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Court of Appeals
Division III
State of Washington

NO. 30978-9-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

AARON LEROY BRIDEN,

Appellant.

BRIEF OF RESPONDENT

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I. ASSIGNMENTS OF ERROR

A. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR.

Appellant makes two assignments of error. These can be summarized as follows;

- 1) The trial court erred when it refused to suppress evidence admitted from the Appellant's unlawful arrest after he was illegally seized during a *Terry* stop of the vehicle he was driving.
- 2) The trial court erred when it did not suppress Appellant's confession due to a violation of CrR 3.1(c)(2)

B. ANSWERS TO ASSIGNMENTS OF ERROR.

- 1) The trial court correctly ruled that the stop of Briden was legal pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).
- 2) The trial court properly admitted Briden's statement, further this alleged error was not raised nor argued at the trial and was therefore not preserved for review by this court.

II. STATEMENT OF THE CASE

The substantive and procedural facts have been adequately summarized in the facts section of appellants brief therefore, pursuant to RAP 10.3(b); the State shall not set forth an additional separate facts section. However the two allegations are very fact specific therefore the State shall include extensive and specific sections of the record in this reply. The issues raised by Mr. Briden are controlled by clearly settled case law. Based on that case law this court must look to the facts of this specific case and what determinations were made by the trial court at both

the CrR 3.5 and CrR 3.6 hearings. The testimony and trial court decisions pertaining to those two hearings are dispositive of the issues raised.

The State shall refer extensively to large sections of the testimony of the detectives who testified, specifically at the hearings and to a lesser extent at the bench trial. These quoted sections shall be set forth either in the argument section of this brief or in the Appendix attached hereto.

The State has supplemented the record before this court with copies of the video exhibits admitted and reviewed by the trial court during the CrR 3.5 and 3.6 hearings; they are dispositive with regard to the allegation involving CrR 3.5 this court must view those recordings.

III. ARGUMENT.

RESPONSE TO ALLEGATION “A” – TERRY STOP.

Briden argues that the initial stop of the vehicle he was driving was illegal. A recent case *State v. Tamblyn*, 167 Wn.App. 332, 273 P.3d 459 (2012) sets forth the standard of review for this type of allegation;

We review a trial court's denial of a suppression motion to determine whether substantial evidence supports the challenged findings of fact and whether these findings support the trial court's conclusions of law. *State v. O'Neill*, 148 Wash.2d 564, 571, 62 P.3d 489 (2003). When the appellant does not challenge any of the trial court's findings of fact, they are verities on appeal. *Id.* We review de novo the trial court's suppression hearing legal conclusions. *State v. Carneh*, 153 Wash.2d 274, 281, 103 P.3d 743 (2004).

Briden has not challenged the trial court's factual findings and they are therefore verities on appeal. *State v. Acrey*, 148 Wash.2d 738, 745, 64 P.3d 594 (2003). It should be noted that Briden did not challenge the findings nor the conclusions in the trial court. (RP 981-2)

The trial court heard extensive testimony that cover almost two-hundred pages of the verbatim report of proceedings and based on that extensive testimony the court entered almost nine pages of Finding of Fact. There were twenty-seven separate Facts entered, several of which were subdivided to set forth additional facts. The very first “Fact” is “There are no disputed facts.” (CP 163-172) Because the Facts are not disputed this court will limit its review to whether the trial court's findings support its legal conclusions that Officers legally stopped and detained Briden during the initial traffic stop. *State v. Budge*, infra.

The Findings of Fact entered by the trial court are directly from the testimony of the numerous detectives who testified at the CrR 3.6 hearing. The conclusions that were drawn by the trial court from that testimony and the facts derived from that testimony are clearly supported by the testimony. The Conclusions of Law entered by a trial court following a suppression hearing carry great significance for a reviewing court. *State v. Collins*, 121 Wn.2d 168, 174, 847 P.2d 919 (1993).

The three primary Conclusions of Law entered by the trial court are as follows:

2.

Detectives Andrews and Hampton were warranted under *Terry v. Ohio*, 392 U.S. A , 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968), *State v. Little*, 116 Wn.2d 488, 495, 806 P.2d 749 (1991), *State v. Glover*, 116 Wn.2d 509, 514 806 P.2d 760 (1991), and *State v. Kennedy*, 107 Wn.2d I, 726 P.2d 445 (1986), in conducting an investigatory detention and investigation of the black Dodge Avenger with Washington license 279-TQF and Aaron Briden, the driver. Under the totality of circumstances presented to Detectives Hampton and Andrews, coupled with the information known by their fellow detectives based on their training, experience and investigation, they had a well-founded suspicion, based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted his minimal intrusion on Aaron Briden's liberty.

3.

The detectives stayed within the proper scope of an investigatory detention at all times. The amount of physical intrusion on Aaron Briden's liberty was justified. The duration of Aaron Briden's detention was reasonable.

4.

The seizure of the black Dodge Avenger with Washington license 279-TQF and Aaron Briden was permissible under the Fourth Amendment of the United States Constitution and Article I, Section 7 of the Washington State Constitution.
(CP 171-2)

State v. Budge, 125 Wn.App. 341, 345-6, 104 P.3d 714 (Wash.App.

Div. 2 2005):

We must first decide if substantial evidence supports the trial court's findings of fact. *State v. Vickers*, 148 Wash.2d 91, 116, 59 P.3d 58 (2002). If yes, then we decide whether the findings of fact support the trial court's conclusions of law. *Vickers*, 148 Wash.2d at 116, 59 P.3d 58. "Substantial evidence is evidence

sufficient to persuade a fair-minded, rational person of the truth of the finding." *State v. Mendez*, 137 Wash.2d 208, 214, 970 P.2d 722 (1999) (citing *State v. Hill*, 123 Wash.2d 641, 644, 870 P.2d 313 (1994)).

It is well settled that a police officer may conduct an investigatory stop based on less than probable cause if the officer has a well-founded suspicion of criminal activity based on specific and articulable facts. *State v. Glover*, 116 Wash.2d 509, 514, 806 P.2d 760 (1991). The level of articulable suspicion necessary to support an investigative detention is "a substantial possibility that criminal conduct has occurred or is about to occur." *State v. Kennedy*, 107 Wash.2d 1, 6, 726 P.2d 445 (1986). This court will decide the "reasonableness" of the officer's suspicion based on the totality of the circumstances, including the officer's training and experience, the location of the stop, and the conduct of the person detained. *Glover*, 116 Wash.2d at 514, 806 P.2d 760.

An officer is not required to rule out all possibilities of innocent behavior before initiating a stop. *State v. Anderson*, 51 Wn. App. 775, 780, 755 P.2d 191 (1988). As the term "articulable suspicion" cannot encompass all the myriad factual situations which may arise, a court must look to the totality of circumstances in determining whether an investigative stop is lawful. *State v. Stroud*, 30 Wn. App. 392, 398, 634 P.2d 316 (1981). See, also, *United States v. Cortez*, 449 U.S. 411, 66 L.

Ed.2d 621,101 S. Ct. 690, 695, (1981). Further, a court must weigh "(1) the gravity of the public concern, (2) the degree to which the seizure advances the public interest, and (3) the severity of the interference with individual liberty." *Id.*, at 397.

The *Terry* stop is an exception to the warrant requirement. *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996). The purpose of a *Terry* stop "is to allow the police to make an intermediate response to a situation for which there is no probable cause to arrest but which calls for further investigation." *State v. Armenta*, 134 Wn.2d 1, 16, 948 P.2d 1280 (1997) (quoting *Kennedy*, 107 Wn.2d at 17 (Dolliver, J., dissenting) (citations omitted) Law enforcement may make a *Terry* stop when an officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991) (quoting *Terry*, 392 U.S. at 21). In other words, "[t]he circumstances must suggest a substantial possibility that the particular person has committed a specific crime or is about to do so." *State v. Martinez*, 135 Wn. App. 174, 180, 143 P.3d 855 (2006) (citing *State v. Garcia*, 125 Wn.2d 239,242, 883 P.2d 1369 (1994)).

