

No. 97066-1

NO. 49337-3-II

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

In re the Personal Restraint of
AMANDA KNIGHT,
Petitioner

SUPPLEMENTAL BRIEF IN SUPPORT OF
PERSONAL RESTRAINT PETITION

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I. STATEMENT OF THE CASE

Petitioner Amanda Knight and three others planned a home invasion robbery. Knight and Higashi entered the home to see a ring Jim Sanders advertised for sale. RP 910-17. The ring belonged to Charlene Sanders. RP 574. Jim called Charlene downstairs. RP 578. Higashi pulled a gun on Jim and Charlene, zip tied their hands and put them on the floor.¹ Two accomplices entered the home and brought the children, Jimmy and Chandler, downstairs at gunpoint. RP 620.² While Knight went upstairs to search for more valuables, one man beat Jim Sanders and another held a gun to Charlene's head, kicked her in the head, demanding they reveal where the safe was and its combination. Charlene testified: "In the midst of the gun being held to my head and them taking things, [my wedding ring] was ripped off my finger." RP 610-11. Charlene said there was a safe or gun locker in the

¹ They were on the floor within a couple of minutes after Charlene came downstairs. RP 580.

² Chandler said the men with guns came upstairs just minutes after Charlene went downstairs; the men pulled them fast and they ran down the stairs, even skipping some steps. RP 637.

garage. The men took Jim into the laundry room toward the garage. RP 586-91.

Jim got his hands loose and started beating on one man. The man shot him. Jim went to the floor, alive but mortally wounded. Jimmy jumped on a man's back; the man threw him off and pistol whipped the boy. Another man dragged Jim into the living room, then shot him two more times. "And instantly, like, everyone was gone. ... They just ran, and then jumped in their car and drove off." RP 627-30, 918-20. "This was maybe ten minutes in total, Your Honor." RP(4/11/2011) 76.³

Items taken included Jim's and Charlene's wedding rings, the ring for sale, a PlayStation, iPod, and cell phone. RP 692, 632.

II. QUESTIONS POSED BY THE COURT'S ORDER

1. WHETHER THE STATE SPECIFIED IN OPENING STATEMENT OR CLOSING ARGUMENT WHICH ACTS OF ROBBERY IT RELIED ON TO PROVE THE FELONY MURDER. ADDITIONALLY, THE PARTIES ARE TO IDENTIFY IF THE PETITIONER ADDRESSED THE SAME ISSUES IN HER OPENING STATEMENT OR CLOSING ARGUMENT.

ANSWER: Neither party addressed in opening statements or closing arguments a specific act of

³ This was defense counsel's characterization to the court. The State did not contradict him.

robbery underlying the felony murder. To the contrary, both parties referred repeatedly to "the robbery" as one over-arching crime encompassing everything that happened in the Sanders' home. But see Answer to No. 3, below, where the State told the court, while discussing jury instructions, that the felony murder was based on the underlying robberies charged in Counts II and IV.

Prosecutor's Opening Statement. The state explained the robbers' plan "was to tie everybody up and steal the expensive stuff out of the house." RP 517. It claimed Ms. Knight stole Charlene Sanders's wedding ring she was wearing, a wallet, iPod, PlayStation, cell phone, and Jim Sanders's wedding ring. RP 524-25. It specifically tied Ms. Knight to Jim Sanders's wedding ring because she pawned it in California. RP 527. Significantly, the state repeatedly referred to one overall robbery of the household.⁴

⁴ "[S]he helped plan **this robbery**," "the other two could come in and help commit **the robbery**," RP 528; "she participated in **the robbery**," "when you participate in **a robbery** and someone ends up getting killed, you are guilty of murder." RP 529-30.

Prosecutor's Closing Argument. The State began by describing "a **scheme to rob, burglarize the Sanders family,**" again one overarching crime. RP 994. It argued again that Ms. Knight pawned Jim Sanders's ring. RP 1002. Regarding Count IV, it argued the force used to rob Charlene Sanders included initially pointing a gun at her while she was zip tied, and later beating her, kicking her in the head. RP 1003-04. It similarly noted multiple acts of force that would support the assault of Charlene. RP 1005.

Specifically, as to the murder charge, the prosecutor argued:

With respect to murder in the first degree, which is Count I in your jury instructions, again, no issue that this occurred on April 28. Charlene testified that her wedding ring was stolen, Jim's wedding ring was stolen. Higashi shot and killed James Sanders, Senior, **in the course of this robbery.** Charlene, Jimmy, and Chandler all testified that they heard the shot that caused the death of Mr. Sanders, and Mr. Sanders died when he was fatally shot through his heart and his lungs. Mr. Sanders was the victim of this crime.

RP 1007. The state continued to refer to "the robbery" or "this robbery" to describe the entire event in the Sanders' home, encompassing stealing the PlayStation and Jim Sanders's ring. RP 1009,

1010, 1016, 1017. The four people "robbed the Sanders family and murdered Mr. Sanders." RP 1018.

Defense Closing Argument. Like the prosecutor, defense counsel described "the robbery" to include all activities in the home.⁵ Referring to the murder charge, he noted Knight had to be "committing **the robbery**" and "a participant in **the robbery**." RP 1031. He got no more specific. "It's about securing the people in the house to go **rob the house**." RP 1037.

State's Rebuttal Argument. The State argued the first element of the murder charge in Instruction No. 9 was "the defendant or an accomplice committed robbery in the first degree." "And she admits that she committed **a robbery** in the first degree." RP 1047-48. "They planned **the robbery**." RP 1049. It referred again to Ms. Knight upstairs ransacking the house to steal items while violence occurred downstairs. RP 1055.

