

1  
2  
3  
4  
5  
6 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

7 STATE OF WASHINGTON, )

8 Plaintiff, )

9 vs. )

10 CHRISTOPHER JAMES WISE, )

11 Defendant. )

No. 09-1-04552-2 SEA

STATE'S BRIEFING RE: CrR 3.5  
AND CrR 3.6 MOTIONS

12  
13  
14 **I. INTRODUCTION**

15 The defendant is currently charged with one count of Murder in the Second Degree and one  
16 count of Manslaughter in the First Degree. The defendant filed his motion to suppress statements  
17 and evidence (pursuant to CrR 3.5 and CrR 3.6) on April 6, 2010. For the reasons below, both  
18 motions should be denied.

19  
20 **II. FACTS**

21 The State incorporates by reference the recitation of facts contained in its trial brief and in  
22 the Certification for Determination of Probable Cause filed by King County Sheriff's Office  
23 (KCSO) Detective Thien Do re: KCSO case number 09-144869 (attached as Appendix A).

1 On June 16, 2009, the defendant called 911 to report that his mother, Ruby Wise, had  
2 died at the home they were renting at 2740 SE Green River Gorge Rd in Black Diamond,  
3 Washington. At about 1:10 a.m., KCSO Deputy McDonald arrived at the home to find Ruby  
4 dead in her bed and two EMTs already on the scene talking to the defendant. When Deputy  
5 McDonald entered the room, one of the EMTs pulled back the blanket from Ruby's face and  
6 upper chest. Deputy McDonald immediately saw that Ruby was emaciated and noted several  
7 areas of bruising and open bed sores on her left shoulder and right elbow. He specifically noted  
8 that Ruby's right shoulder bone was protruding through her skin.

9 Deputy McDonald asked the defendant -- who he had been told was Ruby's son and  
10 caretaker -- what types of medications Ruby had been taking and the name of her primary care  
11 physician. The defendant stated that Ruby was not taking any prescription medications and had  
12 not been to a doctor in two years. The defendant further stated that Ruby did not want to go to a  
13 hospital for treatment and wanted to stay at home.

14 Based on his observations of Ruby's age, physical condition, and appearance, it appeared  
15 odd to Deputy McDonald that Ruby was not being seen by a physician on a routine basis.  
16 Deputy McDonald called the King County Medical Examiner's (KCME) office to report the  
17 death and describe what he had seen. The KCME employee he spoke to was concerned by  
18 Ruby's weight and the absence of care. After this conversation, Deputy McDonald decided to  
19 further examine Ruby. When he did, he discovered numerous additional deep, open sores on her  
20 body. The sores were oozing blood and pus and were surrounded by blackened skin. Deputy  
21 McDonald also discovered that Ruby was wearing a dirty diaper and that there were feces caked  
22 on the inside of her thighs and buttocks.  
23

1 Deputy McDonald began to take pictures of Ruby to document the scene and the  
2 defendant became very upset. Deputy McDonald called his patrol sergeant -- Sergeant Lefler --  
3 to respond to the scene to assist in the investigation and to determine if any additional actions  
4 needed to be taken.

5 When Sergeant Lefler arrived, he first briefly spoke with the defendant. At this time, the  
6 officers were still attempting to determine exactly what had happened. The defendant told  
7 Sergeant Lefler that he was Ruby's sole caretaker and only family and had been taking care of  
8 her for about ten years. The defendant indicated that he had noticed Ruby's health declining in  
9 the last two weeks and knew that she was dying. He claimed that Ruby wanted to die at home  
10 rather than in a hospital and admitted that she had not seen a doctor for over two years.

11 At that point, Sergeant Lefler had the defendant wait in the living room and had Deputy  
12 McDonald show him Ruby's body. In addition to the emaciation and pressure sores seen by  
13 Deputy McDonald, Sergeant Lefler noted that small flies were covering Ruby's face. He also  
14 saw that Ruby was wearing an adult diaper that was soiled, and that she had feces caked on her  
15 buttocks.

16 Sergeant Lefler noted heavy cobwebs in the corners of the bedroom and a thick layer of  
17 dust everywhere. A television hanging from the wall was unplugged and was also covered with  
18 cobwebs. In looking around the home, he saw piles of dirty dishes in the sink, a thick layer of  
19 grease on the stove, and multiple bags of trash by the front door. The kitchen and refrigerator  
20 contained very little food.

21 Based on Ruby's advanced state of emaciation and the numerous deep wounds (that  
22 appeared uncared for), Sergeant Lefler concluded that Ruby had likely suffered greatly before  
23 her death. He immediately requested a call from the Major Crimes Unit of KCSO. Sergeant

1 Gates returned his call and spoke with Sergeant Lefler about the circumstances. Sergeant Gates  
2 then sent Detective Do to the scene.

3 While waiting for Detective Do to arrive, Sergeant Lefler engaged in further conversation  
4 with the defendant. The defendant told him that he had been adopted by Ruby and her husband,  
5 who had died when the defendant was 19 years old. The defendant stated that they had no other  
6 family and showed Sergeant Lefler some paperwork indicating that Ruby had already paid for a  
7 casket and funeral plot at a cemetery in California. The defendant appeared to be in a hurry to  
8 have Ruby's body removed from the house. When Sergeant Lefler again asked about medical  
9 care, the defendant reiterated that Ruby had not seen a doctor in over two years. He claimed that  
10 Ruby had not liked that doctor. When Sergeant Lefler asked the defendant if he had considered  
11 hospice care, the defendant claimed that he had but could not afford it.

12 Detective Do arrived at the scene at about 4:40 a.m. Sergeant Lefler first briefed  
13 Detective Do on what he had observed and then introduced him to the defendant. Detective Do  
14 explained to the defendant who he was and what his role was. The defendant indicated that he  
15 understood and said he would wait in the living room as he tried to figure out how to get Ruby's  
16 body to California. Sergeant Lefler then showed Detective Do where Ruby's body was and had  
17 Deputy McDonald return to his patrol car to finish paperwork. Sergeant Lefler then stood by  
18 while Detective Do took additional photos of Ruby's body.

19 At about 5:00 a.m., Detective Do sat down with the defendant at the dining room table.  
20 Sergeant Lefler left the house and began walking around the property. In the driveway, Sergeant  
21 Lefler saw a blue truck. Looking through the window of the truck, he could see mail on the front  
22 seat. The envelope on top appeared to be a medical bill addressed to Ruby.  
23

1           The defendant was on the phone and appeared to be talking to a funeral home. After he  
2 hung up, the defendant told Detective Do that the plan was to bury Ruby next to his father at the  
3 cemetery in California. The defendant indicated that he did not know what to do next or how to  
4 make the arrangements. Detective Do explained again why he was there and told the defendant  
5 that a funeral home was not going to be able to pick up Ruby's body until the Medical Examiner  
6 had approved it and provided a "NJA number." The defendant said that he understood and stated  
7 that he was a computer engineer and had received his degree from the University of California at  
8 San Diego. Detective Do asked the defendant if he could ask him some questions about Ruby  
9 and her passing. The defendant stated that he did not mind. When Detective Do asked if he  
10 could tape the conversation, the defendant said he could. Detective Do started the recording, but  
11 the phone rang almost immediately. The defendant asked to answer the call because it might be  
12 a funeral home and Detective Do allowed him to do so. However, the defendant was only on the  
13 phone for a short time and hung up after explaining to the caller that the police were there.  
14 Detective Do then restarted the recorder.

