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SUPREME COURT NO. 102132-1

COURT OF APPEALS NO. 55199-3-II

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CLARA ROOD,

Petitioner.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR SKAMANIA COUNTY

THE HONORABLE RANDALL C. KROG, JUDGE

ANSWER TO PETITION FOR REVIEW

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I. **STATEMENT OF THE ISSUES**

1. Did the Court of Appeals correctly decide that Petitioner Clara Rood made a rational decision to waive *Miranda* and confess after the detective allegedly stated that her co-defendant intended to blame her for the charged crimes, and 80 minutes later Petitioner reinitiated contact with the detective, was re-Mirandized, signed a *Miranda* waiver form, and provided her confession?

2. Did the detective scrupulously honor Petitioner's request for counsel when the Court of Appeals correctly determined the detective's remark did not constitute coercive interrogation, and Petitioner made no statement until 80 minutes later when she reinitiated contact with the detective and received new *Miranda* warnings?

3. Did the Court of Appeals correctly decline to apply a presumption of involuntariness to Petitioner's *Miranda* waiver and confession, when the detective did not engage

in coercive interrogation, and when Petitioner concedes Petitioner reinitiated contact with the detective, was re-Mirandized, and signed a *Miranda* waiver form?

4. Did the Court of Appeals correctly accept as a verity on appeal the trial court's unchallenged finding of fact that the detective "may have" made the remark to Petitioner?

II. **STATEMENT OF THE CASE**

In August 2019, Appellant Clara Rood and her accomplice were arrested and charged with numerous felonies, including first-degree assault, first-degree robbery, first-degree kidnapping, first-degree burglary, identity theft, and theft of a motor vehicle. CP 1-6.

In custody and after receiving *Miranda* warnings, Rood agreed to speak with Detective Jeremy Schultz, but soon requested counsel. RP 17-19. Detective Schultz immediately ceased questioning and walked Rood to a holding cell. RP 19. Rood alleges that, while closing the

door to the cell, Detective Schultz remarked that her accomplice wanted to pin everything on her. RP 35.

About 80 minutes later, Rood gained Detective Schultz's attention and expressed that she had decided to speak with him again. RP 33. Detective Schultz then re-read her *Miranda* rights from his printed card. RP 20-22, 574. Rood acknowledged her rights and indicated that she wished to speak to the detective. RP 22. Detective Schultz also read Rood her *Miranda* rights from a printed statement form, which Rood signed, indicating that she understood them and still wanted to speak to the detective. *Id.* Rood then provided a confession to Detective Schultz. RP 23-26, 574-577.

The trial court held a CrR 3.5 hearing and ruled Rood's confession was admissible. RP 42-48; CP 253-55. At the hearing, Detective Schultz testified that Rood's responses during the second interview were appropriate in the context of his questions and that Rood never

indicated she did not understand a question. RP 27. In relevant part, Rood testified to the following:

- Detective Schultz stopped questioning her when she initially stated she wanted a lawyer and placed her in a holding cell. RP 33-34.
- Rood got Detective Schultz's attention from the holding cell and requested he speak with her. RP 33.
- After getting Detective Schultz to return to the holding cell, Rood signed a *Miranda* waiver document. RP 34.
- Detective Schultz explained the effect of the Miranda waiver document. RP at 34.
- Rood understood Detective Schultz would stop the conversation if Rood stated she wanted a lawyer. RP 34.
- Rood understood her rights when she gave her statement to Detective Schultz. RP 35.

- Rood knew she did not have to talk to Detective Schultz when she gave her statement. RP 36.

Based on testimony at the hearing, the trial court entered finding of fact No. 4, providing,

> Hours later, Defendant then requested to speak with Detective Schultz, and Detective Schultz re-read her rights to her. Defendant stated she understood her rights and wished to waive them Defendant then discussed the case at length. Her responses were appropriate, and she was not confused. She was not in handcuffs during the conversation and she knew she could stop the conversation and did not have to talk to the Detective.

