

No. 71383-3-I

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

ORIGINAL

**IN RE THE PERSONAL RESTRAINT PETITION OF
HECTOR SALINAS, Petitioner.**

RESPONSE TO PERSONAL RESTRAINT PETITION

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A. AUTHORITY OF RESTRAINT OF PETITIONER

Petitioner Hector Salinas is under sentence pursuant to Judgment and Sentence entered in Whatcom County Superior Court cause number 08-1-000877-3. Appendix A.

B. ISSUES

1. Whether the petitioner is precluded from asserting a violation of his right to public trial where he invited the alleged violation by requesting private voir dire in the jury questionnaires he proposed to the court, did not object when the court inquired if anyone objected to in-chambers questioning, and where defense counsel actively participated in the in-chambers voir dire.
2. Whether petitioner has demonstrated constitutional error resulting in actual and substantial prejudice where he alleges that appellate counsel was ineffective by failing to raise a right to public trial issue on appeal, but where the record demonstrates that he invited the error by requesting private voir dire at trial such that appellate counsel could have strategically chosen not to assert the error in the direct appeal.
3. Whether In re Morris was wrongly decided and should be overruled.
4. Whether petitioner has demonstrated actual prejudice from appellate counsel's failure to raise a violation of his right to public trial based on the trial court's failure to weigh the Bone-Club factors on the record where he has asserted no specific prejudice, where defense counsel requested the private voir dire and failed to object when the judge inquired if anyone objected to in-chambers questioning, and where a review of the record clearly supports a conclusion that the Bone-Club factors would have supported conducting individual voir dire in chambers in order to protect the defendant's right to a fair and impartial

jury and jurors' privacy rights, where the process promoted frank and candid responses from prospective jurors given the sensitive issues presented, and where only seven jurors were questioned in private and three of those were excused for cause.

5. Whether the Court should remand this matter to the trial court to resolve disputed material facts as to why appellate counsel did not raise the alleged violation of right to public trial and whether the defendant invited the error.

C. RELEVANT FACTS

Appellant Hector Salinas was charged with three counts of Rape in the First Degree, in violation of RCW 9A.44.040(1), and one count of Kidnapping in the First Degree, in violation of RCW 9A.40.020(1), and was provided notice in the information that if he had been convicted twice previously of most serious offenses, the mandatory penalty was life in prison without parole, in accord with RCW 9.94A.120(4) and RCW 9.94A.570. App. A at 1-2. Salinas was tried by a jury and found guilty of all four counts. App. A at 1. At sentencing the court found that Salinas was a persistent offender and imposed life without possibility of release. App. A at 5.

Salinas appealed and filed an overlength brief asserting numerous, substantive issues: 1) "The police lacked authority under Article 1, Section 7 and the Fourth Amendment to search Salinas' wallet, to seize and conduct a search of his clothing, and to hold him in custody without

advising him of his right to bail on the arrest warrant;" 2) "The admission of unreliable 'dog track' evidence violated Salinas' Fourteenth Amendment right to due process of law;" 3) "Defense counsel's failure to request a jury instruction telling the jury to consider the dog track evidence with caution denied Salinas his Sixth Amendment right to the effective assistance of counsel;" 4) "Pellet's in-court identification of Salinas violated the Fourteenth Amendment's guarantee that evidence must be reliable, and should have been excluded;" 5) "The imposition of sentence on count four violated constitutional double jeopardy prohibitions;" 6) "The three counts of rape in the first degree should have been sentenced as the same criminal conduct;" 7) "Salinas had the Sixth and Fourteenth Amendment to have his prior convictions proved to a jury beyond a reasonable doubt;" 8) "The failure to classify the persistent offender finding as an 'element' violates the right to equal protection guaranteed by the Fourteenth Amendment and Article One, Section Twelve of the Washington Constitution;" and 9) "The state presented insufficient evidence to prove Salinas' identity with respect to the Chelan County 1994 robbery conviction." The record that was prepared for the appeal included a complete transcription of the jury voir dire. (See Record in No. 65527-2-I). The Court of Appeals affirmed Salinas' convictions, but directed the sentencing court to address the same course of criminal

conduct sentencing issue on remand and directed that the first degree kidnapping conviction be vacated on remand. State v. Salinas, 169 Wn. App. 210, 224, 279 P.3d 917 (2012), *rev. den.*, 176 Wn.2d 1002 (2013).

Subsequent to the remand hearing, Salinas filed another appeal. That appeal is still pending in Court of Appeals No. 70125-8-I. Salinas then filed this personal restraint petition.

Facts regarding jury voir dire:

On January 25, 2010, prior to trial, Salinas's defense counsel filed a proposed jury questionnaire that informed jurors:

Some of these questions may call for information of a personal nature that you may not want to discuss in public. If you feel that your answer to any question may invade your right to privacy or might be embarrassing to you, you may so indicate on the form that you would prefer to discuss your answer in private. You will find instructions on this on the questionnaire.

App. B at 2. Question 26 then asked whether the juror would prefer to discuss the answer to any of the questions "privately rather than in open court," and asked them to identify the questions by number. App. B at 7. A number of the questions asked about jurors' experience with sexual abuse or misconduct. App. B at 5-6.

Defense counsel filed another proposed jury questionnaire on March 3rd, 2010. App. C. It provided the same advisement to the jurors as the previous one did and asked similar questions about sexual abuse or

misconduct, and whether the juror would prefer to discuss their answers in private rather than in open court. App. C. Defense counsel then filed a “Third Proposed Jury Questionnaire” on March 4th, 2010, which also contained the same advisement and similar questions. App. D. The court ultimately did provide a jury questionnaire, although not the specific one proposed by defense counsel. The courts’ questionnaire advised:

... if your answer to any of the following questions is of such a “sensitive nature” that you would like to discuss it ‘privately’, please identify those questions by number here: _____

App. E.

Although the prosecutor did not request private voir dire, during pre-trial motions the judge mentioned that seven of the jurors wanted to speak in private and suggested that the jurors who wanted to speak individually be addressed first and then the rest of voir dire could be done. 3/8/10 RP 151-52 COA No. 65527-2-I¹; App. F (Affidavit of Dona Bracke). At the end of the pre-trial motions the next day, given time constraints, defense counsel suggested that the court take a break, bring in the “jury” (sic), swear them in and release those who didn’t request to speak in private for the time being. 3/9/10 RP 69-70. The court indicated it was inclined to do that, and when the prosecutor stated: “...when you’re

¹ All the references to the report of proceedings in this response refer to the report of proceedings filed in No. 65527-2-I.

talking about taking them in privately ...,” the judge stated: “I’m going to ask if there’s anybody in the courtroom who has an objection, otherwise we have to do it in open courtroom.” 3/9/10 RP 70.

Later that day, after inquiring about whether all the prospective jurors had filled out the questionnaire, the judge informed the venire:

As you can see by that, this is a case that might involve some matters which might be of a sensitive nature. In this case, I’m going to offer an opportunity to those who have indicated that they wish to speak in private about some issues the chance to do that. That is the first thing we will undertake, and then we will go through the general process of picking a jury which will start this afternoon...

3/9/10 RP 3. After reviewing some preliminary matters, the judge noted that some jurors had requested to speak in private, and then inquired:

Is there anyone in this group or *anyone* in this courtroom at this time *who has any objection* whatsoever to the Court conducting a short interview with each of those jurors, potential jurors with counsel and the defendant *in my chambers* all on the record to determine what their concerns are and be able to have them answer those questions or tell them what their concerns are *in private*? Is there anyone here that has any objection to that?

3/9/10 RP 12-13 (emphasis added). The court then directed the jurors who wished to speak privately to return at 1:30 p.m. and the remainder to return at 2:30 p.m. *Id.* at 13, 23. After the recess, the court inquired again:

I would ask if anyone has an objection to us speaking to them *in private* with us and counsel and defendant and the court reporter? Then I will go into chambers. Counsel will come in. The attorneys will come with me. The court reporter will set up, and Ms. Ortner will bring you in one at a time.

Id. at 23.

Individual voir dire of the prospective jurors then occurred in chambers. 3/9/10 RP 23-54. During private voir dire defense counsel asked questions that were beyond the scope of the purpose of the individual voir dire. 3/9/10 RP 38-40. As a result of the individual voir dire, three of the jurors were excused for cause. 3/9/10 RP 51; App. G at 2-3.

Substantive trial facts:

The rape occurred in Bellingham near Maritime Heritage Park on the night of June 20, 2008. The victim, DP, was homeless and living on the streets. She awoke to find a man sitting close to her. The man reached over and kissed her. He spoke Spanish. When DP stood up, the man grabbed her and hit her in the face. He had a knife in his hand. He raped her. Then he dragged her to a different area of the park where the assault continued.

Afterwards, DP flagged down a police car and told the officer she had been raped by a man with a knife. It was about 2:00 a.m. DP's face was bleeding and she could barely talk. She described her assailant as a Hispanic man wearing a stocking cap and having a mustache with possible chin hair. A canine officer arrived with his dog and began to track.

The dog led the officers to a man in a sleeping bag. They identified themselves as police and directed him to show his hands or the dog would be released. They were able to see that his appearance matched the description given by the victim. The man pulled his sleeping bag over his head, picked up a dark jacket, and ran towards the waterfront. The officers gave chase and found him hiding against a wall not far away. They ordered him to lie down on the ground. He kept trying to stand up. The police released the dog and permitted him to bite the man on the leg to get him to

comply with their orders. The man then complied with the order to lie down. The police placed him in handcuffs.

The man had several identification cards with different names and dates of birth. The officers provided the information on these cards to police dispatch. They were eventually able to identify the man as Hector Salinas. They learned he was wanted on a felony arrest warrant out of Wenatchee. Salinas was taken to the police station where he was interviewed. The police conducted a search incident to arrest and collected his clothes as evidence.

Salinas, 169 Wn. App. at 214-15.

D. ARGUMENT

Salinas asks this Court to find that his *appellate* counsel was ineffective for failing to brief his alleged violation of his right to public trial and to reverse his conviction and grant him a new trial. He has *not* alleged ineffective assistance of trial counsel. Salinas, however, invited the error at the trial level and therefore was precluded from asserting the issue on appeal and is precluded from asserting it in this collateral attack. There is nothing in the record about why appellate counsel did not assert a violation of the right to public trial on appeal but counsel could legitimately have decided not to pursue the right to public trial issue. Salinas asserts believing that he had invited the error.

Furthermore, Salinas has not asserted any specific, actual prejudice from the court's in-chambers voir dire of seven prospective jurors. Salinas was not prejudiced by the temporary closure without an on-the-record

analysis of the Bone-Club² factors where defense counsel sought private questioning of those jurors³ who desired to be questioned in private on certain issues where the in-chambers questioning avoided tainting the rest of the venire from jurors' prior experiences with sexual assault, and the process resulted in three jurors being excused for cause. Where, as in Momah⁴, defense counsel sought private voir dire and Salinas suffered no prejudice and actually benefitted from it, prejudice should not be presumed. His petition therefore should be denied. The State acknowledges the holding of In re Morris⁵, but asserts that case was wrongly decided and should be overruled⁶.

If this Court were to find that the record as currently presented is insufficient to demonstrate defense invited the alleged violation of a right to public trial, the State requests that the matter be remanded for a reference hearing to address two factual issues: why appellate counsel did not assert a violation of the right to public trial issue and whether the defense requested private voir dire, thereby inviting the error alleged.

² State v. Bone-Club, 128 Wn.2d 254, 260, 906 P.2d 325 (1995).

³ The State uses the term "jurors" to refer to members of the venire panel for ease of reference, although the members had not been seated.

⁴ State v. Momah, 167 Wn.2d 140, 217 P.3d 321 (2009).

⁵ In re Morris, 176 Wn.2d 157, 288 P.3d 1140 (2012).

⁶ The State is aware that this is an issue that would need to be addressed by the Washington Supreme Court, but includes it here in order to preserve it in case of further review.

An appellate court will grant substantive review of a personal restraint petition only when the petitioner makes a threshold showing of constitutional error from which he has suffered actual prejudice or nonconstitutional error that inherently results in a complete miscarriage of justice. In re Personal Restraint of Cook, 114 Wn.2d 802, 813, 792 P.2d 506 (1990). The petition must set forth the facts underlying the claim of unlawful restraint and the evidence available to support the factual allegations. In re Personal Restraint of Rice, 118 Wn.2d 876, 886, 828 P.2d 1086 (1992). A personal restraint petition must be supported by competent, admissible evidence. In re Personal Restraint of Dyer, 143 Wn.2d 384, 397, 20 P.3d 907 (2001). A court must decline to review a petition where it fails to meet the threshold burden of providing facts and evidence upon which to decide the issue. In re Cook, 114 Wn.2d at 814.

- 1. Salinas invited and/or waived any violation of his right to a public trial by requesting a jury selection process calling for private individual voir dire of jurors.**

Salinas contends questioning seven prospective jurors in chambers without weighing the Bone-Club factors on the record constituted a violation of his right to a public trial pursuant to In re Morris. The invited error doctrine precludes Salinas's petition. The defense filed three separate questionnaires that called for private voir dire, the prosecutor did

not request private voir dire, the defense did not object when the court asked if anyone in the courtroom objected to private voir dire, and the defense actively participated in the private voir dire. The defense invited the very error Salinas asserts in his petition. His petition therefore should be denied.

a. invited error

The invited error doctrine “prohibits a party from setting up an error ... and then complaining about it on appeal.” In re Personal Restraint of Thompson, 141 Wn.2d 712, 723, 10 P.3d 380 (2000). This is a “strict rule.” State v. Studd, 137 Wn.2d 533, 547, 973 P.2d 1049 (1999) (even though defendants’ proposed jury instructions were based on a WPIC instruction, the error was invited). The doctrine requires some affirmative action on the part of the defendant. Thompson, 141 Wn.2d at 724; *see also*, In re Personal Restraint of Breedlove, 138 Wn.2d 298, 979 P.2d 417 (1999) (defendant invited error by entering into a plea agreement for a reduction of charges in exchange for an agreed, stipulated exceptional sentence). Generally, where the defendant takes knowing and voluntary actions to set up the error, the invited error doctrine applies; where the defendant’s actions are not voluntary, it does not. In re Thompson, 141 Wn.2d at 724. The doctrine applies even in the context of constitutional error. *See*, State v. Studd, 137 Wn.2d at 546, 548 (counsel may not

request a jury instruction on self defense and then later challenge the instruction on appeal). This rule recognizes that “[t]o hold otherwise would put a premium on defendants misleading trial courts.” State v. Henderson, 114 Wn.2d 867, 868, 792 P.2d 514 (1990).

