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STATE OF WASHINGTON  
Jun 27, 2014, 3:55 pm  
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON  
Petitioner,  
vs.  
JOSEPH T. McENROE and  
MICHELE ANDERSON,  
Respondents.

) No. 89881-2  
) 6-27-2014  
) RESPONDENTS' SECOND  
) STATEMENT OF ADDITIONAL  
) AUTHORITIES  
) AFTER ORAL ARGUMENT  
) REGARDING WHETHER ABSENCE OF  
) MITIGATING CIRCUMSTANCES IS A  
) FACTUAL QUESTION

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RAP 10.8

The following case law is relevant to Respondents arguments that Alleyne v. United States applies to Washington's death penalty statute because the State must prove an additional fact, the absence of mitigating circumstances, to increase the available sentence from life without possibility of release to death and this Court has found the absence of mitigating circumstances to be a factual determination, Amended Respondents' Brief, p. 13.

The death penalty does not impose multiple punishments for the same offense. **It does authorize enhancement of the punishment for aggravated first degree murder based on proof of additional facts (insufficient mitigating circumstances to merit leniency).** Double jeopardy is not violated by further sentence enhancement upon an additional finding of insufficient mitigating factors.

State v. Benn, 120 Wn2d 631 (1993). Emphasis added.

ORIGINAL

Dated: June 27, 2014.

Respectfully submitted:

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Kathryn Ross, WSBA 6894  
Attorney for Respondent McEnroe  
The Defender Association Division  
King County Office of Public Defense  
810 Third Avenue  
Seattle, Washington 98104  
(206) 447-3968

**PROOF OF SERVICE**

On June 27, 2014, I sent by electronic mail and by United States Postal Service, properly stamped and addressed, the above document, to counsel listed below:

James Whisman  
Andrea Vitalich  
Office of King County Prosecuting Attorney  
W 554 King County Courthouse  
516 3<sup>rd</sup> Avenue  
Seattle, WA. 98104

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Kathryn Ross  
6/27/2014 at Seattle, Washington.

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**Subject:** Re: State v. McEnroe, No. 89881-2

Dear Mr. Carpenter:

Please accept for filing and distribution the attached Respondents' Second Statement of Additional Authority After Oral Argument.

Respectfully,

Katie Ross  
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