CP 254. In addition, the trial court found Detective Schultz "may have" made the alleged comment to Rood. *Id*. The trial court concluded Rood knowingly, intelligently, and voluntarily waived her right to remain silent, and that Detective Schultz's comment did not overcome her ability to know whether her statements were voluntary. CP 255. At trial, Detective Schultz testified that Rood reinitiated

contact with him approximately 80 minutes after he left her in the holding cell. RP 574.

On review, the Court of Appeals determined in relevant part that substantial evidence supported finding of fact No. 4. Op. at 18-19, and that finding of fact No. 4 supported the trial court's conclusion of law No. 3 that Rood "knowingly, intelligently, and voluntarily" waived her *Miranda* rights. Op. at 19. In addition, the Court of Appeals rejected Rood's argument that Detective Schultz's alleged remark improperly elicited Rood's later confession. Op. at 19-21.

III. <u>ARGUMENT</u>

THE DECISION OF THE COURT OF APPEALS DOES NOT QUALIFY FOR DISCRETIONARY REVIEW BY THE SUPREME COURT.

The sole grounds under which the Supreme Court may accept discretionary review of a court of appeals

decision on a decision by a court of limited jurisdiction are:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Rood alleges that the Court of Appeals' decision terminating review qualifies for discretionary review by this Court under only subsections (2) and (3) above. As this answer demonstrates below, Rood's petition fails to show how either of those grounds might apply to the Court of Appeals' ruling in this case.

The fundamental question in this case is whether Detective Schultz's alleged comment to Rood rendered involuntary her reinitiation of contact with Detective Schultz 80 minutes later and her following confession.

The Court of Appeals correctly determined that the detective's remark was not interrogation, and that Rood rationally decided to speak to law enforcement and confess. In addition, because the Court correctly found no coercive interrogation, Rood's request for counsel was scrupulously honored, and the Court had no cause to apply a presumption of involuntariness to Rood's later confession. Last, the Court of Appeals properly considered the trial court's unchallenged finding that Detective Schultz "may have" made the remark as a verity upon appeal. This Court should deny discretionary review.

A. The Court Of Appeals Correctly Determined Detective Schultz's Comment Was Not Interrogation And Did Not Coerce Rood's Confession.

The Court of Appeals properly decided that Detective Schultz's comment to Rood did not constitute interrogation and did not overcome her ability to make a

rational decision to waive her right to counsel and confess. The Court of Appeals noted that, under *Edwards v. Arizona*, interrogation may occur after a suspect invokes the right to counsel when the suspect "himself initiates further communication, exchanges, or conversations with the police." 451 U.S. 477, 485, 101 S. Ct. 1880 (1981). Op. at 20. In the present case, it is undisputed that, 80 minutes after being placed in a holding cell, Rood gained the attention of jail personnel to speak again with Detective Schultz. RP 20-22, 574.

Next, the Court of Appeals analyzed whether Rood's eventual confession was the product of police coercion. The Court looked to the totality of the circumstances of Detective Schultz's comment, which allegedly occurred when Rood entered the holding cell, to determine whether it overcame Rood's ability to rationally decide to remain silent. Op. at 20 (citing *State v. Unga*, 165 Wn.2d 95, 101-02, 196 P.3d 645 (2008)). *Unga*'s

examination of the totality of the circumstances is the correct test for determining when an officer's statement or conduct coerces a suspect's incriminating response.

> [T]he determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel.

Unga, 165 Wn.2d at 100 (citing *Fare v. Michael C.*, 442 U.S. 707, 724-25, 99 S.Ct. 2560 (1979)). Rood offers no alternative test for evaluating whether a suspect's custodial statement has been coerced by law enforcement.

Unga provides numerous factors relevant to the totality of the circumstances analysis:

> coercive police activity is a necessary predicate to the finding that a confession is not voluntary. Thus, both the conduct of law enforcement officers in exerting pressure on

> the defendant to confess and the defendant's ability to resist the pressure are important.
>
> Circumstances that are potentially relevant in the totality-of-the-circumstances analysis include the crucial element of police coercion; the length of the interrogation; its location; its continuity; the defendant's maturity, education, physical condition, and mental health; and whether the police advised the defendant of the rights to remain silent and to have counsel present during custodial interrogation.

