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**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

PALLA SUM,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Frank E. Cuthbertson, Judge

No. 19-1-01329-1

BRIEF OF RESPONDENT

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I. INTRODUCTION

Palla Sum was slumped over in the driver's seat of a car, appearing unconscious, parked in a church parking lot in a high crime area when he was contacted by Deputy Rickerson. A resident of the area previously complained of suspicious cars in the parking lot to Deputy Rickerson, and Deputy Rickerson knew stolen vehicles had been recovered from the area previously.

The deputy approached Sum on foot to check on his well-being. Sum's car was not blocked in, and the deputy did not have his weapon drawn or engage in any other display of authority. Deputy Rickerson ran the car's license plate and knew it had been recently sold, but Sum could not fully identify the owner of the vehicle when Deputy Rickerson asked. Deputy Rickerson requested Sum's identification. Sum verbally responded with a false name and date of birth.

While Deputy Rickerson was running the false information, Sum peeled out of the parking lot into oncoming traffic and continued fleeing from deputies through multiple red lights until he crashed the car in a homeowner's front yard. Deputies recovered a firearm from the car.

The trial court properly denied Sum's motion to suppress his false statement, where the deputy asked for his name as part of a valid social contact. No seizure occurred. Even if the request for identification

constituted an investigative stop, it was based on reasonable suspicion of criminal activity. There was no error, and this Court should affirm.

II. RESTATEMENT OF THE ISSUES

- A. Did the trial court properly deny Sum's motion to suppress evidence of his false statement where the statement was made during a valid social contact? Even if the request for identification constituted a seizure, was the request based on reasonable, articulable suspicion that Sum was engaged in criminal activity?

III. STATEMENT OF THE CASE

The State charged Palla Sum with one count of making a false or misleading statement to a public servant, one count of attempting to elude a pursuing police vehicle, one count of driving while license suspended in the third degree, and one count of unlawful possession of a firearm in the first degree.¹ CP 4-6. Prior to trial, Sum moved to suppress evidence and dismiss all charges. CP 7-12. The parties held a CrR 3.5/3.6 hearing. RP² 8.

The State called Pierce County Deputy Mark Rickerson to testify. RP 9. Deputy Rickerson has been in law enforcement for 19 years. RP 9. On April 9, 2019, Deputy Rickerson came into contact with Palla Sum, the defendant, around 9:15 in the morning. RP 11-12. The deputy was driving

¹ The State subsequently dismissed the driving while license suspended count. *See* CP 23-24.

² The Verbatim Report of Proceedings is contained in dated volumes with consecutive pagination and will be referred to by "RP" and the relevant page number.

a black 2018 unmarked Ford Explorer with pit bars, a spotlight, and red and blue lights on the interior windshield. RP 10-11. He was wearing a full police uniform. RP 11. Deputy Rickerson generally patrolled in the same area. RP 10. That day, he patrolled one of the “problem areas” – a resident of the area had previously complained to Deputy Rickerson about cars in a specific church parking lot that did not belong there. RP 12-13.

As he passed through the area, he noticed a Honda parked in front of the church. RP 16-17. Deputy Rickerson knew that stolen cars had previously been recovered at that location. RP 17. When the deputy saw the Honda, he noticed Sum in the driver’s seat, “slumped” over. RP 18. The deputy parked his car, careful not to block in the Honda. RP 19. He approached the car to check on it, concerned of the following: whether Sum needed medical aid, whether Sum was under the influence of narcotics, and whether the vehicle Sum occupied was stolen. RP 19.

Deputy Rickerson ran the car’s license plate as he tried to discern whether the car was stolen and who it was registered to. RP 20. Deputy Rickerson learned a bill of sale had been filed for the car, but because the bill of sale was from Oregon, the deputy had a difficult time reading the full details of the report. RP 20-21. Deputy Rickerson confirmed the Vehicle Identification Number (VIN) on the car as he walked up to the vehicle and knocked on the window. RP 21. He noticed both Sum and the passenger

appeared slumped over, unconscious. RP 21-22. It was several seconds before Sum roused and noticed the deputy's presence. RP 21-23. Sum rolled down the window. RP 23.

Deputy Rickerson asked what Sum and the passenger were doing in the area. RP 23. Sum responded that they were waiting for a friend who was across the street. RP 23. Deputy Rickerson understood the area across the street to include, "as far as [he] knew, [...] the house of the citizen that had contacted [him.]" RP 23. The deputy asked Sum who the vehicle he occupied belonged to, to which Sum responded with a person's first name. RP 25. Sum did not give a last name, or any other information about that person. RP 25. Deputy Rickerson asked for Sum and the passenger's identification. RP 25.

