706390

706390

NO. 70639-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

BAHADAR SINGH,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE BARBARA LINDE, JUDGE

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

To establish a violation of public trial rights, a defendant must show: 1) that experience and logic illustrate that the challenged event implicated the core values of the public trial right, and 2) if so, that the trial court failed to conduct a Bone-Club analysis and make findings on the record before closing the courtroom. During jury selection, both counsel wrote peremptory challenges on paper, the court then read aloud the list of challenged jurors in the jury box, filled those vacancies with non-challenged jurors, and dismissed the remaining venire members. The list of challenges was filed with the Court. Is the public trial right satisfied when the entire jury selection process, including the exercise of peremptory challenges, occurred in open court and the peremptory challenge list was filed in the public record?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

The State charged Bahadar Singh with six counts of unlawful issuance of checks or drafts (counts II, III, IV, V, VI, and VII) and

one count of conspiracy to commit first degree theft (Count VIII).[1] CP 1-5, 8-11, 76-79. The Honorable Barbara Linde received the case for trial on June 3, 2013. 1RP 4.[2] On June 6, 2013, a jury found Singh guilty as charged on all 7 counts. CP 52-57; Supp. CP __ (Sub. 49, Verdict Form C); 3RP 162-63.

On July 8, 2013, the trial court sentenced Singh through a first time offender waiver to 90 days on each count to run concurrently, including 45 days of a work/education release program followed by 45 days on electronic home detention. CP 66-72; 3RP 176-77. Singh timely appealed. CP 74.

2. SUBSTANTIVE FACTS.

a. Facts Of The Case.

On October 1, 2011, Bahadar Singh and his wife, Gurbux Kaur, opened a business account with Wells Fargo. 2RP 15, 30-31, 77-78. The business' name on the bank account was Raj and Sons LLC, doing business as Raj Groceries. 2RP 30, 35, 124. The business address provided for this account was the address for

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[1] Count I was a first degree theft charge on Gurbux Kaur, Singh's wife. CP 8, 76. Police could not locate Kaur. 2RP 100, 126. Singh told his former employer that Kaur was in India at the time of the trial. 3RP 55.

[2] The Verbatim Report of Proceedings will be referred to as follows: 1RP (June 3, 2013); 2RP (June 4, 2013); 3RP (June 5, June 6, & July 8, 2013).

Taj Groceries, a market where Singh used to work. 2RP 123-24; 3RP 28-30, 41.[3] Kaur was the only authorized signer on the account. 2RP 30-31, 46.

On February 8, 2012, Singh and his wife opened a checking account at Banner Bank. 2RP 87-88, 113; 3RP 13-15, 39. Again, Kaur was the only signer on the account. 2RP 113. The opening deposit for the checking account was $450.00 and there were no subsequent deposits. 2RP 87; 3RP 18-19. After the initial deposit, Kaur made only one purchase, which was for bank checks. 2RP 87, 143; 3RP 19.

Between March 8, 2012, and March 10, 2012, fourteen checks, totaling $79,050 were deposited in Kaur's Wells Fargo account. 2RP 39-40. Kaur deposited three of the checks, and Singh deposited six; the other transactions were not captured on surveillance video. 2RP 21-23, 44-45, 75, 78, 81, 83-86, 102; Exhibits 1-23. Almost every deposit occurred at a different location, even those that were within minutes of each other. 2RP 83-86. Each of the checks was drawn on Kaur's Banner Bank account, which did not have enough funds to cover any of the checks.

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[3] The owner of Taj Groceries did not give Singh and Kaur permission to use his business' address for "Raj Groceries." Id.

2RP 73-74; 3RP 20. In the same three-day period, Kaur made over $33,000 in withdraws and purchases. 2RP 40, 48, 113-14.

When Singh was arrested by Bellevue Police, he was wearing the same jacket and hat as seen in the six photographs taken from the Wells Fargo security footage. 2RP 45, 95, 100-02. The phone number associated with Singh's cell phone was the same, and only, phone number provided on the Wells Fargo account application. 2RP 103-04, 125.

b. Peremptory Challenges.

On the first day of Singh's trial, the trial court explained the procedure for making peremptory challenges.

> Peremptory challenges...happen at the end of your time, and the way this Court handles it is to have the parties do their peremptory challenges at counsel table by passing back and forth a clipboard with a form on it that will have – what you have is seven peremptories each... So, after you have passed the clipboard back and forth and made your decisions, then I will announce them.

