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COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, RESPONDENT

v.

CURTIS D. LEIN, APPELLANT

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APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

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**BRIEF OF RESPONDENT**

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## **I. APPELLANT'S ASSIGNMENTS OF ERROR<sup>1</sup>**

1. The court erred by denying Curtis Donn Lien's CrR 3.5 motion to suppress statements made to law enforcement.

2. The court erred by entering finding of fact 19, which made it appear that the examination took place after the deputy asked Mr. Lien if the box was when the examination actually took place before the questioning:

In examining the locking box, the deputy could see, sticking out from the closed door, what looked like a plastic bag and the orange cap of what appeared to be a hypodermic syringe.

3. The court erred by making conclusion of law 1 that the statement by Mr. Lien the box from underneath the driver's seat was his was not subject to suppression.

4. The court erred by making conclusion of law 3 that the deputy was not conducting an interrogation but was conducting an inventory which turned into a brief exchange with Mr. Lien, not related to or incident to a criminal investigation.

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<sup>1</sup> In the defendant's opening brief, he asserts five assignments of error in his table contents and four assignments of error in the opening paragraph of his brief. The State will address the greater number as stated in Defendant's table of contents. Defendant's assignments of error are taken verbatim from the defendant's brief.

5. The search of the box revealing controlled substances was fruit of the poisonous tree from Mr. Lien's statement that should have been suppressed and the convictions for possession of a controlled substance must be reversed.

## **II. ISSUES PRESENTED**

1. Was there substantial evidence supporting the trial court's finding of fact 19.

2. Was the defendant "in custody" at the time the deputy asked the defendant regarding ownership of the container?

3. Was the defendant being interrogated at the time of the deputy's question regarding the container?

4. Did the trial court err by permitting the defendant's statement to be used at the time of trial?

## **III. STATEMENT OF THE CASE**

The defendant was charged by information in the Spokane County Superior Court with possession of a controlled substance with intent to deliver methamphetamine, and three counts of possession of a controlled substance. CP 1. The matter proceeded to a jury trial. The jury was deadlocked on the possession with intent to deliver methamphetamine charge. (2/20/14) RP 202-03. However, the jury found the defendant

guilty on the three counts of possession of a controlled substance.  
(2/20/14) RP 202-03.

After trial and at the time of sentencing, the defendant pleaded guilty to the possession of a controlled substance with intent to deliver charge and received a standard range sentence.<sup>2</sup> He was also sentenced to standard range sentences on the remaining charges.

At the beginning of trial, on February 19, 2014, a CrR 3.5 hearing was held before the Honorable Annette Plese. Deputy Thomas Edelbrock testified that during the morning of May 31, 2012, he was patrolling in a remote area along Valley Springs Road; this area is beleaguered with minor criminal violations such as vandalism, illegal dumping and theft. (2/19/14) RP 15. While on patrol, he observed a pickup parked facing the wrong way on the roadside. RP 15. The deputy looked into the bed and the cab of the pickup and it appeared full of possible stolen property or “scrapper”<sup>3</sup> goods. (2/19/14) RP 16.

The deputy waited out of sight for the driver’s return because the engine was warm and radio advised that the registered owner Shawn

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<sup>2</sup> In exchange for pleading guilty, the State agreed to ask the court to dismiss a bail jumping charge and an unrelated possession of a controlled substance charge. (2/19/14) RP 219.

<sup>3</sup> A scrapper is someone who collects garbage or scrap metal, generally by theft, to sell to recyclers. (2/19/14) RP 15.

Moeller had a felony warrant and a suspended driver's license. (2/19/14) RP 17.

As the vehicle drove away, it was stopped by another deputy responding to the area. Deputy Edelbrock approached the driver. (2/19/14) RP 18. He asked the driver to step out of the vehicle because there were numerous knives in the cab of the pickup, including a knife protruding above the driver's head. (2/19/14) RP 18-19. The driver of the vehicle was the defendant. (2/19/14) RP 19. A female passenger was also asked to step out of the vehicle due to the large number of knives in the cab of the pickup. (2/19/14) RP 19.

