NO. 32466-4-III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,

Respondent,

v.

MARGARITO GORDIAN CRUZ

Appellant.

FILED
DECEMBER 18, 2014
Court of Appeals
Division III
State of Washington

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KLICKITAT COUNTY
Superior Court No. 00-1-00023-7

BRIEF OF RESPONDENT

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A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

At trial, the parties exercised silent, written peremptory challenges during jury selection. Was Mr. Cruz's constitutional right to a public trial violated by this procedure when the public record included a list of the jurors challenged, in what order, and by whom?

B. STATEMENT OF THE CASE

The State adopts Mr. Cruz's statement of the case.

C. ARGUMENT

Mr. Cruz's constitutional right to a public trial was not violated when the parties exercised silent, written peremptory challenges because the public record included a list of the jurors challenged, in what order, and by whom.

Written exercise of peremptory challenges implicates no public trial right. *State v. Love*, 176 Wn. App. 911, 920, 309 P.3d 1209 (2013); *State v. Mason Iopu Filitaula*, No. 72434-7-I (Wash. Ct. App. Dec. 8, 2014); *State v. Marks*, No. 44919-6-II (Wash. Ct. App. Dec. 2, 2014); *State v. Dunn*, 180 Wn. App. 570, 321 P.3d 1283 (2014). Public trial "serves to ensure a fair trial, to remind the prosecutor and the judge of their responsibility to the accused and the importance of their functions, to encourage witnesses to come forward, and to discourage perjury." *State v. Sublett*, 176 Wn.2d 58, 72, 292 P.3d 715 (2012). "Those purposes simply are not furthered by a party's actions in exercising a peremptory challenge or in seeking a cause challenge of a potential juror." *Love*, 176 Wn. App. at 919, 309 P.3d 1209.

Here, as in *Love* and *Filitaula*, the "written form on which the attorneys wrote down their peremptory challenges was kept and filed in the court record at the end of the case." *Filitaula,* 2014 Wn. App. 4-5. As in *Filitaula*, the list contained "the names and numbers of the prospective jurors who were removed by the peremptory challenge, list[ed] the order in which the challenges were made, and identif[ied] the party who made them." *Id.* at 5. As in *Filitaula*, nothing here hints that the public is denied access to this record. *Id.* With such a record, "peremptory challenges need not be conducted orally to fulfill the public trial right." *Id.*

The written record here "satisfied the court's obligation to ensure the open administration of justice." *Id.*.

D. CONCLUSION

Mr. Cruz's guilty verdict should be affirmed.

Respectfully submitted this 18th day of December, 2014.

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COURT OF APPEALS OF WASHINGTON
DIVISION III

STATE OF WASHINGTON **Respondent,** **vs.** **MARGARITO GORDIAN CRUZ,** **Appellant**	**NO. 32466-4-III** **CERTIFICATE OF MAILING**

I, Shari Seward, certify that on December 18, 2014, I emailed, a copy of the Brief of Respondent to:

Attorney for Appellant:
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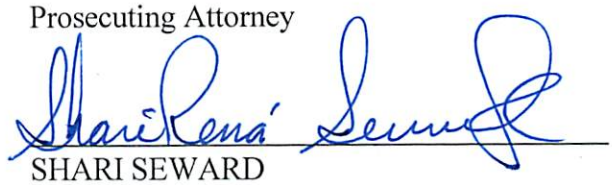
I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 18th day of December, 2014.

LORI LYNN HOCTOR
Prosecuting Attorney



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COURT OF APPEALS OF WASHINGTON
DIVISION III

STATE OF WASHINGTON **Respondent,** **vs.** **MARGARITO GORDIAN CRUZ,** **Appellant**	**NO. 32466-4-III** **CERTIFICATE OF MAILING**

I, Shari Seward, certify that on December 18, 2014, I deposited in the United States mails by certified mail, proper postage affixed, a copy of the Brief of Respondent to:

Margarito Gordian Cruz
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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 18th day of December, 2014.

LORI LYNN HOCTOR
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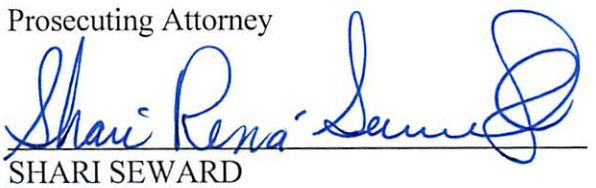

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