1RP 13.

After each counsel had fully questioned prospective jurors in open court, the parties prepared to exercise peremptory

challenges. 1RP 101. The judge told the jury that the attorneys would be consulting their notes, making decisions, informing the court, and that she would then inform the jurors about the selections. Id. The prosecutor and defense counsel exercised their peremptory challenges by writing down the challenged jurors on a piece of paper passed between them. CP 75; 1RP 13, 101-02.

The trial court then read aloud on the record the list of seven jury venire members in the jury box who had been excused by the parties, but did not identify who struck which prospective juror. 1RP 102. The court filled those spots with the next seven jurors who had not been challenged. 1RP 103. After thirteen non-challenged jurors were seated in the jury box, all of the remaining jury venire members were excused. 1RP 103-04. The thirteen members of the jury were sworn in to hear Singh's case. 1RP 103-04. On that same day, the court filed the paper on which peremptory challenges were listed. CP 75.

C. ARGUMENT

THE TRIAL COURT'S PEREMPTORY CHALLENGE PROCESS PRESERVED THE FOUNDATIONAL PRINCIPLE OF AN OPEN JUSTICE SYSTEM.

Singh contends that the trial court violated his constitutional right to a public trial by not conducting a Bone-Club[4] analysis before taking "peremptory challenges of prospective jurors at sidebar,"[5] and that, because of the manner in which peremptory challenges were made, it was not readily apparent to the jurors or the public which party made which peremptory strike. Appellant's Brief at 4, 15. This argument should be rejected. Voir dire was conducted in open court. The public trial right did not attach to the identity of the lawyer exercising any given peremptory challenge, because the identity of the challenging lawyer does not implicate the core values of the public trial right. Therefore, Singh has not established that a closure or public trial right violation occurred.

Whether the constitutional right to a public trial has been violated is a question of law, subject to de novo review on direct appeal. Bone-Club, 128 Wn.2d at 256. A criminal defendant's right to a public trial is found in article I, section 22 of the Washington

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[4] State v. Bone-Club, 128 Wn.2d 254, 256, 906 P.2d 325 (1995).

[5] The record reflects the attorneys were to write down peremptory challenges at their respective counsel tables, not at sidebar. 1RP 13.

State Constitution and the Sixth Amendment to the United States Constitution, both of which provide a criminal defendant with a "public trial by an impartial jury." Additionally, article I, section 10 of Washington's Constitution provides that "[j]ustice in all cases shall be administered openly," granting both the defendant and the public an interest in open, accessible proceedings. Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 36, 640 P.2d 716 (1982). There is a strong presumption that courts are to be open at all stages of trial. State v. Sublett, 176 Wn.2d 58, 70, 292 P.3d 715 (2012). The right to a public trial ensures a fair trial, reminds the prosecutor and judge of their responsibilities to the accused and the importance of their functions, encourages witnesses to come forward, and discourages perjury. State v. Brightman, 155 Wn.2d 506, 514, 122 P.3d 150 (2005).

However, the public trial right is not absolute; a trial court may close the courtroom under certain circumstances. State v. Momah, 167 Wn.2d 140, 148, 217 P.3d 321 (2009); State v. Strode, 167 Wn.2d 222, 226, 217 P.3d 310 (2009). The public trial right may be overcome to serve an overriding interest based on findings that closure is essential and narrowly tailored to preserve

higher values. Press-Enterprise Co. v. Superior Court of California, 464 U.S. 501, 510, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984) (Press I). Additionally, trial courts have wide discretion to manage the voir dire processes, and relief will be granted on appeal only if the defendant can show error and prejudice. State v. Davis, 141 Wn.2d 798, 825, 10 P.3d 977 (2000).

The first step in determining whether a defendant's constitutional right to a public trial was violated is to determine whether a closure occurred. Sublett, 176 Wn.2d at 71. A closure of a trial "occurs when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave." Id. (quoting State v. Lormor, 172 Wn.2d 85, 93, 257 P.3d 624 (2011)). However, not every interaction between the court, counsel, and defendants will implicate the right to a public trial, or constitute a closure if the courtroom is closed to the public during the interaction. Sublett, 176 Wn.2d at 71.

