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NO. 36281-7-III

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

RICHARD VASQUEZ, JR., Appellant.

BRIEF OF RESPONDENT

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I. ISSUES PRESENTED BY ASSIGNMENTS OF ERROR

- A. Could the evidence, viewed in the light most favorable to the State, justify a rational juror finding Vasquez guilty beyond a reasonable doubt as to each alternate means of first degree kidnapping?
- B. Based on the severity of the suspected crime, the suspects' close proximity to the getaway vehicle, which was still hot, did the officers have a reasonable suspicion that Vasquez was involved in the home invasion robbery that occurred a mile away just ten minutes prior?
- C. Does Vasquez's first degree robbery conviction, committed when he was sixteen years old, qualify as a strike offense because *State v. Teas* held that there is no categorical bar to sentencing an adult to mandatory life imprisonment where a predicate offense was youthful?
- D. Should Vasquez's DNA collection fee be waived because his DNA was previously collected?

II. STATEMENT OF THE CASE

The Appellant, Richard Vasquez, Jr., was convicted of first degree burglary, two counts of first degree kidnapping, two counts of first degree robbery, first degree assault, second degree assault, and first degree unlawful possession of a firearm. CP 235-36. The convictions stemmed from the following facts admitted at trial:

In September of 2014, Vasquez asked his long-time friend, Lawrence Quiroz, if he had any weapons and if he would help him do a

home invasion robbery. RP 567-68.¹ Specifically, Vasquez wanted a pistol. RP 568. The home invasion had been planned for some time. RP 571.

The targets were two older individuals who lived in West Valley. RP 548. Vasquez told Mr. Quiroz he was targeting them because they were older and would not put up a fight. RP 569. Vasquez also told him was targeting them for gold, money, jewelry, and similar items. RP 569. Vasquez wanted Mr. Quiroz to be a driver but Mr. Quiroz declined. RP 569. Later on, about two weeks prior to the robbery, Vasquez and another individual, Samuel Crafton-Jones, showed Mr. Quiroz the pistols they acquired. RP 570. Vasquez had a 9mm and Crafton-Jones had a .380. RP 571.

On the morning of October 1, 2014, Kristen Fork and her significant other, Robert Miller, got up around 5:30 in the morning and were getting ready for the day. RP 533. Ms. Fork had a landscaping business and planned to work with a client that day. RP 532-33. It was a beautiful fall day and she was excited to go to work. RP 533. She was in the master bedroom getting laundry ready. RP 532.

¹ The Verbatim Report of Proceedings prepared by Joan E. Anderson will be referenced as "RP __."

Mr. Miller was in another room watching the news. RP 534. At about 6:15 a.m., Mr. Miller heard a knock at the front door. RP 493. He opened the door and a Hispanic man, later identified as Richard Vasquez, was at the door. RP 494. Vasquez claimed his car was overheating. RP 494. Mr. Miller told him to stay where he was, and shut the front door. RP 495.

Mr. Miller then went to the master bedroom and told Ms. Fork, that something was just not right. RP 495. He left and walked into the dining room, at which point Vasquez and another male, later identified as Samuel Crafton-Jones, came through his front door. RP 495. Crafton-Jones held up a gun to Mr. Miller's head and said, "I know you've got money. I know you've got gold." RP 496. Crafton-Jones threatened that he would kill both him and Ms. Fork and that he would kill the police. RP 496.

Both Mr. Miller and Ms. Fork were tied up and threatened repeatedly. RP 338-39, 497-98. Crafton-Jones pistol-whipped Mr. Miller in the back of his head. RP 497, 499. Both victims offered what little cash they had to Vasquez and Crafton-Jones. RP 503. Using a ruse, Ms. Fork was able to escape by jumping out of a bedroom window. RP 541-42. She made it to the front yard where she was pistol-whipped and threatened some more. RP 543-45. Both males kicked and hit her in the

face, shattering her cheekbone and dentures. RP 544-45. She continued to yell for help. RP 544. A neighbor came out and Vasquez and Crafton-Jones ran for their van. RP 544. Despite being severely and permanently injured, Ms. Fork was able to memorize the license plate number for the van. RP 545-46.

One of the neighbors, David Gutierrez, woke up to Ms. Fork screaming loudly and heard a truck or van leaving in a hurry. RP 215, 218. He then saw Ms. Fork in the middle of the road. RP 215. She was bleeding profusely from her face and was covered in blood. RP 215. She told him, "Robbie is inside, and they beat him." RP 216. Mr. Gutierrez went to her house and found Mr. Miller walking with his hands tied tightly behind his back. RP 217. Mr. Gutierrez helped untie him. RP 217.

A neighbor called 911 at 6:38 a.m. RP 71, 545-6. Yakima Police Department Officer Hansen responded and contacted both victims. RP 75. Ms. Fork was bleeding from her head and had severe facial injuries, including open lacerations and multiple fractures. RP 75, 77, 102-03, 340-41, 434, 471-72. Mr. Miller also sustained facial injuries, including a detached retina and swelling around his face and the back of his head. RP 104, 110, 290, 311, 510, 516.

Officers observed a significant amount of blood in the front yard, along with a window screen and Ms. Fork's broken glasses and dentures.

RP 104, 107-09, 116, 159, 236, 239, 282, 287-90, 329, 555, 561. Inside, the victims' bedrooms were in disarray and looked as if they had been rummaged through. RP 162, 237. A safe was open, coins and other items were strewn about the house, and drawers had been emptied out. RP 162-63, 165, 287-88, 291, 328-29, 342-43, 518. Mr. Miller reported that cash, collectible coins, and a unique wristwatch were stolen from their home. RP 241, 248-49, 298.

The suspects left behind a dark knit cap and a purple medical-type glove in the master bedroom. RP 165, 240, 242, 282-83, 291-92, 328, 349-50, 515, 519. The cap and glove were later tested for DNA. RP 399-403. The cap contained DNA matching Vasquez's DNA. RP 400. The glove contained DNA matching that of Crafton-Jones. RP 403.

Officer Hansen stayed at the scene just long enough to get a suspect description. RP 79. That description was "two suspects, possibly Hispanic males, approximately 30 years of age." RP 81. The getaway vehicle was a Ford Aerostar van, license plate AFS8595 registered to Tracy Ellis. RP 81, 120, 129, 134, 231, 345-46.

Two Union Gap police officers, Officer Way and Officer Edwards, went to Ms. Ellis' home at 2115 South Tenth in Union Gap and located the van at 6:45 a.m. RP 90, 120-21, 221-22. The hood of the van was still

warm. RP 223. Using a flashlight, the officers saw an empty firearm holster in the van. RP 124, 223, 246-47, 299, 347.