A radio check revealed the defendant had a suspended license and a DOC escape warrant. (2/19/14) RP 18-19. Deputy Edelbrock advised the defendant he would issue him a citation for the driving while license suspended (DWLS), but he would be arrested on the escape warrant. (2/19/14) RP 20.

Deputy Edelbrock began to advise the defendant of his rights.<sup>4</sup> (2/19/14) RP 20. The defendant stated "Shawn" owned the pickup. (2/19/14) RP 20. The defendant then asked if the female passenger could take the truck. The deputy said "no" because the passenger did not have a

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<sup>4</sup> Deputy Edelbrock stated: "I told him he had a right to an attorney. If he couldn't afford one, we'd provide one for him, and he told me about this Shawn that owned the truck." (2/19/14) RP 20.

driver's license and she was not the registered owner. (2/19/14) RP 20. The deputies, through police radio, attempted contact with the registered owner with telephone numbers provided by the defendant. (2/19/14) RP 20. The attempts were unsuccessful. (2/19/14) RP 20-21. Deputy Edelbrock told the defendant the truck would have to be towed and inventoried. (2/19/14) RP 20-21.

As the deputy retrieved the passenger's belongings, including her purse, the defendant stood nearby. (2/19/14) RP 21. The defendant asked if Deputy Edelbrock could retrieve his coat. (2/19/14) RP 21-22. The coat was retrieved, emptied for safekeeping, and given to the passenger. (2/19/14) RP 22.

The deputy continued inventorying the pickup. He observed from outside, with the driver's door open, what appeared to be a book under the driver's seat. (2/19/14) RP 22-23. The deputy entered the vehicle and pulled the object from under the seat. (2/19/14) RP 23. During the hearing, Deputy Edelbrock stated:

[DEPUTY] I reached in and pulled it out from under the seat. It was way too heavy for a book.

[DEPUTY PROSECUTOR] Okay. Did you examine it?

[DEPUTY] Yes, I opened it.

[DEPUTY PROSECUTOR] Okay. What do you mean you opened it?

[DEPUTY] Like a book. It looks for all purposes like a book. I opened it like a book.

[DEPUTY PROSECUTOR] Okay. What did you find when you opened it?

[DEPUTY] Holding it up as if you're going to read it, it turns out it is a lock box, but it's an old, beat up thing, and the corners of it are pried or sprung. It doesn't fit well.

[DEPUTY PROSECUTOR] When you say it's a lock box, Deputy, was there a place for a key or was it just a metal container?

[DEPUTY] No, there's as I recall a key lock if you're holding it like a book, in the middle of the right edge.

[DEPUTY PROSECUTOR] And what did you do with that?

[DEPUTY] Holding it up in a book reading position at the bottom with the shift -- I could see a bag and a syringe underneath the hinge -- the side edge of the door.

[DEPUTY PROSECUTOR] Without opening it?

[DEPUTY] I can't open it. It's locked. No.

[DEPUTY PROSECUTOR] So how did you see that? Could you describe why --

[DEPUTY] If the book was -- if the box was sitting flat like this, whether somebody closed and locked it with those bags in it or if the metal is slightly sprung, it's an older lock box. It's not in mint condition by any means. It's down by the right corner as you hold it like a book.

(2/19/14) RP 23-24.

After introduction of some photographs of the object, the testimony continued:

[DEPUTY PROSECUTOR] Okay. Then after you discovered the nature of the object of this box, what did you do?

[DEPUTY] After I saw a portion of a syringe in the back with the powder in it, I just closed it.

[DEPUTY PROSECUTOR] Did you make any decision as to how you were going to proceed with the disposition of that item?

[DEPUTY] I really didn't know exactly what to do. I didn't say anything to anybody there about what was -- about the box.

[DEPUTY PROSECUTOR] You mean about the character of what you had seen?

