

FILED

SEP 03 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

NO. 28885-4-III

COURT OF APPEALS
STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

v.

SAMUEL CASTRO,

Defendant/Appellant.

RESPONDENT'S BRIEF

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I. RESPONSE TO ASSIGNMENT OF ERROR

1. The Trial Court did not violate the Defendant's Constitutional Right to a public trial when it granted the Defendant's routine and unopposed pre-trial motions following a discussion between the parties in chambers.

Furthermore, even if the Trial Court was in error when it considered Defendant's motions in chambers and placed its findings on the record, the error was of a purely ministerial or legal issue and not a matter that would necessitate a new trial.

II. STATEMENT OF THE CASE

The State hereby adopts in its entirety the statement of the case prepared by Defendant's counsel with the following additions:

The Trial Court's ruling was placed on the record. The Trial Court's ruling granted every motion that Mr. Castro, the Defendant, raised in Mr. Castro's favor. The Trial Court further entertained a period on the record where the Defendant could raise an objection to the Trial Court's rulings. No objection was made by the Defendant or the State. (RP 5-7)

III. SUMMARY OF ARGUMENT

The Trial Court did not violate the Defendant's right to a public trial when it decided the Defendant's own pre-trial motions in chambers, and in favor of the Defendant. Furthermore, the Defendant's right to a public trial is not absolute with regards to purely ministerial and legal matters that do not require the resolution of disputed facts. Finally, even if the Trial Court was in error by hearing the motions in chambers, the error was harmless in that the rulings were made on the record and the Trial Court provided both parties a chance to object.

IV. ARGUMENT

1. The Trial Court did not violate the Defendant's right to a public trial when it heard the Defendant's pre-trial motions in chambers, decided in favor of the Defendant, placed its findings on the record, and subsequently provided a chance for both parties to object.

Defendant asserts that the Trial Court violated his right to a public trial, and that violations of these rights are presumed prejudicial and not subject to harmless error standard. However, the record clearly shows otherwise. Defendant's previously filed pre-trial motions were all granted, and the Trial Court's findings were all placed on the record. Not surprisingly, neither Defendant

nor his attorney objected to Judge Cooper's rulings when he announced them on the record because said rulings favored Defendant.

The relevant factors to consider here are similar to the factors that the Washington Supreme Court used in deciding State v. Momah, 167 Wn.2d 140, 151 (2009). Specifically, like in Momah, Mr. Castro assented to, and benefitted from, the Trial Court's rulings. These were the Defendant's pre-trial motions after all. Also, like in Momah, the Defendant had a chance to object following the Court's closure and in fact did not object. And this Court should not discount the fact that Mr. Castro's motions (1) excluded witnesses from the trial proceedings, (2) precluded the State from calling any undisclosed witnesses, (3) prohibited the State from impeaching Mr. Castro with prior convictions (of which there were no convictions that the State could have used), and finally, (4) emphasized that all prosecution witnesses should avoid hearsay and improper opinions. Again, these rulings benefitted the Defendant, were at the request of the Defendant, and also, like in Momah, were made on the record with an opportunity to object, yet outside of the jury's presence so as to protect Defendant's right to an impartial jury.

2. The Defendant's right to a public trial is not absolute with regards to purely ministerial and legal matters that do not require the resolution of disputed facts.

The pre-trial motions at issue, while beneficial to the Defendant, were of a ministerial or purely legal nature. There was no opposition to the Defendant's pre-trial motions, and they did not require any factual resolution. There was no consideration of evidence. Defendant's pre-trial motions were of a purely routine, uncontested nature. Such purely ministerial or legal issues that do not involve the resolution of contested facts do not require a public hearing. State v. Sublett, 156 Wash.App. 160, 181-182 (2010) (holding that a trial court's in-chambers conference regarding a juror's question pertaining to the trial court's jury instructions was purely ministerial and not part of a public trial setting).

