

64849-7

64849-7

No. 64849-7-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

---

STATE OF WASHINGTON,

Respondent,

v.

JOSE LUIS ESCOBAR,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

---

APPELLANT'S OPENING BRIEF

---

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**A. ASSIGNMENTS OF ERROR**

1. Admission of Jose Escobar's inculpatory custodial statements violated the Due Process Clause because the statements were not voluntary.

2. Admission of Jose Escobar's inculpatory custodial statements violated the Fifth Amendment because Escobar did not knowingly and intelligently waive his right against self-incrimination.

3. The trial court erred in finding, "The defendant signed his name indicating that he understood his rights. He also indicated that he wished to waive his rights and speak with the detective." CP 33 (FOF 3).

4. The trial court erred in finding, "The defendant did not at any point indicate that he did not understand his rights." CP 33 (FOF 5).

5. The trial court erred in finding Escobar "signed his name indicating he understood his rights. The defendant also indicated that he wished to waive his rights and speak with Brunson." CP 33 (FOF 7).

6. The trial court erred in finding, "The defendant did not, at any point, indicate that he did not understand his rights." CP 33 (FOF 9).

7. The trial court erred in finding Escobar "affixed his signature to the form indicating he understood his rights, and that he wanted to speak with Knudsen." CP 34 (FOF 10).

8. The court erred in finding "that the defendant made a knowing, intelligent and voluntary waiver of his rights." CP 34 (COL 14).

9. The court erred in finding Escobar "made a knowing, voluntary and intelligent waiver of those rights." CP 35 (COL 15).

10. The court erred in finding Escobar "made a knowing, voluntary and intelligent waiver of those rights." CP 35 (COL 16).

11. The court erred in admitting Escobar's statements made during custodial interrogation.

**B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether Mr. Escobar's custodial statements were inadmissible where coercive police tactics, combined with Mr. Escobar's limited language abilities and education, and apparent mental illness, rendered the statements involuntary?

2. Whether the statements were inadmissible in violation of the Fifth Amendment, where Mr. Escobar did not knowingly and intelligently waive his rights?

### C. STATEMENT OF THE CASE

1. The allegation. On January 6, 2009, Levit Ramirez asked Jose Escobar to babysit her two children—four-year-old E.R. and her younger brother D.R. 12/02/09RP 4-5, 12. Ms. Ramirez and her husband Ricardo had to work that day and could not find other childcare. 12/02/09RP 12. Mr. Escobar was a friend of the family whom they had known for about five years. 12/02/09RP 14. Although Ms. Levit had never asked Mr. Escobar to babysit before, she had no concerns about letting him take care of the children that day. 12/02/09RP 15. Mr. Escobar watched the children at the Ramirez' home. 12/02/09RP 16-17.

That afternoon, Mr. Ramirez picked up the children and brought them to Ms. Ramirez at work, and she drove them back home. 12/02/09RP 22. While they were in the car, Ms. Ramirez asked E.R. how her day went, and according to Ms. Ramirez, E.R. said, "Mommy, I am going to tell you something." 12/02/09RP 22. E.R. then made a licking motion on her arm and said, "this is what Jose did, like this, in my vagina." 12/02/09RP 22. Ms. Ramirez called police.

The next day, E.R. was examined by Joanne Mettler, a sexual assault nurse. 12/02/09RP 84-85, 101. Ms. Mettler saw

nothing out of the ordinary on the physical examination.

12/02/09RP 112, 115. She took swabs from E.R.'s genital, perineal, and anal areas, which were sent to the crime laboratory for analysis. 12/02/09RP 115-16.

E.R. was interviewed by Carolyn Webster, a King County Prosecutor child interview specialist. 12/03/09RP 3, 19. E.R. told Ms. Webster that she lay on the bed, Mr. Escobar took off her pants and underpants, and then he "do that," "like that." 12/03/09RP 35. E.R. made a licking motion when she said this. 12/03/09RP 35.