While the court in Momah decided that case did “not present a classic case of invited error,” it did discuss the invited error doctrine in the context of a right to public trial case with approval. Momah, 167 Wn.2d at 153-55. The court there held that while it would not bar appellate review under the circumstances presented in that case, the court found the factors courts have used in applying the invited error doctrine helpful in determining the appropriate remedy in that case. *Id.* at 154.

Recently, the Court of Appeals in Div. III dismissed a personal restraint petition that alleged a violation of the right to public trial involving voir dire, in part because the defense counsel had invited the error. In Re Copland, 176 Wn. App. 432, 309 P.3d 626 (2013). In that case, the court considered whether the petitioner invited the alleged right to public trial violation by “affirmatively assent[ing] to the error, materially contribut[ing] to it, or benefit[ing] from it.” *Id.* at 442, *citing State v. Momah*, 167 Wn. 2d at 154. In comparing the facts to the Momah case, the court in Copland found that the case presented a stronger invited error argument than that in Momah. *Id.* at 442-43. Defense counsel had

asked the trial court to close the courtroom to the media in order to avoid contamination of the jury pool. The state objected to a full closure as a potential public trial violation, but mentioned that individual private voir dire of those prospective jurors who wished privacy might pass constitutional muster if an appropriate record were made. *Id.* at 443. The trial court then denied defense counsel's motion to close the courtroom during voir dire, but ultimately agreed to allow certain jurors to be questioned privately. *Id.* Defense counsel then gave the court a list of jurors for private questioning and actively participated in that questioning. *Id.* On review the court concluded that it could dismiss the petition based on invited error or failure to demonstrate prejudice based on defense having sought a full closure, having participated in the temporary closure and having benefitted from the closure by discovering potential biases of jurors. *Id.*⁷

Here, defense counsel for Salinas sought private voir dire as evidenced by the questionnaires defense counsel proposed. The judge specifically inquired of the entire courtroom if anyone objected to in chambers questioning of those jurors who wished to speak privately on sensitive issues. Defense counsel did not object. Defense counsel

⁷ The court went on to consider whether the failure to analyze the Bone-Club factors on the record was a violation of the public's right to open proceedings that the petitioner could assert. *Id.* at 443-450.

participated in the in-chambers questioning and even expanded it beyond those issues identified by the jurors. As in In re Copland, Salinas invited the very error he now asserts by seeking private voir dire, not objecting when the judge inquired if anyone objected to the in-chambers questioning, and by actively participating in the private voir dire.

b. waiver

Even if not sufficient to constitute invited error, Salinas's conduct waived the objection he now asserts. "The right to public trial is not absolute." State v. Wise, 176 Wn.2d 1, 9, 288 P.3d 1113 (2012). "The general rule throughout the country is that an accused may waive this right expressly or by failing to object." Wright v. State, 340 So. 2d 74, 79 (Ala. 1976), *citing*, 23 C.J.S. Criminal Law s 963(8); *see also*, Robinson v. State, 976 A.2d 1072, 1083 (Maryland 2009) (listing cases that hold the right to public trial can be waived by affirmative waiver or failure to object). The *Sixth Amendment* right to public trial can be waived, merely by failing to object to a closure of the courtroom. Peretz v. United States, 501 U.S. 923, 936, 111 S.Ct. 2661, 115 L.Ed.2d 808 (1991); Freytag v. Commissioner of Internal Revenue, 501 U.S. 868, 896, 111 S.Ct. 2631, 115 L.Ed.2d 764 (1991) (if litigant does not assert Sixth Amendment right to public trial in timely fashion, he is foreclosed). While the failure to object, in and of itself, does not effect a waiver of the right to public trial

in Washington⁸, intentional relinquishment will effect a waiver. State v. Strode, 167 Wn. 2d. 222, 234, 217 P.3d 310 (2009) (J. Fairhurst concurring). What is required in order to effectively waive the right to public trial is currently pending before the Washington Supreme Court in State v. Applegate, Sup. Ct. No. 86513-2. The State submits that defense counsel's failure to object when specifically asked if anyone objected to in chambers questioning, after having requested private voir dire, was sufficient to waive his right to public trial, even if it wasn't sufficient to constitute invited error.

2. The remedy in In re Morris does not apply here because there is insufficient evidence in the record to demonstrate that appellate counsel was ineffective in failing to assert a violation of the right to public trial.

In re Morris does not dictate that the Court grant Salinas's petition, reverse his conviction and order a new trial. As asserted above Salinas may not raise this issue now and couldn't have raised it on appeal because he invited and/or waived the very error he asserts. Appellate counsel may have legitimately believed that under the invited error doctrine, Salinas was precluded from asserting the issue on appeal. Salinas's counsel had a number of other issues she asserted on appeal and she clearly spent a significant amount of time on Salinas's appeal. As the record is

⁸ Wise, 176 Wn.2d at 15.

insufficient to demonstrate that appellate counsel was ineffective, Salinas is not entitled to the remedy under In re Morris.

To prevail on a claim of ineffective assistance of appellate counsel, [a petitioner] must demonstrate the merit of any legal issue appellate counsel raised inadequately or failed to raise and also show [that he] was prejudiced.” In re Pers. Restraint of Netherton, 177 Wn.2d 798, 801, 306 P.3d 918 (2013). A petitioner in a collateral attack asserting an ineffective assistance of *appellate* counsel need only demonstrate prejudice from the ineffective assistance and need not separately demonstrate actual and substantial prejudice under the collateral attack standard. In re D’Allesandro, 178 Wn. App. 457, 314 P.3d 744, 751 (2013) (emphasis added); *see also*, In re Crace, 174 Wn.2d 835, 846-47, 280 P.3d 1102 (2012) (a successful showing of prejudice under the *Strickland* standard satisfies a petitioner’s obligation to demonstrate actual and substantial prejudice in a collateral attack). In order to demonstrate prejudice in an ineffective assistance of appellate counsel claim, the petitioner must show that the issue the petitioner claims should have been raised would have resulted in reversal of the conviction. *See*, In re D’Allesandro, 178 Wn. App. at 751 (in order to establish prejudice from appellate counsel’s failure to assert a right to public trial issue in the petition for review from

the direct appeal, the petitioner must demonstrate that the Supreme Court would have granted review and reversed the conviction).

Even with claims of ineffective assistance of appellate counsel, courts still apply a strong presumption that appellate counsel's representation was reasonable. Charbonneau v. U.S., 702 F.3d 1132, 1136 (8th Cir. 2013). Review is particularly deferential when reviewing a claim of appellate counsel ineffective assistance regarding failure to raise an issue on direct appeal. *Id.*

There can hardly be any question about the importance of having the appellate advocate examine the record with a view to selecting the most promising issues for review. This has assumed a greater importance in an era when oral argument is strictly limited in most courts-often to as little as 15 minutes-and when page limits on briefs are widely imposed.

Jones v. Barnes, 463 U.S. 745, 752-53, 103 S. Ct. 3308, 3313, 77 L. Ed. 2d 987 (1983). Counsel's performance is not ineffective if it can be characterized as legitimate strategy. State v. Grier, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011). "Ineffective assistance of counsel is a fact-based determination that is 'generally not amenable to per se rules.'" *Id.* at 34. Thus, unless there is contrary evidence, a reviewing court will assume that appellate counsel's failure to raise an issue was sound appellate strategy. Charbonneau, 702 F.3d at 1136-37.

In In re Morris, relied upon by Salinas, the defendant asserted that his right to public trial had been violated when the trial court conducted a portion of voir dire in chambers and that appellate counsel had been ineffective for failing to raise the issue in his direct appeal. In re Morris, 176 Wn.2d at 165. At trial, after voir dire had begun, the court indicated that some jurors who had requested to speak privately needed to be interviewed and then conducted individual voir dire of a number of jurors in chambers. *Id.* at 161. The court did this without any discussion or acknowledgement of the defendant's right to public trial and without either the State or the defense requesting private voir dire. *Id.* at 162. The defendant waived his right to be present at the in chambers voir dire in hopes that jurors would be more forthcoming without him in the room. *Id.* Some of the individual jurors desired private questioning due to the nature of the case, a child sex abuse case, and some simply because they did not wish to speak in front of the venire. *Id.*

The In re Morris court found that appellate counsel had been ineffective in failing to raise the issue on appeal and that prejudice would be presumed because it would have been presumed on appeal. *Id.* at 166. Instead of analyzing the prejudice prong in light of the actual error, failing to conduct an on-the-record Bone-Club analysis before temporarily closing the courtroom, the In re Morris court relied on the newly

announced decisions in Wise and Paumier⁹ that “a trial court’s in-chambers questioning of potential jurors is structural error” on direct appeal and held that the per se prejudice standard applied because appellate counsel failed to raise the issue on direct appeal. *Id.* at 166.

Additionally, even though the plurality opinion in Strode had not been published when Morris filed his appeal in 2005, the court found, based solely on In re Orange,¹⁰ that appellate counsel should have known that closure of voir dire without a Bone-Club analysis was presumptively prejudicial. *Id.* at 167. The court reasoned that all appellate counsel had to do was review its public trial jurisprudence to recognize the significance of closing a courtroom without first conducting the Bone-Club analysis. *Id.* at 1145.

In re Morris is factually distinguishable because in that case the defendant did not invite and/or waive the violation of the right to public trial. While the State in Morris attempted to argue that the defendant waived his right to public trial when he waived his personal presence at the private voir dire, the Supreme Court disagreed finding that the closure itself, which the court had already ordered, may have compelled the defendant to waive his right to be present due to the close quarters in

⁹ State v. Paumier, 176 Wn.2d 29, 280 P.3d 1126 (2012).

¹⁰ In re Orange, 152 Wn.2d 795, 100 P.3d 291 (2004).

chambers. Id. at 166-67. Moreover, it appears that the State only asserted that the defendant's waiver of his right to be present was effective to waive his right to public trial and did not otherwise assert that appellate counsel was not ineffective.

Here, there was a discussion about private voir dire before the court conducted individual voir dire in chambers, the court was obviously aware of the right to public trial because it informed the parties that if anyone objected, they would not be able to do voir dire outside of the courtroom. Defense evidently sought to have private voir dire in a closed setting. Of note, Salinas has not produced an affidavit of appellate counsel asserting that she was unaware of the right to public trial issue and law¹¹. Therefore, appellate counsel could have reasonably, strategically, decided not to assert a violation of the right to public trial, believing that Salinas was precluded from raising the issue on appeal because he had invited and/or waived the alleged violation, and reasonably could have chosen instead to focus on the numerous other issues she did assert. In re Morris is therefore distinguishable, and appellate counsel was not ineffective.

¹¹ Appellate counsel on Salinas's first direct appeal was Susan Wilk. Susan Wilk was also assigned appellate counsel in State v. Tyler Hawker, COA No. 61479-7. A right to public trial issue was asserted on appeal in that case that resulted in reversal. The opening brief in Hawker was filed on November 19, 2008, and the State filed a petition for review on April 22, 2011, just a couple months before the opening brief in Salinas was filed, on June 29, 2011.

3. In re Morris is incorrect, harmful and should be overturned.

If this Court were to decide that the appellate counsel's failure to raise a violation of the right to public trial on appeal entitles Salinas to a new trial based on In re Morris, the State asserts that the Washington Supreme Court's decision in In re Morris was wrongly decided, incorrect and harmful. The Washington Supreme Court's decision in In re Morris was incorrect in that the authority it relied upon did not stand for the broad remedy that the majority in Morris indicated it did. Its analysis regarding the effectiveness of appellate counsel was flawed. It was incorrect in concluding that jurisprudence was clear at the time of the direct appeal that an in chambers voir dire process without an on-the-record Bone-Club analysis, a process that was not objected to and benefitted the defendant, constituted an unlawful closure such that an automatic new trial would be warranted. It also was wrong to assume that appellate counsel would necessarily be aware that a part of voir dire had occurred in chambers. The opinion is harmful in that numerous cases in which the defendant received a benefit, greater candor in voir dire and less chance of a tainted jury, which in turn protected the defendant's right to a fair trial, will be overturned simply because the court failed to conduct a Bone-Club

analysis on the record, and not because an unlawful closure occurred, and where no prejudice resulted from the failure to conduct the analysis.

Washington Supreme Court precedent should be overruled if it is shown to be incorrect and harmful. State v. Nuñez, 174 Wn.2d 707, 713, 285 P.3d 21 (2012). A decision is incorrect if it is not supported by the authority upon which it relies or if it conflicts with other Washington Supreme Court precedent. *Id.*; *accord*, State v. Barber, 170 Wn.2d 854, 864, 248 P.3d 494 (2010). The Supreme Court clarified the meaning of “incorrect” in Barber:

The meaning of “incorrect” is not limited to any particular type of error. We have recognized, for example, that a decision may be considered incorrect based on inconsistency with this court's precedent; inconsistency with our state constitution or statutes; or inconsistency with public policy considerations. A decision may also be incorrect if it relies on authority to support a proposition that the authority itself does not actually support.

Barber, 170 Wn.2d at 864 (internal citations omitted). A decision may be harmful “for a variety of reasons.” *Id.* at 865. A decision is harmful if it undermines an important public policy or a fundamental legal principle. Nuñez, 174 Wn.2d at 716-19. A decision is also harmful where it has a “detrimental impact on the public interest.” Barber, 170 Wn.2d at 865. The decision in In re Morris is both incorrect and harmful under this test.

