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No. 33953-0-III

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Court of Appeals
Division III
State of Washington

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON

V.

DESARAE DAWSON

PETITION FOR REVIEW

Thomas E. Weaver
WSBA #22488
Attorney for Appellant

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345

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A. Identity of Petitioner

Desarae Dawson asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. Court of Appeals Decision

The Court of Appeals issued a decision on March 14, 2017, concluding that Ms. Dawson was not read an incomplete Miranda warning and affirming her conviction.

C. Issues Presented for Review

Did the Court of Appeals err by holding that the *Miranda* warning given to Ms. Dawson, which failed to properly advise her she had the right to stop questioning at any time, did not require reversal of her conviction, despite the fact that this Court recently emphasized such an advisement is constitutionally required in *State v. Mayer, infra* (2015)?

D. Statement of the Case

Desarae Dawson was charged by Information with Possession of a Stolen Motor Vehicle. CP, 1. After a jury trial, she was found guilty. CP, 80. The court imposed a standard range sentence of 53 months. CP, 98.

After Desarae Dawson was arrested driving a stolen vehicle, a police officer gave her incomplete and erroneous *Miranda* warnings. Ms. Dawson made several contradictory and incriminating statements that were later used against her at trial. She testified in her own defense and

denied knowing the car was stolen. RP, 147. The jury convicted her of possession of a stolen vehicle. In her direct appeal, Ms. Dawson objected, contending her custodial statements were erroneously admitted at trial. The Court of Appeals disagreed and affirmed.

CrR 3.5 Hearing

Prior to trial the court held a hearing pursuant to CrR 3.5. RP, 49. Officer Stephanie Kennedy testified she came into contact with Ms. Dawson soon after the traffic stop. Ms. Dawson was placed under arrest and handcuffed in the back of a patrol car. RP, 52, 67. No questions were asked of her prior to the arrest. RP, 52. Officer Kennedy started the contact by reciting her constitutional rights from memory. RP, 52. Office Kennedy testified she does not normally use a pre-printed *Miranda* rights card and, consistent with her normal practice, did not on this occasion. RP, 52-53. When asked to recite the *Miranda* rights in court, she was inconsistent with what rights she recited. On direct examination, she said, "I explained to her you have the right to remain silent. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you before questioning if you so desire." RP, 53. Officer Kennedy confirmed those were the rights she "told" to Ms. Dawson. RP, 53. Later, on cross-examination, she stated she had "misspoke" earlier and asked to "read them over." RP, 65. This time, she said, "[A]t this time you have

the right to remain silent. Anything you say can and will be used against you in the court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you without cost before any questioning if you so desire. Do you understand these rights as I've read them to you." RP, 65. According to Officer Kennedy, Ms. Dawson verbally acknowledged her rights and agreed to waive them. RP, 53.

The next day, Detective Wendt went to the jail to spoke with Ms. Dawson. RP, 28. She was still in custody and not free to leave. RP, 28. At the beginning of the discussion, Detective Wendt read *Miranda* warnings to her using a preprinted card. RP, 29. Ms. Dawson signed a card with the *Miranda* warnings on them indicating she was willing to speak with the detective. RP, 30. After speaking with her about some unrelated matters, Detective Wendt then turned the discussion to the stolen motor vehicle. RP, 32. He started the discussion by reminding her of her arrest the day before by Officer Kennedy, that Officer Kennedy had read her rights to her, and asking her to repeat what she told Officer Kennedy. RP, 33-34. Ms. Dawson then summarized what she had told Officer Kennedy, including that she told Officer Kennedy that she knew the vehicle was stolen but had driven it anyway because she needed a ride. RP, 34-35. When Detective Wendt asked who stole the vehicle was stolen, she said she did not know. RP, 36. She said she was not the

person who stole it, but declined to tell the detective who did steal it. RP, 36.

After the testimony, the parties argued the CrR 3.5 issues. RP, 70. The State conceded Ms. Dawson was under arrest and *Miranda* warnings were required. RP, 70. The Defense argued the manner in which the "constitutional rights cards was administered" was objectionable because "officer [Kennedy] did not use a card and I understand it's not a terribly long card but by the same token, there is no card with my client's either ability to sign that she understood or an indication that she could not sign because she was handcuffed." RP, 71.

