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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No 31227-5-III
(consolidated with 31338-7-III)

FILED
DIVISION III
COURT OF APPEALS
STATE OF WASHINGTON
2015 SEP 21 PM 3:01

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

IN RE THE RESTRAINT OF:

ALEKSANDR PAVLIK,

Petitioner.

SECOND SUPPLEMENTAL BRIEF OF PETITIONER

Judgment in Spokane County Superior Court No. 08-1-01641-3
The Hon. Jerome Leveque, Presiding

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A. SUPPLEMENTAL ARGUMENT

On July 16, 2015, the Supreme Court issued its decision in *State v. Love*, 183 Wn.2d 598, ___ P.3d ___ (2015). As the State has correctly summarized in its supplemental brief, the Supreme Court held that the practice of taking “for cause” and peremptory challenges at bench conferences does not violate the right to a public trial or the right to be present.

Mr. Pavlik recognizes that *State v. Love, supra*, supports the State’s position and is contrary to the arguments he has raised in the amended PRP. Nonetheless, with all due respect to the Supreme Court, Mr. Pavlik continues to assert that conversations about what jurors should be selected should take place in open court, with all spectators and the defendant being able to hear what is said by the lawyers and the judge. Private conversations at the bench between legal professionals do not inspire confidence in the public to understand what is actually occurring, nor is it a substitute for the type of personal involvement in the trial required by article I, section 22 of the Washington Constitution, the Sixth Amendment or the Due Process Clause of the Fourteenth Amendment. *See, e.g., State v. Yancey*, 442 Md. 616, 113 A.3d 685 (2014) (reversal

where trial judge ruled defendant could not be present at voir dire bench conference). *Contra United States v. Reyes*. 764 F.3d 1184 (9th Cir. 2014).

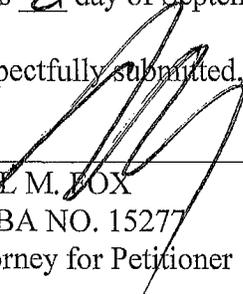
Accordingly, despite *Love*, Mr. Pavlik's conviction should be vacated because of the violation of the right to a public trial and the right to be present, protected by the First, Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 10 and 22 of the Washington State Constitution.

B. CONCLUSION

For the foregoing reasons, and the reasons set out in prior briefing, the Court should grant the petition.

DATED this 21 day of September 2015.

Respectfully submitted,



NEIL M. FOX
WSBA NO. 15277
Attorney for Petitioner

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CAUSE NO. 31227-5-III
(consol with 31338-7-III)

CERTIFICATE OF SERVICE

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I, Alex Fast, certify and declare that on 21st day of September 2015, I deposited a copy of the attached SECOND SUPPLEMENTAL BRIEF OF PETITIONER into the United States mail, with proper first class postage attached, in an envelope addressed to:

Lawrence H. Haskell
Spokane County Prosecuting Attorney
Gretchen E. Verhoef, Deputy
1100 W. Mallon
Spokane, WA, 99260-0270

I certify or declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

9.21.2015 - SEATTLE, WA
DATE AND PLACE

Alex Fast
ALEX FAST