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NO. 63122-5-I

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

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In re Detention of Calvin Ticeson,

STATE OF WASHINGTON,

Respondent,

v.

CALVIN TICESON,

Appellant.

2010 MAR 23 PM 3:14  
FILED  
CLERK OF COURT  
JULIE A. HARRIS

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

The Honorable Catherine Shaffer, Judge

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REPLY BRIEF OF APPELLANT

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A. ARGUMENTS IN REPLY

1. TICESON MAY CHALLENGE THE FAILURE TO GIVE A UNANIMITY INSTRUCTION FOR THE FIRST TIME ON APPEAL.

The state maintains Ticeson waived his objection to the failure to give a unanimity instruction because he did not request the instruction at trial. Brief of Respondent (BOR) at 17-23. Ticeson urges this Court to reject the state's claim.

The failure to give a proper unanimity instruction may be raised for the first time on appeal because it is an error of constitutional magnitude. State v. Crane, 116 Wn.2d 315, 325, 804 P.2d 10, cert. denied, 501 U.S. 1237 (1991); State v. Gitchel, 41 Wn. App. 820, 822, 706 P.2d 1091, review denied, 105 Wn.2d 1003 (1985). The same rule applies in RCW 71.09 cases. In re Detention of Sease, 149 Wn. App. 66, 75, 201 P.3d 1078, review denied, 166 Wn.2d 1029 (2009).

The state argues Sease was wrongly decided for several reasons. First, according to the state, Sease did not consider CR 51(f), "which placed an affirmative duty on Ticeson to argue any claimed instructional error before the trial court." BOR at 21. That rule, however placed no such duty on Ticeson:

Before instructing the jury, the court shall supply counsel with copies of its proposed instructions which shall be numbered. Counsel shall then be afforded an opportunity in the absence of the

jury to make objections to the giving of any instruction and to the refusal to give a requested instruction. The objector shall state distinctly the matter to which he objects and the grounds of his objection, specifying the number, paragraph or particular part of the instruction to be given or refused and to which objection is made.

CR 51(f).

In fact, CR 51(f) is essentially identical to its criminal counterpart, which provides:

Before instructing the jury, the court shall supply counsel with copies of the proposed numbered instructions, verdict and special finding forms. The court shall afford to counsel an opportunity in the absence of the jury to object to the giving of any instructions and the refusal to give a requested instruction or submission of a verdict or special finding form. The party objecting shall state the reasons for the objection, specifying the number, paragraph, and particular part of the instruction to be given or refused. The court shall provide counsel for each party with a copy of the instructions in their final form.

CrR 6.15(c).

CrR 6.15(c) does not forbid a party from challenging asserting certain instructional error for the first time on appeal where it results in error of manifest constitutional magnitude. RAP 2.5(a)(3); State v. Salas, 127 Wn.2d 173, 181-83, 897 P.2d 1246 (1995). Instructional errors that constitute manifest constitutional error include directing a verdict, shifting the burden of proof, and failing to require a unanimous verdict. State v. O'Hara, 167 Wn.2d 91, 100-01, 217 P.3d 756 (2009); see also State v. Watkins, 136 Wn. App. 240, 244, 148 P.3d 1112 (2006) ("unanimity

instruction that does not adequately inform the jury of the applicable law violates a defendant's constitutional right to a unanimous jury verdict."), review denied, 161 Wn.2d 1028 (2007), cert. denied, 128 S. Ct. 1707 (2008).

Despite CR 51(f), RAP 2.5(a)(3) applies to civil appeals as well. See Richmond v. Thompson, 130 Wn.2d 368, 385, 922 P.2d 1343 (1996) (instructions not objected to at trial become law of the case and will not be addressed on appeal unless issue implicates manifest error affecting constitutional right. RAP 2.5(a)); Falk v. Keene Corp., 113 Wn.2d 645, 659, 782 P.2d 974 (1989) ("appellate court has inherent authority to consider issues which the parties have not raised if doing so is necessary to a proper decision"); RAP 1.1(e) (each rule applies to both civil and criminal actions, unless a different application is intended).