Sum inquired why his information was being requested, so the deputy explained that he wanted their information because "[Sum] couldn't tell me exactly who the vehicle belonged to and it was in an area where we've recovered stolen vehicles before." RP 25-23. Sum gave the deputy a false name and date of birth. RP 26-27. The deputy asked if either had been previously arrested so he could search for booking photos, but neither person responded. RP 27. Deputy Rickerson returned to his patrol car to run the information. RP 27.

While in his car, Deputy Rickerson heard the Honda's engine start. RP 28. The Honda backed up quickly and took off at a high rate of speed. RP 29. The Honda went along the fence and over the grass and sidewalk corner. RP 29. Deputy Rickerson turned on his emergency lights and began pursuing the car. RP 29. At this time, Deputy Mock arrived in the area. RP 29.

Sum, driving the Honda, failed to stop at a stop sign and slid the car. RP 30. The car spun around and faced oncoming traffic. RP 30-31. The deputy pulled up with his lights on, but Sum restarted the vehicle and took off again. RP 31. Sum ran two red lights before he crashed into the front yard of a home. RP 31-32. Sum attempted to flee on foot but slipped and was apprehended. RP 32. Deputy Rickerson read Sum his constitutional rights. RP 33-34. Sum admitted he did not know why he ran from the police and gave his correct name and date of birth. RP 35. During this exchange, other deputies notified Deputy Rickerson that they saw a gun through the open driver door from when Sum fled the vehicle. RP 36-37.

Police later recovered the gun from the vehicle pursuant to a search warrant. RP 37-39. Deputy Rickerson learned the gun was loaded, and it had been reported stolen in Oregon. RP 39. Sum had a gun holster on his waistband when he was arrested. RP 39-40.

The trial court denied Sum's motion to suppress and entered the following Findings of Fact:

1. On April 9, 2019, Pierce County Sheriff's Deputy Mark Rickerson was on patrol in a Sheriff's vehicle when he observed a 1988 Honda Civic parked on East 71st Street, just east of East L Street in Pierce County, Washington.
2. Rickerson noticed that the defendant was slumped over and appeared to be unconscious in the driver's seat of that Honda Civic at what was then 9:15 in the morning.
3. Rickerson parked his patrol vehicle to the east of the Honda Civic, making sure to leave enough room so as not to block the Honda Civic or prevent it from leaving.
4. Rickerson then conducted a records check of the Honda's Oregon license plate, which indicated the Vehicle Identification Number (VIN) for the Honda Civic and that a report of sale had been filed pertaining to that vehicle.
5. After obtaining the VIN, Rickerson approached the Honda Civic and, as he did so, noticed that it was also occupied by a second man, who was located in the front passenger seat; both men appeared to be unconscious and did not notice Rickerson approach.
6. Rickerson knocked on the driver's-side window, causing Defendant to slowly move and then look at Rickerson.
7. Rickerson asked Defendant what he and the passenger were doing, and Defendant replied that they were visiting a friend across the street.
8. There was one residence located across the street, and Rickerson had previously been contacted by the owner of that residence, who had complained to him about suspicious vehicles parking where the Honda Civic was then parked.

9. Rickerson was also aware that the area in which the Honda Civic was parked was a high-crime area, and that stolen vehicles had previously been located in the area.

10. Rickerson asked Defendant to whom the Honda Civic belonged, and Defendant replied with the given name, but not the surname, of an individual.

11. Rickerson then inquired if Defendant and his passenger had identification that he could see, and Defendant asked him why he wanted it.

12. Rickerson explained that the two men were sitting in an area known for stolen vehicles and that Defendant did not appear to know to whom the vehicle he was sitting in belonged.

13. Defendant then gave Rickerson a false name and date of birth, stating that his name was San K. Sum and that his date of birth was August 25, 1987. The passenger gave the deputy his true name and date of birth.

14. Rickerson walked back to his vehicle and began to enter the information he was given into his computer when he heard Defendant start the engine of the Honda Civic. Defendant then quickly backed up and drove away.

15. Rickerson and fellow Pierce County Sheriff's Deputy Scott Mock, who had arrived via separate vehicle to assist, signaled Defendant to stop by activating their respective patrol vehicles' emergency lights and sirens, but Defendant did not stop the Honda Civic.

16. Defendant continued to flee from deputies at a high speed in that Honda Civic, without stopping at a stop sign for three red lights, before crashing into the front yard of 804 South 72nd Street in Pierce County, Washington.

17. Defendant exited the vehicle after it crashed and began to flee on foot, but fell down, at which point Deputy Rickerson placed Defendant in handcuffs and read him the Miranda warnings.

