

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

STATE OF WASHINGTON,
Respondent,

v.

RAMOS ORTIZ-LOPEZ,
Appellant.

FILED
COURT OF APPEALS DIVISION ONE
STATE OF WASHINGTON
2012 JUN 23 PM 11:55
10

On Appeal From The Superior Court Of The
State Of Washington For Skagit County

The Honorable John M. Meyer, Judge

STATEMENT OF ADDITIONAL GROUNDS

Ramos Ortiz-Lopez 349223
Appellant, Pro se
Coyote Ridge Correction Center-D-A-19
P.O. Box 769
Connell, Wa 99326

TABLE OF CONTENTS

A.	ASSIGNMENT OF ERROR.....	1
B.	STATEMENT OF THE CASE.....	2
C.	ARGUMENT.....	3
	Since the trial court did not analyze the Bone-Club factors before conducting the private jury voire dire, it violated appellant's constitutional public trial right by excluding the public from voir dire.....	3
D.	CONCLUSION.....	7

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Neder v. United States</u> , 527 U.S. 1, 119 S. Ct. 1827, 144 L. Ed.2d 35(1999).....	5
<u>Press-enter. Co.v. Superior Court</u> , 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984).....	3
<u>Waller v. Georgia</u> , 467 U.S. 39, 104 S. Ct. 2210, 81 L.Ed.2d 31 (1984).....	3,4,6
<u>In re Personal restraint of orange</u> , 152 Wn.2d 795, 100 P.3d 291 (2004).....	3,4,5,6
<u>State v. Brightman</u> , 155 Wn.2d 506 122 P.3d 150 (2005).....	4,5,6,7
<u>State v. Bone-Club</u> , 128 Wn. 2d 254,906 P.2d 325 (1995).....	4,5,6

State v. Easterling, 157 Wn.2d 167, 137 P.3d 825 (2006).....3

State v. Marsh, 126 Wash. 142, 217 P. 705 (1923).....6

Statues

U.S. Const. amend. I.....3

U.S. Const. amend. VI3

WA Const. ar t 1, § 10.....3

WA Const. art 1, § 22.....3

Under the penalty of perjury of the State of Washington, as well as the United States laws, the petitioner hereby declares that the forgoing statement and briefing is true and correct to the best of the petitioner's knowledge and ability furthermore the petitioner is making it known that he is a lay person and unschooled in law and is creating this document pro-se to the best of his ability and should not be held to the high standard of an educated attorney.

Further I saith not.

Romas Ortiz-Lopez July 18 2012

A. ASSIGNMENT OF ERROR

The trial court erred in excluding the public from jury voir dire, thus violating appellant's constitutional to a public trial.

Issue Pertaining to Assignment of Error

Where the trial court did not analyze the Bone- Club¹ factors before conducting the private jury voir dire, did the trial court violate appellant's constitutional public trial right by excluding the public from jury voir dire?

¹ state v. Bone Club, 128 Wn. 2d 254, 906 P.2d 325 (1995).

B. STATEMENT OF THE CASE

Ramos Ortiz-Lopez was convicted by a jury of two counts of first degree rape of a child, as well as one count of second degree child rape.

As part of the jury selection process the juror venire panel were given a questionnaire Jurors who either answered "yes" to question number six or requested private questioning were removed from courtroom number two. The trial court re-convened in courtroom four with only the defendant and counsel present to conduct individual voir dire ("This is in fact a tacit closure") The court then conducted ("Private") individual voir dire of at least four prospective jurors. Challenges for cause were conducted and either granted or denied following the voir dire of each individual prospective juror. (Voir Dire Supp. RP 2-15).

C. ARGUMENT

Since the court did not analyze the Bone Club² factors before conducting the private jury voir dire, it violated appellant's constitutional public trial right by excluding the public from jury voir dire.

