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

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STATE OF WASHINGTON, RESPONDENT

v.

DEREK RODNEY GARNER, 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 ASSIGNMENT OF ERROR**

The appellant asserts only one claim: Defendant was denied his constitutional right to effective assistance of counsel because trial counsel failed to admit the video of his confession.

## **II. ISSUES PRESENTED**

1. Did the defendant receive ineffective assistance of counsel where his attorney did not introduce a copy of the audio/video recording obtained from the police body camera, where the applicable portions of the audio recording was transcribed by the court reporter during his CrR 3.5 hearing?

2. Was any failure to admit the recording harmless where it was uncontested, and remains uncontested, that the defendant made an unsolicited and spontaneous statement that he knew the car was stolen?

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

### Substantive Facts.

On April 18, 2017, at 6:00 a.m., Christopher Gowland drove his Chevy Trax LT<sup>1</sup> to work at Lowe's on North Division, Spokane. RP 64. He had purchased the vehicle in 2016 for \$18,000. RP 67. Upon leaving to take lunch at approximately 9:30 a.m., he discovered his car was missing from

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<sup>1</sup> Vehicle license number AZA 8475.

the parking lot. RP 65. Mr. Gowland believed he had dropped his car keys in the parking lot while walking from his car to the store. *Id.* He reported the car stolen. *Id.* On April 20, at 3:00 a.m., Mr. Gowland was informed the police had recovered his car at a local Spokane motel. RP 65.

Officer Brandon Rankin was working the graveyard patrol<sup>2</sup> on April 20, 2017. RP 69. He was sent to a motel located on Sunset Highway in Spokane after dispatch received a complaint regarding a male asleep in a car at the motel. The license plate on that car belonged to Mr. Gowland's stolen vehicle.<sup>3</sup> RP 69.

The defendant, Mr. Garner, was asleep in the driver's seat of the vehicle. RP 71. He was removed from the stolen vehicle, cuffed, placed in the patrol car, and given *Miranda* warnings. RP 72.

Mr. Garner told the officer he had purchased the car two days earlier somewhere downtown, but was unable to articulate where exactly he had purchased the vehicle. RP 73. He said he purchased the vehicle from an unknown person - he simply described this person as being a tall white guy. RP 73. Mr. Garner said he purchased the vehicle for \$800. RP 73. Mr. Garner admitted he was unemployed, and he could not remember when

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<sup>2</sup> 8:00 p.m. until 7:00 a.m.

<sup>3</sup> The car bore the license plate AZA 8475. RP 70.

he last worked. RP 73-74. He also admitted that there was a possibility the car was stolen. RP 74.

The car was searched for paperwork; none was found containing the defendant's name or indicating that the vehicle had been sold to him. RP 74-75. Mr. Garner informed the officer that he thought that the vehicle was, in fact, stolen, and that he was going to turn it in; but he had not turned it in because he was tired. RP 75-76. Mr. Gowland was allowed to take the vehicle home from the motel as it was in drivable condition, had the keys in it, and it appeared undamaged. RP 66, 77-78.

Mr. Garner was charged with, and convicted of possessing a stolen motor vehicle. CP 1, 49; RP 114. His offender score was "11" (9+). CP 59. Because of his offender score, he faced a 43- to 57-month standard range sentence. CP 59. The parties recommended, and Mr. Garner received, a prison based drug offender sentencing alternative (DOSA) consisting of 25 months of total confinement followed by 25 months of community custody. CP 61.

Procedural Facts – CrR 3.5 Hearing.

A CrR 3.5 hearing was held. RP 13-59. Officer Rankin's interaction with Mr. Garner was video and audio recorded on his body camera. RP 23. The video was played for the court. RP 33. The court reporter transcribed the audio portions of the video while it was being played. RP 13-59.

Officer Rankin read the defendant his *Miranda* warnings. RP 36-37. When he could not understand the defendant's response,<sup>4</sup> he reread him his constitutional warnings and asked him a second time if he understood the rights and if he would agree to speak with the him. RP 37-38.

Question [by Officer Rankin]: You have the right have your attorney present during the questions, if you can't afford an attorney one will be a pointed for you without cost if you so desire. You understand these rights?

