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STATE OF WASHINGTON  
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NO. 92472-4  
COA NO. 46236-2-II  
Cowlitz Co. Cause NO. 13-1-01694-7

**SUPREME COURT OF STATE OF  
WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

**NORMAN ROONEY,**

Appellant/Petitioner.

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**RESPONSE TO PETITION FOR REVIEW**

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**RYAN JURVAKAINEN**  
Prosecuting Attorney  
**AILA WALLACE/WSBA 46898**  
Deputy Prosecuting Attorney  
Representing Respondent

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**I. IDENTITY OF RESPONDENT**

The State of Washington, by and through the Cowlitz County Prosecuting Attorney's Office, respectfully requests this Court deny review of the October 13, 2015, published opinion of the Court of Appeals in *State v. Rooney*, COA No. 46236-2-II. This decision upheld the petitioner's conviction for one count of first degree unlawful possession of a firearm.

**II. ANSWER TO ISSUES PRESENTED FOR REVIEW**

The Court of Appeals properly held that substantial evidence supported the trial court's findings that the officer was concerned for his safety when he conducted a frisk of the petitioner's pants, and that the trial court's findings of fact supported its conclusions of law.

**III. STATEMENT OF THE CASE**

In December 2013, Alexandria White was under supervision with the Department of Corrections (DOC). RP 5, CP 25. DOC required Ms. White to obey all laws and to be available for supervision as requested, including keeping DOC apprised of her current address. RP 7. On December 26, 2013, Oxford house notified Corrections officer Chris Napolitano that Ms. White had moved, thereby violating her DOC conditions. RP 7. Officer Napolitano requested and received an arrest warrant for Ms. White for violations of her community custody. RP 8-9, CP 25. On December 30, 2013, Officer Napolitano spoke to another

supervised offender, Thomas DeClue. Mr. DeClue informed Officer Napolitano he lived with Norman Rooney, Alex White, their children, and his mother. RP 8-9.

Later on December 30, 2013, DOC Officers Napolitano and Keenan Harvey went to the residence and encountered White standing in a bedroom with Rooney and her newborn child in bed. RP 12, 15, 42, 58-59. Officer Napolitano observed swords and axes on the walls and a couple knives on the shelves of the bedroom in which Rooney slept. RP 15.

White was placed under arrest. Officers Napolitano and Harvey then asked Rooney to leave the bedroom as it was going to be searched. Rooney objected to the search, but eventually got up and requested to put on pants, as he was dressed in boxer shorts. RP 22. Rooney then picked up a pair of pants, at which time Officer Napolitano informed him that the pants would be searched. RP 22, 43. Officer Napolitano was concerned that Rooney may have had a weapon in his pants, given all of the weapons in the room. RP 23, 25. Rooney then cursed and pulled the pants away from Officer Napolitano. Napolitano immediately felt what he thought was a gun in the pants. RP 23. He grabbed the gun while Rooney still had a hold of the top of the pants. He then asked Rooney if there was a gun in the pants. Rooney confirmed there was a gun and that it was his. RP 24. Rooney was

placed in cuffs by Officer Harvey. Longview Police assisted DOC and were given the gun. RP 25.

#### IV. ARGUMENT

**The Court of Appeals properly held that substantial evidence supported the trial court's findings of fact and conclusions of law; therefore, the convictions should be upheld and the petition for review should not be granted.**

RAP 13.4(b) states that a petition for review will only be accepted by the Supreme Court only if one of four conditions are met: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a decision of another division of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. Neither in the petition for review nor in the decision from the Court of Appeals are there any issues that would fall under one of the four conditions as outlined by RAP 13.4(b). The Division II Court of Appeals holding in this case is not in conflict with any decisions either the Washington Supreme Court or another division of the Court Appeals. The holding also does not raise a significant question of law or involve an issue of substantial public interest.

A trial court's denial of a motion to suppress is reviewed to determine whether substantial evidence supports the trial court's findings of fact, and whether those findings support the trial court's conclusion of law. *State v. Russell*, 180 Wn.2d 860, 330 P.3d 151 (2014). Substantial evidence is evidence that is sufficient to persuade a fair-minded person of the truth of the stated premise. In this case, Rooney challenges two of the trial court's findings – (1) that the officers saw several swords, an axe, and multiple knives, and (2) that the officer was concerned for his safety due to these weapons. However, substantial evidence supports these findings. The officer testified that he observed these weapons and that he was concerned Rooney may have a weapon in his pants due to the weapons. Therefore, there is substantial evidence supporting these findings of facts.

Furthermore, the trial court's conclusions of law were supported by the facts. A police officer does not need to be certain that a person is armed before conducting a protective frisk, and a reviewing court should not substitute an officer's judgment for their own. As the Court of Appeals stated, "A founded suspicion is all that is necessary, some basis from which the court can determine that the detention was not arbitrary or harassing." *State v. Harrington*, 167 Wn.2d 656, 222 P.3d 92 (2009). The multiple weapons in plain view gave rise to a founded suspicion that there was a gun

in Rooney's pants. The Court's finding that a frisk for weapons was proper is valid.

There is no significant question of law or public interest, and the petition should be denied.

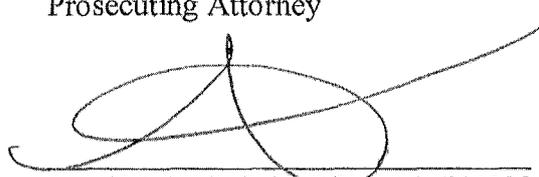
V. CONCLUSION

For the reasons stated above, Petitioner's petition for discretionary review should be denied.

Respectfully submitted this ~~25th~~ day of November, 2015.

RYAN JURVAKAINEN  
Prosecuting Attorney

By:

A handwritten signature in black ink, appearing to read 'A. Wallace', written over a horizontal line.

AILA R. WALLACE/WSBA #46898  
Deputy Prosecuting Attorney  
Representing Respondent

**CERTIFICATE OF SERVICE**

Hannah Bennett-Swanson, certifies the Response to Petition for Review was served electronically via e-mail to the following:

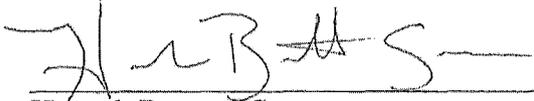
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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on November 25, 2015.

  
\_\_\_\_\_  
Hannah Bennett-Swanson

## OFFICE RECEPTIONIST, CLERK

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Attached please find the Response to Petition for Review regarding the above listed case. Feel free to contact our office if you have any questions.

Thank you,

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