

No. 33704-5-II
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ORIGINAL

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

IN RE THE PERSONAL RESTRAINT
PETITION OF:

ROBERT BONDS,

Petitioner

BRIEF OF PETITIONER

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DIVISION II
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A. SUMMARY OF ARGUMENT

During Robert Bonds' trial for two counts of attempted first degree murder, the prosecution introduced statements by two non-testifying co-defendants. Although the jury was instructed not to use statements by co-defendants against another defendant, the prosecutor linked Mr. Bonds to these statements during his closing arguments. Additionally, the trial court closed the courtroom on several occasions without making specific findings that the closures were necessary as required by State v. Bone-Club.

In his personal restraint petition, Mr. Bonds alleges he was deprived of his state and federal constitutional rights to confront witnesses against him, denied his right to a public trial, and received ineffective assistance of counsel for his attorney's failure to raise these issues on direct appeal when they would be reversible error. Additionally, the public was denied its right to access Mr. Bonds' trial when the court improperly closed the courtroom to the public.

B. ISSUES PRESENTED

1. The state and federal constitutions expressly guarantee a criminal defendant the right to confront witnesses

against him. In Crawford v. Washington,¹ the United States Supreme Court abandoned its prior cases that evaluated the right of confrontation based on the fairness of the proceedings and reliability of the evidence, instead claiming that the Sixth Amendment mandates confrontation for all testimonial statements. In the case at bar, the State relied on testimonial statements made by two non-testifying co-defendants to police officers. Did the State violate Mr. Bonds' right to confrontation by denying him the right to confront and cross-examine testimonial evidence?

2. Cases prior to Crawford permitted the introduction of testimonial statements by non-testifying co-defendants so long as the jury was instructed not to use the evidence against the accused and the prosecution did not undermine that instruction by urging the jury to convict the defendant based on the co-defendants' statements. Here, the prosecution urged the jury to use statements by the two co-defendants as evidence implicating Mr. Bonds. In light of the fundamental importance of confrontation, and based on the prosecution's efforts to use the co-defendant's statements against Mr. Bonds, did the State deny

¹ 541 U.S. 36, 60-61, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004).

Mr. Bonds' his right of confrontation as well as his right to a fair trial?

3. The Washington Constitution, Article I, sections 10 and 22, guarantee that all criminal proceedings will be open to the public. A trial court may close the courtroom only after finding compelling circumstances, narrowly tailoring the closure to meet those circumstances, and entering specific findings as to the necessity of the closure. In the instant matter, the trial court closed the courtroom to the public on three occasions, without articulating any compelling circumstances or otherwise complying with the requirements of such a closure. Was Mr. Bonds denied his right to a public trial and was the public denied its right of access to all criminal proceedings?

4. An appellant in a criminal case has the right to effective assistance of counsel on appeal. In the case at bar, appellate counsel in Mr. Bonds' direct appeal failed to raise the meritorious issues discussed herein, and had he raised those issues on direct appeal, they would have resulted in the reversal of his convictions. Was Mr. Bonds denied his right to effective assistance of appellate counsel and was he actually prejudiced by this denial?

C. STATEMENT OF CASE

At about 2 a.m. on October 14, 2001, Keith Harrell and Daron Edwards were among the 50 or 60 people gathered at an AM/PM convenience store in Tacoma. 3/6/02RP 349; 3/14/02RP 1107.² When gunfire erupted, the two suffered serious but nonfatal injuries. 3/5/02RP 55-57; 3/6/02RP 280-81.

On October 13, 2001, Andre Bonds, a relative of Petitioner Robert Bonds, argued with Mr. Edwards and threatened to revoke Mr. Edwards' Hilltop privileges, referring to the Tacoma neighborhood where Mr. Edwards lived. 3/6/02RP 235-36; 3/7/02RP 426. According to police, Andre was a leading member of a local gang known as the 23rd Street Hilltop Crips. 3/26/02RP 2347.

In the evening of October 13, 2001, Andre and Cory Thomas, a close friend of Mr. Edwards, argued in a Tacoma club called Browne's. 3/7/02RP 437-440. Andre hit Mr. Thomas, Mr. Edwards then struck Andre, and someone else, possibly Robert Bonds, hit Mr. Edwards. 3/7/02RP 440. Security guards broke up the fight. Outside Browne's, Mr. Edwards and Andre

² The verbatim report of proceedings will be referred to herein by date of proceeding followed by page number. This Court previously granted Mr. Bonds'

resumed fighting and Mr. Edwards apparently got the better of Andre. 3/6/02RP 259. After the fight, Mr. Edwards, who was originally from Compton, California, said, "This is California. Fuck Hilltop." 3/6/02RP 262. Spencer Miller, purportedly also a member of the Hilltop Crips, replied, "Fuck California." 3/13/02RP 924-25; 3/26/02RP 2351.

As they usually do on Friday and Saturday nights, the majority of Browne's patrons went to the AM/PM store when Browne's closed. 3/12/02RP 739; 3/13/02RP 456. Tonya Wilson, who was with Robert Bonds, called Andre from the AM/PM, and after that call Andre quickly came to the store. 3/19/02RP 1532; 3/26/02RP 2446. Daron Edwards arrived at the AM/PM with several cars of relatives or close acquaintances, some of whom were armed, under the belief that his niece Sabrina was in trouble. 3/6/02RP 269; 3/7/02RP 450, 516. Mr. Edwards and Andre again exchanged hostile words and Andre displayed a gun, but Andre drove away from the AM/PM before any further altercation. 3/6/02RP 273-79.

Soon after Andre departed, gunfire erupted. 3/6/02RP 280. The gunshots were coming from seemingly all directions.

motion to transfer the report of proceedings from COA No. 28847-8-II to the

Id. Mr. Harrell and Mr. Edwards were hit by some of the initial fire. Id.

Most witnesses could not say from where the gunshots came or did not see shots from the station wagon containing Robert Bonds. 3/6/02RP 280(Mr. Edwards); 3/12/02RP 759 (Necie Brown); 3/13/02RP 938 (Selena Daniels); 3/14/02RP 1118 (Sabrina Stark); 3/19/02RP 1604-06 (Michelle Dudley), 1651 (Kim Johnson), 1683 (Judy Devins); 3/20/02RP 1887 (Homer Wells).³ Three people contended they saw gunfire from the station wagon, but two of the station wagon's passengers denied anyone fired a gun from the car. 3/7/02RP 349; 3/13/02RP 839; 3/18/02RP 69-72; 3/27/02RP 2583; 4/1/02RP 2857-58.

