

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

JENNIFER LYNN MOTHERSHEAD,

Appellants.

NO. 45588-9-II

STATEMENT OF ADDITIONAL
AUTHORITY

Pursuant to RAP 10.8,¹ Respondent, State of Washington, respectfully submits the following as additional authority for:

ISSUE 8, to wit: Has defendant failed to prove the prosecutor committed misconduct in summation by arguing inferences from defendant's testimony and the court's instruction on circumstantial evidence?

1. *State v. Burke*, 163 Wn.2d 204, 207, 181 P.3d 1 (2008): "When defendants take the stand, their prearrest silence may be used to impeach their testimony, but their silence may not

¹ "A party ... may file a statement of additional authorities. The statement should not contain argument, but should identify the issue for which each authority is offered. The statement must be served and filed prior to the filing of the decision on the merits or, if there is a motion for reconsideration, prior to the filing of the decision on the motion."

1 be used as substantive evidence of guilt." *Id.* (citing *See State v. Clark*, 143 Wn.2d 731, 756, 24
2 P.3d 1006 (2001)). "A mere reference to a defendant's silence may be permissible."

3
4 2. *State v. Young*, 89 Wn.2d 613, 600-21, 574 P. 2d 1171 (1978): "The prosecutor was
5 entitled to argue the failure of the defendant to disclaim responsibility after he voluntarily
6 waived his right to remain silent and when his questions and comments showed knowledge of
7 the crime. There was no error."

8
9 3. *Jenkins v. Anderson*, 447 U.S. 231, 238-39, 100 S.Ct. 2124, 65 L.Ed.2d 86 (1980):
10 "[T]he Fifth Amendment is not violated by the use of prearrest silence to impeach a criminal
11 defendant's credibility... The petitioner also contends that use of prearrest silence to impeach
12 his credibility denied him the fundamental fairness guaranteed by the Fourteenth Amendment.
13 We do not agree. Common law traditionally has allowed witnesses to be impeached by their
14 previous failure to state a fact in circumstances in which that fact naturally would have been
15 asserted." *Id.* (citing 3A J. Wigmore, Evidence § 1042, p. 1056 (Chadbourn rev. 1970)).

16
17 RESPECTFULLY SUBMITTED: February 27, 2015.

18 MARK LINDQUIST
19 Pierce County
20 Prosecuting Attorney

21 
22 JASON RUYF
23 Deputy Prosecuting Attorney
24 WSB # 38725

25 Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI
delivery to the attorney of record for the appellant and appellant c/o his or her attorney
or to the attorney of record for the respondent and respondent c/o his or her attorney 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 Tacoma, Washington, on the date below.

2/27/15 Cherene Ka
Date Signature

PIERCE COUNTY PROSECUTOR

February 27, 2015 - 4:20 PM

Transmittal Letter

Document Uploaded: 3-455889-Statement of Additional Authorities.pdf

Case Name: St. v. Mothershead

Court of Appeals Case Number: 45588-9

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: _____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Therese M Kahn - Email: tnichol@co.pierce.wa.us

A copy of this document has been emailed to the following addresses:

wapofficemail@washapp.org

tom@washapp.org