31050-7-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

BENITO GOMEZ,

Appellant.

DIRECT APPEAL
FROM THE SUPERIOR COURT
OF WALLA WALLA COUNTY

RESPONDENT'S BRIEF

Respectfully submitted:

by: Teresa Chen, WSBA 31762
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I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Walla Walla County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

Respondent asserts no error occurred in the trial and conviction of the Appellant. The date of the offense may be corrected on the judgment and sentence.

III. ISSUES

1. Was there a courtroom closure where the judge described common courtroom courtesy, which discourages viewers from entering or exiting in the middle of testimony?
2. Is there sufficient evidence for the assaults against three victims where the Defendant shot at them, they ran from gunshots, and bullets flew past them as they ran? Is there sufficient evidence for the assault against a victim who was in the path of one of the bullet?
3. Should this Court review challenges to community custody conditions where no objection was made below which would have permitted the trial court to create a more perfect record describing

how each condition is crime-related?

IV. STATEMENT OF THE CASE

The Defendant Benito Gomez was charged with murder in the first degree and six counts of assault in the first degree. CP 145-48. Each of the counts included a firearm enhancement. CP 145-48. The prosecutor made the Defendant an offer to plead guilty to murder in the second degree and four counts of assault in the first degree with zero enhancements and a middle of the range offer, for a total of 307 months or approximately 25 years. CP 228-35; RP 124-25.

The Defendant went to trial and was convicted by jury of the second degree murder of Julian Martinez and six counts of first degree assault against six different victims along with seven firearm enhancements. CP 205-19. He was sentenced to the high end of the range on each count and received a sentence of 1378 months or almost 115 years. CP 238, 241.

On the afternoon of May 17, 2011, police responded to a shooting in a Walla Walla alley. RP 162-63.

Julio "Cartoon" Martinez and Miguel "Flaco" Saucedo were

returning from visiting their children when they were nearly hit by a car. RP 466. Mr. Martinez and Mr. Saucedo were members of the 13th Street gang (also known as the F-13s or Florencia 13). RP 432-33, 446, 456, 461. Mr. Saucedo recognized the passenger as Andres "Lion" Solis, who is a member of rival 18th Street gang. RP 196, 467. The driver was Michael "Kilo" Mercado, also affiliated with the 18th Street gang. RP 204, 476-77, 493, 546. Mr. Mercado testified that they intended to fight, but not until they had parked the car where it would not get vandalized. RP 476.

Mr. Martinez and Mr. Saucedo anticipated a fight, but nothing happened right away so they walked home. RP 467-68. There they ran into fellow 13th Street gang member Joseph "Stomper" de Jesus who was visiting with his two-year-old nephew. RP 433-36, 446. Believing that the rival gang was approaching, the three armed themselves with knives and a miniature bat and went outside. RP 433-36, 446, 455-58, 466. Jessica Glasby and David Cloyd were on the porch smoking when the 18th Street group arrived. RP 414-15, 421-22.

Mr. Solis and Mr. Mercado picked up Alberto "Sleeper" Ramirez, another member of the 18th Street gang, and they stopped to talk to a neighbor Sammy Deleon. RP 476-77, 545, 547. A fourth 18th Street

member, Defendant Benito "Drugs" Gomez, suddenly showed up. RP 477, 545-47. The Defendant was the only one with a bandana. RP 477, 480. Although Mr. Mercado asked him why he had it, the Defendant said "not one word," only shaking their hands and joining their party. RP 477, 480. Mr. Deleon testified that the Defendant nodded and the other three in his group left. RP 293.

The four members of the 18th Street gang, walked into the alley to engage in a fight with the rival gang. RP 196-98, 204, 213, 292, 294, 432, 546-47. Alberto "Sleeper" Ramirez, Michael "Kilo" Mercado, and Andres "Lion" Solis all testified that they picked up some rocks for the fight, but were not aware that anyone had a firearm until they heard a shot, saw Mr. Martinez fall, and saw the Defendant pointing the gun. RP 199, 201-03, 479-80, 550 (unlike Ramirez and Mercado, Solis denied seeing the Defendant with a gun), 554. Mr. Ramirez, Mr. Mercado, and Mr. Solis then took off running. RP 199-200, 283-85, 483, 548.

