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SUPERIOR COURT  
STATE OF WASHINGTON

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NO. 78739-5

BY C.J. HERBERT

SUPREME COURT OF THE STATE OF WASHINGTON

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In Re Personal Restraint Petition of

JOHNNY NAV,

Petitioner.

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FROM THE SUPERIOR COURT FOR KING COUNTY

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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TABLE OF CONTENTS

	Page
A. ISSUE PRESENTED.....	1
B. STATEMENT OF THE CASE.....	1
C. ARGUMENT.....	3
1. THE LEGISLATURE HAS CLEARLY STATED ITS INTENT THAT DRIVE-BY SHOOTERS SHOULD BE PUNISHED HARSHLY. ....	3
2. OTHER JURISDICTIONS ALSO PUNISH DRIVE-BY SHOOTERS HARSHLY.....	12
3. THE LEGISLATURE HAS REAFFIRMED ITS INTENT THAT FELONY MURDER MAY BE BASED ON "ANY FELONY." .....	16
D. CONCLUSION .....	20

TABLE OF AUTHORITIES

Page

Table of Cases

Washington State:

In re Personal Restraint of Andress,  
147 Wn.2d 602, 56 P.3d 981 (2002)..... 2, 9, 11, 17

In re Personal Restraint of Hinton,  
152 Wn.2d 853, 100 P.3d 801 (2004)..... 18

State v. Coe,  
109 Wn.2d 832, 750 P.2d 208 (1988)..... 19

State v. Gilmer,  
96 Wn. App. 875, 981 P.2d 902 (1999),  
rev. denied, 139 Wn.2d 1023 (2000) ..... 19

State v. Jacobs,  
154 Wn.2d 596, 115 P.3d 281 (2005)..... 9, 19

State v. Pettus,  
89 Wn. App. 688, 951 P.2d 284,  
rev. denied, 136 Wn.2d 1010 (1998) ..... 10

Other Jurisdictions:

Escutia v. State,  
277 Ga. 400, 589 S.E.2d 66 (2003)..... 16

State v. Adams,  
269 Kan. 681, 8 P.3d 724 (2000) ..... 14

State v. Lowe,  
276 Kan. 957, 80 P.3d 1156 (2003)..... 14

Ward v. State,  
271 Ga. 62, 515 S.E.2d 392 (1999)..... 16

<u>Weems v. State,</u> 268 Ga. 142, 485 S.E.2d 767 (1997).....	16
---	----

Statutes

Washington State:

Laws of 1975, 1st ex. sess., ch. 338 .....	4
Laws of 1989, ch. 271 .....	5
Laws of 1994, 1st sp. sess., ch. 7 .....	6
Laws of 1995, ch. 129 .....	7, 8
Laws of 1997, ch. 338 .....	9
Laws of 2003, ch. 3 .....	16, 18
RCW 10.73.090.....	3
RCW 9.94A.515 .....	10
RCW 9A.32.030 .....	10
RCW 9A.32.050 .....	11, 17
RCW 9A.36.045 .....	2

Other Jurisdictions:

Ark. Code Ann. § 5-10-101 (1997) .....	15
Cal. Penal Code Ann. § 189 (1999) .....	15
Cal. Penal Code Ann. § 190 (1999) .....	15
Ga. Code Ann. § 16-5-1 (2003).....	15

Ga. Code Ann. § 16-5-21 (2003).....	15
Kan. Crim. Code Ann. § 21-3401 (1995).....	14
La. Rev. Stat. Ann. § 14:30.1 (1997).....	14
Minn. Stat. Ann. § 609.185 (2003) .....	13
Minn. Stat. Ann. § 609.19 (2003) .....	13
Minn. Stat. Ann. § 609.66 (2003) .....	13
Okla. Stat. Ann. tit. 21, § 652 (2002).....	14
Okla. Stat. Ann. tit. 21, § 701.8 (2002) .....	14

**A. ISSUE PRESENTED**

A personal restraint petition is not time-barred if the conviction is invalid on its face, or if it is based on a significant change in the law material to the conviction. In these consolidated cases, filed long after the one-year time limit, the petitioners claim that their felony murder convictions are invalid under this Court's decision in In re Andress. However, the petitioners' convictions are predicated upon drive-by shooting, not second-degree assault. The legislature has clearly expressed its intent that a drive-by shooting that causes death should be punished as murder. Should these personal restraint petitions be dismissed as untimely?

