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WASHINGTON STATE  
SUPREME COURT

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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MATTHEW ALEX ERICKSON, Petitioner,

v.

CITY OF SEATTLE, Respondent, 13496

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MOTION FOR DISCRETIONARY REVIEW  
FROM COURT OF APPEALS, DIVISION I, # 73754-6-I

---

Philip A. Chinn, WSBA # 47864  
Counsel for Matthew Alex Erickson

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206-477-7776



ORIGINAL

## **I. IDENTITY OF PETITIONER**

MATTHEW ALEX ERICKSON, "Petitioner," asks for this motion for discretionary review pursuant to RAP 13.5 to be granted, for discretionary review to be granted, and his convictions reversed, for the reasons below.

## **II. DECISION**

Petitioner Erickson seeks review of the order denying his motion to modify in Court of Appeals, Division 1 no. 73754-6-I, affirming the denial of his motion for discretionary review of his conviction in Seattle Municipal Court, no. 589641 and RALJ appeal in King County Superior Court, no. 14-1-06819-7 SEA. The final judgment and sentence was entered on November 13, 2014. The denial of Mr. Erickson's RALJ appeal was June 24, 2015. Appendix A. Mr. Erickson's motion for discretionary review was denied on February 8, 2016, Appendix B, and his motion to modify was denied June 24, 2016. Appendix C.

## **III. ISSUE PRESENTED FOR REVIEW**

Did the Court of Appeals sanction a departure from the accepted and usual course of judicial proceedings when it denied Mr. Erickson review of the Superior Court's order affirming the trial court's ruling that Defense had not made a *prima facie* showing of a racially motivated use

of the City's peremptory challenge under *Batson v. Kentucky*, 476 U.S. 79, 85, 106 S. Ct. 1712, 90 L.Ed.2d 69 (1986)?

#### **IV. STATEMENT OF THE CASE**

Mr. Erickson was charged by the City of Seattle with one count of resisting arrest under SMC 12A.16.050, and one count of possession of a dangerous weapon (switchblade and/or metal knuckles), SMC 12A.14.080, 12A.14.010 stemming from events alleged to have occurred on or about June 10, 2013. Mr. Erickson's jury trial started October 21, 2014 and concluded on October 23, 2014. Mr. Erickson was sentenced on November 13, 2014.

During the first day of trial, the Court conducted voir dire to select jurors for the case. Verbatim Report of Proceedings (VRP) 110 (Appendix D). During Defense's voir dire, Juror Five, identified as Mr. Meyer, discussed at length his interactions with police officers, detailing a time he felt profiled by officers:

I was walking to Volunteer Park to meet some friends when two police cars pulled up and asked me to come up to the car and put my hands on the car. And I asked them for what reason. They said that somebody had just stole something from a church nearby and that I fit the description. I was kind of upset with that because I didn't think I fit the description of somebody who just. And I asked the what was the description of somebody who just. I said, "Was it a guy with long hair?" because I wore my hair long. And they wouldn't tell me what the description was, so I talked back to a cop.

VRP 152. He indicated that after checking his ID, the police released him. *Id.* The experience made him feel “[a]ngry, embarrassed, and upset.” *Id.* During peremptory challenges, the City struck Mr. Meyer, identified as the "only black member of the jury panel". VRP 180. At the time, no one objected to Defense's contention that Mr. Meyer was the only black member of the jury panel. In response to this peremptory challenge, Defense raised a claim under *Batson v. Kentucky*, 476 U.S. 79, 85, 106 S. Ct. 1712, 90 L.Ed.2d 69 (1986). *Id.*

To support the *prima facie* showing of discriminatory intent, Defense stated:

Juror No. 5, who was dismissed with a peremptory challenge by the City was, as far as I could tell, the only black juror on the jury. He was the only member of that particular racial group and he was stricken from the jury. I think we also noted for the record previously that Mr. Erickson is a black male. So to the extent that it's relevant that Mr. Erickson is of the same racial group.

VRP 193. Defense further noted that previous cases have held that striking some members of a racial group is sufficient to support a *prima facie* showing of discriminatory intent, and that because Juror Five was the only member of the same racial group as Mr. Erickson, analysis into jurors of other cognizable racial groups left on the jury panel is not necessary. VRP 193-94.

In response to this motion, the City conceded that Juror Five was of African American descent but noted that there were "other jurors that I would classify as people of color." VRP 194-95. Prior to the Court ruling on the sufficiency of Defense's *prima facie* showing, Defense counsel further elucidated its position:

The concept of *Batson* has to do with cognizable racial groups rather than minorities versus white people and minorities versus non-minorities. So in this case, there was . . . one black man on the jury and he was stricken. Therefore, it's not a situation where there are multiple people of the same cognizable group and thus a pattern could be detected from those people. It's a situation where there's only one person in that, in the group and therefore, we have to do our best to make a decision as to whether there is such a pattern based on that one piece of information rather than numerous pieces of information.

...

And finally, that there are other people on the panel who had experience with the police who were not probed, were not questioned, were not probed to the same extent and therefore we don't know as much about their experiences. . . . In this case, it happens that the one black person also had an experience that was relevant to this case and he was dismissed from the jury.

VRP 203-205.

The Court believed that there may have been another person in the venire who also may have been African-American, but was unsure of this. VRP 205. As noted above, no one contradicted Defense's assertion that Juror Five was the only African-American member of the jury when the *Batson* issue was initially raised. VRP 180. When asked about this issue,

the City said there were other people of color, but did not identify other African American members of the jury. VRP 195. The City indicated that Juror Five "seemed to be me to be [sic] visibly of African American descent." *Id.* The Court agreed that "there was a strike against an African American male." VRP 206. The Court found that there was a "diverse jury" and did not find that Defense made a *prima facie* "showing that the City acted in a non-race neutral manner." VRP 207. The Court never ruled on the sufficiency of any race neutral explanations because it found that no *prima facie* showing was made.

After opening arguments, testimony by the City's witnesses Officers Kevin Oshikawa Clay and Matthew Chase, testimony by defense witnesses Ryan Swanson and Mr. Erickson, Mr. Erickson was found guilty of resisting arrest and possession of a dangerous weapon. Mr. Erickson was sentenced on November 13, 2014.

A Notice of Appeal was filed in Seattle Municipal Court on November 17, 2014. On June 24, 2015, Mr. Erickson's convictions were affirmed. Appendix A. Mr. Erickson timely filed a Notice for Discretionary Review and a motion for discretionary review, which was denied on February 8, 2016. Appendix B. The Court of Appeals, Division I, denied Mr. Erickson's timely motion to modify the commissioner's ruling on June 24, 2016. Appendix C.

**V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

RAP 13.5(b) allows for discretionary review to be granted in three instances:

(b) Considerations Governing Acceptance of Review.  
Discretionary review of an interlocutory decision of the Court of Appeals will be accepted by the Supreme Court only:

(1) If the Court of Appeals has committed an obvious error which would render further proceedings useless; or

(2) If the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act; or

(3) If the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a trial court or administrative agency, as to call for the exercise of revisory jurisdiction by the Supreme Court.

This Court should accept review pursuant to RAP 13.5(b)(3), as the Court of Appeals, in denying Mr. Erickson's motion for discretionary review of the Superior Court order affirming his convictions, has sanctioned a departure from the accepted and usual course of judicial proceedings by the trial court. Specifically, the trial court applied a clearly incorrect legal analysis when it denied Mr. Erickson's *Batson* challenge, and the subsequent

Superior Court order affirming Mr. Erickson's convictions and the Court of Appeals orders denying discretionary review and the motion to modify have sanctioned this error, calling for the Supreme Court to exercise its revisory jurisdiction.

**A. In refusing to accept review, the Court of Appeals has sanctioned the trial court's departure from the accepted and usual course of judicial proceedings by applying the incorrect legal analysis in denying Mr. Erickson's *Batson* challenge.**

"[T]he State denies a black defendant equal protection of the laws when it puts him on trial before a jury from which members of his race have been purposefully excluded." *Batson v. Kentucky*, 476 U.S. 79, 85, 106 S. Ct. 1712, 90 L.Ed.2d 69 (1986); U.S. Const. amend. XIV. Racial discrimination in jury selection harms not only the accused, but also the excluded juror and society as a whole. *Batson*, 476 U.S. at 87.

Courts apply a three-part analysis to determine whether a potential juror was peremptorily challenged pursuant to discriminatory criteria. First, the defendant must make out a *prima facie* case of purposeful discrimination by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose. *Batson*, 476 U.S. at 93-94.

Second, "the burden shifts to the State to come forward with a [race-neutral explanation]" for the challenge. *State v. Saintcalle*, 178 Wn.2d 34,

42, 309 P.3d 326 (2013) (quoting *Batson*, 476 U.S. at 94). Third and finally, the trial court has the duty to determine if the defendant has established purposeful discrimination. *Batson*, 476 U.S. at 98. *Batson* rulings are reviewed for clear error. *State v. Rhone*, 168 Wn.2d 645, 651, 229 P.3d 752 (2009). Any error is structural, requiring reversal without any showing of prejudice. *Batson*, 476 U.S. at 100.

The use of a peremptory challenge against the only venire member of the same cognizable racial group as a defendant may be sufficient to show a prima facie case of purposeful discrimination. *State v. Rhone*, 168 Wn.2d 645, 652-53, 229 P.3d 752 (2010) (citing *State v. Thomas*, 166 Wn.2d 380, 397, 208 P.2d 1107 (2009)). In determining if the prima facie case of discrimination has been made, the Court should look for "something more" than merely a numerical analysis. *Id.* at 653. There is no hard and fast rule for what constitutes "something more", but the Court should consider factors such as:

- (1) striking a group of otherwise heterogeneous venire members who have race as their only common characteristic, (2) exercising a disproportionate use of strikes against a group, (3) the level of a group's representation in the venire as compared to the jury, (4) the race of the defendant and the victim, (5) past discriminatory use of peremptory challenges by the prosecuting attorney, (6) the type and manner of the prosecuting attorney's questions during voir dire, (7) disparate impact of using all or most of the challenges to remove minorities from the jury, and (8) similarities between those individuals who remain on the jury and those who have been struck.

*Id.* at 656 (citing *State v. Wright*, 78 Wn. App. 93, 100-01, 896 P.2d 713 (1995)).

The striking of Juror 5 satisfies the "something more" test because doing so highlighted issues between the race of Mr. Erickson and the police officers, struck the only member of the venire of the same racial group as Mr. Erickson, and the strike itself was based on a race based experience of Juror 5. Here, Mr. Erickson did present "something more"--stating "In this case, it happens that the one black person also had an experience that was relevant to this case and he was dismissed from the jury." VRP 205. That experience, to be clear, was a black man's experience of being detained by police because he "fit the description" of a suspect. VRP 152.

Simply put, Mr. Erickson appropriately argued that Juror 5 was struck because he had an experience unique to a black male facing racial profiling by police. Further, striking Juror 5 evinces factors (3) and (4) as mentioned in *Rhone*, because there was only one African American member of the venire and this striking highlighted racial differences between the victims (the arresting officers) and Mr. Erickson. See *Rhone*, 168 Wn.2d at 656. Because Mr. Erickson has shown "something more"--that Juror 5 was stricken from the venire for sharing a relevant life

experience steeped wholly in racism and racial tension--he has made the prima facie case for discrimination necessary to satisfy the first prong of *Batson*. *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

*Batson* and its progeny make it clear that the initial inquiry as to whether the defense has made a *prima facie* case is focused on the race of the target of the peremptory strike, particularly where, as is the case here, that potential juror is of the same racial group as the defendant. *Batson*, 476 U.S. at 96; *State v. Saintcalle*, 178 Wn.2d 34, 42, 309 P.3d 326 (2013) (“[r]acial discrimination in the qualification or selection of jurors offends the dignity of persons and the integrity of the courts, and permitting such exclusion in an official forum compounds the racial insult inherent in *judging a citizen by the color of his or her skin.*”) (emphasis added).

Here, the trial court based its ruling on whether there were members of *any* constitutionally protected group on the jury, *see* VRP 206, rather than on whether the excluded potential juror was peremptorily struck based on his race. This analysis conflicts with *Batson* itself and the cases that follow it, which emphasize racial discrimination against the potential juror. The requirements of *Batson* are not met merely by having a diverse jury.

Accordingly, the trial court committed clear error in ruling that Mr. Erickson did not present a *prima facie* case of racial discrimination, and both the superior court and the court of appeals erred in affirming this clear misapplication of the law and denying discretionary review, respectively.

By refusing to grant review on this issue, the Court of Appeals has effectively given approval to the trial court's misapplication of the law. In its order affirming Mr. Erickson's convictions, the Superior Court did not address the trial court's misapplication of the *Batson* doctrine. Appendix A at 3-6. Similarly, the Court of Appeals, in its denial of discretionary review, did not address the issue. Appendix B at 5-7.

Further, as *Saintcalle* makes clear, racial discrimination in jury selection is an issue of public interest that should be decided by an appellate court:

Twenty-six years after *Batson*, a growing body of evidence shows that racial discrimination remains rampant in jury selection. . . . We conclude that our *Batson* procedures must change and that we must strengthen *Batson* to recognize these more prevalent forms of discrimination.

*Saintcalle*, 178 Wn.2d at 35-36. Given that this Court has already identified a rampant problem of racial discrimination and the need to strengthen *Batson* protections, this Court should exercise revisory

jurisdiction in a case where the trial court has misapplied the existing, inadequate protections.

## **VI. CONCLUSION**

For the reasons stated above, Mr. Erickson requests that this motion be granted, discretionary review be accepted, and his convictions be reversed and remanded for a new trial.

July 22, 2016

Respectfully submitted,

  
Philip A. Chinn, WSBA #47864

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JUL 25 2016

WASHINGTON STATE  
SUPREME COURT

SUPREME COURT  
OF THE STATE OF WASHINGTON

MATTHEW ALEX ERICKSON,	)	
Petitioner,	)	
	)	
v.	)	MOTION FOR DISCRETIONARY REVIEW &
	)	MOTION TO PROCEED IN FORMA
	)	PAUPERIS
CITY OF SEATTLE,	)	
Respondent.	)	
_____	)	

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing motion for discretionary review and motion to proceed in forma pauperis to Richard Greene, Respondent's attorney, at

Seattle City Attorney's Office  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097  
(206) 684-8200

and to the Court of Appeals, Division I, at

One Union Square, 600 University St, Seattle, WA 98101

postage prepaid, on July 22, 2016.

EXECUTED this 22<sup>nd</sup> day of July, 2016, at Kirkland, Washington.



Philip A. Chinn  
WSBA # 47864

On Behalf of Matthew Alex Erickson, Petitioner

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JUL 25 2016

WASHINGTON STATE  
SUPREME COURT

# APPENDIX A

**FILED**  
KING COUNTY, WASHINGTON

JUN 25 2015 ✓

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

CITY OF SEATTLE,  
Respondent,

v.

MATTHEW ERICKSON,  
Appellant.

No. 14-1-06819-7 SEA

Order on RALJ Appeal

This matter comes as an RALJ appeal from the Seattle Municipal Court. Matthew Erickson ("Mr. Erickson"), was convicted by a jury of Unlawful Use of Weapons, in violation of Seattle Municipal Code (SMC) 12A.14.080, 12A.14.010 and Resisting Arrest, in violation of SMC 12A.16.050. Mr. Erickson contends that (1) insufficient evidence supported his conviction of Unlawful Use of Weapons, (2) the trial court erred in denying his Batson<sup>1</sup> challenge to the City's peremptory dismissal of a potential juror, and (3) the trial court violated his public trial right. Mr. Erickson fails to demonstrate any reversible trial court error. Therefore, this Court affirms the judgment and sentence.

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**(1) Sufficient evidence supports the conviction of Unlawful Use of Weapons**

At trial, Seattle Police Officer Kevin Oshikawa Clay testified that on June 10, 2013, he encountered Mr. Erickson in front of a downtown shopping mall “walking backwards down the sidewalk with [a knife] in his hand, waving it back and forth.”<sup>2</sup> Officer Oshikawa Clay followed Mr. Erickson into mall. Inside the mall, he observed “Mr. Erickson still holding the knife in his hand out in front of him, moving it back and forth.”<sup>3</sup> Once inside the shopping mall, he repeatedly ordered Mr. Erickson to drop his knife.<sup>4</sup> After Mr. Erickson dropped the knife, Officer Oshikawa Clay and a fellow officer took Mr. Erikson into custody.

Officer Oshikawa Clay testified concerning the knife, which was admitted into evidence:

This is a folding knife. It has, the brass knuckles are integrated into the handle of the knife.

...

The [knuckles are] made out of metal. . . . Because of the way that you grip the knife, the loopholes go over your fingers and would be between your finger and your hand, making a fist to punch somebody.

...

[The knife] operates with a spring assist . . . . There’s a little lever. You can use your finger or your thumb right there to move the blade. . . . There’s a spring mechanism.<sup>5</sup>

The Jury was shown a video recording of Mr. Erickson backing towards the mall doors with a knife held out, and Officer Oshikawa Clay approaching Mr. Erickson and drawing his weapon.

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<sup>1</sup> Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).  
<sup>2</sup> VRP 10/22/2014 at 234.  
<sup>3</sup> VRP 10/22/2014 at 236.  
<sup>4</sup> VRP 10/22/2014 at 241.  
<sup>5</sup> VRP 10/22/2014 at 283-287.

1 Under SMC 12A.14.080 (A), it is unlawful for a person knowingly to "possess or carry  
2 any metal knuckles [or] switchblade knife." Under SMC 12A.14.080, "Metal knuckles" is  
3 defined to mean:

4 . . . [A]ny device or instrument made wholly or partially of metal that is  
5 worn for purposes of offense or defense in or on the hand and that either protects  
6 the wearer's hand while striking a blow or increases the force of impact from the  
7 blow or injury to the person receiving the blow. The metal contained in the device  
may help support the hand or fist, provide a shield to protect it or consist of  
projections or studs which would contact the person receiving a blow.

8 Under SMC 12A.14.080, "Switchblade knife" means:

9 [A]ny knife having a blade that opens automatically by hand pressure  
10 applied to a button, spring mechanism, or other device, or a blade that opens, falls  
11 or is ejected into position by force of gravity or by an outward, downward, or  
12 centrifugal thrust or movement, and includes what is commonly known as a  
"butterfly knife."

13 A defendant challenging the sufficiency of the evidence admits as true all of the  
14 prosecution's evidence and all reasonable inferences to be drawn therefrom.<sup>6</sup> A reviewing court  
15 views the evidence in the light most favorable to the prosecution.<sup>7</sup>

16 Here, the evidence overwhelmingly supports the conclusion that Mr. Erickson's  
17 possessed or used a weapon and that the weapon used was "metal knuckles" or a "switchblade  
18 knife."