Joseph "Stomper" de Jesus and Miguel "Flaco" Saucedo also saw the shooter appear from behind the three others. RP 436, 459, 469. Julio Martinez was shot where he stood. RP 442, 482. The shooter kept coming and shot Mr. Martinez again as he lay on the ground. RP 422-24. Mr. Mercado described it as a point blank execution. RP 482.

Ms. Glasby, Mr. Cloyd, Mr. de Jesus, and Mr. Saucedo ran up the stairs and into the apartment as the bullets flew. RP 415-18, 422, 436-37, 460. The shooter kept running toward the fleeing group, "accelerated," shooting after them and into the hallway of the building. RP 425, 482. Mr. Saucedo was first up the stairs and saw the Defendant pursuing and cornering and shooting through the door. RP 460. He testified he was shot at two times with the bullets coming "right in [his] face" forcing him to take a step backwards when climbing the stairs. RP 461. Mr. de Jesus saw a bullet hit the stairs as he ran. RP 437. Mr. Cloyd was pushing Ms. Glasby in front of him and was the last to clear the stairs. RP 422, 424, 426. Mr. Cloyd testified that the bullets were coming into the building after them, hitting the walls and stairs as the group was racing up the stairs. RP 427-28. Then the shooter turned and ran away. RP 461-62.

Slavic Tkachev saw three men running from the alley, empty then except for the expiring Mr. Martinez. RP 283-85. He ran to assist Mr. Martinez and called 911. RP 283-84. Mr. Saucedo and Mr. de Jesus returned to the alley but were unable to help their friend. RP 438, 441-44, 462-63, 469. Julio Martinez was dead, with gunshot wounds to his arm and head. RP 164, 166, 322, 325.

While the Defendant's own gang members identified him as the

shooter, many neighbors also identified the Defendant. There was Sammy Deleon, Braulio Lopez, Antonio Deleon, Robert Fruit, and Anthony Moore. RP 276, 288, 293, 296, 392-95, 398.

As the Defendant ran off, he tried to get Mr. Mercado to hold his gun. RP 484. Mr. Solis' girlfriend Elida Valverde Morales saw the Defendant running down the street, and he jumped into her car and ordered her to "[d]rive, just go"– refusing to explain what had happened or where he wanted to go. RP 358-59, 361. He was holding a blue bandana. RP 360. After a few blocks, she threw him out of the car, and he took off running. RP 360.

Roberto Cuevas and Patricia Nelson were sleeping in an apartment at the time of the shooting. RP 232-33, 235. They woke to the noise and later discovered a bullet had pierced the door and lodged in Ms. Nelson's nearby hoodie sweater. RP 233. Ms. Nelson testified that she woke to a voice saying, "they are coming" and sat up from the bed during the sound of gunshots. RP 236-37. She testified that she jumped behind Mr. Cuevas. RP 236. If it weren't for the hoodie, the bullet would have continued in a straight line from the door to the bed and hit her in the forehead. RP 236.

At the half-time motion, the Defendant challenged the evidence for

some of the assault charges. RP 559-65. The Defendant conceded that there was sufficient evidence for the assaults on Patricia Nelson and Miguel Saucedo, but asked for dismissal of the other assault charges. RP 563-64. The motion was denied. RP 569-71, 579. The issue is renewed on appeal. Appellant's Brief at 15.

Prior to trial, the Defendant made a motion to change venue based on pretrial publicity and the security presence both in the courthouse and directly around the Defendant. RP 141-42. In ruling on the motion, the Honorable Judge Schacht explained the security precautions which had been taken.

A month before trial and a few days after the Trayvon Martin killing, a store owner in Walla Walla had shot and killed intruder Cesar Chavira. RP 156. Both nationally and locally, the public was engaged in vigorous debate on race issues, the castle doctrine, and stand-your-ground laws. Locally, there had been protests or tributes, and the judge was not sure whether or how the highly charged and emotional issues might "flow over" into the trial. RP 152-53 (from another courtroom), 156. But there had already been public protests in front of the courthouse in support of the Defendant "up to and including Monday night," two days before trial.

