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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY_____
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90308-5

NO. 43359-1-II

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

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STATE OF WASHINGTON,

Respondent,

v.

DAVID WILLIAM CARSON,

Appellant.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Ronald E. Culpepper

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# BRIEF OF APPELLANT

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## A. ASSIGNMENTS OF ERROR

1. The trial court erred in failing to provide a unanimity instruction thereby denying appellant his constitutional right to a unanimous verdict.

2. Appellant was denied his constitutional right to effective assistance of counsel.

3. The jury questionnaires were improperly sealed in violation of the constitutional right to a public trial.

## B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. When the State presents evidence of multiple acts, any one of which could form the basis of a count charged, either the State must elect which of such acts is relied upon for conviction or the trial court must instruct the jury to unanimously agree on a specific criminal act. Where the State did not elect a particular act, did the trial court err by failing to provide a unanimity instruction in violation of appellant's right to a unanimous verdict?

2. Was appellant denied his constitutional right to effective assistance of counsel where defense counsel's performance was deficient in objecting to a unanimity instruction and appellant was prejudiced by defense counsel's deficient performance?

3. Were the jury questionnaires improperly sealed in violation of the constitutional right to a public trial where the questionnaires were automatically sealed as a matter of policy and without a Bone-Club hearing?

## C. STATEMENT OF THE CASE[1]

### 1. Procedural Facts

On November 9, 2010, the State charged appellant, David William Carson, with one count of rape of a child in the first degree and one count of child molestation in the first degree. CP 1-2. The State amended the information on February 10, 2012, charging Carson with three counts of child molestation in the first degree. CP 9-10.

Following pretrial hearings[2] and a trial before the Honorable Ronald E. Culpepper, a jury found Carson guilty as charged. CP 75-77; 5RP 476-78. The court sentenced Carson to 105 months with a maximum term of life in confinement and community custody for life. CP 82-101; 5RP 10-12.

Carson filed a timely notice of appeal. CP 78.

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[1] There are five volumes of verbatim report of proceedings: 1RP - 02/15/12, 02/16/12; 2RP - 02/21/12; 3RP - 02/22/12; 4RP - 02/23/12, 02/24/12; 5RP - 04/27/12.

[2] The trial court did not enter Findings and Conclusions after the 3.5 hearing but the court's oral findings are sufficient to permit appellate review. State v. Cunningham, 116 Wn. App. 219, 226, 65 P.3d 325 (2003).

2. Substantive Facts

a. Jury Questionnaire

Prior to voir dire, the court discussed with both counsel the process of passing out and then reviewing the jury questionnaires. 1RP 6-8. The record contains no further discussion about the jury questionnaires but the questionnaires were filed and sealed. Supp. CP ____ (Sealed Jury Questionnaires, 02/24/2012).

b. Trial Testimony

On August 16, 2010, Detective Thomas Catey was assigned to investigate an alleged sexual assault of a six-year-old child, C.C., during the period between June 1, 2009 and May 31, 2010. 2RP 190-92. Catey did not speak with C.C. but he watched and listened to an interview of C.C. conducted by a forensic interviewer and spoke with C.C.'s mother, Tiffany Hagen. 2RP 192-94. Thereafter, he called the suspect identified as David Carson. 2RP 192, 194. Carson volunteered to meet with him at police headquarters. 2RP 194. Catey interviewed Carson for half an hour after advising him of his rights. 2RP 195.

Carson told Catey that he lived with Dustin Halbert and Tiffany Hagen for about a year and a half when he was homeless. He paid rent, provided his food stamps to the household, and watched their children while they were at work. 2RP 198-99. Carson moved out after Halbert

accused him of sleeping with Hagen. 2RP 198, 204. Carson considered C.C. his nephew and he denied the allegations. 2RP 196, 199-200. He believed that Halbert and Hagen planted the idea in C.C.'s head as retaliation for leaving and placing them in a financial bind. 2RP 200. Catey allowed Carson to go home after the interview and he submitted a report to the prosecutor's office. 2RP 204.

Tiffany Hagen lives with her fiancé, Dustin Halbert, and her three children. Her oldest child is C.C. who is now seven years old. 2RP 144-45. Hagen testified that Halbert and Carson were childhood friends and grew up together. 2RP 145-46. In the summer of 2009, Carson came to live with them because he was homeless. 2RP 147. He paid $250 a month in rent, helped pay for food, cooked, cleaned, and watched the children while she and Halbert were at work. 2RP 152, 154, 183. The children liked Carson and C.C. called him "Uncle David." 2RP 153. Carson moved out on the day before Memorial Day 2010 because he and Halbert got into an argument. When Carson left, friends and relatives helped watch the children. 2RP 161-62.