[DEPUTY] This is correct.

[DEPUTY PROSECUTOR] Okay. So what did you do with the box at that point?

[DEPUTY] I just held on to it. I ended up asking Curtis whose it was, but I didn't do -- had said anything to anybody about what I had seen.

[DEPUTY PROSECUTOR] So you asked him whose it was; is that correct?

[DEPUTY] Let me see exactly what I said. I asked him whose it was, yes.

[DEPUTY PROSECUTOR] And what did he say?

[DEPUTY] He said it was his. I then asked him if I could see inside it. He said no, it was his. I couldn't open it.

[DEPUTY PROSECUTOR] So what did you do?

[DEPUTY] I just kept the box.

[DEPUTY PROSECUTOR] Okay. Subsequently, what happened to the box eventually? Did you put it back in the vehicle or did you take it with you?

[DEPUTY] I still didn't know exactly what was inside it. I put it on property as evidence. I didn't know to be tested we would need a search warrant to get it open.

(2/19/14) RP 26-27.

Based upon these facts taken at the CrR 3.5 hearing, the trial court entered the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. Deputy T. Edelbrock, on routine patrol on May 31, 2012, observed a pickup truck parked on the wrong side of the road in the vicinity of 5400 East Valley Springs Road.
2. The vehicle had a warm engine and given the remoteness of the area and law enforcement problems he was aware of, the deputy ran the license plate, finding a warrant and a suspended driver's license in the registered owner's name.
3. Requesting assistance from Deputy Sutter, the two officers positioned themselves at either direction but out of sight from the truck, intending to stop it when it left the area.
4. Deputy Sutter made first contact as the truck drove past her, and summoned Deputy Edelbrock.
5. Approaching the driver, Curtis Lien, who was not the registered owner of the truck, Deputy Edelbrock

observed numerous knives in the vehicle, including a very long one over the visor on the driver's side.

6. Mr. Lien had only a Washington identification card immediately advised the deputy that he did not have a driver's license, and was handcuffed.
7. A radio check showed Mr. Lien to have a suspended driver's license and a felony hold warrant from the Department of Corrections.
8. There was a female passenger in the car, Ms. Brittant Salsbury, who also did not have a driver's license and was suspended.
9. The deputy advised Mr. Lien that he would be cited only for the suspended license but would be booked into jail for the Department of Corrections hold.
10. Several attempts to contact the registered owner by telephone were unsuccessful.
11. Since neither person was registered owner, and Ms. Salsbury did not have a license, Deputy Edelbrock decided the truck would have to be impounded for safekeeping and began to inventory the contents.
12. A purse was released to Ms. Salsbury.
13. Mr. Lien asked the deputy if his leather jacket could also be released to the female.
14. The deputy took the jacket out of the truck to hand it to Ms. Salsbury and noticed that it was extremely heavy.
15. Out of concern for his safety, the deputy removed the items from the pockets, which turned out to be numerous old coins, which were taken to the police property room for safekeeping.

16. The deputy could see a rectangular object protruding from underneath the driver's seat in the truck, which appeared to be a book.
17. The deputy asked Mr. Lien who the item belonged to, to which Mr. Lien responded "it's mine," and declined giving consent to look in the box.
18. The book, also very heavy, turned out to be a locking metal box with a cover that made it look like a book.
19. In examining the locking box, the deputy could see, sticking out from the closed door, what looked like a plastic bag and the orange cap of what appeared to be a hypodermic syringe.
20. The box was not opened but was taken to the police property room, pending the application and eventual granting of a search warrant.
21. In the execution of the search warrant, contraband was discovered which led to the charges filed in this case.

From the foregoing Findings of Fact the Court now makes the following:

#### CONCLUSIONS OF LAW

1. The statement elicited from Mr. Lien was not subject to suppression.
2. The conversation had been initiated by Mr. Lien regarding the disposition of his coat, out of concern that it not be left in the truck after the impound.
3. Deputy Edelbrock was not conducting an interrogation but was conducting an inventory which turned

into a brief exchange with Mr. Lien, not related to or incident to a criminal investigation.

