

NO. 66017-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JOSE ANAYA,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BETH ANDRUS

W

BRIEF OF RESPONDENT

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A. CROSS-ASSIGNMENT OF ERROR

1. The trial court erred in holding that Anaya was in custody, for purposes of Miranda,¹ when police ordered him to stop and briefly detained him to learn his identity. (Finding of Fact No. 13).²

B. ISSUES

1. A defendant subject to custodial interrogation by a state agent must be advised of his Miranda rights. For purposes of Miranda, custody occurs when a reasonable person in the defendant's position would believe that he was in police custody to a degree associated with formal arrest. The State introduced evidence that police ordered Anaya to stop and physically escorted him to a police car. The police told Anaya that he was not under arrest, and that they would release him following his identification. The police did not handcuff Anaya. Given these circumstances,

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

² The State may assign error without filing a notice of cross-appeal because the State is not seeking affirmative relief. See State v. Kindsvogel, 149 Wn.2d 477, 481, 69 P.3d 870 (2003) (holding the prevailing party need not cross-appeal a trial court ruling if the party seeks no further affirmative relief). As the prevailing party, the State "may argue any ground to support a court's order which is supported by the record." McGowan v. State, 148 Wn.2d 278, 288, 60 P.3d 67 (2002).

would a reasonable person in Anaya's position believe that he was in custody to a degree associated with formal arrest?

2. Under Miranda, interrogation is express questioning, words, or actions by the police that the police should know are reasonably likely to elicit an incriminating response from the defendant. An officer asked Anaya his name minutes after a suspected drug transaction. The officer had never met Anaya and did not know anything about him prior to the incident. Based on this record, should the officer have known that asking Anaya his name was reasonably likely to elicit an incriminating response?

C. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Jose Anaya with Violation of the Uniform Controlled Substances Act: Delivery of Cocaine, and False Statement. CP 5-6. The jury convicted Anaya as charged. CP 14-15; 2RP 124.³ The trial court imposed a standard range sentence of 60 months for the delivery and 365 days, concurrent, for the false statement. CP 23-33; 2RP 135.

³ The Verbatim Report of Proceedings consists of two volumes, referred to herein as 1RP (8/19/10 and 8/23/10) and 2RP (8/24/10, 8/25/10, and 9/9/10).

2. SUBSTANTIVE FACTS

In late March 2010, Seattle Police initiated an undercover operation in the Pioneer Square neighborhood called “Roll the Rock.” 1RP 73-74. As part of the operation, police conducted “buy and slide” transactions involving undercover officers who purchase narcotics from sellers, and uniformed officers who identify and release the sellers with plans to arrest them later.⁴ 1RP 71-73. Police rely on such transactions to gather information about the major drug dealers in a neighborhood without revealing the undercover officer’s identity. 1RP 71-73. Once the operation is complete, the police return to the neighborhood to arrest the sellers who previously sold undercover officers narcotics. 1RP 72.

On March 29, 2010 around 4 p.m., Seattle Police Officer Erin Rodriguez posed as the undercover officer in a buy and slide transaction. 1RP 103. Rodriguez approached a black woman, later identified as Denise Little, and asked if she knew where Rodriguez could purchase a “twenty,” a common slang term for \$20 worth of cocaine. 1RP 102-03, 113; 2RP 62. Little told Rodriguez

⁴ “Buy and slide” transactions are also referred to as “buy-walk” transactions. 1RP 72. Such transactions are unlike “buy-bust” operations where the seller is arrested immediately following the transaction. 1RP 68-69, 72.

to follow her, and Rodriguez complied, walking a little over a block to a bus stop in front of Masins Furniture. 1RP 103-04.

As soon as they arrived, Little walked “right up” to Anaya, who was leaning up against the store window, and talked with him for a few seconds before returning to Rodriguez. 1RP 105, 122. Rodriguez gave Little \$20 in prerecorded buy money. 1RP 105-07. Little walked back to Anaya, engaging in a hand-to-hand transaction. 1RP 105-08. Although Rodriguez could not see what Little and Anaya exchanged, Little walked back to Rodriguez and immediately handed her \$20 worth of suspected narcotics that later tested positive for cocaine. 1RP 108, 136-37. Rodriguez signaled to nearby officers that she had completed the transaction and left the area. 1RP 108.

