

NO. 47546-4-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON, Respondent

v.

JASON ROBERT STOMPS, Appellant

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.14-1-00772-8

BRIEF OF RESPONDENT

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RESPONSE TO ASSIGNMENTS OF ERROR

- I. **There was sufficient evidence to sustain Stomps' convictions for Burglary in the First Degree, three counts of Kidnapping in the Second Degree, and three counts of Assault in the Second Degree.**

STATEMENT OF THE CASE

Jason Stomps (hereafter 'Stomps') was charged with Burglary in the First Degree, three counts of Kidnapping in the Second Degree and three counts of Assault in the Second Degree, all with firearm enhancements. CP 42-44. The charges stemmed from an incident that occurred on March 20, 2014. On that date, Tayler Waleske was 18 years old and living in Vancouver with her parents and her brother at 1208 NE 65th Street. RP 112. That evening, Tayler was home watching a movie with her boyfriend, Nathan Panosh. RP 112. At some point that evening Tayler heard loud pounding on the door that greatly increased in volume. RP 112-13. Tayler became concerned and walked down the hallway from her bedroom. RP 113. She heard yelling at that point. RP 113. The pounding and yelling were coming from the front door. RP 113. She heard a voice she did not recognize yell, "I'm looking for Courtney Barnes. Open up your door, or I'll kick your fucking door down." RP 114. Tayler did not know anyone by the name of Courtney Barnes, and no one by that name had ever lived at her house. RP 114. Tayler was terrified. RP 114-

15. Tayler called out, "We don't know Courtney. You need to leave." RP 115. The pounding and yelling continued, so Tayler went to find her brother and let him know someone was at the door and would not leave. RP 115. Tayler then called 911. RP 115.

The entirety of Tayler's 911 call was played to the jury and the transcript shows it as follows:

AUTOMATED VOICE: Thursday, March 20, 2014; the time, 8:35 p.m.

911 OPERATOR: 911, how may I help you? Do you have a (inaudible) or emergency?

TAYLER WALESKE: There's someone at my house right now banging on our door and asking for someone that doesn't live here, and he has a gun.

911 OPERATOR: What's your address?

TAYLER WALESKE: 1208 Northeast 65th Street, 98665.

911 OPERATOR: Is he threatening anybody with the gun?

TAYLER WALESKE: He's -- no. He's just saying, 'Let me in, or I'll kick your fucking door down.'

911 OPERATOR: And you have no idea who he is?

TAYLER WALESKE: No, I have no idea who he is.

911 OPERATOR: Where's the gun?

TAYLER WALESKE: Where's it at?

UNIDENTIFIED MALE TEEN: He's holding it.

TAYLER WALESKE: He's holding it in his hand.

911 OPERATOR: What kind of gun? Can you tell?

TAYLER WALESKE: It's a .45-caliber handgun.

911 OPERATOR: And he's banging on the door?

TAYLER WALESKE: Yeah. He won't leave. He's telling us to let him in.

911 OPERATOR: And he said, 'Let me in or I'll F'ing break your door down'?

TAYLER WALESKE: Yeah. He's knocking right now. He won't leave.

911 OPERATOR: Can you tell me, is your door locked?

TAYLER WALESKE: Yeah, but -- our door is locked. Is the back door locked?

UNIDENTIFIED MALE TEEN: (Inaudible).

TAYLER WALESKE: Go check. We're --

911 OPERATOR: I don't want anybody to put themselves in danger and go near the door or anything like that. I mean, I understand that this very scary. And we're going to give information to the deputy so they can contact you. Do we have a description of him, at all?

TAYLER WALESKE: What?

911 OPERATOR: Can you see what he looks like, at all?

TAYLER WALESKE: He's trying to come in the house right now.

911 OPERATOR: Okay.

TAYLER WALESKE: He's (inaudible) --

911 OPERATOR: Ma'am, ma'am, ma'am --

TAYLER WALESKE: -- he's banging on the door trying to knock it down.

911 OPERATOR: -- ma'am, they're on their way, okay.

TAYLER WALESKE: Okay.

911 OPERATOR: Stay on the phone with me. Do you guys have any weapons in your house?

TAYLER WALESKE: No, we don't.

911 OPERATOR: Okay.

TAYLER WALESKE: I'm so scared right now.

911 OPERATOR: Okay. Stay on the line with me. They're coming as fast as they can, okay.

TAYLER WALESKE: Okay.

