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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45042**
Plaintiff-Appellant,	)	
	)	**Kootenai County Case No.**
v.	)	**CR-2016-19399**
	)	
BRIANNA NICOLE ANDERSEN,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order partially granting Brianna Nicole Andersen's motion to suppress evidence.

Statement Of The Facts And Course Of The Proceedings

Late in the evening on October 1st, 2016, law enforcement officers responded to an apartment after receiving reports of a drug overdose. (12/01/2016 Tr., p. 6, Ls. 11-19.) The officers entered the apartment, which contained four individuals, including Andersen, who had called 911. (12/01/2016 Tr., 8, L. 22 - p. 9, L. 12; p. 19, Ls. 8-14; p. 33, L. 22 – p. 34, L. 5.) Officer Nielsen went into a bathroom on the ground floor where he found a man, later identified as Ryan Stebbins, lying unconscious on the floor. (12/01/2016 Tr., p. 8, L. 10 – p. 9, L. 1.) The officer verified Ryan was breathing and had a pulse, and EMS responded within five minutes. (12/01/2016 Tr., p. 19, L. 24 – p. 20, L. 6; p. 42, Ls., 15-21.)

While in the bathroom Officer Nielsen noticed a syringe laying on the counter. (12/01/2016 Tr., p. 10, Ls. 3-10.) The officer believed that Ryan was under the influence of drugs, and that the syringe was for "a narcotic analgesic of some kind," such as heroin. (12/01/2016 Tr., p. 13, Ls. 3-13.)

Several more officers responded to the apartment—officers Niska, Schneider, Schatz, Rodgers, and Cohen. (12/01/2016 Tr., p. 21, Ls. 8-13; p. 38, Ls. 9-21; p. 41, Ls. 3-15.) While Officer Nielsen was in the bathroom with Ryan the other officers began

interviewing the other persons in the apartment. (12/01/2016 Tr., p. 13, Ls. 17-22; p. 42, Ls. 3-16.)

The bathroom was next to an open-area kitchen and living room, where Officer Rodgers spoke "with someone named Nick." (12/01/2016 Tr., p. 42, L. 8-14.) Officer Niska interviewed Andersen in the same area. (12/01/2016 Tr., p. 31, Ls. 7-12.) Prior to the conversation Andersen opted to sit down in an armchair, and she was not handcuffed or told she was under arrest. (12/01/2016 Tr., p. 31, Ls. 13-25.) Nor did Officer Niska draw any weapons or issue any threats prior to Andersen's agreement to speak with her. (12/01/2016 Tr., p. 32, Ls. 1-4.) Before the conversation began, Andersen was not advised of her Miranda rights. (12/01/2016 Tr., p. 43, L. 24 – p. 44, L. 1.)

Andersen initially told the officer that the whole group was downstairs in the basement eating pizza; she claimed that Ryan went upstairs, they heard a thump, and went up to find Ryan passed out. (12/01/2016 Tr., p. 32, Ls. 18-25.) Andersen also admitted to Officer Niska that she had previously used drugs, and had recently been on probation. (12/01/2016 Tr., p. 36, Ls. 11-21; p. 45, Ls. 6-9; Video Ex., 07:40-07:59.)

Officer Schneider eventually joined the discussion. (12/01/2016 Tr., p. 41, Ls. 3-8.) He asked Andersen about using drugs with Ryan and about her own drug use. (Video Ex., 12:51-13:06.) When Schneider asked "Where'd you put the dope?" Andersen denied having anything. (Video Ex., 13:06-13:11.) Officer Schneider accused Andersen of lying, but Andersen denied being in the bathroom with Ryan, repeatedly denied being untruthful, and told the officers, "I mean honestly I don't have anything; you can search my stuff; search everything; search my car, everything." (12/01/2016 Tr., p. 43, Ls. 4-20; Video Ex., 13:12-15:02.) Soon after that Andersen attempted to sit up

and both officers told her to "Stay seated." (Video Ex., 15:15-15:19.) Less than a minute thereafter, Andersen attempted to sit up again, and Schneider again told her to "Stay seated." (Video Ex., 15:58-16:00.)