RP 148.

This trial also had security issues related to the gang rivalry. The judge was concerned that a trial regarding a rival gang confrontation created a risk of responsive violence, and the court noted that there was local history of this response. RP 150. Both the judge and prosecutor noted that there was an unusual number of spectators present for this trial. RP 147, 150.

Judge Schacht acknowledged his shared responsibility in creating a safe environment for the trial. RP 148. He was acutely aware that three months before trial, a judge had been stabbed and a sheriff's deputy shot in the Grays Harbor County Courthouse in Montesano, Washington. RP 155. The judge had instructed the sheriff to take appropriate security precautions related to the needs of this particular trial. RP 158.

One of the jurors had asked to be excused out of concern for her safety, and the judge was concerned that the jury not be intimidated or influenced by public demonstrations. RP 145, 149, 151. He arranged for the jury panel to park off-site and be transported to and from the courthouse. RP 151.

In this discussion, the judge explained that the precautions were minimally intrusive and not unlike standard courtroom procedures. RP

153. The Defendant would not be shackled or otherwise visibly restrained and he would be provided a writing instrument and paper. RP 154. Also other incarcerated witnesses would not be shackled and would be provided street clothes. RP 154-55. The judge then went on to explain standard courtroom protocol. RP 153. Spectators are instructed to leave their weapons, cell phones, and other electronic devices in their cars. *Id.* There is a courtroom dress code. *Id.* Parties are expected to arrive on time. *Id.* And spectators are expected not to disrupt testimony by entering and exiting. *Id.*

The Defendant appeals the last portion of this general protocol as a violation of the public trial right.

V. ARGUMENT

A. THE GENERAL PROTOCOL AGAINST INTERRUPTION OF TESTIMONY IS NOT A COURTROOM CLOSURE.

The Defendant alleges a violation of the public trial right. The State disagrees that common expectations for decorum in a courtroom are equivalent to a courtroom closure, which would trigger a *Bone-Club* hearing.

It is fundamental that a trial court is vested with inherent power and broad discretion to provide for order and security in the courtroom.

State v. Hartzog, 96 Wn.2d 383, 401, 635 P.2d 694 (1980); *State v. Sanchez*, 171 Wn. App. 518, 568, 288 P.3d 351 (2012).

> We review trial management decisions for abuse of discretion. "A trial judge must exercise discretion in determining the extent to which courtroom security measures are necessary to maintain order and prevent injury." But " '[c]lose judicial scrutiny' is required to ensure that inherently prejudicial measures are necessary to further an essential state interest."

State v. Jaime, 168 Wn.2d 857, 865, 23 P.3d 554 (2010) (citations omitted).

The Defendant focuses on the judge's strict language: "We do not allow people to come into the courtroom after the court is in session for not only security reasons but as well as the distraction that causes when people come in." RP 153. To read this language as a courtroom closure is to completely ignore the context. The court was not creating some new rule, but simply giving context to the ruling denying the motion to change venue. The court was explaining how the presence of law enforcement in the courthouse was simply part of the regular culture of a courthouse, as normal and necessary as rules of decorum like a dress code and rules against public interruption of proceedings.

The protocol described here is no different from what is expected of any theater attendee. Attendees are discouraged from entering or

exiting in such a way as would disrupt proceedings. This is what the judge described.

> ... when people come into the courtroom after the matter is in session, they stop listening to the attorneys or to the witness who is testifying and they immediately direct their attention to the person that is coming in the door. And even though that person may be very innocent in coming in late, that distracts from the proceeding. And you run the potential [risk] that whatever is being said or addressed by the testimony, by the questions, by the Court's instructions is not going to be heard by the jury or members of that jury.

