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Division I  
State of Washington

NO. 74263-9-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

A.I. (DOB 8/1/97),

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JOHN P. ERLICK

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**BRIEF OF RESPONDENT**

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A. QUESTIONS PRESENTED

1. Appellate courts defer to trial courts' findings of fact based on substantial evidence, including witness credibility. Sergeant Sjolín is a member of the Renton Police Department who is trained on reading suspects their rights. The trial court in this case determined Sergeant Sjolín's testimony that he read A.I. his juvenile *Miranda* rights was credible and true. Was there substantial evidence that A.I. received his juvenile *Miranda* warnings?

2. A suspect must knowingly, voluntarily, and intelligently waive his *Miranda* rights. Sergeant Sjolín read A.I. his juvenile *Miranda* rights. Then, Officer Jensen spoke with A.I. in English about a drive-by shooting with BB guns. A.I. asked "[I]f I tell the truth. Then what?" Officer Jensen responded: he would make no promises, but A.I. should take responsibility for his actions. A.I. decided to come clean. Did the trial court abuse its discretion in finding that A.I. validly waived his *Miranda* rights?

B. STATEMENT OF THE CASE

1. OFFICERS RESPOND TO A REPORTED DRIVE-BY SHOOTING DAMAGING CARS IN A RENTON NEIGHBORHOOD.

On November 4, 2014, Alina Gogu's boyfriend pulled her head down and shielded her from what sounded like gun fire. RP 159, 186. Glass shattered into the car, but fortunately neither Gogu nor her boyfriend were hit by the shards of glass. RP 161-62.

It was around 11:30 p.m. in a residential neighborhood in Renton. RP 22, 34, 98, 247. Gogu was talking with her boyfriend in his car. RP 159. His car interior lights were on. RP 158, 169. Gogu saw a red van approaching through the rear view mirror before hearing gun fire. RP 159-60. After the shots flew into the car, and the red van sped away from the scene, Gogu called 911. RP 161.

Less than one mile away, police dispatch sent Officer Jensen to answer a 911 call about a drive-by shooting. RP 22. Officer Jensen is a fourteen-year veteran police officer working for Renton. RP 21. He trains monthly in areas such as reading *Miranda* warnings to suspects. *Id.* Officer Jensen located and stopped a red van about two minutes after being dispatched. CP 27; RP 24. Three people were in the van. RP 23.

Another Renton police officer, Sergeant Craig Sjolin, also arrived on the scene around 11:30 p.m. RP 52, 66. Sergeant Sjolin spent seventeen years as a patrol officer in the Renton Police Department's Traffic Unit. RP 119. He attends annual trainings, which stress the importance of advising suspects of their rights, including *Miranda* warnings. RP 120.

Officer Jensen told the van's occupants to step out of the vehicle. RP 130. Since the officers were investigating a drive-by shooting, this was a "heightened" traffic stop. RP 131. A heightened traffic stop means officers have their firearms drawn, not pointed at any person, but pointed towards the ground. RP 131-32. Two individuals exited the van first. RP 135-36. The driver, later identified as A.I., the appellant, was one of the first two who exited the van. RP 125, 248.

Sergeant Sjolin became worried about the traffic stop. RP 126. A potential crossfire situation developed where officers were on opposite sides of one another. *Id.* If a police stop goes wrong during a crossfire situation, then officers are at risk of being shot by fellow officers. RP 127-28. In addition, another officer's car headlights were shining directly at Sergeant Sjolin and other officers. RP 127. Sergeant Sjolin's worry grew: during this traffic

stop, two people, instead of one, came out of the van at once. RP 129, 135. According to police procedure, only one suspect at a time should exit a vehicle during a police stop. RP 129.

