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STATE OF WASHINGTON  
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Supreme Court No. 101124-5

SUPREME COURT  
OF THE STATE OF WASHINGTON

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THE STATE OF WASHINGTON,  
Respondent,

v.

EDUARDO SALSADO MARTINEZ,  
Petitioner.

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ANSWER TO PETITION FOR REVIEW

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## **I. ISSUES PRESENTED FOR REVIEW**

1. Concerning the joinder issue, is there a significant question of law under the Constitution of the State of Washington or the United States?
2. Concerning the voir dire issue, should the defendant be able to raise this issue since he did not with the Court of Appeals? Is *State v. Zamora* in conflict with the Court of Appeals decision? Is there a significant question of constitutional law by the trial court's denial of a request to question jurors about their attitudes regarding illegal immigrants?

## **II. STATEMENT OF THE CASE**

The State incorporates the Statement of the Case in the brief filed with the Court of Appeals. The State also makes the following comments on statements in the Petition for Review:

From "Issues Presented for Review": "Does the Constitution require that voir dire be broad enough to determine if people are biased toward defendants who are from countries

south of the United States border and/or who are here illegally?” PRV at 4. This was not raised by the defendant on appeal. It was raised by Alejandro, his co-defendant and brother.

It is also not accurate to state that the defendant was prohibited from asking about bias toward defendants who are Hispanic. The defendants requested the trial court to be allowed to ask potential jurors’ attitudes toward illegal immigrants. RP<sup>1</sup> at 444. The trial court specifically allowed questions on whether the venire members had any prejudice against Hispanics. RP at 470.

The defendants offered various justifications for the request. “[P]eople have very different opinions about immigration.” RP at 445.

[The] immigration situation in this country has been a legitimate factual question to ask these jurors because this country seems to be very

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<sup>1</sup> Unless otherwise indicated, “RP” refers to the 3 volume trial VRP from 05/22-10/10/19 prepared by Cheryl Pelletier, RPR, CCR.

divided and very prejudiced now with the wall issue . . . . They could easily see this as a way to get rid of people from this country, or they can see it as a way to stand up against the president of this country.

RP at 445-46.

The justification for the questions then morphed into having some relationship with the case.

[T]here is a lot of . . . animosity in the family and why people dislike each other which goes to their bias for their testimony against their older brothers has to do with the working status of my client (Alejandro) and whether he lived in the family. The fact that he didn't accompany them across the border illegally, it has to do with Eduardo came across the border illegally and they may or may not have had interaction with the children. There is a lot of stuff that goes into that that we can't avoid the fact that it was done by—in that border crossing period and stuff like that. And then the jury is going to imply that they didn't cross legally.

RP at 447. Next the defendants claimed there was some relevance to the manner of crossing the border. “There is going to be evidence of how they cross the border.” RP at 448. Then the defendants claimed there was a possibility that evidence of immigration might be admitted. “I don't know how it's going

to come out (immigration), but it can come out. It could leave the inference to the jury.” RP at 457. Finally, Eduardo claimed that there was some relevance of his immigration status to moving to Connecticut.

I’ve been doing this a long time, I never heard anybody in a jury pool admitting to be prejudiced by anything, ever. . . . But I do think the issue as to legal and illegal status is what’s important because it most probably (will) be part of my client’s (Eduardo’s) defense of why in fact he left Connecticut and came back from Connecticut.

RP at 460-61.

At least some of these concerns were not borne out.

Regarding the representation that immigration status was evidence in the past trials, the prosecutor stated that there was no testimony about immigration status in any previous trial. RP at 448. The defendant has not pointed to any such testimony in previous trials and there was none in this trial.

Regarding whether it played a part of Eduardo’s defense in explaining why he moved to Connecticut, he testified that Alejandro was living in Connecticut and came to pick him up

and that he eventually moved to Connecticut in 1996. RP at 1324. Regarding whether E.P. or J.P. were biased against Alejandro because he did not cross the border with them, E.P. testified that he thought Alejandro accompanied them. RP at 1058.

“In 1998 the Santiago boys told Benton County Deputy Sheriff Cantu that Eduardo had raped them sometime in 1995. . . . On March 13, 2000, the State of Washington filed charges against Eduardo for two counts of Rape of a Child in the First Degree.”

The timeline is as follows:

September 28, 1998: Cantu receives call from Principal Juzeler. RP at 603-04.

October 7, 1998: Cantu goes to the school to interview J.P. and E.P. RP at 608.

October 12, 1998: Cantu conducts a follow up investigation, including going to the RV park, and seeing a unit



that identified Alejandro Martinez as the park manager with a phone number written on a sign. RP at 626.