In In re Morris, five members of the Washington Supreme Court (the lead opinion, signed by four justices, and a concurrence by Justice Chambers) held that the defendant was entitled to a new trial based on the theory that he had received ineffective assistance of appellate counsel because appellate counsel had not raised a public trial violation issue on direct appeal. In re Morris, 176 Wn.2d at 166-67, 173-74 (Chambers, J., concurring). In reaching this decision, the five justices concluded that appellate counsel's performance was deficient because Morris's case was indistinguishable from In re Orange, *supra*, and that prejudice resulted because Morris would have been entitled to a new trial if the issue had been raised on direct appeal. *Id.* at 166-68, 173-74 (Chambers, J., concurring). Both of these conclusions are deeply flawed.

c. In re Morris was wrongly decided.

First, In re Orange is plainly distinguishable from what occurred in In re Morris. In In re Orange, the defendant specifically objected to the exclusion of members of his family from the courtroom during voir dire, but the trial court excluded them anyway despite that specific objection. In re Orange, 152 Wn.2d at 801-02. Moreover, the trial court excluded Orange's family from the courtroom simply due to concerns regarding lack of seating for the large venire. *Id.* On review, the court specifically found that the defendant had been *harmed* by the permanent, full

courtroom closure of voir dire¹², due to “*the inability of the defendant’s family to contribute their knowledge or insight into the jury selection and the inability of the venirepersons to see the interested individuals.*” *Id.* 152 Wn.2d at 812 (*quoting Watters v. State*, 328 Md. 38, 48, 612 A.2d 1288 (1992)) (emphasis added by the Washington Supreme Court). Accordingly, the error in Orange was “conspicuous in the record” and thus, appellate counsel was ineffective for failing to raise it on direct appeal. In re Morris, 176 Wn.2d at 185 (Wiggins, J., dissenting). As the court in Momah explained, in Orange the trial was rendered fundamentally unfair because the closure excluded the defendant’s family and friends from being present during voir dire, despite the defendant’s repeated requests that they be present. Momah, 167 Wn.2d at 150-51.

In In re Morris, by contrast, the defendant did *not* object to conducting individual voir dire in chambers and was *not* harmed as a result of that procedure. To the contrary, the defendant waived his own right to be present for individual voir dire, and he received a benefit from the private questioning because the procedure promoted his right to an impartial jury and his right to a fair trial. In re Morris, 176 Wn.2d at 161-

¹² While the Orange court concluded that the trial court had ordered a permanent, full closure, it acknowledged the ruling may have only effected a temporary, full closure. *Id.* at 808.

63. Accordingly, the purported public trial violation was *not* “conspicuous in the record,” as it had been in Orange.

In light of these obvious and legally significant differences between the two cases, the court’s conclusion that In re Orange and In re Morris are indistinguishable and that Morris’s appellate counsel was ineffective for failing to raise the issue on direct appeal is simply incorrect. The defendant’s objection to the courtroom closure and the harm that resulted from that closure were central to the Orange court’s finding of ineffective assistance of appellate counsel. But these key features are notably absent from In re Morris. In sum, In re Morris is incorrect because it is not supported by the authority upon which it relies.

The In re Morris opinion also ignores the fact that in the very opinion it cites to for its clarity on this issue, In re Orange, a partial in chambers voir dire of jurors occurred there and was never raised as an alleged unlawful courtroom closure, and the opinion never treated that aspect of the voir dire process as an unlawful courtroom closure.

At the opening of trial on April 26, 1995, the court discussed with counsel the method of conducting voir dire. Acknowledging that the prospective jurors had completed a lengthy questionnaire, the trial judge explained that they would be interviewed in chambers about past crimes, pretrial publicity, and familiarity with the Orange family’s reputation. As the trial judge told counsel, “The rest of [voir dire] you can conduct in open court.”

In re Orange, 152 Wn.2d at 801. An appellate attorney reading the opinion could assume that in chambers voir dire was either an issue that could not be raised for the first time on appeal or did not constitute an unlawful courtroom closure.

The In re Morris opinion is devoid of any analysis regarding the effectiveness of appellate counsel. It relies entirely on a conclusory assumption that any effective attorney would have understood that its jurisprudence in Orange extended to all types of closures, no matter how brief or not, no matter whether the defendant objected or not, and no matter whether the alleged closure benefitted the defendant or not. At the time the Morris case went to trial in 2004 and at the time his appeal was decided in 2005¹³, neither Strode nor Momah had been published, the cases in which the Supreme Court first addressed the issue of in chambers voir dire and the remedy for such courtroom closures. Moreover, under Momah, a clear majority, as opposed to the plurality opinion in Strode, concluded that not all violations of the right to public trial result in structural error warranting a new trial. State v. Frawley,¹⁴ the first state case to address in chambers voir dire, was not decided until September of 2007. As noted in Justice Wiggins dissent in In re Morris:

¹³ State v. Patrick Morris, No. 54924-3-I, 130 Wn. App. 1036 (2005), *rev. den.*, 160 Wn.2d 1022 (2007).

¹⁴ State v. Frawley, 140 Wn. App. 713, 167 P.3d 593 (2007).

Second, and perhaps more importantly, it was not at all clear at the time of Morris's appeal that the public trial issue would be a winning issue on appeal or that it should even be pursued. It may seem clear with the benefit of hindsight after *Strode*, 167 Wash. 2d 222, 217 P.3d 210, but before *Strode* this court had never held that partial chambers voir dire would violate the public trial right. Morris's appeal was decided four years before *Strode*, so it is unlikely that Morris's appellate counsel was constitutionally deficient for failing to raise and develop what may have been a novel legal argument at the time.

In re Morris, 176 Wn.2d at 185-86 (Wiggins, J. dissenting). The Supreme Court's jurisprudence certainly was not clear regarding partial in chambers voir dire of jurors at the time Morris filed his appeal, still wasn't clear when it issued its plurality opinion in Strode, and arguably wasn't clear until the opinions issued in Wise and Paumier.

The conclusory declaration in In re Morris that failure to raise the issue of unobjected-to in chambers voir dire without Bone-Club findings was ineffective assistance of appellate counsel also ignores the fact that the practice was common and beneficial to defense at that time, such that, as Justice Wiggins noted, counsel would not have been deficient in developing this issue on appeal. *Id.* at 183-86. Given that, it is also unlikely that defense counsel would have alerted appellate counsel to there being a problem with the voir dire. Moreover, under the RAP rules an appellant isn't automatically entitled to a transcript of voir dire, s/he must seek permission of the trial court in order to obtain a copy, so the factual

basis for raising the issue may not have been apparent from the designated record. RAP 9.2(b). Unless there was a notation in the court minutes, appellate counsel likely would never have known about the in chambers voir dire and, given that the appeal was filed prior to Frawley, would not have known to ask about it. Appellate counsel in In re Morris was not ineffective in failing to raise the issue.

The court's conclusion that defendant Morris had established prejudice is also incorrect. With no analysis, other than citing to Orange, the court stated that defendant Morris had suffered prejudice because he would have been entitled to a new trial if the issue had been raised on direct appeal. In re Morris, 176 Wn.2d at 166, 173 (Chambers, J., concurring). Again, however, because Orange is fundamentally different from In re Morris in legally significant ways, *i.e.*, Orange objected while Morris did not, and Orange was harmed while Morris was not, the court's conclusion is again not supported by the precedent it cites. The court's decision is incorrect in this respect as well.

In re Morris is also incorrect because it conflicts with other Washington Supreme Court precedent. As noted by both dissents, a wealth of precedent had rigorously adhered to the well-settled principle that a personal restraint petitioner is required to show actual and substantial prejudice in order to obtain relief. In re Morris, 176 Wn.2d at

177 (Madsen, C.J., dissenting); *Id.* at 181 (Wiggins, J., dissenting). Other than the conclusory and incorrect statement that Morris's case was the same as Orange's case, the 5-justice majority in In re Morris identified no prejudice whatsoever.

Moreover, as noted in both dissents, the majority's conclusory analysis in In re Morris also conflicts with In re Personal Restraint of St. Pierre, 118 Wn.2d 321, 823 P.2d 492 (1992), wherein the court specifically held that a *higher* standard for prejudice applies on collateral attack:

We have limited the availability of collateral relief because it undermines the principles of finality of litigation, degrades the prominence of trial, and sometimes deprives society of the right to punish admitted offenders. *Therefore, we decline to adopt any rule which would categorically equate per se prejudice on collateral review with per se prejudice on direct review.* Although some errors which result in per se prejudice on direct review will also be per se prejudicial on collateral attack, the interests of finality of litigation demand that a *higher standard* be satisfied in a collateral proceeding.

In re St. Pierre, 118 Wn.2d at 329 (citation omitted) (emphasis supplied); *see also* In re Morris, 176 Wn.2d at 177 (Madsen, C.J., dissenting); *Id.* at 181 (Wiggins, J., dissenting). But rather than apply this higher standard as required, the majority in In re Morris collapsed the rules for direct appeal and the rules for collateral attack into a single standard under the rubric of

ineffective assistance of appellate counsel. As such, the decision is erroneous.

d. In re Morris is harmful.

Furthermore, the decision in In re Morris is harmful because it undermines the public policy considerations and fundamental legal principles inherent in collateral review. It permits a defendant a second direct appeal regarding any alleged closure of the courtroom without a Bone-Club analysis. In doing so, it seriously undermines precedent regarding the finality of review.

It is axiomatic that “[a] personal restraint petition is not to operate as a substitute for a direct appeal.” In re St. Pierre, 118 Wn.2d at 328. To the contrary, because collateral relief “undermines the principles of finality of litigation” and “degrades the prominence of the trial,”¹⁵ collateral relief is reserved for cases in which the fundamental fairness of the proceedings has truly been compromised. Brecht v. Abrahamson, 507 U.S. 619, 633-34, 113 S. Ct. 1710, 123 L. Ed. 2d 353 (1993). It has long been the law in Washington that a personal restraint petitioner is entitled to relief only when the petitioner carries the burden of showing either constitutional error from which he has suffered actual and substantial prejudice, or non-constitutional error that constitutes a fundamental defect

¹⁵In re St. Pierre, 118 Wn.2d at 329.

that inherently resulted in a complete miscarriage of justice. In re Personal Restraint of Cook. 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

The court's decision in In re Morris undermines these fundamental principles. Rather than safeguard the finality of litigation and the prominence of the trial, the In re Morris decision grants the unjustified windfall of a new trial under circumstances where no prejudice has been shown. Indeed, the In re Morris decision grants the windfall of a new trial under circumstances where the defendant received a *benefit* from the procedure employed at trial. As Justice Wiggins stated in dissent,

The right to a public trial is not a magic wand granting new trials to all who would wield it. Openness is a crucially important value in our criminal justice system, but so is finality. It does not serve the interests of justice to reopen this long-decided case, requiring a young girl to relive old traumas, and granting a windfall new trial to a man convicted of sexually molesting his daughter. We require personal restraint petitioners to show actual and substantial prejudice because we value finality and seek to avoid outcomes of this nature. Morris should be required to meet that burden just like every other personal restraint petitioner.

In re Morris, 176 Wn.2d at 186 (Wiggins, J., dissenting).

In short, In re Morris dispenses with the fundamental principle that a personal restraint petitioner is required to show actual and substantial prejudice in order to obtain relief. As such, the decision is harmful, because it undermines the public's interest in the finality of criminal

convictions, and it will result in needless retrials for criminal defendants whose first trials were fundamentally fair.

4. Salinas cannot demonstrate actual prejudice from the court's failure to analyze the Bone-Club factors at the time of the closure.

Salinas should be required to demonstrate actual prejudice from the court's failure to conduct an on-the-record analysis of the Bone-Club factors when he failed to object at the time of the court's inquiry. Salinas has alleged no specific prejudice. On the record before this Court, it is difficult to perceive how Salinas could establish any actual prejudice from the court's failure to make the requisite findings at the time of the private voir dire, or from the in chamber voir dire process itself for that matter, since he desired private voir dire and utilized the process in order to maximize his right to a fair trial by minimizing taint to the venire pool from jurors' negative experiences with sexual abuse.

Moreover, the error alleged here is the failure to conduct an on-the-record analysis of the Bone-Club factors at the time of the closure, and not an in fact unlawful closure over the defendant's objection. The appropriate remedy for failure to make adequate findings on the record generally is remand for entry of findings. *See, State v. Sublett*, 176 Wn.2d 58, 105-06, 292 P.3d 715 (2012) (J. Madsen concurring) (listing cases from other jurisdictions which held remand for findings was appropriate

remedy); *see also*, State v. Alvarez, 128 Wn.2d 1, 19, 904 P.2d 754 (1995) (“An error of the court in entering judgment without findings of fact and conclusions of law is remedied by subsequent entry of findings, conclusions and judgment”); State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1996) (remand for entry of findings is appropriate remedy for failure to make written findings under CrR 6.1(d)). It is clear from the record that the purpose of the private voir dire was to protect the defendant’s right to fair trial and jurors’ privacy interests, the questioning was limited to the seven jurors who expressed desire to be questioned on sensitive issues, e.g. sexual abuse, in private and that no one objected to the procedure. Moreover, three jurors were excused for cause as a result of the in-chambers questioning. If the court had conducted an analysis on the record at the time of closure, the record is sufficient to demonstrate that the Bone-Club factors would have been met. Therefore, Salinas cannot show prejudice from appellate counsel’s failure to raise the issue on direct appeal.

5. This Court should order a reference hearing before granting the requested relief.

This Court has the ability to remand this matter for a reference hearing if it determines there are material disputed issues of fact. If a petitioner meets his/her burden to make a threshold showing, then the

State must answer the allegations and identify material disputed questions of fact. In re Monschke, 160 Wn. App. 479, 489, 251 P.3d 884 (2010). If the evidence presented establishes “material disputed issues of fact,” the reviewing court is to hold a reference hearing to resolve the factual questions. *Id.*; *see also*, RAP 16.9.