Andersen continued to talk to the officers, ultimately admitting to Officer Niska that she was in the bathroom with Ryan when he passed out. (12/01/2016 Tr., p. 33, Ls. 1-15.) Andersen also admitted that prior to calling 911 she snapped a syringe in half and flushed it down the toilet because she did not want Ryan to get in trouble. (12/01/2016 Tr., p. 34, L. 3 – p. 35, L. 4.)

Andersen consented to a search of her purse. (12/01/2016 Tr., p. 38, Ls. 4-8.) The purse contained two plastic baggies with a "very dark substance," and a cotton ball with residue that later tested positive for heroin. (12/01/2016 Tr., p. 14, L. 25 – p. 18, L. 6; State's Ex. 1.) Andersen was accordingly arrested and searched, and two syringes were found in her pocket. (12/01/2016 Tr., p. 46, Ls. 19-25.)

Andersen was charged by information with possession of heroin and felony destruction of evidence. (R., p. 52-53; 12/01/16 Tr., p. 3, L. 18 – p. 4, L. 12.)

Andersen filed a motion to suppress evidence. (R., pp. 56-57, 59-72.) She argued her statements were suppressible pursuant to Miranda and under the Idaho Constitution, that the physical evidence discovered as a result of the statements "must be suppressed as fruit of the poisonous tree," and that the search of her purse was "clearly also the result of police coercion." (R., pp. 61-71 (boldface omitted).) The state responded that because Andersen was not in custody Miranda would not apply; that Andersen freely and voluntarily consented to the search of her purse; and that, even granting any Miranda violations, the physical evidence obtained as a result of her statements would still be

admissible. (R., pp. 74-76.) The parties stipulated that the evidentiary record for the motion would consist of the preliminary hearing transcript and Officer Niska's video of the incident. (03/16/2017 Tr., p. 3, L. 3 – p. 4, L. 3.)

The district court partially granted Andersen's motion. With respect to Andersen's statements the court found the following:

> Okay. The Court finds from a review of the CD at time stamp 1550 approximately, the defendant attempted to get up during the interview. She was rather forcefully told to sit down and stay. The Court finds based upon that, she was in custody. Based upon that, I'm going to suppress all of her statements made to law enforcement after that fact or after that statement. So those will not be used against her.

(03/16/2017 Tr., p. 4, L. 23 – p. 5, L. 6.)

Turning to the search of the purse, the district court considered a number of factors—whether Andersen was in custody, whether the officers' guns were drawn, whether Miranda warnings were given, whether Andersen "was told she had a right not to consent," and whether she was told a search warrant could be obtained. (03/16/2017 Tr., p. 5, Ls. 7-23.) The court concluded that "based on the total conversation between the defendant and law enforcement, that she knew that she was being asked for consent to search and she volunteered it, she agreed to it," and that "based upon the videotape and the total transaction as it occurred," Andersen consented to the search. (03/16/2017 Tr., p. 6, L. 18 – p. 7, L. 7.) The district court accordingly held it would "not grant suppression of the fruits of the search." (03/16/2017 Tr., p. 7, Ls. 8-9.)

The state asked the district court to clarify whether the statements that were suppressed "were voluntarily made," and therefore admissible for other purposes at trial. (03/16/2017 Tr., p. 7, Ls. 15-20.) The district court found they were not:

> I think initially [the officers] were fairly forceful. The farther they went into it, the more conversational it became. But I'm going to find that her statements were not voluntary. They're not useful for any purpose. They're constitutionally prohibited.

(03/16/2017 Tr., p. 8, Ls. 18-23.)

The district court entered an order granting Andersen's motion in part as to the statements, and denying the motion in part as to the physical evidence in the purse. (R., pp. 79-80.) The state timely appealed. (R., pp. 81-84.)

ISSUES

I. Did the district court err in partially granting Andersen's suppression motion?

II. Did the district court err in concluding Andersen's statements were not voluntary?

ARGUMENT

I.
The District Court Erred In Partially Granting Andersen's Suppression Motion

A. Introduction

The district court granted Andersen's motion to suppress in part as to her statements, finding that she "was rather forcefully told to sit down and stay," and that "based on that, she was in custody." (03/16/2017 Tr., p. 5, Ls. 1-2.) The court therefore suppressed "all of her statements made to law enforcement after that fact or after that statement." (03/16/2017 Tr., p. 5, Ls. 3-6.)

