

No. 34899-7-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

Chelan County Superior Court
Cause No. 15-1-00415-9

STATE OF WASHINGTON,
Plaintiff/Respondent,

v.

PATRICK WAYNE KARAS,
Defendant/Appellant.

BRIEF OF RESPONDENT

Douglas J. Shae
Chelan County Prosecuting Attorney

James A. Hershey WSBA #16531
Chief Deputy Prosecuting Attorney

Chelan County Prosecuting Attorney's Office
P.O. Box 2596
Wenatchee, Washington 98807-2596
(509) 667-6204

TABLE OF CONTENTS

	<u>Page</u>
I. <u>STATEMENT OF THE CASE</u> -----	1
II. <u>ARGUMENT</u> -----	1
THE TRIAL COURT DID NOT VIOLATE MR. KARAS' CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL -----	1
III. <u>CONCLUSION</u> -----	4

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>In re Det. of Morgan</u> , 180 Wn.2d 312, 330 P.3d 774 (2014) -----	2
<u>Press-Enter. Co. v. Superior Court</u> , 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) -----	2
<u>Press-Enter. Co. v. Superior Court</u> , 478 U.S. 1, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) -----	2
<u>State v. Halverson</u> , 176 Wn. App. 972, 309 P.3d 795 (2013) -----	2,3
<u>State v. Love</u> , 183 Wn.2d 598, 354 P.3d 841 (2015) -----	1
<u>State v. Smith</u> , 181 Wn.2d 508, 334 P.3d 1049 (2014)-----	2,3
<u>State v. Sublett</u> , 176 Wn.2d 58, 292 P.3d 715 (2012) -----	1,2
<u>State v. Whitlock</u> , Wash. S.Ct. 93685-4 (June 15, 2017)-----	2

I. STATEMENT OF THE CASE

The facts and procedure relevant to the issues presented for review are sufficiently set forth in the appellant's brief.

II. ARGUMENT

THE TRIAL COURT DID NOT VIOLATE MR. KARAS' CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL.

Mr. Karas contends that his constitutional right to public trial was violated when the trial court "heard unrecorded arguments and ruled on various motions in limine in chambers without conducting a Bone-Club analysis." (Respondent's Brief at 6). However, not every interaction between the court, counsel, and defendants will implicate the right to a public trial or constitute a closure if closed to the public. State v. Sublett, 176 Wn.2d 58, 71, 292 P.3d 715 (2012).

A three-step framework guides an analysis in public trial cases. First, we ask if the public trial right attaches to the proceeding at issue. State v. Love, 183 Wn.2d 598, 605, 354 P.3d 841 (2015). Second, if the right attaches, we ask whether a closure occurred. Id. Third, we ask whether the closure was justified. Id. If we conclude that the right to public trial does not apply to the proceeding at issue, we need not reach the remaining

steps of the analysis. State v. Smith, 181 Wn.2d 508, 519, 334 P.3d 1049 (2014).

To determine whether the public trial right attaches to a particular proceeding, we apply the “experience and logic” test. Smith, 181 Wn.2d at 511 (citing Sublett, 176 Wn.2d at 73). Under the experience prong, we consider whether the proceeding at issue has historically been open to the public. In re Det. of Morgan, 180 Wn.2d 312, 325, 330 P.3d 774 (2014) (citing Sublett, 176 Wn.2d at 73). Under the logic prong, we ask “whether public access plays a significant positive role in the functioning of the particular process in question.” Id., at 325-26 (quoting Sublett, 176 Wn.2d at 73 (quoting Press-Enter. Co. v. Superior Court, 478 U.S. 1, 8, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) (Press II))). If both prongs are satisfied, the public trial right attaches. Morgan, 180 Wn.2d at 325 (citing Sublett, 176 Wn.2d at 73); Press II, 478 U.S. at 9. The guiding principle is “whether openness will enhance both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.” Smith, 181 Wn.2d at 514-15 (alteration in original) (quoting Sublett, 176 Wn.2d at 75 (quoting Press-Enter. Co. v. Superior Court, 464 U.S. 501, 508, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) (Press I))).

State v. Whitlock, Wash. S.Ct. 93685-4 (June 15, 2017) at 11-12.

Importantly, the appellant bears the burden of demonstrating that the public trial right attached to the challenged proceeding under the experience and logic test. State v. Halverson, 176 Wn.