This authority renders futile the state's attempt to take refuge in CR 51(f). In so doing, the state makes a distinction without a difference because the criminal counterpart is identical and comes with the same constitutional exception. As Sease makes clear, the failure to object to the lack of a unanimity instruction does not waive the error. Ticeson therefore requests that this court address his argument that he was deprived the right to the right to jury unanimity.

The state responds to this assertion by claiming that unlike the constitutional source of the criminal right to jury unanimity, the source in civil proceedings resides in RCW 71.09.060(1), which provides in pertinent part, "When the determination [whether the person qualified for RCW 71.09 commitment] is made by a jury, the verdict must be unanimous." As such, the failure to give a unanimity instruction is not an error of manifest constitutional magnitude. BOR at 22-23.

The state's assertion exalts form over substance. As explained by our Supreme Court, "[b]ecause the ultimate due process concern is in ensuring the jury unanimously agrees on the basis for confinement, constitutional unanimity rules are applicable in SVP cases." In re Detention of Halgren, 156 Wn.2d 795, 809, 132 P.3d 714 (2006). And in both criminal and RCW 71.09 cases, the jury operates under a constitutionally prescribed unanimity requirement. Id. Principles regarding the right to a unanimous jury verdict in criminal cases apply as well to RCW 71.09 civil commitment hearings. In re Detention of Keeney, 141 Wn. App. 318, 327, 169 P.3d 852 (2007).

Failing to give a unanimity instruction in Ticeson's trial invaded the fundamental due process right to a unanimous jury verdict. See State v. Becker, 132 Wn.2d 54, 64, 935 P.2d 1321 (1997) (absent a trial objection, "an appellate court will consider a claimed error in an

instruction if giving such an instruction invades a fundamental right of the accused."). A constitutional error is "manifest" if it had "practical and identifiable consequences in the trial of the case." State v. Roberts, 142 Wn.2d 471, 500, 14 P.3d 713 (2000) (citation and internal quotation marks omitted).

Furthermore, an instructional error infringing upon a defendant's constitutional rights is presumed prejudicial, and the state has the burden of proving the error was harmless. State v. Miller, 131 Wn.2d 78, 90, 929 P.2d 372 (1997); State v. Belmarez, 101 Wn.2d 212, 216, 676 P.2d 492 (1984). The error cannot be declared harmless unless it was harmless beyond a reasonable doubt. Miller, 131 Wn.2d at 90; Belmarez, 101 Wn.2d at 216.

Relying on In re Detention of Pouncy,<sup>1</sup> the state next maintains there is no unanimity issue in Ticeson's case because the evidence was sufficient to prove both alternative mental means – mental abnormality (paraphilia NOS-NC) and personality disorder NOS. BOR at 25-26. The

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<sup>1</sup> 144 Wn. App. 609, 620, 184 P.3d 651 (2008) ("Where a rational trier of fact could have found beyond a reasonable doubt that Pouncy suffered from both a mental abnormality and a personality disorder, Pouncy's constitutional right to jury unanimity was not violated."), affd. \_\_ Wn.2d \_\_, \_\_ P.3d \_\_ (2010).

state contends that is all the state must prove under the "mental condition" element of RCW 71.09.020.

RCW 71.09.020(18) defines "sexually violent predator" and thereby provides the elements the state must prove beyond a doubt.<sup>2</sup> Those elements are: (1) that the respondent had been convicted of or charged with a crime of sexual violence; (2) that the respondent suffers from a mental abnormality or personality disorder; and (3) that such mental abnormality or personality disorder makes the respondent likely to engage in predatory acts of sexual violence if not confined in a secure facility. In re Detention of Audett, 158 Wn.2d 712, 727, 147 P.3d 982 (2006).

