NO. 103586-1

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CRISTIAN A. MAGAÑA-AREVALO,

Appellant.

STATE'S ANSWER TO PETITION FOR REVIEW

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A. STANDARD FOR ACCEPTANCE OF REVIEW

"A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b).

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State charged the appellant, Cristian Magaña-Arevalo, with one count of murder in the first degree and a special allegation that he was armed with a firearm at the time of the crime. CP 1. A jury found him guilty as charged and found the special allegation proven. CP 183-84. The trial court imposed a high-end standard-range sentence of 320 months,

plus the mandatory 60-month firearm enhancement. CP 265, 267. Magaña-Arevalo timely appealed. CP 275. One of his claims on appeal was a challenge to the trial court's CrR 3.5 ruling that Magaña-Arevalo's statements to police on December 1, 2018, and December 3, 2018, were admissible despite the absence of Miranda[1] warnings because Magaña-Arevalo's interrogation was not custodial. Br. of Appellant at 21-46.

The Court of Appeals affirmed Magaña-Arevalo's conviction and sentence in an unpublished opinion. State v. Magaña-Arevalo, Unpublished, No. 84259-5-I, __ Wn. App. 2d __ (Aug. 26, 2024). The court upheld the trial court's challenged factual findings, and upheld the trial court's conclusion that Magaña-Arevalo's statements were voluntary and therefore admissible to impeach his testimony at trial. Slip op. at 15-16, 22-24. However, the Court of Appeals held that the trial court erred in concluding that the December 1st

[1] Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

interrogation was non-custodial, and therefore erred in admitting the December 1st statements as substantive evidence. Id. at 16-22.

The Court of Appeals did not address the parties' arguments about whether Magaña-Arevalo's noncustodial statements on December 3rd remained admissible as substantive evidence even if the December 1st statements were obtained in violation of Miranda. Id. at 4; Br. of Respondent at 39-40. Instead, the Court of Appeals carefully examined the record and concluded that the State's non-impeachment use of all Magaña-Arevalo's statements was harmless beyond a reasonable doubt. Id. at 33-40.

Magaña-Arevalo now petitions for review of the Court of Appeals' ruling that the improper admission of the statements for non-impeachment purposes was harmless. The State urges this Court to deny review of that issue, as the criteria for review are not met. However, if this Court grants the petition for review, the State asks it to also review the Court of Appeals'

ruling that the trial court erred in admitting the December 1st statements as substantive evidence, as well as whether the admission of the December 3rd statements as substantive evidence was proper regardless of any error regarding the December 1st statements.

2. SUBSTANTIVE FACTS.[2]

a. Magaña-Arevalo Fatally Shoots Jason Hobbs to Settle a "Beef."

Jason Hobbs was gunned down in the parking lot of an apartment complex in Renton on the evening of November 30, 2018. RP 689, 713-14, 720-21, 837, 1842. Two separate witnesses established that Hobbs was killed after leaving to meet up with Magaña-Arevalo and Magaña-Arevalo's brother José to settle a "beef," which was corroborated by phone records. RP 690-91, 891, 1623-32, 1844-45. Hobbs' killing was captured by a surveillance camera. RP 763, 773, 950-52; Trial Ex. 7. The shooter's clothing matched the clothing Magaña-

[2] A full summary of the evidence presented at trial is set out in the Brief of Respondent. Br. of Respondent at 2-16.

Arevalo was seen wearing on other surveillance videos hours earlier. RP 1173-75, 1605, 2043.

Evidence recovered from the scene of the crime included several .357 caliber shell casings, a .357 caliber Heckler & Koch (often referred to by witnesses as "H&K") gun magazine, and two baseball hats. RP 835, 877, 881. A DNA mixture that included Magaña-Arevalo's DNA, but not José's, was found on the gun magazine. RP 1401-04. DNA on the two hats was linked to Hobbs and José, respectively. RP 1389-99.