A [by defendant]: Yes.

Q: With these rights in mind, you want to talk to me?

A: (Inaudible) no.

Q: What's that?

A: (Inaudible).

RP 37-38.

Officer Rankin testified that on Mr. Garner's final response, he heard the defendant respond "yeah." RP 38.

After receiving that response, Officer Rankin proceeded to question Mr. Garner regarding the events leading up to him possessing the car.

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<sup>4</sup> The court reporter transcribed the defendant's response to the first questioning as "No, I do not." RP 37. However, even when that portion of the video/audio was played for the officer, he was still unable to understand the defendant's response. *Id.* The trial court noted that the defendant was difficult to understand in the audio portion of the body camera, and entered a finding to that effect. CP 79.

RP 40-48. Mr. Garner answered his questions, informing Officer Rankin that he had purchased the car for \$800. *Id.* At no time during this questioning did Mr. Garner claim he wanted to stop the questioning or contact an attorney. *Id.*

The trial court reviewed the evidence submitted, and found that “the disputed fact [was] whether Mr. Garner waived his right to remain silent and have an attorney present during the questioning that the officer conducted.” RP 60; *and see* CP 79 (“Whether the defendant said ‘Hell no’ when asked if he would waive his Miranda rights and answer questions”). The trial court noted it had listened to the body cam video and determined that Mr. Garner had responded that he would talk with the officer:

I was present when the body cam video was played. The officer testified that, from his perspective, he heard Mr. Garner say that he would speak to him about the incident with regards to the car. I was present when the body cam video was played. The officer testified that, from his perspective, he heard Mr. Garner say that he would speak to him about the incident with regards to the car.

In reviewing my notes, as I was taking notes during the testimony and listening to the information, and the answers and questions as they came up on the body cam, the defendant would answer questions. “Yeah, I will” is what I heard the defendant say, not “hell no.”

RP 60-61.

The trial court also held that after the defendant was placed under arrest, he *spontaneously* made the voluntary and unsolicited statement: “I figured the car was stolen.”<sup>5</sup>

The trial court entered written findings of fact and conclusions of law. CP 78-80. As relevant here, the court found that “[t]he defendant was difficult to understand [in the video],”<sup>6</sup> that “the court watched and listened to Officer Rankin’s body camera. The court heard the defendant say, ‘Yeah I will’ and not ‘Hell no’ when asked if he waive[d] his Miranda rights and answer questions.” CP 79. The trial court concluded that the defendant made a knowing, intelligent and voluntary waiver of his *Miranda* rights after being advised of those rights. CP 79. The trial court also concluded, as it had in its oral finding,<sup>7</sup> that the defendant’s statement that he knew the car

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<sup>5</sup> The Court held at RP 61:

I will make one other comment, and that is with regards to the statement made by the defendant after he was placed under arrest. He was eventually placed under arrest and advised he was being placed under arrest. There was no question asked of him when he made the statement, “I figured the car was stolen.” *That is a voluntary statement. That was not in response to a question asked by the officer*, although the officer did ask him questions after that.

(Emphasis added.)

<sup>6</sup> Finding of Fact no. 3 at CP 79. The defendant did not testify in either the CrR 3.5 hearing or at trial.

<sup>7</sup> RP 61.

was stolen was separately admissible because it “was spontaneous and not the result of custodial interrogation.” CP 79 (Conclusion of Law).

The audio portions of the body camera used at the CrR 3.5 hearing were transcribed, but the video itself was not entered as an exhibit.

#### IV. ARGUMENT

##### A. **THE DEFENDANT FAILS TO ESTABLISH MANIFEST CONSTITUTIONAL ERROR AS REQUIRED UNDER RAP 2.5. A PERSONAL RESTRAINT PETITION MAY BE A BETTER VEHICLE FOR MR. GARNER’S COMPLAINT.**

Defendant complains that his trial counsel was ineffective because he failed to introduce a hard copy of the police officer’s body camera, and that this failure prevents him from seeking appellate review of the trial court’s findings of fact and conclusions of law entered after the CrR 3.5 hearing. There was neither a motion to admit the video into the record, nor an objection made to the trial court not admitting the audio/video recording.<sup>8</sup>

Initially, RAP 2.5 prevents defendant from raising this ineffective assistance claim. This claim is based upon a physically unadmitted video/audio recording – the video is not here, yet the failure to admit the same does not establish *manifest* error where, as here, *the audio record was*

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<sup>8</sup> No motion has been made to this Court to supplement the record with this video.