2. The interrogations. King County Sheriff Detective Chris Knudsen arrested Mr. Escobar at his home on January 15, 2009. 11/18/09RP 48-50. Mr. Escobar was transported to the precinct and Detective Knudsen interrogated him. 11/18/09RP 51, 54. Detective Knudsen, who describes himself as proficient in Spanish, spoke to Mr. Escobar almost entirely in Spanish. 11/18/09RP 45, 56. Mr. Escobar explained he could not read well. 11/18/09RP 57. Detective Knudsen read Mr. Escobar his Miranda rights from a pre-printed form in Spanish. 11/18/09RP 57. The detective asked Mr. Escobar if he understood and Mr. Escobar said yes. 11/18/09RP 57. Mr. Escobar did not ask for a lawyer or say he did not want to answer any questions; he signed the form purporting to indicate

that he understood his rights. 11/18/09RP 58. Mr. Escobar agreed to speak to the detective. 11/18/09RP 58.

Mr. Escobar rambled extensively during the interrogation on unrelated topics in a manner that raised obvious questions about his mental health. 12/08/09RP 14-78. For example, Mr. Escobar said he had been arrested before for a serious problem with a neighbor, had been taking too many medications for his mind at the time, and had gone to the door with a knife in his hand. 12/08/09RP 57-59. Mr. Escobar explained his mind was not functioning well due to his mental illness and he had been hospitalized in a psychiatric hospital three times. 12/08/09RP 59. Mr. Escobar said he was disabled and nervous and had experienced 14 years of suffering. 12/08/09RP 61. He also said people had tried to kill him many times and he often received telephone calls from people asking him to go to the bank and give them money. 12/08/09RP 65. He had lost faith in the government; although he wanted to talk to the government, he could not, because he was in the mafia. 12/08/09RP 77. He said he was "international support" and that this was a "federal problem." 12/08/09RP 77-78. He was under the impression that Detective Knudsen worked for the FBI. 12/08/09RP 78.

During the interrogation, Mr. Escobar denied abusing E.R. 12/08/09RP 34-36. He described how they had been playing a game, where E.R. would jump on the bed and he would catch her. During the game, her shirt would roll up, and he would kiss her on the belly. 12/8/09RP 34-35.

The next day, January 16, 2009, Detective Knudsen transported Mr. Escobar to a room at the courthouse for a polygraph examination. 11/18/09RP 65. The examination was conducted by King County Sheriff Polygraph Examiner Jason Brunson, with the assistance of a Spanish interpreter, Ed Fuentes. 11/18/09RP 65. Knudsen observed the examination, and Brunson's subsequent interrogation of Mr. Escobar, through a one-way mirror from a room next door. 11/18/09RP 66.

Brunson advised Mr. Escobar of his Miranda rights in English, then Fuentes went over them in Spanish. 11/18/09RP 101-04. Mr. Escobar said he understood his rights and signed the form stating that he understood and waived his rights. 11/18/09RP 105. Mr. Brunson described the allegations to Mr. Escobar and Mr. Escobar denied them. Mr. Escobar said he and E.R. were playing a jumping game, E.R.'s shirt would rise up, and he would kiss her on her stomach. 11/18/09RP 110. Brunson then administered the

polygraph examination. Afterward, he confronted Mr. Escobar, stating the results of the examination indicated deception.

11/18/09RP 112-14. At that point, Mr. Escobar said he licked E.R.'s vagina. 11/18/09RP 114.

Mr. Escobar was charged with one count of first degree rape of a child, RCW 9A.44.073. CP 1.

3. The CrR 3.5 hearing. Prior to the jury trial, a CrR 3.5 hearing was held to determine the admissibility of Mr. Escobar's statements to police. Mr. Escobar testified at the hearing, through a Spanish interpreter. He explained that he was born in El Salvador and Spanish is his native language. 11/19/09RP 4-5, 12. He had spoken English for about five years. 11/19/09RP 4. He had only about four months of schooling in El Salvador and about two months of community college in the United States. 11/19/09RP 5. He never studied the legal system in school and knew only what he had learned from watching television. 11/19/09RP 6. He had talked to Detective Knudsen and Mr. Brunson because "they told me that I had to talk to them and I did talk to them." 11/19/09RP 9. He felt he had no choice when the police told him he must talk to them, "because [Detective Knudsen] had already told me that he was going to arrest me." 11/19/09RP 9.

