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Division II
State of Washington
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No. 52279-9-II

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

STATE OF WASHINGTON,

Respondent,

v.

KEITH BERNARD THREATTS,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLARK COUNTY

The Honorable Daniel Stahnke, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

1. THREATTS WAS NOT ADVISED OF HIS CONSTITUTIONAL RIGHTS BEFORE HIS STATEMENT TO POLICE ABOUT THE GUN, AND HIS STATEMENTS AND FRUITS OF THE SEARCH SHOULD HAVE BEEN SUPPRESSED

The State argues in its response that Threatts' statements to police were voluntarily made and that he was not in police custody. Brief of Respondent (BR) at 13-22. Police officers, however, may create a coercive environment rendering a suspect in custody even when the questioning is conducted in the suspect's home. *State v. Rosas-Miranda*, 176 Wn. App. 773, 779, 309 P.3d 728 (2013) (citing *Orozco v. Texas*, 394 U.S. 324, 326-27, 89 S. Ct. 1095, 22 L.Ed.2d 311 (1969); *State v. Dennis*, 16 Wn. App. 417, 421, 558 P.2d 297 (1976)). An individual has the right to remain free from compelled self-incrimination while in police custody. U.S. Const. amends. V and XIV; *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S. Ct. 1602, 16 L.Ed.2d 694 (1966). The Fifth Amendment to the United States Constitution provides that “[n]o person ... shall be compelled in any criminal case to be a witness against himself.”

In *Miranda*, the Supreme Court recognized that custodial interrogation, by its very nature, “isolates and pressures the individual,” “blurs the line between voluntary and involuntary statements,” and thereby

heightens the risk that an individual will be deprived of his privilege against compulsory self-incrimination. *Dickerson v. United States*, 530 U.S. 428, 435, 120 S. Ct. 2326, 147 L.Ed.2d 405 (2000).

A suspect is in custody for purposes of *Miranda* when “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.” *State v. Heritage*, 152 Wn.2d 210, 218, 95 P.3d 345 (2004) (citing *Berkemer v. McCarty*, 468 U.S. 420, 441–42, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984)).

‘Custody’ for *Miranda* purposes is narrowly circumscribed and requires ‘formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.’ ” *State v. Post*, 118 Wn.2d 596, 606, 826 P.2d 172, 837 P.2d 599 (1992) (internal quotation marks omitted) (quoting *Minnesota v. Murphy*, 465 U.S. 420, 430, 104 S. Ct. 1136, 79 L.Ed.2d 409 (1984)). Courts examine the totality of the circumstances to determine whether a suspect was in custody. When determining whether a suspect was in custody for purposes of *Miranda*, courts examine the totality of the circumstances. *Rosas–Miranda*, 176 Wn. App. at 779 (citing *United States v. Craighead*, 539 F.3d 1073, 1082 (9th Cir. 2008)). Police questioning within the confines of a person's own home may be custodial interrogation. *State v. Dennis*, 16 Wn.App. 417, 421, 558 P.2d297 (1976).

State v. Dennis is very similar to the facts of the case at bar. In

Dennis, this Court held that a suspect was in custody while in his own apartment. Two officers went to the suspect's apartment to execute a search warrant and they discovered that the address on the search warrant was incorrect. *Dennis*, 16 Wn.App. at 418. One officer stayed outside the apartment while the other went to obtain a corrected warrant. *Dennis*, 16 Wn.App. at 418. When the suspect and his wife arrived at the apartment, a neighbor brought the suspect into an adjoining apartment while the suspect's wife went into the apartment she shared with the suspect. *Dennis*, 16 Wn.App. at 418–19. The officer waiting at the apartment complex became worried that the neighbor would tell the suspect that he was a police officer and that the suspect would return to his apartment and destroy contraband before the other officer arrived with the corrected search warrant, and the officer knocked on the suspect's door, identified himself, and was allowed into the apartment by the suspect's wife. *Dennis*, 16 Wn.App. at 419–20. *Dennis* returned from the neighbor's apartment and the officer was already inside the apartment at that point. *Dennis*, 16 Wn.App. at 419. The police officer, the suspect, and the suspect's wife sat at a table and the officer told the suspect that he knew there were drugs in the refrigerator. *Dennis*, 16 Wn.App. at 419, 558 P.2d 297. The suspect was not placed under arrest or told that he could not leave, but when the suspect's wife requested that the officer move into the living room, he

responded, “No, because I don’t like to see you take anything out of the refrigerator that I cannot see.” *Dennis*, 16 Wn.App. at 420. The officer suggested that the suspect produce the drugs voluntarily and save him the trouble of searching and told him that a warrant was going to be produced. *Dennis*, 16 Wn.App. at 419.. The officer again asked for the drugs to be produced without resorting to a search. *Dennis*, 16 Wn.App. at 419. In response, the suspect retrieved several packages of cocaine from the refrigerator and placed them on the table next to the officer. *Dennis*, 16 Wn.App. at 419.