*transcribed* and both the audio and video portions of the body cam were viewed and reviewed by the trial court.

In general, this Court will not consider an issue raised for the first time on appeal. RAP 2.5(a). However, under RAP 2.5(a)(3), this Court will consider an unpreserved claim if the claim involves a manifest error affecting a constitutional right. A claim of error is not manifest if the facts necessary to adjudicate the claim are not in the record. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995).

Here, the actual copy of the body cam audio/video was not included in the record, and, without that record, the defendant's position is based upon *speculation* as to the effect that video would have on this appellate court. Therefore, a personal restraint petition may be the better available vehicle to adjudicate his concerns where the evidence he seeks is currently outside of the record. *See State v. Torres*, 198 Wn. App. 864, 879-80, 397 P.3d 900, *review denied*, 189 Wn.2d 1022, 404 P.3d 486 (2017).

In *Torres*, the defendant alleged that her trial counsel was ineffective for not bringing a suppression motion to challenge a warrantless entry into her home. This Court noted that a claim of ineffective assistance is a two-pronged analysis, with the latter prong requiring the defendant to establish prejudice. *Id.* To establish prejudice, Ms. Torres was required to show that the motion to suppress likely would have been granted. *Id.* at 880. This

Court reasoned that her trial counsel's failure to bring a motion to suppress prevented the development of important facts necessary to determine whether the warrantless entry was constitutionally permissible. *Id.* Because the facts necessary to adjudicate her claim were not in the record, this Court concluded that the claim of error was not manifest and refused to consider it, and found that the filing of a personal restraint petition would better serve the adjudication of her constitutional rights. *Id.* at 879.

Here, this Court should find that the allegation of error is not manifest from the record and that a personal restraint petition would better serve the adjudication of Mr. Garner's ineffective assistance of counsel claim.

**B. THE DEFENDANT FAILS TO ESTABLISH AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.**

To demonstrate ineffective assistance of counsel, Mr. Garner must show both deficient performance and resulting prejudice. *McFarland*, 127 Wn.2d at 334-35. If a defendant fails to satisfy either prong, this Court need not inquire further. *State v. Hendrickson*, 129 Wn.2d 61, 78, 917 P.2d 563 (1996). Deficient performance occurs when counsel's performance falls below an objective standard of reasonableness. *State v. Stenson*, 132 Wn.2d 668, 705, 940 P.2d 1239 (1997). To show prejudice, Mr. Garner must demonstrate there is a probability that, but for counsel's

deficient performance, “the result of the proceeding would have been different.” *McFarland*, 127 Wn.2d at 335. There is a strong presumption of effective assistance, and Mr. Garner also bears the burden of demonstrating the absence of a strategic reason for the challenged conduct. *State v. McNeal*, 145 Wn.2d 352, 362, 37 P.3d 280 (2002).

Here, the defendant fails to establish the first prong of his ineffective assistance of counsel claim – that defendant’s counsel’s performance fell below an objective standard of reasonableness because he failed to admit the electronic recording of the body cam audio/video. Here, that audio/video *was viewed* by the trial court and the parties and *was also transcribed* by the court reporter. The defendant fails to establish that a reasonable, competent attorney must admit an audio/visual record that is listened to and viewed by the trial court, and was also transcribed by the court reporter. Live testimony is usually transcribed and counsel fails to establish that this “body cam testimony” is of a different quality than other such oral testimonial evidence, such that the court reporter’s transcription here does not suffice for a record as it does for live and similarly expressive witnesses. Even the “ever-so-slight” nod by defendant was noted by his attorney and the court, and was a point of his attorney’s argument. RP 56-57 (“and as the body cam video illustrates, Mr. Garner responded by shaking his head side to side, *ever so slightly, on the first response*”).

This Court does not receive live visual recordings of the testimony given by witnesses at trial – by analogy, defendant’s proposition here would suggest that such is required. It is not. The defendant fails to meet the first prong of his ineffective assistance of counsel claim.