Mr. Escobar's testimony suggested he did not fully understand his rights or what it meant to "waive" them. When asked what the word "waive"—translated into Spanish as "renunciar"—means, Mr. Escobar responded with *non sequiturs* and nonsensical answers. He said, "if you are the police and you tell me that I have to take off the uniform, then I have to renounce." 11/19/09RP 10. He also said, "If she has a job and I don't work with her, she tells me that I have to renounce to the job." 11/19/09RP 10. He also said, "It's like if I have something to do and the person tell me you do not have to do it, then I have to wait in the house." 11/19/09RP 10.

When asked if he understood that he had the right to an attorney, Mr. Escobar explained, "My problem is that they had me in [INAUDIBLE]. They interrogated me for an hour and a half. They brought me to jail. They interrogate me again. I am tired." 11/19/09RP 17-18. The deputy prosecutor asked whether Mr. Escobar understood he had a right to an attorney before taking the polygraph examination, and Mr. Escobar replied, "I feel a little bit confuse with all of that." 11/19/09RP 24. When asked whether he understood he could ask for a lawyer at any time, Mr. Escobar said, "the FBI guy told me downstairs that he was going to help me to get

out very soon from jail. So I sign, but he did not help me."

11/19/09RP 26. He still believed Detective Knudsen was with the FBI. 11/19/09RP 26.

Despite Mr. Escobar's testimony suggesting he did not understand his rights or knowingly, intelligently and voluntarily waive them, the trial court ruled his custodial statements were admissible.<sup>1</sup> CP 32-35.

4. The trial. Mr. Escobar testified at the jury trial. He explained he told Detective Knudsen he would talk to him "because I have to talk because he was interrogating me." 12/07/09RP 108. He said Detective Knudsen never told him he did not have to speak to him, or if he did, he could not remember "because of medical problem because I was medically sick for a long time." 12/07/09RP 109. He said, "they were talking to me very fast and that's why I could not understand everything." 12/07/09RP 110. He explained he told police "some things that are not true. I felt like they were forcing me to do." 12/07/09RP 111. He denied placing his mouth on E.R.'s vagina. 12/07/09RP 126, 129. He acknowledged telling Brunson that he had, but stated "it's not true." 12/07/09RP 127. He said, "It's true that I signed and I confessed that, but I was forced

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<sup>1</sup> A copy of the trial court's written findings of fact and conclusions of law pursuant to CrR 3.5 is attached as an appendix.

because of so many questions that they were asking me."

12/07/09RP 128. He explained again that he and E.R. had been playing a game where she would jump on the bed, he would catch her, and he would kiss her belly. 12/07/09RP 129. He said he "felt forced" to tell Brunson he had licked E.R.'s vagina. 12/07/09RP 129-30. He said, "I was already tired that he was repeating the same thing, the same thing." 12/07/09RP 135. Brunson was "accusing, accusing, repeating the same thing many, many times." 12/07/09RP 135.

Jennifer Venditto, a Washington State Crime Laboratory forensic scientist, testified. 12/07/09RP 3-4. She examined swabs taken from E.R.'s mouth and belly button and her perineal and anal areas. 12/07/09RP 25. She also examined the underpants E.R. was wearing that day, as well as the baby wipes her mother had used to wipe her that evening. 12/07/09RP 26. Venditto found no indications of male DNA on any of the samples. 12/07/09RP 34, 37, 40.

The jury found Mr. Escobar guilty of first degree rape of a child as charged. CP 17.

#### D. ARGUMENT

1. ADMISSION OF MR. ESCOBAR'S  
CUSTODIAL STATEMENTS VIOLATED THE  
DUE PROCESS CLAUSE BECAUSE THE  
STATEMENTS WERE NOT VOLUNTARY

a. A criminal defendant's inculpatory custodial

statements are admissible only if they are voluntary. It is axiomatic that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon his involuntary custodial statements, without regard for the truth or falsity of the statements, and even though there is ample evidence aside from the statements to support the conviction. Jackson v. Denno, 378 U.S. 368, 376, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964); U.S. Const. amend. 14; Const. art. 1, § 3.