In the hours after the murder, police quickly learned that Magaña-Arevalo was the registered owner of a blue 2000 Chevrolet Tahoe that matched the appearance of the vehicle associated with the shooter as seen on the surveillance video. RP 959-61. Detectives located the Tahoe parked outside an apartment in Newcastle that was associated with Magaña-Arevalo, and obtained a search warrant for that residence and for Magaña-Arevalo's DNA. RP 962-63.

The search warrant was executed around 6:00 a.m. on December 1, 2018, the morning after the murder. RP 1125. Magaña-Arevalo and his family were called out of the residence by a SWAT team so that investigators could search the home. RP 1126, 2006, 2045. Inside, investigators found a gray "H&K" brand pistol storage box, which matched the brand of the discarded gun magazine found at the scene of the crime. RP 877, 893.

While the warrant was being served, Detective Chris Edwards spoke with Magaña-Arevalo, who agreed to give a recorded statement after being informed that he was not under arrest and was free to leave at any time.[3] RP 1126-28, 1131-32. Magaña-Arevalo indicated that he believed Hobbs had been involved in a recent shooting at Magaña-Arevalo's uncle's home that had endangered Magaña-Arevalo's girlfriend and

[3] Additional information about the circumstances of Magaña-Arevalo's statements to police are set out below in section B.2.b.

young son. RP 1138, 1144-45, 1152. However, he denied any involvement in the murder and maintained that he had been shopping with his family at the time. RP 1133-58. However, he contradicted himself numerous times on different points, such as his relationship to Hobbs, whether anyone other than him had access to his Tahoe, whether the Tahoe in the apartment parking lot belonged to him, and whether he had any contact with José on the day of the murder. RP 1133-58.

Minutes after the recorded interview concluded, investigators initiated a brief second recorded interview to ask Magaña-Arevalo about encountering Hobbs at Subway on the day of the murder, which Magaña-Arevalo had not mentioned in the first interview. RP 1160-61. Magaña-Arevalo initially said that the conversation was "just cordial[,] . . . just regular conversation," with no discussion of problems between himself and Hobbs. RP 1163-64. Later in the interview, he claimed that Hobbs had looked at him like he was "trying to threaten my life

or something" and made a threatening comment about "ha[ving] his gun tucked." RP 1165-66.

Detective Edwards conducted another voluntary interview with Magaña-Arevalo on December 3, 2018, this time inside the defendant's girlfriend's apartment. RP 1461-1509. Magaña-Arevalo had told Edwards on December 1st that he did not like guns, did not own guns, and did not "do any of that." RP 1162. He repeated those denials on December 3rd, and stated that his girlfriend did not own guns either. RP 1477-78. When told that an H&K gun box had been found during the December 1st search, Magaña-Arevalo asserted for the first time that when his Honda Civic had been recovered months earlier after being stolen, the gun box had been inside. RP 1478. However, this was refuted at trial by the testimony of the officer who had searched the Civic before returning it to Magaña-Arevalo. RP 1196-1204.

Magaña-Arevalo said nothing to Edwards about finding any other gun paraphernalia in the Civic until Edwards revealed

that an H&K magazine had been found at the crime scene and asked if Magaña-Arevalo's DNA would be on it. RP 1480-81. Then, Magaña-Arevalo suddenly claimed that when he found the gun box, a magazine had been inside. RP 1481. Magaña-Arevalo first said that he had sold the magazine to someone eight or nine months earlier, then said that he gave it away, and then a few minutes later said that it was actually José who sold the magazine. RP 1481-82, 1485, 1488.

Evidence in the case would eventually show that numerous other things Magaña-Arevalo told Edwards were not true. For example, Magaña-Arevalo told Edwards that he had no cell phone on the day of the murder, but after the State presented evidence of phone records and surveillance video showing Magaña-Arevalo talking on a phone the day of the murder, Magaña-Arevalo admitted on the witness stand that he lied to Edwards because he did not want police to obtain his phone. RP 2065-66. In another example, Magaña-Arevalo claimed to Edwards that he had not seen or spoken to José the

day of the murder, but after being impeached with Facebook messages to the contrary, he admitted on the witness stand that he did in fact speak to José after seeing Hobbs at Subway. RP 2028-31. Magaña-Arevalo also admitted on the witness stand that his statement to detectives that he did not know where José was staying and had no way to contact him was not accurate. RP 2039.

