

FILED  
MARCH 23, 2015  
Court of Appeals  
Division III  
State of Washington  
No. 32103-7-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON, Respondent,

v.

TYSON J. ROMANESCHI, Appellant.

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REPLY BRIEF OF APPELLANT

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## I. THE TRIAL COURT'S FAILURE TO READ CORRECTED INSTRUCTION 9 TO THE JURY

After reading the instructions to the jury as required by CrR 6.15(d), the trial court noticed instruction 9 was wrong, corrected it in the written instructions, but failed to read the corrected instruction 9 to the jury. This is reversible error.

In *State v. Sanchez*, 122 Wn. App. 579, 591, 94 P.3d 384 (2004), this Court held that the trial court's failure to orally recite an instruction to the jury is analogous to giving an erroneous, confusing, and misleading instruction. The error in *Sanchez*, as here, related to essential elements of the crime and was reversible error for the court to fail to read to the jury the instruction in question. Moreover, the error can be raised for the first time on appeal under RAP 2.5(a) because it is a manifest error affecting a constitutional right. *Id.* at 589-91. Mr. Romaneschi's conviction for first degree assault of a child must be reversed.

## II. TRIAL COURT ORDER NOT TO REPORT JURY INSTRUCTION CONFERENCE.

The State misapprehends Mr. Romaneschi's argument on the trial court's ordering the court reporter not to report the jury instruction conference. (7/27/13 RP at 929). The point is not what

was discussed in the conference, but rather the court's error in ordering the reporter not to report the proceedings. Indeed, defense counsel does not recall what happened in the jury instruction conference. It is not appellate counsel's job to correct the trial court's error in improperly ordering an important part of trial not to be reported. The impropriety is in the court's order itself, not the unreported discussion. See RCW 2.32.200, CrR 6.15(c).

There is no authority for the court to order the official court reporter not to transcribe the jury instruction conference. The remedy for the trial court's unwarranted departure from the usual and ordinary course of proceedings is a new trial because prejudice should be presumed when the court, for no discernible reason in the record, orders required proceedings in open court not to be reported. *Id.*

### III. OTHER ISSUES

In reply to the other responses in the State's brief, Mr. Romaneschi relies on the arguments and authority in his opening brief.

### IV. CONCLUSION

Mr. Romaneschi respectfully urges this court to reverse his convictions and remand for new trial.

DATED this 24<sup>th</sup> day of March, 2015.

  
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### CERTIFICATE OF SERVICE

I certify that on March 24, 2015, I served a copy of the reply brief of appellant by first class mail, postage prepaid, on Tyson J. Romaneschi, # 369903, PO Box 2049, Airway Heights, WA 99001; and by email, as agreed, on Larry Steinmetz at [SCPAappeals@spokanecounty.org](mailto:SCPAappeals@spokanecounty.org).

  
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