Seattle Police Detective Daniel Romero watched the transaction unfold as the “close surveillance officer” tasked with keeping Rodriguez safe. 1RP 74-79, 103-04. Romero could not hear the exact words exchanged between Rodriguez and Little, but he did hear a conversation take place. 1RP 75. Romero followed Rodriguez when she and Little walked over to Anaya and remained close by during the hand-to-hand transactions. 1RP 75-78. Rodriguez could not see what Anaya and Little exchanged.

1RP 78. In all, Rodriguez spent “about a minute” outside Masins Furniture before giving a “good-buy sign.” 1RP 79.

Seattle Police Officer Matthew Pasquan also observed the transactions, working as an undercover “trailing officer,” from 40 feet away. 2RP 8-13. Pasquan watched Little approach Anaya and engage in a hand-to-hand exchange with him before returning to Rodriguez for another hand-to-hand exchange. 2RP 12-13. Pasquan kept constant surveillance of Anaya after the exchange and saw other officers detain him a couple blocks away. 2RP 17.

Uniformed Seattle Police Officer Forrest Lednicky and Sergeant Tom Yoon approached Anaya in a “very low key” manner, introducing themselves and asking Anaya for identification. 1RP 38, 42; 2RP 35-36. Lednicky placed his hand above Anaya’s elbow and physically escorted him 10 feet to a nearby patrol car. 1RP 40. Lednicky told Anaya that he was a “possible suspect” whom they needed to identify, and that he would be released upon identification. 1RP 41. Lednicky did not handcuff Anaya and specifically told him that he was not under arrest. 1RP 43-44.

Anaya denied having any identification on him. 1RP 42; 2RP 37. Consequently, Lednicky asked Anaya his name and date of birth. 1RP 42; 2RP 37-38. Anaya lied and said that his name

was Luis Martinez Montos, and gave a date of birth of March 16, 1964. 1RP 43; 2RP 37-38, 56. Lednicky could not find a record of such a person and subsequently transported Anaya to the station for identification by fingerprinting. 1RP 44; 2RP 40. Prior to placing Anaya in his patrol car, Lednicky searched Anaya and did not find anything of evidentiary value, such as the \$20 in prerecorded buy money, cash, drugs, or drug paraphernalia. 2RP 40, 49-53. At the station, police fingerprinted and identified Anaya before releasing him. 1RP 44; 2RP 41.

At trial, Anaya admitted to lying to the police about his name because he believed that he had a warrant for his arrest. 2RP 56, 60. Anaya denied selling drugs, seeing Rodriguez, or even standing in front of Masins Furniture on the day of the incident. 2RP 62, 64-65.

Prior to trial, Anaya moved to suppress his false statement to police, arguing that the police should have advised him of his Miranda rights before inquiring into his name. 1RP 6-9; CP 11-12. The State opposed the motion, contending that Anaya was neither in custody nor under interrogation when the police asked him his

name. 1RP 6-9; CP 3-4. Based solely on Lednicky's testimony,⁵ the court held that Anaya was in custody for purposes of Miranda when the police ordered him to stop, physically escorted him to the patrol car, and briefly detained him to learn his identity. 1RP 55; CP 19. The court admitted Anaya's statement, however, holding that the inquiry regarding Anaya's name was not reasonably likely to elicit an incriminating response. 1RP 56; CP 20.

D. ARGUMENT

1. THE TRIAL COURT ERRED IN HOLDING THAT ANAYA WAS IN CUSTODY.

Although the State argued that Lednicky's brief detention and questioning of Anaya amounted to no more than a Terry⁶ stop, the trial court disagreed and held that Anaya was subject to interrogation under Miranda because "he was not free to leave." 1RP 6-8, 55; CP 19. The trial court erred by applying the Fourth Amendment seizure standard to a Fifth Amendment custody question. Applying the correct standard under Miranda, a reasonable person in Anaya's position, un-handcuffed and told that

⁵ Anaya did not testify at the CrR 3.5 hearing.

⁶ Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

he would be released upon proof of identification, would not have believed that he was in custody to a degree associated with formal arrest.

