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SUPREME COURT  
STATE OF WASHINGTON  
Jun 22, 2011, 9:37 am  
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NO. 86084-0

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SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

JOSEPH McENROE,

Petitioner.

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**STATE'S ANSWER TO MOTION FOR  
DISCRETIONARY REVIEW AND  
ANSWER TO STATEMENT OF GROUNDS FOR  
DIRECT REVIEW**

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DANIEL T. SATTERBERG  
King County Prosecuting Attorney

ANN SUMMERS  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 3rd Avenue  
Seattle, Washington 98104  
(206) 296-9650

ORIGINAL

A. IDENTITY OF RESPONDING PARTY.

Respondent, the State of Washington, seeks the relief designated in part B.

B. STATEMENT OF RELIEF SOUGHT.

The State asks this Court to find that there are no grounds for direct review pursuant to RAP 4.2(a), and to deny the defendant's motion for discretionary review pursuant to RAP 2.3.

C. FACTS RELEVANT TO THE MOTION.

The defendant, Joseph McEnroe, and Michele Anderson are charged with six counts of aggravated murder in the first degree based on the deaths of Wayne, Judith, Scott, Erika, Olivia and Nathan Anderson on December 24, 2007. Appendix A (Information and Certification for Determination of Probable Cause), attached hereto. The Certification for Determination of Probable Cause reflects that both defendants confessed to the murders. Appendix A, attached hereto. The State has given notice of a special sentencing proceeding to determine whether the death penalty should be imposed as to both defendants. Appendix B and C, attached hereto. The trial court granted the State's motion to sever

the trials without objection from the defendants. Appendix D and E, attached hereto.

On May 13, 2011, McEnroe filed a Motion To Waive LGR 15 For The Purpose Of Filing Defendant's Motion To Seal Defendant's Motion To Have His Trial After Michele Anderson's Trial Is Complete. Appendix C, attached to Motion for Discretionary Review. The trial court denied the defendant's request to waive LGR 15. Appendix A, attached to Motion for Discretionary Review. McEnroe seeks direct discretionary review of the trial court's ruling.

The State has moved to commence McEnroe's trial before the trial of co-defendant Michele Anderson. Appendix F, attached hereto. While McEnroe's lead attorney has been assigned to the case since December 31, 2007, Anderson's lead attorney was substituted as counsel approximately seven months ago. Appendix G and H, attached hereto. The State's motion to commence McEnroe's trial first is currently pending in the trial court. Appendix F. A status conference is scheduled for Thursday, June 30, 2011. Appendix F.

D.   GROUNDS FOR RELIEF AND ARGUMENT.

The defendant's motion does not meet the criteria set forth in RAP 4.2(a) for direct review of a superior court decision by this Court, and does not meet the criteria set forth in RAP 2.3(b) for discretionary review. Therefore, this Court should deny the defendant's Motion for Discretionary Review and deny the defendant's request for direct review by this Court.

A motion for discretionary review will be granted only if one or more of the following stringent requirements set forth in RAP 2.3(b) are satisfied:

- (1) The superior court has committed an obvious error which would render further proceedings useless;
- (2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;
- (3) The superior court has so far departed from the accepted and usual course of judicial proceedings . . . as to call for review by the appellate court; or
- (4) The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

RAP 2.3(b). Moreover, at least one of the following additional criteria must be met for a party to obtain direct review of a superior court decision by this Court:

(1) *Authorized by Statute*. A case in which a statute authorizes direct review in the Supreme Court.

(2) *Law Unconstitutional*. A case in which the trial court has held invalid a statute, ordinance, tax, impost, assessment, or toll, upon the ground that it is repugnant to the United States Constitution, the Washington State Constitution, a statute of the United States, or a treaty.

(3) *Conflicting Decisions*. A case involving an issue in which there is a conflict among decisions of the Court of Appeals or an inconsistency in decisions of the Supreme Court.

(4) *Public Issues*. A case involving a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.

(5) *Action Against State Officer*. An action against a state officer in the nature of quo warranto, prohibition, injunction, or mandamus.

(6) *Death Penalty*. A case in which the death penalty has been decreed.

RAP 4.2(a).

In the present case, there is no basis for direct review by this Court. Direct review is authorized pursuant to RAP 4.2(a)(6) in a case in which the death penalty has been *decreed*. RAP 4.2(a)(6) does not authorize direct review in every case that *might* result in a sentence of death. The death penalty has not been decreed in this case.

RAP 4.2(a)(4) is also of no avail to McEnroe. The issue that has arisen in this case is unique due to the unusual procedural posture of this case and is not "a fundamental and urgent issue of broad public import." There is no basis for direct review by this Court of the superior court decision.

Moreover, there is no basis for discretionary review of the superior court's decision by *any* appellate court. As this Court has stated, a party seeking discretionary review of an interlocutory decision "bears a heavy burden" to demonstrate that immediate review is justified. In re Dependency of Grove, 127 Wn.2d 221, 235, 897 P.2d 1252 (1995).

The dispute presented by this motion for discretionary review is purely procedural. McEnroe wishes to file a motion with the trial court requesting that his trial commence after the trial of co-defendant Anderson. Apparently he wishes to file the motion *ex parte* and under seal, accompanied by a motion to seal. McEnroe anticipates that the motion will contain information about the defense theory of mitigation that will be prejudicial if not sealed and kept from both the public and the prosecution. Thus, he sought assurance from the trial court that if the motion to seal is denied, he can withdraw the substantive motions and supporting documents.

Concerned that such a procedure would violate LGR 15(c)(3)(B), which requires the trial court to file original unredacted document(s) when a motion to seal is denied, McEnroe sought waiver of LGR 15.