Unga, 165 Wn.2d at 101-02 (internal quotations and citations omitted). Importantly, as this Court noted, "so long as [the suspect's] decision [to confess] is a product of the suspect's own balancing of competing considerations, the confession is voluntary." *Id*. at 102 (quoting *Miller v. Fenton*, 796 F.2d 598, 605, 55 USLW 2079 (3rd Cir. 1986)). In addition, a valid waiver of *Miranda* may be inferred from findings that the defendant's answers to questions were "freely and voluntarily made without duress, promise or threat and with full understanding of his constitutional rights." *State*

v. Gross, 23 Wn. App. 319, 324, 597 P.2d 894 (1979). And, the signing of an express waiver "is usually strong proof of the validity of the waiver." *State v. Rupe*, 101 Wn.2d 664, 678, 683 P.2d 571 (1984) (quoting *North Carolina v. Butler*, 441 U.S. 369, 99 S. Ct. 1755 (1979)).

The Court of Appeals correctly applied *Unga*'s totality of the circumstances test, noting the following facts:

- Detective Schultz's alleged statement did not result in an immediate response by Rood.
- After the alleged statement, Rood was left alone in her cell and Detective Schultz returned to his office.
- Rood reinitiated contact with Detective Schultz after 80 minutes had passed, during which Detective Schultz had no further contact with her.
- After getting his attention, Rood asked Detective Schultz for a cup of coffee. Detective Schultz then

left Rood alone, got the coffee, and only at that time engaged with her.

- After learning that Rood wished to speak again with him, Detective Schultz read Rood's *Miranda* rights a second time.
- Detective Schultz went over the *Miranda* waiver form with Rood, who signed it, waiving her *Miranda* rights.
- Rood stated she understood her rights and wished to waive them.
- Rood testified she understood she could stop the second interview at any time by requesting a lawyer.
- Rood testified she knew she did not have to speak with Detective Schultz.
- Rood gave appropriate answers and was not confused during the second interview.

Op. at 21. The Court of appeals concluded that, given the above circumstances, “Rood had time to make a rational decision to reinitiate with Detective Schultz after balancing the competing considerations of remaining silent or telling her side of the story.” *Id.* All the facts recounted above directly relate to *Unga*’s factors and support the Court’s conclusion that Rood rationally decided to provide her confession.

Rood’s petition for review fails to identify a single genuine error in the Court of Appeals’ analysis concluding Rood made a rational decision to confess. In contrast to the Court of Appeals’ detailed discussion, Rood fails to engage with the facts of the case, instead generalizing the detective’s comment as “classic interrogation tactics” and offering the conclusory suggestion that “[t]elling a suspect that an alleged partner in crime is pinning the blame on her is a tactic designed to elicit a confession.” Pet. for Review at 7.

For support, Rood points to *Nelson v. Fulcomer*, 911 F.2d 928, 59 USLW 2183 (3rd Cir. 1990), a persuasive authority easily distinguished from the instant case's facts. In *Nelson*, the police, immediately following Nelson's attempt to cut off questioning, "asked Moore [Nelson's alleged accomplice] to tell Nelson he had confessed and had implicated Nelson in the rape and murder." *Id*. at 934. Upon confrontation by Moore, Nelson asked an incriminating question of Moore. *Id*. at 934. However, the *Nelson* Court determined it was uncertain whether Nelson was informed of Moore's confession either by police or the accomplice. *Id*. Because of that, the Court remanded for appropriate findings, concluding, "[i]f it is determined that the police or Moore had already disclosed the confession when Nelson posed his incriminating question," then the police impermissibly interrogated Nelson. *Id*. at 940.

