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Division II  
State of Washington  
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NO. 51016-2-II

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

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STATE OF WASHINGTON, Respondent

v.

RAYLYN KADEEM NELSON, Appellant

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FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.17-1-00781-1

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BRIEF OF RESPONDENT

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Attorneys for Respondent:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

KRISTINE L. FOERSTER, WSBA #44435  
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney  
1013 Franklin Street  
PO Box 5000  
Vancouver WA 98666-5000  
Telephone (564) 397-2261

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### **RESPONSE TO ASSIGNMENTS OF ERROR**

- I. The evidence was sufficient to support Nelson's conviction for escape in the first degree.**
- II. The Court erred in not entering written 3.5 findings, but it is harmless error because the oral ruling allows for appellate review.**
- III. The trial court properly admitted the statement Nelson made to police.**
- IV. The State agrees that the trial court erroneously included the \$250 jury demand fee in the judgement and sentence and that the judgment and sentence should be corrected.**
- V. The State agrees the judgement and sentence should be corrected to reflect proper fees.**

### **STATEMENT OF THE CASE**

The State substantially agrees with the statement of facts laid out by Nelson as it relates to the factual history of the case. The State sets forth these additional facts that pertain directly to the issues on appeal.

The State charged Raylyn Nelson (hereafter "Nelson") by information with Escape in the First Degree for an incident occurring on April 8, 2017. CP 3.

A CrR 3.5 hearing was held on August 16, 2017 to determine the admissibility of Nelson's statement to police. 1 RP 4 -24<sup>1</sup>. At that hearing, Clark County Sherriff's Detective Andrew Kennison testified that it was his job to find Nelson after he escaped from a work center. 1 RP 6. Kennison tracked Nelson to Nelson's parent's residence, which was located at 17015 NE Eighth Street in Vancouver, WA. 1 RP 7, 2 RP 49. When Kennison got out of his vehicle, Nelson turned and walked quickly into an open field. 1 RP 7, 16. Kennison told Nelson to stop but Nelson kept walking away. 1 RP 7. Kennison announced "I know who you are. You're Raylyn Nelson. You need to stop. You're under arrest." 1 RP 17-18. Nelson said, "I'm not the guy you're looking for." 1 RP 17-18. Kennison told Nelson he had been looking at his photo all day, he knew it was him, and "[y]ou need to stop." 1 RP 17. After Nelson stopped, Kennison had Nelson lie down and handcuffed him. 1 RP 8, 17. Subsequently, Kennison took Nelson to his patrol vehicle. 1 RP 8. Kennison read Nelson Miranda warnings after they got back to the patrol vehicle. 1 RP 8. Nelson did not make any statements after receiving the warnings. 1 RP 9.

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<sup>1</sup> The appellant refers to the verbatim report of proceedings of the CrR 3.5 hearing as "1 RP [page number]" and the verbatim report of proceedings of the trial as "2 RP [page number]." For ease, the State cites to the report of proceedings in the same way.

At the CrR 3.5 hearing, the trial court heard argument on whether the statement Nelson made to Kennison when Kennison was trying to stop him was admissible. 1 RP 20-23. The Court ruled that the statement “I’m not the guy you’re looking for,” was admissible because it was spontaneous and not in response to a question or the product of interrogation. 1 RP 23.

Nelson went to trial on the above listed charge on August 21, 2017. 2 RP 5. Sergeant Paul Flores testified as the sergeant who oversees operations at the Jail Work Center. 2 RP 27. The Jail Work Center operates a work release program. 2 RP 28- 29. In addition, jail inmates do kitchen and laundry work at the facility. 2 RP 28-29. Flores identified Nelson in court as being a laundry worker at the facility and indicated that Nelson was not on work release at the time he was at the work center. 2 RP 28-30. Jail inmates wear wristbands for identification, which includes a photo, a central file number, height, and weight of the inmate. 2 RP 30-31. These wristbands are only removed from an inmate’s wrist upon release from custody. 2 RP 30-31. Flores testified that inmates are instructed during orientation that they are not supposed to be anywhere but at work. 2 RP 40. Flores testified that Nelson would have received those instructions when he was moved from the jail to the Work Center. 2 RP 40-41. Nelson had moved to the Work Center just two days before he

escaped. 2 RP 40-41. On April 8, 2017, it was discovered that Nelson was missing from the Jail Work Center. 2RP 38-39. He was last seen in the building at 3 p.m. that day and he did not have permission to leave. 2 RP 39- 41. When asked if Nelson was still serving a sentence at the time he left, Flores answered "Yes, he was." 2 RP 40.