October 15, 1998: Cantu tried to contact both brothers, Alejandro and Eduardo, at the trailer. RP at 647. He tried to contact Alejandro via the cellphone. RP at 647-48.

November 2, 1998: Information filed against Alejandro for Rape of a Child in Benton County Superior Court, setting arraignment for November 13, 1998.

November 13, 1998: Alejandro fails to appear, and a warrant is issued.

December 14, 1998: Information filed against Eduardo for two counts of Rape of a Child in the Benton County Superior Court, Juvenile Division, together with a Motion/Affidavit to Decline Jurisdiction. The hearing on the decline of jurisdiction is set for December 28, 1998.

December 28, 1998: Eduardo fails to appear.

December 30, 1998: Warrant is issued for Eduardo.

The March 13, 2000 date the defendant is referring to was a filing in the adult division of Superior Court.

### III. ARGUMENT

**A. The Joinder issue involves whether the trial court abused its discretion and the defendant's argument does not involve a constitutional issue.**

A trial court's decision on joinder is reviewed for abuse of discretion. *State v. Grisby*, 97 Wn.2d 493, 507, 647 P.2d 6 (1982). Separate trials are not favored in Washington and are granted only where a defendant demonstrates that a joint trial would be "so manifestly prejudicial as to outweigh the concern for judicial economy." *State v. Hoffman*, 116 Wn.2d 51, 74, 804 P.2d 577 (1991).

Here, the defendant claims that the consolidation was unfair given that a State's witness, Detective Cantu, inadvertently caused the mistrial in the first trial. However, the defendant does not dispute the trial court's finding that Detective Cantu inadvertently spoke of the defendant's

invoking his right to an attorney and did not do so intentionally.

He does not assign error to the mistrial in the first trial.

The defendant's argument is that "Fundamental fairness should not allow the government to take advantage of a mistake of this magnitude, with the kind of timing which allowed the state what amounts to a test run." PRV at 11. As the Court of Appeals stated, the issue is whether the consolidation motion should have been granted and the unfairness occurring as a result of the consolidated trial. Court of Appeals decision at 9. There is no abuse of discretion involving the consolidation order itself.

**B. Regarding the voir dire issue, the defendant did not raise the issue on direct review, and it has no merit.**

While his co-defendant raised this issue with the Court of Appeals, the defendant did not. The issue is not preserved for review by this Court. *State v. Arredondo*, 188 Wn.2d 244, 262-63, 394 P.3d 348 (2017).

In any event, the argument has no merit. Neither defendant could come up with a reason to allow inquiries about the venire's attitude about illegal immigrants. And they floated many options—from political attitudes, to the possible importance of extradition as a way “to get rid of people,” to attitudes among family members of the victims and defendants. RP at 445-47. Some of the defense justifications were plainly not correct, such as claim that the illegal immigrant status had been introduced in prior trials, and a claim that the specifics of how exactly they crossed the border was important. RP at 448.

The trial court was correct to not allow questions on voir dire about immigration status. That would have tipped potential jurors that the defendants and victims were not citizens which may have caused some jurors to not consider the evidence as closely as they should have.

The defendant cites *State v. Zamora*, No. 99959-7, 512 P.3d 512 (June 30, 2022). On the contrary, *Zamora* dealt with the danger of introducing illegal immigration in voir dire. The

prosecutor in *Zamora* repeatedly elicited jurors' comments about illegal immigration, border security and undocumented immigrants. Far from allowing such questions, the *Zamora* court not only held these topics were inappropriate, but reversed the conviction holding that the prejudice to the defendant was incurable.

#### IV. CONCLUSION

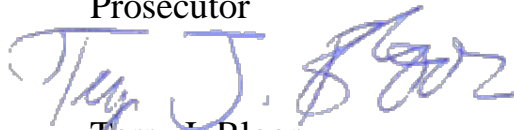
Accordingly, the petitioner for review should be denied.

This document contains 1,567 words, excluding the parts exempted from the word count by RAP 18.17.

**RESPECTFULLY SUBMITTED** this 26th day of August, 2022.

**ANDY K. MILLER**

Prosecutor



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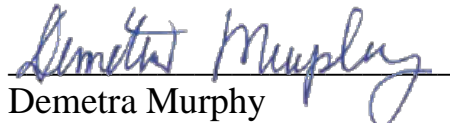
**CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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Signed at Kennewick, Washington on August 26, 2022.

  
Demetra Murphy  
Appellate Secretary

**BENTON COUNTY PROSECUTOR'S OFFICE**

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