This Court will look at the totality of the circumstances surrounding the stop *Glover*, 116 Wn.2d at 514 (citing *United States v.*

Cortez, 449 U.S. 411,418, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981)). This includes the officer's training and experience. *Id.* A *Terry* stop should be minimally intrusive in that the seizure must be "reasonably related in scope to the justification for [its] initiation." *Armenta*, 134 Wn.2d at 16. A hunch alone does not warrant police intrusion into people's everyday lives. *State v. Doughty*, 170 Wn.2d 57,63,239 P.3d 573 (2010). And innocuous facts alone do not justify a stop. *State v. Tijerina*, 61 Wn. App. 626, 629, 811 P.2d 241 (1991). Our courts have ruled that being in a high-crime area at night, for example, is not enough to justify a stop when there is no evidence that a particular crime had been committed. *See Glover*, 116 Wn.2d at 514; *State v. Thompson*, 93 Wn.2d 838,842,613 P.2d 525 (1980); *State v. Richardson*, 64 Wn. App. 693, 697,825 P.2d 754 (1992).

A police officer may rely on his experience to evaluate apparently innocuous facts. *Martinez*, 135 Wn. App. at 180 (citing *State v. Samsel*, 39 Wn. App. 564,570-71,694 P.2d 670 (1985). Facts "which appear innocuous to the average person may appear incriminating to a police officer in light of past experience." *Samsel*, 39 Wn. App. at 570. Police officers are not required to set aside that experience. *Id.* at 570-71.

Appellant argues the stop here was based on nothing more than a hunch. But here, officers were essentially responding to a crime in progress. The testimony set forth below clearly indicates that these

officers were literally in the middle of this investigation, an investigation that had been ongoing and continuous since approximately 5:00 a.m.

The ruling by the trial court came after extensive testimony from the numerous highly experienced detectives who were called out to investigate the murder of Shelly Kinter.

The testimony regarding the investigation that led up to the actual stop of the car Appellant was driving covers well over two hundred pages of the verbatim report of proceedings. The total testimony and the oral ruling by the trial court at the CrR 3.6 hearing consist of almost two-hundred and fifty pages.

This testimony indicated that detectives were called out to the scene at 4:57 am on October 20, 2009 and that these officers arrested Briden on suspicion of murdering Shelly Kinter at approximately 1:15 pm on the same day. (RP 25, 27,171, CP 163-72) These highly trained, experienced officers completed this investigation in approximately eight hours. The information gathered by these detectives in this relatively short time frame was clearly more than sufficient to meet the standards set forth in *Terry* and all of the cases that have followed.

Detectives were called to the scene of this murder and observed a partially nude female body that had obvious signs of significant trauma. The detectives surmised Ms. Kinter had been run over by an automobile.

(RP 116) Her body was covered with lacerations and abrasions, there were “skid marks” that appeared to contain tissue and oily dirt on the victims body. (RP 113,115,118) It also appeared to them that she had sustained injuries to her person prior to her death. (RP 25, 27,116-17, 119) It was determined that Ms. Kinter was living at a location known as “The Connections.” (RP 37) (CP 163-72)

The officers located a surveillance camera on a building, Yakima Valley Health, which is near the location where the Ms. Kinter’s body was found. (RP 30-1, 32) They were able to obtain video that covered the area near the body and near where a set of bloody clothes were found. The officers were able to observe the general type, make and eventually determined the model of a vehicle that was observed to stop in the area where bloody clothing was located. The officers were also able to ascertain that this car appeared to stop, the brake lights were activated and it appeared that someone opened the door of the car or a flashlight was used near the car or possibly a person exited that vehicle. (RP 32-33, 35-35, 36, 61, 80-1, 102-04, 105, 122-23)(CP 163-72)

The bloody clothing recovered had been in a parking lot very near the body, it had been observed by a staff person for the clinic where the surveillance camera was located. This staff person moved the clothing a short distance away and contacted one of the detectives who was working

on this case and explained to the detective his observations and actions. (RP 73-6) The clothing that was recovered contained female clothing, such as a bra, victim Kinter was not wearing a bra when her body was found. (RP 77-8) The clothing appeared to have staining consistent with having been rubbed or scrapped on the undercarriage of an automobile as well as red stains that appeared to be blood. (RP 31, 37, 74-8, 99-100) The detectives surmised that the clothing had been dropped at the location where the staff person had found them by the person or person's who were in the black vehicle. (RP 37, 64-5) (CP 163-72)

The officers determined from the surveillance video, and screen capture pictures, that the vehicle in the surveillance video was an American made two door auto and that it had a distinctive set of lights on the rear-end. (RP 30-33, 83-84) Det. Helms testified based on his background, training and knowledge that he believed the car they observed in the video was in fact a Dodge or Chrysler product. (RP 83-4) (CP163-72)

On further questioning of Det. Helms the following was elicited during this hearing;

Q. When you -- so after you had looked, finished looking at that car there, that Dodge Avenger in the parking lot, and comparing it to the car in the surveillance video photo, did you make a conclusion or a determination as to what kind of car it was in that video?

A. After observing this, after observing this vehicle, we felt very strongly that the vehicle that we were going to be looking for in that surveillance video was a Dodge Avenger. (Emphasis mine.)(RP 87)

Det. Helms then testified;

Q. You testified you saw a second Dodge Avenger?

A. I did.

Q. What color was it?

A. It was black.

Q. Where was it when you saw it?

A. The vehicle was traveling north to south directly in front of the Connections building here.

Q. When you first saw it, was it directly in front of Connections?

A. Yes, sir. It would have been right in this area here when I first observed it.

Q. While you were looking at this Dodge Avenger in the Connections parking lot, did anything happen?

A. Yes. I was standing on the driver's side of that vehicle. I would have been facing Naches Avenue. While the other detectives were still looking at this car, I observed a vehicle that appeared to be similar to this vehicle, another Dodge Avenger, driving southbound on Naches directly in front of Connections.

...

Q. Okay. What color was that Dodge Avenger?

A. Black.

Q. Did it appear to you to be consistent with the car in the surveillance video?

A. Yes, sir.

Q. Did you notice any damage to the second Dodge Avenger that you saw driving down South Naches Avenue?

A. I did.

Q. What was that?

A. Through the windshield I was able to see it appeared to be cracked or damaged, the front windshield of the vehicle toward the driver's side.

Q. Would that be consistent with that car having struck a person?

A. It could potentially be.

. (RP 89-90)

...

Q. After that second Dodge Avenger drove by, what happened then?

A. The Dodge Avenger, like I said, was north to south on Naches followed by one or two other vehicles. Directly behind that I saw detective Kasey Hampton and Mark Andrews driving their unmarked vehicle also southbound on Naches towards Walnut. They began to pull into the parking lot.

Q. The parking lot of Connections?

A. The parking lot of Connections were we all were. When I saw them doing that, I ran to the vehicle and I advised them of the vehicle that I had saw, that there was another Dodge Avenger that appeared to have damage to the windshield and that it was -- that I saw it southbound on Naches. Like I said, they were probably three car lengths behind it at that time.

Q. What did they do then?

A. They immediately exited the parking lot and left toward the vehicle.

Q. Did they follow that second black Dodge Avenger?

A. Yes, sir. I last saw them driving eastbound on Walnut.

Q. What did you do then?

A. I went back to looking at the vehicle that we were looking at before in the Connections parking lot. (RP 91)

While continuing this investigation the officers went to the last known residence of the victim The Connections and at that location observed a Dodge Avenger in the parking lot. (RP 37-38, 42) After observing this automobile the detectives did a search on the internet to locate pictures of Dodge Avengers and after that search determined that a 1997 or 1998 Dodge Avenger had tail light configurations that matched the tail lights of the vehicle in the surveillance video. This was the

vehicle observed in the alley near where the bloody female clothing was found. (RP 123) The location of the body and The Connections are only “a block and a half” apart. (RP 130)

Throughout this initial hearing the detectives were nearly certain that Ms. Kinter had been hit and run over by a car. These officers were looking for a particular set of damage on the striking vehicle to include tissue or hair or other portions of Ms. Kinter’s clothes or body caught on or under the striking vehicle. (RP 39-40, 42-3, 80, 86, 88, 90, 93-4, 131-2, 134)

Detectives were given permission to search this first Avenger. Detectives were looking at and in the process of impounding the Avenger that was in the parking lot of The Connections when they observed the second Avenger driving by The Connections, this was the care driven by Briden which was later determined to be the car used to kill Ms. Kinter. (RP 42-44)(CP 167-8)

Det. Kellett and several other detectives testified that they were at The Connections and he and the other officers observed the second Avenger. (RP 46-7) Det. Kellett testified that he stated that perhaps they should look at that car also. (CP 167-8) This was not just based on the fact that this second car was the same make, model and year as the car they were looking for but also because:

Q. When you went to the arson investigation class or any of the other classes that you've attended, did you receive some training in whether or not people who commit certain kinds of crimes will tend to monitor police investigations?

