NO. 93628-5

THE SUPREME COURT
STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT,

v.

THEODORE ROOSEVELT RHONE, PETITIONER

Court of Appeals Cause No. 46960-0-II
Appeal from the Superior Court of Pierce County
The Honorable Edmund Murphy

No. 03-1-02581-1

COURT ORDERED ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT.

Respondent State of Washington, Respondent in the case below.

B. COURT OF APPEALS DECISION.

Defendant petitioned for discretionary review of the unpublished decision reached by the Court of Appeals, Division II, in case No. 46960-0-II on July 6, 2016. That court affirmed his conviction for firearm enhanced first degree robbery, but vacated his convictions for possession of a controlled substance as well as possession of a firearm, and remanded the case for further proceedings.

C. ISSUES PRESENTED FOR REVIEW.

1. Should review be denied when defendant's claim of error is predicated on a blatant misstatement of the record? He wrongly states the Court of Appeals affirmed his robbery conviction through application of the sufficiency of the evidence standard after concluding the firearm found incident to his arrest was admitted in violation of ***Gant***.[1] Whereas the court unequivocally applied the constitutional harmless error test for direct appeals. This means the conviction survived more rigorous scrutiny than was due, for it was on remand from a personal restraint petition where it is defendant's burden to prove actual and substantial prejudice.

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[1] ***Arizona v. Gant***, 556 U.S. 332, 129 S. Ct. 1710 (2009).

2. Is review of the unpublished decision also unnecessary since reexamination of the record should result in this Court both affirming the robbery conviction underlying defendant's life sentence and reinstating his vacated convictions for possessing a firearm and crack cocaine? For the challenged evidence of defendant's guilt was mistreated as a ***Gant*** violation when it was lawfully discovered amid a protective-firearm sweep during a ***Terry***[2] stop of the car defendant just used to commit a robbery.

3. Would review further prove a waste of scarce resources when the robbery conviction underlying defendant's life sentence should be unaffected by the identified ***Gant*** error due to his lack of a privacy interest in the third-party car searched and inability to invoke automatic standing because first degree robbery is not a possessory offense.?[3]

D. STATEMENT OF THE CASE.

Defendant was charged with possessing crack cocaine with intent to deliver (Ct. I), first degree robbery (Ct. II), unlawful possession of a firearm in the first degree (Ct. III) and bail jumping (Ct. IV). CP 34-36. Firearm enhancements were added to Counts I-II. *Id.* The trial court

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[2] ***Terry v. Ohio***, 392 U.S. 1, 88 S. Ct. 1868 (1968).

[3] Review could not be providently granted as defendant's robbery conviction was correctly affirmed, which leaves his life sentence undisturbed. Because the unpublished decision has no precedential value, the identified errors are academic, being without a capacity for practical effect unless review is granted; in which case, they would become alternative grounds to affirm defendant's robbery conviction that warrant review.

denied defendant's CrR 3.6 motion to suppress the firearm and drugs recovered from a car he rode in during the robbery. CP 40-44. Defendant was convicted as charged. CP 47-48. He was sentenced to life as a persistent offender. *Id.* The Court of Appeals upheld the CrR 3.6 ruling under the search incident to arrest exception. No. 34063-1-II (2007 WL 831725, 1). This Court first granted review of the issue raised pursuant to ***Batson v. Kentucky***, 476 U.S. 79, 106 S. Ct. 1712 (1986), and affirmed. 168 Wn.2d 645, 229 P.3d 752 (2010). In 2009, the United States Supreme Court limited the search incident to arrest exception. ***Gant***, 556 U.S. at 351. Defendant's case became final June 15, 2010. CP 63-93.

The Court of Appeals dismissed defendant's first personal restraint petition ("PRP") January 30, 2012, finding his robbery conviction was supported by sufficient evidence. CP 610-11. (No. 42104-6-II). That court dismissed defendant's second PRP July 31, 2012, as time-barred. CP 612-13 (No. 42812-1-II). Defendant's third PRP was transferred to this Court July 9, 2013, under RCW 10.73.140. It claimed the search incident to his arrest violated ***Gant***. CP 94-96 (No. 44411-9-II). An order issued:

> [r]emanding the trial court's suppression order regarding the automobile search to be reconsidered in light of ... Gant ... and *State v. Patton*, 167 Wn.2d 379, 219 P.3d 651... and such other further proceedings as are appropriate.