At trial, Magaña-Arevalo called two witnesses: his girlfriend and himself. Magaña-Arevalo admitted on the stand that "the word on the street" had been that Hobbs was involved in a shooting at his uncle's house while Magaña-Arevalo's girlfriend and son were present, but denied he was the shooter in the video and claimed he'd gone straight home after shopping with his family and was still home when "people started calling" him asking if he knew what had happened to Hobbs. RP 1994-98, 2007, 2013. His girlfriend, Julissa Norvell, gave a similar timeline of events. RP 1895-1917.

The jury found Magaña-Arevalo guilty as charged of first-degree murder with a firearm. CP 183-84.

b. At a CrR 3.5 Hearing, the Trial Court Determines that Magaña-Arevalo's Statements After Being Told He Was Free to Leave Were Non-Custodial.

During motions in limine, the trial court heard testimony and argument pursuant to CrR 3.5 regarding whether Magaña-Arevalo's recorded statements to Detective Edwards on December 1st and December 3rd were admissible. RP 136.

The trial court made the following findings of fact regarding the defendant's statements, all of which are either unchallenged on appeal or were upheld by the Court of Appeals as supported by the record:[4]

> December 1, 2018 Statements
>
> 1. On November 30, 2018, Jason Hobbs was shot to death.
>
> 2. In relation to Hobbs's death, the Renton Police Department obtained a warrant to search a Newcastle, Washington residence associated with Maga[ñ]a-Arevalo. At the time, Maga[ñ]a-Arevalo was 21 years [old].

[4] Magaña-Arevalo does not seek review of the Court of Appeals' ruling upholding the trial court's factual findings.

3. Before serving the warrant, law enforcement (LE) officers gathered at a "staging area" in a QFC parking lot about one block from the Newcastle address. This was a public area with customers present in and around the QFC store.

4. On December 1, 2018, at approximately 6:00 a.m., LE officers (including a SWAT team) went to the Newcastle residence to serve the warrant. LE officers used a megaphone to notify the residents of the officers' presence and tell the residents to exit the Newcastle residence. Inside the residence, Maga[ñ]a-Arevalo and his partner, Julissa Norvell, heard the officers on the megaphone. Maga[ñ]a-Arevalo and Norvell voluntarily exited the residence along with their son. No LE officers entered the residence to remove Maga[ñ]a-Arevalo or his family.

5. After Maga[ñ]a-Arevalo exited the residence, LE officers restrained his hands with zip-ties. He then stood outside for a few minutes before LE officers put him in Officer Rutledge's patrol car. Officer Rutledge then drove Maga[ñ]a-Arevalo to the staging area in the QFC parking lot. This drive took about 20 to 30 seconds. While in the patrol car, Maga[ñ]a-Arevalo did not request an attorney or invoke his right to silence.

6. At the staging area, at approximately 6:44 a.m., Detective Chris Edwards, in plainclothes, contacted Maga[ñ]a-Arevalo at Rutledge's patrol car. Maga[ñ]a-Arevalo was removed from the patrol car and Edwards promptly introduced himself and removed the zip-tie restraints from Maga[ñ]a-Arevalo's hands.

7. Shortly thereafter, Det. Edwards advised Maga[ñ]a-Arevalo, "So, we'd like to talk to you

about some things . . . [unintelligible] warm in the car over here." Maga[ñ]a-Arevalo promptly responded, "I'm fine with that." Maga[ñ]a-Arevalo then spoke to the LE officers voluntarily and did not manifest or verbalize any hesitation or unwillingness to talk to them. Edwards offered Maga[ñ]a-Arevalo the option of going to the police station to talk, where Maga[ñ]a-Arevalo could "relax" or "get a sip of water." Maga[ñ]a-Arevalo declined to travel to the police station, citing the presence of his partner, Norvell, and child nearby. Officer Rutledge advised Edwards that Maga[ñ]a-Arevalo's family was in Officer Morgan Karney's patrol vehicle "staying warm."