911 OPERATOR: Was anybody able to see if there was a car outside that he might be (inaudible)?

TAYLER WALESKE: No. There's no car. But he's banging on our windows.

UNIDENTIFIED MALE TEEN: (Inaudible).

TAYLER WALESKE: They're sending someone.

911 OPERATOR: Yes. They're on their way, okay.

TAYLER WALESKE: Okay.

911 OPERATOR: Okay. Now, was anybody able to see what he looked like, at all?

TAYLER WALESKE: No, I can't. I don't know –

911 OPERATOR: White? White or Hispanic?

TAYLER WALESKE: -- it's dark outside. I can't see what he looks like. I have no idea.

911 OPERATOR: Does he talk with an accent or anything like that?

TAYLER WALESKE: What?

911 OPERATOR: Does he speak in an accent or anything that would –

TAYLER WALESKE: No.

911 OPERATOR: -- lead you to believe any kind of –

TAYLER WALESKE: No.

911 OPERATOR: Okay. Does he appear to be alone?

TAYLER WALESKE: Is he alone?

UNIDENTIFIED MALE TEEN: No. There's another person.

TAYLER WALESKE: No, there's another person.

911 OPERATOR: And are they also standing at the door?

TAYLER WALESKE: No. I think there's someone in the back and someone in the front of our house.

911 OPERATOR: Okay.

TAYLER WALESKE: I can hear them talking. I think they're in the backyard right now.

911 OPERATOR: Okay.

TAYLER WALESKE: I don't know.

911 OPERATOR: Where exactly are you in your house?

TAYLER WALESKE: We're upstairs in my parents' bedroom. (Dogs barking)

911 OPERATOR: Okay. Is that your dog inside the house?

TAYLER WALESKE: Yeah. I have two dogs. I have a pit bull and then another dog.

911 OPERATOR: Are they in the room with you?

TAYLER WALESKE: No. They're downstairs in the living room. They're barking.

911 OPERATOR: Okay. I can hear them barking. Where are you hearing them now?

TAYLER WALESKE: I don't hear anything right now –

911 OPERATOR: Okay.

TAYLER WALESKE: -- but I don't know if they're still out there, but –

911 OPERATOR: That's okay. We have lots of cops coming, okay.

TAYLER WALESKE: Okay.

911 OPERATOR: What's your name?

TAYLER WALESKE: What's my name? Tayler.

911 OPERATOR: Okay, Tayler. And your contact is 721-6504 in case we get disconnected, correct?

TAYLER WALESKE: Yeah.

911 OPERATOR: Okay. Is your backyard fenced?

UNIDENTIFIED BAIL RECOVERY AGENT:
(Indiscernible yelling in background).

911 OPERATOR: Is that them yelling?

TAYLER WALESKE: Yeah.
(Loud noise)

911 OPERATOR: Okay. Are they kicking the door?

TAYLER WALESKE: Yeah. They –

911 OPERATOR: Did they just break the door down?

UNIDENTIFIED BAIL RECOVERY AGENT:(Inaudible).

TAYLER WALESKE: Yeah. They just kicked the door
down.

911 OPERATOR: The cops are just arriving. Stay on the
line with me. Is your bedroom door locked?

TAYLER WALESKE: No. We're coming downstairs.

911 OPERATOR: Okay. No, I don't want you to go
downstairs because they have a gun, okay.

UNIDENTIFIED BAIL RECOVERY AGENT: (Inaudible)
down here now.

911 OPERATOR: Could you get back up inside?

UNIDENTIFIED BAIL RECOVERY AGENT: (Inaudible)
all of you (inaudible).

UNIDENTIFIED BAIL RECOVERY AGENT: (Inaudible)
all of you, down –

UNIDENTIFIED MALE TEEN: Okay, okay.

UNIDENTIFIED MALE TEEN: Yes, sir.

UNIDENTIFIED BAIL RECOVERY AGENT: -- now.

UNIDENTIFIED MALE TEEN: Okay.

UNIDENTIFIED BAIL RECOVERY AGENT: Get out here on the ground now. Hands on top of your head. Get down here now.

UNIDENTIFIED MALE TEEN: Yes, sir.