CP 97-98.

The Honorable Edmund Murphy presided over the CrR 3.6 hearing as the previous trial judge, the Honorable Linda C.J. Lee, had ascended to the Court of Appeals. RP(6/16/14) 10;CP 40-44. The State supplemented the record with the arresting officer's testimony. RP (9/26/14) 25-28. Defendant argued from Judge Lee's findings without asserting the 2007 appellate decision as law of the case. RP(6/20/14) 5, 10; (9/26/14) 30-31, 33-35, 41-43. He actually conceded there was no search incident to arrest since police lacked probable cause to arrest when the search was undertaken. RP(9/26/14) 31. The discussion focused on whether a warrant should have been obtained to examine the car's interior during the investigative detention. RP (9/16/14) 41-44.

Judge Murphy incorporated several of Judge Lee's findings into his own. RP (10/10/14) 46-50, 69-70. Consistent with defendant's concession, Judge Murphy decided the case did not involve a search incident to arrest, but rather a vehicle-safety sweep for weapons. RP(10/10/14) 50-55, 71-72; CP 540-45. Denial of the motion was reaffirmed because ***Gant*** does not apply to pre-arrest safety sweeps for firearms. *Id.* Defendant timely appealed. CP 546.

The State's response recalled the Court of Appeals to the unusual posture of the case where the trial court's post-PRP CrR 3.6 ruling was on direct appeal, but defendant's convictions were not. For the convictions

were transferred pursuant to a PRP that avoided RCW 10.73.090's time bar under RCW 10.73.100(6)'s "significant change in the law" exception. Pursuant to the PRP posture, defendant was obliged to prove constitutional error attending the alleged ***Gant*** violation resulted in actual and substantial prejudice. ***In re Personal Restraint of Davis***, 152 Wn.2d 647, 671-72, 101 P.3d 1 (2004). Constitutional errors incapable of being harmless on direct appeal are not presumed prejudicial in a collateral attack. *Id.* at 672, n.23.

The State next recalled the court to the immateriality of the actual firearm recovered during the challenged search to the first degree robbery conviction, where it was enough for defendant to have displayed "what appeared to be a firearm." CP 592; RCW 9A.56.200. Defendant's use of what at least appeared to be a firearm was overwhelmingly proved by eye witnesses. *E.g.*, COA No. 34063-1-II (2007 WL 831725, 1-2).

The Court of Appeals affirmed the robbery conviction underlying defendant's life sentence, but vacated his unlawful possession of a firearm and controlled substance convictions, through unequivocal application of the constitutional harmless error test applied in ***State v. Coristine***, 177 Wn.2d 370, 380, 300 P.3d 400 (2013), and ***State v. Lui***, 179 Wn.2d 457, 495, 315 P.3d 493, *cert. denied*, 134 S. Ct. 2842 (2014). COA No. 46960-0-II (2016 WL 3702707, 5-6). There is absolutely no merit to defendant's

claim the court affirmed his robbery conviction through misapplication of the sufficiency of the evidence test. *Id.*

E. ARGUMENT WHY REVIEW SHOULD NOT BE GRANTED.

The United States Supreme Court explained the need for extending constitutional protection to officers conducting traffic stops:

> It would seem ... the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact ... evidence of a more serious crime might be uncovered during the stop. And the motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of the driver.

Maryland v. Wilson, 519 U.S. 408, 414, 117 S. Ct. 882 (1997). Ninth Circuit, Court of Appeals, Chief Judge Kozinski observed that:

> "[i]n the last decade, more than half a million police were assaulted in the line of duty. More than 160,000 were injured, and 536 were killed—the vast majority while performing routine law enforcement tasks like conducting traffic stops []."

Gonzalez v. City of Anaheim, 747 F.3d 798, 803-04 (9th Cir. 2014). Justice Ginsburg reaffirmed the Court's unyielding view traffic stops are "especially fraught with danger to police officers." ***Gonzalez***, 747 F.3d at 804 (quoting ***Arizona v. Johnson***, 555 U.S. 323, 330, 129 S.Ct. 781 (2009)). "[S]he recognize[d]:

> The risk of harm to both the police and the occupants [of a stopped vehicle] is minimized, [] if the officers routinely exercise unquestioned command of the situation[.]