Shortly thereafter, they saw two males, Vasquez and Crafton-Jones walking about thirty feet away from the van. RP 81, 90, 124, 225. The officers approached with guns at low ready and ordered them to stop walking. RP 125, 225. At 6:46 a.m., eight minutes after the 911 call, Officer Edwards called on the radio that they had two at gunpoint. RP 229. Crafton-Jones was hesitant and did not comply right away. RP 225. Both suspects denied driving the van or knowing who was driving. RP 125. Vasquez began sweating and stated that they had been “tweaking” in a graveyard all night. RP 126.

By 6:49 a.m., Vasquez and Crafton-Jones were both in custody. RP 71. A stun-gun, black gloves, stocking hat, change, including foreign coins, and jewelry were found on Crafton-Jones. RP 127, 226, 308-10, 332-35, 442, 444. Some of the coins were similar to those seen on the floor of Mr. Miller’s bedroom. RP 241, 287. Mr. Miller was transported to the location, which is about a three-minute drive from his home, and positively identified both Vasquez and Crafton-Jones as those involved in the home invasion robbery. RP 83, 92, 112, 132, 144, 146, 507. Mr. Miller and Ms. Fork also later positively identified Vasquez in court. RP 507, 537.

Officers found a blue coat in the back yard of the Union Gap address. RP 180-82, 363, 368. The coat had keys and jewelry inside of it, including a necklace and a watch with the initials R.W.M. RP 180, 363, 368-70. Mr. Miller identified the keys and watch as his items. RP 521-22. Next to the coat was Vasquez' identification card. RP 182, 363-64.

Multiple search warrants were executed, including warrants for the Union Gap property and the van. RP 84, 146, 157, 169-70, 195, 256, 299-300, 444, 477. In a camp trailer on the Union Gap property, detectives found mail addressed to Vasquez. RP 177, 183, 188. Vasquez had been staying in the trailer for about one month. RP 376. Detectives located a functioning Smith & Wesson 9 mm Luger firearm in a five-gallon bucket near a basement door. RP 174-6, 178, 197, 302, 304, 362-3, 365-6. The magazine and handgun were swabbed for DNA and DNA profiles on each matched that of Ms. Fork. RP 407.

In the van, officers saw a small silver-colored piece of jewelry on the driver's seat and a purple glove on the passenger-side floorboard that was similar to the one left behind in the victims' bedroom. RP 246-48, 347, 358. The black nylon gun holster was collected as well. RP 479-80. The registered owner of the van reported that she would let Vasquez and others drive the van. RP 377.

Photos were taken of Vasquez while he was in custody. RP 191-93. The photos showed a red discoloration on his hands, and a red staining at the end of a finger consistent with blood evidence. RP 192-93, 437-8. In addition, photos were taken of his shoes. RP 353-55. The shoes tested positive for the presence of blood. RP 404. When deoxyribonucleic acid (DNA) was extracted from the shoes, the major DNA component matched Ms. Fork's DNA. RP 405.

Yakima Police Department's Forensic Lab Supervisor, Kristen Drury, processed the victims' home for fingerprints but none were recovered. RP 156-7.

Prior to trial, Vasquez filed a motion to suppress evidence. CP 18-35. Vasquez claimed that law enforcement was acting on a "mere hunch" that Vasquez was involved in criminal activity and that there was no basis for detaining him. CP 24. The State filed a memorandum opposing that motion, CP 36-91, and a Criminal Rule (CrR) 3.6 suppression hearing was held. The trial court denied the motion to suppress and entered findings of fact and conclusions of law. CP 140-48.

The case proceeded to trial. The defense did not call any witnesses. RP 617.

With respect to the kidnapping counts, the jury was instructed that "A person commits the crime of First Degree Kidnapping when he or an

accomplice abducts another person with intent to hold the person for ransom or reward or as a shield or hostage or to facilitate the commission of First Degree Burglary and/or First Degree Robbery or flight thereafter.” CP 114. The jury was also instructed that they need not be unanimous as to which of three alternatives had been proven beyond a reasonable doubt, as long as each juror finds that one alternative has been proved beyond a reasonable doubt. CP 194-95. Those three alternatives were set forth in the second element:

(2) That the defendant or an accomplice abducted that person with intent (a) to hold the person for ransom or reward, or (b) to hold the person as a shield or hostage, or (c) to facilitate the commission of First Degree Burglary and/or First Degree Robbery or flight thereafter;

CP 194-5. These instructions were proposed by the State. RP 601. The defense did not submit its own proposed jury instructions and did not object to the State’s proposed kidnapping instructions. RP 601, 613.

The jury deliberated and Vasquez was convicted of first degree burglary, two counts of first degree kidnapping, two counts of first degree robbery, first degree assault, second degree assault, and first degree unlawful possession of a firearm. CP 235-36. He was sentenced to a total term of life imprisonment without the possibility of release or parole. CP 238. The life sentence was based on his two prior convictions for second

degree assault, 03-1-01768-5, and first degree robbery while armed with a deadly weapon, 83-1-00019-4. CP 237; Sent. Ex. CC.² Vasquez pled to the prior robbery charge when he was sixteen years of age. Sent. Ex. CC.

Vasquez has filed a timely appeal.

III. ARGUMENT

A. The evidence, viewed in the light most favorable to the State, could justify a rational juror finding Vasquez guilty beyond a reasonable doubt as to each alternate means of first degree kidnapping.

Washington requires that a jury verdict in a criminal case be unanimous. *State v. Owens*, 180 Wn.2d 90, 95, 323 P.3d 1030 (2014). This right extends to unanimity of means if the charge includes alternative means of committing the offense. *Id.* This right of unanimity is satisfied if there is sufficient evidence to support each means of the offense. *Id.* In other words, a jury need not unanimously agree on the means by which the defendant committed the crime if substantial evidence supports each alternative means. *State v. Kitchen*, 110 Wn.2d 403, 410, 756 P.2d 105 (1988). The standard sufficiency analysis applies here: whether the evidence, viewed in the light most favorable to the State, could justify a rational juror finding guilt beyond a reasonable doubt as to each alternate means. *State v. Armstrong*, 188 Wn.2d 333, 341, 394 P.3d 373 (2017).

² The exhibits admitted during the sentencing hearing will be referenced as “Sent. Ex. __.”

