

FILED

MAY 20 2016

WASHINGTON STATE
SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON ,
Respondent,

v.

ALLEN EUGENE GREGORY,
Appellant.

NO. 88086-7

RULING

The appellant Allen Eugene Gregory has proffered a report in support of his contentions titled, *The Role of Race in Washington State Capital Sentencing, 1981 – 2014* (Report), authored by Katherine Beckett, Professor, Law, Societies and Justice Program of the Department of Sociology at the University of Washington, and Heather Evans, M.A., Ph.D. Candidate, Department of Sociology, University of Washington. At oral argument, the State requested an opportunity to challenge the Report. A majority of the court granted the State the opportunity to challenge the Report and ordered that a hearing shall be held before me. The parties were directed to file memoranda addressing the conduct of the hearing, the manner of submitting testimony or other evidence, and whether the court should appoint an expert pursuant to ER 706 or alternatively, the appropriateness of appointment of a technical advisor to assist the court in understanding the evidence. Each party filed a memorandum that

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included suggested procedures for the State to obtain information relating to the Report's method of analysis and conclusions, submission of additional information and evidence, and the State's presentation of the bases for its challenge to the Report and Mr. Gregory's response. Upon consideration of these memoranda, this court issued an order that included a provision directing the parties' attorneys to confer and determine whether agreement may be reached on the steps and timing of procedures for the following: (a) the State to obtain information relating to the Report's method of analysis and conclusions; (b) the submission of additional information and evidence; and (c) the State's presentation of the bases for its challenge to the Report and Mr. Gregory's responses. The parties were directed to report to me any areas where they agree and any areas where they disagree as to the steps and timing of such procedures.

On May 19, 2016, the parties jointly submitted their "Agreed Proposal Regarding Court's Orders of March 16, 2016 and May 3, 2016." This agreed proposal consists of the following procedures:

1. Mr. Gregory will provide the coding manual and data file for the study on the role of race in capital sentencing in Washington to the State and the Court by May 27, 2016, or within 5 days of the Commissioner's ruling detailing procedures, whichever is later.
2. By July 11, 2016, or within 45 days of receiving the data and codebook (whichever is later), the State will submit its expert report stating its conclusions about the methodology used and the reliability of the study's conclusions.
3. By August 25, 2016, or within 45 days of receiving the State's report (whichever is later), Mr. Gregory will provide the response of Professor Beckett and Ms. Evans to the State's report.

The parties did not report any areas where they disagree as to the steps and timing of procedures.

Accordingly, I accept the parties' agreed proposal and order the parties to serve on the other party and file in this court the identified documents on the dates established in the agreed proposal.

In accordance with this court's May 3, 2016, order, if upon review of these documents I determine the assistance of a neutral technical advisor with specialized skills would be beneficial, I will issue a ruling that details how such a technical advisor will be appointed and used. As provided in the court's order, a party may object to any commissioner's ruling as to a technical advisor by a motion to modify the ruling directed to the justices of the court under the provisions of RAP 17.7.


COMMISSIONER

May 20, 2016

May 19, 2016, 3:43 pm

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

Appellant.

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AGREED PROPOSAL REGARDING
 COURT'S ORDERS OF MARCH 16, 2016
 AND MAY 3, 2016



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ORIGINAL

- 1 2. By July 11, 2016, or within 45 days of receiving the data and codebook (whichever is
2 later), the State will submit its expert report stating its conclusions about the
3 methodology used and the reliability of the study's conclusions.
4 3. By August 25, 2016, or within 45 days of receiving the State's report (whichever is
5 later), Mr. Gregory will provide the response of Professor Beckett and Ms. Evans to
6 the State's report.

7 DATED this 19th day of May, 2016.

8 Respectfully submitted,

9 /s Neil M. Fox
10 WSBA No. 15277

/s Kathleen Proctor
WSBA No. 14811

11 /s Lila J. Silverstein
12 WSBA No. 38394

/s John M. Neeb
WSBA No. 21322

13 Attorneys for Appellant

14 Attorneys for Respondent

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8 IN THE SUPREME COURT FOR THE STATE OF WASHINGTON
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10 STATE OF WASHINGTON,

11 Respondent,

12 v.

13 ALLEN EUGENE GREGORY,

14 Appellant.
15
16

} NO. 88086-7

} CERTIFICATE OF SERVICE
17

18 I, Neil M. Fox, certify and declare that on the 19th day of May 2016, I served a copy of
19 the attached AGREED PROPOSAL by emailing copies to:

20 John Neeb jneeb@co.pierce.wa.us
21 Kathleen Proctor kprocto@co.pierce.wa.us
22 Pcpatcecf@co.pierce.wa.us
Pierce County Prosecuting Attorney's Office

23 James Lobsenz lobsenz@carneylaw.com
24 Counsel for Washington Coalition to Abolish the Death Penalty

25 Robert Chang changro@seattleu.edu
26 Jessica Levin levinje@seattleu.edu
27 Counsel for the Korematsu Center

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Cassandra Stubbs cstubbs@aclu.org'

1 Nancy Talner talner@aclu-wa.org
2 John Wolfe john.wolfe@orrick.com
3 Aravind Swaminathan aravind@orrick.com
4 Marc Shapiro mrshapiro@orrick.com
5 Counsel for 56 Former and Retired Judges et al.