The trial court denied McEnroe's motion to waive LGR 15, and denied his request to withdraw any forthcoming substantive motions and supporting documents should the trial court deny a motion to seal those motions and documents. However, the trial court ruled that in the event it denies a motion to seal, the substantive motion and supporting documents will nonetheless be filed under seal for a period of no less than 30 days to permit counsel to seek review from a higher court.

The trial court's ruling in this case is reasonable and sufficiently protects McEnroe's rights, since the court will allow McEnroe a 30-day period to seek review of a denial of a motion to seal before filing the substantive motion and supporting documents. Moreover, if the substantive motion contains confidential information regarding mitigation strategy, there is no reasonable possibility that the trial court will deny the motion to seal. For purposes of this motion, the State will not oppose a motion to seal and for the court to consider *ex parte* information that in the trial

court's judgment reveals mitigation strategy, recognizing that SPRC 4 allows the trial court in its discretion to defer disclosure of the defendant's penalty phase evidence until the guilt phase is completed.<sup>1</sup>

The legal standards that apply to the sealing of court documents are well-established by this Court. The state constitution requires that "justice in all cases shall be administered openly." Wa. Const. art. I, § 10. Openness is presumptive, but may be limited to protect other fundamental rights such as a defendant's right to a fair trial. Dreiling v. Jain, 151 Wn.2d 900, 909, 93 P.3d 861 (2004). Any records filed with the court in anticipation of a court decision, whether dispositive or not, are presumed to be open but may be sealed if the trial court determines that a compelling interest overrides the public's right to the open administration of justice. Rufer v. Abbott Laboratories, 154 Wn.2d 530, 549, 114 P.3d 1182 (2005). This determination is made pursuant to the factors set forth in Seattle Times v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982). Rufer, 154 Wn.2d at 549. See

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<sup>1</sup> However, the State does not agree that any future motions that may reveal mitigation strategy may be filed *ex parte* and under seal. For example, if McEnroe moves to suppress his statements pursuant to CrR 3.5 based in part of his mental health evaluations, the State would strenuously object to any attempt to file that motion and supporting documents *ex parte* and under seal.

also Seattle Times v. Serko, 170 Wn.2d 581, 598, 243 P.3d 919 (2010). The party wishing to seal the record bears the burden of showing that the sealing is proper as to each document the party seeks to protect. Dreiling, 151 Wn.2d at 916. In making this determination, the trial court must conduct a hearing and enter written findings. Yakima v. Yakima Herald-Republic, 170 Wn.2d 775, 801, 246 P.3d 768 (2011).

There is no dispute in this case as to the legal standards that apply. There is no showing that the trial court has failed, or will fail to properly apply the established legal standards for the sealing of court documents in this case.

McEnroe has failed to show that the trial court has committed obvious error that would render further proceedings useless. Nor has he shown that the trial court has committed probable error that substantially alters the status quo. Significantly, the trial court has not denied a motion to seal, and if it does, McEnroe will have a 30-day period to seek discretionary review of such a denial.

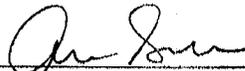
E. CONCLUSION.

The motions for direct review and discretionary review should be denied.

DATED this 2nd day of June, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: 

ANN SUMMERS, WSBA #21509  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

APPENDIX A

FILED

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE STATE OF WASHINGTON, )  
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 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) JOSEPH THOMAS McENROE, and )  
 ) MICHELE KRISTEN ANDERSON, )  
 ) and each of them, )  
 )  
 ) Defendants. )

No. ✓ 07-C-08716-4 SEA  
07-C-08717-2 SEA

INFORMATION

COUNT I

I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington, do accuse JOSEPH THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, of the crime of **Aggravated Murder in the First Degree**, committed as follows:

That the defendants JOSEPH THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, in King County, Washington, on or about December 24, 2007, with premeditated intent to cause the death of another person, did cause the death of Wayne S. Anderson, a human being, who died on or about December 24, 2007; that further aggravating circumstances exist, to-wit: there was more than one victim and the murders were part of a common scheme or plan or the result of a single act;

Contrary to RCW 9A.32.030(1)(a) and 10.95.020(10), and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendants JOSEPH THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, at said time of being armed with a handgun, a firearm as defined in RCW 9.41.010, under the authority of RCW 9.94A.533(3).

INFORMATION - 1

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Seattle, Washington 98104  
(206) 296-9000, FAX (206) 296-0955

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COUNT II

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, of the crime of **Aggravated Murder in the First Degree**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendants JOSEPH THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, in King County, Washington, on or about December 24, 2007, with premeditated intent to cause the death of another person, did cause the death of Judith Anderson, a human being, who died on or about December 24, 2007; that further aggravating circumstances exist, to-wit: there was more than one victim and the murders were part of a common scheme or plan or the result of a single act;

Contrary to RCW 9A.32.030(1)(a) and 10.95.020(10), and against the peace and dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the authority of the State of Washington further do accuse the defendants JOSEPH THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, at said time of being armed with a handgun, a firearm as defined in RCW 9.41.010, under the authority of RCW 9.94A.533(3).