This was an error. A mere detention, even forcefully articulated, would not rise to the level of custody equivalent to an arrest. Because the defendant was not in the equivalent of a custodial arrest when she made her statements to law enforcement, the district court erred by suppressing those statements.

B. Standard Of Review

This Court reviews suppression motion orders with a bifurcated standard. State v. Wulff, 157 Idaho 416, 418, 337 P.3d 575, 577 (2014). When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are not clearly erroneous, but freely reviews the application of constitutional principles to those facts. Id.

C. The District Court Erred By Determining That Andersen Was In Custody Based Solely On The Officer "Rather Forcefully" Telling Her To Sit Down

To safeguard the Fifth Amendment's protections against self-incrimination, the United States Supreme Court held in Miranda v. Arizona, 384 U.S. 436, 478-79 (1966), that before an individual is subjected to custodial interrogation, the interrogating officers

must advise the individual of certain rights, including the right to remain silent. The test for whether an individual is in custody for purposes of Miranda is whether, in light of the totality of the circumstances surrounding the interrogation, there was a "'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125 (1983) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)).

Because Miranda's custody test requires either an arrest, or a restraint on freedom associated with a formal arrest, a person subjected to an investigative detention based on reasonable suspicion of criminal activity, although not "free to leave," is not necessarily in custody for purposes of Miranda. State v. Silver, 155 Idaho 29, 32, 304 P.3d 304, 307 (Ct. App. 2013) ("The freedom-of-movement inquiry is, however, only a necessary and not a sufficient condition for Miranda custody."); see also Maryland v. Shatzer, 559 U.S. 98, 111–13, 130 S.Ct. 1213, 1224, 175 L.Ed.2d 1045, 1057–58 (2010); Berkemer v. McCarty, 468 U.S. 420 (1984); State v. Ybarra, 102 Idaho 573, 634 P.2d 435 (1981); State v. Silva, 134 Idaho 848, 854, 11 P.3d 44, 50 (Ct. App. 2000). For example, neither traffic stops nor the conducting of standard field sobriety tests immediately invoke Miranda. Berkemer, 468 U.S. at 440; State v. Pilik, 129 Idaho 50, 52, 921 P.2d 750, 752 (Ct. App. 1996).

The standard for determining when a suspect is in custody and Miranda warnings are required does not depend on the officer's or suspect's subjective beliefs. Rather, the relevant inquiry is how a reasonable person in the suspect's position would have understood his or her situation. Berkemer, 468 U.S. at 442; State v. Doe, 137 Idaho 519, 523, 50 P.3d 1014, 1018 (2002); State v. Albaugh, 133 Idaho 587, 591, 990 P.2d 753, 757

(Ct. App. 1999). Specifically, the inquiry is "whether a reasonable person would believe he or she was in police custody to a degree associated with formal arrest, not whether the person would believe he or she was not free to leave." Silva, 134 Idaho at 854, 11 P.3d at 50. In State v. James, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010), the Idaho Supreme Court held that the burden of showing custody for the purposes of Miranda lies on the defendant.

Applying these standards, the Court of Appeals has therefore held that even where a suspect "unquestionably was not free to leave" during a traffic stop and DUI investigation, the suspect was not in custody based on the totality of the circumstances. Silver, 155 Idaho at 33, 304 P.3d at 307. In Silver, the defendant was pulled over after multiple traffic violations. Id. at 30, 304 P.3d at 305. The officer smelled marijuana, ran Silver's license and registration, and asked him to step out of the vehicle for field sobriety tests. Id. at 30-31, 304 P.3d at 305-06. Another officer arrived and removed drugs that were in plain view in Silver's pocket. Id. at 31, 304 P.3d at 306. The officers asked the defendant if he had any other drugs or paraphernalia on him, warning that he could be charged with another felony if he brought drugs into the jail. Id. They also threatened that they could "rip [Silver's] car apart" on account of the drugs they already found, and "admonished Silver to 'be straight'"—which led to an admission that there was another ounce of marijuana in the car. Id. The final inquiry was whether Silver was "dealing or just using," and after Silver confirmed the former, the officers performed "three field sobriety tests and then placed Silver under arrest." Id.