Then, Sergeant Sjolín placed A.I.'s cousin, Virgil Lungu, into handcuffs. RP 126, 248. Lungu told Sergeant Sjolín his wrist was broken, to which he stated that it might get broken again. RP 140-41. While Officer Jensen's COBAN device recorded Sergeant Sjolín's statement, there is no evidence A.I. heard it. RP 26-27, 59, 204, 249. Not even Officer Jensen heard this statement. RP 62-63, 203, 249. Sergeant Sjolín also placed A.I. into handcuffs. RP 138-39. Sergeant Sjolín noticed A.I.'s breath smelled of "intoxicating beverages." RP 139. He also noted A.I. had a slight accent. CP 27; RP 143, 250. After learning A.I.'s age, Sergeant Sjolín read A.I. his *Miranda* rights, including the juvenile section of the *Miranda* rights. RP 121-22, 249, 256. Another officer informed Officer Jensen that A.I. received his juvenile *Miranda* warning. RP 25.

A.I. did not ask for an attorney. RP 26, 44-45, 123, 256. He did not say he did not want to talk, or have significant difficulty communicating with the officers. RP 45, 122, 249, 256. Neither Sergeant Sjolín nor Officer Jensen recall A.I. asking for an attorney,

saying he did not want to talk, or being scared of any of the officers. RP 26, 45, 123, 144. When Officer Jensen asked A.I. what he was doing driving the van at 11:30 p.m., A.I. responded: "I want to make a license." RP 34. A.I. then clarified: "I was practicing to drive." *Id.* A little past 11:30 p.m., A.I. and his brother Illie were placed into Officer Jensen's squad car. RP 39, 41, 46.

Officer Jensen spoke to A.I. while driving the squad car. RP 25. Jensen asked A.I. whether he knew about the shooting and the damage to several cars. RP 25, 249. Earlier, Officer Jensen saw BBs and a BB gun in the van after he pulled it over. RP 80–82. Doubting A.I.'s denial, Officer Jensen said A.I. should own up and take responsibility for his actions. RP 34–35. Knowing the red van had to be impounded, Officer Jensen chided A.I. for leaving his mother without a vehicle to drive. RP 39, 42. Officer Jensen said the soonest the police may get the van back to A.I.'s mother was one week. RP 42–43. Then, instead of taking A.I. to a police station, Officer Jensen drove A.I. home to his parents. RP 26, 203. Gogu later identified the van as the same one involved in the shooting. RP 163.

2. AT THE CrR 3.5 HEARING, THE COURT FOUND A.I. UNDERSTOOD AND WAIVED HIS *MIRANDA* RIGHTS.

The court found that A.I. had no difficulty understanding his *Miranda* rights or communicating with officers. CP 27. Similarly, the court found A.I.'s status as a seventeen year-old did not affect his ability to understand his *Miranda* rights. CP 27; RP 254–55. The court noted A.I. was not coerced by Sergeant Sjolin's statement because he initially denied any wrongdoing. CP 27; RP 257. And later A.I. told the truth when Officer Jensen asked him to take responsibility for his actions. *Id.* The court found that A.I. understood and waived his *Miranda* rights, which Sergeant Sjolin testified he read to A.I. CP 27–28; RP 249–50, 254–55. Since A.I. spoke with officers using English and did not require an interpreter, the court ruled that A.I. sufficiently understood and waived his *Miranda* rights. CP 29; RP 256–57.

3. THE COURT GAVE A.I. SIX MONTHS' PROBATION AND ADVISED EARLY TERMINATION FOR GOOD BEHAVIOR.

The court gave A.I. six months' probation and twenty hours of community service for two gross misdemeanors: malicious mischief in the third degree and reckless endangerment. CP 34;

RP 259, 261, 264, 284. This sentence was less than what the Juvenile Probation Services (JPC) recommended, and the court advised the JPC to terminate A.I.'s probation early if he showed good behavior. RP 284.

C. SUMMARY OF ARGUMENT

A.I. decided to own up to shooting at an occupied car with a BB gun, and shattering several car windows. Renton police officers appealed to his conscience to tell the truth. First, substantial evidence shows that Sergeant Sjolín read A.I. his juvenile *Miranda* rights. Next, A.I. knowingly, voluntarily, and intelligently waived his *Miranda* rights.

Appellate courts defer to trial courts' findings of fact supported by substantial evidence. Sergeant Sjolín testified that he read A.I. his juvenile *Miranda* rights. The trial court examined Sergeant Sjolín's testimony and report and found his testimony credible and accurate. Thus, substantial evidence supports the fact that A.I. received his juvenile *Miranda* rights.

