Supreme Court No: 1024321
No. 38811-5-III

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ELIAS JOSEPH LONGORIA,

Appellant.

RESPONSE TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington asks the Court to deny review of the Court of Appeals decision below.

II. COURT OF APPEALS DECISION

The Court of Appeals decision is attached as appendix A to the appellant's petition for review.

III. ISSUES PRESENTED FOR REVIEW

1. Does the analyses in *State v. Sum* apply to the in custody determination of a *Miranda* analysis when there is no facts or argument that race had any role in how an objective observer would view the situation?

2. Did Mr. Longoria unequivocally request an attorney?

3. Assuming Mr. Longoria did unequivocally request an attorney, given he was not in custody, is the Officer required to stop the conversation?

4. Can the prosecutor place evidence introduced by the defense in its proper context using instructions to the jury?

5. Given the Officer was the only one who recognized Mr. Longoria from the video of the crime, was it improper to introduce evidence of how well the officer knew Mr. Longoria, and so could recognize him from a relatively low quality video?

IV. STATEMENT OF THE CASE

The State provides this summary of facts. More detailed facts are incorporated where needed in each section. Rodney Christian's shop was broken into sometime around the 8th of April, 2019. RP 204. He had installed cameras after a break in on or around the 2nd of that month. RP 207. The cameras recorded pictures of individuals who broke into the shop. RP 210. Mr. Christian's brother and friend stayed late at the shop and caught an intruder in the act of stealing items from the shop, but that person fled. RP 246. They showed Deputy

Bushy the camera pictures, and he recognized Mr. Longoria from a mole on his left eyebrow. RP 308.

Deputy Bushy contacted Mr. Longoria at the front yard of his home a couple of months later. RP 310. Deputy Bushy informed Mr. Longoria he was free to leave, and had a conversation about what happened. During the conversation Mr. Longoria mentioned an attorney, but never directly asked for one. This conversation was recorded on Deputy Bushy's body cam. CP4-47. At trial the State offered to introduce a redacted 10-minute version of the recording that omitted any discussion of an attorney. Ex. 3. However, the defense insisted on playing the entire 45-minute video. Ex. 2, RP 28, 190. Mr. Longoria admitted to one instance of entering the shop, but not taking anything, and one instance of entering and taking things. CP 18-21. The State charged Mr. Longoria with two counts of burglary in the second degree. CP 124-127. The jury was unable to agree on the first count of burglary and convicted on

an alternative charge of criminal trespass in the first degree. They also convicted him of the second count of burglary.

V. ARGUMENT WHY REVIEW SHOULD BE DENIED

A. The Court properly admitted the statements.

1. Mr. Longoria was free to leave and did leave and return.

Whether a defendant was in custody for *Miranda*[1] purposes is a question of law reviewed de novo. *State v. Escalante*, 195 Wn.2d 526, 531, 461 P.3d 1183 (2020). Unchallenged findings of fact are verities on appeal. *Id.*

> Examples of circumstance that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.... In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police

[1] For brevity's sake, the Respondent will refer to *Miranda v. Arizona* as "*Miranda.*" 384 U.S. 436, 86 S. Ct. 1602, 16 L.Ed.2d 649 (1966).

> cannot, as a matter of law, amount to a seizure of that person.

State v. Young, 135 Wn.2d 498, 512, 957 P.2d 681, 688 (1998), citing *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L.Ed.2d 497 (1980).

"In our judgment, a police officer's conduct in engaging a defendant in conversation in a public place and asking for identification does not, alone, raise the encounter to an investigative detention." *State v. Armenta*, 134 Wn.2d 1, 11, 948 P.2d 1280 (1997). This same rule applies to individuals who are in parked vehicles. *See State v. Afana*, 147 Wn. App. 843, 196 P.3d 770 (2008); *State v. Mote*, 129 Wn. App. 276, 120 P.3d 596 (2005).

Here the Deputy's body cam video shows that no seizure occurred. As soon as Deputy Bushy walked up to Mr. Longoria the Deputy said "are you ok with talking right now? At any time you can say I'm done and walk away." Mr. Longoria responded "not really, not if I don't know what you are talking

about. Bushy responded, "We'll I'm gonna explain it to you and then you can tell me if you want to talk. Mr. Longoria responds, yeah, you can. He then asked "Am I being under arrest"? Officer Bushy responded "No, you're not under arrest. You're not in custody, you're not under arrest, you're not detained. You at any point in time can walk away, tell me to go fuck yourself." CP 6-7.

