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Supreme Court No. 81225-0

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Personal Restraint of
RICHARD DALE HARTMAN,
Petitioner.

PETITIONER'S OPENING BRIEF

Submitted by:

Richard Dale Hartman, pro se
DOC# 299896 / Unith H5, Cell 22
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen WA 98520

2/19/08

PAYMENT OF FILING
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Ronald R. Carpenter

Ronald R. Carpenter
Supreme Court Clerk

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1. STATUS OF PETITIONER

A. RICHARD DALE HARTMAN, hereby swears under penalty of perjury under the laws of the State of Washington the the following is true and that I am competent to testify to these facts except where indicated by context.

B. On January 8, 2008, I sent a Statement of Additional Grounds to the Court of Appeals, Division 2, and the prosecuting attorney for Mason County, Gary P. Burleson, Esq.

C. It is my understanding that my Statement of Additional Grounds (SAG) was rejected as untimely. I preserve that document in full within the body of this personal restraint petition, pp. 6 thru 17, infra.

D. Although I have additional grounds for collateral attack, I am forced into this venue by circumstances beyond my control. I am a late-stage hepatitis C patient, and time is of the essence in my leaving prison to secure care that the Department of Corrections (DOC) is denying me.

E. The single issue I raise here and now is the violation of public trial in my case by the conduct of voir dire in Judge's chambers. This is played out in the record and is an exhibit in the RP at p. 13, infra.

F. It is also my understanding after reviewing the legal standards for this issue that it is per-se prejudicial and my counsel's failure to raise this issue during trial - and on direct appeal - constitutes ineffective assistance of counsel without further inquiry.

G. Because I am virtually assured of obtaining relief on this issue alone, I am concentrating on this in hopes of entering a liver transplant study to save my life. DOC policy prohibits prisoner participation in experimental treatment - the only kind available to me at no cost.

H. On both the 17th and 21st of November, 2006, my trial court proceedings were in fact closed to the public. No order to this effect was made nor was there any inquiry into closure's necessity.

I. In spite of the fact that I do not need to show prejudice in this case - as is my understanding under the law of the case - I was severely prejudiced because the record plays out that I was in a semi-coherent state. Id., p.18-24, *infra*. I had been hospitalized once previously for internal bleeding causing the same symptoms.

J. As the testimony and exhibits demonstrate at 12, 13, and passim *infra*, my family was barred

from the proceedings. My family members would recognize that semi-coherent state as being caused by internal bleeding. This is further borne out by the two subsequent hospitalizations I've had in DOC custody for unmanaged internal bleeding, and my personal observations of my deteriorating mental state which accompanies the condition.

F. I was accused by the trial court of being high on drugs during this incoherence. My family would have recognized the condition and would have related it to the court, had they not been excluded from the proceedings. See: 12 and 13, infra.

2. ISSUE PRESENTED FOR REVIEW

A. DOES THE MASON COUNTY SUPERIOR COURT'S TACIT CLOSURE OF PROCEEDINGS DURING VOIR DIRE REQUIRE REVERSAL OF MR. HARTMAN'S CONVICTION, AND A NEW TRAIL?

(1). IS THE PETITIONER UNDER COGNIZABLE RESTRAINT?

To obtain relief in a personal restraint petition, a petitioner claiming constitutional error must show that such an error was made and that it "worked to his actual and substantial prejudice." In re Pers. Rest. of Lile, 100 Wn.2d 224, 225; 668 P.2d 581 (1983). The petitioner bears the burden of establishing prejudice by a preponderance of the evidence, but that burden "may be waived where the error gives rise to a conclusive presumption of prejudice." In

re Pers. Rest. of St. Pierre, 118 Wn.2d 321, 328; 823 P.2d 492 (1992).

Article I, section 22 of the Washington State Constitution guarantees that "[i]n criminal prosecutions the accused shall have the right ... to have a speedy public trial." See also U.S. Const. Amend. VI (providing that "in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial"). The guaranty of open criminal proceedings extends to "the process of juror selection," which "is itself a matter of importance, not simply to the adversaries but to the criminal justice system." Press Enter. v. Superior Court, 464 US 501, 505; 104 S.Ct. 819, 78 L.Ed.2d 629 (1984).