CP 78.<sup>5</sup>

#### IV. ARGUMENT

##### A. THE DEFENDANT HAS WAIVED HIS RIGHT TO APPEAL THE SUPPRESSION ISSUE REGARDING THE POSSESSION WITH INTENT TO DELIVER METHAMPHETAMINE CHARGE AS HE PLEADED GUILTY TO THAT OFFENSE AFTER TRIAL.

It is unclear whether the defendant is appealing his conviction under count one, possession of a controlled substance with intent to deliver methamphetamine, which he pleaded guilty after trial.

A defendant who enters a voluntary guilty plea waives his or her right to appeal most issues. While a defendant who pleads guilty preserves the right to challenge the judgment and sentence on collateral grounds, he waives or renders irrelevant all constitutional violations that occurred before the guilty plea, except those related to the circumstances of the plea or the State's ability to prosecute regardless of factual guilt. *State v. Brandenburg*, 153 Wn. App. 944, 947–48, 223 P.3d 1259 (2009), review denied 236 P.3d 207 (2010), citing *State v. Majors*, 94 Wn.2d 354, 356, 616 P.2d 1237 (1980).

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<sup>5</sup> The Honorable Ellen Kalama Clark of the superior court previously denied a CrR 3.6 search suppression motion regarding the container. (10/02/13) RP 2-15.

Here, the defendant is precluded from challenging the conviction to which he pleaded guilty, especially where he received the benefits occurring from his agreement including dismissal of charges.

**B. THE DEPUTY’S QUESTION TO THE DEFENDANT REGARDING THE CONTAINER WAS NOT A CUSTODIAL INTERROGATION SUBJECT TO MIRANDA WARNINGS.**

Standard of review.

The standard of review “to be applied in confession cases is that findings of fact entered following a CrR 3.5 hearing will be verities on appeal if unchallenged; and, if challenged, they are verities if supported by substantial evidence in the record.” *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *State v. Schultz*, 170 Wn.2d 746, 753, 248 P.3d 484 (2011). An appellate court defers to the trier of fact on credibility issues. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). Conclusions of law are reviewed de novo. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996). “[T]his court must determine de novo whether the trial court ‘derived proper conclusions of law’ from its findings of fact.” *State v. Solomon*, 114 Wn. App. 781, 789, 60 P.3d 1215, 1220 (2002).

An officer must advise an individual of his or her *Miranda* rights “when the individual is first subjected to police interrogation while in

custody at the station or otherwise deprived of his freedom of action in any significant way.” *State v. Lewis*, 32 Wn. App. 13, 17, 645 P.2d 722 (1982). Once officers have probable cause to believe that an individual has committed a crime, interrogation becomes custodial, and the officers must advise the individual of his or her *Miranda* rights. *State v. Creach*, 77 Wn.2d 194, 198, 461 P.2d 329 (1969), *overruled in part on other grounds by State v. Russell*, 125 Wn.2d 24, 882 P.2d 747 (1994). Police officers have probable cause to make a warrantless arrest “when there is a reasonable ground for suspicion, supported by circumstances within the knowledge of the arresting officer to warrant a cautious person in believing that the accused was guilty of a crime.” *State v. Hilliard*, 89 Wn.2d 430, 435, 573 P.2d 22 (1977). “‘Custody’ for *Miranda* purposes is narrowly circumscribed and requires ‘formal arrest or restraint on freedom of movement of the degree associated with formal arrest.’” *State v. Post*, 118 Wn.2d 596, 606, 826 P.2d 172, *as amended* 837 P.2d 599 (1992).

An appellate court reviews the trial court's determination of a custodial interrogation de novo. *State v. France*, 121 Wn. App. 394, 399, 88 P.3d 1003 (2004).