The court concluded Ms. Dawson was under arrest and *Miranda* warnings were required. RP, 73. The court was concerned about the fact that *Miranda* rights were not read from a card but were recited by Officer Kennedy RP, 77. But, according to the court, when she was challenged on cross-examination to read back the rights from memory, she was "able to do so without a mistake as far as [the court] could tell." RP, 77. The court determined the statements were admissible. RP, 78. The court also admitted the statements made to Detective Wendt. RP, 41. In ruling on Detective Wendt's testimony, the trial court commended the detective for using a written card with Ms. Dawson's signature. RP, 41-42.

The trial court later entered written findings of fact and conclusions of law. CP, 87. The court found in paragraph 3, "The arresting officer, Stephanie Kennedy, Mirandized Ms. Dawson of her 5th Amendment rights from memory." CP, 87. The court concluded in paragraph 6, "Ms. Dawson was given her Miranda rights when she spoke to Officer Kennedy and she waived her 5th Amendment rights." CP, 88.

Trial Testimony

At trial, the State called Jessica Ochoa, the vehicle's owner, to testify someone stole her 2001 Subaru Legacy from her driveway on December 1, 2014 RP, 97-98. She never gave permission for Ms Dawson to drive her car. RP, 100.

Eight days later, on December 9, Officer Kennedy located the Subaru. She surveilled the vehicle for one hour and twenty minutes until Ms Dawson got into the vehicle and began driving it. RP, 104. The vehicle was promptly stopped and Officer Kennedy contacted Ms Dawson. RP, 105.

According to Officer Kennedy, Ms. Dawson offered several explanations for how she came be driving the vehicle. RP, 106. She first said she borrowed the vehicle the night before from her sister, Tiffany Crawford, who had purchased the vehicle on Craigslist. RP, 106-07. She later provided a second story saying although she did not steal the vehicle,

she knew it was stolen, but she needed to move her personal belongings and decided it was more important to move her things. RP, 113. She said this was the only stolen vehicle she had been in for a month. RP, 113.

The next day, on December 11, Detective Wendt contacted Ms. Dawson at the jail. RP, 127. Prior to contacting her, he read Officer Kennedy's probable cause statement about her December 10 contact with Ms. Dawson. RP, 128. Detective Wendt started his interrogation of Ms. Dawson by reminding her she had spoken to Officer Kennedy the day prior. RP, 129. Ms. Dawson acknowledged she remembered the conversation. RP, 129. Ms. Dawson recounted she initially told Officer Kennedy she had received the vehicle from Tiffany Crawford who had purchased the vehicle on Craigslist. RP, 129. She then told Detective Wendt that she had made up that story and she knew the vehicle was stolen, although she did not know who had stolen it. RP, 130. She was driving the vehicle because she needed a ride. RP, 130 Detective Wendt then confronted her and asked if her if she did not know who stole it or was unwilling to tell who stole it. RP, 130. Ms. Dawson replied she did not want to tell. RP, 131. Detective Dawson asked again about Tiffany Crawford and she said she had lied and made up the story about Ms. Crawford and Craigslist. RP, 131.

Ms. Dawson testified on her own behalf at trial. RP, 143. She disputed her statements to Officer Kennedy, saying she told her she bought the vehicle on Craigslist. RP, 145. She said she told Detective Wendt she was picked up because a car she bought turned out to be stolen. RP, 147. She denied telling either officer she knew the car was stolen. RP, 145.

E. Argument Why Review Should be Accepted

In the Court of Appeals, Ms. Dawson objected to the trial court's findings of fact finding that she was properly read her Miranda warnings. Specifically, she contended that when Officer Kennedy read her rights to her from memory, Officer Kennedy failed to advise her that she had the right to stop answering at any time. The Court of Appeals agreed that this was the case, saying, "The record of the CrR 3.5 hearing is clear that in twice reciting the warnings she gives before interrogating a suspect, Officer Kennedy made no mention of a right to stop questioning at any time until able to speak with a lawyer." Opinion at 7.

In the seminal case of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), the United States Supreme Court held that prior to custodial interrogation, a suspect must be advised of his or her rights. The primary federal case discussing whether the *Miranda* warning needs to be worded exactly in one form or another is *Duckworth v. Eagan*,

492 U.S 195, 109 S Ct. 2875, 106 L.Ed 2d 166 (1989). In *Duckworth*, the Court noted a variety of situations might necessitate a police officer improvising the warning, including, significant to Ms Dawson's case, the possibility "the officer in the field may not always have access to printed *Miranda* warnings." *Duckworth* at 203. Because of these situations, the Court upheld a conviction where the warning given contained some language arguably inconsistent with the *Miranda* decision. See *Duckworth* at 215 (Justice Marshall, dissenting).