A criminal defendant has a right to a public trial, including during the jury selection process. Under both the Washington and United States constitutions, a defendant has a constitutional right to a speedy and public trial. WA Const. art 1, § 22; U.S. Const. amend. VI; In re Personal Restraint of Orange, 152 Wn. 2d 795, 804, 100 P.3d 291

(1984). Additionally, the public and press have an implicit First Amendment right to a public trial. U.S. Const. amend. I; WA Const. art 1, § 10; Waller v. Georgia, 467 U.S. 39, 46, 104 S.Ct. 2210, 81 L. Ed. 2d 31 (1984); State v. Easterling, 157 Wn. 2d 167, 179, 137 P.3d 825 (2006).

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 Co. v. Superior Court, 464 U.S. 501, 505, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984)."

"[A]lthough the public trial right may not be absolute, protection of this basic constitutional right clearly calls for a trial court to resist a closure

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

motion except under the most unusual circumstances.” State v. Bone Club, 128 Wn. 2d 254, 259, 906 P.2d 325 (1995) (emphasis added). Even when only a part of jury voir dire is improperly closed to the public, it can violate a defendant’s constitutional public trial right. Orange, 152 Wn.. 2d at 812, 100 P.3d 291. “moreover, the defendant’s failure to lodge a contemporaneous objection at trial [does] not effect a waiver of the public trial right.” State v. Brightman, 155 Wn.2d 506, 517, 122 P.3d 150 (2005).

“ ‘The presumption of openness may be overcome only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.’ ” Orange, 152 Wn. 2d at 806 (quoting Waller, 467 U.S. at 45, 104 S.Ct. 2210).

The Washington Supreme Court requires compliance with five standards before the court can properly close any part of a trial to the public:

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 a fair trial, the proponent must show a ‘serious and imminent threat ‘ to the 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.

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, 128 Wn.2d at 258-89.

The holding in Bone-Club has been adopted verbatim in subsequent Supreme Court cases. Orange, 152 Wn.2d at 812, 100 P.3d 291. A trial court's failure to follow the five-step closure test violates a defendant's right to a public trial under section 22 of the Washington constitution. Id. when the record "lacks any hint that the trial court considered [the defendant's] public trial right as required by Bone-Club, [the court on appeal] cannot determine whether the closure was warranted." Brightman, 155 Wn.2d at 518, 122 P.3d 150.

The denial of the constitutional right to a public trial is one of the limited classes of fundamental rights not subject to harmless error analysis. Bone- Club, 128 Wn.2d at 261-62, 906 P.2d 325; Neder v. United States, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999)

(citing Waller v. Georgia, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984)). “[P]rejudice is presumed where a violation of the public trial Occurs.” Bone-Club, 128 Wn.2d 261-62 (citing State v. Marsh, 126 Wash. 142, 146-47, 217 P. 705 (1923)).

In Brightman, the trial court sua sponte told counsel that for reasons of security, “we can’t have any observers while we are selecting the jury.” Brightman, 155 Wn.2d at 511. The Supreme Court ruled that where jury selection or a part of the jury selection is closed, the closure is not de minimis or trivial. *Id.* at 517. The trial court had failed to analyze the five Bone-Club factors. Unable to determine from the record below whether the closure was warranted, the Court remanded for a new trial. *Id.* at 518.

In Orange, the trial court closed the courtroom during more than half of the time spent on jury voir dire, because of limited court space and for security reasons. Orange, 152 Wn.2d at 808-10. The Orange Court held the trial court’s failure to analyze the five Bone-Club factors before ordering the courtroom closed violated Orange’s right to a public trial. Orange, 152 Wn.2d at 812. The Orange Court also held the constitutional violation was presumptively prejudicial and would have resulted in a new trial had the issue been raised on Oranges’ direct appeal.

Id.

Herein, the trial court failed to analyze any of the five Bone-Club factors. Therefore, since we are unable to determine from the record below whether the closure was warranted, this Court must remand the case for new trial. See Brightman, 155 Wn.2d at 518.

D. CONCLUSION

For the foregoing reasons, the convictions should be reversed.