Id. Justice Souter called the principle of unquestioned police command at traffic stops "a societal expectation." *Id.* (quoting ***Brendlin v. California***, 551 U.S. 249, 258, 127 S.Ct. 2400 (2007)).

This Court rightly articulated like-minded recognition for the need of our officers to ensure their safety through maintaining scene security amid active investigations. ***State v. Flores***, 186 Wn.2d 506, 510-26, 379 P.3d 104 (2016). In particular, those that must be undertaken through traffic stops of cars in which a person suspected of a firearm offense is accompanied by others who may pose a threat to officers. *Id.* Protective-firearm sweeps of cars amid investigative detentions permitted under ***Terry*** are often essential to ensure police are not gunned down during those encounters. ***State v. Chang***, 147 Wn. App. 490, 495, 195 P.3d 1008 (2008) (citing ***State v. Kennedy***, 107 Wn.2d 1, 12, 726 P.2d 445 (1986)). Being ***Terry***-frisks adapted to vehicles, these minimally intrusive safety measures were not limited by ***Gant's*** clarification of the search incident to arrest exception.

1. SHOULD REVIEW BE DENIED SINCE THE CHALLENGED ROBBERY CONVICTION IS THE BASIS FOR DEFENDANT'S SENTENCE AND SURVIVED REVIEW UNDER THE CONSTITUTIONAL ERROR TEST THOUGH IT WAS ON REMAND FROM A PRP WHERE IT IS FOR DEFENDANT TO PROVE SUCH AN ERROR RESULTED IN ACTUAL AND SUBSTANTIAL PREJUDICE.

Defendant misstates the record by claiming the Court of Appeals "applied what amounts to a sufficiency of the evidence standard" in the decision to affirm the robbery conviction underlying his life sentence. PDR at 7. The court unequivocally applied the constitutional harmless error test appropriate for cases on direct appeal:

> Constitutional errors may be so insignificant as to be harmless. [] Constitutional error is harmless if the appellate court is assured beyond a reasonable doubt that the jury verdict cannot be attributed to the error. [] Constitutional error is presumed to be prejudicial and the State bears the burden of proving that the error was harmless. [] This court uses the "overwhelming untainted evidence" test in its harmless error analysis. [] The State must show that the error was not plausibly relevant to the verdict and that the error could not plausibly have been the cause of a guilty verdict from an honest, fair-minded, and reasonable jury[.]

COA No. 46960-0-II (2016 WL 3702707, 5-6) (citing ***Coristine***, 177 Wn.2d at 380, 393; ***Lui***, 179 Wn.2d at 495; ***State v. Guloy***, 104 Wn.2d 412, 425-26, 705 P.2d 1182 (1985)). It was through application of this test that the robbery conviction was affirmed:

> The jury instructions required the jury to find only that Rhone displayed what appeared to be a firearm in order to convict for first degree robbery, not that he possessed an actual firearm. The unchallenged findings of fact include Miller's statement that the front seat passenger pointed a gun at him when the Camaro proceeded through the drive through, Burg's statements that there was a gun in the car and that they had just returned from the Jack in the Box, and that Rhone exited from the passenger door of the vehicle. The State meets its burden and establishes that the untainted evidence necessarily supports a finding that Rhone displayed what appeared to be a firearm. Thus, the admission of the weapon is harmless error as it relates to Rhone's conviction for first degree robbery with a firearm enhancement.

Id. This analysis found the robbery conviction to be valid under a more exacting test than the actual and substantial prejudice test that should have been applied to a case on remand from a PRP. *Id.*; CP 94-96. ***In re Pers. Restraint of Sims***, 118 Wn. App. 471, 476, 73 P.3d 398 (2003)(citing ***In re Pers. Restraint of Haverty***, 101 Wn.2d 498, 503-04, 681 P.2d 835 (1984)); ***In re Pers. Restraint of Davis***, 152 Wn.2d 647, 671-72, 101 P.3d 1 (2004). The irony in defendant's petition is that the State was really the party prejudiced by the standard of review applied, for it made it less likely his robbery conviction would be affirmed. But since the correct result was reached as to the robbery supporting defendant's life sentence under that tougher test and the case lacks precedential value, the State had no incentive to seek review as the vacated convictions have no practical impact on defendant's sentence.

