IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Petitioner,	)))	No. 97616-3
v.	))	REPLY TO ANSWER TO MOTION TO STRIKE
WILLIAM PHILLIP, JR., Respondent.	))))	

A. ARGUMENT IN REPLY

The prosecution's answer to the motion to strike essentially concedes it used its reply to the cross-petition as an opportunity to address a recent decision that pertained to its petition for review. It offers no reason that *State v. Muhammad*, No. 96090-0, 2019 WL 5798575 (2019), was relevant to the additional issue Mr. Phillip raises involving the exclusionary rule's application after an illegal search.

An answer to a cross-petition is not a vehicle for alerting the Court to cases that bear only on the petition for review. *Mohammad* has

no bearing on the added issue Mr. Phillip included in his answer to the petition for review. This Court should strike the discussion of *Muhammad* in the last paragraph of the State's reply to the cross-petition. *See* RAP 13.4(d); *Chevron U.S.A., Inc. v. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn.2d 131, 140, 124 P.3d 640 (2005).

Alternatively, the prosecution says it "has no objection" to Mr. Phillip expressing his views on how *Muhammad* "affects either the State's petition or his cross-petition." State's Answer at 2.

In *Muhammad*, this Court held that a single "ping" to determine a person's cell phone location must be predicated on a valid warrant or one of the few jealously guarded and established exceptions to the warrant requirement. 2019 WL 5798575, at *4. *Muhammad* leaves no doubt about the core privacy rights attached to a person's cell phone location information. *Id*. at *4-8 (lead opinion); *Id*. at *26 (Gordon McCloud, J., concurring in part).

Review should be denied and the State's efforts to distinguish *Muhammad* should be stricken from its reply to the cross-petition.

B. CONCLUSION

Mr. Phillip respectfully requests this Court strike the

prosecution's final paragraph of its reply to the cross-petition.

DATED this 2nd day of December 2019.

Respectfully submitted,

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DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 97616-3**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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