COUNT III

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, of the crime of **Aggravated Murder in the First Degree**, a crime of the same or similar character and based on a series of acts connected together with another crime charged herein, which crimes were part of a common scheme or plan, and which crimes were so closely connected in respect to time, place and occasion that it would be difficult to separate proof of one charge from proof of the other, committed as follows:

That the defendants JOSEPH THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, in King County, Washington, on or about December 24, 2007, with premeditated intent to cause the death of another person, did cause the death of Scott Anderson, a human being, who died on or about December 24, 2007; that further aggravating circumstances exist, to-wit: there was more than one victim and the murders were part of a common scheme or plan or the result of a single act;

1 Contrary to RCW 9A.32.030(1)(a) and 10.95.020(10), and against the peace and dignity  
2 of the State of Washington.

3 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the  
4 authority of the State of Washington further do accuse the defendants JOSEPH THOMAS  
5 McENROE and MICHELE KRISTEN ANDERSON, and each of them, at said time of being  
6 armed with a handgun, a firearm as defined in RCW 9.41.010, under the authority of RCW  
7 9.94A.533(3).

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COUNT IV

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH  
THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, of the crime  
of **Aggravated Murder in the First Degree**, a crime of the same or similar character and based  
on a series of acts connected together with another crime charged herein, which crimes were part  
of a common scheme or plan, and which crimes were so closely connected in respect to time,  
place and occasion that it would be difficult to separate proof of one charge from proof of the  
other, committed as follows:

That the defendants JOSEPH THOMAS McENROE and MICHELE KRISTEN  
ANDERSON, and each of them, in King County, Washington, on or about December 24, 2007,  
with premeditated intent to cause the death of another person, did cause the death of Erika  
Anderson, a human being, who died on or about December 24, 2007; that further aggravating  
circumstances exist, to-wit: the person committed the murder to conceal the commission of a  
crime or to protect or conceal the identity of any person committing a crime, and there was more  
than one victim and the murders were part of a common scheme or plan or the result of a single  
act;

Contrary to RCW 9A.32.030(1)(a) and 10.95.020(9) and (10), and against the peace and  
dignity of the State of Washington.

And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the  
authority of the State of Washington further do accuse the defendants JOSEPH THOMAS  
McENROE and MICHELE KRISTEN ANDERSON, and each of them, at said time of being  
armed with a handgun, a firearm as defined in RCW 9.41.010, under the authority of RCW  
9.94A.533(3).

COUNT V

And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH  
THOMAS McENROE and MICHELE KRISTEN ANDERSON, and each of them, of the crime  
of **Aggravated Murder in the First Degree**, a crime of the same or similar character and based  
on a series of acts connected together with another crime charged herein, which crimes were part  
of a common scheme or plan, and which crimes were so closely connected in respect to time,

1 place and occasion that it would be difficult to separate proof of one charge from proof of the  
2 other, committed as follows:

3 That the defendants JOSEPH THOMAS McENROE and MICHELE KRISTEN  
4 ANDERSON, and each of them, in King County, Washington, on or about December 24, 2007,  
5 with premeditated intent to cause the death of another person, did cause the death of Olivia  
6 Anderson, a human being, who died on or about December 24, 2007; that further aggravating  
7 circumstances exist, to-wit: the person committed the murder to conceal the commission of a  
8 crime or to protect or conceal the identity of any person committing a crime, and there was more  
9 than one victim and the murders were part of a common scheme or plan or the result of a single  
10 act;

11 Contrary to RCW 9A.32.030(1)(a) and 10.95.020(9) and (10), and against the peace and  
12 dignity of the State of Washington.

13 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the  
14 authority of the State of Washington further do accuse the defendants JOSEPH THOMAS  
15 McENROE and MICHELE KRISTEN ANDERSON, and each of them, at said time of being  
16 armed with a handgun, a firearm as defined in RCW 9.41.010, under the authority of RCW  
17 9.94A.533(3).

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COUNT VI

24 And I, Daniel T. Satterberg, Prosecuting Attorney aforesaid further do accuse JOSEPH  
25 THOMAS McENROE of the crime of **Aggravated Murder in the First Degree**, a crime of the  
26 same or similar character and based on a series of acts connected together with another crime  
27 charged herein, which crimes were part of a common scheme or plan, and which crimes were so  
28 closely connected in respect to time, place and occasion that it would be difficult to separate  
29 proof of one charge from proof of the other, committed as follows:

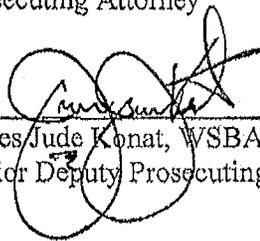
30 That the defendant JOSEPH THOMAS McENROE in King County, Washington, on or  
31 about December 24, 2007, with premeditated intent to cause the death of another person, did  
32 cause the death of Nathan Anderson, a human being, who died on or about December 24, 2007;  
33 that further aggravating circumstances exist, to-wit: the person committed the murder to conceal  
34 the commission of a crime or to protect or conceal the identity of any person committing a crime,  
35 and there was more than one victim and the murders were part of a common scheme or plan or  
36 the result of a single act;

37 Contrary to RCW 9A.32.030(1)(a) and 10.95.020(9) and (10), and against the peace and  
38 dignity of the State of Washington.

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1 And I, Daniel T. Satterberg, Prosecuting Attorney for King County in the name and by the  
2 authority of the State of Washington further do accuse the defendant JOSEPH THOMAS  
3 McENROE at said time of being armed with a handgun, a firearm as defined in RCW 9.41.010,  
4 under the authority of RCW 9.94A.533(3).

DANIEL T. SATTERBERG  
Prosecuting Attorney

5  
6 By:   
James Jude Konat, WSBA #16082  
Senior Deputy Prosecuting Attorney

07 - C - 08716 - 4 SEA  
07 - C - 08717 - 2 SEA

CAUSE NO.

