No. 30411-6-III
IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

FABIAN ARREDONDO,

Defendant/Appellant.

Appellant's Supplemental Brief

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

A. STATEMENT OF THE CASE

The facts are set forth in Appellant's initial brief and reply brief and are incorporated herein. Following the Washington Supreme Court's decision in *State v. Andy*, No. 90567-3, this Court invited supplemental briefing on the application of the *Andy* decision to this case. Court of Appeals letter dated February 26, 2015. The argument that follows pertains to that subject.

B. ARGUMENT

The trial court violated Mr. Arredondo's constitutional right to a public trial by allowing the trial to continue past 4 p.m. during a portion of the jury selection, where the courthouse door was locked at 4 p.m. and a sign on the door indicated the courthouse closed at 4 p.m., thereby effectively excluding the public from portions of the trial.

In *State v. Andy*, Mr. Andy appealed his conviction raising the same public trial issue present in this case. *State v. Andy*, No. 90567-3, p. 2 (December 31, 2014). The Supreme Court held there was no public trial violation because Mr. Andy failed to meet his burden of showing the courthouse doors were actually locked during the times his trial went past 4 p.m. *Id.* at 1-2, 7-8.

Mr. Arredondo's trial preceded Mr. Andy's trial by approximately eight months.[1] Mr. Arredondo's case appears to be the first case on appeal out of Yakima County where this public trial issue was raised. It is undisputed that after Mr. Arredondo's trial the policy and procedure regarding the courthouse hours, signage and locking of the courthouse doors was changed at least in part. See *Id.* at 3, fn 1; 6/27/13 RP 44, 58, 65-66.

The key distinction between Mr. Arredondo's trial and *Andy* is that the courthouse was definitely locked after 4 p.m. while court was still in session. Officer Ron Rogers, a security officer on duty on the days of trial in question, testified the entrance doors were locked at 4 p.m. If a member of the public wanted in the building to watch the trial, he or she would need to knock or pull on the door to get the security officer's attention. The officer would then ask the person why he or she was there. If the person indicated it was for court, the officer would allow that person to enter the building. 6/27/13 RP 61, 67.

Unlike *Andy*, Mr. Arredondo has met his burden of showing the courthouse doors were actually locked during the times his trial went past 4 p.m. Furthermore, Officer Seibol, the other security officer on duty on

[1] Mr. Arredondo's trial was held October 10-11, 2011, while Mr. Andy's trial was held June 11-15, 2012.

the days in question, testified there could have been members of the public who approached the entrance doors, read the sign and just left without trying to get the security guard's attention. 6/27/13 RP 68. This assertion by Officer Seibol had two factual basis. One, Officer Seibol did not recall where in the building (s)he was posted on the days in question so he may not have been in a position to see if anyone approached the entrance door or tried to enter. 6/27/13 RP 65. Two, a member of the public who approached the entrance door and read the sign could not see any of the officers on duty because none of the officers stand directly in front of the doors. 6/27/13 RP 66-67. Since a member of the public would be unaware of the officers' presence, and since the doors were locked, that person would logically just walk away rather than knock or rattle the door.

It should be noted that Mr. Arredondo is not required to prove a member of the public attempted entry to the courthouse and was somehow turned away. This has never been a requirement in determining whether a public trial violation has occurred. Instead, the proper inquiry is whether a closure occurred and if it did, whether the trial court conducted a proper *Bone-Club* analysis. See Appellant's Initial Brief pp 13-15; *State v. Bone-Club*, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995); *In re Personal Restraint of Orange*, 152 Wn.2d 795, 100 P.3d 291 (2004); *Waller v.*

Georgia, 467 U.S. 39, 45, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984). Mr. Arredondo's only burden is to show a closure actually occurred, which he has done. See *Andy*, No. 90567-3 at 7 (citing *State v. Koss*, 181 Wn.2d 493, 503, 334 P.3d 1042 (2014); *State v. Slert*, 181 Wn.2d 598,608,334 P.3d 1088 (2014); *State v. Njonge*, 181 Wn.2d 546, 556,334 P.3d 1068 (2014), cert. denied, No. 14-6940 (U.S. Dec. 15, 2014)).

C. CONCLUSION

For the reasons stated herein and in Appellant's initial brief and Reply Brief, the convictions should be reversed, and the case remanded for a new trial.

Respectfully submitted March 26, 2015,

s/David N. Gasch, WSBA #18270
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PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on June 19, 2014, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or e-mailed by prior agreement (as indicated), a true and correct copy of the supplemental brief of appellant:

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