

FILED

MAY 27, 2014

Court of Appeals
Division III
State of Washington

NO. 31859-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

STEVEN OSTER, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 13-1-00254-3

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

MEGAN A. WHITMIRE, Deputy
Prosecuting Attorney
BAR NO. 29933
OFFICE ID 91004

7122 West Okanogan Place
Bldg. A
Kennewick WA 99336
(509) 735-3591

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

I. RESPONSE TO ASSIGNMENT OF ERRORS 1

**A. The trial court’s procedure for exercising
peremptory challenges did not violate the
defendant’s right to a public trial.** 1

**B. The defendant’s sentence exceeds the statutory
maximum.**..... 1

II. STATEMENT OF FACTS 1

III. ARGUMENT 1

**A. The trial court’s procedure for exercising
peremptory challenges did not violate the
defendant’s right to a public trial.** 1

**B. The defendant’s sentence exceeds the statutory
maximum.**..... 2

IV. CONCLUSION 2

TABLE OF AUTHORITIES

WASHINGTON CASES

State v. Love, 176 Wn.App. 911, 309 P.3d 1209 (2013) 1

I. RESPONSE TO ASSIGNMENT OF ERRORS

- A. **The trial court's procedure for exercising peremptory challenges did not violate the defendant's right to a public trial.**
- B. **The defendant's sentence exceeds the statutory maximum.**

II. STATEMENT OF FACTS

The State agrees with the Statement of the Case included in the Appellant's Brief at pages 2 – 6.

III. ARGUMENT

- A. **The trial court's procedure for exercising peremptory challenges did not violate the defendant right to a public trial.**

The defendant argues that the procedure used by the trial court to allow the parties to exercise preemptory challenges by “silently passing a piece of paper back and forth,” constituted a violation of his right to a public trial. However, this argument has already been considered and rejected by Division III in *State v. Love*, 176 Wn.App. 911, 309 P.3d 1209 (2013). The defendant's argument lacks merit and his conviction should be affirmed.

B. The defendant's sentence exceeds the statutory maximum.

The State agrees with the defendant, pursuant to the authority cited in his brief at pages 16 – 18, that remand for resentencing is appropriate.

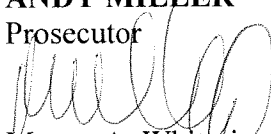
IV. CONCLUSION

Based upon the arguments above, the defendant's conviction should be affirmed; however, because the defendant's sentence exceeds the statutory maximum, this matter should be remanded to the trial court for resentencing.

RESPECTFULLY SUBMITTED this 27th day of May, 2014.

ANDY MILLER

Prosecutor



Megan A. Whitmore, Deputy

Prosecuting Attorney

Bar No. 29933

OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

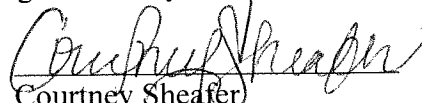
Jennifer J. Sweigert
Nielsen, Broman & Koch, PLLC
1908 E. Madison Street
Seattle, WA 98122

E-mail service by agreement
was made to the following
parties:
Sloanej@nwattorney.net

Steven Oster
2013 Tinkle Street
Richland, WA 99354

U.S. Regular Mail, Postage
Prepaid

Signed at Kennewick, Washington on May 27, 2014.


Courtney Sheaffer
Legal Assistant