15           During the interview, the defendant stated, *inter alia*, that his mother had begun to show  
16 signs of dementia about six months earlier. Three months earlier, he said, she had become  
17 incontinent of urine and bowel. He claimed he changed her diaper every day to day and a half.  
18 He said she had been unable to get out of bed on her own for three to five weeks, so he had been  
19 giving her an "alcohol rub bath" periodically. He admitted to seeing bedsores on his mother, and  
20 claimed that they had shown up as bruises ten days ago, and become sores five days earlier.

21           The defendant claimed he fed his mother bread soaked in juice, bananas, and Snickers  
22 bars. He said that several weeks earlier, his mother had told him she wanted to die and that he  
23 should just "let her be." On the night of her death, the defendant said he went out at 6:30 p.m. to

1 go grocery shopping and to go to a local bar for a beer. He stated that he left the bar at 8:30 p.m.

2 When he entered the house, he heard his mother "wailing," which, he said, she had been doing  
3 for a while. Rather than go to her, he went downstairs to his bedroom and played poker on his  
4 computer, coming up one time to feed his mother a banana. He said that at 11:00 p.m. he  
5 returned to his mother's room, and found her gasping for breath. He stated that he then held her  
6 hand as she died.

7 Detective Do finished speaking with the defendant at about 5:53 a.m. Detective Do then  
8 explained to the defendant that the Medical Examiner's office would need to be called and  
9 informed of the situation. Detective Do told the defendant that he was free to go wherever he  
10 liked or to do whatever he needed to do with the one exception that Ruby's room needed to be  
11 left as it was, so he could not go there. The defendant agreed and went into the downstairs  
12 portion of the house to call the funeral home.

13 Detective Do then spoke again with Sergeant Lefler, who pointed out the blue truck in the  
14 driveway that had the letter that appeared to be a medical bill in plain view on the front seat.  
15 Detective Do then reviewed the statute for homicide by abuse, called the Medical Examiner's  
16 office, and called Detective Peters to request that she respond to the scene to assist in the  
17 investigation.

18 Detective Do and Sergeant Lefler then went back into the house. When they entered, the  
19 defendant returned to the main portion of the house from downstairs. Detective Do told the  
20 defendant that, given the circumstances (including the fact that Ruby had no doctor and so the  
21 only signature on the death certificate would be from the Medical Examiner's office), a "NJA  
22 number" could not be issued without a doctor from the Medical Examiner's office reviewing the  
23 scene. Detective Do informed the defendant that he was going to leave to prepare and request a

1 court order to allow law enforcement and the Medical Examiner's office to examine the scene  
2 and the house. Detective Do then told the defendant that he was free to leave the house and go  
3 anywhere he wished. The defendant then stated he was not fit to drive. Sergeant Lefler then  
4 offered to give the defendant a ride. The defendant stated he had no place to go. Detective Do  
5 then told the defendant that he was free to stay in the house, but that if he did, he could not clean  
6 the house or go into Ruby's bedroom. The defendant agreed and said he would lie on the couch  
7 in the living room. He then went back downstairs.

8 At about 6:00 a.m., Deputy Lien arrived to provide scene security. Detective Do  
9 informed Deputy Lien of his instructions to the defendant and then left to prepare a search  
10 warrant. The defendant was still downstairs, but came up to meet Deputy Lien. The defendant  
11 told Deputy Lien that he had been told not to clean up the kitchen, which Deputy Lien noticed  
12 was filled with piles of dirty dishes. The defendant also told Deputy Lien, *inter alia*, that Ruby  
13 had lived with him since 1999 in two different houses. He stated that Ruby had been okay until  
14 about six weeks ago. At that point, he claimed, she told him that she was "ready to go see dad"  
15 and just stayed in bed. The defendant also claimed that his mother had said she wanted to die in  
16 the house and not in a hospital or in a nursing home. The defendant claimed he was just  
17 respecting her wishes.

18 During the time that Deputy Lien was at the house, the defendant mostly stayed  
19 downstairs, but came upstairs to use the restroom twice. The defendant was repeatedly told he  
20 was free to leave the house if he wanted to. The defendant again stated he had nowhere to go  
21 and should not be driving. The defendant then went back downstairs to sleep.

22 At some point, Sergeant Gates, Detective Peters, and Detective Johnson arrived at the  
23 scene. At some point it was also learned that the defendant had a rifle in his bedroom. Due to

1 concerns for officer safety and to maintain scene integrity, Sergeant Gates requested that the  
2 defendant not remain in the house. Deputy Lien woke up the defendant to ask him to either  
3 move to the front porch or to leave the residence. The defendant indicated that he wished to  
4 remain, but would go to the front porch. Detective Peters and Johnson then entered the main  
5 floor of the house to meet the defendant coming up the internal staircase and to escort him out  
6 the front door (past Ruby's bedroom).

7 While in the house for this limited purpose, Detective Johnson observed that the kitchen  
8 was extremely dirty (dirty dishes piled in the sink, counters covered with dirty dishes and  
9 garbage, a strong odor of grease and rot, and small flies throughout the area). He also saw that  
10 the couch in the living room contained what appeared to be a new, large flat-screen TV on the  
11 wall and a couch covered with blankets that appeared to be a sleeping area. The tables  
12 throughout the house were covered with papers, dishes, unopened mail, and other items.  
13 Detective Johnson also saw a set of orange, foam earplugs on the table next to the couch. Next  
14 to the front door, Detective Johnson noticed five or more full garbage bags with hundreds of flies  
15 flying around or in the bags.

16 As the defendant walked out of the house with the detectives, he repeatedly stated that he  
17 was sorry because he had just woken up and did not understand what was happening. He said,  
18 "Do you understand that's my mom? I feel like you are treating me like a criminal. I feel like  
19 I'm on display for my neighbors." Detective Johnson responded by telling the defendant that the  
20 police investigated any death outside of a medical facility. Detective Johnson also told the  
21 defendant that he was sorry he felt like he was being treated like a criminal and stated that the  
22 police did not mean to make him feel that way. Detective Johnson told the defendant that he was  
23 free to leave if he wanted. The defendant stated that he was in no condition to drive.



1           Once on the porch, the defendant asked for juice and was given a tall glass of orange  
2 juice. Detective Peters then spoke with the defendant on the front porch while Detective Johnson  
3 stood nearby, listening. Detective Peters began speaking with the defendant at about 10:04 a.m.  
4 Detective Peters asked the defendant how long he had been renting the house. The defendant  
5 stated that he and Ruby had been there for about five years and that he thought it was a nice  
6 place for her. When Detective Peters asked the defendant when Ruby had last been to a doctor,  
7 he stated it had been about two years ago. Detective Peters asked if Ruby had fallen recently.  
8 The defendant admitted that Ruby had fallen out of bed six to eight weeks prior while he was  
9 doing a "dump run" and had slipped on the floor about four weeks ago. The defendant  
10 commented that he was Ruby's only caretaker and that he went to the store to get food about  
11 twice a week. The defendant also stated that the last time he had a friend over at the house was  
12 in March.