VERIFICATION/CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of Washington State that the foregoing is true and correct and that today he mailed this document potage pre-paid, via the prison "Legal Mail" system addressed to: Clerk, Washington State Court of Appeals Division 1, One Union Sq. 600, University St., Seattle, WA. 98101-4170; and to Richard A. Weyrich, Prosecuting Attorney, Skagit County, 605 S. 3rd, Mount Vernon, 98273

DATED this 18 day of July, 2012.



Ramos Noel Ortiz-Lopez 349223, pro se
Coyote Ridge Corrections Center
PO BOX 769 DA19
Connell, WA 99326
(509) 543-5800

SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR SKAGIT COUNTY

State of Washington,) Skagit County Cause
) No. 10-1-00148-3
 Plaintiff,)
) Court of Appeals
) No. 67357-2-I
 vs.)
)
)
 Ramos Noel Ortiz-Lopez,)
)
)
 Defendant.)

PORTION OF VERBATIM REPORT OF PROCEEDINGS

The Honorable John M. Meyer
 Department I
 Skagit County Courthouse
 Mount Vernon, Washington 98273

APPEARANCES:

For the Plaintiff: ROSEMARY KAHOLOKULA
 Chief Deputy Prosecuting Attorney
 Skagit County Prosecutor's Office
 Courthouse Annex 605 S. Third Street
 Mount Vernon, WA 98273

For the Defendant: C. WESLEY RICHARDS
 Chief Deputy Public Defender
 Skagit County Public Defender's Office
 120 Broadway
 Mount Vernon, WA 98273

DATE: April 25, 2011

REPORTED BY: JENNIFER CHRISTINE SCHROEDER,
 CA CCR #10176, WA CCR #2221, RPR,
 OFFICIAL REPORTER

MOUNT VERNON, WASHINGTON

* 4:48 P.M.*

1
2
3
4 THE COURT: Number 38, do you still wish to be? So 3,
5 13, 31, 38, and 49 who also wanted to be interviewed outside the
6 presence of the other jurors; is that correct?

7 JUROR NO. 38: I can do it in public as well. I feel I
8 would rather -- either way.

9 THE COURT: Kelli, we will be moving down to 4. I'm going
10 to ask the jury to remain here. What I would like to do, to save
11 you from coming back tomorrow, is to get this jury selected
12 today. Am I hearing any complaints on that? Okay. Then I'm
13 seeing some silent people who may want to complain. If you want
14 to call home and tell them that the judge is going to do his
15 level best to get you out of here by 5:30, feel free to do that.
16 Feel free to stay and chat in here quietly among yourselves.
17 Don't get lost. And please don't discuss this case. And would
18 jurors 3, 13, 31 and 38 accompany Kelli down the hall? Jurors 45
19 and 49, upon stipulation of the parties, are excused.

20 If somebody needs to use the facilities, I assume we will
21 take 15 minutes or so down the hall.
22

23 **(THE FOLLOWING PROCEEDINGS TAKE PLACE IN COURTROOM 4, BOTH**
24 **COUNSEL, THE CLERK, AND THE DEFENDANT ARE PRESENT).**
25

1 THE COURT: The record should reflect that we are now, as
2 opposed to in Chambers or in a jury room, in a public courtroom
3 of the Skagit County Courthouse. And at sidebar I asked counsel
4 if they felt I should do a Bone Club Analysis and go into
5 Chambers, and counsel both agreed that by coming into a public
6 courtroom such as that a Bone Club Analysis would be unnecessary.
7 Does that fairly state what we decided at sidebar?

8 MR. RICHARDS: Yes. The only concern I have is making
9 sure that the doors to the courthouse are still open, that this a
10 public proceeding and that the public can actually get in. It's
11 my understanding that it is. I have not confirmed this myself.

12 THE COURT: We have security downstairs. Would you
13 double check that the courthouse is open, and if it's not make
14 sure that it is.

