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Court of Appeals  
Division II  
State of Washington  
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No. 54007-0-II

THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON, DIVISION TWO

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STATE OF WASHINGTON,

Appellant,

v.

DORCUS ALLEN,

Respondent.

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ON DISCRETIONARY REVIEW FROM THE SUPERIOR  
COURT OF THE STATE OF WASHINGTON FOR PIERCE  
COUNTY

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BRIEF OF RESPONENT

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## **A. INTRODUCTION**

Eleven years after Maurice Clemmons killed four police officers, the State continues its efforts to prosecute Dorcus Allen for those crimes. The State's initial effort resulted in acquittals on four counts of aggravated first degree murder. The jury did convict Mr. Allen of four lesser counts of murder. However, because those convictions were the product of Pierce County prosecutors' egregious misconduct, the Supreme Court reversed those convictions.

Undeterred, the State returned to Superior Court and sought to once again prosecute Mr. Allen on the charges of which he was acquitted. When the trial court rebuffed the State's effort, the State sought review. However, both this Court and the Supreme Court concluded double jeopardy protections prevented the State from ignoring the jury's acquittal.

The State again returns to this Court seeking permission to ignore the preclusive effect of the jury's acquittals. In its present motion for discretionary review, the

State again claims the Supreme Court has endorsed the State's efforts to ignore the preclusive effect of those acquittals. The State has argued the trial court rejection of the State's latest efforts was foreclosed by the Supreme Court. In fact, the Supreme Court did not previously address or endorse the State's current argument. Rather, the trial court properly applied the law and there is no basis for discretionary review.

**B. ISSUES PRESENTED**

1. The law of the case requires that where a higher court has finally decided an issue in the same litigation a lower court must adhere to that ruling. The doctrine only applies where the higher court actually considered and determined the issue. Here, a commissioner of this Court granted discretionary review only on the basis that the trial court departed from the usual course of judicial proceedings by failing to follow the law of the case as established by the Supreme Court in a prior appeal. Where the Supreme Court never addressed nor decided the present issue in any of the

prior appeals in Mr. Allen's case, the commissioner erroneously granted view on the conclusion that the trial court violated the law of the case.

2. The double jeopardy provisions of the Fifth Amendment and Article I, section 9 do not permit the State to litigate anew a factual issue which was finally determined in a previous case. Here, the prior jury acquitted Mr. Allen of aggravated first degree murder, specifically rejecting the charge that:

The victim was a law enforcement officer who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the defendant to be such at the time of the killing.

The trial court properly concluded that acquittal bars the State from asking a new jury to decide an identical element in a subsequent trial.

### **C. STATEMENT OF THE CASE**

*1. The State's egregious misconduct leads to Mr. Allen's conviction.*

Through six-week trial, the State proved beyond a reasonable doubt that Maurice Clemmons killed four police officers. But, Maurice Clemmons was dead and not on trial.

Instead, the State's proof against Mr. Allen, the person actually on trial, was substantially lacking. The State had charged Mr. Allen with four counts of aggravated first degree murder under RCW 10.95.020, and four counts of second degree murder.<sup>1</sup> CP 1-7.

Recognizing the weakness of its case, the State relied upon a misstatement of the law regarding knowledge and accomplice liability. To bridge gap in the evidence, the State presented a closing argument focused on redefining the term knowledge to include what Mr. Allen "should have known." *State v. Allen*, 182 Wn.2d 364, 376-78, 341 P.3d 268 (2015) (*Allen I*). The State repeated numerous times Mr. Allen was

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<sup>1</sup> The trial court dismissed the four second degree counts for insufficient evidence at the close of evidence. CP 50.

guilty as an accomplice so long as the jury found “he should have known.” *Id.* That purposeful misstatement of the law led to Mr. Allen’s convictions of four counts of first degree murder. *Id.* at 380.

However, the jury acquitted Mr. Allen of the four greater counts of aggravated murder, rejecting the RCW 10.95.020 law-enforcement allegation set forth above.<sup>2</sup> CP 38-41.