This challenge to the sufficiency of the evidence admits the truth of the State's evidence and all inferences that can reasonably be drawn therefrom. *State v. Theroff*, 25 Wn. App. 590, 599, 608 P.2d 1254, *aff'd*, 95 Wn.2d 385, 622 P.2d 1240 (1980). The evidence is interpreted most strongly against the defendant. *Id.* Evidentiary inferences favoring the defendant are not considered in a sufficiency of the evidence analysis. *State v. Jackson*, 62 Wn. App. 53, 58 n.2, 813 P.2d 156 (1991). In addition, circumstantial evidence may be used to prove any element of a crime. *State v. Garcia*, 20 Wn. App. 401, 405, 579 P.2d 1034 (1978). "In determining the sufficiency of the evidence, circumstantial evidence is not to be considered any less reliable than direct evidence." *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

1. First degree kidnapping has five alternative means.

An "alternative means crime" is one "that provide[s] that the proscribed criminal conduct may be proved in a variety of ways." *State v. Smith*, 159 Wn.2d 778, 784, 154 P.3d 873 (2007). The legislature has not statutorily defined alternative means crimes, nor specified which crimes are alternative means crimes. *State v. Peterson*, 168 Wash. 2d 763, 769, 230 P.3d 588, 591 (2010). This is left to judicial determination. *Id.* There simply is no bright-line rule by which the courts can determine whether

the legislature intended to provide alternate means of committing a particular crime. *Id.* (citations omitted). Instead, each case must be evaluated on its own merits. *Id.* (citations omitted). An alternative means analysis places less weight on the use of the disjunctive “or” and more weight on the distinctiveness of the verbs or nouns that form the criminal conduct. *State v. Sandholm*, 184 Wn.2d 726, 735, 364 P.3d 87 (2015). The more varied the criminal conduct, the more likely the statute describes alternative means. *Id.* at 734.

In this case, Vasquez was charged with two counts of first degree kidnapping under RCW 9A.40.020, one count for each victim. CP 151. “Because RCW 9A.40.020 lists five distinct, specific intentions sufficient for first degree kidnapping, first degree kidnapping is an alternative means crime.” *State v. Harrington*, 181 Wn. App. 805, 817-18, 333 P.3d 410 (2014). Those five specific intentions are as follows:

- (1) A person is guilty of kidnapping in the first degree if he or she intentionally abducts another person with intent:
 - (a) To hold him or her for ransom or reward, or as a shield or hostage; or
 - (b) To facilitate commission of any felony or flight thereafter; or
 - (c) To inflict bodily injury on him or her; or
 - (d) To inflict extreme mental distress on him, her, or a third person; or
 - (e) To interfere with the performance of any governmental function.

RCW 9A.40.020(1)(a)-(e). Vasquez was charged with the first two alternatives of the statute, subsections (1)(a) and (1)(b). CP 151.

Vasquez argues that the State did not prove two of the three separate alternative means set forth in the jury instructions. App. Br. at 8-9. The jury instructions in this case did provide three separate alternative means of committing the crime. CP 194-95. This was consistent with the standard WPIC for first degree kidnapping, which sets forth six alternative means. WPIC 39.02. The WPIC sets forth “ransom or reward” as the first alternative means, and “shield or hostage” as the second means. WPIC 39.02; CP 194-95.

However, under the statute, “ransom or reward” and “shield or hostage” are combined into the first of five alternative means. RCW 9A.40.020. The question for this court is whether the statute or the court’s jury instructions dictates how many alternative means the State must prove. Under the law of the case doctrine, jury instructions not objected to become the law of the case and the State assumes the burden of proving otherwise unnecessary elements of the offense when such added elements are included without objection in the ‘to convict’ instruction. *State v. Hickman*, 135 Wn.2d 97, 102, 954 P.2d 900 (1998). In this case, however, there were no unnecessary elements added. CP 194-65. As such, the law

of the case doctrine is inapplicable, and this court should determine whether there was sufficient evidence to prove one alternative means, whether there was “an intent to hold the person for ransom or reward or as a shield or hostage.” RCW 9A.40.020. Regardless, the State presented sufficient evidence of both an intent to hold each victim for “ransom or reward” and an intent to hold each victim as a “shield or hostage.”

2. There was sufficient evidence that Vasquez or his accomplice acted with intent to hold each victim for ransom or reward or as a shield or hostage.

Vasquez does not dispute that sufficiency of the evidence showing that he acted with intent to facilitate the commission of a felony or flight thereafter, the means listed in subsection (1)(b). The defense only challenges the sufficiency of the evidence for the first alternative means, RCW 9A.40.020(1)(a). App. Br. at 8. This subsection requires that the State prove that Vasquez or an accomplice acted with *intent* to hold the victim “for ransom or reward, or as a shield or hostage.” RCW 9A.40.020(1)(a). It is not necessary that the perpetrator actually bring about or complete the qualifying factor listed in the statute. *In re Pers. Restraint of Flectcher*, 113 Wn.2d 42, 52-53, 776 P.2d 114 (1989). It is also not necessary that the defendant have verbally expressed his intent. *State v. Missmer*, 72 Wn.2d 1022, 1027, 435 P.2d 638 (1967). The jury

can infer the required intent for all acts and conduct of the defendant, together with all the other circumstances of the case. *See id.*

First of all, the State presented sufficient evidence that Vasquez or his accomplice acted with intent to hold each victim as a hostage. “Most judicial definitions of hostage are the same: a hostage is someone held as security for the performance, or forbearance of some act by a third person.” *State v. Garcia*, 179 Wn.2d 828, 838, 318 P.3d 266 (2014). The person held as a hostage cannot be the person from whom performance or an act is requested, meaning the hostage must be held to coerce someone else to act. *See id.*

Here, the record is clear that Vasquez or his accomplice intended to use Mr. Miller to coerce Ms. Fork to give them cash or gold, and to use Ms. Fork to coerce Mr. Miller to give them cash or gold. In addition, the record is clear that Vasquez and his accomplice intended to use Mr. Miller to prevent Ms. Fork from calling for help or notifying the authorities. Similarly, they intended to use Ms. Fork to prevent Mr. Miller from calling for help or notifying the authorities. As such, each victim was held in order to secure a performance by another person (the giving of cash or gold). And each victim was held to prevent an action by another person (calling for help or reporting the crime), which protected the perpetrators.

