3-13-2018

State v. Vaughn Respondent's Brief Dckt. 45104

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	**No. 45104**
Plaintiff-Respondent,	)	
	)	**Ada County Case No.**
v.	)	**CR-FE-2016-9419**
	)	
RONALD EUGENE VAUGHN,	)	
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Ronald Eugene Vaughn appeals from the judgment entered on the jury verdict finding him guilty of trafficking heroin, possession of methamphetamine, and possession of paraphernalia. On appeal, Vaughn challenges the district court's "decision to admit" Vaughn's pre-Miranda[1] statements.

Statement Of The Facts And Course Of The Proceedings

Vaughn was being investigated by state and federal law enforcement officials for transporting heroin across state lines. (Tr., p.309, L.15 – p.310, L.4; p.320, Ls.1-16; p.322, Ls.16-25; p.323, Ls.2-18.) While surveilling Vaughn as he drove from Utah to Boise, officers observed him speeding and failing to signal a lane change, and pulled him over. (Tr., p.330, L.16 – p.331, L.22; p.335, L.16 – p.336, L.14.) The officers found heroin and methamphetamine in Vaughn's vehicle, and a grand jury indicted Vaughn for trafficking in heroin, possession of methamphetamine, and possession of paraphernalia. (R., pp.18-19.)

The district court entered an Order for Pretrial Proceedings and Notice of Trial Setting, stating that "[a]ny pretrial motion under I.C.R. Rule 12(b) must be filed within 28 days of this date." (R., p.43.)

Vaughn filed a timely motion to suppress. (R., pp.47-70.) In it, he alleged a single basis for suppression: that, "based on the totality of the circumstances, [the arresting officer] unreasonably extended [Vaughn's] detention after the purpose of the

[1] Miranda v. United States, 384 U.S. 436 (1966).

stop had been abandoned." (R., p.49.) Vaughn argued that "[b]ecause there was no reasonable, articulable suspicion of criminal activity, this was an unreasonable extension of a traffic stop in violation of the Fourth Amendment," and that "[t]he evidence seized was based upon an unlawful detention and must be suppressed as fruit of the poisonous tree." (R., p.52.) Vaughn's motion to suppress did not present any Miranda claims. (See R., pp.47-52.)

At the motion to suppress hearing, Vaughn testified, as did the arresting officer. (Tr., pp.7-11, 25-58.) Vaughn's counsel argued that there was no "warrant to stop and arrest or search [Vaughn's] vehicle"; and that "under Linze,[2] Your Honor, there's got to be reasonable suspicion, articulable reasonable suspicion that would give rise to a belief or a reason to abandon the purpose of the stop and conduct an investigation unrelated to the stop," which Vaughn claimed was absent here. (Tr., p. 59, Ls.12-15; p.61, Ls.1-7.) Vaughn did not present any Miranda claims. (Tr., p.59, L.9 – p.61, L.8.)

The district court denied Vaughn's motion to suppress, noting that "[t]he defense has raised this issue really exclusively under the Rodriguez[3] standard," and held that "the detention did not violate the defendant's Fourth Amendment rights" because "there was a reasonably articulable suspicion." (Tr., p.66, L.1 – p.67, L.1.) The district court did not make a Miranda ruling. (See Tr., p.66, L.1 – p. 67, L.1.)

The state filed a Notice of Intent to Use Evidence Pursuant to I.R.E. 404(b) and I.C.R. 16. (R., pp.83-87.) The state sought to introduce evidence of the prior investigation of Vaughn, as well as post-arrest, post-Miranda admissions that Vaughn

[2] State v. Linze, 161 Idaho 605, 389 P.3d 150 (2016).
[3] Rodriguez v. United States, 135 S.Ct. 1609 (2015).

made during an interview with police. (R., pp.83-87.) Vaughn filed a motion *in limine* seeking to suppress that evidence, arguing it was cumulative and "unfairly prejudicial as it only serves to show to the jury that Mr. Vaughn deals drugs." (R., pp.93-96.) Vaughn's motion *in limine* did not bring a Miranda claim. (See R., pp.93-96.)

The state's 404(b) notice and Vaughn's motion *in limine* were heard the day of trial. (Tr., p.80, L.25 – p.99, L.20.) The state argued that two categories of Vaughn's statements should be admissible evidence: 1) statements Vaughn made during the traffic stop itself, which were captured by an officer's on-body audio recording device (which the state clarified were technically not 404(b) evidence but evidence "relevant to prove … specific intent"); and 2) the post-Miranda statements Vaughn made during the interview with police (which the state argued were 404(b) evidence, admissible to show "the defendant's knowledge and intent" and "a pattern or an ongoing course of conduct"). (Tr., p.86, L.8 – p.87, L.19.)