At trial the State admitted the information, judgement and sentence, and order modifying sentence from case number 15-1-02411-6 into evidence as exhibits 1, 2, and 3. 2 RP 7; *See Ex. 1, 2, 3.* Nelson was originally sentenced to 365 days on work release, but the sentence was later modified to 362 days in jail. *See Ex. 2, 3.* Nelson's listed address on the information from 15-1-02411-6 is 17015 NE 8<sup>th</sup> Street, Vancouver WA 98684. *See Ex. 2.* Detective Kennison testified that when he located Nelson, Nelson was walking towards his parent's house at 17015 NE 8<sup>th</sup> Street, Vancouver WA 98684. 2 RP 49. Detective Kennison identified Nelson in Court as the man that he saw at that address on April 9, 2017. 2 RP 47. Detective Kennison testified that when he saw Nelson on April 9, 2018 he matched the photo and description of the alleged escapee that Kennison was looking for and that the jail bracelet on Nelson's wrist identified him as Raylyn Nelson. 2 RP 49-52.

The jury returned a guilty verdict on one count of Escape in the First Degree. CP 26.

## ARGUMENT

### **I. There was sufficient evidence to support Nelson's conviction for escape in the first degree.**

Nelson claims that substantial evidence does not support his conviction for escape in the first degree because the State did not properly prove that he was detained pursuant to a felony conviction. Nelson argues that Washington judgment in case 15-1-02411-6 for conspiracy to possess a controlled substance with intent to deliver and possession of a controlled substance was insufficient to establish that he was the same person detained pursuant to that judgment and sentence at the time of the escape. However, the State submitted additional independent evidence beyond the judgment that proved Nelson's identity as the person detained pursuant to the felony conviction in the judgment for case 15-1-02411-6. Because the State presented sufficient evidence to prove Nelson committed the crime of escape in the first degree, Nelson's claim fails.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn.App. 789, 796,

137 P.3d 893 (2006). When determining whether there is sufficient evidence to support a conviction, the evidence must be viewed in the light most favorable to the State. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). If “any rational jury could find the essential elements of the crime beyond a reasonable doubt,” the evidence is deemed sufficient. *Id.*

An appellant challenging the sufficiency of evidence presented at a trial admits the truth of the State’s evidence and all reasonable inferences therefrom are drawn in favor of the State. *State v. Goodman*, 150 Wn.2d 774, 781, 83 P.2d 410 (2004). The reviewing court defers to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); *State v. Walton*, 64 Wn.App. 410, 415-16, 824 P.2d 533 (1992). When examining the sufficiency of the evidence, circumstantial evidence is just as reliable as direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

When a prior conviction is an essential element of the current charged crime, evidence of name alone is insufficient to prove identity. *State v. Hunter*, 29 Wn.App. 218, 221, 627 P.2d 1339 (1981). Some additional independent evidence is required to prove the person named in the prior conviction is the defendant currently on trial. *Hunter*, 29

Wn.App. at 221; citing *State v. Harkness*, 1 Wn.2d 530, 96 P.2d 460 (1939); *State v. Brezillac*, 19 Wn.App. 11, 573 P.2d 1343 (1978); and *State v. Clark*, 18 Wn.App. 831, 832 n.1, 572 P.2d 734 (1977). Once the State presents sufficient independent evidence to establish identity, the burden then shifts to the defendant to present evidence casting doubt on identity. *Hunter*, 29 Wn.App. at 221; citing *Brezillac*, 19 Wn.App. 11.

