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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 K. ANDERSON,
Respondents.

) No. 884110-2 **88410-2**
)
) RESPONDENTS' STATEMENT
) OF ADDITIONAL AUTHORITIES
)
)
)

Respondents McEnroe and Anderson request the Court to consider the following additional authorities relevant to questions raised during oral argument on May 9, 2013.

In response to questions from Justice Stephens, Chief Justice Madsen and Justice Wiggins, as to whether "strength of the evidence" in the form of "residual doubt" is an appropriate consideration or allowed to be argued to the jury in the penalty phase of a capital case, Respondents submit the following:

The actual language from Personal Restraint Petition of Lord, 123 Wn2d 296 (1994):

3. Hammer and Trace Evidence. Lord claims the trial court erred in admitting evidence regarding the hammer, the trace evidence connecting Lord with the murder, and the charts summarizing the trace evidence (FN 13). These issues were dealt with at length in this court's decision on direct appeal.

FN 13. Lord's principle argument is that the chart precluded the jury from treating "residual doubts" as to his guilt as a mitigating factor... Residual doubt as to the defendant's guilt is not one of the "relevant factors" listed in RCW 10.95.070 (or the jury instructions), ***nor does the constitution require it be treated as a mitigating factor.*** [citing] Franklin v. Lynaugh, 487 US 164 (1988).

RESPONDENTS' STATEMENT OF
ADDITIONAL AUTHORITIES

ORIGINAL

1 Emphasis added. Also:

2
3 “[W]here the sole purpose for seeking to have the evidence admitted [is] to show
4 residual or lingering doubt [of the defendant’s] innocence” the evidence is
5 inadmissible at the penalty phase ... [The defendant] does not have a right to re-
litigate his guilt during the penalty phase after being found guilty as the
perpetrator in the guilt phase.

6 Merck v. State, 2013 WL 264437, Florida (2013).

7 This Court has observed that “there is no constitutional requirement that the
8 sentencing proceeding jury revisit the prior guilty verdict by considering evidence
of “residual doubt.” ...

9 State v. Nordstrom, 230 Ariz 110 (2012).

10 Dated: May 12, 2013.

11
12
13 Respectfully submitted:

14 _____
Kathryn Lund Ross, WSBA 6894
Attorney for Respondent McEnroe

15
16 The Defender Association
810 Third Avenue, Suite 800
Seattle, Wa. 98104

17
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Subject: RE: State v. McEnroe/Anderson, No. 884110-2

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Cc: Andrea.Vitalich@kingcounty.gov

Subject: State v. McEnroe/Anderson, No. 884110-2

Attached please find Respondents' Statement of Additional Authorities and proof of service.

Respectfully,

Katie Ross
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PROOF OF SERVICE

This document has been served on this date electronically and by United States mail on the following counsel:

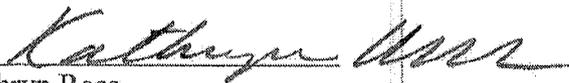
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I declare the foregoing to be true and correct under penalty of perjury under the laws of the State of Washington.

May 12, 2013, at Seattle, WA.


Kathryn Ross
WSBA No. 6894

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