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No. 80727-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RONALD APPLEGATE,

Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

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ORIGINAL

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A. ISSUES FOR WHICH REVIEW WAS GRANTED

1. Whether Mr. Applegate's alleged waiver of his constitutional right to a public trial was knowing, intelligent and voluntary, where he said he did not object to the court's holding a portion of voir dire in chambers but was neither told of his constitutional right to a public trial nor advised of the Bone-Club[1] factors.

2. Whether this Court has correctly held there is no "de minimis" exception to the right to a public trial in Washington, where, unlike the federal constitution, our state constitution provides that "justice in all cases shall be administered openly," and it would be unworkable to draw the line between a violation that is allegedly "de minimis" and one that is not.

B. STATEMENT OF THE CASE

In 2005, Ronald Applegate was convicted of multiple crimes, each with aggravating factors. CP 63. An exceptional sentence was imposed, but the Court of Appeals reversed the sentence and remanded for a new trial on the aggravating factors only. CP 56.

Prior to jury selection, the defense attorney asked how the court

[1]State v. Bone-Club, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995).

was going to explain the unusual procedural posture of the case. 1 RP 25.[2] The court responded:

> That would be by way of the advance oral instruction that has been proposed. I do have the proposed advanced oral instruction. It does seem appropriate. Any jurors who wish to speak privately, we can address that. I still don't know if we have a verdict on the Momah and Frawley cases from the Supreme Court. I don't think we do. I would expect to follow the Momah line of cases.
>
> Is there any objection, Mr. Nelson or Mr. Setter or any member of the public present in the courtroom, if an individual juror wishes to speak about some of the issues perhaps raised in the questionnaire or in voir dire that we take the public session into a less open setting? That is a lot easier than shuffling all of the jurors out.

1 RP 25-26. The defense attorney stated, "I leave it entirely to the Court's discretion." 1 RP 26. The prosecutor responded, "Well, this is not a matter that's addressed entirely to the Court's discretion. ... The public would be excluded under the circumstances." 1 RP 26. The prosecutor noted that at that time there was a member of the public in the courtroom. 1 RP 27. He suggested that the issue be tabled until the point at which it became necessary to address it. 1 RP 27.

The court agreed that the matter could be addressed later. The judge further stated, "Under Momah, as I recall, it didn't even state that

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[2] There are three volumes of reports of proceedings in this case: 1 RP (Second Amended Verbatim Report of Proceedings for 8/10/09), 2 RP (8/11/09 and 8/12/09), and 3 RP (8/27/09).

the factors need to be specifically addressed...." 1 RP 27.

Toward the end of voir dire, the court stated that several jurors expressed a desire to answer some questions privately. 1 RP 116. The court noted it was unlikely that most of them would make it onto the jury anyway, due to their high juror numbers. However, one person with a low number, Number 2, had indicated she wished to answer certain questions in private. 1 RP 116.

The court said, "Counsel, if you do wish to inquire along those lines I would suggest we meet in chambers." 1 RP 118. The court then stated:

> Is there any member of the jury panel or any member of the public who is present who has an objection to our speaking with juror No. 2 I guess in my office? It would be a public proceeding. Any member of the public that is available to come in I will have the outer door open for that purpose. Is there any objection from anyone in the courtroom?
> Counsel, I evaluated the factors set forth by case law and I think all those factors have been met.

1 RP 118. The prosecutor stated, "Except the record doesn't reflect that the defendant has no objection to that process or defense counsel." 1 RP 118. The court responded, "That's the next question I'm going to ask, that in terms of I believe the five factors set forth or referred to as the [Bone-Club] factors I believe those have been met. Mr. Nelson, do you or your client have any objection to ...." Defense counsel interrupted and said,

"No." 1 RP 119. The court inquired, "Are you speaking for yourself and for your client?" The attorney clarified, "I'm not speaking for my client. I'm speaking for myself as his counsel. I don't know if he heard."[3] 1 RP 119.

The court told counsel he could step into chambers to discuss the issue with Mr. Applegate. After a sidebar, counsel said, "For the record, I have talked it over with Mr. Applegate. He has no objection and I have no objection to going back into chambers and asking these questions without the public hearing." 1 RP 119.