Here there is nothing in the record as to why appellate counsel did not brief the issue Salinas’ wishes to raise now. If appellate counsel believed that Salinas invited the error, it would have been a legitimate appellate strategy to not raise the issue, particularly given the number of other issues that appellate counsel did raise. The current record certainly supports the State’s position that Salinas invited his alleged error by defense counsels’ actions in seeking private voir dire and failing to object. Assuming Salinas will assert that he did not invite the error through defense counsels’ actions, if the Court then believes that there is a disputed issue as to a material fact, then the matter should be remanded for a reference hearing. Given that defense counsel did not object, the trial court and the State were never put on notice that defense objected to the court’s failure to conduct an on-the-record Bone-Club analysis. Moreover, there may have been some discussion that was not recorded regarding the procedure to be utilized and appellate counsel may have

been aware of this¹⁶. The questionnaire that the court actually gave to prospective jurors is not the same questionnaire as those filed by defense counsel, and the prosecutor didn't agree with all the questions that appeared on defense's proposed version. It is highly likely therefore that there was some discussion involving trial counsel and the court regarding at a minimum the questionnaire, if not the private juror voir dire process, which discussion unfortunately does not appear in the record.

E. CONCLUSION

The remedy for in chambers voir dire without Bone-Club findings set forth in In re Morris does not apply to this case because Salinas invited the very error he alleges that appellate counsel failed to raise in his direct appeal. Even if In re Morris is not distinguishable on that basis, the State asserts that In re Morris was wrongly decided and should be overruled, and that Salinas should be required to demonstrate prejudice from his allegation of ineffective assistance of appellate counsel. He has not alleged any specific prejudice. Under Momah, not all closures, or in chambers questioning of prospective jurors without Bone-Club findings, results in structural error requiring reversal. The in-chambers voir dire here safeguarded Salinas's right to an impartial jury and did not render his

¹⁶ Given that this was a three strikes case, it is highly unlikely appellate counsel did not have some discussion with defense counsel as to appellate issues that could be raised.

trial fundamentally unfair. Salinas cannot meet his burden to demonstrate actual prejudice, and his petition should be dismissed.

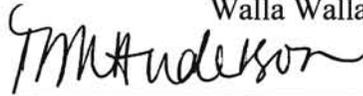
Respectfully submitted this 17th day of April, 2014.


HILARY A. THOMAS, WSBA #22007
Admin. No. 91075
Appellate Deputy Prosecutor
Attorney for Respondent

CERTIFICATE

I certify that on this date I placed in the mail with proper U.S. postage thereon, or otherwise caused to be delivered, a true and correct copy of the foregoing document to this Court, and appellant Hector Salinas, addressed as follows:

Hector Salinas
#726671
Washington State Penitentiary
1313 N. 13th Ave.
Walla Walla, WA 99362



Legal Assistant



Date

APPENDIX A

SCANNED 14

LEA

FILED IN OPEN COURT
6/8/2010
WHATCOM COUNTY CLERK
By M
Deputy

SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM

STATE OF WASHINGTON, Plaintiff,
vs.
HECTOR SERANO SALINAS, Defendant.
DOB: February 15, 1972
Isaac Salinas; Antonio R. Juarez

No. 08-1-00877-3

JUDGMENT AND SENTENCE (JS) *JDSWC*

PRISON
[XX] RCW 9.94A.712 - PRISON CONFINEMENT
[XX] CLERK'S ACTION REQUIRED-para 4.1 (LFO'S),
4.3 (NCO)

I. HEARING

1.1 The court conducted a sentencing hearing June 8, 2010 and the defendant, **Hector Serano Salinas**, the defendant's lawyer, **Starck Follis and Tom Fryer**, and the Deputy Prosecuting Attorney, **Dona Bracke**, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced in accordance with the proceedings in this case, the Court **FINDS**:

2.1 **CURRENT OFFENSE(S)**: The defendant is guilty of the following offenses based upon a **JURY - VERDICT**:

COUNT	CRIME	TYPE OF DRUG	RCW	DATE OF CRIME
I	RAPE IN THE FIRST DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.040(1)	June 30, 2008
II	RAPE IN THE FIRST DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.040(1)	June 30, 2008
III	RAPE IN THE FIRST DEGREE	NOT APPLICABLE ON THIS COUNT	9A.44.040(1)	June 30, 2008
IV	KIDNAPPING IN THE FIRST DEGREE	NOT APPLICABLE ON THIS COUNT	9A.40.020	June 30, 2008

as charged in the Information.

Judgment and Sentence (JS) (Felony)
(RCW 9.94A.500, .505) WPF CR 84.0400 (6/2002)
HECTOR SERANO SALINAS

*JS/m
cc: wese / BPD*

B

10-9-01916-4

LEA/68A

JS SA

[XX] The Court finds Counts I, II, III, and IV are most serious felony offenses pursuant to RCW 9.94A.030(29).

2.2 CRIMINAL HISTORY (RCW 9.94A.525):

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	A or J	TYPE OF CRIME
ILLEGAL RE-ENTRY AFTER DEPORTATION	09/05/01	MARICOPA, ARIZONA	A	Felony
ASSAULT IN THE SECOND DEGREE	11/12/98	DOUGLAS, WASHINGTON	A	Class B felony
TRANSPORT/SALE OF CONTROLLED SUBSTANCE	09/02/97	SAN DIEGO, CALIFORNIA	A	Felony
CARRYING A LOADED FIREARM IN A PUBLIC PLACE	12/02/96	SAN DIEGO, CALIFORNIA	A	Gross Misdo
ROBBERY IN THE FIRST DEGREE	09/19/94	CHELAN, WASHINGTON	A	Class A felony
THEFT THIRD DEGREE	06/30/94	CHELAN, WASHINGTON	A	Gross Misdo
DRIVING UNDER THE INFLUENCE	02/07/94	DOUGLAS, WASHINGTON	A	Gross Misdo

[] Additional criminal history is attached in Appendix 2.2.

[] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.525

[X] The following prior offenses require that the defendant be sentenced as a Persistent Offender (RCW 9.94A.570): Robbery in the First Degree, Assault in the Second Degree

[X] The Court finds that the defendant has been convicted on at least two separate occasions of most serious offense felonies, at least one of which occurred before the commission of the other most serious offense for which the defendant was previously convicted.

2.3 SENTENCING DATA:

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE ACTUAL CONFINEMENT (not including enhancements)	PLUS Enhancements *	TOTAL STANDARD RANGE (standard range including enhancements)	MAXIMUM TERM
I	9	XII	to		to	Life/\$50,000
II	9	XII	to		to	Life/\$50,000
III	9	XII	to		to	Life/\$50,000
IV	9	X	to		to	Life/\$50,000

*(F) Firearm, (D) Other deadly weapons, (V) VUCSA in a protected zone, (VH) Veh. Hom, see RCW 46.61.520, (JP) Juvenile present, (SM) Sexual Motivation, RCW 9.94A.533(8), (SCF) Sexual conduct with a child for a fee, RCW.94A.533(9).

[] Additional current offense sentencing data is attached in Appendix 2.3.

2.4 [] EXCEPTIONAL SENTENCE. The court finds substantial and compelling reasons that justify an exceptional sentence:

2.5 ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS. The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein.
RCW 9.94A.753

The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.753):

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are as follows:

III. JUDGMENT

3.1 The defendant is GUILTY of the Counts and Charges listed in Paragraph 2.1.

3.2 The Court DISMISSES Count(s)

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of this Court:

JASS CODE

\$	Restitution to:
-----------	------------------------

RTN/RJN
Office).

(Name and Address--address may be withheld and provided confidentially to Clerk's

PCV CRC	<u>\$500.00</u> <u>\$450.00</u>	Victim Assessment Court costs, including:	RCW 7.68.035 RCW 9.94A.760, 9.94A.505, 10.01.160, 10.46.190
		Criminal filing fee Witness costs Sheriff service fees Jury demand fee	<u>\$200.00</u> \$ \$ <u>\$250</u> FRC WFR SFR/SFS/SFW/WRF JFR
PUB	<u>\$4,800.00</u>	Fees for court appointed attorney	RCW 9.94A.760
WFR	<u>\$5,000.00</u>	Court appointed defense expert and other defense costs	RCW 9.94A.760
FCM LDI	\$ \$	Fine VUCSA Fine	RCW 9A.20.021 [] VUCSA additional fine deferred due to indigency RCW 69.50.430
MTH	\$	Meth Lab Cleanup	RCW 69.50 [] VUCSA additional fine deferred due to indigency RCW 69.50.401
CDF/LDI/ FCD/NTF/ SAD/SDI	\$	Drug enforcement fund	RCW 9.94A.760
CLF	\$	Crime lab fee	[] Suspended due to indigency RCW 43.43.690

DN2	<u>\$100.00</u>	Felony DNA Collection Fee	<input type="checkbox"/> Not imposed due to hardship
RTN/RJN	\$	Emergency response costs (Vehicular Assault, Vehicular Homicide only, \$1000 maximum)	RCW 38.52.430
	\$ _____	TOTAL	RCW 9.94A.760

The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing:
 shall be set by the prosecutor
 is scheduled for _____.

All payments shall be made in accordance with the policies, procedures and schedules of the Whatcom County Clerk as supervision of legal financial obligations has been assumed by the Court. RCW 9.94A.760

PAYMENT IN FULL: Defendant agrees and is hereby ordered to make payment in full within _____ days after the imposition of sentence to the Whatcom County Clerk for the amount due and owing for legal financial obligations and restitution.

MONTHLY PAYMENT PLAN: The defendant agrees and is hereby ordered to enter into a monthly payment plan, with the Whatcom County Clerk for the amounts due and owing for legal financial obligations and restitution, immediately after sentencing. The Court hereby sets the defendant's monthly payment amount at **\$100.00**, which will remain in effect until such time as the defendant executes a payment plan negotiated with the Collections Deputy. The first payment of **\$100.00** is due immediately after imposition of sentence or release from confinement, whichever occurs last.

During the period of repayment, the Whatcom County Clerk's Collections Deputy may require the defendant to appear for financial review hearings regarding the appropriateness of the collection schedule. The defendant will respond truthfully and honestly to all questions concerning earning capabilities, the location and nature of all property or financial assets and provide all written documentation requested by the Collections Deputy in order to facilitate review of the payment schedule. RCW 9.94A. The defendant shall keep current all personal information provided on the financial statement provided to the Collections Deputy. Specifically, the defendant shall notify the Whatcom County Superior Court Clerk's Collection Deputy, or any subsequent designee, of any material change in circumstance, previously provided in the financial statement, i.e. address, telephone or employment within 48 hours of change.

DEFENDANT MUST MEET WITH COLLECTIONS DEPUTY PRIOR TO RELEASE FROM CUSTODY.

The defendant shall pay the cost of services to collect unpaid legal financial obligations, which include monitoring fees for a monthly time payment plan and/or collection agency fees if the account becomes delinquent. (RCW 36.18.190)

In addition to the other costs imposed herein, the court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the rate of \$50.00 per day, unless another rate is specified here: _____ (JLR) RCW 9.94A.760

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73.160

The defendant is ordered to reimburse _____ at _____ for the cost of pretrial electronic monitoring in the amount of \$.

4.2 **DNA TESTING.** The defendant shall have a biological sample collected for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

HIV TESTING. The defendant shall submit to HIV testing. RCW 70.24.340

4.3 **NO CONTACT ORDER/ORDER PROHIBITING CONTACT**

Domestic Violence No-Contact Order, Antiharassment No-Contact Order, or Sexual Assault Protection Order is filed with this Judgment and Sentence. **SEE ATTACHED APPENDIX F.**

NO POST-CONVICTION ORDER PROHIBITING CONTACT IS BEING ENTERED OR EXTENDED. ANY PRIOR ORDER ENTERED, HAVING THIS CAUSE NUMBER, TERMINATES ON THE DATE THIS JUDGMENT IS SIGNED

4.4 **OTHER:**

Defendant is to be released immediately to set up jail alternatives.

DEPORTATION. If the defendant is found to be a criminal alien eligible for release to and deportation by the United States Immigration and Naturalization Service, subject to arrest and reincarceration in accordance with law, then the undersigned Judge or Prosecutor consent to such release and deportation prior to the expiration of the sentence. RCW 9.94A.280

.....
.....

4.5 **CONFINEMENT OVER ONE YEAR.** The defendant is sentenced as follows:

(a) **CONFINEMENT.** RCW 9.94A.570. Defendant is sentenced to the following confinement in the custody of the Department of Corrections:

Life without possibility of release on Counts I, II, III, and IV

(Add mandatory firearm, deadly weapons, and sexual motivation enhancement time to run consecutively to other counts, see Section 2.3, Sentencing Data above)

.....
OTHER:

.....
All counts shall be served concurrently, except for the portion of those counts for which there is a special finding of a firearm, other deadly weapon, sexual motivation, VUCSA, in a protected zone, or manufacture of methamphetamine with juvenile present as set forth above in section 2.3, and except for the following which shall be served CONSECUTIVELY:

The sentence herein shall run consecutively with the sentence in _____ but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence IMMEDIATELY unless otherwise set forth here: _____
 (should be a Monday if possible) between 1:00 p.m. and 4:00 p.m.

(b) **CONFINEMENT.** RCW 9.94A.712: The defendant is sentenced to the following term of confinement in the custody of the DOC:

(c) The defendant shall receive credit for time served prior to sentencing, including time spent in transport, if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court:

4.6 **SUPERVISION:** [XX]**COMMUNITY CUSTODY** for counts, sentenced under RCW 9.94A.712, is ordered for any period of time the defendant is released from total confinement before the expiration of the maximum sentence;; or the period of earned release awarded pursuant to RCW 9.94A.728(1) and (2), whichever is longer and standard mandatory conditions are ordered. [See RCW 9.94A.700 and .705 for community placement offenses, which include serious violent offenses, second degree assault, any crime against a person with a deadly weapon finding and Chapter 69.50 or 69.52 RCW offenses not sentenced under RCW 9.94A.660 committed before July 1, 2000. See RCW 9.94A.715 for community custody range offenses, which include sex offenses not sentenced under RCW 9.94A.712 and violent offenses committed on or after July 1, 2000. [Use paragraph 4.7 to impose community custody following work ethic camp.]

[On or after July 1, 2003, the court may order community custody under the jurisdiction of DOC for up to 12 months if the defendant is convicted of a sex offense, a violent offense, a crime against a person under RCW 9.94A.411, or a felony violation of chapter 69.50 or 69.52 RCW or an attempt, conspiracy or solicitation to commit such a crime. For offenses committed on or after June 7, 2006, the court shall impose a term of community custody under RCW 9.94A.715 if the offender is guilty of failure to register (second or subsequent offense) under RCW 9A.44.130(1)(a).

