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NO. 92332-9

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THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE DETENTION OF MARK BLACK

STATE OF WASHINGTON,

Petitioner,

v.

MARK BLACK,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

RESPONDENT'S SUPPLEMENTAL BRIEF

NANCY P. COLLINS
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WASHINGTON APPELLATE PROJECT
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A. INTRODUCTION.

Facing indefinite civil commitment, Mark Black waived his presence for the first day of jury selection, hoping some jurors might respond more openly if he was not in court. He expected to take part in the remainder of jury selection and trial. The court promised prospective jurors several times that they would meet Mr. Black “tomorrow.”

But the jail failed to bring Mr. Black to court as ordered. Mr. Black’s lawyers reminded the judge that he had not waived his presence “from this point forward.” The court continued questioning jurors about their ability to serve in this particular case and removed several from the panel. The Court of Appeals held that Mr. Black’s right to be present for jury selection was violated by conducting substantive jury selection when he was prevented from participating due to circumstances beyond his control.

B. ISSUE FOR WHICH REVIEW HAS BEEN GRANTED

The inviolate right to trial by jury and the right to due process of law have historically protected a litigant’s right to personally participate in the selection of a fair and impartial jury. In a criminal case, no judge may explore the qualifications of jurors to serve in a particular case

without letting the accused participate. Like a criminal prosecution, civil commitment requires heightened protections due to the massive curtailment of liberty at stake. Did the Court of Appeals correctly hold that Mr. Black's right to be present for jury selection was violated by conducting voir dire without him when his absence was not his fault?

C. STATEMENT OF THE CASE.

Mark Black was held in the state's custody from the inception of these proceedings, as mandated by RCW 71.09.040(1), (4).

During pretrial hearings, the attorneys and court carefully noted when Mr. Black waived his presence. *See* 9/13/13RP 6; 9/26/13RP 4; 10/8/13RP 4; CP 1422, 1427, 1428. When the judge changed a hearing date, she asked the attorneys to tell Mr. Black in case he wished to attend. 9/13/13RP 6, 164.

On October 17, 2013, Mr. Black's attorney explained he intended to waive his presence for the first day of jury selection, expecting the court would question individual jurors about more personal information at that time. 10/17/13RP 96-97. He would come to court for the second day of jury selection and thereafter. *Id.* at 113. The court signed a transport order and the attorneys discussed the

importance of providing him with clothing for trial on “Tuesday,”

October 22, 2013. *Id.* at 113.

Prospective jurors appeared preliminarily on Monday, October 21, 2013. The judge administered an oath to the panel, introduced the case, excused some jurors who were unavailable to serve, and instructed them to complete a questionnaire. 10/21/13RP 11-27, 33.

Several times, the judge noted Mr. Black’s absence from the courtroom and promised the jurors they would meet Mr. Black the next day, when they would finish jury selection and start trial. 10/21/13RP 4, 6, 28, 38, 81. The judge explained, “Mr. Black is not here today. We accepted that he did not wish to be present today, but will be present tomorrow and of course all the way through the trial.” 10/21/13RP 6.

After lunch, the judge started in-depth voir dire designed to ascertain whether the prospective jurors would “feel comfortable doing the work” required or feel you are “not going to be able to do it for any number of reasons.” 10/21/13RP 36. The attorneys for the State and Mr. Black took turns conducting voir dire of the panel, probing about their abilities to fairly serve. *Id.* at 36-83.

Before the end of the day, the court asked 16 jurors to remain for more private conversations. *Id.* at 83. Fifteen were stricken for cause

based on their answers during individual questioning while five were not excused. *Id.* at 86-135.

At the start of proceedings on October 22, 2013,¹ Mr. Black's attorney informed the court that Mr. Black had not been brought to court from the jail. CP 1430. His attorney told the judge that he had not "waived his presence from this point forward." CP 1430.² Mr. Black's attorney moved for a recess until Mr. Black was brought to court but the court reserved ruling. *Id.*

The judge pressed Mr. Black's attorneys to waive his presence but his lawyers declined, explaining that Mr. Black "did not feel comfortable waiving" his presence and "it would be better for the jury to see him at some point before it's actually picked." 10/22/13RP 51. They also told the court, "It's important that he give input to our selection of the jury." *Id.* at 52.