Ticeson contends that merely proving he might suffer from both a mental abnormality and a personal disorder does not alleviate the unanimity problem. Instead, the abnormality and/or personality disorder must make it difficult to control behavior, just as the court told the jury. Ticeson bases his argument primarily on the wording of the second element of the trial court's "to-commit" instruction, which requires the state to prove beyond a reasonable doubt that he "suffers from a mental

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<sup>2</sup> When the state filed the petition for commitment in April 2003, the definition was enumerated as RCW 71.09.020(16). Though the statute has been amended several times, the definition of "sexually violent predator" has remained unchanged. Hence the citation to the current provision, RCW 71.09.020(18).

abnormality and/or personality disorder which causes serious difficulty in controlling his sexually violent behavior." Brief of Appellant (BOA) at 20-23; CP 338 (instruction 5), attached as appendix.

Specifically, Ticeson wrote, "The state may have linked Ticeson's paraphilia with difficulty controlling sexually violent behavior, but it failed to make this link between personality disorder NOS, with antisocial traits, with a lack of volitional control. Judd offered no testimony to establish this link, which is required under element two as discussed above." BOA at 22-23.

Contrary to the state's contention, Ticeson does not seek to "greatly expand established doctrines relating to the unanimity of juries" in RCW 71.09 proceedings. BOR at p. 0. Rather, Ticeson contends that when there is evidence to establish both a mental abnormality and a personality disorder, the trial court must instruct the jury it must be unanimous as to which "mental illness" that causes difficulty in behavioral control. This is consistent with the reading of the second element of the to-commit instruction. Because the jury gave no unanimity instruction, it is possible some jurors concluded – without sufficient proof – that Ticeson's personality disorder caused his lack of control. This danger warrants a reversal of the trial court's commitment order and remand for a new trial.

2. THE TRIAL COURT UNLAWFULLY CLOSED PORTIONS OF THE TRIAL TO THE PUBLIC.

Ticeson contends in-chambers arguments about the admissibility of parts of certain depositions violated constitutional prohibitions against private proceedings. In response, the state maintains Ticeson (1) lacks standing to invoke the public's right to open court proceedings; (2) waived the issue by failing to object during trial; (3) had no right to be present; and (4) objects to proceedings that were too trivial to offend the constitution. BOR 40-56. For several reasons, the state's response is not persuasive.

Preliminarily, there appear to be two factual misunderstandings. First, Ticeson bases his argument primarily on a private, off-the-record session in which the parties discussed Tedra Howard's deposition. BOA at 16, 27.<sup>3</sup> The session came to light at the beginning of court on February 4, 2009, when the court announced:

We held a conference in chambers with Ms. Murray for the State and Ms. Paulsen for Mr. Ticeson. We talked about the deposition of Tedra Howard and the Court made rulings on the noted defense objections. And the State also agreed to strike a number of items that the defense had objected to.

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<sup>3</sup> Howard appeared on Exhibit 127, the state's "timeline," as having been assaulted by Ticeson in 1991. State's expert witness Dr. Judd briefly discussed the incident involving Howard. RP (2/4/2009) 48-49.

RP (2/4/2009) 2.

The state did not mention this private proceeding in its brief, the specifics of which were never put on the record.

Second, the state mistakenly refers to State v. Wise<sup>4</sup> as an RCW 71.09 case. It is not. Wise appealed from convictions for second degree burglary and first degree theft. Wise, 148 Wn. App. at 430.

Those matters pointed out, it must be remembered that both civil and criminal proceedings are open to the public.<sup>5</sup> Article I, section 10 of the Washington Constitution requires that “[j]ustice in all cases shall be administered openly, and without unnecessary delay.” See Allied Daily Newspapers of Washington v. Eikenberry, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993) (“[I]t is the right of the people to access open courts where they may freely observe the administration of civil and criminal justice.”); Cohen v. Everett City Council, 85 Wn.2d 385, 388, 535 P.2d 801 (1975) (“our constitution mandates an open public trial in a civil case”). Washington's Supreme Court has applied this constitutional provision “without exception” to preclude trial courts from automatically closing

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<sup>4</sup> 148 Wn. App. 425, 200 P.3d 266 (2009), petition for review pending.