19 Erickson's challenge to the sufficiency of the evidence fails.

20  
21 **(2) The trial Court did not err in denying Mr. Erickson's Batson challenge.**

22 Mr. Erickson contends that the trial court erred by denying his challenge to the City's  
23 dismissal of a potential juror. Mr. Erickson fails to demonstrate trial court error.

24 Following voir dire, the City and Mr. Erickson exercised peremptory challenges.<sup>8</sup> The  
25 City challenged Juror No. 5 who, it is undisputed, appeared to be African American. At the

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<sup>6</sup> State v. Barrington, 52 Wn. App. 478, 484, 761 P.2d 632 (1988).

1 time, Mr. Erickson's counsel did not interpose any objection, and Juror No. 5 was dismissed.  
2 Thereafter, the jury was empanelled and sworn in then released for the day. At that time, Mr.  
3 Erickson's counsel mentioned, for the first time, that the defense objected to the City's  
4 peremptory dismissal of Juror 5 under Batson and People v. Wheeler.<sup>9</sup>

5 After Mr. Erickson raised his Batson challenge, the trial court immediately instructed  
6 court personnel to determine whether the sworn jurors and other prospective jurors remained in  
7 the courthouse building. The trial court informed the parties that "The panel that we had, and in  
8 fact all the jurors that were summoned . . . have been released . . . So those jurors and all other  
9 jurors are now gone."<sup>10</sup> The trial court then recessed for the day. The following morning, Mr.  
10 Erickson's counsel addressed the trial court as follows:  
11

12 I do apologize to the court and counsel for not making my objection at a timely  
13 moment. I understand that that does limit the possible remedies available. . . . But  
14 at this point, I think the only remedy I'm aware of that would be available still at  
15 this point would be a mistrial. I'm not aware of any other intermediate remedy at  
16 this time based on the fact that the jury has been excused.<sup>11</sup>

17 The trial court ultimately denied Mr. Erickson's Batson challenge.

18 The equal protection clause guarantees a defendant the right to be tried by a jury selected  
19 free from racial discrimination. The United States Supreme Court in Batson established the test  
20 to determine whether a juror was peremptorily challenged pursuant to discriminatory criteria:  
21 First, the defendant must establish a prima facie case of purposeful discrimination; second, the  
22 burden shifts to the State to articulate a race-neutral explanation for challenging the juror; and  
23

24 <sup>7</sup> State v. Joy, 121 Wn.2d 333, 342, 851 P.2d 654 (1993).

25 <sup>8</sup> The City challenged Jurors 5, 16, 15. Mr. Erickson challenged Jurors 1, 4, and 9. All six were excused. Jurors 3, 7, 8, 18 were previously excused for cause or due to hardship.

<sup>9</sup> 22 Cal.3d 258, 148 Cal.Rptr. 890, 583 P.2d 748 (1978).

<sup>10</sup> VRP 10/21/2014 at 183.

<sup>11</sup> VRP 10/22/2014 at 193.

1 third, the trial court must decide whether the defendant has demonstrated purposeful  
2 discrimination.

3 The trial court concluded that Mr. Erickson failed to make a *prima facie* case of  
4 purposeful discrimination. A *prima facie* case exists if two criteria are met.<sup>12</sup> First, the  
5 challenge must be exercised against a member of a “constitutionally cognizable” group – here, it  
6 is undisputed that Juror No. 5 was a member of a constitutionally cognizable group.<sup>13</sup> Second,  
7 that fact and “other relevant circumstances” must raise the inference that the challenge was based  
8 upon membership in the group.<sup>14</sup> Only the second of these considerations was in dispute.  
9

10 The trial court asked Mr. Erickson’s counsel, under the *Batson* criteria, what is the *prima*  
11 *facie* showing that the City engaged in purposeful discrimination. Counsel answered:

12 And that’s that the Juror No. 5, who was dismissed with a peremptory  
13 challenge by the City was, as far as I could tell, the only black juror on the jury.  
14 He was the only member of that particular racial group and he was stricken from  
the jury.

15 I think it was also noted for the record previously that Mr. Erickson is a  
16 black male. So to the extent that it’s relevant that Mr. Erickson is of the same  
racial group, I would note that. But that is the *prima facie* showing that the  
defense makes.<sup>15</sup>

17 The trial court correctly identified “factual issues” regarding the racial composition of  
18 the voir dire panel that were “not resolvable” – specifically, because “[n]o questions were asked  
19 of the jurors on the record or off the record [regarding their individual racial identification]. . . .  
20 there’s no way at this point to determine the racial makeup of the jurors who were dismissed.”<sup>16</sup>  
21 Moreover, the trial Court “[did] not agree with the defense proposition that he was necessarily  
22

23  
24 <sup>12</sup> *State v. Evans*, 100 Wn. App. 757, 764, 998 P.2d 373 (2000)

25 <sup>13</sup> *State v. Rhodes*, 82 Wn. App. 192, 196, 917 P.2d 149 (1996) (quoting *State v. Burch*,  
65 Wn. App. 828, 840, 830 P.2d 357 (1992)).

<sup>14</sup> *Rhodes*, 82 Wn. App. at 196. “Relevant circumstances” may include a pattern of strikes  
against members of the group or the particular questions asked during voir dire. *Id.*

<sup>15</sup> VRP 10/22/2014 at 193.

<sup>16</sup> VRP 10/22/2014 at 194-196.

1 the only African American on the jury,” based on its perception that “there were people on there  
2 who were I believe of color, but I can’t say exactly where. It’s very difficult.”<sup>17</sup> The trial court  
3 further explained:

4           So when I look at striking one juror who was African American in light of  
5 the facts I know . . . And I don’t know if there were any other African American  
6 jurors on the panel . . . I don’t believe that the defense has shown a *prima facie*  
7 case, made a *prima facie* showing that the City acted in a non-race-neutral  
8 manner.<sup>18</sup>

9 Mr. Erickson identifies no “other relevant circumstances” that raise the inference that the  
10 challenge was based upon Juror No. 5’s membership in the constitutionally cognizable group.

11 Based on the trial court record and the specific arguments raised by the parties, the  
12 identified circumstances did not raise the inference that the peremptory challenge was based on  
13 Juror No. 5’s membership in the constitutionally cognizable group. Mr. Erickson fails to  
14 demonstrate that the trial court erred by concluding that he failed to meet his burden of making a  
15 *prima facie* showing of purposeful discrimination.

16           **(3) The trial court did not violate Mr. Erickson’s public trial rights.**

17 Mr. Erickson contends that the trial court violated his public trial rights by prohibiting  
18 persons from entering the courtroom after proceedings were underway. But this minor  
19 requirement did not completely exclude the public from the trial, but was appropriately-tailored  
20 based on prior disruptions by individuals entering ongoing proceedings in this case.

21 The trial court entered detailed findings of fact and conclusions of law in conjunction with  
22 its ruling. These describe numerous instances of disruptive behavior by spectators and  
23 unsuccessful efforts by the trial court to prevent further disruption.  
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<sup>17</sup> VRP 10/22/2014 at 205.

<sup>18</sup> VRP 10/22/2014 at 206-207.

1 As a preliminary matter, the trial court's limited restriction did not result in a "complete  
2 closure" of the courtroom because the public was never fully excluded from proceedings.<sup>19</sup> In

3 Gomez, our Supreme Court recently stated:

4 [A] trial judge's statement—that he did not like people coming and going during  
5 closing arguments and asked those who did not think they could last throughout the  
6 morning to rethink being in the courtroom—did not amount to a closure because  
7 "the court did not 'completely' or 'purposefully' close the proceedings.["]<sup>20</sup>

8 The Gomez Court further held:

9 [T]he trial judge possesses broad discretion to preserve and enforce order in the  
10 courtroom and to provide for the orderly conduct of its proceedings. . . . Just as trial  
11 court judges are permitted to exclude distracting individuals, they are permitted to  
12 impose reasonable restrictions on the public's manner of entry so as to minimize the  
13 risk of distraction or impact on the proceedings.<sup>[21]</sup>

14 This analysis compels the same conclusion in this case. Because the entire public was  
15 never effectively prohibited from entry, there was no courtroom closure. And the limited  
16 restrictions on the public's manner of entry imposed were reasonably designed to minimize the  
17 impact of distractions were within the trial court's "broad discretion."

18 Moreover, the trial court's expressly analyzed and followed the 5 factors required by State  
19 v. Bone-Club,<sup>22</sup> in reaching its decision.

20 There was no error.

### 21 CONCLUSION

22 Mr. Erickson fails to demonstrate that he is entitled to any relief by means of his RALJ  
23 appeal. His convictions are affirmed.

24  
25 <sup>19</sup> See State v. Gomez, 183 Wn.2d 29, 347 P.3d 876 (2015).

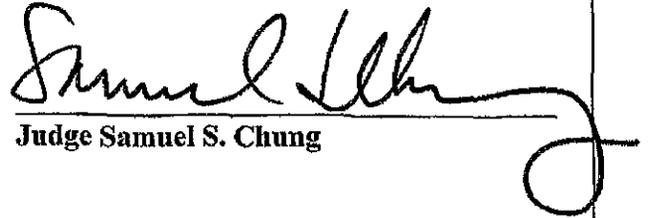
<sup>20</sup> State v. Gomez, 183 Wn.2d 29 (citing State v. Stark, 183 Wn. App. 893, 903, 334 P.3d  
1196 (2014); State v. Lormor, 172 Wn.2d 85, 93, 257 P.3d 624 (2011)).

<sup>21</sup> State v. Gomez, 183 Wn.2d 29 (internal quotes and citations omitted).

<sup>22</sup> 128 Wn.2d 254, 906 P.2d 325 (1995).

Dated:

6/24/15

  
Judge Samuel S. Chung

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# APPENDIX B

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

CITY OF SEATTLE,	)	No. 73754-6-1
	)	
Respondent,	)	
	)	COMMISSIONER'S RULING DENYING
v.	)	DISCRETIONARY REVIEW
	)	
MATTHEW ERICKSON,	)	
	)	
Petitioner.	)	

---

This is a RALJ case. After a jury trial in municipal court, Matthew Erickson was convicted of unlawful use of weapons and resisting arrest. On Erickson's appeal, the superior court affirmed his convictions. He now seeks discretionary review in this Court under RAP 2.3(d). Erickson argues that the trial court violated his equal protection rights when it denied his Batson<sup>1</sup> challenge to the City of Seattle's peremptory dismissal of a potential juror. He raised the challenge after the jury was empaneled, sworn in, and released for the day. The trial court concluded that Erickson failed to make a prima facie case of purposeful discrimination. On review, the superior court agreed with the trial court and further rejected Erickson's challenge to the sufficiency of the evidence to support the jury's finding that the knife he carried was a "metal knuckles" or "switchblade" knife. The court concluded that the evidence overwhelmingly supported the finding. Erickson fails to demonstrate that the superior court decision is in conflict with any Washington case or that the decision involves a significant question of law under the Constitution or an issue of public interest that merits further review. Review is denied.

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<sup>1</sup> Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed. 2d 69 (1986).

## FACTS

On June 10, 2013, Officers Kevin Oshikawa Clay and Matthew Chase saw Erickson in front of a downtown shopping mall Pacific Place “walking backwards down the sidewalk” with a knife in his hand, “waving it back and forth.”<sup>2</sup> The officers followed Erickson into the mall and saw Erickson “still holding the knife in his hand out in front of him, moving it back and forth.”<sup>3</sup> There were a lot of people in the area, families, people with strollers, and business people, who were running away from Erickson with alarm. The officers told Erickson to drop his knife, but he did not do so. Officer Oshikawa Clay repeated his order three or four times, and Erickson finally dropped his knife. The officers arrested Erickson, after Erickson physically resisted the arrest.

The City of Seattle charged Erickson with unlawful use of weapons and resisting arrest in Seattle Municipal Court. After voir dire, both the City and Erickson exercised their peremptory challenges. The City challenged Jurors Nos. 5, 16, and 15, and Erickson challenged Jurors Nos. 1, 4, and 9. All six challenged jurors were excused without objection.<sup>4</sup> A jury was empaneled, sworn in, and released for the day. Then, Erickson’s counsel mentioned, for the first time, that he would note an objection under Batson, asserting that Juror No. 5 was the only black member of the jury panel. The trial court verified with court personnel that all the jurors on the panel were gone. The court recessed for the day to allow time for the parties to address Erickson’s Batson challenge.

The next morning, the trial court heard the parties’ argument on Erickson’s Batson challenge. The court considered the challenge over the City’s timeliness objection but

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<sup>2</sup> RP 234.

<sup>3</sup> RP 236.

<sup>4</sup> RP 172-75.

rejected it on the ground that Erickson failed to make a prima facie showing that the City engaged in purposeful discrimination. Asked what the prima facie showing of purposeful discrimination was, Erickson's counsel answered that Juror No. 5 was, "as far as [he] could tell," the only black potential juror and that Erickson was "of the same racial group":

And that's that the Juror No. 5, who was dismissed with a peremptory challenge by the City was, as far as I could tell, the only black juror on the jury. He was the only member of that particular racial group and he was stricken from the jury.

I think we also noted for the record previously that Mr. Erickson is a black male. So to the extent that it's relevant that Mr. Erickson is of the same racial group, I would note that. But that is the prima facie showing that the defense makes.<sup>[5]</sup>

The trial court pointed out "factual issues" as to whether Juror No. 5 was the only African American member of the jury panel.<sup>6</sup> The court stated that the issues were "not resolvable" where no questions were asked of the jurors on or off the record about their racial composition.<sup>7</sup> Based on his own recollection, the trial judge did not agree that Juror No. 5 was necessarily the only African American member of the jury panel:

But I do not agree with the defense proposition that he was necessarily the only African American on the jury as I do have a memory of someone else - - again, having been deprived of the opportunity to make the record, and there's just no way to do it realistically, forget procedurally or legally - - that there were people on there who were I believe of color, but I can't say exactly where. It's very difficult.<sup>[8]</sup>

The court stated that in light of the "diverse jury," Erickson failed to make a prima facie showing that the City acted in a non-race neutral manner by merely pointing out

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<sup>5</sup> RP 193.

<sup>6</sup> RP 195.

<sup>7</sup> RP 195.

<sup>8</sup> RP 205.

that one African American juror was stricken.<sup>9</sup>

At trial, the parties disputed as to whether the knife Erickson used was a "metal knuckles" or "switchblade knife." Under the Seattle municipal code, it is unlawful for a person to knowingly use or carry, among other things, any "metal knuckles" or "switchblade knife."<sup>10</sup> "Metal knuckles" and "switchblade" knife are defined as follows:

"Metal knuckles" means any device or instrument made wholly or partially of metal that is worn for purposes of offense or defense in or on the hand and that either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the person receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it or consist of projections or studs which would contact the person receiving a blow.

\*\*\*

"Switchblade knife" means any knife having a blade that opens automatically by hand pressure applied to a button, spring mechanism, or other device, or a blade that opens, falls or is ejected into position by force of gravity or by an outward, downward, or centrifugal thrust or movement, and includes what is commonly known as a "butterfly knife."<sup>11</sup>

Officer Oshikawa Clay described the knife Erickson carried, which was admitted into evidence. The knife had "brass knuckles on it."<sup>12</sup> It was "a folding knife" with the brass knuckles "integrated into the handle of the knife."<sup>13</sup> The knuckles were "made out of metal."<sup>14</sup> "Because of the way that you grip the knife, the loopholes here go over your fingers and would be between your finger and your hand, making a fist to punch somebody."<sup>15</sup> The knife was activated or deployed by a lever and a spring mechanism.<sup>16</sup>

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<sup>9</sup> RP 207.

<sup>10</sup> Seattle Municipal Code § 12A.14.080.

<sup>11</sup> Seattle Municipal Code § 12A.14.010.

<sup>12</sup> RP 282.

<sup>13</sup> RP 283.

<sup>14</sup> RP 283.

<sup>15</sup> RP 283.

<sup>16</sup> RP 285-86, 299-300, 303.

With a push on the lever by a finger, the blade "springs out."<sup>17</sup> The jury was shown a video recording of Erickson backing towards the mall doors with a knife held out.

The jury found Erickson guilty as charged, and he was convicted of both unlawful use of weapons and resisting arrest. Erickson appealed his convictions to King County Superior Court. He argued, among other things, that the trial court erred in denying his Batson challenge and that insufficient evidence supported his conviction of unlawful use of weapons. The superior court rejected his arguments and affirmed his convictions.

#### DECISION

Erickson seeks discretionary review of the superior court decision that affirmed his municipal court convictions. This Court accepts review of a superior court RALJ decision only upon a showing of one of the following criteria under RAP 2.3(d):

- (1) If the decision of the superior court is in conflict with a decision of the Court of Appeals or the Supreme Court; or
- (2) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (3) If the decision involves an issue of public interest which should be determined by an appellate court; or
- (4) If the superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the court of limited jurisdiction, as to call for review by the appellate court.

Erickson seeks review under RAP 2.3(d)(1), (2), and (3). Erickson demonstrates no conflict, significant question of law under the Constitution, or issue of public interest that merits further review by this Court.

Erickson argues that the trial court denied him equal protection of the laws when it

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<sup>17</sup> RP 286.

denied his Batson challenge. Although a defendant has no right to a jury composed in whole or in part of persons of his own race, the equal protection clause requires that defendants be tried by a jury whose members are selected "pursuant to nondiscriminatory criteria."<sup>18</sup> Under Batson, a defendant challenging a prosecutor's peremptory challenge "must first establish a prima facie case of purposeful discrimination."<sup>19</sup> To establish the prima facie case, the defendant must present evidence of relevant circumstances that raise an inference that a peremptory challenge was used to exclude a venire member on account of the venire member's race.<sup>20</sup> If the defendant establishes the prima facie case, the burden shifts to the prosecutor to present a race-neutral explanation for challenging the member.<sup>21</sup> The trial court determines whether the defendant has established purposeful discrimination.<sup>22</sup>

In reviewing the trial court's ruling on a Batson challenge, the "determination of the trial judge is accorded great deference on appeal, and will be upheld unless clearly erroneous."<sup>23</sup> A "high level of deference to the trial court's determination of discrimination" is necessary because the finding "largely will turn on evaluation of credibility" and "a reviewing court, which analyzes only the transcripts from *voir dire*, is not as well positioned as the trial court is to make credibility determinations."<sup>24</sup>

There is no blight-line rule that would automatically create a prima facie case of purposeful discrimination based on the removal of the only venire person from a

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<sup>18</sup> Batson, 476 U.S. at 85-86; State v. Rhone, 168 Wn.2d 645, 650-51, 229 P.3d 752 (2010).

