SUPREME COURT NO. _____



NO. 39658-4-III

SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JAIME LEYVA BLANCO,

Petitioner.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CHELAN COUNTY

The Honorable Travis C. Brant & Kristin M. Ferrera, Judges

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# PETITION FOR REVIEW

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## A. PETITIONER AND COURT OF APPEALS DECISION

Petitioner Jaime Leyva Blanco (Leyva) seeks review of the Court of Appeals' June 12, 2025 unpublished opinion ("Op."), which is appended to this brief.

## B. ISSUE PRESENTED

Where there is no express jury unanimity as to an alternative means of committing a crime, an appellate court will only uphold a conviction for that crime if sufficient evidence supports each alternative. Mr. Leyva was charged with and convicted of two alternative means crimes. As to those crimes, the State presented insufficient evidence of at least one of the alternative means upon which the jury was instructed. Further, the prosecutor's comments in closing argument did not satisfy the State v. Carson, 184 Wn.2d 207, 228 n.15, 357 P.3d 1064 (2015) election requirement that the prosecutor not only mention the means on which it is relying but also disclaim reliance on other means. Do the two convictions therefore violate Mr. Leyva's rights to jury unanimity?

C. STATEMENT OF THE CASE[1]

On February 25, 2022, Leyva's wife, I.T., was in her living room with her children when Leyva came to the door. 1RP 176. A no-contact order prevented Leyva from contacting I.T. 1RP 162; Ex. 1.

I.T. dialed the police.[2] 1RP 176. When Leyva saw that I.T. was on the phone, he forced the door open and entered the residence. He took I.T.'s cellular phone and put it on top of her sweater. Dispatch tried to call I.T. back, but she could not answer. 1RP 177. Leyva pushed I.T. against the sofa, leaving a

[1] The verbatim reports consist of three volumes, two of which consist of several dates that overlap chronologically. Therefore, 1RP refers to the multi-date volume with the first chronological date (first date 4/27/2022); 2RP refers to the other multi-date volume (first date 5/9/2022); and 3RP refers to the 6/13/2022 volume.

[2] When considered in the context of the responding officer's testimony, it appears likely that I.T. was attempting to call the 9-1-1 dispatch system, despite translated testimony colloquially referencing "police."

small mark on I.T.'s arm near her elbow. 1RP 178; Ex. 6, 7. Leyva's presence scared I.T.'s and Leyva's kids. 1RP 178.

Leyva eventually left, and I.T. completed her call. RP 178. A Chelan County deputy was dispatched to the scene, but Leyva had left. Meanwhile, I.T.'s friend had arrived. 1RP 155-56. The deputy noted damage to the trim around the door and a red mark on I.T.'s arm. 1RP 160, 164-65; Ex. 3-5.

The State charged Leyva with first degree burglary (Count 1), felony violation of a no-contact order (Count 2), fourth degree assault (Count 3), third degree malicious mischief (Count 4), and interfering with domestic violence reporting (Count 5). CP 13-16. The State alleged the first four charges were "domestic violence" offenses committed against a family member. CP 13-15.

The testimony at trial was as described above. A jury found Leyva guilty as charged. CP 53-60.

Leyva appealed, arguing in part that the State presented insufficient evidence on each alternative means of committing

no-contact order violation, Count 2, and interfering with domestic violence reporting, Count 5. Further, because there was no express jury unanimity, and any attempted election by the prosecutor was inadequate, the verdicts as to each violated Leyva's right to a unanimous jury verdict.

The Court of Appeals disagreed, finding the election adequate as to both challenged convictions. Op. at 1, 6-9. Although Leyva's briefing discussed it, the Court of Appeals' decision does not address this Court's Carson decision. Mr. Leyva now asks that this Court grant review under RAP 13.4(b)(1).

D. REASONS REVIEW SHOULD BE GRANTED

**Review is appropriate under RAP 13.4(b)(1) because the Court of Appeals' decision conflicts with this Court's decision in State v. Carson regarding prosecutorial election in closing argument.**

Under RAP 13.4(b)(1), this Court will accept review of a decision where the Court of Appeals' decision conflicts with a

decision of this Court. Here, the Court of Appeals' decision conflicts with this Court's Carson decision, warranting review.