13           Detective Peters then asked the defendant how often he fed Ruby. The defendant stated  
14 that in the last few days, he fed her a little bit every two hours. He indicated that the food  
15 consisted of half a piece of bread soaked in juice, half a banana, and a small Snicker's bar. The  
16 defendant also stated that he had shared part of a burrito with her a week prior.

17           Detective Peters asked the defendant about his mother's bathing habits. The defendant  
18 indicated he had last given her a shower or a bath about three weeks prior. Other than that, he  
19 would "wash" her with a cloth using rubbing alcohol. The defendant admitted that he had not  
20 bathed her in the last week.

21           Detective Peters asked the defendant if he had noticed bedsores on Ruby and, if so, when.  
22 The defendant said he noticed the bedsores a couple of weeks prior on her hips and shoulders  
23 and was cleaning them and trying to move Ruby around. However, he claimed that about a week

1 prior Ruby had said she did not want to be touched. The defendant stated that he changed Ruby's  
2 diaper every day or day and a half.

3 The defendant then stated, "I promised my mom...she asked me several weeks ago, I'm  
4 ready to go see dad, just let me be. That's what she wanted." When Detective Peters asked if the  
5 defendant had called for medical help, he said no. He further stated that some of his friends had  
6 parents who were dying and they brought them back home to die. The defendant claimed that he  
7 could not afford a nursing home.

8 Based on that comment, Detective Peters asked the defendant about their finances. The  
9 defendant stated that he had no income and last worked in 2002 or in 2003. He explained that  
10 Ruby received \$1,200 a month in Social Security and \$480 every other month for disability from  
11 Liberty Mutual. The defendant said that Ruby's caseworker with Liberty Mutual was Carol  
12 Seeperstad-Green and that she came about once a year to check on Ruby. The defendant claimed  
13 that Ruby did not have any life insurance.

14 Detective Peters asked the defendant about possibly being evicted from the property. The  
15 defendant said that the property owner had talked to him about eviction and had asked them to  
16 move out because he was behind on rent. The defendant claimed he had done some  
17 improvements to the property and had been allowed to stay. The defendant also admitted that he  
18 was currently behind on rent, which was \$1200 per month.

19 In response to a question from Detective Peters, the defendant also stated that they had no  
20 credit cards and paid cash for everything.

21 Detective Peters then asked the defendant how long Ruby's health had been deteriorating.  
22 The defendant stated that it had been only in the last week. He claimed she had dementia and it  
23 was getting worse. He said Ruby had been in bed for a month or longer. In the past, she wore a

1 night gown, but in the last couple of weeks he had put her in a hospital gown. He claimed that  
2 he would change Ruby's bedding twice a week.

3 The defendant also said that Ruby usually had a good appetite and that he fed her about  
4 an hour before she died. When Detective Peters asked the defendant if he brushed Ruby's teeth,  
5 he claimed he did once a day, but admitted that he did not do a very good job. He claimed she  
6 would bite on the tooth brush. Detective Peters also asked if the defendant ever gave Ruby any  
7 nutrition drinks. He admitted that he did not, but instead gave her juice, water, green tea, and  
8 Coke.

9 Detective Peters asked the defendant if Ruby was taking any prescriptions. The  
10 defendant stated that she was not. Detective Peters asked if Ruby smoked. The defendant said  
11 that she used to, but no longer did. He did admit that he would give her "a drag" from one of his  
12 cigarettes "every now and then." The defendant explained that Ruby had broken both of her hips  
13 in 1992, but had no other broken bones. Detective Peters asked if Ruby could get herself up if  
14 she fell. The defendant said that she could not and he would have to help her up. Detective  
15 Peters asked the defendant if he had done any research on bedsores. He said he had not, but  
16 knew from her hip surgery that she should not be in the same spot and should move around. He  
17 said Ruby had been bedridden for the past three weeks.

18 At about 10:59 a.m., Judge Charles DeLaurentii signed a search warrant (BEL094S9) for  
19 the residence, the blue truck, and for Ruby's medical records from Overlake Hospital and Valley  
20 Medical Hospital. A copy of the warrant and affidavit in support is attached as Appendix B.  
21 Once the warrant had been signed, Detective Do called Sergeant Gates to inform her that the  
22 search could begin. Detectives Peters and Johnson then entered the house and began searching.  
23

1 While performing the search, Detective Johnson noted that the only telephone he saw in  
2 the living room was not plugged in and was not working. Detective Johnson went back to the  
3 front porch and asked the defendant how he had called 911. The defendant explained that he  
4 used a VOIP service and that the phone was in his room in the basement.

5 The defendant stayed on the front porch until the Medical Examiner was ready to remove  
6 Ruby's body from the house. The defendant then moved to the lake side of the house and sat in a  
7 chair by the entry to the lower portion of the house. Deputy Lien again offered to drive the  
8 defendant anywhere he wanted to go, but he again refused the offer and again stated he had  
9 nowhere to go.

10 At about 11:30 a.m., Detective Peters asked the defendant some follow-up questions.  
11 When she asked why the defendant had earplugs in the front room, he stated that Ruby liked to  
12 count out loud. Detective Peters then asked him if it was to drown out Ruby's moaning.<sup>1</sup> The  
13 defendant admitted that he used the earplugs to drown her out "to some degree." Detective  
14 Peters asked who came to visit Ruby, the defendant said that "Carol" had cut her hair about a  
15 year ago and mentioned "Carolyn" from Liberty Mutual as someone who had visited. During the  
16 conversation, the defendant mentioned that Ruby had flushed a diaper down the toilet a couple of  
17 months earlier. He also admitted that Ruby would moan and talk to herself. When Detective  
18 Peters asked about Ruby crying for help, the defendant claimed that this had only happened one  
19 time, but that he "guessed" he should have gotten more help.

20  
21  
22  
23  

---

<sup>1</sup> By this time, detectives had learned that several neighbors had heard Ruby moaning in pain in the days and weeks leading up to her death.

1 Detective Peters then asked the defendant if Ruby had been to the emergency room at  
2 Valley Medical.<sup>2</sup> The defendant said that Ruby had fallen out of bed about two years prior and  
3 had been taken to the hospital in an ambulance. This was the last time Ruby left the property.

4 Detective Peters then asked the defendant if he ever thought of taking Ruby for care or to  
5 a home. The defendant stated that he had thought about taking her to a home called "A Place for  
6 Mom" in Maple Valley in December of 2008, but had ultimately decided to keep her at home.  
7 He claimed Ruby wanted to die with him by her bedside. The defendant claimed that Ruby had  
8 no friends in Washington.

9 The defendant said that he slept during the day and did "research" on the computer at  
10 night. He also admitted that he played on-line poker. Detective Peters asked the defendant when  
11 he had last spoken with Ruby and had a conversation. The defendant claimed Ruby was smiling  
12 a couple of days before and had thanked him. Detective Peters then asked about a visit with  
13 Carol. The defendant said that Carol had been planning to come out last week, but that Ruby and  
14 he did not want visitors.