Juror 2 was then questioned in chambers, and she ultimately served on the jury. 1 RP 120-22. After trial, the jury returned a special verdict form finding each aggravating factor existed for each count. CP 32-34. The court imposed an exceptional sentence of 120 months. CP 9.

On appeal, Mr. Applegate argued his right to a public trial was violated by the court's conducting in-chambers voir dire without performing the required steps set forth in State v. Bone-Club, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995). The Court of Appeals affirmed, holding Mr. Applegate "waived" his right to a public trial when his attorney stated Mr. Applegate did not object, notwithstanding the fact that Mr. Applegate was not advised of the Bone-Club factors.

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[3] Mr. Applegate is partially deaf.

C. ARGUMENT

1. Mr. Applegate did not waive his constitutional right to a public trial.

Where the State alleges a defendant has waived a constitutional right, it must show the waiver was knowing, intelligent, and voluntary. A waiver is not knowing unless a defendant was informed of all relevant information. For example, an alleged waiver of counsel is valid only if the defendant was advised of the risks of self-representation; an alleged waiver of the right to silence is valid only if the defendant was given Miranda warnings; and an alleged waiver of the right to appeal is valid only if the defendant was advised of the right to appeal, the right to court-appointed appellate counsel, and the time limits and procedures for filing a notice of appeal. An alleged waiver of the constitutional right to a public trial is valid only if the defendant was advised of the Bone-Club factors. Because that did not occur in this case, Mr. Applegate did not knowingly waive his constitutional right to the open administration of justice.

a. Courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and a waiver is not valid unless it is knowing, intelligent, and voluntary.

The rights of the accused guaranteed by the state and federal constitutions must be vigorously enforced to ensure fair trials. Nevertheless, a defendant may waive most constitutional rights, so long as

he understands the protection he is foregoing. "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938). Because of the importance of the protections at issue, "courts indulge every reasonable presumption against waiver of fundamental constitutional rights." Id. A waiver is not valid unless it is knowing, intelligent, and voluntary. City of Seattle v. Klein, 161 Wn.2d 554, 556, 166 P.3d 1149 (2007).

Thus, for example, an alleged waiver of the constitutional right to appeal is not knowing and therefore not valid unless the trial court strictly complied with CrR 7.2(b) by advising the defendant of the right to appeal and procedures for doing so. State v. Sweet, 90 Wn.2d 282, 286-87, 581 P.2d 579 (1978) (citing former CrR 7.1(b), later recodified as CrR 7.2(b)); accord Klein, 161 Wn.2d at 560 n.5; Const. art. I, § 22. The circumstances must "reasonably give rise to an inference the defendant understood the import of the court rule and did in fact willingly and intentionally relinquish a known right." Sweet, 90 Wn.2d at 286-87; Klein, 161 Wn.2d at 560 n.5. The trial court must advise the defendant:

> (1) of the right to appeal the conviction; (2) of the right to appeal a sentence outside the standard sentence range; (3) that unless a notice of appeal is filed within 30 days after the entry of the judgment or order appealed from, the right to appeal is irrevocably waived; (4) that the superior court

> clerk will, if requested by the defendant appearing without counsel, supply a notice of appeal form and file it upon completion by the defendant; (5) of the right, if unable to pay the costs thereof, to have counsel appointed and portions of the trial record necessary for review of assigned errors transcribed at public expense for an appeal; and (6) of the time limits on the right to collateral attack imposed by RCW 10.73.090 and .100. These proceedings shall be made a part of the record.

Sweet, 90 Wn.2d at 286-87; Klein, 161 Wn.2d at 560 n.5; CrR 7.2(b). Only after a defendant is so advised on the record may any alleged waiver be deemed valid. Sweet, 90 Wn.2d at 286-87; Klein, 161 Wn.2d at 560 n.5.

