

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
Jun 03, 2013, 4:37 pm  
BY RONALD R. CARPENTER  
CLERK

Supreme Court No. 88522-2

RECEIVED BY E-MAIL

IN THE WASHINGTON SUPREME COURT

---

STATE OF WASHINGTON,  
Petitioner/Cross-Respondent,

v.

CHRISTOPHER JOHN MONFORT,  
Respondent/Cross-Petitioner.

---

REPLY BRIEF OF RESPONDENT/CROSS-PETITIONER

---

By:

SUZANNE LEE ELLIOTT  
WSBA 12634  
Attorney for Respondent/Cross-Petitioner  
Law Office of Suzanne Lee Elliott  
Suite 1300 Hoge Building  
705 Second Avenue  
Seattle, WA 98104

 ORIGINAL

**TABLE OF CONTENTS**

I. REPLY ARGUMENT .....1

II. CONCLUSION.....3

**TABLE OF AUTHORITIES**

**Cases**

*State v. McEnroe and State v. Anderson*, No. 88410-21 ..... 2

**Statutes**

RCW 10.95.040 ..... 1, 2

RCW 10.95.060 ..... 1

RCW 10.95.070 ..... 1

## I. REPLY ARGUMENT

This case requires this Court to consider and apply the unambiguous language of RCW 10.95.040(1). The State appears to concede that there is no other similar capital statute in the country. Therefore, the citations to cases construing other states' capital schemes are not relevant to this Court's construction of Washington's unique statute. While other states may not require the prosecutor to consider the defendant's mitigating circumstances before filing a notice of his intent to seek the death penalty, Washington's statute does.

This Court should reject the prosecutor's argument that the "plain language" of RCW 10.95.040 requires the prosecutor to consider the facts of the crime. It does not. RCW 10.95.040 makes no reference to the facts of the crime. The Legislature limited the prosecutor's inquiry to whether the defendant is "worthy" of the death penalty, not whether the crime is "worthy" of the death penalty.

It is true that one mitigating factor – RCW 10.95.070(3) – might require reference to a very limited consideration of the "victim's consent" to the act of their own murder. But once that very singular (and highly unlikely) factual consideration is resolved, the prosecutor's consideration of other facts of the crime are improper. Monfort does not agree that other statutory mitigating factors require consideration of anything other than the defendant and his mental state.

The State argues that RCW 10.95.060(4) poses a different question because, unlike the prosecutor, the jury needs to be "reminded" to consider

the facts of the crime when considering the proper punishment. The State thus concludes that RCW 10.95.040(1) does not mirror that language because “there is no need to explicitly remind the prosecutor to consider the facts of the crime.” Response Brief of Petitioner/Cross-Respondent [Pet’s Response] at 26. But RCW 10.95.060(4) and 10.95.040 are not “reminders.” There are statutes that explicitly set forth the legal parameters of the jury and the prosecutor’s considerations at different stages of the proceedings.

The law frequently requires jurors to ignore certain evidence even after they have heard about it during trial. Jurors are frequently instructed that they may consider evidence for one purpose but not another. If the law presumes that a juror can shield himself or herself from certain facts, then it is neither absurd nor impossible to expect the elected prosecutor to do precisely the same thing.

Finally, the State argues that the prosecutor “can and should consider the facts and circumstances of the crime in deciding whether to seek the death penalty.” Pet’s Response at 28. But that is not what the Legislature permits. Worse, yet, as Judge Ramsdell pointed out in *State v. McEnroe and State v. Anderson*, No. 88410-21, the result is this: If prosecutors are permitted to seek the death penalty based upon the facts of the crime, in a heinous case, where the evidence is overwhelming, then the prosecutor might seek the death penalty even though the evidence of the defendant’s mitigating circumstances is compelling and undeniable. But the Legislature intended that in every case, heinous or not so heinous,

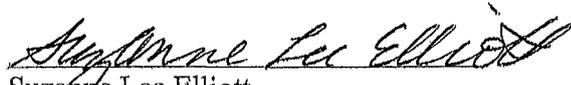
where there are sufficient mitigating circumstances to merit leniency, the prosecutor should not even seek the death penalty.

## II. CONCLUSION

For the reasons stated, this Court should affirm Judge Kessler's order.

DATED this 3rd day of June, 2013.

Respectfully submitted,

  
Suzanne Lee Elliott  
WSBA 12634

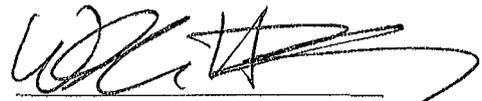
## CERTIFICATE OF SERVICE

I certify that on June 3, 2013, I served one copy of the foregoing pleading by email on the following:

Ms. Deborah Dwyer  
Deputy King County Prosecutor  
516 Third Avenue, W554  
Seattle, WA 98104  
Deborah.Dwyer@kingcounty.gov

Ms. Ann Summers  
Deputy King County Prosecutor  
516 Third Avenue, W554  
Seattle, WA 98104  
Ann.Summers@kingcounty.gov

03 June 2013  
Date

  
William Hackney

## OFFICE RECEPTIONIST, CLERK

---

**To:** William Hackney  
**Cc:** deborah.dwyer@kingcounty.gov; ann.summers@kingcounty.gov; calbouras@hotmail.com; suzanne-elliott@msn.com  
**Subject:** RE: State v. Monfort, No. 88522-2

Rec'd 6-3-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

---

**From:** William Hackney [<mailto:william@davidzuckermanlaw.com>]  
**Sent:** Monday, June 03, 2013 4:32 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** [deborah.dwyer@kingcounty.gov](mailto:deborah.dwyer@kingcounty.gov); [ann.summers@kingcounty.gov](mailto:ann.summers@kingcounty.gov); [calbouras@hotmail.com](mailto:calbouras@hotmail.com); [suzanne-elliott@msn.com](mailto:suzanne-elliott@msn.com)  
**Subject:** State v. Monfort, No. 88522-2

Attached for filing in *State v. Monfort*, No.88522-2, is Monfort's reply brief of respondent/cross-petitioner.

These pleadings are filed by Suzanne Lee Elliott, WSBA #12634, 206-623-0291, [Suzanne-elliott@msn.com](mailto:Suzanne-elliott@msn.com). Thank you for your assistance.

~William Hackney  
Legal Assistant