**B. STATEMENT OF THE CASE**

In 1996, petitioner Johnny Nav and several of his friends attended a party in south King County. Nav and his friends, who were gang members, started flashing gang signs at rival gang members at the party, and tensions quickly escalated. Nav and his friends decided to leave. As the hostilities continued, Nav and his friends got into their van and began driving away. Nav, who was seated just behind the driver, stuck his arm out the window of the moving vehicle and fired several shots while numerous people were standing outside. James Taupule was shot in the face and killed.

Topelagi Siva and Robert Herman were also shot, but they survived.<sup>1</sup>

After the shooting, Nav was charged with second-degree felony murder predicated upon assault, as well as two counts of first-degree assault. Nav negotiated a plea agreement with the State, and pled guilty to second-degree felony murder predicated upon first-degree reckless endangerment and one count of second-degree assault.<sup>2</sup>

Many years after his convictions were final, Nav filed a personal restraint petition in the Court of Appeals claiming that his second-degree murder conviction was invalid under this Court's decision in In re Personal Restraint of Andress, 147 Wn.2d 602, 56 P.3d 981 (2002). Nav's petition was consolidated with that of Jacob Bowman, a Whatcom County petitioner making the same claim with respect to the predicate felony of drive-by shooting.<sup>3</sup>

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<sup>1</sup> A detailed statement of the facts of the case is set forth in the certification for determination of probable cause, which is attached as an appendix to this brief.

<sup>2</sup> The information, amended information, and statement of defendant on plea of guilty are attached as appendices to the State's Response to Personal Restraint Petition, No. 55488-3-1, which was filed in the Court of Appeals on February 16, 2005.

<sup>3</sup> As will be discussed in detail below, first-degree reckless endangerment is the same crime as drive-by shooting. RCW 9A.36.045. Therefore, in the interests of brevity and clarity, the predicate crime at issue will be referred to as "drive-by shooting" unless otherwise specified.

The Court of Appeals dismissed both petitions in an unpublished decision. In re Personal Restraint of Bowman and Nav, Nos. 53250-2-I & 55488-3-I, slip op. (filed 4/3/06). The court concluded that the petitions were time-barred because Andress is not a change in the law material to a felony murder conviction predicated upon drive-by shooting rather than second-degree assault. Id.

C. **ARGUMENT**

Nav and Bowman argue that their felony murder convictions are facially invalid under In re Andress. They are mistaken. Nav's and Bowman's murder convictions are facially valid. Furthermore, Andress is not a significant change in the law material to these convictions because Andress does not apply to felony murder predicated upon drive-by shooting. Therefore, these petitions are untimely under RCW 10.73.090, and the Court of Appeals correctly concluded that they should be dismissed.

1. **THE LEGISLATURE HAS CLEARLY STATED ITS INTENT THAT DRIVE-BY SHOOTERS SHOULD BE PUNISHED HARSHLY.**

Nav and Bowman argue that there is no meaningful distinction between a drive-by shooting and a generic second-degree assault, and that this Court should expand the scope of In

re Andress for this reason. This argument is simply incorrect.

Unlike second-degree assault, the drive-by shooting statute proscribes very specific, inherently life-threatening conduct that the legislature has repeatedly identified as worthy of harsh punishment. Accordingly, Andress does not apply here because the legislative history of drive-by shooting demonstrates that the legislature intends drive-by killings to be punished as murder.

As enacted in 1975, the reckless endangerment statute provided as follows:

(1) A person is guilty of reckless endangerment when he recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment is a gross misdemeanor.

Laws of 1975, 1st ex. sess., ch. 338. In 1989, however, the legislature recognized the need to single out drive-by shooting as a separate, specific crime due to the increasing frequency of drive-by shootings in communities across the state in connection with the sale and distribution of illegal drugs:

The legislature finds that increased trafficking in illegal drugs has increased the likelihood of "drive-by shootings." It is the intent of the legislature . . . to categorize such reckless and criminal activity into a

separate crime and to provide for an appropriate punishment.

Laws of 1989, ch. 271, § 108. Accordingly, the legislature created the new felony offense of first-degree reckless endangerment in order to proscribe drive-by shootings with a specific criminal statute:

(1) A person is guilty of reckless endangerment in the first degree when he or she recklessly discharges a firearm in a manner which creates a substantial risk of death or serious physical injury to another person and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm to the scene of the discharge.

(2) A person who unlawfully discharges a firearm from a moving motor vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

(3) Reckless endangerment in the first degree is a class C felony.

Laws of 1989, ch. 271, § 109. For purposes of the Sentencing Reform Act (SRA), first-degree reckless endangerment was designated as a level II offense. Laws of 1989, ch. 271, § 102. The former version of reckless endangerment was recodified as second-degree reckless endangerment, which remained a gross misdemeanor. Laws of 1989, ch. 271, § 110.

