FILED
SUPREME COURT
STATE OF WASHINGTON
9/27/2019 3:53 PM
BY SUSAN L. CARLSON
CLERK

No. 97596-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

JARED STEVEN LEE, Petitioner.

ANSWER TO PETITION FOR REVIEW

Tamara A. Hanlon, WSBA #28345
Senior Deputy Prosecuting Attorney
Attorney for Respondent

JOSEPH BRUSIC
Yakima County Prosecuting Attorney
128 N. 2d St. Rm. 329
Yakima, WA 98901-2621

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES ii

A. IDENTITY OF RESPONDENT 1

B. COURT OF APPEALS DECISION 1

C. ISSUE PRESENTED FOR REVIEW 1

D. STATEMENT OF THE CASE 1

E. ARGUMENT WHY REVIEW SHOULD BE DENIED 7

1. Lee waived any argument that counts 1 and 2 encompass the same criminal conduct. 7

2. The Court of Appeals correctly held that counts 1 and 2 do not encompass the same criminal conduct because they involve different victims 8

F. CONCLUSION 18

TABLE OF AUTHORITIES

Page

Cases

In re Personal Restraint of Goodwin, 146 Wn.2d 861, 50 P.3d 618 (2002)..... 7

State v. Aldana Graciano, 176 Wn.2d 531, 295 P.3d 219 (2013) 8, 9

State v. Avery, 103 Wn. App. 527, 13 P.3d 226 (2000)..... 15

State v. Danis, 64 Wash. App. 814, 826 P.2d 1096 (1992) 17

State v. Dunaway, 109 Wn.2d 207, 743 P.2d 1237 (1987)..... 9, 10

State v. Edwards, 45 Wn. App. 378, 725 P.2d 442 (1986) 10

State v. Garza-Villarreal, 123 Wn.2d 42, 864 P.2d 1378 (1993) 9

State v. Haddock, 141 Wn.2d 103, 3 P.3d 733 (2000)..... 8, 9

State v. Halstien, 122 Wash.2d 109, 857 P.2d 270 (1993) 15

State v. J.P., 149 Wn.2d 444, 69 P.3d 318 (2003)..... 16

State v. Johnson, 180 Wn. App. 92, 320 P.3d 197 (2014)..... 9

State v. Keller, 143 Wn.2d 267, 19 P.3d 1030 (2001) 15

State v. Laviollette, 118 Wash.2d 670, 826 P.2d 684 (1992 15

State v. Porter, 133 Wn.2d 177, 942 P.2d 974 (1997)..... 10

State v. Rattana Keo Phuong, 174 Wn. App. 494, 299 P.3d 37 (2013)..... 7

State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984)..... 10, 11

State v. Tvedt, 153 Wn.2d 705, 107 P.3d 728 (2005) 11, 12

Statutes

RCW 9.94A.010 10

RCW 9.94A.120 17

RCW 9.94A.390 17

RCW 9.94A.525 9

RCW 9.94A.589 ..... 9, 14, 16, 17, 18

RCW 9A.56.190 11

Other Authorities

1996 Final Bill Report, ESHB 2227 18

D. Boerner, Sentencing in Washington § 5.8(a), at 5-18 (1985). 10

Rules

RAP 13.4(b) 1, 18

A. IDENTITY OF RESPONDENT

The Respondent is the State of Washington.

B. COURT OF APPEALS DECISIONS

At issue is the unpublished court of appeals decision filed on July 30, 2019 in Division Three of the Court of Appeals.