Nelson's facts do not align with the instant case. In *Nelson*, the police, "on the heels of Nelson's attempt to cut off questioning, conceived of and implemented the confrontation for the purpose of eliciting an incriminating response from Nelson." *Id*. at 938-39. The ploy appeared to succeed, and Nelson asked an incriminating question during the confrontation with Moore. In contrast, Detective Schultz allegedly made an isolated remark that produced no immediate response from Rood, who then waited 80 minutes before gaining the detective's attention, being re-Mirandized, waiving *Miranda*, and providing her confession.

The totality of the circumstances, including the detective's innocuous remark, the passage of time before Rood reinitiated contact, her express waiver of *Miranda* and testimony that she understood the implications of her waiver, all support the Court of Appeals' conclusion that Rood made a rational decision to confess after balancing

competing considerations of remaining silent or resuming her interview with Detective Schultz. Because the Court of Appeals correctly decided the detective's comment did not amount to interrogation or coerce her confession, this Court should deny discretionary review.

B. Because The Court Of Appeals Correctly Found The Detective's Remark Was Not Interrogation, Rood's Right To Counsel Was Scrupulously Honored And No Presumption Of Involuntariness Applied.

The Court of Appeals' determination that Detective Schultz's remark did not constitute interrogation rendered unnecessary any examination of whether he "scrupulously honored" Rood's request for counsel. In addition, the Court's refusal to find interrogation foreclosed Rood's asserted "presumption of involuntariness." *See* Pet. for Review at 9. It is undisputed that Rood reinitiated contact, was re-Mirandized, and then confessed. The only significant questions remaining

regarding the admissibility of Rood's confession are whether Detective's Schultz's remark amounted to interrogation and, if so, whether it coerced her confession 80 minutes later.

Because the Court of Appeals correctly determined the detective's remark did not amount to interrogation, Rood's request for counsel was scrupulously honored. And, because the Court correctly found Rood reinitiated the later reinterrogation (resulting in Rood's confession) after a valid waiver of *Miranda*, no presumption of involuntariness applied.

1. ***Detective Schultz scrupulously honored Rood's request for counsel***.

While this Court did not directly analyze whether law enforcement scrupulously honored Rood's right to counsel, the Court's determination that the detective's comment did not amount to interrogation satisfies that standard in this case. In *State v. Boggs*, the Court of

Appeals addressed the factors informing whether a defendant’s rights were “scrupulously honored:”

> [1] that the police had ceased interrogation immediately upon the defendant's exercise of his rights, [2] that they resumed their interrogation only after the passage of a significant period of time, and [3] that subsequent interrogation was preceded by a reiteration of the *Miranda* rights.

16 Wn. App. 682, 687, 559 P.2d 11 (1977) (citing *Michigan v. Mosley*, 423 U.S. 96, 106, 96 S. Ct. 321 (1975)). The *Boggs* decision then clarified:

> This is not to say the individual could not by his own voluntary and unsolicited action waive a previous exercise of his constitutional rights without first having the *Miranda* warnings reread to him. . . . That situation differs factually from one in which the state is responsible for reinitiating the interrogation process. When the police either reopen a formal interrogation or solicit a response from a defendant in some other way, such statements will be admissible only if they were preceded by the *Miranda* warnings.

Id. (citing *Mosely*, 423 U.S. 96).

Given the undisputed facts that Rood reinitiated contact and was re-Mirandized, *Boggs* indicates that the prime consideration in whether Detective Schultz "scrupulously honored" Rood's request for counsel is whether his remark amounted to interrogation—a question the Court of Appeals' decision already answered. In view of the elements above, the Court of Appeals' analysis correctly establishes that (1) the remark was not interrogation, (2) it was Rood—not law enforcement—that reinitiated contact, leading to resumed interrogation, and (3) Rood was re-Mirandized before that interrogation. Accordingly, Rood's request for counsel was scrupulously honored.

