

ORIGINAL

No. 81225-0

THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE PERSONAL RESTRAINT PETITION OF

RICHARD D. HARTMAN

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STATE OF WASHINGTON  
DEPARTMENT OF CORRECTIONS

APPEAL FROM WASHINGTON STATE COURT OF APPEALS

DIVISION TWO

No. 35763-1-II

MASON COUNTY SUPERIOR COURT No. 06-1-00246-6  
The Honorable Toni A. Sheldon, Trial Judge

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SUPPLEMENTAL BRIEF OF PETITIONER

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RICHARD DALE HARTMAN pro se  
DOC 299896 , Cell H4 A 100  
Stafford Creek Correction Center  
191 Constantine Way  
Aberdeen, WA 98520

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, )  
Respondent, ) No. 81225-0  
v. ) PETITIONER'S REPLY TO THE  
RICHARD D. HARTMAN, ) STATE'S RESPONSE TO THE  
Appellant. ) COURT'S ORDER FOR  
SUPPLEMENTAL BRIEFING

1. IDENTITY OF PARTY

RICHARD D. HARTMAN writes this reply asking for the relief set forth in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Petitioner asks this Court to REVERSE his conviction for violation of Public Trial.

3. FACTS RELEVANT TO RELIEF

The State filed a supplemental brief on June 25 which Petitioner received June 30. The State's position is summarized as follows:

(1) voir dire did occur in chambers (2) no others were allowed in during the questioning of these jurors (3) the trial court did not conduct a  
PET. REPLY 1

Bone-Club analysis prior to taking these ten jurors into chambers (4) Hartman's presence in chambers during voir dire constitutes a "valid tactical decision" on his or his counsel's part under Momah (5) no State source remembers anyone being excluded due to overcrowding and (6) this distinguishes the case from Presley. The State requests the Court affirm the conviction.

#### 4. ARGUMENT AND GROUNDS FOR RELIEF

We begin with a point-for-point rebuttal of the State's position.

(1) as voir dire was conducted in-chambers and (2) Hartman's family was excluded from this portion of the proceedings and (3) the trial court did not conduct a Bone-Club closure analysis, this Court should reverse under Orange and Paumier.

(4) Hartman was in-and-out of consciousness during this portion of proceedings as observed and recorded by Toni Sheldon on page 29 of the RP, on lines 11 through 19.

Closure was a fundamental structural error to which Hartman in his condition could not have consented to, overtly or tacitly. Hartman's family, who herein testify to their exclusion, would have

recognized Hartman's condition as weakness from internal bleeding due to his late-stage hepatitis C. Proceedings should have been stopped at this point until Hartman's condition was treated and he was capable of consciously participating.

A "valid tactical decision" to participate in closure would require a record made in the trial court under Bone-Club.

(5) Hartman's family testifies to their exclusion and the State has not rebutted that. Hartman was inherently prejudiced by being forced to participate in proceedings in a semi-conscious state.

(6) to whatever degree this case is distinguishable from Presley, the State cannot, and this Court should not, depart from centuries of jurisprudence which entitle Hartman to a public trial.

Division Two's April 27, 2010 decision in Paumier sews up the issues of Presley and the HIPAA in the State's supplemental briefing at bar.

The State argues in its supplemental briefing that applying Momah and Strode would violate a juror's right to keep his or her medical conditions and treatment private under the federal Health Insurance Portability and Accountability Act (HIPAA). Again, Presley resolves the matter. As discussed above, Presley does not require all proceedings to be open in all circumstances. Presley requires a trial court to consider reasonable alternatives to closure and to make appropriate findings explaining why closure is

necessary under the particular circumstances of the case before closing the proceeding. Accordingly, a proceeding may be closed under Presley, when these requirements are met. Id.

Presley v. Georgia, 558 US \_\_\_, 130 S.Ct.271, \_\_\_ L.Ed. 3d \_\_\_ (2010) as quoted in State of Washington v. Rene P. Paumier, \_\_\_ Wn.App. \_\_\_, \_\_\_ P.3d \_\_\_ (2010) (No. 36346-1-II).

Because there was no affirmative acceptance of closure, no requested expansion of it, and no benefit to the defense from it, Momah cannot apply to foreclose relief.

Because this case is so factually similar to Orange and Paumier, this Court should REVERSE Hartman's conviction.

#### 5. CONCLUSION

Hartman is dying from late-stage hepatitis C and the DOC prevented him from getting curative care when he was still amenable to it. He is most likely beyond the point where a liver transplant is a viable option.

Hartman's earliest release date is in December of this year. He has served nearly four years on a charge in which he was offered a plea bargain of a year-and-a-day.

The witnesses in police reports claiming they saw Hartman inside the fenced area of the school district's gas storage area admitted under cross examination they could not be sure he was actually inside the fence. There was no forensic evidence Hartman was ever on private property. Hartman was not in possession of any stolen property. An evidentiary presumption at law relieved the State of the burden of proving Hartman committed second degree burglary.

Once the witnesses admitted in trial (RP \_\_\_\_\_) they could not place Hartman inside the fence, the case should have been dismissed for lack of evidence. The presumption instruction was unlawful under Washington v. Deal, 128 Wn.2d 693, 911 P.2d 996 (1996) and State v. Brunson, 128 Wn.2d 98, 905 P.2d 346 (1995) Id. 128 Wn.2d at 106.

There is no evidence for a new trial.

RICHARD D. HARTMAN pro se

*Richard Hartman*

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PROOF OF SERVICE

I, RICHARD DALE HARTMAN hereby swear I mailed a copy of the preceding SUPPLEMENTAL BRIEF OF PETITIONER, dated June 30, 2010, to opposing counsel at

Edward P. Lombardo  
Deputy Prosecuting Attorney  
Mason County Prosecutor's Office  
521 N. Fourth Street  
P.O. Box 639  
Shelton, WA 98584

on this 15<sup>th</sup> of July, 2010 from Stafford Creek Correction Center, in Grays Harbor County, Washington.

Richard Hartman

Richard D. Hartman 299896  
Stafford Creek Correction Center  
191 Constantine Way  
Aberdeen, WA 98520