Mr. Allen appealed his convictions, arguing in part the State’s egregious and repeated misconduct denied him a fair trial. The State conceded its repeated misstatements of the law were improper. *Allen I* at 374. The Supreme Court agreed and found the repeated misstatements of the law on a critical issue were “particularly egregious.” *Id.* at 380. The Court reversed the remaining convictions. No double jeopardy issue was presented to the Court.

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<sup>2</sup> In convicting Mr. Allen of first degree murder, the jury found the existence of the aggravating factor from RCW 9.94A.535(3)(v). CP 42-45.

*2. The Supreme Court rules the State cannot ignore the jury's acquittal.*

After remand to the trial court, Mr. Allen filed a motion to dismiss the RCW 10.95.020 aggravating factors on which the jury had acquitted him. *State v. Allen*, 192 Wn.2d 526, 531, 431 P.3d 117 (2018) (*Allen II*). The trial court granted that motion. *Id.* The State sought discretionary review arguing double jeopardy protections did not apply to the jury's acquittal.

On discretionary review, first this Court and then the Supreme Court rejected the State's claims and affirmed the trial court. *Id.* at 531, 544. The Supreme Court held that because the aggravating factors are elements of the offense of aggravated first degree murder, the Fifth Amendment Double Jeopardy Clause barred retrial. *Id.* at 544.

*3. The State again argues the acquittal does not prevent it from relitigating the same issue.*

On remand, Mr. Allen filed a motion to strike the allegation of an aggravator from the information that mirrors the one on which the jury acquitted him. CP 187-91. The trial

court agreed with Mr. Allen, concluding double jeopardy protections require striking the aggravator. CP 169.

The State again seeks discretionary review, once again contending double jeopardy provisions do not apply.

**D. ARGUMENT**

*1. Review was improvidently granted; this matter should be dismissed.*

Because it believes it is necessary for this Court to address the question of whether a mandatory minimum sentence of a mere 100 years is sufficient, or whether Mr. Allen should instead face the possibility of hundreds of more years in prison, the State has sought discretionary review in this case.

The commissioner properly concluded the State fell far short of showing review of this purely academic question met the criteria of either RAP 2.3(b)(1) or (2). Ruling at 9, n.10. Nonetheless, the commissioner granted review, concluding the trial court departed from the usual course of judicial proceedings. Ruling at 8.

Specifically, the commissioner reasons the “law of the case” doctrine precluded the trial court from applying the Double Jeopardy Clause in this case. But *Allen I* did not involve any double jeopardy claim. Instead, the Court granted review only three issues:

## II. ISSUES

A. Did the prosecuting attorney commit prejudicial misconduct by misstating the standard upon which the jury could convict Allen?

B. Does the aggravator found in RCW 9.94A.535(3)(v), which is silent as to accomplice liability, apply to a defendant charged as an accomplice?

C. Was Allen prejudiced when spectators at trial wore T-shirts bearing the names of the murdered officers?

*Allen I*, 182 Wn.2d at 373.

An opinion that “does not discuss a legal theory does not control a future case in which counsel properly raises that legal theory.” *State v. Granath*, 200 Wn. App. 26, 35, 401 P.3d 405 (2017), *affirmed*, 190 Wn.2d 548, 415 P.3d 1179 (2018).

The Supreme Court has explained:

Where the literal words of a court opinion appear to control an issue, but where the court did not in fact address or consider the issue, the ruling is

not dispositive and may be reexamined without violating stare decisis in the same court or without violating an intermediate appellate court's duty to accept the rulings of the Supreme Court. "An opinion is not authority for what is not mentioned therein and what does not appear to have been suggested to the court by which the opinion was rendered." *Continental Mutual Savings Bank v. Elliot*, 166 Wash. 283, 300, 6 P.2d 638 (1932).

*In re the Personal Restraint of Stockwell*, 179 Wn.2d 588, 600, 316 P.3d 1007 (2014). Thus, because *Allen I* did not concern any double jeopardy claims, it did not determine the issue.

The commissioner's ruling correctly notes *Stockwell* and *Grantham* concern stare decisis and not the impact of an appellate decision in the same case - the law of the case. But that distinction does not matter.