Both victims, Mr. Miller, and Ms. Fork, testified at trial. Mr. Miller testified that Vasquez and Crafton-Jones came through his door, and Crafton-Jones put a gun to his head. RP 496-97, 499. Crafton-Jones said, "I know you've got money. I know you've got gold." RP 496, 503 526. Crafton-Jones threatened, "I will kill you. I will kill her. I will kill the police." Crafton-Jones then walked Mr. Miller towards the master bedroom. RP 497. He tied Mr. Miller's hands behind his back and turned Mr. Miller so could not see him. RP 497. Crafton-Jones then pistol-whipped him on the back of the head and said, "lie down on the floor." RP 497. Mr. Miller complied, and Crafton-Jones put a blanket over his head. RP 498. Mr. Miller testified that they got Ms. Fork tied up as he was laying on the ground. RP 498. Mr. Miller heard them telling her to "shut the fuck up, just shut the fuck up" and making demands for property. RP 498. They were saying, "Where is it? I know that you've got money. I know you have gold." RP 498. Vasquez was in the bedroom with Ms. Fork. RP 499.

At one point, Crafton-Jones found a safe at the other end of the house and came back and told Mr. Miller "I found the safe. I want the combination." RP 499. At this time, Mr. Miller's hands were bound together, and he could not move. RP 499. Mr. Miller gave Crafton-Jones the combination number to the safe. RP 499. Crafton-Jones then came

back and said, "I'll fucking kill you. You lied. You lied." RP 499. He then kicked Mr. Miller in the face near his right eye. RP 499. Crafton-Jones then asked, "Can you open the safe?" and Mr. Miller replied, "yes." RP 500. Crafton-Jones lifted him up and took him to the safe. RP 500. Prior to opening it, Mr. Miller told him there was nothing of value in the safe and Crafton-Jones got irate and called him a "fucking liar." RP 500. Mr. Miller opened the safe and Crafton-Jones saw that there was nothing but papers in it. RP 500, 503. Crafton-Jones was angry and said, "I know you have gold. I know you have lots of money." RP 503. Mr. Miller told him there was forty-eight dollars lying on the nightstand. RP 503. It then got quiet and after waiting for a few minutes, Mr. Miller yelled out for Ms. Fork but got no response. RP 504. Mr. Miller, with his hands still bound together, was able to escape out the back door and told a neighbor, "call the police; call 911. We've been robbed. I think they took Kris." RP 504-05.

Ms. Fork testified at trial as well. She testified that she was in her bedroom when she heard a scuffling noise. RP 534. She believed that Mr. Miller was being assaulted. RP 539. She went out to the living room where she saw two men, later identified as Crafton-Jones and Vasquez. RP 557. Vasquez rushed towards her and pushed her into a bedroom. RP 534. Vasquez told her, "get the fuck down on the ground." RP 534. She

then heard a noise in the living room where Mr. Miller was with Crafton-Jones. RP 534. Vasquez threw her to the floor and tied her hands behind her back. RP 535, 557. He then shut the curtains and covered her head and shoulders with a blanket. RP 535. Both men were asking, “[W]here is the gold? Where is the money?” RP 535. Crafton-Jones was saying things to Mr. Miller such as, “We know you have money. Where is the alarm system?” RP 535. While tied up she heard them say, “Don’t give us any trouble. We’ll kill you.” RP 536. She heard Crafton-Jones in the other room saying, “[W]e’re going to kill her. We’re going to kill you, and we’re going to kill all the cops that come after us because we don’t give a fuck.” RP 536. She started crying and Vasquez said, “Shut the fuck up or I’ll kill you right now.” RP 536. Vasquez then put the gun between her eyes and said, “shut the fuck up or I’m going to kill you right now.” RP 537. She told Vasquez that she has a daughter and children. RP 537. He said, “I don’t give a fuck. I’ll kill you right now if you don’t shut up.” RP 536. She was quiet and pleaded with Vasquez, “We’re good people.” RP 537. Vasquez replied, “Bad things happen to good people.” RP 536. He put his gloved finger in her face and threatened, “I’ll kill you, right now.” RP 536.

Vasquez questioned her again, “where was the gold, where was the money?” RP 540. She told him that she had fourteen dollars in her

billfold in the other bedroom. RP 540. Ms. Fork then came up with a ruse in order to escape. RP 541-42. She told Vasquez that there was money in a pitcher on top of the kitchen cabinets. RP 541. While he was searching for that she then jumped out a window, falling seven to eight feet to the ground. RP 542. Soon thereafter, Vasquez came out and hit her. RP 543. She yelled for help. RP 543. Vasquez hit her two to three times and told her to “shut the fuck up, shut the fuck up.” RP 543-44. He then ran back into the house and said, “she fucking jumped out the fucking window.” RP 543-44.

The next thing Ms. Fork knew, both Vasquez and Crafton-Jones came running out of the house and Crafton-Jones started pistol-whipping her with the gun. RP 544. He grabbed her by the hair and said, “Shut the fuck up. Shut the fuck up.” RP 544. Both males kicked and hit her in the face to try to shut her up. RP 545. Her dentures and cheekbone were shattered. RP 544. She continued to yell for help. RP 544. When a neighbor came out to get their paper, Vasquez and Crafton-Jones ran for their van. RP 544.

Based on this record, a rational trier of fact, viewing the evidence in the light most favorable to the State, could find that Vasquez or his accomplice, Crafton-Jones, acted with intent to hold Mr. Miller as a hostage in order to coerce Ms. Fork to give cash or gold. The males

repeatedly told him, while he was tied up, that they were going to kill him as well as Ms. Fork. RP 496, 503, 526. Throughout the incident, they demanded money and gold from both victims. Ms. Fork heard the males threaten Mr. Miller in the other room. RP 536. By holding him hostage, they also intended to prevent Ms. Fork from getting help or calling the police. As such, the State presented substantial evidence that Vasquez or his accomplice intentionally abducted Mr. Miller with an intent to hold him hostage and thereby coerce Ms. Fork to give them cash or gold, and also to prevent Ms. Fork from trying to contact the authorities.

Similarly, a rational trier of fact, could have found that Vasquez acted with intent to hold Ms. Fork as a hostage in order to coerce Mr. Miller to give them cash or gold. The males told Mr. Miller repeatedly that they were going to kill Ms. Fork. RP 496, 503, 526. Mr. Miller knew that Ms. Fork was tied up and that they were demanding money from her. RP 498. Why did Vasquez and Crafton-Jones tell him that were going to kill Ms. Fork? So that he would turn over the cash and gold to them in order to save Ms. Fork's life. By holding Ms. Fork as a hostage, they also intended to prevent Mr. Miller from trying to call for help or notify the police out of fear that something would happen to his girlfriend.

Second of all, there was sufficient evidence that Vasquez or his accomplice acted with intent to hold each victim for ransom or reward.

