

FILED  
JUNE 29, 2015  
Court of Appeals  
Division III  
State of Washington

No. 31501-1-III

IN THE COURT OF APPEALS  
OF THE  
STATE OF WASHINGTON  
  
DIVISION THREE

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STATE OF WASHINGTON,

Respondent,

v.

ARTURO LUNA HUERTA,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR YAKIMA COUNTY

The Honorable Blaine G. Gibson

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APPELLANT'S REPLY BRIEF

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## **A. ARGUMENT IN REPLY TO STATE’S RESPONSE**

Arturo Huerta primarily relies upon his Opening Brief as his Reply to the State’s Response. He does, however, make the following supplemental argument:

1. Constitutional Principles of an “Open and Public Trial” Were Violated When the Trial Court Reviewed Evidence *In Camera* Without Conducting a *Bone-Club* Analysis.

The State relies upon *State v. Andy*, 182 Wn. 2d 294, 340 P.3d 840 (2014), in arguing that the result in *Andy* precludes Mr. Huerta’s appeal on this issue.

However, *Andy* addresses only half of Mr. Huerta’s argument on this issue.

It is accurate that Mr. Huerta raised the issue of whether signs in the courthouse created an unconstitutional prohibition against an “open and public trial” for Mr. Andy, the defendant in that Supreme Court case (based on the specific facts of that case, as found during an evidentiary hearing).

But Mr. Huerta’s “open and public trial” argument was two-fold, and included the fact that the trial court reviewed evidence *in camera* without conducting a *Bone-Club* analysis. See Opening Brief at 13-17; see also *State v. Bone-Club*, 128 Wn.2d 254, 906 P.2d 325 (1995). In fact, Mr. Huerta’s primary argument on this issue was the *in camera* review of

evidence. Thus, even if *Andy* does preclude Mr. Huerta's argument regarding the courthouse signs (which it does not necessarily do, because there is no evidence that Mr. Huerta's facts surrounding those signs were the same as the facts in *Andy*), it is of no consequence because the primary issue in this case regarding the constitutional violation of an "open and public trial" was the *in camera* review of evidence.

Mr. Huerta relies on his Opening Brief for the details of that issue.

2. The State's Factual Assertions Do Not Negate Mr. Huerta's Legal Argument that the Evidence Presented at Trial Failed to Prove Mr. Huerta Involved a Minor in a Drug Transaction – a Necessary Element of the Appealed Conviction.

The State alleges citations from the record in support of its assertion that the evidence in this case is sufficient to sustain a conviction. Primarily, Mr. Huerta relies on his own recitation of facts (both in the Facts Section of his Opening Brief and as stated in the Argument section on this issue) to respond to the State's interpretation of what the facts showed. Mr. Huerta notes that, with regard to whether the evidence showed that the minor was a "lookout," the jury told the court that it did not believe that the minor was a lookout, and the court found during sentencing that there was no evidence that the minor was aware of any transaction. (RP 562-563)

In its Response, however, the State fails to address the legal arguments made by Mr. Huerta as to whether he took steps to involve the minor in the alleged transaction, and/or whether the minor having money on her person at the time of arrest was too attenuated from the alleged transaction to be unlawful under this statute.

It was the trial court who cautioned the government against presuming this set of facts will be upheld on appeal, and who recommended that the government propose a jury instruction that would allow the jury to explain the basis of any verdict it may have rendered against Mr. Huerta. (RP 147) The government chose not to follow the trial court's recommendation, and has failed to address the specifics of the law in its Response on appeal. Mr. Huerta relies upon his Opening Brief, detailing the problems in making that choice. He asks that his conviction be reversed and remanded or, as argued in the Opening Brief, reversed and dismissed with prejudice.

### 3. Remaining Arguments

Mr. Huerta relies on his Opening Brief as his Reply to the State's Response to his remaining arguments.



COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON )  
Plaintiff/Respondent ) COA No. 31501-1-III  
vs. ) No. 12-1-00838-3  
)  
ARTURO LUNA HUERTA ) PROOF OF SERVICE  
)  
Defendant/Appellant )  
\_\_\_\_\_ )

I, Kristina M. Nichols, assigned counsel for the Appellant herein, do hereby certify under penalty of perjury that on June 29, 2015, having obtained prior permission from the Yakima County Prosecutor's Office, I served the State by email at [appeals@co.yakima.wa.us](mailto:appeals@co.yakima.wa.us).

I also mailed a true and correct copy of the same by U.S. first-class mail, postage prepaid, to:

Arturo L. Huerta, #364481  
Stafford Creek Corrections Center  
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Dated this 29th day of June, 2015.

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