Although the United States Supreme Court does not require a word-for-word recitation of the *Miranda* warning, the warning given must still convey the "all of the bases required by *Miranda*." *Duckworth* at 203 As set out by the *Duckworth* Court, the five bases required by *Miranda* are (1) the right to remain silent; (2) that anything he said could be used against him in court; (3) that he had the right to speak to an attorney before and during questioning; (4) that he had the right to the advice and presence of a lawyer even if he could not afford to hire one; and (5) that he had the right to stop answering at any time until he talked to a lawyer. *Id* at 203. In Ms. Dawson's case, the fifth requirement, that she had the right to stop questioning, was omitted from the *Miranda* warning.

Although the Court of Appeals agreed Ms. Dawson was not read the fifth right outlined in *Duckworth*, it relied on 2005 case from this Court to hold that the fifth right is not constitutionally required. *In re the Personal Restraint of Woods*, 154 Wn.2d 400, 434, 114 P.3d 607 (2005). In *Woods*, this Court reviewed a Personal Restraint Petition (PRP) in a death penalty case. The Court concluded that the *Miranda* warning given the Defendant adequately conveyed the necessary information, although it omitted the fifth right of *Duckworth*. This Court began its lengthy opinion (addressing a total of fifteen assignments of error) by emphasizing that the standard of review for PRPs is whether the petitioner has experienced "actual and substantial prejudice." *Woods* at 409. This high standard is necessary in order to "preserve the societal interest in finality, economy, and integrity of the trial process" and also to encourage appellants to litigate their claims on direct appeal and not on collateral attack. *Woods* at 409.

In the Court of Appeals, Ms. Dawson relied on a recent 2015 case from this Court. *State v. Mayer*, 184 Wn.2d 548, 362 P.3d 745 (2015). In *Mayer*, this Court reviewed a situation where the *Miranda* warnings were confusing and contradictory. The Court stressed "that the rights set forth in what became known as the '*Miranda* warnings' must be explained fully prior to questioning. This explanation of rights must convey to the suspect

that his right to silence—and his opportunity to exercise that right—applies continuously throughout the interrogation process." *Mayer* at 557. In reaching this conclusion, and without reference to *Woods*, this Court quoted the *Duckworth* opinion. In doing so, this Court placed in italics the requirement that a suspect be advised of her "*right to stop answering at any time until you've talked to a lawyer.*" *Mayer* at 563, citing *Duckworth* at 198 (Emphasis added by this Court).

The *Miranda* warning given by Officer Kennedy was incomplete and misleading. It did not convey to Ms. Dawson her right to stop questioning at any time. It is worth noting Officer Kennedy gave two versions of the *Miranda* warning at the CrR 3.5 hearing. In both versions she omitted the right to stop questioning. But in one of the versions, she also omitted the right to an attorney at public expense. Because she was reciting the rights from memory to Ms. Dawson, as opposed to reading them off a preprinted card, and the interaction was not recorded, it is impossible to know what version is accurate. But it is uncontested at this juncture that Ms. Dawson, at a minimum, was not advised of her right to cease questioning at any time.

The Court of Appeals commented that the *Mayer* discussion "appears to muddy what in *Woods* was a clear rejection of requiring any warning beyond the core four" but felt that the above quoted language did

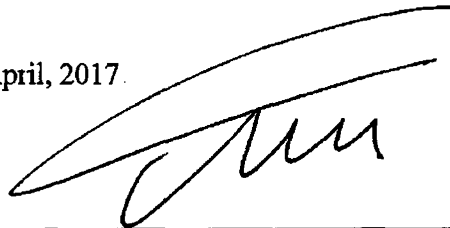
not overrule *Woods*. But *Mayer* does more than just muddy the *Woods* waters; it dams them up permanently. Given that *Woods* was before this Court on collateral attack where "actual and substantial prejudice" must be shown, the much-more-recent analysis from the direct appeal in *Mayer* should prevail. The decision of the Court of Appeals in Ms Dawson's case is in conflict with this Court's most recent pronouncement and review should be granted RAP 13.4(b)(4).