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

8 DATED this 19th day of May 2016, at Seattle, WA,

9 /s/ Neil M. Fox
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11 WSBA NO. 15277
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OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, May 19, 2016 3:45 PM
To: 'Neil Fox'
Cc: PCpatcecf@co.pierce.wa.us; John Neeb; Kit Proctor; lobsenz@carneylaw.com; levinje@seattleu.edu; changro@seattleu.edu; Nancy Talner; mrshapiro@orrick.com; aravind@orrick.com; john.wolfe@orrick.com; cstubbs@aclu.org; robinson@sgb-law.com; Lila Silverstein
Subject: RE: State v. Gregory, 88086-7. Agreed Proposal

Received 5/19/2016

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: Neil Fox [mailto:nf@neilfoxlaw.com]
Sent: Thursday, May 19, 2016 2:37 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: PCpatcecf@co.pierce.wa.us; John Neeb <jneeb@co.pierce.wa.us>; Kit Proctor <kprocto@co.pierce.wa.us>; lobsenz@carneylaw.com; levinje@seattleu.edu; changro@seattleu.edu; Nancy Talner <TALNER@aclu-wa.org>; mrshapiro@orrick.com; aravind@orrick.com; john.wolfe@orrick.com; cstubbs@aclu.org; robinson@sgb-law.com; Lila Silverstein <Lila@washapp.org>
Subject: RE: State v. Gregory, 88086-7. Agreed Proposal

Please find attached and accept for filing the "Agreed Proposal" of the parties in State v. Gregory, No. 88086-7.

Neil M. Fox
WSBA No. 15277
nf@neilfoxlaw.com
Law Office of Neil Fox, PLLC
NOTE NEW ADDRESS AND FAX # July 1, 2015
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WASHINGTON STATE
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
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v.

ALLEN EUGENE GREGORY,
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NO. 88086-7

ORDER

This matter came before the court for oral argument on February 25, 2016. The appellant Allen Eugene Gregory proffered a report in support of his contentions. The report is titled, *The Role of Race in Washington State Capital Sentencing, 1981 – 2014* (Report), authored by Katherine Beckett, Professor, Law, Societies and Justice Program of the Department of Sociology at the University of Washington, and Heather Evans, M.A., Ph.D. Candidate, Department of Sociology, University of Washington.

Before oral argument, the State moved to strike the Report, and this court denied the motion. At oral argument, the State requested an opportunity to challenge the Report. A majority of the court granted the State the opportunity to challenge the Report and ordered that a hearing shall be held before Supreme Court Commissioner

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Pierce on an expedited basis upon the parties' filing of memoranda addressing the conduct of the hearing, the manner of submitting testimony or other evidence, and whether the court should appoint an expert pursuant to ER 706 or alternatively, the appropriateness of appointment of a technical advisor to assist the court in understanding the evidence.

Mr. Gregory and the State submitted memoranda on April 15, 2016. Mr. Gregory suggests the State should be required to identify its proposed alternative method of analysis and further suggests that if the court orders an evidentiary hearing it should mandate collection of evidence to evaluate matters beyond those included in the scope of the Report. Each party's memorandum includes suggested procedures for the State to obtain information relating to the Report's method of analysis and conclusions, submission of additional information and evidence, and the State's presentation of the bases for its challenge to the Report and Mr. Gregory's response. The court also received each party's comment on the appropriateness of appointment of an expert pursuant to ER 706 or, alternatively, appointment of a technical advisor to the court. Additionally, Mr. Gregory states that funding is needed for the expert services of Professor Beckett and Ms. Evans in responding to requirements of this court's orders.

Now, therefore, it is

ORDERED:

1. The subject matter of the hearing provided for in this court's March 16, 2016 Order, shall be limited to the State's challenge to the contents and conclusions of the Report.

2. The parties' attorneys shall confer and determine whether agreement may be reached on the steps and timing of procedures for the following: (a) the State to obtain information relating to the Report's method of analysis and conclusions; (b) the submission of additional information and evidence; and (c) the State's presentation of the bases for its challenge to the Report and Mr. Gregory's responses. No later than May 20, 2016, the parties shall report to the commissioner any areas where the parties agree and any areas where they disagree as to the steps and timing of such procedures. The commissioner may direct the attorneys for the parties to appear before her in a telephone conference to consider the steps and timing of procedures. Following the parties' report and a telephone conference, if any, the commissioner shall issue a ruling detailing the procedures and timelines that will be followed. A party may object to the commissioner's ruling by a motion to modify the ruling directed to the justices of the court under the provisions of RAP 17.7. Any motion to³ modify the commissioner's ruling in this matter will be decided by the court en banc.

3. If at any point in the hearing provided for in this court's March 16, 2016, Order the commissioner determines that the assistance of a neutral technical advisor with specialized skills would be beneficial, the commissioner shall issue a ruling that details how such technical advisor will be appointed and used. A party may object to the commissioner's ruling by a motion to modify the ruling directed to the justices of

the court under the provisions of RAP 17.7. Any motion to modify the commissioner's ruling in this matter will be decided by the court en banc.

4. Substantial reason exists for the expert services of Professor Beckett and Ms. Evans in responding to the requirements that result from this court's orders, and such services are allowed at public expense. Attorneys for Mr. Gregory may submit invoices to the Office of Public Defense consistent with the provisions of RAP 15.4(a), and the director of the Office of Public Defense shall determine all claims for expenses under this order consistent with the provisions of RAP 15.5.

DATED at Olympia, Washington this 3rd day of May, 2016.

For the Court

Madsen, C. J.
Chief Justice