Just five years later, during the first extraordinary session of 1994, the legislature made many substantial changes to Washington's criminal code in order to address the increasing problem of gun violence. Laws of 1994, 1st sp. sess., ch. 7. In enacting these changes, the legislature expressed its clear intent that violent crime, and gun violence in particular, had to be addressed in order to lessen its terrible impact on the community:

The legislature finds that the increasing violence in our society causes great concern for the immediate health and safety of our citizens and our social institutions. Youth violence is increasing at an alarming rate and young people between the ages of fifteen and twenty-four are at the highest risk of being perpetrators and victims of violence. Additionally, random violence, including homicide and the use of firearms, has dramatically increased over the last decade.

The legislature finds that violence is abhorrent to the aims of a free society and that it can not be tolerated. State efforts at reducing violence must include changes in criminal penalties, reducing the unlawful use of and access to firearms, increasing educational efforts to encourage nonviolent means for resolving conflicts, and allowing communities to design their prevention efforts.

Laws of 1994, 1st sp. sess., ch. 7, § 101. In order to address the increasing problem of gun violence, the legislature also stated its specific intent to "increase the severity and certainty of punishment for youth and adults who commit violent acts[.]" Id. Accordingly,

among many other changes, the legislature found it necessary to increase first-degree reckless endangerment from a class C felony to a class B felony, and to raise it from a level II offense to a level V offense for purposes of the SRA. Laws of 1994, 1st sp. sess., ch. 7, §§ 510, 511.

During the very next regular session in 1995, the legislature made even more changes to the criminal code. Once again, the legislature strongly stated its intent to punish gun crimes harshly, finding that "[a]rmed criminals pose an increasing and major threat to public safety and can turn any crime into serious injury or death." Laws of 1995, ch. 129, § 1. Furthermore, the legislature saw a need to "[d]istinguish between the gun predators and criminals carrying other deadly weapons," and to "[b]ring accountability and certainty into the sentencing system by tracking individual judges and holding them accountable for their sentencing practices in relation to the state's sentencing guidelines for serious crimes." Id. Accordingly, among many other amendments, the legislature again raised the seriousness level of first-degree reckless endangerment and designated it as a level VII offense for purposes of the SRA. Laws of 1995, ch. 129, § 3. Moreover, the legislature required that records be kept regarding each sentence imposed for first-degree

reckless endangerment and other armed crimes in order to "compile a yearly and cumulative judicial record of each sentencing judge in regards to his or her sentencing practices[.]" Laws of 1995, ch. 129, § 6.

In addition to providing for more serious penalties for drive-by shooting as a stand-alone crime, the 1995 legislature also added three new aggravating circumstances, including drive-by shootings, to the list of factors that could elevate a premeditated first-degree murder to an aggravated murder – the most serious crime under Washington law. The title of this enactment is telling with respect to the legislature's intent: "DEATH PENALTY AUTHORIZED FOR DRIVE-BY SHOOTERS, MURDERS FOR GROUP MEMBERSHIP, AND RESIDENTIAL BURGLARS WHO KILL." Laws of 1995, ch. 129, § 17. The new aggravating circumstance of drive-by shooting closely mirrored the statutory language of first-degree reckless endangerment:

The murder was committed during the course of or as a result of a shooting where the discharge of the firearm . . . is either *from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge*[.]

Id. (emphasis supplied).

Finally, just two years later in 1997, the legislature changed the name of the stand-alone crime from "reckless endangerment in the first degree" to "drive-by shooting," and redesignated the gross misdemeanor of second-degree reckless endangerment as simply "reckless endangerment." Laws of 1997, ch. 338, §§ 44, 45. In so doing, the legislature made the name of the crime -- "drive-by shooting" -- far more descriptive of the conduct proscribed.<sup>4</sup>

It is axiomatic that this Court's primary objective in construing any statute is to give effect to the legislature's intent. State v. Jacobs, 154 Wn.2d 596, 600, 115 P.3d 281 (2005). In Andress, the Court concluded that the legislature did not intend for second-degree assault to serve as a predicate for second-degree felony murder, due in part to the "undue harshness" of the resulting punishment in proportion to the conduct at issue. In re Andress, 147 Wn.2d at 615-16. However, the legislative history of drive-by shooting and related statutes amply demonstrates that the legislature specifically intends to punish this particular conduct very harshly indeed.

