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IN THE SUPREME COURT OF THE STATE OF  
WASHINGTON

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STATE OF WASHINGTON,  
Respondent,

v.

TIANA WOOD-SIMS,  
Petitioner/Appellant.

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MEMORANDUM OF AMICUS CURIAE  
CENTER FOR CIVIL RIGHTS AND CRITICAL JUSTICE  
IN SUPPORT OF REVIEW

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Melissa R. Lee, WSBA #38808  
Jessica Levin, WSBA #40837  
RONALD A. PETERSON LAW CLINIC  
SEATTLE UNIVERSITY SCHOOL OF LAW  
1112 East Columbia St.  
Seattle, WA 98122  
Tel: (206) 398-4394  
[leeme@seattleu.edu](mailto:leeme@seattleu.edu)  
[levinje@seattleu.edu](mailto:levinje@seattleu.edu)

Counsel for Amicus Curiae  
CENTER FOR CIVIL RIGHTS  
AND CRITICAL JUSTICE

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## **IDENTITY AND INTEREST OF AMICUS**

The identity and interest of amicus are set forth in the Motion for Leave to File that accompanies this memorandum.

## **INTRODUCTION**

Accomplice liability and felony murder are unique in the criminal legal canon for their departure from foundational elements of culpability. This departure invites racial bias and results in unconstitutionally excessive punishment for accomplices to felony murder. In 2015, in Alabama, five Black teenagers were caught burglarizing a home; police called to the scene shot one of the teens, and the other four were charged with felony murder in his death; all were sentenced to between 17-65 years.<sup>1</sup> Studies conducted over the past 60 years, in multiple states, have consistently found that Black people are disproportionately convicted and sentenced for felony murder at

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<sup>1</sup> Jamiles Lartey, *New Scrutiny on Murder Charges Against People Who Don't Actually Kill*, The Marshall Project (Mar. 18, 2023), <https://www.themarshallproject.org/2023/03/18/felony-murder-law-alabama-pennsylvania-arizona/>.

rates far beyond the racial disparities in the criminal legal system at large.<sup>2</sup>

On January 6, 2021, five people died during the Capitol insurrection, including an insurrectionist shot by a Capitol Police Officer safeguarding lawmakers in the Capitol Building.<sup>3</sup> Following the insurrection, 1,171 people, 93% of them white,<sup>4</sup> were charged with crimes, including felonies such as seditious conspiracy; assaulting, resisting, or impeding officers; and unlawful entry and theft.<sup>5</sup> While many of these rioters were

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<sup>2</sup> Perry Moriearty et al., *Race, Racial Bias, and Imputed Liability Murder*, 51 Fordham Urb. L.J. 675, 697-700 (2024).

<sup>3</sup> Chris Cameron, *These Are the People Who Died in Connection With the Capitol Riot*, N.Y. Times (Jan. 5, 2022, updated Oct. 13, 2022), <https://www.nytimes.com/2022/01/05/us/politics/jan-6-capitol-deaths.html>.

<sup>4</sup> Robert Pape, Chi. Project on Sec. and Threats, *American Face of an Insurrection: Analysis of Individuals Charged for Storming the US Capitol on January 6, 2021* 5 (Jan. 5, 2022), [https://cpost.uchicago.edu/publications/american\\_face\\_of\\_insurrection/](https://cpost.uchicago.edu/publications/american_face_of_insurrection/).

<sup>5</sup> G. Ben Cohen et al., *Racial Bias, Accomplice Liability, and the Felony Murder Rule: A National Empirical Study*, 101 Denver L. Rev. 65, 71 (2023).

accomplices who could have been charged with felony murder, not one of them was.<sup>6</sup>

This Court should accept review to address the significant questions of state constitutional law and public interest implicated when felony murder is imposed on the basis of accomplice liability, given the significant evidence of racially biased application of the law. Review is particularly important where, as here, the sentence imposed results in disproportionate punishment.

## **ARGUMENT**

### **I. This Court Should Grant Review to Address the Risk of Racially Biased and Disproportionate Sentences Imposed on Accomplices to Felony Murder.**

This Court should grant review to address the risk that a standard range sentence for an accomplice who did not intend for violence to occur, and who did not participate in the homicide, is unconstitutionally disproportionate. *See* RAP

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<sup>6</sup> *Id.*

13.4.(b)(3). Article I, section 14 affords greater protection against cruel punishments than the Eighth Amendment where the accused can demonstrate diminished culpability. *See In re Pers. Restraint of Monschke*, 197 Wn.2d 305, 326, 482 P.3d 276 (2021) (article I, section 14 requires discretion to consider mitigating circumstances associated with diminished culpability where mandatory sentence creates risk of disproportionality). This Court has recognized the need for individualized sentencing when there is heightened risk of disproportionate sentencing due to diminished culpability. *Id.* at 325-26; *State v. Houston-Sconiers*, 188 Wn.2d 1, 21, 391 P.3d 409 (2017).