RP 153-54. The court emphasized this common sense decorum, because the disruptive effect of late entrants is especially disruptive in the Walla Walla courtroom due to its particular layout. The court discouraged rude behavior which would disrupt proceedings.

The judge described other standard rules of decorum, regarding cell phones and appropriate dress. RP 153. The rules the judge was describing come from the Washington Courts' "Information for Self-Represented Persons"[1] which is linked to from the Walla Walla clerk's page.[2] At section D of the linked .pdf, the public is advised not to interrupt another person who is speaking to the judge. Judge Schacht further explained that interruptions can be the result of entering and

[1] http://www.courts.wa.gov/programs_orgs/pos_bja/ptc/documents/SuperiorCourtProSeLitigantInformation.pdf
[2] http://www.co.walla-walla.wa.us/departments/clk/index.shtml

exiting during testimony.

The Defendant cites *State v. Lormor*, 172 Wn.2d 85, 257 P.3d 624 (2011) in support of his argument. There, the court did not permit a particular member of the public to attend a criminal trial. Specifically, the court excluded the defendant's four-year-old daughter, who was confined to a wheelchair and on a ventilator, because she would be a distraction. *State v. Lormor*, 172 Wn.2d at 89. In the *Lormor* case, the Washington Supreme Court defined a closure. "[A] 'closure' of a courtroom occurs when the courtroom is completely and purposefully closed to spectators so that no one may enter and no may leave". *State v. Lormor*, 172 Wn.2d at 93. The court reviewed, *Presley v. Georgia*, 558 U.S. 209, 130 S.Ct. 721, 175 L.Ed.2d 675 (2010), where a closure was found in a general practice of excluding ***all spectators*** from jury selection. *State v. Lormor*, 172 Wn.2d at 91.

Ultimately, the *Lormor* court found that there had been no closure where the trial was conducted in a courtroom open to the public generally. *State v. Lormor*, 172 Wn.2d at 92-93. No class of spectator was excluded as the defendant's family had been in *In re Orange*, 152 Wn.2d 795, 100 P.3d 291 (2004). No entire portion of proceedings was closed to the public as the suppression hearing had been *State v. Bone-Club*, 128 Wn.2d

254, 906 P.2d 325 (1995) or had been conducted in an inaccessible location (such as a judge's chambers) as in *State v. Momah*, 167 Wn.2d 140, 217 P.3d 321 (2009) and *State v. Strode*, 167 Wn.2d 222, 217 P.3d 310 (2009). The defendant was not excluded from proceedings as had happened in *State v. Easterling*, 157 Wn.2d 167, 137 P.3d 825 (2005).

The common sense rules of decorum repeated by the trial court in the instant case do not effectuate a general closure. All parts of the trial were open to the public. The public was present – in significant numbers. The public could enter and exit. But the public was not permitted to be disruptive. The only restriction on spectators was a normal, common, and appropriate exercise of the court's discretion, namely an advisement that spectators should act with good sense so as not to be disruptive of proceedings.

When the trial court exercises its inherent power to maintain order and decorum in a courtroom by warning against the interruption of proceedings by the public entering and exiting in the middle of testimony at whim, there is decorum and order - not a closure.

B. THERE IS SUFFICIENT EVIDENCE FOR THE ASSAULT CONVICTIONS.

The Defendant challenges the evidence for the assault convictions

regarding Mr. de Jesus, Ms. Glasby, Mr. Cloyd, and Mr. Cuevas. Appellant's Brief at 15. The evidence is sufficient for the convictions.

The standard for such a challenge is whether, after viewing evidence in the light most favorable to the state, any rational trier of fact could have found the facts beyond a reasonable doubt. *State v. Hepton*, 113 Wn. App. 673, 681, 54 P.3d 233 (2002); *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). The standard admits the truth of the state's evidence *and* all inferences that can reasonably be drawn from this evidence in the state's favor and interpreted most strongly against the defendant. *State v. Hepton*, 113 Wn. App. at 681; *State v. Schelin*, 147 Wn.2d 562, 573, 55 P.2d 632 (2002); *Jackson v. Virginia*, 443 U.S. at 319, 99 S.Ct. at 2789.