1. The defendant was not “in custody” for a controlled substance offense requiring the deputy to *Mirandize* him before asking about the container located in the pickup.

This case is akin to cases where a defendant is in custody or incarcerated for one charge and he is questioned by law enforcement regarding an unrelated charge.

When dealing with a person already incarcerated, “custodial” means more than just the normal restrictions on freedom incident to incarceration. *State v. Warner*, 125 Wn.2d 876, 889 P.2d 479 (1995); *State v. Post*, 118 Wn.2d at 607.

In *Warner*, the defendant was incarcerated. He participated in sex offender therapy, and, during group therapy sessions, he disclosed that he had abused other children. Warner was later charged with these additional offenses. He moved to suppress his admissions, claiming that he should have received *Miranda* warnings before he was asked about other offenses in his sex offender therapy. The Supreme Court disagreed:

Arguably, there was some compulsion here[,] in that ... Warner could have felt [that] cooperation (i.e., making confessions) would lead to more lenient treatment or avoid reprisals. This type of “compulsion” is not contemplated in *Miranda*, however ... [w]hen dealing with a person already incarcerated, “custodial” means more than just the normal restrictions on freedom incident to incarceration.... In [*State v. Post*, [118 Wn.2d 596, 826 P.2d 172 (1992),] this court rejected the argument that an interview by a Department of Corrections psychologist was custodial where the [inmate being interviewed] was on work release, even though “Post

was ‘required’ to submit to [this] evaluation in the sense that it was widely known that[,] if individuals did not cooperate during the interview process, it was a factor considered against them.” *Post*, ... 826 P.2d [at 181 n. 5]. We held that [such] psychological pressure is not enough to establish “custody” for *Miranda* purposes. *Post*, ... 826 P.2d [at 180]. [Likewise, the] circumstances surrounding Mr. Warner's disclosures [during sex offender therapy] cannot be considered “custodial” [for *Miranda* purposes].

*Warner*, 125 Wn.2d at 884-85.

Similarly, in *Cervantes v. Walker*, 589 F.2d 424 (9<sup>th</sup> Cir. 1978),<sup>6</sup> one of the most-cited cases on the issue, the defendant was being moved from one jail cell to another following an altercation with a fellow inmate. En route, he spent some time waiting in the jail library. During his wait, his belongings were searched, pursuant to standard jail procedure when moving inmates. During the search, the officer found a green odorless substance. The officer immediately took the substance to the defendant, and asked him what it was. The defendant promptly replied, “That's grass, man,” at which point he was arrested. To determine whether the inmate

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<sup>6</sup> In *State v. Earls*, 116 Wn.2d 364, 805 P.2d 211 (1991) use of the *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986) analysis was found to be unnecessary for article 1 section 9 because state precedent holds that “the protection of article 1, section 9 is coextensive with, not broader than, the protection of the Fifth Amendment.” *Earls*, 116 Wn.2d at 374–75.

had been subjected to “custodial interrogation” for *Miranda* purposes, the Ninth Circuit established four considerations:

[T]he language used to summon the individual, the physical surroundings of the interrogation, the extent to which he is confronted with evidence of his guilt, and the additional pressure exerted to detain him must be considered to determine whether a reasonable person would believe there had been a restriction of his freedom over and above that in his normal prisoner setting.

*Id.* at 428.

Ultimately, the Ninth Circuit concluded that *Miranda* warnings were not required in that case because “this was an instance of on-the-scene questioning enabling [the officer] to determine whether a crime was in progress.” *Id.* at 429. Subsequently, the Fourth Circuit embraced and elaborated on the Ninth Circuit's holding in *Cervantes* and evaluated, ultimately, “whether the inmate was subjected to more than the usual restraint on a prisoner's liberty to depart.” *United States v. Conley*, 779 F.2d 970, 973 (4<sup>th</sup> Cir. 1985). Likewise following *Cervantes*, the Tenth Circuit similarly determined that *Miranda* warnings were not required where an inmate “was not deprived of his freedom nor was he questioned in a coercive environment.” *United States v. Scalf*, 725 F.2d 1272, 1276 (10<sup>th</sup> Cir. 1984). In making this determination, an appellate court looks to the totality of the circumstances surrounding the questioning. *Garcia v. Singletary*, 13 F.3d 1487, 1492 (11<sup>th</sup> Cir. 1994).