A. Well, yes.

Q. Tell me about that.

A. One of the signatures of an arsonist is that they will -- specifically they stick around to watch the fire, the fire fighting and the investigation afterwards. Through my experience as well as training with other criminals, they are very interested in the investigation and the proceeding investigation.

Q. Will they sometimes try and monitor the police investigation?

A. Yes.

...

Q. Why did you want to take a look at that car?

A. I know through training and experience that, again, criminals will often follow the investigation of the crime they committed especially if they are confident in their anonymity. It wouldn't be unusual to me for the suspect to monitor the investigation.

Q. It was obvious there was an investigation going on?

A. Yes.

(RP 110-11)

...

Q. Did the fact that the second black Dodge Avenger was driving past Connections where Shelly Kinter lived make a difference to you?

A. Yes, it does.

Q. Why is that?

A. Again, as stated before, it is not unusual for people to monitor the police investigation.

Q. The fact that she lived there in and of itself, would that make a difference?

A. That it was nearby not only where she lived but actually where the body was found.

Q. How far is Connections from where Shelly Kinter's body was found?

A. A block and a half.

(RP 129-30)

The detectives investigating this murder not only had been patrol officers and were very familiar with makes and models of cars but several also worked on cars as a hobby and one detective had an actual degree in maintenance and repair of vehicles and had worked extensively in that industry. (RP 70-1, 111-12, CP 166)

The Avenger at Kinter's residence had tail lights that were the same as the tail lights observed in the surveillance video. The detectives testified that the observation of this car cemented their belief that this was the make and model of the car in the video and screen captures.

The basis for the stop was articulated by Det. Andrew and Det. Hampton during the CrR 3.6 hearing set forth in Appendix A. This testimony by itself is more than sufficient to support a *Terry* stop of the car driven by Mr. Briden. This court need only read this portion of the hearing and it would be the position of the State that the ruling of the trial court would still be upheld. These detectives were working together, there was only a period of approximately eight hours from the initial call out to the time they were stopping this second Avenger.

One of the most important actions taken by the stopping officers was that after they learned of this second vehicle they didn't just race up and stop it, they navigated through town in such a way so that the second Avenger driven by Briden would have to drive in front of them thereby

allowing them to physically observe the front of this vehicle to see if there was damage which was consistent with striking a person. They observed such damage. This is all set forth in the testimony set out in Appendix A.

After the actual stop the intrusion on Mr. Briden's rights was very short and actually very non-intrusive. The officers merely stopped his vehicle and within minutes if not seconds of walking up to the vehicle, with no other physical actions on the part of the stopping officers, they were able to confirm and affirm their belief that this car was involved in the death/killing of Shelly Kinter. They observed the specific type of damage they were looking for and observed what appeared to be blood on various locations of the car and were able to observe blood or what appeared to be blood inside this car from their legal vantage point. They then merely got down and looked under the car and were able to see what appeared to be hair, blood a tissue on the undercarriage of the car. This was all done with the naked eye. (RP 47-9, 59, 93, 94-5) (CP 169-71)

The officers suspicions were immediately confirmed when they approached the stopped car; this was even before they removed Briden from this car. Det. Janis testified that he observed what appeared to be blood on the inside of the vehicle as well as on Briden's clothing while Briden was still seated in the vehicle. (RP 170-71) These observations

were appropriate under the open view doctrine. *State v. Lemus*, 103 Wn.App. 94, 102-3, 11 P.3d 326 (2000):

By contrast, the "open view" doctrine applies when an officer observes contraband from a "nonconstitutionally protected area." *Kennedy*, 107 Wash.2d at 10, 726 P.2d 445 (citing *Seagull*, 95 Wash.2d at 901-02, 632 P.2d 44). The "open view" observation is thus not a search at all but may provide evidence supporting probable cause to constitutionally search; in other words, a search pursuant to a warrant. *See State v. Bobic*, 140 Wash.2d 250, 254, 255, 258-59, 996 P.2d 610 (2000) (officer observation of contraband through hole in wall of storage unit, which led to search warrant, held not to be search under open view doctrine).

Here, Officers Washburn and Kelly stood outside the automobile parked on a city street and conducted a valid, routine traffic stop. Mr. Lemus does not have any expectation of privacy on a city street. In other words, Mr. Lemus cannot claim constitutional privacy protection in the places where these officers stood. *See State v. Young*, 28 Wash.App. 412, 416-17, 624 P.2d 725 (1981). "There is no expectation of privacy shielding that portion of an automobile which can be viewed from outside by diligent police officers." *Gonzales*, 46 Wash.App. at 397, 731 P.2d 1101 (citing *Texas v. Brown*, 460 U.S. 730, 740, 103 S.Ct. 1535, 75 L.Ed.2d 502 (1983)). Further, Officer Kelly's use of a flashlight, as a routine officer safety measure, did not turn the observation into "an intrusive method of viewing." *State v. Rose*, 128 Wash.2d 388, 399, 909 P.2d 280 (1996).

An officer's act of observing the interior of an automobile through its windows while the vehicle is parked in a public place is not a search "in the constitutional sense." *Young*, 28 Wash.App. at 417, 624 P.2d 725. Simply put, the "plain view" doctrine does not apply if the contraband can be viewed from outside the vehicle.

The following is the testimony of the detective's observations immediately after the stop;

DET. ANDREWS

- Q. When you got up close to this Dodge Avenger that Mr. Briden was driving, did you have a chance at that time to observe whether the car had any damage?
- A. Yes.
- Q. Tell me about that.
- A. There was damage close to the driver's side windshield that was smashed consistent with something of some size hitting it. Upon briefly talking to him, I could see what looked to be fresh or dried blood inside the vehicle and also some droplets on the outside.
- Q. Where were the blood droplets on the outside of the vehicle?
- A. On the driver's door.
- Q. Inside of the vehicle where did you see the blood?
- A. On the dashboard.
- Q. What about on the console?
- A. There as well.
- Q. Showing you Exhibit M, can you tell me what that is.
- A. That's the damage to the vehicle on the driver's side.
- Q. Is that the way it looked the day you stopped it?
- A. Yes.
- Q. And I'm going to show you O. Can you tell what that is?
- A. That is the front end of the vehicle, the damage on the side as we saw it.
- Q. Is that the car that you stopped?
- A. Yeah. It's right there on the street where we stopped it.
- Q. Did you notice the license plate of that car?
- A. The license plate on this one is 279 Tom Queen Frank.
- Q. Showing you now N, is that a photograph?
- A. Yes. That's the inside, the console of the vehicle we stopped.
- Q. What do you see of interest in that photograph?
- A. There is the blood on the center console.
- Q. Is that the way that blood appeared on the center console of the Dodge Avenger when you stopped it on October 9, 2009?
- A. Yes.
- Q. Would you go ahead and show that to the court so that the court can see. Hold it up so the court can see where the blood was and point that blood out, please.
- A. Right there on the console, your Honor.

Q. I'll show you Q. Is that a photograph?
A. Yes.
Q. What does it show?
A. That's the inside door of the vehicle.
Q. Is there anything of interest on the door of that vehicle?
A. There is blood on the handle.
Q. Is that the way that car looked the day you stopped it?
A. Yes.
Q. Would you go ahead and hold that up so the court can see.
Now, when you got up close to that car, when you actually -- just before you turned on your lights and stopped that car -- let me rephrase the question. When you got out of your car and you walked up to the car and you got a close-up look at the damage on the car and you saw the blood inside the car, did that enhance or weaken your belief that this car might be connected with the death of Shelly Kinter?
A. I believed this was the vehicle involved.
Q. Did you ask Mr. Briden for any identification?
A. I did.
Q. What did you ask him for?
A. I asked if he had a driver's license, insurance, proof of identification.
Q. Did he have any identification?
A. He said he did not have any identification.
Q. At some point did you ask him to get out of the car?
A. Yes, I did.
Q. Why did you do that?
A. I believed he was our suspect involved in the situation.
Q. At that time did you believe you had probable cause to arrest him?