“Generally, reward implies something given in return for good or evil done or received.” *State v. Aleck*, 10 Wn. App. 796, 801-02, 520 P.2d 645 (1974), *cert. denied*, 420 U.S. 937, 95 S. Ct. 1146, 43 L. Ed. 2d 413 (1975). The word reward is broad enough to include within its meaning a benefit that will accrue to the defendant. *See id.* at 802. A reward need not be a thing of pecuniary value. *State v. Berry*, 200 Wash. 495, 512, 520, 93 P.2d 782 (1939). Reward can also consist of freedom from arrest. As explained in *Aleck*, “To escape physical arrest, or attempt to do so, as the defendant did here, is within the broad definition of reward.” 10 Wn. App. 802.

In the case at hand, the State presented sufficient evidence that Ms. Fork and Mr. Miller were both abducted with the intent to hold the person for “ransom or reward.” First, there was substantial evidence that the suspects abducted both victims in order to receive a financial reward consisting of money and things of value from the victims’ home. Both Vasquez and Crafton-Jones made repeated demands for cash and gold while the victims were tied up. Second, the suspects abducted the victims in order to prevent their apprehension and arrest. By tying each victim up and threatening to kill them and threatened to kill the police, they were able to escape without being caught at the scene of the crime. As indicated in *Aleck*, “To escape physical arrest...is within the broad

definition of reward.” 10 Wn. App. at 802. In sum, the State presented substantial evidence that the defendants intended to hold the victims for a reward, a benefit accruing to them.

Because there was substantial evidence to support both alternative means, unanimity was not required. *See State v. Kitchen*, 110 Wn.2d at 410. The record supports that Vasquez or his accomplice intended to hold the victims “for ransom or reward, or as a shield or hostage.” Therefore, this alternative means was supported by sufficient evidence, and the court should affirm his first degree kidnapping convictions.

B. Based on the severity of the suspected crime, the suspects’ close proximity to the getaway vehicle, which was still hot, the officers had reasonable suspicion that Vasquez was involved in the home invasion robbery that occurred just a mile away ten minutes prior.

When reviewing the denial of a suppression motion, the court must determine whether substantial evidence supports the findings of fact and then determine whether the findings support the conclusions of law. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999); *State v. Hill*, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994). This court reviews a trial court’s findings of fact for substantial evidence. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded,

rational person of the truth of the finding. *Id.* at 644. Unchallenged findings are verities on appeal. *Id.*

Conclusions of law are reviewed de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). In addition, courts review de novo conclusions of law that are mistakenly characterized as findings of fact. *In re Disciplinary Proceeding Against VanDerbeek*, 153 Wn.2d 64, 73 n.5, 101 P.3d 88 (2004). Finally, courts review the conclusions of law in mixed findings de novo. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 43, 59 P.3d 611 (2002). Courts review the factual aspects of such mixed findings for substantial evidence. *See Burrell v. State (in Re K.S.C.)*, 137 Wash. 2d 918, 925, 976 P.2d 113, 117 (1999).

1. The trial court’s findings of fact were supported by substantial evidence.

The facts elicited at the CrR 3.6 hearing were as follows:

A home invasion at 105 West Washington Avenue No. 54 was reported to 911 at 6:36 a.m. on October 1, 2014. 4/26/18 RP 47.³ Two minutes later, Union Gap Police Officer Way received an agency assist call. 4/26/18 RP 81-82, 107; Mot. Ex. C.⁴ The call informed him that a

³ The Verbatim Transcript of Proceedings for the CrR 3.6 Hearing will be referenced as “4/26/18 RP ___.”

⁴ Exhibits admitted during the CrR 3.6 motion hearing will be referenced as “Mot. Ex. ___.”

home invasion robbery had just occurred in Yakima and that there was a possible suspect or suspect vehicle with plate number AFS8595. 4/26/18 RP 82, 124; Mot. Ex. B. They were informed that the robbery involved a pistol whipping, and someone being tied up and robbed. 4/26/18 RP 85.

In addition to the license plate number, the officers had an initial suspect description of “two Hispanic males in their thirties.” 4/26/18 RP 84, 116. Officer Way looked at the state returns to see where the van was registered to. 4/26/18 RP 82. The van was registered to Traci Ellis at 2115 South 10th Avenue. 4/26/18 RP 83, 125, 137.

It took Officer Way about five minutes to respond to the location. 4/26/18 RP 84. Union Gap Police Officer Edwards also went to this location, but in a separate car. 4/26/18 RP 84, 126. For officer safety reasons, the two officers parked to the north of the residence so that they could walk up to the home on foot. 4/26/18 RP 84, 126. It was dark out at the time. 4/26/18 RP 130.

Officer Way was familiar with the address due to police contacts over the years. 4/26/18 RP 83. He described the location as a residential house with a dirt driveway and back yard that extends to a wooded area and a creek with lots of abandoned vehicles and small sheds. 4/26/18 RP 83; Mot. Exs. N, O. The property was not well-maintained. 4/26/18 RP 125. Officer Edwards was also familiar with the property, as he had been

to the property many times for calls related to criminal activity. 4/26/18 RP 125.

Officer Way looked in the driveway and saw a van parked in the driveway that matched the suspect vehicle license plate number, AFS8595. 4/26/18 RP 95-96, 127; Mot. Exs. C, H. Officer Edwards felt the van's engine and it was hot, indicating it had been driven recently. 4/26/18 RP 127. The officers shined flashlights into the van to make sure no one was hiding there that could ambush them. 4/26/18 RP 86, 127, 141. No one was in the van. 4/26/18 RP 127, 141.

Officer Edwards called out that he spotted a gun holster. 4/26/18 RP 86, 128, 137; Mot. Ex. J. That made him concerned there could be an armed suspect in the vicinity. 4/26/18 RP 128. They then saw two subjects, later identified as Vasquez and Crafton-Jones, walking behind a fence in the backyard. 4/26/18 RP 86, 93, 128-29, 141. The two males were about thirty feet or so from the van. 4/26/18 RP. 86-87, 94, 130; Mot. Exs. N, O.

Officer Edwards said, "Stop, police" and ordered Vasquez and Crafton-Jones to the ground. 4/26/18 RP 131. Crafton-Jones initially was hesitant to comply and looked like he was ready to flee, while Vasquez, complied with the officers' commands. 4/26/18 RP 98, 115, 132, 144-45. The officers had both at gunpoint at 6:46 a.m. 4/26/18 RP 57, 70, 107,

129, 131-32, 141-42; Mot. Exs. B, C. Officer Way immediately recognized Crafton-Jones. 4/26/18 RP 95. Officer Way explained who he was and why he was there. 4/26/18 RP 97. He then attempted to get a further description of the suspects over the air and was told that the males were described as Hispanic males in their thirties. 4/26/18 RP 97, 116, 118; Mot. Ex. FF. This was similar to the description he had initially. 4/26/18 RP 116, 118.