15 Finally, Detective Peters asked the defendant where he kept the medical supplies for  
16 Ruby. The defendant indicated that they were in the upstairs bathroom. In response to  
17 questions, the defendant said that he used two different sizes of gauze pads on Ruby and used  
18 rubbing alcohol and peroxide to clean her. When Detective Peters asked about the flies in the  
19 house, the defendant stated that he had bought some spray to get rid of them. He claimed that he  
20 did not have garbage service and had to take his garbage to the dump in his truck.

21 At about 11:40, Detective Do arrived back at the scene and contacted the defendant and  
22 Detective Peters, who were still talking. Detective Do noticed that the defendant appeared to be  
23

---

<sup>2</sup> In the search, detectives had found a emergency room bracelet with Ruby's name on it.

1 relaxed and freely answering questions. Detective Do told the defendant that officers were going  
2 to be at the house for a few more hours, but that it was not necessary for him to be there.  
3 Detective Do offered the defendant a ride, but the defendant said he could drive. The defendant  
4 was allowed to get his keys from his bedroom. Detective Do walked with the defendant to his  
5 truck. The defendant stated that he would get a motel room or would go sit by the boat launch  
6 ramp. Detective Do told the defendant that it was completely up to him where he wanted to go,  
7 but that he expected that the defendant could return to his house at around 3:30 p.m. Detective  
8 Do gave the defendant his business card and watched as he drove away.

9 At about 2:30 p.m., detectives left the house, leaving behind a return of service on the  
10 search warrant. Over the rest of the day, detectives conducted further investigation of the  
11 situation.

12 The next day (June 17, 2009), Detective Do met with Detective Peters to compare notes  
13 and review applicable statutes. The detectives decided that they had probable cause to arrest the  
14 defendant. Detectives decided to use a ruse to have the defendant come to the police station,  
15 where they would arrest him.<sup>3</sup> After a number of phone calls back and forth, the detectives  
16 arranged for the defendant to meet them at the Black Diamond police station, ostensibly to  
17 retrieve his laptop.

18 The defendant arrived at the station to meet with Detectives Do and Peters at about 4:45  
19 p.m. on June 17<sup>th</sup>. Detective Do patted down the defendant for officer safety reasons and  
20 escorted him into the unlocked court room. Detective Do explained to the defendant that they  
21 wanted to ask him some additional questions to clarify things and to follow up on information  
22

23 <sup>3</sup> In making this decision, the detectives were taking into account that they had found a rifle and a handgun during the search of the defendant's home. They also knew from talking to him (and his friends and neighbors) that he did not leave the house very often. On the other hand, detective felt that a forced entry using SWAT would have been "too much."

1 that they had obtained since last speaking with him. The defendant agreed to let the detectives  
2 tape record his statement. Detective Do told the defendant that, as they were in a courtroom and  
3 a police station, he needed to inform him of his constitutional rights. Detective Do then read the  
4 defendant his constitutional rights from a KCSO pre-printed form. The defendant stated that he  
5 fully understood his rights.

6 The following exchange then took place:

7 [Detective Do]: Do you have any questions about any of these rights?

8 [The Defendant]: My only question is when I spoke with Carol [Seeperstad]-  
9 Green, who I think one of you talked to. She's the Liberty Mutual --

10 [Detective Peters]: That was me that spoke to her

11 [The Defendant]: -- lady, she suggested that I...just [because] she left me a  
12 message saying that she got a call and she wanted to express her sympathy, and  
13 she suggested that I call a lawyer. I haven't called any lawyers just to protect  
14 myself. But I will continue. I'm just I...I...yeah, I don't know what I'm saying.  
15 I'm sorry.

16 [Detective Do]: Well, keeping these rights in mind do you wish to talk to  
17 me now about this?

18 [The Defendant]: Sure. Yes.

19 [Detective Do]: Okay. And this statement is voluntary on your part? I  
20 didn't threaten you, promise you anything?

21 [The Defendant]: Yes.

22 Detectives Do and Peters then interviewed the defendant.

23 Over the course of this interview, the defendant stated that Ruby had first showed signs  
of dementia five or six years prior, but that it had gotten significantly worse in the last six  
months. The defendant described Ruby's dementia as having "short term memory loss" and  
talking to herself. The defendant described his conversations with Ruby as being repetitive and  
"loopy." Despite this, the defendant insisted that Ruby had a "sound mind" and was aware of her

1 surroundings. However, he admitted that Ruby's moments of clarity occurred when he  
2 specifically directed her "to focus."

3 The defendant claimed that the moans of pain and cries for help heard by the neighbors  
4 were actually just Ruby "counting out loud" and making noise just to hear herself talk. The  
5 defendant stated that Ruby did not moan "24 hours a day," but admitted that it was "a lot."

6 The defendant then stated that Ruby had become "bedridden" about a month ago. He  
7 admitted noticing Ruby's sores "a couple of weeks" prior, but that claimed they did not become  
8 worse until a week prior. The defendant also claimed that Ruby had told him that she was not in  
9 pain. The defendant stated that he was Ruby's sole caretaker and did "the best he could" to care  
10 for her. The defendant repeatedly asserted that Ruby did not want to go to a doctor and wanted  
11 to die at home and he was just trying to fulfill her wishes. However, the defendant did admit that  
12 "it was bad for the last month" and that from an outsider's perspective, the circumstances of  
13 Ruby's death would be described as "repulsive."

14 Following the interview, the detectives informed the defendant that he was under arrest  
15 for homicide by neglect. The defendant said he understood. He was then transported to the King  
16 County Jail.

### 17 18 **III. ARGUMENT**

19 The defendant now argues under CrR 3.5 and CrR 3.6 that this court should exclude all of  
20 his statements described above, along with all evidence found during the service of the search  
21 warrant on June 16, 2009. The State anticipates calling Deputy McDonald, Sergeant Lefler,  
22 Detective Do, Deputy Lien, Detective Peters, Detective Johnson, and Sergeant Gates as witnesses  
23



1 and anticipates that they will testify as outlined above. For the reasons described below, both of the  
2 defendant's motions should be denied.

3  
4 **A. All Of The Defendant's Statements Are Admissible.**

5 **1. Applicable law.**

6 Under the Fifth Amendment of the United States Constitution, an individual has the right  
7 to be free from compelled self-incrimination while in police custody.<sup>4</sup> U.S. Const. amend. V;  
8 U.S. Const. amend. XIV; Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 16 L. Ed. 2d  
9 694 (1966); State v. Sargent, 111 Wn.2d 641, 647, 762 P.2d 1127 (1988). To protect this right,  
10 law enforcement is required to provide Miranda warnings to a person in custody before that  
11 person is subjected to interrogation. Miranda, 384 U.S. at 479. Whether a specific defendant  
12 must be advised of Miranda rights, therefore, depends on whether the questioning is (1) custodial  
13 (2) interrogation (3) by a state agent. State v. Post, 118 Wn.2d 596, 605, 826 P.2d 172 (1992)  
14 (citing Sargent, 111 Wn.2d at 649-53). Unless all three factors are present, Miranda warnings  
15 are not required. Post, 118 Wn.2d 596.

