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5 IN THE COURT OF APPEALS  
6 FOR THE STATE OF WASHINGTON  
7 DIVISION II

8 STATE OF WASHINGTON,  
9 Respondent,  
10 and  
11 PAUL WILLIAM GEBHARDT,  
12 Appellant.  
13

CASE NO. 41068-1-II  
STATEMENT OF ADDITIONAL  
AUTHORITIES

14 The Appellant, PAUL WILLIAM GEBHARDT, by and through his attorney of record,  
15 BARBARA COREY, offers the following additional authorities pursuant to RAP 10.8.  
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17 1. State v. Aquarius Walker, No. 39420-1-II, Opinion Filed 11/8/11. (prosecutorial  
18 misconduct in closing argument, including misstatement of burden of proof; “fill in the blank”  
19 arguments are improper (opinion as amended 11/18/11 only as to “fill in the blank” argument)

20 It is also improper for the prosecutor to compare the reasonable doubt standard of  
21 proof to everyday decision making in a way that minimizes the reasonable standard by  
22 trivializing it and failing to convey to the jury the gravity of the State’s burden the jury’s role.  
23 A prosecutor improperly explains to the jury the standard for defense of another by telling the  
24 jury that whether the standard is met is determined by whether the jurors would have taken the  
25 same action that was taken by the defendant.  
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27 2. State v. Warren, 165 Wn.2d 17, 195 P.3d 940 (2008) (State may not undermine  
28 the presumption of innocence by saying or intimating that inferences are not to be made from  
29 evidence for the benefit of the doubt to the accused. It is “particularly grievous” for the  
30 prosecutor to undermine the State’s burden beyond a reasonable doubt by saying that the  
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1 defendant burden “doesn’t mean, as the defense wants you to believe, that you give the  
2 defendant the burden of the doubt.”

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4 3. State v. Venegas, 155 Wn.App. 507, 228 P.3d 813, rev. den. 170 Wn.2d 1003, 245  
5 P.3d 226 (2010) (The presumption of innocence is the bedrock upon which the criminal justice  
6 system stands. The presumption continues throughout trial and may be overcome, if at all, during  
7 the jury’s deliberations. Arguments that imply reversal of the presumption constitute flagrant  
8 misconduct. The court expressly condemned the prosecutor’s argument that that the jury needed  
9 to analysis the cases as follows: ”I doubt that the defendant is guilty and the reason is ‘blank’”  
10 improper for two reasons: (1) implying the jury had an affirmative duty to convict; and (2)  
11 implying the defendant responsible for supplying such a reason.

12 NOTE: State v. Warren, 165 Wn.2d 17, 195 P.3d 940 (2008) is in accord.

13 SEE ALSO: State v. Johnson, 158 Wn.App. 677, 243 P.3d 936 (2010): “fill in the blank”  
14 argument is ill-intentioned and requires reversal.

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16 4. State v. Anderson, 153 Wn.App. 417, 431, 220 P.2d 1273 (2009) (prosecutor’s  
17 repeated argument in closing to the jury that jurors “declare the truth” or “declare what happened  
18 on the day in question” is improper because “solving the case” is not the jury’s role.

19 Accord, State v. Aquarius Walker, No. 39420-1-II, Opinion Filed 11/8/11.

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21 5. State v. Carter, 74 Wn.App. 320, 875 P.1, 1994) (suggesting that defendant  
22 characterized police officers as liars and conspirators is misconduct).

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24 6. State v. Johnson, 158 Wn.App. 677, 243 P.3d 936 (2010) (prosecutor’s “fill in the  
25 blank” and “partially completed puzzle” arguments are flagrant and ill-intentioned and required  
26 reversal)

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28 Respectfully submitted this 22<sup>nd</sup> day of November, 2011.

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30 /s/Barbara Corey, WSBA #11778  
31 Attorney for Appellant  
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CERTIFICATE OF SERVICE:

I declare under penalty of perjury under the laws  
Of the State of Washington that the following is a true  
and correct: That on this date, I delivered via ABC- Legal  
Messenger/U.S. Mail-postage pre-paid, a copy of this  
Document to: Kathleen Proctor, Pierce County  
Prosecutor's Office, 930 Tacoma Ave So, Room 946  
Tacoma, Washington.

11/22/11

/s/Kim Redford  
Legal Assistant

STATEMENT OF ADDITIONAL AUTHORITIES  
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