The two suspects were detained at 6:49 a.m. 4/26/18 RP 58; Mot. Ex. B. After being detained, the two males were patted down for weapons for officer safety. 4/26/18 RP 97. A black stun gun was found on Mr. Crafton-Jones. 4/26/18 RP 99, 133. Officer Edwards informed the two males why they were there and asked them if they'd been involved. 4/26/18 RP 98. Both denied involvement and denied driving the van. 4/26/18 RP 98. Vasquez was sweating during the questioning. 4/26/18 RP 98.

Shortly thereafter, Yakima Police Department took over the scene and Officer Reyes brought Mr. Miller for a field show-up. 4/26/18 RP 73, 138, 101. It took about a minute or two for Mr. Miller to get there as his residence is only about a mile away from the suspects' location. 4/26/18 RP 74; Mot. Exs. L, M. There was a positive identification at 7:06 a.m. 4/26/18 RP 76, 101; Mot. Ex. B.

At the CrR 3.6 hearing, Officer Way testified that they detained the two males because they had located the van a very short time after the home invasion had occurred and the two males were immediately near the suspect vehicle. 4/26/18 RP 95, 108. Similarly, Officer Edwards testified that they were going to contact anyone close to the van. 4/26/18 RP 139.

Officer Edwards testified that he could not tell what race either of the suspects were when he first spotted them from thirty feet away in the darkness. 4/26/18 RP 131, 139, 142-43. Officer Way testified that He knew Crafton-Jones was Caucasian but was unsure of Vasquez's race. 4/26/18 RP 95, 109.

Vasquez has assigned error to numerous findings of fact, but has only presented argument on one finding, the first sentence of finding number 19. App. Br. at 13. As such, as to all other findings, he has waived those assignments of errors. An appellant waives an assignment of error when he presents no argument in support of the assigned error. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). Those findings are treated as verities on appeal. *In re Det. of Belcher*, 196 Wn. App. 592, 600 n.1, 385 P.3d 174 (2016).

a. Finding of fact number fifteen was supported by substantial evidence.

Finding of fact number fifteen states, “Officer Edwards and Way indicated that the risk to them rated a ten on a scale of one to ten because of the crimes they were investigating and because the property there were entering was known for criminal activity.” CP 143. This finding is support by the testimony from both Officer Edwards and Way. *See* 4/26/18 RP 83-85, 125, 133.

b. Finding of fact number eighteen was supported by substantial evidence.

Finding of fact number eighteen states, “Mr. Vasquez complied immediately, however, Mr. Crafton-Jones was hesitant to go to the ground and appeared to be preparing to flee. After ordering Mr. Crafton-Jones to the ground several times, he slowly complied. This increased the officers’ suspicion that Mr. Crafton-Jones and Mr. Vasquez were the suspects in the home invasion.” CP 143. This finding was supported by substantial evidence in the record. *See* 4/26/18 RP 115, 132, 144.

c. Finding of fact number nineteen was supported by substantial evidence.

Finding of fact number nineteen states that “Mr. Vasquez and Mr. Crafton-Jones were in close proximity to the suspects’ van and matched the general suspect descriptions given by the victims. These facts also

increased the officers' suspicion that Mr. Crafton-Jones and Mr. Vasquez were the suspects in the home invasion." CP 143.

The defense specifically challenges the portion of the finding that the suspects "matched the general suspect descriptions given by the victims." App. Br. at 13. However, this finding was supported by substantial evidence. *See* 4/26/18 RP 86-87, 94-95, 141.

The description of the suspects given to the officers was "two Hispanic males in their thirties." *Id.* at 116; Mot. Ex. FF. Vasquez is a Hispanic male in his forties. App. Br. at 13. The fact that Vasquez did not match the age range does not negate the finding that he matched the general description (male and Hispanic). And the age range, although not exact, was close. Vasquez has provided no legal authority that an officer must have an exact match in a suspect's age in order to have a well-founded suspicion that the suspect is connected to criminal activity.

The officers were not provided with more specific identifiers such as clothing, facial features, hair color, weight, or height. Given the limited identified they had, to say that Vasquez matched the general suspect description was accurate. The number of male suspects also matched what the victims' reported – two.

As for Crafton-Jones, Officer Edwards said that he could not tell if he was Hispanic or not because there are light and dark-skinned Hispanics.

4/26/18 RP 146. Even assuming that Mr. Crafton-Jones is not Hispanic, the trial court's finding would still be correct in that the suspects matched the *general* suspect description. As such, this finding of fact was supported by substantial evidence.

d. Finding of fact number twenty was supported by substantial evidence.

Finding of fact number twenty states, "Both Mr. Vasquez and Mr. Crafton-Jones were patted down for officer safety. During the pat down search, officers located a black stun gun in Mr. Crafton-Jones' pants pocket. The discovery of the stun gun increased the officers' suspicions that Mr. Crafton-Jones and Mr. Vasquez were the suspects in the home invasion." CP 144. This finding was supported by substantial evidence. *See* 4/26/18 RP 97, 99, 133.

e. Finding of fact number twenty-one was supported by substantial evidence.

Finding of fact number twenty-one states, "Mr. Vasquez and Mr. Crafton-Jones were asked if they knew who had been driving the van. They both denied driving the van or knowing who had been driving the van. During the questioning, Mr. Vasquez began sweating profusely and said that "they had been tweaking all night at a graveyard." Their responses to questioning and body language increased the officers'

suspicions that they were involved in the home invasion.” CP 144. This finding was supported by the record. *See* 4/26/18 RP 98-101, 115.

f. Finding of fact number twenty-two was supported by substantial evidence.

Finding of fact number twenty-two states, “The officers were familiar with Mr. Crafton-Jones and knew him to be involved in criminal activities. The officers’ familiarity with Crafton-Jones increased the officers’ suspicions that Mr. Crafton-Jones and Mr. Vasquez were involved in the home invasion.” CP 144. The testimony of the officers provided substantial evidence for this finding. *See* 4/26/18 RP 97, 109.

2. The trial court’s findings of fact supported the conclusions of law.

Under *Terry v. Ohio*, police may briefly detain and question an individual even though probable cause is lacking if they have a well-founded suspicion based on objective facts that he is connected to actual or potential criminal activity. 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *see also State v. Sieler*, 95 Wn.2d 43, 46, 621 P.2d 1272 (1980). Such facts are judged against an objective standard: would the facts available to the officer at the moment of the seizure warrant a person of reasonable caution in belief that the action taken was appropriate? *State v. Almanza-Guzman*, 94 Wn. App. 563, 566, 972 P.2d 468 (1999). In other words, a reasonable suspicion is a “substantial possibility that criminal

conduct has occurred or is about to occur.” *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986).