¹ The October 22, 2013 transcripts are in two volumes, divided by subject matter. One contains jury selection and the other has other in-court proceedings throughout the day. The clerk's minutes show the context of the day's occurrences. CP 1430-31.

² The original clerk's minutes stated the case was "ON THE RECORD" when counsel informed the court Mr. Black had not waived his presence. Appendix A (clerk's minutes, page 9).

The minutes were later manually altered to change "on" to "off the record." App. B (altered minutes, page 9). Counsel was unaware this handwritten change had occurred until preparing this brief.

The court continued questioning jurors about their qualifications for this case. 10/22/13RP 3-89. The judge spoke to multiple jurors, dismissing two, rejecting a defense cause challenge to one, and keeping three others on the panel. 10/22/13RP 5-8, 22, 26-32, 34-43, 49-50, 61-69, 77.

After determining the jail would not bring Mr. Black to court due to a staff shortage, the judge excused the panel for the day. She told the venire that they were “not able to proceed” further as she “hoped and as everyone had expected.” 10/22/13RP 60. The reason for the delay was there are “some parts of our system which have not responded in the way I had expected.” *Id.* The judge emphasized the delay was not the fault of “the people in the room.” *Id.* at 60-61.

Even after excusing the jury panel, the judge questioned additional jurors, removing six due to claims of hardship and one based on his opinions after an extended conversation about the case. CP 1430; 10/22/13RP 64-87. In addition, the judge told two jurors for whom English was a second language that she was “concerned” the parties would speak quickly. 10/22/13RP 79. The judge did not find either juror was unqualified to serve, but said this trial might not be right for

them. *Id.* at 82.³ The court told both jurors to report to the administrator for another case. *Id.* at 82-83.

Mr. Black was brought to court the following day and participated in the rest of jury selection and trial. 10/23/13RP 3.

The Court of Appeals held that individually questioning and dismissing multiple jurors due to their qualifications for the particular case when Mr. Black was involuntarily absent violated his right to participate in jury selection. *In re Det. of Black*, 189 Wn.App. 641, 654, 357 P.3d 91 (2015), *rev. granted*, _ Wn.2d _, S.Ct. No. 92332-9 (2016).

D. ARGUMENT.

Mr. Black's involuntary exclusion from a substantive portion of jury selection violated his right to be present and participate in selecting the jury

1. *Mr. Black has the inviolate right to a jury trial, including the personal right to be present and participate in jury selection.*

The right to a trial by jury “shall remain inviolate” under article I, section 21. This right is an “essential component of our legal system” in civil and criminal cases, and this Court accords it “the highest

³ A juror who is “not able to communicate in the English language” is not qualified to serve as a juror. RCW 2.36.070.

protection.” *Sofie v. Fibreboard Corp.*, 112 Wn.2d 636, 656, 771 P.2d 711 (1989).

Jury selection has long been recognized as a critical stage in a jury trial as a component of due process. *Gomez v. United States*, 490 U.S. 858, 873, 109 S.Ct. 2237, 104 L.Ed.2d 923 (1989); U.S. Const. amend. 14; Const. art. I, § 3. The right to challenge potential jurors secures the “fairness and impartiality” necessary for trial by jury. *State v. Superior Court of Whatcom Cty.*, 82 Wash. 284, 289, 144 P. 32 (1914). This right that “has existed from the earliest times.” *Id.* (internal citation omitted).

