

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
5/3/2019 3:05 PM  
BY SUSAN L. CARLSON  
CLERK

No. 97066-1

(Court of Appeals No. 49337-3-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

---

In re the Personal Restraint of:  
AMANDA CHRISTINE KNIGHT,  
Petitioner.

---

RESPONSE OF AMANDA CHRISTINE KNIGHT  
TO STATE'S MOTION FOR DISCRETIONARY REVIEW

---

TIMOTHY K. FORD, WSBA #5986  
MacDONALD HOAGUE & BAYLESS  
705 2nd Avenue, Suite 1500  
Seattle, WA 98104  
(206) 622-1604

ATTORNEYS FOR PETITIONER

TABLE OF CONTENTS

	Page
FACTS AND PROCEDURAL HISTORY .....	1
GROUNDS FOR ACCEPTANCE OF REVIEW .....	5
CONCLUSION .....	9

TABLE OF AUTHORITIES

Page(s)

**FEDERAL CASES**

*Ball v. United States*,  
470 U.S. 856, 105 S.Ct. 1668, 84 L.Ed.2d 740 (1985)..... 5

*Harris v. Oklahoma*,  
433 U.S. 682, 97 S.Ct. 2912, 53 L.Ed.2d 1054 (1977)..... 6

*Hurst v. Florida*,  
136 S. Ct. 616, 193 L. Ed. 2d 504 (2016)..... 7

*Russell v. United States*,  
369 U.S. 749, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962)..... 9

*Southern Union Co. v. United States*,  
567 U.S. 343, 132 S. Ct. 2344, 183 L. Ed. 2d 318 (2012)..... 7

*Blockburger v. United States*,  
284 U.S. 299, 52 S. Ct. 180, 76 L.Ed. 306 (1932)..... 5

**STATE CASES**

*In re Knight*,  
2019 WL 1231402 (Mar. 14, 2019)..... *passim*

*State v. Farnsworth*,  
192 Wash. 2d 468, 430 P.3d 1127 (2018)..... 9

*State v. Freeman*,  
153 Wash. 2d 765, 108 P.3d 753 (2005)..... 4, 5

*State v. Kier*,  
164 Wash. 2d 798, 194 P.3d 212 (2008)..... 8

*State v. Knight*,  
176 Wash. App. 936, 309 P.3d 776 (2013)..... 1, 7

*State v. Lynch*,  
93 Wash. App. 716, 970 P.2d 769 (1999)..... 2

*State v. Recuenco*,  
163 Wash. 2d 428, 180 P.3d 1276 (2008)..... 7

*State v. Tvedt*,  
153 Wash.2d 705, 107 P.3d 728 (2005)..... 6

*State v. Whittaker*,  
192 Wash. App. 395, 367 P.3d 1092 (2016)..... 7,8

*State v. Zumwalt*,  
119 Wash. App. 126, 82 P.3d 672 (2003)..... 7

The State's Motion for Discretionary Review should be granted. Although the Court of Appeals decision challenged in the State's Motion for Discretionary Review was correct, the issues the State raises overlap with those in Ms. Knight's Motion. For the reasons set forth in Ms. Knight's Motion, she agrees those are issues warranting this Court's review.

### **FACTS AND PROCEDURAL HISTORY**

Ms. Knight agrees with the State's description of the procedural history of this case, and she acknowledges that the trial evidence would support the facts set forth in the State's Statement of Facts. The State's summary is similar to the factual statements in the Court of Appeals' opinions on Ms. Knight's direct appeal, and the decision below. *See State v. Knight*, 176 Wash. App. 936, 941-44, 309 P.3d 776 (2013); *In re Knight*, 2019 WL 1231402 (Wash. Ct. App. No. 49337-3-II, Mar. 14, 2019) [Knight MDR App. A] at slip op. 2-4. It is also consistent with the factual statement in Ms. Knight's Motion. *See Knight MDR* at 1-3.

What the State's factual statement conspicuously omits—and what we submit should control this case—is the language of the Information, the jury instructions and the verdicts that defined the crimes Ms. Knight was charged with and convicted of.