Similarly, although a defendant may waive his constitutional right to counsel, such waiver is not valid unless the defendant has been made aware of the "dangers and disadvantages of self-representation," preferably through a colloquy on the record. Faretta v. California, 422 U.S. 806, 835, 95 S. Ct. 2525, 45 L. Ed. 2d 562 (1975); City of Bellevue v. Acrey, 103 Wn.2d 203, 211, 691 P.2d 957 (1984); U.S. Const. amend. VI; Const. art. I, § 22. The defendant must understand the seriousness of the charges and the possible maximum penalty. Acrey, 103 Wn.2d at 211. He must be aware of the existence of technical rules, and must know that presenting a defense is not just a matter of telling one's story. Id. It is only after he has received all of this information and unequivocally asserts his desire to forego counsel that the waiver is considered knowing,

intelligent, and voluntary. State v. Madsen, 168 Wn.2d 496, 504, 229 P.3d 714 (2010).

Another example of the requirements for establishing knowing waiver is the rule of Miranda v. Arizona, 384 U.S. 436, 444-45, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966); U.S. Const. amend. V; Const. art. I, § 9. A waiver of the Fifth Amendment right to silence is not valid unless the suspect has been warned, prior to a custodial interrogation, that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. Miranda, 384 U.S. at 444. If a suspect has not been advised of these rights and the dangers of foregoing them, an alleged waiver will be deemed unknowing and invalid. Missouri v. Seibert, 542 U.S. 600, 608, 124 S. Ct. 2601, 159 L. Ed. 2d 643 (2004).

Finally, a waiver of the constitutional right to trial is not knowing and voluntary unless a defendant is told of the numerous protections he forfeits by pleading guilty. State v. Chervenell, 99 Wn.2d 309, 312, 662 P.2d 836 (1983) (citing Boykin v. Alabama, 395 U.S. 238, 244, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). The defendant must be made aware that he is foregoing the right to remain silent, the right to trial by jury, and the right to confrontation. Id. The defendant must also understand the nature of the offense charged and the sentencing consequences of the guilty plea.

Id. at 314. In the absence of such information, a waiver of the right to trial is unknowing and invalid. Id. at 319.

As will be explained below, a waiver of the constitutional right to a public trial, like waivers of the constitutional rights above, is not valid unless it is knowing, intelligent, and voluntary. It is knowing, intelligent, and voluntary only if the defendant has been apprised of the information required under State v. Bone-Club, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995). Because that did not occur in this case, Mr. Applegate did not knowingly waive his constitutional right to a public trial.

b. Mr. Applegate did not knowingly waive his constitutional right to a public trial because the court did not perform the required *Bone-Club* analysis prior to closing proceedings.

The federal and state constitutions guarantee the right to a public trial. U.S. Const. amends. I, VI; Const. art. I, §§ 10, 22. Article I, section 10's mandate that "justice in all cases shall be administered openly" is among the strongest public-access provisions in the nation, especially when viewed in tandem with the article, I section 22 right to a public trial. Const. art. I, §§ 10, 22; see State v. Wise, 176 Wn.2d 1, 9 n.2, 288 P.3d 1113 (2012); State v. Sublett, 176 Wn.2d 58, 145, 292 P.3d 715 (2012) (Wiggins, J., concurring) ("Washington's article I, section 10 is unique among American constitutions"). "The open operation of our courts is of

utmost public importance." State v. Easterling, 157 Wn.2d 167, 185, 137 P.3d 825 (2006) (Chambers, J., concurring).

Even though the constitutional right to a public trial is of paramount importance, a defendant may waive the right. However, "like other fundamental trial rights, a right to a public trial may be relinquished only upon a showing that the defendant knowingly and voluntarily waived such a right." Walton v. Briley, 361 F.3d 431, 434 (7th Cir. 2004) (holding same waiver rules should apply to public trial right as apply to right to counsel, right to trial, and privilege against self-incrimination). This is achieved through the court's explanation of the Bone-Club factors, a procedure which is required prior to holding proceedings outside the public courtroom. Sublett, 176 Wn.2d at 143 (Stephens, J., concurring) ("The way to secure a valid waiver of the public trial right is set forth in the Bone-Club analysis").