C. ISSUE PRESENTED FOR REVIEW

1. Does the unpublished court of appeals decision meet the criteria for review under RAP 13.4(b)?

D. STATEMENT OF THE CASE

The defendant, Jared Lee, was convicted of first degree robbery, attempted first degree robbery, and first degree unlawful possession of a firearm. CP 186. The convictions were based on the following facts elicited at trial:

On February 24, 2017, 24-year-old Roger Salazar withdrew $3,400 from his Banner Bank account so that he could buy a car. RP 194-5. Bank records confirmed this. SE 16. Roger testified that in March he saw a BMW on Craigslist that he wanted to purchase. RP 187-9. He texted the seller's phone number asking for photos of the car and inquiring about the car's condition. RP 207-8, 213, 215. The seller was asking $3,500 for the car. RP 215. Roger told the seller that he had $3,000 cash. RP 224. He later texted, "I have the cash in hand right now." RP 230.

After some negotiating, the seller accepted $3,000. Roger and the seller agreed to meet on March 5, 2017 at Fiesta Foods at 2:15 pm so Roger could see the car. RP 219, 234.

Roger drove to Fiesta Foods. His father, Esteban Salazar, was in the passenger seat. RP 244. Roger texted the seller that he was in a silver Jetta. RP 238, 240. Roger brought $3,000 cash with him, which he kept in his wallet by the gearshift. RP 243. At 2:40 pm, Roger texted the seller that he was at the Fiesta Food's parking lot. RP 241. Photographs of all the text messages were admitted at trial. SE 17, 19-31. Roger and Esteban sat in the parking lot for a while. RP 245.

After waiting for the seller, an unknown male (later identified as Lee) knocked on the passenger window and asked, "are you the one who called for the Beemer?" RP 246. Roger said, "yes." *Id.* Lee said that the car was on the other end of the lot and asked Roger for a ride. RP 247. Roger agreed to give him a ride and Lee got in the rear passenger seat. *Id.* After Roger started driving, Lee pulled out a gun and told him to stop the car. RP 248. Lee pointed the gun at Esteban's head. RP 248. He said that there was no car and he wanted money, the $3,000. RP 248-9. Roger stopped the car, looked back at him, and told him that he did not have the money. RP 250. Esteban gave Lee $12 and said that's all they had. RP

252. While pointing the gun at Roger, Lee said he knew that they had the money and wanted it all. RP 252.

Esteban said, "there's my brother" and distracted Lee. RP 252-3. Esteban then grabbed the gun and he and Lee started fighting for the gun. RP 253, 254. Esteban stood up on his seat during the struggle, leaving a shoe print on the car seat. RP 545, SE 39. Roger got out of the car, grabbed Lee, and pulled him out of the car. RP 255. Lee released the gun and Esteban ended up with it. RP 255. Roger chased Lee and they started fighting. RP 256. Anthony Avalos, a Fiesta Foods employee helped Roger hold onto Lee. RP 256. Esteban ran up and hit Lee with the gun. RP 256. Roger yelled at folks to call the police, and officers came and arrested Lee. RP 259, 262-3. In-court, Roger identified Lee as the male who tried to rob him. RP 263-4.

47-year-old Esteban Salazar testified that he was with his son at Fiesta Foods to see a car. RP 531. He testified that they waited 10-15 minutes and then gave the male a ride. RP 534. The male told Roger to stop and told him to give him the $3,000. RP 535. Esteban turned back and there was a gun to his head. RP 535. He told the male that all he had was $12 and gave him $12 from his pants pocket. RP 535-6. The male took the $12 with his hand but said that he wanted $3,000. RP 536, 548.

In order to distract the male, Esteban pointed to the back and said

that his brother had the $3,000. RP 536. The male turned and Esteban grabbed the gun. RP 536. They started fighting. *Id.* Esteban punched the male in the face and he released the gun. RP 537. Roger got out of the car and pulled the male out. RP 537. The male tried to get away but Roger grabbed him. *Id.* Esteban told a Fiesta Foods employee to call the police. RP 537. Esteban testified that he hit the male in the head because he kept trying to get away and Esteban wanted to hold him for the police. RP 538.