On or after July 1, 2003, DOC shall supervise the defendant if DOC classifies the defendant in the A or B risk categories; or DOC classifies the defendant in the C or D risk categories and at least one of the following apply:

a) the defendant committed a current or prior:		
i) Sex offense	ii) Violent Offense	iii) Crime against a person (RCW 9.94A.411)
iv) Domestic violence offense (RCW 10.99.020)		v) Residential burglary offense
vi) Offense for manufacture, delivery or possession with intent to deliver methamphetamine		
vii) Offense for delivery of a controlled substance to a minor; or attempt, solicitation or conspiracy (vi, vii)		
b) the conditions of community placement or community custody include chemical dependency treatment.		
c) The defendant is subject to supervision under the interstate compact agreement, RCW 9.94A.745.		

While on community placement or community custody, the defendant shall: (1) report to and be available for contact with the assigned community corrections officer as directed; (2) work at DOC-approved education, employment and/or community restitution (service); (3) notify DOC of any change in defendant's address or employment; (4) not consume controlled substances except pursuant to lawfully issued prescriptions; (5) not unlawfully possess controlled substances while in community custody; (6) pay supervision fees as determined by DOC; (7) perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC; and (8) for sex offenses, submit to electronic monitoring if imposed by DOC. The residence location and living arrangements are subject to the prior approval of DOC while in community placement or community custody. Community custody for sex offenders not

sentenced under RCW 9.94A.712 may be extended for up to the statutory maximum term of the sentence. Violation of community custody imposed for a sex offense may result in additional confinement.

Defendant shall report to Department of Corrections, 1400 N Forest, Bellingham, WA 98225, not later than 72 hours after release from custody; and the defendant shall perform affirmative acts necessary to monitor compliance with the orders of the court as required by DOC. For sex offenses, defendant shall submit to electronic monitoring if imposed by DOC. Defendant shall comply with the instructions, rules and regulations of DOC for the conduct of the defendant during the period of community supervision or community custody and any other conditions of community supervision or community custody stated in this Judgment and Sentence. The defendant shall:

[XX] The defendant shall not consume any alcohol.

[XX] Defendant shall comply with the No Contact provisions stated above.

[XX] Defendant shall remain of a specified geographical boundary, to wit: _____.

[] The defendant shall undergo an evaluation for treatment for the concern noted below AND FULLY COMPLY with all recommended treatment.

[] The defendant shall participate in the following crime related treatment or counseling services:

[] The defendant shall comply with the following crime-related prohibitions:

Other conditions may be imposed by the court or Department during community custody, or are set forth here:

[XX] For sentences imposed under RCW 9.94A.712, other conditions, including electronic monitoring, may be imposed during community custody by the Indeterminate Sentence Review Board, or in an emergency by DOC. Emergency conditions imposed by DOC shall not remain in effect longer than seven working days.

4.7 [] **WORK ETHIC CAMP.** RCW 9.94A.690, RCW 72.09.410. The court finds that defendant is eligible and is likely to qualify for work ethic camp and the court recommends that the defendant serve the sentence at a work ethic camp. Upon completion of work ethic camp, the defendant shall be released on community custody for any remaining time of total confinement, subject to the conditions below. Violation of the conditions of community custody may result in a return to total confinement for the balance of the defendant's remaining time of total confinement. The conditions of community custody are stated above in Section 4.6.

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections:

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT.** Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea, motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090

5.2 **LENGTH OF SUPERVISION.** For an offense committed prior to July 1, 2000, the defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or release from confinement, whichever is longer, to assure payment of all legal financial obligations unless the court extends the criminal judgment an additional ten years. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for the purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. RCW 9.94A.760 and RCW 9.94A.505(5)

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in Section 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.7602. Other income-withholding action under RCW 9.94A.760 may be taken without further notice. RCW 9.94A.7606

5.4 **RESTITUTION HEARING.**

[XX] Defendant waives any right to be present at any restitution hearing (sign initials): _____

_____ Defendant refuses to waive any right to be present at any restitution hearing.

5.5 **COMMUNITY CUSTODY VIOLATION.**

(a) If you are subject to a first or second violation hearing and DOC finds that you committed the violation, you may receive as a sanction up to 60 days of confinement per violation. RCW 9.94A.634.

(b) If you have not completed your maximum term of total confinement and you are subject to a third violation hearing and DOC finds that you committed the violation, DOC may return you to a state correctional facility to serve up to the remaining portion of your sentence. RCW 9.94A.737(2).

5.6 **FIREARMS.** You must immediately surrender any concealed pistol license and you may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

5.7 **SEX AND KIDNAPPING OFFENDER REGISTRATION. RCW 9A.44.130, 10.01.200**

1. **General Applicability and Requirements:** Because this crime involves a sex offense or kidnapping offense involving a minor as defined in RCW 9A.44.130, you are required to register with the sheriff of the county of the state of Washington where you reside. If you are not a resident of Washington but you are a student in Washington or you are employed in Washington or you carry on a vocation in Washington, you must register with the sheriff of the county of your school, place of employment or vocation. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.
2. **Offenders Who Leave the State and Return:** If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within three business days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections. If you leave this state following your sentencing or release from custody but later while not a resident of Washington you become employed in Washington, carry on a vocation in Washington, or attend school in Washington, you must register within three business days after starting school in this state or becoming employed or carrying out a vocation in this state, or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Correction.
3. **Change of Residence Within State and Leaving the State:** If you change your residence within a county, you must send signed written notice of your change of residence to the sheriff within 72 hours of moving. If you change your residence to a new county within this state, you must send signed written notice of your change of residence to the sheriff of your new county of residence at least 14 days before moving and register with that sheriff within 24 hours of moving. You must also give signed written notice of your change of address to the sheriff of the county where last registered within 10 days of moving. If you move out of Washington state, you must send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington State.
4. **Additional Requirements Upon Moving to Another State:** If you move to another state, or if you work, carry on a vocation, or attend school in another state you must register a new address, fingerprints, and photograph with the new state within 10 days after establishing residence, or after beginning to work, carry on a vocation, or attend school in the new state. You must also send written notice within 10 days of moving to the new state or to a foreign country to the county sheriff with whom you last registered in Washington State.
5. **Notification Requirement When Enrolling in or Employed by a Public or Private Institution of High**

Education or Common School (K-12): If you are a resident of Washington and you are admitted to a public or private institution of higher education, you are required to notify the sheriff of the county of your residence of your intent to attend the institution within 10 days of enrolling or by the first business day after arriving at the institution, whichever is earlier. If you become employed at a public or private institution of higher education, you are required to notify the sheriff for the county of your residence of your employment by the institution within 10 days of accepting employment or by the first business day after beginning to work at the institution, whichever is earlier. If your enrollment or employment at a public or private institution of higher education is terminated, you are required to notify the sheriff for the county of your residence of your termination of enrollment or employment within 10 days of such termination. If you attend, or plan to attend, a public or private school regulated under Title 28A RCW or chapter 72.40 RCW, you are required to notify the sheriff of the county of your residence of your intent to attend the school. You must notify the sheriff within 10 days of enrolling or 10 days prior to arriving at the school to attend classes, whichever is earlier. If you are enrolled on September 1, 2006, you must notify the sheriff immediately. The sheriff shall promptly notify the principal of the school.

6. **Registration by a Person Who Does Not Have a Fixed Residence:** Even if you do not have a fixed residence, you are required to register. Registration must occur within 24 hours of release in the county where you are being supervised if you do not have a residence at the time of your release from custody. Within 48 hours, excluding weekends and holidays, after losing your fixed residence, you must send signed written notice to the sheriff of the county where you last registered. If you enter a different county and stay there for more than 24 hours, you will be required to register in the new county. You must also report weekly in person to the sheriff of the county where you are registered. The weekly report shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. You may be required to provide a list the locations where you have stayed during the last seven days. The lack of a fixed residence is a factor that may be considered in determining an offender's risk level and shall make the offender subject to disclosure of information to the public at large pursuant to RCW 4.24.550.
7. **Reporting Requirements for Persons Who Are Risk Level II or III:** If you have a fixed residence and you are designated as a risk level II or III, you must report, in person, ever 90 days to the sheriff of the county where you are registered. Reporting shall be on a day specified by the county sheriff's office, and shall occur during normal business hours. If you comply with the 90-day reporting requirement with no violations for at least 5 years in the community, you may petition the superior court to be relieved of the duty to report every 90 days.
8. **Application for a name Change:** If you apply for a name change, you must submit a copy of the application to the county sheriff of the county of your residence and to the state patrol not fewer than five days before the entry of an order granting the name change. If you receive an order changing your name, you must submit a copy of the order to the county sheriff of the county of your residence and to the state patrol within five days of the entry of the order. RCW 9A.44.130(7).

5.8 [] The court finds that Count(s) is a felony in the commission of which a motor vehicle was used. The court clerk is directed to immediately mark the person's Washington State Driver's license or permit to drive, it any in a manner authorized by the department. The court clerk is directed to immediately forward an Abstract of Court Record to the Department of Licensing, which must revoke the defendant's driver's license. RCW 46.20.285.

5.9 If the defendant is or becomes subject to court-ordered mental health or chemical dependency treatment the defendant must notify DOC and the defendant's treatment information must be shared with DOC for the duration of the defendant's incarceration and supervision. RCW 9.94A.562.

5.10 **OTHER:**

DONE in Open Court and in the presence of the defendant this date: **June 8, 2010.**

Refused.
DEFENDANT
Print name: HECTOR SERANO SALINAS

Dona Bracke
Deputy Prosecuting Attorney
WSBA # 29753
Print name: DONA BRACKE

[Signature]
JUDGE

[Signature]
Attorney for Defendant
WSBA # 15677/22952
Print name: STARCK FOLLIS AND TOM FRYER

Voting Rights Statement: I acknowledge that my right to vote has been lost due to felony conviction. If I am registered to vote, my voter registration will be cancelled. My right to vote may be restored by: a) A certificate of discharge issued by the sentencing court, RCW 9.94A.637; b) A court order issued by the sentencing court restoring the right, RCW 9.92.066; c) A final order of discharge issued by the indeterminate sentence review board, RCW 9.96.050; or d) A certificate of restoration issued by the governor, RCW 9.96.020. Voting before the right is restored is a class C felony, RCW 92A.84.660.
Defendant's signature: Refused.

Interpreter Print name: Kyra Flor

I am a certified interpreter of, or the court has found me otherwise qualified to interpret, Spanish language, which the defendant understands. I translated this **JUDGMENT AND SENTENCE** for the defendant into that language.

Dated: June 8, 2010

[Signature]
Interpreter Signature

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY**

THE STATE OF WASHINGTON,)	No. 08-1-00877-3
)	
Plaintiff,)	APPENDIX F - SEXUAL ASSAULT PROTECTION
)	ORDER
vs.)	(Criminal/Felony)
)	(ORSXP)
Hector Serano Salinas, DOB: February 15, 1972)	(JIS order code: SXP)
)	
Defendant.)	[XX] Post Conviction
)	[XX] Clerk's Action required

1. The court find that the defendant has been convicted of a sex offense as defined in RCW 9.94A.030, a violation of RCW 9A.44.096, a violation of RCW 9.68A.090, or a gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030. Additional findings on page two.

2. This Sexual Assault Protection Order is entered pursuant to Laws of 2006, ch. 138 § 16. This order protects:

DEBORAH LYNN PELLETT (5/19/1961) (NO ADDRESS AVAILABLE)

IT IS ORDERED:
This Post Conviction Sexual Assault Protection Order DOES NOT EXPIRE. This is a lifetime protection order.

(A final sexual assault protection order entered in conjunction with a criminal prosecution shall remain in effect for a period of two years following the expiration of any sentence if imprisonment and subsequent period of community supervision, conditional release, probation or parole.)

Defendant is **RESTRAINED** from:

- A. Having any contact with the protected person(s) directly, indirectly or through third parties regardless of whether those third parties know of the order.
- B. Knowingly coming within or knowingly remaining with **500 feet** of the protected person(s) residence, school, place of employment, [] other: _____
- C. Obtaining, owning, possessing or controlling a firearm.

WARNINGS TO THE DEFENDANT: Violation of this order is a criminal offense under chapter 26.50 RCW and will subject a violator to arrest. You can be arrested even if any person protected by the order invites or allows you to violate the order's prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order.

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to: **Bellingham Police Department**, which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

This order is issued in accordance with Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265. The court determines that the defendant's relationship to a person protected by this order is: N/A. Therefore, 18 U.S.C. §§ 2261 (federal violation penalties) may apply to this order.

Done in Open court in the presence of the defendant this date: **June 8, 2010**

Refused

Defendant
Print name: HECTOR SERANO SALINAS

[Signature]

Judge
Print name: *Charles R. Snyder*

[Signature]

Dona Bracke
WSBA# Dona Bracke
Print name DONA BRACKE

[Signature] *[Signature]*

Attorney for Defendant
WSBA # 15677 / *122464* *15677*
Print name: STARCK FOLLIS AND TOM FRYER

[Signature]
Kym Flor, Spanish Int

A Law Enforcement Information Sheet (LEIS) must be completed.

**SUPERIOR COURT OF WASHINGTON
COUNTY OF WHATCOM**

STATE OF WASHINGTON, Plaintiff,

vs.

HECTOR SERANO SALINAS, Defendant.

No. 08-1-00877-3

WARRANT OF COMMITMENT

DOB: February 15, 1972

THE STATE OF WASHINGTON

TO: THE SHERIFF OF WHATCOM COUNTY

The defendant, **HECTOR SERANO SALINAS**, has been convicted in the Superior Court of the State of Washington of the crime or crimes of **RAPE IN THE FIRST DEGREE, RAPE IN THE FIRST DEGREE, RAPE IN THE FIRST DEGREE and KIDNAPPING IN THE FIRST DEGREE** and the Court has ordered that the defendant be punished by serving the sentence of

LIFE IN PRISON WITHOUT THE POSSIBILITY OF RELEASE

The defendant shall receive credit for time served prior to sentencing, as long as the time served was solely on that cause number, including time spent in transport, if that confinement was solely under this cause number. RCW 9.94A.505. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court.