15 The record should also reflect I believe Mr. Richards'
16 point is well taken, though I don't believe there's been a member
17 in the courthouse all day long in the main courtroom all day
18 long; so it's a very good point.

19 MS. KAHOLOKULA: And just logistically where are we going
20 to place the jurors, put them in the witness stand?

21 THE COURT: I don't have much other place to put the
22 jurors than on the witness stand.

23 THE BAILIFF: It's open.

24 THE COURT: Alright. Would you please -- the record
25 should reflect the courthouse doors are open.

1 Let us start with Juror Number 3.

2 I hate to do this to you, ma'am, I may have to ask you to
3 come on up and sit in the witness chair here. Thank you. Sorry
4 to inconvenience you. But on your confidential jury
5 questionnaire you did say that you would like to discuss some
6 answers to some of these questions outside the presence of the
7 other jurors, which we are at this point. What would you like to
8 tell us first? Anything that isn't already on the juror
9 questionnaire.

10 JUROR NO. 3: No.

11 THE COURT: Do you have any questions, Ms. Kaholokula?

12 BY MS. KAHOLOKULA:

13 Q. Question Number 5 was about impartiality, whether you felt
14 you could be fair and impartial in this case given your
15 background, and you answered that you didn't know. What do
16 you think at this point?

17 A. (JUROR NO. 3) I think some of the others sound more
18 impartial.

19 Q. Do you think that you can be impartial?

20 A. All I can do is try.

21 Q. And the event that we're talking about involved some friends
22 of yours?

23 A. No. There's numerous events involving my daughters and
24 myself.

25 Q. And were they victims?

1 **A.** Yes.

2 **Q.** And based on that does that make it difficult for you to sit
3 on this case?

4 **A.** I would wonder, yes it may.

5 **Q.** And I hate to try to pin you down, but I have to do it. But
6 do you think you could put those experiences aside and judge
7 this case on its own merits and the people who testify in
8 this case? Or will you be looking back in the back of your
9 mind saying well what happened to my loved ones?

10 **A.** I don't know. That's why I put I don't know. I honestly
11 don't know the details. I don't know how similar. I just
12 don't know. All I can do is try.

13 **Q.** If they were similar do you think it would more likely be a
14 problem?

15 **A.** I don't know. I've never been in this position. I have no
16 idea.

17 **Q.** You would try to do that?

18 **A.** I would try to. I would try to separate things out, but I
19 don't know how successful I would be.

20 **Q.** You know yourself better than we know you. Do you think
21 you're the kind of person that can succeed at that?

22 **A.** I've never been tried on that issue; so I really don't know
23 how well I would do.

24 MS. KAHOLOKULA: Alright.

25 BY MR. RICHARDS:

1 Q. So tell me if I have this right you would try to be fair,
2 but you have some reservations about whether you would be
3 fair?

4 A. True.

5 Q. And if you were in Mr. Ortiz-Lopez's shoes, charged with
6 this crime --

7 A. Would I want me?

8 Q. Would you want somebody with your state of mind to sit as a
9 juror on your case?

10 A. No.

11 MR. RICHARDS: Thank you.

12 I would ask to excuse for cause.

13 THE COURT: You have some concern about being fair and
14 impartial in this case, there's nothing wrong with that. That
15 doesn't make you a bad person. We're all products of our life
16 experiences. You have had experiences in your life than you
17 sooner not have, I'm sure.

18 Anything you would like to have, Ms. Kaholokula?

19 I'll grant the motion. You are free to go after sitting
20 with us all day long. Thank you for your candor. And please if
21 you would tell Kelli out there to send in Number 13. We would
22 appreciate it.

23 JUROR NO. 3: Okay.

24 THE COURT: Ms. Green will be excused.

25 Number 13.

1 Unfortunately we get to put you on the witness stand
2 here. Okay.

3 BY MS. KAHOLOKULA:

4 **Q.** You indicated on your questionnaire that you and your
5 siblings had been victimized?