18. After acknowledging that he understood the *Miranda* warnings, Defendant gave Rickerson his true name and date of birth. Defendant denied that he had outstanding warrants, and when asked why he fled, told Rickerson he did not know. When asked about the Honda Civic, Defendant stated that he had bought it several weeks before.

19. Deputy Mock observed a firearm on the floorboard in front of the driver's seat in which Defendant had been sitting.

20. During a search incident to the arrest, Mock found a small holster on the inside of Defendant's pants.

21. On April 10, 2019, Deputy Mock obtained a search warrant for the Honda Civic, which he served on April 11, 2019, and, in so doing, found, among other things, a Taurus pistol, loaded with three rounds in the magazine and one in the chamber.

CP 85-87.³ There were no disputed facts at the hearing. *See* CP 88. The court entered the following Conclusions of Law:

1. The Court has jurisdiction over the parties and the subject matter.
2. Deputy Rickerson's initial contact with Defendant, who was apparently unconscious in the driver's seat of a Honda Civic parked on East 715th Street, was not a seizure, but a reasonable check on health and safety because the public's interest in confirming the defendant's safety at the time outweighed Defendant's interest in freedom from police interference.
3. The facts that Defendant then told Rickerson that the vehicle in which he was sitting did not belong to him, that he could not fully identify the owner of that vehicle, and, to a lesser extent, the fact that the location in which Defendant had parked was a high-crime area from which stolen vehicles had been recovered, were specific and articulable facts which would lead one to believe that there was a substantial possibility that criminal conduct had occurred, and hence, justified a *Terry* stop[] of Defendant which rendered

³ Sum assigns error to Finding of Fact No. 8, insofar as it states that there was one residence across the street. Brief of Appellant, 1.

Rickerson's request for Defendant and his passenger to identify themselves lawful and reasonable.

4. Because Rickerson did not retain Defendant's physical identification to conduct his records check, Defendant was not seized when Rickerson asked him to identify himself, and Defendant's present motion to suppress evidence obtained thereafter as the product of an unlawful seizure is therefore denied, and such evidence is admissible.

5. Because Defendant was not in custody while parked in his Honda Civic on East 71st Street, the statements he made to Deputy Rickerson at that time were not the result of custodial interrogation, and because they were otherwise voluntary, are admissible in the trial of this case.

6. Deputy Rickerson did seize Defendant when he placed Defendant in handcuffs after Defendant crashed at 804 South 72nd Street in Pierce County, Washington.

7. Deputy Rickerson thereafter properly administered the *Miranda* warnings to Defendant prior to any subsequent interrogation or the making of any statements by Defendant.

8. Defendant then made a knowing, intelligent, and voluntary waiver of his rights when he spoke to Deputy Rickerson, and because his statements were voluntary and not otherwise the product of coercion, they are admissible in the trial of this case.

CP 88-90.⁴

The case proceeded to jury trial. RP 168. Deputy Rickerson's testimony at trial tracked his testimony at the CrR 3.5/3.6 hearing. *See* RP 177-228. The deputy elaborated on Sum's crash, the execution of the search

⁴ Sum assigns error to Conclusions of Law 3 and 4. Brief of Appellant, 1.

warrant on the car, and the recovery of the handgun. RP 198-99, 201-02, 206-27.

The State also called Deputy Scott Mock to testify at trial. RP 233. Deputy Mock heard Deputy Rickerson was performing a traffic stop, so he responded to back up Deputy Rickerson. RP 234-35. As Deputy Mock responded to the area, he saw Sum's silver Honda drive at him, "dodging between the cars that were parked along the roadway, almost striking the back of [Deputy Mock's] car," and cut through a shoulder area of the road to change directions. RP 236. Deputy Rickerson was pursuing Sum's car, so Deputy Mock joined in the pursuit. RP 238-39. Eventually, Sum crashed his car into the front yard of a home. RP 240. After Deputy Rickerson apprehended Sum, Deputy Mock focused on the car and the passenger. RP 241-42. Deputy Mock directed the passenger to exit the car, and in doing so, noticed a black semi-automatic handgun on the floorboard of the driver's side of the car. RP 242-43.

The jury convicted Sum of one count of making a false or misleading statement to a public servant, one count of attempting to elude a pursuing police vehicle, and one count of unlawful possession of a firearm in the first degree. CP 51-53. Sum was sentenced to 31 months confinement. CP 61. This appeal follows. CP 77.

IV. ARGUMENT

A. Police lawfully contacted Sum pursuant to a valid social contact, or alternatively, pursuant to an investigatory stop based on reasonable suspicion.