A. Accomplices to Felony Murder Are Necessarily Less Culpable than Those Who Commit the Homicide.

Legal scholars, courts, and advocates harshly criticize the felony murder rule because it undermines basic concepts of culpability by holding individuals accountable for murder without requiring proof of intent to commit homicide. *Moriearty, supra*, at 687. Because there is no intent to murder, the requisite state of mind must be imputed from the predicate

felony. Cohen, *supra*, at 76. Accomplice liability similarly offends traditional notions of culpability by allowing the accomplice to be held liable for the acts of the principal, regardless of whether they were directly involved in carrying out the crime. Moriearty, *supra*, at 695.

When the felony murder rule and accomplice liability doctrine are combined, an individual who neither intended to kill nor actually committed homicide can be held equally responsible as someone who intentionally commits murder. However, courts have long recognized that minor accomplices to felony murder do not have the same degree of culpability as the person who carries out the killing and should therefore be punished less harshly. *See Enmund v. Florida*, 458 U.S. 782, 798-800, 102 S. Ct. 3368, 73 L. Ed. 2d 1140 (1982) (culpability of minor accomplice to felony murder was “plainly different” than that of the co-defendants who carried out the robbery and killing, and punishment “must be tailored to his personal responsibility and moral guilt”).

B. BIPOC Accomplices to Felony Murder Face Heightened Risk of Excessive Punishment Due to Racialized Stereotypes that Activate Imputation of Guilt.

The accomplice liability doctrine and felony murder rule operate together to result in the over-incarceration of people of color. Cohen, *supra*, at 87. Substantial research suggests both felony murder and accomplice liability murder prosecutions are “especially susceptible to the influence of racial bias,” Moriearty, *supra*, at 680, and studies on felony murder have established that “the degree to which Black and Brown people are charged with, convicted of, and sentenced to death for felony murder is extreme.” *Id.* at 697.

Available data indicates racial bias in the application of Washington’s felony murder law—Black people in Washington are 12.9 times more likely to be incarcerated for felony murder than white people. Felony Murder Reporting Project, Washington Data, <https://felonymurderreporting.org/states/wa/>. While nationwide statistics have not been compiled, data from other jurisdictions reflect significant levels of racial

disproportionality in their application of felony murder. *See* Nazgol Ghandnoosh et al., The Sentencing Project, *Felony Murder: An On-Ramp for Extreme Sentencing* 5-6 (Mar. 2022, updated May 2024), <https://www.sentencingproject.org/reports/felony-murder-an-on-ramp-for-extreme-sentencing/>; *see generally* Felony Murder Reporting Project, State Data, <https://felonymurderreporting.org/states/>.

Because imputed liability crimes decrease the State's burden and reduce rigor in prosecution, they "increase the ambiguity, superficiality, and subjectivity of the State's charging decision," Moriearty, *supra*, at 737, which allows implicit bias, and related notions of entitativity<sup>7</sup> and Black criminality, to flourish. This explains why implicit racial bias, already recognized as infecting much of the legal system, *see*,

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<sup>7</sup> Entitativity is the psychological study of the circumstances under which people are perceived to be members of a group or perceived as individuals. *Entitativity*, APA Dictionary of Psychology, <https://dictionary.apa.org/entitativity> (last visited Mar. 27, 2025).

*e.g.*, *State v. Zamora*, 199 Wn.2d 698, 720-21, 512 P.3d 512 (2022) (recognizing the role of implicit bias in prosecutorial behavior), is even more virulent in felony murder cases. *Cf.* *State v. Morgan*, \_\_ Wn.3d \_\_, 562 P.3d 360, ¶ 55 (2025) (Knodell, J.P.T., concurring) (recognizing, in felony murder case, that “one of the root causes of systemic bias” is the “lack of any judicial oversight” of prosecutorial discretion).

A recent empirical study examining the role of anti-Black and anti-Latinx biases when the felony murder rule and accomplice liability doctrine are combined, Cohen, *supra*, at 103, demonstrates that such biases are particularly activated in the context of accomplice liability. *Id.* at 108. These biases may lead decision-makers to “indifferently impute guilt” to Black and Latinx defendants. *Id.* at 113.