6 **A.** (JUROR NO. 13) yes.

7 **Q.** But on question Number 5 you didn't answer that you thought
8 that you couldn't be fair and impartial. My question is: Do
9 you think you can be fair and impartial?

10 **A.** Yes, I think I could be.

11 **Q.** Is there anything that we need to know in terms of talking
12 with you privately, or do you think we have all of the
13 information, or you just put that in case of inquiry as to
14 details?

15 **A.** Did I answer it wrong or something?

16 **Q.** No, no. I'm just asking: Did you put down that you wanted
17 to talk about it privately in case we wanted to inquire into
18 the details?

19 **A.** Yes. Yes, because I was raised in the area I work in with
20 the public; so I didn't want to have too much information
21 out there to respect my family and siblings.

22 MS. KAHOLOKULA: I don't have any other questions.

23 BY MR. RICHARDS:

24 **Q.** I hate to pry.

25 **A.** It's fine.

1 Q. But could you tell me what the nature of this abuse was that
2 involved you and your siblings?

3 A. My father.

4 Q. And was it sexual abuse?

5 A. Yes.

6 Q. And can you tell me how old you and your siblings were when
7 that was going on?

8 A. Started from when I was 7 through like 17 years old. My
9 brother, it was the same time we were -- myself, my sister,
10 and brother all a year, so many months apart. My youngest
11 sister is 6 years younger than myself. And I just don't
12 know for sure. It happened to the sister that was a year
13 younger than me once or twice; my brother over a period of
14 time. I don't know throughout the years. We all didn't know.
15 The one the year younger than me knew it was happening to me
16 because she shared the room with me. My brother, I didn't
17 realize it was happening to him. He shared a room with my
18 younger sister. And she knew he was hurting my brother,
19 beating on him. And then I guess there was a couple of
20 sexual things when he took my brother on a trip when he was
21 working. I just learned this just three years ago about my
22 brother. I didn't realize he was being hurt.

23 Q. I'm guessing this would have been an emotionally
24 traumatizing event for you; is that true?

25 A. Yes.

1 Q. When you think about this event is it still emotionally
2 troubling to you?

3 A. It can be at times, yes.

4 Q. Do you think in light of what happened to you and your
5 siblings that you might be inclined to identify somewhat
6 with the alleged victim in this case?

7 A. I might at times, yes.

8 Q. Do you have any insight of what happened to you and your
9 siblings that you might feel or be inclined to think that
10 what she says happened did, in fact, occur?

11 A. I think I would just have to listen to the testimony and the
12 evidence that's presented. I wouldn't judge until I knew all
13 of the facts.

14 Q. Do you think in light of your experience that you might be
15 starting off with an assumption that these allegations are
16 true?

17 A. No.

18 Q. And if you were charged with these crimes today, you were
19 sitting here next to me, would you feel comfortable having
20 yourself as a juror with your frame of mind?

21 A. Yes.

22 Q. Okay. Thank you.

23 THE COURT: Motions?

24 MS. KAHOLOKULA: No.

25 MR. RICHARDS: No.

1 THE COURT: You get to go back into the big courtroom.

2 JUROR NO. 13: Okay.

3 THE COURT: Number 31 is next.

4 Hi there.

5 JUROR NO. 31: Hello.

6 THE COURT: You had not originally indicated that you
7 wanted to talk in Chambers. Apparently you came up to somebody.

8 JUROR NO. 31: Yes, I did.

9 THE COURT: What would you like to tell us?

10 JUROR NO. 31: When I got home I realized I had heard
11 something. I'm little embarrassed I forgot this. Years and
12 years ago my sister, an unfit parent, I had to testify against
13 her to have her children taken away from her. Her littlest one
14 ended up being molested by her grandfather. I didn't hear about
15 it until I think like 15 years ago through a telephone
16 conversation I got from my mother. There was a write-up in
17 paper. I mean I haven't seen her since she was a baby and forgot
18 that. I figured I pretty much lied on that thing.

