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

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STATE OF WASHINGTON,

Respondent,

v.

JAY ROBERT SPADONI,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF  
KITSAP COUNTY, STATE OF WASHINGTON  
Superior Court No. 19-1-00335-18

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BRIEF OF RESPONDENT

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**TABLE OF CONTENTS**

I. COUNTERSTATEMENT OF THE ISSUE.....1

II. STATEMENT OF THE CASE.....1

    A. PROCEDURAL HISTORY.....1

    B. 3.5 HEARING FACTS.....7

    C. TRIAL FACTS .....12

III. ARGUMENT .....18

    THE TRIAL COURT PROPERLY FOUND THAT HOLDEN’S QUESTIONS TO SPADONI MADE IN AN EFFORT TO DETERMINE HIS MENTAL STATUS DID NOT CONSTITUTE CUSTODIAL INTERROGATION. ....18

        1. Standard of review. ....18

        2. Spadoni was not in custody for the purposes of *Miranda*. ....19

        3. Holden’s questions were not interrogation. ....22

        4. Any error would be harmless.....26

IV. CONCLUSION.....28

## TABLE OF AUTHORITIES

### CASES

<i>Arizona v. Fulminante</i> , 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991).....	26
<i>Berkemer v. McCarty</i> , 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984).....	21
<i>Heinemann v. Whitman County</i> , 105 Wn.2d 796, 718 P.2d 789 (1986).....	22
<i>Minnesota v. Murphy</i> , 465 U.S. 420, 104 S. Ct. 1136, 79 L. Ed. 2d 409 (1984).....	20
<i>People v. Huffman</i> , 41 N.Y.2d 29, 359 N.E.2d 353 (1976).....	25
<i>People v. Jemmott</i> , 984 N.Y.S.2d 443 (N.Y. App. Div. 2014) .....	24
<i>People v. Kenyon</i> , 970 N.Y.S.2d 638 (N.Y. App. Div. 2013) .....	26
<i>People v. Nesby</i> , 554 N.Y.S.2d 894 (N.Y. App. Div.) .....	24, 25
<i>Rhode Island v. Innis</i> , 446 U.S. 291, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980).....	23
<i>State v. A.M.</i> , 194 Wn.2d 33, 448 P.3d 35 (2019).....	23
<i>State v. Braulick</i> , 379 Mont. 302, 349 P.3d 508 (2015).....	25
<i>State v. Broadaway</i> , 133 Wn.2d 118, 942 P.2d 363 (1997).....	18
<i>State v. Cunningham</i> , 116 Wn. App. 219, 65 P.3d 325 (2003).....	20
<i>State v. Ferguson</i> , 76 Wn. App. 560, 886 P.2d 1164 (1995).....	21
<i>State v. Guloy</i> , 104 Wn.2d 412, 705 P.2d 1182 (1985).....	26
<i>State v. Heritage</i> , 152 Wn.2d 210, 95 P.3d 345 (2004).....	19
<i>State v. Mayer</i> , 184 Wn.2d 548, 362 P.3d 745 (2015).....	27
<i>State v. Post</i> , 118 Wn.2d 596, 826 P.2d 172, 837 P.2d 599 (1992).....	19, 20
<i>State v. Reuben</i> , 62 Wn. App. 620, 814 P.2d 1177 (1991).....	26

<i>State v. Rosas-Miranda</i> , 176 Wn. App. 773, 309 P.3d 728 (2013).....	18
<i>State v. Sargent</i> , 111 Wn.2d 641, 762 P.2d 1127 (1988).....	19, 23
<i>State v. Thornton</i> , 83 So. 3d 1024 (La. 2012) .....	26
<i>State v. Walton</i> , 67 Wn. App. 127, 834 P.2d 624 (1992).....	20
<i>Terry v. Ohio</i> , 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).....	20
<i>United States v. Farlee</i> , 910 F. Supp. 2d 1174 (D.S.D. 2012) .....	25

**TREATISES**

1 W. LaFave & J. Israel, <i>Criminal Procedure</i> , § 6.6 (Supp.1991).....	21
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## **I. COUNTERSTATEMENT OF THE ISSUE**

Whether the trial court properly found that Holden's questions to Spadoni made in an effort to determine his mental status did not constitute custodial interrogation?

## **II. STATEMENT OF THE CASE**

### **A. PROCEDURAL HISTORY**

Jay Robert Spadoni was charged by information filed in Kitsap County Superior Court with possession of methamphetamine. CP 1. A first amended information was filed, adding charges of residential burglary and indecent exposure. CP 5. At the start of trial, a second amended information was filed, leaving only the original possession count, on which Spadoni was tried. CP 89, 1RP 50-51.