YOU, THE SHERIFF, ARE COMMANDED to take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

By Direction of the HONORABLE



JUDGE

N.F. JACKSON, JR., Clerk

DATED: June 8, 2010

By: _____

Deputy Clerk

HECTOR SERANO SALINAS
CAUSE NUMBER of this case: 08-1-00877-3

I, _____, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: **June 8, 2010.**

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. _____
(If no SID take fingerprint card for State Patrol)

Date of Birth: 02/15/72

FBI No. _____
PCN No. 900211139

Local ID No. _____

Other _____

Alias name, SSN, DOB: Isaac Salinas; Antonio R. Juarez

Race: White

Sex: Male

Defendant's Last Known Address: TRANSIENT

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his fingerprints and signature thereto.

Clerk of the Court: _____, Deputy Clerk. Dated: **June 8, 2010**

DEFENDANT'S SIGNATURE: _____

Refused to sign

Left



Right Thumb



APPENDIX B

FILED
COUNTY CLERK

SCANNED 9

2010 JAN 25 PM 3:55

WHATCOM COUNTY
WASHINGTON

BY [Signature]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 vs.)
)
 HECTOR SERANO SALINAS,)
)
 Defendant.)

NO. 08-1-00877-3

PROPOSED JURY
QUESTIONNAIRE

COMES NOW, the above-named Defendant, HECTOR SERANO SALINAS, acting by and through his undersigned attorney, Thomas H. Fryer, of the Law Offices of Tario & Associates, P.S., and hereby submits the attached proposed jury questionnaire for use at trial in the above entitled case.

DATED this 25 day of January, 2010.

TARIO & ASSOCIATES, P.S.

[Signature]

Thomas H. Fryer, WSBA #22955
Attorney for Defendant
Hector Serano Salinas

ORIGINAL

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TO PROSPECTIVE JURORS

This questionnaire is designed to elicit information with respect to your qualifications to sit as a juror in a pending case. This questionnaire will substantially shorten the process of jury selection. This questionnaire will remain confidential.

Because this questionnaire is part of the jury selection process, you must answer the questions to the best of your ability and you must fill out the questionnaire by yourself. As you answer the questions that follow, please keep in mind that there are not any right or wrong answers, only complete and incomplete answers. Complete answers are far more helpful than incomplete answers because they make long questioning unnecessary and by doing that they shorten the time it takes to select a jury.

If you cannot answer a question, please leave the response area blank. During the questioning by the attorneys and the court, you will be given an opportunity to explain or expand any answers if necessary.

Some of these questions may call for information of a personal nature that you may not want to discuss in public. If you feel that your answer to any question may invade your right to privacy or might be embarrassing to you, you may so indicate on the form that you would prefer to discuss your answer in private. You will find instructions for this on the questionnaire.

After you have completed the questionnaire, please hand it to the Bailiff.

Thank you for your cooperation.

The Honorable Charles D. Snyder
Judge of the Superior Court

6. **Where have you resided since the age of ten (city and state) and how long have you lived in each place?**

7. **Are you personally acquainted with or related to anyone who works with law enforcement? If the answer is yes, please state that person's name and your affiliation with that individual.**

8. **This case involves an allegation that in June 2008, the defendant, Hector Serano Salinas, sexually assaulted another person. If you have heard or read anything about this case, please state with specificity what you know and how.**

9. **Are you familiar with any of the following attorneys or any persons affiliated with these attorneys?**

Thomas H. Fryer _____ Stark Follis _____

Dona Bracke _____

10. **Do you have a situation at work, at home, or in your life in general that would make it difficult for you to direct your attention to this case for approximately one and a half weeks? If the answer is yes, please explain.**

11. **If you have had prior jury experience, please describe briefly the type of cases that you heard during your tenure as a juror.**

- 12. Have you ever testified as a witness in a lawsuit or been a plaintiff or defendant in a lawsuit? If the answer to this question is yes, please briefly describe your experience and the circumstances.**

- 13. What activities do you prefer to engage in during your spare time?**

- 14. What organizations, clubs, social or charitable groups do you belong to?**

- 15. Have you, or any member of your family, or any person close to you been accused of convicted of any act of sexual abuse/misconduct? If the answer to this question is yes, please provide a brief description of this situation.**

- 16. Have you, or any member of your family, or any person close to you been the victim of sexual abuse or misconduct? If the answer to this question is yes, please provide a brief description of this situation.**

- 17. Are you now, or have you ever been involved in any organization which address issues**

of sexual abuse/misconduct? If the answer to this question is yes, please name these organizations and describe your participation.

18. In recent years, the media has paid increased attention to the subject of sexual abuse/misconduct. Please describe how this attention has affected your feelings on the topic:

19. Have you or any member of your family, or any acquaintance ever been a defendant in a criminal action? If your answer to this question is yes, please provide a brief description as to the nature of this accusation.

20. In either job, education, or training, have you ever had any experience or training in dealing with issues related to sexual abuse or sexual misconduct? If your answer to this question is yes, please provide a brief description as to the experience or training.

21. If you were the defense lawyer or the prosecutor in this case, what do you think would be important for us to know about you in order to determine whether or not you would be a fair juror?

22. Do you have any feelings regarding the subject of sexual abuse/misconduct or any other subject which would prevent you from being a fair and impartial juror. If your answer

to this question is yes, please explain.

23. Please describe your general opinion of the criminal justice system in this country.

24. If you could change one thing about our system of justice, what change would you make?

25. Do you or do you know anyone who speaks Spanish as their first language?. If your answer is yes, please explain.

26. Would you prefer to discuss the answer to any of these questions privately rather than in open court? If so, please identify the questions by number in the space provided below.

27. Do you know any of the following persons? Please write in the word yes for each person that you know.

Deborah Lynn Pellett	_____
Detective Gina Crosswhite	_____
Officer Wodward	_____
Officer Daniel Bennett	_____
Officer D. Wubben	_____

Officer Michael Deruiter	_____
Officer Peter Kolby	_____
Officer K. Johnson	_____
Michael Sparks	_____
Officer C. Queen	_____
RN Kathy Hanbury	_____
RN Rolling Walker Morgan	_____
Officer Amy Garland	_____
Officer Pauline Renick	_____
Officer Scott Grunhurd	_____
Agent Barbara Kremzner	_____
Officer McKissick	_____
Carl A. Stewart	_____
Brooklyn L. Stewart	_____
Terry Belgrade	_____
Mike Croteau	_____
Deputy Bundy	_____
Lt. Timothy Lintz	_____
Officer Tawsha Dykstra	_____
Officer Jeremiah Smith	_____
Emanuel Borden	_____
Officer M. Scanlon	_____

Detective Donna Miller	_____
Theresa Meurs	_____
Jonathan Schilk	_____
Michael Jackets	_____
Gilber Rager	_____
Greg Frank	_____
Paramedic Brian Jones	_____
Paramedic Ray Young	_____
Deputy Jason Nyhus	_____
Paramedic Ryan Hillmon	_____
Officer Daniel Kelsh	_____
Dr. Bradley Biselow	_____
Dr. David Ashley	_____
Dr. Stephen Bueton	_____
Dr. Michael Pietro	_____
Dr. Robin Nicholson	_____
Gail Brudea	_____
Tom Solin	_____

APPENDIX C

SCANNED 9

FILED
COUNTY CLERK
2010-03-30 PM 1:00
BY: 

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

HECTOR SERANO SALINAS,

Defendant.

NO. 08-1-00877-3

SECOND
PROPOSED JURY
QUESTIONNAIRE

COMES NOW, the above-named Defendant, HECTOR SERANO SALINAS, acting by and through his undersigned attorney, Thomas H. Fryer, of the Law Offices of Tario & Associates, P.S., and hereby submits the attached second proposed jury questionnaire for use at trial in the above entitled case.

DATED this 30th day of March, 2010.

TARIO & ASSOCIATES, P.S.



Thomas H. Fryer, WSBA #22955
Attorney for Defendant
Hector Serano Salinas

ORIGINAL

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TO PROSPECTIVE JURORS

This questionnaire is designed to elicit information with respect to your qualifications to sit as a juror in a pending case. This questionnaire will substantially shorten the process of jury selection. This questionnaire will remain confidential.

Because this questionnaire is part of the jury selection process, you must answer the questions to the best of your ability and you must fill out the questionnaire by yourself. As you answer the questions that follow, please keep in mind that there are not any right or wrong answers, only complete and incomplete answers. Complete answers are far more helpful than incomplete answers because they make long questioning unnecessary and by doing that they shorten the time it takes to select a jury.

If you cannot answer a question, please leave the response area blank. During the questioning by the attorneys and the court, you will be given an opportunity to explain or expand any answers if necessary.

Some of these questions may call for information of a personal nature that you may not want to discuss in public. If you feel that your answer to any question may invade your right to privacy or might be embarrassing to you, you may so indicate on the form that you would prefer to discuss your answer in private. You will find instructions for this on the questionnaire.

After you have completed the questionnaire, please hand it to the Bailiff.

Thank you for your cooperation.

The Honorable Charles R. Snyder
Judge of the Superior Court

VOIR DIRE

Please read each of these questions carefully and answer them as honestly and completely as possible. Please do not skip any of the questions.

1. Please state your name and your juror number.

_____ name

_____ juror number

2. Please list your current occupation. If retired, please state your occupation prior to your retirement.

3. How many years of schooling have you completed? If you hold any degrees, please list the field in which you earned this degree. If you have any advanced training, please describe that training.

4. Do you now, or have ever supervised people in the work place?

_____ yes

_____ no

5. Please list all members of your immediate family, their relationship to you, their age and occupation.

Name Relationship Age Occupation

6. Where have you resided since the age of ten (city and state) and how long have you lived in each place?

7. Are you personally acquainted with or related to anyone who works with law enforcement? If the answer is yes, please state that person's name and your affiliation with that individual.

8. This case involves an allegation that in June 2008, the defendant, Hector Serano Salinas, sexually assaulted another person. If you have heard or read anything about this case, please state with specificity what you know and how.

9. Are you familiar with any of the following attorneys or any persons affiliated with these attorneys?

Thomas H. Fryer _____ Stark Follis _____

Dona Bracke _____

10. Do you have a situation at work, at home, or in your life in general that would make it difficult for you to direct your attention to this case for approximately one and a half weeks? If the answer is yes, please explain.

11. If you have had prior jury experience, please describe briefly the type of cases that you heard during your tenure as a juror.

12. Have you ever testified as a witness in a lawsuit or been a plaintiff or defendant in a lawsuit? If the answer to this question is yes, please briefly describe your experience and the circumstances.

13. What activities do you prefer to engage in during your spare time?

14. What organizations, clubs, social or charitable groups do you belong to?

15. Have you, or any member of your family, or any person close to your been accused of convicted of any act of sexual abuse/misconduct? If the answer to this question is yes, please provide a brief description of this situation.

16. Have you, or any member of your family, or any person close to you been the victim of sexual abuse or misconduct? If the answer to this question is yes, please provide a brief description of this situation.

17. Are you now, or have you ever been involved in any organization which address issues

of sexual abuse/misconduct? If the answer to this question is yes, please name these organizations and describe your participation.

18. In recent years, the media has paid increased attention to the subject of sexual abuse/misconduct. Please describe how this attention has affected your feelings on the topic:

19. Have you or any member of your family, or any acquaintance ever been a defendant in a criminal action? If your answer to this question is yes, please provide a brief description as to the nature of this accusation.

20. In either job, education, or training, have you ever had any experience or training in dealing with issues related to sexual abuse or sexual misconduct? If your answer to this question is yes, please provide a brief description as to the experience or training.

21. If you were the defense lawyer or the prosecutor in this case, what do you think would be important for us to know about you in order to determine whether or not you would be a fair juror?

22. Do you have any feelings regarding the subject of sexual abuse/misconduct or any other subject which would prevent you from being a fair and impartial juror. If your answer

to this question is yes, please explain.

23. Please describe your general opinion of the criminal justice system in this country.

24. If you could change one thing about our system of justice, what change would you make?

25. Do you or do you know anyone who speaks Spanish as their first language?. If your answer is yes, please explain.

26. Would you prefer to discuss the answer to any of these questions privately rather than in open court? If so, please identify the questions by number in the space provided below.

27. Do you know any of the following persons? Please write in the word yes for each person that you know.

Deborah Lynn Pellett _____

Detective Gina Crosswhite _____

Officer Wodward _____

Officer Daniel Bennett _____

Officer D. Wubben _____

Officer Michael Deruiter	_____
Officer Peter Kolby	_____
Officer K. Johnson	_____
Michael Sparks	_____
Officer C. Queen	_____
RN Kathy Hanbury	_____
RN Rolling Walker Morgan	_____
Officer Amy Garland	_____
Officer Pauline Renick	_____
Officer Scott Grunhurd	_____
Agent Barbara Kremzner	_____
Officer McKissick	_____
Carl A. Stewart	_____
Brooklyn L. Stewart	_____
Terry Belgrade	_____
Mike Croteau	_____
Deputy Bundy	_____
Lt. Timothy Lintz	_____
Officer Tawsha Dykstra	_____
Officer Jeremiah Smith	_____
Emanuel Borden	_____
Officer M. Scanlon	_____

Detective Donna Miller	_____
Theresa Meurs	_____
Jonathan Schilk	_____
Michael Jackets	_____
Gilber Rager	_____
Greg Frank	_____
Paramedic Brian Jones	_____
Paramedic Ray Young	_____
Deputy Jason Nyhus	_____
Paramedic Ryan Hillmon	_____
Officer Daniel Kelsh	_____
Dr. Bradley Biselow	_____
Dr. David Ashley	_____
Dr. Stephen Bueton	_____
Dr. Michael Pietro	_____
Dr. Robin Nicholson	_____
Gail Brudea	_____
Tom Solin	_____
Donald Riley	_____
Gary Shutler	_____

APPENDIX D

FILED
COUNTY CLERK
2010 MAR -4 AM 10:18

SCANNED 9

WHATCOM COUNTY
WASHINGTON
BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

HECTOR SERANO SALINAS,

Defendant.