<sup>19</sup> Rhone, 168 Wn.2d at 651.

<sup>20</sup> Id.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id. (citation omitted).

<sup>24</sup> State v. Hicks, 163 Wn.2d 477, 493, 181 P.3d 831 (2008).

constitutionally cognizable group, such as African Americans.<sup>25</sup> Instead, “something more” than the venire member’s removal is required, and the trial court has “broad discretion” in making its determination of purposeful discrimination.<sup>26</sup>

Erickson argues that the removal of the only African American member of the venire satisfied the “something more” test, claiming that it highlighted the issues between Erickson’s race and the police officers’ race. But the trial court did not necessarily agree that Juror No. 5 was the only African American member of the venire. In view of the record, the cases cited by the parties, and the highly deferential standard of review, Erickson’s Batson argument satisfies none of the criteria for discretionary review.

Erickson argues that there is insufficient evidence to support the jury’s finding the he used a “metal knuckles” or “switchblade” knife. He argues that “the evidence showed that the knife handle was not reinforced to protect a hand or add force to a blow and that the knife did not open automatically.”<sup>27</sup> He argues that sufficiency of the evidence implicates his due process rights. However, for discretionary review, Erickson must demonstrate a “significant” question of law under the Constitution. His fact-specific argument fails to meet this criterion. Further, the facts in the record appear sufficient to support the jury’s finding that Erickson used a “metal knuckles” or “switchblade” knife. Erickson’s contrary argument presents no basis for discretionary review.

#### CONCLUSION

Erickson fails to satisfy the criteria for discretionary review under RAP 2.3(d).

Therefore, it is

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<sup>25</sup> Rhone, 168 Wn.2d at 653; State v. Meredith, 178 Wn.2d 180, 184, 306 P.3d 942 (2013), cert. denied, 134 S. Ct. 1329 (2014).

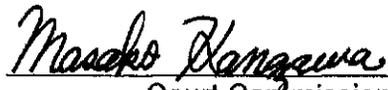
<sup>26</sup> Rhone, 168 Wn.2d at 654-55; Meredith, 178 Wn.2d at 184.

<sup>27</sup> Motion for Discretionary Review at 16.

No. 73754-6-I

ORDERED that discretionary review is denied.

Done this 8<sup>th</sup> day of February, 2016.

  
\_\_\_\_\_  
Court Commissioner

# APPENDIX C

# APPENDIX C

# APPENDIX D

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MUNICIPAL COURT FOR THE CITY OF SEATTLE

CITY OF SEATTLE, ) No. 589641  
)  
Plaintiff, ) RALJ No. 14-1-06819-7  
)  
v. )  
)  
MATTHEW ALEX ERICKSON, ) DISK ENCLOSED  
)  
Defendant. ) VOLUME 1 OF 3  
)

VERBATIM REPORT OF PROCEEDINGS  
THE HONORABLE MICHAEL ROSEN, JUDGE, PRESIDING  
OCTOBER 21, 2014

APPEARANCES:

For Plaintiff: SUMEER SINGLA  
City of Seattle Law Department  
P.O. Box 94769  
Seattle, Washington 98124

For Defendant: WILLIAM SCHWARZ  
King County Office of Public Defense  
Northwest Defenders Division  
1109 First Avenue #300  
Seattle, Washington 98101

Transcribed by: Rose Landberg  
Lickety Split Transcripts  
P.O. Box 21461  
Seattle, Washington 98111  
206-932-5025

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City of Seattle Municipal Court Cause No. 589641

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OCTOBER 21, 2014

Start Time: 02:51:05

COURT: You may be seated. Alright. You both got the additional two names. Is that right?

MR. SINGLA: Yes, Your Honor.

MR. SCHWARZ: Yes, Your Honor. Thank you.

COURT: Alright. So Amy, is Geronimo going to be No. 17?

AMY: Yes, Your Honor.

COURT: And Stone will be No. 18?

AMY: Yes, Your Honor.

COURT: So that we're clear going forward. Alright. We will bring out the jurors.

JURORS PRESENT

COURT: Alright. You may all be seated. You should each have a numbered placard. If you could please raise that over your head at this time so I can see it. Alright. Thank you. You may put them down. That's a hearing test. You've all passed. You can hear me.

But what we do here is very important, and it is extremely important that you be able to hear everything that is said throughout the trial process. If you have any problems hearing me or anybody else at any time, I want you to wave that number over your head. And if you don't have it anymore for some reason, just wave your hand.

1           We have up here in the corner an assisted listening  
2 device. It's tied into all of our microphones, and it  
3 broadcasts the sound, it rebroadcasts it. And if you want,  
4 we can give you headphones that will play the sound loudly  
5 directly into your ears. Anybody has a problem, it's very  
6 important you let me know.

7           I have some instructions to read to you at this  
8 time.

9           The remarks that I make, the questions I ask and  
10 the questions that I permit the lawyers to ask and the  
11 instructions that I give are directed to the attention of  
12 every juror in the courtroom. Every juror is cautioned to  
13 pay close attention to these proceedings.

14           In order that the case be tried before an  
15 impartial jury, the lawyers and I will ask you questions,  
16 not to embarrass you or to pry into your private affairs but  
17 to determine if you're unbiased and without preconceived  
18 ideas which might affect this case. You should not withhold  
19 information in order to be seated on this particular jury.  
20 You should be truthful in your answers rather than answering  
21 in the way you feel the lawyers or the court expect you to  
22 answer.

23           It is presumed that when a jury has been selected  
24 and accepted by both sides each of you will keep an open  
25 mind until the case is finally submitted, will accept the

1 instructions of the court, and will base any decision upon  
2 the law and the facts uninfluenced by any other  
3 consideration. The purpose of the questions on voir dire is  
4 to determine if you have that frame of mind.

5 The lawyers have the right and the duty to  
6 challenge any jurors for cause. They may also challenge up  
7 to three jurors without giving any reasons. These are called  
8 peremptory challenges. You should not take offense if you  
9 are challenged since the challenge is not exercised as a  
10 personal reflection upon you.

11 At this time, I'm going to ask everyone to  
12 introduce themselves. Mr. Singla is the plaintiff's  
13 attorney.

14 MR. SINGLA: Thank you, Your Honor. Good  
15 afternoon, ladies and gentlemen of the jury. My name is  
16 Sumeer Singla. I'm the assistant city prosecutor for the  
17 City of Seattle.

18 COURT: Mr. Schwarz is Mr. Erickson's attorney.

19 MR. SCHWARZ: My name is William Schwarz. I'm here  
20 to represent Mr. Erickson.

21 COURT: Thank you.

22 And this case will be the City of Seattle v. Mr.  
23 Erickson. There are two charges. They are unlawful use and  
24 display of a weapon, specifically, a knife, and resisting  
25 arrest.

1           Keep in mind that these charges are only an  
2 accusation. The filing of the charges are not evidence that  
3 the charges are true.

4           Mr. Erickson has entered a plea of not guilty.  
5 That plea puts in issue every element of the crimes charged.

6           Mr. Erickson is presumed innocent. This  
7 presumption continues throughout the entire trial unless you  
8 find it has been overcome by the evidence beyond a  
9 reasonable doubt.

10           The plaintiff has the burden of proving each  
11 element of the crime beyond a reasonable doubt. The  
12 defendant has no burden of proving that a reasonable doubt  
13 exists. Mr. Erickson has no duty to call witnesses, produce  
14 evidence, or to testify.

15           A reasonable doubt is one for which a reason  
16 exists. It may arise from the evidence or the lack of  
17 evidence. A reasonable doubt is a doubt that would exist in  
18 the mind of a reasonable person after fully, fairly, and  
19 carefully considering all of the evidence or the lack of  
20 evidence.

21           In a civil case, the plaintiff must prove his or  
22 her case by a preponderance of the evidence, that is, by the  
23 greater weight of the evidence. In a criminal case such as  
24 this one, the plaintiff must prove every element of the  
25 crime charged beyond a reasonable doubt.

1           In a civil case, the verdict does not need to be  
2 unanimous. But in a criminal case, as this one, the law  
3 requires that all jurors agree.

4           I'm now going to ask you a number of questions, and  
5 if you would answer yes or probably yes to any of the  
6 questions, I want you to raise your placard. Err on the  
7 side of being over inclusive, okay, with your answers.

8           Has anyone ever heard of this case before being  
9 called in for jury service? There are no placards.

10           Has anyone ever expressed an opinion to you  
11 concerning this case? And there are no placards.

12           Does anybody know either of the lawyers involved in  
13 this case, Mr. Erickson, myself, or any of the court staff?  
14 There are no placards.

15           There are a number of people who might be called as  
16 witnesses in this case. They include Seattle police officer  
17 Kevin Oshikawa Clay, Seattle police officer Matthew Chase,  
18 Seattle police officer Keith Swank, Ryan Swanson and  
19 investigator Marlin Torres. Does anybody know any of those  
20 people? There are no placards.

21           Is there anyone here who's had a similar or related  
22 type of incident or any experience related to a similar type  
23 of incident? Have you ever been charged with resisting  
24 arrest or unlawful use of a weapon? Have you been a witness  
25 in such a situation? Have you had a very close friend or

1 relative be involved in a similar or related situation?

2 JUROR No. 18 in the back. What was your  
3 experience?

4 JUROR 18: Long time ago, I was pretty young,  
5 interfered (inaudible,) got pretty banged up.

6 COURT: You got pretty what?

7 JUROR 18: Pretty banged up.

8 COURT: Oh, banged up.

9 JUROR 18: Yeah.

10 COURT: Alright. So tell me what you mean by you  
11 interfered with a domestic violence.

12 JUROR 18: My neighbor was fighting hugely and at a  
13 certain point where the (inaudible) and I went onto the  
14 porch. I was actually detained by the police (inaudible).

15 COURT: And you were detained for what purpose?

16 JUROR 18: Because they thought I was the  
17 perpetrator.

18 COURT: Oh. And you got banged up how?

19 JUROR 18: By everybody in the system.

20 COURT: Oh, not physically? You didn't get beat  
21 up?

22 JUROR: (Inaudible)

23 COURT: No? It's just that the system thought you  
24 were the perpetrator?

25 JUROR 18: Yeah.

1 COURT: For about how long?  
2 JUROR 18: Five days.  
3 COURT: Alright. And what happened eventually?  
4 JUROR 18: I was released.  
5 COURT: Okay. And did you spend those five days in  
6 jail?  
7 JUROR 18: (Inaudible)  
8 COURT: And that's a yes?  
9 JUROR 18: Yes.  
10 COURT: Alright. And about how long ago was that?  
11 JUROR 18: Thirty years.  
12 COURT: Alright. And what area of the country?  
13 JUROR 18: California.  
14 COURT: Is there anything about that experience  
15 that would cause you to be concerned that you could not be  
16 impartial in a case such as this one with what little you  
17 know about it?  
18 JUROR 18: Not really. You were asking about a  
19 violent case and.  
20 COURT: Absolutely.  
21 JUROR 18: I can see both sides rather readily now.  
22 COURT: Alright. Well, it's good that you answered  
23 the question more over inclusive and answered yes. I always  
24 follow that up to see if you think it will affect you.  
25 Doesn't seem like it does. If you change your mind, please

1 let me know.

2 Juror No. 14, ma'am.

3 JUROR 14: I have a question. Is it if you just  
4 know someone, like you work with them?

5 COURT: Well, I would call it someone that you know  
6 very well, I mean, you know, we say just someone you met or  
7 someone you know; it could be hundreds of people. But is it  
8 someone you knew very well or you were closely involved in  
9 the situation, please let us know about it. Doesn't apply?

10 JUROR 14: Well, I don't know. I mean, it's  
11 somebody I work with and have lunch with, but not on a daily  
12 basis.

13 COURT: Alright. Why don't you tell me what  
14 happened.

15 JUROR 14: One person (inaudible).

16 COURT: I didn't hear that.

17 JUROR 14: One person that I worked with stabbed  
18 the other person that I knew. I knew both the victim and  
19 the murderer actually.

20 COURT: Alright. And how long ago was that?

21 JUROR 14: It was a long time ago. It was at least  
22 25 years ago.

23 COURT: Alright. And somebody was stabbed with a  
24 knife?

25 JUROR 14: Yes.

1 COURT: And did you see any of it happen?

2 JUROR 14: No.

3 COURT: Did it happen at your workplace?

4 JUROR 14: I worked in a hotel. And it was a  
5 staffing house for a hotel, so it didn't happen in the  
6 actual building I was in.

7 COURT: Okay. Were you involved in any of the  
8 legal repercussions from that?

9 JUROR 14: No. I just saw the people when they,  
10 when they first came to report it and were very, very upset  
11 about it.

12 COURT: Did you see, for example, people who were  
13 bloodied from this incident?

14 JUROR 14: No.

15 COURT: Did you see someone taken away by an  
16 ambulance or a coroner or anything like that?

17 JUROR 14: No.

18 COURT: Is there anything about that experience 25  
19 years ago that causes you to be concerned you couldn't be  
20 impartial in a case like this one?

21 JUROR 14: I don't think so because I didn't know  
22 the people and. Even though I don't really understand why  
23 it happened, I think I've come to accept that it happened  
24 and I think it was dealt with in a fair way, so. It was  
25 resolved to my satisfaction.

1 COURT: Okay. Thank you.  
2 Anybody else?  
3 Juror No. 3.  
4 JUROR 3: Do you count being a victim?  
5 COURT: Of what?  
6 JUROR 3: Of a break-in when I was a teenager with  
7 my sister home alone. Very traumatic situation.  
8 COURT: Did it involve someone using a knife or  
9 displaying a weapon?  
10 JUROR 3: Uh huh.  
11 COURT: Yes?  
12 JUROR 3: Yes.  
13 COURT: And you were home or she was home?  
14 JUROR 3: We were both home.  
15 COURT: Okay. What happened?  
16 JUROR 3: It's a little awkward. It was the case,  
17 it was in Sacramento. It was the east area rapist who broke  
18 into our house when our parents weren't home. And my sister  
19 was raped. I was not, but we were tied up and held at knife  
20 point.  
21 COURT: Would you like to discuss that further in a  
22 more private setting or would you like to continue answering  
23 questions here and now?  
24 JUROR 3: Maybe private.  
25 COURT: Okay. We'll continue talking in just a

1 minute.

2 And there was another placard up.

3 Juror No. 10.

4 JUROR 10: Yeah, about, about eight years ago, when  
5 I was serving as a CEO for Boys and Girls Clubs of King  
6 county, one of our youth was, one of our leaders actually,  
7 was down in Rainier Valley and was, the police thought that  
8 he had, maybe have been involved in an incident, so he was  
9 wrestled to the ground. And he later chose to sue the  
10 police department and I was called as a witness. Not, not  
11 as a witness but a character witness.

12 COURT: Okay. So was this child involved in a  
13 crime or he was mistakenly identified?

14 JUROR 10: He was not, no. He was mistakenly  
15 identified.

16 COURT: Alright. And you saw it all happen?

17 JUROR 10: No, I was not a witness. I was, I knew  
18 him, and so I was brought in during the trial as a character  
19 witness for the youth.

20 COURT: Okay. How long ago was all of that?

21 JUROR 10: Probably seven years ago.

22 COURT: Alright. And here in King County?

23 JUROR 10: Yes.

24 COURT: Is there anything about that experience  
25 that would cause you to be concerned about your ability to

1 be impartial in a case like this one?

2 JUROR 10: No.

3 COURT: Alright. Thank you.

4 Alright. Anybody else? No, alright.

5 I'd like to know if anyone here is in any way  
6 connected with the administration of justice. Do you work  
7 for or are you affiliated with the police department, a  
8 sheriff's office, a marshal's office, a court system, a  
9 public defender or a prosecutor, a private law firm or  
10 private investigatory firm? Any association yourself with  
11 any law enforcement of any sort of variety, raise your  
12 placard, please. There are no placards.

13 Is there anybody here who has a very close friend  
14 or relative who is in any way associated with any of the  
15 groups that I just mentioned, or law enforcement?

16 Juror No. 1.

17 JUROR 1: My wife's niece, her husband is a police  
18 officer at City of Everett.

19 COURT: Alright. And that would be your, your  
20 wife's niece's husband?

21 JUROR 1: Shirt tail relative, yeah.

22 COURT: And this person, do you see them very  
23 often?

24 JUROR 1: Around holidays, but not too much, yeah.

25 COURT: And do you talk to that person about their

1 work?

2 JUROR 1: Not really. Maybe some, but not really.

3 COURT: Have you talked in the past about certain  
4 cases or incidents or arrests or investigations?

5 JUROR 1: No.

6 COURT: Anything about that relationship or any  
7 conversations you've had related to that relationship that  
8 would cause you to be concerned you couldn't be impartial in  
9 a case like this one?

10 JUROR 1: No.

11 COURT: Alright. Thank you.

12 Anybody else, close friend or relative involved in  
13 law enforcement in some way? No? Alright. Thank you.

14 There is a stage of the trial which you don't  
15 usually see in movies and TV involving when the judge will  
16 read to the jury when they're selected instructions on the  
17 law of the case. It happens after opening statements, and  
18 then there is evidence presented and then just before the  
19 closing argument, there is this instructional phase. The  
20 judge reads a large number of instructions to the jury.

21 This question is about that phase of the trial. Is  
22 there anybody here who would be concerned that they would  
23 not be likely or able to follow my instructions on the law  
24 because of your personal beliefs? Anybody concerned that  
25 their personal beliefs is going to cause them to not follow

1 the instructions that I give on the law? Please raise your  
2 placard. It's okay if that's the case. Now is the time to  
3 let me know. There are no placards.

4 I've asked a number of questions designed to ferret  
5 out people who may have dealt with situations, similar  
6 situations in the past or maybe have concerns that they may  
7 not be able to be impartial, but I haven't asked every  
8 possible question that bears on that issue. If you have a  
9 concern that you might not be able to sit on this case and  
10 be impartial, please let me know at this time. For any  
11 other reason, raise your placard. No. Alright.

12 We believe this case will be over probably by the  
13 end of the day. Well, I'd say at this point probably by  
14 mid-day on Thursday, although you never know for sure.  
15 Sometimes things take longer. Is there anybody who would  
16 have a problem serving on this jury if they had to be here  
17 through the end of the day Thursday on this week? Anybody  
18 have any scheduling problems? Anybody have any scheduling  
19 problems being here through mid-day, through lunch on  
20 Friday?