Mr. Garner also fails to establish the prejudice prong of his ineffective assistance of counsel complaint. He fails to establish, other than by conjecture, that this Court would reach a different conclusion than that reached by the trial court if it listened to, and viewed a copy of the videotape, and listened to the witnesses testifying<sup>9</sup> live before it.

In order to establish actual prejudice, Garner must show that this Court would not only have granted a motion to suppress his confession, but that the trial court abused its discretion in making the findings it made after it considered the same evidence. Notably, it is not this Court’s function to reweigh factual evidence and witness credibility, and this Court is not in a position to find persuasive that which a fact-finder found unpersuasive. *State v. Boyer*, 200 Wn. App. 7, 13, 401 P.3d 396 (2017); *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009) (“where a trial court

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<sup>9</sup> Mr. Garner does not address any of the trial court’s findings, all of which are supported by the record below. The finding of fact that the defendant was hard to understand is unchallenged on appeal and is, therefore, a verity, as are the other findings. *See State v. Lorenz*, 152 Wn.2d 22, 93 P.3d 133 (2004); *State v. Gasteazoro-Paniagua*, 173 Wn. App. 751, 294 P.3d 857, review denied 178 Wn.2d 1019, 312 P.3d 651, post-conviction relief denied 196 Wn. App. 106 (2013).

finds that evidence is insufficient to persuade it that something occurred, an appellate court is simply not permitted to reweigh the evidence and come to a contrary finding. It invades the province of the trial court for an appellate court to find compelling that which the trial court found unpersuasive”).<sup>10</sup> Where it is clear that the trial court weighed conflicting evidence before it and there is substantial supporting evidence, a reviewing court will not disturb the trial court’s determination of voluntariness of statement. *State v. Burgess*, 71 Wn.2d 617, 430 P.2d 185 (1967). This Court must accept the trial court’s findings of fact if they are supported by substantial evidence. *State v. Rosas-Miranda*, 176 Wn. App. 773, 779, 309 P.3d 728 (2013). Of course, this Court reviews de novo whether the trial court’s conclusions of law are support by the lower court’s finding of fact. *Id.*

The trial court’s decision is supported by the record. The defendant fails to establish the second prong of his ineffective assistance of counsel

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<sup>10</sup> What would be the result, if, in the review of an audio recording, the trial court heard “Yanny” and the appellate court heard “Laurel”? If the trial court heard “Yanny” and the appellate court heard “Laurel,” the trial court’s position should be maintained.

“Yanny or Laurel” is an auditory illusion of a re-recording of a vocabulary word plus added background sounds, also mixed into the recording, which became popular in May 2018. In the brief audio recording, 53% of over 500,000 people answered on a Twitter poll that they heard a man saying the original word “Laurel”, while 47% reported hearing a voice saying the name “Yanny”.

From Wikipedia, the free encyclopedia, last viewed October 9, 2018.

claim, that if a copy of the body cam had been admitted, this Court would be forced to reverse the trial court's ruling on the admissibility of the statements. Having failed to establish either prong, the appellant's assignment of error regarding his ineffective assistance of counsel is without merit.

**C. THE TRIAL COURT PROPERLY FOUND THAT MR. GARNER DID NOT UNEQUIVOCALLY INVOKE HIS RIGHT TO REMAIN SILENT.**

While not directly or properly raised by the defendant, his real complaint is that the trial court erred by finding his custodial statements admissible at trial. In order to preserve a defendant's Fifth Amendment right against compelled self-incrimination, the police must inform a suspect of certain rights, including the right to remain silent, prior to custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444, 479, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Any waiver of these rights by the suspect must be knowing, voluntary, and intelligent. *State v. Radcliffe*, 164 Wn.2d 900, 905-06, 194 P.3d 250 (2008). Even after they are waived, a suspect can invoke these rights at any point during the interview and the interrogation must cease. *State v. Piatnitsky*, 180 Wn.2d 407, 412, 325 P.3d 167 (2014).