8. Det. Edwards abided by Maga[ñ]a-Arevalo's decision to remain in the QFC parking lot as opposed to traveling to the police station. Edwards and Maga[ñ]a-Arevalo got into the backseat of Edwards's work truck. Detective Justin Renggli, also in plainclothes, sat in the front seat. The detectives chose to talk inside the truck, as opposed to the parking lot, so the parties would not be interrupted by others and because the weather was very cold.

9. Maga[ñ]a-Arevalo's demeanor and/or willingness to speak with police did not change between the time he was initially contacted by Det. Edwards and the time he entered the detective's truck.

10. Det. Edwards's work truck was an unmarked Chevy Silverado with a crew cab and leather seats. There was no police divider or "cage" partition located inside the truck. The only thing distinguishing the truck from a civilian vehicle was the presence of inconspicuously-

placed lighting equipment. While Maga[ñ]a-Arevalo was in the truck, he was not handcuffed or restrained in any fashion, the detectives did not lock the doors or tell Maga[ñ]a-Arevalo that the doors were locked, and there were no armed officers immediately outside the truck doors or any officers assigned to guard the truck. There were several LE officers/units around the staging area who had been involved in the service of the warrant.

11. Prior to recording any part of his ensuing conversation with Maga[ñ]a-Arevalo, Det. Edwards advised Maga[ñ]a-Arevalo that Maga[ñ]a-Arevalo was not under arrest and was free to leave at any time. Maga[ñ]a-Arevalo consented to recording of the conversation.

12. On December 1, 2018, from 6:47 a.m. to 7:08 a.m., Det. Edwards conducted a recorded interview of Maga[ñ]a-Arevalo. Early in the interview, Edwards advised Maga[ñ]a-Arevalo (for a second time) that Maga[ñ]a-Arevalo was not under arrest and Maga[ñ]a-Arevalo was free to leave at any time.

13. Soon after the first recorded interview, which ended at 7:08 a.m., Det. Edwards conducted a second recorded interview with Maga[ñ]a-Arevalo to clarify information discussed earlier. Edwards also recorded this second interview after Maga[ñ]a-Arevalo consented to the recording.

14. Between the first recording and the second recording, Maga[ñ]a-Arevalo did not indicate that he was unwilling to talk to the detectives or that he wanted to leave the truck. The second recorded interview ended at 7:14 a.m.

15. Det. Edwards later took Maga[ñ]a-Arevalo back to Maga[ñ]a-Arevalo's residence.

16. Before, in between, and during the two interviews of Maga[ñ]a-Arevalo on December 1, 2018:

a. The detectives' interaction with Maga[ñ]a-Arevalo was cordial and not coercive or aggressive.

b. The detectives never took out their weapons or displayed them in plain sight.

c. LE officers did not do anything to threaten, intimidate, or coerce Maga[ñ]a-Arevalo to talk or give a statement.

d. LE officers did not incentivize Maga[ñ]a-Arevalo to talk or give a statement by offering him anything of substance in exchange.

e. Maga[ñ]a-Arevalo was free to leave and was not placed under arrest or told he was under arrest.

f. Maga[ñ]a-Arevalo did not request an attorney, invoke his right to silence, or ask to leave the truck or the detectives' presence.

g. Maga[ñ]a-Arevalo was not advised of his Miranda rights.

17. Maga[ñ]a-Arevalo was never placed under arrest on December 1, 2018.

18. The Court incorporates by reference the transcripts admitted as pretrial exhibits 9 and 10.

December 3, 2018 Statements

19. Det. Edwards later arranged to interview Maga[ñ]a-Arevalo again at his Newcastle residence on December 3, 2018. That day, Detectives Edwards and Tracie Jarratt went to the residence. Both detectives were dressed in plainclothes. When the detectives arrived, they explained that they had follow-up questions, Maga[ñ]a-Arevalo and his family invited the detectives into the residence, and the detectives confirmed with Maga[ñ]a-Arevalo that he was again willing to voluntarily speak with the detectives and answer questions. The detectives spoke to Maga[ñ]a-Arevalo in the living room of the residence. Maga[ñ]a-Arevalo's partner, Norvell, and Maga[ñ]a-Arevalo's uncle were also present in the residence. At no point was Maga[ñ]a-Arevalo restrained in any fashion while he was inside the residence.