21 Juror No. 13.

22 JUROR 13: Well, a little bit. I was supposed to  
23 be with my daughter's field trip. I know that seems very  
24 minor.

25 COURT: Not necessarily. Your daughter is about

1 how old?

2 JUROR 13: Four.

3 COURT: How long has this trip been planned?

4 JUROR 13: It's been planned for about two or three  
5 months.

6 COURT: Okay.

7 JUROR 13: It's to a farm in Carnation.

8 COURT: Pumpkin patch sort of thing. And how -- if  
9 you weren't able to go, what would happen?

10 JUROR 13: She would have a chaperone, another  
11 parent.

12 COURT: And she'd still be able to go?

13 JUROR 13: Yes.

14 COURT: And you feel she'd be safe and taken care  
15 of?

16 JUROR 13: Yes.

17 COURT: Alright. I'm going to keep that in mind.  
18 We'll see where that goes.

19 Anybody else?

20 I'm going to ask you a final catchall question. Is  
21 there any reason that you don't think you should be a juror  
22 on this case? We've covered impartiality. We've covered  
23 scheduling issues. Sometimes a juror says, "I can't sit for  
24 a long period, I have a medical problem, I have an objection  
25 to the judicial process." This is speak now or forever hold



1 should proceed in this manner? There are a number of  
2 possible ways to proceed.

3 MR. SCHWARZ: Your Honor, defense would propose  
4 that Ms. Peterson is it?

5 JUROR 3: Yeah.

6 MR. SCHWARZ: That Ms. Peterson be stricken either  
7 for cause or for hardship. I think hardship would be -- I  
8 think there's a clear hardship to me in terms of the  
9 emotional issues that I think she might have to talk about  
10 in order for us to -- about her feelings, her, and whether  
11 she can be impartial in this case.

12 Alternatively, we could potentially have a  
13 conversation off the record to, in chambers, to explore  
14 further, but I have concerns regarding the public nature of  
15 the trial and I think that, that probably would not work.

16 COURT: Mr. Singla.

17 MR. SINGLA: Thank you, Your Honor. Your Honor, I  
18 -- first of all, good afternoon, ma'am. I don't think  
19 we've, we don't have a basis to see whether or not a  
20 hardship actually exists. There's only one question that  
21 was asked Ms. Peterson, to which she gave a limited reply.

22 I'll defer to the court. There are a number of  
23 ways, most recent case law has addressed the way of  
24 addressing jurors and inquiring of jurors that make it  
25 public without need for, for anguish or embarrassment. I'll

1 defer to the court.

2 COURT: Do you have a suggestion?

3 MR. SINGLA: Well, Your Honor, there's a number of  
4 ways we can do it. We can ask limited questions and thereby  
5 establish, establish the parameters afterwards. I do  
6 believe that the voir dire of jurors of this particular  
7 nature are to be done in public and on the record.

8 COURT: So that doesn't leave a number of options  
9 as you just suggested.

10 MR. SINGLA: If the court -- I'm more than happy to  
11 inquire. If the court wants to inquire with limited  
12 questions, I think that may give us a little bit more basis  
13 to see if whether a hardship can be developed at this point.

14 COURT: So your position is that there's, one  
15 option is to proceed by having some questions asked of Ms.  
16 Peterson and see where it goes?

17 MR. SINGLA: Correct.

18 COURT: I unfortunately tend to agree and I think  
19 Mr. Schwarz does too. We don't have a lot of options. We  
20 might be able to do an in chambers on the record  
21 conversation. However, we don't have the ability to do that  
22 here.

23 So I'm going to start, Ms. Peterson, by telling you  
24 this. If there's anything anybody asks you at this point  
25 that you're uncomfortable answering, just say, "I'm not

1 comfortable answering that."

2 JUROR 3: Okay.

3 COURT: Then we'll see where we go.

4 JUROR 3: Okay

5 COURT: What they're saying is that they may get  
6 enough information about things that you're able to talk  
7 about without having to go into some of those other things.

8 JUROR 3: Other things, okay.

9 COURT: So I understood from what you said  
10 originally that a pretty significant crime was committed  
11 against you and our sister in California.

12 JUROR 3: California.

13 COURT: About how long ago?

14 JUROR 3: 1976.

15 COURT: And the perpetrator of that crime was  
16 wielding a knife?

17 JUROR 3: Yes.

18 COURT: and were you or any of your family members,  
19 did he or she -- it was a he?

20 JUROR 3: It was a he.

21 COURT: Did he use the knife?

22 JUROR 3: Nobody was cut.

23 COURT: No one was cut?

24 JUROR 3: No.

25 COURT: But there was a threat to use a knife

1 essentially?

2 JUROR 3: Uh hm.

3 COURT: Yes?

4 JUROR 3: Yes.

5 COURT: Okay. And has that caused, does bringing  
6 up the, this incident cause you to be stressed out or  
7 disturbed to some degree? Does it cause you some anguish?

8 JUROR 3: A little bit. Just, you know, just like  
9 I didn't expect it to kind of come up.

10 COURT: Sure.

11 JUROR 3: So a little bit, yes.

12 COURT: This case, I believe that when the City  
13 will present its evidence, the City will likely try to  
14 convince the jury that there was a knife used in this case.

15 JUROR 3: Okay.

16 COURT: The belief is that it would indicate nobody  
17 was directly harmed, nobody was cut.

18 JUROR 3: Right.

19 COURT: But that there was a knife that was sort of  
20 waved around. There may be allegations, I'm not sure, that  
21 there was, there was sort of threatening behavior.

22 JUROR 3: Okay.

23 COURT: Or that there was defensive behavior, for  
24 that matter, but it involved a knife.

25 JUROR: Okay.

1 COURT: Considering the trauma that you've been  
2 through, do you feel like you can hear a case like that and  
3 be impartial without having memories of a significant event  
4 affecting your judgment?

5 JUROR 3: I think probably. You know, it's like,  
6 like you said, it's, like it was traumatic. But I mean, I  
7 feel like I would hope I could be impartial.

8 COURT: You would hope you would be impartial.

9 JUROR 3: Yeah. Can I?

10 COURT: And of course, you want to because you're a  
11 good citizen.

12 JUROR 3: Yeah.

13 COURT: The question is do you think you would be  
14 or do you think there's even a somewhat minor risk that you  
15 would not be able to be looking at the evidence the same way  
16 as sort of somebody who didn't have that --

17 JUROR 3: I suppose there's a minor risk, someone  
18 who didn't have that experience.

19 COURT: Alright.

20 JUROR 3: Yeah.

21 COURT: Alright.

22 Mr. Schwarz, do you still make your motion?

23 MR. SCHWARZ: Yes, Your Honor.

24 MR. SINGLA: May I, may I inquire a little bit,  
25 Your Honor?

1 COURT: You can. I'll just remind you that if  
2 there's a question you're uncomfortable answering, don't  
3 feel like you're obligated.

4 JUROR 3: Okay.

5 COURT: Go ahead.

6 MR. SINGLA: Thank you.

7 Good afternoon, ma'am. Ma'am, just to follow up on  
8 what the judge said, you may or may not actually see  
9 evidence of a knife or, or folks talking about a knife. We  
10 can't tell what's going to happen. But my question is based  
11 on the traumatic incident you had, say you see a knife,  
12 would that trigger something in you that, that would cause  
13 you to stop and then reel back?

14 JUROR 3: No.

15 MR. SINGLA: Thank you.

16 COURT: What about a video of someone displaying a  
17 knife in an offensive or a defensive manner? Not just  
18 walking in the kitchen holding a knife, but in a crowd of  
19 people sort of -- I'm gesturing for the record.

20 JUROR 3: No. No.

21 COURT: You have no concern about seeing anything  
22 like that at all?

23 JUROR 3: No.

24 COURT: Mr. Singla, your position.

25 MR. SINGLA: Your Honor, at this point, I don't

1 believe that we have a reason for cause or hardship based  
2 upon the juror's responses.

3 COURT: Mr. Schwarz.

4 MR. SCHWARZ: May I inquire, please, Your Honor?

5 COURT: Again, with the same reminder.

6 MR. SCHWARZ: Ms. Peterson, thank you for being  
7 here and sharing with us some, a very traumatic event in  
8 your life.

9 Have you, were you ever subsequently diagnosed with  
10 any conditions based on the experience that you had?

11 JUROR 3: No.

12 MR. SCHWARZ: Posttraumatic stress disorder comes  
13 to mind. And given that you were the victim of the  
14 situation where you were threatened with a knife, do you  
15 think it would be harder for you to see someone, to be  
16 impartial about whether someone who does have a knife is the  
17 aggressor or the, or someone who's acting in a defensive  
18 manner protecting themselves, do you think that that would  
19 be harder for you to be impartial about that distinction?

20 JUROR 3: I don't know. I feel like I'm  
21 conflicting myself, but it's difficult to know.

22 MR. SCHWARZ: Can you explain for us a little bit  
23 why you're having, having trouble with that?

24 JUROR 3: In this incident, I never saw the knife.  
25 I felt it, but I don't have an image of someone wielding a

1 knife in my head. That's not what I saw.

2 MR. SCHWARZ: Have you -- since then, have you ever  
3 encountered somebody wielding a knife on a subsequent  
4 occasion?

5 JUROR 3: No.

6 MR. SCHWARZ: Have you ever used a knife to protect  
7 yourself or anything along those lines?

8 JUROR: No.

9 MR. SCHWARZ: And did the experience that you had  
10 go into your deciding not to perhaps carry a knife to defend  
11 yourself? I think some people carry a knife to protect  
12 themselves use, it sounds like you've made a choice not to  
13 do that.

14 JUROR 3: Uh uh.

15 MR. SCHWARZ: Did that go into, did that experience  
16 go into that choice?

17 JUROR 3: No. No, I just don't. I just don't, no.

18 MR. SCHWARZ: I have no further questions. Thank  
19 you, Your Honor.

20 MR. SINGLA: None from the City, Your Honor.

21 COURT: Ms. Peterson, you clearly have some  
22 feelings about knives in general because of your past  
23 experience. Mr. Erickson is charged with a criminal  
24 offense. The charge is alleged that there was a knife  
25 involved. The question that I'd like to ask you is if you

1 were in his shoes, do you feel that you would be a good  
2 juror and an impartial juror? Everybody has some  
3 partiality. But compared to the average person who's not  
4 been through a horrible traumatic experience, do you have  
5 any concerns if you were in his shoes that you would be more  
6 likely to have a partiality or a concern or reaction to a  
7 knife than other jurors who hadn't been through that?

8 JUROR 3: If I was in his shoes and I was sitting  
9 on the jury. Is that what you're asking?

10 COURT: You're sitting in his shoes and there was  
11 someone who had this experience, would you be concerned that  
12 there would be a possibility that that person could be less  
13 partial or could have an emotional reaction to the  
14 situation?

15 JUROR 3: Yes.

16 COURT: Thank you.

17 Mr. Schwarz.

18 MR. SCHWARZ: I maintain my previous motions and I  
19 don't have any further argument.

20 COURT: Mr. Singla.

21 MR. SINGLA: Your Honor, the City has no objection.

22 COURT: Ms. Peterson, I'm going to grant the  
23 motion. I think it's just appropriate, you don't need to  
24 serve on this jury. I think that -- first, I want to say  
25 how much I respect you for, one, coming in and giving your

1 time, and two, telling us the truth in a very, very, very  
2 difficult situation.

3 This, you know, I don't know how long I've been a  
4 judge. I know it's been seven years or so. Think this is  
5 the second case I've had involving a knife. And I can see  
6 from your reaction, tearing up, this was the right decision.  
7 You have some issues in your past related to knives. You  
8 don't need to sit through this, and it's not fair to Mr.  
9 Erickson to have a juror like that. It's not a comment on  
10 you. I would actually be more concerned if I wasn't  
11 concerned. You should have some issues with what happened.

12 JUROR 3: Okay.

13 COURT: And I'm very sorry that we've had to ask  
14 you these questions.

15 JUROR 3: That's okay.

16 COURT: And you're excused today.

17 JUROR 3: Okay.

18 COURT: And Ms. Johnson is going to take you back  
19 upstairs. And I cannot tell you how much I thank you.

20 JUROR3: Okay.

21 COURT: Okay?

22 JUROR 3: Uh hm.

23 COURT: You're excused.

24 Bring them right back in, yeah. In fact, I think  
25 instead what we're going to do is we're going to take a

1 little bit of a recess and I'm going to talk to her and  
2 direct her to some services.

3 MR. SINGLA: Thank you, Your Honor.

4 COURT: She seemed to have become more emotional as  
5 she walked out.

6 MR. SCHWARZ: Thank you, Your Honor.

7 COURT: We'll be at recess.

8 OCTOBER 21, 2014

9 End Time: 03:25:35

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OCTOBER 21, 2014  
Start Time: 03:30:17

JURORS PRESENT

COURT: You may be seated. Alright. In just a minute, we're going to go forward with the City's portion of voir dire. The City will be allowed to ask you questions, and then the defense will.

Before we do that, I'll ask each of you to stand at this time and raise your right hand. Do each of you solemnly swear or affirm that you will truthfully answer questions about your qualifications to act as jurors in this case and that all the answers that you gave me previously today were true and correct?

JURORS: (Respond)

COURT: If you answer affirmatively, you may sit down. And for the record, all the jurors are now seated.

Mr. Singla, you may inquire.

MR. SINGLA: Thank you.

Good afternoon, ladies and gentlemen.

JURORS: Good afternoon.

MR. SINGLA: Come on.

JUROR: It's been a long time since I've been --

MR. SINGLA: What was that?

JUROR: I said it's been a long time since I've been in school.

1 MR. SINGLA: Well, this is going to be a little bit  
2 like school. Let me -- I know you probably, perhaps you --  
3 how many people have already been through voir dire?

4 JUROR: Not today.

5 MR. SINGLA: But you've been through a voir dire  
6 process.

7 Some of you may be familiar; others are probably  
8 not familiar. This is a chance for us to have a  
9 conversation, both Mr. Schwarz and I, have a conversation to  
10 see whether or not you're a right fit for this jury. Some  
11 people are a good fit for criminal trials. Some people are  
12 a good fit for civil trials.

13 How many people have been a juror through an entire  
14 trial? Just four people.

15 JUROR: I was an alternate.

16 MR. SINGLA: All the way through a verdict? How  
17 many people have been all the way through a verdict? Three  
18 of them all the way through verdict.

19 And this is an opportunity for us to have a  
20 conversation. So what I'm going to ask you is a couple of  
21 things. One is to speak up loudly. Like I just raised my  
22 voice, and that's when I was asking for participation. The  
23 reason being is that you're being recorded by the two mikes  
24 in front of you. There's no court reporter, so we want to  
25 make sure that you are speaking loudly so we can pick it up

1 as far as the record is concerned and so you can hear each  
2 other.

3 The other reason is this is a conversation where  
4 I'm going to be asking you a number of questions. I'm going  
5 to be asking you your opinions based upon what some of your  
6 colleagues may say, so I want to, I want to make sure that  
7 you're paying attention and I want to make sure that  
8 everybody's speaking in a proper manner. If you see me  
9 moving back, that's a good sign that I need you to speak up.

10 The other thing that I'm going to say is I'm going  
11 to refer to you by your juror numbers. Right before you  
12 walked in is the first time we got to know who you were a  
13 little bit and know your last names. And I'm terrible in  
14 pronouncing last names, so I'm just not even going to try.

15 So with that, you heard the two charges that the  
16 defendant, Mr. Erickson, is charged with. One is illegal  
17 possession or use of a weapon, specifically, a knife.

18 When you hear that charge, unlawful use of a  
19 weapon, specifically, a knife, does anybody have a strong  
20 opinion on it? I warn you, I was a camp counselor, and I  
21 will start picking on people. Does anyone have a strong  
22 opinion when I say unlawful use of a weapon?

23 JUROR 18: I mean, other than the fact that it's  
24 scary.

25 MR. SINGLA: How is it scary?

1 JUROR 18: It's a weapon, and (inaudible).

2 MR. SINGLA: And what about that would you find  
3 scary? And that's Juror No. 18. And what about that would  
4 be scary to you?

5 JUROR 18: Get hurt.

6 MR. SINGLA: Juror No. 2, what do you think about  
7 that?

8 JUROR 2: Same, same answer. It's scary because he  
9 has a knife. He can use it against you.

10 MR. SINGLA: Is there a distinction between that  
11 knife being sheathed and just being on somebody's belt? You  
12 know, people carry it. Versus somebody having it out?

13 JUROR 2: Yeah, there's a difference.

14 MR. SINGLA: And what's the difference?

15 JUROR 2: Well, having it out is going to have you  
16 scared. And having it, you know, strapped to your waist and  
17 whatnot, maybe you, there's other things like maybe stopped  
18 on the side of the road or something, or you're going to cut  
19 something or whatever. Personally, it's not as scary as  
20 having it out.

21 JUROR 18: More of a tool.

22 JUROR 2: Yeah, a tool.

23 MR. SINGLA: So Juror No. 18 said tool. Juror No.  
24 2, you agreed with that.

25 Is there a distinction between using a knife as a

1 tool versus as a weapon?

2 JUROR: There is a difference.

3 MR. SINGLA: And what's the difference?

4 JUROR: The difference is using that knife towards  
5 somebody, you know, physically, you know, physically, so.

6 MR. SINGLA: Juror No. 1, what do you think about  
7 that?

8 JUROR 1: I think if it's out and it's threatening,  
9 it's threatening you, that's scary, yeah.

10 MR. SINGLA: And what would -- why threatening?  
11 Why that, why that additional component?

12 JUROR 1: It just seems that, you know, if it's on  
13 someone's person on their side and it's used as a tool,  
14 that's one thing. But if it's out, the knife's out in  
15 somebody's hand and it's pointing at you, that's  
16 threatening.

17 MR. SINGLA: Juror No. 6, what do you think about  
18 that?

19 JUROR 6: I guess intent is the thing I would think  
20 of there, what's the intent of having it out. Was it  
21 malicious or was it, the person had their reason?

22 MR. SINGLA: What if you didn't know the  
23 individual? What if it was just somebody who had a knife?

24 JUROR 6: I would steer clear.

25 MR. SINGLA: And why is that?

1 JUROR 6: Because I wouldn't know what their  
2 thought process was and I wouldn't know what their intent  
3 was.

4 MR. SINGLA: Juror No. 5, what do you think about  
5 that?

6 JUROR 5: I think it's the person's intention. So  
7 just having a knife doesn't scare me, but knives can be  
8 scary, so.

