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SUPREME COURT
STATE OF WASHINGTON
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NO. 90749-8

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BENJAMIN C. STUM,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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 ORIGINAL

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

An accurate statement of facts is set forth in the decision of the Court of Appeals appended to the petition for review. A more detailed set of facts is set out in the Brief of Respondent filed in the Court of Appeals.

III. ARGUMENT

THERE IS NO NEED FOR THIS COURT TO REVIEW THE WELL ESTABLISHED AREA OF CUSTODIAL INTERROGATION AND MIRANDA LAW AS APPLIED IN THIS CASE.

The defendant relies on the claim that the decision of the Court of Appeals presents a significant question of law under the constitution of the United States or the State of Washington. RAP 13.4(b)(3). Miranda warnings are required prior to the initiation of "custodial interrogation." State v. Heritage, 152 Wn.2d 210, 217, 95 P.3d 345 (2004). To determine if a person is in custody for purposes of Miranda the objective test is whether a reasonable person in the individual's position would believe he or she was in police custody to a degree associated with formal arrest." State v. Lorenz, 152 Wn.2d 22, 37, 93 P.3d 133 (2004). An officer may

conduct a brief investigatory detention if the officer has a reasonable and articulable suspicion that an individual is involved in criminal activity. State v. Sieler, 95 Wn.2d 43, 46, 621 P.2d 1272 (1980); see also, Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1968, 30 L.Ed. 2d 889 (1968). A routine investigatory detention is not custodial for purposes of Miranda. State v. Heritage, 152 Wn.2d at 218.

The law concerning what constitutes custodial interrogation for the purposes of Miranda warnings has long been settled. The specific application of these principals to a given fact pattern does not raise a significant question of law under either the State or Federal constitutions. RAP 13.4(b)(3). An as-applied constitutional challenge turns less on legal principles than on the specific facts presented at the pre-trial hearing. Petitioner may disagree with those facts and what they mean, but he has not established a basis for review that goes beyond the factual setting of this particular case. Nor does it involve an issue of substantial public interest that this Court should review. RAP 13.4(b)(4).

To support his petition the petitioner asserts error in the decision of the Court of Appeals for failing to take two factors into consideration. First, the petitioner alleges the open ended nature of

the contact. This ignores that the Terry stop was ended when the officer realized the defendant was admitting to a crime and immediately advised him of his constitutional rights.

Second, the petitioner asserts the Court of Appeals did not take into consideration the coercive nature of the Reid Technique. The petitioner argues for the first time, the officer's use of the "Reid Technique" in questioning the defendant elevated the Terry stop to the equivalent of a custodial interrogation. Pet. Brief at 10. The petitioner presents this court with references to the Reid Technique as a "coercive and deceptive technique used to obtain confessions." This argument was not raised at the trial level or to the Court of Appeals.

To support his petition, the petitioner asserts that the officer admitted to using the Reid Technique prior to giving Miranda warnings; the record actually shows the opposite. The officer indicated that although he had been trained in the Reid Technique the question at issue did not come from that. The officer acknowledged the question may have been based on his training, but asserted it was not doctrinal Reid Technique. RP 17. The allegedly coercive questioning was the officer saying, "Isn't it time to be honest?" Appendix to Petition at 3; RP at 16.

The Court of Appeals did not address whether the Reid Technique is coercive and if so, if it elevated questioning during a Terry stop to a custodial interrogation for purposes of Miranda because there was no evidence in the record to indicate the Reid Technique had been employed by the officer and it was not briefed or argued at the trial level or to the Court of Appeals.

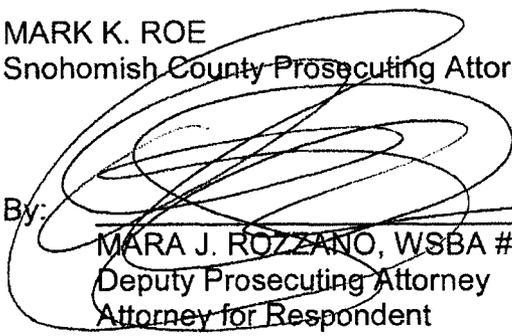
IV. CONCLUSION

For the forgoing reasons the State asks the Court to deny the motion for review.

Respectfully submitted on October 2, 2014.

MARK K. ROE
Snohomish County Prosecuting Attorney

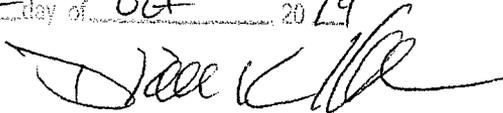
By:


MARA J. ROZZANO, WSBA #22248
Deputy Prosecuting Attorney
Attorney for Respondent

Sent via e-mail
On this day I mailed a ~~properly stamped envelope~~ addressed to the attorney for the defendant that contained a copy of this document.

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office
this 2nd day of Oct 20 14



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Good Afternoon...

RE: State v. Benjamin Stum
Supreme Court No. 90749-8

Please accept for filing the following attached pleading: State's Answer to Petition for Review.

Thanks.

Diane.

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