On August 13, 2010, Hagen was driving to her friend's house with the children when C.C. kept saying, "Mom, Mom, Mom." 2RP 162-64. When she asked him what he wanted, C.C. "very simply just stated that David tried to put his penis in his butt." 2RP 164. C.C. said it happened

"[n]ext to a closet," which was located at the end of a very small hallway between the stairs and bedrooms. 2RP 160, 180. Hagen was unsure of the exact term that C.C. used but recalled that he sometimes used the word "business" to describe his penis. 2RP 165. She called Halbert and when she arrived at her friend's house, she called 911. 2RP 166-68. Hagen spoke with an officer who came to the house and she later took C.C. to a clinic for a forensic interview and medical examination. 2RP 169-72.

C.C. testified that "Uncle David" would watch him and his brother and sister when his mom and dad were at work. 2RP 103-04. "Business" is "[s]omething that you use to go to the bathroom." 2RP 105. C.C. made up the word "business" and his mom and dad told him to use the word. 2RP 124-25. Uncle David touched C.C.'s business with his hands and touched C.C.'s bottom with his business more than once. 2RP 106, 109. Uncle David touched C.C.'s business in his dad's office, C.C.'s bedroom, his mom's bedroom, and in the bathroom. 2RP 109-110, 127. His business never went inside C.C.'s body. 2RP 111. Uncle David used "plastic strings" to tie C.C.'s hands and put duct tape on his mouth when they were in his mom's room. 2RP 112-13, 116-17, 128. C.C. told his mom about what Uncle David did and she told his dad. 2RP 118.

Cornelia Thomas, a child forensic interviewer, conducted an interview with C.C. on August 26, 2010 when he was six years old. 3RP

243. The recorded interview was played for the jury. 3RP 249; Ex. 5. After the interview, Michele Breland, a pediatric nurse practitioner, performed a medical examination on C.C. 3RP 385, 402-03. During the examination, C.C. told Breland that David "tried to punch me and he put his business in my bottom." 3RP 389. C.C. asked her if she "was going to check my business" and he pointed to his genital area. 3RP 390. The result of the examination was inconclusive. 3RP 401.

Katie Davenport met Carson when he was about seven years old. Carson has trouble focusing because of a learning disability. 3RP 266. Davenport has known Dustin Halbert and Tiffany Hagen for several years. When Carson moved in with them, she visited him a few times. 3RP 267. Carson baby-sat the children, changed their diapers, fed them, and cleaned the house. Davenport heard the children call Carson "dad" because "he had been with them for so much and he does everything for them." 3RP 267-68, 271. The children were really happy and healthy. 3RP 269.

Amber Midgett has known Carson for 11 years. 3RP 272. Midgett picked Carson up multiple times when he was living with Halbert and Hagen. Carson was not able to drive. 3RP 272-73, 276. Midgett saw Carson playing with the children on several occasions, "[t]hey adored him." 3RP 274. Even when their mother was there, the children would go to Carson, "I never saw anything other than love for him." 3RP 274-75.

Carson's brother, Martin, saw Carson playing with the children many times at family functions, get-togethers with friends, birthdays, and barbeques. 3RP 282-83. C.C. was a shy, very skittish child, but he loved Carson, gave him hugs, and played with him. 3RP 282-83. When Carson was living with Halbert and Hagen, Martin never went to their home because they would not allow him to visit. 3RP 282, 287. Carson has a learning disability and people can easily take advantage of him. 3RP 284-85.

Jennifer Bryant, Martin's wife, saw Carson playing with the children at family functions. Carson acted "like a really big kid with the kids." 3RP 290. When Carson was living with Halbert and Hagen, he watched the children, cooked, cleaned, and changed diapers. 3RP 291. Bryant picked Carson up at their house many times but Halbert would never allow her to come inside. 3RP 291-92.

Ruben Lupio visited Carson almost everyday when he was living with Halbert and Hagen. 3RP 294-95. They worked on cars or would just hang out. 3RP 296. Carson was "basically a baby-sitter, nanny, always watching the kids." 3RP 295. Carson played with the children and had a good relationship with them. Lupio never noticed anything unusal. 3RP 296.