The State can sustain its burden of proving a defendant's identity in a variety of ways, including distinctive personal information or admissions by the defendant that the prior convictions were part of his criminal history. See *State v. Huber*, 129 Wn.App. 499, 502, 119 P.3d 388 (2005) (citing *Brezillac*, 19 Wn.App. at 13 and *State v. Johnson*, 33 Wn.App. 534, 538, 656 P.2d 1099 (1982)).

In *Hunter*, testimony of a probation and parole officer that identified the defendant as a former resident of the work release facility who had been transferred there from a state correctional institution following his Lewis County felony convictions was found to be sufficient evidence to establish a prima facie case that defendant was the same person as named in the certified judgments and sentences. *Hunter*, 29 Wn.App. at 221-22.

In *Brezillac*, the defendant was facing a habitual criminal proceeding where the State was attempting to prove six prior convictions

from Georgia. 19 Wn.App. at 12-13. The State admitted certified copies of judgments and sentences for the convictions, and also prison records for the convictions. *Id.* at 13. The prison records for three of the prior convictions did not contain specific verifying information, such as photos and physical descriptors. *Id.* However, a prima facie case of identity was established for these three convictions, because all the documents taken together were sufficiently similar. *Id.* at 14-15. The Court relied on the fact that the name of the defendant was the same in all six convictions, the defendant committed the same crime in five of the convictions, and the crimes were committed contemporaneously with each other. *Id.* at 15. The Court held that these similarities were “more than mere identity of names,” and that the “possibility of another Mitchell T. Brezillac committing the same crimes, in the same county of the same state, during the same period of time, is far too remote.” *Id.*

In the present case the State presented sufficient evidence for any reasonable jury to find that Nelson was detained pursuant to a felony conviction at the time of his escape. The State admitted more than just the certified copy of the prior judgment for Washington case 15-1-02411-6. 2 2 RP 7; *See* Ex. 2. The State also admitted a certified copy of the amended information in the prior case, which had Nelson’s last known address on it.

2 RP 7; *See* Ex. 1. This is the same address Nelson was arrested at for the escape charge. 2 RP 49.

The State presented additional independent evidence of identity to the jury. Sergeant Flores indicated that he was in charge of the Jail Work Center operations and that he was on duty on April 8, 2017. 2 RP 28-29. He made a courtroom identification of the appellant as an inmate working in the laundry facility at the work center prior to April 8, 2017. 2 RP 29-30. Sgt. Flores identified the 15-1-02411-6 judgement and sentence as being for “Raylyn Kadeem Nelson,” and testified that it indicated he had been sentenced on a felony charge. 2 RP 31. Flores then identified the Amended Information from cause number 15-1-02411-6. 2 RP 38. When asked “[i]s this specific to Mr. Nelson,” Flores answered “yes.” 2 RP 38. The testimony of Sgt. Flores is similar to the testimony in *Hunter*: he identified himself as the Sergeant in charge of the work center, identified the appellant as an inmate working in the laundry facility at the work center, and identified the information with the same cause number as the admitted judgment and sentence as “specific to Mr. Nelson,” whom he had identified in Court.

Additionally, Detective Kennison testified that he reviewed the booking photo, date of birth, and physical descriptions of the individual who had escaped from the work center and he identified the appellant in

court as the individual whom he was searching for based on that information. 2 RP 47. Detective Kennison testified that he eventually found Nelson at his parent's house at 17015 Northeast Eighth Street in Vancouver, Washington. 2 RP 49. This matches the address on the Amended Information in case number 15-1-02411-6. *See* Exhibit 1. Detective Kennison confirmed that the jail bracelet that Nelson was wearing at the time of arrest had his photo and birthday on it and that the appellant matched the booking photo for Raylyn Nelson that he had been viewing. 2 RP 49-52. Detective Kennison also identified Nelson in Court as the Raylyn Nelson that he had been searching for and who he found next to 17015 Northeast Eighth Street in Vancouver, Washington. 2 RP 47.