Choosing a jury “is the primary means by which [to] enforce a defendant’s right to be tried by a jury free from ethnic, racial, or political prejudice, or predisposition about the defendant’s culpability.” *Gomez*, 490 U.S. at 873 (internal citations omitted). An accused person must be given the opportunity to tender advice or make suggestions to his or her lawyer when assessing potential jurors. *United States v. Gordon*, 829 F.3d 119, 124 (D.C. Cir. 1987). This right is particularly important when a person’s “life or liberty may depend upon the aid which, by his personal presence, he may give to counsel and to the

court and triers, in the selection of jurors.” *Lewis v. United States*, 146 U.S. 370, 373, 13 S.Ct. 136, 36 L.Ed. 1011 (1892).

The importance of selecting a fair, impartial jury and purposefully exercising challenges applied to civil and criminal cases. The right to trial by jury in civil cases “carries with it the privilege to be present at the selection of the jury.” *Harrington v. Decker*, 356 A.2d 511, 512 (Vt. 1976) (finding plaintiff in civil action had right to be present for jury selection under state and federal constitutions); *see also Rozbicki v. Huybrechts*, 22 Conn.App. 131, 134-35, 576 A.2d 178, 179-80 (1990), *aff’d*, 218 Conn. 386, 589 A.2d 363 (1991) (right to be present during jury selection “applies with equal force to civil cases” because it is “equally important that a party be at his attorney’s elbow during examination of prospective jurors”); *Jordan ex rel. Jordan v. Deery*, 778 N.E.2d 1264, 1271-72 (Ind. 2002) (“without the right to be present, the right to trial by jury becomes meaningless”).

The right to challenge prospective jurors is a “vital and often crucial aspect of any trial. It has aptly been described as the cornerstone of the right to a trial by impartial jury.” *Carlisle v. County of Nassau*, 408 N.Y.S.2d 114, 117 (N.Y. App.Div. 1978). *Carlisle* was a civil suit where the plaintiff was not allowed to attend jury selection. *Id.* at 115.

The appellate court reversed due to a party's personal fundamental "right to pass upon the acceptability of prospective jurors and insist that they be challenged peremptorily or for cause," which is not rectified by the attorney's presence. *Id.* at 117.

The Supreme Court held, in a civil case, "the orderly conduct of a trial by jury, essential to the proper protection of the right to be heard, entitles the parties who attend for the purpose to be present in person or by counsel at all proceedings from the time the jury is impaneled until it is discharged after rendering the verdict." *Fillippon v. Albion Vein Slate Co.*, 250 U.S. 76, 81, 39 S.Ct. 435, 63 L.Ed. 853 (1919). The impaneling of the jury occurs when the oath is given at the beginning of voir dire. RCW 4.44.120; *State v. Crafton*, 72 Wn.App. 98, 103 n.4, 863 P.2d 620 (1993); *see also Carlisle*, 64 A.D.2d at 19 ("a trial begins when the veniremen are called for examination as to their qualifications").

Applying a state constitutional provision similar to article I, section 21, the Connecticut Supreme Court held the right to trial by jury includes the right to be present during jury selection. *Rozbicki v. Huybrechts*, 589 A.2d 363, 365 (Conn. 1991) (citing Conn. Const. art. I, § 19, "The right of trial by jury shall remain inviolate . . ."). In

Rozbicki, the plaintiff's attorney participated in jury selection but the plaintiff was unable to attend for reasons beyond his control and the court had refused to reschedule. *Id.* at 364. The plaintiff did not claim any of the seated jurors were unqualified. *Id.*

Finding the plaintiff had a personal right to participate in jury selection, the Connecticut Supreme Court explained that a party may play "a significant role" at voir dire because its purpose is to discover the prospective juror's predispositions by exploring the juror's interests and relationships. *Id.* at 365. Personal presence is important as "a party may recognize, during voir dire, a potentially prejudicial relationship that might pass unnoticed by his counsel." *Id.*

If the court discusses the case with jurors without including the accused, he loses the opportunity to "assess the jurors' facial expressions, demeanor, and other subliminal responses as well as the manner and tone of their verbal replies." *People v. Sloan*, 592 N.E.2d 784, 786 (N.Y. 1992). This information "could have been critical in making proper determinations in the important and sensitive" decisions necessary for jury selection. *Id.* at 787.