The term "voluntary" means the statement is the product of the defendant's own free will and judgment. State v. Unga, 165 Wn.2d 95, 102, 196 P.3d 645 (2008). The question is whether the police officer's tactics were so manipulative or coercive that "they deprived [the suspect] of his ability to make an unconstrained, autonomous decision to confess." Id. (citations omitted). The proper test is whether the officer resorted to tactics that under the circumstances prevented the suspect from making a rational decision whether to make a statement. Id.

In determining whether a custodial statement is voluntary, the inquiry is whether, under the totality of the circumstances, the statement was coerced. State v. Broadaway, 133 Wn.2d 118, 132, 942 P.2d 363 (1997). The court must determine whether there is a causal relationship between the officers' coercive conduct and the statement. Id. The question is whether the suspect's will was overborne. Id.

The court considers both whether the police exerted pressure on the defendant and the defendant's ability to resist the pressure. Unga, 165 Wn.2d at 101.

"[P]olice conduct requiring exclusion of a confession has evolved from acts of clear physical brutality to more refined and subtle methods of overcoming a defendant's will." Jackson, 378 U.S. at 389. "[A]ny evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege." State v. Pierce, 94 Wn.2d 345, 352, 618 P.2d 62 (1980) (quoting Miranda v. Arizona, 384 U.S. 436, 476, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). "Cajolery' may be defined as a deliberate attempt at persuading or deceiving the accused, with false promises, inducements or information, into relinquishing his rights and responding to

questions posed by law enforcement officers." State v. Davis, 73 Wn.2d 271, 282, 438 P.2d 185 (1968). Police deception alone does not make a statement inadmissible as a matter of law, but is one factor to consider under the totality of the circumstances. State v. Braun, 82 Wn.2d 157, 161, 509 P.2d 742 (1973); State v. Burkins, 94 Wn. App. 677, 695, 973 P.2d 15 (1999) ("Deception alone does not make a statement inadmissible as a matter of law; rather, the inquiry is whether the deception made the waiver of constitutional rights involuntary."). Other factors to consider include whether police made any express or implied promises. Unga, 165 Wn.2d at 101-02. Also relevant are the length and other circumstances of the interrogation. Davis, 73 Wn.2d at 286-87.

The impact of the police conduct or tactics must be determined in relation to the defendant's subjective experience of them. State v. Setzer, 20 Wn. App. 46, 49-50, 579 P.2d 957 (1978). In determining whether the defendant's will was overborne, the court considers the defendant's physical condition, age, mental abilities, and experience. State v. Rupe, 101 Wn.2d 664, 678-79, 683 P.2d 571 (1984); Burkins, 94 Wn. App. at 694. A defendant's mental illness alone does not per se make his statements inadmissible, but it is one factor that may affect their voluntariness.

State v. Allen, 67 Wn.2d 238, 242, 406 P.2d 950 (1965). A person's language difficulty is another factor to consider in determining the issue of voluntariness. State v. Lopez, 74 Wn. App. 264, 270, 872 P.2d 1131 (1994). Also relevant are the defendant's capacity to understand his Miranda rights and the consequences of waiving them. Unga, 165 Wn.2d at 108-09.

b. Mr. Escobar's custodial statements were not admissible because they were not voluntary. Under the totality of the circumstances, in light of the pressures exerted on Mr. Escobar during the interrogation and his inability to resist them, his inculpatory custodial statement was involuntary in violation of due process.

First, Detective Knudsen's and Mr. Brunson's tactics during interrogation were coercive. The United States Supreme Court recognizes that "the very fact of custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals." Miranda, 384 U.S. at 455. The officers in this case used tactics that enhanced the inherently coercive nature of the interrogation. Brunson told Mr. Escobar that "in his experience these kinds of cases are often caused by the child coming onto the adult or the child, you know, reaching out to somebody they trust

that will teach them about their own sexuality, and he asked if somebody [sic] like that could have happened." 12/07/09RP 72-73. Mr. Escobar then said yes, it was possible something like that had happened. 12/07/09RP 75. Detective Knudsen explained that this kind of statement by a police officer to a suspect was a common police tactic and ruse, designed to lull the suspect into believing the officer is sympathetic to the suspect's plight and would not disapprove if the suspect admitted any wrongdoing. 12/07/09RP 73-75.