"Under article I, section 21 of the Washington Constitution, criminal defendants have a right to a unanimous jury verdict." State v. Owens, 180 Wn.2d 90, 95, 323 P.3d 1030 (2014); accord Ramos v. Louisiana, 590 U.S. 83, 93 (2020) (Sixth Amendment right to jury unanimity applies to states). When the accused is charged with, and the jury is instructed on, an alternative means crime, this includes the right to unanimous jury determination as to the *means* of commission. Owens, 180 Wn.2d at 95. If, as here, the State presents insufficient evidence to support any of the instructed means, a particularized expression of jury unanimity is required—or, as will be discussed below, there must be a clear prosecutorial election. Otherwise, error has occurred, and reversal is required. See State v. Ortega-Martinez, 124 Wn.2d 702, 707-08, 881 P.2d 231 (1994).

An accused person may challenge the lack of a unanimous jury verdict for an alternative means crime for the first time on

appeal. RAP 2.5(a)(3); State v. Peterson, 174 Wn. App. 828, 849 n. 5, 301 P.3d 1060 (2013). When a defendant challenges the sufficiency of the evidence as to a means of committing a crime, they admit the truth of the State's evidence and all reasonable inferences that can be drawn therefrom. See State v. Homan, 181 Wn.2d 102, 106, 330 P.3d 182 (2014). This Court will find evidence is sufficient only where a rational trier of fact could have found each of the alternative means beyond a reasonable doubt. Ortega-Martinez, 124 Wn.2d at 708. This Court reviews the sufficiency of the evidence de novo, as a question of constitutional law. State v. Berg, 181 Wn.2d 857, 867, 337 P.3d 310 (2014). The presumptive remedy for a violation of the right to a unanimous jury verdict in this context is reversal. State v. Woodlyn, 188 Wn.2d 157, 165-67, 392 P.3d 1062 (2017); see id. at 166 ("[i]t would be a curious rule if insufficient evidence of the alternative both gives rise to the error and renders it harmless."). "Absent some form of colloquy or explicit

instruction, [this Court] cannot assume that every member of the jury relied solely on the supported alternative." Id.

Here, Count 2, felony violation of a no-contact order, is an alternative means crime. As the jury was instructed, the relevant alternative means by which an order violation may be elevated from misdemeanor to a felony are (a) that the conduct was an assault, or (b) the conduct was reckless and created a substantial risk of death or serious physical injury to another person. See State v. Joseph, 3 Wn. App. 2d 365, 369, 416 P.3d 738 (2018) (addressing jury unanimity in context of same two alternative means); former RCW 26.50.110(4).[3]

The trial court instructed the jury that the State must prove the first three elements of the crime as well as "any of the alternative elements (4)(a) or (4)(b) . . . beyond a reasonable doubt." The court further instructed the jury that "the jury need

[3] The statute was repealed and recodified effective July of 2022, five months after date of the charged crimes. Laws 2021, ch. 215, § 170.

not be unanimous as to which of alternatives (4)(a) or (4)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt." CP 39 (Instruction 17).

In Joseph, on appeal, the defendant argued insufficient evidence supported the second alternative, reckless conduct that created a substantial risk of death or serious physical injury to another. There, Joseph pushed his partner to the couch, picked up a hammer, waved it around, and tapped the partner's forehead with the hammer's flat end. Joseph, 3 Wn. App. 2d at 368. The State conceded—and the Court of Appeals agreed—that the evidence that Joseph waved a hammer around and tapped his partner on the head was insufficient to demonstrate that he recklessly "created a substantial risk of death or serious physical injury." Id. at 370. The court therefore reversed Joseph's conviction.