Before trial, the court conducted a CrR 3.5 hearing. After the hearing, the trial court, after making extensive oral findings, 1RP 104-16, ruled that Spadoni's pre-*Miranda* statements to the police were voluntary, 1RP 128, and that they were admissible. 2RP 154. The court followed up with written findings of fact and conclusions of law. CP 126. The court first presented extensive factual findings, which Spadoni does not challenge on appeal:

- I. Port Orchard Police Sergeant T. Holden (hereinafter "Sergeant Holden.") was on patrol duty, driving a marked police vehicle and in uniform when he

received a call from CENCOM on March 14, 2019.

- II. CENCOM reported that a caller was reporting that in his bedroom was a “naked man ... on a mission from God.” Sergeant Holden was dispatched to the caller’s home in Port Orchard, Kitsap County, State of Washington.
- III. As Sergeant Holden was driving to the home, he believed he was dispatched to investigate the possibility of criminal activity.
- IV. Based on his years of experience and training, Sergeant Holden testified that in a typical “Naked Man Call,” the majority of suspects were suffering a mental state known as “excited delirium.” This mental state caused the suspects to be irrational and so “amped up” that the suspects were unreasonably physically aggressive such that they could not be restrained without fighting to the point of physical exhaustion. A statistically significant number of the suspects unexpectedly died after being subdued and handcuffed. The police learned that the mental condition of “excited delirium” and the attendant physical exhaustion from fighting, put suspects at risk of dying once subdued.
- V. As a result, Sergeant Holden, per his standard Police Procedure, called to have an ambulance and EMT’ s standing by at the residence to provide aid as quickly as possible to the suspect, who was expected to be physically aggressive and fight the officers’ attempts to investigate and/or restrain the suspect.
- VI. Also as a result of his experience and training, Sergeant Holden was prepared to assist the aid crew by getting the following information from the patient in the event that aid was necessary: whether the patient had eaten that day, whether the patient was eating regularly and getting nutritious food, when and how much the patient last slept, whether the patient had alcohol or Marijuana in his system and if so, how much and when, or if the patient had recently ingested drugs such as herein,

methamphetamine or cocaine and if so, how much and when.

- VII. Upon arrival, Sergeant Holden contacted the resident of the house, just outside the home. Sergeant Holden noted items of clothing strewn on the ground outside the house. Sergeant Holden was familiar with the resident from other contacts. As Sergeant Holden got close to the resident, the resident exclaimed: "Good luck getting him out of [the bedroom]."
- VIII. Other officers were arriving to assist Sergeant Holden. Officer Huibregtse joined Sergeant Holden per protocol as they prepared to enter the house.
- IX. Also pursuant to standard protocol, Sergeant Holden believed that both officers unholstered their guns and held them at a "low ready" position as they entered the house and searched for the suspect.
- X. The officers found the bedroom and entered. They took up positions triangular to the suspect so that he was unable to leave the room. Sergeant Holden said the defendant's demeanor was unexpected, since the officers expected to encounter a man suffering from "excited delirium." The officers holstered their weapons but remained in their positions.
- XI. Sergeant Holden engaged with the defendant by asking preliminary questions such as: "What's up?" "what are you doing?;" "whose room is this?;" and "What's your name?"
- XII. Sergeant Holden did not advise the defendant of his Miranda rights.
- XIII. Sergeant Holden testified that he had not yet determined whether a crime had happened, as he was just beginning to ascertain the situation.
- XIV. The defendant answered Sergeant Holden's first question by stating that the defendant was "on a mission from God" and that the defendant, even if it was very uncomfortable, was there "to do what he was instructed to do by Jesus Christ" adding he was there in the room "to have sex with a beautiful

woman.”

- XV. The defendant’s initial response caused Sergeant Holden’s initial reason for responding-that a crime may have occurred-to expand to a real concern for the defendant’s mental status.
- XVI. Whenever the Sgt. Responds to the scene of an alleged criminal event, he testified that he is also mindful and attentive to his community caretaking function. He also stated that circumstances at a scene may involve only criminal investigation, only community caretaking, or some combination and/or overlap of both.
- XVII. Given the defendant’s appearance, affect and initial response to the Sgt.’s initial question, the Sgt was now primarily concerned about whether he should take the defendant to the county’s Mental Health inpatient facility to be held for an involuntary commitment.
- XVIII. As such, Sergeant Holden intended to take the defendant directly to the aid crew and have them examine the defendant.
- XIX. Sergeant Holden then asked the series of questions to get the information that he knew the aid crew expected from him and told the defendant that there was an aid crew ( or ambulance) on the way to take a look at the defendant.
- XX. The defendant, responding to the questions by Sergeant Holden, said that he had eaten a donut that day and was “not taking very good care of” himself. The defendant was not sure what day of the week it was, saying it was Wednesday or Thursday.
- XXI. When asked if he had any alcohol or drugs, the defendant said that he did have some “holy substance” that “you [the police] might call it a drug” but he did not. Sergeant Holden said he needed to know what the substance was to let the aid crew know what they were dealing with and the defendant replied: “meth.”
- XXII. Sergeant Holden directed another officer to retrieve

the clothing he had seen outside and gave the clothes to the defendant who identified them as his clothes. Sergeant Holden asked the defendant to get dressed, which he did, putting on the retrieved clothing. The defendant retrieved a sweatshirt and boots from inside the bedroom and put those on as well.