It is also of note that the State attempted to offer the booking photo from the prior felony offense specifically to show that the person in the Courtroom was the person confined to the work center under the felony sentence offered. 2 RP 7-14. The Court excluded the photo under ER 403 finding that the photo of the appellant, taken in booking for the conviction that the appellant is now claiming was not proved to be specific to him, was unduly prejudicial. 2 RP 10. The Judge also excluded the jail identification card because he found the religion section, which the deputy prosecutor offered to redact, would be unduly prejudicial and cumulative. 2 RP 11-14. This identification card had identifiers including the

defendant's booking dates, sentence length and the release date as well as identifying information such as height, weight, ethnicity and address, which was the same address that Detective Kennison found Nelson at. 2 RP 11-14, 49. In his ruling, the judge made it clear that he felt that the evidence the State would present through Sgt. Flores was sufficient and specifically excluded the identifying information on the jail card as cumulative. 2 RP 14.

When taking all reasonable inferences in a light most favorable to the State, the amended information and Clark County judgment and sentence and the in court identifications and testimony from Sgt. Flores and Detective Kennison established beyond a reasonable doubt that Nelson was the person convicted of the conspiracy to possess a controlled substance with intent to deliver in 15-1-02411-6. Thus, the State presented sufficient independent evidence to establish a prima facie case of Nelson's identity and Nelson's claim fails.

**II. The Court erred in not entering written 3.5 findings, but it is harmless error because the oral ruling allows for appellate review.**

CrR 3.5 sets forth the procedure by which a trial court determines whether statements of a defendant, made to state actors and offered by the State at trial, are admissible into evidence. CrR 3.5(a). This rule requires that the trial court, "set forth in writing: (1) the undisputed facts; (2) the

disputed facts; (3) conclusions as to the disputed facts; and (4) conclusion as to whether the statement is admissible and the reasons therefor.” CrR 3.5(c). The trial court did hold a hearing pursuant to CrR 3.5, however the trial court did not enter any written findings pursuant to CrR 3.5(c). The trial court instead gave an oral ruling finding the statement Nelson made to law enforcement officers admissible. 1 RP 23.

Although a trial court’s failure to enter written findings and conclusions pursuant to CrR 3.5(c) is error, it is harmless error as long as the oral findings are sufficient to allow appellate review. *State v. Thompson*, 73 Wn.App. 122, 130, 867 P.2d 691 (1994) (citing to *State v. Riley*, 69 Wn.App. 349, 352-53, 848 P.2d 1288 (1993) and *State v. Clark*, 46 Wn.App. 856, 859, 732 P.2d 1029, *rev. denied*, 108 Wn.2d 1014 (1987)). In *State v. Haynes*, 16 Wn.App. 778, 559 P.2d 583, *rev. denied*, 88 Wn.2d 1017 (1977) this Court found that the trial court’s failure to enter written findings and conclusions on the CrR 3.5 hearing was not reversible absent prejudice to the defendant. *Haynes*, 16 Wn.App. at 788. This Court reasoned that the trial court gave “adequate oral reasoning in ruling that the statements, if indeed made, were voluntary” and the absence of written findings “did not hinder [its] review....” *Id.* Many courts have since upheld this reasoning. *See e.g. State v. Grogan*, 147 Wn.App. 511, 195 P.3d 1017, *rev. granted, cause remanded*, 168 Wn.2d

1039, 234 P.3d 169, *on remand*, 158 Wn.App. 272, 246 P.3d 196 (2008) (holding a trial court's failure to enter findings required is harmless error if the court's oral findings are sufficient to permit appellate review); *State v. Miller*, 92 Wn.App. 693, 703, 964 P.2d 1196 (1998) (holding a trial court's failure to comply with CrR 3.5(c) is harmless error if the court's oral findings are sufficient to allow appellate review); *State v. Phillip Arthur Smith*, 67 Wn.App. 81, 834 P.2d 26, *reviewed and affirmed on other grounds*, 123 Wn.2d 51, 864 P.2d 1371, (1992) (holding a trial court's failure to enter written findings following the denial of a motion to suppress was harmless error where the court's oral findings were sufficient to permit appellate review).