UNIDENTIFIED BAIL RECOVERY AGENT: Hands above your head.
(Everyone speaking)

911 OPERATOR: Ma'am, can you get back --
(Everyone speaking)

911 OPERATOR: -- ma'am, can you get back upstairs?

TAYLER WALESKE: No.
(Everyone speaking)

911 OPERATOR: Okay. Who's telling you to put your hands above your head?

TAYLER WALESKE: Yes. My hands are above my head. I'm on the ground.

UNIDENTIFIED BAIL RECOVERY AGENT: Who are you on the phone with?

UNIDENTIFIED MALE TEEN: Our parents.

911 OPERATOR: Don't say anything if you don't have to.

UNIDENTIFIED MALE TEEN: (Inaudible) the cops, and we don't know what you're looking for.

UNIDENTIFIED BAIL RECOVERY AGENT: Why didn't you open the door?

UNIDENTIFIED MALE TEEN: Because we were scared. We didn't know who were you or anything.

UNIDENTIFIED BAIL RECOVERY AGENT: I identified myself very well. You looked at me three times.

UNIDENTIFIED MALE TEEN: I don't know who you are, dude. What are you talking about?

UNIDENTIFIED BAIL RECOVERY AGENT: Bail enforcement agent.

UNIDENTIFIED MALE TEEN: Bail enforcement? What (inaudible)?

UNIDENTIFIED BAIL RECOVERY AGENT: Come out with your hands up now.

UNIDENTIFIED BAIL RECOVERY AGENT: Cuff yourself to your friend.

UNIDENTIFIED MALE TEEN: Me?

UNIDENTIFIED BAIL RECOVERY AGENT: Yeah, you.

UNIDENTIFIED MALE TEEN: Sir, like, what are you looking for? You don't have a search warrant or anything.

UNIDENTIFIED BAIL RECOVERY AGENT: We don't need a search warrant to retrieve a fugitive. (Inaudible).

UNIDENTIFIED MALE TEEN: No one else is here.

UNIDENTIFIED BAIL RECOVERY AGENT: Is anyone else --

UNIDENTIFIED MALE TEEN: Our parents are out for the evening. It's just us three. I swear.

UNIDENTIFIED BAIL RECOVERY AGENT: Shut up. (Inaudible) move. Cuff yourself to him.

UNIDENTIFIED MALE TEEN: He just got back from work, and this is my girlfriend. We just literally --

UNIDENTIFIED MALE TEEN: Yeah. I just got home. I just got out of the shower, sir.

UNIDENTIFIED MALE TEEN: Yeah.

UNIDENTIFIED BAIL RECOVERY AGENT: (Inaudible) there's no one up here. (Inaudible).

UNIDENTIFIED MALE TEEN: What the fuck is going on? What the fuck is going on?

UNIDENTIFIED BAIL RECOVERY AGENT: Yeah. We are bail enforcement agents.

UNIDENTIFIED MALE TEEN: That makes no sense. You guys don't have a warrant to search the house. Where's your warrant?

UNIDENTIFIED BAIL RECOVERY AGENT: We don't need a warrant.

UNIDENTIFIED MALE TEEN: Give me the keys to your fucking handcuffs, now.

UNIDENTIFIED BAIL RECOVERY AGENT: No. (Inaudible).

UNIDENTIFIED MALE TEEN: Give me the key to your handcuff, now.

UNIDENTIFIED BAIL RECOVERY AGENT: No.

UNIDENTIFIED BAIL RECOVERY AGENT: You need to chill out, bro.

UNIDENTIFIED MALE TEEN: No (inaudible).

TAYLER WALESKE: Nathan, just stop, please.

UNIDENTIFIED BAIL RECOVERY AGENT: Relax.

UNIDENTIFIED MALE TEEN: Give me the key.

UNIDENTIFIED MALE TEEN: Don't worry, Nathan, just relax. Who are you looking for exactly?

UNIDENTIFIED BAIL RECOVERY AGENT: I'm looking for Courtney.

UNIDENTIFIED MALE TEEN: We don't know Courtney. Courtney who?

UNIDENTIFIED BAIL RECOVERY AGENT:(Inaudible).

UNIDENTIFIED MALE TEEN: Okay. Yes, sir.

UNIDENTIFIED OFFICER: (Inaudible).

UNIDENTIFIED MALE TEEN: Yes, sir.

UNIDENTIFIED OFFICER: (Inaudible).

UNIDENTIFIED MALE TEEN: Yes, sir. We're cuffed together, yeah.

UNIDENTIFIED OFFICER: (Inaudible).