16 For the purposes of Miranda, a suspect is in "custody" when his or her "freedom of action  
17 is curtailed to a 'degree associated with formal arrest.'" Berkemer v. McCarty, 468 U.S. 420,  
18 440, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984) (citing California v. Beheler, 463 U.S. 1121, 1125,  
19 103 S. Ct. 3517, 77 L. Ed. 2d 1275 (1983); see also State v. Harris, 106 Wn.2d 784, 789-90, 725  
20 P.2d 975 (1986). The question of "custody" is objective and focuses purely on whether a

21  
22  
23 <sup>4</sup> Article I, section 9 of the Washington State Constitution is equivalent to the Fifth Amendment and is subject to the  
same definitions and interpretations as have been given to the Fifth Amendment. State v. Templeton, 148 Wn.2d  
193, 207-08, 59 P.3d 632 (2002) (citing City of Tacoma v. Heater, 67 Wn.2d 733, 736, 409 P.2d 867 (1966)).

1 reasonable person in the person's position would conclude that they were in custody. State v.  
2 Lorenz, 152 Wn.2d 22, 36-37, 93 P.2d 133 (2004).

3       However, not every contact between a police officer and a subject that leads to a  
4 limitation on the subject's freedom of movement constitutes a "custodial" situation. For  
5 example, courts have specifically held that an investigatory Terry<sup>5</sup> stop – while a detention that  
6 results in a limitation on a person's freedom of action – is not custodial for the purposes of  
7 Miranda analysis. See, e.g., State v. Templeton, 152 Wn.2d 210, 218, 95 P.3d 345 (2004)  
8 (citing, e.g., State v. Hilliard, 89 Wn.2d 430, 573 P.2d 22 (1977)). As noted in State v. Walton,  
9 "[t]he fact that a suspect is not 'free to leave' during the course of a Terry stop does not make the  
10 stop comparable to a formal arrest for purposes of Miranda." 67 Wn. App. 127, 130, 834 P.2d  
11 624 (1992) (citations omitted). As a result, because a Terry stop is not custodial, when such a  
12 stop is justified, an officer "may ask a moderate number of questions to determine the identity of  
13 the suspect and to confirm or dispel the officer's suspicions without rendering the suspect 'in  
14 custody' for the purposes of Miranda." State v. Heritage, 152 Wn.2d 210, 219, 95 P.3d 345  
15 (2004) (citing Berkemer, 46 U.S. at 439-40); see also State v. Marshall, 47 Wn. App. 322, 325,  
16 737 P.2d 265 (1987) (a suspect "may be asked to identify himself and to explain his activities  
17 without the necessity of first giving Miranda warnings.").

18       For the purposes of Miranda, a suspect is "interrogated" whenever the police subject him  
19 to either express questioning or its functional equivalent. Rhode Island v. Innis, 446 U.S. 291,  
20 300-01, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). Interrogation includes words or actions on the  
21 part of police, other than those normally attendant to arrest and custody, that police should know  
22 are reasonably likely to elicit an incriminating response from the suspect. Id.

23  

---

<sup>5</sup> Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

1 Before any statements obtained during a custodial interrogation may be admitted against  
2 a defendant at trial, the State must show by a preponderance of the evidence that the defendant  
3 knowingly and intelligently waived the right to remain silent. Id. at 475; State v Athan, 160  
4 Wn.2d 354, 380, 158 P.3d 27 (2007). Courts determine whether there has been a waiver by  
5 examining the totality of the circumstances, including the background, experience, and conduct  
6 of the defendant. North Carolina v. Butler, 441 U.S. 369, 374-75, 99 S. Ct. 1755, 60 L. Ed. 2d  
7 286 (1979); State v. Young, 89 Wn.2d 613, 620, 574 P.2d 1171 (1978).

8  
9 **2. All of the defendant's statements on June 16, 2009 are admissible.**

10 **a. The defendant's initial statements to Deputy McDonald and**  
11 **Sergeant Lefler were not the product of a custodial**  
**interrogation.**

12 The defendant called 911 shortly after midnight on June 16, 2009, to report that his  
13 mother had died. As is standard, both EMTs and a law enforcement officer were dispatched to  
14 the scene. When Deputy McDonald arrived he spoke to the EMTs, who had previously spoken  
15 to the defendant. Deputy McDonald then asked the defendant who Ruby's physician was and  
16 what types of medications she was taking. The defendant responded that she was not under the  
17 care of a physician and was not taking any medication.

18 Deputy McDonald then conducted additional investigation and ultimately called Sergeant  
19 Lefler to the scene. When he arrived, Sergeant Lefler also briefly spoke with the defendant. The  
20 defendant told Sergeant Lefler that he was Ruby's sole caretaker and only family and had been  
21 taking care of her for about ten years. The defendant indicated that he had noticed Ruby's health  
22 declining in the last two weeks and knew that she was dying. He claimed that Ruby wanted to  
23

1 die at home rather than in a hospital and admitted that she had not seen a doctor for over two  
2 years.

3 Here, these statements are admissible because there is simply no indication that the  
4 defendant's freedom of movement or action was curtailed *in any way* -- let alone to the degree  
5 associated with formal arrest -- when he was asked, and answered, these basic questions. As a  
6 result, he was not in custody and there was no requirement that Deputy McDonald or Sergeant  
7 Lefler inform him of his constitutional rights before asking the questions.

8 The defendant's arguments to the contrary are not persuasive. First, the defendant asserts  
9 that, because he was at home, his interaction with the officers did not constitute a Terry or traffic  
10 stop. This assertion is irrelevant -- at the time in question, the defendant's freedom of movement  
11 was not curtailed in any way by State authority. Thus, there simply was no "stop" of any kind.  
12 As a result, the attempt to characterize what type of "stop" it was is meaningless.

13 Second, the defendant asserts that he was not free to leave his house because it was the  
14 middle of the night and he was socially isolated and grieving. However, this argument ignores  
15 the relevant legal standard. As noted above, a person is only "in custody" for the purposes of a  
16 Miranda analysis when their freedom of movement is curtailed to a "degree associated with  
17 formal arrest." In other words, the question is whether the person is *free* to move or act, not  
18 whether they *want* to go anywhere else. Whether a reasonable person in the defendant's  
19 position would want to go anywhere is irrelevant -- the point is that he was not prevented from  
20 doing so. As a result, he was not in custody.

21 In addition, inherent in the very concept of "custody" (for Miranda purposes) is the  
22 requirement that it be a State agent who curtailed a suspect's freedom of movement. Here,  
23 neither the defendant's grief, nor his social isolation, nor the fact that Ruby died in the middle of

1 the night were circumstances created by a State agent. Thus, while these circumstances may  
2 have made the defendant less likely to actually take advantage of the opportunity to leave, that  
3 does not mean he was "in custody" when Deputy McDonald and Sergeant Lefler talked to him.