CERTIFICATION FOR DETERMINATION OF PROBABLE CAUSE

That Scott Tompkins is a(n) Detective with the King County Sheriff's Office and has reviewed the investigation conducted in the King County Sheriff's case number(s) 07-366042;

There is probable cause to believe that Michele K. Anderson & Joe T. McEnroe committed the crime(s) of Six counts of Aggravated First Degree Murder.

This belief is predicated on the following facts and circumstances:

On Wednesday morning, December 26, 2007, just before 8:00 a.m., 911 operators received a frantic call from a woman reporting a multiple murder. The woman was calling from the home of her dear friend Judith Anderson who owned and lived in the house located at 1910 346<sup>th</sup> Avenue N. E. in Carnation, King County, Washington.

The caller stated that she went to the Anderson residence where Judy lived with her husband Wayne because Judy did not show up at the United States Post Office in Carnation where she had worked faithfully for many years. The caller reported that Judy was her best friend and that she had become concerned when she could not reach her by telephone. The caller stated that she was peering in a window and could clearly see the bodies of two adults and one small child on the living room floor.

Certification for Determination  
of Probable Cause

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ORIGINAL

1 King County sheriff's deputies responded to the location. It  
2 did not take long for the investigators to realize that a 911  
3 "hang up" call had been made from the Anderson residence at  
4 about 5:00 p.m. on Monday, December 24, 2007. The 911 operator  
5 that received the call noted that while nobody spoke to her  
6 directly, she could hear loud noises and possibly voices in the  
7 background.

8  
9 When deputies responded on the 24<sup>th</sup> to the 911 "hang up" call,  
10 they found that the extensive and heavily wooded property was  
11 protected by a large gate across the driveway. The gate was  
12 closed and secured with a chain and several locks. No contact  
13 was made with any of the occupants of the Anderson home at that  
14 time.

15  
16 When the first officers arrived on the morning of December 26,  
17 they found that there were actually four bodies in the living  
18 room. A second small child who was also dead was discovered  
19 with her body mostly hidden by the body of the adult female. In  
20 addition to the four bodies inside the primary residence,  
21 officers discovered two additional bodies in the back yard.  
22 Fire personnel responded shortly after the initial police  
23 response and found, in the course of their life saving duties,  
24 that the bodies were cold to the touch.

25

Certification for Determination  
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**ORIGINAL**

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The area where the Anderson property is located is rural, and the hilly terrain is mostly covered with woods. Homes are hundreds of feet apart and the closest neighbors might not see one another for days at a time. The Anderson property is no exception and investigators eventually learned that there was a second modular home on the property.

While the modular home has a separate address, it is situated on the Anderson property. It was built near the bottom of the long, steep driveway that leads to the home where Wayne and Judith lived. As a result of the terrain and the abundant forest, one home is not visible from the other.

Investigators quickly learned that the Andersons' daughter Michele lived in the modular home at the bottom of the property. While Michele was not home when officers arrived on the morning of December 26, investigators learned that she lived with her boyfriend Joe McEnroe.

Investigators applied for and received judicial authority to search the entire Anderson property. The search consisted of acres of woods, the two primary homes, several other buildings, and numerous automobiles and trailers. At the time of this

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1 writing, the search continues and it will not be completed for  
2 several days.

3  
4 The King County Medical Examiner's Office has been, and  
5 continues to be, an integral part of the law enforcement  
6 response. Pathologists have been to the scene no fewer than  
7 four times and have confirmed that six people are dead as a  
8 result of homicidal violence. Autopsies have begun but none of  
9 the six are complete at this time.

10  
11 A number of hours after the crime scene response had been  
12 established, investigators learned that there were two people on  
13 the perimeter of the scene who indicated they lived on the  
14 Anderson property. They were driving a dark colored pick up  
15 truck and were requesting permission to enter their home. The  
16 two were indentified as the defendants; Michele Anderson, the  
17 29-year-old daughter of Wayne and Judy Anderson, and her  
18 boyfriend Joe McEnroe.

19  
20 At the time the two arrived, there was a large police presence  
21 in what was otherwise a quiet and rural area. Yellow police  
22 tape was strewn across driveways and yards, there were dozens of  
23 police vehicles, mobile command centers, helicopters, and many,  
24 many, uniformed and plain clothes personnel on the scene. There  
25

Certification for Determination  
of Probable Cause

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ORIGINAL

1 was also a very large press contingent with their own trucks,  
2 vans and helicopters. Interestingly, neither Michele Anderson  
3 nor Joe McEnroe ever asked what was going on or why they were  
4 not being allowed to return to their home. Neither of them  
5 inquired if the Anderson family was safe. The two were  
6 separated and interviewed by detectives.

7  
8 Separately, the two defendants laid out a detailed explanation  
9 of their activities over the previous two days. They both  
10 stated that a decision to drive to Las Vegas to get married had  
11 been made on Monday, December 24, 2007. They both outlined how  
12 they surprised Wayne and Judy Anderson with the news of their  
13 pending marriage on the morning of the 24<sup>th</sup>. Both defendants  
14 declared that Wayne and Judy were very happy about their  
15 daughter's decision. Similarly, both defendants told detectives  
16 that they knew that the family had planned to celebrate  
17 Christmas Eve with Michele's brother Scott, his wife Erika, and  
18 their two children Olivia and Nathan the same day the two  
19 defendants decided to get married.

20  
21 Eventually, the defendants were confronted about their story and  
22 both admitted the trip to Las Vegas was a story they had worked  
23 out in anticipation of being questioned by police. Both  
24 defendants were advised of their constitutional rights, they  
25

Certification for Determination  
of Probable Cause

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ORIGINAL

1 waived those rights, and both gave lengthy confessions to the  
2 murders of Wayne and Judy Anderson. Similarly, both defendants  
3 confessed to the murders of Scott Anderson, his wife Erika  
4 Anderson, and their two children Olivia and Nathan Anderson.