As part of this study, researchers developed an Accomplice Liability Implicit Association Test (IAT) to test

entitativity in the felony murder context,<sup>8</sup> and determined that racially motivated assessments about who is part of a group can expand legal liability relative to felony murder. *Id.* at 100, 102-03. Participants in the study were significantly more likely to correlate Black and Latinx names with words associated with groups, such as “pack, crew, them, crowd, folks, bunch,” and white faces with words associated with individuality, such as “self, one, solo, single.” *Id.* at 108. These findings raise the concern that if white people are automatically perceived as individuals and Black people automatically perceived as members of a group, crimes like felony murder that can be charged on the basis of group involvement may worsen racial inequalities in the criminal legal system. *Id.* at 100.

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<sup>8</sup> “The purpose of this IAT was to measure whether jurors automatically perceive members of some racial or ethnic groups as unique individuals while simultaneously perceiving members of other racial or ethnic groups more as members of those groups and less as individuals. ... The IAT measure is thus designed to allow honing in on potentially specific implicit racialized biases regarding group liability in the felony murder context.” Cohen, *supra*, at 104.

The negative racial stereotypes associating Blackness with violence and criminality that influence outcomes across the criminal legal system may also result in negative treatment of Black people in the context of felony murder. *See Moriearty, supra*, at 727-29, 740. Research on the racial construction of crime suggests “group” homicides, where perpetrators are determined to have shared mens rea, have become stereotypically “Black crimes” in the minds of not just the public, but also of those whose job it is to charge them. *Id.* at 728-29. This stereotypical association normalizes felony murder as a “Black crime,” which may result in prosecutors automatically associating felony murder with Black defendants, prompting them to charge Black defendants with felony murder, thereby reinforcing the racial stereotype. *Id.* at 740. Because felony murder comes with a high standard sentencing range,<sup>9</sup> the combination of reduced culpability for accomplices

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<sup>9</sup> *See Morgan*, 562 P.3d at ¶ 50 (2025) (Knodel, J.P.T., concurring) (noting prosecutors may use tactic of charging

to felony murder and evidence that people of color are more likely to be charged, convicted, and sentenced for felony murder leads to the risk of excessive punishment for defendants of color in this context.

C. When Sentencing Accomplices to Felony Murder, Courts Should Have Discretion to Account for Mitigating Circumstances.

This Court should reckon with the evidence of racial bias in the application of felony murder in Washington and the empirical research demonstrating how race operates to expose people of color to punishment as accomplices to felony murder. Part of that reckoning must include a sentencing mechanism that prevents imposition of lengthy incarceration that is incommensurate with the diminished culpability of accomplices.

As Ms. Wood-Sims suggests in her petition for review, an individualized sentencing procedure would allow courts to

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felony murder to induce defendants to plead to a lesser charge to avoid a long sentence).

consider the degree of culpability and the role the person actually played in the crime and would help guard against excessive punishment. *See* Pet. for Review at 17-18; *cf. Houston-Sconiers*, 188 Wn.2d at 21 (courts must consider mitigating factors of youth when sentencing children in adult court and must have discretion to impose sentences below the standard range to account for diminished culpability).

This Court should accept review to address whether consideration of mitigating factors is an appropriate safeguard against disproportionate sentences where the defendant charged with felony murder was an accomplice to the underlying crime and did not cause the death of the victim.

**II. This Court Should Grant Review to Address the Substantial Public Interest Concerns Regarding Racial Animus and Disproportionality Raised by Imputed Liability Doctrines.**

This Court should accept review of this case because the biased application of the felony murder rule to accomplices undermines confidence in the fairness and legitimacy of the

criminal legal system, raising an issue of substantial public interest. RAP 13.4(b)(4).