⁵ "James Sanders was shot and murdered in the course of **a robbery**." RP 1023. "Who is the only one at **the robbery** without a gun? Amanda." RP 1028.

2. WHETHER THERE IS ANY EVIDENCE IN THE RECORD TO SUPPORT THE STATE'S THEORY THAT THE FELONY MURDER OCCURRED BASED ON THE ROBBERY OF THE SAFE AND NOT OF THE RINGS AND WHETHER THE FELONY MURDER HAD AN INDEPENDENT PURPOSE FROM THE ROBBERY.

ANSWER: No one testified to who removed Jim Sanders's ring from his hand or when they did it. Ms. Sanders did not know it was taken until the police returned it to her. RP 692. It could have been taken in the kitchen or in the living room after he was shot. Thus the evidence does not separate stealing his ring from shooting him. There was no evidence to support the State's theory that the felony murder was based on robbing the safe and not taking the rings. The safe was not actually opened or stolen.

Similarly, Ms. Sanders testified someone took her wedding ring at the same time as they held a gun to her head and were taking things. RP 585-88, 610-11. Knight and Reese were upstairs taking things while the men downstairs held a gun to Ms. Sanders's head demanding to know if there was a safe. RP 919-20, 957-58. So all of the stealing and use of force happened at the same time, over a very short period of time, as part of one overarching robbery.

3. ASSUMING MORE THAN ONE ROBBERY OCCURRED, DID THE STATE ELECT WHICH ONE IT RELIED UPON TO SUPPORT THE FELONY MURDER CHARGE? DID THE PETITIONER?

ANSWER: Arguing about jury instructions and duress as a defense to murder, the prosecutor told the court:

It's not clear to the state whether the defendant is entitled to duress on **the underlying felonies of robbery, since they are the felony predicate for the felony murder.** ...

The "to convict" in this case for murder in the first degree ... it reads that the state has to prove the following elements beyond a reasonable doubt: That on or about April 28, the defendant or an accomplice committed robbery in the first degree. And she admits committing robbery in the first degree, but it doesn't say she has to be convicted of robbery in the first degree. We think it's fair if she has factually established ... a defense of duress, that she be given an instruction on duress for the underlying felonies, but not for the murder

RP(4/12/2011) 15-16. Thus the State's theory was that the robbery of Jim Sanders was a "felony predicate for the felony murder."

That "election," if it is one, was not articulated in the jury instructions. Nonetheless, it led defense counsel to argue to the jury that Ms. Knight committed the charged robberies only

under duress, so was not guilty of the felony murder based on them. RP 1031.

4. IDENTIFY ALL EVIDENCE, STATEMENTS AND ARGUMENTS OF COUNSEL, AND PLEADINGS THAT SUPPORT THAT THE ROBBERY UNDERLYING THE FELONY MURDER CHARGE HAD AN INDEPENDENT PURPOSE FROM THE ROBBERY OF THE RINGS.

ANSWER: There is no such evidence, statements, arguments of counsel at trial, or pleadings. To the contrary, as noted above in No. 3, the State based the felony murder on the robbery charges, including the robbery of James Sanders. Otherwise it repeatedly referred to a single robbery and did not focus in any way on "a robbery" separate and distinct from taking the rings.

Arguing against the defense motion to dismiss, the State again characterized the crime as one inclusive robbery.

So the state believes the defendant was present, that she was an accomplice, and that the assaults were part and parcel of the planning of **this particular robbery.**

RP(4/11/2011) 80. "Amanda was present, participated in **the robbery, the burglary.**" Id. at 81. **"With respect to the robbery, to display the firearm and take the items from the residence... ."** Id. at 82.

With respect to the murder ... What the state has to prove is that they went in there to commit **the robbery**, the murder occurred. Here there are three firearms present **during this burglary, robbery, that ultimately resulted in the murder** of James Sanders.

Id. at 82.

With respect to deliberate cruelty, the plan was to go in and zip tie Charlene Sanders and Jim Sanders and put them facedown on the floor **while stealing their belongings**. When YG and Reese entered the residence and brought the children down and put them down face down on the floor, **the robbery continued and the assault continued and the burglary continued and the murder ultimately happened ...**

Id. at 83. Cross-examining Ms. Knight, the prosecutor repeated four times: "You set up Jim Sanders for **this robbery**, didn't you?" RP 950-51.

III. CONCLUSION

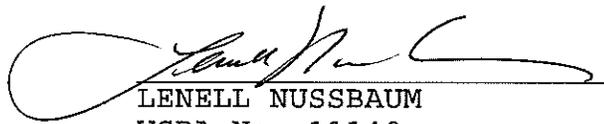
The State based the felony murder, Count I, on the robberies it charged, including specifically the robbery of James Sanders, Count II. The jury instructions permitted the jury to base its verdict on that underlying felony. Neither the evidence nor the State's argument at trial support its post-conviction theory that the felony murder occurred based on the failed effort to locate and obtain the contents of a safe.

The evidence was at best inconclusive of when Mr. Sanders's ring was taken, before or after he was shot. Thus the verdict cannot support separating those acts. This record makes the instructions and verdict ambiguous, at best, on what robbery the jury relied on in finding Ms. Knight guilty of felony murder. The rule of lenity requires merger. See Brief in Support of Personal Restraint Petition at 4-12; Reply on Personal Restraint Petition at 1-4.

Under the protection against double jeopardy this Court should merge Counts I and II, the felony murder of James Sanders based on robbery, and the robbery of James Sanders.

DATED this 6th day of October, 2017.

Respectfully submitted,



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