

Eight of the first nine sentences the State wants stricken as “new” were in the Court of Appeals brief. *Compare* Supplemental Brief at 11-12 *with* Motion for Discretionary Review (filed in Court of Appeals 6/15/12) at 9-10. These eight sentences explain that the State’s new hebephilia diagnosis fails the *Frye* standard of admissibility, and discusses the extensive evidence presented by Mr. Meirhofer’s counsel in the trial court showing that “hebephilia” is not a valid diagnosis. *See, e.g.*, Motion for Discretionary Review (Court of Appeals), Appendix C at 17 (trial counsel argues that the hebephilia diagnosis is of “questionable validity”); Appendix D at 17-20 (trial counsel presents expert report explaining that “hebephilia” is not a valid mental disorder).

In fact, these same eight sentences were also in the Motion for Discretionary Review filed in this Court, and the State already responded to them at length. *See* Motion for Discretionary Review (filed in Supreme Court 8/13/14) at 10-11; State’s Answer to Motion for Discretionary Review (filed in Supreme Court 9/17/14) at 26-30. The State’s claim that the argument is new and that they have never had a chance to respond to it is therefore entirely without merit. Furthermore, this Court granted the motion for discretionary review,

so the parties were permitted to file supplemental briefs supplementing the arguments raised therein. See RAP 13.7(e).

The next three paragraphs at issue in the supplemental brief expand upon the argument by discussing a recent Illinois case, *In re Detention of New*, 992 N.E.2d 519 (Ill.App.Ct. 2013). This case did not exist when Mr. Meirhofer wrote his Court of Appeals briefs. The State's view seems to be that no current caselaw can be cited in Supreme Court supplemental briefs. This is illogical. Presumably the reason this Court allows for supplemental briefing is so that parties can discuss authority that has developed since the prior briefs were filed. Otherwise, supplemental briefs would be wholly redundant and a waste of time for the Court. Mr. Meirhofer's discussion of the 2013 case is not a new issue; it is supplemental argument on the same issue that has been discussed throughout these proceedings – namely, the invalidity of the State's new "hebephilia" diagnosis and whether the State may continue to confine Mr. Meirhofer without trial based on that new diagnosis. Thus, it is perfectly appropriate. See *State v. Miller*, 156 Wn.2d 23, 32 n.5, 123 P.3d 827 (2005) (motion to strike denied where

supplemental brief “reasonably developed issues and arguments raised below”).

The concluding paragraph of the section the State wants to strike is not copied verbatim from the Court of Appeals brief, but it is similar. *Compare* Supplemental Brief at 13 *with* Motion for Discretionary Review (Court of Appeals) at 11. The point of each of these paragraphs is, again, that no jury has ever committed Mr. Meirhofer based on this new diagnosis which is of questionable validity, and thus Mr. Meirhofer is entitled to a trial. This has been the issue all along.

Finally, the State asks this Court to strike reference to the fact that the King County Superior Court recently excluded evidence of hebephilia following a *Frye* hearing and that one of the conclusions of law entered in that case is that “[h]ebephilia is not a generally accepted diagnosis in the psychological community.” There is a single sentence on page 13 of Mr. Meirhofer’s supplemental brief referring to this case, and the order in question is attached as a supplemental appendix.

The reference and attachment are appropriate because they support the same argument that Mr. Meirhofer has been making for

years. See Motion for Discretionary Review (Court of Appeals) & its appendices C and D. Mr. Meirhofer does not claim that the King County order is evidence in his case, nor that it is legal authority. It is cited as an example of the real-world response to the invalid diagnosis of hebephilia in Washington courts. This is the type of information a court should consider in these circumstances. *Cf. State v. Gore*, 143 Wn.2d 288, 304, 21 P.3d 262 (2001) (*Frye* rulings are reviewed de novo and appellate court “will undertake a searching review which may extend beyond the record and involve consideration of scientific literature as well as secondary legal authority”).

Furthermore, it is exactly the type of information the **State** put before this Court – for the first time in a motion to reconsider – in *In re McCuiston*, 174 Wn.2d 369, 275 P.3d 1092 (2012). See amici briefs and appendices filed by King County Prosecuting Attorney’s Office and Superintendent of Special Commitment Center in case number 81644-1. It is incongruous for the State to claim now that such information should not be provided to the Court. And of course, since the order in question was entered in November of 2013, Mr. Meirhofer could not have presented it to the courts earlier.

If this Court is nevertheless inclined to grant the State's motion to strike, it should strike **only** the supplemental appendix and the single sentence referring to it. As explained above, there is no conceivable basis for striking anything else.

The bottom line is that Mr. Meirhofer continues to argue what he has been arguing all along: that he is entitled to a trial on whether he continues to meet the definition of an SVP in light of the State's change in diagnosis from pedophilia to hebephilia – a diagnosis which is of questionable validity and which was not the basis for Mr. Meirhofer's commitment. The motion to strike should be denied.

III. CONCLUSION

Mr. Meirhofer asks this Court to deny the State's motion to strike.

Respectfully submitted this 8th day of April, 2014.

/s/ Lila J. Silverstein
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE)

ALAN MEIRHOFER)

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)
) NO. 89251-2
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)

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, DECLARE THAT ON THE 8TH DAY OF APRIL, 2014, I CAUSED THE ORIGINAL **RESPONSE TO STATE'S MOTION TO STRIKE** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 8TH DAY OF APRIL, 2014.


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Please accept the attached document for filing in the above-subject case:

Response to Motion to Strike

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