The jury was instructed on the definition of assault:

> An assault is an intentional [ ] shooting of another person, with unlawful force, that is harmful or offensive regardless of whether any physical injury is done to the person.
>
> ....
>
> An assault is also an act, with unlawful force, done with intent to inflict bodily injury upon another, tending but failing to accomplish it and accompanied with apparent present ability to inflict the bodily injury if not prevented. It is not necessary that bodily injury be inflicted.
>
> An assault is also an act, with unlawful force, done

> with the intent to create in another apprehension and imminent fear of bodily injury even though the actor did not actually intend to inflict bodily injury.

CP 191 (jury instruction no. 13). While the Defendant prefers to quote the language in *State v. Elmi*, 166 Wn.2d 209, 215, 207 P.3d 439 (2009) (Appellant's Brief at 16-17), this case notes that the WPIC provides the same definitions. *State v. Elmi*, 166 Wn.2d at 215-16.

At trial, defense counsel argued that Mr. de Jesus, Ms. Glasby, and Mr. Cloyd were differently situated from Mr. Saucedo, because Mr. Saucedo specifically testified that he was shot at while he ducked behind a door. RP 563. RP 568-69. There is no distinction between Mr. Saucedo and these three.

All four were similarly situated. All four were in the alley. All four immediately took flight up the same stairs and through the same door. The Defendant shot in the direction of all four, as they were all four running in the same direction. The bullets flew past them and impacted along their same path of flight.

This is an assault under multiple definitions. The Defendant shot at them. Done. By shooting at four persons along the same path of flight, he acted with intent to inflict bodily injury upon them and had the present apparent ability to do so. Done. Their flight indicates that they were all

four placed in apprehension of harm. Because all four were taking the identical escape route, the Defendant intended to cause them to believe that he would shoot them. Done. Just as there is indisputable evidence of the assault on Mr. Saucedo, there is sufficient evidence of the Defendant's assault on Mr. de Jesus, Ms. Glasby, and Mr. Cloyd.

The Defendant also challenges the sufficiency of the evidence for the assault on Mr. Cuevas while conceding the assault on Ms. Nelson. But Mr. Cuevas is similarly situated to Ms. Nelson. They were both in the same identical location, in bed in the same room, directly across from the door where the bullet entered. They were both awakened by the noise. Someone was coming. Ms. Nelson testified that but for the hoodie, she would have been shot. She was startled by the noise and bolted upright. While Mr. Cuevas was sleeping more soundly and less aware of which noise awakened him, he was actually sitting up before Ms. Nelson, such that she hid behind him. Their positions necessarily indicate that Mr. Cuevas would have been shot first had the bullet's path not been impeded. They were both equally shot at.

As the Defendant acknowledged, the law of transferred intent means that the Defendant does not have to have known that Mr. Cuevas and Ms. Nelson were in danger or even present. RP 561-62; CP 198 (jury

instruction no. 20). His intent to harm the fleeing four is transferred to these two. He actually shot at Mr. Cuevas and Ms. Nelson, although intending to shoot at the other four. This meets the definition of assault.

Both at trial and on appeal, the Defendant has referenced *State v. Elmi*, 166 Wn.2d 209, 207 P.3d 439 (2009) on this point. This case holds:

> Where a defendant intends to shoot into and to hit someone occupying a house, a tavern, or a car, she or he certainly bears the risk of multiple convictions when several victims are present, regardless of whether the defendant knows of their presence. ***And, because the intent is the same, criminal culpability should be the same where a number of persons are present but physically unharmed.***

State v. Elmi, 166 Wn.2d at 218 (emphasis added). This holding supports conviction. The Defendant relies upon the reasoning in Justice Madsen's dissent, which, while not without appeal, is not the law.

C. THE COURT MADE NO ERROR IN IMPOSING CRIME RELATED PROHIBITIONS.

The Defendant challenges the imposition of certain community custody conditions. Appellant's Brief at 22-25. The Defendant acknowledges that there was no timely objection to the conditions. Appellant's Brief at 23.