Miranda warnings protect a defendant's Fifth Amendment right not to make incriminating confessions or admissions while in the coercive environment of police custody. State v. Harris, 106 Wn.2d 784, 789, 725 P.2d 975 (1986). A defendant must be advised of his Miranda rights when he is in custody and subject to interrogation by a state agent. State v. Lorenz, 152 Wn.2d 22, 36, 93 P.3d 133 (2004).

Courts use an objective test to determine whether a defendant is in "custody" for purposes of Miranda. Lorenz, at 36-37. The relevant inquiry is whether a reasonable person in the defendant's position would believe that he was in police custody to a degree associated with formal arrest. Id. (citing Berkemer v. McCarty, 468 U.S. 420, 440, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984)). It is irrelevant whether the police have probable cause to arrest the defendant, whether the defendant is the focus of the investigation, or whether the defendant is in a coercive environment at the time of the interview. Lorenz, at 37.

A trial court's custodial determination is reviewed *de novo* on appeal. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). The court's unchallenged findings of fact are considered verities on appeal, while the court's challenged findings are considered verities if they are supported by substantial evidence in the record. Id. Substantial evidence exists when there is a sufficient quantity of evidence in the record to convince "a fair-minded, rational person" of the finding's truth. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

A brief seizure of a suspect, "either in the context of a routine, on-the-street Terry stop or a comparable traffic stop, does not rise to the level of 'custody' for purposes of Miranda." State v. Heritage, 152 Wn.2d 210, 218, 95 P.3d 345 (2004). Unlike a formal arrest, a Terry stop is not inherently coercive because it is typically brief, occurs in public, and is "substantially less 'police dominated.'" Id. at 218. "[A] detaining officer may ask a moderate number of questions during a Terry stop to determine the identity of the suspect and to confirm or dispel the officer's suspicions without rendering the suspect 'in custody' for the purposes of Miranda." Id. The fact that a suspect is not free to leave during a Terry stop does not transform the detention into a formal arrest for purposes of

Miranda. State v. Walton, 67 Wn. App. 127, 130, 834 P.2d 624 (1992).

In this case, the trial court erred by confusing “custody” under Miranda and the Fifth Amendment, with “seizure” under Terry and the Fourth Amendment. After the CrR 3.5 hearing, the court ruled:

The test is whether a reasonable person in the defendant’s position would have believed that he was in police custody with the [loss]⁷ of freedom associated with a formal arrest. Based on the evidence presented this morning, it is my conclusion that in fact a reasonable person in Mr. Anaya’s position would have believed that he was in police custody with the loss of freedom associated with formal arrest. Officer Lednicky testified that he was not free to leave, they had made an oral statement to him to stop, and was described as a verbal order. He was physically escorted with a hand on his arm over to the police vehicle where he was questioned.

1RP 55. Thus, the trial court specifically found that Anaya was in custody because “he was not free to leave,” based on the police ordering him to stop and physically escorting him to a patrol car for questioning. 1RP 55. The court’s written findings mirror its oral ruling, concluding that Anaya was in custody because “his

⁷ Although the transcript indicates that the court said “laws of freedom,” it is more likely that the court said “loss of freedom” based on the actual legal standard and the court’s reference in the next sentence to “loss of freedom.” 1RP 55.

movement was restricted” by police ordering him to stop and remain by the police car. CP 19.

The fact that Anaya was not free to leave, however, is not dispositive of whether he was in “custody” for purposes of Miranda. See Berkemer, 468 U.S. at 441-42 (holding that the defendant was not “in custody” when a trooper ordered him to stop and briefly detained him for questioning and a balancing test); Heritage, 152 Wn.2d at 219 (holding that a park security guard’s questioning of an underage defendant about a marijuana pipe was “analogous to a Terry stop, not custodial interrogation” because the guard did not search or physically detain the defendant, and told the defendant that he could not arrest her); Walton, 67 Wn. App. at 130 (holding that an officer’s question to an underage defendant about alcohol usage “was posed in the course of a typical Terry stop,” despite the fact that the defendant was not free to leave).