The Corrected Second Amended Information on which Ms. Knight was tried is set out in Appendix C to her Motion for Discretionary Review.

In Count I it alleged that she or an accomplice<sup>1</sup> “while committing or attempting to commit the crime of Robbery in the first or second degree, and in the course of or in furtherance of said crime or in immediate flight therefrom, did shoot James Sanders and [sic] thereby causing the death of James Sanders....” Knight MDR App. C at 1. In Count II the amended Information alleged that she committed “a crime of the same or similar character, and/or a crime based on the same conduct or on a series of acts connected together” by

unlawfully and feloniously tak[ing] personal property belonging to another with intent to steal from the person or in the presence of James Sanders, the owner thereof or a person having dominion and control over said property, against such person’s will by use or threatened use of immediate force, violence, or fear of injury to James Sanders, said force or fear being used to obtain or retain possession of the property or to prevent or overcome resistance to the taking ....

Knight MDR App. C at 2. Neither of the two counts described or specified the personal property that was taken from Mr. Sanders or otherwise distinguished the robbery alleged in Count One from the robbery alleged in Count Two.

Neither did the jury instructions on the murder and robbery counts. They said nothing specific about the property that was taken from Mr. Sanders or the force or violence that was used to take it. Instruction 9 said:

---

<sup>1</sup>The Information said Ms. Knight “did shoot” James Sanders, although it was undisputed that Mr. Sanders was shot by one of her accomplices. *See State v. Lynch*, 93 Wash. App. 716, 722, 970 P.2d 769 (1999) (Information need not specify whether defendant is charged as principal or accomplice).

To convict the defendant of the crime of Murder in the First Degree as charged in Count I, each of the following elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about April 28, 2010, the defendant or an accomplice committed Robbery in the First Degree;

(2) That the defendant or an accomplice caused the death of James Sanders, Sr. in the course of or in furtherance of such crime; [and]

(3) That James Sanders, Sr. was not a participant in the crime of Robbery in the First Degree ...

See Appendix H<sup>2</sup>, attached hereto. Instruction 13 said:

To convict the defendant of the crime of Robbery in the First Degree as charged in Count II, each of the following six elements of the crime must be proved beyond a reasonable doubt:

(1) That on or about the 28th day of April, 2010 the defendant or an accomplice unlawfully took personal property from the person or in the presence of another (James Sanders);

(2) That the defendant intended to commit theft of the property;

(3) That the taking was against the person's will by the defendant's or an accomplice's use or threatened use of immediate force, violence or fear of injury to that person or to the person or property of another,

(4) That the force or fear was used by the defendant or an accomplice to obtain or retain possession of the property or to prevent or overcome resistance to the taking; and

(5) (a) That in the commission of these acts the defendant or an accomplice was armed with a deadly weapon; or

---

<sup>2</sup> For clarity, the Appendices to this Response are lettered consecutively to those attached to Ms. Knight's Motion for Discretionary Review.

(b) That in the commission of these acts the defendant or an accomplice inflicted bodily injury ....

*Id.* The Verdict forms said only that Ms. Knight was “Guilty” of these crimes and she or an accomplice was armed with a firearm (and that the aggravating factor allegations WERE not true). See Appendix I.

Nothing in the Amended Information or the jury instructions or the verdicts supports the State’s contention “that James Sanders was robbed of two different types of his property at two different times.” State’s MDR at 18. But the dissenting judge below accepted this argument, saying that the prohibition against double jeopardy was subject to exceptions based on “the individual facts of the case”—and then finding facts *de novo*, based on what “the State relied on” at trial, without regard to what the charging document said or what the jury found. Knight MDR App. A at 22-23. The dissent based its analysis on language taken out of context from *State v. Freeman*, 153 Wash. 2d 765, 108 P.3d 753 (2005). State MDR at 20-21. It did so even though the Court in *Freeman* found double jeopardy was violated in both the cases its opinion addressed, and it expressly *rejected* an argument for an exception to the merger doctrine based on one of the prosecution’s factual allegations, because the alleged fact “was not found by the jury.” *Freeman*, 153 Wash. 2d. at 779.