It is well established that, “[i]n allowing such detentions, *Terry* accepts the risk that officers may stop innocent people.” *Illinois v. Wardlow*, 528 U.S. 119, 126, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000). However, despite this risk, “[t]he courts have repeatedly encouraged law enforcement officers to investigate suspicious situations.” *State v. Mercer*, 45 Wn. App. 769, 775, 727 P.2d 676 (1986).

Evaluating the reasonableness of the police action and the extent of the intrusion, each case must be considered in light of the particular circumstances facing the law enforcement officer. *State v. Lesnick*, 84 Wn.2d 940, 944, 530 P.2d 243 (1975). No single rule can be fashioned to meet every conceivable confrontation between the police and a citizen. *Id.* Moreover, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior. *State v. Lee*, 147 Wash. App. 912, 917, 199 P.3d 445, 447 (2008) (citing *Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000)).

When determining whether police have a reasonable suspicion sufficient to justify a *Terry* stop, courts have applied the totality of the circumstances test. *State v. Lee*, 147 Wash. App. at 916. Specifically, the reasonableness of the officer’s suspicion is determined by the totality of

the circumstances known to the officer at the inception of the stop. *State v. Rowe*, 63 Wn. App. 750, 753, 822 P.2d 290 (1991).

Here, Vasquez argues that the police lacked reasonable suspicion to stop him. App. Br. at 11. Specifically, he argues he did not match the description of the suspect and that there was no evidence to tie him to any crimes. App. Br. at 11.

During the CrR 3.6 hearing, the defense argued that the two suspects did not match the description given to the officers, which was “two Hispanic males in their thirties,” and that there was no indication that the two males were involved in the robbery. 4/26/18 RP 157-60. Based on that, the defense argued that the initial seizure was unlawful and that any evidence taken thereafter should be suppressed. 4/26/18 RP 161.

The State argued that the officers had a reasonable, articulable suspicion based on the totality of the circumstances. 4/26/18 RP 166-69. The State pointed to certain facts such as the quick timeframe, with Vasquez and Crafton-Jones being seen just eight minutes after the Union Gap officers were dispatched to assist, and the fact that the two males were only thirty feet from the getaway vehicle, which was confirmed to be the same one at the scene of the crime, just one mile away. 4/26/18 RP 163-64, 166, 169. The State also pointed to the fact that the van was still

warm to the touch and contained an empty gun holster, and that no one else was around it. 4/26/18 RP 164, 166.

The trial court denied the motion to suppress and ruled that the officers had a reasonable and articulable suspicion that the two males were involved in the home invasion robbery, either as the actual robbers or as accomplices. 4/26/18 RP 175. The court entered findings of fact and conclusions of law. CP 140-48.

Here, the court's findings supported the conclusion that the police officers had a reasonable suspicion sufficient to justify a *Terry* stop. Here are the facts known to the officers:

1. A home invasion robbery involving a pistol had just occurred, and the suspects fled the scene in a van,
2. The victim gave dispatch the van's license plate,
3. The officers immediately went to the registered owner's address, an address known for criminal activity,
4. An unoccupied van was parked at the address,
5. The van was still warm to the touch, and the license plate was an exact match,
6. There was an empty gun holster in the van,
7. It was dark and no one else is around,
8. The only two individuals nearby were two males about thirty feet away,
9. One male appeared as if he was going to flee,
10. The two males were detained eight minutes after the agency assist call, and
11. The males were detained one mile away from the scene of the home invasion robbery.

Most of these facts are not disputed, and therefore, verities on appeal. *See Hill*, 123 Wn.2d at 644. Vasquez's primary argument is that

the suspects did not match the *exact* description relayed to the officers. App. Br. at 13. The defense states that Mr. Vasquez is Hispanic. App. Br. at 13. And it was uncontroverted that Vasquez was also a male. Because Mr. Vasquez was a male and Hispanic, the only argument is essentially that Mr. Vasquez should not have been stopped because he was not “in his thirties.” The defense points out that he was forty-eight years old at the time of the seizure. App. Br. at 13. So, Vasquez was a Hispanic male, but not in his thirties. But this fact did not negate the reasonable suspicion to stop him given the totality of the circumstances. At the time of the stop, Vasquez could have been a getaway driver who was never seen by the victims. The officers did not know his role in the robbery yet.

Vasquez’s other argument is that there was no evidence tying him and his accomplice to the robbery “other than their proximity to the van.” App. Br. at 11. He claims that the fact that he was “walking near the parked van” is inadequate to rise to the level of reasonable suspicion. App. Br. at 14. However, this overlooks a substantial number of the court’s findings of fact.

Officers were dispatched at 6:36 am to a robbery that had just occurred. CP 141 (Findings 1, 8). The suspects fled in a van that was found, and still warm, at the registered owner’s address. CP 141-42 (Finding 2, 12, 16). The van had a firearm holster on the floorboard. CP

143 (Finding 16). It was still dark outside and the officers spotted two males walking from the rear of the residence less than thirty feet away away from the van. CP 143 (Finding 17). No one else was around. One male did not comply with their orders and appeared to be preparing to flee. CP 143 (Finding 18).

Based on these facts, the officers knew that the van was involved in the home invasion robbery that had just occurred. They found the van within eight minutes from the agency assist call. No one was around it except for Vasquez and Crafton-Jones. Because of the severity of the suspected crime, the suspects' close proximity to the getaway vehicle, which was still hot, and the empty gun holster, the officers had a reasonable suspicion that Vasquez and the male he was with were involved in the robbery that had occurred just minutes prior. Under *Terry*, the officers were allowed to stop them both for questioning.

a. Conclusion of law number five was supported by the findings of fact.

Conclusion of law number five states:

Considering the totality of the circumstances, Officers Edwards and Way had a reasonable articulable suspicion that Mr. Vasquez and Mr. Crafton-Jones were involved in the home invasion assault and robbery as principals or accomplices. The officers' brief *Terry* stop of Mr. Vasquez and Mr. Crafton-Jones was reasonable

because they met the general description of the suspects, they were in temporal proximity to the crime scene, they were in close proximity to the suspects' van, and an empty firearm holster seen inside the van. (The defendants were contacted within ten minutes of the 911 call, were located at a residence only few minutes away from the crime scene, and were within 30 feet of the suspects' van.).

CP 146. The first sentence of this conclusion contains the conclusion of law, while the other sentences supply the facts supporting this conclusion. As explained previously, the findings of fact supported the conclusion that the officers had a reasonable articulable suspicion to detain Vasquez and his accomplice.

b. Conclusion of law number six was supported by the findings of fact.