19 THE COURT: Do you think you can be fair and impartial in
20 this case, listen to the facts, make a fair determination?

21 JUROR NO. 31: I do.

22 THE COURT: Anybody have any questions?

23 MS. KAHOLOKULA: No.

24 MR. RICHARDS: No, Your Honor.

25 THE COURT: That was simple. You get to go back to the

1 big courtroom too.

2 This is Juror Number 38?

3 Okay. You said -- well, let me ask counsel to inquire.

4 BY MS. KAHOLOKULA:

5 Q. You indicated on your questionnaire you had been victimized?

6 A. (JUROR NO. 38) yes.

7 Q. That you wanted to speak about the details about that
8 privately?

9 A. Well, yeah, it if needs to be known.

10 Q. But you didn't say you couldn't be fair and impartial on
11 question Number 5?

12 A. Yeah, I'm not really -- I would like to say that I could be
13 because we had -- my husband has a family member who was
14 accused wrongly. And, you know, that was just horrible on
15 the family, you know. However, if you are a victim of rape
16 when you are a child you can't just close off all of those
17 emotions. When you're in the same situation and it is
18 brought up.

19 Q. So when those emotions are brought up do you have any
20 concerns about your ability to be fair and impartial?

21 A. I think there's a possibly that I could be. I've never been
22 in a situation. But I am concerned about that because it is
23 such an emotionally driven memory that I can't give
24 100 percent. I mean I definitely would want to do that. I
25 know I've seen a person be accused wrongly, but like I said,

1 you know.

2 **Q.** You can see on both sides?

3 **A.** Yeah.

4 MS. KAHOLOKULA: I don't have any more questions.

5 BY MR. RICHARDS:

6 **Q.** Okay. So given your experience -- I guess maybe I should
7 ask you: The sexual abuse that you suffered it was by a
8 family member?

9 **A.** Friend of family.

10 **Q.** You were about how old at that time?

11 **A.** 13.

12 **Q.** Do you think that given what happened to you that you would
13 find yourself identifying with the alleged victim in this
14 case?

15 **A.** I think with the emotions that come with abuse, yes,
16 possibly. But I don't think that I can relate because if
17 they were younger, you know, my situation was that I didn't
18 tell anybody for years. So with it being a child that's
19 talking about it or people a child in the court is something
20 very different.

21 **Q.** So I take it from what you have said you have some concerns
22 about the nature of the subject matter of this case that
23 might trigger some emotional response in you?

24 **A.** Yes.

25 **Q.** You're concerned this emotional response will trigger and

1 then it might impede your ability to be fair?

2 **A.** It might make me more inclined to think that he's guilty. I
3 don't want to be -- I'm trying to be fair.

4 **Q.** So you're thinking if you had had this emotional response it
5 might make you more inclined to think that Mr. Ortiz-Lopez
6 is guilty of that charge?

7 **A.** Possibly, I've never been in this situation. I can't say.
8 I think it's appropriate to say this happened when I was
9 younger, even though it's been years. I've dealt with it.
10 There's still an emotional response.

11 **Q.** And if you were sitting here charged with this crime do you
12 think you would be comfortable with a juror such as yourself
13 with your frame of mind sitting in judgment on this case?

14 **A.** That is just an awful question. You keep asking me that.
15 If I were in his position, somebody like me, I'd lean more
16 towards yes just because I do try to be fair and impartial
17 and get all of the facts. I've seen a family member be
18 accuse wrongly. However, I'm very concerned about my -- I
19 guess I would be uncertain about it. I would be uncertain.
20 I can't say yes or no. I would be hesitant.

21 **Q.** So if you were in my client's position you would be a little
22 bit uncomfortable?

23 **A.** Possibly.

24 **Q.** More likely than not?

25 I think you also indicate you knew Ms. Starkovich?

1 **A.** Yeah.

2 **Q.** You would be inclined to accept her testimony as being true;
3 is that correct?

