

No. 97066-1

NO. 49337-3

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

AMANDA KNIGHT, PETITIONER

Appeal from the Superior Court of Pierce County
The Honorable Rosanne Buckner

No. 10-1-01903-2

Supplemental Response Brief

MARK LINDQUIST
Prosecuting Attorney

By
Robin Sand
Deputy Prosecuting Attorney
WSB # 47838

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

Table of Contents

A. ARGUMENT..... 1

1. PETITIONER’S CONVICTIONS FOR THE ROBBERY
AND MURDER OF JAMES SANDERS DO NOT
VIOLATE DOUBLE JEOPARDY AND MERGE AS THE
RECORD REFLECTS THAT THERE WAS
INDEPENDENT PURPOSE TO THE ROBBERY OF
JAMES SANDERS FROM THE FELONY MURDER..... 1

B. CONCLUSION..... 6

Table of Authorities

State Cases

<i>State v. Freeman</i> , 153 Wn.2d 765, 778, 108 P.3d 753 (2005).....	1, 2, 3
<i>State v. Frohs</i> , 83 Wn. App. 803, 807, 924 P.2d 384 (1996).....	1
<i>State v. Johnson</i> , 92 Wn.2d 871, 680, 600 P.2d 1249 (1979).....	1
<i>State v. Knight</i> , 176 Wn. App. 936, 942, 309 P.3d 776 (2013).....	3, 4
<i>State v. Whittaker</i> 192 Wn. App. 395, 411, 367 P.3d 1092 (2016).....	1

A. ARGUMENT.

1. PETITIONER'S CONVICTIONS FOR THE ROBBERY AND MURDER OF JAMES SANDERS DO NOT VIOLATE DOUBLE JEOPARDY AND MERGE AS THE RECORD REFLECTS THAT THERE WAS INDEPENDENT PURPOSE TO THE ROBBERY OF JAMES SANDERS FROM THE FELONY MURDER.

Two convictions may stand even when they may formally appear to be the same crime under other tests. *State v. Freeman*, 153 Wn.2d 765, 778, 108 P.3d 753 (2005). This well-established exception to the merger doctrine requires the court to look at the facts of each case. *State v. Whittaker* 192 Wn. App. 395, 411, 367 P.3d 1092 (2016). *Whittaker* states:

“Where two offenses would otherwise merge but have ‘independent purposes or effects,’ separate punishment may be applied.” When dealing with merger issues, we look at how the offenses were charged and proved, and do not look at the crimes in the abstract.”

192 Wn. App. at 411. Stated another way, the offenses may be separate “when there is a separate injury to the ‘the person or property of the victim or others, which is separate and distinct from and not merely incidental to the crime of which it forms an element.’” *Freeman*, 153 Wn.2d at 778 (citing *State v. Frohs*, 83 Wn. App. 803, 807, 924 P.2d 384 (1996) (citing *State v. Johnson*, 92 Wn.2d 871, 680, 600 P.2d 1249 (1979))). Here, although the State did not explicitly elect which robbery supported the

felony murder, there is no legal authority which requires a specific election. On the contrary, the courts must take a “hard look at each case” based on their *facts and charged crimes*. **Freeman**, 153 Wn.2d at 774 (emphasis added).

In the present case, the State charged and proved that the robbery of the rings was separate from the felony murder of James Sanders. The felony murder of James Sanders was an injury to his person completely separate and distinct and not merely incidental to the robbery of his rings. The force used in the robbery of James Sanders was complete well before the force used in shooting James occurred. Thus, the incident of force used in the robbery of James was a completely separate “injury to ‘the person or property of the victim or others, which [wa]s separate and distinct from’” the incident of force that was used in the homicide. **Freeman**, 153 Wn.2d at 778-79. It would be different if the force or fear used to obtain or retain possession of the ring in the robbery of James was one in the same as the force used to kill James. Only if Higashi obtained or retained possession of the rings by shooting James then the injury at issue would be the same for both the robbery and the murder and the crimes would merge. Here, however, the force used in the robbery of James is “separate and distinct from and not merely incidental to the [the charged felony murder]

of which [such robbery] forms an element.” *Freeman*, 153 Wn.2d 765, 778-79. Thus, the crimes do not merge.

There is ample 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, giving an independent purpose to each robbery. This is evident from the record which shows that the robbery of the rings was complete well before the force used in shooting James occurred.