Here, the situation is similar. The testimony (and photo exhibits) established that Leyva forced a door open, by damaging

the trim, and pushed his wife onto the couch, leaving a small mark on her skin. 1RP 174-78. There was insufficient evidence that Leyva's actions created a substantial risk of death or serious physical injury. If, as the Court of Appeals found in Joseph, a rational juror could not find beyond a reasonable doubt that swinging a hammer near a person's head created a substantial risk of death or serious physical injury, then damaging door trim and pushing a person onto a couch also do not create a substantial risk of death or serious physical injury.

The Court of Appeals does not dispute this premise. But it found no constitutional violation occurred because the prosecutor elected which act it was relying on, thereby avoiding any unanimity error. Op. at 8-9 Indeed, if the State clearly identifies the specific means on which the charge is based, verbally explaining its election to the jury during closing argument may suffice. This is true in both alternative means and "multiple acts" cases. See State v. Smith, 17 Wn. App. 2d 146, 159, 484 P.3d 550 (2021) (alternative means decision relying on

Carson, 184 Wn.2d at 227, which discussed prosecutor's election in the context of multiple alleged acts).

But, as this Court stated in Carson, "essential to a clear election [is that] State must not only discuss the acts on which it is relying, it must in some way disclaim its intention to rely on other acts." Carson, 184 Wn.2d at 228 n.15.

In Smith, which the Court of Appeals purports to rely on here, the prosecutor clearly elected the "remain unlawfully" "alternative"[4] for residential burglary, disclaiming any reliance on unlawful entry. Smith, 17 Wn. App. 2d at 159-60. See Op. at 8. This satisfies the Carson standard.

The problem with the Court of Appeals' reliance on Smith is that the prosecutor in the present case in no way disclaimed the second alternative and therefore did not successfully elect a means. The prosecutor argued in closing:

[4] That court in any event found that residential burglary was not an alternative means crime. Smith, 17 Wn. App. 2d at 157.

> Moving on to the second charge, Felony Violation of a Court Order. This is Instruction No. 17.
>
> That on or about the 25th of February, there was an existing no-contact order restraining the defendant. The defendant knew about the order; that he knowingly violated it; *and the defendant conducted an assault*. That no-contact order is in evidence.
>
> You'll have a chance to review it, when you deliberate. That order has a line, indicating the defendant acknowledges receiving a copy of the order, with a signed signature spot. You'll also have the chance to review the clerk minutes from that day the order was filed, indicating that [Leyva] was present in court, when that was entered.
>
> He knew he wasn't supposed to be in contact with her. From the testimony of [I.T.], he did come into contact with her, *and he did assault her*. All the elements are met.

1RP 225-26 (emphasis added). The prosecutor in closing *mentioned* the first alternative means, assault, but did not make it clear that that was the only means jurors could rely on despite the court's written instructions. And, although, under the law, the burden to show prejudice is not Leyva's, there is a good chance jurors relied on the unsupported alternative, considering

that neither "physical injury" nor "serious physical injury" was defined for the jury. CP 20-52.[5]

A lack of evidence as to an alternative does not assure unanimity. The State presented insufficient evidence of the second alternative for felony no-contact order violation; yet based on the language of the alternative the jury may have been confused. And the prosecutor's closing argument was not the type of clear election envisioned by this Court in Carson. The constitutional requirement of jury unanimity is not assured. Thus, reversal is required. Woodlyn, 188 Wn.2d at 165-67.

The conviction for interfering with domestic violence reporting, Count 5, must be reversed for similar reasons. The crime of interfering with reporting a crime of domestic violence

[5] "Serious physical injury" is not defined by statute, but "physical injury" is. RCW 9A.04.110(4)(a). See State v. Rich, 184 Wn.2d 897, 904, 365 P.3d 746 (2016). "Physical injury" is "physical pain or injury, illness, or an impairment of physical condition." RCW 9A.04.110(4)(a). And WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1993) defines "serious" as "[g]rave in disposition, appearance, or manner." Id. at 2073.