Because tacit closure during voir dire in this case runs afoul of the constitutional requirements set forth above, it constitutes cognizable restraint under RAP.16.4(C)(6).

(2). GROUNDS FOR RELIEF AND ARGUMENT

"Whether a trial court procedure violates a right to a public trial is a question of law we review de novo." State v. Brightman, 155 Wn.2d 506, 514; 122 P.3d 150 (2005). This court has made clear that the trial court must engage in the five-part analysis set out in State v. Bone-Club, 128 Wn.2d 254, 258-259; 906 P.2d 325 (1995), before conducting all or

a portion of voir dire outside of the public forum of the courtroom. In re Pers. Rest. of Orange, 152 Wn.2d 795; 100 P.3d 291 (2004).

Here, as in Frawley, the trial court conducted a portion of voir dire in chambers without engaging in the necessary Bone-Club analysis. In re Pers. Rest. of Frawley, ____ Wn.App. ____; 167 P.3d 593 (2007). This requires reversal, and the remedy is a new trial. State v. Duckett, No. 25614-6-III (Div. 3, 2007) at VersusLaw ¶21.

3. OATH OF PETITIONER

After first being duly sworn on oath, I depose and say: I am the petitioner in this cause, I file this petition as an affidavit as set forth on page 1, and I believe the contents of this brief to be true and correct, including the exhibits.

SO SWORN this 7th of February, 2008, at Grays Harbor County, Washington.

Richard Hartman
RICHARD DALE HARTMAN

John Thompson
Notary Public in and for the State of Washington, at Grays Harbor County. My Commission expires: 6/6/10

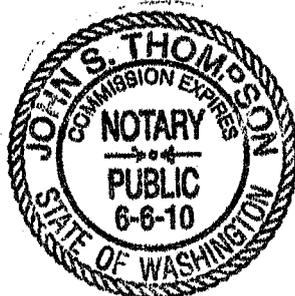
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PRP-5



THE STATE OF WASHINGTON
COURT OF APPEALS
DIVISION TWO

STATE OF WASHINGTON,) Mason Co. 06-1-00246-6
Respondent,) COA: 35763-1-II
) **STATEMENT OF ADDITIONAL**
) **GROUND, PURSUANT TO**
vs.) **RAP 10.10**
)
RICHARD D. HARTMAN,)
Appellant.)

STATEMENT OF THE CASE

COMES NOW Appellant RICHARD D. HARTMAN and hereby submits his "Statement of Additional Ground's for Review" pursuant to RAP 10.10. Appellant Hartman adopts and incorporates as if rewritten herein the "Statement of the Case" as put forth in Counsel Pethick's Opening Brief for Appellant.

Appellant Hartman received and reviewed the opening brief prepared by his attorney, Patricia A. Pethick, and awaited the State's Response. Appellant was never provided a copy of the State's Response to His opening brief, and this responsive pleading was due in the court by September 7, 2007. Premised upon the belief that the State had chosen not to file a Response, Appellant, on October 18, 2007, submitted a "Withdrawal of Intent to file Supplemental Brief [pursuant to RAP 10.10] as [a] Request for Expedited Hearing for Medical Emergency".

6

Appellant Hartman's decision to hasten this process is based solely upon his failing health as he suffers late stage cirrhosis of the liver with Hepatitis C. Appellant Hartman is on a liver transplant waiting list and his survival depends upon receiving a transplant as soon, as is possible.

Summarized below is the additional ground for review that is not addressed in Counsel's opening brief. I understand the Court will review this "Statement of Additional Grounds" for Review when my appeal is considered on the merits. The Respondent may object to the timeliness of this pleading, however, Appellant was just notified and recently provided a copy of the State's Response.

ISSUE FOR REVIEW

Appellant Hartman's right, pursuant to Washington State Constitutional Article I, § 22' and the United States Constitutional Article VI, applicable to the state through the Fourteenth Amendment, was violated when he was denied his right to a speedy and public trial.