The United States Supreme Court has held that there is “no categorical rule” that a *Miranda* violation, which requires a “custodial” interrogation, occurs when a prisoner is removed from the general population and taken to another location for questioning by outside law enforcement about a different crime than the one on which his conviction is based. *See, Howes v. Fields*, —U.S.—, 132 S. Ct. 1181, 1187, 182 L. Ed. 2d 17 (2012) (no evidence of coercion that would support a finding of “custodial interrogation” in five-to-seven hours of questioning by armed officers using “sharp tone” in a “well-lit, average-sized conference room;” no physical restraint of prisoner). In *Howes*, the Court held that “[w]hen a prisoner is questioned, the determination of custody should focus on all of the features of the interrogation. These include the language that is used in summoning the prisoner to the interview and the manner in which the interrogation is conducted.” *Id.* at 1192

Here, the defendant was not in custody or under investigation for a controlled substance violation. At the time the question was asked by Deputy Edelbrock to the defendant regarding the book container, the defendant had been placed under arrest for an unrelated escape warrant and the deputy was inventorying the pickup. The deputy asked the defendant about the personal belongings in the vehicle during the inventory search and retrieved several items at the defendant’s request.

Even though the deputy observed what looked “...like a plastic bag and [an] orange cap of what appeared to be a hypodermic needle”<sup>7</sup> inside the book, there was no crime established at this point. Mere possession of drug paraphernalia is not a crime. *State v. McKenna*, 91 Wn. App. 554, 563, 958 P.2d 1017, 1022 (1998). It was only later determined to be a crime after the box and contents were opened and inspected during execution of a search warrant and later tested by the crime lab. (2/19/14) RP 113–130.

Accordingly, the defendant was not in custody for *Miranda* purposes on the unrelated drug charges at the time of the deputy’s question regarding ownership.

2. The deputy’s question regarding ownership of the container was not “interrogation” subject to *Miranda*.

Here, the defendant was not in custody or under investigation for a controlled substance violation when asked whether the box was his. The question by the deputy did not constitute an “interrogation” and are more analogous to a roadside questioning by an officer.

“Interrogation” means questioning initiated by law enforcement *after a person has been taken into custody*. *State v. Daniels*, 160 Wn.2d 256, 266, 156 P.3d 905 (2007).

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<sup>7</sup> The trial court’s finding of fact number 19.

A police officer who reasonably suspects an individual is violating the law is permitted to conduct a traffic stop “to try to obtain information confirming or dispelling the officer's suspicions.” *Berkemer v. McCarty*, 468 U.S. 420, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). Our Supreme Courts has adopted the *Berkemer* test. *State v. Heritage*, 152 Wn. 2d 210, 217, 95 P.3d 345, 348 (2004). In addition, an officer making a *Terry* stop may ask a moderate number of questions to determine the identity of a suspect and to confirm or dispel the officer's suspicions without rendering the suspect “in custody” for the purposes of *Miranda*. *Heritage*, 152 Wn.2d at 219.

In *State v. Creach*, *supra*, the police were told that an individual was displaying credit cards that appeared to be stolen. An officer went to a hotel and the defendant was pointed out as being the individual using the cards. The officer asked the defendant for identification, and was given a driver's license and credit cards bearing the name “Black” and told by defendant that his name was Black. The defendant was then asked questions concerning his date of birth, height, etc., and his responses did not correspond with the information on the license. He was then requested to accompany the officers to the police station. At this point, no *Miranda* warnings had been given.

