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SUPREME COURT
STATE OF WASHINGTON

2006 DEC 13 P 1:24

BY C.J. MERRITT

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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
Respondent,) No. 77719-5
)
vs.)
) THIRD STATEMENT OF
NATHAN KIRKPATRICK,) ADDITIONAL AUTHORITIES --
)
Petitioner,) DENIALS OF CERTIORARI,
) NEW CASES, AND A REVISED
) OPINION
)
_____)

Pursuant to RAP 10.8, Respondent respectfully notes that certiorari was denied by the United States Supreme Court in the following cases previously cited by Respondent:

- 1) United States v. Cantellano, 430 F.3d 1142 (11th Cir. 2005) (warrant of deportation is a public record and not testimonial), **cert. denied**, 126 S.Ct. 1604 (Mar. 20, 2006) (No. 05-9303).
- 2) United States v. Torres-Hernandez, 447 F.3d 699 (9th Cir.2006) (CNR was not testimonial), **cert denied**, --- S.Ct. ----, 2006 WL 3066436 (Nov 27, 2006) (No. 06-7348).
- 3) Rollins v. State, 392 Md. 455, 897 A.2d 821 (2006) (factual components of autopsy report was non-testimonial), **cert. denied**, 127 S.Ct. 392 (Oct. 10, 2006) (No. 06-5701).

Respondent also cites the following cases which were decided or modified after the parties filed their briefs:

- 1) United States v. Urghart, No. 06-1242, slip op. at 3 (8th Cir. Nov. 22, 2006) (2006 WL 3372863) (CNR is not testimonial).
- 2) United States v. Feliz, 467 F.3d 227, 233-37 (2nd Cir. 2006) (autopsy reports were both business records and public records and, thus, were not testimonial).
- 3) United States v. Ellis, 460 F.3d 920, 923-27 (7th Cir. 2006) (medical record showing presence of methamphetamine in blood was not testimonial; nor was authentication by written certification).
- 4) United States v. Gilbertson, 435 F.3d 790, 795-96 (7th Cir. 2006) (certified certificates of vehicle titles, including odometer statements used to prove fraud were not testimonial because they were not made with the respective declarants having an eye towards criminal prosecution).
- 5) United States v. Baker, 458 F.3d 513, 519 (6th Cir. 2006) (postal records are business records and, thus, not testimonial)
- 6) United States v. Ballesteros-Selinger, 454 F.3d 973, 974-75 (9th Cir. 2006) (memorandum of oral decision issued by immigration judge at deportation hearing was non-testimonial).
- 7) State v. Forte, 360 N.C. 427, 629 S.E.2d 137 (2006) (state laboratory reports on chain of custody of DNA material, and agent's DNA analysis were not testimonial evidence), **cert. denied, 127 S.Ct. 557 (2006) (No. 06-6282)**.
- 8) Anderson v. Com., 48 Va.App. 704, 634 S.E.2d 372 (2006). (Certificate from State laboratory established chain of custody and was not testimonial; quoting Michels v. Commonwealth, 47 Va.App. 461, 467, 624 S.E.2d 675 (2006) (documents establishing the existence or absence of some objective fact are not testimonial)).

9) State v. Craig, 110 Ohio St.3d 306, 853 N.E.2d 621 (2006) ("An autopsy report, prepared by a medical examiner and documenting objective findings `is the quintessential business record.' ")

10) United States v. Salazar Gonzalez, 445 F.3d 1208 (9th Cir. 2006), opinion amended and superseded on rehearing, 458 F.3d 851 (9th Cir. 2006).

Dated this 13th day of December, 2006.

Norm Maleng
Prosecuting Attorney

FILED AS ATTACHMENT
TO E-MAIL

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Certificate of Service by Mail

Today I sent by electronic mail, and deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Dana Lind, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the **THIRD STATEMENT OF ADDITIONAL AUTHORITIES -- DENIALS OF CERTIORARI, NEW CASES, AND A REVISED OPINION**, in STATE V. NATHAN KIRKPATRICK, Cause No. 77719-5, in the Supreme Court of the State of Washington.

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

~~FILED AS ATTACHMENT~~
Name James M. Whisman
Done in Seattle, Washington
~~TO E-MAIL~~

Date 12/13/06

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