UNIDENTIFIED MALE TEEN: Thank you, Officer. (Inaudible). Their handguns are up here, Officer.

UNIDENTIFIED OFFICER: (Inaudible).

UNIDENTIFIED MALE TEEN: Yes, sir.

(Dogs barking)

UNIDENTIFIED MALE TEEN: Hey, stop barking. You lie down. We are (inaudible), Officer.

TAYLER WALESKE: (Inaudible) so scared.

UNIDENTIFIED MALE TEEN: (Inaudible). Thank you.
(Dogs barking)

TAYLER WALESKE: Shut up.

UNIDENTIFIED MALE TEEN: Hey.

911 OPERATOR: Tayler, can you hear me?

TAYLER WALESKE: Yes.

911 OPERATOR: Okay. Are you able to talk to me for a second?

TAYLER WALESKE: Yes, I can.

911 OPERATOR: Okay. Did I hear you say that you were cuffed with your boyfriend?

TAYLER WALESKE: No. It's my brother and my boyfriend who are cuffed together.

UNIDENTIFIED OFFICER: (Inaudible).

UNIDENTIFIED MALE TEEN: Yes, sir.

911 OPERATOR: Okay. There's three of you total in the house?

TAYLER WALESKE: Yes. And my phone's about to die, but, yeah.

911 OPERATOR: Okay. Keep on the phone with me. We are just talking to the deputies, okay.

TAYLER WALESKE: Okay.

911 OPERATOR: Does anybody have a warrant in the house?

TAYLER WALESKE: What?

911 OPERATOR: Does anybody have a warrant for their arrest in your house?

TAYLER WALESKE: No.

911 OPERATOR: Are you still lying on the ground?

TAYLER WALESKE: No. We're standing up now with our hands above our head.

911 OPERATOR: Okay. Just stay in the house for right now. That's what the deputies want you to do, okay.

TAYLER WALESKE: Okay.

(911 call stopped)

RP 115-126.

Tayler identified Stomps as the man who broke in through the front door of her house and told them to come downstairs and get on the ground. RP 127-28. Stomps had a firearm and was pointing it at Tayler, her brother, Quincy, and her boyfriend, Nathan, as they came downstairs. RP 128. Tayler believed she was going to be shot. RP 128. Tayler, Quincy and Nathan followed what Stomps told them to do. RP 129. Tayler never

gave Stomps permission to enter the house. RP 129. Tayler did not feel like she could leave because she had a gun pointed at her. RP 129.

Quincy Waleske, Tayler's brother, also testified at trial. He had just turned 20 years of age and was living at home with his parents and his sister Tayler. During the evening hours of March 20, 2014, Quincy came home from work, said hello to his sister and her boyfriend, Nathan, and then went to take a shower. RP 80. He heard the dogs barking, but did not think much of it. RP 80. He then heard pounding coming from the front door. RP 80. This irritated Quincy because no one was answering the door and it was not stopping. RP 80. Tayler then came in and said that there was someone at the front door asking for Courtney and that they would not leave. RP 80-81. Quincy did not know of anyone by the name of Courtney. RP 81. Quincy then went to his bedroom window, which is close to the front door. RP 81. Quincy yelled out the front window, "I don't know who you are or who you're looking for, but you need to leave now." RP 83. Stomps then took a step back from the front door, looked at Quincy and said, "Open the fucking door now, or I'm going to kick it in." RP 84. Quincy saw that Stomps had a semiautomatic handgun in his hand. RP 84. Quincy was instantly frightened. RP 84. He told his sister to call 911, which she did. RP 88. Quincy, Tayler and Nathan congregated in their parents' bedroom, which was upstairs. RP 89. Quincy continued to

hear pounding on the door until he heard the door hit the floor and the shuffling of feet enter the house. RP 90. Then there were two men in the house yelling for them to come down and put their hands on their heads. RP 91. Quincy followed their directions because the men had guns and he felt intimidated and that his life was in danger. RP 91. Stomps pointed the gun at Quincy, Tayler and Nathan. RP 92. The men told them to lay flat on the ground and the three of them did so. RP 93. Stomps threw a pair of handcuffs to Quincy and Nathan and told the two of them to handcuff themselves to each other. RP 94. Quincy did not feel free to leave as he was dressed in only a towel, held at gun point and forced to lie on the floor and be handcuffed to Nathan. RP 94. Quincy never heard Stomps identify himself as a “bail agent” or “bail bonds” or anything of the sort. RP 87.