The court rule allows an appellate court to refuse to review any claim of error not raised in the trial court. RAP 2.5(a). This rule reflects a

policy encouraging ***the efficient use of judicial resources*** and discouraging a late claim that ***could have been corrected with a timely objection***. *State v. Scott*, 110 Wn.2d 682, 685, 757 P.2d 492 (1988). Case law supports the refusal to review an unpreserved claim of error. *State v. Blazina*, -- Wn. App. --, -- P.3d --, 2013 WL 2217206, (Wn. App. May 21, 2013) (No. 42728-1-II) (A defendant's failure to object at his sentencing hearing to the court's finding that the defendant has the current or likely future ability to pay legal financial obligations, can preclude appellate review of the sufficiency of the evidence that supports the finding); *State v. Danis*, 64 Wn.App. 814, 822, 826 P.2d 1015 (1992), *review denied*, 119 Wn.2d 1015, 833 P.2d 1389 (1992) (refusing to hear a challenge to the restitution order when the defendant Danis objected to the restitution amount for the first time on appeal).

The Defendant urges this Court to review the claim anyway, arguing that the sentence is illegal or erroneous. Appellant's Brief at 23, citing *State v. Bahl*, 164 Wn.2d 739, 744, 193 P.3d 678 (2008). While a crime-related prohibition is expressly permitted under RCW 9.94A.703(3)(f), the Defendant argues that these conditions are not crime-related. Appellant's Brief at 23-25. However, in this case, a timely objection would have allowed the court to make abundantly clear how

these prohibitions are crime-related. Therefore, the Court should decline to review this claim.

The first condition challenged regards a prohibition against attendance in a court proceeding where the Defendant is not a party or subpoenaed as a witness. CP 245. This condition prevents the Defendant from intimidating witnesses or otherwise improperly influencing legal processes which do not involve him.

The offenses arose out of a gang conflict between the Florencia 13 gang and the 18th Street gang. CP 125. The prosecutor argued that gang evidence was "part and parcel of this case," the very motive for the act. RP 132-33. And this was a crime of intimidation. The gang culture from which the crime came is a culture of witness intimidation. RP 497 (Solis held a gun to the Defendant's head, threatening to kill him if he snitched). Mr. Ramirez was cast out of the 18th Street gang and had to move away and hide, because he cooperated with police and testified against the Defendant. RP 217. Witness intimidation is a significant concern in the prosecution of gang cases. Therefore, the prohibition here is most definitely crime-related.

The record in this case shows a heightened concern for public safety around the trial. There was a need for extra security around this

trial. RP 142-44, 158. Leading up to the trial, there had been public displays of support for the Defendant. RP 148. One potential juror asked to be excused, because she was afraid. RP 143. So concerned was the court with juror safety that the jurors were instructed to park off-site and were transported as a group to and from the courthouse. RP 151.

Given this record, the Defendant's failure to object to the condition is cause to reject his challenge made for the first time on appeal. It is apparent that the superior court had specific crime-related reasons for imposing this condition. The gang activity in the county which erupted in this crime persisted around the legal response, heightening security concerns around the trial.

The second challenged condition regards the possession of wireless communication devices. CP 245. Again, because there was no timely objection, the trial court has not had an opportunity to make a record defending this condition. RAP 2.5(a) is intended to effectuate an efficient use of judicial resources. Barring a timely objection, the next best time to challenge the condition would be when it is enforced if and when the Defendant is released to community supervision. Until that time, this Court should decline to review the claim.

The third challenged condition regards the possession of graffiti.

CP 245. This crime was the result of gang membership and the enforcement of boundaries between gangs. Gangs are inherently and aggressively territorial to such a degree that they mark their territory with graffiti after crafting and practicing their signature mark. Therefore, the possession of this rehearsed graffiti would be indicative of the Defendant's continued gang membership.