- XXIII. Sergeant Holden told the defendant he would be handcuffed for their safety while they escorted him to the aid crew. The defendant cooperated.
- XXIV. After the aid crew examined the defendant, Officer Huibregtse handcuffed the defendant and put him in his patrol car as the decision had been made to arrest the defendant and take him to the county jail.
- XXV. Officer Huibregtse arrived at the jail. He patted down the defendant while they were in the sally port on the way up to booking. The officer discovered a small plastic baggie containing Methamphetamine.

CP 126-30. The court then entered the following conclusions of law:

- I. The Court has jurisdiction over the defendant.
- II. A reasonable person in defendant's position would believe that he or she was not free to leave the initial encounter with the police. While the detention of the defendant was temporary, this court finds that the defendant was NOT in custody for purposes of *Miranda*.
- III. The officer's questions were NOT a custodial interrogation of the defendant such that the *Miranda* warnings were required.
- IV. The officer's questions were intended to gather information for the aid crew and were designed to elicit information from the defendant that would be necessary for the aide crew. Although some questions could result in an incriminatory response (Whose house is this?) (Whose bedroom is this?), they were a part of the initial investigatory detention ~~and~~ which became a community caretaking function

because the officers had not yet received information leading them to conclude that a crime had been committed and certainly had no information that the defendant actually possessed Methamphetamine.

- V. While the initial focus was to determine whether a crime had been committed, the defendant's first response to the officer's question "What's up?" was so strange and the defendant's affect so unexpected, that a reasonable and prudent officer would be concerned with whether the defendant was gravely disabled by a mental disorder such that he would need to be taken to the mental health facility as opposed to a county jail. This fundamentally changed the nature of the officer's questioning to an investigatory detention to determine the mental status of the defendant and to gather the necessary "history" of the defendant to give to the aide crew as a report.
- VI. The temporary detention and questions were not a custodial interrogation for purposes of *Miranda*. The questions were not reasonably designed to elicit an incriminating response from the defendant, and the questions did not reflect a measure of compulsion such that *Miranda* warnings were necessary.
- VII. The defendant voluntarily spoke to the police officers, never asked Sergeant Holden to stop questioning him, did not ask to leave and did not ask for an attorney.
- VIII. Therefore, *Miranda* warnings were not required.
- IX. The statements made by the defendant outlined above are admissible at trial.

CP 130-31 (strikethrough and underlining indicates Court's hand-written correction).

The case was tried to a jury, which was instructed on the defense

of unwitting possession. CP 104. The jury found Spadoni guilty as charged. CP 109. The court imposed a standard-range sentence. CP 2-3.

**B. 3.5 HEARING FACTS**

Port Orchard Police Sergeant Trey Holden received a dispatch that there was a man in a house that was not his and that he was “on a mission from God.” 1RP 37. Holden called for aid to stage before he got there, because he did not know what to expect. 1RP 39.

When he arrived, Holden was treating the matter as potential burglary call. 1RP 129. He called the aid car before arriving because he was concerned Spadoni might have been in an “excited delirium,” which could potentially result in death without treatment. 1RP 130.

When Holden arrived, the resident, Frank Reidle, met him outside and told him, “Good luck getting him out of there.” 1RP 37. Holden waited for Officer Huibregtse to arrive and then the two went inside and found Spadoni, naked, sitting on the bed. 1RP 38. Holden had no prior encounters with Spadoni. 1RP 141. Spadoni’s behavior was not what he expected based on his experience: “I didn’t expect him just to be sitting on the edge of the bed with his hands in his lap and having a conversation with me.” 1RP 131.

Spadoni appeared to have a head injury when they arrived. 1RP 95. He had a mark on his head that was bleeding, but not profusely. 1RP 96.

He also had blood on a toe and his knee. 1RP 96. He told Spadoni and ambulance was coming. 1RP 98.

Holden had not arrested Spadoni. 1RP 38. They were trying to figure out what was going on. 1RP 39. At that point, Holden's priority was to get Spadoni dressed and out of the room. 1RP 39. Spadoni was being cooperative, but he was talking and rambling on about things that Holden could not follow. 1RP 40.

Holden and Huibregtse were the only ones in the room. 1RP 89. It was "highly likely" that he had his gun out, but he had no actual recollection. 1RP 91. He would not have pointed it at him under the circumstances. 1RP 91. Since it was obvious Spadoni was unarmed his intent would have been to deescalate the situation. 1RP 91. He would have reholstered the weapon before speaking to Spadoni. 1RP 91.

Holden, attempted to establish a rapport with Spadoni and asked him his name. 1RP 38. Holden was trying to figure out what was going on and what Spadoni was doing there. 1RP 38.