On November 17, 2006, Mason County Superior Court Judge Toni A. Sheldon held in chamber's juror voir dire, effectively denying Appellant Hartman his right to a public trial. Those privately allowed in chambers for these proceedings were the Appellant, his attorney Mr. Eric Valley, the stenographer, the prosecutor, and one juror at a time for questioning outside the public purview.

The jury pool took every seat in the Mason County superior courtroom, and additional chairs were needed and brought in just to accommodate the pool. This excluded the public entirely. Appellant Hartman's mother, wife and younger brother were excluded from those proceedings on November 17, 2006, violating the appellant's – and his family's – right to a public trial. Hartman's mother, wife and brother are

available to testify, if necessary, to their exclusion from voir dire on that date.

(Appellant's wife' phone # (360) 275-5839) (See: Exhibit 1, RP 29, at line 12 and Affidavit's of Family Members).

ANALYSIS

In this case, we determine the trial court committed reversible error by closing the courtroom to spectators and the public, and specifically the accused's mother, wife and brother on that date.

Closed Courtroom: Article I, section 22 of the Washington Constitution and the sixth amendment to the United States Constitution both guarantee criminal defendants the right to a public trial. The public trial right serves to ensure a fair trial, to remind the officers of the court of the importance of their functions, to encourage witnesses to come forward, and to discourage perjury. Peterson v. Williams, 85 F. 3d 39, 43 (2nd Cir. 1996) (citing Waller v. Georgia, 467 U.S. 39, 46-47; 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984)). Whether a defendant's right to a public trial has been violated is a question of law, subject to de novo review on direct appeal. See State v. Bone-Club, 128 Wn.2d 254, 256 and 258-59, 906 P.2d 325 (1995). See also United States v. Al-Samadi, 15 F.3d 153, 154 (10th Cir. 1994).

In order to protect the defendant's right to a public trial, a trial judge may not close the courtroom without complying with the following five requirements:

"1. The proponent of the closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than the accused's right to a fair trial, the proponent must show a 'serious and imminent threat' to that right."

"2. Anyone present when the closure motion is made must be given an opportunity to object to the closure."

"3. The proposed method for curtailing public access must be the least restrictive means available for protecting the threatened interests."

“4. The court must weigh the competing interests of the proponent of closure and the public.”

“5. The order must be no broader in its application or duration than necessary to serve its purpose.” Bone-Club, supra, 128 Wn.2d 254, 258-59.

While the Bone-Club court addressed the complete closure of the courtroom for a suppression hearing, not jury selection, it is well settled that the right to a public trial also extends to jury selection. In re Pers. Rest. Of Orange, 152 Wn.2d 795, 804, 100 P.3d 291 (2004) (citing Press-Enter. Co. v. Superior Court, 464 U.S. 501, 505, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984)). Our Supreme court has noted that a closed jury selection process harms the defendant by preventing his or her family from contributing their knowledge or insight to jury selection and by preventing the venire from seeing the interested individuals. Orange, 152 Wn.2d at 812. Thus, in order to support closure during jury selection, a trial court must engage in the Bone-Club analysis.

In State v. Brightman, 112 Wn.App. 260, 48 P.3d 363 (2002) the Court of Appeals noted, as the State may here, that there was no record of a written closure order, and nothing else in the record indicating that anyone was denied access to the courtroom. Brightman, 2002 Wash. App. LEXIS 1440, slip op. At 264, as cited in State v. Brightman, 155 Wn.2d 506, at paragraphs 10-11. But see Exhibit 2, Declaration of Richard Hartman, attached.

This issue is raised on direct appeal, and the appellant presents attached Exhibit’s 1 and 2 in support, as well as offering testimony of those turned away from the court that day, available at a reference hearing. But, the burden of showing that closure in fact did not occur rests with the State. Orange, supra, at 814 (noting that appellate counsel would

have succeeded had he or she raised the closed courtroom issue on direct appeal). See also: Brightman, 155 Wn.2d 506 at 516 n.# 6. On appeal, a defendant claiming a violation to the public trial right is not required to prove that a court ordered closure has been carried out. Orange, at 813-14. When the record “lacks any hint the trial court considered [the defendant’s] public trial right as required by Bone-Club, [the Court of Appeals] cannot determine whether the closure was warranted.” Brightman, at 518.

