

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
7/10/2019 4:19 PM  
BY SUSAN L. CARLSON  
CLERK

Supreme Court No. 97419-5  
(COA No. 78460-9-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

---

STATE OF WASHINGTON,

Respondent,

v.

LEVI STAPLES,

Petitioner.

---

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

---

MOTION FOR DISCRETIONARY REVIEW

---

Devon Knowles  
Attorney for Appellant

WASHINGTON APPELLATE PROJECT  
1511 Third Avenue, Suite 701  
Seattle, Washington 98101  
(206) 587-2711

**TABLE OF CONTENTS**

**A. IDENTITY OF PETITIONER ..... 1**

**B. OPINION BELOW ..... 1**

**C. ISSUE PRESENTED FOR REVIEW..... 1**

**D. STATEMENT OF THE CASE..... 2**

**E. ARGUMENT ..... 3**

The Court of Appeals’ decision unnecessarily denied Mr.  
Staples relief without a hearing on the merits and sanctioned an  
ongoing violation of article I, section 10. .... 3

**F. CONCLUSION..... 7**

**TABLE OF AUTHORITIES**

**Washington Constitution**

Const. art. I, § 10..... 1, 3, 4, 6

**Washington Supreme Court**

*Allied Daily Newspapers of Washington v. Eikenberry*, 121 Wn.2d 205,  
848 P.2d 1258 (1993)..... 5

*Doe G. v. Department of Corrections*, 190 Wn.2d 185, 410 P.3d 1156  
(2018)..... 5

*Hundtofte v. Encarnacion*, 181 Wn.2d 1, 330 P.3d 168 (2014) ..... 4, 5

*Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982) .. passim

**Rules**

GR 15 ..... 4

RAP 1.2..... 6

RAP 13.4..... 1

RAP 13.5..... 1, 2, 6, 7

RAP 9.10..... 6

## **A. IDENTITY OF PETITIONER**

Pursuant to RAP 13.5, Petitioner, Levi Staples, moves this Court to accept review of the Court of Appeals opinion designated in Part B. A copy of the opinion is attached.

## **B. OPINION BELOW**

Mr. Staples respectfully requests this Court review the Court of Appeals Opinion, dated June 12, 2019, denying Mr. Staples' Motion to Modify Commissioner Kanazawa's March 28, 2019 ruling referring Mr. Staples' Motion to Strike Respondent's Brief to the panel considering the appeal.

## **C. ISSUE PRESENTED FOR REVIEW**

Article I, section 10 of the Washington Constitution guarantees that "justice in all cases shall be administered openly." Const. art. I, § 10. Courts may not authorize the redaction or sealing of court documents without engaging in an on-the-record analysis as outlined in *Seattle Times Co. v. Ishikawa*. The Respondent in this case, like the trial court, unilaterally decided to redact the identity of the adult alleged-victim, Ana Prado, in court documents. When Mr. Staples sought to strike the Respondent's brief as a violation of article I, section 10, the Commissioner referred the issue to the panel considering Mr. Staples substantive appeal. Where the Court of Appeals' decision denies Mr. Staples relief without a

hearing on the merits and sanctions on ongoing violation of article I, section 10, should this Court accept review pursuant to RAP 13.5?

#### **D. STATEMENT OF THE CASE**

On January 22, 2019, Mr. Staples filed Appellant’s Opening Brief, appealing his conviction for indecent liberties, in which Ana Prado was the alleged victim. Although Ms. Prado was nearly 30 years old at the time of trial, her name was redacted in all court records, including the jury instructions. In his appeal, Ms. Staples argues that, *inter alia*, without a motion or the requisite analysis under *Seattle Times Co. v. Ishikawa*,<sup>1</sup> the redaction violated article I, section 10 of the Washington Constitution.