Spadoni identified himself and said that he was just doing what Jesus Christ was telling him to do. 1RP 38. Whether Spadoni knew where he was was among the preliminary questions Holden asked. 1RP 143. It was before any of the questions regarding drug usage. 1RP 143. Holden asked Spadoni if he knew whose room it was. 1RP 39. Spadoni replied

that he did not. 1RP 39. Spadoni then mentioned a woman's name. 1RP 39. Holden knew the room was Reidle's, so he told Spadoni that that was not correct. 1RP 39.

Holden attempted to clarify, and Spadoni kept talking about what Jesus Christ asked him to do. 1RP 40. Holden asked him what specifically Jesus wanted him to do. 1RP 40. Spadoni explained that he was doing things even if they were uncomfortable for him. 1RP 40. He said he was there to have sex with a beautiful woman if she wanted to. 1RP 40.

Based on Spadoni's behavior, Holden suspected it was possible Spadoni was under the influence of something: he was sweating, he was naked, he was talking a lot. In his experience, people under the influence of drugs often become hot and strip down. 1RP 139. In his experience this was consistent with having taken a stimulant. 1RP 139. He seemed coherent, but his responses were unexpected. 1RP 139. Because Spadoni's initial statements did not make sense to Holden, he tried to verify if he knew where he was, when the last time was that he ate, when he slept last, whether he knew what day it was, whether he had consumed any alcohol or drugs. 1RP 132.

Holden specifically asked him if he had had any alcohol, meth, or heroin. 1RP 132. Holden asked these questions based on his training from the aid crew "to try to establish as much information as possible before

they get there so that they know what they're dealing with as far as a medical standpoint so they can give the appropriate treatment." 1RP 132. The drug question was not related to any investigation of whether he was in possession of a controlled substance. 1RP 137. He was trying to determine whether he had a mental health breakdown or drug situation:

In every situation where I have aid coming, if it's a suicidal subject, whatever it is. We ask them -- I personally ask them what have they taken tonight. We're literally trained to have that information hopefully to the aid crew when we walk in the door.

1RP 137.

Holden initially asked a vague question about drug use, but Spadoni responded that he "did partake in a holy substance," and that Holden might call it a drug but he would not. 1RP 140. Spadoni began talking about nature and God, so Holden asked him specifically if he was talking about meth, heroin or alcohol. 1RP 140. Spadoni responded that it was meth. 1RP 140.

Holden wanted him to get dressed and asked Spadoni where his clothes were. 1RP 40. He said they were outside. 1RP 40. Holden then recalled having seen underwear, pants, and a shirt right outside the door. 1RP 40. He instructed Officer Yatch to retrieve them. 1RP 41. Holden asked Spadoni if they were his. 1RP 41. He said they were and Holden put them on the bed next to him. 1RP 41. Spadoni put the clothes on and

reached for a pair of boots that were in the room. 1RP 41. He also put on a sweatshirt that was in the room. 1RP 41. Holden became concerned about the last two items and asked them if they were his. 1RP 41.

Spadoni had not been placed under arrest at that point. 1RP 42. Although Spadoni was not free to leave, Holden never told him that, or that he was under arrest or that he was being detained. 1RP 133. Holden had not yet decided what to do with Spadoni after he was seen by the aid crew:

Well, I didn't have the -- the other side of the story yet. So - - and in my experience there's always two sides of the story.

I've had people in a residence where they don't belong, it doesn't mean they go to jail.

I've had people under the influence of a lot of elicit [sic] stuff that's not a crime. I wanted to get him help. He's either a danger to himself or others and he would need to be involuntarily taken to the hospital. He might have a mental health crisis and there's mental health people on standby that may say take him down to KMH and we'll see him here. Or if it was to a point where he committed a crime he could go to jail. But I hadn't made up my mind because I didn't have the story yet.

As this is escalating within moments, my first priority is to neutralize the situation, get as much information as possible, make sure everybody is safe and then figure out what we really have to do when we have somebody who's in crisis at the moment.

1RP 142. Therefore, for the safety of the responders at the scene, he handcuffed Spadoni before taking him out of the room. 1RP 42. He was not handcuffed until after he dressed himself. 1RP 134.

His discussions with Spadoni in the room all occurred before Spadoni was handcuffed. 1RP 88, 134. Holden did not have any conversations with Spadoni after aid personnel took over once he was outside. 1RP 88.

They were in the room for a total of 10 to 15 minutes. 1RP 134. In the room Spadoni appeared to be speaking voluntarily. 1RP 88. While Spadoni's answers were odd, he appeared to understand Holden's questions. 1RP 99. Not all his responses were bizarre. 1RP 141. He responded normally to question like whether these were his clothes. 1RP 141.

Holden did nothing to coerce him. 1RP 88. Nor did the other officer. 1RP 88. There was nothing threatening that they were doing. 1RP 94. They did not threaten him or promise him anything. 1RP 89.