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<sup>4</sup> While this statutory change does not apply to Nav's crime, which was committed in 1996, it can be considered by this Court as part of the overall legislative history of the statute in question and as further evidence of legislative intent.

In the course of just six years, from 1989 to 1995, the legislature created a new felony proscribing drive-by shootings, increased its classification from a C felony to a B felony, and raised its seriousness level from II to VII – *three levels higher than second-degree assault*. See RCW 9.94A.515 (listing second-degree assault as a level IV offense). At each step along the way, the legislature has clearly and repeatedly expressed its strong condemnation of gun violence and its intent to punish this type of conduct severely. Indeed, the legislature has provided that drive-by shooters who commit premeditated murders may be subject to the ultimate penalty -- death.<sup>5</sup>

In light of this legislative history, and in light of the specific and inherently life-threatening conduct the drive-by shooting statute proscribes, it strains reason to suggest that the legislature would not have intended for drive-by shooting to serve as a predicate for second-degree felony murder, but intended instead for drive-by

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<sup>5</sup> Moreover, a drive-by shooter who causes a death "[u]nder circumstances manifesting an extreme indifference to human life" may be prosecuted for first-degree murder, even if the death was not intended. RCW 9A.32.030(1)(b); see also *State v. Pettus*, 89 Wn. App. 688, 951 P.2d 284, *rev. denied*, 136 Wn.2d 1010 (1998) (drive-by shooter who fired repeatedly from a moving car in a residential neighborhood manifested extreme indifference to human life). Accordingly, it would make no sense to conclude that the legislature did not intend for drive-by shooters to be prosecuted for, at a minimum, second-degree felony murder.

shooters to be prosecuted only for manslaughter. Furthermore, such an argument flies in the face of the fact that the legislature was certainly aware that the second-degree murder statute provided that "*any felony*" could serve as the predicate for felony murder when it created a new felony proscribing drive-by shootings in 1989. See RCW 9A.32.050(1)(b). In sum, this Court's conclusions in Andress regarding disproportionate punishment for felony murder based on second-degree assault are inapplicable to drive-by shooting because the legislature has repeatedly expressed its intent to punish drive-by shooters severely.

Furthermore, this Court's other concerns regarding second-degree assault as a predicate for felony murder as expressed in Andress are absent here as well. In Andress, the Court concluded that the language of the felony murder statute dictating that a killing must occur "in the course of and in furtherance of" a felony was rendered meaningless where second-degree assault was the predicate because an assault is never independent from the homicide itself. In re Andress, 147 Wn.2d at 610. Thus, the Court concluded that the legislature could not have intended for felony murder to be based on second-degree assault. Id. In contrast, drive-by shooting involves conduct – using a vehicle, transporting

the firearm, the shooter, or both, discharging the firearm, and causing a risk of death or injury – that evinces a felonious design separate and distinct from the homicide. See State's Supplemental Brief, In re Bowman. Accordingly, the "in furtherance of" language of the felony murder statute retains its meaning where drive-by shooting is the predicate felony.

The legislature's intent is clear: to punish drive-by shooters harshly, and to punish drive-by killings as murder. This Court should reject Nav's and Bowman's arguments, and dismiss their petitions.

**2. OTHER JURISDICTIONS ALSO PUNISH DRIVE-BY SHOOTERS HARSHLY.**

As demonstrated above, Washington's legislature has determined that drive-by shooters should be punished severely due to the undeniable fact that drive-by shootings pose a grave risk to human life and the safety of the community as a whole. Thus, it is not surprising that legislatures in other jurisdictions have reached similar conclusions, and have also determined that drive-by shooters should be punished severely. A sampling of statutes from other jurisdictions demonstrates widespread condemnation of drive-

by shootings and a consistent policy to provide severe sanctions for killings committed in the course of drive-by shootings.<sup>6</sup>

For example, in Minnesota, a person who kills another person in the course of committing a drive-by shooting is guilty of second-degree felony murder, regardless of the perpetrator's intent with respect to the killing. This crime is punishable by up to 40 years in prison. Minn. Stat. Ann. § 609.19(1)(2) (2003). The stand-alone crime of drive-by shooting upon which this statute is based provides for punishment of up to ten years in prison if the shooter fires at a person, at another occupied vehicle, or at an occupied building. Minn. Stat. Ann. § 609.66(1e) (2003). Furthermore, a person who commits an *intentional* killing in the course of a drive-by shooting in Minnesota is guilty of *first-degree* murder. This crime carries a mandatory life sentence. Minn. Stat. Ann. § 609.185(3) (2003).