The law of the case doctrine is similarly unconcerned simply with the words of a prior opinion. Instead, the doctrine only applies where the prior opinion "explicitly or implicitly consider[ed]" an issue. *State v. Trask*, 98 Wn. App. 690, 695, 990 P.2d 976 (2000). "In its most common form, the law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding

will be followed in subsequent stages of the same litigation.” *Roberson v. Perez*, 156 Wn.2d 33, 41, 123 P.3d 844 (2005). The doctrine does not apply if the question was not considered in the first appeal. *Columbia Steel Co. v. State*, 34 Wn.2d 700, 706, 209 P.2d 482 (1949). Thus, just as the doctrine of stare decisis, the law of the case doctrine only applies where the court actually considered the issue.

The portion of *Allen I* which the State and commissioner point to concerned whether an aggravating factor could rely upon accomplice liability. The Court concluded it could and mentioned Mr. Allen could be retried. *Allen I*, 182 Wn.2d at 382-83. But the Court never addressed any double jeopardy claim much less resolved the issue presented here. Only by taking the Court’s words out of context and ignoring the absence of any double jeopardy issue before the Court could the commissioner conclude *Allen I* established the law of the case on the present double jeopardy issue.

Indeed, it is ironic that the State suggests *Allen I* resolved any double jeopardy claim, as *Allen II* was necessitated by the State's blind insistence that double jeopardy did not apply to any aggravators at all. Moreover, the present issue arises because of the preclusive effect of the acquittal affirmed in *Allen II*, and thus it certainly could not have been a part of the holding of *Allen I*.

Nonetheless, the State continues to argue that the law of case, supposedly established by *Allen I*, precluded the trial court's ruling. Although the State does so only half-heartedly, relegating this argument to the last few pages of its brief. If the State truly believed *Allen I* actually established the law of this case with respect to the double jeopardy claim, the State's substantive double jeopardy argument would be short, as it could just point that analysis *Allen I*. One could reasonably assume the State would at least cite to *Allen I* in its double jeopardy argument. Yet the State does not once cite to *Allen I* in its double jeopardy argument. That failure readily reveals

that even the State does not really believe *Allen I* established the law of the case.

Unless this Court can find that *Allen I* established the law of the case with respect to the present double jeopardy claim, the Court must conclude review was improvidently granted. The law of the case doctrine can only apply where an issue has been addressed and finally resolved in the litigation. The Supreme Court did not address this issue in either previous case, and thus, there were no prior holdings for the trial court to “ignore.” The trial court was not bound to follow a nonexistent holding. The trial court properly applied existing double jeopardy cases.

There is no basis for discretionary review and the matter must be dismissed.

*2. The trial court correctly ruled the State cannot ignore the prior jury’s verdict.*

The Fifth Amendment Double Jeopardy Clause applies to state prosecutions by virtue of the Due Process Clause of the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 795-96, 89 S. Ct. 206, 23 L. Ed. 2d 707 (1969).

[T]he Clause embodies two vitally important interests. The first is the “deeply ingrained” principle that “the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.” *Green v. United States*, 355 U.S. 184, 187–188, 78 S. Ct. 221, 2 L. Ed. 2d 199 (1957). The second interest is the preservation of “the finality of judgments.” *Crist v. Bretz*, 437 U.S. 28, 33, 98 S. Ct. 2156, 57 L. Ed. 2d 24 (1978).

*Yeager v. United States*, 557 U.S. 110, 117–18, 129 S. Ct. 2360, 174 L. Ed. 2d 78 (2009) (some internal citations omitted).

The Double Jeopardy Clause of the Fifth Amendment bars (1) prosecution for the same offense after acquittal, (2) prosecution for the same offense after conviction, and (3) multiple punishments times for the same offense. *Brown v. Ohio*, 432 U.S. 161, 165, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977); *North Carolina v. Pearce*, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 2d 656 (1969), *overruled on other grounds by*, *Alabama v. Smith*, 490 U.S. 794, 109 S. Ct. 2201, 104 L. Ed.