may be committed by alternate means. See State v. Nonog, 145 Wn. App. 802, 812-13, 187 P.3d 335 (2008), aff'd, 169 Wn.2d 220, 237 P.3d 250 (2010).[6] A person may interfere with domestic violence reporting by committing a crime of domestic violence and preventing or attempting to prevent the complainant from: (1) calling a 911 emergency communication system; (2) obtaining medical assistance; or (3) making a report to any law enforcement official. RCW 9A.36.150(1)(a), (b). "Interfering with reporting of a crime of domestic violence must . . . be regarded as an alternative means crime because the statute does not criminalize all acts that might appear to constitute interfering with the reporting of domestic violence. Interference is culpable only when a victim or witness is trying to report the crime to a

[6] The Court of Appeals' Nonog decision nonetheless found no error because even though the State presented no evidence supporting two of the three means, and a definitional instruction listed all three, the *to-convict* instruction only listed one possible means. Nonog, 145 Wn. App. at 813.

*particular entity*." Nonog, 145 Wn. App. at 813 (emphasis added).[7]

Here, the trial court instructed the jury on all three means. CP 49 (Instruction 25). So, for the conviction to withstand unanimity challenge, each means must be supported by sufficient evidence. But, consistent with Nonog, there was no evidence that I.T. (who was trying to call 9-1-1) was attempting to obtain medical assistance or to make a report to a law enforcement official. See Nonog, 145 Wn. App. at 813 ("[W]hen Estandian tried to call 911[, Nonog] took her cell phone and threw it against the wall. There was no evidence that he tried to prevent her from obtaining medical assistance or making a report to law enforcement[.]").

Thus, a rational juror could not have found beyond a reasonable doubt that the State proved those means.

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[7] Another Division Three panel recently disagreed with Division One's Nonog decision and held that interfering with domestic violence reporting is *not* an alternative means crime. State v. Buck, ___ Wn. App. 2d ___, 567 P.3d 54, 57 (2025).

And, as for whether the prosecutor's election assured unanimity, contrary to the Court of Appeals decision in the present case,[8] the answer is no. The State argued

> The fifth charge, Interfering in the Reporting of Domestic Violence.
>
> This is Instruction No. 26 on your packet. On or about February 25th, the defendant assaulted [I.T.]; that she's a household or family member; that *he prevented or attempted to prevent her from calling 911*.
>
> We've already [addressed] the assault a few times. And [I.T.] testified that [Leyva] is her husband. That constitutes a family member.
>
> You've heard, from [I.T.], that, when [Leyva] arrived at her residence, *she began to call the police*.
>
> Inquired about the phone, pushed her, and she was unable to use the phone or answer it. All the elements are met.

1RP 227 (emphasis added). Here, the prosecutor did not disclaim the medical assistance or "making a report" alternatives and otherwise failed to make a clear election. See Carson, 184 Wn.2d

[8] Op. at 9-10.

at 228 n.15. Again, unanimity was not assured, and reversal is required. Woodlyn, 188 Wn.2d at 165-67.

In summary, the Court of Appeals decision conflicts with this Court's decision in Carson. The prosecutor's attempts to elect means in closing were not clear enough to avoid constitutional error. This Court should grant review and reverse Counts 2 and 5.

## E. CONCLUSION

Mr. Leyva respectfully requests that this Court grant review under RAP 13.4(b)(1).

**I certify this document is prepared in 14-point font and contains 2,683 words excluding RAP 18.17 exceptions.**

DATED this 4th day of July, 2025.

Respectfully submitted,

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# APPENDIX

**FILED**
**June 12, 2025**
**In the Office of the Clerk of Court**
**WA State Court of Appeals,**
**Division III**

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

| | | |
|---|---|---|
| STATE OF WASHINGTON,<br><br>Respondent,<br><br>v.<br><br>JAIME LEYVA-BLANCO,<br><br>Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | No. 39658-4-III<br><br><br><br><br><br>UNPUBLISHED OPINION |

FEARING, J. — Jaime Leyva-Blanco (Leyva) appeals his convictions for felony violation of a no-contact order and interfering with domestic violence reporting. He contends the State failed to introduce evidence supporting one or more alternate means of each crime. Because the State during closing elected the alternate means on which it relied to convict Leyva of each crime and because substantial evidence supports the elected means, we reject Leyva's appeal from his convictions. We strike, however, some of his community custody conditions and his victim penalty assessment.