<sup>5</sup> Article I, section 22 provides in pertinent part as follows: “In criminal prosecutions the accused shall have the right . . . to have a speedy public trial by an impartial jury[.]”

their proceedings to the public. In re Detention of D.F.F., 144 Wn. App. 214, 217, 183 P.3d 302, review granted, 164 Wn.2d 1034 (2008).

RCW 71.09 proceedings are open to the public. In re Detention of Campbell, 139 Wn.2d 341, 355, 986 P.2d 771 (1999), cert. denied, 531 U.S. 1125 (2001). The information disseminated in RCW 71.09 proceedings is of particular interest to the public: "The specific modus operandi of sex offenders, preying on vulnerable strangers or grooming potential victims, is markedly different from the behavior of other types of persons civilly committed and such dangerous behavior creates a need for disclosure of information about convicted sex offenders to the public." Campbell, 139 Wn.2d at 355. Indeed, Tedra Howard, whose deposition was dissected in private, was one of those "vulnerable strangers" to whom the Campbell Court referred.<sup>6</sup>

With respect to the state's standing claim, Ticeson emphasizes that although a criminal defendant's right to a public trial and the public's right to open access to court proceedings are different, they serve

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<sup>6</sup> In Campbell, the state argued for open proceedings in RCW 71.09 trials. In Ticeson's case, however, the state defends the trial court's use of private proceedings at which it made admissibility rulings regarding an important deposition. See Haslett v. Planck, 140 Wn. App. 660, 665, 166 P.3d 866 (2007) (doctrine of judicial estoppel "precludes a party from taking incompatible positions to its advantage in successive court proceedings[;]" [t]he doctrine preserves respect for judicial proceedings by avoiding inconsistency and duplicity, and prevents a party from playing "'fast and loose'" with the courts) (citations omitted).

"complementary and interdependent functions in assuring the fairness of our judicial system." State v. Bone-Club, 128 Wn.2d 254, 259, 906 P.2d 325 (1995).

“The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions....”

Bone-Club, 128 Wn.2d at 259 (quoting In re Oliver, 333 U.S. 257, 270 n.25, 68 S. Ct. 499, 92 L. Ed. 682 (1948) (quoting Thomas M. Cooley, Constitutional Limitations 647 (8th ed. 1927)).

In State v. Erickson, the majority disagreed with the dissent’s position Erickson lacked standing to invoke the public’s right to a public trial under article I, section 10. 146 Wn. App. 200, 205-06 n.2, 189 P.3d 245 (2008), petition for review pending. The majority noted that the Bone-Club found article I, section 10 and article I, section 22 “are interdependent means of ensuring the fairness of our judicial system.” Erickson, 146 Wn. App. at 205-06 n.2.<sup>7</sup>

In State v. Duckett, the court rejected the same standing argument, finding “it fails to appreciate the court’s independent obligation to

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<sup>7</sup> The dissenting judge in Erickson wrote for the majority in Wise, where the court held the criminal appellant lacked standing to assert the public’s right of access to court proceedings under article I, section. Wise, 148 Wn.2d at 441-43.

safeguard the open administration of justice.” 141 Wn. App. 797, 804, 173 P.3d 948 (2007). Duckett went on to state the right secured by article I, section 10, which is mandatory, “is fully present even when a defendant asserts only rights under article I, section 22 and the Sixth Amendment[.]” Duckett, 141 Wn. App. at 804.

And as in these criminal cases, article I, section 10 requires a trial court to first apply the Ishikawa<sup>8</sup> factors before closing an RCW 71.05 mental illness commitment proceeding. D.F.F., 144 Wn. App. at 223. This Court in D.F.F. noted the Supreme Court in Easterling<sup>9</sup> held the trial court's action violated the Court's "consistent position of strictly protecting the public's and the press's right to view the administration of justice" guaranteed by article I, section 10. D.F.F., 144 Wn. App. at 223 (quoting Easterling, 157 Wn.2d at 179).