### **C. TRIAL FACTS**

Holden was dispatched to the scene around 9:00 p.m. 2RP 166. He waited until Huibregtse arrived for backup before approaching. 2RP 166. A man directed them to the house with a flashlight. 2RP 168. They proceeded to a rear garage building. 2RP 171. A second man, Frank Reidle, was there who told him, "Good luck getting him out of there." 2RP 171, 182, 186. They entered through a door next to the garage door, which led to a hallway. 2RP 170-71. At the end of the hall was a second door,

which was open, which led to a bedroom. 2RP 170-71. As they entered the bedroom, they saw Spadoni, who was sitting on the bed, completely naked. 2RP 171.

The bed occupied most of the room. 2RP 172. Huibregtse moved into the room and stood near Spadoni, while Holden blocked the door. 2RP 172. He was about three feet from Spadoni. 2RP 173.

Holden attempted to establish a rapport with Spadoni by talking to him to figure out what was going on. 2RP 172. He was uncertain what the situation would be and did not want to escalate it. 2RP 173-74. Holden asked Spadoni his name, which he gave. 2RP 174.

Holden asked Spadoni was he was doing that evening. 2RP 174. Spadoni responded that he was doing what Jesus Christ told him to. 2RP 174. Holden found the response odd and attempted to clarify it. 2RP 174. Spadoni was talkative and not everything made sense to Holden, so he specifically asked him what he thought Jesus Christ was telling him to do. 2RP 174. Spadoni replied that he was there to have with a beautiful woman if she wanted to. 2RP 174. Spadoni sat calmly on the edge of bed with his hands in his lap the entire time. 2RP 179.

Holden also noticed that Spadoni had a bump on his head that was bleeding, though not profusely. 2RP 175. He also had injuries to a knee and a toe. 2RP 175. Holden had arranged for an aid crew to come before

he arrived. 2RP 175. He wanted to see if he could talk Spadoni into getting dressed so he could be evaluated by the aid crew. 2RP 175.

Holden had multiple concerns about Spadoni's well-being based on their conversation. 2RP 182. Spadoni was obviously "in crisis." 2RP 182. In addition to drugs Holden was concerned Spadoni might have a head injury. 2RP 199. Holden did not know what was going on, just that something was wrong. 2RP 182. Holden therefore asked some preliminary questions to assist the aid crew when they arrived. 2RP 183.

Holden asked him if he knew what day of the week it was, and when the last time he ate was. 2RP 183. Spadoni said that he had a doughnut, and that he had not been taking very good care of himself. 2RP 183.

Holden also asked him if he had had any drugs or alcohol. 2RP 183. Spadoni responded, "Well, I did partake of a holy substance." 2RP 183. He further explained that Holden might call it a drug and started talking about God and nature and that what people call drugs he did not call drugs. 2RP 184. Holden interrupted him and told him he did not care about that debate; he just wanted to know "what you've got on board" so he could the information to the aid crew. 2RP 184. Holden asked if he was talking about alcohol, meth, or heroin. 2RP 184. Spadoni responded that it was meth. 2RP 184.

Holden asked him where his clothes were. 2RP 175. Spadoni responded that they were outside, and Holden then recalled having seen a shirt, pants, and underwear on the gravel driveway. 2RP 175, 180. They were in a line, like he had taken them off and dropped them as he was walking toward the door. 2RP 181. He asked Officer Gapsch, who was waiting in the hall, to retrieve them. 2RP 175.

He did not search Spadoni's clothes at the scene. 2RP 204. They squeezed them to make sure there were no weapons in them. 2RP 204. He explained why:

Q. Do you need a reason to look in somebody's pockets?

A. Legally. It's having a frisk or a pat search, that's another term, for weapons is legally allowable. It is a safety issue. Safety for myself, for the aid crew that I would be passing him on to.

A search is more invasive. So legally there's typically more of a requirement to go to that level of infringing on someone's potential right to privacy.

Q. So at that point you didn't feel you had a legal reason to look inside of the pockets of Mr. Spadoni's clothing?

A. At that point Mr. Spadoni was not under arrest. And that's usually a primer for us to be searching is it's called search incident to arrest. Then it is a more invasive search.

At that point, I didn't really know what I had except some kind of mental health or medical crisis.

2RP 207.

When Gapsch brought the clothes in, Spadoni confirmed that they

were his. 2RP 181. Holden put them on the bed next to Spadoni and Spadoni put them on. 2RP 181. Then Spadoni reached over and picked up some boots and a sweatshirt that were in the room and put those on as well. 2RP 181.

Once he had his clothes on, Holden prepared to take Spadoni out of the room. 2RP 184. Although Spadoni had remained calm up to that point, he was concerned for the safety of the other officers and the aid crew, as well as the possibility that Spadoni would flee. 2RP 184. He therefore told Spadoni that he wanted to handcuff him for the safety of the officers and the aid crew. 2RP 184-85. Spadoni was completely cooperative and Holden cuffed him, and walked him outside to the aid crew and Huibregtse. 2RP 185.