Sum was not seized when Deputy Rickerson requested his identification as part of a valid, routine social contact, thus the trial court properly denied Sum's CrR 3.6 suppression motion. When reviewing a trial court's denial of a CrR 3.6 suppression motion, the court determines whether substantial evidence supports the challenged findings of fact and whether those findings support the challenged conclusions of law. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Where only immaterial portions of a challenged finding of fact lacks support, it is of no legal consequence. *State v. Coleman*, 6 Wn. App. 507, 510, 431 P.3d 514 (2018). Even if a trial court relies on erroneous or unsupported findings of fact, immaterial findings that do not affect its conclusions of law are not prejudicial and do not warrant reversal. *Id.* at 516.

Here, Sum assigns error to only one of the trial court's CrR 3.6 findings of fact; the remaining findings of fact are thus considered verities on appeal. RAP 10.3(g); *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The court reviews de novo conclusions of law from an order pertaining to the suppression of evidence. *State v. Ortega*, 177 Wn.2d 116, 122, 297 P.3d 57 (2013). Unchallenged conclusions of law become the law

of the case. *Nguyen v. City of Seattle*, 179 Wn. App. 155, 163, 317 P.3d 518 (2014).

On review, the court may affirm the trial court on any grounds established by the pleadings and supported by the record. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004); *Truck Ins. Exchange v. Vanport Homes, Inc.*, 147 Wn.2d 751, 766, 58 P.3d 276 (2002).

Here, Sum assigns error to the trial court's Finding of Fact No. 8, insofar as the court found there to be one residence across the street from the parking lot, and Conclusions of Law Nos. 3 and 4. *See* Brief of Appellant, 1. Sum claims the trial court erred in concluding that Deputy Rickerson's request for his identification did not amount to a seizure and that the deputy had reasonable, articulable facts to justify a *Terry*⁵ stop. Sum's claims fail. As argued below, Deputy Rickerson did not seize Sum by approaching him in a parked vehicle, asking questions, and requesting his identification. This was a lawful social contact. Finding of Fact 8 was immaterial to the trial court's conclusion that Sum was not seized. However, even if this Court finds that Sum was seized during the initial contact, the seizure was lawful as Deputy Rickerson had reasonable

⁵ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

suspicion of criminal activity based on reasonable, articulable facts that lead him to believe Sum was engaged in criminal activity.

1. No seizure occurred when Deputy Rickerson approached Sum's parked car, engaged him in conversation, and asked for Sum's name.

Under the Washington Constitution, “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Const. art. 1 § 7. Article 1, section 7 of the Washington Constitution provides greater protection of a person’s right to privacy than the Fourth Amendment. *State v. O’Neill*, 148 Wn.2d 564, 584, 62 P.3d 489 (2003). The right to be free of unreasonable governmental intrusion into an individual’s private affairs extends to automobiles. *Id.* Sum, as the individual asserting an unconstitutional seizure occurred, bears the burden of establishing that a seizure in fact occurred. *State v. Young*, 135 Wn.2d 498, 510, 957 P.2d 681 (1998).

But not every encounter between a law enforcement officer and the public constitutes a seizure. *United States v. Mendenhall*, 446 U.S. 544, 551-55, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980). The Washington Constitution permits “social contacts” between police and private citizens. *Young*, 135 Wn.2d at 511. “An officer's mere social contact with an individual in a public place with a request for identifying information, without more, is not a seizure or an investigative detention.” *State v. Mote*,

129 Wn. App. 276, 282, 120 P.3d 596 (2005) (citing *Young*, 135 Wn.2d at 511, 957 P.2d 681; *Mendenhall*, 446 U.S. at 555, 100 S. Ct. 1870; *State v. Armenta*, 134 Wn.2d 1, 11, 948 P.2d 1280 (1997)).

The applicable test to determine whether a seizure has occurred is whether an individual's freedom of movement is restrained, and the individual would not believe that he is free to leave, or decline a request, due to an officer's use of physical force or display of authority. *O'Neill*, 148 Wn.2d at 574. This determination is made only by looking objectively at the actions of the law enforcement officer; it is irrelevant whether the officer subjectively suspects the possibility of criminal activity. *Young*, 135 Wn.2d at 501, 504-05, 510; *O'Neill*, 148 Wn.2d at 574-75.

Encounters between civilians and police are consensual if a reasonable person would feel free to leave. *State v. Harrington*, 167 Wn.2d 656, 663-64, 222 P.3d 92 (2009). Such encounters may become "seizures" if accompanied by: (1) the threatening presence of several officers; (2) the display of a weapon by an officer; (3) physical touching of the defendant by the officer; (4) language or tone indicating mandatory compliance; or (5) a progressive intrusion culminating into a request to frisk. *Id.* at 664 (citing *Young*, 135 Wn.2d 512, which adopted the factors identified by *Mendenhall*, 446 U.S. at 554-55). This Court reviews de novo whether the

facts surrounding a police encounter amount to a seizure.⁶ *State v. Rankin*, 151 Wn.2d 689, 709, 92 P.3d 202 (2004).

