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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, ) No. 88854-0  
 )  
 ) vs. )  
 ) STATEMENT OF ADDITIONAL  
 ) JOEL CONDON, ) AUTHORITIES  
 )  
 ) Respondent, )  
 )  
 )  
 )  
 )  
 )

Pursuant to RAP 10.8, The State respectfully cites the following as additional authority:

- A. Regarding the appropriate standard for evaluating due process challenges arising in the context of criminal proceedings:

State v. Hurst, 173 Wn.2d 597, 601-02, 269 P.3d 1023 (2012) (due process challenges arising in the context of criminal proceedings are governed by the analytical framework of Medina v. California, 505 U.S. 437, 445, 112 S.Ct. 2572, 120 L.Ed.2d 353 (1992), rather than Matthews v. Eldridge, 424 U.S. 319, 333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)).

In re Personal Restraint of Dyer, 143 Wn.2d 384, 394, 20 P.3d 907 (2001) ("Washington's due process clause does

not afford a broader due process protection than the Fourteenth Amendment”).

- B. Regarding the proper test for determining whether a defendant is entitled to a jury instruction on an inferior degree offense, vis-à-vis a lesser included offense:

State v. Tamalini, 134 Wn.2d 725, 731, 953 P.2d 450 (1998) (noting the distinction between lesser included offenses and inferior degree offenses). See also, State v. Fernandez-Medina, 141 Wn.2d 448, 462-68, 6 P.3d 1150 (2000) (Ireland, J., dissenting) (further articulating the difference between the factual components of the tests for instructing the jury on lesser included and inferior degree offenses).

- C. Regarding the impact of failure to instruct the jury on the lesser included/inferior degree offense of intentional murder in the second degree:

11A Wash. Prac., Pattern Jury Instr. Crim. WPIC 155.00 (3d Ed) (directing jury to consider lesser offenses only if it finds the defendant not guilty of the greater offense).

- D. Regarding the appropriate remedy in the event that this Court finds the evidence of premeditation insufficient:

State v. Heidari, 174 Wn.2d 288, 274 P.3d 366 (2012) (when conviction is reversed for insufficient evidence, appellate court has power to remand for sentence on a lesser offense where the jury has been explicitly instructed thereon and the record shows that the trier of fact expressly found each of the elements of the lesser offense).

Dated this 21<sup>st</sup> day of February, 2014.

JAMES HAGARTY  
Yakima County Prosecuting Attorney

  
JENNIFER P. JOSEPH, WSBA #35042  
Special Deputy Prosecuting Attorney  
Attorneys for Petitioner

W554 King County Courthouse  
Seattle, WA 98104  
Telephone: 206-296-9000

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the respondent, Manek Mistry and Jodi Backlund (at backlundmistry@gmail.com (with permission)), containing a copy of the Statement of Additional Authorities, in State v. Joel Condon, Cause No. 88854-0, in the Supreme Court, for the State of Washington.

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

W Brame  
Name  
Done in Seattle, Washington

2/21/19  
Date

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**Sent:** Friday, February 21, 2014 3:15 PM  
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**Cc:** backlundmistry@gmail.com; David.Trefry@co.yakima.wa.us; Joseph, Jennifer  
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**Attachments:** 88854-0 - Statement of Additional Authorities.pdf

Please accept for filing the attached documents (Statement of Additional Authorities) in State of Washington v. Joel Condon, No. 88854-0.

Thank you.

Jennifer P. Joseph  
Deputy Prosecuting Attorney  
WSBA #35042  
King County Prosecutor's Office  
W554 King County Courthouse  
Seattle, WA 98104  
206-296-9070  
E-mail: [jennifer.joseph@kingcounty.gov](mailto:jennifer.joseph@kingcounty.gov)  
E-mail: [PAOAppellateUnitMail@kingcounty.gov](mailto:PAOAppellateUnitMail@kingcounty.gov)  
WSBA #91002

This e-mail has been sent by Wynne Brame, paralegal (phone: 206-296-9650), at Jennifer Joseph's direction.

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