## FACTS

This prosecution arises from the relationship between Jaime Leyva-Blanco and his wife, Isabel Trevino, a pseudonym. The two married in 2006. On October 25, 2021, the Chelan County Superior Court issued a one-year domestic violence no-contact order against Leyva and protecting Trevino.

On February 25, 2022, Jaime Leyva- Blanco traveled to Isabel Trevino's house and approached her door. Trevino reposed in the living room with her children. She

attempted to call 911. Leyva saw Trevino speaking on the phone, forced open the home's front door, and entered the home. Leyva seized the phone from Trevino and prevented her from answering dispatch when it called her back later. Leyva pushed Trevino against the couch, leaving a mark on her arm. When Leyva exited the home, Trevino phoned 911 again.

PROCEDURE

The State of Washington charged Jaime Leyva-Blanco with first degree burglary, felony violation of a no-contact order, fourth degree assault, third degree malicious mischief, and interfering with reporting domestic violence. The first four charges carried domestic violence aggravators. An accused may commit both felony violation of a no-contact order and interfering with reporting domestic violence by alternative means.

The trial court instructed the jury on the elements of felony violation of a no-contact order:

> INSTRUCTION NO. 17
>
> To convict the defendant of the crime of felony violation of a court order as charged in Count II of the information, each of the following five elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about the 25th day of February, 2022, there existed a no-contact order applicable to the defendant;
>
> (2) That the defendant knew of the existence of this order;
>
> (3) That on or about said date, the defendant knowingly violated a provision of this order;
>
> (4) That

> (a) the defendant's conduct was an assault, or
>
> (b) the defendant's conduct was reckless and created a substantial risk of death or serious physical injury to another person; and
>
> (5) That the defendant's act occurred in the State of Washington.
>
> If you find from the evidence that elements (1), (2), (3) and (5), and any of the alternative elements (4)(a) or (4)(b) have been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty. To return a verdict of guilty, the jury need not be unanimous as to which of alternatives (4)(a) or (4)(b) has been proved beyond a reasonable doubt, as long as each juror finds that at least one alternative has been proved beyond a reasonable doubt.
>
> On the other hand, if, after weighing all the evidence, you have a reasonable doubt as to any one of the five elements, then it will be your duty to return a verdict of not guilty.

Clerk's Papers (CP) at 39-40. Thus, the jury could find Jaime Leyva-Blanco committed the crime by either assaulting Isabel Trevino or engaging in reckless conduct that created a substantial risk of death or serious physical injury to Trevino.

The trial court instructed the jury on the elements of the crime of interfering with reporting domestic violence:

> INSTRUCTION NO. 26
>
> To convict the defendant of the crime of Interference with the Reporting of a Domestic Violence Offense as charged in Count V of the information, each of the following elements of the crime must be proved beyond a reasonable doubt:
>
> (1) That on or about the 25th day of February 2022, the defendant committed the crime of assault in the fourth degree against [Isabel Trevino];
>
> (2) That on that date the defendant was a family or household member of [Isabel Trevino];

> (3) That the defendant prevented or attempted to prevent [Isabel Trevino] from calling a 911 emergency communication system or obtaining medical assistance or making a report to any law enforcement officer; and
>
> (4) That the acts occurred in the State of Washington.
>
> If you find from the evidence that each of these elements has been proved beyond a reasonable doubt, then it will be your duty to return a verdict of guilty.
>
> On the other hand, if, after weighing all of the evidence, you have a reasonable doubt as to any one of these elements, then it will be your duty to return a verdict of not guilty.

CP at 49. Thus, the jury could find Jaime Leyva-Blanco committed the crime by any of a number of means: preventing Isabel Trevino from calling 911, attempting to prevent Trevino from calling 911, preventing Trevino from obtaining medical assistance, attempting to prevent Trevino from obtaining medical assistance, preventing Trevino from reporting to law enforcement, or attempting to prevent Trevino from reporting to a law enforcement officer.