4 Third, the defendant asserts that "the officers were with Chris for over an hour and a half"  
5 and that, therefore "the questioning...was not brief and mean to confirm or dispel the officer's  
6 suspicion." However, this assertion ignores some facts and distorts others. As an initial matter,  
7 the phrase "confirming or dispelling an officer's suspicion" is a reference to the standard for the  
8 questioning that can be done when a defendant is not in custody, but is being detained (e.g. in a  
9 Terry stop). But, as noted above, here the defendant was simply not detained. Therefore,  
10 whether the questioning was brief or not is irrelevant. In addition, even if it is assumed  
11 *arguendo* that the defendant was detained and that the detention lasted "for over an hour and a  
12 half," the defendant was not subject to interrogation for that entire time. Rather, the questions  
13 asked by Deputy McDonald and Sergeant Lefler were moderate and were exactly the sort of  
14 questions that would help to confirm or dispel their suspicions. The fact that these questions  
15 took place in the context of a longer detention does not mean that the questioning was  
16 improperly lengthy.

17 Finally, the defendant asserts that he was in custody because his freedom of movement  
18 within the home was restricted when he was not allowed to go into Ruby's bedroom. However,  
19 as noted above the relevant is whether a reasonable person in the defendant's position would  
20 have felt that their freedom of movement or action was restricted to a degree associated with  
21 formal arrest. Without more, the mere fact that a person might be temporarily excluded from one  
22 room in a house -- the room where a dead body is located -- is not a restriction on liberty that  
23 would make a reasonable person believe they were "in custody." Moreover, even if this did

1 constitute "custody," the defendant's assertions simply ignores the fact that this restriction on his  
2 movement occurred *after* he spoke with Deputy McDonald and Sergeant Lefler. As he was not  
3 in custody when he actually made the statements, the fact that he might have been in custody  
4 later is not a basis to suppress.

5  
6 **b. The defendant's subsequent statements to Sergeant Lefler were  
7 not the product of a custodial interrogation.**

8 After speaking with the defendant, Sergeant Lefler looked at Ruby's body and then spoke  
9 with Sergeant Gates, who sent Detective Do to the scene. While waiting for Detective Do to  
10 arrive, Sergeant Lefler engaged the defendant in further conversation.

11 The statements made during this conversation are admissible because the defendant's  
12 freedom of movement or action was not curtailed to the degree associated with formal arrest  
13 prior to or during that conversation. Sergeant Lefler never told the defendant that he was not free  
14 to leave the scene. The defendant was neither handcuffed nor told he was under arrest. As a  
15 result, the defendant was not in custody and there was no requirement that Sergeant Lefler  
16 inform him of his constitutional rights before engaging him in conversation.

17 The defendant's argument to the contrary is not persuasive. The defendant asserts that  
18 after Sergeant Lefler spoke to Major Crimes he "froze the scene" and the defendant was not free  
19 to leave as a result. From this, the defendant contends that the conversation with Sergeant Lefler  
20 "undoubtedly" constituted custodial interrogation. But, for a number of reasons, the latter does  
21 not flow from the former. First, while Sergeant Lefler probably would have stopped the  
22 defendant had the defendant attempted to leave the scene, he never actually told the defendant  
23 that. Moreover, the issue never came up because the defendant never actually tried to leave. As  
a result, whatever Sergeant Lefler might or might not have hypothetically done is irrelevant to

1 the question of whether the defendant was in custody. As noted above, the question of "custody"  
2 is purely objective and focuses on whether a reasonable person would have believed he was in  
3 custody. Lorenz, 152 Wn.2d at 36-37. In that context, if the subjective intent or plans of an  
4 officer are never communicated to the suspect, then that intent or those plans are immaterial to  
5 the question of custody.

6 Second, even if the defendant had been aware that Sergeant Lefler had "frozen the  
7 scene," this would have only created a detention analogous to a Terry stop, not a custodial  
8 situation. As noted above, during a detention officers are allowed to ask investigatory questions  
9 designed to confirm or dispel their suspicions. Such questioning does not turn the situation into  
10 a "custodial interrogation" within the meaning of Miranda.

11  
12 **c. The defendant's initial statements to Detective Do were not the**  
13 **product of a custodial interrogation.**

14 Detective Do arrived at the scene at about 4:40 a.m., was briefed on what Sergeant Lefler  
15 had observed, and was then introduced to the defendant. Detective Do immediately explained  
16 who he was and what his role was. The defendant indicated that he understood and said he  
17 would wait in the living room as he tried to figure out how to get Ruby's body to California.  
18 About 20 minutes later, Detective Do sat down with the defendant at the dining room table. The  
19 defendant was on the phone and appeared to be talking to a funeral home. After he hung up,  
20 Detective Do again explained why he was there and told the defendant that a funeral home was  
21 not going to be able to pick up Ruby's body until the Medical Examiner had approved it. The  
22 defendant said that he understood. Detective Do then asked the defendant if he could ask some  
23 questions about Ruby and her death. The defendant stated that he did not mind. When Detective  
Do asked if he could tape the conversation, the defendant said he could. Detective Do started the

1 recording, but the phone rang almost immediately. The defendant asked to answer the call  
2 because it might be a funeral home and Detective Do allowed him to do so. However, the  
3 defendant was only on the phone for a short time and hung up after explaining to the caller that  
4 the police were there. Detective Do then restarted the recorder.

5 The statements made during this recorded interview are admissible because the  
6 defendant's freedom of movement or action was not curtailed to the degree associated with  
7 formal arrest. When Detective Do first sat down, the defendant was on the phone. Detective Do  
8 allowed him to finish the phone call before asking him if he would be willing to answer  
9 questions. The defendant said he would. The entire interview was conducted with both the  
10 defendant and Detective Do seated at the defendant's dining room table. The defendant was not  
11 handcuffed, was not told he was under arrest, was not told he was not free to leave, and was not  
12 pressured or coerced to answer Detective Do's questions. When the phone rang again, Detective  
13 Do allowed the defendant to interrupt the interview and answer the call. In other words, the  
14 defendant was not formally arrested and there was nothing about the circumstances that would  
15 lead a reasonable person to believe that he was in custody. As a result, he was not in custody  
16 and there was no requirement that Detective Do inform him of his constitutional rights before  
17 interviewing him.

18 Nor is the defendant's argument to the contrary is persuasive. With regard to this specific  
19 interview, the only additional factor pointed to by the defendant (in addition to those already  
20 addressed) is the allegation that Detective Do's initial interview of the defendant was "formalized  
21 and recorded." However, the mere fact that an interview is "formal" and/or audio recorded does  
22 not turn a non-custodial situation into a custodial one.  
23



1                                   **d.     The defendant's initial statements to Deputy Lien were not the**  
2                                   **product of a custodial interrogation.**

3           After Detective Do completed the interview with the defendant, he told the defendant that  
4 he was free to go wherever he liked or to do whatever he wanted or needed to do. The one  
5 exception was that the defendant could not go into Ruby's room. Shortly thereafter, Detective  
6 Do again spoke with the defendant and reiterated that he was free to leave the house and go  
7 wherever he wished. At that point, Sergeant Lefler even offered the defendant a ride, which he  
8 declined. Detective Do again told the defendant that he was free to stay in the house, but could  
9 not clean it or go into Ruby's room. At about 6:00 a.m. Deputy Lien arrived to provide scene  
10 security while Detective Do was obtaining a warrant. During that time, Deputy Lien and the  
11 defendant engaged in conversation.