In In re Pers. Rest. Of Huwe, No. 25033-4-III (?), Division Three of the Court of Appeals held that the trial court violated Daniel Huwe’s constitutional right to a public trial when it conducted voir dire of potential jurors, one at a time, in the jury deliberation room in the presence of only the court, Mr. Huwe, counsel, the court reporter and the clerk. See also, State v. Easterling, 157 Wn.2d 167, 179-82, 137 P.3d 825 (2006). Huwe controls here and the State will concede as much.

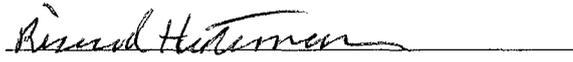
Neither the size of the courtroom or the general concern for security can provide an adequate basis for compromising the fundamental tenet “that an accused is at the very least entitled to have his friends, relatives and counsel present, no matter with what offense he may be charged.” In re Oliver, 333 U.S. 257, 171-72, 68 S.Ct. 499, 92 L.Ed.2d 682 (1948).

RELIEF REQUESTED – CONCLUSION

Based upon the public trial principles guaranteed by both the Constitutions of the United States, and its stricter protection under the Constitution of the State of Washington, there really is no controversy regarding this issue and the appellant must prevail. The State cannot credibly – legally – refute this claim.

Appellant therefore prays for this court's intervention through an Order reversing appellant Hartman's conviction, with remand of this case for a new trial.

Respectfully submitted this 7 day of January 08.

A handwritten signature in cursive script, appearing to read "Richard D. Hartman", is written over a horizontal line.

RICHARD D. HARTMAN

January 7, 2007 Declaration of RICHARD D. HARTMAN

1. I, RICHARD D. HARTMAN, hereby swear under penalty of perjury under the laws of the State of Washington that the following is true and that I am competent to testify to these facts except where indicated by context.

2. On what I remember as November 17, 2006, I was present in what I believe were the Judge's Chambers, in the Mason County Superior Courtrooms, before who I believed to be the Honorable Tony Sheldon, during voir dire proceedings.

3. I was only semi-coherent because of what was later determined to be blood loss through internal bleeding, due to a condition called ascites, consonant with my late-stage hepatitis C. I have since been operated on twice to stop the same internal bleeding, so I have a good understanding now of the cause of my compromised mental state then.

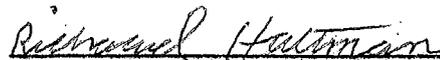
4. Although I was impaired as indicated above, I do recall that the room I was in was basically standing-room-only, and that the adjacent courtroom was also packed with potential jurors. I also recall that the court needed to have extra chairs brought in to accommodate the pool of potential jurors.

5. I also recall that my mother and younger brother, who promised me they'd be there that day, were not there. I was told later by them that they were not allowed in, and were turned away when trying to get in to witness the proceedings, and lend me their loving moral support, which I so desperately needed at that time. They have also told me they are available to testify at any reference hearing the court may require in this regard, as to the particulars of how they were turned away, and by whom.

6. I only found out recently that their (my mother and brother) being turned away was actually a violation of my rights to a public trial. The case law presented in the accompanying Statement of Additional Grounds represents my best understanding of the issue, as explained to me by other prisoners more familiar with the law than I am.

7. I ask this court to vacate my conviction and remand the case for a new trial based on violation of my right to a public trial.

SO SWORN this 7th of January, 2008, in Grays Harbor County, Washington.


RICHARD D. HARTMAN #299896
Stafford Creek Correction Center
191 Constantine Way
Aberdeen WA 98520

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Court addresses and swears in jury venire; Court introduces parties and case; State and defense introduce witnesses; twelve jurors excused for cause.

Pause while Court briefly addresses unrelated matter.