9 MR. SINGLA: What do you mean by knives can be  
10 scary?

11 JUROR 5: A knife pointed at you can be scary. A  
12 knife on somebody, seeing a knife on somebody can be scary.  
13 But I don't think having a knife or a knife in itself is  
14 just scary. It's how it's used or the intention, like she  
15 said.

16 MR. SINGLA: Juror No. 4, what do you think about  
17 that?

18 Thank you.

19 JUROR 4: Well, you know, when I first heard this,  
20 I mean, we don't know the circumstances.

21 MR. SINGLA: Right.

22 JUROR 4: We haven't heard those described, you  
23 know, if it's offensive or defensive. And you also said  
24 unlawful use, and we haven't been instructed on the law yet.  
25 A knife in general is scary. A knife is a weapon. It's

1 scary. Sharp. It can hurt you. Statistically, if you  
2 think about that, I think it's probably, you know, with  
3 intent. A knife is a tool. It's something that's been  
4 around forever, so, I mean. We can parse up the words, but  
5 we haven't really heard anything yet.

6 MR. SINGLA: Right.

7 And Juror No. 4 brings up a good point. We're  
8 going through this exercise, and sometimes it gets  
9 frustrating because you don't know the context. The purpose  
10 for us is just to see whether or not you're a good fit based  
11 upon your responses. At the end of the day, the judge is  
12 going to give you the instructions on what the law is, and  
13 that will help you make the determination on what the law  
14 is. And Juror No. 4 is very much correct on that.

15 So leaving off with what I see is -- from the, from  
16 the responses that I've gotten is that intent is an  
17 important factor for most folks. Is that fair to say? Is  
18 there anybody who says you know what, intent is not a  
19 factor? Okay.

20 Let me put it this way. What if you were  
21 instructed that intent, you could not consider? You could  
22 not consider what a person's intent was. Would anybody have  
23 a problem following that instruction?

24 Juror No. 18.

25 JUROR 18: I've used a knife as a weapon.

1 MR. SINGLA: I'm sorry, what was that?

2 JUROR 18: I have used a knife as a weapon.

3 MR. SINGLA: And how -- can you, can you explain a  
4 little bit more about that?

5 JUROR 18: I'd rather not. It's not like I'm in  
6 therapy. It was a long time ago, but I was mugged and  
7 beaten. Prior to the one 25 years ago, I was a teenager.  
8 And they didn't back off, so I used a weapon.

9 MR. SINGLA: Would you feel more comfortable  
10 talking about that with the judge and counsel present about  
11 that situation?

12 JUROR 18: How detailed do you want to go?

13 MR. SINGLA: Can you give me a moment?

14 Your Honor, I think it's important to inquire of  
15 Juror No. 18 in further detail. It seems like he feels  
16 uncomfortable about doing that in the presence of the rest  
17 of the jurors.

18 COURT: Sir, you said you're not fully comfortable  
19 talking about that in front of the other jurors, which is  
20 absolutely fine. At the end of the selection process, if  
21 you'd like, we could have you talk here just with me and the  
22 attorneys in a little bit more private setting. Would you  
23 like that?

24 JUROR 18: It's up to you. I just don't want to  
25 get too graphic in front of an audience.

1 COURT: It's up to you actually. I don't mind at  
2 all. We'll give you that opportunity if you want it.

3 JUROR 18: He may or may not have lived.

4 COURT: Alright. We're going to proceed  
5 questioning Juror No. 18 on this in a more private setting  
6 outside of the presence of the other jurors, but we'll do  
7 that later. So we're going to move on. We'll come back to  
8 you at the end, okay?

9 MR. SINGLA: So going back -- and thank you, Juror  
10 No. 18.

11 Going back to the question. What if you were given  
12 the instruction that you cannot consider it? Would anyone  
13 have a problem following that instruction? What if the  
14 judge -- you, Juror No. 16, you have your hand raised. Can  
15 you tell us why?

16 JUROR 16: (Inaudible)

17 MR. SINGLA: And why would that be important to  
18 you?

19 JUROR 16: Because, as other people have pointed  
20 out, it can be a tool or it can be a weapon. Whether it's  
21 one or the other is based on intent, on how that person's  
22 going to use it.

23 MR. SINGLA: And even if the judge said, "You know  
24 what, Juror No. 16, you are not to consider intent. You are  
25 supposed to follow the instruction and intent is not part of

1 that instruction," do you feel like you could not follow  
2 that instruction?

3 JUROR 16: I would have to, I mean, if you're  
4 allowed to consider context, I may be able to follow it.  
5 But, but not being able to consider context at all, I  
6 wouldn't, I would not be able to.

7 MR. SINGLA: What if you were told you've got the  
8 evidence, you're to consider the evidence that's been given  
9 to you, but the instructions just say there's nothing about  
10 intent that you can consider? Would you be able to then  
11 follow them?

12 JUROR 16: It depends on the situation. It depends  
13 on the details of the case. If the context made it clear  
14 whether the knife was to be used as a tool or a weapon, then  
15 I could rely on context.

16 MR. SINGLA: Anybody else feel like that, Juror No.  
17 16? You know, you were given a specific instruction you're  
18 not to consider intent. You say, "Sorry, I've got to have  
19 context, I can't follow this."

20 Juror No. 13.

21 JUROR 13: I, I agree with what (inaudible).

22 MR. SINGLA: Anybody else?

23 The second charge here is resisting arrest. How  
24 many people have seen somebody being arrested? Juror Nos.  
25 4, 5, 16, 13, 18, and 11. Juror No. 11.

1 Juror No. 11, thank you. What did, what, what did  
2 you see?

3 JUROR 11: (Inaudible) drunk and I saw him arrested  
4 on the street.

5 MR. SINGLA: Was it somebody you knew?

6 JUROR 11: No.

7 MR. SINGLA: And did that, did that individual  
8 resist arrest?

9 JUROR 11: No.

10 MR. SINGLA: And was that the only time that you've  
11 seen it?

12 JUROR 11: I've seen it like off and on. I live in  
13 the downtown area, so I see it once in a while.

14 MR. SINGLA: And what do you think about that?  
15 What do you think about seeing somebody being arrested?

16 JUROR 11: I don't have any strong opinions about  
17 it. I haven't seen anything that violent. Usually they're  
18 being handcuffed and put in cars is what I've seen.

19 MR. SINGLA: Has anybody seen somebody who's being  
20 arrested who's actively tried to resist the officers from  
21 being arrested?

22 No. 4, what have you seen?

23 JUROR 4: I was just driving home to my  
24 neighborhood in West Seattle once, and there were about  
25 eight patrol cars zipping around. And the next thing I

1 knew, they had some guy, they were pulling him out of the  
2 alley and threw him on the hood of the car. Turned out to  
3 be a pellet gun. He was shooting at garbage cans. I work  
4 downtown. I live in West Seattle. You see someone get  
5 arrested now and then.

6 MR. SINGLA: And what do you think of the officers  
7 what they're doing?

8 JUROR 4: Think they're doing their job. He had a  
9 gun in that case. Couple other times, I can remember  
10 shoplifting, it's more peaceful.

11 MR. SINGLA: Juror No. 5.

12 Thank you.

13 Juror No. 5.

14 JUROR 5: I live on Capitol Hill, so I've seen  
15 people get arrested somewhat often. But it just depends on  
16 the, the one. One time, there was one guy who was getting  
17 and there were several cops, you know, for one guy, and I  
18 thought that was a little bit excessive. You know, and I've  
19 seen it. Sometimes I think about it. Sometimes I don't.

20 MR. SINGLA: Have you ever seen somebody who's been  
21 resisting while they're being arrested?

22 JUROR 5: Not fighting back, but definitely, you  
23 know, verbally talking trash.

24 MR. SINGLA: And what do you think about that?

25 JUROR 5: Think it's their right to talk trash.

1 MR. SINGLA: Okay.

2 Juror No. 13.

3 Thank you, sir.

4 JUROR 13: I, I have similar experiences as this  
5 previous juror. But I used to live on Capitol Hill too and  
6 so therefore, you know, it's just an urban density  
7 situation. Sometimes you'd see somebody resisting and  
8 sometimes you wouldn't. Sometimes things would cause a  
9 stir, a scene, and you know, sometimes people are more, some  
10 are more passive than others.

11 MR. SINGLA: Has anybody -- thank you, ma'am.

12 Has anybody intervened in somebody being arrested?  
13 You know, jumped in. Has anybody jumped in to help out  
14 somebody being arrested?

15 We've heard a lot about the Seattle Police  
16 Department recently. They've been in the paper. What do  
17 you think about that? What do you think about officers  
18 effecting an arrest? Does anybody have a strong opinion  
19 about the Seattle Police Department effecting arrests? No?

20 Anybody have any strong opinions about, let's take  
21 the example that we've been given by Juror No. 5 or Juror  
22 No. 13, a number of police officers effecting an arrest on  
23 one person. Do you think that's fair?

24 Juror No. 13.

25 JUROR 13: I do have some opinions. A couple

1 months ago, I was crossing the University Bridge by foot and  
2 I heard there was one person inside a building who was  
3 threatening suicide when I passed an officer what the cause  
4 of the stir was. And they had roped off the entire exit of  
5 the bridge. There were not less than about eight cop cars  
6 plus a paddy wagon and emergency vehicles. It was quite a  
7 scene. And they had portions of Northlake Way also taped  
8 off. So it was, it was blocking pedestrians and cars. I  
9 mean, it impacted a lot of traffic. And I thought well,  
10 that's sort of excessive for just one person who is  
11 threatening suicide. I didn't know the full story, but I, I  
12 think it can be excessive based on what I experienced.

13 MR. SINGLA: Thank you.

14 Anybody else?

15 COURT: Mr. Singla, that's your time.

16 MR. SINGLA: Thank you, Your Honor.

17 COURT: Mr. Schwarz.

18 MR. SCHWARZ: Thank you, Your Honor.

19 Good afternoon, ladies and gentlemen. Thank you so  
20 much for your patience and for being here to serve as  
21 potential jurors. Mr. Erickson and I really appreciate it.

22 I have to kind of parrot what you've heard from  
23 both the judge and Mr. Singla. We just want to make sure  
24 that you're a good fit for this jury, and so I'm not trying  
25 to make you feel uncomfortable. Please do let us know if,

1 if while in this situation I make you uncomfortable, that's  
2 certainly not my intention. Thank you.

3 So I'm going to start with some general questions.  
4 Has anyone here every applied to be a police officer?  
5 Seeing no hands.

6 Any a corrections officer?

7 Mr. Stone, how long ago did you apply to be a  
8 police officer? Sorry, a corrections officer.

9 JUROR: Oh, I'm sorry. I didn't get it up in time.  
10 It was a reserve officer in Timbuktu in California. Sorry.  
11 Long time ago.

12 MR. SCHWARZ: Okay. And is that, is that something  
13 that you'd still want to do or --

14 JUROR: No, not.

15 MR. SCHWARZ: What made you change your mind about  
16 that?

17 JUROR: Once I went through the interview process  
18 and realized how it wasn't for me. It's just is serious  
19 business and it's not for me.

20 MR. SCHWARZ: Okay. Thank you.

21 And has anyone here -- we've had a lot of  
22 conversation about seeing someone resist police when they're  
23 being arrested. If we could just take a step back from  
24 that.

25 Has anyone here ever argued with a police officer,

1 been in a situation where they were, you were arguing with a  
2 uniformed or on duty police officer?

3 Mr. Meyer?

4 JUROR: Uh hm.

5 MR. SCHWARZ: And what kind of circumstances when  
6 you were in that situation?

7 JUROR: I was walking to Volunteer Park to meet  
8 some friends when two police cars pulled up and asked me to  
9 come up to the car and put my hands on the car. And I asked  
10 them for what reason. They said that somebody had just  
11 stole something from a church nearby and that I fit the  
12 description. I was kind of upset with that because I didn't  
13 think I fit the description of somebody who just. And I  
14 asked the what was the description of somebody who just. I  
15 said, "Was it a guy with long hair?" because I wore my hair  
16 long. And they wouldn't tell me what the description was,  
17 so I talked back to a cop.

18 MR. SCHWARZ: What ended up happening in that  
19 situation?

20 JUROR: They took my ID and ran it and then let me  
21 go.

22 MR. SCHWARZ: How did it make you feel to be  
23 accused by the police of doing something that you hadn't  
24 done?

25 JUROR: Angry, embarrassed, and upset.

1 MR. SCHWARZ: Thank you for sharing that. That  
2 must been a really difficult experience for you.

3 And I think I saw is it Ms. -- I'm sorry?

4 JUROR: Chaney.

5 MR. SCHWARZ: Ms. Chaney, thank you. I think I saw  
6 you raise your hand. Is that correct?

7 JUROR: Yeah.

8 MR. SCHWARZ: What did you, what was your  
9 experience?

10 JUROR: I was an activist for a long time and  
11 (inaudible).

12 MR. SCHWARZ: What kind of activism were you  
13 involved with?

14 JUROR: Some animal activism. And definitely was  
15 in (inaudible).

16 MR. SCHWARZ: And I think you discussed with Mr.  
17 Singla whether or not you'd be able to have, excuse me, how  
18 you'd be able to react to certain situations. And I just  
19 want to kind of clarify. I will give you a chance to talk  
20 about what, what you meant.

21 If the, if the judge were to instruct you on the  
22 law, would you be able to listen to that and, since the  
23 judge's role is to instruct on the law, obey his  
24 instructions in that regard? Is that something you think  
25 you'd be able to do?

1 JUROR: I think so.

2 MR. SCHWARZ: And can you, would you be able to  
3 accept that what the judge tells you is the law? Is that  
4 something you'd be able to accept?

5 JUROR: Yes.

6 MR. SCHWARZ: And assuming that, that the judge  
7 tells you something and that's an instruction on the law,  
8 would you then follow that because at that point, you know  
9 that it's the law?

10 JUROR: Yes.

11 MR. SCHWARZ: Thank you.

12 And Juror No. 13, Ms. Schlea. I think you, you  
13 discussed a similar issue, whether you'd be able to follow  
14 the, the instructions that you receive. So if the judge  
15 instructs you on something and tells you the law is a  
16 certain way, do you think you'll be able to obey those  
17 instructions?

18 JUROR 13: Yes.

19 MR. SCHWARZ: Do you have any reservations about  
20 that?

21 JUROR 13: No.

22 MR. SCHWARZ: Thank you.

23 So did anyone else raise their hands regarding  
24 arguing with police? I know I talked to a couple people.  
25 Did I miss anyone? Thank you. Seeing no hands.

1 Does anyone think it's wrong to argue with police  
2 if, if you think the police are wrong? Does anyone think  
3 that's a bad or a wrong thing to do? Any hands? Seeing no  
4 hands.

5 Is anyone here involved in any groups that support  
6 the right to bear arms?

7 Sir. Mr. Toda, No. 15.

8 JUROR: Riker.

9 MR. SCHWARZ: I'm sorry. I've got my numbers  
10 wrong.

11 JUROR: I, I am a member of the National Rifle  
12 Association. I also have a concealed (inaudible).

13 MR. SCHWARZ: And do you, are your feelings -- let  
14 me take a step back. What are your feelings about the right  
15 to bear arms?

16 JUROR: I believe it's a constitutional right,  
17 Second Amendment right. Own firearms.

18 MR. SCHWARZ: Okay. And is that, is it limited  
19 just to firearms in your opinion? Do you, do you value just  
20 firearms or weapons in general?

21 JUROR: Weapons in general. Tools. They're all  
22 tools. I mean, they're certainly specific, but they are  
23 tools.

24 MR. SCHWARZ: What do you mean by that exactly?

25 JUROR: Well, for instance, competition shooting.

1 A rifle or a pistol to test one's acuity towards striking a  
2 target on a range, I find a great deal of fun.

3 MR. SCHWARZ: Any other purposes?

4 JUROR: Knives. You know, I work with hand tools  
5 all the time. Knives are another tool. Just like a  
6 screwdriver or a hammer or a table saw.

7 MR. SCHWARZ: Thank you.

8 Does anyone have any, any feelings that feel like  
9 they feel the same way or feel differently?

10 Yes, sir. Juror No. 10.

11 JUROR 10: I'm a supporter of cease fire, have  
12 concerns about access to weapons.

13 MR. SCHWARZ: What, what are those concerns?

14 JUROR 10: That they're too easy to get access to,  
15 they get in the hands of people who shouldn't have weapons.  
16 I have a special needs son who is on the autism spectrum and  
17 is often suicidal. My wife and I both work in the mental  
18 health field.

19 MR. SCHWARZ: So, so what are, your concerns are?  
20 I don't want to put words in your mouth, but that people  
21 would --

22 JUROR 10: I feel like in this country, guns are  
23 too accessible. They find themselves in the hands of people  
24 and kids end up getting killed and there's a lot of  
25 unnecessary deaths because of the access of firearms.

1 MR. SCHWARZ: And are your feelings specific to  
2 firearms or is it more broadly to weapons?

3 JUROR 10: Firearms.

4 MR. SCHWARZ: So do you think you'd be able to be  
5 fair and impartial regarding other types of weapons?

6 JUROR 10: I do.

7 MR. SCHWARZ: Thank you.

8 Were there any other hands that I missed? Thank  
9 you.

10 And kind of a general question. Does anyone have  
11 any, any conditions that they think might make it hard to  
12 just sit through a trial that could take a day and a half or  
13 so, anything along those lines? Seeing no hands. Thank  
14 you.

15 And has anyone -- I don't think I've talked with  
16 Mr. Matthew.

17 JUROR: Yes.

18 MR. SCHWARZ: I haven't picked on you yet. Have  
19 you ever seen the police jump to a conclusion before based  
20 on false information, something along those lines?

21 JUROR: No.

22 MR. SCHWARZ: Have you ever seen anybody who's not  
23 a police officer do that? Can you think of any experiences  
24 where someone jumped to a conclusion based on not enough  
25 information?

1 JUROR: I've probably done it myself many times.

2 MR. SCHWARZ: Can you, can you think of any  
3 examples and share with us why you think that might happen?

4 JUROR: I can think of something that happened to  
5 me with a police officer. I was in downtown Seattle. I  
6 crossed Pike Street I think it was and it was against the  
7 signal. And there was a crowd of people. It was  
8 summertime. And out of the crowd, a motorcycle policeman is  
9 like hey and he's yelling at me. And he was kind of acting  
10 like I was going to run away. And I didn't run away, but I  
11 got a ticket for jaywalking, you know. And so I don't know.  
12 Maybe, maybe he was jumping to the conclusion that I would  
13 run away.

14 MR. SCHWARZ: Thank you.

15 Mr. Metosha.

16 JUROR: Metuacha.

17 MR. SCHWARZ: Metuacha. Thank you. Have you ever,  
18 have you ever jumped to a conclusion based on not enough  
19 information? Have you ever been in that kind of situation?