Louisiana also provides that a killing that occurs in the course of a drive-by shooting should be punished as second-degree murder. No intent to kill is required. La. Rev. Stat. Ann. §

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<sup>6</sup> The survey of the law as set forth in this section is a sampling of drive-by shooting statutes in a few other states. It is not an all-inclusive survey of the law in all 50 states.

14:30.1(A)(2) (1997). The penalty for this crime is life without the possibility of parole. La. Rev. Stat. Ann. § 14:30.1(B) (1997).

Kansas punishes as first-degree murder any killing that occurs during the commission of, an attempt to commit, or flight from any "inherently dangerous felony." Kan. Crim. Code Ann. § 21-3401(b) (1995). Kansas courts acknowledge that this law applies to a killing committed in the course of a drive-by shooting. State v. Lowe, 276 Kan. 957, 80 P.3d 1156 (2003); State v. Adams, 269 Kan. 681, 8 P.3d 724 (2000).

In Oklahoma, the second-degree murder statute encompasses killings committed during an act "imminently dangerous to another and evincing a depraved mind," and killings occurring during the commission of any felony not enumerated in the first-degree murder statute. Okla. Stat. Ann. tit. 21, § 701.8(1) & (2) (2002). The use of a vehicle to facilitate the discharge of a firearm "in conscious disregard for the safety of others" is a separate offense that can support a felony murder charge under the previous statute, and which carries a penalty of up to 20 years in prison as a stand-alone crime. Okla. Stat. Ann. tit. 21, § 652(B) (2002).

Arkansas specifically provides that a person who "purposely discharges a firearm from a vehicle" at a person, an occupied vehicle, or an occupied building, and who thereby causes death under circumstances "manifesting extreme indifference to the value of human life" has committed capital murder. The only punishments available for this crime are life without parole or the death penalty. Ark. Code Ann. § 5-10-101(10) (1997).

In California, "any murder which is perpetrated by means of discharging a firearm from a motor vehicle" with intent to cause death is classified as first-degree murder. Cal. Penal Code Ann. § 189 (1999). In addition, a person who causes a death while committing a drive-by shooting with the intent to cause injury is guilty of second-degree murder, and is subject to an enhanced sentence of 20 years to life. Cal. Penal Code Ann. § 190(c) (1999).

In Georgia, the crime of aggravated assault includes an alternative means for "discharging a firearm from within a motor vehicle toward a person[.]" Ga. Code Ann. § 16-5-21(a)(3) (2003). Furthermore, the felony murder statute punishes as murder any killing that occurs in the commission of a felony. Ga. Code Ann. § 16-5-1(c) (2003). Georgia's courts acknowledge that drive-by killings are properly punished as felony murder. See, e.g., Escutia

v. State, 277 Ga. 400, 589 S.E.2d 66 (2003); Ward v. State, 271 Ga. 62, 515 S.E.2d 392 (1999); Weems v. State, 268 Ga. 142, 485 S.E.2d 767 (1997).

This brief survey demonstrates that Washington is hardly alone in its condemnation of drive-by shooters, and of drive-by shooters who cause death in particular. There are clear policy reasons to condemn such behavior and to punish it harshly, and legislatures across the country have done just that. Indeed, it is self-evident that drive-by shooting is inherently dangerous behavior that threatens both intended targets and innocent bystanders alike. Accordingly, this Court should soundly reject Nav and Bowman's request to label their conduct as mere manslaughter.

**3. THE LEGISLATURE HAS REAFFIRMED ITS INTENT THAT FELONY MURDER MAY BE BASED ON "ANY FELONY."**

Immediately after Andress was decided, the legislature amended the felony murder statute to reaffirm its intent that "any felony" may be used as a predicate for second-degree felony murder. Laws of 2003, ch. 3. Although this amendment postdates Nav's and Bowman's convictions for felony murder based upon drive-by shooting, this Court should still consider the 2003 amendment as further evidence of legislative intent.

This Court issued its decision in In re Andress in October 2002. The Court's decision was premised entirely upon an interpretation of legislative intent. In re Andress, 147 Wn.2d at 605. First, the Court focused upon the language in the felony murder statute as amended in 1976, dictating that a killing must occur "in the course of and in furtherance of" a felony. Id. at 609-10. The Court concluded that this language was rendered meaningless in cases where second-degree assault is the predicate crime because an assault is never independent from a homicide. Id. at 610. Second, as discussed above, the Court concluded that the use of second-degree assault as a predicate for felony murder led to unduly harsh punishment in proportion to the conduct at issue. Id. at 615-16. Therefore, the Court held that second-degree assault could not serve as the predicate for felony murder because to conclude otherwise would lead to strained, unlikely, or absurd consequences contrary to the legislature's intent. Id.