Nathan Panosh also testified at the trial. He was 19 on March 20, 2014 and was dating Tayler. He was over at her house watching a movie with her in her bedroom. RP 99. Nathan never heard Stomps say anything about “bail bonds” or “fugitive recovery.” RP 101-02. Nathan testified that they were moved by gunpoint from the bedroom to the living room and that Stomps told them to move. RP 104. Nathan was terrified during the incident. RP 106. And then Stomps, while pointing his gun at them, told Quincy and Nathan to handcuff themselves to each other. RP 107.

Deputy Kennison of the Clark County Sheriff's Office responded to the Waleske home and when he arrived he saw the front door appeared to have been "blown completely off its hinges." RP 149. Deputy Kennison saw into the front entryway of the house and saw a man wearing a black shirt with his arms fully extended in front of him holding what appeared to be a handgun in his hands. RP 149. Deputy Kennison believed he was seeing a burglar or robber who intended to harm the people inside. RP 150-51. He worried he would have to shoot the man in order to save the lives of the people inside the house. RP 151. Deputy Kennison called out that he was with the sheriff's office and to drop the gun. RP 151. After a second time yelling that phrase, the man turned and put the gun on the ground. RP 151. Then a second individual came out of the hallway and Kennison directed both of them to walk backwards towards the sound of his voice. RP 151-52. As the two men came closer, Deputy Kennison noted they were not wearing black shirts like he thought, but tactical ballistic vests like police wear. RP 152. Kennison was then informed by dispatch that bail recovery agents had forced entry into the home. RP 151.

Chris Nicholls is a Detective with the Clark County Sheriff's office. RP 156. When he arrived at the house, it looked like the door had been kicked in. RP 157. He saw Stomps inside the house wearing a tactical vest that had the words "Fugitive Recovery Agent" on the back of

it. RP 158-59. There was nothing on the front of his vest. RP 159. Deputy Tim Boardman with the Clark County Sheriff's Office saw Stomps had a badge on a dog tag chain around his neck, but that it was turned around backwards over his back. RP 166. The badge was also upside down and had it been slung over the front of body would have still been backwards and thus not visible as a badge. RP 166. Deputy Mikles also saw Stomps at the time of the incident and saw his badge was not visible. RP 220.

Deputy Boardman interviewed Stomps after the incident. RP 167. Stomps told him that he was at the house to serve a warrant on Courtney Barnes and that he knew that Barnes lived at the house because he had an informant who told him Barnes was seen coming and going all day long. RP 169. Stomps also told him that the house belonged to Barnes' girlfriend and she signed the bond so therefore the bond company owned the house. RP 169. Stomps said the only information he checked was that the girlfriend had put this address on the file at Regan Bail Bonds and his partner had surveilled the house for about an hour and a half. RP 170. Stomps said he believed the person he was looking for was in his 30s. RP 171. Courtney Barnes would have been 41 years of age at the time of this incident. RP 171. Stomps admitted to using the large hammer tool to break in the door. RP 172. Stomps said he told the "bail lady" to call 911 and tell 911 that they were forcing entry into the home. RP 173. Stomps said he

knew none of the three persons he contacted were the fugitive he was looking for. RP 174. Stomps admitted to having his gun drawn during the incident. RP 174. Stomps also admitted to ordering the males to cuff themselves together because they were “monkeying around.” RP 174.

Deputy Kevin Schmidt tested the firearm Stomps used during the incident and found it to be an operable firearm. RP 205-10.

Lew Ervin testified he works for Regan Bail Bonds and that Sinan Hang gave the address of 1208 NE 65th Street, Vancouver, WA as her address in her co-signor application for Courtney Barnes’ bond on November 25, 2013. RP 225-27, 233. This is the home where this incident took place. RP 112. However, the photo ID that Ms. Hang presented showed an address of 3103 NE Littler Way. RP 233. The following day, November 26, 2013, Courtney Barnes told Regan Bail Bonds that *his* address was 17916 NE 189th. RP 233-34. It is generally cheaper for a bail bonds company, like Regan Bail Bonds, to contract out a fugitive recovery agent than to simply pay the bond. RP 229-30. This case involved a \$550 bond on a driving while suspended charge. RP 232.

Stomps testified in his defense and he admitted that he immediately knew the three people he contacted in the residence were not the fugitive he was looking for. RP 279, 282. He knew this before he ordered the two men to handcuff themselves to each other. RP 279.