NO. 08-1-00877-3

THIRD
PROPOSED JURY
QUESTIONNAIRE

COMES NOW, the above-named Defendant, HECTOR SERANO SALINAS, acting by and through his undersigned attorney, Thomas H. Fryer, of the Law Offices of Tario & Associates, P.S., and hereby submits the attached second proposed jury questionnaire for use at trial in the above entitled case.

DATED this 4th day of March, 2010.

TARIO & ASSOCIATES, P.S.



Thomas H. Fryer, WSBA #22955
Attorney for Defendant
Hector Serano Salinas

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TO PROSPECTIVE JURORS

This questionnaire is designed to elicit information with respect to your qualifications to sit as a juror in a pending case. This questionnaire will substantially shorten the process of jury selection. This questionnaire will remain confidential.

Because this questionnaire is part of the jury selection process, you must answer the questions to the best of your ability and you must fill out the questionnaire by yourself. As you answer the questions that follow, please keep in mind that there are not any right or wrong answers, only complete and incomplete answers. Complete answers are far more helpful than incomplete answers because they make long questioning unnecessary and by doing that they shorten the time it takes to select a jury.

If you cannot answer a question, please leave the response area blank. During the questioning by the attorneys and the court, you will be given an opportunity to explain or expand any answers if necessary.

Some of these questions may call for information of a personal nature that you may not want to discuss in public. If you feel that your answer to any question may invade your right to privacy or might be embarrassing to you, you may so indicate on the form that you would prefer to discuss your answer in private. You will find instructions for this on the questionnaire.

After you have completed the questionnaire, please hand it to the Bailiff.

Thank you for your cooperation.

The Honorable Charles R. Snyder
Judge of the Superior Court

VOIR DIRE

Please read each of these questions carefully and answer them as honestly and completely as possible. **Please do not skip any of the questions.**

1. Please state your name and your juror number.

_____ name

_____ juror number

2. Please list your current occupation. If retired, please state your occupation prior to your retirement.

3. How many years of schooling have you completed? If you hold any degrees, please list the field in which you earned this degree. If you have any advanced training, please describe that training.

4. Do you now, or have ever supervised people in the work place?

_____ yes

_____ no

5. Please list all members of your immediate family, their relationship to you, their age and occupation.

Name Relationship Age Occupation

6. Where have you resided since the age of ten (city and state) and how long have you lived in each place?

7. Are you personally acquainted with or related to anyone who works with law enforcement? If the answer is yes, please state that person's name and your affiliation with that individual.

8. This case involves an allegation that in June 2008, the defendant, Hector Serano Salinas, sexually assaulted another person. If you have heard or read anything about this case, please state with specificity what you know and how.

9. Are you familiar with any of the following attorneys or any persons affiliated with these attorneys?

Thomas H. Fryer _____ Stark Follis _____

Dona Bracke _____

10. Do you have a situation at work, at home, or in your life in general that would make it difficult for you to direct your attention to this case for approximately three weeks? If the answer is yes, please explain.

11. If you have had prior jury experience, please describe briefly the type of cases that you heard during your tenure as a juror.

12. Have you ever testified as a witness in a lawsuit or been a plaintiff or defendant in a lawsuit? If the answer to this question is yes, please briefly describe your experience and the circumstances.

13. What activities do you prefer to engage in during your spare time?

14. What organizations, clubs, social or charitable groups do you belong to?

15. Have you, or any member of your family, or any person close to you been accused of convicted of any act of sexual abuse/misconduct? If the answer to this question is yes, please provide a brief description of this situation.

16. Have you, or any member of your family, or any person close to you been the victim of sexual abuse or misconduct? If the answer to this question is yes, please provide a brief description of this situation.

17. Are you now, or have you ever been involved in any organization which address issues

of sexual abuse/misconduct? If the answer to this question is yes, please name these organizations and describe your participation.

18. In recent years, the media has paid increased attention to the subject of sexual abuse/misconduct. Please describe how this attention has affected your feelings on the topic:

19. Have you or any member of your family, or any acquaintance ever been a defendant in a criminal action? If your answer to this question is yes, please provide a brief description as to the nature of this accusation.

20. In either job, education, or training, have you ever had any experience or training in dealing with issues related to sexual abuse or sexual misconduct? If your answer to this question is yes, please provide a brief description as to the experience or training.

21. If you were the defense lawyer or the prosecutor in this case, what do you think would be important for us to know about you in order to determine whether or not you would be a fair juror?

22. Do you have any feelings regarding the subject of sexual abuse/misconduct or any other subject which would prevent you from being a fair and impartial juror. If your answer

to this question is yes, please explain.

23. Please describe your general opinion of the criminal justice system in this country.

24. If you could change one thing about our system of justice, what change would you make?

25. Do you or do you know anyone who speaks Spanish as their first language?. If your answer is yes, please explain.

26. Would you prefer to discuss the answer to any of these questions privately rather than in open court? If so, please identify the questions by number in the space provided below.

27. Do you know any of the following persons? Please write in the word yes for each person that you know.

Deborah Lynn Pellett _____

Detective Gina Crosswhite _____

Officer Wodward _____

Officer Daniel Bennett _____

Officer D. Wubben _____

Officer Michael Deruiter	_____
Officer Peter Kolby	_____
Officer K. Johnson	_____
Michael Sparks	_____
Officer C. Queen	_____
RN Kathy Hanbury	_____
RN Rolling Walker Morgan	_____
Officer Amy Garland	_____
Officer Pauline Renick	_____
Officer Scott Grunhurd	_____
Agent Barbara Kremzner	_____
Officer McKissick	_____
Carl A. Stewart	_____
Brooklyn L. Stewart	_____
Terry Belgrade	_____
Mike Croteau	_____
Deputy Bundy	_____
Lt. Timothy Lintz	_____
Officer Tawsha Dykstra	_____
Officer Jeremiah Smith	_____
Emanuel Borden	_____
Officer M. Scanlon	_____

Detective Donna Miller	_____
Theresa Meurs	_____
Jonathan Schilk	_____
Michael Jackets	_____
Gilber Rager	_____
Greg Frank	_____
Paramedic Brian Jones	_____
Paramedic Ray Young	_____
Deputy Jason Nyhus	_____
Paramedic Ryan Hillmon	_____
Officer Daniel Kelsh	_____
Dr. Bradley Biselow	_____
Dr. David Ashley	_____
Dr. Stephen Bueton	_____
Dr. Michael Pietro	_____
Dr. Robin Nicholson	_____
Gail Brudea	_____
Tom Solin	_____
Donald Riley	_____
Gary Shutler	_____

APPENDIX E

SCANNED 6

FILED IN OPEN COURT
3/8 2010
WHATCOM COUNTY CLERK
By 

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

<p>ST of WA Petitioner/Plaintiff vs. Hector Salinas Respondent/Defendant</p>	<p>No. 08-1-00877-3 Jury Questionnaire</p>
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JURY QUESTIONNAIRE

JUROR # _____ NAME _____

Please read each of these questions carefully and answer them as candidly and fully as possible—if your answer to any of the following questions is of such a “sensitive nature” that you would like to discuss it “privately”, please identify those questions by number here: _____

1. Do you have any prior experience as a juror? If yes, briefly describe:

2. Please state your age: _____

3. Please describe your current [or last] employment, including the title of the position, length of employment, and general duties:

a) If married or co-habiting, please describe the same employment information for your spouse or partner:

4. If you have children, please complete the following information:

a) Name _____ Age: _____ Occupation: _____

b) Name _____ Age: _____ Occupation: _____

c) Name _____ Age: _____ Occupation: _____

5. How long have you lived in Whatcom County? _____

6. Prior to living in Whatcom County, where else have you lived?

7. Please describe your educational background, including the highest grade level completed, any degrees received and the field in which the degree was received:

8. Have you ever been the victim of a crime? If yes, describe:

a) Have you ever been accused or convicted of a crime (this would not include minor traffic tickets)? Please describe briefly:

9. This case involves an allegation of sexual assault and kidnapping:

a) Do you have any special training, experience or education involving sexual assault or kidnapping? If yes, briefly explain:

b) Have you, a friend, relative or acquaintance ever been a victim of sexual assault or kidnapping? Describe briefly:

c) Have you, a friend, relative or acquaintance ever been accused or convicted of an allegation of sexual assault or kidnapping? Describe briefly:

d) Have you or anyone close to you ever been a member of an organization which advocates against sexual abuse or assault?

e) Is there anything about the mere allegation of sexual assault and kidnapping that would make it impossible for you to be a fair and impartial juror for both the defendant and the State of Washington?

10. Do you have a situation at home, at work or generally in your life that would make it unfair for you to direct your whole attention to this case over the next three weeks? If yes, briefly explain:

11. Are you personally acquainted with anyone who works in the criminal justice system (this would include law enforcement officers)? If yes, name your acquaintance(s):

12. Please describe any experience or training you have in supervising other people:

13. If any of the questions asked here are of such a "sensitive" nature that you would like to discuss it privately, please indicate the number of the question(s) here:

15. Have you heard of, or do you know any of the following people?

ATTORNEYS:

FOR THE STATE:	Dona Bracke	_____
	Shannon Connor	_____
FOR THE DEFENSE	Thomas Fryer	_____
	Starck Follis	_____

WITNESSES:

- _____ Deborah Pellett, Bellingham
- _____ Detective Gina Crosswhite, Bellingham Police Department (BPD)
- _____ Officer Woodward, BPD
- _____ Officer Bennett, BPD
- _____ Officer Wubben, BPD
- _____ Officer M. Deruiter, BPD
- _____ Officer K. Johnson, BPD
- _____ Michael Sparks, Public Defender's Office
- _____ Officer Queen, BPD
- _____ Kathy Hanbury, RN, St. Joseph's Hospital
- _____ RN Rolling Morgan, St. Joseph's Hospital
- _____ Officer Amy Garland, BPD
- _____ Sergeant Scott Grunhurd, BPD
- _____ Scott Farlow- Bellingham Fire Department
- _____ Barbara Kremzner, Bellingham
- _____ Officer McKissick, BPD
- _____ Carl Stewart, Bellingham
- _____ Brooklyn Stewart, Bellingham
- _____ Terry Belgarde, Shelton, WA
- _____ Mike Croteau, Washington State Patrol Crime Lab
- _____ Deputy Bundy, Blaine Police Dept.
- _____ Retired Lt. Tim Lintz, BPD
- _____ Officer T. Dykstra, BPD
- _____ Officer Jeremiah Smith, BPD
- _____ Emanuel Borden, Bellingham

____ Officer Scanlon, BPD
____ Detective Donna Miller, BPD
____ Theresa Meurs, Bellingham
____ Jonathan Schilk, Bellingham Parks Department
____ Michael Jackets, Burlington, WA
____ Gilbert Rager, Bellingham, WA
____ Greg Frank, Washington State Patrol Crime Lab
____ Brian Jones, paramedic, Bellingham
____ Ray Young, paramedic, Bellingham
____ Ryan Hillmon, paramedic, Bellingham
____ Officer Leighton, BPD
____ Officer Dan Kelsh, BPD
____ Dr. Bradley Bigelow, Bellingham
____ Dr. David Ashley, Bellingham
____ Dr. Stephen Bueton, Bellingham
____ Dr. Michael Pietro, Bellingham
____ Dr. Robin Nicholson
____ Gail Bruder, Marysville Washington State Patrol Crime Lab
____ Robert Smith, Bellingham
____ Dr. Gary Shutler, Washington State Patrol Crime Lab
____ Bradd Reynolds
____ Dr. Riley
____ Tom Solin

APPENDIX F

questions in private. I did not file a proposed questionnaire before defense filed theirs. It is my general practice not to request juror questionnaires.

4. I was opposed to some of the questions in the defense questionnaire as submitted.
5. I did not request that jurors be questioned in private.

Dated this 14th day of April, 2014.

Respectfully Submitted,



DONA BRACKE, WSBA #29753
Deputy Prosecuting Attorney
Attorney for Plaintiff

SUBSCRIBED AND SWORN to before me this 14 day of April, 2014.