Deputy Bushy's tone and Mr. Longoria's tone and body language can be observed on the body camera. Deputy Bushy does not use a commanding tone or raise his voice in any manner. He does not pull a weapon or handcuffs or make any threatening or coercive motion towards Mr. Longoria. At approximately time 34:30 on the body cam video Mr. Longoria goes back into his house to obtain a phone charger and returns. During this time Deputy Bushy hangs out and talks to the other two officers there with him. Those Officers stand well back from the conversation between Deputy Bushy and Mr. Longoria, and make no threatening or coercive statements, and

do not adopt any threatening gestures or posture. At the time Deputy Bushy comes out to talk one Officer can be seen back near the street and the other one is down the street some distance. No cars have their overhead lights on. At the end of the conversation the officers leave and Mr. Longoria goes about his business.

This case is a textbook example of a social contact, where the Officer talks to someone, makes clear at the outset he is free to leave, treats him like he is free to leave throughout the conversation, lets him leave and voluntarily return in the middle of the conversation, and at the end leaves the citizen free to go on his way. Given Deputy Bushy's statements at the outset that Mr. Longoria was free to leave, his lack of assertion of authority on Mr. Longoria's movements in tone or action, and the fact that Mr. Longoria left, returned and then the Officers left without detaining Mr. Longoria, an objective observer would conclude that what Deputy Bushy said at the outset of the conversation was true, if Mr. Longoria had chosen to leave

the conversation, he would have been free to do so. An objective observer would conclude there was no seizure here.

B. Even if Mr. Longoria was not free to leave, he was not in custody associated with formal arrest.

Even if there was a seizure, Mr. Longoria concedes a sufficient factual basis for the seizure, and it never elevated to the level of formal arrest, thus *Miranda* warnings were not required. The test for whether *Miranda* warnings are required is more stringent than whether a seizure occurred. The test is "whether a reasonable person in a suspect's position would have felt that his or her freedom was curtailed to the degree associated with a formal arrest. Washington has adopted this test." *State v. Heritage*, 152 Wn.2d 210, 218, 95 P.3d 345, 348 (2004).

Factors to be considered in deciding whether someone is "in custody" include the place of the interrogation, whether the interrogation is conducted during normal business hours or is conducted at an odd hour of the night' the presence of friends,

relatives or neutral persons at the interview, the presence or absence of fingerprinting, photographing, and other booking procedures, telling a suspect that s/he is under arrest, the length and mode of the interrogation... Ferguson, *12 Wash. Prac., Criminal Practice and Procedure* § 3309, at 858- 59 (3d ed. 2004).

In this case it is clear that Mr. Longoria was not in custody equivalent to formal arrest. The same facts that show this was a social contact still apply, only more so. He was told he was free to terminate the conversation at any time. The interview took place during daylight hours in Mr. Longoria's front yard. The officer used a normal tone of voice during the interrogation. While the officers were armed with normal duty pistols, these were simply a non-issue during the discussion, and there were not heavier weapons present, such as long arms. Handcuffs were never displayed, discussed or apparent.

Nor does the Court of Appeals decision conflict with *State v. Escalante*, 195 Wn.2d 526, 540, 461 P.3d 1183, 1192 (2020). Mr. Longoria takes an out of context quote from *State v. Lorenz*, 152 Wn.2d 22, 36, 93 P.3d 133, 140 (2004). But a review of *Escalante* shows a completely different set of facts. There the defendant was held in a room, not open to the public, under the watch of an agent, where he had to ask to go use the restroom, for five hours while the border patrol investigated some drugs. Escalante was not told he was free to leave. The Court compared *Escalente's* circumstances to *Lorenz* and *Berkemer*. In *Lorenz* the conversation happened on a porch where the officers told the defendant she was free to leave fairly similar to this case. *Berkemer* was a traffic stop, which was presumptively temporary and brief, and only involved at most two officers, and most importantly, took place in public. *Escalante*, 195 Wn.2d at 534-35. Mr. Longoria's case is clearly on the *Berkemer/Lorenz* side of the line. The conversation took place in public, only one officer contacted Mr. Longoria, the

rest stayed well away, Mr. Longoria was told he was free to leave, and did in fact leave and then came back. The trial court and Court of Appeals took all relevant factors into account and correctly held that Mr. Longoria was not in custody. There is no conflict between the Court of Appeals decision and any other case.