Data compiled by the Felony Murder Reporting Project demonstrates that Black people are significantly overrepresented in felony murder sentences, beyond the typical rates of disproportionality in Washington's criminal legal system as a whole. Black people make up 4% of the statewide population and 17% of the incarcerated population, yet 31% of those incarcerated for felony murder are Black. Felony Murder Reporting Project, Washington Data, <https://felonymurderreporting.org/states/wa/>. This translates to Black people being almost 13 times more likely to be incarcerated for felony murder than white people. *Id.*

A more sophisticated analysis of racial disproportionality in felony murder cases in Minnesota demonstrates that racial disproportionality is more severe for accomplices to felony

murder than principals.<sup>10</sup> Moriearty, *supra*, at 708-22; *id.* at 721 (noting “[t]his data is substantially more detailed than what is available in other jurisdictions.”). The researchers disaggregated data for all murder cases in the state to examine racial disproportionality in imputed liability murder cases—both accomplice cases and felony murder cases. The data demonstrate that from 2010-19, Black people were over-represented in those charged with imputed liability murder: Black people make up 7.6% of Minnesota’s population and 39% of those charged with direct liability murder, yet they were nearly 60% of those charged with imputed liability murder, either felony murder, accomplice liability, or both. Moriearty, *supra*, at 722. Patterns fell in the opposite direction for white defendants, who were 77.6% of the state population, 31% of the

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<sup>10</sup> Minnesota has similar, but slightly higher, rates of racial disproportionality than Washington in application of its felony murder laws, with Black people being 14.6 times more likely to be convicted of felony murder than white people. Felony Murder Reporting Project, *Minnesota Data*, <https://felonymurderreporting.org/states/mn/>.

population of direct liability murder defendants, and 24% of imputed liability murder charges. *Id.*

When the researchers examined the data specific to accomplices to felony murder, the results were even more stark. The only predicate crime for which any defendant was charged as an accomplice was robbery, a crime disproportionately associated with Blackness. *Id.* at 719-20; *id.* at 683 (discussing research demonstrating disproportionate association of Black people with robbery). Among those individuals charged as accomplices to felony murder, 67.4% were Black and only 16.3% were white. *Id.* at 719-20. The Minnesota study, when considered in conjunction with the racial disproportionality in Washington's felony murder regime, illustrates the degree to which racial bias infects felony murder.

This Court should not ignore the available racial disproportionality data, or the empirical evidence that explains how implicit bias produces this disproportionality. Taken together, the data and science magnify why the public interest is

served by this Court’s scrutinizing our felony murder scheme and harmed by a failure to do so.

This Court has been a trailblazer in fashioning doctrinal interventions to remedy the improper influence of race in individual cases, *see, e.g., Zamora*, 199 Wn.2d at 717; GR 37, and in fashioning systemic remedies where empirical evidence establishes the risk of improper risk of racial bias at the aggregate level. In *State v. Gregory*, this Court explained the importance of revising law in light of scientific advances, and acknowledged “[w]here new, objective information is presented for our consideration, we must account for it.” 192 Wn.2d 1, 18, 427 P.3d 621, 633 (2018).

This Court should accept review to determine the interventions necessary to align punishment for felony murder with notions of proportionality and justice. While the remedy requested here—individualized consideration of mitigating evidence for accomplices to felony murder who did not participate in the crime—is not systemic, it is an important

opportunity to account for the stark evidence of racial bias in our state's felony murder scheme on a case-by-case basis.

### **CONCLUSION**

Amicus urges this Court to accept review of this case.

### **CERTIFICATE OF COMPLIANCE WITH RAP 18.17**

Undersigned counsel certifies that, pursuant to RAP 18.17(b), the document contains 2,498 words, exclusive of words contained in the appendices, title sheet, table of contents, table of authorities, certificates of compliance and signature blocks, and pictorial images, and therefore meets the word count limitation of motions of 2,500 words as required by RAP 18.17(c)(9).

DATED this 28th day of March, 2025.

Respectfully Submitted:

/s/ Melissa Lee

Melissa R. Lee, WSBA #38808

Jessica Levin, WSBA #40837

Counsel for Amicus Curiae

CENTER FOR CIVIL RIGHTS AND CRITICAL JUSTICE

\*Counsel recognize Spring 2025 Civil Rights Clinic

Students Greg Crowder and Julie McCleery for their  
significant contributions to this brief.

## **DECLARATION OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington, that on March 28, 2025, the forgoing document was electronically filed with the Washington State's Appellate Court Portal, which will send notification of such filing to all attorneys of record.

Signed in Seattle, Washington, this 28th day of March, 2025.

/s/ *Melissa Lee*  
Melissa Lee  
Counsel for Amicus Curiae

**FRED T. KOREMATSU CENTER FOR LAW AND EQUALITY**

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**Comments:**

Amicus memorandum in support of petition for review and accompanying motion for leave to file as amicus, per RAP 13.4(h).

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Sender Name: Melissa Lee - Email: leeme@seattleu.edu  
Address:  
1112 E COLUMBIA ST  
SEATTLE, WA, 98122-4458  
Phone: 206-398-4394

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