5  
6 Michele Anderson told detectives that her brother owed her a lot  
7 of money. She indicated that she had given her brother Scott  
8 money on numerous occasions and that the last time was years  
9 ago. She told the detectives that she was very close to her  
10 brother until he got married. She told detectives that she was  
11 upset with her parents because they would not support her in her  
12 conflict with her brother. Additionally, her parents were  
13 pressuring her to start paying rent for the house she and  
14 McEnroe had been living in for the last six or seven months.

15  
16 Eventually, Michele Anderson told detectives that she and  
17 McEnroe each owned a handgun. She told them that her gun was a  
18 semi-automatic and the gun McEnroe owned was a revolver. She  
19 explained how she and McEnroe loaded their guns and drove up the  
20 hill to confront her parents on the afternoon of December 24,  
21 2007.

22  
23 Michele told detectives that her father Wayne was killed first  
24 and then his wife Judy. She indicated that she shot at her Dad

25  
Certification for Determination  
of Probable Cause

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

ORIGINAL

1 (it appears that she missed) and that McEnroe shot Wayne in the  
2 head. Michele told detectives that McEnroe killed her Mother  
3 after Wayne was killed. Michele recounted how she and McEnroe  
4 then dragged the bodies out of the house so her brother Scott  
5 would not see them when he arrived with his family to celebrate  
6 Christmas Eve. She described how she and McEnroe tried to clean  
7 up the blood from her parents' bodies with towels and rugs and  
8 how they disposed of those items so Scott and his family would  
9 not know what had happened.

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Michele admitted that she and McEnroe planned to confront Scott  
when he arrived at the parents' house. Michele told detectives  
Scott charged her when she pulled out the gun and that she shot  
him at least twice and maybe as many as four times. Michele  
stated that one of the shots hit her brother in the neck.  
Michele stated she also shot Erika twice. Michele indicated  
that Erika was able to crawl over the back of the couch to call  
911 even after she had been shot two times.

Michele stated that McEnroe had to finish Erika because she  
(Michele) had run out of ammunition. Michele told detectives  
that McEnroe shot both of the kids because she couldn't do it.

Certification for Determination  
of Probable Cause

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

ORIGINAL

1 When asked why she killed her entire family Michele stated that  
2 she was tired of everybody stepping on her. She stated that she  
3 was upset with her parents and her brother and that if the  
4 problems did not get resolved on December 24<sup>th</sup>, then her intent  
5 was definitely to kill everybody. When asked about Erika and  
6 the children in particular, she stated it was a combination of  
7 not wanting them to have to live with the memories and not  
8 wanting there to be any witnesses.

9  
10 Michele also admitted that sometime after the killings but  
11 before officers arrived, she went down the hill and closed and  
12 locked the gate at the end of the driveway because they knew  
13 Erika had dialed 911.

14  
15 In his lengthy confession Joe McEnroe admits that he shot both  
16 of Michele's parents in the head. He said that he was in the  
17 rear of the house with Judy when Michele fired her first shot at  
18 Wayne. McEnroe stated that he and Judy stepped into the room  
19 with Michele and Wayne, and McEnroe fired a shot into Wayne's  
20 head. Judy was screaming after he shot Wayne, so he shot Judy  
21 one time and she fell to the floor. McEnroe said that Judy was  
22 still screaming so he apologized to her and then shot her again,  
23 this time in the head.

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of Probable Cause

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Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

ORIGINAL

1 McEnroe's version of these events is entirely consistent with  
2 the confession of his codefendant Michele. He, too, described  
3 in detail how they dragged the bodies out of the house so Scott  
4 would not see them when he arrived. While McEnroe stated he was  
5 not sure who shot Scott, he does recall struggling with him to  
6 prevent him from stopping Michele.

7  
8 McEnroe describes in dramatic fashion how he shot Erika in the  
9 head. He stated that he did not shoot her immediately after she  
10 was shot by Michele. Rather, McEnroe described how he took the  
11 cordless phone from Erika and saw that she had made a call and  
12 that the call was connected. McEnroe told detectives that he  
13 tore the telephone apart and then allowed Erika to huddle with  
14 her children before he shot Erika in the head. McEnroe made  
15 sure to mention that he apologized to Erika after she pleaded  
16 with him not to shoot her saying "...you don't have to do this."  
17 McEnroe recalled how he looked at her and said "...yes, we do."

18  
19 In similar fashion, McEnroe admitted that he shot Olivia after  
20 Erika was dead. Finally, McEnroe told detectives that three-  
21 year-old Nathan had picked up the batteries McEnroe had torn out  
22 of the cordless telephone moments before. McEnroe told  
23 detectives that Nathan held the batteries up in one hand and  
24 gave him (McEnroe) "...the look of complete comprehension.....as  
25

Certification for Determination  
of Probable Cause

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

ORIGINAL

1 if he understood..." McEnroe then fired one last bullet through  
2 Nathan's head.

3  
4 When asked why he shot Erika, Olivia, and Nathan in particular,  
5 McEnroe stated three consecutive times, word for word: "I  
6 didn't want them to turn us in."

7  
8 The crime scene investigation is currently ongoing. Although  
9 the weapons have not yet been recovered, all casings found at  
10 the scene are consistent with the two firearms described by  
11 Michele Anderson and Joe McEnroe as the firearms they used to  
12 kill all six family members.