Whether considered under the constitutional harmless error test applied, or the actual and substantial prejudice test that should have been, the evidence of defendant's guilt for first degree robbery is overwhelming. That conviction is predicated on the jury's determination:

> (1) [D]efendant unlawfully took personal property belonging to another person or in the presence of another;
> (2) [D]defendant intended to commit theft of the property;
> (3) [T]he taking was against the person's will by the defendant's use or threatened use of immediate force, violence or fear of injury to that person;
> (4) That force or fear was used by the defendant to obtain or retain possession of the property;
> (5) That in the commission of these acts the defendant **displayed what appeared to be a firearm**;
> (6) That the acts occurred in the State of Washington.

CP 592 (Inst.16)(emphasis added); RCW 9A.56.200. Conviction for the offense was decided separately from the others and did not depend on proof that an actual firearm was used, let alone the one recovered, or the confiscated cocaine. CP 580 (Inst. 4); ***State v. Emery***, 174 Wn.2d 741, 754, 278 P.3d 653 (2012) (jurors are presumed to follow instructions).

Police contacted defendant as he emerged from the passenger side of a Camaro just involved in a robbery at the Jack in the Box where a firearm was displayed. No. 34063-1-II (2007 WL 831725, 1-2). A felony stop followed. *Id.* Defendant "slowly and deliberately looked at Deputy Shaffer and leaned back into the car" as if he was hiding a firearm or

reaching for one. *Id.* One occupant told police they just came from the Jack in the Box. *Id.* As Shaffer walked toward the Camaro, but before he searched it, its owner told him there was a gun inside. *Id.*

For the analysis going forward it makes no difference whether one assumes the gun was suppressed at trial under ***Gant***, or cleverly hidden never to be recovered. Eye witness testimony from the victim Jack in the Box employee proved defendant pointed a gun at him while demanding money. *Id.* It was immaterial to the robbery conviction whether the object defendant had in hand was a real gun or only appeared to be. The robbery was completed when the victim complied with defendant's demand by throwing money into the Camaro. *Id.* The Camaro's owner testified at trial "she heard [defendant] demanding $40, and saw the money thrown into the car. She saw [defendant] with a plastic bag and ... saw a gun in th[e] bag when [defendant] threw it into the back seat after [] police surrounded the Camaro." *Id.*

The robbery was proved through the independent testimony of the victim and a person with defendant in the Camaro when the robbery was committed. It was legally irrelevant whether defendant displayed a gun or fashioned some object into the shape of a gun, or successfully ditched the gun, or the gun-shaped object, prior to arrest. The undisputed facts of the robbery are not dependent on the gun's recovery or production at trial.

Erroneous admission of weaponry used to commit similarly proved crimes has long been deemed harmless under the constitutional error test applied on direct review. ***State v. McCollum***, 17 Wn.2d 85, 91-92, 136 P.2d 165 (1943). Such a conclusion was reached in ***Reid***, where admission of shotgun shells and a photograph of defendant's wife holding a shotgun was harmless in a murder case where the shooting was described by two witnesses, and another described the defendant's previous possession of a similar gun. ***State v. Reid***, 38 Wn. App. 203, 213, 687 P.2d 861 (1984); *see also* ***State v. Ferguson***, 3 Wn. App. 898, 904, 479 P.2d 114 (1970); ***Fitts v. State***, 25 P.3d 1130, 1135 (2001) (failure to suppress gun harmless where victim identified him as the "robber who held the gun."); ***State v. Harrison***, 805 P.2d 769 (1991); ***Pericola v. State***, 499 So.2d 864, 868 (1986); ***Adkins v. Beto***, 462 F.2d 802, 804 (5th Cir. 1972).

Defendant wrongly criticizes the record reviewed. It was his burden to perfect the record. ***Stiles v. Kearney***, 168 Wn. App. 250, 259, 277 P.3d 9 (2012). It was not for the court to *sua sponte* transfer the record and scour it for facts omitted from his briefing that might prove relevant to his claim. *See* ***In re Disciplinary Proceeding Against Whitney***, 155 Wn.2d 451, 467, 120 P.3d 550 (2005). His January 21, 2015, Statement of Arrangements requested transmission of eight VRPs from hearings held in 2014. Attached to his brief as attachments were Opinion

No. 34063-1-II (137 Wn. App. 1046 (2007)) and the findings of fact from the 2014 CrR 3.6 hearing. The State cannot find a record of RAP 9.2 (c) notice of Partial Report of Proceedings and Issues, transcripts of the trial he says the court should have considered forwarded to the State, or a RAP 9.10 motion to supplement the record. Nor did he claim to have perfected the record through his motion for reconsideration.