12           The statements made by the defendant during this conversation are admissible because  
13 his freedom of movement or action was not curtailed to the degree associated with formal arrest.  
14 While Deputy Lien was present, the defendant moved within the house at will and was  
15 repeatedly informed that he was free to leave if he wished. As a result, the defendant was not in  
16 custody and there was no requirement that Deputy Lien inform him of his constitutional rights  
17 before engaging him in conversation.

18                                   **e.     The defendant's initial statements to Detective Peters were not**  
19                                   **the product of a custodial interrogation.**

20           At some point, Sergeant Gates, Detective Peters, and Detective Johnson arrived at the  
21 house and it was learned that the defendant had a rifle in his bedroom. Due to concerns for  
22 officer safety and to maintain scene integrity, Sergeant Gates requested that the defendant not  
23 remain in the house. Deputy Lien woke the defendant to ask him to either move to the front

1 porch or to leave the residence. The defendant indicated that he wished to remain, but would go  
2 to the front porch. As Detectives Peters and Johnson escorted the defendant out of the house, he  
3 repeatedly stated that he felt that he was being treated like a criminal. Detective Johnson  
4 responded by telling the defendant that the police investigated any death outside of a medical  
5 facility and that they did not mean to make him feel like a criminal. Detective Johnson again  
6 told the defendant that he was free to leave if he wanted. Once on the porch, the defendant asked  
7 for, and received, a glass of juice. Detective Peters then spoke with the defendant on the front  
8 porch while Detective Johnson stood nearby, listening. The defendant was not handcuffed or  
9 told he was under arrest. Nor was he told that he was required to answer any questions.

10 Here, there is no indication that the defendant's freedom of movement or action was  
11 curtailed to the degree associated with formal arrest. Other than the requirement that he leave  
12 the house, there were no restrictions placed on the defendant's movements. He was explicitly  
13 and repeatedly told that he was free to leave if he wanted. As a result, the defendant was not in  
14 custody and there was no requirement that Detective Peters inform him of his constitutional  
15 rights before engaging him in conversation.

16  
17 **f. The defendant's statements -- made to Detective Johnson and**  
18 **Detective Peters while the house was being searched -- were not**  
**the products of custodial interrogations.**

19 While officers were searching the house pursuant to the warrant, both Detective Johnson  
20 and Detective Peters independently spoke with the defendant to ask him additional questions.  
21 However, there is no indication that the defendant's freedom of movement or action was  
22 curtailed to the degree associated with formal arrest at any point during this time. To the  
23 contrary, the defendant was repeatedly told that he did not need to stay at the scene and was free

1 to leave. Various officers even offered to give him a ride wherever he needed to go. The  
2 defendant was free to move around the outside of the house. The only restriction put on his  
3 movement was that he was not allowed into the house itself while it was being searched. As a  
4 result, the defendant was not in custody and there was no requirement that Detective Peters or  
5 Detective Johnson inform him of his constitutional rights before asking him these questions.

6 The defendant's arguments to the contrary are not persuasive. First, the defendant points  
7 out that these conversations occurred about 10 hours after the officers first arrived at the house.  
8 Second, the defendant argues that officers already had probable cause to believe he had  
9 committed a crime and were executing a search warrant. However, neither fact would turn a  
10 non-custodial situation into a custodial one. Thus, neither changes the fact that there was no  
11 custodial interrogation.

12 Thus, despite the defendant's assertions to the contrary, his statement made on June 16,  
13 2009, are admissible in the State's case in chief.

14  
15 **2. The defendant's statements on June 17, 2009 are admissible.**

16 On June 17, 2009, the defendant met with Detective Do and Detective Peters at the Black  
17 Diamond police station/courthouse. While the defendant was patted down for officer safety after  
18 he arrived, he was not handcuffed and was interviewed in an unlocked court room. The  
19 interview was recorded. Prior to asking any questions, the defendant was informed on the record  
20 of his constitution rights from a pre-printed KCSO form. The defendant stated that he  
21 understood his rights and agreed to speak with the detectives. The interview was then recorded  
22 in full.

1 The statements made by the defendant during this interview are admissible. The  
2 defendant was properly informed of his constitutional rights, indicated that he understood them,  
3 and explicitly stated he was willing to answer questions. Thus, this court can and should find by  
4 a preponderance of the evidence that the defendant knowingly, intelligently, and voluntarily  
5 waived his rights.

6 The defendant's arguments to the contrary are not persuasive. First, the defendant argues  
7 that prior violations of his constitutional rights (i.e. on June 16<sup>th</sup>) rendered his June 17<sup>th</sup> waiver  
8 invalid. This argument fails. As an initial matter, as outlined above there were no prior  
9 violations of the defendant's constitutional rights. Moreover, as the defendant himself concedes,  
10 the "taint" from either a technical Miranda violation or even coerced statements may be cured when  
11 there is a sufficient change in circumstances between the "tainted" and subsequent statements.  
12 Oregon v. Elstad, 470 U.S. 298, 105 S.Ct. 1285, 84 L.Ed.2d 222 (1984); State v. Allenby, 68  
13 Wn. App. 657, 847 P.2d 1 (1993); State v. Baruso, 72 Wn. App. 603, 865 P.2d 512 (1993).  
14 Here, almost 24 hours passed between the defendant's statements on June 16<sup>th</sup> and June 17<sup>th</sup>. In  
15 addition, there was a dramatic change in both the location and context of the two statements.  
16 Moreover, the defendant's statements on June 17, 2009, were unquestionably preceded by a  
17 proper advisement of his constitutional rights. Thus, even if the statements from June 16<sup>th</sup> were  
18 improperly taken, the statements from June 17<sup>th</sup> are still admissible.

19 Second, the defendant argues that the statements he made on June 17, 2009, are  
20 inadmissible because he made an equivocal assertion of his right to counsel that detectives failed  
21 to clarify. But this assertion is not supported by what the defendant actually said. As an initial  
22 matter, the defendant did not make even an equivocal assertion of his right to counsel. As noted  
23 above, when asked if he had any questions, the defendant stated:

1 My only question is when I spoke with Carol [Seeperstad]-Green, who I think one  
2 of you talked to. She's the Liberty Mutual [...] lady, she suggested that I...just  
3 [because] she left me a message saying that she got a call and she wanted to  
4 express her sympathy, and she suggested that I call a lawyer. I haven't called any  
5 lawyers just to protect myself. But I will continue. I'm just I...I...yeah, I don't  
6 know what I'm saying. I'm sorry.

7 This statement did not constitute an equivocal assertion of the right to counsel. Rather, it is  
8 precisely the opposite -- an unequivocal *waiver* of counsel. Read in context, what the defendant  
9 stated is that someone else had suggested to him that he might want a lawyer (i.e. "she suggested  
10 that I call a lawyer,"), that he had not done so (i.e. "I haven't called any lawyers..."), *but that he*  
11 *was willing to proceed without one* (i.e. "But I will continue.")

12 Moreover, even if the defendant's statement could be read as an equivocal request for  
13 counsel, detectives adequately clarified any ambiguity. Immediately after the above statement,  
14 Detective Do asked the defendant, "Well, keeping these rights in mind, do you wish to talk to me  
15 now about this?" The defendant answered, "Sure. Yes." While the defendant may now assert  
16 that Detective Do should have phrased his question differently, there is no authority for the  
17 proposition that there are "magic words" that a detective must use when clarifying an ambiguous  
18 or equivocal request for counsel. Here, Detective Do's question and the defendant's answer were  
19 sufficient to clarify any ambiguity and to ensure that the defendant was willing to waive his  
20 rights and answer the detectives' questions.