4 **A.** Now, that I've had time to think about, I don't think that
5 would be the case it's just hearing the name knowing that
6 person is going to be in the courtroom, that relationship
7 and the emotions from that relationship takes time to
8 process what that would look like. If it was very
9 convincing, yes. But I mean I know that's not what you want
10 to hear. You want to hear straightforward --

11 **Q.** Let me ask you another question. Overall between your views
12 about Ms. Starkovich and your concerns about having an
13 emotional response, given the nature of this case do you
14 have some reservation about your ability to give Mr. Ortiz a
15 fair shake in this case?

16 **A.** I'd have to say with the five counts and if I were to hear
17 the child speak and if a lot of the evidence is leaning
18 towards him looking guilty I would definitely have a hard
19 time. During the process of not being able to wait until my
20 emotional response, it would probably cause me to lean more
21 towards one way and have a difficult time waiting until the
22 very end.

23 **Q.** Thanks.

24 THE COURT: Do you have anything?

25 MS. KAHOLOKULA: No.

1 MR. RICHARDS: I'd make a motion to excuse for cause.

2 MS. KAHOLOKULA: I don't have any objection.

3 THE COURT: Okay. You are free to go then.

4 JUROR NO. 38: Alright.

5 THE COURT: Thank you for spending your day with us.

6 JUROR NO. 38: Thank you.

7 THE COURT: Okay. What I would like to do is -- I assume
8 you'll want a few moments to go over notes?

9 MR. RICHARDS: I would, Your Honor.

10 THE COURT: How much time do you want?

11 MR. RICHARDS: Maybe 10 minutes.

12 THE COURT: Let's start -- any other motions for cause?

13 MR. RICHARDS: Not from the Defense.

14 THE COURT: State?

15 MS. KAHOLOKULA: My only concern is 42 is flying out on
16 Tuesday. It might spill over into next week when they will still
17 be deliberating.

18 THE COURT: I don't think we'll get to her.

19 MR. RICHARDS: I wouldn't have any objection to releasing
20 her, Your Honor. I agree we won't get to her.

21 MS. KAHOLOKULA: Looks like we're at 37.

22 THE COURT: I have 36 or 37. Probably 37. You're right.
23 I think we're okay.

24 Okay. We will reconvene in about 10 minutes then, or do
25 it here? You may want to take a look at them.

1 MR. RICHARDS: Yes, that would help.

2
3 **(A BREAK IS TAKEN, BOTH COUNSEL, THE DEFENDANT, AND THE CLERK ARE**
4 **REASSEMBLED IN COURTROOM 2)**

5
6 * 5:28 PM *

7
8 THE COURT: Okay.

9 MR. RICHARDS: We're ready.

10 THE COURT: You ready?

11 MS. KAHOLOKULA: No response.

12 THE COURT: Come on up to sidebar, around here.

13
14 **(SIDEBAR CONFERENCE)**

15
16 THE COURT: Alright. The lawyers have selected the
17 jury. When I call your number or your name Kelli is going to seat
18 you. And we are moving to Courtroom 1 tomorrow, which is my
19 courtroom right below us. Kelli is going to want to take the 14
20 people who have been selected as jurors down there after you are
21 seated.

22 So Number 1 is Ms. Acuna. If you would come up please,
23 Kelli will show you where to sit.

24 Number 2 is it Mr. Wheless? Is that how you pronounce
25 it, sir?

1 JUROR NO. 2: Yes.

2 THE COURT: Number 3 is Mr. Mills.

3 Number 4 is Ms. Weston.

4 Number 5 is Mr. Walker, David Walker.

5 Number 6 is Jennifer Wilson.

6 Number 7 is Rick Moore.

7 Number 8 is Nancy Drake.

8 Number 9 is Stanley Couzens. Is that the correct
9 pronunciation, Couzens?

10 JUROR NO. 9: Yes, Couzens, aunts and uncles.

11 THE COURT: He's been asked that question before.

12 Number 10 is Ms. Basaar.

13 Number 11 is Mr. Kampen.

14 Number 12 is Ms. Callahan.

15 Number 13 is Ms. Larsen.

16 Number 14 is Ms. Rudd.

17 The rest of you are free to go. Thank you for your
18 willingness to serve. You need not call the jury line, and
19 please leave your number. I made a mistake. Ms. Larsen I'm
20 trading you for Ms. Justice. You almost got away. I apologize
21 for that. Thank you.