The prosecution relied on statements from two co-defendants, Spencer Miller and Tonya Wilson, to establish (1) what happened during the incident, (2) the perpetrators' motives in retaliating against Mr. Edwards for beating up Andre and disrespecting "Hilltop," and (3) that the co-defendants knew they were aiding in the crime. 3/26/02RP 2390-2434, 2438-2455.

instant petition.

During the trial, the court closed the courtroom to the public on four occasions. 2/21/02RP 72-73; 3/7/02RP 411-12; 3/13/03RP 944; 3/18/03RP 3. The court did not elicit objections for three of these courtroom closures and did not make specific findings explaining the necessity of any of the closures.

Mr. Bonds' convictions were affirmed on direct appeal.⁴ The Appellants' Briefs, particularly the brief filed by appellant Tonya Wilson and adopted by the co-appellants, more fully present the conflicting witness accounts presented at trial.

This personal restraint petition is Mr. Bonds' first such petition. He is presently serving a 680-month prison sentence for his convictions in this matter. Judgment and Sentence (attached as Appendix A to both Mr. Bonds' Petition filed on July 22, 2005, and the State's Response filed October 10, 2005).

³ Several additional witnesses also denied seeing anyone shooting or denied seeing shots fired from the wagon. See Brief of Appellant Wilson, COA 28847-8-II, p.20-30.

⁴ State v. Robert Bonds, 2004 Wash.App. LEXIS 1902 (COA No. 28847-8-II) (unpublished), rev. denied, 154 Wn.2d 1002 (2005) (mandate issued May 9, 2005).

D. ARGUMENT

1. MR. BONDS IS SUFFERING UNLAWFUL RESTRAINT AND IS ENTITLED TO RELIEF BY WAY OF A PERSONAL RESTRAINT PETITION

a. Mr. Bonds is unlawfully restrained. A person is entitled to relief by way of a Personal Restraint Petition (PRP) where the person is unlawfully restrained as defined in RAP 16.4. A person is restrained where he “is confined.” RAP 16.4(b). Mr. Bonds is currently confined at the Florence Correction Center, where he is serving the 680-month sentence imposed in the case at bar. Therefore, he is restrained pursuant to RAP 16.4.

RAP 16.4(c)(6) provides restraint is unlawful where:

The conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington

As set forth in below, Mr. Bonds was denied his state and federal constitutional rights to confront witnesses against him, receive effective assistance of counsel, and have a public trial. Thus, Mr. Bonds’ restraint is unlawful pursuant to RAP 16.4(c)(2).

b. Mr. Bonds is entitled to relief by way of a personal restraint petition. RAP 16.4(d) limits relief via a PRP to those situations where there are inadequate alternative remedies

available to the petitioner. In the context of issues raised for the first time in a PRP, the Supreme Court has explained this rule as: (1) a petitioner raising a constitutional error must demonstrate actual prejudice; and (2) a petitioner raising a nonconstitutional issue must demonstrate the “error constitutes a fundamental defect which inherently results in a complete miscarriage of justice.” In re the Matter of the Restraint of Cook, 114 Wn.2d 802, 812, 792 P.2d 506 (1990).

The errors Mr. Bonds claims in this case -- the deprivation of the right to confront witnesses against him, the denial of his right to a public trial by several courtroom closures without entering specific findings that such closures were necessary, and his appellate attorney’s ineffective assistance of counsel for failing to object to the deprivation of his right of confrontation or the courtroom closures -- are constitutional errors. In re Restraint of Orange, 152 Wn.2d 795, 804, 812, 100 P.3d 291 (2004); State v. Rohrich, 132 Wn.2d 472, 476 n.7, 939 P.2d 697 (1997). To meet this standard Mr. Bonds need only “show that more likely than not he was prejudiced by the error.” In re the Restraint of Hagler, 97 Wn.2d 818, 825, 650 P.2d 1103 (1982).

2. MR. BONDS WAS DENIED HIS FUNDAMENTAL RIGHT TO CONFRONT WITNESSES AGAINST HIM, WHICH MORE LIKELY THAN NOT PREJUDICED THE OUTCOME OF THE CASE.

a. The Sixth Amendment's guarantee of

confrontation is a procedural requirement of a fair trial. In Crawford v. Washington, 541 U.S. 36, 60-61, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the United States Supreme Court overturned its prior rule that an out-of-court statement could be admitted as evidence solely based on whether it fell within a "firmly rooted hearsay exception," or was given under circumstances showing it to be trustworthy. U.S. Const. amend. 6; Wash. Const. Art. I, section 22.⁵ Crawford rejected decisional law that equated the confrontation clause analysis with admissibility under hearsay rules. 541 U.S. at 61-63; see also Davis v. Washington, ___ U.S. ___, 126 S.Ct. 2266, 2273-74, 165 L.Ed.2d 224, 237 (2006) (affirming Crawford and further explaining definition of "testimonial" statements that require confrontation under Sixth Amendment).

The Crawford Court reasoned that the Sixth Amendment is not based on evidence's reliability. "It commands, not that

⁵ The Sixth Amendment grants a defendant the right, "to be confronted with witnesses against him." Likewise, the Washington constitution guarantees an accused the right "to meet the witnesses against him face to face." Wash. Const. art. I, section 22.

evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.” 541 U.S. at 68. Crawford “reject[ed]” the view that the reliability-based framework of Ohio v. Roberts, 448 U.S. 56, 100 S.Ct. 2531, 65 L.ED.2d 597 (1980), or the rules of evidence, govern the admissibility of out-of-court statements, ruling:

Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation.

Id. at 69.

The constitution's absolute prohibition of unconfrosted out-of-court accusations at trial applies without question to statements made to a police officer in the course of an investigation. Crawford, 541 U.S. at 52 (“any conceivable definition” of testimonial includes Mirandized statement of possible suspect in police custody); Davis, 126 S.Ct. at 2278 (statements to police explaining “what happened” are “inherently testimonial”). No hearsay exception, even a “firmly rooted” exception, satisfies the constitutional demand of confrontation. Crawford, 541 U.S. at 68-69.