While the trial court erred in failing to enter written findings pursuant to CrR 3.5, the trial court's oral ruling is sufficient to permit full review by an appellate court of the trial court's decision in finding Nelson's statement to police was admissible at trial. Therefore, the trial court's failure to enter written findings was harmless.

**III. The trial court properly admitted the statement that Nelson made to police.**

Nelson argues the trial court erred in admitting the statement he made to Detective Kennison after Detective Kennison said "I know you're Raylyn Nelson. You're under arrest. You need to stop." The trial court

properly concluded the statement was admissible as a spontaneous statement and that Nelson was not subject to custodial interrogation. The trial court should be affirmed.

This Court reviews a trial court's decision after a CrR 3.5 hearing by determining whether substantial evidence supports the trial court's findings of fact, and whether those findings of fact support the court's conclusions of law. *State v. Broadaway*, 133 Wn.2d 118, 130-31, 942 P.2d 363 (1997). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding." *State v. Solomon*, 114 Wn.App. 781, 789, 60 P.3d 1215 (2002) (quoting *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999)). Police must inform a suspect of his or her rights under *Miranda* prior to beginning a custodial interrogation. *State v. Cunningham*, 116 Wn.App. 219, 227, 65 P.3d 325 (2003) (citing *State v. Baruso*, 72 Wn.App. 603, 609, 865 P.2d 512 (1993)). There are three elements to a custodial interrogation: 1) custody; 2) interrogation; and 3) by a state agent. *Solomon*, 114 Wn.App. at 787.

The trial court below found Nelson was in custody at the time he made the statement the State sought to introduce at trial. 1 RP 23. Neither the State nor Nelson contest this finding. The issue that Nelson now raises is whether an "interrogation" occurred while Nelson was in custody. To be subject to exclusion due to lack of *Miranda* warnings, statements must

result from police interrogation. *State v. McWatters*, 63 Wn.App. 911, 915, 822 P.2d 787, *rev. denied*, 119 Wn.2d 1012, 833 P.2d 386 (1992). Interrogation means questioning or other words or actions likely to elicit an incriminating response. *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S.Ct. 1682, 1689, 64 L.Ed.2d 297 (1980). “[S]ince the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.” *Innis*, 446 U.S. at 301-02.

Spontaneous statements made while in police custody are admissible. *State v. Bradley*, 105 Wn.2d 898, 904, 719 P.2d 546 (1986). Such spontaneous statements are admissible because they are unsolicited, not the product of custodial interrogation, and are not coercive within the concept of *Miranda*. *State v. Roberts*, 14 Wn.App. 727, 544 P.2d 754 (1976); *State v. Toliver*, 6 Wn.App. 531, 494 P.2d 514 (1972).

In *State v. McIntyre*, 39 Wn.App. 1, 691 P.2d 587 (1984), this Court held a defendant’s spontaneous in-custody statements were admissible because they were not prompted by questioning or other conduct equivalent to interrogation, and the actions of the police were merely those attendant to arrest. *McIntyre*, 39 Wn.App. at 6. Further, in *State v. Sadler*, 147 Wn.App. 97, 193 P.3d 1108 (2008), this Court found a

defendant's statements to a detective after the detective told the defendant he was going to apply for a search warrant were spontaneous, voluntary statements. *Sadler*, 147 Wn.App. at 131. "Merely telling a suspect about the status of the investigation is not likely to elicit a response." *Id.* This is on par with the detective's actions in Nelson's case: Detective Kennison told Nelson to stop walking away from him, informed Nelson that he knew Nelson's identity, and did not ask Nelson any questions. Detective Kennison merely revealed that he knew who Nelson was and told Nelson to stop walking away from him. Unlike *Innis* or *Wilson*, the purpose of this statement was logically to get Nelson to stop walking away; it was not a statement likely to elicit an incriminating response and thus was not an interrogation. The only response Detective Kennison's statement invited was for Nelson to stop walking. The trial court properly found that no interrogation occurred. As no interrogation occurred, Nelson's statement was spontaneous and admissible at trial. The trial court should be affirmed.