Regarding the traffic-stop statements, captured on the officer's recording device, Vaughn's counsel stated the following:

> My client tells me that a lot of the information he provided to these officers were [sic] prior to being advised of his right to remain silent or his right to have an attorney present.
>
> I didn't get a chance to look into that more—in more detail. Of course, this would delay proceedings in search of another Motion to Suppress those statements if indeed they were pre Miranda.
>
> The comments on the side of the road—again, there was no rights given [sic] at that stage. I do know that he was in police custody at the time of the questioning, and that there were no syringes located in his truck or bag.
>
> So, Your Honor, I think those statements are prejudicial. I know the State cites that case, but I am somewhat at a loss of what to request here with

> the late disclosure[4] and the fact that my client is prejudiced in and of itself regarding the late disclosure.

(Tr., p.90, L.17 – p.91, L.9.)

The state responded that the audio of the traffic-stop statements had not been disclosed late, and that the potential Miranda issue should have been raised sooner, because there was "no good cause or excusable neglect not to raise that issue pursuant to Your Honor's scheduling order or the 12(B) rule." (Tr., p.97, Ls. 7-11.) The district court stated that "I will deny the motion in limine, motion to suppress or exclude as the case may be as we've heard it here today," and the traffic-stop audio was admitted without further objection. (Tr., p.99, Ls.18-20.)

Vaughn was found guilty on all counts and was sentenced to twenty years, with ten years fixed, on the trafficking charge; a concurrent seven-year sentence, with three years fixed, for the methamphetamine charge; and a concurrent 180-day jail sentence on the paraphernalia charge. (R., pp.165-68.)

Vaughn timely appealed. (R., pp.177-80.)

[4] Vaughn's counsel later retracted his accusation that there was any late disclosure of audio. (Tr., p.97, Ls.16-25.)

ISSUES

Vaughn states the issue on appeal as:

> Whether the district court erred when it concluded Mr. Vaughn was not in custody for *Miranda* purposes during the pretext traffic stop.

(Appellant's brief, p.5)

The state rephrases the issues as:

I. Has Vaughn Waived His Miranda Challenge By Raising It For The First Time On Appeal?

II. Has Vaughn Failed To Show That The District Court Erred On The Merits?

ARGUMENT

I.
Vaughn Has Waived His *Miranda* Challenge By Raising It For The First Time On Appeal

It is well-settled that Idaho's appellate courts "will not consider issues raised for the first time on appeal." State v. Garcia-Rodriguez, 162 Idaho 271, ___, 396 P.3d 700, 704 (2017) (quoting Mickelsen Const., Inc. v. Horrocks, 154 Idaho 396, 405, 299 P.3d 203, 212 (2013)). "Issues not raised below will not be considered by this court on appeal, and the parties will be held to the theory upon which the case was presented to the lower court." Id. (citing Heckman Ranches, Inc. v. State, By & Through Dep't of Pub. Lands, 99 Idaho 793, 799–800, 589 P.2d 540, 546–47 (1979); Marchbanks v. Roll, 142 Idaho 117, 119, 124 P.3d 993, 995 (2005); Frasier v. Carter, 92 Idaho 79, 82, 437 P.2d 32, 35 (1968) ("We have held generally that this court will not review issues not presented in the trial court, and that parties will be held to the theory on which the cause was tried.")).

Below, Vaughn's motion to suppress was premised on a single theory: "[b]ecause there was no reasonable, articulable suspicion of criminal activity, this was an unreasonable extension of a traffic stop in violation of the Fourth Amendment." (R., p.52.) Vaughn's motion did not seek suppression of his statements based on a purported Miranda violation (see R., pp.47-52), nor did he ever cite any Fifth or Sixth Amendment authority in his briefing (see R., pp.47-52), or make any Miranda arguments during the suppression hearing (Tr., p.59, L.9 – p.61, L.8). Unsurprisingly, the district court denied Vaughn's motion to suppress on the theory that was presented—the claimed Fourth Amendment violation—and did not *sua sponte* make a Miranda ruling instead. (See Tr., p.66, L.1 – p.67, L.1.) Because Vaughn did not raise his Miranda claim in his motion to

suppress, he cannot raise it now for the first time on appeal. Garcia-Rodriguez, 162 Idaho at ___, 396 P.3d at 704.