C. The Court of Appeals did not categorically refuse to apply *Sum* to *Miranda* warnings, instead correctly holding that Mr. Longoria had not made an adequate argument of how to apply *Sum* to this particular *Miranda* situation.

In *State v. Sum*, 199 Wn.2d 627, 647, 511 P.3d 92, 105 (2022), the Court held that a person's ethnicity might be relevant as to whether they are seized or not for the purposes of Article 1 sec. 7 of the Washington State constitution. "While it is true that there is no uniform life experience or perspective shared by all people of color, heightened police scrutiny of the BIPOC community is certainly common enough to establish that race and ethnicity have at least some relevance to the question of whether a person was seized...The weight that

should be given to the allegedly seized person's race and ethnicity will vary between cases based on the evidence presented." *Id.* At 647.

In responding to Mr. Longoria's argument the Court of Appeals held:

> Aspects of the analysis in *Sum* could have application in Fifth Amendment cases like this one, but Mr. Longoria does not provide a disciplined analysis of how any particular aspect of *Sum* applies in this appeal. He engages in no *legal* analysis of how the state constitutional analysis in *Sum* translates to the Fifth Amendment context, in which Washington applies *Berkemer*. Nor does he address the difference in the interests involved. A significant interest addressed in *Sum* (arguably the most significant) is that "[w]hen it comes to police encounters without reasonable suspicion, 'it is no secret that people of color are disproportionately victims of this type of scrutiny.' " *Id.* at 644 (quoting *Utah v. Strieff*, 579 U.S. 232, 254, 136 S. Ct. 2056, 195 L. Ed. 2d 400 (2016) (Sotomayor, J., dissenting)). Justice Sotomayor emphasized that she was speaking of "*suspicionless* stop[s], one in which the officer initiated this chain of events without justification." *Strieff*, 579 U.S. at 254. While people of color might be disproportionately subject to custodial interviews, it cannot be said to be a matter of common understanding, as it is in the seizure context.

> In this case, the trial court was never asked to consider Mr. Longoria's race or ethnicity at the suppression hearing. That he had a Spanish surname was apparent; otherwise, the relevant record is silent. Even on appeal, Mr. Longoria makes no effort to identify numbers of questions, types of questions, requests, or anything else about Deputy Bushy's interview that should have caused the trial court to conclude—on its own, without request or suggestion by defense counsel—that an objective observer, aware of implicit, institutional, or unconscious bias, would view Mr. Longoria's freedom of action during the interview at the top of the driveway to his home as curtailed to a degree associated with formal arrest.

Sum, in essence, requires the reviewing court so ask "how would a reasonable BIPOC person view the circumstances of seizure differently than a white person?" *Sum* applied the stereotype that BIPOC people are subject to heightened police scrutiny, and thus more likely to feel seized under certain circumstance. *Sum*, 199 Wn.2d at 647. The critical question for *Miranda* purposes is not simply whether the person is seized, but whether the person is in custody associated with formal arrest. *Berkemer v. McCarty*, 468 U.S. 420, 440, 104 S. Ct. 3138, 3150, 82 L. Ed. 2d 317 (1984). Formal arrest

typically has certain characteristics associated with it, such as being placed in handcuffs, the officer telling the person they are under arrest, being placed in the back of a police car and/or being taken to a police station or jail. The State is unaware of any stereotype, and Mr. Longoria does not produce any evidence of one, that BIPOC people define and view formal arrest and its attendant characteristics differently than non BIPOC people. That is not to say it does not exist, or it could not be relevant under certain circumstances, but Mr. Longoria has made no showing or argument about the situation here, or in the trial court where facts might need to be developed.

Mr. Longoria treats the *Sum* analysis as bonus points. BIPOC people should get some vague and indeterminate amount of extra credit in the formal custody analysis. But that is not what *Sum* said. "The weight that should be given to the allegedly seized person's race and ethnicity will vary between cases based on the evidence presented, but the State cites no Washington authority holding that any objective circumstance

is presumptively irrelevant to the seizure inquiry." *State v. Sum*, 199 Wn.2d at 647 (2022). Mr. Longoria does not provide sufficient evidence or argument to determine what weight to give ethnicity, or for the State to respond to that argument.