Mr. Escobar said he had sexual contact with E.R. only after Brunson asserted the results of the polygraph examination indicated deception. 11/18/09RP 113-14. Ordinarily, evidence that a polygraph test has been taken or passed is inadmissible absent stipulation by both parties because the polygraph has not attained general scientific acceptability. State v. Justesen, 121 Wn. App. 83, 86, 86 P.3d 1259 (2004). By inducing Mr. Escobar to take a polygraph examination, and then telling him the results of the exam indicated he was lying, the officers implied they had evidence of guilt that could incriminate Mr. Escobar. The officers' conduct amounted to another ruse.

More important, Mr. Escobar was unable to resist the pressures of the interrogation and make a free and rational choice whether to make a statement. Mr. Escobar's ability to speak English was very limited and he could not read well in either English or Spanish. He could not read the Miranda rights listed on the form. 11/18/09RP 57. He had very limited education and had never studied the legal system in school. 11/19/09RP 5-6.

Even more concerning was Mr. Escobar's apparent mental illness. His statements were often rambling and indicated he had only a tenuous grasp on reality. He claimed people had tried to kill him several times and that people often called him on the telephone to ask him to go to the bank and give them money. 12/08/09RP 65. He claimed he was in the mafia and was never able to comprehend that Detective Knudsen was not in the FBI. 11/19/09RP 26; 12/08/09RP 77-78.

Finally, despite being read his Miranda rights, Mr. Escobar did not understand them. He talked to Detective Knudsen and Mr. Brunson because "they told me that I had to talk to them." 11/19/09RP 9. He felt the police "were forcing" him to talk to them. 12/07/09RP 111, 129-30. He did not understand what it means to "waive" one's rights. 11/19/09RP 10. He was "confuse[d]" about

whether he had a right to an attorney before taking the polygraph examination. 11/19/09RP 24. He signed the waiver because "the FBI guy" told him "that he was going to help me to get out very soon from jail. So I sign, but he did not help me." 11/19/09RP 26. He also explained "they were talking to me very fast and that's why I could not understand everything." 12/07/09RP 110. He felt forced to confess "because of so many questions that they were asking me." 12/07/09RP 128.

The officers' repeated questions and use of ruses and deception, combined with Mr. Escobar's limited language abilities and education, possibly low intelligence, and apparent mental illness, rendered his inculpatory custodial statements involuntary in violation of due process.

c. The conviction must be reversed. The State must prove beyond a reasonable doubt the erroneous admission of the custodial statements did not contribute to the verdict. See Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). The State cannot do so.

"A confession is like no other evidence. Indeed, 'the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him.'" Arizona v.

Fulminante, 499 U.S. 279, 296, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991) (quoting Bruton v. United States, 391 U.S. 123, 139-40, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968) (White, J., dissenting)). The erroneous admission of a confession has great risk of prejudice, because the jury may be tempted "to rely upon that evidence alone in reaching its decision." Fulminante, 499 U.S. at 296.

In light of the highly prejudicial and damaging effect of Mr. Escobar's custodial statements, the conviction must be reversed.

2. ADMISSION OF MR. ESCOBAR'S  
CUSTODIAL STATEMENTS VIOLATED THE  
FIFTH AMENDMENT BECAUSE MR.  
ESCOBAR DID NOT KNOWINGLY AND  
INTELLIGENTLY WAIVE HIS RIGHTS

a. A defendant's custodial statements are inadmissible unless he intelligently and knowingly waives his *Miranda* rights. The Fifth Amendment to the United States Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." In Miranda, the United States Supreme Court fashioned a practical rule to ensure the integrity of the privilege against self-incrimination under the Fifth Amendment:

[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards

effective to secure the privilege against self-incrimination.