(RP 143-56)

DET. HAMPTON

Q. After the detective car stopped, what did you do?
A. I approached the passenger side of the vehicle while Detective Andrews approached the driver's side.
Q. While you approached that car on the passenger side, did you make any observations about the passenger side of that black Dodge Avenger?

A. Yes, sir, I did.

Q. What did you see?

A. I saw red drops which appeared to be bloodstains on the center console.

Q. Did you see anything on the outside, the exterior of the Dodge Avenger, as you approached that caught your attention?

A. Yes, I noticed red stains that could be bloodstains on the outside of the vehicle as well.

Q. On what side?

A. The passenger side.

Q. How long did it take you -- how long after the car stopped did it take you to get to the passenger side of that Dodge Avenger?

A. Fifteen, twenty seconds.

Q. During that 15, 20 seconds from the moment the black car stopped until you got up to the window of that car, during that time frame that's when you saw the blood on the outside of the car?

A. Yes, sir.

Q. When you got to the window of that Dodge Avenger, did you look inside the car?

A. Yes, sir. The window was rolled down.

Q. Did you see anything of interest inside the car?

A. Yes, sir. I saw some red drops and stains on the center console.

Q. Did those stains appear to be blood?

A. Yes, they did.

Q. Showing you now Exhibit N, can you tell me what that is?

A. This is the center console of the suspect vehicle. You can see the center console. You can see red drops and stains there. Also it appears that there is red stains on the emergency brake.

Q. Is that the way it looked when you approach the car?

A. Yes, it is.

Q. Did you make an observation of the driver of the car?

A. Yes, I did.

Q. Who was the driver of the car?

A. The gentleman sitting there right by Mr. Crowley.

Q. Did you identify that gentleman?

A. Yes, we did.

Q. Who was it?

A. Aaron Briden.
Q. He is the defendant seated at counsel table?
A. Yes.
Q. Did you observe anyone else in that car other than Mr. Briden?
A. No, sir. There was nobody else in the car.
Q. At that time did you take Mr. Briden into custody?
A. Yes, sir, we did.
Q. Did you arrest him?
A. Yes, sir.
Q. Why did you arrest him?
A. He was detained for the investigation of the murder of Shelly Kinter.
Q. When you walked up to the passenger side of the car and saw the blood on the side of the car, did that enhance or weaken your belief that this may be the car that --
A. It enhanced.
Q. When you saw the blood on the console inside the car, did it enhance or weaken your belief this is the correct car?
A. It enhanced it.
Q. Did you make any note of the time that you stopped Mr. Briden in that car?
A. I stopped him at 1:15 hours.
Q. Would that be 1:15 p.m.?
A. 1:15 p.m.
(RP 162-164)

DET. KELLETT

Q. Did you see that second black Dodge Avenger parked there?
A. I did.
Q. Did you make any observations about that second black Dodge Avenger?
A. I went immediately and looked at the undercarriage.
Q. What did you see?
A. Right in front of me I saw a large clump of hair and blood.
Q. Did you have a chance -- when you were looking at Shelly Kinter's body, did you have a chance to see what color her hair was?
A. She had curly black hair.
Q. The hair that you saw on this Dodge Avenger, what did it

look like?

A. Curly black hair.

Q. Did you see any blood?

A. Yes, I did.

Q. Tell me about the blood you saw on the second Dodge Avenger.

A. There was at the time what appeared to be blood smeared down the undercarriage of the car.

Q. Did you see any blood on the car that was not on the undercarriage but was on the side of the car?

A. Detective Hampton pointed out blood spots that were on the side of the car as well.

Q. Did it appear to you that this second black Dodge Avenger, that the state of this second black Dodge Avenger was consistent with what a car would look like if it had recently run over a human being?

A. Yes. It did exactly.

Q. Do you recall about how long it was from when you first heard from Detective Hampton that they had stopped the second black Dodge Avenger to the time when you had a chance to look at the undercarriage of the second black Dodge Avenger?

A. Maybe three to six minutes, somewhere in there, a very short time.

(RP 131-32)

The standard of review for the admission of evidence is set forth in

State v. Wade, 138 Wn.2d 460, 979 P.2d 850, 852 (Wash. 1999);

A trial court's admission of evidence is reviewed for an abuse of discretion. *State v. Lane*, 125 Wash.2d 825, 831, 889 P.2d 929 (1995). A court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 482 P.2d 775 (1971). A trial court's judgment is presumed to be correct and should be sustained absent an affirmative showing of error. *Smith v. Shannon*, 100 Wash.2d 26, 35, 666 P.2d 351 (1993); *Mattice v. Dunden*, 193 Wash. 447, 450, 75 P.2d 1014 (1938).

The defendant bears the burden of proving abuse of discretion. *State v. Hentz*, 32 Wn. App. 186, 190, 647 P.2d 39 (1982), rev'd on other grounds, 99 Wn.2d 538, 663 P.2d 476 (1983).

The trial court entered extensive oral and written Findings of Fact and Conclusions of Law. (CP 163-72) Once again “These findings were unassailed by either party on appeal and, consequently, they are verities on appeal. *Metropolitan Park Dist. v. Griffith*, 106 Wn.2d 425, 433, 723 P.2d 1093 (1986). Therefore this courts review is limited to determining if the trial court's findings support its conclusions of law. *Willener v. Sweeting*, 107 Wn.2d 388, 393, 730 P.2d 45 (1986).”

The facts presented clearly set forth a valid basis for a “Terry” stop. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

The video that was watched by the detectives and upon which a determination was made regarding the make, model and eventually even the year of the car was watched by the trial court judge.

The minimal intrusion of a *Terry* stop would have been justified even if appellant had later turned out to merely be a witness such as the owner of the first Avenger. *State v. Mitchell*, 145 Wn.App. 1, 186 P.3d 1071 (2008) addresses what an officer may do; it is clear the actions of the officers complied with this standard as well;

[T]he law ordinarily permits police to seek the voluntary cooperation of members of the public in the investigation of a crime. “[L]aw enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, [or] by putting questions to him if the person is willing to listen.” *Florida v. Royer*, 460 U.S. 491, 497, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983). See also *ALI, Model Code of Pre-Arrest Procedure* § 110.1(1) (1975) (“[L]aw enforcement officer may ... request any person to furnish information or otherwise cooperate in the investigation or prevention of crime”). That, in part, is because voluntary requests play a vital role in police investigatory work. See *e.g.*, *Haynes v. Washington*, 373 U.S. 503, 515, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963) (“[I]nterrogation of witnesses ... is undoubtedly an essential tool in effective law enforcement”); *U.S. Dept. of Justice, Eyewitness Evidence: A Guide for Law Enforcement* 14-15 (1999) (instructing law enforcement to gather information from witnesses near the scene)

In judging reasonableness, courts apply a balancing test that looks to “the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.” (Emphasis mine.)

A police officer may detain a witness if there are exigent circumstances or special officer safety concerns. *State v. Dorey*, 145 Wn. App. 423, 186 P.3d 363 (2008) Other factors this court should consider include “the seriousness of the crime being investigated, a reason to believe the person detained had knowledge of material to aid in the investigation of such crime, and the need for prompt action.” *State v. Mitchell*, 145 Wn. App. at 8 (citing 4 *Wayne R. LaFare, Search and Seizure: A Treatise on the Fourth Amendment* § 9.2(b) at 289-91 (4th ed.

2004)). These officers were in the middle of an investigation of the brutal rape and murder of Shelly Kinter when they stopped the car driven by Briden.

In reviewing the circumstances leading up to a stop courts may consider such factors as the officer's training and experience, the location of the stop, and the conduct of the person detained. *State v. Pressley*, 64 Wn. App. 591, 596, 825 P.2d 749 (1992) citing *State v. Glover*, 116 Wn. 2d 509, 513, 806 P.2d 760 (1991). Another important factor in the totality of the circumstances that this court must examine is the nature of the suspected crime; a violent felony crime provides an officer with more leeway to act than does a gross misdemeanor. *State v. Randall*, 73 Wn. App. 225, 229-30, 868 P.2d 207 (1994); *State v. Thiery*, 60 Wn. App 445, 803 P.2d 844 (1991) (“Officers may do far more if the suspect conduct endangers life or personal safety than if it does not”); *State v. McCord*, 19 Wn. App. 250, 576 P.2d 892, review denied, 90 Wn.2d 1013 (1978) (seriousness of suspected crime bears on the degree of suspicion needed to make a stop and the extent of the permissible intrusion after the stop).