A.I. knowingly, voluntarily, and intelligently waived his *Miranda* rights when he decided to own up to his actions after officers appealed to his conscience. No officer coerced A.I. There is

no evidence he was afraid. A.I. did not testify. Officer Jensen appealed to A.I.'s conscience. Neither A.I.'s age nor his English proficiency prevented him from understanding his rights. His conviction should be affirmed.

D. ARGUMENT

1. THE TRIAL COURT'S FINDING THAT SERGEANT SJOLIN READ JUVENILE *MIRANDA* RIGHTS TO A.I. WAS SUPPORTED BY SUBSTANTIAL EVIDENCE: SERGEANT SJOLIN'S TESTIMONY.

Sergeant Sjolín's testimony provided substantial evidence that he read A.I. his juvenile *Miranda* rights. Washington courts defer to the trial courts' findings, and the trial court found Sergeant Sjolín's testimony credible.

- a. Washington Courts Defer To The Trier Of Fact For Determining Witness Credibility And The Persuasiveness Of Evidence.

Washington courts use the substantial evidence standard of review for witness credibility and usually defer to trial courts' factual conclusions. A police officer must read *Miranda* rights to a suspect before interrogating that suspect in custody. *Miranda v. Arizona*, 384 U.S. 436, 466, 86 S. Ct. 1602, 1624 (1966). A "clearly

erroneous” standard of review applies to a trial court’s finding based on determinations regarding witness credibility. See *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 575, 105 S. Ct. 1504, 1512 (1985).

Similarly, Washington courts use a substantial evidence standard of review when resolving issues of credibility. *Dolan v. King Cty.*, 172 Wn.2d 299, 310–11, 258 P.3d 20 (2011), as corrected (Jan. 5, 2012); see also *City of Bellevue v. Pine Forest Properties, Inc.*, 185 Wn. App. 244, 264, 340 P.3d 938 (2014), review denied, 183 Wn.2d 1016 (2015) (using a substantial evidence standard of review for evidentiary conflicts). The substantial evidence standard only requires evidence sufficient to convince a fair-minded person that the finding is true. *State v. Hardgrove*, 154 Wn. App. 182, 185, 225 P.3d 357 (2010). Washington courts defer to the trier of fact, in this case the trial court, in determining the credibility of witnesses and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874–75, 83 P.3d 970 (2004) (en banc). See also *State v. Johnson*, 48 Wn. App. 681, 684, 739 P.2d 1209 (1987), rev’g on other grounds (finding substantial evidence supports a trial court’s

conclusion that a detective properly advised a juvenile of his *Miranda* rights based solely on the detective's testimony).

- b. This Court Should Defer To The Trial Court's Conclusion That Sergeant Sjolín's Testimony Is Substantial Evidence That He Read A.I. His Juvenile *Miranda* Rights.

Substantial evidence supports the trial court's conclusion that Sergeant Sjolín read juvenile rights to A.I. because the trial court properly weighed Sergeant Sjolín's credibility as a witness. Sergeant Sjolín testified that he read A.I. his *Miranda* rights, and included the juvenile portion due to A.I.'s age. CP 26; RP 121–22, 249, 256. Sergeant Sjolín said he is constantly trained on advising suspects of their rights. RP 120. He also wrote in his report that A.I. was seventeen years old at the time. CP 121. The trial court made a reasonable decision to credit Sergeant Sjolín's statements as true and accurate.

An officer's testimony is enough substantial evidence to support a trial court's factual findings. In *State v. Johnson*, this Court found that a trial court's conclusion regarding testimony was supported by the evidence. 48 Wn. App. 681, 684, 739 P.2d 1209, 1211. *Johnson* involved a juvenile accused of stealing chain saws

who confessed the theft to a police detective. *Id.* at 682. The juvenile testified that he was not given any *Miranda* warnings. *Id.* at 683. The detective testified that he read the juvenile his *Miranda* warnings. *Id.* at 682. This Court deferred to the trial court, who found the detective's testimony provided substantial evidence that the detective read the juvenile his *Miranda* rights. *Id.* at 684. Like the detective in *Johnson*, Sergeant Sjolin testified that he read A.I. his *Miranda* rights. Unlike Johnson, A.I. did not testify. RP 151, 187, 198. Sergeant Sjolin's testimony is un rebutted and thus there is even more reason than in *Johnson* to find that the trial court's conclusions are supported by substantial evidence. In sum, substantial evidence shows that Sergeant Sjolin read A.I. his juvenile *Miranda* warnings.