The Supreme Court underscored the independent importance of confrontation, as a necessary procedural requirement, in its recent decision in United States v. Gonzalez-

Lopez, __ U.S. __, 2006 U.S. LEXIS 5165, *11-12 (2006). In Gonzalez-Lopez, the prosecution urged the Supreme Court to find that since Gonzalez-Lopez received a fair trial, the deprivation of his Sixth Amendment right to counsel of choice was harmless. The Supreme Court likened the government's argument to the now-rejected reliability framework of Ohio v. Roberts and denounced this approach. Id. at *11-12. Instead, "the Confrontation Clause 'commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.'" Id. at *12 (quoting Crawford, 521 U.S. at 61). The Sixth Amendment's procedural guarantee of counsel of choice similarly "commands, not that a trial be fair, but that a particular guarantee of fairness be provided -- to wit, that the accused be defended by the counsel he believes to be best." Id. Gonzalez-Lopez demonstrates that, in keeping with Crawford, the Sixth Amendment requires confrontation for any testimonial statements used in a criminal case without exception.

b. Co-defendant statements are not exempt from the confrontation clause. Plainly, had any witness other than a co-defendant made statements to the police in the course of a criminal investigation, those statements would be inadmissible at trial

absent an opportunity for cross-examination. See Davis, 126 S.Ct. at 2278 (statements resulting from police “interrogation [that] was part of an investigation into possibly criminal past conduct” easily qualify as testimonial).

In Bruton v. United States, 391 U.S. 123, 129, 88 S.Ct. 1620, 20 L.Ed.2d 476 (1968), the Supreme Court used a “fairness” approach in measuring whether a co-defendant’s statement implicating the accused denied the accused his right of confrontation. The Bruton Court recognized the inherent prejudice attached when introducing a co-defendant’s statement to police, even when the jury is instructed multiple times not only to disregard that statement, but also to “leave it out of consideration entirely” when assessing the defendant’s guilt. Id. at 126. In Bruton, the court found it unreasonable to expect the jury to abide by the numerous limiting instructions and disregard the co-defendant’s statement implicating the accused. Id. at 129.

Since Bruton, courts have found no violation of the right to confrontation when a non-testifying co-defendant’s statement contains no references to the defendant’s existence and a limiting instruction directs the jury not to use the co-defendant’s confession against the defendant. Richardson v. Marsh, 481 U.S. 200, 107

S.Ct. 1702, 95 L.Ed.2d 176 (1987). A redacted confession will violate the Sixth Amendment if it implicitly implicates a defendant, or if the statements are so incriminating that there is substantial doubt as to whether the jury could abide by a limiting instruction. Bruton, 391 U.S. at 135-37; Gray v. Maryland, 523 U.S. 185, 192, 118 S.Ct. 1151, 140 L.Ed.2d 294 (1998).

In Richardson, the Court acknowledged that its approach was a “pragmatic” accommodation to the prosecution’s interest in joint trials by trying to minimize the harmfulness of co-defendant’s uncross-examined statements. 481 U.S. at 210-11. The Court was trying to balance the competing interests held by the prosecution and defense in a fair way. Id.

Unlike Crawford, Bruton and its progeny are premised on the notion that the confrontation clause is not violated where the trial otherwise seems fair, by balancing the prosecution’s interest in a joint trial with a defendant’s interest in a fair trial. See Richardson, 481 U.S. at 209-11. Yet, as the Court said in Gonzalez-Lopez, the Sixth Amendment is not a mere extension of the due process clause of the Fourteenth Amendment. 2006 U.S. LEXIS 5165, *11-12 (the rights guaranteed by the Sixth Amendment cannot “be disregarded so long as the trial is, on the whole, fair.”). The

possibility of harmless error analysis does not mean there is no confrontation clause violation where the prosecution uses a nontestifying co-defendant's statement to the police as part of its case against the accused. Id. at *16. Even if a defendant is not expressly implicated by the co-defendant, when the statement discusses salient facts to a crime that will be used against the defendant, the introduction of testimonial evidence which the defendant cannot address on cross-examination violates the right of confrontation. Davis, 126 S.Ct. at 2278; Crawford, 541 U.S. at 52.

c. The co-defendants' statements were testimonial evidence introduced against Mr. Bonds. Spencer Miller and Tonya Wilson gave recorded, Mirandized statements to the police after the incident. 3/26/02RP 2390-2434, 2438-2455. These statements were plainly directed toward explaining "what happened" during the incident and qualify as "testimonial" under any definition. Crawford, 541 U.S. at 52; see Davis, 126 S.Ct. at 2278.

The court redacted most direct references to Mr. Bonds' street name "PeeWee" from the statements. 2/20/05RP 43; 3/26/02RP 2435-38; CP 56-108. Despite these redactions, Mr. Miller's statement also referred to a "guy named Bobby. That's my

homeboy's brother Bobby. He was like trying to calm him down. . . .
. . ." 3/26/02RP 2402. The statement indicates "Bobby" was present
when Mr. Miller and Mr. Edwards had the "Fuck Hilltop, Fuck
Compton" exchange. Id. Whether Mr. Bonds knew about Mr.
Edwards' purported disrespect and challenge to the primacy of the
Hilltop gang was a critical part of the prosecution's theory.

While "Bobby" may not have been Mr. Bonds, a person
unfamiliar with the people involved may have believed Mr. Miller
was placing Robert Bonds at the scene of the important verbal
altercation between Mr. Miller and Daron Edwards. Since Robert
Bonds is related to Andre, and Mr. Miller called Andre his
"homeboy," the reference to "my homeboy's brother Bobby"
certainly sounds like it refers to Robert Bonds.

Mr. Miller's and Ms. Wilson's statements to the police add
further detail to the discordant description of events offered by other
witnesses. Since other witnesses stated Mr. Bonds was with Mr.
Miller and Ms. Wilson, and Mr. Miller and Ms. Wilson verify such
accusations were true, they implicitly implicate Mr. Bonds even
without mentioning him.