Selecting jurors is a critical component of a fair trial. It involves discretionary, personal judgments. *Rozbicki*, 589 A.2d at 365. It is one

of the few areas where a party may supercede his attorney. *Gordon*, 829 F.3d at 124. The person whose liberty is a stake may notice nonverbal cues or recognize a potential juror as an acquaintance. Mr. Black's right to be present and participate in jury selection stems from his inviolate right to trial by jury, his right to due process of law, and longstanding common law recognition of the importance of personal participation in assessing the qualifications of jurors. As in a criminal case, conducting jury selection in Mr. Black's absence, when he asked to attend, denied him the right to participate in selecting jurors.

2. *The right to due process provides an accused person with the opportunity to be heard during selection of the jury.*

This Court has held that defendants have a right to be present when testing jurors' "fitness to serve as jurors in this particular case." *State v. Irby*, 170 Wn.2d 874, 882, 246 P.3d 796 (2011).

In *Irby*, the attorneys and judge agreed to excuse several potential jurors in an email exchange. *Id.* at 877-78. The defendant was not included in the discussion. *Id.* at 878. Dismissing potential jurors for reasons related to the case, without including Mr. Irby, violated his right to participate in a critical stage of the proceedings. *Id.* at 882. His

lawyer's agreement to excusing the jurors did not cure the error. *Id.* at 883-84.

Irby explained that the right to be present at jury selection is similarly protected by both due process and article I, section 22. 170 Wn.2d at 883-85. To assess whether a due process right has been violated, the court weighs: (1) the private interests affected, (2) the risk of erroneous deprivation of that interest through the procedures used and probable value, if any, of substitute procedural safeguards, and (3) the government's objectives and interest, including the burdens entailed by additional or different procedural requirements. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976).

The Court of Appeals applied this test and correctly concluded Mr. Black's right to be present for jury selection was unreasonably violated when the court questioned jurors about their qualifications when Mr. Black was not present and had not waived his right to participate in jury selection. 189 Wn.App. at 647-49.

a. A person facing indefinite commitment has a significant interest in liberty, the right to be present for the proceedings, and the right to participate in selecting jurors.

Because involuntary commitment is a massive curtailment of liberty, the first criterion “weighs heavily” in Mr. Black’s favor. *In re Detention of Stout*, 159 Wn.2d 357, 370, 150 P.3d 86 (2007). The potentially life-long length of the deprivation and its resulting total custodial confinement merit the highest procedural protections. *See Mathews*, 424 U.S. at 341.

b. The State has no interest in barring a cooperative litigant from participating in jury selection.

Conducting substantive factual proceedings outside the presence of the person facing commitment creates an unacceptable risk of wrongful detention in violation of due process. *In re Young*, 122 Wn.2d 1, 46, 857 P.2d 989 (1993).

In *Young*, this Court ruled that a statute denying a detained person the right to attend the probable cause hearing in person deprived them of due process. 122 Wn.2d at 46. The court reasoned that because “liberty interests are substantially infringed during the 45-day period leading up to trial,” people facing commitment have the right to appear in person at the probable cause hearing. *Id.* Barring an incarcerated

respondent from personally attending, even when represented by counsel at a preliminary proceeding, creates “too great” a “risk of wrongful detention.” *Id.*

Jury selection is a stage of trial where personal presence is necessary to observe potential jurors, make credibility determinations, and weigh contradictory evidence. *See Gomez*, 490 U.S. at 874 n.27.

The presence of counsel is not a substitute. *See Irby*, 170 Wn.2d at 683. The person facing indefinite commitment is not merely an interested observer. *Carlisle*, 408 N.Y.S.2d at 117; *see Helminski v. Ayerst Labs., A Div. of A.H.P.C.*, 766 F.2d 208, 214 (6th Cir.1985) (in jury selection, “a court may not exclude arbitrarily a party who desires to be present merely because he is represented by counsel”). As the Ninth Circuit explained,

The right to be present at trial stems in part from the fact that by his physical presence the defendant can hear and see the proceedings, can be seen by the jury, and can participate in the presentation of his rights.