13  
14 The medical examiner is continuing with the autopsies on all six  
15 family members at this time. Preliminary results indicate that  
16 Wayne was shot one time to the left temple and Judy was shot  
17 twice with one bullet to the left temple. Nathan was also shot  
18 one time to the left temple. Scott, Erika and Olivia were each  
19 shot multiple times to the head and body.

20  
21 Under penalty of perjury under the laws of the State of Washington,  
22 I certify that the foregoing is true and correct. Signed and dated  
23 by me this 28 day of December, 2007, at Seattle, Washington.

24 

25 Certification for Determination  
of Probable Cause

Norm Maleng  
Prosecuting Attorney  
W 554 King County Courthouse  
Seattle, Washington 98104-2312  
(206) 296-9000

ORIGINAL

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CAUSE NO. 07-C-08716-4 SEA  
CAUSE NO. 07-C-08717-2 SEA

PROSECUTING ATTORNEY CASE SUMMARY AND REQUEST FOR BAIL AND/OR  
CONDITIONS OF RELEASE

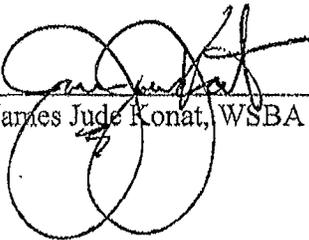
The State incorporates by reference the Certification for Determination of Probable Cause.

There is evidence to suggest that the defendants had planned these murders two weeks in advance. There is also evidence that four of the victims were killed simply because they had been present when others were killed before them.

REQUEST FOR BAIL

For all these reasons, the State is requesting that warrants be issued for the arrest of Michele Kristen Anderson and Joseph Thomas McEnroe on six counts of Aggravated Murder in the First Degree. The State further requests that these defendants be held without bail and that they be precluded, by written order, from having any contact with the witnesses in this case, either directly or through third persons.

Signed this 28<sup>th</sup> day of December, 2007.

  
James Jude Konat, WSBA #16082

APPENDIX B

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**FILED**  
KING COUNTY, WASHINGTON  
  
OCT 16 2008  
  
SUPERIOR COURT CLERK  
KIRSTIN GRANT  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	No. 07-C-08716-4 SEA
Plaintiff,	)	
	)	NOTICE OF SPECIAL SENTENCING
vs.	)	PROCEEDING TO DETERMINE
	)	WHETHER DEATH PENALTY
JOSEPH THOMAS McENROE,	)	SHOULD BE IMPOSED
	)	
Defendant,	)	

COMES NOW Daniel T. Satterberg, King County Prosecuting Attorney, and gives notice pursuant to RCW 10.95.040 of a special sentencing proceeding to determine whether the death penalty should be imposed, there being reason to believe that there are not sufficient mitigating circumstances to merit leniency.

DATED this 16<sup>th</sup> day of October, 2008.

By: Daniel T. Satterberg  
DANIEL T. SATTERBERG  
King County Prosecuting Attorney  
Office WSBA #91002

APPENDIX C

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KING COUNTY, WASHINGTON

OCT 16 2008

SUPERIOR COURT CLERK  
KIRSTIN GRANT  
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,	)	
	)	No. 07-C-08717-2 SEA
Plaintiff,	)	
	)	NOTICE OF SPECIAL SENTENCING
vs.	)	PROCEEDING TO DETERMINE
	)	WHETHER DEATH PENALTY
MICHELE KRISTEN ANDERSON,	)	SHOULD BE IMPOSED
	)	
Defendant.	)	

COMES NOW Daniel T. Satterberg, King County Prosecuting Attorney, and gives notice pursuant to RCW 10.95.040 of a special sentencing proceeding to determine whether the death penalty should be imposed, there being reason to believe that there are not sufficient mitigating circumstances to merit leniency.

DATED this 16<sup>th</sup> day of October, 2008.

By: Daniel T. Satterberg  
DANIEL T. SATTERBERG  
King County Prosecuting Attorney  
Office WSBA #91002

APPENDIX D

FILED

2011 MAR 31 PM 2:42

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

MICHELE ANDERSON and  
JOSEPH McENROE,

Defendants.

)  
)  
) No. 07-C-08717-2 SEA  
) 07-C-08716-4 SEA  
)

) STATE'S MOTION TO SEVER  
) DEFENDANTS' CASES FOR JURY  
) PORTION OF PROCEEDINGS  
)  
)  
)

I. INTRODUCTION

Michele Anderson and Joseph McEnroe have each been charged with six counts of aggravated first degree murder. Each is facing the prospect of the death penalty. Each defendant provided a tape-recorded confession to police in which they greatly detail both their own involvement and the involvement of the other in the murders.<sup>1</sup> The State intends to offer the confession of each defendant against that respective defendant in the State's case in chief. There

<sup>1</sup> Pursuant to CrR 4.4(3) the State is willing to provide copies of the full 100+ page transcript of each defendant's statement if it would assist the court in ruling on the present motion. However, the attached certification for determination of probable cause should give the court an adequate picture of what each defendant stated to police for purposes of this motion.

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1 is no way to sufficiently and meaningfully redact either of the confessions to offer just the  
 2 portions that relate to the actions of that individual defendant. Both the relevant court rule on the  
 3 issue of severance and the applicable caselaw make it clear that the defendants' cases must be  
 4 severed. Indeed, all parties are in agreement that the cases will need to be severed for trial.  
 5 Finally, any pretrial motions that are held outside the presence of the jury could still be jointly  
 6 conducted for purposes of judicial economy.

## 7

## 8 II. ARGUMENT

9 CrR 4.4 governs severance of defendants and states in relevant part the following:

### 10 CrR 4.4 SEVERANCE OF OFFENSES AND DEFENDANTS

11 ...

#### 12 (c) Severance of defendants.

13 ...