The court must advise the defendant and any members of the public who are present that they have a constitutional right to public proceedings in an open courtroom. The court must explain that it is considering closing proceedings anyway because of a countervailing compelling interest, and must identify that compelling interest. It must explain why there is a "serious and imminent threat" to that interest absent closure. It must describe its proposed means of protecting that interest,

and explain why the proposed method is the least-restrictive means available. Bone-Club, 128 Wn.2d at 258-59.

After this on-the-record Bone-Club analysis, if the defendant states that he understands and waives his right to open proceedings, the waiver is valid. But absent the Bone-Club procedure, the "waiver" is no more knowing and valid than an alleged waiver of counsel in the absence of a Faretta colloquy, an alleged waiver of the right to silence in the absence of Miranda warnings, or an alleged waiver of the right to appeal in the absence of the Sweet advisement.

> To the contrary, this court has held an opportunity to object holds no practical meaning unless the court informs potential objectors of the nature of the asserted interests. The motion to close, not Defendant's objection, triggered the trial court's duty to perform the weighing procedure. The summary closure thus deprived Defendant of a meaningful opportunity to object.

Bone-Club, 128 Wn.2d at 261.

In this case, the trial court conducted a portion of voir dire outside the public courtroom on its own motion. It did not conduct a Bone-Club analysis on the record. It did not identify a compelling interest in closure, even though it had an affirmative obligation to do so. It did not explain the importance of public access, or balance that interest against the unidentified interest in closure. It did not apply the least-restrictive means of protecting the unnamed interest, stating only that jurors who "wished

to be questioned privately" would be questioned in chambers because "that is a lot easier than shuffling all of the [other] jurors out."

Not only did the trial court fail to conduct a Bone-Club analysis on the record as required, there is no indication that Mr. Applegate's attorney stepped through the Bone-Club factors with him. 1 RP 119. Thus, Mr. Applegate's alleged "waiver" of his constitutional right to a public trial was not knowing, intelligent, and voluntary, and is invalid. See Carnley v. Cochran, 369 U.S. 506, 516, 82 S. Ct. 884, 8 L. Ed. 2d 70 (1962) ("Presuming waiver from a silent record is impermissible").

2. A violation of the right to a public trial cannot be "de minimis" under the Washington Constitution.

Some courts have adopted a "de minimis" exception to the federal constitutional right to a public trial, holding certain closures may be so trivial that they do not implicate the Sixth Amendment. See, e.g., Peterson v. Williams, 85 F.3d 39, 42 (2d Cir. 1996). But the Washington Constitution is unmatched in its protection of the right to a public trial. Const. art. I, §§ 10, 22; Sublett, 176 Wn.2d at 145 (Wiggins, J., concurring). "A public trial is a core safeguard in our system of justice. Be it through members of the media, victims, the family or friends of a party, or passersby, the public can keep watch over the administration of justice when the courtroom is open." Wise, 176 Wn.2d at 5-6. Thus,

although there is "arguably" room for concluding a violation of the federal constitutional right to a public trial may be "de minimis," such is not the case under the more-protective Washington Constitution. Easterling, 157 Wn.2d at 181 n.12. "[T]here is no case where the harm to the principle of openness, as enshrined in our state constitution, can properly be described as de minimis." Id. at 186 (Chambers, J., concurring).

a. A *Gunwall* analysis demonstrates that because the Washington Constitution provides an unparalleled right to the open administration of justice, this Court has correctly declined to adopt a "de minimis" exception to the public trial provision.

To determine whether a state constitutional provision supplies different or broader protections than its federal counterpart, this Court evaluates six nonexclusive criteria. These are: (1) the text of the state constitutional provision, (2) the differences in the texts of the parallel state and federal provisions, (3) state constitutional history, (4) pre-existing state law, (5) structural differences between the state and federal constitutions, and (6) matters of particular state interest and local concern. State v. Gunwall, 106 Wn.2d 54, 61-62, 720 P.3d 808 (1986). A Gunwall analysis shows that there is no "de minimis" exception to the constitutional promise of open justice in Washington.

i. *The text of the state constitutional provisions and differences in language between the state and federal constitutions.*

Two sections of the Washington Constitution explicitly mandate that judicial proceedings be open to the public. Article I, section 10 provides, "Justice in all cases shall be administered openly, and without unnecessary delay." Const. art. I, § 10. Article I, section 22 states that "[i]n criminal prosecutions, the accused shall have the right ... to have a speedy public trial...." Const. art. I, § 22. Article I, section 22 must be read in tandem with article I, section 10, as the latter necessarily illuminates the meaning of the former. See Bone-Club, 128 Wn.2d at 259.