Bustamante v. Eyman, 456 F.2d 268, 274 (9th Cir. 1972).

The person facing commitment has the right to demand a jury trial; it is not merely the lawyer’s decision. RCW 71.09.050(3) (“The person . . . shall have the right to demand” a jury trial). The party has

the right to ask questions of jurors, not only the lawyer. *See* CR 47(a) (the court “shall permit the parties or their attorneys to ask reasonable questions” of prospective jurors).

Other protections afforded under ch. 71.09, such as requiring the State to prove its case beyond a reasonable doubt to a unanimous jury, depend on a fairly selected jury. *See* RCW 71.09.060(1). Mr. Black’s interest in personally assessing the qualifications and biases of jurors outweighs any interest of the State in failing to bring him to court.

c. The government intended but failed to bring Mr. Black to court, showing that his presence requires little additional or different procedural requirements.

The government expected to bring Mr. Black to court but failed to do so, which shows there is no undue burden on the state. The expediency of rapidly choosing jurors does not outweigh the importance of affording a person facing potential life-long confinement the ability to participate in jury selection. *Black*, 189 Wn.App. at 654.

Mr. Black did not cause the delay. He timely advised his lawyers and the court of his desire to be present and they obtained the necessary transport order in advance. 10/17/13RP 113. His custodial detention was not due to his misbehavior; it is a mandatory requirement for any pretrial detainee under RCW 71.09.040(4). Having assumed the burden

of detaining all people facing civil commitment, the State is not free to disregard a person's request to attend substantive proceedings.

d. Mr. Black did not waive his right to be present.

Mr. Black agreed to miss only one day of jury selection. 10/17/13RP 96-97, 113. The judge repeatedly told the jurors they would meet Mr. Black on the second day of jury, promising he "will be present tomorrow." 10/21/13RP 4, 6, 38.

When the jail failed to bring Mr. Black to court, his attorneys advised the judge, before any proceedings started, that he had not waived his presence from this point forward. CP 1430. When the court pressed his lawyers to waive his presence, they refused, because they wanted the jurors to see him and thought it was "important" he have "input" in jury selection. 10/22/13RP 51-52. But the court continued speaking to jurors about their qualifications for this particular case even after his attorneys refused to continue with jury selection. *Id.* at 53-89.

Inexplicably, the State has contended Mr. Black did not sufficiently object. The Court of Appeals properly rejected this argument. 189 Wn.App. at 654-55. Mr. Black agreed to miss only the first day of jury selection, as the court told the jury in advance, and

when he was not brought to court, his lawyers immediately reminded the judge he had not waived his presence. CP 1430.

Even if Mr. Black's objection is somehow deemed inadequate, his right to participate in jury selection is an issue of constitutional magnitude, inherent in his right to a jury trial and due process of law. RAP 2.5(a); U.S. Const. amend. 14; Const. art. I, §§ 3, 21; *see Lewis*, 146 U.S. at 373-74. The error is manifest because the court discussed juror qualifications and dismissed jurors without Mr. Black's input when he did not waive his presence, as in *Irby*, 170 Wn.2d at 883-84.

3. *By disregarding Mr. Black's desire and intent to be present for and participate in jury selection, and questioning many jurors without him, Mr. Black was denied his right to a fair trial.*

Violating a person's right to be present during the qualification phase of jury selection is a constitutional error. *Irby*, 170 Wn.2d at 886. The State bears the burden of proving the error harmless beyond a reasonable doubt. *Id.* Although *Irby* is a criminal case, its reasoning rests on the due process clause of the Fourteenth Amendment, which likewise governs this case. *Id.* at 885-86.

