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SUPREME COURT  
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No. 101068-1

IN THE SUPREME COURT OF WASHINGTON

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In re the Personal Restraint of:

AMANDA CHRISTINE KNIGHT,

Petitioner.

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PETITIONER'S SUPPLEMENTAL BRIEF

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## INTRODUCTION

Petitioner Amanda Knight is serving a 71-year prison sentence for participating at age 21 in a robbery in which an accomplice killed one of the victims, James Sanders. This petition was transferred by the Court of Appeals to this Court to decide whether there is sufficient evidence to support one of the six counts on which that sentence was imposed, felony murder.

That question arises from a previous determination by this Court that the felony murder count was distinct from a charge of first degree robbery of Mr. Sanders because it was based on evidence he “was shot in furtherance of Knight’s accomplices robbing the Sanderses of their safe.” *In re Knight*, 196 Wn.2d 330, 339, 473 P.3d 663 (2020) (“*Knight 2020*”). It arises because Petitioner’s jury was instructed that, in order to convict of felony murder, it had to find Mr. Sanders was killed in the course or furtherance of a completed robbery, and there is no evidence a completed robbery of the victims’ safe or its contents ever occurred.

The Court of Appeals transferred this case pursuant to *In re Martinez*, 171 Wn.2d 354, 256 P.3d 277 (2011) and RCW 10.73.140.<sup>1</sup> It did so because it had considered and rejected a similar sufficiency of evidence argument in an earlier petition. *Id.* That earlier rejection was based on the premise that Petitioner and her accomplices committed a single robbery that included the theft of the victims' rings. See *In re Knight*, 2019 Wash. App. LEXIS 621, at \*32 (Mar. 14, 2019). This Court's reversing decision rejected that premise and held the contrary. *Knight 2020*, 196 Wn.2d at 339.

Before transferring this petition, the Court of Appeals held it was not procedurally barred. *Knight 2022* at 5-6. The State did not seek reconsideration or review of those procedural rulings, so the sufficiency of evidence supporting the felony murder conviction is the only issue now before this Court.

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<sup>1</sup> See *In re Knight*, Wash CoA No. 56100-0-II (July 6, 2022) at 3 ("*Knight 2022*"). A copy of this slip opinion is appended to this Brief for the Court's convenience.

The resolution of that issue is clear. A conviction cannot stand without proof from which a reasonable juror could find every element of the offense proved beyond a reasonable doubt. *State v. Anderson*, 198 Wn.2d 672, 685-86, 498 P.3d 903 (2021) (citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). Petitioner’s jury was instructed that in order to convict of murder, the first element it had to find was “[t]hat on or about April 28, 2010, the defendant or an accomplice committed Robbery in the First Degree,” and that Robbery is “tak[ing] personal property ... by the use or threatened use of immediate force ....” Pet. Appdx. F, Inst. 9 and 11. There is no evidence that Petitioner or anyone took or even touched the victims’ safe, or anything in it, on the night of the murder. The Court’s determination that the “personal property” involved in the robbery that made James Sanders killing a felony murder was the safe or its contents left the felony murder count without any evidence to support it. Because of that, it cannot stand.

## **ISSUE PRESENTED FOR REVIEW**

Was there any evidence at trial that Petitioner or an accomplice “committed Robbery in the First Degree” of a safe, in the course or furtherance of which James Sanders was killed?

## **FACTS**

The majority opinion of this Court issued in 2020 summarized the facts and history of this case as follows:

In April 2010, James and Charlene Sanders posted an advertisement on Craigslist, seeking to sell a wedding ring. On the evening of April 28, after informing the Sanderses they were interested in purchasing the ring, Amanda Knight and three other men arrived at the Sanderses’ residence. James invited Knight and one other man into the kitchen where Charlene soon joined them. Just as the transaction was seemingly about to be completed, Knight's accomplice drew a gun and pointed it at the Sanderses. While holding James and Charlene at gunpoint, Knight and her accomplice zip-tied the couple, placed them face down on the floor, and took their wedding rings off their fingers.