The issue in *Creach* was whether the officer could testify concerning the statements of defendant. The court held the testimony to be admissible because the questioning of defendant was during the course of a routine investigation, not during a “custodial interrogation.” In determining whether questioning in such encounters is custodial, the court adopted the following rule:

It is difficult to set forth an all-inclusive rule covering every possible situation, but once an investigating officer has probable cause to believe that the person confronted has committed an offense, the officer cannot be expected to permit the suspect to leave his presence. At that point, interrogation becomes custodial, and the suspect must be warned of his rights.

*Creach*, 77 Wn.2d at 198.

Accordingly, police do not have to give *Miranda* warnings when the questioning is part of a routine, general investigation in which the defendant voluntarily cooperates but is not yet charged. *State v. Harris*, 106 Wn.2d 784, 789, 725 P.2d 975 (1986). An investigative stop in public where a police officer asks questions to determine the identity and confirm or dispel the officer's suspicions does not constitute custodial interrogation. *Hilliard*, 89 Wn.2d at 436.

In *Hilliard*, police officers told an otherwise unknown assault suspect that if the police could verify his story that he was only in the area to visit a certain person, he could leave. Our Supreme Court held that

Hilliard was not in custody for *Miranda* purposes. The court found: “Mere suspicion, before the facts are reasonably developed, is not enough to turn the questioning into a custodial interrogation.” *Id.* at 436. Moreover, a police officer’s unstated thoughts and plan are irrelevant to whether a person is in custody at the time of questioning. *Solomon*, 114 Wn. App. at 790.

Rather, a custodial interrogation requiring *Miranda* warnings occurs once the police have probable cause to believe the suspect committed an offense. *Hilliard*, 89 Wn.2d at 435.

However, in *France, supra*, a police officer stopped a suspect while he was walking alongside the road. The officer told the suspect that there was an alleged domestic dispute and that they needed to “clear it up” before the suspect would be free to leave. *France*, 121 Wn. App. at 397. On appeal, the court concluded that *Miranda* warnings should have been given because “no reasonable person in that same situation would have believed that he or she would have been allowed to leave.” *France*, 121 Wn. App. at 400.

This case is different than the situation in *France* because the defendant here was not being investigated for a controlled substance violation when asked about the container. At the time, the deputy was conducting an inventory search of the vehicle while the defendant

observed – albeit in handcuffs on a different charge. Notwithstanding the arrest on the DOC escape warrant, no reasonable person in the defendant’s position would have thought he or she was constrained in a manner consistent with formal arrest on suspicion of drug charges during the time in which the deputy asked the question.

Certainly, the deputy could ask the defendant a question to dispel his suspicion regarding the container. The question and answer regarding the container did not turn encounter into a custodial interrogation for a controlled substance violation.

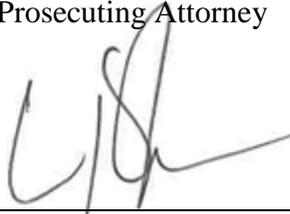
*Miranda* warnings were not required prior to the question because the defendant was not “in custody” at the time of the question for a controlled substance violation and the “interrogation” element was not met because the deputy properly asked the defendant a question to dispel his suspicion regarding the container before any probable cause was developed to arrest the defendant on that charge. The trial court properly admitted the defendant’s statement as there was substantial evidence supporting that conclusion.

**V. CONCLUSION**

For the reasons stated above, the trial court's CrR 3.5 findings of fact and conclusions of law should be affirmed.

Dated this 22 day of October, 2015.

LAWRENCE H. HASKELL  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read 'LDS', is written over a horizontal line.

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Attorney for Respondent

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

STATE OF WASHINGTON,

Respondent,

v.

CURTIS DONN LIEN,

Appellant,

NO. 32443-5-III

CERTIFICATE OF MAILING

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I certify under penalty of perjury under the laws of the State of Washington, that on October 22, 2015, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Kenneth H. Kato  
khkato@comcast.net

10/22/2015

(Date)

Spokane, WA

(Place)

*Kim Cornelius*

(Signature)