Stomps testified that he did not know who the informant was who indicated the fugitive was seen at the Waleske family home. RP 275-76.

The jury considered all charges and convicted Stomps of Burglary in the First Degree, three counts of Kidnapping in the Second Degree and three counts of Assault in the Second Degree, all with firearm enhancements. CP 79-92. The Assault in the Second Degree convictions were merged with the Kidnapping counts and were vacated for purposes of sentencing. CP 93. The State recommended and the Court followed an exceptional downward sentence of 180 total months to serve. CP 95-96. This appeal followed.

ARGUMENT

I. The evidence was sufficient to allow a trier of fact to find Stomps guilty beyond a reasonable doubt.

Stomps claims there was insufficient evidence to support his convictions for Burglary in the First Degree, Kidnapping in the Second Degree and Assault in the Second Degree. Stomps argues that he had no criminal intent in his actions on the night of the incident. There was sufficient evidence of his intent and it is clear that in the light most favorable to the State, a rational jury would have found him guilty of all the crimes charged.

The State is required under the Due Process Clause to prove all the necessary elements of the crime charged beyond a reasonable doubt. U.S. Const. Amend. XIV, § 1; *In re Winship*, 397 U.S. 358, 362-65, 90 S. Ct 1068, 25 L.Ed.2d 368 (1970); *State v. Colquitt*, 133 Wn.App. 789, 796, 137 P.3d 893 (2006). When reviewing a claim of insufficiency, the Court of Appeals must determine whether, when viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). A challenge to the sufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences therefrom. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When determining whether there is sufficient evidence to support a conviction, the evidence must be viewed in the light most favorable to the State. *Id.* Evidence is sufficient if *any rational finder of fact* could have found the essential elements of the crime beyond a reasonable doubt. *State v. Witherspoon*, 180 Wn.2d 875, 883, 329 P.3d 888 (2014).

“Criminal intent may be inferred from circumstantial evidence or from conduct, where the intent is plainly indicated as a matter of logical probability.” *State v. Billups*, 62 Wn.App. 122, 126, 813 P.2d 149 (1991) (citing *State v. Caliguri*, 99 Wn.2d 501, 506, 664 P.2d 466 (1983) and *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980)).

The appellate court's role does not include substituting its judgment for the jury's by reweighing the credibility of witnesses or importance of the evidence. *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980). "It is not necessary that [we] could find the defendant guilty. Rather, it is sufficient if a reasonable jury could come to this conclusion." *United States v. Enriquez-Estrada*, 999 F.2d 1355, 1358 (9th Cir. 1993) (overruled in part on other grounds, *United States v. Peterson*, 140 F.3d 819, 822 (9th Cir. 1998)), (quoting *United States v. Nicholson*, 677 F.2d 706, 708 (9th Cir. 1982)).

The determination of the credibility of a witness or evidence is solely within the scope of the jury and not subject to review. *State v. Myers*, 133 Wn.2d 26, 38, 941 P.2d 1102 (1997), citing *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). "The fact finder...is in the best position to evaluate conflicting evidence, witness credibility, and the weight to be assigned to the evidence." *State v. Olinger*, 130 Wn.App. 22, 26, 121 P.3d 724 (2005) (citations omitted).

Stomps was charged with Burglary in the First Degree, Kidnapping in the Second Degree and Assault in the Second Degree. A person is guilty of Burglary in the First Degree when the person enters or remains in a building with the intent to commit a crime against a person or property therein, and while entering, remaining or during immediate flight

therefrom the person is armed with a deadly weapon or assaults another.

RCW 9A.52.020. A person commits the crime of Kidnapping in the Second Degree when that person intentionally abducts another person.

RCW 9A.40.030. A person commits the crime of Assault in the Second Degree when that person assaults another with a deadly weapon. RCW 9A.36.021(c).

Stomps argues the State failed to meet its burden in proving that Stomps intentionally abducted Tayler, Quincy and Nathan and that the State failed to prove that Stomps assaulted the same three people. Br. of Appellant, p. 10. Stomps argues that because it was undisputed that Stomps was a bail bondsman that he could not have intended the crimes. However, his profession does not excuse his criminal behavior.