2d 865 (1989). For this purpose, lesser and greater offenses are the same offense. *Brown*, 432 U.S. at 168-69. Thus, an acquittal on a greater offense bars an effort to try a person for a lesser offense. *Id.* This is precisely what the trial court held here.

**a. The jury acquitted Mr. Allen of aggravated first degree murder finding he did not know the victims were law enforcement officers. The State cannot submit that element to jury again.**

A jury unanimously acquitted Mr. Allen on each of the four counts of aggravated first degree murder. Specifically, the jury unanimously answered “No” to the allegation that

The victim was a law enforcement officer who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the defendant to be such at the time of the killing.

CP 38-41.

After the State, nonetheless, sought to retry Mr. Allen on those four counts, the Supreme Court made clear that double jeopardy protections barred such efforts. *Allen II*, 192 Wn.2d at 544. An acquittal on a count not only bars retrial on

that count, it also bars trial on lesser counts. *Brown*, 432 U.S. at 168-69. “Where the same act or transaction constitutes a violation of two distinct statutory provisions” the two offenses constitute the same offense unless “each provision requires proof of a fact which the other does not.” *Blockburger v. United States*, 284 U.S. 299, 304, 52 S. Ct. 180 76 L. Ed. 2d 306 (1932). That is the case here.

Now accepting as it must that the jury’s acquittal of aggravated first degree murder bars it from retrying that offense, the State seeks to retry Mr. Allen on first degree murder with an aggravating factor that

The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim’s status as a law enforcement officer is not an element of the offense.

RCW 9.94A.535(3)(v).

The language of this aggravator mirrors that of the factor on which Mr. Allen was acquitted. *Compare* CP 38-45. Neither factor requires proof of an additional fact not required

by the other. Because they are the same for purposes of double jeopardy the jury's prior acquittal bars the State's efforts to try Mr. Allen anew on the law enforcement aggravator in RCW 9.94A.535(3)(v). The trial court committed no error in properly applying the law.

Each aggravator requires the jury find Mr. Allen knew the victims were law enforcement officers. But, the State contends that because RCW 10.95.030(1) uses the phrase "was known or reasonably should have been known" whereas RCW 9.94A.535(3)(v) simply says "knew" the aggravators require different mental states. This is a remarkable claim for the State to make in light of the history of this case.

"Knowledge" means a person "is aware of a fact, facts, or circumstances . . . or . . . has information which would lead a reasonable person in the same situation to believe that facts." RCW 9A.08.010(1)(b). However under either definition "The jury must still find subjective knowledge." *State v. Shipp*, 93 Wn.2d 510, 517, 610 P.2d 1322 (1980). "To pass

constitutional muster, the jury must find actual knowledge but may make such a finding with circumstantial evidence.” *Allen I*, 182 Wn.2d at 374 (citing *Shipp*, 93 Wn.2d at 516).

It is precisely because of the State’s repeated misstatements that “should have known” was an alternative to actual knowledge that led to Mr. Allen’s convictions following the first trial. It is because of that egregious and prejudicial misstatement of the law that the Supreme Court unanimously reversed those convictions. The State’s willingness to ignore the history of this case aside, the mental state required for each of the aggravators is precisely the same.

Next the State erects yet another, but even more complex, strawman. The State contends that because the aggravator in RCW 10.95.030 was previously a basis to seek the death penalty, and because the Eighth Amendment limits the death penalty to those who are major participants in the crime, the aggravator necessarily requires a major-participation finding in cases not involving the death penalty.

Tellingly, the State does not cite a single case that has actually held that to be the case. The imposition of a life sentence does not trigger the same Eighth Amendment concerns as the death penalty. *See e.g. Johnson v. Mississippi*, 486 U.S. 578, 584, 108 S. Ct. 1981, 100 L. Ed. 2d 575 (1988) (“The fundamental respect for humanity underlying the Eighth Amendment’s prohibition against cruel and unusual punishment gives rise to a special ‘need for reliability in the determination that death is the appropriate punishment.’”)

In any event, while a major-participant finding is required in capital cases, it is not an element of aggravated first degree murder. “Elements” are those facts that, by law, increase the penalty for a crime.” *Alleyne v. United States*, 570 U.S. 99, 103, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013). The major-participant finding does not increase Mr. Allen’ punishment.