This was an ongoing investigation involving multiple officers in several locations gathering information and evidence in an attempt to solve this brutal murder. Washington has long accepted findings of probable cause under the "fellow officer rule." Under this rule, "in those

circumstances where police officers are acting together as a unit, cumulative knowledge of all the officers involved in the arrest may be considered in deciding whether there was probable cause to apprehend a particular suspect." *State v. Maesse*, 29 Wn. App. 642, 647, 629 P.2d 1349 (1981).

Even if Mr. Briden was innocent the test for reasonableness of an investigative stop involves weighing the invasion of personal liberty against the public interest to be advanced. *State v. Samsel*, 39 Wn. App. 564, 570, 694 P.2d 670 (1985).

In a recently decided case *State v. Johnson*, 156 Wn.App. 82, 89-92, 231 P.3d 225 (2010) the court forth this issue as follows:

We review a trial court's denial of a CrR 3.6 suppression motion "to determine whether substantial evidence supports the trial court's challenged findings of fact and, if so, whether the findings support the trial court's conclusions of law." *State v. Cole*, 122 Wash.App. 319, 322-23, 93 P.3d 209 (2004). Unchallenged findings of fact are verities on appeal. *State v. Balch*, 114 Wash.App. 55, 60, 55 P.3d 1199 (2002). We review de novo conclusions of law, "including mischaracterized ' findings.' " *Cole*, 122 Wash.App. at 323, 93 P.3d 209. We defer to the fact finder on witness credibility issues. *State v. Thomas*, 150 Wash.2d 821, 874-75, 83 P.3d 970 (2004).

Whether a law enforcement officer has seized a person is a mixed question of law and fact. *State v. Harrington*, 167 Wash.2d 656, 662, 222 P.3d 92 (2009). The defendant bears the burden of proving that an unlawful seizure occurred. *State v. Young*, 135 Wash.2d 498, 501, 957 P.2d 681 (1998). To determine

whether a seizure occurred, Washington courts use an objective standard to examine the police officer's actions. State v. O'Neill, 148 Wash.2d 564, 574, 62 P.3d 489 (2003). Not every encounter between a law enforcement officer and an individual amounts to a seizure. State v. Armenta, 134 Wash.2d 1, 10, 948 P.2d 1280 (1997) (quoting State v. Aranguren, 42 Wash.App. 452, 455, 711 P.2d 1096 (1985)).

...

When an officer subjectively suspects the possibility of criminal activity but does not have suspicion justifying an investigative detention (Terry stop), officer contact does not constitute seizure. O'Neill, 148 Wash.2d at 574-75, 62 P.3d 489. Thus, it is not a seizure when a law enforcement officer parks behind a vehicle parked in a public place, asks an occupant to roll down a window, questions him, and requests identification. *See O'Neill*, 148 Wash.2d at 572, 577, 579-581, 62 P.3d 489.

Once again the findings of fact and conclusions of law were not disputed. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), overruled on other grounds by *Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007) states “We review findings of fact on a motion to suppress under the substantial evidence standard. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. We review conclusions of law in an order pertaining to suppression of evidence de novo.” (Citations omitted.)

This court has before it all of the information which was considered by the trial court. The findings of fact and conclusions of law

support the actions of the officer and are based on the information presented to the trial court. They are further supported by the oral ruling made by the trial court. The oral findings and conclusions contained are supported by the testimony and the facts and should not be disturbed by this court. "Even if inadequate, written findings may be supplemented by the trial court's oral decision or statements in the record." *In re Det. of LaBelle*, 107 Wn.2d 196, 219, 728 P.2d 138 (1986).

In *State v. Thornton*, 41 Wn. App. 506, 705 P.2d 271 (1985) cited by Appellant the stop of the suspect vehicle was upheld by the court on a factual basis that is not as thorough and complete as the investigation in Briden's case.

Appellant cites to two Federal cases, both are clearly distinguishable from the case before this court. *United States v. Jaquez*, 421 F.3d 338 (5th Cir. 2005) cited by Appellant is distinguishable. In *Jaquez* the only information the stopping officer had was that there had been shots fired in a high crime area and the only information given to the officer by the dispatcher was that "a red vehicle" was involved in the incident." *Id* at 340. The totality of information at the disposal of the detectives in this case was far in excess of "a red car." The totality of the information has been set forth above.

He next cites *United States v. Rias*, 524 F.2d 118 (5th Cir. 1975) which is also clearly distinguishable on the facts. In *Rias* an officer was aware that a series of “Farm Store” robberies had occurred in the last two weeks to a month. He only knew that two black males in a black or blue Chevrolet were suspects. He observed two black males in a black Chevrolet drive by his location on two occasions. This location was in the vicinity of a “Farm Store.” Based solely on that information the officer stopped the car. Once again facts set forth in the CrR 3.6 Hearing and memorialized in the undisputed Findings of Fact, and set forth in this brief, in the Appendix to this brief are far in excess of “two black men in a black or blue car in the area of a Farm Store involving a crime that had been committed weeks if not months earlier.

While not argued during the suppression motion in the trial court it must be made clear that the vehicle that was being operated by Briden was in fact stolen. This court may affirm a lower court's ruling on any grounds adequately supported in the record. *In re Marriage of Rideout*, 150 Wash.2d 337, 358, 77 P.3d 1174 (2003). "We may affirm the trial court on an alternative theory, even if not relied on below, if it is established by the pleadings and supported by proof." *State v. Lakotiy*, 151 Wn.App. 699, 707, 214 P.3d 181 (2009), *review denied*, 168 Wn.2d 1026, 228 P.3d 19 (2010).

The State charged and convicted Briden in Count four of his for crime of robbing Cereilia Sinclair. In this robbery he bit Ms. Sinclair on the head and stole her car not once but twice. This was the black Avenger that Briden used to kill Shelly Kinter. (CP 4)(RP 962-63, 875-94) There was extensive testimony at trial from the true owner of this Avenger. At the time Mr. Briden was found in the car it had apparently been reported stolen by Ms. Sinclair on two occasions. The first instance apparently the police would not take a report because she did not know he own license number. (RP 881, 886-87)

In *State v. Zakel*, 119 Wn.2d 563, 571, 834 P.2d 1046 (1992) Zakel was in possession of a stolen car when an officer looked at a “VIN” number and the contents were eventually searched. The Washington State Supreme Court ruled that Zakel did not have an expectation of privacy in this stolen vehicle “An individual "who owns or lawfully possesses or controls property will in all likelihood have a legitimate expectation of privacy by virtue of his right to exclude." *Rakas v. Illinois*, 439 U.S. at 144 n.12 (1978); see also *State v. Mathe*, 102 Wn.2d 537, 688 P.2d 859 (1984). Zakel had no legitimate interest in the RX7, and therefore he cannot claim a legitimate expectation of privacy.”

Once again while not argued at the trial court this court can and should use both this and the clearly legitimate stop as a basis to uphold the ruling of the trial court.

The well reasoned ruling by the trial court should not be disturbed by this court.