The key inquiry for purposes of Miranda is whether a reasonable person in Anaya’s position would have believed that his freedom was curtailed to a degree associated with formal arrest. Lorenz, 152 Wn.2d at 37. Police in this case did not handcuff Anaya, or tell him that he was under arrest. 1RP 43-44; CP 19. Instead, police told Anaya that he would be released as soon as he

identified himself.⁸ 1RP 41; CP 19. Although Officer Lednicky ordered Anaya to stop and physically guided him to the patrol car, Lednicky's touching was brief, amounted to little force, and lasted only the brief amount of time that it took to walk 10 feet. 1RP 40; CP 18. Neither Lednicky nor Sgt. Yoon laid a hand on Anaya again until they had to search and handcuff him prior to transporting him to the station for fingerprinting. 1RP 40-41; CP 18, 20. Anaya's encounter with Lednicky and Yoon lasted "less than ten minutes." 1RP 49.

The trial court fundamentally erred by applying a Fourth Amendment test to a Fifth Amendment question. The court improperly held that Anaya was in custody because he was not free to leave. 1RP 55; CP 19. Applying the correct standard under Miranda, this Court should hold that a reasonable person in Anaya's position - free of handcuffs and knowing that he would be

⁸ Although Anaya assigns error to the trial court's finding that, "Officer Lednicky told the Defendant that he . . . would be released once the police were able to confirm his identity," this finding is supported by substantial evidence. Appellant's Br. at 10. Lednicky testified at the CrR 3.5 hearing to telling Anaya that, "We were contacting him as a possible suspect that we were looking for, we just needed to identify him, we let him know right away that he would be released as soon as we could identify him." 1RP 41. Thus, sufficient evidence exists from which "a fair minded, rational person" could find that Lednicky told Anaya that he would be released after police confirmed his identity. Hill, 123 Wn.2d at 644. Anaya's argument to the contrary amounts to hair splitting, and should be rejected.

released upon providing his name - would not have believed that he was in custody to a degree associated with formal arrest.⁹

2. THE TRIAL COURT PROPERLY RULED THAT THE POLICE DID NOT INTERROGATE ANAYA.

Anaya argues that the trial court erred by admitting his false statements to police about his name and date of birth. He contends that whether he was subject to interrogation is reviewed *de novo* on appeal. He claims that the police should have known that asking him his name was reasonably likely to elicit an incriminating response. Further, Anaya contends that the booking exception did not justify the attempts to identify him because the exception applies only to questions asked during “a true booking.” Appellant’s Br. at 19.

Anaya’s claims fail. Assuming that the *de novo* standard applies, the trial court did not err in admitting Anaya’s false statement to police. Considering the events from Anaya’s perspective and the intent of police, this Court should hold that the

⁹ If this Court concludes that the trial court erred in its custody determination, then this Court need not reach the second issue of whether the police interrogated Anaya by asking him his name. See Lorenz, 152 Wn.2d at 36 (holding that Miranda warnings are required when a suspect is in custody and interrogated by a state agent).

police should not have known that asking Anaya his name was reasonably likely to elicit an incriminating response. Moreover, although Washington courts have not specifically addressed whether the booking exception applies outside the traditional booking process, federal courts have held, and a leading commentator has suggested, that police can inquire into a suspect's name outside the booking context without violating Miranda.

Interrogation under Miranda includes express questioning, words, or actions by the police that the "police should know are reasonably likely to elicit an incriminating response." Rhode Island v. Innis, 446 U.S. 291, 301, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980); see also State v. Sargent, 111 Wn.2d 641, 650, 762 P.2d 1127 (1988) (adopting the Innis standard). The test is an objective one that focuses primarily on the suspect's perceptions, rather than the officer's intent. Innis, 446 U.S. at 301.

An officer's intent, however, is relevant to whether the police should have known that their words or actions were reasonably likely to evoke an incriminating response. Id. at 301 n.7. Further, any knowledge that the police might have about a suspect's unusual susceptibility to a particular form of persuasion "might be

an important factor in determining whether the police should have known that their words or actions were reasonably likely to elicit an incriminating response.” Id. at 302 n.8.

Courts have long recognized that not every question posed in a custodial setting is equivalent to interrogation. State v. Bradley, 105 Wn.2d 898, 903, 719 P.2d 546 (1986); State v. Booth, 669 F.2d 1231, 1237 (9th Cir. 1982). For example, general background questions do not constitute interrogation. Bradley, 105 Wn.2d at 904. It is “well established” that routine questions asked during the booking process do not require Miranda warnings, in part because the questions asked rarely elicit incriminating responses. Sargent, 111 Wn.2d at 651; State v. Wheeler, 108 Wn.2d 230, 238, 737 P.2d 1005 (1987).

