

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JASHAWN DEMEATRUS
McGHEE,
Petitioner.

NO. 103373-7

RESPONSE TO
STATEMENT OF
ADDITIONAL AUTHORITY

Petitioner cites *State v. Jones*, 117 Wn. App. 89, 68 P.3d 1153 (2003) as an instance where the court reviewed an unpreserved claim of opinion testimony. However, this Court subsequently issued the definitive word on the RAP 2.5(a) issue—holding that even an explicit opinion on the defendant’s guilt is not manifest error in light of standard jury instructions making jurors the sole deciders. *State v. Kirkman*, 159 Wn.2d 918, 937, 155 P.3d 125 (2007); *see also* CP 220, 226 (same instructions) and *State v. Montgomery*, 163 Wn.2d 577, 595-96, 183 P.3d 267 (2008) (finding no manifest error, i.e., no actual

prejudice, in light of standard jury instruction). More importantly, it is irrelevant in light of the court of appeals' decision to reach the merits. Unpub. Op. at 17 (“[a]ssuming without deciding that this issue was preserved on appeal”). It found the detective's question about why McGhee remained did not express an opinion on guilt. *Id.*

McGhee notes that this Court has declined review of *State v. House*, 32 Wn. App. 2d 1, 553 P.3d 1157 (2024) (affirming same criminal conduct analysis on objective statutory intents). As the State argued below, the crimes cannot encompass the same criminal conduct because they have different *victims*. Br. of Resp. at 51-52 (citing RCW 9.94A.589(1)(a)). Keith Rogers was the victim of the attempted murder. CP 1. The public generally is the victim of a drive-by shooting. CP 2; *State v. Bell*, 26 Wn. App. 2d 821, 844-45, 529 P.3d 448, 460, *review denied*, 1 Wn.3d 1035, 536 P.3d 181 (2023). Such an offense recklessly endangers everyone in the vicinity, which in this case included Crescenda

Banks and Felicia Edwards and possibly the occupants of nearby businesses. RP 353 (Banks pushing Edwards down and covering her); Ex 197 (Cam 8).

This document contains 296 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated: August 28, 2025.

MARY E. ROBNETT
Pierce County Prosecuting Attorney

s/ Teresa Chen
TERESA CHEN
Deputy Prosecuting Attorney
WSB # 31762/OID #91121
Pierce County Prosecutor's Office
930 Tacoma Ave., Rm 946
Tacoma, WA 98402
Telephone: (253) 798-7400
teresa.chen@piercecountywa.gov

Certificate of Service:

The undersigned certifies that on this day she delivered by E-file to attorney of record 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 Gig Harbor, Washington, on the date below.

8/28/2025	s/ Kimberly Hale
Date	Signature

PIERCE COUNTY PROSECUTING ATTORNEY

August 28, 2025 - 1:48 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 103,373-7
Appellate Court Case Title: State of Washington v. Jashawn Demeatrus McGhee
Superior Court Case Number: 19-1-04382-4

The following documents have been uploaded:

- 1033737_Answer_Reply_20250828134637SC571517_5175.pdf
This File Contains:
Answer/Reply - Other
The Original File Name was States Response to Statement of Additional Authority.pdf

A copy of the uploaded files will be sent to:

- nf@neilfoxlaw.com
- pcpatcecf@piercecountywa.gov

Comments:

Sender Name: Kimberly Hale - Email: kimberly.hale@piercecountywa.gov

Filing on Behalf of: Teresa Jeanne Chen - Email: teresa.chen@piercecountywa.gov (Alternate Email: PCpatcecf@piercecountywa.gov)

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

Note: The Filing Id is 20250828134637SC571517