RESPONSE TO ALLEGATION “B” – CONFESSION

Briden did not raise the allegation that there had been a violation of CrR 3.1(c)(2) in the trial. The only mention by Briden in the trial court regarding the legality of his statement that the State can find in any briefing done by Briden is contained in the Motion to Suppress (CP 5-17) and is as follows;

3. The physical evidence obtained from the stop, as well as any statements made by the defendant after the stop, must be suppressed. "The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion" violating the Fourth Amendment. *Wong Son v. United States*, 371 U.S. 71,485 (1963). Here, police stopped Mr. Briden's car without a reasonable suspicion that he was involved in any illegal activity. Because Mr. Briden's confession was "obtained either during or as a direct result of [this] unlawful invasion" of his Fourth Amendment rights, all evidence must be suppressed. See id. (Emphasis mine.)
(CP 17)

There is no mention in cross-examination of the detectives in the CrR 3.5 hearing who interviewed Briden regarding CrR 3.1(c)(2), there was no mention of CrR 3.1(c)(2) in any of the argument presented to the court after the CrR 3.5 hearing. (RP 243-252) At trial the sole basis

argued by Briden was that he invoked his right to have an attorney present and the officers should not have “questioned” Briden after that invocation. The State argued then as it does now that Briden by his words and acts reinitiated contact with the detectives after this invocation and therefore all of his statements were admissible at trial, the trial court agreed with the State’s position. (CP 156-162)

In the trial court Briden actually only asked “that you not permit the jury to hear the statements beyond 1948” a reference to the specific area of the transcript of his confession. (RP 252) This court must remember that in the end Briden waived his right to a jury trial and the matter was tried to the bench. *State v. Carlson*, 27 Wn. App. 387, 390, 618 P.2d 531 (1980) “ Judges routinely rule on evidentiary matters in bench trials and are not found "prejudiced" by the exposure to inadmissible evidence. Trial judges are presumed to have considered only the evidence properly before the court and for proper reasons. *In re Harbert*, 85 Wn.2d 719, 538 P.2d 1212 (1975); *State v. Jefferson*, 74 Wn.2d 787, 446 P.2d 971 (1968).”

Briden has not addressed how or why this court can or should consider this new allegation for the first time on appeal nor has he addressed RAP 2.5. *State v. Naillieux*, 158 Wn.App. 630, 638-9, 241 P.3d 1280 (Div. 3 2010) addressed the standard of review for a court of appeal

when an appellant requests an issue be addressed for the first time on appeal;

We sit as a court of review which, of course, means that we do not preside over trial proceedings de novo. Our function is to review the validity of claimed errors by a trial judge who presided over a trial. That function assumes that counsel preserve the error by objecting to something the trial judge did or did not do. We do not, and should not, be in the business of retrying these cases. It is a wasteful use of judicial resources. *Id.* at 344, 835 P.2d 251; *State v. Bashaw*, 169 Wash.2d 133, 146, 234 P.3d 195 (2010); *State v. Labanowski*, 117 Wash.2d 405, 420, 816 P.2d 26 (1991). And it encourages skilled counsel to save claims of constitutional error for appeal so a defendant can get a new trial and second chance at a not guilty verdict if the first trial does not end in his favor. *Lynn*, 67 Wash.App. at 343, 835 P.2d 251. Most errors in a criminal case can be characterized as constitutional. *Id.* at 342-43, 835 P.2d 251.

This court then went on to analyze what *Naillieux* or Mr. Briden or any appellant would have to establish in order to prevail on an allegation raised for the first time on appeal. Once again Briden has not addressed RAP 2.5 in his briefing;

Mr. Naillieux is entitled to a new trial only if his claimed errors are manifest constitutional errors. RAP 2.5(a)(3); see *Lynn*, 67 Wash.App. at 345, 835 P.2d 251 (setting forth four-part manifest constitutional error test). Even if the claimed error is constitutional in nature, we will not review it unless it is also manifest. *Lynn*, 67 Wash.App. at 345, 835 P.2d 251. An error is manifest when the defendant shows "the asserted error had practical and identifiable consequences in the trial of the case." *Id.* "'[M]anifest' means unmistakable, evident or indisputable, as distinct from obscure, hidden or

concealed. 'Affecting' means having an impact or impinging on, in short, to make a difference. A purely formalistic error is insufficient." *Id.* (footnote omitted). We conclude that, while Mr. Naillieux's claims of manifest constitutional error might well implicate constitutional due process rights, they are not manifest.

The trial court entered written Findings of Fact and Conclusions of Law after the CrR 3.5 hearing after it issued the almost five page oral ruling. (RP 252-56, CP 153-62) Briden did not challenge the Findings of Fact nor the Conclusion Law at the trial court and has not challenged them before this court. (RP 981-2) As stated above, even if this court were to consider the written findings incomplete or inadequate it may also look to the oral ruling, "Even if inadequate, written findings may be supplemented by the trial court's oral decision or statements in the record." *In re Det. of LaBelle*, 107 Wn.2d 196, 219, 728 P.2d 138 (1986); In addition, even where a trial court's written findings are incomplete or inadequate, we can look to the trial court's oral findings to aid our review. *State v. Robertson*, 88 Wash.App. 836, 843, 947 P.2d 765 (1997), review denied, 135 Wash.2d 1004, 959 P.2d 127 (1998).

The standard of review is set out in *State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999);

“[F]indings of fact entered following a CrR 3.5 hearing will be verities on appeal if unchallenged, and, if challenged, they are verities if supported by substantial evidence in the record.” *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d

363 (1997); see also *State v. Hill*, 123 Wn.2d 641,647, 870 P.2d 313 (1994). Evidence is substantial when it is sufficient to persuade a fair-minded person of the truth of the stated premise. *State v. Thetford*, 109 Wn.2d 392, 745 P.2d 496 (1987).”

...
Further, an appellate court does not independently evaluate the testimony to embellish the findings. See *State v. Carner*, 28 Wn. App. 439, 441, 624 P.2d 204 (1981).

In a very recent case Division II of this court set out the standard of review. *State v. Gasteazoro-Paniagua*, 41103-2-II (WACA)(Slip opinion):

We review the trial court's findings of fact from a CrR 3.5 hearing to determine if they are supported by substantial evidence. *State v. Broadaway*, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). We review de novo whether the trial court's conclusions of law are properly derived from its findings of fact. *State v. Pierce*, 169 Wn.App. 533, 544, 280 P.3d 1158 (citing *State v. Grogan*, 147 Wn.App. 511, 516, 195 P.3d 1017 (2008), *remanded*, 168 Wn.2d 1039 (2010)), *review denied*, No. 87766-1 (Wash. Dec. 4, 2012). Unchallenged findings of fact are verities on appeal. *Pierce*, 169 Wn.App. at 544 (citing *State v. Lorenz*, 152 Wn.2d 22, 30, 93 P.3d 133 (2004)). After making a knowing, voluntary, intelligent waiver of *Miranda* rights, a defendant must unequivocally request an attorney in order to invoke his right to counsel. *State v. Radcliffe*, 164 Wn.2d 900, 906-07, 194 P.3d 250 (2008); *see also State v. Nysta*, 168 Wn.App. 30, 40-41, 275 P.3d 1162 (2012); *Pierce*, 169 Wn.App. at 544 (Footnote omitted.)

The findings clearly indicate that when Briden’s at 3:13:43 p.m. of the interrogation said, "Man, can I speak to an attorney?" that “The court finds that this was an unequivocal request for counsel.” (CP 159) The

very next question by Briden makes it clear that he is reinitiating the interview;

At 3:13:19 Mr. Briden asked, "So how long am I gonna be up in this mother fucker, man?" Then he asked, "Or can I talk to you guys?"

"You just asked for an attorney," Detective Janis replied. "Well, can I talk to you guys **instead?**" Mr. Briden asked. (CP 159)

The entire statement makes it clear that Briden wishes to re-engage the interview. One of the most crucial words, emphasized above, is the word "instead." It is at the end of the second question to the detectives about whether he could talk to them when Briden responds to the statement of Det. Janis regarding the just uttered request for and attorney by saying "Well, can I talk to you guys instead?" (CP 179) This is then followed, as the trial court also stated "The court finds that Mr. Briden's persistent knocking on the door demonstrated his desire to reinitiate conversation with the police and continue telling them what he knew about the incident....The police did not prompt or coerce Mr. Briden to reinitiate conversation by isolating him for a long time. There is no indication that the police subtly motivated Mr. Briden to reinitiate conversation. The court finds that Mr. Briden reinitiated conversation with the detectives under *Edwards v. Arizona*, 451 U.S. 477, 68 L. Ed. 378, 101 S. Ct. 1880 (1981)." (CP 160)

This court need only review the video exhibit that has been submitted to this court to understand and determine that the ruling of the trial court was correct. That video tells the entire story. Once Briden says "Man, can I speak to an attorney?" the officers literally get up and walk from the room. It is only after Briden asks, twice, if he can continue to speak to the officers and pounds on the wall that the officers even come back into the room.

The undisputed Findings, which were not objected to at the trial court nor have they been challenged in this appeal, quote the video of the actions of the officers when they reenter the interview room;

10.

At 3:13:43 p.m. Mr. Briden said, "Man, can I speak to an attorney?" This was the only time Mr. Briden referred to an attorney. The court finds that this was an unequivocal request for counsel.