Vaughn points to the parties' discussion on the morning of trial, and argues that during the hearing on the State's 404(b) motion and Vaughn's motion *in limine*, "Mr. Vaughn did move to suppress the roadside statements," and the district court "implicitly" ruled on this motion. (Appellant's brief, p.6 (citing R., pp.93-96; Tr., p.90, L.25 – p.21, L.19).) "Therefore," Vaughn claims, "this Court has authority to review the propriety of the district court's ruling on the merits of Mr. Vaughn's motion." (Appellant's brief, p.6.)

This claim fails. First, Vaughn's motion *in limine* to exclude evidence specifically stated that it was "based upon Idaho Rules of Evidence 403, and 404(b) and supporting case law." (R., p.93.) Like Vaughn's motion to suppress, it made no mention whatsoever of any Miranda violation. (See R., pp.93-96.)

Moreover, it is unclear from Vaughn's counsel's statements during the 404(b) motion hearing that he was moving to suppress statements based on a Miranda violation, as opposed to shoring up the prejudice prong of his 404(b) response:

> My client tells me that a lot of the information he provided to these officers were [sic] prior to being advised of his right to remain silent or his right to have an attorney present.
>
> *I didn't get a chance to look into that more—in more detail. Of course, this would delay proceedings in search of another Motion to Suppress those statements if indeed they were pre Miranda.*
>
> The comments on the side of the road—again, there was no rights given [sic] at that stage. I do know that he was in police custody at the time of the questioning, and that there were no syringes located in his truck or bag.

> So, Your Honor, *I think those statements are prejudicial.* I know the State cites that case, but I am somewhat at a loss of what to request here with the late disclosure and the fact that my client is prejudiced in and of itself regarding the late disclosure.

(Tr., p.90, L.17 – p.91, L.9 (emphasis added).)

Vaughn's counsel made an offhand reference to Miranda, indicated that, "of course," *another* Motion to Suppress would need to be filed to raise the issue properly, and concluded the statements were prejudicial. He did not, however, conclude that Miranda barred the admission of the statements, or clearly indicate that he was moving *at that time* to suppress, as Vaughn now claims he was. (See Tr., p.90, L.17 – p.91, L.9.)

Even assuming Vaughn's remarks amounted to an impromptu, Miranda-based suppression motion, it is even less clear that the district court ever ruled on such a motion. The district court's remarks on the issue came after the state correctly pointed out that such a motion would be untimely per the district court's scheduling order. (Tr., p.97, Ls.7-14 (citing R., p.43).) Placed in that context, while the district court admittedly addressed Miranda, it did not clearly state whether it was *presently* denying a motion to suppress, or musing about what it *would* have done had a timely motion been filed, or simply reserving ruling on the issue:

> All right. Well, based upon what I've heard this morning, it appears to the court that there was not a violation of Miranda regarding the information on the tapes at the scene. From what I've heard, the defendant voluntarily disclosed those things when he was not in custody or otherwise. The facts and circumstances there do not disclose a Miranda violation….
>
> The evidence, again, I think is admissible as relevant as otherwise explained by the State. So in the exercise of its discretion, the court is not going to grant any Motion to Suppress or exclude that evidence. *Though if the defense can—if the defense has additional information or arguments, I think I'd be willing to rehear the arguments, if there are any, and we can take that up outside the presence of the jury….*

> It does sound to me as though [audio recordings at issue] were disclosed last month. So while that might not have been proper timing for the defense to have filed a motion within 28 days of the scheduling order, *the fact of the matter is if the defense would have made the motion earlier, I certainly would have dealt with it and heard it,* and we might have all had a chance to listen to those tapes and things.
>
> But so from that perspective, *I will deny the motion in limine, motion to suppress or exclude as the case may be as we've heard it here today.*

(Tr., p.98, L.5 – p.99, L.20 (emphasis added).) Following this nebulous statement, the court clarified what it said, making it even more apparent that it was not ruling on an eleventh-hour motion to suppress, because no such motion had been filed:

> [PROSECUTOR]: Judge, may I just quickly ask? I don't want to belabor this, but in Your Honor's record related to the recordings; I just wanted to clarify.
>
> What I'm getting from the defense is that there's an objection or an assertion that there was [sic] un-Mirandized statements and that would have been at the scene of the traffic stop. So Officer Martinez and Officer Beaudoin.
>
> Those recordings were provided in November. The only audio that was provided last month was—under what we're discussing, was the audio recording of the interview, and that was Mirandized and the defendant signed a Miranda form. I have a copy of the form. It was provided to counsel, and it's bait stamped [sic] number 64.
>
> So I just want to make that clarification. *I know Your Honor was just making a quick ruling, but I think it's important to make the distinction because the claimed un-Mirandized statements were within the defendant's possession since November and could have been brought to the court's attention pursuant to your scheduling order and 12(B).*
>
> THE COURT: *I think it's fair to say that's what I meant*. If I didn't make myself clear, then I would apologize. But, yes, I did understand that he had the on scene tapes in November *and certainly any issues about that could have and should have been brought in a timely matter.*

(Tr., p.101, L.15 – p.102, L.16 (emphasis added).) The court went on to say that "if a Motion to Suppress or something had been filed, let's say, in late February or something,

we would have taken the time to get that heard without trying to deal with it this morning when we all might have been better able to be fully prepared." (Tr., p.102, Ls.19-23.)