20 JUROR: Yeah, I have.

21 MR. SCHWARZ: Can you tell us about that.

22 JUROR: There was this one time where I thought, it  
23 was one day where my brother came home and he did stuff  
24 around the house and I didn't know it was him, but it ended  
25 up being him 'cause I jumped to the conclusion saying that

1 it was him, but it wasn't him, so. To the point where I had  
2 to jump ahead and thought it was him, which it wasn't him,  
3 so.

4 MR. SCHWARZ: And why do you think you, you did  
5 that? Why do you think you came to that conclusion instead  
6 of looking into the facts a bit more before making --

7 JUROR: Well, there was things where I knew that he  
8 would do, you know what I mean? It ended up not being him.  
9 It was just me jumping to conclusions.

10 MR. SCHWARZ: Do you regret --

11 JUROR: Yeah. Oh, yeah.

12 MR. SCHWARZ: Thank you.

13 Mr. Moat.

14 JUROR: Yes.

15 MR. SCHWARZ: You were telling us about a story  
16 where you someone who was arrested for using a pellet gun by  
17 the police. Am I remembering that correctly?

18 JUROR: That's correct, yes.

19 MR. SCHWARZ: Did you, did you feel like it was  
20 appropriate for, for him to be arrested in that  
21 circumstance, or did you think that was the police going too  
22 far in that situation? What, what are your thoughts about  
23 that?

24 JUROR: Well, I didn't have full information. I  
25 was driving home. Two blocks from my house and see patrol

1 cars two blocks from your house, you wonder what's going on.  
2 And they were kind of in a hurry, you know, looking down  
3 alleys and stuff. And then I stopped because there was a  
4 bunch of them blocking the driveway. And they just kind of  
5 hustled some guy out in front of my car and put a gun on the  
6 car next to him. My guess is that they're trained if  
7 there's a guy with a gun that to get the situation under  
8 control. So I mean, that was my take at the time. I'm  
9 happy that they were in my neighborhood doing their job.

10 MR. SCHWARZ: That, that's interesting. You said  
11 that you think that their training would be to get control  
12 of the situation and then, and then investigate the facts.  
13 Is that? What, what are you --

14 JUROR: Yeah. If there's a guy with a gun and  
15 they're police and someone calls and says there's a guy in  
16 the alley shooting a gun off, I guess they're, I guess that  
17 they'd try to get control of the situation.

18 MR. SCHWARZ: And do you think that's an  
19 appropriate way for the police to go about doing their job?

20 JUROR: Sure. In that case.

21 MR. SCHWARZ: Okay.

22 JUROR : In that case.

23 MR. SCHWARZ: Alright.

24 And does anyone disagree? Does anyone think that,  
25 that that's not a, not an appropriate way to react to a

1 situation like Mr. Moat was telling us about? I see no  
2 hands.

3 And let's see, Ms. (inaudible). You, you mentioned  
4 earlier that you thought that -- correct me if I'm wrong. I  
5 think you said that whether somebody was threatening with a  
6 knife or another weapon would depend on their intent. Is  
7 that, is that a fair representation of what you said?

8 JUROR: (Inaudible)

9 MR. SCHWARZ: And do you think that you'd be able  
10 to set aside the issue of intent if you were instructed to  
11 by, by the judge?

12 JUROR: Yes.

13 MR. SCHWARZ: Okay. Thank you.

14 And Ms. Lewis. I think I saw that you're a high  
15 school counselor. Is that right?

16 JUROR: Uh hm.

17 MR. SCHWARZ: Does your, does your job involve  
18 possibly ever settling disputes between people?

19 JUROR: Meeting with students individually, but  
20 I've never been involved in two people at the same time.

21 MR. SCHWARZ: Do you ever have to -- are you ever  
22 faced with a situation where you're told that there's a  
23 problem and then there's one person on one side and multiple  
24 people on the other side and you need to figure out what  
25 happened?

1 JUROR: Yeah.

2 MR. SCHWARZ: Can you tell us about how you would  
3 go about doing that.

4 JUROR: Yeah. So I'm the college counselor, so not  
5 a lot of disputes or situations come to me directly, so  
6 there's other people involved. But I have been involved  
7 with talking to students individually, and my job would be  
8 taking it to the dean of students or principal for them to  
9 resolve it. So I haven't really been involved in something  
10 like that.

11 MR. SCHWARZ: You wouldn't investigate further, you  
12 would just kind of present the concerns?

13 JUROR: Right. Yeah.

14 MR. SCHWARZ: Thank you.

15 Has anyone else here been involved in trying to  
16 figure out say a dispute between, between children, one on  
17 one side, a few on the other side? I know we've got some  
18 parents in here.

19 Let's see. Is it Juror No. 13? I saw you  
20 laughing, so I'm going to pick on you. What are your  
21 thoughts?

22 JUROR 13: Oh, yeah. I've been in that position  
23 (inaudible).

24 MR. SCHWARZ: What did you do to resolve that kind  
25 of situation?

1 JUROR 13: Well, find out somebody's feelings and  
2 why they're upset, and then ask the other person how they  
3 feel. Ask them what they want, how could the situation  
4 resolve based upon the realistic feelings of the other  
5 person.

6 MR. SCHWARZ: So do you make your decision based on  
7 just talking to one person or more than one person and how  
8 long -- do you make a decision right away or just take a  
9 little bit, a little while to decide?

10 JUROR 13: Depends upon what happened.

11 MR. SCHWARZ: Can you give us an example of when  
12 you've been in this situation?

13 JUROR 13: Maybe not. But I think I can say that  
14 you have to be on the fly sometimes. I'm sorry, I can't  
15 think of some story right now.

16 MR. SCHWARZ: That's okay. Thank you.

17 I saw some other hands. Does anyone, anyone have  
18 -- I think, Mr. Wells, I think you, I heard you chuckle.

19 JUROR: I did. I have three kids, so, you know,  
20 constant bickering about things. And I'll just try to  
21 ascertain the facts of the situation before going with the  
22 largest scream. But, you know, I've been in business my  
23 whole life and you inherit problems. And I inherited a  
24 lawsuit once and I actually thought that the guy suing us  
25 was right, so we settled quickly.

1 COURT: Mr. Schwarz, that's your time.

2 MR. SCHWARZ: Thank you all very much.

3 Thank you, Your Honor.

4 COURT: Alright. I have a few follow-up questions.

5 Juror No. 16, Ms. Chaney. Can you see me?

6 JUROR 16: Yes.

7 COURT: I'm right here. There's probably a speaker  
8 over there out of the ceiling. Alright.

9 So during the City's questioning, you indicated you  
10 might have a problem following some instructions regarding  
11 intent. But I want to see if I could clarify a little bit  
12 so that I know your position. And you're entitled to your  
13 position. There's not a wrong position here. I want that to  
14 be clear. But I don't know that I fully understood it based  
15 on the questions that were asked you.

16 So if I instruct the jury what the law is. And I'm  
17 not saying this will be the case, but what was posited to  
18 you I believe is that there's an instruction that something  
19 is crime and it doesn't require intent. A good example not  
20 related to this case as far as I know is it's illegal to  
21 possess certain drugs, cocaine, heroin, etcetera. You don't  
22 have to intend to use them or to sell them or give them to a  
23 kid or anything else. Would you have any sort of objection  
24 to following that instruction in that scenario?

25 JUROR 16: No.

1 COURT: Alright.

2 JUROR 16: No, I mean, I, my reservation at that  
3 point was that -- I guess I was thinking about the American  
4 Indian who was killed by police officers because he was  
5 Indian. I have (inaudible).

6 COURT: Right. So do you have any sort of personal  
7 belief or moral objection to the idea that some things might  
8 be illegal even if you don't intend to use them? I'll give  
9 you another example of a weapon. I know for a fact it is  
10 illegal for anybody, any individual to possess a nuclear  
11 weapon in Seattle. You don't have to intend to use it. That  
12 might be something that is analogous to the situation here  
13 with a different weapon or another substance, certain car  
14 you can't possess if it has say the legislature said you  
15 can't possess a car that gets less than 30 miles to the  
16 gallon or something like that. Is all that making sense to  
17 you?

18 JUROR 16: Yeah. (Inaudible) Yeah, I --

19 COURT: And you'd have no objection to enforcing a  
20 law based on that?

21 JUROR 16: No.

22 COURT: Okay. Thank you. I thought that's what you  
23 were going to say and what you were trying to say, but  
24 sometimes the question and answers make it a little bit hard  
25 to understand the intent.

1 Juror No. 13, Ms. Schlea.

2 JUROR 13: Yes.

3 COURT: You had similar concerns. Do you think  
4 that in those situations where intent is not required as  
5 part of the crimes such as possession of a drug or illegal  
6 possession of some clearly outlandish weapon like a nuclear  
7 bomb or a car that doesn't meet certain requirements or  
8 anything else, is that something you would have any  
9 objection to making a decision on?

10 JUROR 13: No.

11 COURT: No. Alright. Thank you.

12 I don't believe we've heard anything from Mr.  
13 Hernandez or Mr. Geronimo, and so I wanted to ask, not put  
14 you on the spot, but I do want to make sure we've been  
15 following what's been going along, so I'd ask first Mr.  
16 Hernandez, could you stand up, tell us your full name, what  
17 you do for a living or what you did do for a living and what  
18 one area of discussion today has been most interesting for  
19 you.

20 JUROR: My name is Esteven Hernandez. I work in  
21 the (inaudible) for a living. I don't know what to say.

22 COURT: Did you find any area of discussion  
23 interesting today?

24 JUROR: Everything's interesting.

25 COURT: Everything's interesting, alright. Thank

1 you very much.

2 Mr. Geronimo.

3 JUROR: I'm Ted Geronimo. I'm a general manager  
4 for a laboratory, (inaudible) laboratory here in Seattle.

5 COURT: Alright. And today?

6 JUROR: Yeah, it's interesting. Really no opinion  
7 otherwise.

8 COURT: Okay. Thank you.

9 And we lost Ms. Johnson. Chastity, can you fill in  
10 and take all the jurors other than Mr. Stone back? Alright.  
11 Thank you.

12 So we're going to have Mr. Stone stay out here.  
13 Everyone else is going to go back with Chastity. Everyone  
14 rise.

15 JURORS LEAVE

16 COURT: Alright. Mr. Stone, come on up here.  
17 Everyone else can have a seat if they like. Have a seat.

18 Alright, Mr. Stone. It was not totally clear to me  
19 if you were not wanting to talk about something because you  
20 were concerned about your feelings in talking about it or  
21 because you didn't know if it was appropriate to talk about.

22 JUROR 18: Correct.

23 COURT: Which was it?

24 JUROR 18: Mainly appropriate.

25 COURT: Whether, okay. So --

1 JUROR 18: I don't talk about it much, but I'm --

2 MR. SCHWARZ: Excuse me, Your Honor.

3 COURT: Yes.

4 MR. SCHWARZ: I'm so sorry to interrupt. I was  
5 just wondering whether it might be appropriate to have a  
6 lawyer appointed for Mr. Stone.

7 JUROR 18: Oh, no.

8 MR. SCHWARZ: I, I don't, there's no statute of  
9 limitations for certain crimes.

10 JUROR 18: Yes. That, that -- thank you. I would  
11 not want, I would not want some zealous prosecutor reopening  
12 something that has been redacted from my juvenile life.

13 COURT: Okay. Well, now that you've indicated Mr.  
14 Schwarz's position is a good one, do you wish to have an  
15 attorney before you talk about what happened?

16 JUROR 18: Do --

17 COURT: I can't tell you because I don't know what  
18 happened and I don't know why you would have --

19 JUROR 18: It was, it's ancient history. But like  
20 he says, and I've thought about it and. And I was told he  
21 lived at the time, but going over it in my head, I have to  
22 wonder.

23 COURT: Okay. So do you not wish to answer any  
24 questions about it?

25 JUROR 18: I do not.

1 COURT: Okay. Alright. The juror does not wish to  
2 answer any questions and has asked for an attorney.

3 Mr. Schwarz, Mr. Singla, your positions?

4 MR. SINGLA: Your Honor, we don't have jurisdiction  
5 on this matter as far as. I don't know what's going to come  
6 up, so. I'm fine with proceeding and inquiring. I think I  
7 have the general nature. I'll just have a few questions  
8 that may shed some light and that's about it.

9 COURT: Mr. Schwarz.

10 MR. SCHWARZ: I'll defer to the court, Your Honor.

11 COURT: Alright. It's not a matter of whether we  
12 have jurisdiction, the City of Seattle prosecutor's office,  
13 where you work has jurisdiction, it's whether Mr. Stone can  
14 be put in jeopardy. And apparently we don't know the answer  
15 to that because we don't know what happened and so he  
16 potentially could be in jeopardy. He's asked for an  
17 attorney. He's told me he's not going to answer the  
18 questions because he wants an attorney. You're entitled to  
19 all of that. And so I'm going to excuse you for cause  
20 because I cannot determine if you're a good juror.

21 So thank you for being here. I don't know where  
22 Annie went to, so Chastity is going to take you back and  
23 she'll excuse you. Thank you for being here.

24 JUROR 18: Thank you. I don't normally think of  
25 that.

1 COURT: Alright. With that, do you want to take a  
2 minute since the jurors are already out and let me know when  
3 you're ready to proceed with peremptory challenges?

4 MR. SINGLA: Your Honor, I know the court had  
5 inquired of Juror No. 16 and 13, but there was one  
6 additional question that I wanted to ask. I suspect I know  
7 the answer, but I just wanted to put it on the record. That  
8 would probably allay my challenge for cause on both those  
9 jurors. And that question was would they be able to set  
10 aside their personal beliefs or what they thought the law  
11 should be and follow the law as it's given.

12 COURT: Alright. So I already asked that question,  
13 and they already indicated that they would. That's the last  
14 of the questions that I asked originally. It's do you have  
15 any concerns you won't be able to follow the law and the  
16 instructions that I give regardless of what you think the  
17 law is or ought to be. They didn't raise their placards.  
18 You asked some follow-up questions, Mr. Schwarz did, and I  
19 did. And if you have a motion for cause for those jurors or  
20 any others considering the time that you were allotted, now  
21 would be the time to make it.

22 MR. SINGLA: At this point, just for the record,  
23 the City would make a motion for cause on Juror No. 16. And  
24 the reason being is I understand the court had asked the  
25 question before we had started the inquiry. Thereafter, I

1 think we got into the context of possession, weapons,  
2 intent. And again, I know I inquired some questions and  
3 they might not have been, they might have been, not have  
4 been articulate answers or questions on my part, and I know  
5 the court inquired as well.

6 The examples given by the court were appropriate I  
7 think as far as they were concerned, but I think it would be  
8 easy for a juror to say, "Yeah, I'm against somebody having  
9 a nuclear weapon," or "I'm against a car that doesn't drive  
10 that's fuel inefficient, especially in this environment." I  
11 just wanted to get a clear context of whether or not they  
12 would be able to follow the law despite what their personal  
13 beliefs were based upon the context and the discussion that  
14 had occurred between Mr. Schwarz and I and the jurors.

15 COURT: Mr. Schwarz, Juror No. 16.

16 MR. SCHWARZ: Your Honor, I, I do not think it's  
17 appropriate to strike Juror No. 16 for cause. I think that  
18 she answered both my questions and Your Honor's questions in  
19 a way that would indicate that she could follow the  
20 instructions of the court and could set aside her, the  
21 feelings that she had been indicating and consider the  
22 evidence based on your instructions. So I would ask that  
23 she not be stricken.

24 COURT: Alright. Thank you.

25 I'll deny the City's motion. I'm trying to think

1 of a way to say this, but I'll just be very blunt about it.  
2 There are a lot of questions in voir dire. The City's  
3 questions on that area to me were somewhat confusing, and I  
4 think they were somewhat confusing to the jurors. The  
5 relevant questions and answers were not do you believe that  
6 intent is something that should considered or do you have a  
7 personal objection to it not being considered in general  
8 because they didn't, I don't believe, I think they were  
9 under the misimpression that the City was asking them if  
10 somebody was using a knife and how were they, did they  
11 intend to hurt someone or did they intend to carve something  
12 or did they intend to defend themselves. It's a very open-  
13 ended question, which is often a good tactic. But in this  
14 case, I think they had a different opinion, which is why I  
15 chose some pointed things that involved possession without  
16 an intent. And the jurors indicated, both No. 13 and No.  
17 16, that they understood the difference and they didn't have  
18 a moral objection.

19 So as to No. 16, the challenge for cause is denied.

20 MR. SINGLA: Thank you, Your Honor.

21 COURT: Either side have any other challenges for  
22 cause?

23 MR. SCHWARZ: None from the defense, Your Honor.

24 COURT: None from the City?

25 MR. SINGLA: None from the City, Your Honor.

1 COURT: Alright. Thank you. I'll give you one  
2 minute to think about your peremptories before I have the  
3 jurors come back in.

4 MR. SINGLA: Just a point of inquiry, Your Honor.  
5 Are we going to do the peremptories on the record?

6 COURT: We're going to do them on the record. We  
7 don't have to do them in front of the jurors. Sometimes the  
8 lawyers like the jurors to be here so they can see their  
9 faces and associate them with answers. But if you want to  
10 do them on the record but with the jurors in the back,  
11 that's fine with me too.

12 MR. SCHWARZ: Your Honor, I think it would be  
13 helpful to have the jury present for that purpose.

14 COURT: Are you ready?

15 MR. SCHWARZ: Yes.

16 COURT: Is the City ready?

17 MR. SINGLA: Yes, Your Honor.

18 COURT: Alright. We'll get the jurors and we'll  
19 continue.

20 JURORS PRESENT

21 COURT: You may be seated.

22 Alright. At this point, I will turn to the City  
23 for its first peremptory challenge.

24 MR. SINGLA: Thank you, Your Honor. The City would  
25 like to thank and excuse Juror No. 5.

1 COURT: Alright. So stay where you are. We'll go  
2 through this just a minute.  
3 And defense number one.  
4 MR. SCHWARZ: Defense would thank and excuse Juror  
5 No. 1.  
6 COURT: City's second.  
7 MR. SINGLA: May I have a brief moment, Your Honor?  
8 COURT: Yes.  
9 MR. SINGLA: Your Honor, the City would like to  
10 thank and excuse Juror No. 16.  
11 COURT: Alright.  
12 Mr. Schwarz.  
13 MR. SCHWARZ: The defense would thank and excuse  
14 Juror No. 4.  
15 COURT: Number what?  
16 MR. SCHWARZ: 4, Your Honor.  
17 COURT: 4, alright. Thank you.  
18 City.  
19 MR. SINGLA: Your Honor, the City would like to  
20 thank and excuse Juror No. 15.  
21 COURT: Defense.  
22 MR. SCHWARZ: Just one moment, please, Your Honor.  
23 The defense would thank and excuse Juror No. 9.  
24 COURT: Alright. So I'm going to read the jurors  
25 that I believe have been empaneled. I'd like each of the

1 attorneys to check that we are empaneling. Juror No. 2,  
2 Metuacha; 6, Coyle; 10, Johnson; 11, Chen; 12, Hernandez;  
3 and 13, Schlea.