In the Court of Appeals, Ms. Dawson also argued that her interview with Detective Wendt was tainted by the earlier interview. The Court of Appeals did not reach this issue because it found Officer Kennedy's warning was not incomplete. In the event this Court grants review, this issue remains to be resolved.

F. Conclusion

This Court should grant review to resolve the conflict between *Woods* and *Mayer*, reverse Ms. Dawson's conviction and remand for a new trial.

DATED this 12th day of April, 2017.



Thomas E. Weaver, WSBA #22488
Attorney for Defendant/Appellant

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON, Respondent,	)	No. 33953-0-III
v.	)	
DESARAE M. DAWSON, Appellant.	)	UNPUBLISHED OPINION

SIDDOWAY, J. — At issue in this appeal of Desarae Dawson's conviction for possession of a stolen motor vehicle is the question of what warnings are essential, before law enforcement questions an individual in custody, in order to comply with *Miranda v. Arizona*.[1] Ms. Dawson challenges the failure of the first officer who questioned her to warn Ms. Dawson of her right to stop answering questions at any time and speak with a lawyer. She contends that her statements to that officer were not knowing and voluntary and that her statements to a detective the next day were tainted by the prior day's violation of her rights.

The warning Ms. Dawson complains was omitted was not constitutionally required, so the trial court's findings and conclusions in denying her motion to suppress were supported by the evidence and the law. We affirm.

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[1] 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

FACTS AND PROCEDURAL BACKGROUND

A 2001 black Subaru Legacy that had been reported stolen was spotted on the streets of Spokane and watched by officers for over an hour before Desarae Dawson approached the Subaru, entered it, and drove off. Ms. Dawson was stopped and placed under arrest. Officer Stephanie Kennedy recited to Ms. Dawson her *Miranda* rights. Officer Kennedy had been a police officer since January 1999 and did not use a card preprinted with *Miranda* warnings, relying instead on her memory. A witness, Officer Phillips,[2] was present to confirm that Ms. Dawson acknowledged and understood her rights and agreed to waive them before interrogation began.

In responding to Officer Kennedy's questions, Ms. Dawson initially said her sister had purchased the car on Craigslist, but would not show Officer Kennedy the Craigslist listing or provide the officer with her sister's phone number. Ms. Dawson eventually admitted to Officer Kennedy that she knew the car was stolen, although she added "this is the only stolen car I've been in in the last month." Report of Proceedings (RP) at 62.[3]

Detective Craig Wendt was assigned to the case and visited Ms. Dawson in jail the next day to question her about the stolen car and other matters. Before their discussion, he read Ms. Dawson *Miranda* warnings from a preprinted card, which Ms. Dawson signed to signify that she understood her rights and wanted to waive them.

[2] Officer Phillips's first name does not appear in the record.
[3] All citations to the Report of Proceedings refer to RP (Nov. 9, 2015).

During Detective Wendt's questioning, Ms. Dawson acknowledged having been read her *Miranda* rights by Officer Kennedy, affirmed she had told Officer Kennedy the Craigslist story, and affirmed she had admitted to Officer Kennedy that she knew the car was stolen but that she was driving it "because she needed a ride." RP at 34. At first, she stated to Detective Wendt that she did not know who had stolen the car but later she told him that she did not want to say who had stolen the car.

After the State charged Ms. Dawson with possession of a stolen motor vehicle, the trial court conducted a CrR 3.5 hearing to determine whether the incriminating statements Ms. Dawson had made to Officer Kennedy and Detective Wendt should be suppressed

During direct examination in the CrR 3.5 hearing, Officer Kennedy was asked if she could tell those in attendance "off the top of your head" what a custodial detainee's rights were. RP at 53. She answered, "Absolutely," and demonstrated:

> I explained to her you have the right to remain silent. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you before any questioning if you so desire.

Id.

When it came time for the defense to cross-examine Officer Kennedy, she volunteered that she misspoke on direct examination and left something out when reciting the *Miranda* warnings. She explained that she is usually looking at the suspect rather than a lawyer when she recites the warnings, and the courtroom setting made her nervous. Correcting herself, she testified that she would have told Ms. Dawson instead:

> [A]t this time you have the right to remain silent. Anything you say can and will be used against you in the court of law. You have the right to an attorney. If you cannot afford one, one will be appointed for you without cost before any questioning if you so desire. Do you understand these rights as I've read them to you[?]

RP at 65.