Petitioner and Higashi completed the first robbery, or unit of force, against James Sanders when they removed his wedding ring from his finger at gunpoint. RP 581, 585-586, 588, 610, 693. Petitioner and Higashi entered the house while the other co-defendants waited outside. *State v. Knight*, 176 Wn. App. 936, 942, 309 P.3d 776 (2013); RP 581, 693. Higashi pulled out a gun, ziptied James’ hands behind his back, and either he or petitioner removed Charlene and James’ wedding rings from their fingers. *Knight*, 176 Wn. App. at 942; RP 581, 693. After that initial robbery was completed, Bernard and Reese entered the house and forced James and Charlene’s two young boys downstairs at gunpoint so all four of the co-defendants could take turns gathering items from various places. *Knight*, 176 Wn. App. at 942-43; RP 585, 625, 918-19. The record reflects this occurred prior to James Sanders being shot, further highlighting the attenuation between the robbery of the ring and

the shooting of James Sanders. *Knight*, 176 Wn. App. at 942-43; RP 585, 625, 918-19.

The second robbery, or unit of force resulting in a completely separate injury, occurred when Berniard and Reese shot and killed James while trying to access the safe. After the rings were taken from Charlene and James Sanders, the co-defendants demanded access to the safe. RP 585-588, 610. Berniard forced James into the garage and shot him in the ear. *Knight*, 176 Wn. App. at 943; RP 589, 628. James' body was then drug into the living room where he was shot multiple times by either Reese or Berniard causing him to die from internal bleeding. *Knight*, 176 Wn. App. at 943; RP 603-04, 630, 641-42. On the contrary, there is no evidence or testimony that James Sanders was shot while the co-defendants tried to remove the ring from his finger.

Further, the fact that each unit of force or injury was inflicted by different co-defendants further demonstrates the separation of each unit of force and injury to James Sanders. The record reflects that Higashi and/or petitioner robbed the Sanders' of their rings, not Berniard and/or Reese. *Knight*, 176 Wn. App. at 942; RP 581, 693. In addition, Berniard and/or Reese shot and killed James Sanders while trying to gain access to the safe, not Higashi and/or petitioner. *Knight*, 176 Wn. App. at 943; RP 589, 603-604, 628, 641-642.

During closing arguments, the State made very clear that the felony murder occurred based on the robbery of the safe and not of the rings, giving an independent purpose to each robbery. The State articulated that the robbery occurred when James Sanders' ring was removed at gunpoint. RP 997-1003. The State explicitly stated that there was evidence to support the robbery conviction based on testimony that the ring was removed from James Sanders. RP 1001-1003. The State never argued that James Sanders was shot while the co-defendants attempted to get his ring.

This is further evident in the chronology of the State's presentation of evidence during closing arguments. As the State summarized the facts of the case, it first stated that "the defendant takes Charlene's ring from her finger. And Jim Sanders' ring is also stolen." RP 997. For an entire page of the transcripts, the State continued to walk the jury through the sequence of events after the robbery of the rings during the home invasion before it even mentions the safe. RP 997-999. The State then explicitly states that James Sanders was killed during the robbery of the safe. RP 999. Without ever conflating the two robberies, the State explicitly argued that the robbery occurred when the ring was removed from James Sanders' finger and that James Sanders was shot and killed during the robbery of the safe. RP 997-1003. Thus, where evidence in the record and the State's closing arguments support the State's theory that the felony murder occurred based

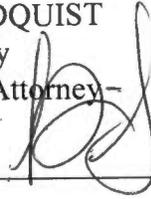
on the robbery of the safe and not of the rings, giving an independent purpose to each robbery, the crimes do not merge.

B. CONCLUSION.

The facts of the present case fall within the exception to merger doctrine as the force used in the robbery of James Sanders was separate and distinct from and not merely incidental to the murder of James Sanders. As the trial court properly found during sentencing, petitioner's convictions for the first degree felony murder and first degree robbery of James Sanders do not merge.

DATED: October 6th, 2017

MARK LINDQUIST
Pierce County
Prosecuting Attorney



Robin Sand
Deputy Prosecuting Attorney
WSB # 47838

Certificate of Service:

The undersigned certifies that on this day she delivered by ~~US~~-mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

10-6-17 
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

October 06, 2017 - 4:07 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49337-3
Appellate Court Case Title: Personal Restraint Petition of: Amanda Christine Knight
Superior Court Case Number: 10-1-01903-2

The following documents have been uploaded:

- 4-493373_Briefs_20171006160427D2716813_7708.pdf
This File Contains:
Briefs - Respondents - Modifier: Supplemental
The Original File Name was knight supp brief.pdf

A copy of the uploaded files will be sent to:

- lenell@nussbaumdefense.com

Comments:

Sender Name: Therese Kahn - Email: tnichol@co.pierce.wa.us

Filing on Behalf of: Robin Khou Sand - Email: rsand@co.pierce.wa.us (Alternate Email: PCpatcecf@co.pierce.wa.us)

Address:
930 Tacoma Ave S, Rm 946
Tacoma, WA, 98402
Phone: (253) 798-7400

Note: The Filing Id is 20171006160427D2716813