Division Two found that the suspect was in custody for purposes of *Miranda* when, at the officer's urging, he took cocaine out of the refrigerator in front of the officer. *Dennis*, 16 Wn.App. at 422.

This Court stated:

Here, even though the conversation took place in the defendant’s own apartment, neither Dennis had been placed under arrest, and the officer avowed they were free to leave at any time, the atmosphere was nevertheless dominated by the officer's unwelcome presence and his insistence on remaining in a position where he could monitor and thus restrict the occupants' freedom of movement within their home.

Dennis, 16 Wn.App. at 421–22.

The officer also made it clear to the suspect that not cooperating would be futile because another officer was on his way with a search warrant. *Dennis*, 16 Wn.App. at 421–22.

This Court held that a reasonable person in the suspect's position would have “believed his freedom of movement was significantly restricted and that any attempt to leave would probably result in immediate physical restraint or custody.” *Dennis*, 16 Wn.App. at 422. Thus, the suspect was in custody for purposes of *Miranda* and the officer should have advised him of his rights. *Dennis*, 16 Wn.App. at 422.

Here, the circumstances demonstrate a police dominated atmosphere which led to Threatts’ reasonable belief that he was in custody, despite the officer’s claim that he was “free to leave.” RP at 352. Mr. Threatts answered the door and was directed to step outside [RP at 347], and closed the door behind him as the result of deception by Officer William Pardue, who not only gave the impression that he was not a police officer by responding that “it’s Bill,” and telling him that he had his hat, but also by purposely secreting himself outside the view of the apartment door so that the occupant could not see who was knocking through a peephole by stepping to the side of the door. RP at 335, 336, 347.

Moreover, despite the State’s argument to the contrary, Mr. Threatts was not realistically free to leave; he was not free to go back into his apartment to check on his sleeping son unescorted [RP at 351, 352], and he could not reasonably leave, and could not realistically be expected

to leave the apartment at that time of night with his son, who was asleep inside the apartment, or to leave the apartment area while leaving his son unattended in the apartment. RP at 364.

Mr. Threatts was held outside his apartment while an officer stood guard by the door. This factor also weighs in favor of finding that Mr. Threatts was in custody. See *Craighead*, 539 F.3d at 1087 (suspect in custody when escorted to and interviewed in small storage room at back of house).

It was under these circumstances, and after being held outside the apartment for a long period of time and prior to being given his constitutional warnings, that Mr. Threatts said that the gun was inside his apartment. RP at 367.

Once Mr. Threatts opened the door for “Bill,” the officers made it clear that they were in control by not permitting Mr. Threatts to retreat into his apartment and permitting him to go into his own apartment only with police escort. RP at 366. With these actions the officer communicated to Mr. Threatts that any attempt to retreat into the apartment would result in immediate physical restraint or custody. See *State v. Dennis*, 16 Wn. App. 417, 422, 558 P.2d 297 (1976) (officer impressed upon defendant that he was in control, insisting they remain in kitchen while waiting for warrant where officer could monitor defendant

and suspected location of contraband).

As discussed above and in the appellant's opening brief, the circumstances went beyond mere investigatory detainment; the facts of the case have the hallmarks inherent of a formal arrest and thus sufficiently coercive to constitute an interrogation for *Miranda* purposes. The circumstances under which he was held turned the familiar surroundings of the home into a "police dominated atmosphere." *Craighead*, 539 F.3d at 1083-84. Mr. Threatts was therefore in custody when he was held outside his apartment by the officers, and *Miranda* warnings were required prior to his statement to police that the gun was in the apartment. Since the warnings were not given, his statements were inadmissible.

Miranda is a constitutional requirement. As such, the State bears the burden of proving that the admission of statements obtained in violation of *Miranda* was harmless beyond a reasonable doubt. See *Arizona v. Fulminante*, 499 U.S. 279, 292-97, 111 S. Ct. 1246, 113 L.Ed.2d 302 (1991). In other words, the State must show that the admission did not contribute to the conviction. *Id.* at 296. The State cannot meet this heavy burden here.

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B. CONCLUSION

For the reasons stated herein and in the appellant's opening brief, this Court should grant the relief previously requested.

DATED: July 15, 2019

Respectfully submitted,
THE TILLER LAW FIRM



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CERTIFICATE

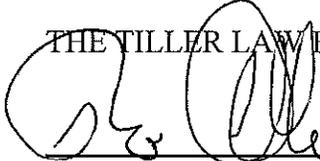
I certify that I sent by JIS a copy of the Reply Brief of Appellant to Clerk of Court of Appeals and to Clark County Prosecuting Attorney, and mailed copies, postage prepaid on July 15, 2019, to appellant, Clifford Collier at the following address:

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