Conclusion of law number six states, "The brief seizure of Mr. Vasquez and Mr. Crafton-Jones was reasonable to confirm or dispel the suspicion that they were involved in the violent home invasion and it was reasonable because it advanced the public interest of apprehending violent criminals." CP 146. This conclusion was also supported by the court's findings, as previously explained.

c. Conclusion of law number seven was supported by the findings of fact.

Conclusion of law number seven states, “The pat-down weapons frisk was justified because the officers observed an empty firearm holster in the van, because the violent nature of the crimes being investigated, and because the victims reported that firearms were used during the commission of the crimes.” CP 146-7. The conclusion of law in this finding is that, “the pat-down weapons frisk was justified.” The rest of the sentence supplies the facts supporting that conclusion.

An officer may conduct a protective frisk for weapons only if the officer has reasonable grounds, based on specific and articulable facts, to believe that the person is armed and presently dangerous. *See State v. Russell*, 180 Wn.2d 860, 867, 330 P.3d 151 (2014). It is enough that the officer reasonably believes that a search should be conducted to protect his or her own safety and the safety of others. *Id.* The officer is not required to be absolutely certain that the person is armed – only a founded suspicion is necessary. *State v. Harrington*, 167 Wn.2d 656, 668, 222 P.3d 92 (2009). Here, the officers knew that the home invasion robbery involved a weapon and saw an empty gun holster in the getaway van. 4/26/18 RP 85, 86, 128, 137. As such, they had reasonable grounds to

believe that Vasquez and his accomplice were armed and presently dangerous.

d. Conclusion of law number nine was supported by the findings of fact.

Conclusion of law number nine states, “Mr. Vasquez and Mr. Crafton-Jones’ statements and conduct reasonably increased the officers’ suspicions that they were involved in the home-invasion. Mr. Crafton-Jones’ refused to immediately freeze and drop to the ground. Mr. Crafton-Jones appeared to be preparing to flee. Mr. Vasquez and Mr. Crafton-Jones denied driving the van and denied knowing who had been driving the van. Mr. Crafton-Jones possessed a stun-gun. In addition, Mr. Vasquez began sweating profusely and said that “they had been tweaking all night at a graveyard.” CP 147. The first sentence is the conclusion of the law. The rest of the sentences are the findings supporting that conclusion. An officers’ suspicions can increase during the course of a *Terry* stop and the court’s conclusion here was supported by the facts listed.

e. Conclusion of law number eleven was supported by the findings of fact.

Conclusion of law number eleven states, “The discovery of the firearm, property of Ms. Fork and Mr. Miller, and the other evidence

seized at the 2115 S. 10th Avenue address was a direct result of the authorized search warrant. The search warrant was based upon probable cause.” CP 147. The alleged error involving the warrant may be part of the appellant’s “fruit of the poisonous tree” argument. But Vasquez never specifically argued what was wrong with the warrant, so he has waived this assignment of error.

f. Conclusion of law number twelve was supported by the findings of fact.

Conclusion of law number twelve states, “The discovery of the coins and other personal property of Ms. Fork and Mr. Miller in the defendants’ possession and blood/DNA evidence, was seized incident to Mr. Vasquez and Mr. Crafton-Jones’s lawful arrest.” CP 148. Again, this alleged error seems to be part of the defendant’s “fruit of the poisonous tree” argument. Because the *Terry* stop and subsequent arrest was valid, evidence subsequently found as a result of the stop was properly seized.

g. Conclusion of law number fourteen was supported by the findings of fact.

Conclusion of law number fourteen states, “All the evidence seized by law enforcement officers in this case was pursuant to lawful authority. Therefore, the defendants’ motion to suppress evidence pursuant to CrR

3.6 is denied.” CP 148. This conclusion was supported by the court’s findings of fact, as argued in section three.

C. Vasquez’s prior first degree robbery conviction, committed when he was sixteen years old, qualifies as a strike offense because *State v. Teas* held that there is no categorical bar to sentencing an adult to mandatory life imprisonment where a predicate offense was youthful.

Vasquez claims that under article 1, section 14 of the Washington Constitution, his first degree robbery conviction, committed when he was sixteen years old, is categorically barred from qualifying as strike offense for his current sentence. This issue was decided by the Court of Appeals in *State v. Teas*, 10 Wash. App. 2d 111, 131, 447 P.3d 606, 618 (2019), review denied, 2020 Wash. LEXIS 200 (Wash., Apr. 1, 2020). In *Teas*, the court held that such a sentence did not violate article 1, section 14. 10 Wash. at 131. The court first set forth the framework used for assessing a categorial bar challenge:

...we consider “(1) objective indicia of society’s standards to determine whether there is national consensus against sentencing those [of a particular class] to mandatory life imprisonment and (2) our own understanding of the prohibition of cruel punishment.” This second step requires this court to consider “‘the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question’ and ‘whether the challenged

sentencing practice serves legitimate penological goals.”

Id. at 133 (citations omitted). Working within that framework, the court first found that there was no national consensus against sentencing adults as persistent offenders when their predicate offenses were “youthful.” *Id.* at 134. The Court of Appeals cited to *State v. Moretti*:

Recently, our Supreme Court held that “[a]rticle I, section 14 of the Washington Constitution does not require a categorical bar on sentences of life in prison without the possibility of parole for fully developed adult offenders who committed one of their prior strikes as young adults.” *State v. Moretti*, 193 Wn.2d 809, 814, 446 P.3d 609 (2019). And review of other jurisdictions’ statutes and case law does not show a national consensus against sentencing adults as persistent offenders when their predicate offenses were “youthful.” Rather, several jurisdictions have rejected this very argument.

Id. at 134. Second, the court held that punishing an adult as a persistent offender when a predicate offense was youthful does not contradict the penological goals of Washington’s Persistent Offender Accountability Act. *Id.* Punishing an adult for continuing to commit violent crimes after being given the chance for rehabilitation supports the penological goal of separating repeat offenders from the rest of society. *Id.* at 135.

D. Vasquez's DNA collection fee should be waived as his DNA was previously collected.

The State's records show that the Vasquez's DNA was previously collected. As such, the State agrees to waive the DNA collection fee.

IV. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm Vasquez's convictions and sentence.

Respectfully submitted this 4th day of May, 2020,

s/Tamara A. Hanlon
TAMARA A. HANLON WSBA 28345
Deputy Prosecuting Attorney

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on May 4, 2020, via the portal, I emailed the Brief of Respondent to Skylar T. Brett. I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 4th day of May, 2020 at Yakima, Washington.

s/Tamara A. Hanlon
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