Whether the right to remain silent has been invoked is "a bright-line inquiry"; a statement is either an assertion of the right or it is not. *Id.* at 413. An invocation of *Miranda* must be objectively unambiguous, meaning it

“must be sufficiently clear ‘that a reasonable police officer in the circumstances would understand the statement to be [an invocation of *Miranda* rights].” *Id.* (quoting *Davis v. United States*, 512 U.S. 452, 459, 114 S.Ct. 2350, 129 L.Ed.2d 362 (1994)).

Here, the audio portions of the video were transcribed, as was the testimony of the live witnesses. The court found the defendant was hard to understand on the audio portion of the body camera, and believed the officer who testified that he could not understand the defendant’s initial responses after the police had roused him from his deep sleep<sup>11</sup> in the purloined vehicle containing his drug paraphernalia.<sup>12</sup> If Mr. Garner wished to exercise his *Miranda* rights, he failed to make that wish sufficiently clear to Officer Rankin, who could not understand his responses and twice inquired regarding his wishes. RP 37-38. “Although a suspect need not ‘speak with the discrimination of an Oxford don,’ he must articulate his desire ... sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be [an assertion of his rights].” *Davis*,

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<sup>11</sup> “He was in a deep sleep from my initial observations.” RP 16 (Officer Rankin).

<sup>12</sup> Officer Rankin testified at the CrR 3.5 hearing that he asked the defendant what type of drug he was shooting because there were needles in the car. “What do you shoot? There’s needles in the car.” RP 42-43. That information was not used at trial. RP 88. Nor was the fact that Mr. Garner was arrested on a warrant. *Id.*

512 U.S. at 459 (citation omitted) (quoting *Davis*, 512 U.S. at 476 (Souter, J., concurring in judgment)). In *Davis*, our highest court determined that a requirement that officers cease interrogation where a suspect makes a statement that might be an invocation of his or her rights would create an unacceptable hindrance to effective law enforcement. *Id.* at 461. Moreover, “[t]here is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously. A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that ‘avoid[s] difficulties of proof and ... provide[s] guidance to officers’ on how to proceed in the face of ambiguity.” *Berghuis v. Thompkins*, 560 U.S. 370, 381, 130 S.Ct. 2250, 176 L.Ed.2d 1098 (2010) (alterations in original) (quoting *Davis*, 512 U.S. at 458-59).

The “bright line” rule requiring officers to cease interrogation where a suspect invokes his or her rights “can be applied by officers in the real world of investigation and interrogation without unduly hampering the gathering of information.” *Davis*, 512 U.S. at 461. This “clarity and ease of application would be lost” were officers required to cease questioning in response to ambiguous statements of the accused regarding his or her rights. *Id.* at 461. Thus, following a valid waiver of rights, a defendant’s statements to police are properly suppressed for violation of the privilege against self-incrimination *only* where police continued a custodial interrogation

notwithstanding an accused's *unequivocal* assertion of his or her rights. *See Berghuis*, 560 U.S. at 381-82; *Davis*, 512 U.S. at 462.

Therefore, the suspect must unambiguously request counsel. As the Supreme Court has observed, a statement either is such an assertion of the right to counsel or it is not. *Smith v. Illinois*, 469 U.S. 91, 97-98, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984). Because Mr. Garner was hard to understand, there was never an objectively unequivocal and unambiguous assertion of his right to remain silent or to have an attorney present. *Cf. State v. Newell*, 212 Ariz. 389, 132 P.3d 833 (2006). In *Newell*, the defendant made a claim similar to the one claimed here – that he said “no” when asked if he wished to waive his rights. After reviewing the videotaped interrogation and hearing testimony from the detectives, the trial judge found that this statement was made while Newell and one of the detectives were talking over each other and it was reasonable to believe the statement could not be clearly heard by the detective. Given these circumstances, the judge found that the detective was free to follow up to determine what Newell had said, because the request was ambiguous. The trial court ruled, and the appellate court agreed, that the alleged requests for lawyer, which could not be heard clearly or understood on the videotape of custodial interrogation, did not constitute clear and unequivocal invocation of right to counsel that would require officers to cease questioning.