Miranda, 384 U.S. at 444. To safeguard the uncounseled individual's Fifth Amendment privilege against self-incrimination, a suspect interrogated while in police custody must be told: he has a right to remain silent; anything he says may be used against him in court; he is entitled to the presence of an attorney; and if he cannot afford an attorney one will be appointed for him prior to the interrogation if he desires. Id. at 479. The Miranda warnings are a bright-line constitutional requirement independent of the requirement that custodial statements be voluntary in a due-process sense. Dickerson v. United States, 530 U.S. 428, 443, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000).

The inherently coercive nature of custodial interrogation imposes a heavy burden on the State to show an accused person's waiver of his rights was "an intentional relinquishment or abandonment of a known right or privilege." State v. Jones, 19 Wn. App. 850, 853, 578 P.2d 71 (1978) (quoting Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938)). Courts must indulge every reasonable presumption against a valid waiver. Johnson, 304 U.S. 458.

Waivers of counsel must be not only voluntary, but must also "constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege, a matter which depends in each case 'upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.'" Edwards v. Arizona, 451 U.S. 477, 482, 101 S.Ct. 1880, 68 L.Ed.2d 379 (1981) (quoting Johnson, 304 U.S. at 464). Even if police officers read a suspect his Miranda rights, if the suspect could not understand the officer and was not otherwise aware of the rights, then his incriminating statement is not admissible. City of Seattle v. Gerry, 76 Wn.2d 689, 692, 458 P.2d 548 (1969). "One cannot effectively waive . . . a constitutional right without knowledge of its existence." Id. (citation omitted).

A person's inability to understand written or spoken English may affect his ability to understand and waive his Miranda rights. See State v. Prok, 107 Wn.2d 153, 727 P.2d 652 (1986).

b. Mr. Escobar did not knowingly and intelligently waive his rights. As the discussion above indicates, Mr. Escobar did not understand his rights or knowingly and intelligently waive them. His limited education and language ability, combined with his apparent mental illness, meant he did not understand he did not

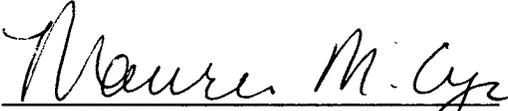
have to talk to police or provide a statement. See 11/19/09RP 9, 24-26; 12/07/09R 111, 129-30. The officers "were talking to me very fast and that's why I could not understand everything." 12/07/09RP 110. He felt forced to admit to sexual contact with E.R. "because of so many questions that they were asking me." 12/07/09RP 128. He did not understand what it means to "waive" one's rights. 11/19/09RP 10.

In sum, Mr. Escobar did not knowingly and intelligently waive his rights and thus his inculpatory statement should have been suppressed.

E. CONCLUSION

Mr. Escobar's Fifth Amendment and due process rights were violated when the trial court admitted his involuntary custodial statements. The conviction must be reversed.

Respectfully submitted this 31st day of August 2010.

  
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# **APPENDIX**

**FILED**  
KING COUNTY, WASHINGTON

JAN 15 2010

SUPERIOR COURT CLERK  
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DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	
	)	Plaintiff,
	)	No. 09-1-00755-8 SEA
vs.	)	
	)	FINDINGS OF FACT AND
JOSE ESCOBAR,	)	CONCLUSIONS OF LAW
	)	PURSUANT TO CrR 3.5
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This matter came before the Honorable Helen Halpert for pre-trial matters in November 2009. The defendant was present represented by his attorney, Victoria Foedisch. The State of Washington was represented by Senior Deputy Prosecuting Attorney Julie Kays.

**I. FINDINGS OF FACT**

1. On January 15, 2009, Detective Knudsen, with the King County Sheriff's Department, arrived at the defendant's apartment to arrest him. Knudsen spoke with the defendant first in English, and when the defendant indicated he did not speak English that well, Knudsen spoke with him entirely in Spanish. Knudsen is proficient in speaking and understanding the Spanish language. He has several years of coursework in Spanish from various learning institutions, and he has spoken Spanish regularly while performing his job as a KCSO patrol deputy and detective.