In determining whether a seizure occurred in violation of article I, section 7 of the Washington Constitution, this Court applies a purely objective standard “‘looking to the actions of the law enforcement officer.’” *O’Neill*, 148 Wn.2d at 574 (quoting *Young*, 135 Wn.2d at 501). “[T]he focus of the inquiry is not on whether the defendant’s movements are confined due to circumstances independent of police action[, such as occupying a parked vehicle,] but on whether the police conduct was coercive.” *State v. Thorn*, 129 Wn.2d 347, 353, 917 P.2d 108 (1996), *overruled on other grounds by O’Neill*, 148 Wn.2d at 571.

In *O’Neill*, a police officer observed a car parked in front of a business that was closed and had recently been burglarized. 148 Wn.2d at 571-72. The officer pulled behind the car, activated his spotlight, and ran a computer check on the license plate. *Id.* at 572. He learned that the vehicle had been impounded within the previous two months. *Id.* The vehicle’s windows were fogged over and the vehicle appeared to be occupied. *Id.*

The officer approached the driver’s side of the parked vehicle, shined his flashlight on the driver’s face, and asked him to roll down the

⁶ “Whether police have seized a person is a mixed question of law and fact...but ‘the ultimate determination of whether those facts constitute a seizure is one of law and is reviewed de novo.’” *Harrington*, 167 Wn.2d at 662 (internal citations omitted).

window. *Id.* The driver, later identified as O’Neill, complied. *Id.* The officer then asked O’Neill what he was doing there, and O’Neill responded that his car had broken down and would not start. *Id.* The officer asked O’Neill to try and start the vehicle. *Id.* O’Neill tried, but the vehicle would not start. *Id.* The officer then asked O’Neill for identification. *Id.* O’Neill responded he had no identification and his license had been revoked, and he gave the officer a name that turned out to be false. *Id.* The officer asked O’Neill to step out of the vehicle, and subsequent events led to O’Neill’s arrest. *Id.* at 572-73.

The Washington Supreme Court held that under article I, section 7, O’Neill was not seized until he was asked to step out of the vehicle. *Id.* at 574. Before that point, the officer neither used physical force nor displayed any show of authority. *Id.* at 577-81. The court observed,

It is important to bear in mind that the relevant question is whether a reasonable person in O’Neill’s position would feel he or she was being detained. The reasonable person standard does not mean that when a uniformed law enforcement officer, with holstered weapon and official vehicle, approaches and asks questions, he has made such a show of authority as to rise to the level of a Terry stop. If that were true, then the vast majority of encounters between citizens and law enforcement officers would be seizures.

Id. at 581.

Similarly, in *Mote*, a police officer observed two people sitting in a car parked in a residential neighborhood late at night with its rear and dome

lights activated. *Mote*, 129 Wn. App. at 279-80. The officer was driving a fully marked police vehicle and wearing a standard police uniform. *Id.* at 279. “Concerned about drug activity and frequent vehicle prowls in the area,” the officer parked behind the other vehicle, approached the driver’s side, and asked the occupants “what they were up to.” *Id.* at 280. The officer also asked the occupants for identification, and they complied. *Id.* at 280-81.

On appeal, the court in *Mote* held that even assuming the officer used a spotlight when he approached the vehicle, his “actions in their entirety, viewed objectively, did not create such a show of authority that there would be a seizure.” *Id.* at 292. The court noted that the officer did not activate his vehicle’s siren or overhead lights, he did not display his weapon or make physical contact with the defendant, he was alone, and he requested, rather than demanded, the defendant’s identification. *Id.*

Here, as in *O’Neill* and *Mote*, Sum was not seized when Deputy Rickerson approached Sum’s parked vehicle, asked questions, and asked for his identification. This was a valid social contact. The deputy initially was concerned about the well-being of Sum and his passenger, as both men appeared “unconscious” in the car at 9:15 in the morning. CP 86 (Findings of Fact “FOF” 2, 5). Deputy Rickerson ran the Oregon license plate and learned the car had been recently sold. CP 86 (FOF 5); RP 20-21. The

deputy parked his car with enough room so as to not block Sum's car from leaving. CP 86 (FOF 3). The deputy knocked on the window, causing Sum to wake. CP 86 (FOF No. 6). Sum rolled his window down without being asked to do so by the deputy. RP 23. The deputy was alone, and there was no indication that the deputy displayed his weapon or made demands of either Sum or the passenger.