Segment of in-chambers conference heard in the presence of counsel and defendant and outside the presence of the jury venire:

THE COURT: And then hopefully we'll go on the record with Mr. Hartman's matter. And the Court just has some concerns about whether Mr. Hartman is physically able to go forward with the trial today. As I was looking at him a couple of times during the course of our voir dire here in chambers - and he's only perhaps seven feet away from me - his eyes tend to narrow to the point that I'm not sure they're fully open, and I'm just concerned --

MR. HARTMAN: I feel kind of light-headed and I'm sick, Your Honor.

THE COURT: -- that he doesn't look like he may be fully able to comprehend what's going on. So I'll give you time while the Court is taking up the other matter to address that with Mr. Hartman.

Court and parties return to the courtroom, and the following is heard in the presence of the jury venire:

THE COURT: The next portion of our selection process involves the Court providing each counsel with some time to be

ETHEL GUNDERSON

NOTE TO COURT CLERK: This affidavit is in support of Richard D. Hartman.
RE: Mason County # 06-1-00246-6, COA 35763-2-II. Please attach to R.A.P 10.10 filed with this court by Richard D. Hartman.

I, Ethel Gunderson, under oath, declares as follows:

To whom it may concern: On the 17th day of November, 2006, I was not allowed into the Modular court room of the Mason County Superior Court, and as such I was unable to be present for my sons jury selection process, in preparation for his jury trial.

The court bailiff informed us that the jury pool had filled the room and that there was no space available for me, or any other member of the family.

This is a clear violation of the right to a public trial as guaranteed by the Constitutions of both the United States as well as the State of Washington.

I, Ethel Gunderson, am over the age of majority and am also a U.S. citizen competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth. (RCW 9A.72.085)

Affidavit pursuant to 28 U.S.C. § 1746 and UNITED STATES v. KARR 928 F.2d 1138 (9th Cir. 1991), sworn as true and correct under penalty of perjury has full force of and is not required to be verified by notary public.

Dated this 25 day of Feb, 2008.



*Chere D Resnick
2/25/2008*

Ethel Gunderson

Signature ETHEL GUNDERSON

E16991 HY3 ALLYNWAS98524

Printed Name

Address:

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MASON COUNTY SUPERIOR COURT

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STATE OF WASHINGTON
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MASON CO. WA.
PAT SWARTOS, CO. CLERK

**AFFIDAVIT OF
STEVEN EWALD**

BY _____ DEPUTY

See

NOTE TO COURT CLERK: This affidavit is in support of Richard D. Hartman.
RE: Mason County # 06-1-00246-6, COA 35763-2-II. Please attach to R.A.P 10.10 filed with this court by Richard D. Hartman.

I, Steven Ewald, under oath, declares as follows:

To whom it may concern: On the 17th day of November, 2006, I was not allowed into the Modular court room of the Mason County Superior Court, and as such I was unable to be present for my brothers jury selection process, in preparation for his jury trial.

The court bailiff informed us that the jury pool had filled the room and that there was no space available for me, or any other member of the family.

This is a clear violation of the right to a public trial as guaranteed by the Constitutions of both the United States as well as the State of Washington.

I, Steven Ewald, am over the age of majority and am also a U.S. citizen competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth. (RCW 9A.72.085)

Affidavit pursuant to 28 U.S.C. § 1746 and UNITED STATES v. KARR 928 F.2d 1138 (9th Cir. 1991), sworn as true and correct under penalty of perjury has full force of and is not required to be verified by notary public.

Dated this 25th day of February, 2008.

Steve Ewald

Signature

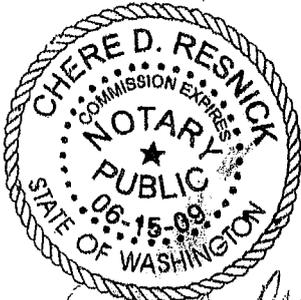
5904STY RD BELFAIR WA 98528

Printed Name STEVEN EWALD
Address:

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MAR - 5 2008

MASON COUNTY SUPERIOR COURT



Chere D. Resnick

SHERRI HARTMAN

NOTE TO COURT CLERK: This affidavit is in support of Richard D. Hartman.
RE: Mason County # 06-1-00246-6, COA 35763-2-II. Please attach to R.A.P 10.10 filed with this court by Richard D. Hartman.