At one point during the fight, Lee asked for help from an unidentified man who was sneaking in between the cars and who also had a gun. RP 538-9. Esteban told him to stop but the man kept coming towards them. RP 539. Esteban lifted the gun and told the man that if he did not stop coming towards them, he would fire at him. *Id.* The man turned and ran away. RP 538.

Anthony Avalos, an employee at Fiesta Foods, testified that he was outside when he saw two white, light-skinned males looking around and walking around the cars. RP 327. Mr. Avalos saw them peeking through the windows of the cars. RP 327. He kept an eye on them. RP 328. A little later he tried to break up a fight between two Hispanic males and one light-skinned male. RP 328-9. He arrived in the middle of the fight. RP 333. He held onto the light-skinned male until the police arrived. RP 329-

30. He testified that the male he was holding was one of the two males he had seen earlier in the parking lot. RP 329.

Officer Joe Scherschligt testified that he got to Fiesta Foods and identified the man being detained as Jared Lee. RP 295-6. When the officer got there, he had Mr. Avalos step away from Lee. RP 303. Roger still had a hold on Lee's right arm and shoulder. *Id.* When Mr. Avalos stepped away, Lee started struggling and it looked like he was trying to pull away. *Id.* Lee turned and put his left hand behind his back. *Id.* Officer Scherschligt pointed his gun at Lee and told him to get his hands up. *Id.* Officer Scherschligt then arrested Lee. RP 303.

A 45-caliber Smith & Wesson pistol and a black leather jacket were found lying on the ground close to all those involved. RP 297, 316, 318, 337, 425. The pistol had one bullet in the chamber and a loaded magazine. RP 317, 426, 428. The pistol was test-fired and was functional. RP 431. Also found at the scene was a bullet proof vest. RP 297, 303, 319, 337. Roger testified that when he chased and grabbed Lee by the shirt, Lee's bullet proof vest came off. RP 256.

Officer Jaime Gonzalez also responded and found a cell phone and hat in the backseat of Roger Salazar's car. RP 484-7. Neither the phone or hat belonged to the Salazars. RP 486.

In addition, Sergeant Tory Adams responded to the scene and testified that Roger Salazar showed him $3200 cash that was brought to purchase the car. RP 500-1. The extra $200 was brought in case there were negotiations. RP 501. The cash was photographed. RP 501. Sergeant Adams also photographed a shoe print seen on the front passenger seat of the Salazars' car. RP 506, SE 39.

Kristen Drury, the forensic lab supervisor for the Yakima Police Department, swabbed the firearm three times for DNA. RP 421, 438. The first swab was from the grips, slide, and trigger of the pistol. RP 439. The second swab was from the lips and base of the magazine. RP 439, 441. The third swab was from a red stain on the upper portion of the slide and the frame. RP 439, 442. The red-stained portion was swabbed separately from the swab of the grips and the slide. RP 439, 442.

Washington State Patrol forensic scientist Laura Kelly examined the three sets of swabs. RP 459, 470-3. First, she concluded that there was staining consistent with blood. RP 470. She found that DNA obtained from the swabs of the stain matched the DNA profile of Lee. RP 470, 473. The match was 1 in 6.3 decillion. *Id.* Second, Ms. Kelly concluded that that the DNA profile obtained from the swab of the grip and slide of the pistol came from at least three individuals. RP 471. The profile of the major component matched the DNA profile of Lee. The

match was 1 in 6.3 decillion. *Id.* The scientist testified that the DNA on the grip of the pistol or slide could be consistent with someone holding a pistol in one's hand. RP 478. Third, Ms. Kelly concluded that the swabs from the magazine lips came from at least two individuals, including one male. RP 472. However, due to limited genetic information, no comparisons could be made from the mixed profile. RP 472.

Lee was convicted of all three counts. At sentencing, the court found that the three counts did not encompass the same criminal conduct and did not count as one crime in determining the offender score. CP 187. Lee did not object to this finding. The Court of Appeals held that the robbery and attempted robbery were two separate crimes for scoring purposes.

