

IN THE SUPREME COURT OF THE  
STATE OF WASHINGTON

STATE OF WASHINGTON,  
Respondent,

vs.

DUANE JONATHON KOSLOWSKI,  
Appellant.

No. 80427-3

STATEMENT OF  
ADDITIONAL AUTHORITIES

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STATE OF WASHINGTON  
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Pursuant to RAP 10.8, Appellant submits the following additional authorities relating to the question of which party bears the burden of establishing that a proffered hearsay statement is nontestimonial and admissible:

The State bears the burden of proving that the statement it seeks to admit is nontestimonial. *State of Minnesota v. Moua Her*, 750 N.W.2d 258, 264 (2008 Minn. 2008) (citing *State v. Caulfield*, 722 N.W.2d 304, 308 (Minn. 2006)).

“Once appellant objected to the admission of the [evidence] under *Crawford*, the burden shifted to the State, as the proponent of that evidence, to establish that it was admissible under *Crawford*.” *De La Paz v. State of Texas*, \_\_\_ S.W.3d \_\_\_, 2008 Tex. Crim. App. LEXIS 751 (Tex. 2008).

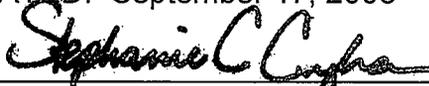
The proponent of the hearsay evidence bears the burden of proving its admissibility. *Logan v. City of Pullman* 392 F. Supp. 2d 1246, 1253 (U.S. Dist. 2005) (citing *United States v. Bellucci*, 995 F.2d 157, 160 (9th Cir. 1993)).

Federal relevance rules place the burden of demonstrating admissibility on the proponent of evidence at trial. *United States v. Connors*, 825 F.2d 1384, 1390 (9th Cir. 1987).

It is the burden of the proponent of evidence to establish that exceptions to the hearsay rule apply. *United States v. Two Shields*, 497 F.3d 789, 793 (8th Cir. 2007) (citing *United States v. Turning Bear*, 357 F.3d 730, 738 (8th Cir. 2004)).

If the hearsay evidence is "testimonial," the proponent must show that the declarant is unavailable and that the accused had a prior opportunity to cross-examine the declarant. *State v. Kirkpatrick*, 160 Wn.2d 873, 882, 161 P.3d 990 (2007).

DATED: September 17, 2008



STEPHANIE C. CUNNINGHAM, WSB # 26436  
Attorney for Appellant Duane J. Koslowski

**CERTIFICATE OF MAILING**

I certify that on 09/17/2008, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: (1) Kenneth Ramm, DPA, Prosecuting Attorney's Office; (2) Duane J. Koslowski, # 965011, Airway Heights Correction Center, P.O. Box 1839, Airway Heights, WA 99001-1839.



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