The detectives stopped questioning and rose to leave.

At 3:13:19 Mr. Briden asked, "So how long am I gonna be up in this mother fucker, man?" Then he asked, "Or can I talk to you guys?"

"You just asked for an attorney," Detective Janis replied.

"Well, can I talk to you guys instead?" Mr. Briden asked.

"You just asked for an attorney," Detective Janis repeated.

Mr. Briden asked if he could be put in a cell. This was not tantamount to a repeated request for counsel.

The detectives exited the interview room at 3:13:33.

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Outside the interview room, the detectives monitored Mr. Briden. **Mr. Briden's knocking on the door made it obvious to the detectives that he wanted to reengage them and had something more to say.** Sergeant Scott Levno also monitored Mr. Briden. He advised the detectives that if Mr. Briden wanted to resume talking it was permissible

for them to re-enter the interview room and listen so long as they asked no questions.
(Emphasis mine.)

13.

The court finds that Mr. Briden's persistent knocking on the door demonstrated his desire to reinitiate conversation with the police and continue telling them what he knew about the incident. Mr. Briden was in the interview room alone for one minute and fourteen seconds. The police did not prompt or coerce Mr. Briden to reinitiate conversation by isolating him for a long time. There is no indication that the police subtly motivated Mr. Briden to reinitiate conversation. The court finds that Mr. Briden reinitiated conversation with the detectives under *Edwards v. Arizona*, 451 U.S. 477, 68 L. Ed. 378, 101 S. Ct. 1880 (1981).

14.

The detectives entered the interview room at 3:14:47. Detective Janis told Mr. Briden, "If you want to tell us something, we'll listen to you."

"So basically, I am looking at years, huh?" Mr. Briden asked.

"We're here to listen to you now," Detective Janis told him. "We're done asking questions. You got something you want to tell us, we're here." The court finds that Detective Janis did not prompt Mr. Briden to resume speaking but correctly advised him that they would listen if he chose to speak.

15.

Mr. Briden resumed making statements. Almost immediately, at 3:15:56, Mr. Briden said, "I took that car. I ran her over, man. That's all that happened."

The detectives asked follow-up questions for clarification, which Mr. Briden voluntarily answered.

The detectives ended the interview at 3:23:23.
(Emphasis mine.)

State v. Copeland, 89 Wn. App. 492, 949 P.2d, 458 (1998) sets forth an in depth review of the test in this area;

The Sixth Amendment right to counsel attaches at the initiation of adversarial criminal proceedings. *Davis v. United States*, 512 U.S. 452, 456-57, 114 S. Ct. 2350, 129 L. Ed. 2d 362 (1994); *United States v. Gouveia*, 467 U.S. 180, 188, 104 S. Ct. 2292, 81 L. Ed. 2d 146 (1984) (citing *Kirby v. Illinois*, 406 U.S. 682, 688-89, 92 S. Ct. 1877, 32 L. Ed. 2d 411 (1972) (adversarial criminal proceedings include formal charge and filing of information)). The CrR 3.1(b) right to counsel accrues as soon as feasible after the defendant is taken into custody, appears before a committing magistrate, or is formally charged, whichever occurs earliest. "Police are not prohibited under the Sixth Amendment from initiating conversations with the accused in the absence of counsel if defendant has not previously invoked the right, is given warnings, and makes a valid waiver." *State v. Quillin*, 49 Wn. App. 155, 159, 741 P.2d 589 (1987) (citing *Michigan v. Jackson*, 475 U.S. 625, 106 S. Ct. 1404, 1407, 89 L. Ed. 2d 631 (1986); *State v. Vidal*, 82 Wn.2d 74, 78, 508 P.2d 158 (1973)), review denied, 109 Wn.2d 1027 (1988). "If the suspect effectively waives his right to counsel after receiving the Miranda warnings, law enforcement officers are free to question him. But if a suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation." *Davis*, 512 U.S. at 458 (citations omitted).

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

The trial court cited to *Edwards v. Arizona*, 451 U.S. 477, 68 L. Ed. 378, 101 S. Ct. 1880 (1981). The rule set forth in *Edwards* has been adopted and reiterated in this State, *State v. Stewart*, 765 P.2d 1320, 53 Wn.App. 150 (1989);

As a matter of law, the presumption raised by a suspect's request for counsel--that he considers himself unable to deal with the pressure of custodial interrogation without legal assistance--does not disappear simply because the police have approached the suspect, still in custody, still without counsel, about a separate investigation.

Roberson, 486 U.S. at ----, 108 S.Ct. at 2099, 100 L.Ed.2d at 715. The *Edwards* rule serves to provide "clear and unequivocal" guidelines to the law enforcement profession. It plainly requires that "after a person in custody has expressed his desire to deal with police only through counsel, he 'is not subject to further interrogation by the authorities until counsel has been made available to him, **unless the accused himself initiates further communication, exchanges, or conversations with the police'**" *Roberson* at ----, 108 S.Ct. at 2098, 100 L.Ed.2d at 714, quoting *Edwards v. Arizona*, 451 U.S. at 484-85, 101 S.Ct. at 1884-85. (Emphasis mine.)

The rule set forth in *Edwards* has been ratified more recently in *State v. Radcliffe*, 164 Wn.2d 900, 906, 194 P.3d 250 (2008) "Once waived, a suspect may ask for an attorney at any time. If he requests an attorney, all questioning must stop until he has an attorney **or starts talking again on his own.** *Id.* at 484-85, 101 S.Ct. 1880." (Emphasis mine.)

This Division of the Court of Appeals addressed this issue in *State v. McReynolds*, 104 Wn.App. 560, 575-6, 17 P.3d 608 (Wash.App. Div. 3 2000), review denied 144 Wn.2d 1003, 29 P.3d 719 (2001):

...the court's findings directly or implicitly rejected this evidence and accepted the officers' accounts of the incident. Substantial evidence supports the court's findings. *See State v. Hill*, 123 Wash.2d 641, 644-47, 870 P.2d 313 (1994)

(trial court's factual determinations after a suppression hearing will be overturned only if they are not supported by substantial evidence).

More specifically, the McReynoldses contend the officers violated Amy Jo McReynolds' *Miranda* rights by continuing the interrogation after she asserted her right to remain silent. Police interrogation must stop when a person asserts her *Miranda* rights unless the person "initiates further communication, exchanges, or conversations with the police." *Edwards v. Arizona*, 451 U.S. 477, 485, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). A person may be found to have waived the right if she "freely and selectively responds to police questioning after initially asserting *Miranda* rights." *State v. Wheeler*, 108 Wash.2d 230, 238, 737 P.2d 1005 (1987) (citing *State v. Coles*, 28 Wash.App. 563, 567, 625 P.2d 713, *review denied*, 95 Wash.2d 1024 (1981)). Here, the court found that Amy Jo McReynolds initially asserted her right to remain silent but later changed her mind after consulting with Donna Sears. This finding is supported by the testimony of both officers to the effect that Amy Jo McReynolds agreed to talk to the officers after speaking privately with Ms. Sears.

The court's findings, which are supported by substantial evidence, justify the conclusion that Amy Jo McReynolds validly waived her *Miranda* rights after speaking with Ms. Sears. The court did not err in concluding the statements were admissible. (Footnotes omitted.)

The trial court made a careful, considerate, well reasoned decision based on the facts before it. That decision was based on well established case law that has been in place for over three decades, a standard that has been adopted by all courts of appeal in this state. This court should not disturb that ruling.

IV. CONCLUSION

Based on the forgoing facts and law Briden's appeal should be denied. This appeal should be dismissed.

Dated this day of March, 2013

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APPENDIX A

DET. ANDREWS

- A. When I arrived at the station, I assisted other detectives with a homicide case, a murder case.
- Q. Do you recall seeing a photo from a surveillance video?
- A. Just a brief one there at the PD.
- Q. And do you recall what the subject matter of that video was, the photo was?
- A. Of a possible suspect vehicle involved.
- Q. Can you describe that possible suspect vehicle.
- A. It was a black newer car. I estimated it to be like 2000, year 2000.
- Q. At some point in time did you go to the Connections apartment building?
- A. Yes.
- Q. Is that 110 South Naches Avenue?
- A. Yes.
- Q. Did you observe any automobiles of interest in the parking lot of Connections?
- A. Yes.
- Q. What was that?
- A. It was a late 90's black Dodge Avenger.
- Q. Did it appear to be -- how did it compare to the car you saw in the still shot of the surveillance video?
- A. It just looked similar from the rear end and the taillights, comparing it.
- Q. Were you in a police car that day?
- A. I was in a detective car, unmarked.
- Q. Do you recall in the early afternoon being in a detective car with Detective Helms -- strike that -- Detective Hampton?
- A. Correct, yes.
- Q. Do you recall the early afternoon driving back with Detective Hampton to the Connections apartment building?
- A. Yes.