22 Okay. Kelli wants a few minutes with you downstairs
23 because she wants to just show you where you are going to be
24 living for the next week, so right below us in Courtroom 1. And
25 all I'm going to tell you -- I'm going to give a whole lot of

1 instructions tomorrow. But the only instruction I'm going to
2 give you tonight is don't discuss this with anybody or among
3 yourselves. Somebody at home is going to say tell me all about
4 your day. You're going to say just wonderful. I'll let you
5 know.

6 Two of you are alternates. We don't know who you are.
7 You're name will randomly be selected at the end of the trial.
8 We have to keep you all. Other than that, that's all.

9 Our normal hours are, as I said earlier, we may start as
10 early as 9:00, and we may go as late as 5:00. But what I hope to
11 generally do is to get you out of here at 4:30 possibly. We're
12 just trying to get this case done for you this week so you don't
13 have to go into next week, if we can avoid that. It might be
14 unavoidable. We're starting tomorrow morning at 10:00. So please
15 be here by, say, a quarter to 10:00. Kelli will tell you all
16 about parking, and coffee, and donuts, and all that stuff. If you
17 will accompany Kelli downstairs.

18 Anything we need to take up outside the presence of the
19 jury?

20 The record should reflect the clerk saved the Court's
21 bacon on that one. I accidentally called the wrong person as
22 Juror Number 13. Thank you very much, Becky. The record so
23 reflects that.

24 We'll see everybody tomorrow morning. There will be
25 another activity in my courtroom starting roughly at 9:00. I'm

1 going to get it done as close to 10:00 as I can.

2
3 **(PROCEEDINGS ENDING FOR THE DAY IN THIS MATTER AT 5:55 PM)**
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF WASHINGTON)

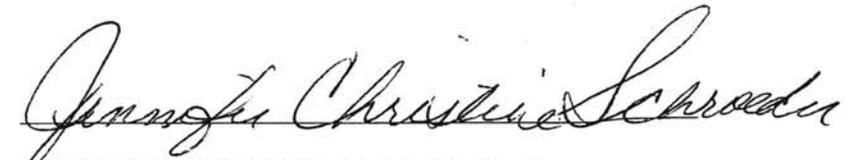
2) ss: C E R T I F I C A T E

3 COUNTY OF SKAGIT)

4
5
6
7 I, JENNIFER CHRISTINE SCHROEDER, Official Court
8 Reporter in and for the County of Skagit do hereby certify;

9
10 That the foregoing is a true and correct transcript of
11 the proceedings held on April 25, 2011.

12
13 Witness my hand on this 22nd day of May, 2012.

14
15
16
17 
18 JENNIFER CHRISTINE SCHROEDER,

19 CA CCR #10176, WA CCR #2221, RPR,
20 Official Court Reporter
21
22
23
24
25

Ramos Noel Ortiz-Lopez
WDOC 349223
Coyote Ridge Corrections Center
PO BOX 769 DA19
Connell, WA 99326

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2012 JUL 20 AM 11:56

July 18, 2012

Clerk, Washington State Court of Appeals Div. I
One Union Sq. 600
University St.
Seattle, WA 98101-4170

RE: *State v. Ortiz-Lopez*, COA No. 67357-2-I

Dear Clerk:

Enclosed please find defendant's Statement of Additional Grounds in the above name cause. Please provide this document to the panel of judges for consideration.

Sincerely,

Ramos Noel Ortiz-Lopez

cc. ENCLOSURE
file