The decisive factor is the nature of the question asked, rather than the nature of the proceeding during which the question is asked. Sargent, 111 Wn.2d at 651; State v. Walton, 64 Wn. App. 410, 414, 824 P.2d 533 (1992). For example, a detective’s question to a defendant during booking, about whether the defendant knew the co-defendant, was “interrogation” for purposes of Miranda. Wheeler, 108 Wn.2d at 239. Although “routine” biographical and descriptive questions are “generally permitted”

under Miranda, the court concluded that the detective's question "was not a routine question in the booking process." Id.

Similarly, an officer's question during the booking process about recent drug use, to a defendant arrested for drug possession, amounted to interrogation under Miranda. State v. Denney, 152 Wn. App. 665, 673, 218 P.3d 633 (2009). Although the officer's question was legitimate and well-intentioned, the question violated the defendant's Miranda rights because it invited the defendant to "comment directly on the charges against her." Id. at 673-74.

Washington courts have not specifically addressed whether questions asked for purposes of identification, such as a suspect's name, age, or date of birth, are permitted outside the traditional booking context. The cases recognizing the booking exception have generally arisen during booking, or its equivalent. See Walton, 64 Wn. App. at 412, 414 (question asked during booking); Denney, 152 Wn. App. at 667, 671-73 (question asked during the booking process and as part of the bail survey); Wheeler, 108 Wn.2d at 233, 238-39 (question asked during an arraignment survey).

The Ninth Circuit, however, has held that police can inquire into a temporarily detained suspect's name, age, and residence

without triggering Miranda's protections. Booth, 669 F.2d at 1238. The court held that the inquiries did not amount to interrogation because they were routine, non-investigatory, and "totally unrelated" to the burglary for which the defendant was in custody.¹⁰ Id. Further, there was nothing in the record to suggest that the defendant was "particularly susceptible" to such a line of questioning. Id. The court did not consider whether the booking exception applied; rather, the court focused entirely on the nature of the questions asked, and the fact that "[n]othing" about the questions was "likely to elicit an incriminating response." Id. at 1238-39.

A leading commentator has suggested that officers can ask questions for the limited purpose of identification, outside the traditional booking context, without violating a defendant's right against self-incrimination. 2 W. LaFare and J. Israel, Criminal Procedure § 6.7(b) (2010) (relying on the United States Supreme Court's decision in California v. Byers, 402 U.S. 424, 433-34, 91 S. Ct. 1535, 29 L. Ed. 2d 9 (1971) (plurality opinion) (comparing

¹⁰ The court concluded that the defendant was in custody, for purposes of Miranda, based on the police searching and handcuffing the defendant, while telling him that he matched the description of a suspected bank robber. Booth, 669 F.2d at 1236.

a motorist compelled to leave his name at the scene of an accident to a person compelled to provide her name on a tax return, and recognizing that although obtaining a suspect's name could lead to arrest and charges, "those developments depend on different factors and independent evidence"))).

Further, the United States Supreme Court has recognized that "questions concerning a suspect's identity are a routine and accepted part of many Terry stops," and that "[a]nswering a request to disclose a name is likely to be so insignificant in the scheme of things as to be incriminating only in unusual circumstances." Hiibel v. Sixth Jud. Dist. Ct., 542 U.S. 177, 186, 191, 124 S. Ct. 2451, 159 L. Ed. 2d 292 (2004); compare United States v. Edwards, 885 F.2d 377, 385 (7th Cir. 1989) (officer's questions about the defendant's name and place of residence following a suspected drug transaction did *not* amount to interrogation because police had no reason to believe the questions would elicit an incriminating response and such inquiries are permitted during booking), with United States v. Disla, 805 F.2d 1340, 1347 (9th Cir. 1989) (officer's question about defendant's place of residence amounted to interrogation because the officer knew that a large amount of cocaine and cash had been found in the defendant's apartment).

Although it is well established that a trial court's custodial determination is reviewed *de novo*, it is less clear if the same standard applies to a court's interrogation determination. Compare Thompson v. Keohane, 516 U.S. 99, 112-13, 116 S. Ct. 457, 133 L. Ed. 2d 383 (1995) (applying the *de novo* standard of review to a court's custodial determination because it is a "mixed question of law and fact"), and United States v. Moreno-Flores, 33 F.3d 1164, 1168 (9th Cir. 1994) (applying the *de novo* standard to a court's interrogation determination because it is a "mixed question of law and fact"), with Denney, 152 Wn. App. at 671 (applying the "clearly erroneous" standard to an interrogation determination).