After Knight and her accomplice stole the Sanderses’ rings, Knight's two remaining accomplices entered the Sanderses’ house, went upstairs, and brought the Sanderses’ two children downstairs at gunpoint. Both children were then zip-tied and one of them was pistol-



whipped in the head. As Knight proceeded to ransack the rest of the house, Knight's accomplices demanded that Charlene tell them the location of their safe. When she denied owning a safe, they kicked her in the head and once again held her at gunpoint.

The Sanderses then admitted to owning a safe, and James agreed to provide Knight's accomplices with the combination. At that point, James was pulled off the floor and his zip tie was loosened. James then broke free of his restraints and jumped on one of the accomplices. James was attacked and pistol-whipped in the head before he was fatally shot three times. After James was shot, Knight and her accomplices fled. The police declared James dead at the scene.

A week later, Knight turned herself in and confessed. The police charged Knight with one count of first degree murder while in the furtherance of a robbery (i.e., felony murder), two counts of first degree robbery, two counts of second degree assault, and one count of first degree burglary, all with firearm enhancements. At trial, the jury was presented with 45 jury instructions, one of which stated that “[a] person commits the crime of Murder in the First Degree when she or an accomplice commits Robbery in the First Degree and in the course of or in furtherance of such crime she or another participant causes the death of a person other than one of the participants.” Clerk's Papers at 335. In April 2011, the jury found Knight guilty on all counts, and the trial court sentenced Knight to 860 months in prison.

*Knight 2020*, 196 Wn.2d at 333–35 (footnotes omitted).

Following an unsuccessful appeal, Petitioner filed a personal restraint petition which claimed, among other things, that her right to be free from Double Jeopardy was violated by the multiple convictions and sentences for the robbery and robbery murder of James Sanders. The Court of Appeals first rejected that claim, but then reversed itself. *See Knight 2019* at slip op. 14. This Court granted review and by a 5-4 vote reversed on this point. *Knight 2020* at 196 Wn.2d 341.

The majority did so based on a finding that Mr. Sanders was the victim of two robberies, one of his ring and one of a safe in his garage, and his murder occurred in the course of the second robbery, after the first one was complete. It wrote:

James was pulled up ... to guide Knight's accomplices *to the safe—a separate robbery*. In the middle of this new robbery, James attacked Knight's accomplices, who then killed James—completing Knight's felony murder charge, as *James' murder was in furtherance of a second, distinct robbery*. Based on the chronology of these events, James' ““person or property”” was injured ““in a separate and distinct manner”” when he was robbed of his ring, and then injured ““in a separate and distinct manner”” when he was shot in furtherance of Knight's accomplices robbing the Sanderses of their safe.

*Id.* at 339 (emphasis added). The majority opinion held there was no Double Jeopardy because of this distinction, although the jury instructions did not reflect it, saying the prosecutor’s closing argument “clearly show[ed] that the robbery of the ring was complete before Knight’s accomplices engaged in another robbery of the Sanderses’ safe and the subsequent murder of James Sanders.” *Id.* at 340.

Petitioner moved for reconsideration, arguing that Double Jeopardy cannot be avoided by jury arguments alone, and also pointing to places in the prosecutor’s arguments saying that both the first-degree robbery and felony murder counts could be based on the theft of the victims’ rings.<sup>2</sup> The Motion was denied over a four Justice dissent. *In re Knight*, No. 97066-1, 2021 Wash. LEXIS 515, at \*1 (Feb. 2, 2021). Petitioner then filed the instant petition.

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<sup>2</sup> See Motion for Reconsideration, *In re Knight*, Wn. Sup. Ct. No. 97066-1 (filed 10/28/20) (citing RP 1002-03, 1007).

## ARGUMENT

### I. PETITIONER'S JURY WAS INSTRUCTED THAT AN ELEMENT OF THE FELONY MURDER CHARGE WAS A COMPLETED ROBBERY.

Petitioner's jury was given the following instructions:

To convict ... of Murder in the First Degree as charged in Count I, ... the following elements must be proved ...:

- (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 ...

Pet. Appdx F, Instr 9) (emphasis added).

A person commits the crime of Robbery when she or an accomplice unlawfully and with intent to commit theft thereof *takes* personal property from the person or in the presence of another against that person's will by the use or threatened use of immediate force, violence, or fear of injury to that person or to the person or property of anyone.....

Id., Instr. 11) (emphasis added). These instructions were proposed by the State. See Pet. Appdx. G.