I, Sherri Hartman, under oath, declares as follows:

To whom it may concern: On the 17th day of November, 2006, I was not allowed into the Modular court room of the Mason County Superior Court, and as such I was unable to be present for my husbands jury selection process, in preparation for his jury trial.

The court bailiff informed us that the jury pool had filled the room and that there was no space available for me, or any other member of the family.

This is a clear violation of the right to a public trial as guaranteed by the Constitutions of both the United States as well as the State of Washington.

I, Sherri Hartman, am over the age of majority and am also a U.S. citizen competent to testify and herein attest under penalty of perjury that all statements contained herein is the absolute truth. (RCW 9A.72.085)

Affidavit pursuant to 28 U.S.C. § 1746 and UNITED STATES v. KARR 928 F.2d 1138 (9th Cir. 1991), sworn as true and correct under penalty of perjury has full force of and is not required to be verified by notary public.

Dated this 26th day of February, 2008.

Sherri L. Hartman
Signature

Sherri L. Hartman
Printed Name

Address: 16993 E. State Rt. 5
Allyn Wa. 98524

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MASON COUNTY
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CLERK

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MASON CO. WA.
PAT SWARTOS, CO. CLERK
BY _____ DEPUTY

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MAR - 5 2008

AFFIDAVIT OF SERVICE BY MAILING

I, RICHARD D. HARTMAN, declare that on this _____ day of _____, I deposited the foregoing document(s):

“STATEMENT OF ADDITIONAL GROUNDS, PURSUANT TO RAP 10.10” _____
and, this **”AFFIDAVIT OF SERVICE BY MAILING”**.

and/or copy(s) thereof, in the internal legal mail system of the Stafford Creek Corrections Center with first class postage affixed, and addressed as follows:

OFFICE OF THE PROSECUTING ATTORNEY FOR MASON COUNTY
GARY P. BURLESON
P.O. BOX 639, 521 N. 4th St. #A
SHELTON, WA 98584

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this _____ day of _____.

At Aberdeen Washington.

/s/

RICHARD D. HARTMAN
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN, WASHINGTON 98520

1 Court addresses and swears in jury
2 venire; Court introduces parties and
3 case; State and defense introduce
4 witnesses; twelve jurors excused for
5 cause.

6 Pause while Court briefly addresses
7 unrelated matter.

8 Segment of in-chambers conference heard
9 in the presence of counsel and
10 defendant and outside the presence of
11 the jury venire:

12 THE COURT: And then hopefully we'll go on the record
13 with Mr. Hartman's matter. And the Court just has some concerns
14 about whether Mr. Hartman is physically able to go forward with
15 the trial today. As I was looking at him a couple of times
16 during the course of our voir dire here in chambers - and he's
17 only perhaps seven feet away from me - his eyes tend to narrow
18 to the point that I'm not sure they're fully open, and I'm just
19 concerned --

20 MR. HARTMAN: I feel kind of light-headed and I'm
21 sick, Your Honor.

22 THE COURT: -- that he doesn't look like he may be
23 fully able to comprehend what's going on. So I'll give you time
24 while the Court is taking up the other matter to address that
25 with Mr. Hartman.

26 Court and parties return to the
27 courtroom, and the following is heard
28 in the presence of the jury venire:

29 THE COURT: The next portion of our selection process
30 involves the Court providing each counsel with some time to be

1 able to ask questions of our panel. We need to take a break
2 prior to doing that, however, because we have a jury that has
3 just finished deliberating and has knocked to advise their
4 bailiff that they've reached a verdict. So we need to be able
5 to bring them back in here from the multi-day trial that they
6 have been hearing to be able to render their verdict. So I will
7 ask that our bailiff take our jurors back up to the main
8 courthouse, and that we will ask you to return as soon as we've
9 completed taking the verdict in that case.