In *Irby*, the defendant never had an opportunity to test the dismissed jurors' "alleged inability to serve ." *Id.* at 886. This Court

ruled the State did not prove no prejudice resulted because the State “has not and cannot show” that the dismissed jurors had no chance to sit on the jury. *Id.* If they had “been subjected to questioning in Irby’s presence,” that questioning “might have revealed that one or more of these potential jurors were not prevented by reasons of hardship from participating on Irby’s jury.” *Id.* Mr. Irby’s lost opportunity to test these jurors, and determine whether they were qualified to serve, could not be proven harmless. *Id.*

The court continued jury selection despite Mr. Black’s involuntary absence. 10/22/13RP 5-43, 58-59, 71-88. The judge spoke with 15 potential jurors about their ability to serve without him. Conducting far more personal and credibility-bound questioning than in *Irby*, where the email exchange focused on questionnaire answers, the court engaged jurors in individual conversations about their feelings and ability to serve. 10/22/13RP 5-43, 58-59, 71-88; *Irby*, 170 Wn.2d at 886. Many of these jurors were excused, but some remained having expressed personal feelings relevant to assessing their impartiality. 10/22/13RP 22, 49-50, 58, 61, 65-66, 68-69, 70-77. Even if Mr. Black’s lawyers did not contest to dismissing these jurors, Mr. Black had the right to test their qualifications himself. *Irby*, 170 Wn.2d at 886.

Two dismissed jurors had learned English as a second language. 10/22/13RP 79-82. The judge excused them because she was “concerned” the parties would speak quickly and this might not be the right case. *Id.* at 79, 82. The court told them to report to the administrator for a different case. *Id.* at 81-83. The judge did not let Mr. Black assess their abilities to understand the proceedings before finding they could not serve in this case but could serve in another case.

Mr. Black’s involuntary absence also detrimentally affected the jurors’ perception of him. The premise of the State’s commitment was its claim he routinely disregarded rules, prided himself on being deceitful, and was indifferent to the feelings of others, thus asserting he was likely to reoffend. 10/23/13RP 148; 5RP 385, 387, 391-93, 405.

When sending the prospective jurors home after they waited several hours for the promised jury selection, the judge told them the delay was not the fault of any person “in the room.” 10/22/13RP 60-61. The judge expressed exasperation for wasting their time because someone had not done what was expected of them. 10/22/13RP 60. Mr. Black was conspicuously absent from the room. 10/21/13RP 4, 6, 28, 38, 81. Since he was the person the jurors expected to see in the courtroom but was not present, they would likely speculate it was his

misbehavior that caused the delay and the court's obvious irritation, particularly when the State's case centered on his claimed propensity for disrespecting others and flouting rules.

Failing to bring Mr. Black to court as promised and ordered, conducting substantive portions of jury selection without him, and implying that his behavior inconvenienced and delayed jury selection, together show the prejudice resulting from the violation of his right to be present for jury selection. The error requires a new trial before a fairly selected jury.⁴

E. CONCLUSION.

Mr. Black respectfully requests this Court affirm the Court of Appeals decision and order a new trial.

DATED this 1st day of April 2016.

Respectfully submitted,



NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project (91052)
Attorneys for Respondent

⁴ The Court of Appeals declined to decide whether other trial errors required reversal because it was ordering a new trial due to the jury selection violation. 189 Wn.App. at 658-59. If the Court of Appeals decision is not affirmed, the case must be remanded for the Court of Appeals to determine whether the remaining trial errors require a new trial.

APPENDIX A

In re the Detention of: Mark Black
King County Cause No. 11-2-36238-8

Date: 10/22/2013

Judge: Carol Schapira
Bailliff: Ted Hong
Court Clerk: LeAnne Symonds

Digital Record: 3F (for jury selection only)

Continued from: 10/21/2013

MINUTE ENTRY

9:23:59 ON THE RECORD.

Counsel is present to proceed with trial, however, the Defendant is not present.

Counsel states that the Defendant has not been brought up from the jail, even though he did not waive his presence from this point forward. The Court directs the Bailiff to contact the jail about the situation and report back to the Court.

JURY SELECTION RESUMES. JURY PANEL ABSENT.

The Court and counsel questions prospective jurors #7 and #48 individually, and retains both jurors at this time.