Immediately after Andress was decided, however, the legislature amended RCW 9A.32.050(1)(b) in order to clarify its intent and to specifically include assault as a predicate for felony murder. As amended, the statute provides that "any felony, including assault," may serve as the basis for felony murder. Laws

of 2003, ch. 3, § 2. The legislature disagreed with the Court's conclusion that the "in furtherance of" language leads to absurd results when an assault is the predicate felony. Accordingly, the legislature clarified that any felony resulting in a death should be punished as second-degree murder, so long as the death occurs "sufficiently close in time and proximity to the predicate felony." Laws of 2003, ch. 3, § 1. In addition, the legislature stated that this amendment was "intended to be curative," and urged this Court to apply it retroactively. Id. The legislature also included an emergency clause so that the law would take effect immediately. Laws of 2003, ch. 3, § 3.

Subsequently, this Court concluded that the 2003 amendment could not be applied retroactively to felony murder convictions predicated upon second-degree assault. In re Personal Restraint of Hinton, 152 Wn.2d 853, 861, 100 P.3d 801 (2004). This conclusion was based on the principle that, when this Court construes a statute, the Court's construction dictates what the statute has meant since the date of its enactment. Id. at 859. Unlike felony murder predicated upon second-degree assault, however, this Court has not previously construed the felony murder

statute when predicated upon a drive-by shooting.<sup>7</sup> Accordingly, although Nav's and Bowman's convictions predate the 2003 amendment, this Court should take the 2003 amendment into account as further evidence of legislative intent when considering Nav's and Bowman's arguments for an expansion of Andress to the felony of drive-by shooting.

As stated above, this Court's objective in construing a statute is to give effect to the legislature's intent. Jacobs, 154 Wn.2d at 600. When the Court decided Andress, it did not have before it the statement of legislative intent as contained in the 2003 amendment to the felony murder statute, and thus the Court resorted to principles of statutory construction in order to discern legislative intent. In these cases, however, the Court may consider the 2003 amendment as further evidence of the legislature's intent. Particularly when coupled with the legislative history of the drive-by shooting statute, the 2003 amendment to the felony murder statute

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<sup>7</sup> The Court of Appeals has previously held that first-degree reckless endangerment is a proper predicate for felony murder. State v. Gilmer, 96 Wn. App. 875, 981 P.2d 902 (1999), *rev. denied*, 139 Wn.2d 1023 (2000). Although decisions from the Court of Appeals are not binding on this Court, the legislature is presumed to be aware of past judicial interpretations of its enactments, and thus its failure to amend the felony murder statute in response to Gilmer is indicative of legislative intent as well. See State v. Coe, 109 Wn.2d 832, 846, 750 P.2d 208 (1988) (discussing the doctrine of legislative acquiescence).

reaffirms that the legislature intends for "any felony," including drive-by shooting, to serve as a predicate for felony murder. Nav and Bowman ask this Court to contravene the legislature's intent by expanding the holding of Andress to the felony of drive-by shooting. In so doing, the petitioners urge this Court to violate the primary objective of statutory construction. This Court should reject their arguments, and dismiss these petitions.

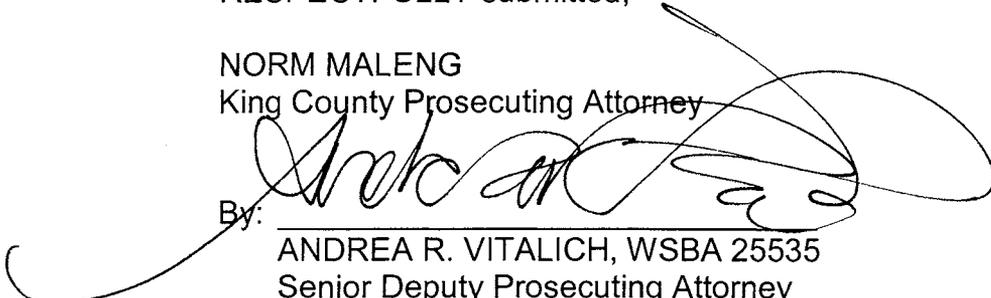
**D. CONCLUSION**

For all of the forgoing reasons, for the reasons stated in the State's supplemental brief in the Jacob Bowman case, and for the reasons stated in the decision of the Court of Appeals, this Court should affirm the Court of Appeals and dismiss these petitions.