Although the Sixth Amendment, like article I, section 22, grants the accused "the right to a speedy and public trial," the First Amendment only implicitly guarantees what article I, section 10 expressly requires. U.S. Const. amends. I, VI; see Wise, 176 Wn.2d at 9 n.2 ("article I, section 10 of our constitution has no exact parallel in the federal constitution"). The relevant portion of the First Amendment provides that "Congress shall make no law ... abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble ...." U.S. Const. amend. I.

The United States Supreme Court has held that the right of the public to attend trials is "implicit in the guarantees of the First

Amendment." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 580, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980). But as this Court has recognized, article I, section 10's guarantee is explicit. Rufer v. Abbott Labs., 154 Wn.2d 530, 549, 114 P.3d 1182 (2005); Easterling, 157 Wn.2d at 181 n.12. This "separate, clear and specific provision entitles the public, and ... the press is part of that public, to openly administered justice." Seattle Times Co. v. Ishikawa, 97 Wn. 2d 30, 36, 640 P.2d 716 (1982).

ii. *Constitutional history and pre-existing state law.*

This difference in text was no accident. Our framers were the first to include language in a state constitution declaring that "justice in all cases shall be administered openly." Sublett, 176 Wn.2d at 147 (Wiggins, J., concurring). Arizona followed Washington, but no other state constitution contains precisely the same language. Id. Oregon's constitution comes close, providing, "No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation." Or. Const. art. I, § 10 (emphasis added).

Half of the state constitutions in the country do not have an open

courts provision at all, and, of those that do, most emphasize access to justice, not the ability to observe court proceedings. Jennifer Friesen, State Constitutional Law, § 6.07[2] (4th ed. 2006). In contrast, the delegates to the Washington Constitutional Convention rejected a proposed version that would have emphasized access to legal redress in favor of one that focusses on the open administration of justice. Journal of the Washington State Constitutional Convention, 1889, at 499 (B. Rosenow ed. 1962). Thus, history shows the framers of our state constitution considered open proceedings to be of paramount importance.

Pre-existing state law demonstrates that this Court has respected the framers' intent, holding "protection of this basic constitutional right clearly calls for a trial court to resist a closure motion except under the most unusual circumstances." Bone-Club, 128 Wn.2d at 259. In Rufer, for example, this Court rejected the federal test for sealing court records filed with nondispositive motions, which allowed for sealing merely upon a showing of good cause. Rufer, 154 Wn.2d at 548-49. This Court held that article I, section 10's mandate presented "good reason to diverge from federal open courts jurisprudence." Id. at 549.

> [O]ur prior caselaw does not so limit the public's right to the open administration of justice. As previously noted, the right is not concerned with merely whether our courts are generating legally sound results. Rather, we have interpreted this constitutional mandate as a means by which

> the public's trust and confidence in our entire judicial system may be strengthened and maintained. To accomplish such an ideal, the public must – absent any overriding interest – be afforded the ability to witness the complete judicial proceeding ....

Id. (emphases in original).