The Silver Court weighed "the totality of the circumstances" to determine whether all of this amounted to custody:

> Only two officers were present at the scene. The officers did not draw their weapons or place Silver in a police vehicle. He was not handcuffed or told that his detention was more than temporary. Although the stop was at night, it took place in a publicly visible location on a public roadway. *Cf. James*, 148 Idaho at 578, 225 P.3d at 1173. The interrogation was brief, lasting less than two minutes—approximately six to eight minutes after Silver was stopped. On balance, these factors suggest the questioning occurred during an investigative detention and weigh against a conclusion that Silver was in custody. The escalation in this case from a traffic infraction stop, to a DUI investigation, to a drug possession investigation was not the result of police browbeating or police domination, but instead was the result of the discovery of evidence of additional possible crimes during the officers' investigation.

Id. at 34–35, 304 P.3d at 309–10. The Silver Court accordingly "conclude[d] that Silver was not in custody" when he made the admissions, and reversed the order suppressing his statements. Id.

Similarly, in this case, an officer "rather forcefully" telling Andersen to stay seated would not rise to the level of custody given the totality of the circumstances. The officers were the first responders to Andersen's 911 call, which naturally led to an investigation of the drug use that preceded the overdose. (12/01/2016 Tr., p. 29, Ls. 3-6; p. 33, L. 22 – p. 34, L. 5.) While multiple officers were present on the scene, it was a private residence and not a police station, and there were four civilians in the apartment as well (not to mention multiple EMS personnel). (12/01/2016 Tr., p. 19, Ls. 11-14; p. 20, L. 24 – p. 21, L. 4.) Moreover, not every police officer was in the living room area simultaneously, and even during the rare times when the area was crowded with people not every one of them was a police officer. (See e.g., Video Ex. at 08:25-08:35 (showing at least seven people in the living room, including EMS personnel and occupants).) For the majority of the interview Andersen spoke to only one officer, and the other officers who joined the conversation did so fleetingly, filtering in and out of the living room as the

interview progressed. (See generally, Video Ex.) The video also reflects that at least one other suspect (presumably Nick) was sitting in close proximity to Andersen for a large portion of the conversation. (See 12/01/2016 Tr., p. 42, Ls. 12-14; Video Ex., 24:57-52:15.) Far from "dominating" the living room, or improperly escalating a routine investigative detention into a *de facto* custodial arrest, the police presence here was perfectly reasonable given the emergency call for help after an overdose and the ensuing drug investigation. See Silver, 155 Idaho at 34, 304 P.3d at 309.

Moreover, the interview itself was amicably initiated by Officer Niska, who asked Andersen, "Why don't you come talk to me?," which Andersen agreed to do. (Video Ex., 02:52; 12/01/2016 Tr., p. 32, Ls. 3-4.) The officers did not handcuff Andersen, tell her she was under arrest, place her in a police vehicle, or physically restrain her.[1] (12/01/2016 Tr., p. 31, Ls. 13-25.) No guns were drawn, and the officers did not threaten to arrest Andersen if she did not talk to them. (12/01/2016 Tr., p. 32, Ls. 1-2; p. 48, L. 24 – p. 49, L. 11; see generally, Video Ex.) While the officers at times raised their voices, including when they instructed her to "stay seated," emotions ran high on both sides, as the video shows. (See Video Ex., 13:20-15:59.) The video also reflects that the majority of the interview was relaxed in tone and non-confrontational. (See generally Video Ex., 16:59-52:51.) All told, given the totality of the circumstances, a reasonable person would not have interpreted the instruction to stay seated as a custodial arrest.

[1] Officer Niska testified that she "pulled [Andersen] over closer to the kitchen" but this was apparently a figure of speech, as the video does not appear to show the officer literally pulling Andersen. (Compare 12/01/2016 Tr., p. 31, Ls. 15-20 with Video Ex., 02:49-02:58.)

The district court disagreed, noting that Andersen "was rather forcefully told to sit down and stay" at one point in time, and finding "based upon that, she was in custody." (03/16/2017 Tr., p. 5, Ls. 1-2.) This perfunctory conclusion was in error because mere detentions—even ones that are "rather forcefully" articulated—are insufficient to establish custody. The Silver case made this clear when it found that the "unquestionably detained" defendant was not in custody, even factoring in the officers' admonishments to "be straight" about his drug use, threats of potential arrest, and warnings that they could "rip [his] car apart" in light of the drugs they already ferreted out. Silver, 155 Idaho at 31-35, 304 P.3d at 306-10. The detention there, even accounting for the officers' confrontational language, did not rise to the level of Miranda custody. Id. at 35, 304 P.3d at 310.

