In the
Indiana Supreme Court

Jeffery Alan Vlietstra,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
23A-CR-01786

Trial Court Case No.
45G01-2302-F5-74

Published Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 1/21/2025.

FOR THE COURT

Loretta H. Rush
Chief Justice of Indiana

Massa, Slaughter, and Goff, JJ., concur.
Molter, J., dissents from the denial of transfer with separate opinion in which Rush, C.J., joins.

Molter, J., dissenting.

Issue preclusion (collateral estoppel) and judicial notice are critical tools for an efficient judicial system, but their misuse can deprive parties of their full opportunity to be heard. This case illustrates that concern in two ways, both warranting transfer. First, the trial court improperly used judicial notice to give preclusive effect to another court's proceedings in which there was no final judgment. Second, the record of the noticed proceedings was never transmitted to the Court of Appeals or this Court, which impedes appellate review.

I.

Jeffery Vlietstra faced burglary charges in a Porter County case and two Lake County cases. Some evidence in his Porter County case was also relevant to his two Lake County cases, one of which is the subject of this appeal. Vlietstra first unsuccessfully moved to suppress evidence in the Porter County case. And while that case was still pending, he filed an identical motion to suppress the same evidence in the first Lake County case. The court in Lake County took judicial notice of "the entirety of the suppression hearing" in Porter County, and denied the motion based on the Porter County suppression ruling. Tr. Vol. II at 35–36. But the Lake County court did not review or even have the transcripts of those Porter County proceedings. After Vlietstra's counsel objected to this procedure, the trial court responded that although it had not reviewed all the evidence, the Porter County court had. And in the Lake County court's view, the fact that the Porter County court considered the same evidence was a good enough reason to deny Vlietstra's motion to suppress in the first Lake County case.

Then, in the second Lake County case—this case—Vlietstra once again moved to suppress the same evidence. With the same judge presiding as in the first Lake County case, the trial court took judicial notice of the Porter County case and the first Lake County case and denied the motion, again basing the decision on the prior rulings and without reviewing all the evidence.

II.

Although the judge in the two Lake County cases said he was taking judicial notice of the Porter County proceedings, he conflated judicial notice with issue preclusion. Judicial notice is "the cognizance of certain facts which judges and jurors may properly take and act on without proof because they already know them." 12 Ind. Law Encyc. Evidence § 1. When a court takes judicial notice of a court record, "judicial notice must be limited to the fact of the record, rather than to any facts found or alleged in the record of the other case." 12 Ind. Prac., Indiana Evidence § 201.106 (4th ed.).

"Issue preclusion, or collateral estoppel, bars subsequent relitigation of the same fact or issue where that fact or issue was necessarily adjudicated in a former lawsuit and that same fact or issue is presented in a subsequent suit." *Nat'l Wine & Spirits, Inc. v. Ernst & Young, LLP*, 976 N.E.2d 699, 704 (Ind. 2012). There are three requirements to apply the doctrine in circumstances like these: "(1) a final judgment on the merits in a court of competent jurisdiction; (2) identity of the issues; and (3) the party to be estopped was a party or the privity of a party in the prior action." *Id.*

The trial court here didn't merely take notice of the Porter County proceedings. It denied the motion to suppress based on the ruling by the court in the Porter County proceedings. The State conceded at oral argument in our Court that it would be improper for one trial court to deny a motion to suppress solely because a different court denied a similar motion. Oral Argument at 25:57–26:15. Yet that is exactly what happened here. The trial court did not independently review the evidence from the Porter County proceedings when it denied Vlietstra's motion to suppress in this case. Instead, it explicitly based its own ruling on the Porter County court's decision, without examining the basis for that decision. In other words, it applied issue preclusion. But since there was no final judgment on the merits in the Porter County case, issue preclusion could not apply.

