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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner/Cross-Respondent,

v.

BRIAN K. BRUSH,

Respondent/Cross-Petitioner.

NO. 90479-1

STATEMENT OF
ADDITIONAL
AUTHORITIES

COMES NOW the petitioner, State of Washington, by and through, Pamela B. Loginsky, Special Deputy Prosecuting Attorney for Pacific County, and respectfully requests that the Court consider the following additional authority pursuant to RAP 10.8:

- 1. Laws of 2005, ch. 68 § 1:

The legislature intends to conform the sentencing reform act, chapter 9.94A RCW, to comply with the ruling in *Blakely v. Washington*, 542 U.S. ... (2004). In that case, the United States supreme court held that a criminal defendant has a Sixth Amendment right to have a jury determine beyond a reasonable doubt any aggravating fact, other than the fact of a prior conviction, that is used to impose greater punishment than the standard range or standard conditions. The



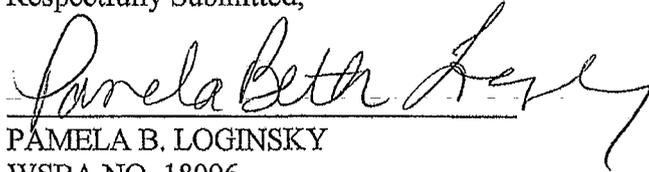
legislature intends that aggravating facts, other than the fact of a prior conviction, will be placed before the jury. The legislature intends that the sentencing court will then decide whether or not the aggravating fact is a substantial and compelling reason to impose greater punishment. The legislature intends to create a new criminal procedure for imposing greater punishment than the standard range or conditions and to codify existing common law aggravating factors, without expanding or restricting existing statutory or common law aggravating circumstances. The legislature does not intend the codification of common law aggravating factors to expand or restrict currently available statutory or common law aggravating circumstances. The legislature does not intend to alter how mitigating facts are to be determined under the sentencing reform act, and thus intends that mitigating facts will be found by the sentencing court by a preponderance of the evidence.

While the legislature intends to bring the sentencing reform act into compliance as previously indicated, the legislature recognizes the need to restore the judicial discretion that has been limited as a result of the Blakely decision.

2. *State v. Boss*, 167 Wn.2d 710, 721, 223 P.3d 506 (2009) (“A judicial comment on the evidence in a jury instruction is presumed prejudicial, and the burden is on the State to show that the defendant was not prejudiced, unless the record affirmatively shows that no prejudice could have resulted. *State v. Jackman*, 156 Wn.2d 736, 743, 132 P.3d 136 (2006). The State makes this showing when, without the erroneous comment, no one could realistically conclude that the element was not met. *Levy*, 156 Wn.2d at 725-27.”)

DATED January 14, 2015.

Respectfully Submitted,



PAMELA B. LOGINSKY

WSBA NO. 18096

Pacific County Special Deputy Prosecuting Attorney

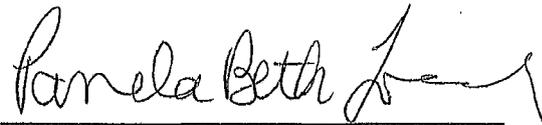
PROOF OF SERVICE

I, Pamela B. Loginsky, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On the 14th day of January, 2015, I e-mailed a copy of the document to which this proof of service is attached to Jodi R. Backlund, Manek R. Mistry, and Skylar T. Brett at backlundmistry@gmail.com.

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

Signed this 14th day of January, 2015, at Olympia, Washington.



Pamela B. Loginsky, WSBA No. 18096

OFFICE RECEPTIONIST, CLERK

To: Pam Loginsky; Mark McClain; Jodi Backlund
Subject: RE: State v. Brush, No. 90479-1

Received 1-14-2015

Supreme Court Clerk's Office

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: Pam Loginsky [mailto:Pamloginsky@waprosecutors.org]
Sent: Wednesday, January 14, 2015 3:05 PM
To: Mark McClain; OFFICE RECEPTIONIST, CLERK; Jodi Backlund
Subject: State v. Brush, No. 90479-1

Dear Clerk and Counsel:

Attached for filing is a Statement of Additional Authorities. This case is scheduled for argument tomorrow.

Please let me know if you should encounter any difficulty in opening the document.

Sincerely,

Pam Loginsky
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