Carson testified on his own behalf. He has ADHD, a learning disability that slows him down. 3RP 301. He has known Halbert since they were kids and moved in with Halbert and Hagen in 2009 when he became homeless. 3RP 302-03. After four or five months, "I was giving them all my money and giving them $150 of my food stamps and watching the kids pretty much all day." 3RP 304. Carson cared for the children, cooked, cleaned, did the laundry, and took care of the family dog. 3RP 305-06. C.C., the oldest child, would pick on his younger brother and sister at times and was extremely skittish. 3RP 306-07, 310-11. Carson discovered C.C. with a pornographic tape once and the incident was reported to Halbert who "dealt with it." 3RP 312-13.

Carson moved out in May 2010 after Halbert accused him of sleeping with Hagen. 3RP 314. Halbert and Hagen were extremely upset when he left because they had no one to watch the children and he had been contributing about $350 to $400 to the family's income. 3RP 316, 319. When a detective called Carson about allegations made by C.C., he agreed to meet with the detective, "[b]ecause I didn't do it and I wanted to try to clear my name as quickly as possible." 3RP 318-19. He did not do anything sexually inappropriate to C.C. 3RP 317. Carson acknowledged that there were discrepancies between his direct testimony and his

responses during his interview with the detective due to memory lapses. 3RP 324-325, 330-32.

c. Unanimity Instruction

During a review of the jury instructions, the court heard argument from the State and defense counsel on whether a Petrich unanimity instruction should be provided to the jury. 4RP 404. Defense counsel opposed giving the instruction, arguing that the instruction would confuse the jury because it was designed for one-count cases, not multiple-count cases. 4RP 404-06, 408-09. The State argued that it proposed the instruction because it did not elect any particular act and therefore a unanimity instruction is required because multiple acts of the same crime are alleged. 4RP 406-09. The trial court declined to give the instruction. 4RP 409.

## D. ARGUMENT

### 1. THE TRIAL COURT ERRED IN FAILING TO PROVIDE A UNANIMITY INSTRUCTION THEREBY DENYING CARSON HIS CONSTITUTIONAL RIGHT TO A UNANIMOUS JURY VERDICT.

Reversal is required where the trial court erred by failing to provide a unanimity instruction in violation of Carson's constitutional

right to a unanimous jury verdict and the error was not harmless beyond a reasonable doubt.[3]

Criminal defendants in Washington have a constitutional right to a unanimous jury verdict. Wash. Const. art. I, section 21; State v. Ortega-Martinez, 124 Wn.2d 702, 707, 881 P.2d 231 (1994). A defendant may be convicted only when a unanimous jury concludes that the accused committed the criminal act charged. State v. Petrich, 101 Wn.2d 566, 569, 683 P.2d 173 (1984). When the State presents evidence of multiple acts, any one of which could constitute the crime charged, the jury must unanimously agree as to which act constitutes the crime. Id. at 572. To ensure jury unanimity, the State must elect a single act upon which it will rely for conviction, or the jury must be instructed that all of them must agree as to which act or acts were proved beyond a reasonable doubt. Id.

Where there is no election made by the State in a multiple acts case, omission of a unanimity instruction "is presumed to result in prejudice" because of the possibility that some jurors relied on one act and some relied on another, resulting in a lack of unanimity on all of the elements necessary for a valid conviction. The State v. Coleman, 159 Wn.2d 509, 512, 150 P.3d 1126 (2007)(citing State v. Kitchen, 110 Wn.2d 403, 411-

[3] Manifest constitutional errors can be asserted for the first time on appeal. State v. Bobenhouse, 166 Wn.2d 881, 892 n.4, 214 P.3d 907 (2009).

12, 756 P.2d 105 (1988). Failure to provide a unanimity instruction requires reversal unless the error is harmless beyond a reasonable doubt. "The presumption of error is overcome only if no rational juror could have a reasonable doubt as to any of the incidents alleged." Coleman, 159 Wn.2d at 512 (citing Kitchen, 110 Wn.2d at 411-12).

