

1 **CERTIFIED STATEMENT OF COUNSEL**

2 State of Washington)
3 County of Thurston) ss:

4 HEATHER STONE, Deputy Prosecuting Attorney, as an officer of this court, deposes and
5 affirms as follows:

6 I am the prosecuting attorney assigned to the above-referenced matter. In response to the
7 defendant's motion to suppress, I believe a hearing or trial on this matter will elicit, in part, the
8 following evidence:

- 9 (1.) On 7/17/21 at approximately 0901 hours, Thurston County Deputy Blankenship responded
10 to a complaint of custodial interference at 6945 76th Ave. NE. Olympia, WA.
- 11 (2.) The reporting party, Kathryn Stoker advised that her daughter, Selena Smith, had entered
12 her residence without her permission and was refusing to leave. Smith did not have
13 permission to be in her house, was not invited to the home, and had never lived at the home.
- 14 (3.) She stated that her daughter, the defendant in this case, **advised that law enforcement**
15 **would have to arrest her in order to make her leave without her kids.**
- 16 (4.) Ms. Stoker has legal guardianship of the children who were eight and three years old at
17 the time of the incident.
- 18 (5.) Dep. Blankenship arrived at the residence and the defendant observed him enter the
19 residence. As he did so, Smith picked up her 3-year-old daughter and then went quickly
20 into the TV room and picked up her 8-year-old daughter.
- 21 (6.) Smith then sat on the couch with both children on her lap in front of her as if she was
22 using them as shields from law enforcement. She had both girls tightly gripped.
- 23 (7.) Blankenship asked her to release her hold on the children so they could talk about the
24 incident and she refused to do so. **She stated she would not let the girls go, she did not**

1 **care what the court ruled as they were corrupt, and she was going to take the**
2 **children with her.**

3 **(8.)** Blankenship attempted several times to convince Ms. Smith to let the girls go and **each**
4 **time she refused and accused law enforcement of only helping the rich.**

5 **(9.)** **Smith again said she would not leave unless she had the children and she stated her**
6 **children hated law enforcement anyway. She then asked the 8-year-old girl what she**
7 **thought about police.** The child looked confused until the defendant whispered in her
8 ear that they hated cops. The child then repeated the words and **Smith told Blankenship**
9 **that law enforcement was corrupt and had wrongfully taken her children away.**

10 **(10.)** Blankenship told Smith that it sounded like brainwashing as she clearly told the child
11 what to say. At that, Smith became very angry and began to **rant about how parents,**
12 **law enforcement, and ex boyfriends had all wronged her. She stated she knew her**
13 **visitation rights with her children and she had not violated them.**

14 (11.) Smith was advised that she was remaining unlawfully and needed to leave immediately.
15 She continued to refuse to do so and due to the danger she presented to the children by
16 squeezing them tightly, she was told she could exit the residence with the children.

17 (12.) After continuing to argue for some time, Smith grabbed both children and walked out of
18 the residence and into the driveway where she sat on a curb. She still held both children
19 around her chest and stomach tightly as shields against law enforcement. During this
20 time, Blankenship observed that the 3-year-old child reached back several times to get
21 out of Smith's grip and return to the residence.

22 (13.) Blankenship observed that both children were distraught in Smith's arms and were being
23 held tightly to her chest. She refused several options to let go of the girls and **continued**
24

1 **to chastise law enforcement for allowing her daughters to be hostages of the**
2 **reporting party.**

3 (14.) The deputies on scene then devised a plan to arrest the defendant and attempt to safely
4 get the children away from her.

5 (15.) Selena was then asked about being served a writ from the court regarding the children.
6 **She replied that she did not recognize the authority of the court and they could not**
7 **take her children away from her. Selena was given a final order to let go of the**
8 **children and she refused.**

9 (16.) Blankenship and other deputies then grabbed her arms from behind as she was seated on
10 the curb. She responded by screaming profanities and actively resisting by tightening her
11 grip around both children, not allowing either to be freed.

12 (17.) Blankenship could see that the 8-year-old was clearly distraught and in pain as she
13 tightened her grip around her with her right arm.

14 (18.) Blankenship was able to break Smith's grip on the 8-year-old enough for the child to get
15 free. As she did so, Stoker attempted to grab the child and **Smith screamed at Stoker,**
16 **called her an awful mother and other profanities,** and kicked her in the shin with both
17 feet as she attempted to grab the child. Stoker leapt back in pain before grabbing the 8-
18 year old.

19 (19.) Smith's momentum from kicking Kathryn Stoker caused her to fall to her left side where
20 she still had a grip on the 3-year-old. The child yelled in fear and pain as Smith laid on
21 her. Smith was told several times she was laying on her daughter's arm and to let go.
22 **Smith refused to do so and continued screaming profanities.** Eventually the 3-year old
23 was able to be pried from Smith's grip and given to Stoker's husband Hans.