The state revisited the issue before the second day of trial, and the district court again indicated that the court's ruling was based on the 404(b) issues, and not a suppression issue, to which Vaughn had no comment:

> [PROSECUTOR]: Judge, the only other thing I just wanted to make sure—again, I'm just want it be [sic] abundantly clear—in terms of the on body video by Officer Beaudoin and the audio recording by Officer Martinez, the defendant makes statements about recent meth, use as well as directs the officers to syringes and a spoon in the truck.
>
> And it was my understanding that it was Your Honor's ruling that those statements were admissible and they're not propensity, but rather evidence that goes directly to elements that the State must prove in terms of knowledge and the specific intent on the paraphernalia.
>
> THE COURT: Any comments, Mr. Stewart?
>
> [DEFENSE COUNSEL]: No, Your Honor.
>
> THE COURT: Well, I do think that both of those items are evidence of intent, which is required in Count Three. So I do find that those are relevant and admissible.

(Tr., p.289, Ls.7-24.) Moreover, Vaughn had a final opportunity to object to the audio recording—and clarify the basis for his objection—when the state moved to admit the exhibit; instead, Vaughn's counsel stated he had "[n]o objection" to its admission. (Tr., p.439, Ls.4-16.)

All told, Vaughn fails to show that he made a motion to suppress during the pretrial hearings, or even if he did, that the district court "implicitly" ruled on a Miranda question in response. Because Vaughn is claiming, for the first time on appeal, that his

statements should have been suppressed due to Miranda violations, he has waived that argument on appeal.

II.
Vaughn Failed To Show That The District Court Erred On The Merits

A. Introduction

Alternatively, even assuming the district court made an implicit ruling on an implied motion to suppress, Vaughn fails to show the district court erred in denying that motion.

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. Even Assuming Vaughn Made A *Miranda*-Based Motion To Suppress, He Fails To Show The District Court Erred By Concluding He Was Not In Custody

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 (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 implicate 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.

Of particular relevance here, "*the burden of showing custody rests on the defendant* seeking to exclude evidence based on a failure to administer *Miranda* warnings." State v. James, 148 Idaho 574, 577, 225 P.3d 1169, 1172 (2010) (emphasis added). The James Court was assessing a case—much like this one—that was "most remarkable" for its lack of evidence regarding the purported interrogation. Id. The James Court noted that:

> At the [motion to suppress] hearing, James' attorney did not present testimony. The only evidence before the district court was the transcript of the preliminary hearing. As a result of the late filing of the brief and the State's inability to respond thereto, the district court did not consider James' brief but did consider his attorney's argument in support of the motion.

Id. at 576, 225 P.3d at 1171. Following James's failure to develop a record below, the district court there naturally made "relatively few findings of fact" regarding the stop:

> The defendant was a passenger in a vehicle that was stopped for possible driving under the influence. During a search of the vehicle, and [sic] officer found what he suspected to be a controlled substance and drug paraphernalia. The defendant was then questioned about the items. The defendant was then arrested for possession of drug paraphernalia with intent to use, and was searched incident to that arrest.

Id. at 575, 225 P.3d at 1170. The James Court concluded, based on the limited information before the district court—which did not include the "duration of the detention" or "the extent of questioning"—that James "failed to demonstrate that his freedom of movement was restrained to the degree associated with formal arrest." Id. at 578, 225 P.3d at 1173.

Vaughn similarly failed to meet his threshold burden below to show he was in custody. At the actual motion to suppress hearing, Vaughn did not make any evidence-based argument that he was in custody. (See Tr., p.59, L.9 – p.61, L.8.) He did not show,

much less argue, that a "reasonable person" in Vaughn's position "would believe he or she was in police custody to a degree associated with formal arrest." (See Tr., p.59, L.9 – p.61, L.8.) The district court therefore made no factual findings or legal holdings regarding custody. (Tr., p.66, L.1 – p.67, L.1.)