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

1. Lee waived any argument that counts 1 and 2 encompass the same criminal conduct.

The failure of a defendant to argue at sentencing that two crimes constituted the same criminal conduct waives the argument on appeal. *State v. Rattana Keo Phuong*, 174 Wn. App. 494, 547, 299 P.3d 37 (2013). When a defendant fails to request the court to exercise its discretion in sentencing, any error in that regard is waived. *In re Personal Restraint of Goodwin*, 146 Wn.2d 861, 875, 50 P.3d 618 (2002). Here, Lee never

objected to the offender score or to the finding that the offenses did not encompass the same criminal conduct. In addition, Lee has not argued that his attorney was ineffective in failing to raise the issue at sentencing. As such, he has waived any argument that counts 1 and 2 encompass the same criminal conduct.

2. The Court of Appeals correctly held that counts 1 and 2 do not encompass the same criminal conduct because they involve different victims.

Appellate courts generally defer to the discretion of the sentencing court and will reverse a sentencing court's determination of same criminal conduct only on a "clear abuse of discretion or misapplication of the law." *State v. Haddock*, 141 Wn.2d 103, 110, 3 P.3d 733 (2000). If the record supports a single conclusion about whether the crimes constitute the same criminal conduct, the sentencing court abuses its discretion if it arrives at a contrary result. *State v. Aldana Graciano*, 176 Wn.2d 531, 537-8, 295 P.3d 219 (2013). But if the record supports different conclusions, the issue lies in the court's discretion. *Id.* at 538.

A trial court abuses its discretion where the court: (1) adopts a view no reasonable person would take and is manifestly unreasonable; (2) rests on facts unsupported in the record and is therefore based on untenable grounds; or (3) was reached by applying the wrong legal

standard and is made for untenable reasons. *State v. Johnson*, 180 Wn. App. 92, 100, 320 P.3d 197 (2014). In this case, Lee has not shown an abuse of discretion.

Under the Sentencing Reform Act (SRA), "when calculating an offender's score, a court must count all convictions separately except offenses which encompass the same criminal conduct." RCW 9.94A.525(5)(a)(i), .589(1)(a). Offenses which constitute the same criminal conduct are counted as one offense. RCW 9.94A.525(5)(a)(i). "Same criminal conduct" means "two or more crimes that require the same criminal intent, are committed at the same time and place, *and involve the same victim*." RCW 9.94A.589(1)(a) (emphasis added). If any element of the same criminal conduct analysis is missing, a trial court must count the offenses separately when calculating the offender score. *State v. Haddock*, 141 Wn.2d 103, 110, 3 P.3d 733 (2000); *State v. Garza-Villarreal*, 123 Wn.2d 42, 864 P.2d 1378 (1993). Thus, same criminal conduct cannot occur where there are multiple victims. *State v. Dunaway*, 109 Wn.2d 207, 215, 743 P.2d 1237 (1987).

The same criminal conduct statute is "construed narrowly to disallow most claims that multiple offenses constitute the same criminal act." *Aldana Graciano*, 176 Wn.2d at 540 (quoting *State v. Porter*, 133

Wn.2d 177, 181, 942 P.2d 974 (1997)). The defendant bears the burden of proving current offenses encompass the same criminal *conduct. Id.*

In *State v. Dunaway*, 109 Wn.2d 207, 215, 743 P.2d 1237 (1987), this Court held that "Convictions of crimes involving multiple victims must be treated separately." The Court overruled the portion of *State v. Edwards*, 45 Wn. App. 378, 380-82, 725 P.2d 442 (1986), that held that crimes involving two victims could constitute "the same course of conduct." *Id.* This Court reasoned:

> To hold otherwise would ignore two of the purposes expressed in the SRA: ensuring that punishment is proportionate to the seriousness of the offense, and protecting the public. RCW 9.94A.010(1), (4). As one commentator has noted, "to victimize more than one person clearly constitutes more serious conduct" and, therefore, such crimes should be treated separately. D. Boerner, *Sentencing in Washington* § 5.8(a), at 5-18 (1985). Additionally, treating such crimes separately, thereby lengthening the term of incarceration, will better protect the public by increasing the deterrence of the commission of these crimes. For these reasons, we conclude that crimes involving multiple victims must be treated separately.