14 (2) The court, on application of the prosecuting attorney, or on  
 15 application of the defendant. . . should grant a severance of  
 defendants whenever:

16 (i) if before trial. . .it is deemed appropriate to promote  
 17 a fair determination of the guilt or innocence of a  
 defendant.

18 In Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620, 20 L. Ed. 2d 476 (1968), the  
 19 United States Supreme Court held that the confession of a codefendant who did not take the  
 20 stand may not be used against the defendant because to do so would deny him his rights under  
 21 the confrontation clause of the Sixth Amendment to the United States Constitution. As such,  
 22 severance of defendants is required where the non-testifying codefendant's out-of-court statement  
 23

1 refers to the defendant and is used by the prosecution, unless the codefendant's references to the  
2 defendant are excised. State v. Melton, 63 Wn. App. 63, 67, 817 P.2d 413 (1991).

3 Because the State intends to offer in its case-in-chief the confession of McEnroe against  
4 McEnroe in its entirety and the confession of Anderson against Anderson in its entirety, and  
5 because the confessions are not meaningfully subject to redaction and it is unknown whether  
6 either defendant will testify in order to be subject to cross examination by the attorneys for the  
7 other defendant, the defendants' cases must be severed for the proceedings that will occur in the  
8 presence of the jury. This must be done to accomplish the goal of promoting the fair  
9 determination of guilt or innocence of each defendant. Furthermore, because of this, the present  
10 motion is agreed among the parties and therefore lends further support to the request.

11 A trial court's decision on a motion for severance is reviewed for manifest abuse of  
12 discretion. State v. Larry, 108 Wn. App. 894, 34 P.3d 241 (2001). Granting severance under the  
13 present circumstances would in no way be an abuse of this court's discretion. Additionally, the  
14 fact that the defense is agreeing to the necessity of severance in essence makes the severance  
15 request non-discretionary as the State is electing to offer the confessions of each defendant and  
16 there is no way to redact all references of the other defendant in each of the confessions in such a  
17 way as to eliminate any prejudice to the other. See CrR 4.4(c)(1) (defendant's motion for  
18 severance on the grounds that an out-of-court statement of a codefendant referring to him is  
19 inadmissible against him *shall* be granted unless prosecution chooses not to offer the statement in  
20 its case in chief or references to the moving defendant can be deleted so to avoid *any* prejudice  
21 from the admission of said statement) (emphasis supplied).

22 Finally, the fact that the defendants' cases should be severed insofar as the substantive  
23 guilt and penalty phases heard before the jury are concerned, the court should require any pretrial

1 motions heard outside the presence of the jury that concern both defendants to be held jointly to  
2 further the interests of judicial economy. The inherent prejudice that would stem from the  
3 admission of the defendants' confessions has no bearing on any pretrial proceedings held outside  
4 the presence of the jury, including but not limited to the CrR 3.5 hearing that will be heard before  
5 jury selection.

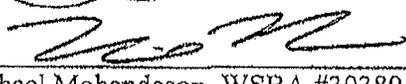
### 6 III. CONCLUSION

7 For the forgoing reasons the State respectfully requests that the court sever the  
8 defendants' cases insofar as any proceedings held in the presence of the jury.

9  
10 Respectfully submitted this 30 day of March, 2011.

11 DANIEL T. SATTERBERG  
12 King County Prosecuting Attorney

13  
14 By:   
15 James Kona, WSBA #16082  
Senior Deputy Prosecuting Attorney

16 By:   
17 Michael Mohandeson, WSBA #30389  
Senior Deputy Prosecuting Attorney

APPENDIX E

**FILED**  
KING COUNTY, WASHINGTON

APR 28 2011

SUPERIOR COURT CLERK  
KIRSTIN GRANT  
DEPUTY

**SUPERIOR COURT OF WASHINGTON, COUNTY OF KING**

State of Washington,

Plaintiff,

vs.

MICHELE ANDERSON and JOSEPH MCENROE,  
Defendants.

No. 07-1-08717-2 SEA  
No. 07-1-08716-4 SEA ✓

ORDER ON CRIMINAL MOTION

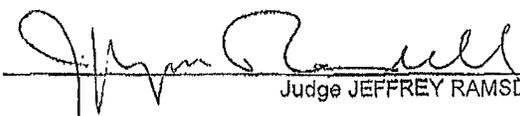
Plaintiff /  Defendant The State has moved the Court

to sever the trials of the two co-defendants. Both  
Co-defendants join in the motion

THE COURT HEREBY ORDERS THAT:

the trials of the co-defendants are severed

DATED THIS 28 day of April, 2011

  
Judge JEFFREY RAMSDELL

Deputy Prosecutor / WSBA No. \_\_\_\_\_

Defense Attorney / WSBA No. \_\_\_\_\_

**ORIGINAL**

APPENDIX F

**CLERK'S MINUTES**

SCOMIS CODE: MTHRG

Judge: Jeffrey M. Ramsdell  
Bailliff: Kenya Hart  
Court Clerk: Kirstin Grant  
Reporter: JoAnn Bowen  
Digital Record:

Dept. 09  
Date: 6/2/2011

---

**KING COUNTY CAUSE NO.: 07-1-08716-4 SEA**

**State of Washington v. Joseph McEnroe**

---

**Appearances:**

Defendant appearing in person and through counsel, Kathryn Ross, William Prestia and Leo Hamaji.  
State appearing through counsel, DPA James Konat.

**MINUTE ENTRY**

This cause having come on for Status Conference.

Court discussion re: Defendant's subpoenas for depositions.

State's Motion to Commence Defendant Joseph McEnroe's Trial Before Defendant Michele Anderson's Trial.

