

FILED
September 11, 2015
Court of Appeals
Division III
State of Washington

NO. 32965-8-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

NICHOLAS ALAN CRUTHERS, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 14-1-00767-5

BRIEF OF RESPONDENT

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I. RESPONSE TO ASSIGNMENTS OF ERROR

1. **The exercise of voir dire for cause challenges orally at the bench and the exercise of peremptory challenges silently by exchanging a list of jurors and alternatively striking names occurring in open court did not constitute a courtroom closure and therefore did not violate the constitutional right to a public trial.**
2. **The record supports the court's conclusion that the defendant has the future ability to pay his legal financial obligations.**

II. STATEMENT OF THE CASE

The defendant proceeded to trial after being charged with one count of Unlawful Possession of a Controlled Substance. After finishing the voir dire process, the trial court called for a brief side bar in which for cause challenges were discussed on the record outside the hearing of the jury pool. Report of Proceedings ("RP") 11/10/2014 Voir Dire at 33. After finalizing for cause challenges, the parties exercised peremptory challenges silently by passing a written list of jurors between the parties. *Id.* at 34.

The defendant was found guilty as charged and a sentencing hearing was held. At sentencing, the defendant requested a sentence on work crew and his trial counsel explained that the defendant had employment. RP 12/15/2014 at 84. The court inquired further about his employment and the defendant responded that he had been working for the

same employer that he was working for while he was in the drug court program. RP 12/15/2014 at 87-88.

III. ARGUMENT

1. There was no courtroom closure and therefore there was no violation of the defendant's right to a public trial.

The first issue raised by the defendant was recently addressed by the Washington State Supreme Court in *State v. Love*, No. 89619-4, slip op. (Wash. July 16, 2015). The facts surrounding the issues raised by the defendant are nearly identical to those in *Love*. In *Love*, voir dire was conducted in open court and potential jurors' responses to questioning were included as part of the record. *Love*, slip op. at 1. Counsel exercised for cause to potential jurors during a sidebar conversation. *Id.* Counsel then exchanged a list and took turns striking jurors from the panel. *Id.* The Court held that this process of striking for cause jurors at side bar and using a piece of paper to write down peremptory challenges was not a courtroom closure. *Id.*

Since the trial court followed the same procedure approved in *Love*, the defendant's argument must be rejected because there was no courtroom closure.

2. The record supports the trial court's finding that the defendant has the ability to pay his costs and fines.

Under *State v. Blazina*, the trial court must make an individualized

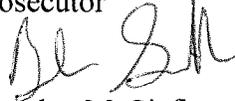
determination regarding the defendant's ability to pay discretionary costs and fines. *State v. Blazina*, 182 Wn.2d 827, 838, 344 P.3d 680 (2015). In the present case, it was clear that the trial court did make an inquiry into the defendant's ability to pay costs and fines. It is clear from the record that the defendant has the physical ability to work and it is also clear that the defendant is employed. RP 12/15/2014 at 84, 87-88. The defendant requested work crew as an alternative to a jail sentence, thus demonstrating his ability to perform manual labor. *Id.* at 84. The defendant also acknowledged that he is employed and has had the same job since he completed drug court some time prior to the current case. *Id.* at 87-88. The record clearly demonstrates the defendant's future ability to pay costs and fines and the defendant's argument must be rejected.

IV. CONCLUSION

Based upon the foregoing analysis, the State respectfully asks this Court to affirm the defendant's conviction and deny the request to be resentenced based on his ability to pay legal financial obligations.

RESPECTFULLY SUBMITTED this 11th day of September, 2015.

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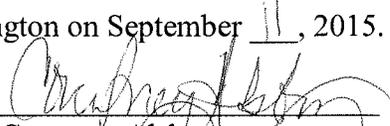
CERTIFICATE OF SERVICE

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 September 11, 2015.



Courtney Alsbury
Appellate Secretary