

No. 59960-7-I

**COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE**

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**STATE OF WASHINGTON, Respondent,**

**v.**

**WILLIAM R. COGGIN, Appellant.**

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**SUPPLEMENTAL BRIEF OF RESPONDENT**

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**DAVID S. McEACHRAN,  
Whatcom County Prosecuting Attorney  
By HILARY A. THOMAS  
Appellate Deputy Prosecutor  
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COURT OF APPEALS  
STATE OF WASHINGTON  
FILED

**A. SUPPLEMENTAL BRIEF ISSUE**

This Court has requested the parties to brief the impact of State v. Castro, No. 25533-6-III, 2007 WL 3146813, on the outcome of this case.

**B. SUMMARY ANSWER**

The case of State v. Castro supports the denial of Coggin's personal restraint petition. First, the case supports the State's argument that Coggin does not have standing to assert the public's right to open proceedings. Second, it holds that individual voir dire in chambers for the purpose of asking jurors questions regarding their prior history regarding sexual abuse is an appropriate, limited closure of the courtroom. While addressed in a procedurally different context, Castro supports the conclusion that Coggin's right to a public trial was not violated by holding limited individual voir dire in chambers.

**C. ARGUMENT**

Coggin has asserted that he has standing to assert the public's right to open proceedings as well as his own right to a public trial. He further claims that the individual voir dire of some prospective jurors in chambers on questions related to their history with sexual abuse and/or sexual offenses violated his right to a public trial, asserting that he did not waive this right.

The question posed in Castro was whether the defendant, who had been charged with child molestation, properly waived his right to a public trial regarding in-chambers questioning of jurors. Id. at ¶¶1, 2, 10. The prospective jurors there completed questionnaires that included questions regarding their past history with sexual abuse or sexual offenses. Id. at ¶3. In asking the defendant whether he would waive his right to question jurors in public regarding their responses to those questions, the trial court explained that the purpose of asking the questions in private would be to obtain better disclosure from those jurors. Id. After the defendant indicated he would waive, the trial court questioned those jurors in chambers and then resumed voir dire in public. Id. at ¶4. In concluding that the defendant had properly waived his right to public trial, the court found that the trial court had adequately addressed the Orange<sup>1</sup> factors and properly considered the defendant's public trial rights. Id. at ¶15.

In addition to asserting his own public trial interest, Coggin is attempting to assert the public's. In Castro, after concluding that the defendant had properly waived his public trial right, the court stated: "Mr. Castro should not be allowed to waive his rights and then appeal an

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<sup>1</sup> In re Personal Restraint of Orange, 152 Wn.2d 795, 100 P.3d 291 (2005). Although the trial and appellate courts referred to them as the Orange factors, those factors are typically referred to as the BoneClub factors.

adverse jury verdict, arguing the public was deprived of its right to participate in the hearing; the public has not appealed.” Just like in Castro, where the public has not appealed the closure of a hearing, the defendant should not be allowed to assert any alleged violation of the public’s right to open proceedings, but should be limited to asserting only his right to a public trial.

Second, the court in Castro found that the Bone-Club factors were met under the facts of the case. ¶¶13, 15. Noting that a trial court may close a hearing even over a defendant’s objection as long as it adequately considers the Bone-Club factors, the court found that obtaining better disclosure from prospective jurors regarding their history of personal sexual abuse and/or sexual offenses was a sufficient compelling interest. *Id.* at ¶¶13, 15. In addition to finding that the defendant had been provided with an opportunity to object, the appellate court further found that closure of the related voir dire was the least restrictive means available to protect the threatened interest. *Id.*

The court’s finding that the desire for better disclosure given the sexual nature of the questions to be asked of jurors is a sufficient compelling interest supports the same conclusion here as well, where jurors were asked the same type of questions. Castro also supports the

conclusion that in chambers questioning of jurors, outside the presence of the public, would be the least restrictive means available to protect such a compelling interest.

The trial court's review of the Bone-Club factors clearly was not extensive in Castro. While the appellate court found the trial court's review was sufficient, neither the trial court nor the appellate court explicitly addressed two of the five factors: balancing of the protected interest against the public trial right and narrow tailoring of the order. In that regard, under Castro, reversal is not warranted merely for failure to address explicitly all the Bone-Club factors where review of the record is sufficient to demonstrate that the factors were met.

While Castro also held that a defendant may waive his right to a public trial by a personal expression of that waiver, the court did not address what specifically constitutes a waiver and whether defendant's conduct can constitute waiver. *Id.* at ¶12. The defendant in Castro made a specific waiver on the record, therefore the court did not have to address what constitutes an adequate waiver.

It is important to note that the case was heard in the context of a direct appeal and not a personal restraint petition as here. Within a direct appeal, the defendant in Castro would not carry the burden of

demonstrating constitutional error resulting in actual prejudice whereas Coggin does.

**D. CONCLUSION**

State v. Castro supports the conclusion that Coggin is limited to asserting his own right to public trial and cannot assert the public's right to open proceedings. It also supports the conclusion that, if a closure implicating Coggin's right to public trial occurred, the record demonstrates that the Bone-Club factors were met.

DATED this 16<sup>th</sup> day of November, 2007.

Respectfully submitted,

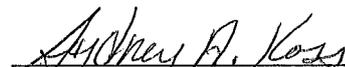


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**CERTIFICATE**

I certify that on this date I placed in the United States mail with proper postage thereon, a true and correct copy of the document to which this certificate is attached to this Court and petitioner's counsel, Jennifer Winkler, addressed as follows:

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Legal Assistant

11/16/2007  
Date

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