The deputy asked Sum what they were doing, and Sum responded they were waiting for a friend. CP 86 (FOF 7); RP 23. Deputy Rickerson asked who the car belonged to, to which Sum only provided a first name. CP 86 (FOF 10); RP 25. Then, like in *O'Neill*, the deputy requested Sum's identification. CP 86 (FOF 11); RP 25. Sum inquired why the deputy wanted his information and the deputy responded that Sum could not identify the registered owner of the car, and the car was parked in a place where stolen vehicles had been previously recovered. CP 86-87 (FOF 11-12); RP 25-26. Sum then gave the deputy a false name and date of birth. CP 87 (FOF 13); RP 26. While the deputy was running a check on Sum's information, Sum quickly backed his car up and drove away. CP 87 (FOF 14). Only after Sum fled, a second deputy arrived and both deputies activated their lights and sirens. CP 87 (FOF 15).

There was no show of authority to elevate the deputy's social contact to a seizure when he approached Sum's car, engaged him in conversation,

and requested his identification. Deputy Rickerson was the only deputy on scene; he did not display his weapon; he did not touch Sum; he did not demand Sum's identification; and he never requested to frisk Sum. Like in *O'Neill* and *Mote*, Deputy Rickerson's request for Sum's identification was not accompanied by a show of authority, thus it did not rise to the level of a seizure.

Sum analogizes the facts of his case to the facts in *State v. Young*, 167 Wn. App. 922, 925-26, 275 P.3d 1150 (2012), and *State v. Johnson*, 8 Wn. App. 2d 728, 440 P.3d 1032 (2019), arguing that Sum was seized even though there was not complete obstruction of his path of exit, because under the circumstances in those cases, the defendants would not have felt free to leave. Brief of Appellant, 15-17. Both of those cases are distinguishable.

Notably, in both *Young* and *Johnson*, the defendants were positioned such that leaving would be difficult. In *Young*, the defendant was questioned by two police officers, each at 45-degree angles from her, while her back was against a wall. 167 Wn. App. at 931. This questioning followed an original contact one officer had with the defendant, where he approached her and asked for her name, he ran a warrant check which came back "clear," and she left. *Id.* Instead of carrying on, the officer radioed for back up, and initiated the second stop of the defendant. *Id.* The court held that the information before the officers was insufficient to justify a

Terry stop, and any reasonable person in the defendant's position would not have felt free to leave. *Id.*

These facts are distinguishable from Sum's case. Sum was only contacted by one deputy, one time, when he was asked for his identification. His back was not against a wall and he was not boxed into his position. Instead, the deputy was careful to ensure there was adequate space for Sum to leave if he wanted to.⁷ RP 19-20. The contact between the deputy and Sum is more analogous to the first social contact the officer in *Young* engaged defendant Young in, rather than the second, unjustified stop. *See Young*, 167 Wn. App. at 925.

Johnson is similarly distinguishable. In *Johnson*, two officers saw Johnson park his car, but no one exited. 8 Wn. App. 2d at 733. The officers were concerned the occupants were using drugs. *Id.* The officers approached the parked car, which was "flanked on both sides by cars parked in adjoining stalls," each on one side of the vehicle. *Id.* The officers requested Johnson's identification, to which Johnson stated he had an identification card. *Id.* at 734. The officers then became suspicious that Johnson did not have a valid driver's license. *Id.* While one officer ran a warrant check on Johnson, the other officer remained "leaning over the

⁷ It cannot be ignored that Sum, in fact, did leave and refused to stop for the deputy, giving rise to the other charges in this case.

driver's side door," when he noticed a handgun. *Id.* The officer alerted the second officer of the handgun, drew his own weapon, and Johnson was removed from the car. *Id.* The court held that the request for Johnson's identification was a seizure, because under the totality of the circumstances, "ignoring the officer's requests, terminating the encounter, or leaving the scene were not viable options." *Id.* at 744. The court reasoned that leaving was not a "viable option," because the vehicle could only back out of the parking space, there were cars parked on either side of the vehicle, and the officers were standing adjacent to the vehicle's doors with minimal space to move, which prevented Johnson or the passenger from opening their doors. *Id.* The court relied on the additional facts to reach its holding:

The sudden presence of two uniformed officers so soon after the vehicle had parked, the shining of flashlights into the vehicle, the question, repeated, as to whether the vehicle belonged to Taylor Smith, and the request for the driver's name and proof of his identity would lead a reasonable innocent person to believe that the vehicle, and by extension its driver, was the subject of an ongoing criminal investigation.

Id.