2. The defendant identified himself by name, and answered various questions concerning his date of birth, social security number, and address. Knudsen needed this information in order to book the defendant into jail. The defendant had not been advised of his Miranda rights prior to Knudsen asking him these booking type questions. The defendant was arrested and transported to the Burien precinct of the KCSO some five minutes away.

FINDINGS OF FACT AND CONCLUSIONS OF LAW  
PURSUANT TO CrR 3.5 - 1

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1 3. Once at the Burien precinct, the defendant was placed in an interview room. The  
2 interview room was audio recorded. The entire conversation was recorded with the permission of  
3 the defendant. A transcript of the conversation was marked as an exhibit and admitted into  
4 evidence for pre-trial purposes. Detective Knudsen spoke with the defendant in Spanish.  
5 Knudsen advised the defendant of his Miranda warnings using a pre-printed rights form in the  
6 Spanish language. This form was admitted into evidence for pre-trial purposes. The defendant  
7 signed his name indicating he understood his rights. He also indicated that he wished to waive  
8 his rights and speak with the detective, and signed his name under the waiver portion.

9 4. During this January 15, 2009 conversation with the defendant at the precinct, Knudsen  
10 asked the defendant if he would submit to a polygraph examination, and the defendant agreed to  
11 do so.

12 5. Knudsen did not threaten or promise the defendant anything in exchange for the  
13 defendant giving a statement. The defendant did not at any point indicate that he did not  
14 understand his rights, he did not exercise his right to remain silent, nor to have a lawyer.  
15 Detective Knudson observed that the defendant was tracking his questions and that the defendant  
16 did not appear to have any problems understanding him.

17 6. On January 16, 2009, the defendant was checked out of the King County Jail and taken to  
18 an interview room in the King County Courthouse for a polygraph examination. Ed Fuentes,  
19 Washington state and court certified Spanish translator/interpreter, was present for this  
20 conversation to act as a translator for the defendant. Jason Brunson is a polygraph examiner for  
21 the KCSO. Brunson has been in law enforcement for over 15 years, and has spent the past five  
22 years as a polygraph examiner for the KCSO. Detective Knudsen observed the entire  
23 conversation between Brunson and the defendant through a one-way mirror and sound system.

24 7. Brunson spoke with the defendant with the use of Mr. Fuentes, the Spanish interpreter.  
Brunson verbally advised the defendant of his Miranda warnings using a pre-printed form. This  
form was admitted into evidence for pre-trial purposes. The defendant signed his name indicating  
he understood his rights. The defendant also indicated that he wished to waive his rights and  
speak with Brunson and signed his name under the waiver portion.

8. Brunson asked the defendant to explain to him what had occurred, and the defendant  
spoke with Brunson. Following the defendant's narrative, Brunson discussed with the defendant  
the polygraph questions he would ask of him. The defendant was then hooked up to the  
polygraph machine and the test was administered. The defendant was informed by Brunson that  
he had failed the polygraph examination. The defendant then spoke with Brunson, and admitted  
that he had placed his mouth on ER's vagina and licked it.

9. Brunson did not threaten or promise the defendant anything in exchange for the  
defendant giving a statement. The defendant did not, at any point, indicate that he did not  
understand his rights, he did not exercise his right to remain silent, nor to have a lawyer.

1 Brunson observed that the defendant was tracking his questions and that the defendant did not  
2 appear to have any problems understanding him.

3 10. Within minutes of concluding his interview with the defendant, Knudsen entered the  
4 interview room. Knudsen, with the assistance of Mr. Fuentes, took a recorded statement from  
5 the defendant. The defendant was advised of his Miranda warnings, using the exact same form  
6 that he used on the 15<sup>th</sup> of January. The defendant again affixed his signature to the form  
7 indicating he understood his rights, and that he wanted to speak with Knudsen. The defendant  
8 proceeded to give a recorded statement to Knudsen. A transcript of that statement was admitted  
9 into evidence for pre-trial purposes.