Whether viewed under the lens of constitutional harmless error, as was done, or actual and substantial prejudice, as should have been done, failure to suppress the gun had no material impact on the first degree robbery conviction underlying defendant's life sentence.

2. REVIEW IS ALSO UNNECESSARY SINCE IT SHOULD RESULT IN THIS COURT BOTH AFFIRMING THE ROBBERY CONVICTION AND REINSTATING THOSE VACATED AS THE EVIDENCE MISTREATED AS A GANT VIOLATION WAS PROPERLY SEIZED IN A WEAPONS SWEEP PERMITTED BY TERRY.

The protective sweep exception to the warrant requirement applies when ***Terry*** stops include a safety sweep of a car's passenger compartment for weapons:

> If a police officer has a reasonable belief ... the suspect in a ***Terry*** stop might be able to obtain weapons from a vehicle, the officer may search the vehicle without a warrant to secure his own safety, limited to those areas in which a weapon may be placed or hidden.

Chang, 147 Wn. App. at 495 (citing ***Kennedy***, 107 Wn.2d at 12); ***State v. Glossbrener***, 146 Wn.2d 670, 679, 49 P.3d 128 (2002); ***State v. Belieu***, 112 Wn.2d 587, 594, 773 P.2d 46 (1989); ***State v. Wheeler***, 108 Wn.2d 230, 233-37, 737 P.2d 1005 (1987); ***United States v. Edwards***, 761 F.3d 977, 981-82 (9th Cir. 2014); ***Washington v. Lambert***, 98 F.3d 1181, 1185 (9th Cir. 1996); ***United States v. Miles***, 247 F.3d 1009, 1012-13 (9th Cir. 2001)). Such intrusions are permitted during an investigative detention where the police have information the suspect is currently armed or the stop closely follows a violent crime. *Id.*

The decisions in defendant's direct appeals unduly focused on what was perceived to be probable cause to arrest and the intrusiveness of the stop from the detainees' perspective without due, if any, regard for safety concerns justifying the situationally appropriate use of a firearm sweep. No. 34063-1-II (2007 WL 831725, 4-5). But the supposed existence of probable cause from hindsight assessments of dynamic and easily deadly circumstances does not transform an investigative detention into formal arrest, for courts wisely do not "require[e] [police] to guess at their peril the precise moment at which they have probable cause to arrest." ***Hoffa v. United States***, 385 U.S. 293, 310, 87 S. Ct. 408 (1966); *see also* ***State v. O'Neill***, 148 Wn.2d 564, 574-75, 62 P.3d 489 (2003). The court further

found formal arrest from facts that had not supported the finding in this Court's earlier decisions, which guided later decisions antithetical to the outcome in defendant's case. Chief among the seizure-analysis errors in defendant's case is lack of consideration for the "justification" component which "frequently proves determinative." *E.g.*, ***Belieu***, 112 Wn.2d at 594; ***Wheeler***, 108 Wn.2d at 233-37; ***Chang***, 147 Wn. App. at 496-97; ***Edwards***, 761 F.3d at 981-82;

Most of those cases involved analogous indicia of detainee guilt. Yet the Court of Appeals incorrectly factored the detainees' consciousness of guilt into assessing if it would have been reasonable for them to perceive a possibility of release. The correct test considers how innocent detainees would perceive the prospect of release. *E.g.*, ***Edwards***, 761 F.3d at 981. Reconsidered with due focus on justification, and discounting detainee' consciousness of guilt, it is easy to understand why two trial court judges found a lawful ***Terry*** sweep for firearms in defendant's case:

> Pierce County Sheriff's Deputy[] Shaffer responded to a call involving an incident at a Jack in the Box restaurant [that] indicated [] there were three occupants in the vehicle and that the front passenger was armed with a gun. [] Deputy Shaffer pulled in behind the vehicle, the passenger door opened and the front passenger, later identified as [defendant], began to step from the vehicle. Due to the report that the front passenger was armed with a gun,

