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Division III
State of Washington
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No. 97268-1

NO. 35812-7-III

COURT OF APPEALS

STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

ALEJANDRO ESCALANTE,

Defendant/Appellant.

REPLY BRIEF

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ARGUMENT

Initially, the State argues search cases as opposed to when *Miranda*¹ warnings are required. Mr. Escalante is not challenging the search. He is challenging the fact that he was not advised of his *Miranda* warnings prior to custodial interrogation.

There can be no dispute that Mr. Escalante was interrogated by a border patrol officer. He was specifically asked if the backpack was his. The officer already knew that the backpack contained controlled substances.

The State attempts to compare the fact situation in Mr. Escalante's case to the one in *State v. Walton*, 67 Wn. App. 127, 834 P.2d 624 (1992). The *Walton* case is *inaposite*. In *Walton*, a juvenile suspect was contacted on the balcony of an apartment complex. The officer noted the odor of intoxicants on the juvenile's breath. When asked the juvenile stated he had consumed one half of a beer.

This is not a *Terry*² stop. It is a seizure of the van in which Mr. Escalante was a passenger. The driver of the van and one other passenger had

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

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

been placed in cells inside the border patrol station. The fact that Mr. Escalante was not placed in a cell was based upon his not having a controlled substance on his person when a patdown search was conducted.

Mr. Escalante agrees that an objective test applies to whether or not *Miranda* warnings are required. Under the facts and circumstances of this case, viewed objectively, there can be no question that he was not free to leave the border patrol station. He was locked in. He was in a secured lobby. One of the border patrol officers had his identification papers. Additionally, since the driver of the van was in a cell, Mr. Escalante was aware that he was not going to go anywhere without the driver.

The federal cases cited by the State were previously discussed. What is critical with regard to those cases is that they are indicative of when *Miranda* warnings must be given.

In *United States v. Leasure*, 122 F.3d 837, 840, (9th Cir. 1997) the Court set forth those critical areas as follows:

... *Miranda* warnings need not be given in a border crossing situation unless, and until, the questioning agents have probable cause to believe that the person has committed an offense. ... In most cases, the **earliest that a person could be in custody is at the point when she is moved into a secondary inspection area and asked to exit her vehicle while it is searched.**

(Emphasis supplied.)

The van in Mr. Escalante's case had been moved to a secondary inspection area. The occupants of the van had been directed into the secured lobby of the border patrol station.

A black backpack was discovered in the van. It contained controlled substances. There was no identification as to who owned the backpack.

A border patrol officer questioned Mr. Escalante concerning ownership of the backpack. He admitted it was his. *Miranda* warnings were required before that question was asked.

The case of *United State v. RRA-A*, 229 F.3d 737 (9th Cir. 1999) is distinguishable. The Court ruled that a person actually had to be under arrest before *Miranda* warnings were required. It also appears that the individual believed that she was free to leave.

There is nothing in the record that Mr. Escalante believed that he was free to leave.

In *United States v. John Doe*, 219 F.3d 1009, (9th Cir. 2000) the juvenile was told to sit on a bench. He was inside a secure border patrol station. The Court properly concluded that the juvenile was not in custody when he was told to sit on the bench.

In *United States v. Butler*, 249 F.3d 1094 (9th Cir. 2001) the defendant was questioned prior to being placed in a security cell. The questioning

occurred outside the border patrol station. The facts differ substantially from Mr. Escalante's case.

Moreover, the border patrol officers had no reasonable suspicion that he possessed any controlled substance. Instead, they made that determination by asking who owned the black backpack.

Finally, insofar as the silver platter doctrine is concerned, the State relies upon it in connection with the search. It ignores the fact that "agents of the foreign jurisdiction [must comply] with the laws governing their conduct." *See generally State v. Brown*, 132 Wn.2d 529, 586-87, 940 P.2d 546 (1997), *cert denied*, 523 U.S. 1007 (1998). This means that the officers must comply with *Miranda*.

Mr. Escalante otherwise relies upon the argument contained in his original brief.

Respectfully submitted this 13th day of October, 2018.

Respectfully submitted,

s/ Dennis W. Morgan

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NO. 35812-7-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	STEVENS COUNTY
Plaintiff,)	NO. 17 1 00242 3
Respondent,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
ALEJANDRO ESCALANTE,)	
)	
Defendant,)	
Appellant.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this 13th day of October, 2018, I caused a true and correct copy of the *REPLY BRIEF* and to be served on:

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