Judge Bjorgen, concurring below, commented that the analyses used by both the majority and the dissenting opinions (and in other recent Court of Appeals decisions) is unnecessarily “Baroque”—and that a “straightforward” application of *Freeman*’s test made it clear that the

robbery and robbery murder of James Sanders merged. Knight MDR App. A at 18.

### GROUNDS FOR ACCEPTANCE OF REVIEW

The State's Motion exploits the confusion in this area of the law that Judge Bjorgen points out, and thus underscores why review should be granted here.

The State's Motion correctly lays out the general law of double jeopardy:

“Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.”  
*Freeman*, 153 Wash. 2d at 753 (quoting *Blockburger* [v. *United States*, 284 U.S. 299, 304, 52 S. Ct. 180, 76 L.Ed. 306 (1932).]”

State MDR at 8-9. It then asserts that “the *Blockburger* presumption may be rebutted by other evidence of legislative intent.” *Id.* That is true, but irrelevant here. “Evidence of legislative intent may be clear on the face of the statute, found in the legislative history, the structure of the statutes, the fact the two statutes are directed at eliminating different evils, or any other source of legislative intent.” *Freeman*, 153 Wash.2d at 773 (citing *Ball v. United States*, 470 U.S. 856, 864, 105 S.Ct. 1668, 84 L.Ed.2d 740 (1985)). But the State cites nothing from any of these sources that suggests that the legislature intended to separately punish the crimes of felony murder based on first degree robbery and first degree robbery itself.

Most likely, the reason there is no evidence of any such intent is that separately punishing felony first degree murder and the felony that elevated the murder to the first degree is an archetypical example of a double jeopardy violation under the *Blockburger* rule. See, e.g., *Harris v. Oklahoma*, 433 U.S. 682, 682–83, 97 S.Ct. 2912, 53 L.Ed.2d 1054 (1977) (holding that, for double jeopardy purposes, robbery with a firearm is the same offense as felony murder predicated on armed robbery).

The State says this clear law has no application here because “James Sanders was robbed of two different types of his property at two different times.” State’s MDR at 18. But of course that can be said about any robbery in which more than one piece of property is stolen. The State quotes out of context from *State v. Tvedt*, 153 Wash.2d 705, 107 P.3d 728 (2005) that “[e]ach separate forcible taking of property” constitutes a “unit of prosecution” that can be separately punished. State’s MDR at 16. But the Court in *Tvedt* said the opposite: that the Court of Appeals had “properly rejected the premise that the number of robberies can be based merely on the number of items taken.” 153 Wash. 2d at 713-14.

The State tries to get around this by asserting that “[t]he force used to rob James Sanders of his wedding ring was completed before and separate from the force later used to shoot him.” State’s MDR at 18. This is factually questionable, since it was undisputed that Ms. Knight’s

accomplices continuously threatened and used force on Mr. Sanders to compel him to give them his property from the moment the robbery began until he was fatally shot. See *State v. Knight*, 176 Wash.App. at 941-44. But more importantly, the claim that the robberies of Mr. Sanders described in Counts I and II involved “two different types of his property” and occurred “at two different times” has absolutely no basis in the charging documents or the verdict of the jury.

It is settled beyond question that the constitutional and legal validity of a punishment depends on the facts properly found by a jury, not a court. See, e.g., *Hurst v. Florida*, 136 S. Ct. 616, 193 L. Ed. 2d 504 (2016); *Southern Union Co. v. United States*, 567 U.S. 343, 132 S. Ct. 2344, 183 L. Ed. 2d 318 (2012); *State v. Recuenco*, 163 Wash. 2d 428, 180 P.3d 1276 (2008). This Court’s double jeopardy rulings have respected that principle. In a companion case to *Freeman* involving a defendant named Zumwalt, the Court upheld the reversal of convictions of first degree robbery and second degree assault because, in a bench trial, “the [trial] court *found* evidence of but a single assault ....” *State v. Zumwalt*, 119 Wash. App. 126, 132, 82 P.3d 672 (2003) (emphasis added). In *State v. Whittaker*, 192 Wash. App. 395, 367 P.3d 1092 (2016), the Court of Appeals applied that same principle where the defendant was

convicted in a jury trial, and the jury's verdicts were not adequately specific to determine whether separate crimes were found or not:

While it is true there were multiple violations ... we cannot be certain which served as the basis for the jury to convict Whittaker ..... The possibility that the jury could have convicted Whittaker on a basis that does not offend the double jeopardy protections to which he is entitled is simply not enough to cure the problem. The verdict is ambiguous. The rule of lenity applies. In this case, the conviction ... must merge ....