21 Finally, the defendant argues that he never waived his rights, but only acknowledged  
22 them. This argument also fails. Prior to asking the defendant any questions, Detective Do read  
23 him his constitutional rights. The defendant stated that he understood each individual right and  
his rights as a whole. Detective Do then asked the defendant, "[K]eeping these rights in mind,  
do you wish to talk to me now about this?" The defendant answered, "Sure. Yes." Despite the

1 defendant's assertion to the contrary, this statement is clearly a waiver of his rights, separate and  
2 distinct from his earlier statements acknowledging that he understood what his rights were.

3 The defendant also makes much of the fact that he was not informed that he was going to  
4 be arrested prior to waiving his rights. However, this fact is irrelevant. The State is not aware of  
5 any authority holding that a defendant's waiver is only valid if he or she is told beforehand that  
6 they are, or are going to be, arrested for a specific crime. Nor would such a requirement make  
7 any sense in the context of the purpose of Miranda and its progeny.

8 Thus, despite the defendant's assertions to the contrary, his statement made on June 17,  
9 2009, are admissible in the State's case in chief.

10  
11 **B. There Is No Basis To Exclude Any Evidence Under CrR 3.6**

12 All of the physical evidence in this case was seized pursuant to the search warrant  
13 obtained by KCSO Detective Thien Do on June 16, 2009. The defense bases its motion to  
14 suppress the physical evidence seized pursuant to that warrant entirely on the claim that the  
15 affidavit that was the basis for the warrant contains statements of the defendant that were  
16 illegally obtained. For all of the reasons set out in the preceding section of this brief, the State  
17 contends that none of the defendant's statements were obtained illegally. If, after the CrR 3.5  
18 hearing the court finds the defendant's statements admissible, then the defense motion to  
19 suppress the physical evidence seized will be moot. If the court does suppress that portion of the  
20 defendant's statements that were recited in the affidavit for the search warrant, then the court  
21 should find that the affidavit contains facts that are otherwise sufficient to establish probable  
22 cause.

1 A search warrant is entitled to a presumption of validity. State v. Wolken, 103 Wn.2d  
2 823, 827-28, 700 P.2d 319 (1985). When a search warrant is based in part on illegally obtained  
3 information, the warrant is nonetheless valid if the warrant application contains “otherwise  
4 sufficient facts to establish probable cause independent of the illegally obtained information.”  
5 State v. Spring, 128 Wash. App. 398, 115 P.3d 1052 (2005), *citing* State v. Maxwell, 114 Wn.2d  
6 761, 769, 791 P.2d 223 (1990). “Probable cause is established when an affidavit supporting a  
7 search warrant provides sufficient facts for a reasonable person to conclude there is a probability  
8 the defendant is involved in criminal activity.” State v. Vickers, 148 Wn.2d 91, 108, 59 P.3d 58  
9 (2002).

10 The affidavit for the search warrant written by Detective Do states that victim Ruby Wise  
11 lived with her son, Christopher Wise, at 27402 SE Green River Gorge Road. Christopher Wise  
12 called 911 to report his mother’s death. The affidavit goes on to say that the responding deputies  
13 found Ruby Wise lying dead on her bed with a blanket over her body. When they removed the  
14 blanket, they saw that she was wearing only an adult diaper. The affidavit describes her as  
15 emaciated; her sternum and rib cage were visible through her skin, her cheeks and eyes were  
16 sunken. She had multiple pressure sores (bedsores) all over her body, one of which was about  
17 six inches in diameter. The sore on her left shoulder was an open wound with blood clotting.  
18 More wounds and sores were found on her back. Deputies noted that on every joint of her  
19 Ruby’s body was a pressure sore or what appeared to be a healed infection. Ruby’s weight at the  
20 time was estimated to be about 50 pounds. An apparent attempt to treat one of the wounds was  
21 evidenced by a gauze bandage stuck to it. All of her other wounds were exposed.

22 Besides mention of the bill for medical treatment found in Christopher Wise’s truck, the  
23 rest of the affidavit summarizes Detective Do’s interview of Christopher Wise. Detective Do’s

1 summary of his belief that probable cause that the defendant had committed the crime of  
2 “Homicide Criminal Mistreatment” reads as follows:

3 It is your affiant’s belief that given the extensive bed sores, healing wounds and  
4 signs of aged bruising, that Ruby had been medically neglected for a period of  
5 time. The extent of sores and wound on her left and right shoulder showed a raw  
6 rubbing sore that has partially healed by blood clotting. The healing shows that  
7 not only did the injury transpire but that time had passed for the wound to start  
healing. The multiple bruising and [sic] on Ruby’s legs, arms, torso and back also  
indicated that a considerable time had passed in order for these wounds to form.  
The lack of body mass on Ruby’s frame and the taut skin on her skeleton structure  
shows that she was malnourished...

8 After mentioning some of the defendant’s statements, the detective goes on to conclude,  
9 “Although Ruby is 88 years old, the condition of her body shows that an amount of neglect was  
10 exhibited and that she could have died from an infection from one of her many wounds and  
11 sores.”

12 All of the information recited above is based on preliminary information provided to the  
13 detectives after they were called out to the Wise residence, and their observations of the victim’s  
14 body at the scene. The detectives knew that the defendant lived alone with this mother at their  
15 residence. They knew that Ruby Wise died in her bed, obviously malnourished and covered with  
16 numerous, severe, untreated wounds. They further knew that the defendant only called 911 after  
17 his mother had already died—not in order to obtain treatment for her before she died.

18 As is evidenced by the above summary written by Detective Do, the affidavit relies  
19 heavily on the condition of the body to establish probable cause. Although the defendant’s  
20 statement that is mentioned in the warrant does contain admissions that he was not providing his  
21 mother with proper care, it also contains self-serving claims establishing his defense to the  
22 neglect allegations. The defendant’s statement aside, the affidavit contains facts clearly  
23 sufficient for a reasonable person to conclude that there is a probability the defendant is involved



1 in some degree of criminal neglect. Therefore, even if the court suppresses the defendant's  
2 statement to Detective Do that was described in the search warrant, the court should nevertheless  
3 deny the defense motion to suppress the physical evidence seized pursuant to the search warrant.  
4

#### 5 IV. CONCLUSION

6 For all the foregoing reasons, the State respectfully requests that this court find the  
7 defendant's statements admissible and deny his motion to suppress physical evidence.  
8  
9

10 DATED this \_\_\_\_ day of April, 2010.

11  
12 DANIEL T. SATTERBERG  
King County Prosecuting Attorney

13  
14 By: \_\_\_\_\_  
15 Page B. Ulrey, WSBA # 23585  
Senior Deputy Prosecuting Attorney

16  
17 \_\_\_\_\_  
18 Patrick H. Hinds, WSBA #34049  
Deputy Prosecuting Attorney  
19  
20  
21  
22  
23