20. With Maga[ñ]a-Arevalo's consent, the detectives recorded the December 3, 2018 interview of Maga[ñ]a-Arevalo. The interview began at 9:17 a.m. and ended at 9:48 a.m.

21. After the December 3, 2018 interview, the detectives were cordially escorted out of the residence and left.

22. Before and during the interview of Maga[ñ]a-Arevalo on December 3, 2018:

a. The detectives' interaction with Maga[ñ]a-Arevalo was cordial and not coercive or aggressive.

b. The detectives did not do anything to threaten, intimidate, or coerce Maga[ñ]a-Arevalo to talk or give a statement.

c. The detectives did not incentivize Maga[ñ]a-Arevalo to talk or give a statement by offering him anything of substance in exchange.

d. Maga[ñ]a-Arevalo was free to leave and was not placed under arrest or told he was under arrest.

e. Maga[ñ]a-Arevalo did not request an attorney, invoke his right to silence, or request to leave the presence of the detectives.

f. Maga[ñ]a-Arevalo was not advised of his Miranda rights.

23. Maga[ñ]a-Arevalo was never placed under arrest on December 3, 2018.

24. The Court incorporates by reference the transcript admitted as pretrial exhibit 11.

CP 295-301.

There were only three facts disputed by the parties at the CrR 3.5 hearing: Magaña-Arevalo's assertions that, on December 1, 2018, (1) the SWAT team threatened to use deadly force if he did not come out of the residence, (2) the weather was not very cold, and (3) Magaña-Arevalo felt "pressured" to speak to Edwards. CP 302. The trial court found that Magaña-Arevalo's testimony on those points was not credible, while Detective Edwards' testimony was. CP 302. The court found

that "[t]he SWAT team did not threaten to use deadly force," "[t]he weather was very cold," and "Maga[ñ]a-Arevalo was not pressured or coerced to speak to Detectives Edwards and Renggli." CP 302.

Based on its findings of fact, the trial court concluded that each time Magaña-Arevalo spoke to Edwards, the interrogation was not custodial because Magaña-Arevalo's "freedom of action or movement was not curtailed or restrained to a degree associated with formal arrest, a reasonable person in his position would not have believed or felt that he was restrained to the degree associated formal arrest, and his statements were voluntary and not coerced." CP 302-03; RP 636. Thus, the court concluded, the statements were admissible in the State's case-in-chief despite the absence of Miranda warnings. CP 303.

C. THIS COURT SHOULD DENY THE PETITION FOR REVIEW

Magaña-Arevalo offers little or no argument in his petition regarding why he believes the criteria for review are

met in this case. He simply asserts that this Court should grant review, and cites RAP 13.4(b)(3). Pet. for Review at 2. That criterion calls for this Court to grant review "If a significant question of law under the Constitution of the State of Washington or of the United States is involved." RAP 13.4(b)(3). However, Magaña-Arevalo's petition reveals that he simply wishes to correct a purported misapplication of well-settled law regarding the constitutional harmless error standard to the particular facts of this case.

There is no legal dispute in this case about the constitutional harmless error standard; Magaña-Arevalo simply disagrees with the Court of Appeals' careful analysis of the extent to which Magaña-Arevalo's statements to police were properly used for impeachment rather than improperly used as substantive evidence. His contention that the Court of Appeals erred in finding the error harmless beyond a reasonable doubt centers on his assertion that, if the trial court had excluded the December 1st statements as substantive evidence, the jury

would never have learned that Magaña-Arevalo's "beef" with Hobbs arose from Magaña-Arevalo's belief that Hobbs had participated in a shooting at a home where Magaña-Arevalo's girlfriend and child were present. Pet. for Review at 10-12.

