RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Mar 22, 2013, 1:17 pm
BY RONALD R. CARPENTER
CLERK

RECEIVED BY E-MAIL

Supreme Court No. 88522-2

IN THE WASHINGTON SUPREME COURT

---

STATE OF WASHINGTON,

Plaintiff,

v.

CHRISTOPHER JOHN MONFORT,

Defendant.

---

# MONFORT'S REPLY RE: STATE'S MOTION FOR DISCRETIONARY REVIEW

---

By:

SUZANNE LEE ELLIOTT
WSBA 12634
Attorney for Defendant
Law Office of Suzanne Lee Elliott
Suite 1300 Hoge Building
705 Second Avenue
Seattle, WA 98104

ORIGINAL

## TABLE OF CONTENTS

I. REPLY ARGUMENT ..... 1

A. MONFORT'S STATUTORY CONSTRUCTION ARGUMENT MERITS REVIEW ..... 1

B. THE COURT SHOULD REVIEW THE JURY INSTRUCTIONS NOW ..... 1

## TABLE OF AUTHORITIES

### Cases

*State v. Campell*, 103 Wn.2d 1, 691 P.2d 929 (1984), *cert. denied*, 471 U.S. 1094, 105 S.Ct. 2169, 85 L.Ed.2d 526 (1985) ..... 1

*State v. Davis*, 141 Wn.2d 798, 10 P.3d 977 (2000), *post-conviction relief granted in part*, 152 Wn.2d 647, 101 P.3d 1 (2004) ..... 2

*State v. Gregory*, 158 Wn.2d 759, 147 P.3d 1201 (2006) ..... 2

*State v. Woods*, 143 Wn.2d 561, 23 P.3d 1046, *cert. denied*, 534 U.S. 964, 122 S.Ct. 374, 151 L.Ed.2d 285 (2001) ..... 2

### Statutes

RCW 10.95.040 ..... 1

## I. REPLY ARGUMENT

### A. MONFORT'S STATUTORY CONSTRUCTION ARGUMENT MERITS REVIEW

If this Court grants the State's motion for discretionary review, this Court should take Monfort's claim that the prosecutor cannot consider the facts of the crime under RCW 10.95.040. Monfort's claim, like the State's claim, concerns the proper construction of the statute. Thus, it would make sense to consider the issues at the same time. The State cites to caselaw that expands on the plain wording of the statute. *See, e.g., State v. Campell*, 103 Wn.2d 1, 26-27, 691 P.2d 929 (1984), *cert. denied*, 471 U.S. 1094, 105 S.Ct. 2169, 85 L.Ed.2d 526 (1985). This Court should accept review to clarify whether that expansion of the statute is proper.

The fact that this Court previously denied review of this issue in *State v. McEnroe*, No. 84693-6, supports review now. In October 2010, the arguments regarding a proper construction of RCW 10.95.040, had not reached critical mass. But now it is quite clear that this Court needs to clarify the parameters of the prosecutor's discretion under RCW 10.95.040.

### B. THE COURT SHOULD REVIEW THE JURY INSTRUCTIONS NOW

A verdict of death is only constitutional if the jury understands the application of the law to the facts of the case. Monfort presented evidence that given the nature of capital litigation in the United States, and the limitations on trying to educate jurors via the use of flawed jury

instructions, most jurors cannot correctly apply the law to the facts. This is not a question of proportionality review, it is a question of communication.

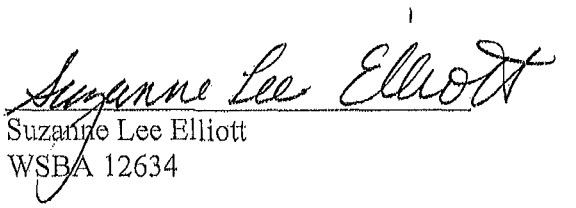
Washington jurors are no different than the jurors interviewed by the social scientists. They are all given the law in English. But the overwhelming evidence is that jurors don't understand the legal concepts. Thus, their discretion is not guided in a constitutionally adequate way. Monfort is not challenging the individual thought process of the jurors. He is arguing that the jury instructions – although written in English – might as well be written in Ancient Greek.

Finally, there are issues of racial discrimination prosecutions in Washington. This Court just recently accepted review of *In Re Gentry*, No. 86585-0. In that case, Mr. Gentry argues that his death sentence was tainted by race. He is alleged to have killed a white child. There are three other African American men on death row: Dwayne Woods, *State v. Woods*, 143 Wn.2d 561, 570-72, 23 P.3d 1046, *cert. denied*, 534 U.S. 964, 122 S.Ct. 374, 151 L.Ed.2d 285 (2001); Cecil Davis, *State v. Davis*, 141 Wn.2d 798, 809-13, 10 P.3d 977 (2000), *post-conviction relief granted in part*, 152 Wn.2d 647, 101 P.3d 1 (2004); and Allen Gregory, *State v. Gregory*, 158 Wn.2d 759, 811, 147 P.3d 1201 (2006). All three are alleged to have killed women. Woods's and Gregory's victims were white and Davis's victim was Asian.

Thus, the Washington cases fit the pattern of racial bias identified by the social scientists. The imposition of the death sentence is far more likely if the victim is white and the defendant is black.

DATED this 22nd day of March, 2013.

Respectfully submitted,



Suzanne Lee Elliott
WSBA 12634

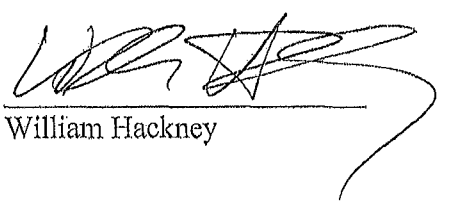
**CERTIFICATE OF SERVICE**

I certify that on March 22, 2013, I served one copy of the foregoing pleading by Email on the following:

Ms. Deborah Dwyer
Deputy King County Prosecutor
516 Third Avenue, W554
Seattle, WA 98104
Deborah.Dwyer@kingcounty.gov

Ms. Ann Summers
Deputy King County Prosecutor
516 Third Avenue, W554
Seattle, WA 98104
Ann.Summers@kingcounty.gov

22 Mar 2013
Date



William Hackney

## OFFICE RECEPTIONIST, CLERK

**To:** William Hackney
**Subject:** RE: State v. Monfort, No. 88522-2

Received 3-22-13

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.

---

**From:** William Hackney [mailto:william@davidzuckermanlaw.com]
**Sent:** Friday, March 22, 2013 1:17 PM
**To:** OFFICE RECEPTIONIST, CLERK
**Cc:** suzanne-elliott@msn.com; calbouras@hotmail.com; deborah.dwyer@kingcounty.gov; ann.summers@kingcounty.gov
**Subject:** State v. Monfort, No. 88522-2

Attached for filing in *State v. Monfort*, No.88522-2, is Monfort's reply to the State's motion for discretionary review.

These pleadings are filed by Suzanne Lee Elliott, WSBA #12634, 206-623-0291, Suzanne-elliott@msn.com. Thank you for your assistance.

~William Hackney
Legal Assistant