Mr. Miller also referred to taking the "guns" to Seattle after
the incident. 3/26/02RP 2433-34. The police never located the

guns used to inflict the complainants' injuries, but Mr. Miller references taking more than one gun to Seattle and the prosecution theorized Mr. Miller and Mr. Bonds were working together to shoot the complainants, Mr. Miller's statement thus further connects Mr. Bonds to the incident by underscoring the notion that Mr. Miller and his cohorts had multiple guns at the scene. 4/3/02RP 3154 (prosecutor's closing argument noting Mr. Miller told police he took several "guns" to Seattle after shooting). The incriminating nature of the codefendants' statements is demonstrated by the prosecutor's closing argument, as discussed below.

d. The single limiting instruction does not undo all testimonial aspects of the co-defendants' statements to police. In Richardson, 481 U.S. at 211, the court said that with a proper limiting instruction and redacting the statement "to eliminate not only the defendant's name but any reference to his or her existence," introducing a nontestifying co-defendant's statement does not violate the Sixth Amendment as long as the prosecution does not undo the effect of the limiting instruction by urging the jury to use the confession against the defendant.

The Richardson Court remanded the case because the prosecutor drew a link between the co-defendant's statement and

the defendant's trial testimony, which effectively undermined the limiting instruction. 481 U.S. at 211. The prosecutor in Richardson mentioned the co-defendant's statement in the course of explaining why the defendant was guilty, and the Supreme Court found the prosecutor therefore "urg[ed] the jury to use [co-defendant] Williams' confession in evaluating respondent's case" and thus "sought to undo the effect of the limiting instruction." Id. at 211.

In the case at bar, the court issued its only limiting instruction in its closing instructions to the jury:

You may not consider an admission or incriminating statement made out of court by one defendant as evidence against a codefendant.

Instruction 7. In Bruton and Richardson, the trial court gave far more emphatic and repeated limiting instructions than in the case at bar. Bruton, 391 U.S. at 126; Richardson, 481 U.S. at 204, 205.

Despite this one instruction, the prosecutor undermined its possible effectiveness in his closing argument. The prosecution used the substance of Mr. Miller and Ms. Wilson's statements as evidence against Mr. Bonds. Thus, the prosecutor directly and expressly urged the jury to look to those statements as supplying evidence against Mr. Bonds, which impermissibly undermined the

efficacy of the limiting instruction and denied Mr. Bonds his right to confront witnesses against him. Richardson, 481 U.S. at 211.

The prosecutor never mentioned in his closing argument that the jury must disregard the co-defendants' statements when considering whether the defendant was guilty, as did the Richardson prosecutor. Id. at 205. Instead, the prosecutor implied that those statements were indeed, part of the important evidence in the case against Mr. Bonds:

If you look at the evidence as a whole, if you look at it in common sense fashion, if you look at what Spencer Miller admitted about what happened at Browne's, . . . what you get is an overall picture

4/2/02RP 2981. The prosecutor continued by explaining his theory of how the incident occurred, without ever mentioning that what Mr. Miller or Ms. Wilson said could not be used as evidence against Mr. Bonds. Id.

The prosecutor argued that Mr. Bonds and Mr. Miller were both long-time members of the Hilltop Crips, which gives them a personal investment in anything that happened to Andre Bonds.

4/2/02RP 2977. The prosecution then pointed to the statement Mr. Miller made admitting that Mr. Edward's disrespectful statement about Hilltop incensed him and the prosecution theorized that Mr.

Bonds must have had the same reaction as Mr. Miller admitted he had to Daron Edwards.

Daron says Fuck Hilltop at 2 a.m. at Browne's. And Spencer Miller in his statement to the detective admits it set him off. . . he said it did matter and he did respond to it and he did care about it. Why? Because when you disrespect the gang . . . it matters to the gang. It mattered to Robert Bonds. It matters that Daron Edwards was attacking his co-leader, the man he co-founded the Hilltop Crips with.

4/2/02RP 2798. The prosecutor continued linking Mr. Bonds to Mr. Miller's statement that he was upset by Mr. Edwards challenge to Hilltop, "What about Robert Bonds? Did it mean nothing to him?" Id. Mr. Bonds was there and "it mattered to him that someone would have the gall to shout out Hilltop Crips." Id. at 2879.

The "it mattered" theme continued, as the prosecutor linked Mr. Bonds to Mr. Miller's statement admitting the fight between Mr. Edwards and Andre Bonds mattered. Id. at 2982, 3015.

The prosecutor further linked Mr. Bonds to Mr. Miller's statement by urging the jury to consider that Mr. Miller spoke of getting rid of "guns" in a plural form. 4/3/02RP 3154. Since Mr. Miller admitted he got rid of multiple guns, his statement explained what happened to the gun used by Mr. Bonds. Id.

The prosecutor also linked Mr. Bonds to Ms. Wilson's statement admitting that she was the person who called Andre

Bonds from the AM/PM, and after this call Andre quickly arrived at the AM/PM, purportedly intending to exact revenge on Mr.

Edwards. Many witnesses described Mr. Bonds as being with Ms. Wilson at the AM/PM. The prosecutor argued,

the fact that [Andre] is summoned to the scene by Robert Bonds by Tonya Wilson by that phone call indicates to you that something is going to happen.

4/3/02RP 3148. The prosecution also mentioned that Ms. Wilson made that phone call, which shows that, "It's not Andre Bonds who is the driving force. It's Tonya Wilson and Robert Bonds." These arguments demonstrate the prosecutor's efforts to show Tonya Wilson acted at Mr. Bonds' behest and in conjunction with him, thus urging the jury to consider her admissions as evidence against Mr. Bonds.

In sum, the prosecution plainly used the co-defendants' statements as substantive evidence against Mr. Bonds in his closing argument. Therefore, despite any limiting instruction given, the statements were plainly testimonial evidence that Mr. Bonds had no opportunity to confront and cross-examine, in violation of his Sixth Amendment rights. Crawford, 521 U.S. at 52.

e. The prejudicial error requires reversal. In a personal restraint petition, a constitutional error requires reversal

when the accused shows that the error more likely than not affected the verdict. Hagler, 97 Wn.2d at 825. In addition, since Mr. Bonds received ineffective assistance of counsel on appeal, this Court must also consider, as discussed in Argument section 4, the fact that had counsel raised this obvious error in his direct appeal, the prosecution would have borne the burden of proving the error harmless beyond a reasonable doubt, thus demonstrating the prejudice he suffered by counsel's deficient performance.