App. 972, 977, 309 P.3d 795 (2013) (citing State v. Sublett, 176 Wn.2d 58, 73, 292 P.3d 715 (2012)). The appellant has failed to carry that burden as he has not demonstrated that an in-chambers discussion of an uncontested motion to exclude witnesses is a procedure historically open to the public. Nor has appellant shown that public access plays a significant positive role in the furthering of that process.

Likewise, appellant has failed to demonstrate that a public trial right attached to an in-chambers discussion of an uncontested motion in limine to exclude a hearsay statement by a witness. As the court observed in State v. Smith:

Many lawyers fail to fully appreciate the complexities of the hearsay rule and its many exceptions. For the public, discussions on hearsay and the prior inconsistent statement exception are practically a foreign language. Such rulings are exclusively within the province of the trial judge under ER 104(a). Nothing is added to the functioning of the trial by insisting that the defendant or public be present during side bar or in-chambers conferences. Indeed, the trial court did what ER 104(c) requires in the interest of justice by preserving the jury from hearing discussions on potentially inadmissible evidence.

Smith, 181 Wn.2d at 519.

Furthermore, though appellant contends that the trial court heard arguments while in chambers, he fails to establish by the record that there were any such arguments. What the record does demonstrate is that counsel met in chambers and discussed only legal issues and some motions. (RP 82). After that discussion, those matters were addressed in court on the record. (RP 82-83). There is no basis to conclude that a public trial right had attached. The appellant has not met his burden.

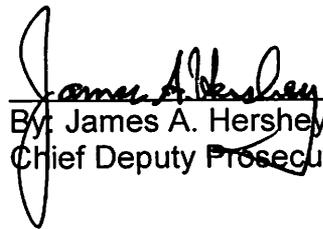
III. CONCLUSION

The appellant has failed to meet his burden in demonstrating that the public trial right attached to the in-chambers discussion to exclude witnesses as well as a hearsay statement, which occurred shortly before the court addressed those matters on the record in court. Consequently, the appellant's assignment of error is without merit, and his convictions should be affirmed.

DATED this 18th day of August, 2017.

Respectfully submitted,

Douglas J. Shae
Chelan County Prosecuting Attorney


By James A. Hershey WSBA #16531
Chief Deputy Prosecuting Attorney

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

STATE OF WASHINGTON,)	
)	No. 34899-7-III
Plaintiff/Respondent,)	Chelan Co. Superior Court No. 15-1-00415-9
)	
vs.)	DECLARATION OF SERVICE
)	
PATRICK WAYNE KARAS,)	
)	
Defendant/Appellant.)	

I, Cindy Dietz, under penalty of perjury under the laws of the State of Washington, declare that on the 18th day of August, 2017, I caused the original BRIEF OF RESPONDENT to be filed via electronic transmission with the Court of Appeals, Division III, and a true and correct copy of the same to be served on the following in the manner indicated below:

David N. Gasch	()	U.S. Mail
Gasch Law Office	()	Hand Delivery
P.O. Box 30339	(X)	E-Service Via Appellate
Spokane, WA 99223-3005		Courts' Portal
gaschlaw@msn.com		

Signed at Wenatchee, Washington, this 18th day of August, 2017.



 Cindy Dietz
 Legal Administrative Supervisor
 Chelan County Prosecuting Attorney's Office

CHELAN COUNTY PROSECUTING ATTORNEY

August 18, 2017 - 4:13 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 34899-7
Appellate Court Case Title: State of Washington v. Patrick Wayne Karas
Superior Court Case Number: 15-1-00415-9

The following documents have been uploaded:

- 348997_Briefs_20170818161255D3396720_2249.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Karas 34899-7 Brief of Respondent.pdf

A copy of the uploaded files will be sent to:

- douglas.shae@co.chelan.wa.us
- gaschlaw@msn.com

Comments:

Sender Name: Cindy Dietz - Email: cindy.dietz@co.chelan.wa.us

Filing on Behalf of: James Andrew Hershey - Email: james.hershey@co.chelan.wa.us (Alternate Email: prosecuting.attorney@co.chelan.wa.us)

Address:
P.O. Box 2596
Wenatchee, WA, 98807
Phone: (509) 667-6204

Note: The Filing Id is 20170818161255D3396720