Assuming that the *de novo* standard applies,¹¹ the trial court properly held that police did not "interrogate" Anaya, for purposes of Miranda, by asking him his name. 1RP 56; CP 20. Although Anaya argues at length about whether the officer's question falls under the booking exception, it is not clear that the trial court actually ruled on this issue. Appellant's Br. at 18-20. In its written

¹¹ Given the Thompson court's rationale, the appropriate standard appears to be *de novo*. 516 U.S. at 112-14 (holding that an objective test requiring the court to determine what a reasonable person would believe, "calls for application of the controlling legal standard to the historical facts," which ultimately presents a "mixed question of law and fact").

findings of fact and conclusions of law, the trial court held that the officer's question was "not reasonably likely to elicit an incriminating response," and was the type of question "normally 'attendant to arrest,'" relying on State v. McIntyre, 39 Wn. App. 1, 6, 691 P.2d 587 (1984).¹² 1RP 56; CP 20. The court's written order does not reference the booking exception.

The court's oral ruling, however, referenced the exception in Walton, a case applying the exception:

Under State v. Walton, 64 Wash. App. 410, interrogation for purposes of Miranda include expressed questioning on the part of the police which they should know [are]¹³ reasonably likely to elicit an incriminating response from the suspect. So the question is the nature of the question not the procedure during which the question was asked. So it's the nature of the question that's decided. And it is established in Walton that routine booking procedure and requests for routine information necessary for identification purposes is not interrogation. Only if the agent should have reasonably known the information sought was

¹² The court's reliance on McIntyre is mistaken given that the issue in that case was whether the defendant's spontaneous statements, that "he was sorry and had not meant to hurt anyone," were the product of interrogation. 39 Wn. App. at 4, 6. The defendant's statements were made post-arrest, prior to booking, and without questioning. Id. at 6. Although the McIntyre court noted in dicta that the "actions by the police were those normally attendant to arrest, and were not equivalent to interrogation," the actions were unlike those in this case where the police told Anaya that he was not under arrest and specifically asked him his name. 1RP 42-44; CP 19.

¹³ Although the transcript states, "or reasonably likely," the trial court likely said "are reasonably likely," given that the phrase required a verb rather than a conjunction. 1RP 56 (emphasis added).

directly relevant to the offense will the request be subject to scrutiny. So, in my opinion the question asked; i.e., the identity of the defendant, his name, is not the type of question that constitutes an interrogation requiring a Miranda warning.

1RP 56. Given the court's comments, it is unclear if the booking exception, the legal test for interrogation, or both, formed the basis for the court's ruling that Anaya was not subject to interrogation.

Nonetheless, the court properly ruled that Officer Lednicky did not interrogate Anaya by asking him his name. Viewing the inquiry from Anaya's perspective and the intent of police, the Court should conclude that Lednicky should not have known that asking Anaya his name was reasonably likely to elicit an incriminating response.

Lednicky asked Anaya his name and date of birth after he could not provide any identification. 1RP 42; CP 19. Lednicky told Anaya that he was not under arrest, and that he would be released "as soon as" they identified him. 1RP 41; CP 19. Anaya was not handcuffed and was allowed to stand on his own after the police escorted him 10 feet to the patrol car. 1RP 40-44; CP 18-19.

Although Lednicky told Anaya that they were contacting him as a "possible suspect," Lednicky did not ask Anaya any questions

about the alleged drug transaction.¹⁴ 1RP 41-43; CP 19. Given that Officer Rodriguez was working undercover at the time, Anaya had no reason to suspect that Lednicky knew Rodriguez, or that the events were connected, except for the closeness in timing and geographical proximity. Considering the questioning from Anaya's perspective, the police intended only to identify and release him based on the singular focus of their questions – identification – and the fact that the police allowed Anaya to stand freely without handcuffs.

Similarly, examining the officers' intent, it is clear that the police intended only to identify and release Anaya, and that their inquiries were not part of an overall scheme to elicit an incriminating response. The record is undisputed that Lednicky asked Anaya his name solely for the purpose of identifying and releasing him. CP 19; 1RP 37 (“my job was to find that person, identify them, and release them from the scene”).