*Whittaker*, 192 Wash. App. at 417.

Similarly, in *State v. Kier*, 164 Wash. 2d 798, 194 P.3d 212 (2008) this Court held that charges of first degree robbery and second degree assault merged because “it is unclear from the jury's verdict whether the assault was used to elevate the robbery to first degree.” *Id.* at 813. The Court in *Kier* so held even though two victims were involved and the prosecution argued to the jury that the two charges applied to different victims. *Id.* Directly to the point here, the court held that a prosecutor's arguments could not change what “the evidence *and instructions* allowed....”. *Id.* at 814 (emphasis added).

As stated in Ms. Knight's MDR, this is a much easier case than *Kier*, or *Whittaker*. Ms. Knight is not challenging the State's authority to punish her for the most serious crimes committed by her accomplices on each of the victims (in addition to First Degree Burglary). Her only challenge is to the infliction of multiple punishments on overlapping

charges arising from the single first degree robbery of each victim to which she was an accomplice. That challenge does not preclude multiple punishments for crimes that are truly separate, and puts no real burden on prosecutors seeking to impose them. All that it requires is that Informations clearly allege separate offenses that require separate proof—as should be done in any event to comply with the constitutional requirement charges be sufficiently specific to protect against double jeopardy. *See Russell v. United States*, 369 U.S. 749, 763-64, 82 S.Ct. 1038, 8 L.Ed.2d 240 (1962). Such clear charges permit trial courts to determine whether the prosecution has improperly “divid[ed] up [one offense] to support separate charges.” *State v. Farnsworth*, 192 Wash. 2d 468, 475, 430 P.3d 1127 (2018). And verdicts based on clear jury instructions insure that all aspects of a defendant’s punishment are based on facts that were actually found by a jury, not just those argued for by the prosecution or inferred from a cold record by an appellate court.

### **CONCLUSION**

James Sanders was one victim, killed in the course of a first degree robbery. That made the crime first degree murder. Even though Ms. Knight didn’t commit the murder and wasn’t present when it occurred, she is not disputing here that she can be punished, severely, for that most serious offense. But she can be severely punished for it only once, not

twice. The Court of Appeals correctly so held and this Court should grant review and affirm on this issue.

DATED this 3 day of May, 2019.

Respectfully submitted,

MacDONALD HOAGUE & BAYLESS

By

A handwritten signature in black ink, appearing to read 'T. Ford', written over a horizontal line.

Timothy N. Ford, WSBA #5986  
Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that on this 3<sup>rd</sup> day of May, 2019, I filed the foregoing RESPONSE OF AMANDA CHRISTINE KNIGHT TO STATE'S MOTION FOR DISCRETIONARY REVIEW using the Washington Appellate Portal which will serve a copy on the following:

Robin Khou Sand

rsand@co.pierce.wa.us

  
\_\_\_\_\_  
Linda M. Thiel, Legal Assistant

**MACDONALD HOAGUE & BAYLESS**

**May 03, 2019 - 3:05 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 97066-1  
**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:**

- 970661\_Answer\_Reply\_20190503150228SC626104\_1422.pdf  
This File Contains:  
Answer/Reply - Other  
*The Original File Name was Response of Knight to State's MDR.pdf*

**A copy of the uploaded files will be sent to:**

- PCpatcecf@piercecountywa.gov
- pcpatcecf@co.pierce.wa.us
- rsand@co.pierce.wa.us

**Comments:**

---

Sender Name: Timothy Ford - Email: timf@mhb.com  
Address:  
705 2ND AVE STE 1500  
SEATTLE, WA, 98104-1796  
Phone: 206-622-1604

**Note: The Filing Id is 20190503150228SC626104**