A comparison of the statutory language of the law enforcement aggravators in RCW 9.94A.535 and RCW 10.95.030 makes clear they are the same in fact and law.

The jury's acquittal of Mr. Allen of four counts of aggravated first degree murder now bars the State's effort to try him on the lesser offense of first degree murder. *Brown*, 432 U.S. at 168-69. That is what the trial court held.

**b. Nonexistent verdicts have no impact on the double jeopardy analysis of whether the acquittals preclude the State from asking a new jury to consider the same issues rejected by the prior jury.**

The State contends the trial court's application of double jeopardy and collateral estoppel fails to give effect to the verdicts finding an aggravating factor under RCW 9.94A.535. But those verdicts no longer exist. Instead they were vacated five years ago in *Allen I*.

In *Allen I*, the Court found the State's egregious misconduct, purposefully and repeatedly misstating the law, permeated the State's argument to the jury. The Court found "the record reveals the jury was influenced by the improper statement of law during deliberations." *Allen I*, 182 Wn.2d at 378. The Court recognized "the jury was influenced" by the purposeful and flagrant misconduct. *Id.* at 380. Thus, the

Supreme Court vacated those verdicts. Accordingly, the trial court did not ignore, disturb nor fail to give weight to these “verdicts.” Those verdicts do not currently exist.

By contrast, the verdicts of acquittal remain in full force. More specifically, the jury’s rejection of the State’s charge that Mr. Allen knew the victims of the crimes were law enforcement officers remains intact. Despite that specific rejection, the State contends nothing bars it from submitting substantially the same question to a new jury. The State is wrong.

The State relies principally on *State v. Wright*, 165 Wn.2d 783, 203 P.3d 1027 (2009). Brief of Respondent at 7. In *Wright* the appellants were each charged with a single count of second degree murder. *Id. at 789-90*. In each case, the juries were instructed on the same single statutory alternative of second degree murder and convicted. *Id.* After, that alternative was deemed legally unavailable by the Supreme Court, and both convictions were overturned. *Id. at 790*. The State then retried each defendant on different

theories of homicide; in one case a different alternative of second degree murder and, in the other, manslaughter. *Id.*

In *Wright*, neither appellant was acquitted of anything, a critical distinction which the State simply ignores. Instead, in *Wright*, the only verdicts returned by the jury were reversed on appeal. In that scenario, the Court concluded there was no acquittal which could bar retrial. 165 Wn.2d at 793-94.

Here, there are acquittals from the initial trial. CP 38-41. The State has yet to identify a case which requires the trial court to ignore those acquittals. The trial court cannot.

**c. The trial court properly concluded the State is estopped from attempting to relitigate and issue already rejected by the first jury.**

The constitutional guarantee against double jeopardy “surely protects a man who has been acquitted from having to ‘run the gauntlet’ a second time.” *Ashe v. Swenson*, 397 U.S. 436, 446, 90 S. Ct. 1189, 25 L. Ed. 2d 469 (1970). Collateral estoppel “is an integral part of the protection against double jeopardy.” *Harris v. Washington*, 404 U.S. 55, 56-57, 92 S. Ct.

183, 184, 30 L. Ed. 2d 212 (1971). “It means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties.” *Ashe*, 397 U.S. at 443.

The doctrine of collateral estoppel generally bars a party from litigating a factual question if that factual issue was decided adversely to the party in a previous proceeding. *State v. Williams*, 132 Wn.2d 248, 254, 937 P.2d 1052 (1997). Importantly, Washington courts have applied a narrower standard than federal courts, requiring four specific criteria be satisfied:

(1) the issue decided in the prior adjudication must be identical with the one presented in the second; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea of collateral estoppel is asserted must have been a party or in privity with a party to the prior litigation; and (4) application of the doctrine must not work an injustice.

*In re the Personal Restraint of Moi*, 184 Wn.2d 575, 580, 360 P.3d 811, 813 (2015) (citing *Williams*, 132 Wn.2d at 254). The

United States Supreme Court has never required an examination of potential injustice. *See Moi*, 184 Wn.2d at n.4.