In State v. York, 152 Wn. App. 92, 216 P.3d 436 (2009), a jury convicted York of four counts of second degree rape of a child and he appealed his conviction on count four. 152 Wn. App. at 93-94. The evidence supporting count four was the child's testimony that she spent the night at Cindy's house once a week for about a year and that York had sex with her on most of those occasions. This evidence presented the jury with multiple acts of like misconduct, any one of which could form the basis of count four. Id. at 95. This Court concluded that "[b]ecause the State did not specify an act for count four, the trial court should have given a unanimity instruction to ensure that the jurors agreed that a specific act, out of the multiple acts S.B. described, supported the count four conviction beyond a reasonable doubt." Id. In reversing the conviction, this Court reasoned that it had no way to determine which specific act the jury relied upon because S.B. testified to numerous separate rapes and there was conflicting evidence. Id. at 96.

Here, a jury convicted Carson of three counts of child molestation in the first degree.[4] The evidence supporting the three counts was C.C.'s trial testimony, his statements to a child forensic interviewer, and his mother's testimony. Tiffany Hagen testified that her son, C.C., used the word "business" to describe his penis. 2RP 165. C.C. told her that Carson tried to put his penis in his butt and that it happened next to a closet located at the end of a very small hallway between the stairs and bedroom. 2RP 160, 164, 180. C.C. testified that Carson touched his "business" while in his dad's office, C.C.'s bedroom, his mom's bedroom, and in the bathroom. 2RP 109-110, 127. C.C. made similar statements during a recorded forensic interview. Ex. 5.

The State proposed a unanimity instruction based on WPIC 4.25, which the court declined to provide to the jury:

> The State alleges that the defendant committed acts of Child Molestation in the First Degree against C.C. on multiple occasions. To convict the defendant on any count of Child Molestation in the First Degree, one particular act of Child Molestation in the First Degree must be proved beyond a reasonable doubt, and you must unanimously agree as to which act has been proved. You need not

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[4] A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

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> unanimously agree that the defendant committed all the acts of Child Molestation in the First Degree.

CP 58-74 (Jury Instruction 3).

Similar to York, the evidence revealed at least five separate acts which could form the basis of the three counts of child molestation in the first degree: in C.C.'s father's office; in C.C.'s mother's bedroom, in C.C.'s bedroom, in the bathroom, and near the closet at the end of the small hallway. Without a unanimity instruction, there is no assurance that the jurors unanimously agreed as to which acts supported the three counts. Jurors have a constitutional "responsibility to connect the evidence to respective counts." State v. Vander Houwen, 163 Wn.2d 25, 39, 177 P.3d 93 (2008).

Furthermore, the record substantiates that the court's failure to give a unanimity instruction was not harmless beyond a reasonable doubt. In Kitchen, 115 Wn.2d at 412, the Court reversed because of the conflicting testimony and a rational juror could have entertained reasonable doubt as to whether one or more of the acts occurred. In Petrich, 101 Wn.2d at 573, the Court reversed because at times during the child's testimony, she expressed confusion and uncertainly. The Court concluded that it could not hold that a rational trier of fact could have found each incident proved beyond a reasonable doubt. Similarly, there was conflicting testimony

here. Carson testified that he never touched C.C. inappropriately and that he "was like my nephew or even my own kid." 3RP 317-18. Numerous witnesses testified that Carson had a loving relationship with C.C. and the other children and they adored him and called him "dad." 3RP 267-71, 274-75, 282-83, 290, 295-96. At various times, C.C.'s testimony was contradictory and confusing:

> Q. Was there ever a time that David had to touch your business?
> A. Yes.
> Q. Can you tell us when David touched your business?
> A. I forgot.
> Q. Do you remember what he touched your business with?
> A. His hands.
> Q. Do you remember where you were when he touched your business?
> A. No.
> Q. When he touched your business, was it over your clothes or under your clothes?
> A. I forgot.
>
> . . . .
>
> Q. Okay. How many times do you actually remember David touching your business, or do you remember at all?
> A. I don't remember at all.
> Q. Does that mean he never did?
> A. He did, but I don't know how much times.
> Q. So could it have been 10 or 15?
> A. The only time I know when he did that is in the bathroom.
>
> . . . .

Q. And you don't know if your clothes were on or off when you said David twisted your business or touched your business?
A. I don't remember.
Q. And you don't remember him touching your business at all?
A. No.
Q. And you've never seen his business?
A. No.

. . . .