The evidence showed that Stomps negligently and recklessly focused on the Waleske family home where Tayler and Quincy lived with their parents as the location of a fugitive, without properly reviewing the file for the most recent address, and without doing proper surveillance. RP 115-128. The evidence showed Stomps entered the home by breaking the door down with a rail tie hammer, taking it off its hinges, pulled a Glock semiautomatic and pointed it at Tayler, Quincy and Nathan. RP 128. All three testified they were scared; Tayler thought she was going to die. RP 128. The evidence is also uncontested that even though Stomps knew

these three individuals were not the fugitive he was looking for, that he handcuffed Quincy and Nathan together under threat of force. RP 279. There is no defense to assault or kidnapping that the person committing the crime is a bail bondsman looking for a fugitive. *See* CP 59-78. The only reasonable inference from the evidence is that Stomps wanted to use fear and intimidation and the threat of deadly force to get what he wanted from Tayler, Quincy and Nathan. A bail bondsman does not have the right to use deadly force or the threat of deadly force against non-fugitives in his quest to find a fugitive.

In *State v. Warfield*, 103 Wn.App. 152, 5 P.3d 1280 (2000), three defendants, acting to arrest an individual on an out-of-state warrant, were charged and convicted of Unlawful Imprisonment. *Warfield*, 103 Wn.App. at 154. The trial was a stipulated facts trial. *Id.* The uncontested facts showed the fugitive had a misdemeanor warrant out of the State of Arizona; the three defendants notified police; apprehended the fugitive and held him until police arrived and police gave their blessing for the defendants to take the fugitive out of state. *Id.* at 154-55. On appeal, the court considered whether there was sufficient evidence to show the defendants knew they did not have lawful authority. On appeal this court found the defendants did not know they did not have legal authority to restrain the fugitive and reversed the conviction. *Id.* at 159.

Warfield differs dramatically and in important ways from the case at hand. In the instant case, Stomps knew he did not have authority of law; there was sufficient evidence (and his admission on the stand) that Stomps knew the three individuals he pointed a gun at and forced to move and restrain were not the fugitive he was seeking. There was sufficient evidence and an inference that Stomps entered the residence knowing that there was a teenaged female (not his sought-after fugitive) and a young male (also not his sought-after fugitive) in the house, yet entered with the intent to gain their compliance by any means necessary, in order to unlawfully search the house for a fugitive, which if he had done his due diligence, he would have known was not at this residence. The defendants in *Warfield* did not know they did not have lawful authority to do what they did; in fact, the Kelso police showed up and gave their blessing to their actions. Here, Stomps knew what he did was wrong. He hid his badge, he did not wear the “bail bondsman” sign on the front of his vest, and he was angry young adults were not following his commands. He then entered with the intent to intimidate and scare them into complying with his demands. This was terrifying for those three young adults. The invasion into the Waleske family home was not sanctioned by law, and Stomps knew that.

If a bail bondsman had the right to hold up any person in his quest to find a fugitive, a bail bondsman could hold up every pedestrian on a street corner looking for a fugitive he believes takes the 8a.m. bus at 10th street. This is simply not the type of behavior our law allows. The jury properly found that Stomps intended to threaten and use fear of deadly force against Tayler, Quincy and Nathan. He pointed a gun at them; they were scared and followed his directions. He then forced them to move from the stairs to the living room and forced them to lie down, all while pointing a gun at them. The Sheriff's deputy then saw him through the door pointing his gun in the vicinity where the three victims were lying down. He intended to enter and knew he was restraining and pointing his gun at three people who were not his fugitive and over whom he had no legal authority. RP 279. He entered intending to use his gun to obtain compliance from the victims as he was already upset they did not comply with his demand to open the door. The jury made reasonable and rational inferences from the evidence. The evidence clearly shows Stomps committed the crimes of Burglary in the First Degree, Kidnapping in the Second Degree, and Assault in the Second Degree. Stomps' claim of insufficient evidence fails.

CONCLUSION

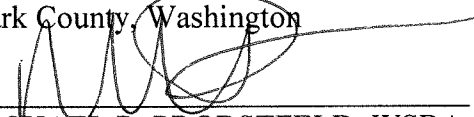
Stomps' argument that there was not sufficient evidence to convict him of Burglary in the First Degree, Kidnapping in the Second Degree, and Assault in the Second Degree fails. Stomps was convicted upon sufficient evidence. The convictions should be affirmed.

DATED this 17th day of February, 2016.

Respectfully submitted:

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By:


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CLARK COUNTY PROSECUTOR

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