10 We will then take a brief recess while we set up to bring
11 in our jurors from the last trial.

12 Court adjourns for the day.

13 RECESS/COURT RECONVENES

14 Court reconvenes on November 21, 2006,
15 in the presence of the parties and
16 outside the presence of the jury
venire:

17 THE COURT: The Court calls at this time the matter of
18 State vs. Richard Hartman, 06-1-246-6. We had begun our jury
19 selection last Friday. The Court was also involved in taking a
20 verdict from a previous jury and also needed to take additional
21 testimony with regard to an enhancement that would apply once
22 the verdict came in as it did in a guilty. And so the Court was
23 also concerned that Mr. Hartman did not look particularly well
24 physically, or perhaps mentally as well, to be able to continue
25 the trial as I indicated in chambers, and I believe we put it on
the record. It appeared he did not track very well or his eyes

Line # 4

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1 were closing.

*

2 And so we adjourned our selection in the midst of it and
3 have also recognized that at the point that we adjourned, we
4 only had I believe 29 jurors. We didn't have a sufficient
5 number to guarantee that we would be able to get a jury,
6 allowing all of the peremptories to be exercised in light of the
7 fact that neither counsel had had any blocks of time to talk
8 with the jurors and explore whether there were any additional
9 challenges for cause.

10 So we have brought in the jurors that were here last
11 Friday, with two exceptions, and they are jurors number 22 and
12 juror number 25. Both of those jurors were asked to come back
13 in, but also then listened to the recording that was placed for
14 new jurors and didn't hear their number, so they did not come in
15 this morning. Again, number 22 and 25 did not come in, and when
16 called to ask them to come in, they were an hour and a half
17 away.

*

18 MR. VALLEY: I already had lines through their names.
19 What are their names, Your Honor?

20 THE COURT: Jimmy Vernon, number 22, and Diane Wheeler
21 Vernon. They were the husband and wife couple that were in our
22 panel, and since they were an hour and a half away, we did not
23 ask them to drive in so that the rest of the --

*

24 MR. SCHUETZ: Actually, I don't think the husband and
25 wife issue was called out in this voir dire, but rather in Mr.

2051?

Total Jurors

Line # 22 Jurors

1 Lane's. But there was a husband and wife couple that they
2 returned for this pool at the previous --

3 MR. VALLEY: And I had them stricken already, anyway.
4 I don't know why.

5 THE COURT: Oh, Marie, our clerk, I guess did that
6 strike-out on your list. So then, in addition, we have brought
7 in 22 additional jurors, and their numbers start with 53 and
8 extend through 76 on a separate page. The jurors in this panel
9 that did not appear, despite being requested to do so on the
10 recording line, are 56 and 69. So with those changes to our
11 list, the counsel should be updated with respect to our jury
12 panel available for voir dire.

13 MR. SCHUETZ: And as I'm going through the list here,
14 I would just note that my best guess is that juror 70, who is
15 4428 by juror number, a 66-year-old man named Lawrence Knudsen,
16 I believe that's the father of the Knudsen of - Lori Knudsen.

17 UNIDENTIFIED FEMALE: No.

18 MR. SCHUETZ: No, it's not? Okay, just - I was
19 thinking it might be because it's about the right age. Okay.
20 Different person then. Never mind.

21 THE COURT: Alright. Any other preliminary matters
22 before our jurors are brought in?

23 MR. SCHUETZ: Yes. The defendant, to my
24 understanding, was an hour late today. We were supposed to
25 start at 9:00. The observations of the Court, and all others

1 that had an opportunity to make of the defendant last week, was
2 by way of an explanation that he was sick. The defendant has a
3 drug history, to the State's knowledge. I would ask that the
4 defendant be taken into custody on a higher bail because he
5 hasn't shown the responsibility to come to court in a timely
6 fashion, and that the Court also order a UA.

7 THE COURT: Mr. Valley.

8 MR. HARTMAN: Your Honor, may I speak for a second
9 please?

10 THE COURT: Address Mr. Valley.

11 MR. VALLEY: Thank you, Your Honor.

12 THE COURT: And you may have time off the record to
13 speak with Mr. Hartman, if you need to.

14 MR. VALLEY: We've spoken, Your Honor. I don't - I
15 hope the Court won't give much shrift to either of those
16 requests. The UA, there's simply no grounds for a UA.