At the conclusion of the hearing, the trial court orally ruled that the statements made to Officer Kennedy and Detective Wendt were admissible. As to Officer Kennedy's memory lapse, the trial court complimented defense counsel on his advocacy, but stated:

> While it might be good practice for an officer to use a preprinted rights card each time, my experience is that law enforcement officers do not. The crucial issue is that they advise the individual of those rights before inquiring and Officer Kennedy testified she did advise Ms. Dawson of her rights and that Ms. Dawson knowingly, intelligently and voluntarily waived her right to an attorney and waived the right to remain silent and chose voluntarily to speak.
>
> So although, again, the Court would prefer everybody to have a preprinted rights card signed, it makes things less perplexing for me, it's not required. The law doesn't require it. The law requires that somebody be read their rights and that's the evidence before the Court. I'm satisfied that everything that was testified to by Officer Kennedy in terms of Ms. Dawson's statements to her in the backseat of a law enforcement car on December 9, 2014, are admissible.

RP at 77-78.

At trial, Ms. Dawson testified in her own defense and denied telling Officer Kennedy or Detective Wendt that she knew the vehicle was stolen. The jury nonetheless found her guilty. The trial court sentenced her to 53 months' confinement. She appeals.

ANALYSIS

Ms. Dawson challenges the denial of her motion to suppress, assigning error to the trial court's third finding of fact, that "[t]he arresting officer, Stephanie Kennedy, Mirandized Ms. Dawson of her 5th Amendment rights from memory," and to its sixth conclusion of law, that "Ms. Dawson was given her *Miranda* rights when she spoke to Officer Kennedy and she waived her 5th Amendment rights." Clerk's Papers (CP) at 87-88. She contends that five warnings are required by *Miranda,* one being that a suspect can stop answering questions at any time until able to speak with a lawyer. She argues that Officer Kennedy's omission of that right, twice, in reciting warnings at the suppression hearing is compelling evidence that the officer did not impart the fifth warning to Ms. Dawson. She argues that because the warnings were incomplete, any waiver of her rights was not knowing or voluntary, and any statements she made should have been suppressed at trial. She argues that despite Detective Wendt's administration of a proper warning, any statements he obtained were not sufficiently attenuated from the coercive interrogation by Officer Kennedy to be admissible.

When reviewing denial of a motion to suppress a confession, we examine "whether substantial evidence supports the challenged findings and whether the findings of fact support the conclusions of law." *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Evidence is considered substantial when it is sufficient "'to persuade a fair-minded person of the truth of the stated premise.'" *Id.* (quoting *State v. Reid*, 98

Wn. App. 152, 156, 988 P.2d 1038 (1999). We review the trial court's conclusions of law de novo. *State v. Campbell*, 166 Wn. App. 464, 469, 272 P.3d 859 (2011).

The Fifth Amendment to the United States Constitution "provides that no person 'shall be compelled in any criminal case to be a witness against himself.'" *State v. Templeton*, 148 Wn.2d 193, 207, 59 P.3d 632 (2002). The Washington Constitution's equivalent to the Fifth Amendment is article I, section 9[4] and "'should receive the same definition and interpretation as that which has been given to'" the Fifth Amendment by the United States Supreme Court. *Id.* at 207-08 (quoting *City of Tacoma v. Heater*, 67 Wn.2d 733, 736, 409 P.2d 867 (1966)).

To ensure the Fifth Amendment's protections, the United States Supreme Court held in *Miranda* that law enforcement must fully explain a suspect's constitutional rights before questioning her. 384 U.S. at 444-45. In *In re Personal Restraint of Woods*, our Supreme Court characterized *Miranda* as requiring a four-part warning, stating that it required that "a suspect in custody must be warned prior to any questioning that: (1) he has the absolute right to remain silent, (2) anything that he says can be used against him, (3) he has the right to have counsel present before and during questioning, and (4) if he cannot afford counsel, one will be appointed for him." 154 Wn.2d 400, 434, 114 P.3d 607 (2005), *overruled in part on other grounds by Carey v. Musladin*, 549 U.S. 70 127 S.

[4] "No person shall be compelled in any criminal case to give evidence against himself." WASH. CONST., art. I, § 9.