10 11. Knudsen did not threaten or promise the defendant anything in exchange for the  
11 defendant giving a statement. The defendant did not at any point indicate that he did not  
12 understand his rights, he did not exercise his right to remain silent, nor to have a lawyer.  
13 Detective Knudson observed that the defendant was tracking his questions and that the defendant  
14 did not appear to have any problems understanding him.

15 **II. DISPUTED FACTS**

16 12. The defendant testified during this pre-trial hearing. He testified on direct that he did not  
17 have an understanding of the court system in the United States; that he read little English; that he  
18 had been through only a small amount of schooling in his native El Salvador. The defendant  
19 testified while on direct that he did not understand his rights, but then on cross examination  
20 admitted that he understood each of the enumerated rights that were read to him. He further  
21 testified that he wanted to talk with Knudsen and Brunson to get out his side of the story.

22 **III. CONCLUSIONS OF LAW**

23 The court, having considered the testimony of witnesses, exhibits admitted into evidence,  
24 authority and argument of counsel, hereby enters the following conclusions of law:

13. On January 15, 2009, the defendant was placed under arrest by Detective Knudsen.  
Knudsen's questions of the defendant concerning his name, date of birth and other biographical  
information were necessary to book the defendant into custody. These routine booking questions  
fall outside of the protections of Miranda. The statements the defendant made in response to  
these routine booking questions are admissible in the State's case in chief.

14. On January 15, 2009, the defendant was in custody to the degree associated with formal  
arrest when he was taken to an interview room at the KCSO Burien precinct. The defendant was  
advised of his Miranda warnings, and the defendant acknowledged those rights and waived those  
rights. The court finds that the defendant made a knowing, intelligent and voluntary waiver of  
his rights. At the time of the 3.5 hearing, the State only requested that the court make a finding  
of voluntariness with respect to this statement. The court at that time, found that the statement  
was voluntary. The defendant later testified at trial, and the State requested to present this  
January 15<sup>th</sup> statement in its rebuttal case. The court at that time, at the request of the State,

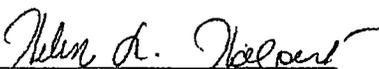
1 expanded its pre-trial ruling to find that not only was this statement voluntary, but that it would  
2 have been admissible in the State's case in chief, if requested.

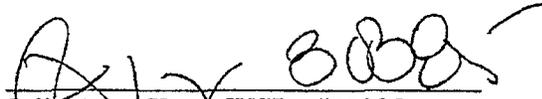
3 15. On January 16, 2009 the defendant was in custody to the degree associated with formal  
4 arrest when he spoke, with the assistance of an interpreter, to Jason Brunson. The defendant was  
5 advised of his Miranda warnings, and made a knowing, voluntary and intelligent waiver of those  
6 rights. The defendant's statements made to Brunson are admissible in the State's case in chief.

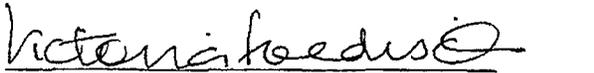
7 16. Immediately following the defendant's conversation with Brunson, the defendant spoke  
8 with Detective Knudson. The defendant remained in custody. The defendant was advised of his  
9 Miranda warnings and made a knowing, voluntary and intelligent waiver of those rights. The  
10 defendant's statements made to Knudson are admissible. The court finds that the defendant, at  
11 page 6 of the transcript of the interview, in essence, invoked his right to remain silent as to the  
12 issue of whether he licked ER's vagina when he stated "Uh, please ask him not to ask me that  
13 question anymore....". The court finds that the defendant's statements made after that point are  
14 not admissible, and directs the State to make the appropriate redactions to the statement to  
15 conform with the court's ruling. With this exception noted, the Court finds that the defendant's  
16 statements to Detective Knudson are admissible in the State's case in chief.

17 The court hereby incorporates by reference and without limitation its oral rulings as set  
18 forth on the record.

19 Signed this 15 day of January, 2010.

20   
21 The Honorable Helen Halpert

22   
23 Julie Anne Kays, WSBA#30385  
24 Senior Deputy Prosecuting Attorney

25   
26 ~~Victoria~~ Foedisch, Attorney for Defendant  
27 VICTORIA WSBA# 15763