2. A.I.'S CONVERSATIONS WITH OFFICERS AND WILLINGNESS TO OWN UP TO HIS ACTIONS SHOWS A.I. KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVED HIS *MIRANDA* RIGHTS.

A.I.'s conversation with the officers show that A.I. knowingly, voluntarily, and intelligently waived his *Miranda* rights. He was not coerced by the officers, and his age and proficiency with English

did not prevent him from understanding and waiving his *Miranda* rights.

- a. There Is No Evidence Police Coerced A.I.: He Did Not Appear Afraid Of Officers And Was Not Threatened By Any Officer.

A.I. was not coerced by police officers because:

- 1) psychological appeals to a suspect's conscience do not violate the Fifth Amendment and are not coercive; 2) Officer Jensen appealed to A.I.'s conscience rather than coercing him; and
- 3) there is no evidence A.I. heard Sergeant Sjolin's statement. The trial court did not abuse its discretion in finding A.I. was not coerced.

- i. Psychological appeals to a person's conscience are consistent with the Fifth Amendment and are not coercive.

The Fifth Amendment to the U.S. Constitution provides that no person can be compelled to be a witness against himself in any criminal case. U.S. Const. amend. V. To determine whether statements obtained during custodial interrogation are admissible, a court must decide if the suspect knowingly, voluntarily, and intelligently waived his *Miranda* rights. *Miranda v. Arizona*, 384 U.S.

436, 444, 86 S. Ct. 1602, 1612 (1966). One element for a confession's voluntariness is police coercion. *Withrow v. Williams*, 507 U.S. 680, 693–94, 113 S. Ct. 1745, 1754 (1993). Determining police coercion requires examining the totality of the circumstances, including implied and direct promises, and improper influence. *State v. Broadaway*, 133 Wn.2d 118, 132, 942 P.2d 363, 371 (1997). Promises by police do not make a confession per se involuntary. *Id.* There must be a direct causal relation between the confession and the promise. *Id.* Psychological appeals to a defendant's conscience are not coercive. *State v. Rupe*, 101 Wn.2d 664, 679, 683 P.2d 571 (1984).

- ii. Asking a seventeen year-old to take responsibility for his actions and describing the consequences of his behavior is not coercion.

Officer Jensen asked A.I. to take responsibility for his actions and described the consequences for A.I. This did not coerce A.I. In *State v. Rupe*, the Washington Supreme Court found a defendant was not coerced into confessing because a police officer simply appealed to the defendant's conscience. *Id.* at 680. The defendant, Rupe, confessed to two murders and a robbery at a bank. *Id.* at

670. Rupe alleged that police questioning techniques, namely a polygraph test asking Rupe to tell the truth, were psychologically coercive. *Id.* at 678–79. The Washington Supreme Court disagreed: the police tactics used were not overly zealous or coercive. They merely appealed to the defendant's conscience. *Id.* at 679.

Like the police in *Rupe*, Officer Jensen asked A.I. to tell the truth. RP 34–35. Officer Jensen saw the BB guns in the car and asked A.I. to take responsibility for his actions. RP 80–82. He did not threaten A.I. Rather, Officer Jensen chided him for depriving his mother of the van for at least a week. RP 39, 42. Officer Jensen acknowledged that the van had to be impounded as a part of standard police procedure. *Id.* Significantly, A.I. denied any knowledge or wrongdoing at first. RP 34. The trial court found A.I.'s behavior indicative that he was not coerced or overwhelmed into confessing. CP 27; RP 257. As in *Rupe*, Officer Jensen appealed to A.I.'s conscience to do the right thing. *Rupe*, 101 Wn.2d at 670. A.I. assessed the situation: “[I]f I tell the truth. Then what?” RP 35. Officer Jensen responded that he would not make A.I. any promises, but he would be on more friendly terms with A.I. CP 27; RP 35. Officer Jensen did not use any overly zealous or coercive tactics.