After speaking with Reidle, Holden advised Huibregtse that he believed there was probable cause to arrest Spadoni. 2RP 186. Holden never spoke to the aid personnel; he just returned to his office to write his report. 2RP 188, 203. While there, Huibregtse came in and handed him a bag of suspected meth. 2RP 188.

After he was handcuffed, Huibregtse escorted Spadoni to the ambulance for treatment of his injuries. 2RP 218. Huibregtse transported Spadoni to the jail. 2RP 218. Huibregtse searched Spadoni in the booking area, and recovered a baggie containing a white crystal substance from

Spadoni's left pants pocket. 2RP 219. After Spadoni was booked into the jail, Huibregtse turned the baggie over to Holden. 2RP 221.

Testing at the crime lab determined that the baggie contained 0.14 grams of methamphetamine. 2RP 239-40.

Spadoni testified at trial and stated that he had smoked meth earlier that evening in the front house. 2RP 252. He subsequently went out back to the garage room to take off his clothes and get the pine needles and debris out of them. 2RP 253. He had slept rough in the woods the night before. 2RP 253. He took off his clothes and put them on the floor next to him. 2RP 253.

While he was there an unknown person grabbed him in a wrestling hold and pulled him out of the room. 2RP 254. His injuries were the result of that altercation. 2RP 254. The man left, and Spadoni returned to the room. 2RP 255.

Spadoni had a poor memory of his interaction with the police. 2RP 255. He had "No explanation" for why his memory was poor. 2RP 255. He admitted that it was possible he mentioned Jesus Christ. 2RP 255. He did not recall saying anything about sleeping with a beautiful woman or a holy substance. 2RP 256. He recalled getting dressed; his clothes were in the room. 2RP 256. He did not remember going to jail or interacting with the police there. 2RP 256-57.

Spadoni denied ever having the baggie of meth in his pocket. 2RP 257. He did not recall the officer asking him about the baggie. 2RP 257.

### III. ARGUMENT

#### THE TRIAL COURT PROPERLY FOUND THAT HOLDEN'S QUESTIONS TO SPADONI MADE IN AN EFFORT TO DETERMINE HIS MENTAL STATUS DID NOT CONSTITUTE CUSTODIAL INTERROGATION.

Spadoni argues that that the trial court erred in admitting Spadoni's pre-*Miranda* statements to Sergeant Holden. This claim is without merit because the trial court properly found that Holden's questions to Spadoni, made in an effort to determine his mental status, did not constitute custodial interrogation.

#### 1. *Standard of review.*

This Court reviews challenged findings of fact entered after a CrR 3.5 hearing for substantial evidence and reviews de novo whether the trial court's conclusions of law are supported by its findings of fact. *State v. Rosas-Miranda*, 176 Wn. App. 773, 779, 309 P.3d 728 (2013).

Unchallenged findings of fact are verities on appeal. *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). Spadoni does not challenge the trial court's factual findings, and thus, as he concedes, they are verities on appeal. Brief of Appellant, at 7. The only issue for review is therefore the court's conclusions of law. *Id.*

The Fifth Amendment of the United States Constitution protects a criminal defendant against self-incrimination. “*Miranda* warnings were developed to protect a defendant’s constitutional right not to make incriminating confessions or admissions to police while in the coercive environment of police custody.” *State v. Heritage*, 152 Wn.2d 210, 214, 95 P.3d 345 (2004). Thus, when determining the admissibility of a defendant’s statements, a trial court must first ascertain whether the defendant was in custody for purposes of *Miranda*. *Rosas–Miranda*, 176 Wn. App. at 779.

*Miranda* applies when the interview or examination is: (1) custodial; (2) through interrogation; (3) by a state agent. *State v. Sargent*, 111 Wn.2d 641, 647–53, 762 P.2d 1127 (1988). The State concedes that the examination here was by a state agent and will therefore only address whether Spadoni was in custody for *Miranda* purposes and whether the questioning constituted interrogation.

**2. *Spadoni was not in custody for the purposes of Miranda.***

In most cases, the term custodial refers to whether the suspect’s freedom of movement was restricted at the time of questioning. *Sargent*, 111 Wn.2d at 649-50. An interrogation occurs when the investigating officer should have known his or her questioning would provoke an incriminating response. *Sargent*, 111 Wn.2d at 650-52; *State v. Post*, 118

Wn.2d 596, 605-06, 826 P.2d 172, 837 P.2d 599 (1992).

