

COURT OF APPEALS  
DIVISION TWO  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON )  
)  
Respondent, )  
)  
v. )  
Michael Anthony LAR )  
(your name) )  
)  
Appellant. )

11 FEB - 8 PM 12:00  
STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

No. 40801-5-II

STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Michael LAR, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

LAR argues that the trial court conducted an inadequate inquiry into adverse publicity that occurred hours before in vivo due of his trial.  
see attachments;

Additional Ground 2

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If there are additional grounds, a brief summary is attached to this statement.

Date: 1/27/11

Signature: Michael A. Lar

**CERTIFICATE OF SERVICE**  
I certify that I mailed  
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Date Signed

We review a district court's actions regarding alleged improper influences on the jurors' deliberation for abuse of discretion. United States v. Smith, 790 F.2d 789, 795 (9th Cir. 1986).

On Tuesday, March 23, 2010, at 12:27 P.M. The Chronicle News, the local daily newspaper for Centralia, Chehalis, and surrounding Lewis County, posted a news release from the Centralia Police Department. The news release stated that Michael Anthony LAR, already in custody on suspicion of robbing the Centralia Twin Star Credit Union, had been linked by DNA evidence to a previous holdup at the same location a year before.

This news release issued by the Centralia Police Department was not only released exclusively to the Chronicle News, but to local radio, and the television news, which extended from Seattle down through Lewis County. Prior to this news release there had been extensive coverage regarding LAR's upcoming trial.

About 3:00 P.M. on March 23, 2010, Don Blair, counsel for LAR, received a call notifying him of the press release. Attorney Blair contacted the court and arranged for a hearing at 4:00 P.M. With in voir dire for LAR's trial, scheduled only hours away on Wednesday, March 24, 2010, at 8:00 A.M.

LAR's counsel, Don Blair, at 4:06 P.M. on March 23, 2010, filed a motion for a change of venue given the prior media attention, and specifically the motion addressed the news release on the Eve of his trial. Counsel Blair expressed to the court LAR wanted to waive the speedy trial, and set it out a ways. So that the latest highly prejudicial news release was not right in the potential jurors' face the beginning of in voir dire in the morning hours away.

The court denied LAR's motion for a continuance, stating it

was totally speculative about the information out there, and how it is going to be presented. The court sided with the prosecutor, saying this issue could be dealt with during jury selection.

March 24, 2010, in Preliminary Matters, before jury selection. The trial court judge, stated in regards to pre-trial publicity issue, he would propose the question, when he talks about whether anyone has heard anything about the case or at some point during my voir dire questions, whether anyone listened to the radio story about the trial today. That may help us determine if any jurors need to be questioned individually or not.

Voir dire commenced and the jury was selected and sworn in. The trial court judge told the jury to keep their minds free of outside influences. Do not read or listen to any report from the newspaper, the radio, or the television on the subject of this trial. Do not permit anyone to read or comment on it to you or in your presence.

### Argument

The news release of March 23, 2010, charging LAR with the Armed Bank Robbery of the Twin Star Credit Union in Centralia, that occurred on January 2, 2009. This news story may have caused a juror to ignore the evidence at the trial on March 24, 2010, and convict as an emotional reaction to this latest charge. This news release suggested that there was a link between the separate robberies and LAR. Indeed, a number of the media outlets commented on the connection between the robberies of the Twin Star Credit Union and LAR. See Attachment to Additional Grounds 7: Page 5 - Chronicle News Centralia.

We must decide if the procedures the court followed were adequate to address and resolve the risk of prejudice, and must reverse if we conclude that "the probability of prejudice, arose and was not eliminated" United States v. Smith 790 F.2d 789, 795 (9<sup>th</sup> Cir. 1986). (Quoting Silverthorne v. United States, 400 F.2d 627, 644 (9<sup>th</sup> Cir. 1968). In doing so, we are cognizant of the fact that a trial court is in a far better position to gauge the impact of adverse publicity on a jury than we are. In analogous circumstances, we have cautioned that "[u]nless a trial judge clearly has erred in his estimation of the action needed to uncover and prevent prejudice from pretrial publicity, an appellate court should not intervene and impose its estimate." United States v. Polizzi, 500 F.2d 856, 880 (9<sup>th</sup> Cir. 1974).