Here, the totality of the circumstances does not reach the same show of authority as displayed by the officers in *Johnson*. Looking at the *Mendenhall* factors, there was only one officer on scene, the car was not blocked from leaving, and the officer did not shine a flashlight into the car. Moreover, ignoring the officer's request, terminating the encounter, and

leaving remained viable options for Sum when his identification was requested.

Finally, Sum cites cases where officers retained property, “immobilizing” the defendant and rendering the encounter a seizure. Brief of Appellant, 17-18. In each of the cases Sum cites, the seizure culminated once the property was retained, thus the respective defendants would not have felt free to leave without their property. *See Armenta*, 134 Wn.2d at 6, 12 (seizure when defendant’s property placed in patrol car); *State v. Thomas*, 91 Wn. App. 195, 198, 955 P.3d 420 (1998) (seizure when officer retained defendant’s identification); *State v. Dudas*, 52 Wn. App. 832, 834, 764 P.2d 1012 (1988) (seizure when deputy took identification to patrol car); *State v. Crespo Aranguren*, 42 Wn. App. 452, 465, 711 P.2d 1096 (1985) (seizure when officer took identification documents to patrol car). These cases are plainly distinguishable. Deputy Rickerson did not retain, or ever even possess, any of Sum’s or his passenger’s, property.⁸ The circumstances of this case did not involve a show of authority that gave rise to a seizure when Deputy Rickerson asked for Sum’s identification.

⁸ Compare *State v. Hansen*, 99 Wn. App. 575, 578, 994 P.2d 855 (2000) (No seizure occurred when officer held defendant’s identification for 30 seconds in the presence of the defendant); *State v. Smith*, 154 Wn. App. 695, 226 P.3d 195 (2010) (No seizure when officer remained within two-three feet of defendant with his identification).

Accordingly, the findings of fact support the trial court's conclusion of law that because Deputy Rickerson did not retain Sum's physical identification to run his records check, Sum was not seized when the deputy asked him to identify himself. CP 87 (Conclusion of Law 4). As argued, the trial court's conclusion of law was proper under *O'Neill* and *Mote*. This Court should affirm.

2. Alternatively, even if this Court finds that Sum was seized when Deputy Rickerson requested his identification, the deputy had reasonable suspicion sufficient to justify an investigatory stop.

Even if Deputy Rickerson "seized" Sum when he asked Sum for his identification, the deputy had reasonable suspicion to justify an investigative *Terry* stop.

"[W]arrantless seizures are per se unreasonable, and the State bears the burden of demonstrating that a warrantless seizure falls into a narrow exception to the rule." *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010). A *Terry* stop, a brief investigatory seizure, is an exception to the warrant requirement. *Doughty*, 170 Wn.2d at 61-62; *State v. Z.U.E.*, 183 Wn.2d 610, 617, 352 P.3d 796 (2015); *see also, State v. Snapp*, 174 Wn.2d 177, 197, 275 P.3d 289 (2012). Whether a warrantless seizure or *Terry* stop passes constitutional muster is a question of law the appellate court reviews de novo. *State v. Howerton*, 187 Wn. App. 357, 364, 348 P.3d 781 (2015).

A *Terry* stop is justified when the officer can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21. “For a *Terry* stop to be permissible, the State must show that the officer had ‘reasonable suspicion’ that the detained person was, or was about to be involved in a crime.” *Z.U.E.*, 183 Wn.2d at 617 (quoting *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003)). When considering the reasonableness of a stop, the court must evaluate it based on a totality of the circumstances. *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991). An officer’s training and experience is taken into account when determining the reasonableness of a *Terry* stop. *Glover*, 116 Wn.2d at 514.

If an officer has reasonable articulable suspicion that a suspect is involved in criminal activity, the officer may detain the suspect, request him to produce identification, and ask him about his activities. *State v. Little*, 116 Wn.2d 488, 495, 806 P.2d 749 (1991).

The following unchallenged Findings of Fact are verities in this appeal: Deputy Rickerson conducted a records check of the Honda’s Oregon License plate, which indicated the Vehicle Identification Number (VIN) for the Honda Civic and that a report of sale had been filed pertaining to that vehicle; after obtaining the VIN, Rickerson approached the Honda and observed two men that appeared to be unconscious; Sum stated they

were visiting a friend across the street; Rickerson was aware the area in which the Honda was parked was a high-crime area and that stolen vehicles had previously been located in the area; Rickerson asked Sum who the Honda belonged to, to which Sum gave only a first name; Rickerson then asked for Sum's identification; Sum questioned why Rickerson needed his information, so Rickerson explained that the two men were sitting in an area known for stolen vehicles and that Sum did not appear to know to whom the vehicle he was sitting in belonged. CP 86-87 (FOF Nos. 4, 5, 7, 9-12).

