

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

CLAY D. STARBUCK,

Appellant,

Supreme Court No. 92363-9
(COA No. 31845-1-III)

RESPONDENT'S MOTION TO
STRIKE APPELLANT'S SECOND
SUPPLEMENTAL AUTHORITY

I. IDENTITY OF MOVING PARTY

The Respondent, State of Washington, represented by Spokane County Prosecuting Attorney, Lawrence Haskell, through his deputy prosecuting attorney, Larry Steinmetz, seeks the relief designated below.

II. RELIEF SOUGHT

The respondent requests this Court strike the appellant's second supplemental authority from the record, filed with the Court on January 21, 2016.

III. REFERENCE TO RECORD RELEVANT TO MOTION

On January 21, 2016, the respondent received the appellant's second supplemental authority. Pursuant to RAP 10.8, the appellant attached reference

material to his second supplemental authority to support “his argument that the proper evaluation of other suspect evidence is a continuing issue”:

In Re Lui, #72478-9-I, unpublished opinion filed January 19, 2016.

State v. Nickels, #31642-4-III, excerpt of opening brief June 17, 2015.

State v. Ortuno-Perez, #72849-1-I, excerpt of opening brief filed December 11, 2015.

IV. GROUNDS FOR MOTION TO STRIKE AND ARGUMENT

1. Unpublished opinion.

GR 14.1(a) prohibits a party from citing as authority an unpublished opinion of the court of appeals. *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 577 n. 10, 964 P.2d 1173 (1998) (“Unpublished opinions have no precedential value and, therefore, [the Supreme Court] ha[s] not considered them”); *State v. Nysta*, 168 Wn. App. 30, 44, 275 P.3d 1162 (2012), *review denied*. 177 Wn.2d 1008 (2013) (“No matter how well reasoned, unpublished opinions of the court of appeals lack precedential value, in part, because they merely restate well established principles”); *Skamania Cty. v. Woodall*, 104 Wn. App. 525, 536 n. 11, 16 P.3d 701, 707 (2001) (“Unpublished opinions have no precedential value and should not be cited or relied upon in any manner”).

This Court should strike the unpublished opinion from the record.

2. “Excerpts” from other appellate court cases.

RAP 10.8 permits parties to file statements of additional authorities. However, RAP 10.8 specifies that such a statement “*should not contain argument*, but should identify the issue for which each authority is offered.” (Emphasis added). This rule expressly forbids argument. Moreover, the appellant has not identified which portion of the 53 pages of briefing from other appellate court cases, if any, he relies on as authority. Finally, the defendant has not provided any citation to authority providing for this Court’s consideration of “briefs” from other appellate court cases.

This Court should strike the additional briefs from the record.

V. CONCLUSION

The respondent respectfully requests this Court strike the appellant’s additional authorities filed on January 21, 2016.

RESPECTFULLY SUBMITTED this 25 day of January 2016.

LAWRENCE H. HASKELL
Prosecuting Attorney



Larry Steinmetz #20635
Deputy Prosecuting Attorney
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on January 25, 2016, I e-mailed a copy of the Respondent's Motion to Strike Appellant's Second Supplemental Authority in this matter, pursuant to the parties' agreement, to:

Suzanne Elliott
suzanne-elliott@msn.com; suzanne@suzanneelliottlaw.com

<u>1/25/2016</u>	<u>Spokane, WA</u>	<u>Kim Cornelius</u>
(Date)	(Place)	(Signature)