To be clear, there is nothing wrong with one trial court considering another trial court's decision as persuasive. Our Court has even created a

database of Commercial Court orders in part to make it easier to do so. Commercial Court Document Search, https://public.courts.in.gov/CCDocSearch (last visited Jan. 21, 2025). But what a trial court can't do—as the trial court did here—is treat another court's ruling as *conclusive* in a subsequent case on an issue where issue preclusion doesn't apply.

III.

The trial court compounded the error by refusing to make an adequate record related to its judicial notice rulings. Because the court said it was taking judicial notice of the Porter County proceedings and basing its decision on those proceedings, Vlietstra's counsel moved to supplement the record with the Porter County proceedings when preparing for appeal in this case. But the trial court denied this motion. And since the Porter County proceedings were the basis of the court's ruling, the absence of the proceedings in the record impedes appellate review.

We outlined the proper procedure for creating a record of judicially noticed court proceedings in *Horton v. State*, 51 N.E.3d 1154 (Ind. 2016). There, we identified two competing interests that inform best practices for taking judicial notice: apprising litigants and appellate courts of the evidentiary basis for the judgment, and "efficient consideration of uncontroversial facts." *Id.* at 1160–61 (emphasis omitted). In light of these interests, when it comes to judicially noticed court records the best practice is to enter particular documents (not the whole case file) into the record. *Id.* at 1160. This practice ensures that everyone is on the same page about the court's reasoning without flooding the record with superfluous materials. And without access to the court's reasoning, appellate review becomes unnecessarily difficult.

The parties can take steps to ensure the noticed materials are transmitted on appeal. As we pointed out in *Horton*, the record on appeal includes "all proceedings before the trial court . . . whether or not . . . transmitted to the Court on Appeal." *Id.* at 1162; Ind. Appellate Rule 2(L), 27. This means that judicially noticed materials are part of the record on appeal even if they are not transmitted to the Court of Appeals or this Court. *Horton*, 51 N.E.3d at 1162. One consequence of this is that if noticed

materials are not reflected in the appellate record, a party can move to correct the record (since an incomplete record is inaccurate). App. R. 32(A).

When the full record has not been transmitted, appellate courts have their own tools to assist their review. Since noticed materials are by rule part of the appellate record, an appellate court can obtain them from the trial court clerk on its own, just as we did in *Horton*. 51 N.E.3d at 1162. Although the Appellate Rules do not provide a procedure for this, Appellate Rule 1 allows the Court of Appeals and the Supreme Court to deviate from the Appellate Rules when necessary. App. R. 1. By this same token, a party may move for leave to include judicially noticed materials in the appendix even though the trial court did not make a better record of the noticed materials. *See* App. R. 34(A) (governing appellate motion practice). That gives the parties and the appellate court the opportunity to address whether the materials proposed for the appendix are what the trial court judicially noticed.

How far an appellate court is willing to go to hunt down or include noticed materials will depend on the context. For example, when the parties make no effort to ensure that noticed material is transmitted on appeal, an appellate court may still decide issues without the benefit of those records. *See Horton*, 51 N.E.3d at 1162. But here, the full record was not transmitted *despite* Vlietstra's efforts. When a party tries and fails to correct the record, an appellate court will have reason to search for the noticed materials on its own—or at least allow a party to do so—in the interest of justice.

IV.

Two things went wrong in the trial court: the trial court gave preclusive effect to judicially noticed materials despite the absence of a final judgment and then refused to include those materials in the record to be transmitted on appeal. The Court of Appeals mistakenly affirmed based on invited error. *Vlietstra v. State*, No. 23A-CR-1786, at *6 (Ind. Ct. App. Apr. 3, 2024) (mem.), *trans. denied*. But while Vlietstra did invite the trial court to take judicial notice of the prior proceedings to accurately reflect the trial court's suppression ruling, which was itself based on judicial

notice, he never asked the court to give those proceedings preclusive effect. By affirming, the Court of Appeals sanctioned a stark departure from accepted law and practice, warranting the exercise of our jurisdiction. App. R. 57(H)(6). Respectfully, I would therefore grant transfer.

Rush, C.J., joins.