- iii. There is no evidence A.I. heard or was intimidated by Sergeant Sjolín's statements to Lungu, so the trial court did not abuse its discretion.

In addition, there is no evidence Sergeant Sjolín intimidated or coerced A.I. Sergeant Sjolín told A.I.'s cousin, Lungu, whose wrist was already broken, that his wrist might get broken again when placing Lungu into handcuffs. RP 140–41. There is no evidence A.I. heard Sergeant Sjolín's statement to Lungu. CP 27; RP 26–27, 59, 204, 249. Officer Jensen did not even hear Sergeant Sjolín's statement. CP 27; RP 62–63, 203, 249. Sergeant Sjolín appeared frustrated at the dangerous situation, instead of purposefully threatening the van's occupants. RP 127–28, 129, 135. Indeed, A.I. initially denied any wrongdoing or knowing about the shooting. RP 34. This implies A.I. did not hear Sergeant Sjolín's statement, or, even if he did hear it, A.I. was not intimidated or coerced by the statement. CP 27; RP 257. Thus, the trial court did not abuse its discretion in concluding that A.I. was not coerced into telling the truth.

- b. A.I.'s Age Was No Obstacle To Understanding And Waiving His *Miranda* Rights Where A.I. Initially Denied Liability, But Then Voluntarily Decided To Take Responsibility For His Actions.

A.I.'s age was not an obstacle for him to understand and waive his *Miranda* rights. Juveniles nearing their majority, like A.I., are more likely than younger juveniles to understand their *Miranda* rights; they can be expected to behave as an eighteen year-old adult. A.I. initially denied any wrongdoing, but after talking with Officer Jensen, A.I. understood and was willing to face the consequences of his actions.

- i. A seventeen year-old nearing majority understands and can waive his *Miranda* rights, and can be expected to behave as an adult.

Only juveniles twelve years and younger cannot waive their *Miranda* rights. See Wash. Rev. Code § 13.40.140(11) (2014). When police know a suspect is a juvenile, the juvenile's age only informs the *Miranda* custody analysis; age does not inform how the juvenile's youth affects their particular mindset. *J.D.B. v. N. Carolina*, 564 U.S. 261, 275, 131 S. Ct. 2394, 2404–05 (2011) (finding a mere thirteen year-old was in police custody when police

questioned him at school and during class). A juvenile's age is not always determinative, or even a significant factor, in every case. *Id.* at 277.

*J.D.B.* involved a thirteen year-old student questioned by police in a closed room at his school. *Id.* at 265. Police officers believed *J.D.B.* stole items from a person's house. *Id.* *J.D.B.* confessed after the police threatened to send him to juvenile detention. *Id.* at 266. Only after *J.D.B.* confessed did the police read *J.D.B.* his *Miranda* rights. *Id.* The issue *J.D.B.* raised was whether his confession should be suppressed because he was interrogated by police in a custodial setting without receiving his *Miranda* rights. *Id.* at 267. The Court ruled that *J.D.B.*'s age, thirteen, should be considered to determine if he was in custody for the purposes of *Miranda* warnings. *Id.* at 281. The Court remanded the case to the North Carolina Supreme Court to answer whether *J.D.B.* was in custody when police interrogated him. *Id.*

With respect to waiver, a totality of circumstances approach is used even for juveniles. *Fare v. Michael C.*, 442 U.S. 707, 725, 99 S. Ct. 2560, 2572 (1979). These circumstances include the juvenile's age, education, experience, and background. *In re Gault*, 387 U.S. 1, 55, 87 S. Ct. 1428, 1458 (1967).