The district court therefore applied an incorrect standard when it concluded Andersen was in custody based on a single fact: the officer's "rather forceful[]" pronouncement to stay seated. (See 03/16/2017 Tr., p. 4, L. 23 – p. 5, L. 6.) While such an instruction plainly shows Andersen was *detained*, it is insufficient to show she was in *custody*, because "[t]he freedom-of-movement inquiry is … only a necessary and not a sufficient condition for *Miranda* custody." Silver, 155 Idaho at 32, 304 P.3d at 307. In other words, the test is not whether Andersen was detained, or whether a reasonable person would feel free to leave after being forcefully told to sit down; the correct test is whether, given all the circumstances, a reasonable person would "believe he or she was in police custody to a degree associated with formal arrest." Silva, 134 Idaho at 854, 11 P.3d at 50. Because the totality of the circumstances would not support such a belief

here, the district court erred in determining Andersen was in custody, and therefore erred in suppressing her statements.

II.
The District Court Erred By Concluding Andersen's Statements Were Not Voluntary

A. Introduction

The state asked the district court to clarify whether the suppressed statements were voluntarily made, such that they could be used for other purposes at trial. (03/16/2017 Tr., p. 7, Ls. 15-20.) The court ruled that the statements were not voluntary:

> I think initially [the officers] were fairly forceful. The farther they went into it, the more conversational it became. But I'm going to find that her statements were not voluntary. They're not useful for any purpose. They're constitutionally prohibited.

(03/16/2017 Tr., p. 8, Ls. 18-23.)

This was also an error. A review of the record shows that Andersen's will was not overborne by the officers' questioning, and that her statements were accordingly voluntary. Because "a fairly forceful" conversation alone does not show coercion, the district court erred by finding the statements were constitutionally prohibited.

B. Standard Of Review

This Court reviews suppression motion orders with a bifurcated standard. Wulff, 157 Idaho at 418, 337 P.3d at 577. When a decision on a motion to suppress is challenged, the appellate court accepts the trial court's findings of fact that are not clearly erroneous, but freely reviews the application of constitutional principles to those facts. Id.

C. The District Court Erred When It Found That Andersen's Voluntary Statements Were Coerced Based Simply On The "Fairly Forceful" Initial Tone Of The Conversation

"The use against a criminal defendant of a statement that the defendant made involuntarily violates the Due Process Clause." State v. Hays, 159 Idaho 476, 485-86, 362 P.3d 551, 560-61 (Ct. App. 2015) (citing Miller v. Fenton, 474 U.S. 104, 109–10 (1985); Haynes v. Washington, 373 U.S. 503, 514–15 (1963); State v. Doe, 131 Idaho 709, 712, 963 P.2d 392, 395 (Ct. App. 1998)). "The exclusionary rule 'applies to any confession that was the product of police coercion, either physical or psychological, or that was otherwise obtained by methods offensive to due process.'" Id. (quoting State v. Doe, 130 Idaho 811, 814, 948 P.2d 166, 169 (Ct. App. 1997)). "In determining whether a statement was involuntary, the inquiry is whether the defendant's will was overborne by police coercion." Id. (citing Arizona v. Fulminante, 499 U.S. 279, 286 (1991); Colorado v. Connelly, 479 U.S. 157, 177 (1986); Doe, 131 Idaho at 713, 963 P.2d at 396; State v. Davila, 127 Idaho 888, 892, 908 P.2d 581, 585 (Ct. App. 1995)). In determining the voluntariness of a confession, courts consider the characteristics of the accused and the interrogation itself, including whether Miranda warnings were given; the accused's age, education and intelligence; the length of the detention and whether it was repeated or prolonged; and whether the accused was deprived of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973); State v. Troy, 124 Idaho 211, 214, 858 P.2d 750, 753 (1993); State v. Valero, 153 Idaho 910, 912, 285 P.3d 1014, 1016 (Ct. App. 2012).