The Amended Information by which Petitioner was charged included an allegation that James Sanders was killed while Petitioner was “committing *or attempting to commit* the crime of Robbery.” CP 1 (emphasis added). The record does not indicate why the State nonetheless elected to have the jury instructed only on the completed crime of robbery rather than attempt. It may have done so because an “attempt” requires an “intent to commit a specific crime,” RCW 9A.28.020, and the jury knew that Petitioner was not even present when her accomplices began demanding the victims’ safe and the struggle broke out in which Mr. Sanders was shot. *See Knight 2020*, 196 Wn.2d at 334. Or it may have done so simply because, as the Court of Appeals observed, the robbery of the safe was no part of the State’s theory and argument at trial. *See Knight 2019* at 11n.6. But regardless of the reason for its election, the jury instruction the State proposed defined the elements it had to prove in order to convict.

[I]n a criminal case, “the State assumes the burden of proving otherwise unnecessary elements of the offense when such added elements are included without objection in the ‘to convict’ instruction.” *State v. Hickman*, 135 Wn.2d 97, 102, 954 P.2d 900 (1998) (where to-convict instruction erroneously included venue as an element, State was required to prove venue beyond a reasonable doubt) (citing *State v. Lee*, 128 Wn.2d 151, 159, 904 P.2d 1143 (1995)). Similarly, if an unchallenged instruction limits the State to one of several alternative means of committing a crime, then the doctrine limits the State to proving that specified means.

*State v. Anderson*, 198 Wn. 2d 672, 679, 498 P.3d 903 (2021) (citing *State v. Chamroeum Nam*, 136 Wn. App. 698, 706-07, 150 P.3d 617 (2007)).

Moreover, to satisfy Due Process, the sufficiency of the evidence to support a conviction can only be assessed with reference to the charge that was actually submitted to the jury, not to one that might have been.

To conform to due process of law, petitioners [a]re entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court.

*Cole v. Arkansas*, 333 U.S. 196, 202, 68 S. Ct. 514, 92 L.Ed. 644 (1948).

Petitioner's jury was told that, to convict of felony murder, it had to find that James Sanders was killed in the course or furtherance of a completed robbery. This Court has held that the robbery on which the felony murder count is based was a robbery of the victims' safe. The trial evidence showed that neither Petitioner nor any of her accomplices took the safe or anything from it. It was not opened or removed during the robbery: it was there when the police inspected the house after the robbery, and it had only James Sanders' fingerprints on it. See RP 641, 684-85, 727. No reasonable juror could have found there was a completed robbery of the safe. Petitioner's felony murder conviction therefore cannot stand.

**II. THIS COURT'S DETERMINATION OF THE BASIS FOR THE FELONY MURDER CHARGE IS THE LAW OF THIS CASE.**

"In its most common form, the law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation." *Roberson v. Perez*,

156 Wn.2d 33, 41, 123 P.3d 844 (2005) (citing *Lutheran Day Care v. Snohomish Cty.*, 119 Wn.2d 91, 113, 829 P.2d 746 (1992) and 15 L. H. ORLAND & K. B. TEGLAND, WASHINGTON PRACTICE: JUDGMENTS § 380, at 55-56 (4th ed. 1986)).

Where there has been a determination of the applicable law in a prior appeal, the law of the case doctrine ordinarily precludes redeciding the same legal issues in a subsequent appeal. .... The Supreme Court is bound by its decision on the first appeal until such time as it might be authoritatively overruled.

*State v. Clark*, 143 Wn. 2d 731, 744, 24 P.3d 1006 (2001).

We will reconsider a subsequent appellate argument raising the identical legal issue only when the holding of the prior appeal is clearly erroneous and the application of the law of the case doctrine will result in a manifest injustice.

*State v. Gregory*, 192 Wn. 2d 1, 29-30, 427 P.3d 621 (2018).

Neither of these circumstances is present here. Although Petitioner has contended that the Court's previous decision regarding the basis for the felony murder charge was in error, the Court has rejected her arguments and her request for reconsideration. The State has not argued that in doing so the



Court erred, and it has accepted the benefits of the decision in its favor. It is too late to contend that decision was erroneous.