During trial closing, the State argued to convict Jaime Leyva-Blanco with felony violation of a no-contact order:

> That on or about the 25th of February, there was an existing no-contact order restraining the defendant. The defendant knew about the order; that he knowingly violated it; and the defendant conducted an assault.
>
> That no-contact order is in evidence. You'll have a chance to review it, when you deliberate. That order has a line, indicating the defendant acknowledges receiving a copy of the order, with a signed signature spot.
>
> You'll also have the chance to review the clerk minutes from that day the order was filed, indicating that the defendant, Mr. Leyva-Blanco,

> was present in court, when that was entered.
>
> He knew he wasn't supposed to be in contact with her. From the testimony of [Isabel Trevino], he did come into contact with her, and he did assault her.
>
> All the elements are met.

3 Report of Proceedings (RP) at 225-26. During summation, the State argued to convict Leyva with interfering with reporting domestic violence:

> On or about February 25th, the defendant assaulted [Isabel Trevino] that she's a household or family member; that he prevented or attempted to prevent her from calling 911.
>
> We've already hit on the assault a few times. And [Isabel Trevino] testified that Jaime is her husband. That constitutes a family member.
>
> You've heard, from [Isabel Trevino], that, when Mr. Leyva-Blanco arrived at her residence, she began to call the police.
>
> Inquired about the phone, pushed her, and she was unable to use the phone or answer it.
>
> All the elements are met.

3 RP at 227.

The jury found Jaime Leyva-Blanco guilty of all five charged crimes. When sentencing Leyva, the trial court imposed community custody conditions that included:

> [O]bey all criminal laws and shall not associate with persons known to have a felony criminal background or known to use controlled substances without the prior approval of the Department of Corrections;
>
> . . . .
>
> [O]btain a substance use disorder evaluation within 60 days of sentencing and shall successfully complete any recommended treatment/counseling program including but not limited to outpatient treatment for a period not to exceed two years, or inpatient treatment not to exceed the standard range for this offense.

> [S]ubmit to random urinalysis, BAC, or other tests at the direction of his/her community corrections officers and at the defendant's own expense.

CP at 63. The court also imposed a $500 victim penalty assessment (VPA). The judgment and sentence reflect that the court found Leyva indigent.

## LAW AND ANALYSIS

### Sufficiency of Evidence for Alternate Means Crimes

Jaime Leyva-Blanco argues that insufficient evidence supports the discrete alternative means of committing a felony no-contact order violation and interfering with domestic violence reporting, counts 2 and 5. He further argues that the trial court did not require the jury to state on which alternate means it based its convictions, and the State never elected an alternate means. Therefore, he suffered an unconstitutional verdict.

In response, the State contends it sufficiently elected the means on which it sought a conviction for each crime. The State relies on *State v. Nonog*, 145 Wn. App. 802, 187 P.3d 335 (2008) to support its argument.

Article I, section 21 of the Washington Constitution guarantees a criminal defendant the right to a unanimous jury verdict. *State v. Joseph*, 3 Wn. App. 2d 365, 369, 416 P.3d 738 (2018); *State v. Sandholm*, 184 Wn.2d 726, 732, 364 P.3d 87 (2015). The law labels a crime that the accused may commit in more than one way as an "alternate means" crime. The question arises in an alternate means prosecution of whether each

juror must agree to the same means by which the accused committed the crime. In an alternative means case, the jury need not express unanimity of the means by which the crime was committed if the State supported each alternative means with sufficient evidence. *State v. Joseph*, 3 Wn. App. 2d 365, 369 (2018). This court will reverse a conviction when insufficient evidence supports at least one of the alternative means submitted to the jury. *State v. Joseph*, 3 Wn. App. 2d 365, 369 (2018); *State v. Sandholm*, 184 Wn.2d 726, 732 (2015).