Dunaway, 109 Wn.2d at 215.

Lee argues that the robbery and attempted robbery encompass the same criminal conduct. Similar arguments have been rejected before. In *State v. Rupe*, 101 Wn.2d 664, 693, 683 P.2d 571 (1984), a defendant was

convicted of two counts of aggravated first degree murder and two counts of first degree robbery after he shot and killed two bank tellers during the course of a robbery. *Id.* at 667-69. This Court held that the defendant's multiple convictions for robbery were valid under RCW 9A.56.190, the statute which defines robbery. *Id.* at 693. As the court explained:

> Robbery has several distinct elements: the taking of the personal property and the use or threat to use force on an individual. The statute does not require that the person from whom the property is taken own that property. Possession or custody will suffice. Here, each teller was individually responsible for money in her till. Each had control and possession of that money and each had the money taken by the use of force. These facts constitute two separate robberies and the double convictions do not place defendant in double jeopardy.

101 Wn.2d at 693.

Similarly, in an appeal in which the proper unit of prosecution for robbery was contested, this Court explained that the "unit of prosecution" for robbery encompasses "both a taking of property and a forcible taking against the will of the person from whom or from whose presence the property is taken." *State v. Tvedt*, 153 Wn.2d 705, 720, 107 P.3d 728 (2005). Therefore, "a conviction on one count of robbery may result from *each separate taking of property from each person*," although multiple counts may not be based on "multiple items of property taken from the

same person at the same time," nor on "a single taking of property from or from the presence of multiple persons even if each has an interest in the property." *Id.* (emphasis added).

Here, the second amended information identified Esteban Salazar as the victim in count 1, first degree robbery. CP 38. And in count 2, attempted first degree robbery, the victim was identified as Roger Salazar. RP 39.

In his opening statement, the prosecutor told the jury, "Count 1 is first degree robbery for taking the $12 cash from Esteban Salazar. Count 2, attempted first degree robbery for trying to take $3,000 cash from Roger Salazar." RP 176. The prosecutor explained that there were two victims: "The first witness to testify will be Roger Salazar. Probably the second witness to testify will be Esteban Salazar, the two named victims in this case." RP 177. At the end of his opening, the prosecutor stated:

> At the conclusion of all the evidence, I will have an opportunity to come back before you and make a closing statement. At that time I will ask you to find Mr. Lee guilty of all three counts, first degree robbery of Esteban Salazar, attempted first degree robbery of Roger Salazar and first degree unlawful possession of a firearm.

RP 186. Again, in closing argument, the prosecutor also explained that count one involved Esteban Salazar:

> So let's look at the elements of first degree robbery. The state must prove these things beyond a reasonable doubt: On March 5, 2017, in Washington State, Jared Lee unlawfully took personal property, which was cash, from the person or in the presence of Esteban Salazar. That's the $12 that Esteban and Roger testified about. Esteban Salazar owned or was in possession of the property, the cash. Mr. Lee intended to commit theft of the property, the cash, and the taking was against Esteban's will by Mr. Lee's use or threatened use of force, immediate force violence or fear of injury.

RP 597-8. He went on to explain count two:

> Count 2, attempted first degree robbery. The elements, again, March 5, 2017, Washington State, Mr. Lee committed an act that was a substantial step toward the commission of first degree robbery. In this count, what we're talking about is the $3000 or the $3200 cash that Roger Salazar had.