Rood's discussion of *Brewer v. Williams*, 430 U.S. 387, 97 S. Ct. 1232 (1977), does not support her argument. In *Brewer*, the Supreme Court concluded no valid waiver of the defendant's right to counsel occurred. *Id*. at 404-06. Williams, a mental hospital escapee known

to be deeply religious, was arrested for abducting a child and transported by a detective to another city for judicial proceedings. *Id.* at 390. Prior to embarking, Williams's attorney explicitly told the detective not to question Williams about the abduction. *Id.* at 391-92. En route, Williams stated several times that he intended to meet with his attorney at their destination. *Id.* at 392. Before long, the detective expressed to Williams his belief that the abducted child should receive a Christian burial, and that they should stop and locate it on the way before a snowstorm concealed the body. *Id.* at 392-93. At two points in the journey, Williams unsuccessfully attempted to lead the detective to pieces of evidence. *Id.* at 393. As they approached the town where the body was located, Williams led the detective to the body. *Id.*

Brewer is easily distinguished because the federal district court found, and the U.S. Supreme Court agreed, that the transporting detective's monologue to the

defendant was specifically intended to elicit incriminating statements by exploiting the defendant's deep religiosity and mental illness. *Id*. at 402-05. In addition, the Court found clear constitutional error because the record contained no evidence supporting the prosecution's assertion that the defendant intended to relinquish his right to counsel. *Id*.

However, in the instant case, it is undisputed that Rood was re-Mirandized and signed a *Miranda* waiver form before providing her confession. In addition, while *Brewer*'s detective delivered an extended, psychologically manipulative monologue designed to take advantage of Williams's religiosity and mental susceptibility, Detective Schultz's quip was isolated and benign.

While Rood suggests the *Brewer* Court did not consider the time interval between the monologue and Williams's incriminating conduct, the record showed the detective specifically instructed Williams not to respond,

and instead just to think about what he said. *Id.* at 393. And, at each point on the journey where Williams believed he had left evidence, he attempted to help the detective locate it, ultimately resulting in the discovery of the body. *Id*. With respect to the coercive nature of the detective's words, the *Brewer* Court was heavily concerned with Williams's ability to resist the detective's psychological pressure. *Id*.

Contrary to Rood's suggestion, the time interval between police conduct and an incriminating statement by a suspect is relevant in determining the statement's admissibility. *See*, *e.g.*, *State v. Riley,* 19 Wn. App. 289, 299, 576 P.2d 1311 (1978) (finding an interval of more than one hour between an officer's offer of leniency and the suspect's confession indicated the offer had little if any impact). In the instant case, the time element is relevant because Rood's waiting 80 minutes after

Detective Schultz's remark indicates she had time to make a rational decision to provide her statement.

Because the Court of Appeals correctly found that Detective Schultz's remark did not constitute interrogation and that Rood reinitiated contact with law enforcement, Rood's right to counsel was scrupulously honored.

2. ***The Court of Appeals correctly refused to apply a presumption of involuntariness***.

No presumption of involuntariness applied to Rood's confession because the Court correctly found Detective Schultz's remark was not interrogation. Rood advocates for applying that presumption without adequately addressing its nature. In *Arizona v. Roberson*, the U.S. Supreme Court explained the circumstances when the presumption of involuntariness arises:

> the prophylactic protections that the *Miranda* warnings provide to counteract the "inherently compelling pressures" of custodial interrogation and to "permit a full opportunity to exercise the privilege against self-

> incrimination," are implemented by the application of the *Edwards* corollary that if a suspect believes that he is not capable of undergoing such questioning without advice of counsel, then ***it is presumed that any subsequent waiver that has come at the authorities' behest, and not at the suspect's own instigation***, is itself the product of the "inherently compelling pressures" and not the purely voluntary choice of the suspect. [T]he accused having expressed his own view that he is not competent to deal with the authorities without legal advice, a later decision ***at the authorities' insistence*** to make a statement without counsel's presence may properly be viewed with skepticism.