The fourth challenged condition regards fraternization with those partaking in illegal substances. CP 246. Mr. Mercado testified that his role or affiliation with the gang was in narcotics distribution, thus the nickname "Kilo." RP 500-01. Gang boss Mr. Solis testified that the Defendant's gang moniker was "Drugs," which likewise suggests the Defendant's role in the gang. RP 500-01, 545-46. To prevent the Defendant from returning to the gang life which led to these offenses, this condition is appropriately crime-related.

D. THE SCRIVENER'S ERROR ON THE JUDGMENT AND SENTENCE SHOULD BE CORRECTED WITH THE CORRECT OFFENSE DATE.

The State agrees with the Defendant that the judgment and sentence should be corrected as to the offense date. As the Defendant notes, the recitation of the offenses in the judgment and sentence indicates

that the "Date of Crime" was May 17, 2012. Appellant's Brief at 25, citing CP 237-38. The correct date is May 17, 2011. CP 146-47, 189, 192-97, 206-12.

VI. CONCLUSION

Based upon the forgoing, the State respectfully requests this Court affirm the Appellant's conviction.

DATED: June 17, 2013.

Respectfully submitted:

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Deputy Prosecuting Attorney

Jill S. Reuter <jill@gemberlaw.com> <admin@gemberlaw.com> Benito Gomez, DOC # 358688 Washington State Penitentiary 1313 North 13th Avenue Walla Walla, WA 99362	A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED June 17, 2013. Pasco, WA **Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201**

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

STATE OF WASHINGTON, Respondent,	)	NO. 31050-7
v.	)	STATEMENT OF ADDITIONAL AUTHORITIES
BENITO GOMEZ , Appellant.	)	

Pursuant to RAP 10.8, the State respectfully cites the following as additional authority in relation to the Appellant's public trial challenge and relative to the "experience and logic" test:

> *McCrae v. State*, 908 So. 2d 1095 (Fla. App. 2005) (Because no one was excluded from the courtroom when the judge ordered the doors locked to prevent distractions, defendant's Sixth Amendment right to a public trial was not violated; controlling ingress and egress to the courtroom was not a "closure," but a reasonable restriction upon the time and manner of public access to the trial);
>
> *People v. Woodward*, 4 Cal. 4th 376, 841 P.2d 954, 14 Cal. Rptr. 2d 434 (1992) (holding that the trial court's action in locking courtroom doors and posting "do not enter" sign for about 90 minutes while prosecutor completed closing argument was not a closure and did not violate defendant's right to public trial);
>
> *Davidson v. State*, 591 So.2d 901, 903 (Ala.Crim.App.1991) (observing a trial court's inherent power to preserve order and decorum in the courtroom and holding there is no constitutional violation where court ordered doors locked to prevent noise in hallway from disrupting the proceedings while people entered and exited the courtroom);
>
> *Spencer v. Commonwealth*, 393 S.E.2d 609, 614 (Va. 1990) (holding "there is no constitutional violation where

members of the public and the news media are actually in attendance, having entered before" the locking of the doors);

People v. Colon, 71 N.Y.2d 410, 526 N.Y.S.2d 932, 521 N.E.2d 1075, 1079 (1988) (Controlling ingress and egress of tardy spectators to the courtroom does not seek to exclude the public or frustrate the salutary purposes of public scrutiny and is not a "closure," but a "reasonable restriction upon the time and manner of public access to the trial.");

State v. Williams, 742 S.W.2d 616, 621 (Mo. App. 1987) (After the jury complained of being unable to hear witnesses because of people talking outside the courtroom and that noise becoming bothersome as persons would come in and out of the courtroom into the hallway, the court's direction to a deputy to permit spectators to enter and exit only during period of recess was held not to be a "closure" of the trial and to not have denied the defendant an open and public trial.)

DATED June 24, 2013.

Teresa Chen, WSBA #31762
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Jill S. Reuter <jill@gemberlaw.com> <admin@gemberlaw.com>	A copy of this brief was sent via U.S. Mail or via this Court's e-service by prior agreement under GR 30(b)(4), as noted at left. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED June 24, 2013, Pasco, WA **Original filed at the Court of Appeals, 500 N. Cedar Street, Spokane, WA 99201**