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SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
Petitioner,

vs.

JOSEPH T. McENROE and
MICHELE ANDERSON,
Respondents.

88410-2
) No. ~~884110-2~~
)
) RESPONDENTS'
) STATEMENT OF ADDITIONAL
) AUTHORITIES AFTER ORAL
) ARGUMENT
) RAP 10.8
) July 1, 2013
)
)
)

1)

During oral argument in this case on May 9, 2013, Justice Stephens asked Respondents' counsel whether there is a remedy for a charging decision absent a constitutional violation. (TVW recording of oral argument, 5/9/2013, at approximately 37 minutes). Respondents' counsel cited RCW 10.95.040(3), and answered that filing a notice of special sentencing proceeding is not a charging decision, and referred the Court to Respondents' Amended Joint Response brief [section C, part 3, pp.38-44] and Respondents' Joint Response to Brief of Amicus, [p. 6 – 7]. The following authorities are also relevant to Justice Stephen's inquiry regarding separation of powers with regards to courts reviewing "charging" decisions:

CrR 2.1(2)(d):

Amendment. The Court *may* permit any information or bill of particulars to be amended at any time before verdict or finding if substantial rights of the defendant are not prejudiced.

Emphasis added. 1.

Also relevant is State v. James, 108 Wn2d 483 (1987):

Granting a motion to amend an information is a matter within a trial court's discretion.

State v. James followed State v. Haner, 95 Wn2d 858 (1981), quoted in Respondents'

Amended Joint Response at p. 44:

[Although] there is no role for the court at the time the prosecuting attorney files the original charge ... the amendment of an information is not an initial decision to prosecute.

...

[W]e cannot say that the judge abused his discretion in concluding that the public interest would not be served by reduction of the charge and dropping of the deadly weapon allegation.

Also pertinent to Justice Stephen's question is RCW 10.16.110, entitled "Statement of Prosecuting Attorney if No Information is Filed – Court Action," quoted at p. 40 of Respondents' Amended Joint Response.

1 Respondents argued in their brief, that if this Court finds that filing a notice of special sentencing proceeding is a charging decision, it is an amendment to the original information charging aggravated murder, which alone carries a maximum punishment of life in prison without release. RCW 10.95.030(1). See: Respondents' Amended Joint Response, p. 44; Respondents' Joint Response to Brief of Amicus, pp. 5-6.

2)

In “Respondents’ Joint Response to Brief of Amicus Curiae Washington Association of Prosecuting Attorneys,” p. 14, Respondents assert: “[T]he Prosecuting Attorney has shown either an indifference to racial bias or an inability to recognize [racial bias].”

Additional authority for that assertion is State v. Cook, 2013 WL 2325117 (Wash App, Div. 1) (May 28, 2013)

A [King County] prosecutor’s proffered reasons for the peremptory challenge of one of two African-American jurors on the venire are not sufficient to defeat a Batson challenge where, as here, the proffered reasons for the strike are unsupported by the record, appear “pretextual” because similar jurors were not excused from sitting, or appear to be mere “proxy” reasons for racially motivated excusal.

Dated: July 1, 2013

Respectfully submitted:

Kathryn Lund Ross, WSBA 6894
Attorney for Respondent McEnroe

The Defender Association Division,
King County Office of Public Defense
810 Third Avenue, Suite 800
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Sent: Tuesday, July 02, 2013 9:01 AM
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Subject: RE: State v. McEnroe and Anderson, WSSC No. 88410-2

Rec'd 7-2-13

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Subject: State v. McEnroe and Anderson, WSSC No. 88410-2

Looks like I was so busy making sure all counsel got this Statement of Additional Authorities, I left the Court off the addressee list.

Respectfully,

Katie Ross
Director, WDPAC
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-----Original Message-----

From: Wdpac <Wdpac@aol.com>
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Cc: prestia <prestia@defender.org>; leo.hamaji <leo.hamaji@defender.org>
Sent: Mon, Jul 1, 2013 10:34 pm
Subject: State v. McEnroe and Anderson, WSSC No. 88410-2

To the Court and Counsel:

Attached please find Respondents' Statement of Additional Authorities and a Certificate of Service.

Respectfully,

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