---

<sup>1</sup> *Seattle Times Co. v. Ishikawa*, 97 Wn.2d 30, 640 P.2d 716 (1982). Under *Ishikawa*, prior to sealing court records, the court must consider the following:

1. The proponent of closure or sealing must show the need for doing so, stating as specifically as possible the rights or interests at stake and where that need is based on a right other than an accused’s right to a fair trial, the proponent must show a “serious and imminent threat” to those rights of interests.
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.
4. The court must weigh the competing interests of the proponent of closure and the public.
5. The order must be no broader in its application or duration than necessary to serve its purpose.

*Id.* at 37-39.

The State filed the Brief of Respondent on March 20, 2019. In its brief, the State redacted Ms. Prado's name, using her initials throughout the court document. The State did not move for an *Ishikawa* hearing and no court authorized the State's redaction of court records.

On March 21, 2019, Mr. Staples moved to strike Respondent's brief as a violation of article I, section 10 pending an *Ishikawa* hearing. In the alternative, Mr. Staples did not object to the State filing an amended, un-redacted brief that complies with article I, section 10. The State filed a response to the motion and Mr. Staples filed a reply. On March 28, 2019, without considering the arguments raised by Mr. Staples, Commissioner Kanazawa referred the motion to the panel that will consider Mr. Staples' appeal. The Court of Appeals subsequent denied Mr. Staples' Motion to Modify the Commissioner's ruling, effectively denying Mr. Staples relief without a hearing on the merits.

#### **E. ARGUMENT**

The Court of Appeals' decision unnecessarily denied Mr. Staples relief without a hearing on the merits and sanctioned an ongoing violation of article I, section 10.

The Commissioner erred in referring Mr. Staples Motion to Strike Respondent's Brief to the panel pending consideration of his appeal as (1) the State's brief constitutes an independent violation of article I, section 10 that can and should be decided separately from the merits of Mr. Staples'

appeal; (2) delaying a decision on the motion effectively denies relief without a hearing on the merits; and (3) delaying a decision condones a continued violation of article I, section 10.

There is no question that the State independently and blatantly violated article I, section 10 when it filed a redacted court document absent a motion pursuant to GR 15 and without court authorization following an *Ishikawa* hearing. The redaction of court documents implicates the open administration of justice guaranteed under article I, section 10 of the Washington Constitution. Const. art. I, § 10; *Hundtofte v. Encarnacion*, 181 Wn.2d 1, 7, 330 P.3d 168 (2014). A court record may be redacted or sealed only after a court “enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety concerns that outweigh the public interest in access to the court record.” GR 15(c)(2); *Hundtofte*, 181 Wn.2d at 6. Under GR 15, there is no legal difference in redacting and sealing a court record. GR 15(4); *see Hundtofte*, 181 Wn.2d at 6. Nor is there any exception for documents filed in appellate court. *See* GR 15 (rules on redaction apply to all court records).

It is well-settled that the names of litigants or alleged victims in court documents are encompassed by article I, section 10 and subject to an *Ishikawa* analysis. *Allied Daily Newspapers of Washington v. Eikenberry*,

121 Wn.2d 205, 848 P.2d 1258 (1993) (portion of statute requiring courts to preclude disclosure of identity of all child victims of sexual assault violation of article I, section 10); *Doe G. v. Department of Corrections*, 190 Wn.2d 185, 410 P.3d 1156 (2018) (trial court was required to apply *Ishikawa* framework before allowing litigants seeking to preclude release of SSOSA evaluations to proceed in pseudonym).

In this case, there was no need to delay decision on Mr. Staples' motion to strike. Although related to the arguments on appeal, a ruling on Mr. Staples' motion to strike the Respondent's brief can be made separately from a ruling on the merits of the underlying appeal. Mr. Staples' assigned errors on appeal extend beyond the article I, section 10 violation. More importantly, there are significant differences that compel the instant issue to be decided separately from the arguments on appeal, including the records on review and the party bearing the burden: in his appeal, Mr. Staples must show that a closure occurred, whereas it is currently the State's burden to show redaction is necessary after an *Ishikawa* hearing. *Hundtofte*, 181 Wn.2d at 7 (“[T] party seeking to seal court records ‘must make some showing of the need therefor.’”) (quoting *Ishikawa*, 97 Wn.2d at 37).