24 (20.) Smith continued to actively resist for several seconds as she was placed into handcuffs.

1 (21.) Smith was read her constitutional rights after being placed into handcuffs, however she
2 refused to answer if she understood them. She was then placed into a patrol vehicle.

3 (22.) During this time, Smith stated to deputies that she was fine being arrested as she could
4 now get an attorney to represent her which she did not have.

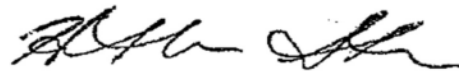
5 (23.) Kathryn Stoker stated that when she had come home from her walk she had discovered
6 Smith inside and asked her to leave. **Smith refused.**

7 (24.) Hans Stoker stated that he was inside that morning, heard someone enter, and heard the
8 door slam. He stated he observed it was Smith and asked her to leave. **She responded**
9 **that she would not and would need to be arrested to leave.**

10 I certify and declare under the penalty of perjury of the laws of the State of Washington that the
11 foregoing is true and correct to the best of my knowledge.

12 Dated this __2d__ day of December, 2021.

13 JON TUNHEIM
14 PROSECUTING ATTORNEY

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16 _____
17 HEATHER STONE, WSBA # 42093
18 Deputy Prosecuting Attorney

1 be charged with a crime. But police officers are not required to administer
2 Miranda warnings to everyone whom they question. Nor is the requirement
3 of warnings to be imposed simply because the questioning takes place in the
4 station house, or because the questioned person is one whom the police
suspect. Miranda warnings are required only where there has been such a
restriction on a person's freedom as to render him "in custody." It was that
sort of coercive environment to which Miranda by its terms was made
applicable, and to which it is limited.

5 Oregon v. Mathiason, 429 U.S. 492, 495, 97 S. Ct. 711, 50 L. Ed. 2d 714 (1977).

6 In the case of a social contact, it is well-settled case law in Washington that a police officer does
7 not seize a person merely by striking up a conversation or asking questions. Florida v. Bostick, 501 U.S.
8 429, 115 L. Ed. 2d 389 (1991); State v. Mennegar, 114 Wn.2d 304, 310, 787 P.2d 1347 (1990). When a
9 citizen freely converses with a police officer, the encounter is permissive. It is not a seizure and thus, the
10 Fourth Amendment is not implicated. U.S. v. Mendenhall, 446 U.S. 544, 554, 64 L. Ed.2d 497 (1980);
11 State v. Mennegar, 114 Wn.2d 304, 310, 787 P.2d 1347 (1990). If a person does freely consent to stop
12 and talk, the officer's asking of questions or requesting identification does not necessarily elevate a
13 consensual encounter into a seizure. Id.; State v. Barnes, 96 Wn. App. 217, 222, 978 P.2d 1131 (1999).
14 There is no clear definition for a social contact in Washington case law, but there is indication that a
15 social contact in the field may include an investigative component without it transforming the stop into a
16 Terry stop or something greater. State v. Harrington, 167 Wn.2d 656, 222 P.3d 92 (2009). Notably, the
17 State Supreme Court stated in State v. O'Neill, "[W]e reject the premise that under article I, section 7 a
18 police officer cannot question an individual or ask for identification because the officer subjectively
19 suspects the possibility of criminal activity, but does not have a suspicion rising to the level to justify a
20 Terry stop." State v. O'Neill, 148 Wn.2d 564, 577, 62 P.3d 489 (2003).

21
22 Moreover, Miranda is also not required when the contact is a Terry stop. In such a case, the
23 defendant is also not "in custody" for the purposes of Miranda. In fact, "[p]olice may conduct an
24 investigatory stop if the officer has a reasonable and articulable suspicion that the individual is [or is

1 about to be] involved in criminal activity." State v. Walker, 66 Wn. App. 622, 626, 834 P.2d 41 (1992);
2 State v. Day, 161 Wn.2d 889, 896-97, 168 P.3d 1265 (2007); State v. Acrey, 148 Wn.2d 738, 746-47, 64
3 P.3d 594 (2003). A reasonable suspicion is the "substantial possibility that criminal conduct has
4 occurred or is about to occur." State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). Specifically,
5 "[t]he reasonableness of the officer's suspicion is determined by the totality of the circumstances known
6 to the officer at the inception of the stop." State v. Rowe, 63 Wn. App. 750, 753, 822 P.2d 290 (1991).
7 "[T]he determination of reasonable suspicion must be based on commonsense judgments and inferences
8 about human behavior." Illinois v. Wardlow, 528 U.S. 119, 125, 120 S. Ct. 673, 145 L. Ed. 2d 570
9 (2000). For example, the totality of the circumstances can include the officer's subjective beliefs, his
10 training and experience, the location of the stop, and the conduct of the person detained. Day, 161
11 Wn.2d at 896; Acrey, 148 Wn.2d at 747. Moreover,

12 [N]o single rule can be fashioned to meet every conceivable confrontation
13 between the police and citizen. Evaluating the reasonableness of the police
14 action and the extent of the intrusion, each case must be considered in light of
15 the particular circumstances facing the law enforcement officer.