Many seventeen year-olds can be expected to behave as adults. *Yarborough v. Alvarado*, 541 U.S. 652, 669, 124 S. Ct. 2140, 2152 (2004) (O'Connor, J., concurring) (plurality opinion). In Washington State, a waiver may be oral or in writing. *Rupe*, 101 Wn.2d 664 at 678 (stating that the validity of waiver is not dependent upon a signed written waiver form).

A youngster nearing the age of majority is more likely to comprehend her *Miranda* warnings. See *Dutil v. State*, 93 Wn.2d 84, 93, 606 P.2d 269, 274 (1980). Voluntariness of a juvenile's waiver of *Miranda* rights need only be shown by a preponderance of the evidence, not beyond a reasonable doubt. *State v. Ellison*, 36 Wn. App. 564, 571, 676 P.2d 531, 536 (1984).

- ii. A.I. is a seventeen year-old who understood and waived his *Miranda* rights after a conversation with Officer Jensen appealing to his conscience.

A.I.'s age did not prevent him from knowingly, voluntarily, and intelligently waiving his *Miranda* rights. He initially denied any wrongdoing or even knowing about the shooting. RP 34. Officer Jensen said that if A.I. wanted to tell the truth, then he would listen.

RP 35. Officer Jensen did not make any promises to A.I. CP 27;

RP 35. A.I. assessed the situation and decided to tell the truth.

Older juveniles can waive their *Miranda* rights and their statements can be used in criminal proceedings. See Wash. Rev. Code § 13.40.140(10) (allowing juveniles over twelve to waive their *Miranda* rights). For example, in *Dutil v. State*, the Washington Supreme Court affirmed *Miranda* waivers by three juveniles who were older than twelve. *Dutil*, 93 Wn.2d at 94. *Dutil* consolidated three cases with juveniles over twelve years old, whose statements to police were admitted in their criminal proceedings. *Id.* at 85. The court found that juveniles over twelve are fully capable of waiving their *Miranda* rights. *Id.* at 93. Like *Dutil*, A.I.'s age does not prevent him from intelligently waiving his *Miranda* rights.

Officer Jensen's conversation with A.I. reveals A.I.'s willingness to waive his *Miranda* rights and continue talking with Officer Jensen. *Fare v. Michael C.* involved a 16 ½-year-old juvenile who waived his *Miranda* rights after an officer told him that he did not have to talk. *Fare v. Michael C.*, 442 U.S. 707, 726, 99 S. Ct. 2560, 2572 (1979). As in *Michael C.*, A.I. was not compelled to tell the truth: Officer Jensen said that if A.I. wanted to tell the truth, then he would listen. RP 35.

A preponderance of the evidence shows A.I. voluntarily waived his *Miranda* rights. In *State v. Blair*, two juveniles were accused of taking a car without permission. *State v. Blair*, 56 Wn. App. 209, 210, 783 P.2d 102, 102 (1989). Neither juvenile expressly waived his *Miranda* rights when making statements to officers. *Id.* at 211. This Court ruled that the juveniles waived their *Miranda* rights by beginning to talk with the officers, and expressing no desire to stop talking with the police. *Id.* As in *Blair*, A.I. voluntarily waived his *Miranda* rights by talking with Officer Jensen when he did not have to. A.I. did not express reluctance to talk to Officer Jensen or Sergeant Sjolín. CP 27; RP 35. He said he would tell the truth. RP 35. A.I. knew he did not have to talk: he asked Officer Jensen “[I]f I tell the truth. Then what?” *Id.* Officer Jensen did not promise A.I. anything for telling the truth. CP 27; RP 35. Yet A.I. decided to voluntarily own up to his actions.

Finally, even youth with significantly impaired educational abilities are competent enough to waive their *Miranda* rights. This Court in *State v. Ellison* ruled that a seventeen year-old juvenile suspect in a special education program, with difficulties with reading and comprehension, plus an initial misunderstanding of his rights at the CrR 3.5 hearing, still had the capacity to knowingly,

voluntarily, and intelligently waive his *Miranda* rights. *State v. Ellison*, 36 Wn. App. 564, 571–72, 676 P.2d 531, 536 (1984).