17 You know, I know this trial concerns him, but when we're
18 back in chambers talking about things with which he has no
19 familiarity - and he did say he was sick. Today, he says he has
20 a cold; that's why he said he was late. I think one thing
21 that's not on the record yet is that the Court was unavailable
22 itself this morning until, oh, I'd say 20, 25 minutes before Mr.
23 Hartman did show up - because, yes, he was late, he was to be
24 here at 10:00 o'clock. But it didn't prejudice us more than -
25 at the most a half an hour.

1 He did call. He called before any of us were aware that he
2 was late. So he did demonstrate responsibility. He did arrive,
3 and he arrived wearing, you know, a nice blue suit and a white
4 dress shirt. He is dressed for court, dressed appropriately.

5 He's informed me he's had hepatitis C for 30 years, he
6 says. It affects the - his liver and how it processes and
7 converts proteins, et cetera. I don't know if it affects his
8 blood sugar, but he says it does cause fatigue. It causes
9 spikes in his blood sugar. He actually asked me before we went
10 on the record maybe to bring to the Court's attention that if
11 his eyes start falling to half-mast, he may need a break to get
12 some fresh air and to, you know, snap out of that fatigue.

13 He did arrive, Your Honor. I don't - also, this is a day-
14 long trial, I believe. I think it's been represented that this
15 trial will take a day, day and a half.

16 THE COURT: What was represented to the Court in our
17 in-chambers meeting last Friday is that it would be Friday last
18 week, Tuesday and we would spill over to Wednesday in case it's
19 needed.

20 MR. VALLEY: Okay. So I guess we will be back here
21 tomorrow morning.

22 MR. SCHUETZ: If for no other --

23 THE COURT: So this is now going to spill over to
24 Thursday.

25 MR. SCHUETZ: No, it won't.

1 THE COURT: Oh, Thursday is Thanksgiving.

2 MR. SCHUETZ: At this point, I have three witnesses
3 set for this afternoon and two for tomorrow morning, the two
4 tomorrow morning being the law enforcement officers who - one of
5 whom is on a regular series of three days off, this being his
6 first, and he chose tomorrow morning at my option as the least
7 inconvenience to him. That dovetails with Deputy Ledford, who
8 is on graveyard, and would prefer to come awake and just off-
9 shift, rather than having to wake up and come in this afternoon.
10 So he'll be here tomorrow morning, also. And I don't -
11 scheduling-wise, I think that probably comports to what is going
12 to be available anyway.

13 THE COURT: So you anticipate that we will finish this
14 trial on Wednesday?

15 MR. SCHUETZ: I anticipate resting mid-morning
16 tomorrow.

17 THE COURT: Alright. Well, let's go back to the first
18 issue, which was the State's request --

19 MR. VALLEY: Well, Your Honor, I wasn't quite done.
20 And I'm looking now for his DCH, which I don't seem to have in
21 my discovery, which of course I got from my investigator. I
22 don't know what his drug history is. I was suspecting
23 methamphetamine, which keeps you awake, unless you've been awake
24 for three days or five days and then you fall asleep. But we're
25 talking, you know - and he tells me he doesn't have a - and

CERTIFICATE OF SERVICE BY MAIL

This is to certify and state under the penalty of perjury under the laws of the State of Washington that I have mailed a true and correct copy of the following document(s):

Personal Restraint Petition of

Richard Dale Hartman

By depositing in the United States mail, marked Legal Mail, postage prepaid, on this ___ day of the month of _____, 2008 to the following:

Rob McKenna Prosecutor Superior Court Judge
Attorney General Rhinehold Schuetz Toni Sheldon
1125 Washington St. S.E. Po Box 639 521 P.O. Box "X"
Po Box 40100 N. 45th #A Shelton WA.
Olympia WA. Shelton WA 98584 0078
98504-0100 98584

Respectfully Submitted

Richard Dale Hartman
Signature

Richard Hartman
Printed/Typed Name
D.O.C. # 299 896
Unit: H5A22L Cell: A22L
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, Washington 98520