However, even if the trial court had excluded Magaña-Arevalo's statements to police as substantive evidence, the portion about Hobbs' alleged involvement in the prior shooting would have remained admissible to impeach Magaña-Arevalo's testimony at trial that he did not have a "beef" with Hobbs and had "no problems" with him. RP 2011.

The Court of Appeals correctly ruled that any error in the trial court's admission of Magaña-Arevalo's statements to police as substantive evidence was harmless beyond a reasonable doubt in light of the other permissible uses of the statements and the overwhelming evidence of guilt. Further review of the Court of Appeals' decision on that point is not warranted.

D. IF THIS COURT REVIEWS WHETHER ANY ERROR WAS HARMLESS, IT SHOULD ALSO REVIEW WHETHER THE TRIAL COURT ERRED

1. THE TRIAL COURT'S CONCLUSION THAT MIRANDA WARNINGS WERE NOT REQUIRED IS PROPERLY SUPPORTED BY ITS FACTUAL FINDINGS.

In order to preserve a defendant's Fifth Amendment right against compelled self-incrimination, the police must inform a suspect of his rights prior to custodial interrogation. Miranda, 384 U.S. at 444. Statements made in response to custodial interrogation are inadmissible if not preceded by such warnings. State v. Lavaris, 99 Wn.2d 851, 856, 664 P.2d 1234 (1983). To constitute a statement in response to custodial interrogation, (1) the individual making the statement must be in custody, and (2) the statement must be in response to interrogation. Rhode Island v. Innis, 446 U.S. 291, 298, 100 S. Ct. 1682, 64 L. Ed. 2d 297 (1980). If either requirement is not met, the statement is admissible even in the absence of Miranda warnings. State v. Sargent, 111 Wn.2d 641, 649-51, 762 P.2d 1127 (1988).

A suspect is "in custody" if a reasonable person in the suspect's position would feel that his or her freedom of movement is curtailed to the degree associated with formal arrest. State v. Heritage, 152 Wn.2d 210, 218, 95 P.3d 345 (2004) (citing Berkemer v. McCarty, 468 U.S. 420, 441-42, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984)). Because the test for whether a suspect is in custody is an objective one that focuses exclusively on the suspect's freedom of movement, it is irrelevant whether the officers subjectively planned to arrest the suspect or had probable cause to do so. State v. Lorenz, 152 Wn.2d 22, 37, 93 P.3d 133 (2004).

Even when a suspect is not free to leave, that fact does not cause an investigative detention to rise to the level of "custody" for the purposes of Miranda. Heritage, 152 Wn.2d at 218. Nor does the presence of multiple officers necessarily convert an investigative detention into "custody" requiring Miranda warnings. State v. Marcum, 149 Wn. App. 894, 909, 205 P.3d 969 (2009) (defendant not "in custody" even though

multiple police cars blocked him in while officer questioned him about smell of cannabis in vehicle). A trial court's determination that a defendant was not in custody for purposes of Miranda is reviewed de novo to verify that the conclusion of law is supported by the findings of fact. State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009); Lorenz, 152 Wn.2d at 36.

Here, the trial court's findings of fact amply support the court's conclusion that Magaña-Arevalo was not in custody for purposes of Miranda at the time of his December 1st statements. CP 302-03. Our supreme court has held that where a defendant is questioned while a search warrant is executed and is explicitly told and acknowledges that he or she is not under arrest and is free to leave at any time, Miranda warnings are not required because a reasonable person would not feel they are in custody. Lorenz, 152 Wn.2d at 38. Put another way, "[f]reedom to depart ends the inquiry—no Miranda warnings are required." United States v. Woodson, 30 F.4th 1295, 1303 (11th Cir.

2022), cert. denied, 143 S. Ct. 412 (2022). Here, Magaña-Arevalo was told at least twice prior to his statements that he was not under arrest and was free to leave, and he was in fact permitted to leave—and even given a ride back to the residence—at the end of the interview.