A routine investigative encounter that is supported by reasonable suspicion does not require *Miranda* warnings. *State v. Cunningham*, 116 Wn. App. 219, 228, 65 P.3d 325 (2003). For *Miranda* purposes, the fact that a suspect is not free to leave during the course of an investigative stop does not make the encounter comparable to a formal arrest. *Id.* An investigative encounter, unlike a formal arrest, is not inherently coercive since the detention is presumptively temporary and brief, relatively less “police dominated,” and does not lend itself to deceptive interrogation tactics. *Id.* (quoting *State v. Walton*, 67 Wn. App. 127, 130, 834 P.2d 624 (1992)). To qualify as a *Terry* stop, the detention must be “reasonably related in scope to the justification for [its] initiation.” *Terry v. Ohio*, 392 U.S. 1, 29, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

Additionally, “[c]ustody’ for *Miranda* purposes is narrowly circumscribed and requires ‘formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.’” *Post*, 118 Wn.2d at 606 (internal quotation marks omitted) (quoting *Minnesota v. Murphy*, 465 U.S. 420, 430, 104 S. Ct. 1136, 79 L. Ed. 2d 409 (1984)). 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.

The inquiry into restraint is an objective one: how would a reasonable person in the suspect's position have understood the situation? *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). But the issue is not whether a reasonable person would believe he or she was not free to leave; "rather '[w]hether such a person would believe he was in police custody of the degree associated with formal arrest.'" *State v. Ferguson*, 76 Wn. App. 560, 566, 886 P.2d 1164 (1995) (quoting 1 W. LaFave & J. Israel, *Criminal Procedure* § 6.6, at 105 (Supp.1991)).

In *Berkemer*, the United States Supreme Court explained:

[T]he usual traffic stop is more analogous to a so-called "Terry stop", see *Terry v. Ohio*, 392 U.S. 1 (1968), than to a formal arrest. Under the Fourth Amendment, we have held, a policeman who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed ... a crime, may detain that person briefly in order to investigate the circumstances that provoke suspicion. [T]he stop and inquiry must be reasonably related in scope to the justification for their initiation. Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obliged to respond.... The comparatively nonthreatening character of detentions of this sort explains the absence of any suggestion in our opinions that *Terry* stops are subject to the dictates of *Miranda*. The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of *Miranda*.

*Berkemer*, 468 U.S. at 439-40 (Footnotes, citations and some quotation

marks omitted.); accord, *Heinemann v. Whitman County*, 105 Wn.2d 796, 808, 718 P.2d 789 (1986) (request for performance of field sobriety tests during routine traffic stop does not amount to custody so as to require *Miranda* warnings).

Thus in *Ferguson*, where the police were investigating a vehicular homicide and spoke to the defendant at the scene, neither the officer's subjective belief that he would not allow the defendant to leave, nor the seriousness of the offense transformed what was still an investigatory detention into custody for *Miranda* purposes.

Similarly here, although Holden would probably not have allowed Spadoni to leave, at the time he questioned him, his questions were merely investigatory and directed primarily at Spadoni's mental state. Spadoni was never told he was not free to leave, and never told he was under arrest. He was in no way threatened. To the contrary, all the questions directed at him seemed to be directed at his physical and mental well-being. A reasonable person in Spadoni's situation would not have believed he was in police custody of the degree associated with formal arrest. The trial court's conclusion that Spadoni was not in custody for *Miranda* purposes was thus correct. CP 5.

**3. *Holden's questions were not interrogation.***

"An 'interrogation' is 'any words or actions on the part of the

police ... that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *State v. A.M.*, 194 Wn.2d 33, 39, 448 P.3d 35, 39 (2019) (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980)). This is an objective standard “focusing on what the officer knows or ought to know will be the result of his words and acts.” Sargent, 111 Wn.2d at 651.

Although the officer’s intent is not dispositive in determining whether certain conduct amounts to custodial interrogation, “[t]his is not to say that the intent of the police is irrelevant, for it may well have a bearing on whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response.” *Innis*, 446 U.S. at 301 & n.7. Indeed, the Supreme Court has found that certain conduct did not amount to interrogation partly on the basis that it was not designed or intended to elicit incriminating information. *See Innis*, 446 U.S. at 303 n.9, (noting that “[t]he record in no way suggests that the officers’ remarks were *designed* to elicit a response” (emphasis in original) and finding that “[i]t is significant that the trial judge, after hearing the officers’ testimony, concluded that [the officers’ remark] was ‘entirely understandable.’”).

Here, Holden testified without contradiction that his primary motivation in asking the questions of Spadoni was to determine his mental

health status for the aid crew, as he was trained to do. He was completely unaware at the time he spoke to Spadoni that the latter was in a possession of meth, which was not even discovered until Spadoni's booking. The trial court properly concluded that under the circumstances, Holden was engaged in community caretaking when he questioned Spadoni, who was naked and responding in a bizarre manner, and was not asking questions *designed* to elicit an incriminating response.