DATED this 21<sup>st</sup> day of November, 2006.

RESPECTFULLY submitted,

NORM MALENG  
King County Prosecuting Attorney

By: 

ANDREA R. VITALICH, WSBA 25535  
Senior Deputy Prosecuting Attorney  
Attorneys for the Respondent

2 CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

3 That Dana Cashman is a Deputy Prosecuting Attorney for King  
4 County and is familiar with the police report and investigation  
5 conducted in King County Department of Public Safety case No.  
6 96-337707;

7 That this case contains the following upon which this motion  
8 for the determination of probable cause is made;

9 Defendant Johnny Nav is 16 years old and is subject to the  
10 exclusive original jurisdiction of the adult court pursuant to RCW  
11 13.04.030, as amended by the 1st Special Session, Chapter 7, Section  
12 519, 1994 laws, because he is charged with Murder in the Second  
13 Degree and two counts of Assault in the First Degree, serious  
14 violent crimes, as defined in RCW 9.94A.030(29).

15 Pursuant to RCW 13.04.030 (3), as amended by the 1st Special  
16 Session, Chapter 7, Section 519, 1994 laws, the State recommends  
17 that the Court order the defendant to be held in the King County  
18 Department of Adult Detention, subject to the Court's bail  
19 conditions in this cause.

20 In early October of 1996, Steve Williams decided to have a  
21 Halloween Party at his home, located at 14453 25th Avenue South,  
22 SeaTac, King County, Washington, on October 25, 1996. He printed up  
23 some flyers to advertise the party and posted them around the  
24 neighborhood. Williams, concerned that members of rival gangs might  
25 attend the party, included the words, "No set trippin!" on the  
flyer. This language was intended to inform party goers that all  
were welcome, but that there would be no gang rivalry tolerated at  
the party.

On the morning of the 25th, Thuy T. Nguyen (date of birth:  
9/25/76) drove her stepfather's grey and blue Ford Aerostar van to  
pick up her boyfriend Kepvong "Jeff" Kaeodala (date of birth:  
5/6/78). They spent the day together, shopping and seeing friends.  
At about 2:00 p.m. they met up with Cola Bounyarith "Cola",  
Chansomone Vongkhamphet "Looney", Thongsamouth Louangmath "Little"  
and the defendant, Johnny Nav "Jay" (date of birth: 12/29/79).  
Nguyen had seen the flyer for the party at Williams' home earlier  
that week and they discussed attending the party (none of them knew  
Williams).

At about 9:30 p.m., Jeff, Nguyen, Cola, Looney and the  
defendant got into the Nguyen's van and drove to the party. Little

1 and several other friends followed in her grey Toyota Corolla. They  
2 all parked on the street and went into the party.

3 There were about 20 to 30 people at the party when the  
4 defendant and his friends arrived. Most of those already in  
5 attendance were Samoan. People were drinking and smoking Marijuana.  
6 A Disc jockey was playing music and several people were dancing. At  
7 about 10:30 p.m. some hostility between the Samoans and the  
8 defendant and his friends, who are all Asian, began to develop.

9 The defendant, who is affiliated with the Tiny Rascals Gang, or  
10 TRG, and Looney, Jeff and Phouva Khammanivong "Pooh", who are  
11 affiliated with the Bad Side Posse, or BSP, began to display their  
12 gang signs. Several of the Samoans, who were affiliated with the  
13 Cycle Lane gang, began to display their gang signs. The Asians  
14 began to yell "South Side", because most of their gang members were  
15 active in South Seattle. The Samoans began to yell, "West Side",  
16 because most of their members are active in West Seattle. An  
17 argument erupted between one member of each group (Kosene Tulimona  
18 from the Samoans and possibly "Pooh" from the Asians) and the party  
19 moved outside to watch the two of them fight. The two removed their  
20 shirts, but one of the Samoan's calmed everyone down.

21 Jeff became concerned about the hostility that was developing  
22 and suggested to his friends that they should leave the party. They  
23 gathered to leave and walked outside to their van. As they  
24 approached the van, Priscilla Taupule overheard the defendant say  
25 several times to one of his friends, "Pass me the gun."

James Taupule (date of birth: 7/11/80), one of the Samoan's,  
who was described by several people at the party as intoxicated, was  
under the impression that someone was harassing his sister,  
Priscilla. He began to yell, "Who's messing with my sister?"  
Priscilla tried to assure him that no one was bothering her. James  
took off his shirt and approached the van ready to fight. He  
continued to yell about his sister.