4 Is that what the City shows?

5 MR. SINGLA: Yes, Your Honor.

6 COURT: And defense?

7 MR. SCHWARZ: Yes, Your Honor.

8 COURT: Alright.

9 If I call your name, I'd like you to come have a  
10 seat in the jury box. The names I call first, starting on  
11 the back end of the court are No. 1 and filling in  
12 backwards.

13 Mr. Metuacha, come on up.

14 Ms. Coyle.

15 Mr. Johnson.

16 Ms. Chen.

17 Ms. Hernandez and Ms. Schlea.

18 Go ahead and have a seat whenever you're ready.

19 Alright.

20 To everybody else who was not selected. I want to  
21 thank you for taking the time to be here and be a part of  
22 this process. We could not have juries and jury selection  
23 in criminal cases and civil cases if people like you didn't  
24 essentially donate your time. I know that it's mandatory  
25 and you get a little bit of remuneration, but it's very,

1 very small. And you've done your civic duty and we  
2 appreciate it very much, so thank you. With my great  
3 appreciation, I'll excuse you for the last time. Follow Ms.  
4 Johnson.

5 JURORS LEAVE

6 COURT: Alright. At this time, I'll ask you to  
7 rise and raise your right hands. Do each of you solemnly  
8 swear or affirm that you will well and truly try this case  
9 and declare a true verdict according to the evidence and the  
10 instructions from the court?

11 JURY: (Responds)

12 COURT: If you answered affirmatively, you may sit  
13 down. Everyone else may be seated.

14 I'll now explain the procedure that we're going to  
15 follow during the trial. And due to the hour, I'm going to  
16 abbreviate these and give you further instructions in the  
17 morning, okay?

18 The first thing that I want to tell you today is  
19 that I want -- let me see if I can get to the right section  
20 here. Until you're dismissed at the end of this trial,  
21 you're to avoid outside sources such as newspapers,  
22 magazines, the Internet, or radio or television broadcasts  
23 which may discuss this case or issues involved in this  
24 trial. By giving this instruction, I do not mean to suggest  
25 that this particular case is newsworthy. I give this

1 instruction in every single case.

2 Do not try to determine on your own what the law  
3 is. Do not seek out any evidence on your own. Do not  
4 consult any reference material such as dictionaries and the  
5 like. Do not inspect the scene of any event involved in this  
6 case.

7 I am telling you all these things because it is  
8 very important that everything that you learn about this  
9 case comes to you in this courtroom and in only this  
10 courtroom. You may not allow yourselves to be exposed to  
11 any outside information sources. Do not permit anyone to  
12 comment about it or discuss it in your presence. You must  
13 keep your mind free of outside influences so that your  
14 decision will be based entirely on the evidence presented  
15 during the trial and my instructions to you about the law.

16 I want to take a minute to talk about those outside  
17 sources, specifically the Internet, but it applies to  
18 everything. You don't know a lot about this case yet, but  
19 you know what the charges are. You can't talk about what's  
20 happening with friends, coworkers, spouses, family,  
21 etcetera. You can tell that you're a juror, but you can't  
22 talk about anything related to this case because they may  
23 express an opinion to you on what should happen or something  
24 similar to this happened in the past to them or something  
25 else that could cause you to lose your impartiality.

1           With the Internet, we've had a number of problems  
2 with jurors using their Internet connected devices,  
3 computers, tablets, phones, other things, to do research on  
4 cases. I'm not going to prohibit you from using your  
5 devices to do things as long as you don't violate any of the  
6 other conditions that I've placed on you. Don't read  
7 information or consume information, video or audio, that is  
8 any way or could in any way be perceived to be related to  
9 the charges in this case or what little you know about it.  
10 I know that's hard because you don't know about it. But if  
11 you see anything on the Internet related to criminal charges  
12 related to criminal charges for resisting arrest or using or  
13 possessing weapons or something like that, you're not to  
14 consume that information. It's totally fine to use your  
15 device to check your e-mail, to do something for work, check  
16 sports scores, arrange things later on, you know, like where  
17 you're going to meet somebody, to read a book, as long as  
18 you are not reading or consuming information about this  
19 case.

20           I'm also going to prohibit you at this time from  
21 posting anything on the Internet that is in any way related  
22 to this case or your jury service. That is not a permanent  
23 prohibition. You're giving up one of your rights, your free  
24 speech right, for a limited amount of time. The reason that  
25 I'm going to prohibit you from doing that is because if you

1 post something, say on Facebook or a different network that  
2 says, "I'm a juror," that in general is seen as an  
3 invitation to then comment back to you, "Oh, when I was a  
4 juror, such and such happened and it was really good or  
5 really bad or whatever," and it could be related to a case,  
6 so I don't want you to get that sort of information.

7           When the trial is done, I will release you from  
8 that admonition and you'll be able to post anything you like  
9 on the Internet, on your social networks, that you were a  
10 juror, what you thought about this trial, how good looking  
11 the judge was, or whatever else you'd like to post. But for  
12 now, no posting, no consuming information that is in any way  
13 related to this case.

14           Because of the hour, what we're going to do is  
15 recess at this time, and I'll have you back for further  
16 instructions and then we'll begin the trial tomorrow morning  
17 at 9 a.m., okay? So please follow Chastity back.

18           And have them wait in the back room for Amy to be  
19 back, Ms. Johnson, and then she'll give you instructions on  
20 when to come in upstairs so that you can be ready to go down  
21 here at 9:00.

22           I will also give you one last piece of information  
23 if you've not been on a jury before. Although we try to take  
24 very, to be very good about using your time, we know your  
25 time is valuable, we want you to spend as little time here

1 as possible, it's my experience that close to 40 percent of  
2 the time that you spend on your jury service will be in that  
3 room waiting for us. Even though we're trying to get  
4 everything done for you as fast as possible, you're going to  
5 have a significant amount of waiting time. So bring  
6 something to read, something to knit, something to do, a  
7 magazine, whatever it is you like to do. You will be  
8 probably over the course of the next several days spending  
9 several hours sitting there just waiting. Okay?

10 Ms. Johnson, if you'd take them back and arrange so  
11 that they can be downstairs ready to go at 9. Thank you.

12 JURY LEAVES

13 COURT: You may be seated.

14 Is there anything either attorney would like to  
15 bring up before we break until tomorrow?

16 MR. SCHWARZ: Yes, Your Honor. I just would like  
17 to note that, note a, an objection under Batson Wheeler as  
18 Juror No. 5 was the only, was the only black member of the  
19 jury panel, and he was stricken using a peremptory strike by  
20 the prosecution.

21 COURT: You're noting that now?

22 MR. SCHWARZ: Your Honor, I didn't want to do it in  
23 front of the jury. This is the first moment that we were  
24 not directly in front of the jury.

25 COURT: Alright. Well, you're certainly entitled

1 to note it now, so excuse me for asking that. The problem  
2 is that the jurors have been excused and already brought  
3 upstairs and I suspect they've already been released by the  
4 jury coordinator due to the lateness of this notice. There  
5 were other procedures available. Could have asked for a  
6 sidebar. Could have said, "Judge, I have an objection I  
7 need to make outside the presence of the jury," or even just  
8 an objection I likely would have known what you meant.  
9 Frankly, I was surprised you didn't make the objection  
10 earlier, but that was your choice and I assumed a strategic  
11 decision.

12 At this point, the remedy I believe that you would  
13 seek is probably long past. I have already sworn in the  
14 jury, which causes other problems.

15 MR. SCHWARZ: And Your Honor, I apologize. I  
16 certainly did not mean to cause any, any such problems. I  
17 was simply concerned about bringing it in front of the jury,  
18 and I apologize for that.

19 COURT: You don't have to apologize. The concern  
20 that I have is not -- the only concern that I have is that  
21 I'm not sure what remedy that I could grant you, so. I  
22 guess the first thing I'll do is ask what remedy are you  
23 seeking?

24 And while you do that, while you think about that,  
25 Chastity, can you check upstairs and see if they've released

1 those jurors for the day?

2 MR. SCHWARZ: I guess, Your Honor, I would ask that  
3 Juror No. 5 be placed on the panel instead of Juror No. 13,  
4 who was the last, last person on.

5 COURT: Alright.

6 I want the record to reflect even if -- we're  
7 checking right now to see if any of the jurors are still  
8 even in the building. But even if they are in the building,  
9 we've lost control, care, custody and control of the jurors.  
10 The reasons that we have jurors enter from the back, be  
11 escorted at all times, when they're in the courtroom, it's  
12 always supervised by staff, me. Usually, almost always, I'm  
13 in the courtroom or a judge is, sometimes a judge has to  
14 step out and there'll always be another member of the  
15 judge's staff to watch to make sure nothing inappropriate is  
16 said to that juror.

17 For example, the juror could be in the building but  
18 talking with another juror how they weren't selected, and  
19 that other person up in the jury selection room could be  
20 saying, or the jury waiting room could say, "Oh, well, they  
21 always strike African Americans," or "Police are really  
22 bad," or "Police are really good," or who knows what. "Oh,  
23 it was a case about a knife, that's all you know? I like to  
24 throw knives, it's really great, it's a sport." "I hate  
25 knives. Someone almost killed me with one once." And

1 that's the concern that I have. Now I have a juror who I  
2 don't know what they've been exposed to who has some  
3 information about the case.

4 I also don't think that it is an appropriate remedy  
5 to bump a different juror. The appropriate remedy might  
6 have been to keep him in the mix and then strikes could be  
7 used appropriately. But if, and this is only an if, I had  
8 granted the motion or if I, I guess in the past if I had,  
9 the City might have chosen to use its peremptories  
10 differently and now they wouldn't have that ability to do  
11 so. So I don't find that either of those remedies are  
12 appropriate.

13 Chastity, what'd you find out?

14 CHASTITY: (Inaudible)

15 COURT: Alright. I don't know if the record or the  
16 attorneys picked that up. The panel that we had, and in  
17 fact all the jurors that were summoned in Seattle Municipal  
18 Court for this week, which we summons them in on Tuesday,  
19 have been released. That was because of the, the way and  
20 the objection being noted and because we were the last trial  
21 of the week that was waiting for a jury. So those jurors  
22 and all other jurors are now gone.

23 That said, I'm not sure -- I have a number of  
24 different thoughts, but I don't know even what the defense  
25 is asking for. Do you want to discuss this now or would you

1 like to wait until tomorrow and have some time to think  
2 through the different options and remedies that you might  
3 seek?

4 MR. SCHWARZ: I think that might be better, Your  
5 Honor.

6 COURT: Alright. I'm going to give you that  
7 ability. We'll reconvene tomorrow morning at --

8 MR. SINGLA: And may the City just briefly respond  
9 so the court has --

10 COURT: No. Because I don't have anything that's  
11 workable at this point and -- you know what, I'm going to  
12 retract that, because perhaps you have an idea that Mr.  
13 Schwarz would agree with, and perhaps not. If you have some  
14 ideas, maybe you can --

15 MR. SINGLA: I do, Your Honor. I just know the law  
16 around Batson challenges. State v. Allen is one of the  
17 Division I cases that's on point. And the courts have been  
18 pretty clear that that's a challenge that needs to be raised  
19 at the time of the, of the peremptory challenge having  
20 existed so as to avoid this very issue that we're in. And  
21 if the challenge is raised after, it is deemed to be waived.  
22 And at this point, the challenge not being raised at the  
23 time means that the challenge has been waived at this point,  
24 if that objection is not made.

25 COURT: And if a chal-, I'm not saying it is, but

1 if a challenge is waived because of inaction of an attorney,  
2 then what's the next step?

3 MR. SINGLA: The, the case law, the case law of --  
4 it would be, it would be under the rubric of an untimely  
5 objection. And if it's an untimely objection, it's deemed  
6 to be waived. And what, what the courts have reviewed that  
7 as is that it's either as a trial tactic, or it can be  
8 raised up as an ineffective assistance of counsel, which is  
9 huge bar and a hurdle to overcome.

10 And even if that was to happen, again, it would be  
11 whether or not, whether or not, even if it was, say even if  
12 the court was to go down that road, whether or not Batson  
13 would have a reasonable reason, I'm more than happy to put a  
14 reasonable reason on the record for Juror No. 5 so that we  
15 can perfect the record at this point.

16 COURT: We'll do all that tomorrow morning.

17 MR. SINGLA: I'm more than happy to do that.

18 COURT: I am somewhat concerned that the logical  
19 chain that you've drawn out, which I agree with, could  
20 result in this case not going forward or not being upheld on  
21 an appeal. I don't know that's the case. I'll hear from  
22 both of you tomorrow morning.

23 What time can you be here tomorrow morning? I'd  
24 like to try to get this issue resolved before the jurors  
25 come out. I don't know if you have childcare or other

1 issues. Is 9 the earliest you can be here? Can anyone be  
2 here at 8:45 or 8:30? Yes, no, maybe.

3 MR. SINGLA: 8:45 is fine, Your Honor.

4 COURT: Mr. Schwarz.

5 MR. SCHWARZ: Defense and Mr. Erickson can be here  
6 at 8:30 or whatever time you choose.

7 COURT: 8:30 or 8:45? It's up to you.

8 MR. SINGLA: 8:45 would be preferable, Your Honor.

9 COURT: 8:45 it will be. The jurors will have to  
10 wait. We've already told them they'll have to wait.  
11 Alright. With that said, I'd just ask the attorneys to just  
12 have a seat for a moment.

13 There's a number of people in the gallery watching.  
14 And I note that earlier, I talked to two of the women, Ms.  
15 Harriet and Raposa, who I gave some I think pretty stern  
16 warnings to. I'm sorry if I said your name wrong.

17 MS. RAGOSA: That's okay. It happens.

18 COURT: I'm sorry. But they, both of those women  
19 have been here watching and have had I believe no, any, I  
20 think that they've been behaving very appropriately since we  
21 talked earlier, and I appreciate that.

22 There's a lot of other folks here. You're here  
23 watching, you're entitled to be here to watch. In fact, I  
24 welcome you to be here watching because most people in our  
25 society don't. But that said, I want to repeat what I said

1 earlier, because one of the jurors said something that I  
2 noticed a number of you thought were funny. Sometimes that  
3 happens in trials. Sometimes something funny happens.

4 But there's been some expressions made. Have not  
5 been too severe, but I want you to be very clear. Mr.  
6 Erickson is entitled to a fair trial. And for that matter,  
7 so is the City. Any expressions, outbursts, nonverbal  
8 communication which is made that could influence the jury as  
9 the decision maker or me as the decision maker will not be  
10 tolerated. If I see any of that from anybody, -- and I  
11 don't care if they're defense witnesses, City's witness, a  
12 lawyer or a non-lawyer -- it's not acceptable. Everybody is  
13 entitled to a fair trial, and they get that by not having  
14 outside influences. I went over that with the jury and with  
15 the lawyers and Mr. Schwarz just a moment ago about we don't  
16 let outside influences into our jurors.

17 So I want you all to have fair warning. Please  
18 come. Please watch. Please be responsible members of our  
19 society. If there's a problem with any sort of non-verbal  
20 communication, or verbal communication for that matter, I  
21 will not hesitate to make sure you're not allowed back into  
22 the courtroom. And depending on the level, you could be  
23 held in contempt. I don't think that's going to happen, but  
24 I also want to make sure you all know that because it  
25 appeared to me there were some strong feelings growing.

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So with that, we're at recess until 8:45 in the morning and we will see what happens in the morning. We are at recess. Thank you.

OCTOBER 21, 2014

End Time: 16:37:59

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MUNICIPAL COURT FOR THE CITY OF SEATTLE

CITY OF SEATTLE, ) No. 589641  
 )  
Plaintiff, ) RALJ No. 14-1-06819-7  
 )  
v. )  
 )  
MATTHEW ALEX ERICKSON, )  
 )  
Defendant. ) VOLUME 2 OF 3  
 )

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VERBATIM REPORT OF PROCEEDINGS  
THE HONORABLE MICHAEL ROSEN, JUDGE, PRESIDING  
OCTOBER 22, 2014

APPEARANCES:

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OCTOBER 22, 2014  
Start Time: 09:01:07

JURY NOT PRESENT

COURT: Good morning.

MR. SINGLA: Good morning, Your Honor.

COURT: Alright. We're back on the Erickson matter. It's 9:00. Mr. Erickson just arrived.

Mr. Erickson, you're going to need to make sure you're here early from now on so that this doesn't happen again, okay?

MR. ERICKSON: Okay.

COURT: Have a seat.

We left off with the defense request essentially under Batson to prohibit a strike. And you were going to do some research and get back to me this morning.

MR. SCHWARZ: Yes, Your Honor. I don't think it's really helpful, but I do want to apologize to the court and counsel for not making my objection at a timely moment. I understand that that does limit the possible remedies available. I don't know that we'll reach that issue because I think, depending on whether the court grants the Batson challenge and whether or not the State, the City rather, has a neutral reason for striking the juror, I think that only after those first two stages are passed is remedy an issue. But at this point, I think the only remedy I'm aware of that

1 would be available still at this point would be a mistrial.  
2 I'm not aware of any other intermediate remedy at this time  
3 based on the fact that the jury has been excused.

4 COURT: Alright. And in order to successfully even  
5 begin a Batson challenge, the defense has to make a prima  
6 facie showing. What is that showing?

7 MR. SCHWARZ: Yes, Your Honor.

8 COURT: What is that showing?

9 MR. SCHWARZ: And that's that the Juror No. 5, who  
10 was dismissed with a peremptory challenge by the City was,  
11 as far as I could tell, the only black juror on the jury.  
12 He was the only member of that particular racial group and  
13 he was stricken from the jury.

14 I think we also noted for the record previously  
15 that Mr. Erickson is a black male. So to the extent that  
16 it's relevant that Mr. Erickson is of the same racial group,  
17 I would note that. But that is the prima facie showing that  
18 the defense makes.