"[C]oercive police activity is a necessary predicate to the finding that a confession is not 'voluntary' within the meaning of the Due Process Clause of the Fourteenth Amendment." Connelly, 479 U.S. at 167. "Indeed, coercive government

misconduct was the catalyst for this Court's seminal confession case, *Brown v. Mississippi*, 297 U.S. 278, 56 S.Ct. 461, 80 L.Ed. 682 (1936)." Connelly, 479 U.S. at 163. In Brown, "police officers extracted confessions from the accused through brutal torture." Id. "[T]he cases considered by th[e] Court" post-Brown "have focused upon the crucial element of police overreaching." Id. at 163-164. "While each confession case has turned on its own set of factors justifying the conclusion that police conduct was oppressive, all have contained a substantial element of coercive police conduct." Id. at 164. "Absent police conduct causally related to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." Id.

A review of the record here shows that Andersen's statements were voluntary. Per the video of the encounter, Andersen was told to stay seated at 15:58.[2] Officer Nielsen was incredulous that Andersen did not hide drugs or paraphernalia, given that Ryan, unconscious as he was, would have been unable to stash the items. (Video Ex., 15:23-16:09.) Officer Nielsen accused Andersen of hiding the drugs, repeatedly asking her "who hid it," and it is clear from his raised voice that he was frustrated at Andersen's repeated denials of involvement. (Video Ex., 16:10-16:46.) But Officer Nielsen eventually gives up and exits the room, leaving the conversation. (Video Ex., 16:46-16:56.)

Officer Niska tells Andersen to "Quit—quit lying. Enough with the B.S." (16:49-16:52.) The officer then says "When you start being honest with us it's going to get you a

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[2] The instruction to "stay seated" at 15:58 marks the beginning of statements that were suppressed by the court, and that were later the subject of the state's request for clarification and the court's coercion ruling. (See 03/16/2017 Tr., p. 5, Ls. 1-6; p. 7, Ls. 15-20; p. 8, Ls. 18-23.)

lot further, okay?" (Video Ex., 17:06-17:10.) After a long pause Officer Niska asks, with a much more subdued tone: "So what really happened?" (Video Ex., 17:24-17:26.) The ensuing conversation is significantly lower in volume and intensity, with the officers only pushing back when they determine Andersen is still being untruthful. (See e.g., Video Ex., 18:55-19:01; 22:59-23:16; 31:47-35:02; 35:57-36:17.) And soon thereafter Andersen, herself calm and even-toned, admits that she broke the syringe and flushed it down the toilet. (Video Ex., 19:30-39; 20:48-21:09.) The vast majority of the remaining conversation—primarily between Andersen and Officer Niska, but peppered with brief appearances by Officer Nielsen and other interlocutors—struck a substantially similar tone; per the district court, it was "more conversational," which the video clearly affirms. (See generally, Video Ex., 17:26-52:21; 03/16/2017 Tr., p. 8, Ls. 19-20.)

The district court therefore erred by determining that Andersen's statements were coerced based on a single factor: the officers' "fairly forceful" initial disposition. The record shows that even at the emotional high point of the encounter the officers were at worst simply yelling at Andersen, and only did so for a brief span of time. (See e.g., Video Ex., 13:18-14:48; 15:55-16:53.) Andersen herself shouted back at the officers, an indicator that her willpower had not been overborne by the exchange. (See e.g., Video Ex., 14:00-14:08; 14:30-14:33; 15:36-:15:48.) Moreover, while the officers' tone is undoubtedly a factor to consider, it cannot be the *only* factor supporting a coercion finding—especially where the exchange's "fairly forceful" start quickly gave way to a "more conversational" decrescendo. (See 03/16/2017 Tr., p. 8, Ls. 19-20.) In sum, an initially forceful, increasingly cordial conversation, with no other coercive factors identified by the court or shown by the evidence, is altogether insufficient to show

Andersen's will was overborne or her statements were involuntary. A review of the record plainly shows the statements were voluntary. The district erred by concluding otherwise.

CONCLUSION

The state respectfully requests that this Court reverse the district court's order partially granting Andersen's suppression motion and remand this case for further proceedings.

DATED this 26th day of September, 2017.

_/s/ Kale D. Gans_______________
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 26th day of September, 2017, served a true and correct copy of the foregoing BRIEF OF APPELLANT by emailing an electronic copy to:

ERIC D. FREDERICKSEN
STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

_/s/ Kale D. Gans_______________
KALE D. GANS
Deputy Attorney General

KDG/dd