The Court outlines the briefing scheduling for Motions on Order of Trial.

The State outlines the discovery status.

The next Status Conference is set for June 30, 2011 at 3:00 p.m.

Court adjourned.

APPENDIX G

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**FILED**  
2007 DEC 31 PM 2:05  
KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING**

<p><b>STATE OF WASHINGTON,</b>   <b>Plaintiff,</b>   <b>vs.</b>   <b>JOSEPH McENROE,</b>   <b>Defendant</b></p>	}	<p>Case No. 07-C-08716-4 SEA   <b>NOTICE OF APPEARANCE</b></p>
---	---	--

Please take notice that Kathryn Ross and C. Wesley Richards are attorneys of record for the above-named defendant.

Dated this 31<sup>st</sup> day of December 2007.

  
Kathryn Ross, WSBA #6894

  
C. Wesley Richards, WSBA #11946

APPENDIX H

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**FILED**  
KING COUNTY WASHINGTON

NOV 22 2010

SUPERIOR COURT CLERK  
KIRSTIN GRANT  
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF KING

STATE OF WASHINGTON,

Plaintiff,

v.

MICHELE ANDERSON,

Defendant.

Cause No. 07-C-08717-2SEA

ORDER ON MOTIONS TO WITHDRAW

The above-entitled Court, on November 18, 2010 having considered motions to withdraw from further representation of the Defendant, by Lisa Mulligan, lead defense counsel, and by Society of Counsel, the criminal defense agency assigned to represent the Defendant; and having considered Society of Counsel's motion to appoint independent counsel to address a potential claim of ineffective assistance of counsel;

IT IS HEREBY ORDERED that Lisa Mulligan's motion to withdraw is granted; that Society of Counsel's motion to withdraw is denied, and Society of Counsel's motion to appoint independent counsel to address a potential claim of ineffective assistance of counsel is denied without prejudice.

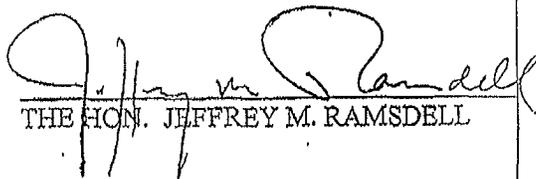
ORDER ON MOTIONS TO WITHDRAW - 1

SOCIETY OF COUNSEL  
REPRESENTING ACCUSED PERSONS  
1401 East Jefferson Street, Suite 200  
Seattle, Washington 98122  
(206) 322-8400

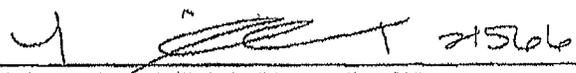
**ORIGINAL**

1 Colleen O'Connor is permitted to substitute as counsel of record for Ms. Mulligan effective  
2 immediately.

3 <sup>27<sup>nd</sup> (jmr)</sup>  
4 DATED this ~~19<sup>th</sup>~~ day of November, 2010.

5  
6   
7 THE HON. JEFFREY M. RAMSDELL

8 Presented by:

9  
10   
11 DAVID SORENSON, WSBA #27617  
12 Society of Counsel Representing Accused Persons  
13 Attorney for Defendant

14 Approved as to Form:

15  
16 Reviewed and approved via email  
17 KURT M. BULMER, WSBA #5559  
18 Attorney for Lisa Mulligan

19  
20 JAMES JUDE KONAT, WSBA #16082  
21 Senior Deputy King County Prosecuting Attorney  
22 Attorneys for Plaintiff, State of Washington

23  
24  
25 ORDER ON MOTIONS TO WITHDRAW - 2

SOCIETY OF COUNSEL  
REPRESENTING ACCUSED PERSONS  
1401 East Jefferson Street, Suite 200  
Seattle, Washington 98122  
(206) 322-8400

Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to the attorneys for the petitioner, Kathryn Ross, Leo Hamaji and William Prestia, and to the attorneys for Michelle Anderson, Colleen O'Connor and David Sorenson, containing a copy of the State's Answer to Motion for Discretionary Review and Answer to Statement of Grounds for Direct Review, in STATE V. MCENROE, Cause No. 86084-0-1, 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.



\_\_\_\_\_  
Name

Done in Seattle, Washington

6-22-2011

\_\_\_\_\_  
Date

**OFFICE RECEPTIONIST, CLERK**

---

To: Summers, Ann; Bailey, Amy; [wdpac@aol.com](mailto:wdpac@aol.com); [leo@defender.org](mailto:leo@defender.org); [prestia@defender.org](mailto:prestia@defender.org); Satterberg, Dan; Vitalich, Andrea; Konat, James; Mohandeson, Mike; O'Connor, Colleen; Sorenson, David  
Subject: RE: State's answer, No. 86084-0, State v. McEnroe

Rec. 6-22-11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Summers, Ann [<mailto:Ann.Summers@kingcounty.gov>]

Sent: Wednesday, June 22, 2011 9:36 AM

To: Bailey, Amy; [wdpac@aol.com](mailto:wdpac@aol.com); [leo@defender.org](mailto:leo@defender.org); [prestia@defender.org](mailto:prestia@defender.org); Satterberg, Dan; Vitalich, Andrea; Konat, James; Mohandeson, Mike; O'Connor, Colleen; Sorenson, David; OFFICE RECEPTIONIST, CLERK

Subject: State's answer, No. 86084-0, State v. McEnroe

Attached please find the State's Answer to Motion for Discretionary Review and Answer to Statement of Grounds for Direct Review.

Thank you,

Ann Summers  
Attorney for Respondent