Ct. 649, 166 L. Ed. 2d 482 (2006) (citing *State v. Brown*, 132 Wn.2d 529, 582, 940 P.2d 546 (1997)).[5]

Even though the warnings identified in *Miranda* are required, "there is no requirement that the warnings be given in the precise language stated in *Miranda*." *Woods*, 154 Wn.2d at 434 (citing *Duckworth v. Eagan*, 492 U.S. 195, 202-03, 109 S. Ct. 2875, 106 L. Ed. 2d 166 (1989)). In reviewing a challenge to the sufficiency of warnings, we examine "'whether the warnings reasonably and effectively conveyed to a suspect his rights as required by *Miranda*.'" *Woods*, 154 Wn.2d at 434 (quoting *Brown*, 132 Wn.2d at 582.

The record of the CrR 3.5 hearing is clear that in twice reciting the warnings she gives before interrogating a suspect, Officer Kennedy made no mention of a right to stop answering questions at any time until able to speak with a lawyer. To evaluate her challenge to the trial court's finding and conclusion, then, we must address whether that right is essential to "*Mirandiz[ing]*" a person in custody or being "given [one's] *Miranda* rights"—the language used in the challenged finding and conclusion. CP at 87-88. It is

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[5] This tracks language in *Miranda* that the suspect must be told that

> he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

384 U.S. at 479.

not one of the four warnings that our Supreme Court gleaned from *Miranda* in *Woods*, 154 Wn.2d 400.

Ms. Dawson relies on the United States Supreme Court's decision in *Duckworth* for her contention that a fifth warning—of a right to stop answering questions until able to speak with a lawyer—is constitutionally required. *Duckworth*, a habeas petition challenging an Indiana conviction, and specifically, the "advice of rights" form used in Indiana, involved warnings that differed substantially from the warnings challenged here The Indiana form informed a suspect

> that he had the right to remain silent, that anything he said could be used against him in court, that he had the right to speak to an attorney before and during questioning, that he had "this right to the advice and presence of a lawyer even if [he could] not afford to hire one," and that he had the "*right to stop answering at any time until [he] talked to a lawyer*."

Duckworth, 492 U.S. at 203 (alterations original) (emphasis added). The Court held that these warnings "touched all of the bases required by *Miranda*." *Id.*

But what was at issue in *Duckworth* was language in the advice of rights form stating, "We have no way of giving you a lawyer, but one will be appointed for you, if you wish, if and when you go to court." *Id.* at 198 (emphasis omitted). A divided panel of the Seventh Circuit Court of Appeals had reversed the petitioner's conviction, concluding that the language denied the person in custody "'a clear and unequivocal warning of the right to appointed counsel before any interrogation,'" and "'link[s] an indigent's right to counsel before interrogation with a future event.'" *Id.* at 200

(alteration in original) (quoting *Eagan v. Duckworth*, 843 F.2d 1554, 1557 (7th Cir. 1988)). The Supreme Court reversed. In holding that Indiana's form "touched on all the [*Miranda*] bases," the Court explained that the Court of Appeals misapprehended the effect of the "if and when you go to court" language, which merely explained, for indigent defendants, when Indiana procedure provided that counsel would be appointed.

The Supreme Court in *Duckworth* addressed the *sufficiency* of Indiana's advice of rights form but did not address the extent to which its contents were *necessary*. The controlling case that does address whether a suspect must be told she can stop answering questions at any time until able to speak with a lawyer—and concludes that she need not be told—is *Woods*. The defendant in *Woods* made precisely the same argument as Ms Dawson, and our Supreme Court rejected it. 154 Wn.2d at 434-35.

Ms. Dawson also relies on a more recent Washington decision, *State v. Mayer*, however, which she argues requires some equivalent to the fifth warning given in *Duckworth*. The court in *Mayer* points to language in *Miranda* indicating that the Supreme Court's concern in that case was with "'effective means . . . to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it,'" and that *Miranda* requires that the rights it identifies be "'explained fully.'" 184 Wn.2d 548, 557, 362 P.3d 745 (2015) (emphasis omitted) (quoting *Miranda*, 384 U.S. at 444). The *Mayer* court then states, "This explanation of rights must convey to the suspect that

his right to silence—and his opportunity to exercise that right—applies continuously throughout the interrogation process." *Id*

In isolation, this discussion in *Mayer* appears to muddy what in *Woods* was a clear rejection of requiring any warning beyond the core four But *Mayer* did not overrule *Woods*, and our Supreme Court in *Mayer* was addressing a different factual context: after unchallenged *Miranda* warnings, the suspect asked how and when a lawyer would be appointed for him if requested, and received answers that obscured the meaning of the initial warnings. The confusing answers made it doubtful that the suspect's willingness to continue was knowing and intelligent *Id* at 556-57.