The Court of Appeals erroneously focused most of its attention on the degree to which a reasonable person in Magaña-Arevalo's position might have felt their freedom of movement was restricted *before* Magaña-Arevalo was released from the zip ties and told he was free to leave. Slip op. at 16-21. Although the Court of Appeals acknowledged in its recitation of the facts that Detective Edwards told Magaña-Arevalo at the beginning of their recorded conversation, "[Y]ou're not under arrest. We just wanted to talk to you about an incident that we're gonna explain to you. You can leave anytime," it elided any mention of the trial court's finding that this was actually the *second* time since arriving at the QFC parking lot that Magaña-Arevalo had been told he was free to leave. Slip op. at 6; CP

298. Moreover, in its legal analysis of whether Magaña-Arevalo was in custody for purposes of Miranda, the Court of Appeals never addressed the fact that Magaña-Arevalo was told he was free to leave, let alone that he was told it twice; the court mentioned only that he was told he "was not under arrest." Slip op. at 18.

The facts that Magaña-Arevalo had originally been detained so that a search warrant could be executed, was interviewed in an unmarked police vehicle, and could see other law enforcement officers in the vicinity do not convert his circumstances *after being explicitly told twice that he was free to leave* into ones that would lead a reasonable person to feel that his movement was restricted *to the degree associated with formal arrest*. Courts have repeatedly found that Miranda warnings were not required under circumstances nearly identical to, or more restrictive than, those present here. E.g., Woodson, 30 F.4th at 1303-07; United States v. Roberts, 975 F.3d 709, 715-18 (8th Cir. 2020).

Never before has any Washington appellate court concluded that a defendant was in custody for purposes of Miranda after being explicitly told that he was free to leave. The Court of Appeals' holding on this point is unsupported by logic or authority, and should be reviewed if this Court grants Magaña-Arevalo's request to review the Court of Appeals' holding that the error was harmless beyond a reasonable doubt.

2. EVEN IF THE DECEMBER 1ST STATEMENTS WERE IMPROPERLY ADMITTED, ADMISSION OF THE DECEMBER 3RD STATEMENTS REMAINED PROPER.

As the State argued below, Magaña-Arevalo's December 3rd statements—in which he repeatedly changed his story about the H&K magazine found at the crime scene—would have remained admissible in the State's case-in-chief even if the trial court had ruled that the December 1st statements were obtained in violation of Miranda. Br. of Respondent at 39-40. This is not a case where an initial unlawfully-obtained confession potentially taints a subsequent confession by virtue of the

defendant feeling that the cat is already out of the bag. Magaña-Arevalo never let the cat out of the bag to begin with—he consistently denied any involvement in Hobbs' death in all his statements. Moreover, even when a defendant *does* confess his guilt in a first statement obtained in violation of Miranda, a subsequent confession obtained in compliance with Miranda remains admissible so long as both were voluntary. Oregon v. Elstad, 470 U.S. 298, 318, 105 S. Ct. 1285, 84 L. Ed. 2d 222 (1985).

Magaña-Arevalo did not contend in the Court of Appeals that he was in custody for purposes of Miranda at the time of his December 3rd statements, he merely argued that they should have been excluded as "fruit of the poisonous tree." Br. of Appellant at 43. The State argued that the December 3rd statements were properly admitted, which makes any error in admitting the December 1st statements even more clearly harmless beyond a reasonable doubt.

The Court of Appeals never resolved the parties' dispute regarding the admission of the December 3rd statements, and simply moved on to correctly conclude that the State's non-impeachment use of *all* Magaña-Arevalo's statements was harmless beyond a reasonable doubt. If this Court grants Magaña-Arevalo's petition for review, it should also review whether the December 3rd statements were properly admitted, as that issue directly affects the analysis of whether any error in admitting the December 1st statements was harmless.

E. CONCLUSION

For the foregoing reasons, the petition for review should be denied. In the event it is granted, this Court should also review the issues identified above that the Court of Appeals either did not reach or decided adversely to the State.

This document contains 4,852 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 2nd day of December, 2024.

Respectfully submitted,

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KING COUNTY PROSECUTING ATTORNEYS OFFICE, CRIMINAL/APPELLATE UNIT

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