Later on, at the 404(b) hearing, Vaughn's counsel presented the barest conclusory argument relating to custody: he simply declared, without any legal argument or factual support, that Vaughn was in custody: "The comments on the side of the road—again, there was no rights given at that stage. I do know that he was in police custody at the time of the questioning…." (Tr., p.90, L.25 – p.91, L.3.) Vaughn's attorney did not admit the audio recording of the purported interrogation into evidence, or point to any specific facts supporting his conclusion that his client was in custody. (See Tr., p.90, L.25 – p.91, L.3.) Citing the evidence presented that day, the district court's factual findings were accordingly just as sparse: "Well, *based upon what I've heard this morning*, it appears to the court that there was not a violation of Miranda regarding the information on the tapes at the scene. *From what I've heard, the defendant voluntarily disclosed those things when he was not in custody or otherwise*." (Tr., p.98, Ls.5-10 (emphasis added).) It was Vaughn's burden below to show custody and, based on the limited argument and evidence he proffered, the district court correctly concluded he did not do so.

On appeal, Vaughn's custody argument relies on the facts found in the grand jury transcript and his own testimony at the motion to suppress hearing. (Appellant's brief, pp.7-8.) Vaughn argues the number of officers on scene constituted "unusual or excessive police force in and around the traffic stop," which he claims is one factor showing police custody. (Appellant's brief, p.7 (citing State v. Myers, 118 Idaho 608,

610-11, 798 P.2d 453, 455-56 (Ct. App. 2010).) Vaughn also notes that an officer stood next to him; officers "never returned his identification or registration"; and the stop took place "on the side of a freeway." (Appellant's brief, p.8.) Vaughn claims all of these factors show that "Mr. Vaughn's freedom of movement was restricted in the way associated with a formal arrest." (Appellant's brief, p.8.)[5]

These arguments, even if preserved, fail on the merits. Here, three officers were admittedly present for the investigation, but that was not necessarily "unusual" here, given that Vaughn was stopped as part of a multi-state, ongoing, federal and state surveillance operation. Compare Myers, 118 Idaho at 609-12, 798 P.2d at 454-57 (where the officer was surveilling a specific area, and happened to see a defendant he was "acquainted with … and recognized," after which four police vehicles responded to the traffic stop). Moreover, Vaughn only speculates that another undercover officer "was also *likely* nearby," and counts two officers who "oversaw the stop from a short distance away" as part of the total headcount "in and around the traffic stop." (Appellant's brief, p.8 (emphasis added).) Narrowing the scope to those officers actually *in* the traffic stop, the presence of three officers would not cause a reasonable person to think their freedom of movement was restrained to the degree associated with a formal arrest. But see Myers, 118 Idaho at 609-12, 798 P.2d at 454-57.

Nor does Vaughn show that his freedom of movement was restricted to the degree associated with an arrest simply because law enforcement took his license and registration, stood next to him, and stopped him on the side of a freeway. (See

[5] Vaughn does not challenge the district court's decision on 404(b)- or 403-based grounds. (See generally, Appellant's brief.)

Appellant's brief, p.8.) One presumes that *every* freeway traffic stop involves all three of these factors—but a routine traffic stop by definition does not necessarily imply an arrest. To the contrary, traffic stops do not "immediately invoke" Miranda, and the "freedom-of-movement inquiry" is "only a necessary and not a sufficient condition for Miranda custody." Berkemer, 468 U.S. at 440; Silver, 155 Idaho at 32, 304 P.3d at 307.

It should be noted that the empirical questions raised by Vaughn's arguments on appeal—such as the typical officer response to a roadside freeway traffic stop—could have easily been litigated by the parties below, had Vaughn properly raised the issue below. See, e.g., Myers, 118 Idaho at 611, 798 P.2d at 456 (where the officer testified as to how many police vehicles would "normally" respond to a traffic stop, and clarified the "reason why several patrol vehicles responded to this particular traffic stop"). This is precisely why parties are required to raise all of their claims below—to identify relevant issues and induce "the timely raising of claims and objections, which gives the [trial] court the opportunity to consider and resolve them," as opposed to asking this Court, *ex post,* to apply an underdeveloped record to an unpreserved claim. See State v. Perry, 150 Idaho 209, 224, 245 P.3d 961, 976 (2010). Nevertheless, even applying the law to all the facts adduced below, Vaughn has failed to show the district court erred in concluding he was not in custody.

Even if Vaughn's custody arguments have been preserved, they are insufficient to show Miranda custody. Vaughn has failed to show that the district court erred in concluding he was not in custody.

CONCLUSION

The state respectfully requests this affirm Vaughn's judgment of conviction.

DATED this 13th day of March, 2018.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 13th day of March, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

BRIAN R. DICKSON
DEPUTY 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