The State may avoid a challenge to the sufficiency of evidence for an alternate means crime by electing the means on which it relies. *State v. Smith*, 17 Wn. App. 2d 146, 158, 484 P.3d 550 (2021). Stated differently, if the State expressly elects to rely on only one alternative means to obtain a conviction, the State need not present sufficient evidence of all alternative means in order to avoid violating the defendant's right to a unanimous verdict. *State v. Smith*, 17 Wn. App. 2d 146, 159 (2021). The State need not formally plead or incorporate the election into the information. *State v. Smith*, 17 Wn. App. 2d 146, 159 (2021). An election suffices if the State tells the jury, during closing, the means on which it relies. *State v. Smith*, 17 Wn. App. 2d 146, 159 (2021).

*State v. Smith*, 17 Wn. App. 2d 146 (2021), illustrates the State's election of an alternate means to commit a crime. A jury convicted Michael Smith of residential burglary with sexual motivation and indecent liberties with forcible compulsion. On

appeal, Smith argued the verdict violated his constitutional right to jury unanimity because insufficient evidence supported a finding he unlawfully entered the victim's house. The State argued residential burglary is not an alternative means crime. This court agreed. This court added that, assuming residential burglary to be an alternative means crime, the State had elected one means and substantial evidence supported that means. This court wrote:

> Here, the prosecutor made a clear election as to the acts constituting residential burglary. During closing argument, the prosecutor specifically stated:
>
> > The first element is that on November 17, 2017 the defendant entered or remained unlawfully in her house. *And here the issue is that he remained unlawfully. It wasn't his entry that was unlawful*. He'd come over like that before. *But it was his remaining after she told him to leave. That's the part that's unlawful*.
> >
> > The second element is that the entering or remaining was with the intent to commit a crime against a person or property inside.
> >
> > So *remaining unlawfully*, your instructions 13 tells you about that. *When someone is not invited—not invited to stay, that is enough*. The defendant was not invited. She repeatedly told him to leave. *He was remaining unlawfully*.

*State v. Smith*, 17 Wn. App. 2d 146, 159–60 (2021).

Felony Violation of a No-Contact Order

To repeat, the jury could have found Jaime Leyva-Blanco committed the crime of felony violation of a no-contact order by finding either Leyva assaulted Isabel Trevino or

engaged in reckless conduct that created a substantial risk of death or serious physical injury to Trevino. According to Leyva, the State offered insufficient evidence to support the second of the alternate means for committing the crime—he engaged in reckless conduct that created a substantial risk of death or serious physical injury. The State responds that it elected to proceed only on the first of the two alternate means—assault. Leyva impliedly concedes that evidence supported an assault. He also concedes the State mentioned assault in its closing argument, but contends this court cannot be assured that the jurors understood they could not base their verdict on reckless conduct.

In its closing remarks, the State only contended that Jaime Leyva-Blanco assaulted Isabel Trevino. The State never suggested that Leyva engaged in reckless conduct that created a substantial risk of death or serious injury. We conclude that the State made an adequate election.

Interference with Reporting Domestic Violence

Jaime Leyva-Blanco argues that insufficient evidence supports the second and third alternative means for committing the crime of interference with reporting domestic violence—Leyva prevented or attempted to prevent Isabel Trevino from obtaining medical assistance or prevented or attempted to prevent Trevino from reporting to any law enforcement officer. We agree that the State presented no evidence to convict on these alternate means but conclude that the State elected to proceed solely on the means

of preventing or attempting to prevent Trevino from calling 911. In summation, the State expressly mentioned that Leyva prevented Trevino from calling 911. The State never asked the jury to convict on the other alternate grounds.

Community Custody Conditions

Substance Use Evaluation

Jaime Leyva-Blanco challenges the legality of the imposed community custody condition requiring that he submit to a substance use disorder evaluation and possible treatment. He asserts that the State never established that substance abuse caused any of the crimes. The State concedes.