Although this fact pattern appears to present a question of first impression in Washington, courts elsewhere have concluded that similar circumstances did not amount to interrogation. Thus, a police officer who reasonably suspects that a person has committed a crime may stop and detain that person, and need not administer Miranda warnings before asking questions "for the purpose of ascertaining [the person's] identity and an explanation of his [or her] conduct" *People v. Jemmott*, 984 N.Y.S.2d 443, 445 (N.Y. App. Div. 2014). In *Jemmott*, An officer's questions as to defendant's name and whether he "had a problem with a girl around the corner" were thus permissible as "threshold crime scene inquiries designed to clarify the situation." *Id.*

Similarly, in *People v. Nesby*, 554 N.Y.S.2d 894, 895 (N.Y. App. Div.), *review denied*, 76 N.Y.2d 793 (N.Y. 1990), a police officer asked the defendant, "Whose apartment is this?" The defendant responded that

he did not know. The police officer then asked defendant what he was doing in the apartment and defendant responded that he had “broken in.” The officer asked defendant, “Whose property is this?” and defendant responded that he did not know. The court concluded that although the “defendant was in police custody when the police officer asked him the three questions, those questions did not “constitute a process of interrogation to which Miranda is applicable,” because “the questions were designed to clarify the nature of the situation confronted, rather than to coerce statements.” *Nesby*, at 895 (quoting *People v. Huffman*, 41 N.Y.2d 29, 34, 359 N.E.2d 353 (1976)).

In *State v. Braulick*, 379 Mont. 302, 310, 349 P.3d 508 (2015), officers responded to a report of a domestic incident reported by the defendant’s mother. After the defendant was in custody, an officer asked “So, Jeremy, what’s going on? What happened here?” and “Jeremy, what happened to your dad? What happened to your step-dad?” *Id.* The officer testified that at that point, he and other officers on the scene did not understand what had happened or how many people may have been involved. The Montana Supreme Court held that the officer’s “limited questioning was a reasonable effort to obtain information confirming his suspicions about events at the scene.” *Id.*

See also *United States v. Farlee*, 910 F. Supp. 2d 1174, 1181

(D.S.D. 2012), *aff'd*, 757 F.3d 810 (8th Cir. 2014) (questioning did not amount to an interrogation where officer was not aware of assault and asked defendant what happened to his arm; officer was not attempting to evoke an incriminating response, but trying to determine the nature and extent of arm injury); *People v. Kenyon*, 970 N.Y.S.2d 638, 642 (N.Y. App. Div. 2013) (inquiries as to defendant's welfare did not constitute interrogation); *State v. Thornton*, 83 So. 3d 1024, 1025 (La. 2012) (no interrogation where "the police were exercising their community caretaking functions in responding to reports of defendant's erratic driving, and to her unsteady appearance, slurred speech, and the reasonable possibility she was experiencing a drug overdose, when they questioned her and summoned Emergency Medical Services"). The trial court here properly determined that Spadoni was not interrogated for *Miranda* purposes when Holden questioned him.

#### **4. Any error would be harmless**

Admission of a statement obtained in violation of *Miranda* is subject to treatment as harmless error. *State v. Reuben*, 62 Wn. App. 620, 626-27, 814 P.2d 1177 (1991) (citing *Arizona v. Fulminante*, 499 U.S. 279, 292 & n.6, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991)). To find an error affecting a constitutional right harmless, the Court must find it harmless beyond a reasonable doubt. *Fulminante*, 499 U.S. at 295; *State v. Guloy*,

104 Wn.2d 412, 425, 705 P.2d 1182 (1985), *cert. denied*, 475 U.S. 1020 (1986). An error is harmless beyond a reasonable doubt if the untainted evidence is so overwhelming that it necessarily leads to the same outcome. *State v. Mayer*, 184 Wn.2d 548, 566, 362 P.3d 745 (2015).

Here, even absent Spadoni's responses to Holden's questions, the evidence that Spadoni possessed the methamphetamine was overwhelming. The drugs were found in his clothing, which was found right outside the door to the building where he was found naked.<sup>1</sup> No reasonable explanation of how the meth got into Spadoni's pocket exists in the evidence. Finally, Spadoni himself testified that he come to the front house on the property and smoked methamphetamine that evening, 2RP 252, and claimed to lack any recollection of even going to jail the evening he was arrested. 2RP 256-57. Even if the trial court should have suppressed Spadoni's statements, any error would be harmless.

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<sup>1</sup> Spadoni testified that the clothes were his though he claimed they were in the room next to him, not outside. 2RP 253, 256. In any event, even if some of the other questions were in response to custodial interrogation, it cannot be seriously argued that the question of where his clothes were was designed to elicit an incriminating response.

#### IV. CONCLUSION

For the foregoing reasons, Spadoni's conviction and sentence should be affirmed.

DATED January 23, 2020.

Respectfully submitted,

CHAD M. ENRIGHT  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read 'RS', with a long horizontal line extending to the right.

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**KITSAP COUNTY PROSECUTOR'S OFFICE - CRIMINAL DIVISION**

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