If, in experience and logic, the core values of the public trial right are implicated by a particular proceeding, then the public trial right attaches to that proceeding. Press-Enterprise Co. v. Superior Court of California, 478 U.S. 1, 8-10, 106 S. Ct. 2735, 92 L. Ed. 2d 1 (1986) (Press II). The first part of the test, the experience prong,

asks "whether the place and process have historically been open to the press and general public." Id. at 8. The second part of the test, the logic prong, asks "whether public access plays a significant positive role in the functioning of the particular process in question." Id. If the answer to both is yes, the public trial right attaches. Id. at 7-8.

If the public trial right attaches, the trial court, before closing the proceeding to the public, is required to weigh the five Bone-Club criteria and enter specific findings on the record.[6] Bone-Club, 128 Wn.2d at 258-59. If it is determined upon appeal that a closure occurred at trial, the court then looks to whether the trial court properly conducted a Bone-Club analysis before closing the courtroom. If the trial court failed to do so, then a per se prejudicial public trial violation has occurred, even where the

[6] Those five criteria are: (1) the proponent of closure must show a compelling interest, and if based on anything other than defendant's right to a fair trial, must show serious and imminent threat to that right; (2) anyone present when the closure motion is made must be given opportunity to object; (3) the least restrictive means available for protecting the threatened interests must be used; (4) the court must weigh the competing interests of the proponent of the closure and the public; and (5) the order must be no broader in its application or duration than necessary to serve its purpose. Bone-Club, 128 Wn.2d at 258-59.

defendant failed to object at trial.[7] State v. Wise, 176 Wn.2d 1, 16-19, 288 P.3d 1113 (2012).

The jury selection process is presumptively open to the public because, "'[t]he process of juror selection...is itself a matter of importance, not simply to the adversaries, but to the criminal justice system.'" In re Pers. Restraint of Orange, 152 Wn.2d 795, 804, 100 P.3d 291 (2004) (quoting Press I, 464 U.S. at 505). However, a defendant's public trial right does not apply to every component of the broad "jury selection" process. Many courts have distinguished the narrower voir dire component, which does need to be conducted publicly, from other components of the general "jury selection" process. State v. Wilson, 174 Wn. App. 328, 338-40, 298 P.3d 148 (2013) (discussing cases, and holding that a bailiff's

[7] At a minimum, Singh's claim should be rejected because it was not preserved. RAP 2.5(a). Although the Supreme Court appears to have held that courtroom closures may be challenged for the first time on appeal, State v. Wise, 176 Wn.2d 1, 16-19, 288 P.3d 1113 (2012), several justices have disagreed on this point. See, e.g., State v. Sublett, 176 Wn.2d 58, 156, 292 P.3d 715, 763 (2012) (Wiggins, J., concurring) ("A defendant who raises a public trial violation for the first time on appeal must comply with RAP 2.5(a)(3) by showing that the violation actually prejudiced the defendant: that the asserted error had "practical and identifiable consequences in the trial of the case."). This court is bound by the decision in Wise but the State raises this argument in the event the Court reconsiders its position on RAP 2.5(a)(3).

pre-voir dire, administrative excusals of two ill jurors did not implicate defendant's public trial right).[8]

For example, in State v. Love, 176 Wn. App. 911, 309 P.3d 1209 (2013), the court determined that, unlike the voir dire component, the exercise of peremptory and for-cause challenges does not implicate the public trial right. At the conclusion of voir dire in Love's trial, the trial judge called the attorneys forward for a bench conference to discuss challenges for cause; the record did not reflect whether Love joined the conference. Id. at 913. The attorneys discussed several jurors with the court and two were excused for cause. Id. The attorneys then exercised their peremptory challenges by writing on a form, likely passed back and forth, and signing the document. Id. at 914, n.1. This piece of paper became part of the court record of Love's case. Id.

[8] The general process of "jury selection" begins when the trial court summons members of the public, some of whom do not respond and some of whom respond but who, for various hardship reasons unrelated to the specific case to be tried, are unable to serve at that time. In contrast, "voir dire" is a later-occurring component of the broader "jury selection" process, which provides the parties in a specific case with an opportunity to question prospective jurors in the open public courtroom to examine them for biases and to obtain a fair and impartial jury to try their specific case. State v. Wilson, 174 Wn. App. 328, n.12, 298 P.3d 148 (2013).

