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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
Respondent,)	NO. 96777-6
v.)	
JOHN ALAN WHITAKER,)	STATEMENT OF ADDITIONAL
Petitioner.)	AUTHORITIES

Pursuant to RAP 10.8, Petitioner John Alan Whitaker, by and through his attorney, Neil M. Fox, submits the following statement of additional authorities:

1. Regarding *State v. Moretti*, 66 Wash. 537, 120 P. 102 (1912), cited at page 8 of the *Supplemental Brief of Respondent*, Mr. Whitaker cites:

Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist. 1, 124 Wn.2d 816, 824, 881 P.2d 986 (1994) (“In cases where a legal theory is not discussed in the opinion, that case is not controlling on a future case where the legal theory is properly raised.”);

Webster v. Fall, 266 U.S. 507, 511, 45 S. Ct. 148, 69 L. Ed. 411 (1925) (“Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not considered as having been so decided as to constitute precedents.”);

1 2. Regarding *State v. Ng*, 110 Wn.2d 32, 750 P.2d 632 (1988),
2 cited at page 8 of the *Supplemental Brief of Respondent*, Mr. Whitaker cites:

3 *Malted Mousse, Inc. v. Steinmetz*, 150 Wn.2d 518, 531, 79 P.3d
4 1154 (2003) (“Statements in a case that do not relate to an issue
5 before the court and are unnecessary to decide the case
6 constitute obiter dictum, and need not be followed.”) (quoting
7 *State v. Potter*, 68 Wn. App. 134, 149 n.7, 842 P.2d 481
8 (1992));

9 3. Regarding an issue that the Court did not accept review on
10 (*Petition for Review*, Issue No. 2, regarding the holdout juror), but with all due
11 respect and for purposes of the record, Mr. Whitaker cites the following:

12 *State v. Berhe*, 193 Wn.2d 647, 429 P.3d 511 (2019)
13 (remanding for an evidentiary hearing where a juror came
14 forward after verdict and stated that she felt intimidated during
15 jury deliberations based upon the explicit and implicit racial
16 bias of other jurors).

17 Dated this 10th day of October 2019.

18 Respectfully submitted,

19 s/ Neil M. Fox
20 _____
21 WSBA No. 15277
22 Attorney for Petitioner

1 Declaration of Service

2 I hereby certify that on the 10th day of October 2019 I electronically filed the
3 foregoing STATEMENT OF ADDITIONAL AUTHORITIES with the Clerk of the Court
4 using the Appellate Courts Portal which will send notification of such filing and an electronic
5 copy to attorneys of record for the Respondent and any other party.

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

8 Dated this 10th day of October 2019 at Seattle, WA.

9 s/ Neil M. Fox
10 WSBA No. 15277
11 Attorney for Petitioner
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LAW OFFICE OF NEIL FOX PLLC

October 10, 2019 - 11:48 AM

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