D. The alleged conditions in Grant County cited by Mr. Longoria are both irrelevant and wrong.

1. The conditions are irrelevant to the analysis.

Mr. Longoria cites *State v. Zamora*, 199 Wn.2d 698, 701, 512 P.3d 512, 515 (2022), and Seattle Times articles regarding the case to demonstrate conditions in Grant County must be horrible for BIPOC people. However, "the relevance of race and ethnicity in the seizure inquiry cannot turn on whether there has been recent, well-publicized discrimination and violence by law enforcement directed at individuals of the same race or ethnicity as the allegedly seized person." *State v. Sum*, 199 Wn.2d at 644. In addition, the determination of whether someone is in custody consistent with formal arrest is an objective one. "(T)he initial determination of custody depends

on the objective circumstances of the interrogation, not on the subjective views harbored by either the interrogating officers or the person being questioned. Courts must examine "all of the circumstances surrounding the interrogation" and determine how a reasonable person in the position of the individual being questioned would gauge the breadth of his or her freedom of action." *Yarborough v. Alvarado*, 541 U.S. 652, 663, 124 S. Ct. 2140, 2148–49, 158 L. Ed. 2d 938 (2004). However, the more individualized circumstances are brought into the analysis, the more subjective the analysis becomes. *See State v. Westwood*, 100570-9, 2023 WL 5762260, at *5 (Wash. Sept. 7, 2023). For instance, a defendant's experience with police and *Miranda* warnings may well be a relevant factor that is able to be objectively determined but does not factor into the in custody analysis. *Alvarado*, 541 U.S. at 667.

If individual County circumstances are to be taken into account, does that mean that "in custody" means something different in Grant County than it does in Pierce, Clallam or

Asotin Counties? How far down does that go? Moses Lake, where the incident with Mr. Zamora occurred, is about 40 minutes driving time from Quincy, where Mr. Longoria and Deputy Bushy talked. That is approximately the same distance as Olympia to Fife. Does the term have different meanings in different cities, neighborhoods or even blocks? How much knowledge of local circumstances is imputed to the hypothetical reasonable individual? It is doubtful that Mr. Longoria had ever heard of Mr. Zamora at the time he talked to Deputy Bushy, and there is certainly no evidence of it. Mr. Longoria's argument about what has happened in Grant County is irrelevant to the in custody inquiry and would turn the question from an objective to a subjective one.

2. The facts cited are simply wrong.

Mr. Longoria cites to this Court's opinion in *Zamora* and newspaper articles primarily citing the Supreme Court case and interviews with Mr. Zamora for his facts. None of these "facts"

have been tested in an adversarial proceeding before a competent fact finder. The Court must disregard them.

26 years ago, this court decided *State v. Valentine*, 132 Wn.2d 1, 3, 935 P.2d 1294, 1294 (1997). The primary issue in *Valentine* was whether an unlawful arrest that would only result in loss of freedom could be resisted with force. At the Supreme Court, Mr. Valentine raised the issue that the conduct of the arresting officer was so outrageous as to violate the right to due process. The Court refused to consider the issue for the first time on appeal because it would have to weigh the credibility of the officers versus the credibility of Mr. Valentine, and the factfinder was not requested to consider the claim. *Id.* at 23-24. The Court held that "in the absence of findings of fact or undisputed facts showing outrageous conduct by the Spokane police officers, we cannot say that their conduct was violate of due process. Consequently, we are unwilling to direct dismissal of the third degree assault charge against Valentine." *Id* at 24.

Fast forward to 2023. This Supreme Court unanimously rebuked Division 3 of the Court of Appeals for raising issues not presented to it and finding facts to support its conclusions that were irrelevant to the issues presented by the parties. *Dalton M, LLC v. N. Cascade Tr. Servs., Inc.*, 534 P.3d 339, 342 (Wash. 2023). The Court held:

> This decision violates both the Rules of Appellate Procedure (RAPs) and our controlling precedent. Under both sources of law, an appellate court may raise a new issue sua sponte if it is necessary to resolve the questions presented; an appellate court may not raise a new issue sua sponte if it is separate and distinct from the questions presented and unnecessary to resolve those questions—especially when the new "issue" is more like a whole new unpleaded claim depending on factual allegations that were never presented in or proved to the trial court. The Court of Appeals violated these rules: it sua sponte raised a new issue that is more like an unpleaded claim, that new issue was distinct from issues or theories raised before, resolution of that new issue was not necessary to resolve the questions presented about the claims actually pleaded, and resolution of that new issue depended on facts that the parties never had a chance to develop at trial.