> Deputy Shaffer, who was alone at the time, stepped from his patrol car, drew his weapon, and gave loud verbal commands to [defendant] to put his hands where they could be seen. [Defendant] made eye contact with the deputy, but failed to comply with the deputy's oral commands. Instead, [defendant] reached back into the rear interior of the vehicle. Deputy Shaffer feared that [defendant] was reaching for a gun and continued to give verbal commands before [defendant] eventually complied. [He] was frisked, handcuffed, and detained in a patrol car by another officer who had just arrived on the scene. [] As Deputy Shaffer approached the vehicle to determine if there was a gun in the vehicle that could pose a threat to law enforcement officers, Burg stated that there was a gun in the car. Deputy Shaffer then entered the vehicle and found a .22 caliber Smith and Wesson revolver in a white plastic bag on the floorboard behind the driver's seat[.]

COA 46960-0-II (2016 WL 3702707, 1-2); RP(10/10/14) 50-55, 71-72; CP 540-45. This was treated as a ***Gant*** case because the Court of Appeals first affirmed the admission of the recovered firearm under the pre-***Gant*** search incident to arrest exception. When properly viewed as the ***Terry*** scenario the case presents, one more reason to affirm defendant's robbery conviction appears. But since the Court of Appeals decision does not set precedent and leaves his life sentence undisturbed, the State only requests review of this issue if defendant's petition is granted.

3. REVIEW OF THE ROBBERY CONVICTION AFFIRMED BY THE COURT OF APPEALS IS ALSO AN IMPROVIDENT WASTE OF THIS COURT'S SCARCE RESOURCES SINCE THE DEFENDANT LACKS STANDING TO RAISE A CLAIM AGAINST THE FIREARM SWEEP AS IT APPLIED TO THE ROBBERY DUE TO THE INAPPLICABILITY OF AUTOMATIC STANDING FOR THAT NONPOSSESSORY OFFENSE.

A defendant only has "automatic standing" to challenge the search of a car in which he has no legitimate expectation of privacy when charged with a possessory offense. ***State v. Foulkes***, 63 Wn. App. 643, 646-48, 821 P.2d 77 (1991); ***Rakas v. Illinois***, 439 U.S. 128, 133, 99 S. Ct. 421 (1978)). First degree robbery is not a possessory offense. RCW 9A.56.200.

Burg owned the searched Camaro. Defendant's only connection to it was Burg's decision to give him a ride to the Jack in the Box. Defendant was exiting the car at the end of that trip when the stop was initiated. Burg's act of alerting police to the presence of a gun in the car could be fairly interpreted as tacit consent to its recovery, which defendant could not countermand. Regardless, he had no reasonable expectation of privacy in Burg's car, leaving him without standing to challenge the gun's recovery from the car as to the robbery count.

F. CONCLUSION.

Defendant's petition should be denied because it is predicated on a blatant misstatement of the record. His robbery conviction was affirmed because it proved to be supported by overwhelming evidence when tested under the constitutional harmless error test. The highly deferential test for assessing the sufficiency of evidence to support conviction was plainly not applied as defendant claims. Although the lower court should have placed the onerous on defendant to prove actual and substantial prejudice in a case on remand from a PRP, there is no reason to review that issue since a conviction that survives exacting constitutional harmless error review would survive the collateral attack test where prejudice is not presumed.

The perceived ***Gant*** error that prompted remand is illusory as the firearm was lawfully recovered during the ***Terry*** sweep of a car fresh from an armed robbery that occurred before a ***Gant***-triggering arrest. Defendant lacks standing to challenge the gun's admissibility as to the robbery. It is not a possessory offense, so automatic standing does not apply. Because these issues do not impact defendant's life sentence at the moment and the lower court's decision is not precedent, the State only requests review of

them if defendant's petition is granted, for they are alternative grounds that justify affirming his well-deserved robbery conviction with the persistent offender sentence it supports.

RESPECTFULLY SUBMITTED: January 24, 2017.

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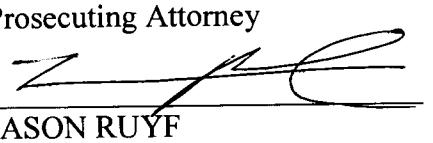

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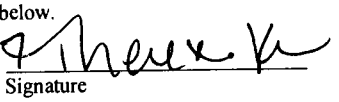
Certificate of Service:
The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

1.25.17 

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