As in *Newell*, here the trial court held that the defendant's responses were not clearly understood by the officer, that "the defendant was difficult to understand." CP 79. This finding remains unchallenged and supports the trial court's finding that the defendant did not clearly and unambiguously assert his *Miranda* rights after proper advisement of his warnings.<sup>13</sup>

**D. ANY ERROR IN THE ADMISSION OF THE DEFENDANT'S RESPONSIVE STATEMENTS IS HARMLESS BECAUSE HIS UNSOLICITED STATEMENT THAT HE KNEW THE VEHICLE WAS STOLEN WAS ALL THAT WAS NECESSARY FOR THE JURY TO DETERMINE HE KNEW THE VEHICLE WAS STOLEN.**

"The general rule is that a statement is voluntary if it is made spontaneously, is not solicited, and not the product of custodial interrogation." *State v. Ortiz*, 104 Wn.2d 479, 484, 706 P.2d 1069 (1985) (citing *State v. Miner*, 22 Wn. App. 480, 591 P.2d 812 (1979)). Voluntary, spontaneous statements are not protected by *Miranda*.

In this case, most of the defendant's statements that were *Miranda*-protected involved his denial that he had received a good deal in purchasing the vehicle and his explanations regarding where he had obtained the vehicle. At trial, the defendant treated these statements as exculpatory evidence. However, the overarchingly damning statement he made was that

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<sup>13</sup> It is uncontested that Mr. Garner was properly informed of his *Miranda* rights.

he knew the vehicle was stolen, a statement that the trial court determined was spontaneous and unsolicited. CP 79 (Finding of Fact 4); RP 61 (he *spontaneously* made the voluntary and unsolicited statement: “I figured the car was stolen”). Mr. Garner does not even attempt to challenge the trial court’s finding of fact that this utterance was voluntary and spontaneous. That finding remains a verity on appeal. *State v. Broadaway*, 133 Wn.2d 118, 133, 942 P.2d 363 (1997).

Mr. Garner’s statement that he knew the car was stolen addresses the sole factual issue in dispute in this case. There was no issue regarding the fact that the car was stolen. The owner testified that it was stolen. The only issue at trial was whether the defendant knew it was stolen when he possessed it. The defendant clearly stated that this was the only issue in dispute during his closing argument:

Just because the state has proven, beyond a reasonable doubt, three of the four elements of the crime does not mean that Mr. Garner is guilty of possession of a stolen motor vehicle. Court and Ms. Brady went over the four elements of the crime that’s being alleged here. I don’t need to go through all of those. I think the one in dispute is whether or not Mr. Garner knew the car was stolen.

RP 104.

Therefore, any claim regarding the admission of the other statements is rendered harmless where the admission of this one statement provides the jury with all the evidence needed to decide the case.

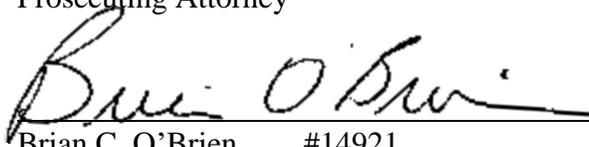
## V. CONCLUSION

The defendant fails to meet the criteria of RAP 2.5 in that he fails to establish manifest constitutional error. A personal restraint petition may be a better vehicle for Mr. Garner's complaint. He fails to establish an ineffective assistance of counsel claim in the case because the relevant portions of the video were transcribed by the court reporter.

The trial court properly found that Mr. Garner did not unequivocally invoke his right to remain silent and any error in the admission of the defendant's responsive statements is harmless because his spontaneous, unsolicited statement that he knew the vehicle was stolen was all that was necessary for the jury to determine he knew the vehicle was stolen. The judgment of the trial court should be affirmed.

Dated this 12 day of October, 2018.

LAWRENCE H. HASKELL  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

Brian C. O'Brien #14921  
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

DEREK GARNER,

Appellant.

NO. 35552-7-III

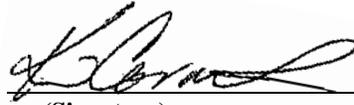
CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on October 12, 2018, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Valerie Marushige  
ddvburns@aol.com

10/12/2018  
(Date)

Spokane, WA  
(Place)

  
(Signature)

**SPOKANE COUNTY PROSECUTOR**

**October 12, 2018 - 12:52 PM**

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**Superior Court Case Number:** 17-1-01489-4

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