The pre-trial conference with its attendant pre-trial motions consideration at issue here is more akin to a chambers meeting or a bench conference than to an integral part of a public trial. State v. Rivera, 108 Wash.App 645, 653 (2001), is illustrative to the prosecution's contention. (Court of Appeals for Division One in Rivera reasoned that opening chambers meetings and bench

conferences to the public would do damage to the goals of what a public trial seeks to attain.)

One thing that should be clear is that the issues raised in the instant matter are not similar to the issues decided by the Strode court. Counsel for appellant cites State v. Strode, 167 Wash.2d 222 (2009) as support for their argument that “trial proceedings conducted in chambers are closed to the public and violate a public trial.” (AB 5) While this is true in the abstract, the Strode court was dealing with the problematic situation relating to interviews of prospective jurors taking place in chambers, in a closed courtroom proceeding, without any analysis of the Bone-Club factors by the trial court. The situation at hand is very different from Strode in that the “process of jury selection is a matter of importance, not simply to the adversaries but to the criminal justice system.” And that a “closed jury selection process harms the defendant by preventing his or her family from contributing their knowledge or insight to jury selection and by preventing the venire from seeing the interested individuals.” Strode at 226-227. The pre-trial conference wherein Mr. Castro’s pre-trial motions were considered and ultimately decided in his favor is nothing like the situation of a closed

courtroom jury selection procedure undertaken without Bone-Club analysis prior to courtroom closure.

3. Even if the Trial Court erred, the error was harmless because the Trial Court's rulings were in favor of the Appellant, were made on the record, and because the Trial Court provided an opportunity for both sides to object to its ruling.

Should it be determined that the Trial Court erred in discussing the Defendant's pre-trial motions in chambers, said error is nevertheless harmless to the Defendant's *own interest* to a public trial. How is the Defendant's interests negatively impacted when the trial court granted the Defendant's own routine pre-trial motions? How would recitation of Bone-Club factors cure any putative damage to Mr. Castro? The answer to the two posited questions is clear, and it is similarly clear that *Mr. Castro* was not harmed. Finally, not all harms would require a new trial.

A new trial is required only when the closure results in a fundamentally unfair trial. Waller v. Georgia, 467 U.S. 39, 50 (1984). (Holding that the remedy for an improper courtroom closure should be appropriate to the nature of the harm). How can it be said that a chambers conference wherein routine pretrial motions were discussed reaches the level of harm wherein a new trial is

merited? The Waller case involved a lengthy suppression hearing during a closed courtroom session, most unlike Mr. Castro's appeal. Even the Waller case didn't merit a new trial.

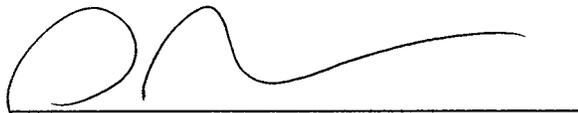
Finally, it appears that the Defendant is asserting the *general public's* right to witness a public trial, which is an entirely different matter vis a vis a *Defendant's* right to a public trial. At any rate, whichever party's (or in the case of the general public's right, whichever non-party's) right to a public trial is implicated, it is abundantly clear that Judge Cooper placed his findings on the record, and that Judge Cooper also provided an opportunity for comment or objection. Thus Judge Cooper informed the public of his decisions on the record, and Judge Cooper simultaneously provided the defendant below an opportunity to comment or object. (RP 5-7)

V. CONCLUSION

The Trial Court did not violate the Appellant's right to a public trial when it decided the Defendant's own pre-trial motions in chambers, and in favor of the Defendant. Furthermore, the Appellant's right to a public trial is not absolute with regards to purely ministerial and legal matters that do not require the

resolution of disputed facts. Finally, even if the Trial Court was in error by hearing the motions in chambers, the rulings were made on the record, were harmless, and an opportunity to object to the Trial Court's ruling was provided for the Appellant and Respondent.

Respectfully submitted on August 31, 2010.

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a long horizontal stroke extending to the right.

David K. Barrett # 34542
Deputy Prosecuting Attorney
Kittitas County
Attorney for Respondent