The State's case was a mishmash of disreputable and conflicting accounts by various witnesses with deep personal connections to the parties involved.⁶ The prosecution devoted a significant portion of his closing argument to assuring the jury that he too believed that many of his critical witnesses lied during their testimony, but claimed they stayed "close" to the truth. See e.g., 4/2/02RP 2983 ("I'm not saying all witnesses told the gospel truth."); 4/2/02RP 2990 (Salena Daniels "did not want to tell you" the truth about what she saw); 4/2/02RP 2992 ("I will be the first to admit it [Cory Thomas's story about where he got a gun] didn't sound credible. It is not the truth."); 4/2/02RP 3004 (Nashonda's

⁶ Opening Brief of Appellant Tonya Wilson, filed in COA 28847-8-II, details the conflicting accounts and witness biases. See Opening Brief of Appellant Wilson, p. 8-32.

story, except for part implicating the defendants, is “incredible. It is not the way it happened.”).

The State’s witnesses were closely affiliated with the complaining witnesses. Keith Harrell and Daron Edwards lived together and considered themselves father and son, even though they were not related by blood. 3/6/02RP 230-31. Sabrina Stark, Salena Daniels, and Ernest Trent likewise think of themselves as relatives: daughter, niece, and brother, respectively, to Mr. Harrell as similarly close to Mr. Edwards despite a lack of blood relationship. 3/13/02RP 914; 3/14/02RP 1079-81; 3/18/02RP 30. Ms. Stark is the mother of Cory Thomas’ child and he considers himself very close to the complainants. 3/7/02RP 426-7. Mr. Harrell, Mr. Edwards, Ms. Stark, and Mr. Trent, also with good or “best” friends Ray Sinclair, Neechie Brown, and Salena Daniels, were an extraordinarily close-knit group involved in a heated dispute with Andre Bonds. 3/6/02RP 230-31; 3/18/02RP 29-31.

Although there were 50-60 people at the AM/PM, according to some accounts, only three people stated they saw gunfire coming from the station wagon allegedly containing Mr. Bonds. One of these people was Mr. Edwards’ close friend Cory Thomas, who claimed he got a gun from “Omar,” which the prosecutor told

the jury was simply untrue, and who had told the court under oath several days before trial that he did not see Mr. Bonds fire any weapon at the AM/PM. 2/20/02RP 179-80; 3/7/02RP 474, 492, 501; 4/2/02RP 2992. The second accuser was Ernest Trent, Mr. Harrell's "brother" who gave the police a false name at the hospital when they arrived to investigate Mr. Harrell's near fatal shooting. 3/18/02RP 30, 82. The third purported eyewitness to gunfire coming from the station wagon was Shavella Brown, who changed her story to include this allegation just days before she testified, when her sister Neechie was being held in jail on a material witness warrant and she faced a similar penalty when she approached the police for assistance with her own material witness warrant. 3/13/02RP 862, 889, 901, 906. Shavella Brown was in the back seat of a van and despite ducking when she heard gunfire, claimed she picked up her head once and saw shots from the wagon although she lied to the detective about seeing such gunfire previously. 3/13/02RP 839, 894.

The majority of the witnesses, including Mr. Edwards, said gunfire was coming from everywhere, "literally everywhere," and they could not see who was firing shots. 3/6/02RP 380; 3/7/02RP 518; 3/12/02RP 759. Mr. Harrell had no memory of the incident.

3/6/02RP 55-57. The remaining witnesses generally placed Mr. Bonds at the scene, with Ms. Wilson, but without further allegations of direct involvement.

The testimony by Mr. Miller and Ms. Wilson, through their statements to the police, was critical in the State's case against Mr. Bonds. Given the many discrepancies about who was where and could have seen what, the fact that the co-defendants corroborated these unreliable prosecution witnesses was the critical cement in the case against Mr. Bonds. It was this testimony that provided the critical link in establishing the Mr. Bonds was not only at the scene but was directly involved in orchestrating the confrontation and was motivated to obtain revenge. Mr. Miller provided necessary substance to the prosecution's otherwise purely speculative theory that Mr. Bonds knew of and was upset about the "Fuck Hilltop" comments. The prosecutor used Ms. Wilson's statements to demonstrate that she and Robert Bonds choreographed the encounter at the AM/PM. The co-defendants' testimony not only verified Mr. Bonds was at the scene of the offense, but directly established his intimate involvement in orchestrating the vengeful attack against Mr. Edwards and his cohorts.

Based on the prosecution's testimonial use of Mr. Miller and Ms. Wilson's statements as evidence against Mr. Bonds, Mr. Bonds was denied the right to confront and cross-examine fundamentally important evidence in the case against him which the prosecutor urged the jury to consider when deciding Mr. Bonds' guilt. Mr. Bonds was actually prejudiced by the denial of confrontation and by his attorney's failure to raise this issue on direct appeal, when the State would have had to prove the improperly admitted evidence was harmless beyond a reasonable doubt, as argued below.

3. THE TRIAL JUDGE CLOSED THE COURTRROOM TO THE PUBLIC SEVERAL TIMES DURING THE TRIAL, THUS DENYING MR. BONDS HIS RIGHT TO A PUBLIC TRIAL.

a. The federal and state constitutions provide the accused the right to a public trial and also guarantee public access to court proceedings. Public criminal trials are a hallmark of the Anglo-American justice system. Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 605, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982); Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 564-73, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) (plurality) (outlining history of public trials from before Roman Conquest of England through Colonial times). "A trial is a public event. What transpires in the

court room is public property.” State v. Coe, 101 Wn.2d 364, 380, 679 P.2d 353 (1984), quoting Craig v. Harney, 331 U.S. 367, 374, 67 S.Ct. 1249, 91 L.Ed.2d 1546 (1947).

Both the federal and state constitutions guarantee the accused the right to a public trial. The Sixth Amendment provides, “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial” Article I, section 22 of the Washington Constitution also guarantees “[i]n criminal prosecutions, the accused shall have the right to . . . a speedy public trial.”