NOTARY PUBLIC in and for the
State of Washington. My commission
expires on: 5/29/14

APPENDIX G

DOCKETED WOM NJTRIAL _____ JTRIAL X MODHRG _____ (OTHER) _____
SCOMIS CODES

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

ST of WA	NO.	08-1-00877-3
vs.	JUDGE	Snyder
Hector Salinas	REPORTER	Jensen
	CLERK	O'Brien Campau
	DATE	3/8/10
	BAILIFF	Ortner
	PANEL	C 0

Dona Bracke/Shannon Connor
Attorney for Plaintiff

Tom Fryer/Stark Follis
Attorney for Defendant

This cause came on for Trial By Jury this 8th day of March 2008 in Dept. 3 with Judge Snyder presiding. Court convened @ 9:54

State present by and through Dona Bracke and Shannon Connor

Defendant present in person, in custody, and with Tom Fryer and Starck Follis

Court certified interpreter, Kyra Flor, is sworn in by the Court

Court and counsel discuss upcoming motions

Defendant requests to address the Court

Court explains to defendant any statements made are on the record

Defendant addressed the Court

Court and defendant continue

3.5 3.6 Hearing see EVIHRG 3/8/10

*****Tuesday March 9, 2010*****

EVIHRG continued

Atty Follis argues regarding the dog tracking asking the Court to not admit testimony

Dep Connor responded

Court rules that the necessary foundation has been laid and that the testimony can come in

Court and counsel discuss schedule and instructions

Court recessed @ 11:16

Reconvened @ 11:48

Defendant is present

Jurors registered prior to Court convening

Court welcomed jurors

Jurors are sworn for term and cause by clerk

11:53

Court asks general questions

Parties introduce themselves

Court instructs jurors

Court inquires if anyone objects to any jurors being questioned in private

No one objects

Jurors 1046 1037 1064 1297 1103 1114 1224 told to come back at 1:30, the balance of panel instructed to come back at 2:30

Court talks to jurors and excused 1230 1159 1290 1028

Court recessed @ 12:13

Reconvened @ 1:31

Defendant is present

No one has an objection to Court and counsel questioning certain jurors in chambers

1046 1037 1297 1103 1224 questioned in chambers

1114 1103 1224 were excused

Court recessed @ 2:15

Reconvened @ 2:31

Defendant is present

Court instructed and questioned jurors

Jurors are questioned on voir dire

Jury left

Court and counsel discuss schedule

Court recessed @ 4:36

*****Wednesday March 10, 2010*****

State present by and through Dona Bracke and Shannon Connor

Defendant present in person, in custody, and with Tom Fryer and Starck Follis

Court convened @ 9:40

Voir dire continued

Court questioned and then excused juror 957

Voir dire continued

The following jurors were sworn to try the case by the clerk 11:02

- | | |
|----------|----------|
| 1. 1258 | 2. 1036 |
| 3. 1073 | 4. 1179 |
| 5. 1218 | 6. 1188 |
| 7. 1004 | 8. 1074 |
| 9. 1202 | 10. 1297 |
| 11. 1115 | 12. 1005 |
| 13. 988 | 14. 1235 |

The balance of panel was excused with instructions to call in for further service

Court instructed and admonished seated panel

Court recessed @ 11:15 Reconvened @ 11:32

Defendant is present

Dep Bracke moves to admit the pre trial exhibits

With no objection they are admitted (see EVIHRG 3/10/10)

Atty Fryer moves to suppress in-court identification made in presence of jury

Dep Connor responded

Dep Bracke responded

Court and counsel continue

Court rules, if foundation is laid, she can be asked to identify the defendant

Court and counsel work on motions in limine (see court reporter notes)

ST Exh 1 – 80 Marked

Court puts sidebar challenges for cause on the record

States peremptory challenges used on jurors 1161 1046 1037 1272 960 1164

Page 3

3/10/10

Defendant's peremptory challenges used on jurors 1143 1038 1035 1064 1206 1145

Court and counsel discuss schedule

Court recessed @ 11:57

Reconvened @ 1:35

Defendant is present

Jury returned

Dep Bracke made opening statement

1:37

Atty Follis made opening statement

2:00

The following were called, sworn, and testified on behalf of the State

1.) Pauline Renick BPD

Direct examination by Dep Connor

Atty Fryer cross examined

2.) Debra Pellett

Direct examination by Dep Bracke

Court recessed @ 3:01

Reconvened @ 3:21

Defendant is present

Atty Follis addressed the Court regarding the witness refreshing her recollection with prior written statements

Court and counsel discuss

Jury returned

Direct continued

Atty Follis cross examined

Def Exh #81 – 82 M

Court recessed @ 4:31

*****Thursday March 11, 2010*****

State present by and through Dona Bracke and Shannon Connor

Defendant present in person, in custody, and with Tom Fryer and Starck Follis

Court convened @ 9:42

ST Exh #83 M

Jury returned

Called out of order, sworn and testified on behalf of the State

Page 4

3/10-11/10

3.) Kathleen Hambury

Direct by Atty Bracke
Atty Fryer cross examined
Dep Bracke examined on re direct

ST Exh #84 M

Atty Fryer examined on re cross
Court recessed @ 10:43
Defendant is present

Reconvened @ 11:04

Resuming the stand, having already been sworn

Debra Pellett for continuation of cross

examination by Atty Follis
Dep Bracke examined on re direct
Atty Follis examined on re cross

4.) Dale Wubben, BPD

Direct by Dep Connor
Atty Follis cross examined

Def Exh #85 M

Dep Connor examined on re direct
Atty Follis examined on re cross
Dep Connor questioned again
Jury left

Pla Exh # 86 – 87 M

Court and counsel discuss schedule
Court recessed @ 11:55

*****Monday March 15, 2010*****

State present by and through Dona Bracke and Shannon Connor
Defendant present in person, in custody, and with Tom Fryer and Starck Follis
Court convened @ 9:38

Pla Exh #88 M

5.) Ryan Hillmon BFD

Direct examination by Dep Connor

6.) Dan Kelsh, BPD

Direct examination by Dep Connor

Atty Fryer cross examined

Dep Conner examined on re direct

7.) Joseph Leighton, BPD

Court recessed @ 10:57

Reconvened @ 11:15

Defendant is present

Jury returned

8.) Donna Miller, BPD

Direct by Dep Bracke

Atty Fryer cross examined

9.) Amy Garland, BPD

Direct examination by Dep Bracke

Court recessed @ 12:02

Reconvened @ 1:37

Defendant is present

Court and counsel discuss striking "armed with deadly weapon enhancement" from instructions

Jury returned

Direct continued

Atty Fryer cross examined

Dep Bracke examined on re direct

10.) Dan Bennett, BPD

Direct by Dep Connor

Atty Follis cross examined

Dep Connor examined on re direct

Atty Follis examined on re cross

Dep Connor questioned again

Atty Follis questioned again

Court recessed @ 2:56

Reconvened @ 3:16

Page 6

3/15/10

Defendant is present
Jury returned

11.) Jeremy Woodward, BPD

Direct by Dep Connor
Court recessed @ 4:31

*****Tuesday March 16, 2010*****

State present by and through Dona Bracke and Shannon Connor
Defendant present in person, in custody, and with Tom Fryer and Starck Follis
Court convened @ 9:32

Pla Exh #89 – 97 M

Jury returned
Direct examination of
Atty Follis cross examined

Jeremy Woodward by Dep Connor continued

Def Exh #98 – 100 M

Jury left
Court and counsel discuss schedule
Court recessed @ 10:47
Defendant is present
Taken out of order on behalf of the State

Reconvened @ 11:08

12.) Dr. Bradley Bigelow

Direct by Dep Bracke
Atty Fryer cross examined
Dep Bracke examined on re direct

Jeremy Woodward resumed the stand for cross

examination by Atty Follis
Dep Connor examined on re direct

Pla Exh #101 M

Atty Follis cross examined
Court recessed @ 12:01

Reconvened @ 1:35

Defendant is present
Jury returned
Out of order on behalf of the State

13.) Dr. Robin Nicholson

Direct by Dep Bracke
Atty Fryer cross examined

14.) Jonathan Schilk, COB

Direct by Dep Connor

15.) Jason Nyhus, WCS

Direct by Dep Connor
Atty Follis cross examined
Dep Connor questioned on re direct
Jury left

Court and counsel discuss schedule

Court recessed @ 3:10

Reconvened @ 3:30

Defendant is present

Jury returned

16.) Karin Queen, BPD

Direct by Dep Bracke
Court recessed @ 4:30

*****Wednesday March 17, 2010*****

State present by and through Dona Bracke and Shannon Connor

Defendant present in person, in custody, and with Tom Fryer and Starck Follis

Court convened @ 9:39

Pla Exh # 102 – 112 M

Jury returned

Pla Exh #113 – 114 M

17.) Robert Smith, WSP

Direct by Dep Bracke
Atty Fryer cross examined

18.) Gail Bruder, WSP

Direct by Dep Bracke
Atty Fryer cross examined

19.) Micheal Croteau, WSP

Direct by Dep Bracke
Court recessed @ 10:56
Defendant is present
Jury returned
Direct continued
Jury left
Court and counsel discuss schedule
Court recessed @ 12:05
Defendant is present
Jury returned
Direct continued

Reconvened @ 11:18

Reconvened @ 1:37

Pla Exh #115 M

Atty Fryer cross examined
Dep Bracke examined on re direct
Atty Fryer examined on re cross

20.) Greg Frank, WSP

Direct by Dep Bracke
Court recessed @ 3:01

Jury returned
Direct continued
Atty Fryer cross examined
Dep Bracke examined on re direct
Atty Fryer cross examined
Returning to order
examination by Atty Fryer

Reconvened @ 3:22

Pla Exh #116 M

Karin Queen, BPD resumed the stand for cross

Dep Bracke examined on re direct
Atty Fryer examined on re cross
Court admonished and released jury until Monday
Court recessed @ 4:36

*****Monday March 22, 2010*****

State present by and through Dona Bracke and Shannon Connor
Defendant present in person, in custody, and with Tom Fryer and Starck Follis
Court convened @ 9:47

Pla Exh #117 – 135 M

Atty Fryer addressed the Court regarding witness schedule
Atty Fryer addressed the Court regarding one of the State's witnesses asking to exclude certain testimony
Dep Bracke responded
Atty Follis responded
Court defines parameters
Jury returned

21.) Patrick Scanlon, BPD

Direct by Dep Bracke
Atty Fryer cross examined

22.) Micheal DeRuiter, BPD

Direct by Dep Bracke
Court recessed @ 11:00
Defendant is present
Direct continued
Atty Fryer cross examined
Court recessed @ 12:00
Defendant is present

Reconvened @ 11:19

Reconvened @ 1:37

Pla Exh 136 – 137 M

Jury returned

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3/17,22/10

Taken out of order, called, sworn and testified on behalf of the state

23.) Dr. Gary Shutler

Direct by Dep Bracke

Atty Fryer cross examined

Court recessed @ 301

Reconvened @ 3:18

Defendant is present

Jury returned

Pla Exh# 138 – 139 M

Dep Bracke cross examined

Atty Fryer examined on re cross

Recalled to the stand having already been sworn

Micheal DRuiter, BPD

Atty Fryer continued cross examination

Dep Bracke examined on re direct

24.) Gina Crosswhite, BPD

Direct by Dep Bracke

Pla Exh #140 M

Jury left

Court and counsel discuss schedule

Court recessed @ 4:28

*****Tuesday March 23, 2010*****

State present by and through Dona Bracke and Shannon Connor

Defendant present in person, in custody, and with Tom Fryer and Starck Follis

Court convened @ 9:33

Atty Follis asked to speak with state's witness prior to testimony

Court will allow

Court recessed @ 9:34

Reconvened @ 9:45

Defendant is present

Atty Follis address the Court regarding his "chain of custody" objection and

The state's next witness

Jury returned

Taken out of order, called, sworn and testified on behalf of the state

25.) Scott Grunhurd, BPD

Direct by Atty Bracke

Atty Fryer cross examined

Dep Bracke examined on re direct

Atty Fryer examined on re cross

Resuming the stand having already been sworn

Gina Crosswhite, BPD

Atty Follis cross examined

Def Exh #136 O -Admitted

Pla Exh #137 O -Admitted

Dep Bracke examined on re direct

State offers all of its exhibits

State rests

10:43

Jury left

Court recessed @ 10:44

Reconvened @ 1:31

Defendant is present

Atty Follis addressed the Court regarding trial schedule

Jury returned

The following were called, sworn and testified on behalf of the defense

1.) Dr. Donald Riley

Direct by Atty Fryer

Def Exh #141 M

Dep Bracke cross examined

Jury left

Court and counsel discuss schedule

Court recessed @ 3:00

Reconvened @ 3:18

Defendant is present

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3/22/10

Jury returned

Cross continued

Atty Fryer examined on re direct

Dep Bracke examined on re cross

Atty Fryer questioned again

Jury left

Court and counsel discuss schedule, exhibit admission and instructions

Court recessed @ 427

*****Wednesday March 24, 2010*****

State present by and through Dona Bracke and Shannon Connor

Defendant present in person, in custody, and with Tom Fryer and Starck Follis

Court convened @ 9:53

Court and counsel discuss instructions and schedule

Court questioned defendant

Court recessed @ 10:00

Reconvened @ 10:10

Defendant is present

Atty Follis put on the record the problem discussed regarding Mr. Salinas' testifying

Court recessed @ 10:18

Reconvened @ 11:11

Defendant is present

Atty Follis puts request of Mr. Delvin to speak to Mr. Salinas on the record

Jury returned

By agreement of the parties the following exhibits were **admitted**

Pla # 1 through 80

Pla #83, 84

Pla #86 through 97

Pla #102 through 114

Pla #117 through 132

Pla #136 through 140

2.) Hector Salinas

Direct by Atty Fryer

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3/23-24/10

Court recessed @ 12:01

Reconvened @ 1:34

Defendant is present

Jury returned

Direct continued

Dep Bracke cross examined

Defense rests

2:39

The following were called, sworn and testified in rebuttal on behalf of the State

Keith Johnson, BPD

Direct by Dep Bracke

Atty Fryer cross examined

Dep Bracke examined on re direct

Amy Bundy, Blaine PD

Direct by Dep Bracke

Atty Follis cross examined

Gina Crosswhite, BPD

Direct by Dep Bracke

Atty Follis cross examined

Dep Bracke examined on re direct

Rebuttal complete

3:08

Court and counsel discuss instructions

Recessed @ 3:09

Reconvened @ 3:35

Defendant is present

Atty Fyer moves in limine re burden shifting

Court states it is understood

Jury returned

Court reads instructions to jury

Dep Bracke made closing argument

3:59

Court recessed @ 4:44

*****Tuesday March 25, 2010*****

State present by and through Dona Bracke and Shannon Connor

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3/24-25/10

Defendant present in person, in custody, and with Tom Fryer and Starck Follis

Court convened @ 9:05

Jury returned

Atty Follis made closing argument 9:06

Dep Bracke made rebuttal argument 9:52

Court temporarily released jurors 988 and 1235 with and admonition

Bailiff was sworn in charge of the jury by the clerk 10:34

Case given to jury for their deliberation

Jury left

Due to an error by the clerk exhibits that we marked incorrectly are discussed by Court and counsel.

Pla Exh #141 M, O –Adm

Pla Exh #142 M, O –Adm

Recessed @ 10:53

Jury reached a verdict @ 2:15

Court convened @ 2:38

State present by and through Dona Bracke and Shannon Connor

Defendant present in person, in custody, and with Tom Fryer and Starck Follis

Jury returned

Court found the verdict in proper form and it was read by the clerk

Defendant is found GUILTY on all four counts

See VRD 3/25/10 signed by presiding juror 1005

The jury is polled by the clerk and found to be unanimous

Court thanked the jury and released them from service and it's earlier admonition

Jury left

Court and counsel discuss PSI

Court signed "Order for Mandatory Presentence Investigation"

Dep Bracke asked that the defendant be remanded without bail

Court granted and signed "Remand Without Bail"

Court adjourned @ 2:43