RCW 9.94A.703(3) gives trial courts authority to order certain discretionary community custody conditions, some of which must be crime-related. Under RCW 9.94A.703(3)(c), a trial court possesses discretion to order that an offender "[p]articipate in crime-related treatment or counseling services." Under RCW 9.94A.607(2):

> A trial court may order participation in rehabilitative programs, including chemical dependency evaluation or treatment, when the court finds a defendant has a chemical dependency that contributed to the offense.

A community custody condition is crime-related if the crime was "reasonably related" to the condition. *State v. Irwin*, 191 Wn. App. 644, 656-59, 364 P.3d 830 (2015); *State v. Kinzle*, 181 Wn. App. 774, 785, 326 P.3d 870 (2014).

We agree with both parties that the evidence does not support a finding that any substance abuse contributed to the crimes. The superior court should strike the community custody condition requiring an evaluation and possible treatment.

Urinalysis

Jaime Leyva-Blanco challenges the legality of the imposed community custody condition requiring blood alcohol testing. He emphasizes that the court did not impose any alcohol prohibition that would necessitate monitoring. Leyva also contends the condition violates his constitutional right to privacy. The State concedes the court should remove the condition. We agree. Alcohol or other substance use did not contribute to the crimes.

Association with Felons

Jaime Leyva-Blanco next attacks, on two grounds, the community custody condition preventing association with felons and drug users. First, the condition does not relate to his crimes as required by RCW 9.94A.703(3)(b). Second, the condition impermissibly interferes with his constitutional right to freedom of association. The State concedes. We agree.

The sentencing court possesses authority under RCW 9.94A.703(3)(b) to order that an offender refrain from direct or indirect contact with a class of individuals, but only to the extent the prohibition relates to a crime. *State v. Riles*, 135 Wn.2d 326, 350, 957

P.2d 655 (1998), *abrogated on other grounds by State v. Valencia*, 169 Wn.2d 782, 792, 239 P.3d 1059 (2010); *State v. Munoz-Rivera*, 190 Wn. App. 870, 893, 361 P.3d 182 (2015). Jaime Leyva-Blanco's association with other individuals did not contribute to his crimes.

Victim Penalty Assessment

Jaime Leyva-Blanco asks us to strike the victim penalty assessment levied against him because of a recent change in the law that bars the assessment on indigent offenders. The State takes no position on this challenge.

A change in this state's law took effect on July 1, 2023. Courts apply a new rule for the conduct of criminal prosecutions to all cases, state or federal, pending on direct review or not yet final. *In re Personal Restraint of Eastmond*, 173 Wn.2d 632, 638, 272 P.3d 188 (2012). Beginning on July 1, 2023, Washington courts are no longer permitted to impose victim penalty assessments on a defendant "if the court finds that the defendant is indigent at the time of sentencing." *See* LAWS of 2023 ch. 1169, §§ 1, 4. Additionally, "[u]pon motion, the court must waive any crime victim penalty assessment previously imposed against an adult defendant who does not have the ability to pay. A person does not have the ability to pay if the person is indigent." *See* LAWS of 2023 ch. 1169, §§ 1, 4.

Jaime Leyva-Blanco filed his notice of appeal on June 22, 2023. Therefore, his case was pending at the time the change in the law took effect. Leyva's judgment and

sentence reflects that the trial court found him to be indigent at the time of sentencing.

We direct that the victim penalty assessment be stricken.

CONCLUSIONS

We affirm Jaime Leyva-Blanco's convictions for felony violation of a no-contact order and interference with domestic violence reporting. We remand to the superior court to strike the community custody conditions requiring a substance abuse evaluation and urinalysis and prohibiting contact with felons. We also remand for the superior court to strike the victim penalty assessment.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Fearing, J.

WE CONCUR:

Cooney, J.

Murphy, J.

## NIELSEN KOCH & GRANNIS P.L.L.C.

## July 04, 2025 - 10:37 AM

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|---|---|
| **Filed with Court:** | Court of Appeals Division III |
| **Appellate Court Case Number:** | 39658-4 |
| **Appellate Court Case Title:** | State of Washington v. Jaime Leyva Blanco |
| **Superior Court Case Number:** | 22-1-00070-9 |

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