The public also has a vital interest in access to the criminal justice system. The Washington Constitution provides, “Justice in all cases shall be administered openly, and without unnecessary delay.” Wash. Const. art. I, section 10. This clear constitutional provision entitles the public and the press to openly administered justice. Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 36, 640 P.2d 716 (1982); Federated Publications Inc. v. Kurtz, 94 Wn.2d 51, 59-60, 615 P.2d 440 (1980). Public access to the courts is further supported by article 1, section 5, which establishes the freedom of every person to speak and publish on any topic. Kurtz, 94 Wn.2d at 58. In the federal constitution, the First Amendment’s guarantees of free speech and a free press also protect the right of

the public to attend a trial. Globe Newspaper, 457 U.S. at 603-05; Richmond Newspapers, 448 U.S. at 580 (plurality).

Although the defendant's right to a public trial and the public's right to open access to the court system are different, they serve "complimentary and interdependent functions in assuring the fairness of our judicial system." State v. Bone-Club, 128 Wn.2d 254, 259, 906 P.2d 325 (1995).

The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions.

Id., quoting In re Oliver, 333 U.S. 257, 270 n.25, 68 S.Ct. 499, 92 L.Ed. 682 (1948).

Open public access to the judicial system is also necessary for a healthy democracy, providing a check on the judicial process. Globe Newspaper, 457 U.S. at 606; Richmond Newspapers, 448 U.S. at 572-73 (plurality). Criminal trials may provide an outlet for community concern or outrage concerning violent crimes. Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 509, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) (Press-Enterprise I). When trials are open to the public, citizens may be confident that established, fair procedures are being followed and that deviations from those

standards will be made known. Press-Enterprise I, 464 U.S. at 508. Openness thus “enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.” Id. at 501. The role of public access to the court system in maintaining public confidence was also noted by the Washington Supreme Court.

We adhere to the constitutional principle that it is the right of the people to access open courts where they may freely observe the administration of civil and criminal justice. Openness of courts is essential to the courts’ ability to maintain public confidence in the fairness and honesty of the judicial branch of government as being the ultimate protector of liberty, property, and constitutional integrity.

Allied Daily Newspapers v. Eikenberry, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993).

The right to a public trial includes the right to have public access to pre-trial proceedings. State v. Easterling, __ Wn.2d __, 2006 Wash. LEXIS 502, *7 (2006) (public trial right includes pre-trial hearing regarding co-defendant’s interest in pleading guilty); Orange, 152 Wn.2d at 812 (public trial right applies to jury voir dire); Bone-Club, 128 Wn.2d at 257 (public trial right at pre-trial suppression hearing).

b. Washington courts apply a five-part test when addressing a request for full or temporary closure of a trial. In order to protect the accused's constitutional right to a public trial,

a trial court may not close a courtroom without, first, applying and weighing five requirements as set forth in Bone-Club and, second, entering specific findings justifying the closure order.

Easterling, 2006 Wash. LEXIS 502, *8 (emphasis added).

The constitutional right to a public trial is not waived by counsel's failure to object. Id. at 12 n.8 ("explicitly" holding "a defendant does not waive his right to appeal an improper closure by failing to lodge a contemporaneous objection."); State v. Brightman, 155 Wn.2d 506, 514-15, 122 P.3d 150 (2005). The trial court bears the affirmative burden of seeking a defendant's objection to courtroom closure. Easterling, at 12 n.8.

The presumption of openness may be overcome only by a finding that closure is necessary to "preserve higher values" and the closure must be narrowly tailored to serve that interest. Waller v. Georgia, 467 U.S. 39, 45, 104 S.Ct. 2210, 81 L.Ed2d 31 (1984), citing Press-Enterprise I, 464 U.S. at 510. Moreover, the trial court must enter specific findings identifying the interest so that a reviewing court may determine if the closure was proper. Id.

A Washington court faced with a request for closure must perform a weighing test based upon the five criteria adopted in Bone-Club and Ishikawa, which mirrors the Waller decision. Bone-Club, 128 Wn.2d at 259-60. The test requires:

1. The proponent of closure or sealing must make some showing [of a compelling state interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right;
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests;
4. The court must weigh the competing interests of the proponent of closure and the public;
5. The order must be no broader in its application or duration than necessary to serve its purpose.

Bone-Club, 128 Wn.2d at 258-59, quoting Eikenberry, 121 Wn.2d at 210-11. Accord, Dreiling v. Jain, 151 Wn.2d 900, 913-15, 93 P.3d 861 (2004) (test applied to motion to seal information filed in support of civil motions); Orange, 152 Wn.2d at 806-07; Ishikawa, 97 Wn.2d at 37-39.

c. The trial court did not apply the five-part *Bone-Club* test before closing the courtroom, and a review of the five factors

demonstrates Mr. Bonds' rights to a public trial and right to access to the court were violated by the closure. The court closed the courtroom to the public on at least four occasions.

i. Courtroom closures. First, during a pretrial hearing involving the competency of complainant Keith Harrell, the court sua sponte closed the hearing, reasoning that Mr. Harrell should be accorded "some heightened privacy protection" since health issues could be discussed during the hearing. 2/21/02RP 72. At the prosecution's insistence, the court permitted Mr. Harrell's wife to remain. Id. at 75, 77. The hearing did not elicit any particularly intimate details about Mr. Harrell's health, as he was mostly confined to answering "yes" or "no" based on his limited verbal abilities. Id. at 80-85. The court listened to Mr. Harrell's testimony, heard argument on the competency issue and whether Mr. Harrell's testimony should be excluded based on his limited verbal abilities, and ruled that Mr. Harrell was competent and concerns of the confrontation clause would be addressed by the State providing its questions to the defense in advance. Id. at 80-104. Prior to this courtroom closure, the court did not ask the public or defense if it objected, enter any findings on the reason for

the closure, or otherwise comply with the mandatory Bone-Club criteria.

Second, the court ordered the public to leave the courtroom during Salena Daniels's testimony. 3/13/02RP 944. Ms. Daniels was a witness for the prosecution present during the events at the AM/PM. Id. at 914. The court interrupted her direct testimony when she complained about being harassed by the police after the shooting. Id. at 944. After the audience and jury left the courtroom, the judge admonished the witness to answer the questions, and "don't push me," or she would be found in contempt of court. Id. at 944-46. Prior to closing the courtroom, the court did not seek objections or otherwise comply with the Bone-Club criteria.

