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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

ALEXANDRA BRAATZ,
Respondent,

v.

MICHAEL BRAATZ,
Petitioner.

) NO. 95747-9

) SUPPLEMENTAL CITATION
) TO AUTHORITY

COMES NOW Michael Braatz, the petitioner, by and through his attorney, Neil M. Fox, and offers the following additional authority, regarding whether he ever “waived” the right to assert the Fifth Amendment in any future hearing:

1. *Stone v. State*, 85 Wn.2d 342, 344, 534 P.2d 1022 (1975):

The established rule is that a waiver of the privilege against self incrimination by testifying at one proceeding does not extend to a later, separate proceeding. [Citations omitted] The reasons given by courts following this rule are various: that repetition adds to the weight of the evidence increasing the self-incrimination danger; that changed circumstances may have created new and greater dangers of prosecution of the witness; that a different proceeding may entail different procedures, increasing the possibility of incriminatory disclosures. [Citations omitted] But whatever the justification for this result, it is clear that the vast majority of courts both ancient and modern, state and federal, have reached it.

2. *Rogers v. United States*, 340 U.S. 367, 374, 71 S. Ct. 438, 95 L. Ed. 344 (1951):

[T]he court was required to determine, as it must whenever the privilege is claimed, whether the question presented a reasonable danger of *further* incrimination in light of all the circumstances, including any previous disclosures. As to each question to which a claim of privilege is directed, the

1 court must determine whether the answer to that particular question would
2 subject the witness to a “real danger” of *further* crimination.

3 Emphasis added.

4 3. *McCarthy v. Arndstein*, 262 U.S. 355, 357-60, 43 S. Ct. 562, 67
5 L. Ed. 1023 (1923) (holding that when a witness’s previous disclosure is not an
6 actual admission of guilt or incriminating facts, the witness subsequently may
7 assert the privilege and decline to testify as to matters that might incriminate
8 him: “And since we find that none of the answers which had been voluntarily
9 given by Arndstein, either by way of denials or partial disclosures, amounted to
10 an admission or showing of guilt, we are of opinion that he was entitled to
11 decline to answer further questions when so to do might tend to incriminate
12 him.”)

13 4. *Emspak v. United States*, 349 U.S. 190, 198, 75 S. Ct. 687, 99
14 L. Ed. 997 (1955) (referring to the Court’s “own oft-repeated admonition” that
15 the courts must indulge every reasonable presumption against finding a
16 testimonial waiver)

17 5. *United States v. Licavoli*, 604 F.2d 613, 623 (9th Cir. 1979)
18 (holding that voluntary testimony before a grand jury did not waive the
19 privilege at trial, because “[i]t is settled that a waiver of the Fifth Amendment
20 privilege is limited to the particular proceeding in which the waiver occurs”).

21 Dated this 29th day of May 2018.

22 Respectfully submitted,

23 s/ Neil M. Fox
24 WSBA No. 15277
25 Attorney for Petitioner
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CERTIFICATE OF SERVICE

I, Neil Fox, certify and declare as follows:

On May 29, 2018, I served a copy of the attached SUPPLEMENTAL CITATION TO AUTHORITY by filing this pleading through the Portal and thus a copy will be delivered electronically to counsel for all parties.

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

Dated this 29th day of May 2018, at Seattle, Washington.

s/ Neil M. Fox

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LAW OFFICE OF NEIL FOX PLLC

May 29, 2018 - 9:13 AM

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Appellate Court Case Title: Alexandra Braatz v. Michael Braatz
Superior Court Case Number: 16-2-07697-1

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