On appeal, Love claimed the trial court erred in considering peremptory and for-cause challenges at sidebar.[9] Id. at 915. The Love court assumed that the sidebar conference constituted a closure, but nevertheless held that the juror challenge process used was not an *improper* closure. Id. at 916-17. The court found that neither prong of the experience and logic test required that the exercise of cause or peremptory challenges take place in public. Id. at 920. The written record protected the public's interest in the cause and peremptory challenges. Id. at 920 (citing Sublett, 176 Wn.2d at 77). Thus, this closure in Love's case did not violate the public trial right under the Washington Constitution.[10]

When examining the considerations of experience and logic, the peremptory challenge process used in Singh's trial, like the one used in Love's, did not violate the public trial right. Love, 176 Wn. App. at 918-20. Here, as in Love, neither prong of the experience and logic test requires that the exercise of peremptory challenges take place in public. Additionally, experience and logic

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[9] Love also presented a due process claim arising from his absence from the sidebar conference and a sufficiency of the evidence claim. He prevailed on none of his claims. Id. at 915, 924.

[10] The Love court also observed that the record did not reflect that the peremptory challenge process was conducted at sidebar, but noted that, even if it did, the court's analysis would not change. Id. at 915-16.

do not dictate that the identity of the party challenging a juror must be made known to the public at the time of the challenge.

The purpose and general process of jury selection in criminal trials, including voir dire examination as well as for cause and peremptory challenges, is governed by superior court criminal rule 6.4.[11] With respect to how peremptory challenges are taken, this rule provides:

> After prospective jurors have been passed for cause, peremptory challenges shall be exercised alternately first by the prosecution then by each defendant until the peremptory challenges are exhausted or the jury accepted. Acceptance of the jury as presently constituted shall not waive any remaining peremptory challenges to jurors subsequently called.

CrR 6.4(e)(2). The rule does not require that the jury and public must be informed as to which party struck which prospective juror. However, in this case, this information *was* available to the public because, as noted, the court filed the paper on which peremptory challenges were listed on the same day they were made. CP 75.

Additionally, there is nothing in experience which would require public awareness as to the identity of the lawyer challenging

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[11] CrR 6.4(e) supersedes the former statutes that provided for peremptory challenges in criminal cases. Those statutes, former RCW 10.49.030-.060, were repealed by Laws of 1984, ch. 76, § 30, and had their genesis in the Laws of 1854 §§ 102-106. Love, 176 Wn. App. 918, n.6.

any given juror. Singh has cited no case, rule, or practice aid that requires the exercise of peremptory challenges in open court, nor that they be exercised verbally by the attorneys.

Case law suggests that historical practices do not require peremptory challenges to be made in public. Love, 176 Wn. App. at 918. As discussed in Love, in State v. Thomas, 16 Wn. App. 1, 553 P.2d 1357 (1976), Division II of this court discerned no prejudice to the defendant from the "use of secret – written – peremptory jury challenges" and noted that this same process was used in several counties at that time. Thomas, 16 Wn. App. at 13. The court rejected Thomas' argument challenging the use of secret, written peremptory challenges as having "no merit." Id. The Love court also indicated that Sublett itself was suggestive that peremptory challenges can be conducted in private. Love, 176 Wn. App. at 919. The Washington Supreme Court applied the experience and logic test in Sublett and found that questions from a deliberating jury need not be answered in open court; the use of a written question and answer created a public record that satisfied the public trial right. 176 Wn.2d at 75-77.

Ultimately, through its historical review, the Love court concluded:

> A peremptory challenge is one for which no reason need exist and rests in the discretion of the parties...There is no evidence suggesting that historical practices required these challenges to be made in public...
>
> The history review confirms that in over 140 years of cause and peremptory challenges in this state, there is little evidence of the public exercise of such challenges, and some evidence that they are conducted privately. Our experience does not require that the exercise of these challenges be conducted in public.

Id. at 918-19. Thus, history does not compel the process Singh argues for.

Under the logic prong, a trial or reviewing court must consider whether openness will "enhance both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system." Press I, 464 U.S. at 508. Relevant to the logic inquiry are the overarching policy objectives of open trials, such as ensuring fairness to the accused by permitting public scrutiny of proceedings. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 572, 100 S. Ct. 2814, 65 L. Ed. 2d 973 (1980). As earlier noted, the purposes of the public trial right are "to ensure a fair trial, to remind the officers of the court of the importance of their functions, to encourage witnesses to come forward, and to discourage perjury." Brightman, 155 Wn.2d at 514.