Nguyen got into the driver's seat and Jeff got into the  
passenger seat of the van. Their friends opened the sliding  
passenger door to get in, but they began to argue with the group of  
Samoan's that had surrounded the van. Nguyen started the van, but  
one of the Samoan's (possibly James) reached in the van, grabbed her  
arm and told her that she wasn't going anywhere. He reached in and  
grabbed the key. Michael Paosa retrieved the key, returned it to  
Nguyen and told her to leave. Nguyen asked Jeff to drive because  
her arm hurt.

Jeff started the van and called out for his friends to get in  
the car because he was going to leave. The defendant, and others,

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of Probable Cause - 2

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1 got in. The defendant sat behind the driver's seat. They closed the  
2 door and the Samoan's began to move away from the van. Priscilla  
3 had succeeded in pulling James about a car length away from the van.  
4 Jeff began to pull away from the group, he drove down to the corner  
5 and had just begun to turn towards Pacific Highway South, when he  
6 heard gun shots.

7 Peter Neemia, who was standing on the street as the van pulled  
8 away, heard the first shot and turned to look at the van. He saw an  
9 arm, holding a gun, extended out the driver's side window of the  
10 van. A Samoan, identified only as "Matt" returned fire.

11 When Jeff and Nguyen heard the first shots, they cried out, "No  
12 Jay! Stop!" Jeff drove to a friend's house in Othello Park. He,  
13 Nguyen, Looney, Cola and the defendant went inside. No one spoke of  
14 the shooting.

15 Meanwhile, one of the shots fired by the defendant struck James  
16 Taupule in the lower lip, went through his lower teeth, and through  
17 his vertebra. Topelagi Siva (date of birth: 1/2/78), who had been  
18 standing near Taupule, was shot through the right hand and in the  
19 right calf. Robert Herman (date of birth: 6/24//74) was shot in  
20 the buttocks, the bullet went into his leg and stopped just above  
21 his knee cap. The bullet was later surgically removed. Sampson  
22 Faasuaamalie had a bullet hole in his pant leg, but he was un-  
23 injured.

24 Neighbors called 911. Medics were already on the scene when  
25 King County Police officers Lindey and Connelly arrived on the  
scene. Taupule was declared dead at the scene by the medics and his  
body was removed. The street became chaotic. The Samoan's were  
hostile and un-cooperative. Officer Connelly quickly noted the  
locations of seven 9mm casings and four .40 caliber casings in the  
street and picked them up. All of the shooting victims were taken  
to Harborview Hospital.

Detectives Garske and Mullinax went to Harborview to interview  
the surviving shooting victims and their family members. Saiti  
Mauai told Detective Garske that one of the Asian males at the party  
was armed with three guns and that this same male got into the van  
from which shots were fired. Mauai did not know the male's name,  
but took the detectives to his apartment at 7900 Rainier Avenue  
South. This is the home of the defendant. Mauai later picked the  
defendant's picture from a montage as the person who was in  
possession of the guns at the party.

In an initial statement to the police, the defendant said that  
he was not armed at the party and that he was not involved in the  
shooting. Later, after further investigation, the defendant was

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1 interviewed again. He admitted to being responsible for the  
2 shootings, but claimed that he was firing warning shots in the air  
and was not aiming at Taupule. The gun has not been recovered.

3 The defendant is a gang member. His mother reported that he  
4 often does not return home at night. The State requests bail in the  
amount of \$500,000.00 and a No-Contact Order with the State's  
5 witnesses (Thuy Nguyen and Jeff Kaeodala) and the victims Topelagi  
Siva and Robert Herman.

6 Under penalty of perjury under the laws of the State of Washington,  
I certify that the foregoing is true and correct. Signed and dated  
7 by me this \_\_\_\_ day of November, 1996, at Seattle, Washington.

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Dana Cashman, WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Suzanne Lee Elliot, the attorney for petitioner Jacob Bowman, at 1300 Hoge Building, 705 2nd Ave., Seattle, WA 98104-1741, containing a copy of the Supplemental Brief of Respondent, in IN RE PERSONAL RESTRAINT OF JACOB BOWMAN AND JOHNNY NAV, Cause No. 78739-5, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

U Brame  
Name  
Done in Seattle, Washington

11/20/06  
Date

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Jason Brett Saunders, the attorney for petitioner Johnny Nav, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Supplemental Brief of Respondent, in IN RE PERSONAL RESTRAINT OF JACOB BOWMAN AND JOHNNY NAV, Cause No. 78739-5, in the Supreme Court, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame  
Name  
Done in Seattle, Washington

11/21/06  
Date

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