Another courtroom closure occurred for the court to hear counsels' argument on whether a statement Judy Harrell, Keith Harrell's wife, allegedly heard was a present sense impression or admissible to impeach another witness. 3/18/02RP 3. The court closed the courtroom sua sponte and without any explanation whatsoever. Id. The Friday prior to this Monday hearing, the court had taken testimony, outside the jury's presence but apparently without closing the courtroom, as to the circumstances under which

this hearsay statement was made but had reserved ruling on its admissibility at that time. 3/15/02RP 1275, 1287.

A fourth courtroom closure occurred during the start of trial proceedings. The prosecution brought Cory Thomas to court for an inquiry to ascertain whether he would invoke his right to be free from self-incrimination at trial, in addition to granting him immunity for his admission that he possessed a firearm during the incident, informing him of in limine rulings and to ascertain whether the detective had recently exerted any improper improper influence over him. 3/7/02RP 413-23. On this third occasion, the courtroom was closed at the request of the prosecutor, the defense stated it had no objection, and the court asked if anyone in the audience objected. Id. at 411-12. The court did not otherwise articulate the Bone-Club criteria.

ii. Three courtroom closures violated both Mr. Bonds' right to a public trial and the public's right of access to criminal proceedings. No one requested a closed hearing for Mr. Harrell's pretrial hearing, Ms. Daniels' lecture on decorum, or counsels' argument regarding the admissibility of Ms. Harrell's hearsay. 2/21/02RP 72; 3/13/03RP 944; 3/18/02RP 3. Although the court expressed privacy concerns for Mr. Harrell's health, the

court's concern for his privacy does not establish a compelling interest in closing the courtroom to the public. The public has a legitimate interest in viewing the testimony underlying the court's decisions as to the admissibility of witness testimony. See Cohen v. Everett City Council, 85 Wn.2d 385, 388-89, 535 P.2d 801 (1975), (court could not seal transcript of city council proceedings despite serious allegations made against unrepresented person who was not present).

In addition, Mr. Harrell did not reveal information in the closed hearing that was especially intimate or significantly embarrassing. Mr. Harrell's testimony and the subsequent argument was neither confidential nor embarrassing. No one, and certainly not the trial court, articulated a valid, compelling reason for courtroom closure in Mr. Harrell's hearings.

Likewise the court did not present a compelling interest in closing the courtroom to lecture Ms. Daniels. While the court certainly may retain control over the courtroom and be certain witnesses understand they must limit their answers to the questions presented, there is no apparent reason the public needed to be excluded if the court believed it necessary to warn Ms. Daniels that she must answer the questions put to her.

Similarly, the court closed the hearing when deciding whether to admit Ms. Harrell's testimony without explanation or apparent cause. 3/18/02RP 3. Counsel argued about whether a hearsay statement by another witness was admissible under the rules of evidence, hardly a particularly private or sensitive topic from which the public should be barred.

In none of these instances did the court ask if anyone objected to the hearing, as it is its obligation to do under the second Bone-Club factor. Easterling, 2006 Wash. LEXIS 502 at *12 n.8.

The third Bone-Club factor requires the proposed method for curtailing open access to the court be the least restrictive means available for protecting the threatened interests. The court did not consider any less restrictive alternatives to the closed hearings.

The trial court did not weigh the competing interests of the need for privacy against those of Mr. Bonds, his co-defendants, the prosecutor, and the public or make findings on the record as required by the fourth Bone-Club factor. The trial court's cursory rulings do not demonstrate the court even identified the various interests in open proceedings. All interests must all be identified for the court to engage in the meaningful weighing required by the constitution.

In Bone-Club, this Court remanded for a new trial in light of the absence of a record showing consideration of the defendant's right to a public trial before ordering temporary closure of his suppression hearing. This Court reasoned, "the record lacks any hint the trial court considered Defendant's public trial right, much less engaged in the detailed review required to protect that right." Bone-Club, 128 Wn.2d at 260-61. Here, trial court failed to identify Mr. Bonds' interest in a public trial or the public's right to access to the courts and failed to weigh the five Bone-Club factors. The lack of a meaningful analysis on the record violated Mr. Bonds' right to a public trial as well as the public's right to open access to proceedings. See Bone-Club, 128 Wn.2d at 261.

iii. The public was denied its right to access the proceedings regarding Cory Thomas. Prior to the Cory Thomas hearing, the prosecutor asked for a closed hearing and the defense agreed. 3/7/02RP 411-12. The court also asked members of the audience if they objected before it closed the courtroom, thereby complying with the second Bone-Club factor. Id. at 411. Since Mr. Bonds apparently agreed to the courtroom closure, he may have waived his right to a public trial. Easterling, 2006 Wash. LEXIS 502 at *12 n.8.

However, the public has a constitutional right to open access to the proceedings. Id. at *8. Article I, section 10 expressly commands that “Justice in all cases shall be administered openly, and without unnecessary delay.” Accordingly, the court may not limit or deny the public access to court proceedings absent compelling circumstances. Ishikawa, 97 Wn.2d at 37-39.

In closing the courtroom for Mr. Thomas’ hearing, the court did not establish the compelling reason for closure, rule out less intrusive alternatives, or make specific findings articulating the need for denying the public access to the proceedings. Easterling, at *9 n.4. The court’s request for objections is insufficient to justify the closure of the courtroom for a hearing. Id. at 9, 15-16. While perhaps the court wished to ascertain in private whether Mr. Thomas had been harassed or threatened by anyone in the audience, the courtroom closure was not limited to this inquiry. 3/7/02RP 411-24. Accordingly, even if there was a compelling reason to close one aspect of the hearing, the court did not articulate this reason or narrowly limit the closure to this issue.

d. Reversal is required. A violation of the right to a public trial infects the entire trial process, rendering the proceedings fundamentally unfair, and its denial “is one of the limited classes of

fundamental rights not subject to harmless error analysis.”