16 State v. Lesnick, 84 Wn.2d 940, 944, 530 P.2d 243 (1975).

17 If the officer's initial suspicions are confirmed or further aroused, the scope of the stop may be
18 extended and its duration prolonged. Acrey, 148 Wn.2d at 747. In fact, "[t]he courts have repeatedly
19 encouraged law enforcement officers to investigate suspicious situations." State v. Mercer, 45 Wn. App.
20 769, 775, 727 P.2d 676 (1986). A suspect's reaction to police helps determine the reasonableness of an
21 officer's actions during a Terry stop. State v. Belieu, 112 Wn.2d 587, 600, 773 P.2d 46 (1989). A
22 detaining officer may also ask a moderate amount of questions during a Terry stop, including questions
23 designed to elicit incriminating responses, to confirm or dispel the officer's suspicions. State v. Heritage,
24 152 Wn.2d 210, 218, 95 P.3d 345 (2004); State v. Walton, 67 Wn. App. 127, 130, 834 P.2d 624 (1992).

1 Thus, the scope of a Terry stop is not limited to the reason for the initial stop or a simple exchange
2 between an officer and a citizen.

3 In the instant case, the defendant was plainly never seized until she was arrested. Indeed, she was
4 asked to leave the residence multiple times and refused. When law enforcement contacted her within the
5 residence, she was not in custody for the purpose of Miranda. She was sitting on a couch with her
6 children, in a place and with people of her choosing, despite her lack of right to do so. Law enforcement
7 used no force on her in the residence and did not create a scenario in which her statements to them were
8 only made due her will being overborn—this is the scenario for which Miranda is concerned and one
9 which did not exist inside the house. This is further evidenced by the fact that they repeatedly asked her
10 to leave the residence and release her hold on the children and she refused to do so; she was apparently
11 fully capable of asserting her will as she saw fit. There was no interrogation, let alone a custodial
12 interrogation. Thus, all statements made by her in the house are admissible.

13 The defendant was then told that she could exit the home with the children and upon doing so,
14 she walked out and sat on the curb. It appears at this point, the most that could be claimed is that the
15 defendant was seized for the purpose of a Terry investigative stop and not free to leave, but it could also
16 be that she chose to leave and remain simply outside the home. Presuming at most that a Terry seizure
17 occurred, she was still not in custody pursuant to Miranda and no custodial interrogation occurred. She
18 exited the house with her children, sat down on the curb, and then proceeded to berate and swear at her
19 mother and law enforcement as outlined above. Indeed, it is unclear if any question was actually
20 proffered by law enforcement at the time, but it is clear that she continued to argue with law
21 enforcement about her right to her children. At this point the deputies devised a plan to attempt to safely
22 remove the children from Smith. When asked by Sgt. Odegaard about the court order regarding the
23 children, Smith stated she did not recognize the authority of the court and that they could not take her
24 children away from her. Throughout this process, she remained unrestrained, sitting in a location of her

1 apparent choosing, in the company of her children, mother, and step father, had all of her own property
2 apparently still on her, and law enforcement had not drawn or pointed weapons of any sort.

3 When they advised her one final time to release the children and she refused, then deputies, for
4 the first time, physically began to try and seize the defendant. The defendant's statements to deputies
5 during the time she was seated on the curb and the course of her arrest are all admissible. They were not
6 the result of a custodial interrogation by state agents, let alone the result of a coercive environment. The
7 continuance acts of independence demonstrated by the defendant demonstrated she felt no compulsion
8 to do anything she was directed to do by law enforcement; this is in direct contrast with the concerns and
9 prophylactic measures of Miranda. The defendant swearing and yelling at her mother and law
10 enforcement was, indeed, not the result of any interrogation—it was her own spontaneous statements
11 with which Miranda does not concern itself.

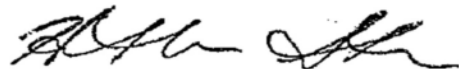
12 Upon effecting the arrest, the defendant was read her Miranda Rights which she declined to
13 acknowledge she understood and thus, no such questioning occurred. Instead, she was placed in a patrol
14 vehicle and driven to jail where she was booked. As a result, all statements made to law enforcement
15 during their interaction with her are admissible at trial.

16 CONCLUSION

17 For the reasons stated previously, the State respectfully requests the court to admit the
18 defendant's statements.

19 Respectfully submitted this __2d__ day of December, 2021.

20 JON TUNHEIM
21 PROSECUTING ATTORNEY

22 

23 HEATHER STONE, WSBA # 42093
24 Deputy Prosecuting Attorney