Q. You said something about your dad's office?
A. Yeah.
Q. Something happened in your dad's office?
A. I forgot.
Q. Okay. Did this, with David's business, happen once or more than once?
A. Did he do it more than once?
Q. Yes.
A. Yes.
Q. How many times?
A. I don't really remember.
Q. Five? Six?
A I think he did it -- I don't know, really.
Q. Well, you just told us that it happened in your dad's office?
A. Dad's, and my mom's and dad's room and my room and Cayden's, my brother's, and the bathroom.
Q. So it happened in the bathroom?
A. My mom and dad's room.
Q. What happened in the bathroom?
A. He put his business -- I mean, wait. I forgot that.
Q. So you don't remember what happened in the bathroom?
A. No.
Q. Do you remember -- you don't remember what happened in your room?
A. No
Q. And you don't remember what happened in your mom's room?

A. The only thing I know in my mom's room was he put the duct tape and the strings on me.

2RP 106-07, 125-28.

Tiffany Hagen testified that when C.C. told her what Carson did, "it was unclear whether it was more than one event or not." 2RP 181. C.C. did not say that anything happened in the office or her bedroom. She could only remember that C.C. said it happened next to the closet. 2RP 180.

Unlike in Camarillo, 115 Wn.2d 60, 72, 794 P.2d 850 (1990)(error was harmless beyond a reasonable doubt), there was conflicting testimony, uncertainty, and confusion. The court instructed the jury that "[i]n order to decide whether any proposition has been proved, you must consider all of the evidence that I have admitted that relates to the proposition." CP 58-74 (Jury Instructions 1). When considering all of the evidence, fraught with contradictions and inconsistencies, no rational trier of fact could have found each incident proved beyond a reasonable doubt. Consequently, the presumption of prejudice cannot be overcome. "*Kitchen* requires a presumption of prejudice whenever jury instructions are erroneous as to unanimity, precisely because the error usually makes it impossible to determine what the jury found factually. Without a unanimity instruction in a multiple acts case, the jury might convict even though they were not

unanimous about any particular act having occurred." State v. Camarillo, 115 Wn.2d at 73 (Utter, concurring)(citing Kitchen, 110 Wn.2d at 411).

As the prosecutor argued in proposing the unanimity instruction, "my reading of the law is that where the State fails to elect, a Petrich instruction must be given, and it's a constitutionally due process right." 4RP 407. Reversal is required because the trial court erred in failing to provide a unanimity instruction and the court's error was not harmless beyond a reasonable doubt.

2. CARSON WAS DENIED HIS CONSTITUTIONAL RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL WHERE DEFENSE COUNSEL OBJECTED TO GIVING A REQUIRED UNANIMITY INSTRUCTION.

Reversal is required because Carson was denied his constitutional right to effective assistance of counsel where defense counsel objected to giving a unanimity instruction.

The right to effective assistance of counsel is "fundamental to, and implicit in, any meaningful modern concept of ordered liberty." State v. A.N.J., 168 Wn.2d 91, 96, 225 P.3d 956 (2010). "The purpose of the requirement of effective assistance of counsel is to ensure a fair and impartial trial." State v. Thomas, 109 Wn.2d 222, 225, 743 P.2d 816 (1987).

To demonstrate ineffective assistance of counsel, a defendant must show that (1) defense counsel's representation was deficient, i.e., it fell below an objective standard of reasonableness based on consideration of all the circumstances; and (2) defense counsel's deficient representation prejudiced defendant, i.e. there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceedings would have been different. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995)(citing Thomas, 109 Wn.2d at 225-26)(applying the 2-prong test in Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984)).

When the State proposed a unanimity instruction based on WPIC 4.25, defense counsel objected, arguing that it is confusing and that it would be error to give such an instruction. Defense counsel asserted that under Petrich, the instruction should be given only when "you're alleging one count but multiple acts." RP 408-09. Defense counsel was clearly mistaken because in Petrich, 101 Wn.2d at 568, the petitioner was convicted of one count of indecent liberties and one count of second degree statutory rape. The State alleged multiple acts but did not elect the act upon which it relied for each conviction. The Court reversed because the trial court failed to give a unanimity instruction.

Defense counsel's representation was deficient and Carson was prejudiced by defense counsel's deficient representation because as argued above, the unanimity instruction was required and failure to provide the instruction "is presumed to result in prejudice." Coleman, 159 Wn.2d at 512.

3. SEALING JURY QUESTIONNAIRES WITHOUT A BONE-CLUB HEARING VIOLATES THE CONSTITUTIONAL RIGHT TO A PUBLIC TRIAL.

Reversal is required because the jury questionnaires were sealed without a Bone-Club hearing in violation of the right to a public trial.