Sum challenges only Finding of Fact No. 8, which states, "There was one residence located across the street, and Rickerson had previously been contacted by the owner of that residence, who had complained to him about suspicious vehicles parking where the Honda Civic was then parked." CP 86 (FOF 8). The number of residences across the street from the vehicle is immaterial to the fact that a resident contacted Deputy Rickerson to complain about suspicious vehicles parked where Sum was parked. The critical portion of the Finding are supported by the record; any mistake in the specific number of residences is not legally significant. *See Coleman*, 6 Wn. App. at 510; RP 13, 17-18.

Looking at the facts known to the officer at the time he contacted Sum, together with rational inferences from those facts, Deputy Rickerson had reasonable suspicion to request Sum's identification. The car was

present in a high crime area, known for recovering stolen cars. A resident of the area had previously complained to the deputy about cars that did not belong in the neighborhood being parked where Sum was parked. RP 13, 17, 40-41. When the deputy ran the car's license plate, he saw a report of sale that was difficult to read. RP 20-21. The deputy clarified that the fact that a car was not reported stolen did not mean the car was not stolen. RP 41. The deputy could not discern who the true owner of the car was, and Sum could not tell him.⁹ RP 25, 42. Instead, Sum could only provide a first name. RP 25.

Based on the deputy's training and 19 year career, the facts that he had unclear information on a car in an area where stolen cars had been previously recovered, had been informed by a citizen of problem cars, and Sum could not provide him with the name of the person who owned the car he was sitting in, it was reasonable for the deputy to request Sum's identification to find out more information. Accordingly, if the request for Sum's identification could be construed as an investigative stop, any stop was justified by articulable facts indicating possible criminal behavior. *See, e.g., Dudas*, 52 Wn. App. at 833-34 (finding that initial stop of defendant and request for identification was lawful).

⁹ After Sum was arrested, he told the deputy he bought the car several weeks prior, but that was not known at the time of the alleged seizure. RP 36.

The trial court's conclusion that the deputy had articulable facts sufficient to justify requesting Sum's identification was supported by sufficient facts. This Court should affirm.

3. Even if this Court disagrees and finds that any seizure was unlawful, the proper remedy is suppression of the false statement only.

If this Court finds that any seizure of Sum was unlawful, the proper remedy is only to suppress the evidence that Sum gave a false name and date of birth. Any evidence relating to Sum's subsequent attempted elude from the police, and his unlawful possession of the firearm recovered in the car, remains untainted by the initial contact.

Evidence of Sum's attempted elude and his unlawful possession of the firearm was attenuated from any evidence of Sum's false statement. Washington recognizes the attenuation doctrine as an exception to the state exclusionary rule; the doctrine is satisfied only if an unforeseeable intervening act genuinely severs the causal connection between official misconduct and the discovery of the evidence. *State v. Mayfield*, 192 Wn.2d 871, 895-99, 434 P.3d 58 (2019). A defendant's independent act of free will may be sufficient to establish a superseding cause so long as the act is not causally connected to alleged official misconduct. *Id.* at 899.

Here, Sum's decision to erratically and dangerously peel out of the church parking lot was an unforeseeable intervening act that severed the

causal connection between the evidence related to the false statement and evidence related to the attempted elude and his unlawful possession of a firearm. Sum peeled into oncoming traffic, drove through multiple red lights, and crashed into a home's front yard. His driving was an unforeseeable, unpredictable act of free will that created a superseding cause that was not related to his use of false name or the deputy's request for his identification. *Compare Mayfield*, 192 Wn.2d at 899-901 (defendant's consent to search during unlawful seizure was direct, foreseeable consequence of officer's unconstitutional actions).

Sum does not dispute that the only remedy, if this matter is reversed and remanded, is suppression of his false statement. Brief of Appellant, 24 ("The remedy is suppression of the fruit of the seizure, that is, Sum's statement misidentifying himself."). Therefore, even if this Court agrees with Sum and reverses his misdemeanor conviction, his convictions for unlawful possession of a firearm in the first degree and attempting to elude a pursuing police vehicle should be affirmed.

V. CONCLUSION

For the above stated reasons, the State requests this Court affirm the trial court's denial of Sum's suppression motion. Alternatively, if this Court reverses, the proper remedy would be suppression of Sum's statements of

the false name and date of birth, affecting only his False Statement conviction.

RESPECTFULLY SUBMITTED this 9th day of April, 2020.

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Rule 9

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The undersigned certifies that on this day she delivered by E-file to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

04/09/20 s/Aeriele Johnson
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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