*Moi* acknowledged the absence of an injustice analysis in the federal standard. *Id.* The Court expressly recognized that, if it were to rule in favor of the State and find application of the doctrine worked an injustice, *Moi* would be entitled to habeas relief. *Id.* Thus, Mr. Allen need not demonstrate application of collateral estoppel will work an injustice, only that an issue of ultimate fact was finally decided in prior litigation involving the same parties.

There is no question the same parties, the State of Washington and Mr. Allen, were involved in the former and current litigation. That litigation finally determined an issue of ultimate fact: whether

The victim was a law enforcement officer who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the defendant to be such at the time of the killing.

CP 38-41. For each of the four counts, the jury unanimously answered “No.” *Id.*

The State wishes to ask a new jury to decide whether:

The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

RCW 9.94A.535(3)(v). The language of these two elements is in all important respects identical.

Importantly, unlike the *Blockburger* test, collateral estoppel is not limited to circumstances involving the same "element." Instead, the doctrine applies where an issue of fact has previously been determined. *Williams*, 132 Wn.2d at 254. Moreover, a prosecution may be precluded even if it did not result in a final verdict of acquittal.

In *Moi*, the State charged the defendant with murder and unlawful possession of a firearm. 184 Wn.2d at 577. Prior to trial, Mr. Moi waived his right to a jury on the firearm charge. *Id.* at 578. The evidence at trial was uncontroverted that the murderer shot the victim. *Id.* The trial resulted in a hung jury on the murder count. *Id.* The trial acquitted Mr.

Moi of the firearm charge. *Id.* The State then retried Mr. Moi on the murder charge and a jury convicted him. *Id.*

The Supreme Court granted Mr. Moi's personal restraint petition concluding the acquittal on the gun possession collaterally estopped a retrial on murder. The trial court's acquittal finally determined the issue of whether Mr. Moi a gun, deciding he had not. Thus because he had not possessed the gun, Mr. Moi could not be convicted of murder by shooting someone; the same issue of fact had been decided already. *Moi*, 184 Wn.2d at 584.

*Moi* makes two points clear. First, unlike the *Blockburger* test, collateral estoppel is not limited to circumstances in which the statutory elements are the same. The murder charge in *Moi* did not include an element of use or possession of a firearm. Thus, even if the law enforcement aggravators were not identical, collateral estoppel may still apply. Second, estoppel applies even if the estopped charges have not resulted in a final verdict. In *Moi*, retrial on the murder charge was estopped even though the jury had hung

on that count at the first trial. Thus, here the doctrine applies even if there is no final verdict on the first degree murder charges.

The State has not identified a single case that requires a court to give effect to the vacated verdicts, ignore the acquittals and permit the State to retry the same question to a new jury. The trial committed no error when it concluded collateral estoppel precludes the State from submitting that issue to a new jury.

#### **E. CONCLUSION**

Discretionary review was improvidently granted in this case. The trial court did not violate the law of the case. The trial court properly struck the charged aggravator from the information. This Court should dismiss the grant of discretionary review.

Respectfully submitted this 17<sup>th</sup> day of July, 2020.



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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STATE OF WASHINGTON,	)	
	)	
Appellant,	)	
	)	NO. 54007-0-II
v.	)	
	)	
DORCUS ALLEN,	)	
	)	
Respondent.	)	

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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 17<sup>TH</sup> DAY OF JULY, 2020, I CAUSED THE ORIGINAL **BRIEF OF RESPONDENT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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TACOMA, WA 98402-2171		

**SIGNED** IN SEATTLE, WASHINGTON THIS 17<sup>TH</sup> DAY OF JULY, 2020.



X \_\_\_\_\_

**Washington Appellate Project**  
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# WASHINGTON APPELLATE PROJECT

July 17, 2020 - 4:38 PM

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**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 54007-0  
**Appellate Court Case Title:** State of Washington, Appellant v. Darcus D. Allen, Respondent  
**Superior Court Case Number:** 10-1-00938-0

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