

No. 68972-0-1

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

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STATE OF WASHINGTON,  
Respondent,  
v.  
T.M.,  
Appellant.

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

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REPLY BRIEF

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A. ARGUMENT

BECAUSE THE ARRESTING OFFICER'S STATEMENTS TO T.M. WERE THE FUNCTIONAL EQUIVALENT OF INTERROGATION, SUPPRESSION WAS REQUIRED AND REVERSAL MUST NOW BE GRANTED.

1. The officer's statements to T.M. were the functional equivalent of interrogation, since they were reasonably likely to elicit an incriminating response. The State has conceded that T.M. was in custody at the time he made the statements in question. Brief of Respondent at 7. The only issue remaining for this Court is whether T.M.'s statements were the product of interrogation.

Because it is recognized that the distinction between an officer's "questioning" and his "statements" to a suspect is often "artificial," such distinctions have been rejected by courts. United States v. Gomez, 927 F.2d 1530, 1537 (11<sup>th</sup> Cir. 1991). The test is whether under all of the circumstances in a given case, the officer's questions or statements were reasonably likely to elicit an incriminating response from the suspect. Rhode Island v. Innis, 446 U.S. 291, 300-01, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980); State v. Bradley, 105 Wn.2d 898, 903-04, 719 P.2d 546 (1986).

Here, Officer Thompson's pre-Miranda statement to T.M. that he believed T.M. was under the influence of alcohol amounted to interrogation because it was "reasonably designed to elicit an incriminating response" from T.M., who the State concedes was in custody. Innis, 446 U.S. at 300-01; Bradley, 105 Wn.2d at 903-04. As T.M. argued at trial, there is no functional difference between an officer asking a juvenile the query, "Son why do I smell alcohol on your breath because you're only 16?" ... and making the following statement to a juvenile, "this is why I'm doing this; I smell alcohol on your breath; that's why I'm putting you in handcuffs." RP 82. Because the officer's accusation was designed to elicit a response - - inculpatory or exculpatory – it was the functional equivalent of interrogation. Innis, 446 U.S. at 300-01; Bradley, 105 Wn.2d at 903-04.

Although the State repeatedly argues that the trial court found that T.M.'s statements were voluntary, repetition does not make it so. Brief of Respondent at 7, 8, 9. Whether there was custodial interrogation and thus whether Miranda warnings were required is reviewed by this Court *de novo*. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997).

**DECLARATION OF FILING AND MAILING OR DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 69944-0-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

- respondent Greta Jibbensmith, DPA  
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