RP 598. And the prosecutor explained the difference between the two counts as follows:

> Basically the difference between an attempted first degree robbery and a completed first degree robbery, in a completed first degree robbery Mr. Lee actually succeeded in getting the $12 cash from Esteban. So that robbery is completed. The attempted first degree robbery is an attempted robbery because he did not succeed in getting the $3000 or $3200 cash from Roger.

RP 598-9. The prosecutor then went through the evidence and throughout his closing maintained that count one involved the completed robbery of Esteban and that count two involving the attempted robbery of Roger. RP 604-7, 610. The defense attorney, in his closing argument, agreed, stating "Count 1 is based on $12." RP 615. He argued there was a reasonable doubt as to Count 1 because "there's no $12." RP 618. As to Count 2, the defense stated in closings that "Count 2 is first degree attempted first degree robbery. This would be for the $3000." RP 618.

In this case, the victims for each count were clearly identified in the second amended information and throughout the trial. On appeal, Lee agrees that count one was based on an allegation that Lee had taken $12.00 from Esteban Salazar and that count two was based on an attempt to take money from Roger Salazar. *See* Petition for Review at 4. For the first time on appeal, Lee claimed that the first degree robbery and attempted first degree robbery were the same course of conduct. The Court of Appeals rejected that argument.

Lee now argues, for the first time, that because the two victims were in a vehicle when they were robbed, the two counts (first degree robbery and attempted first degree robbery) constitute the same course of conduct. His argument is based on language in RCW 9.94A.589 regarding vehicular assault and vehicular homicide cases. He claims that the statute

is "ambiguous as applied" and that the "rule of lenity" applies. Petition at 17. However, he made no claim below that the statute was ambiguous as applied to him. This issue was never raised or briefed at the trial level or in the Court of Appeals and should not be considered now by this Court. *State v. Halstien*, 122 Wash.2d 109, 130, 857 P.2d 270 (1993) ("An issue not raised or briefed in the Court of Appeals will not be considered by this court.") (citing *State v. Laviollette*, 118 Wash.2d 670, 679, 826 P.2d 684 (1992)).

Even if the Court considers this new issue, it must be rejected. First of all, the statute is not ambiguous. Statutory construction begins by reading the text of the statute or statutes involved. If the language is unambiguous, a reviewing court is to rely solely on the statutory language. *State v. Avery*, 103 Wn. App. 527, 532, 13 P.3d 226 (2000). Where statutory language is amenable to more than one reasonable interpretation, it is deemed to be ambiguous. *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001). Here, RCW 9.94A.589 is not subject to more than one reasonable interpretation. By definition, the crimes of vehicular assault and vehicular homicide involve a vehicle. As such, addressing whether multiple victims occupy the same vehicle or not is appropriate for those types of cases. It does require that we go through an analysis for *other* crimes as to whether the victims occupy the same vehicle or not.

Second, a reading that produces absurd results must be avoided because "it will not be presumed that the legislature intended absurd results." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). Based on Lee's argument, any crimes (other than vehicular assault and vehicular homicide) would be considered the same course of conduct if multiple victims occupied the same vehicle. For example, if a defendant shot three passengers in a car, the three murder convictions would count as one crime despite there being three separate victims. Lee argues that "had the legislature intended other crimes to be calculated similarly it would have included those crimes in its legislation." Petition at 16. He did not make this argument at the Court of Appeals or at the trial court level. He makes this argument now for the first time in his petition for review to this Court.

A look at the prior amendments to RCW 9.94A.589 is informative. Prior to 1996, the statute read as follows:

> (I) (a) Except as provided in (b) of this subsection, whenever a person is to be sentenced for two or more current offenses, the sentence range for each current offense shall be determined by using all other current and prior convictions as if they were prior convictions for the purpose of the offender score: PROVIDED, That if the court enters a finding that some or all of the current offenses encompass the same criminal conduct then those current offenses shall be counted as one crime. Sentences imposed under this subsection