Id. at 343. The Court also noted how raising and deciding issues without notice to the parties denies due process. *Id.* at 347

In *Zamora* the Court limited its review to two issues, prosecutorial misconduct and the admissibility of the fact of a use of force investigation by the police agency. *State v. Zamora*, 198 Wn.2d 1017 (2021). The Court did not reach the use of force investigation issue. The facts cited by Mr. Longoria were completely irrelevant to the issues the Court granted review on in *Zamora*. Mr. Longoria discusses how Mr. Zamora was subject to extreme acts of violence for doing nothing more that walking while high on drugs. Petition for review at 13. He cites to two Seattle Times articles for the proposition of a well-known culture in Grant County Law enforcement resulting in violence towards Latino men. *Id.* At 14. He also alleges "discrimination resulting

in disproportionate police contacts, as well as Grant County's history." *Id* at 19.

None of these facts were litigated in either Mr. Zamora's case or Mr. Longoria's. While the State could not prove beyond a reasonable doubt with admissible evidence Mr. Zamora was prowling vehicles, that is a far cry from affirmatively establishing he was merely walking while high on drugs. In fact, given his history of very similar actions, a history that is not in the record of either Mr. Zamora's case or Mr. Longoria's because the issue was never raised in the trial court in either case, Mr. Zamora was, to a more likely than not standard, trying to get into people's cars.[2] This fact, of course, was also never argued because it was irrelevant to the issues the Court actually granted review on, or any issue the Court

[2] There are many other debatable "facts" from the *Zamora* opinion and the newspaper articles. The State does not mean to imply the facts mentioned are the only ones.

of Appeals reviewed, or any issues raised at the trial court. How extreme the violence was as Mr. Zamora, super fueled by methamphetamine, tried to pull his knife on the officer was also a fact never litigated in any court.

Nor is there any evidence of a culture of disproportionate police contacts in Grant County. The only thing the Court reviewed in *Zamora* was the elected prosecutor's comments during voir dire. To the undersigned's knowledge no deputy prosecutor ever adopted the prior elected prosecutor's approach to voir dire in this respect, and no law enforcement officer had anything to do with it, which would contradict the whole idea of a cultural norm. Of course, that also is not in the record in Mr. Longoria's case or Mr. Zamora's because the issue was never raised in the trial court. Nor were the circumstances of Deputy Bushy's other contacts with Mr. Longoria, including who else was there, the reasons behind them or any other details of the encounters.

This Court followed a policy of judicial restraint in *Valentine*. It reaffirmed that policy in *Dalton M LLC*. It should continue with a restrained policy. One sided yellow journalism and court opinions that create facts that were never subject to an adversarial proceeding and were not relevant to the issues raised create impressions of conflict and problems that may not actually exist or exacerbate problems that do. Courts have a deliberative system for finding facts for a reason. It should not be short circuited.

E. Mr. Longoria did not unequivocally invoke his right to counsel. Even if he did, because he was not in custody Deputy Bushy was not obligated to stop the conversation.

1. Mr. Longoria did not unequivocally invoke his right to counsel.

The State briefed this issue in its brief to the Court of Appeals and the Court of Appeals considered this issue. Mr. Longoria does not point to any conflicting cases or important

issues of law on this issue, so the State will rest on its previous briefing. RAP 13.4(b).

2. *Assuming, arguendo, that Mr. Longoria did unequivocally invoke his right to counsel, Deputy Bushy was not obligated to stop the conversation.*

The protections of *Miranda* do not apply when the suspect is not in custody. "If the defendant is not in custody then *Miranda* and its progeny do not apply." *Bobby v. Dixon*, 565 U.S. 23, 28, 132 S. Ct. 26, 29, 181 L. Ed. 2d 328 (2011). "If a suspect requests counsel but is not in custody, the police may continue to question the suspect." *State v. Bartelt*, 375 Wis. 2d 148, 164, 895 N.W.2d 86, 93 (Wis. Ct. App. 2017), *aff'd*, 379 Wis. 2d 588, 906 N.W.2d 684 (2018). Because Mr. Longoria was not in custody, Deputy Bushy was not obligated to stop the conversation when Mr. Longoria asked about an attorney. Even if the request was unequivocal, *Miranda* protections do not apply. Deputy Bushy was free to

keep asking questions, and Mr. Longoria was free to not answer and walk away or tell Deputy Bushy to leave.