Neverthe

Nevertheless, we agree with Waters that the district courts' statements to the jury were inadequate in light of the highly prejudicial nature of the publicity. Indeed, although district courts have discretion on these matters "discretion is not a substitute for duty," Silverthorne, 400 F.2d at 637 (9<sup>th</sup> Cir. 1968). Thus when "publicity is great, the trial judge must exercise correspondingly great care in all aspects of the case relating to publicity which might tend to defeat or impair the rights of an accused." Id. at 637-38 United States v. Waters 622 F.3d 1093 (9<sup>th</sup> Cir. 2010)

The district courts' statement only minimally addressed this potential prejudice. It did nothing to determine whether any juror had read or heard about the news stories, let alone to determine how, if at all, any juror who knew of the publicity was affected by it. Instead, the court posed a general, compound question to the jurors en masse, vaguely asking whether any juror could set aside in deliberations anything learned.

high risk of prejudice caused by the publicity, we conclude that the "probability of prejudice arose" and that the district court's single, general question to the group was insufficient to eliminate it. See Smith, 790 F.2d at 795; see also Polizzi, 500 F.2d at 879 (explaining in the pretrial publicity context that when there is "substantial" publicity the inquiry "must not simply call for the juror's subjective assessment of their ~~own~~ ~~impartiality~~ impartiality, and it must not be so general that it does not adequately probe the possibility of prejudice", United States v. Waters, 622 F.3d 1093 (9th Cir. 2010))

As a result of the district court's failure to make adequate inquiries regarding the news stories, we do not know whether any juror heard any of the information. If any juror was exposed to the publicity, we do not know the impact of that publicity on the juror. Given the high risk of prejudice that could have been caused by the publicity and our lack of reliable information as to the actual impact, we have no choice but to reverse. United States v. Waters, *Supra* (9th Cir. 2010)

# The Chronicle: News - TwinStar Robbery Suspect's DNA Linked to Previous

Home News

## TwinStar Robbery Suspect's DNA Linked to Previous Robbery

Story Commenting (0)

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Posted: Tuesday, March 23, 2010 12:27 pm | Updated: 12:26 pm, Tue Mar 23, 2010.

By The Chronicle | 0 comments

Michael Anthony Lar, already in custody on suspicion of robbing the Centralia TwinStar Credit Union, has now been linked by DNA evidence to a previous holdup at the same location a year before, according to the Centralia Police Department, which just released this statement:

<!--[if !supportEmptyParas]--> 03-23-2010 Centralia Detective Patrick Beal received WSP Crime Lab report on evidence that was submitted for DNA analysis from the January 2, 2009 robbery of the Twin Star Credit Union. In that robbery, the suspect accosted two tellers as they arrived to open the bank. The tellers were bound with duct tape and placed in the vault. The loss from the robbery was significant. Detective Beal submitted the duct tape that was used to bind the victim tellers. The initial DNA analysis indicated an unknown male profile. When the profile was compared with that of Michael Anthony Lar, the suspect in the most recent robbery that took place on January 25, 2010 it matched.

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There are numerous other similarities in the method of operation of both robberies that led detectives to submit Michael Lar's profile for comparison. Ongoing investigations in several other jurisdictions continue to produce evidence that Lar may be linked to as many as seven other bank robberies in the western states area. Detectives will be arresting Lar on two new charges of Robbery 1st Degree and Kidnapping 1st Degree in connection with the January 2009 incident.

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Posted in News on Tuesday, March 23, 2010 12:27 pm Updated: 12:26 pm.