> shall be served concurrently. Consecutive sentences may only be imposed under the exceptional sentence provisions of RCW 9.94A.120 and 9.94A.390(2)(f) or any other provision of RCW 9.94A.390. "Same criminal conduct," as used in this subsection, means two or more crimes that require the same criminal intent, are committed at the same time and place, and involve the same victim. **This definition does not apply in cases involving vehicular assault or vehicular homicide if the victims occupied the same vehicle. However, the sentencing judge may consider multiple victims in such instances as an aggravating circumstance under RCW 9.94A.390.**

Former RCW 9.94A.589 (emphasis added). The rationale for this vehicular assault/homicide exception that existed at the time was explained in *State v. Danis*:

> A basis for this distinction is that victims in the same vehicle are necessarily hurt by one impact, whereas multiple victims not in the same vehicle (for example, two vehicles or two pedestrians or one vehicle and one pedestrian) almost necessarily involve more than one impact.
> …
> The Legislature is entitled to provide less punishment to defendants whose victims occupied one vehicle.

64 Wash. App. 814, 821-22, 826 P.2d 1096, 1100 (1992). However, the statute was amended in 1996 to read as follows: "This definition applies in cases involving vehicular assault or vehicular homicide even if the victims

occupied the same vehicle." RCW 9.94A.589. As such, the legislature undid the specific exception for vehicular assault and vehicular homicide cases. The amendment was proposed in Senate Bill 2227, entitled "An act relating to felony traffic offense." 1996 Final Bill Report, ESHB 2227. Numerous changes were made to the vehicular homicide and vehicular assault laws, including raising vehicular homicide to a class A and vehicular assault to class B. *Id.* Nothing indicates that the legislature's intent was to change the law pertaining to other types of crime where multiple victims occupy the same vehicle. As such, Lee's argument is without merit.

F. CONCLUSION

This case does not meet any of the criteria in RAP 13.4(b). First of all, the decision is not in conflict with a decision of the Supreme Court or another decision of the Court of Appeals. Second, a significant question of law under the Constitution of the State of Washington or of the United States is not involved. Lastly, the petition does not involve an issue of substantial public interest that should be determined by the Supreme Court. The Court of Appeals was correct in finding that counts 1 and 2 did not encompass the same criminal conduct. As such, Lee's petition for review should be denied.

Respectfully submitted this 27th day of September, 2019,

s/Tamara A. Hanlon
TAMARA A. HANLON, WSBA # 28345
Senior Deputy Prosecuting Attorney
Yakima County, Washington

DECLARATION OF SERVICE

I, Tamara A. Hanlon, state that on September 27, 2019, via the portal, I emailed a copy of STATE'S ANSWER TO PETITION FOR REVIEW to Douglas Dwight Phelps at phelps@phelpslaw1.com.

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

DATED this 27th day of September, 2019 at Yakima, Washington.

s/Tamara A. Hanlon
TAMARA A. HANLON, WSBA #28345
Senior Deputy Prosecuting Attorney
Yakima County, Washington
128 N. Second Street, Room 329
Yakima, WA 98901
Telephone: (509) 574-1210
Fax: (509) 574-1211
tamara.hanlon@co.yakima.wa.us

YAKIMA COUNTY PROSECUTING ATTORNEY'S OFF

September 27, 2019 - 3:53 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	97596-5
Appellate Court Case Title:	State of Washington v. Jared Steven Lee
Superior Court Case Number:	17-1-00440-1

The following documents have been uploaded:

- 975965_Answer_Reply_20190927120748SC790337_1944.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Lee Answer to Petition.pdf

A copy of the uploaded files will be sent to:

- joseph.brusic@co.yakima.wa.us
- phelps@phelpslaw1.com

Comments:

Sender Name: Tamara Hanlon - Email: tamara.hanlon@co.yakima.wa.us
Address:
128 N 2ND ST RM 329
YAKIMA, WA, 98901-2621
Phone: 509-574-1210

Note: The Filing Id is 20190927120748SC790337