¹⁴ Anaya's testimony to the contrary at trial is irrelevant, given the trial court's finding of fact - which Anaya has not challenged - that police asked “[n]o other questions . . . concerning the suspected drug transaction,” except for Anaya's name and date of birth. CP 19; see Broadaway, 133 Wn.2d at 131 (unchallenged findings of fact are verities on appeal).

There is no evidence in the record to suggest that Lednicky asked Anaya his name as part of a “police practice . . . designed to elicit an incriminating response” from Anaya. See Innis, 446 U.S. at 301 n.7 (suggesting that a police practice designed to elicit an incriminating response is one that police should know is reasonably likely to evoke an incriminating response). Indeed, asking a suspect his name is generally not a “practice that the police should know is reasonably likely to evoke an incriminating response.” See Wheeler, 108 Wn.2d at 238 (suggesting the booking exception exists because the type of questions asked, such as a person's name, “rarely elicit an incriminating response”).

Here, Lednicky had no reason to believe that Anaya would lie about his name. There is no evidence to suggest that Lednicky had met Anaya previously, that he knew anything about Anaya, or had a reason to believe that Anaya might have a warrant for his arrest. Anaya was essentially a stranger to Lednicky until other officers told Lednicky to identify him. 1RP 38. Lednicky had no reason to believe that Anaya was any more likely to lie about his

name than any other suspect stopped for identification as part of a criminal investigation.¹⁵

Moreover, Lednicky had no reason to believe that Anaya had an “unusual susceptibility” to lie when asked about his name. See Innis, 446 U.S. at 302 n.8 (recognizing that an officer’s knowledge about a defendant’s “unusual susceptibility” to a particular form of persuasion might be an important factor in determining whether an officer should have known that his words or actions were reasonably likely to elicit an incriminating response). Considering Anaya’s perspective and the intent of the police, the Court should find that police did not interrogate Anaya, for purposes of Miranda, by asking him his name.

Additionally, this Court should hold that police can ask a suspect his name, outside the booking process, without violating the Fifth Amendment right against self-incrimination. Federal courts, including the United States Supreme Court, and a leading

¹⁵ Lednicky’s testimony, at trial, that “people are not always truthful” about their names and that people lie for “several reasons” is irrelevant to this Court’s analysis, given that the issue is whether the trial court erred based on the CrR 3.5 testimony before it. 2RP 36, 48. Moreover, Anaya’s argument misunderstands the test for interrogation under Miranda, suggesting that the questioning amounted to interrogation because it “was *reasonably foreseeable*” that Anaya would lie, when the test requires that it be “reasonably likely.” Appellant’s Br. at 22; Innis, 446 U.S. at 301.

commentator, have all suggested that asking a suspect his name usually does not amount to interrogation under Miranda. Hiibel, 542 U.S. at 186, 191; Booth, 669 F.2d at 1238-39; LaFave, § 6.7(b).

Holding that the police can generally ask a suspect's name without triggering Miranda's protections is in line with Washington courts' consistent focus on the nature of the question asked, rather than the proceeding during which the question is asked. E.g., Sargent, 111 Wn.2d at 651 (prioritizing the nature of the question asked over the nature of the proceeding); Denney, 152 Wn. App. at 670-73 (same); Walton, 64 Wn. App. at 414 (same). Asking a suspect his name, as demonstrated by the facts of this case, is a routine, non-investigatory inquiry that rarely relates to the underlying crime. This Court should hold that the trial court properly ruled that police did not interrogate Anaya, for purposes of Miranda, by asking him his name.¹⁶

¹⁶ Given the evidence presented at trial and the State's closing argument, the State does not argue that any error in admitting Anaya's false statement to police was not harmless beyond a reasonable doubt.

E. CONCLUSION

For the reasons stated above, the Court should affirm
Anaya's convictions.

DATED this 16th day of May, 2011.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Casey Grannis, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Respondent's Brief, in STATE V. JOSE ANAYA, Cause No. 66017-9-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

A handwritten signature in black ink, appearing to be "Casey Grannis", written over a horizontal line.

Name
Done in Seattle, Washington

05/10/11
Date