

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
Respondent,	)	No. 104111-0
	)	
vs.	)	STATEMENT OF
	)	ADDITIONAL
LAVELL LEWIS,	)	AUTHORITIES
Petitioner.	)	
_____	)	

Pursuant to RAP 10.8, Mr. Lewis cites the following additional authorities, with regard to argument 2 (court of appeals’ inconsistent interpretations of “manifest”) in his petition for review, pages 17-21: State v. Ferguson, \_\_Wn. App. 2d\_\_, \_\_P.3d\_\_, 2025 WL 1229596 (Apr. 29, 2025) (published portion); and State v. Waits, No. 37894-2-III, 2025 WL 1113431 (Apr. 15, 2025) (unpublished, GR 14.1).

Following its own prior decision in Dimas, Division Two in Ferguson held a right to confer error was not manifest because “Ferguson fail[ed] to show that opportunities to confer with his attorney would have made any difference in the

proceedings.” 2025 WL 1229596, at \*7; see also id. at \*8 (“Overall, Ferguson fails to show any practical and identifiable consequence that would have changed the outcomes of these hearings.”). Division Two did not find persuasive the opposite conclusions regarding manifest error in Anderson, Bragg, and Schlenker, decisions by Divisions One and Three. Ferguson, 2025 WL 1229596, at \*7.

Division Three recently reiterated its holding in Anderson and concluded a right to confer error was manifest in Waits, an unpublished decision. There, the Waits court held “[t]he trial court’s failure to allow Mr. Waits to confer privately with his attorney during the pretrial hearings amounts to identifiable and unmistakable errors that the trial court could have foreseen and should have remedied even without an objection.” 2025 WL 1113431, at \*5. “Thus,” Division Three concluded, “the error was manifest.” Id.

Division Two’s decision in Ferguson and Division Three’s decision in Waits confirm there is continuing conflict

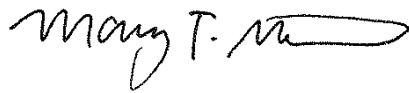
among the three divisions as to whether a right to confer claim  
is manifest error reviewable for the first time on appeal.

DATED this 2nd day of May, 2025.

**I certify this document contains 276 words, excluding  
those portions exempt under RAP 18.17.**

Respectfully submitted,

NIELSEN KOCH & GRANNIS, PLLC

A handwritten signature in black ink, appearing to read "Mary T. Swift", with a stylized flourish at the end.

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MARY T. SWIFT, WSBA No. 45668  
Attorney for Petitioner

**NIELSEN KOCH & GRANNIS P.L.L.C.**

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