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SUPREME COURT  
STATE OF WASHINGTON  
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NO. 97268-1

SUPREME COURT  
STATE OF WASHINGTON

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**ALEJANDRO ESCALANTE,**

Defendant/Appellant.

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**SUPPLEMENTAL BRIEF OF APPELLANT**

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## ARGUMENT

Const. art. I, § 9 states: “No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.”

Mr. Escalante’s case involves the failure of border patrol agents to provide him with *Miranda*<sup>1</sup> warnings when they questioned him about ownership of a backpack which contained drugs. At the time of the questioning he had been inside a locked border patrol station for a period of five hours. His identification was withheld by one of the agents behind a plexiglass enclosed office.

Border patrol agents should be required to provide Miranda warnings just as any state law enforcement officer is.

A comparison of the provisions found in the United States constitution and our state constitution ... reveals that the two are identical in thought, substance, and purpose. In a series of cases commencing with *State v. Vance*, 29 Wash. 435, 70 P. 34 (1902), this court has adhered to the rule that where the language of the state constitution is similar to that of the Federal constitution, the language of the state constitutional provision should receive the same definition and interpretation

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<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436, 16 L. Ed 2d 694, 86 S. Ct 1602, 10 A.L.R. 3d 974 (1966).

as that which has been given to the like provision in the Federal constitution by the United States supreme court.

*State v. Schoel*, 54 Wn. (2d), 388, 391, 341 P.(2d) 481 (1959).

Controlled substances were found in multiple baggage items inside a van which had been pulled into the secondary inspection area at the border crossing. The four individuals in the van were placed inside the border patrol station which prevents them from leaving until authorized to do so.

Two of the individuals who requested to use the restroom were subjected to patdown searches. Controlled substances were found in their pockets.

When Mr. Escalante and the other individual were subjected to a patdown search no controlled substances were located.

Many of the bags/containers which contained drugs could not be identified as belonging to a specific individual.

One of the border patrol agents showed those items to the van's occupants and asked each of the individuals whose bag/container it was. The agent already knew that controlled substances had been found inside the baggage.

No *Miranda* warnings were provided to Mr. Escalante or the others. He admitted a black backpack was his.

The *Miranda* safeguards apply “as soon as a suspect's freedom of action is curtailed to a ‘degree associated with formal arrest.’” *Berkemer v. McCarty*, 468 U.S. 420, 440, 104 S. Ct. 3138, 82 L. Ed.2d 317 (1984) (quoting *California v. Beheler*, 463 U.S. 1121, 1125, 103 S. Ct. 3517, 77 L. Ed.2d 1275 (1983)). Whether a defendant was in custody for *Miranda* purposes depends on “whether the suspect reasonably supposed his freedom of action was curtailed.” *State v. Short*, 113 Wn.2d 35, 41, 775 P.2d 458 (1989) (citing *State v. Watkins*, 53 Wn. App. 264, 274, 766 P.2d 484 (1989)); see *Berkemer*, 468 U.S. at 442 (“[T]he only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation.”). **It thus is irrelevant whether the police had probable cause to arrest the defendant.** *Harris* [*State v. Harris*, Wn.2d 784, 725 P.2d 975 (1986)], at 789–90, (citing *Berkemer*, 468 U.S. at 442; **whether the defendant was a “focus” of the police investigation**, *Beckwith v. United States*, 425 U.S. 341, 347, 96 S. Ct. 1612, 48 L. Ed.2d 1 (1976); **whether the officer subjectively believed the suspect was or was not in custody**, *Berkemer*, 468 U.S. at 442; **or even whether the defendant was or was not psychologically intimidated**, *Sargent* [111 Wn.2d 641, 762 P.2d 1127 (1988)] at 649.

*State v. D.R.*, 84 Wn. App. 832, 836, 930 P.2d 350 (1997). (Emphasis supplied.)

Mr. Escalante contends that any reasonable man, in his position at the border patrol station, would realize that he was not free to leave. There may have been comfortable seats and magazines inside the station; but there

were also detention cells where two of the van's occupants had been placed.

It was also a locked room.

As set out in *State v. Mahoney*, 80 Wn. App. 495, 496-97, 909 P.2d

949 (1996):

Miranda safeguards apply when a "suspect's freedom of action is curtailed to a "' . . . 'degree associated with formal arrest.'"" *State v. Short*, 113 Wn.2d 35, 40, 775 P.2d 458 (1989) (quoting *State v. Harris*, 106 Wn.2d 784, 789, 725 P.2d 975 (1986), *cert. denied*, 480 U.S. 940 (1987)). That determination depends on whether the "suspect reasonably supposed his freedom of action was curtailed." *State v. Richmond*, 65 Wn. App. 541, 544, 828 P.2d 1180 (1992) (quoting *Short*, 113 Wn.2d at 41); *State v. Pejsa*, 75 Wn. App. 139, 146-47, 876 P.2d 963 (1994) (**inquiry is how a reasonable person in the suspect's position would understand the situation**), *review denied*, 125 Wn.2d 1015 (1995). A **Miranda interrogation** is not limited to express questioning. It **includes words or conduct by the police "that the police should know are reasonably likely to elicit an incriminating response from the suspect."** *Pejsa*, 75 Wn. App. at 147 (quoting *Rhode Island v. Innis*, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980), *cert. denied*, 456 U.S. 930, *amended*, 456 U.S. 942 (1982)).

(Emphasis supplied.)

Mr. Escalante submits that both the trial court and Court of Appeals failed to look at the facts based upon his position at the time and place in question. If they had done so they, themselves, would have realized that they were not free to leave until the border patrol agents told them that they were free to leave.

*Miranda* warnings are required pursuant to the Fifth Amendment to the United States Constitution and Const. art. I, § 9. As agents of the United States government, the border patrol is required to mirandize suspects when they are being interrogated in custody.

### **CONCLUSION**

Mr. Escalante respectfully requests that the Court of Appeals decision and his conviction be reversed and the case dismissed.

DATED this 10th day of October, 2019.

Respectfully submitted,

s/ Dennis W. Morgan

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**NO. 97268-1**

**SUPREME COURT**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	STEVENS COUNTY
Plaintiff,	)	NO. 17 1 00242 3
Respondent,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
ALEJANDRO ESCALANTE,	)	COURT OF APPEALS
	)	NO. 35812-7-III
Defendant,	)	
Appellant.	)	
_____	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 10<sup>th</sup> day of October, 2019, I caused a true and correct copy of the *Supplemental Brief of Appellant* and to be served on:

WASHINGTON STATE SUPREME COURT  
Temple of Justice  
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