F. The prosecutor properly used the jury instructions to clarify to the jury how to deal with the discussion of an attorney the defendant placed into evidence.

Rather than agree to the State's redaction of the body camera video or offer his own redaction Mr. Longoria insisted on placing the entire interview video in front of the jury. The prosecutor is not silenced from discussing how the jury should treat that evidence in the context of the jury instructions because it happened to involve discussion of an attorney. The Prosecutor clearly referenced the jury instructions that the judge had made a legal ruling, so the jury would not try to apply its lay understanding of *Miranda* warnings. As the Court of Appeals held, this was proper. Again, there is no demonstration of conflicting cases or significant issue of law. This issue is discussed in more detail in the State's brief in the Court of Appeals and the prior opinion.

G. Mr. Longoria's identity and how Deputy Bushy recognized him were highly relevant.

Mr. Longoria's arguments here are logically inconsistent. He argues that the number of contacts Deputy Bushy had with him are evidence of over policing of BIPOC persons presented to the jury, but that the number of contacts were inherently prejudicial showing he was a bad person. If the jury was to take them as evidence of over policing, they would be evidence that the police were picking in Mr. Longoria unjustly, and thus likely to be wrong in their assessment of what happened in the case, and he was not a bad person, but picked on by the police. Thus the argument that these contacts were evidence of over policing presented to the jury would actually help Mr. Longoria, if the jury accepted that premise.

Mr. Longoria's contacts with Deputy Bushy were relevant to identification. For the first time on appeal Mr. Longoria claims that identity was not an issue. But that was never conceded at trial. Deputy Bushy recognized Mr.

Longoria from the video of the incident by a distinctive mole on his face. Given this somewhat tenuous identification Deputy Bushy's familiarity with Mr. Longoria was important to the credibility of Deputy Bushy's identification. Why and how Deputy Bushy was familiar with Mr. Longoria was critical to the jury's evaluation of how he recognized Mr. Longoria as being the person in the video.

In addition, any error was clearly harmless. "Where the error is *not* of constitutional magnitude, we apply the rule that error is not prejudicial unless, within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected." *State v. Barry*, 183 Wn.2d 297, 303, 352 P.3d 161, 165 (2015). The jury convicted Mr. Longoria of what he confessed to, not what the State alleged, given the conviction on the lesser charge of trespass. The jury was not inappropriately swayed by the evidence.

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VI. CONCLUSION

Race/ethnicity may be a factor in determining if someone is in custody for purposes of *Miranda*, the Court of Appeals did not hold otherwise. However, the analysis must be more than the person has a last name that originates on the Iberian Peninsula, therefore the circumstances indicate custodial arrest. Mr. Longoria does not point to any circumstances that would indicate a person like Mr. Longoria would consider himself in custody any more than anyone else. Mr. Longoria was clearly informed he was not in custody, and there was no evidence that any reasonable person would conclude Deputy Bushy was not truthful when he told Mr. Longoria that. Mr. Longoria did not unambiguously ask for an attorney, and even if he did Deputy Bushy was not obligated to stop the conversation. The prosecutor is not prohibited from placing evidence the defense insisted on introducing in its proper context of the jury instructions. The reason Deputy Bushy recognized Mr. Longoria was relevant to an issue at trial, specifically who the

person in the video was. If it was error to introduce such evidence, the error was harmless. There are no conflicting cases or issues of law or significate issues that call for Supreme Court review. The petition should be denied. RAP 13.4(b).

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Dated this 27th day of October 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this day I served a copy of the Response to Petition for Review in this matter by e-mail on the following parties, receipt confirmed, pursuant to the parties' agreement:

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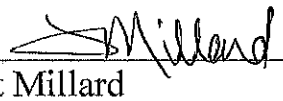
Dated: October 27, 2023.



Janet Millard

GRANT COUNTY PROSECUTOR'S OFFICE

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