Q. Did you receive some information at that time from Detective Helms?

A. Yes, I did.

Q. What was that information?

A. There was another vehicle that was headed southbound on Naches towards Walnut.

Q. What was the description they gave you of that vehicle?

A. A black Dodge Avenger.

Q. Did they tell you the license plate?

A. Yes.

Q. What was the license plate?

A. It was -- I have it here. 438 YDI.

Q. Did he ask you to do something?

A. He asked me if I could stop that car.

Q. Did you follow the car?

A. I did.

...

A. We were coming down Chestnut, and then we went south on Naches here.

Q. Okay. Did you pull into the Connections parking lot?

A. We continued past there to try to catch up to the vehicle that had now turned east on Walnut Street from Naches.

Q. Okay. Who was driving the detective car?

A. I was.

...

Q. ...Where was Detective Hampton?

A. In my passenger seat.

Q. Okay. So you followed the car southbound down Naches?

A. We were trying to catch up to it. It had already turned eastbound on Walnut from Naches. So we made a quick turn as well trying to catch up, at which point the vehicle then went northbound on Sixth Street from Walnut.

Q. What happened then?

A. There's some cars between us as we're trying to catch up to the vehicle. There's more traffic up here. So it's slowing down and it gets to the right where it's going to make a right-hand turn.

Q. So you saw that black Dodge Avenger get to what point?

A. It came all the way -- we were behind it. There's a couple vehicles in between us. It had come up and stopped to make a right turn to go eastbound on Yakima Avenue from Sixth Street.

- Q. Okay.
- A. At which point, as we're catching up, I see that. So I cut through the Greyhound parking lot and come out -- I stop here at the north end of the alley. Then I see the vehicle makes its turn, at which point we got behind it.
- Q. So originally when you were following the car you were behind the car?
- A. Correct.
- Q. When you came to the mouth of the alley just east of the Greyhound that intersects with Yakima Avenue, where was the second black Dodge Avenger then?
- A. As we were right here waiting, it made its turn coming eastbound on Yakima Avenue and went right by us.
- Q. So at that point were you -- what angle of that Dodge Avenger were you looking at?
- A. The front end, the front end of the vehicle.
- Q. Did you see anything about the front end of that Dodge Avenger that interested you?
- A. Yes.
- Q. What was that?
- A. There was front end damage towards the front of the car as well as the windshield, upper portion of the car.
- Q. Why was that damage of interest to you?
- A. We believe that the person might have been struck by a vehicle, and it was consistent with someone hitting the front end and possibly rolling on the hood.
- Q. And the damage that you were able to observe on that second car was what?
- A. Front edge damage and also some windshield damage, some smashing.
- Q. All right. How far did you follow that Dodge Avenger?
- A. Once it passed us, we pulled in behind it. We waited for the light, I believe, at Eighth Street. We were coming up to. At that point we lit it up and stopped on Union Street.
- Q. The condition of that second Dodge Avenger, the appearance of that second Dodge Avenger, was it consistent with the car that might have hit somebody?
- A. Yes.
- Q. Where did the car actually stop?
- A. It stopped at Union and Yakima. So I'm trying to get -- hold on. It stopped right about here.

Q. Did you park your detective car?
A. Right behind it.
Q. When you parked your detective car, were you able to observe how many occupants there were of that black car?
A. There was one.
Q. Where was that person situated?
A. In the driver's seat.
Q. Did you get out of your car?
A. Yes.
Q. What happened then?
A. We went to contact the driver of the car.
Q. You approached on foot?
A. Yes.
Q. Did Detective Hampton get out of the car?
A. Yes, he did.
Q. What side of the Dodge Avenger did you approach on?
A. I approached from the driver's side and Detective Hampton approached from the passenger side.
Q. Did you make contact with the driver?
A. Yes, I did.
Q. Describe the driver.
A. It's that subject right there.
Q. What subject?
A. Mr. Briden.
Q. Was Mr. Briden driving that Dodge Avenger that you stopped?
A. Yes.
Q. Was there anyone else in the car?
A. No.
(RP 137-42)

DET. HAMPTON.

Q. Where was -- did you see the second black Dodge Avenger?
A. I did not until -- what happens is Detective Helms advised it was southbound on -- southbound on Naches. We went southbound. We hit Naches, went southbound. When we turned eastbound on Walnut, that's when we noticed the Dodge Avenger was at the light, going to make a northbound or left-hand turn onto North Sixth Street.
Q. What happened then?
A. We caught up to the vehicle and the several cars ahead of

us. So what we did, we saw it was going make an eastbound turn onto East Yakima Avenue. So we made an eastbound turn into the Greyhound parking lot to cut through there so we get to the alley and so we get ahead of the vehicle.

Q. Why did you want to get ahead of the vehicle?

A. We wanted to see if there was any damage to the front of the vehicle.

Q. The kind of damage that might be consistent with that vehicle having hit a person?

A. Yes, sir.

Q. Did you see that vehicle again?

A. Yes, I did. I saw it as it passed us.

(RP 156-7)

...

Q. What did you see then?

A. We waited there for a few seconds. That's when the vehicle passed us.

Q. Before -- when you say the vehicle, what vehicle do you mean?

A. It's a black Dodge Avenger.

Q. What was the license plate?

A. I had it written in my report. I think it's wrong because I have the same plate written down two times.

Q. Okay.

A. I know that there are two different vehicles. One is a 98 and the other one is a 97 Dodge Avenger.

Q. When you saw this Dodge Avenger driving eastbound on Yakima Avenue, did you notice if it had any damage?

A. Yes, I did. In my report I noticed it had extensive damage to the front windshield and looked like damage to the roof top and hood.

Q. Was that -- did that damage to you, did that damage appear to be potentially consistent with that car having struck a person?

A. It was consistent with it striking something.

Q. What did you do then?

A. Detective Andrews and I got behind the vehicle and performed a traffic stop.

Q. Tell me the reasons why you initiated that traffic stop at that time.

A. We knew a vehicle that was a black Dodge Avenger had dropped

off clothes behind the Neighborhood Health, which was consistent with clothing worn by the victim.

Q. All right. You knew you were looking for a black Dodge Avenger?

A. Yes. Due to the circumstances in the alley, we believed that vehicle would have damage to it with striking a person.

Q. Shelly Kinter?

A. Yes, sir.

Q. So the car that you stopped was a Dodge Avenger?

A. Yes, sir.

Q. How old did that Dodge Avenger appear to be?

A. Until we saw the one at Connections and determined that one was a 98, usually car models, they go in a certain set of years. Like if you buy a car today, it's usually five years of the same body model before they change body styles. We knew it would have to be within that kind of year period.

Q. Pretty close to a 98?

A. Yes, sir, 97, 98.

Q. So it was a Dodge Avenger?

A. Yes, sir.

Q. Did it appear to be consistent with the car in the surveillance video?

A. Yes, sir, it does.

Q. Was the color consistent with the car in the video?

A. Yes, sir.

Q. It had damage to the car?

A. Yes, sir.

Q. That would have been consistent with hitting something?

A. Yes, sir.

Q. Did the car stop?

A. Yes, it did.

Q. Where did it stop?

A. It stopped on Union Street just -- it stopped on Union Street right here just south of Yakima Avenue.

(RP 159-61)

DECLARATION OF SERVICE

I, David B. Trefry state that on March 21, 2013 emailed as copy, by agreement of the parties, of the Respondent's Brief , to Mitch Harrison at mitch@johncrowleylawyer.com and to Aaron Briden DOC# 358254, Monroe Corrections Center, 16550 177th Ave. SE, P.O. Box 777, Monroe, WA 98272.

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

DATED this 21st day of March, 2013 at Spokane, Washington.

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