prison and answered with specific information about prisoners and gangs. See *Cortez*, 294 Mich App at 490. In these circumstances, his isolation for purposes of questioning might have been more comforting than coercive. Indeed, Lieutenant Vashaw testified that he questioned defendant away from other prisoners because “inmates are often reluctant to speak openly in front of others.” *Id.* at 485-486. Defendant's isolation from other prisoners did not create a coercive atmosphere suggestive of custody to which *Miranda* applies.

³ As noted in *Cortez*, 294 Mich App at 501, “Dangerous weapons were recovered from defendant's cell, for which a misconduct report was filed. Departmental procedure required that he be placed in segregation and handcuffed whenever outside of segregation.”

III. CONCLUSION

In light of all the features of the interrogation, defendant was not in custody for purposes of *Miranda* when he was questioned. On reconsideration in light of *Fields*, we again conclude that no violation of defendant's Fifth Amendment rights occurred.

Affirmed.

/s/ Patrick M. Meter