Neither would adhering to that decision work an injustice to the State. Petitioner would remain convicted of five serious felonies with five firearm and weapon enhancements for participating in a crime during which she never held a gun. The State elected to bring these multiple charges against her it did, and proposed the instructions the jury was given about those charges, in order to convict on as many of them as it could. It would be no injustice for this Court to find that by stretching its charging discretion to the limit in this manner, the State included one count that its evidence cannot sustain.

**III. ROBBERY WAS AN ELEMENT OF THE FELONY MURDER CHARGE, NOT JUST AN “INDEPENDENT EFFECT.”**

While accepting the benefits of the Court’s previous decision in its favor, in its Brief responding to this Petition the State argued that the decision does not mean what it clearly says, reverting to the claim that “the predicate offense for the

felony murder was the robbery of James' ring," and so "it is irrelevant that the robbery of the safe was not completed or charged as an offense." Brief of Respondent, *In re Knight*, CoA No. 56100-0-II at 12.

That directly contradicts what this Court's majority opinion said: that Mr. Sanders "was shot in furtherance of Knight's accomplices robbing the Sanderses of their safe" (*Knight 2020*, 196 Wn. 2d at 339); "the robbery of the ring was complete before Knight's accomplices engaged in another robbery of the Sanderses' safe and the subsequent murder of James Sanders" (*id.* at 340); "the first robbery against James was already completed before James was murdered in the furtherance of a second, distinct robbery" (*id.* at 341).

The State's Brief below also ignored how the instructions to Petitioner's jury defined what the Court had to determine in order to rule as it did on the Double Jeopardy issue. As shown above, the jury was told that in order to convict it had to find "that on or about April 28, 2010, the defendant or an

accomplice committed Robbery in the First Degree” and that James Sanders was killed “in the course of or in furtherance of *such crime.*” Pet. Appdx. F, Instr. 9 (emphasis added). The *Knight 2020* majority’s double jeopardy ruling expressly rested on the holding that the robbery that satisfied this first element—the robbery in furtherance of which Mr. Sanders was killed—was the robbery of “the safe.” 196 Wn. 2d at 339. If it had held otherwise, it would have reached a different conclusion on the double jeopardy issue.

The legal issue—as both the majority and the dissent recognized—is whether the crimes of felony-murder-based-on-robbery and the underlying robbery were based on the same criminal taking. If they were, then under controlling law of this court and the United States Supreme Court, the double jeopardy clause bars conviction on both counts.... If they were not, then both convictions survive.

The majority agreed with this analytical framework. *In re Pers. Restraint of Knight*, 196 Wn.2d 330, 337, 473 P.3d 663 (2020) (“when the degree of one offense is raised by conduct separately criminalized by the legislature, we presume the legislature intended to punish both offenses through a greater sentence for the greater crime”) (quoting *State v. Freeman*, 153 Wn.2d 765, 772-73, 108 P.3d 753 (2005)), 345 (Yu, J., dissenting).

*In re Knight 2021*, 2021 Wash. LEXIS 515 at \*3-4 (dissent from denial of reconsideration). “[E]ven assuming that *Freeman* controls over *Blockburger*, ... [if] the criminal acts supporting the conviction of robbery of Mr. Sanders and the criminal acts supporting the conviction of felony-murder-based-on-robbery of Mr. Sanders were identical” “even under the majority's legal analysis, conviction of both of those crimes violates the double jeopardy clause.” *Id.*

Because the *Knight 2020* decision was, and must have been, based on a determination that the felony murder conviction was based on a robbery of the safe, and there is no evidence such a robbery occurred, that conviction cannot stand.

## CONCLUSION

Petitioner's felony murder conviction should be vacated and the case remanded for resentencing on the remaining charges against her.

*This document contains 3026 words in all sections included in RAP 18.17(b).*

DATED this 13th day of January 2023.

Respectfully submitted,

/s/ Timothy K. Ford

Timothy K. Ford  
Attorney for Petitioner

## CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on the 13th day of January, 2023, I emailed a copy of the foregoing document to counsel for the Respondent, Pamela Loginsky, DPA [pamela.loginsky@piercecounywa.gov](mailto:pamela.loginsky@piercecounywa.gov) and filed it electronically through the Washington State Appellate Courts' Portal, which will serve a copy upon her.

/s/ Chris Bascom