Easterling, 2006 Wash. LEXIS 502 at *20. The Easterling Court refused to find apply a de minimus exception to the rule of open trials, as “a majority of this court has never found a public trial right violation to be de minimis.” Id. at *20. Moreover, because “[p]rejudice is necessarily presumed where a violation of the public trial right occurs, and would automatically require reversal if counsel had raised the issue on direct appeal,” the conviction must be reversed. Orange, 152 Wn.2d at 813.

4. MR. BONDS RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL.

a. Mr. Bonds has the right to effective assistance of counsel on appeal. Where a state provides an appeal of right, the Fourteenth Amendment requires the state also provide the effective assistance of counsel on appeal. Evitts v. Lucey, 469 U.S. 387, 396-97, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); Douglas v. California, 372 U.S. 353, 358, 83 S.Ct. 814, 9 L.E.d.2d (1963). Article I, section 22 of the Washington Constitution provides for a right to appeal; therefore, appellants are entitled to the effective assistance of counsel on appeal. State v. Rolax, 104 Wn.2d 129, 135, 702 P.2d 1185 (1995).

A claim of ineffective assistance of appellate counsel requires the petitioner to,

first show that the legal issue that appellate counsel failed to raise had merit. Second, the petitioner must show that he or she was actually prejudiced by appellate counsel's failure to raise the issue.

In re Personal Restraint of Dalluge, 152 Wn.2d 772, 778, 100 P.2d 279 (2004), citing In re Personal Restraint of Maxfield, 133 Wn.2d 332, 344, 945 P.2d 196 (1997).

b. Mr. Bonds' attorney failed to raised plainly meritorious legal issues that would have required reversal. If an appellate attorney failed to raise "an issue with underlying merit, then the first prong of the ineffective assistance test is satisfied." Dalluge, 152 Wn.2d at 787.

The violation of Mr. Bonds' right to a public trial was obvious and plainly available to appellate counsel. Orange, 152 Wn.2d at 813. Failing to raise this issue on direct appeal constitutes deficient performance, as the court ruled in Orange:

had Orange's appellate counsel raised the constitutional violation on appeal, the remedy for the presumptively prejudicial error would have been, as in Bone-Club, remand for a new trial. Consequently, we agree with Orange that the failure of his appellate counsel to raise the issue on appeal was both deficient and prejudicial and therefore constituted ineffective assistance of counsel.

Id.

The violations of Mr. Bonds' rights to confront witnesses and to a public trial plainly have merit, as discussed above. Crawford was decided while Mr. Bonds' appeal was pending, which, according to the State, was two weeks after oral argument and five months before the Court of Appeals issued its written decision. See State's Response to Personal Restraint Petition (filed Oct. 10, 2005), p. 4; 2004 Wash.App. LEXIS 1902.

Crawford "is a departure from previous United States Supreme Court precedent," which marked considerable change in the law defining the right of confrontation. In re Restraint of Markel, 154 Wn.2d 262, 270, 273, 111 P.3d 249 (2005). The ruling would certainly apply to Mr. Bonds since his direct appeal was pending at the time of the Crawford decision. State v. Evans, 154 Wn.2d 438, 444, 114 P.3d 627 (2005). Appellate counsel had the option of filing a motion to add a new issue to the appeal, as the Rules of Appellate Procedure broadly provide for motions to be filed for a wide range of relief on appeal. RAP 17.1. For example, in the case at bar, co-appellant Wilson received permission to add an issue pertaining to the sufficiency of the evidence after she filed her brief. 2004 Wash.App. LEXIS 1902, *30 n.56. As further example,

counsel may add an issue of constitutional magnitude raised for the first time even in a petition for review. Easterling, 2006 Wash. LEXIS 520, *5-6 & n.2.

However, after a direct appeal there is no appeal as of right and by failing to include the meritorious issue in the direct appeal, counsel increased the hurdles by which Mr. Bonds must overcome to present to issue and prevail. See e.g., In re Restraint of Domingo, 155 Wn.2d 356, 363, 119 P.3d 816 (2005) (noting procedural obstacles to raising erroneous accomplice instruction in PRP). Since no final decision on the merits had been issued when Crawford was decided, it would have been not only appropriate, but also necessary to add this issue to the brief once Crawford was decided and the confrontation violation became plain. Since the underlying issues involving the right to a public trial, the public's right to access court proceedings, and the right of confrontation have merit, counsel was deficient in failing to raise these issues on direct appeal.

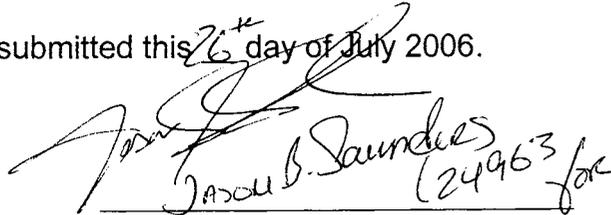
c. Since Mr. Bonds' convictions would have been reversed had counsel properly raised available legal issues, the resulting prejudice requires granting the personal restraint petition. As the Orange Court held, counsel's failure to raise an issue that

would be presumed prejudicial on direct appeal and would require automatic reversal is prejudicial to the petitioner. 152 Wn.2d at 814. The same error occurred here, as well as the erroneous deprivation of Mr. Bonds' right to confront witnesses, an error which the State would have had to prove harmless beyond a reasonable doubt had the issue been raised on direct appeal. Since the State could not have met this high burden, in light of the conflicting accounts of biased and unbelievable witnesses, and the prosecution's efforts to link Mr. Bonds to the incriminating statements made by his non-testifying statements in closing argument, the confrontation clause violation is also plainly prejudicial and requires granting the petition, reversing his convictions, and ordering a new trial. Orange, 152 Wn.2d at 814.

E. CONCLUSION

Mr. Bonds is unlawful restrained and is entitled to relief by way of a PRP. This Court should grant Mr. Bonds' PRP and order his convictions reversed and the case remanded for a new trial.

Respectfully submitted this 26th day of July 2006.

A handwritten signature in black ink, appearing to read "Nancy P. Collins", is written over a horizontal line. To the right of the signature, the text "(24963 for" is written in a similar cursive style.

Nancy P. Collins (WSBA 28806)
Washington Appellate Project – 91052
Attorneys for Petitioner