19 COURT: Does that meet the threshold of prima facie  
20 under the case law, because somebody is a certain race?

21 MR. SCHWARZ: Your Honor, I think that there, there  
22 are cases where courts have held that striking some of  
23 members of a racial group can be sufficient, but is not  
24 always sufficient. Here, I think it's, it's relevant that  
25 Juror No. 5 was the only member of that particular racial

1 group and he was stricken, so the court would not need to  
2 find whether or not -- strike that -- the court would be  
3 able to find that he was the only member of that racial  
4 group and he was stricken. Therefore, I don't think we need  
5 to go further into, into an analysis based on there being  
6 other members of a racial group.

7 So I think that would be an adequate record to,  
8 upon which a Batson challenge could be granted.

9 COURT: Alright. Thank you.

10 Mr. Singla, start with the very beginning on the  
11 facts. Does the City agree that this Juror No. 5, Mr.  
12 Meyer, was the only African American on the jury? I'm  
13 asking for a stipulation because frankly, I don't remember.  
14 We had so many jurors in and out and then the challenge was  
15 made after they were gone.

16 I have a memory of a -- I'll just be very blunt --  
17 a darker-skinned woman in the back. And I know the defense  
18 had objected to the first panel because there was nobody you  
19 felt was similar to the defendant on it. That makes me  
20 think it was in this panel, but I really can't say, and we  
21 don't track that information in any of the statistics that  
22 we do.

23 So I don't know if the City has a memory and wants  
24 to agree with the defense or not.

25 MR. SINGLA: Your Honor, I don't particularly --

1 well, what I can say is the juror in question was, seemed to  
2 be me to be visibly of African American descent. There were  
3 other jurors that I would classify as people of color, and  
4 we didn't inquire into what their nationality or origin was.  
5 I'm assuming that one of the jurors that the judge inquired  
6 of and that Mr. Schwarz and I didn't, and I believe he's on  
7 the panel, seems to be of Hispanic descent. And there were  
8 other jurors that the court had inquired of but we hadn't  
9 gotten to their nationality.

10 COURT: Mr. Hernandez, No. 12?

11 MR. SINGLA: Correct, Your Honor. He's seated as  
12 Juror No. 5.

13 COURT: And also No. 2, Metuacha, if I'm saying  
14 that correctly, seems to be not Caucasian is about the best  
15 I can tell.

16 MR. SCHWARZ: Your Honor, I also recall that I  
17 believe it was Juror No. 17, Mr. Geronimo, was, did not seem  
18 to be Caucasian. But I don't, I don't have a memory of  
19 whether there was a woman.

20 COURT: Alright. So we have some factual issues to  
21 start with. And they're not resolvable, frankly, because we  
22 don't have video in this courtroom, and the record will  
23 reflect there is no video in this courtroom. The audio that  
24 was recorded is res ipsa loquitor; it speaks for itself. No  
25 questions were asked of the jurors on the record or off the

1 record.

2 And I will also put, I'm taking judicial notice  
3 that the City of Seattle Municipal Court's jury summoning  
4 process, the questions that are asked of the jurors and the  
5 -- some of those, you don't have in front of you; those are  
6 qualifying questions like have you been convicted of a  
7 felony, etcetera. You don't get all that information. You  
8 only get the information for those who qualified and some of  
9 their questions. But none of that has to do with race. I  
10 don't even think it has to do with the gender, if I remember  
11 right. It does have to do with age. And so to my  
12 knowledge, there's no way at this point to determine the  
13 racial makeup of the jurors who were dismissed.

14 So with that factual limbo, I'll turn it over to  
15 the City.

16 MR. SINGLA: Your Honor, first of all, the City's  
17 position is that the challenge was waived and needed to be  
18 made at the time of the challenge.

19 COURT: You said that yesterday. Did you, were you  
20 able to present any support for that position?

21 MR. SINGLA: I wasn't able to research the timing  
22 of challenges per Batson. I think that there is, there is  
23 the general recognition that if a challenge has not been  
24 made, if an objection has not been made during the course of  
25 the trial, at the time, it's considered to be waived as part

1 of trial strategy. I wasn't able to specifically pinpoint  
2 as to the issue of a Batson challenge.

3 COURT: Unless it's a manifest injustice of a  
4 constitutional nature under Rule of Appellate Procedure 2.5.  
5 I did research this as best as I was able. I know we were  
6 all on a short timeline. I found State v. Rhone at 168  
7 Wn.2d 645. In that case, you can see at page 648, the court  
8 says, "After the jury was sworn in but prior to trial,  
9 defense counsel informed the trial court that Rhone wished  
10 to make a statement." And then the defendant made a  
11 statement about racial diversity in the juror panel and the  
12 court considered it to be a Batson challenge.

13 MR. SINGLA: What was the citation again?

14 COURT: What's that?

15 MR. SINGLA: What was the citation again?

16 COURT: 168 Wn.2d 645.

17 Still on page 649, it says, "The trial court  
18 understood Rhone's statement to be a Batson challenge," and  
19 the defense counsel informed the court that Rhone was  
20 requesting a new jury pool. And then it says footnote 1 --  
21 and this is the key statement. You're welcome to look it  
22 up, but here it is word for word: "Roan's challenge was made  
23 after Juror 19 was dismissed and the jury panel was sworn  
24 in." Which is exceedingly similar to what we have here.  
25 "Accordingly, had the trial court concluded that the

1 prosecutor's challenge of 19 was discriminatory, Juror 19  
2 would be unable to be reinstated into the jury pool.  
3 Rather, the trial court would be required to dismiss the  
4 entire jury, declare a mistrial, and reopen voir dire with a  
5 new jury pool."

6 That's a State Supreme Court case from 2010. It's  
7 the closest thing that I was able to find and the only thing  
8 that has been presented -- it's the closest thing I was able  
9 to find and neither side has presented anything that's even  
10 close to, as on point as that case and that footnote.

11 I did also find in other states different rules.  
12 In Utah, for example, I found 289 Pacific 3d 591, State v.  
13 Harris. There's a section here at headnotes 4 and 5 saying  
14 "A Batson challenge must be raised in such a manner that the  
15 trial court is able to fashion a remedy in the event a  
16 Batson violation has occurred. This entails a critical  
17 timing element. The objecting party must raise and press  
18 his challenge before the jury is sworn and the venire  
19 dismissed."

20 I was able to find other cases, other states' laws  
21 that said you have to raise it before the jury is sworn in  
22 and the panel is dismissed and other states' laws that seem  
23 to say it's a manifest constitutional error, it can be  
24 raised at any time, even for the first time on appeal. I  
25 couldn't find anything in Washington other than Rhone and

1 Rule 2.5 of the Rules of Appellate Procedure, which led me  
2 to believe that there is no waiver in Washington.

3 Unless there's some other argument or authority  
4 either side would like to present on the waiver issue, I'm  
5 prepared to rule.

6 MR. SINGLA: No, Your Honor.

7 MR. SCHWARZ: Nothing further, Your Honor.

8 COURT: There is no waiver in Washington. The  
9 issue is not waived. I personally think that is a very bad  
10 and dangerous rule because it allows an attorney, not just  
11 defense attorneys, prosecutors, civil attorneys, etcetera,  
12 to see an issue, not object to it, leave it, and then raise  
13 it on appeal. And not only does that create a problem  
14 because then you can have the whole trial thrown out when  
15 there is a remedy if it's raised timely. The juror cannot  
16 be excused. That happens in Utah and in other states. But  
17 also because the record isn't clear if this raised for the  
18 first time on appeal because then the prosecutor is no  
19 longer here, it's a documentary review, and the prosecutor  
20 might have had a race neutral reason. May not have, but  
21 there's no way to know that.

22 Also, I've been spending a lot of time thinking  
23 about this in the last 12 or 15 hours. If this challenge  
24 had been made in what I considered, not what the case law  
25 does, but before the jury was sworn and the panel dismissed,

1 a lot of things could have happened. For example, we could  
2 have made a more accurate racial demographic picture of the  
3 jury for the record, which we really don't know. I think  
4 all three of us have sort of agreed we're not totally sure  
5 of the racial makeup of the jury.

6 Additionally, I can imagine a situation where I  
7 would allow further questioning of a specific juror after a  
8 Batson challenge but before the court made its ruling. I  
9 can also imagine situations where that wouldn't happen. But  
10 the court has been deprived of the ability to get further  
11 relevant information on the challenge. That's my pitch in  
12 case this case is appealed for a higher court to make a very  
13 clear rule so that we don't end up in this situation again.  
14 That said, it's not my decision; it's the Court of Appeals'  
15 decision. And the Supreme Court seems to say there is no  
16 waiver, so there is no waiver in this case. The issue is  
17 ripe.

18 The next question, Mr. Singla, is has the defense  
19 made a prima facie showing.

20 MR. SINGLA: Your Honor, I believe that the Batson  
21 case stood for the proposition that there needed to be a  
22 pattern or practice of discrimination in peremptory  
23 challenges as in one by one, people of color were being  
24 eliminated by the government. I don't think that, based  
25 upon the mere exclusion of the particular juror in question,

1 and I believe that's Juror No. 5, that pattern and practice  
2 has been shown. And again, we're trying to recreate the  
3 record not really knowing who was on the venire and trying  
4 to remember who was on the venire, this being the second  
5 panel. I don't think that has been shown.

6 If the court does find that there is a pattern and  
7 practice, the City is prepared to present a race neutral  
8 reason for eliminating Juror No. 5.

9 COURT: Alright. A couple of things come to mind,  
10 and I don't mean to presume what will be relevant to a  
11 higher court or relevant to the attorneys or Mr. Erickson.

12 Mr. Singla, I wanted to make sure you had the  
13 opportunity to state your own background on the record as  
14 the allegations are being made against you. You don't have  
15 to if you don't wish to.

16 MR. SINGLA: That's fine, Your Honor. I am an  
17 immigrant to this country. I came here from India when I  
18 was 12 years old. I grew up here in eastern Washington in a  
19 racially mixed community and I attended both Washington  
20 State University and the University of Washington.

21 COURT: And you identify as a racial minority or as  
22 a nonwhite or white person?

23 MR. SINGLA: I identify myself as an East Indian.

24 COURT: And I am, I can rule on whether the defense  
25 has met its prima facie burden, but this issue seems to be

1 ripe, and so I want to make sure the City has a chance to  
2 make a record, if you'd like to, on whether or not, or  
3 excuse me, or on what your race neutral reason is if  
4 somebody doesn't agree with my ruling on the first issue.  
5 Again, you don't have to.

6 MR. SINGLA: Sure, Your Honor.

7 COURT: It's your call if you want to make that.

8 MR. SINGLA: I think it would be appropriate to  
9 perfect the record at this point.

10 We went into an extensive discussion, specifically  
11 with Juror No. 5. I had asked the question if anybody had  
12 been in an argument or a disagreement or talked back to the  
13 officers. Juror No. 5 had specifically said that there was  
14 an incident where he was stopped and he was temporarily  
15 detained by the officers. He was argumentative in the sense  
16 that he asked them why they were being stopped. They told  
17 him they were being stopped because there was a robbery and  
18 he met the description. He asked the officers for the  
19 description. The officers didn't provide a description.  
20 They asked for his ID. He provided that ID and thereafter,  
21 he was let go. And he said that he felt embarrassed and  
22 angry by, by that and he felt that was appropriate to push  
23 back and argue.

24 The charge here, the second charge is that of  
25 resisting arrest, somebody resisting arrest when officers

1 have probable cause to effect an arrest. The City believes  
2 that that particular incident specifically with Juror No. 5  
3 may make him impartial were he to hear the facts in this  
4 case. And that's the reason that the City exercised its  
5 peremptory challenge, not for cause, but its peremptory  
6 challenge to exclude Juror No. 5.

7 COURT: Thank you.

8 Does the defense wish to make any other statements,  
9 arguments, or respond in any way?

10 MR. SCHWARZ: Your Honor, I don't have any further  
11 comments. I believe Mr. Erickson has something he'd like to  
12 say, if I could have just one moment.

13 COURT: Alright. You speak for Mr. Erickson. You  
14 represent him, so --

15 MR. SCHWARZ: Yes, Your Honor.

16 COURT: -- I'll need to understand why.

17 MR. SCHWARZ: If I could.

18 COURT: Go ahead.

19 (Pause)

20 MR. SCHWARZ: Your Honor, I think what I'd like to  
21 address, and I think it would address some of Mr. Erickson's  
22 concerns as well. I think Batson, the concept of Batson has  
23 to do with cognizable racial groups rather than minorities  
24 versus white people and minorities versus non-minorities.  
25 So in this case, there was, to the best of my recollection,

1 one black man on the jury and he was stricken. Therefore,  
2 it's not a situation where there are multiple people of the  
3 same cognizable group and thus a pattern could be detected  
4 from those people. It's a situation where there's only one  
5 person in that, in that group and therefore, we have to do  
6 our best to make a decision as to whether there is such a  
7 pattern based on that one piece of information rather than  
8 numerous pieces of information.

9 And I think Mr. Erickson would like to also just  
10 reemphasize his previous concerns regarding having a jury of  
11 his peers. He previously mentioned, or I mentioned on his  
12 behalf, that on the first panel there weren't any black  
13 members of the jury. On the second panel, there was only  
14 one. And now that person has been stricken.

15 And if I could have just one moment to make sure  
16 that I've adequately expressed Mr. Erickson's concerns.

17 (Pause)

18 MR. SCHWARZ: And, and finally, that there are  
19 other people on the panel who had experiences with the  
20 police who were not probed, were not questioned, were not  
21 probed to the same extent and therefore we don't know as  
22 much about their experiences. Obviously that's, I'm  
23 expressing Mr. Erickson's feeling and I am partly to blame  
24 for any lack of questioning of, of certain people. But  
25 that's, in this case, it happens that the one black person

1 also had an experience that was relevant to this case and he  
2 was dismissed from this jury.

3 Thank you, Your Honor.

4 COURT: Thank you.

5 Alright. First, I want the record to reflect what  
6 I believe to be the case. I don't know that I can take  
7 judicial notice, but it seems to be undisputed; Juror No. 5  
8 in my mind was clearly an African American male. It was not  
9 a situation as is often the case and as is with some of the  
10 other jurors on the panel where I cannot tell what their  
11 background is, what their heritage is. He seemed to be a  
12 dark-skinned African American male. But I do not agree with  
13 the defense proposition that he was necessarily the only  
14 African American on the jury as I do have a memory of  
15 someone else -- again, having been deprived of the  
16 opportunity to make the record, and there's just no way to  
17 do it realistically, forget procedurally or legally -- that  
18 there were people on there who were I believe of color, but  
19 I can't say exactly where. It's very difficult.

20 And I actually have tried to do that for a year.  
21 As you know, I've been working, I assume you both know, I've  
22 been working on this project trying to get a more diverse  
23 jury pool for all of Washington. And I spent a year  
24 tracking jurors and keeping a spreadsheet of what  
25 background, what race, what gender. There were a number of

1 different categories. And in that process, I became very  
2 aware that it's not very easy to track. I would see  
3 somebody and I couldn't tell.

4           Second, Mr. Schwarz, you indicated in your argument  
5 that this one strike indicates a pattern, which is almost  
6 impossible. According to the defense, -- which again, I  
7 don't agree with. I don't disagree with either; it's an  
8 unknown situation we're in. There was a strike against an  
9 African American male. But that doesn't establish a  
10 pattern. And you indicate that it doesn't matter what the  
11 other backgrounds of the jurors are, it's constitutionally  
12 cognizable groups. But we understand the process, you know,  
13 people who have been in a protected class at some point, or  
14 could be considered a protected class.

15           In light of the makeup of this jury as I understand  
16 it now, which is not complete, but it involves the panel,  
17 Juror No. 2, Mr. Metuacha, clearly to me seems to be of a  
18 protected class. I could guess he might be Polynesian of  
19 some sort, or Hawaiian. I'm not exactly sure. It's not my  
20 point to guess. My point is that he is constitutionally  
21 protected. Julie Chen appears to me to also be  
22 constitutionally protected. She was on the panel. And  
23 Estevan Hernandez. I don't remember Anne Toda and I do  
24 believe Mr. Teodoro Geronimo, No. 17, also likely was in a  
25 protected class.

1           Of note, the City only struck one person, Juror No.  
2 5, that I've been able to identify as in a protected class,  
3 and I haven't heard any argument to the contrary. And in  
4 fact, Jurors No. 2, No. 14 and -- excuse me -- No. 2, No.  
5 11, and No. 12 are all seated on the jury. Neither side  
6 struck them. And No. 17, who I do remember as being in a  
7 protected class, nobody struck him. He didn't make it onto  
8 the jury, but that had nothing to do with his situation  
9 except that he was sitting in the back and he was Juror No.  
10 17. We didn't need that many jurors. Again, I don't  
11 remember Anne Toda.

12           So when I look at striking one juror who was  
13 African American in light of the facts that I know, which is  
14 I know there were, there was a diverse jury. And I don't  
15 know if there were any other African American jurors on the  
16 panel. I can't establish a pattern. I don't believe that  
17 the defense has shown a prima facie case, made a prima facie  
18 showing that the City acted in a non-race neutral manner.

19           And I agree with the defense, Mr. Schwarz. Some  
20 cases seem to indicate that one strike is enough. Other  
21 cases indicate that it might not be. What I know is that in  
22 this case, using my discretion -- and I'll note for Mr.  
23 Erickson especially, I believe I'm the only judge in this  
24 building that has ever granted a Batson challenge, against a  
25 different City attorney. In this case, I just don't see it.

1 There was one strike. There were many other opportunities  
2 to influence the racial makeup of the jury, the gender  
3 makeup of the jury, and I can't see any pattern at all as to  
4 any of that. And so based on that, I find the defense  
5 hasn't even met the threshold showing and I deny the defense  
6 motion for a Batson challenge.

7 That said, I also want the record to be clear that  
8 it's my belief that there is a remedy under Rhone and that  
9 this situation has not backed me into a corner, if you will.  
10 I think that's important. It's my belief here today that if  
11 I thought that there was a prima facie showing and if I  
12 thought there was not a race neutral reason, that there  
13 would be a remedy, and that would be a mistrial per Rhone  
14 and we would start over a third time. I don't feel like I'm  
15 in a corner because I have that as an option. I just don't  
16 think legally that the defense has met its burden.

17 So with that, I believe we finally about 30 seconds  
18 ago got our last juror. Is that right? Alright, great. So  
19 unless there's anything else that you want to discuss, I'm  
20 prepared to instruct the jury and begin opening statements.

21 MR. SCHWARZ: Could I -- Your Honor, if I could  
22 just have approximately 30 seconds to consult with Mr.  
23 Singla regarding scheduling issues.

24 COURT: Go ahead.

25 (Pause)