Similarly, this Court has repeatedly rejected a "de minimis" exception to the open administration of justice, notwithstanding its arguable existence under the federal constitution.[4] Indeed, in Bone-Club the courtroom was closed for the testimony of just one witness during a suppression hearing, but this Court reversed. Bone-Club, 128 Wn.2d at 256, 261-62. And just a few months ago this Court reversed for a public-trial violation in Paumier even though only four potential jurors were questioned in chambers. State v. Paumier, 176 Wn.2d 29, 32, 288 P.3d 1126 (2012). In sum, consistent with article I, section 10's unparalleled promise that "justice shall be administered openly," this Court "has never found a public trial right violation to be de minimis." Easterling, 157 Wn.2d at 180.

iii. *Structural differences and matters of particular state concern.*

The fifth *Gunwall* factor, differences in structure between the state

[4]Whether the exception exists under the federal constitution is an open question in light of the fact that the U.S. Supreme Court has not addressed the issue.

and federal constitutions, always supports an independent state constitutional analysis because the federal constitution is a grant of power from the states, while the state constitution represents a limitation of the State's power. State v. Young, 123 Wn.2d 173, 180, 867 P.2d 593 (1994).

Finally, the open administration of justice in state courts is a matter of state concern. See Const. art. I, § 10; Const. art. VI, § 1 (establishing state courts). There is no need for national uniformity regarding a "de minimis" exception which would outweigh Washington's very strong interest in the open administration of justice. See Rufer, 154 Wn.2d at 548-49 (Washington's constitutional guarantee of the open administration of justice trumps federal rule which is less protective of open access to court records).

As Oregon Supreme Court Justice Linde explained in a seminal case construing that state's similar open-courts provision, "some aspects of constitutional liberty in this federal nation rest on the independent importance of state constitutional grounds." State ex rel. Oregonian Pub. Co. v. Deiz, 289 Or. 277, 286, 613 P.2d 23 (1980) (Linde, J., concurring).

> In modern times the impression probably has become widespread that a question of constitutional law is not settled until the United States Supreme Court settles it, and that it cannot be settled differently from that Court's decision. That is half true. It is true only when a state denies someone a right guaranteed by the United States Constitution. It is not true when a state's constitution

> provides more or stronger guarantees than the national minimum. This is such a case.

Id. (invalidating closure statute under Or. Const. art. I, § 10 where federal law at the time would not have dictated same result). As in Oregon, the open administration of justice is a matter of particular concern in Washington, and our constitution provides stronger guarantees than the national minimum. See id.

b. A "de minimis" exception would be unworkable.

Not only has this Court properly rejected a "de minimis" exception, the State does not explain where the line would be drawn if the Court abandoned this principle and adopted a triviality rule. Would the examination of two jurors in chambers be de minimis? Ten jurors? Ten jurors for 15 seconds each? One juror for an hour? What about just one witness at trial?

Or is the State's proposed rule content-based? Would the exclusion of the public for one witness's testimony be de minimis if the testimony ended up being "unimportant" to the verdict? How would that decision be made? The bottom line is that this Court has already repeatedly and appropriately decided that no violation of the constitutional right to a public trial can be de minimis. This Court should reaffirm that the Washington Constitution does not countenance a "de minimis"

exception to the open administration of justice.

D. CONCLUSION

"Open justice is just too important to our constitution and our state to allow us to look for reasons to turn a blind eye to improperly locked courtroom doors. When the court room doors are locked without a proper prior analysis under [Bone-Club], the people deserve a new trial." Easterling, 157 Wn.2d at 187 (Chambers, J., concurring). Mr. Applegate asks this Court to reverse the findings on the aggravating factors and remand for a new trial.

DATED this 27th day of June, 2013.

Respectfully submitted,

/s/ Lila J. Silverstein
Lila J. Silverstein – WSBA 38394
Washington Appellate Project
Attorney for Petitioner Ronald Applegate

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 80727-2
	)	
RONALD APPLEGATE,	)	
	)	
APPELLANT.	)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF JUNE, 2013, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF PETITIONER** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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[X]	MARK LINDSEY, DPA STEVEN TUCKER, DPA SPOKANE COUNTY PROSECUTOR'S OFFICE 1100 W MALLON AVE SPOKANE, WA 99260	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
[X]	DAVID GASCH ATTORNEY AT LAW PO BOX 30339 SPOKANE, WA 99223-3005	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF JUNE, 2013.

X_____

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Rec'd 6-28-13

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State v. Ronald Applegate
No. 80727-2

Please accept the attached document for filing in the above-subject case:

Supplemental Brief of Petitioner

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