Article I, section 10 of the Washington Constitution provides that "Justice in all cases shall be administered openly." Division One of this Court concluded in State v. Tarhan, 159 Wn. App. 819, 246 P.3d 580 (2011), that a trial court must conduct a Bone-Club[5] analysis before

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[5] The trial court must perform a weighing test consisting of five criteria:

1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to 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 open access must be the least restrictive means available for protecting the threatened interests.

sealing jury questionnaires and the court's failure to do so violates the public's right to open and accessible court proceedings under article I, section 10. 159 Wn. App. at 834. The Court held that the appropriate remedy is to remand the case for reconsideration of the sealing order in light of Bone-Club and other relevant authority. 159 Wn. App. at 835. Tarhan filed a petition for review arguing that sealing of the jury questionnaires without a Bone-Club hearing violates the right to an open and public trial which constitutes structural error warranting a new trial. The Washington Supreme Court accepted review and a decision is pending (Supreme Court No. 85737-7).

Here, the record reflects that prior to voir dire, the court discussed with both counsel the process of passing out and then reviewing the jury questionnaires. 1RP 6-8. The record contains no further discussion about the jury questionnaires. The questionnaires were filed and sealed. Supp. CP ___ (Sealed Jury Questionnaires, 02/24/2012). According to the Clerk's Office, pursuant to a policy established by the presiding judge of the Pierce County Superior Court, jury questionnaires are automatically

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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.

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

sealed in all cases. In light of this policy, it is evident that the trial court did not conduct a Bone-Club hearing.

Sealing jury questionnaires without a proper Bone-Club hearing violates Wash. Const., article I, section 22 and article I, section 10 which protects the right to a public trial. The violation of the right to an open and public trial is a structural error and the remedy is a remand for a new trial. See State v. Strode, 167 Wn.2d 222, 231, 217 P.3d 310 (2009).

Carson is aware of this Court's decisions in State v. Smith, 162 Wn. App. 833, 262 P.3d 72 (2011)(the court did not err in sealing the jury questionnaires without a Bone-Club analysis) and In re Stockwell, 160 Wn. App. 172, 181 248 P.3d 576 (2011)(sealing of jury questionnaires does not constitute structural error). However, he respectfully requests that this Court stay its decision on this issue pending a decision by the Washington Supreme Court.

E. CONCLUSION

For the reasons stated, this Court should reverse Mr. Carson's convictions.

DATED this 16th day of November, 2012.

Respectfully submitted,

VALERIE MARUSHIGE
WSBA No. 25851
Attorney for Appellant, David William Carson

## DECLARATION OF SERVICE

On this day, the undersigned sent by U.S. Mail, in a properly stamped and addressed envelope, a copy of the document to which this declaration is attached to Kathleen Proctor, Pierce County Prosecutor's Office, 930 Tacoma Avenue South, Tacoma, Washington 98402 and David William Carson, DOC # 356205, Washington Corrections Center, P.O. Box 900, Shelton, Washington 98584.

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

DATED this 16th day of November, 2012 in Kent, Washington.

Valerie Marushige

VALERIE MARUSHIGE
Attorney at Law
WSBA No. 25851

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DIVISION II
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# November 19, 2012 - 4:14 PM

**Transmittal Letter**

Document Uploaded: 433591-Supplemental Designation of Clerk's Papers.pdf

Case Name: State v. Carson
Court of Appeals Case Number: 43359-1

**Is this a Personal Restraint Petition?** ○ Yes ◉ No

**The document being Filed is:**

◉ Designation of Clerk's Papers ☑ Supplemental Designation of Clerk's Papers

○ Statement of Arrangements

○ Motion: ____

○ Answer/Reply to Motion: ____

○ Brief: ____

○ Statement of Additional Authorities

○ Cost Bill

○ Objection to Cost Bill

○ Affidavit

○ Letter

○ Copy of Verbatim Report of Proceedings - No. of Volumes: ____
Hearing Date(s): _____

○ Personal Restraint Petition (PRP)

○ Response to Personal Restraint Petition

○ Reply to Response to Personal Restraint Petition

○ Petition for Review (PRV)

○ Other: _____

**Comments:**

No Comments were entered.

Sender Name: Valerie B Marushige - Email: ddvburns@aol.com

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