As it pertains to this case, the logic prong of the test requires asking whether the fairness of the process would be enhanced by telling the jury and spectators which lawyers struck which jurors.[12]

> Those purposes [of the public trial right] simply are not furthered by a party's actions in exercising a peremptory challenge... The...action presents no questions of public oversight...The written record of th[is] action... satisfies the public's interest in the case and assures that all activities were conducted aboveboard, even if not within public earshot.

Love, 176 Wn. App. at 919-20.

Here, as in Love, the parties' exercise of peremptory challenges did not implicate the purposes of a public trial. Singh's case has almost identical facts to Love with respect to the manner in which peremptory challenges were exercised. Singh concedes that the parties in Love used a chart similar to the one filed in Singh's trial. App. Br. at 13. Indeed, the only perceivable difference between the processes used in Singh's and Love's trials is that, while it was unclear where the parties were physically located when writing their peremptory challenges in Love's case, Love, 176 Wn. App. at 913, 915-16, the parties in Singh's case

[12] It is possible that fairness may be enhanced by *not* sharing this information with the jurors. A party's decision about how to exercise their peremptory challenges is a subjective determination made at the party's discretion. Some judges feel a peremptory process that does not reveal which lawyer challenged which juror protects lawyers from ill-will that may be engendered by their challenges. See also Love, 176 Wn. App. at 918.

made their challenges while at their respective counsel tables. 1RP 13. Thus, Singh could confer with counsel during the peremptory process.

Additionally, since the parties were both aware of which jurors were being stricken by the other party, each still had the opportunity to object to any discriminatory motive behind exercised peremptory challenges perceived by the parties. RCW 2.36.080; Batson v. Kentucky, 476 U.S. 79, 96-98, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986); State v. Burch, 65 Wn. App. 828, 834, 830 P.2d 357 (1992). Not having jurors or spectators know which party challenged which jurors did not compromise either party's ability to make a Batson challenge, another factor protecting the fairness of the proceedings.

Because Singh has not shown that the identity of the lawyer who challenged a prospective juror is information that has historically been open to the press and general public, nor that the peremptory challenge selections of the lawyers would play a "significant positive role" in the jury selection process, this court should find that there was no courtroom closure that implicated Singh's public trial rights. Since a closure that triggered the public trial right did not occur, the public trial right does not attach to the

particular procedure used for exercising peremptory challenges and the Bone-Club factors did not have to be considered by the court.

Nevertheless, Singh argues that his public trial rights were violated based upon State v. Jones, 175 Wn. App. 87, 303 P.3d 1084 (2013), a Division III case involving the selection of alternate jurors. App. Br. at 6. However, Jones is easily distinguished. In Jones, a court recess off the record during which the trial court clerk randomly selected four alternate jurors constituted a "closure" that implicated Jones' constitutional right to a public trial on charges for attempted murder and a related firearms offense. Id. at 95, 101-03. The clerk conducted the drawing during an afternoon court recess, which was announced to Jones, counsel, and the jurors after it had occurred. Id. at 102. The drawing occurred off the record and outside of the trial proceedings, thus constituting a closure. Id.

Singh's case is distinguishable from Jones. As an initial matter, while Jones deals with the selection of alternate jurors, Singh deals with peremptory challenges to jurors and, specifically, whether or not disclosing the identity of the challenging attorney can constitute a closure. While the Jones court found that the procedure for selecting alternate jurors historically occurs in open

court as part of the voir dire component of jury selection, Id. at 101, the same can not be said for disclosing which attorney exercised a peremptory challenge against a prospective juror. Furthermore, in Singh's case, unlike in Jones, the selection of peremptory challenges occurred in open court and was part of the trial proceedings. Singh, the defense counsel, and the jurors were present, as well as any spectators who wanted to observe. Anyone who wanted to hear and see which jurors were being excused could do so. Moreover, in Jones, there was no way to tell how the drawing was performed. Id. at 102. However, in Singh's case, the judge gave explicit instructions as to how the peremptory challenge process would occur and any individual who wanted to determine which party excused which juror could do so by checking the public record that same day. CP 75; 1RP 13, 101.