Moreover, referring Mr. Staples' motion to the panel deciding his appeal was akin to denying relief. The Rules of Appellate Procedure favor

decisions on the merits. *See* RAP 1.2(a); RAP 9.10. In considering the arguments on appeal, the panel will necessarily consider the substance of the Respondent's brief. The only alternatives would be a last-minute striking of the brief pending an *Ishikawa* hearing, a last-minute order to refile the brief using Ms. Prado's full name, or a refusal to consider the brief altogether given its constitutional deficiency. Mr. Staples' motion to strike should be considered on its merits; delaying a ruling until his appeal is under consideration will either deny him this relief or hinder the effective administration of justice.

Finally, under the Court of Appeals' decision, the violation of the public's right to the open administration of justice is ongoing. The redaction is endemic to the Respondent's brief. Although an *Ishikawa* hearing may ultimately result in the State's ability to redact Ms. Prado's name, article I, section 10 demands a hearing before this can occur. Absent the requisite analysis, the State's executive decision to file a redacted court document without court approval remains a violation of court rules and article I, section 10, and is contrary to Washington caselaw.<sup>2</sup> Accordingly, this Court should accept review pursuant to RAP 13.5.

---

<sup>2</sup> Again, should the State decide to forgo an *Ishikawa* hearing, Appellant does not object to the State filing an amended brief using Ms. Prado's full name.

## F. CONCLUSION

The Respondent's brief was filed in violation of article I, section 10. When Mr. Staples attempted to correct the issue, he was denied relief without a hearing on the merits. As a result, the violation persists. Mr. Staples respectfully requests that this Court grant review under RAP 13.5.

DATED this 10<sup>th</sup> day of July, 2019.

Respectfully submitted,

s/Devon Knowles

WSBA No. 39153

Washington Appellate Project

1511 Third Avenue, Suite 610

Seattle, Washington 98101

Telephone: (206) 587-2711

Email: [devon@washapp.org](mailto:devon@washapp.org)

## DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, a true copy of the **Motion for Discretionary Review** was filed in the **Washington State Supreme Court** under **Court of Appeals Case No. 78460-9-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

respondent Gavriel Jacobs, DPA  
[PAOAppellateUnitMail@kingcounty.gov]  
[gavriel.jacobs@kingcounty.gov]  
King County Prosecutor's Office-Appellate Unit

petitioner

Attorney for other party

  
MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

Date: July 10, 2019

# WASHINGTON APPELLATE PROJECT

July 10, 2019 - 4:19 PM

## Filing Motion for Discretionary Review of Court of Appeals

### Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** Case Initiation  
**Appellate Court Case Title:** State of Washington, Respondent v. Levi Querilla Staples, Jr., Appellant (784609)

#### The following documents have been uploaded:

- DCA\_Motion\_Discretionary\_Rvw\_of\_COA\_20190710161916SC830497\_2620.pdf  
This File Contains:  
Motion for Discretionary Review of Court of Appeals  
*The Original File Name was washapp.071019-01.pdf*

#### A copy of the uploaded files will be sent to:

- gaviel.jacobs@kingcounty.gov
- paoappellateunitmail@kingcounty.gov

#### Comments:

---

Sender Name: MARIA RILEY - Email: maria@washapp.org

**Filing on Behalf of:** Devon Carroll Knowles - Email: devon@washapp.org (Alternate Email: wapofficemail@washapp.org)

Address:  
1511 3RD AVE STE 610  
SEATTLE, WA, 98101  
Phone: (206) 587-2711

**Note: The Filing Id is 20190710161916SC830497**