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SUPREME COURT
STATE OF WASHINGTON
Feb 18, 2014, 9:01 am
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NO. 88854-0

SUPREME COURT
OF THE STATE OF WASHINGTON

0
1 State of Washington)

vs.)

2 Joel Condon)

) Statement of Additional Authority and
) Certificate of Service
) RAP 10.8
)

3 Appellant/Respondent Joel Condon submits the following additional authority pursuant to RAP 10.8:

4 A. Regarding the state's argument that "the trial court treated the alternative charge of first degree
felony murder exactly like a lesser included offense," and thus the jury implicitly rejected all
lesser-included offenses by voting to convict (Petitioner's Supplemental Brief, pp. 18-22):

- 5
- 6 • Felony murder is not a lesser-included offense of aggravated first-degree murder. *State v.*
Irizarry, 111 Wn.2d 591, 592, 763 P.2d 432 (1988).
 - 7 • A court commits reversible error when it refuses to instruct "on the matter of reasonable
doubt as between degrees." *State v. Stationak*, 73 Wn.2d 647, 652, 440 P.2d 457 (1968).
 - 8 • When an offense has been proved but there is a reasonable doubt as to whether the accused
person committed the greater or the lesser crime, he or she shall be convicted only of the

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0 *Statement of Add'l Authority- 1*

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lesser crime. RCW 10.58.020; WPIC 4.11 (11 Wash. Prac., Pattern Jury Instr. Crim. (3d Ed)).

B. Regarding Mr. Condon's argument that the evidence is insufficient to prove premeditation (Respondent's Supplemental Brief, pp. 3-8):

- Speculation regarding a person's mental state, unsupported by any evidence, may not be used to elevate one offense to a higher degree. *State v. Garcia*, No. 88020-4, Slip. Op., p. 11 (Feb. 13, 2014).

0 I certify that on February 18, 2014, I delivered an electronic version of this document to the prosecuting attorney (at jennifer.joseph@kingcounty.gov and David.Trefry@co.yakima.wa.us (with permission)).

1 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed this February 18, 2014 at Olympia, Washington

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4 Manek R. Mistry, No. 22922
Attorney for Appellant/Respondent

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0 *Statement of Add'l Authority- 2*

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-----Original Message-----

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Sent: Tuesday, February 18, 2014 7:04 AM
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Attached is the Statement of Additional Authorities.

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