There is no evidence A.I. did not understand his *Miranda* rights. CP 27–28; RP 249–50, 254–55. To the contrary, after denying wrongdoing, A.I. decided to tell Officer Jensen the truth. RP 34–35. Officer Jensen appealed to A.I.'s conscience. He asked A.I. to take responsibility and chided him for leaving his mother without a van for a week. RP 35, 39, 42. As such, A.I.'s status as a seventeen year-old did not prevent him from understanding and waiving his *Miranda* rights.

- c. A.I.'s Ability To Successfully Communicate With Officers In English—Asking “[I]f I Tell The Truth. Then What?”—Demonstrates He Understood The Officers And Voluntarily Waived His *Miranda* Rights.

A suspect's understanding of his *Miranda* rights is best explained by the suspect, not someone else. See *City of Seattle v. Gerry*, 76 Wn.2d 689, 692, 458 P.2d 548, 549 (1969). A suspect may waive her constitutional rights despite language difficulties. See *State v. Teran*, 71 Wn. App. 668, 672, 862 P.2d 137, 139 (1993), *review denied*, 123 Wn.2d 1021, 875 P.2d 636 (1994). Using English to read *Miranda* rights to a foreign national suffices

when the suspect appears to understand her rights and waive them. *United States v. Amano*, 229 F.3d 801, 805 (9th Cir. 2001).

A.I. demonstrated a proficiency in English throughout his conversations with officers such that he understood and waived his *Miranda* rights. A suspect can testify to explain whether his language skills interfered with his understanding of *Miranda* rights. See *Gerry*, 76 Wn.2d at 692. But A.I. did not testify. RP 151, 187, 198. Officer Jensen and Sergeant Sjolin understood A.I. RP 38, 122. By a preponderance of the evidence, A.I. understood his conversations with the police officers, since he expressed no confusion, and responded appropriately. CP 27; RP 122.

Finally, A.I.'s language skills did not prevent him from knowingly waiving his *Miranda* rights. In *State v. Teran*, the defendant, Teran, was arrested for drug possession. *State v. Teran*, 71 Wn. App. 668, 669, 862 P.2d 137, 137 (1993). Teran was a national from Mexico whose native language was Spanish. *Id.* at 670. He argued that his third grade education and poor English skills prevented him from effectively waiving his *Miranda* rights. *Id.* at 670–73. Teran spoke proficiently with officers; he did not express confusion. *Id.* at 673. The court ruled Teran understood and waived his *Miranda* rights. *Id.*

Like *Teran*, A.I. speaks two languages: Romanian and English. RP 3. He understood and waived his *Miranda* rights in English. Neither Sergeant Sjolín nor Officer Jensen had difficulty understanding A.I. CP 27; RP 45, 122, 249, 256. A.I. never expressed confusion. RP 122; CP 27. Moreover, unlike *Teran*, who had a third grade education, A.I. had a tenth grade education. *Teran*, 71 Wn. App. at 670; RP 315. Sergeant Sjolín and Officer Jensen, both of whom are trained frequently in giving *Miranda* warnings, did not report A.I. had any difficulty understanding English. CP 27; RP 21, 45, 120, 122, 249, 256. Therefore, substantial evidence shows A.I. was proficient enough in English to understand and waive his *Miranda* rights.

E. CONCLUSION

Asking a seventeen year-old nearing majority to take responsibility for his actions is not coercion and does not take advantage of his age or language abilities. The trial court's finding that Sergeant Sjolín read A.I. his juvenile *Miranda* rights is supported by substantial evidence. Additionally, A.I. knowingly, voluntarily, and intelligently waived his *Miranda* rights: he was not coerced into confessing, and his age and proficiency with English

did not prevent him from understanding and waiving his *Miranda* rights.

The trial court did not abuse its discretion, and substantial evidence from the record supports its decision. A.I.'s willingness to take responsibility for his actions should be admissible, and the trial court's decision should be affirmed.

DATED this 19<sup>th</sup> day of August, 2016.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the appellant, travis@washapp.org, containing a copy of the Brief of Respondent, in STATE V. A.I., Cause No. 74263-9-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.

  
\_\_\_\_\_  
Name  
Done in Seattle, Washington

08-19-16  
Date