Singh also cites State v. Slert, 169 Wn. App. 766, 774 n.11, 282 P.3d 101 (2012), review granted in part, 176 Wn.2d 1031 (2013), for the proposition that, "a closure occurs even when the courtroom is not physically closed if the proceeding at issue takes place in a manner that renders it inaccessible to public scrutiny." App. Br. at 11. However, Slert is also easily distinguished.

In Slert, the Court of Appeals (Division II) reversed Slert's conviction, holding that an in-chambers conference during which the court and counsel discussed jury questionnaires specific to the case and the court dismissed four jurors off the record violated Slert's right to a public trial. 169 Wn. App. at 778-79. The court found that, as in State v. Irby,[13] 170 Wn.2d 874, 246 P.3d 796 (2011), the questionnaires were part of jury selection because they dealt with publicity from Slert's earlier trials and thus were "'designed to elicit information with respect to [the jurors'] qualifications to sit'" as jurors in Slert's particular case, as opposed to inquiring about the jurors' general qualifications. 170 Wn.2d at 882 (quoting Irby Clerk's Papers at 1234). Because the record indicated that the in-chambers conference involved the dismissal of four jurors for case-specific reasons based at least in part on the jury questionnaires, the court held that the conference and

[13] In State v. Irby, the Washington Supreme Court held that an email exchange where trial court and counsel *discussed* jury questionnaire responses and dismissed seven potential jurors for cause implicated the defendant's trial rights because the email exchange "did not simply address the general qualifications of 10 potential jurors, but instead tested their fitness to serve as jurors in [Irby's] particular case." 170 Wn.2d 874, 882, 246 P.3d 796 (2011). The court held that the email exchange was a portion of jury selection and that the email exchange violated Irby's right under the federal and state constitutions to be present at critical stages of his trial. Id. at 882.

dismissals were part of the jury selection process to which the public trial right applied. Id. at 774.

The court added that, "if a side-bar conference was used to dismiss jurors, the *discussion* would have involved dismissal of jurors for case-specific reasons and, thus, was a portion of jury selection held wrongfully outside Slert's and the public's purview." Id. at n.11 (emphasis added). Thus, in Slert, as in Irby, the Court held a violation of the public trial right occurred when there was *discussion* regarding the juror's qualifications to sit on the specific case at hand that the defendant and public was not privy to. Id., Irby, 170 Wn.2d at 882.

The present case is entirely distinguishable from both Slert and Irby. Here, peremptory challenges occurred in open court and involved no discussion whatsoever, let alone any discussion designed to determine jurors' individual fitness for serving on Singh's particular jury. The defendant, jury, and any spectators were present during the process. The challenged jurors were dismissed on the record and anyone who wanted to know which party struck which juror could access this information through the public record on that same day. CP 75.

Singh claims, "[m]embers of the public are no more able to approach the bench and listen to an intentionally private jury selection process than they are able to enter a locked courtroom, access the judge's chambers, or participate in a private hearing in a hallway." App. Br. at 11-12. However, those hypothetical scenarios are irrelevant to this case as none of them occurred here.

No closure existed in Singh's trial since it was conducted in an open courtroom where public attendance was never prohibited. Therefore, this case should be analyzed as a matter of courtroom operations, where the trial court judge possesses broad discretion. Lormor, 172 Wn.2d at 93. In addition to its inherent authority, the trial court, under RCW 2.28.010, has the power "to provide for the orderly conduct of proceedings before it," and "[t]o control, in furtherance of justice, the conduct of its ministerial officers, and all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto." RCW 2.28.020(3), (5); Lormor, 172 Wn.2d at 93-94, n.4. The trial court acted well within its considerable discretion to manage courtroom proceedings in having the attorneys write down their peremptory challenges, reading them on the record, and filing the document formalizing those challenges in the public record.

The trial court in Singh's case did not violate his public trial rights because, under considerations of experience and logic, those rights were not implicated by the peremptory challenge process used. The court was not required to conduct a Bone-Club analysis because no closure existed at any point of the jury selection process. Therefore, the trial court protected the foundational principle of an open justice system.

D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm Singh's convictions and sentence.

DATED this 27th day of March, 2014.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Andrew Zinner, the attorney for the appellant, at Nielsen, Broman & Koch, PLLC, 1908 East Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. BAHADAR SINGH, Cause No. 70639-0-I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 28th day of March, 2014

Wynne Brame
Done in Seattle, Washington