The section of *Miranda* from which *Mayer* quotes this language about a "continuous opportunity to exercise" the right to silence requires the State to develop effective means to do two things. *Miranda*, 384 U.S. at 444-45. It must develop effective means (1) to inform accused persons of their right of silence, and (2) to assure a continuous opportunity to exercise it. *Id.* at 444. The first can be satisfied by the four-part warning that *Miranda* identifies as sufficient. The second is satisfied by responding appropriately to what happens thereafter. *Miranda* states:

> The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own

> does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

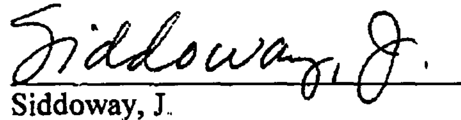
Id. at 444-45.

For these reasons, we do not read *Miranda* as requiring a fifth warning that the suspect can stop answering at any time until she talks to a lawyer, and we do not read *Mayer* as retreating from or modifying the controlling holding of *Woods*.

Substantial evidence supports the trial court's finding that Ms. Dawson was Mirandized before providing the statements she sought to have suppressed. Ms. Dawson's argument and authority dealing with taint and attenuation assumes a violation of *Miranda* by Officer Kennedy and, since we find no violation, need not be addressed.

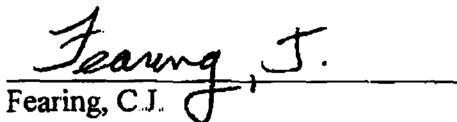
Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.



Siddoway, J.

WE CONCUR:



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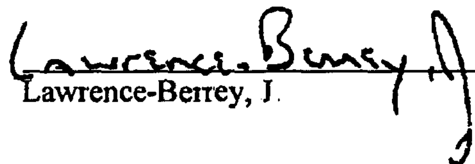

Lawrence-Berrey, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON, Plaintiff/Respondent, vs. DESARAE DAWSON, Defendant/Appellant	)	Court of Appeals No : 339530 DECLARATION OF SERVICE OF PETITION FOR REVIEW

STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

I, Alisha Freeman, declare that I am at least 18 years of age and not a party to this action

On April 12, 2017, I e-filed the Petition for Review in the above-captioned case with the Washington State Court of Appeals, Division Three; and designated said document to be transmitted electronically, through the Court of Appeals transmittal system, to the Spokane County Prosecuting Attorney. scpaappeals@spokanecounty.org

On April 12, 2017, I deposited into the U.S. Mail, first class, postage prepaid, a true and correct copy of the Petition for Review to the defendant:

Desarae M Dawson
Washington Corrections Center for Women
9601 Bujacich Rd NW
Gig Harbor, WA 98332

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The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct

DATED: April 12, 2017, at Bremerton, Washington

Alisha Freeman

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345

WEAVER LAW FIRM
April 12, 2017 - 2:22 PM
Transmittal Letter

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Court of Appeals
Division III
State of Washington

Document Uploaded: 339530-Dawson Petition for Review.pdf

Case Name: State of Washington v. Desarae Dawson

Court of Appeals Case Number: 33953-0

Party Respresented:

Is This a Personal Restraint Petition? ☐ Yes ☑ No

Trial Court County: Spokane - Superior Court #: 14-1-04442-0

Type of Document being Filed:

- ☐ Designation of Clerk's Papers / ☐ Statement of Arrangements
- ☐ Motion for Discretionary Review
- ☐ Motion: ___
- ☐ Response/Reply to Motion: ___
- ☐ Brief
- ☐ Statement of Additional Authorities
- ☐ Affidavit of Attorney Fees
- ☐ Cost Bill / ☐ Objection to Cost Bill
- ☐ Affidavit
- ☐ Letter
- ☐ Electronic Copy of Verbatim Report of Proceedings - No. of Volumes: ___
  Hearing Date(s): ______
- ☐ Personal Restraint Petition (PRP)
- ☐ Response to Personal Restraint Petition / ☐ Reply to Response to Personal Restraint Petition
- ☑ Petition for Review (PRV)
- ☐ Other: ______

Comments:

No Comments were entered.

Proof of service is attached and an email service by agreement has been made to scpaappeals@spokanecounty.org.

Sender Name: Thomas E Weaver - Email: admin@tomweaverlaw.com