Even if the statement had been admitted in error, it would be harmless error. "[C]onstitutional error is presumed to be prejudicial and the State bears the burden of proving that the error was harmless." *State v. Watt*, 160 Wn.2d 626, 635, 160 P.3d 640 (2007) (citing *State v. Guloy*, 104 Wn.2d 412, 426, 705 P.2d 1182 (1985)). That said, "[i]t is well

established that constitutional errors, including violations of a defendant's rights under the confrontation clause, may be so insignificant as to be harmless." *Guloy*, 104 Wn.2d at 426 (citing *Harrington v. California*, 395 U.S. 250, 251-52, 89 S.Ct. 1726, 1727-28, 23 L.Ed.2d 284 (1969)). An error is harmless if the reviewing court "is convinced beyond a reasonable doubt that any reasonable jury would have reached the same result in the absence of the error." *Id.* In other words, "[i]f there is no 'reasonable probability that the outcome of the trial would have been different had the error not occurred,' the error is harmless. *State v. Mason*, 160 Wn.2d 910, 927, 162 P.3d 396 (2007) (quoting *State v. Powell*, 126 Wn.2d 244, 267, 893 P.2d 615 (1995)).

Nelson argues that the State needed his statement that he was not who Detective Kennison was looking for to prove that Nelson "knowingly" escaped from custody, but the record shows ample evidence that the defendant acted knowingly. Sergeant Flores testified that Nelson would have been told at orientation that he was not allowed to leave the work center. The jury had the order modifying the judgement and sentence for the prior case showing that Nelson had been sentenced to serve 362 days in jail only 30 days before Nelson left the work center, which he did on his birthday. *See Ex. 3.* Detective Kennison testified that he found Nelson near his parents' house over 24 hours after Nelson had been

reported as missing from the work center and that Nelson quickly walked away from Detective Kennison into a vacant field when Detective Kennison approached him. Because there was ample evidence for the jury to find that Nelson knowingly escaped from custody, there is no reasonable probability that the outcome of the trial would have been different if the jury had not heard that Nelson said “I am not the person you’re looking for<sup>2</sup>” and any error in admission of the statement would be harmless.

**IV. The State agrees that the trial court erroneously left the \$250 jury demand fee on the judgement and sentence and that the judgment and sentence should be amended.**

The State agrees and concedes that the trial court did not intend to include the jury demand fee in the judgment and sentence. The trial court indicated that it would strike any non-mandatory fees. Accordingly, the State agrees with Nelson that the trial court should not have imposed a jury demand fee; it appears to have been a scrivener’s error and this Court should remand with instruction to the trial court to strike this condition from the judgment.

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<sup>2</sup> Nelson argues in his brief that the State used the statement to show consciousness of guilt, yet that argument was never made by the State. Additionally, Nelson’s statement was not discussed in the State’s closing argument when discussing the “knowing” element of the crime.



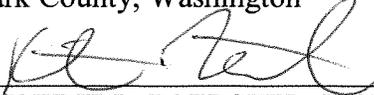
## CONCLUSION

The State presented sufficient evidence at trial from which a reasonable juror could find Nelson guilty of Escape in the First Degree. Furthermore, the trial court properly admitted the statement Nelson made to police as it was not the product of custodial interrogation, and despite the trial court's failure to enter written findings of this decision, the court's oral ruling is sufficient to allow for appellate review. Accordingly, Nelson's conviction and sentence should be affirmed. This Court should remand the matter to the trial court to correct the scrivener's errors contained in the judgment and sentence.

DATED this 2<sup>nd</sup> day of August, 2018.

Respectfully submitted:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

By: 

KRISTINE L. FOERSTER, WSBA #44435  
Deputy Prosecuting Attorney  
OID# 91127

# CLARK COUNTY PROSECUTING ATTORNEY

August 02, 2018 - 4:15 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51016-2  
**Appellate Court Case Title:** State of Washington, Respondent v. Raylyn K. Nelson, Appellant  
**Superior Court Case Number:** 17-1-00781-1

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