9:51:50 The Court and counsel discuss the status of the Defendant's presence.

9:54:45 A representative of the jail is contacted telephonically in open court and questioned as to the status of the Defendant.

10:03:30 The Court and counsel question prospective jurors #61, #70, and #74. The Court excuses prospective jurors #61 and #74 for Cause at this time.

10:38:00 The Defendant's motion to recess this trial until the Defendant is present is RESERVED.

10:50:00 MORNING BREAK.

11:20:30 The Court and counsel review possible hardships.

In re the Detention of: Mark Black
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11:30:17 OFF THE RECORD.

JURY PANEL PRESENT.

11:38:20 The Court reconsiders hardship requests.

The Court releases the jury panel for the day at this time, due to the inability of the jail to bring the Defendant to the courtroom. The panel shall reconvene on 10/23/2013 at 9:00 am.

JURY PANEL ABSENT.

11:50:52 OFF THE RECORD.

11:53:40 ON THE RECORD.

Prospective Jurors #4, #45, #51, #52 and #62 are questioned individually by the Court and counsel, The Court excuses prospective juror #45 for Cause, jurors #4, #51, and #52 for hardship, and retains #62.

12:21:30 The Court and counsel discuss scheduling.

12:22:15 LUNCH BREAK.

1:51:40 The Court and counsel review the status of the jury panel.

1:57:50 The Court reviews and rules on deposition designations.

2:55:49 AFTERNOON BREAK.

3:10:10 Designation rulings continue.

4:07:00 The Court and counsel discuss the preliminary jury instructions.

4:22:00 This cause is continued to 10/23/2013 at 9:00 am.

APPENDIX B

In re the Detention of: Mark Black
King County Cause No. 11-2-36238-8

Date: 10/22/2013

Judge: Carol Schapira
Bailliff: Ted Hong
Court Clerk: LeAnne Symonds

Digital Record: 3F (for jury selection only)

Continued from: 10/21/2013

MINUTE ENTRY

(OFF THE RECORD.)

Counsel is present to proceed with trial, however, the Defendant is not present.

Counsel states that the Defendant has not been brought up from the jail, even though he did not waive his presence from this point forward. The Court directs the Bailliff to contact the jail about the situation and report back to the Court.

9:23:59 JURY SELECTION RESUMES. JURY PANEL ABSENT.

The Court and counsel questions prospective jurors #7 and #48 individually, and retains both jurors at this time.

9:51:50 The Court and counsel discuss the status of the Defendant's presence.

9:54:45 A representative of the jail is contacted telephonically in open court and questioned as to the status of the Defendant.

10:03:30 The Court and counsel question prospective jurors #61, #70, and #74. The Court excuses prospective jurors #61 and #74 for Cause at this time.

10:38:00 The Defendant's motion to recess this trial until the Defendant is present is RESERVED.

10:50:00 MORNING BREAK.

11:20:30 The Court and counsel review possible hardships.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

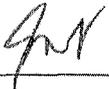
IN RE THE DETENTION OF)
)
)
 MARK BLACK,) NO. 92332-9
)
)
)
 RESPONDENT.)
)

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 1ST DAY OF APRIL, 2016, I CAUSED THE ORIGINAL **SUPPLEMENTAL BRIEF OF RESPONDENT** TO BE FILED IN THE **WASHINGTON STATE SUPREME COURT** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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KING COUNTY PROSECUTING ATTORNEY		
SVP UNIT		
KING COUNTY COURTHOUSE		
516 THIRD AVENUE, W-554		
SEATTLE, WA 98104		
<input checked="" type="checkbox"/> MARK BLACK	(X)	U.S. MAIL
SPECIAL COMMITMENT CENTER	()	HAND DELIVERY
PO BOX 881000	()	_____
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SIGNED IN SEATTLE, WASHINGTON THIS 1ST DAY OF APRIL, 2016.

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To the Clerk of the Court:

Please accept the attached document for filing in the above-subject case:

Supplemental Brief of Respondent

Nancy P. Collins - WSBA #28806
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