486 U.S. 675, 681, 108 S. Ct. 2093 (1988) (emphasis added and internal citations and quotations omitted). The above excerpt from *Roberson* restates the *Edwards* rule, which permits reinterrogation after a suspect voluntarily reinitiates contact with law enforcement. Rood's assertion that the presumption applies stems from her underlying, incorrect assumption that Detective Schultz's comment constituted interrogation—an argument the Court of

Appeals directly reviewed and correctly rejected according to *Unga*'s totality of the circumstances. Op. at 20-21; *see supra* Section A.

Because the Court already correctly determined that Detective Schultz's remark was not interrogation, a presumption of involuntariness never arose. The Court of Appeals correctly analyzed the voluntariness of Rood's confession under the totality of the circumstances.

C. **The Court Of Appeals Correctly Accepted The Trial Court's Finding That The Detective "May Have" Made The Comment In Question.**

The Court of Appeals appropriately accepted the trial court's unchallenged finding, that Detective Schultz "may have" made the remark, as a verity upon appeal. As the Court of Appeals correctly noted, unchallenged CrR 3.5 findings of fact are "verities on appeal." Op. at 16 (citing *State v. Lorenz*, 152 Wn.2d 22, 30, 93 P.3d 133

(2004)). Rood's failure to assign error to the trial court's finding rendered it unreviewable on appeal.

Rood unconvincingly suggests that the Court of Appeals should have followed precedent construing the absence of a vital finding of fact as a presumption against the party bearing the burden of proof. Pet. for Review at . (citing *State v. Armenta*, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997).

Even indulging Rood's conjecture that this finding may be reviewed would have no effect on the outcome of her appeal. First, Rood offers no support for her assumption the trial court's somewhat ambiguous finding of fact is tantamount to an omission of a finding. Second, Rood's argument fails because the question of whether Schultz made the statement was not vital to the State proving voluntariness at the CrR 3.5 hearing. Rood incorrectly suggests that applying the presumption of

Armenta to the instant case would result in the State failing its burden of proving voluntariness.

In *Armenta*, the trial court omitted an essential finding of fact necessary to support the officer's detention of the defendant. 134 Wn.2d at 14. The Supreme Court noted, "Because the State had the burden of proof at the suppression hearing, we presume in light of the absence of a finding that Cruz [Armenta's associate] did not make the statement attributed to him by [the officer]." *Id*. The presumption that Cruz did not provide the false name was fatal to the State's effort to prove a lawful seizure. *Id*. In the instant case, however, the Court would presume merely that Schultz in fact made alleged the remark and would still need to analyze whether that remark (or any other conditions) coerced Rood's confession under the totality of the circumstances. *State v. Unga*, 165 Wn.2d 95, 101-02, 196 P.3d 645 (2008).

More problematic for Rood is that both the trial court and the Court of Appeals applied this presumption in practice. Despite the ambiguity of its finding of fact, the trial court's relevant conclusion of law presumed that Schultz in fact made the remark:

> Then again during the second conversation the defendant knowingly, intelligently and voluntarily waived her right to remain silent. The First Statements after the Defendant invoked her rights are not admissible. The second statements after Defendant reengaged with the Detective and ***the Detective used a ruse saying the co-Defendant pinned it on her***, did not overcome Defendant's ability to know whether her statements were voluntary. Defendant's motivation to make the statement does not make the statement involuntary. Defendant knowingly, intelligently and voluntarily waived her right to remain silent during the second interview and provided a statement thus the second statements are admissible at trial.

CP at 255 (emphasis added). In addition, the Court of Appeals' decision explicitly analyzed the voluntariness of Rood's confession from the perspective that Schultz made the remark. Op. at 20. Even after giving Rood the

benefit of the doubt on this issue, this the Court of Appeals correctly concluded Rood's confession was voluntary.

IV. CONCLUSION

Because Rood's Petition for Review fails to demonstrate a single conflict of the Court of Appeals' decision with appellate case law, and because it does not involve a significant question of Constitutional law, this Court should deny discretionary review.

RESPECTFULLY SUBMITTED, this 31st day of July, 2023.

(I certify this document contains 4608 words, excluding the parts of the document exempted from the word count by RAP 18.17)

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DATED: July 31, 2023, at Stevenson, Washington.

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