Detainee D.F.F., not a member of the public, invoked the right to a public trial as guaranteed by article I, section 10. This did not stop this Court from finding the trial court unconstitutionally closed the proceeding. Nor should it here.

A litigant generally has no standing to challenge a statute in order to vindicate the constitutional rights of a third party. Mearns v.

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<sup>8</sup> Seattle Times Co. v. Ishikawa, 97 Wn.2d 30, 640 P.2d 716 (1982).

<sup>9</sup> State v. Easterling, 157 Wn.2d 167, 137 P.3d 825 (2006).

Scharbach, 103 Wn. App. 498, 511, 12 P.3d 1048 (2000), review denied, 143 Wn.2d 1011 (2001). The litigant may have standing if (1) the litigant has suffered an injury-in-fact, giving him a sufficiently concrete interest in the outcome of the disputed issue; (2) the litigant has a close relationship to the third party; and (3) there exists some hindrance to the third party's ability to protect his or her own interests. Powers v. Ohio, 499 U.S. 400, 411, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991); Ludwig v. Washington State Dept. of Retirement Systems, 131 Wn. App. 379, 385, 127 P.3d 781 (2006).

Powers is instructive by analogy and this Court adopted its analysis in State v. Burch, 65 Wn. App. 828, 837-38, 830 P.2d 357 (1992). The Supreme Court in Powers held a white criminal defendant had standing to raise the equal protection rights of black venire members who were excluded from jury service through the state's race-based peremptory challenges. 499 U.S. at 415.

The Court first held the white defendant was injured by and had a concrete interest in the racially motivated peremptory challenges because racial discrimination during voir dire casts doubt on the integrity of the proceeding and diminished its fairness. Powers, 499 U.S. at 411. This was particularly harmful because "the jury acts as a vital check against the wrongful exercise of power by the State and its prosecutors." Id.

Second, the Court found the defendant had a close relationship to the excluded prospective jurors because they shared an interest in eliminating racial bias from the courtroom. Powers, 499 U.S. at 413-14. The defendant has much to gain, according to the Court, in proving the jury was wrongly chosen because discrimination in voir dire process may result in reversal of a conviction. Powers, 499 U.S. at 414.

Third, the Court concluded the cost of and difficulty in obtaining injunctive relief compared to the small financial stake involved made it unlikely an excluded venire member would sue for violation of equal protection rights. Powers, 499 U.S. at 414-15.

Similar reasoning justifies an RCW 71.09 detainee's assertion of the article I, section 10 right to open judicial proceedings. First, the public trial right is designed to promote fairness, remind judges and attorneys of the importance of their functions, encourage witnesses to testify, and deter perjury. State v. Strobe, 167 Wn.2d 222, 226, 217 P.3d 310 (2009) (citing State v. Brightman, 155 Wn.2d 506, 514, 122 P.3d 150 (2005)). All participants in the judicial process benefit from open proceedings. Just as the jury does, the public served as a "vital check" on the system. The detainee thus has a concrete interest in opposing closure, which frustrates these purposes and results in injury in fact.

Second, the detainee and the excluded public have a close relationship because of their shared interest in public proceedings and responsible performances of judges, attorneys and witnesses.

Finally, the detainee is in a better position to assert the rights guaranteed by article I, section 10 than is a member of the public, who is obviously not accompanied by counsel and is thus less likely to rise from the gallery and object when a trial judge announces closure of a portion of trial.

The state maintains Ticeson "actually benefited" from the chambers conference because the state withdrew a deposition of a different potential state's witness, Officer Linda Patrick, as a result. BOR at 44. There are several reasons to dismiss this claim. First, as stated, Ticeson primarily relies on an off-the-record discussion of and rulings made on admissibility of a different deposition, of state's witness Tedra Howard. But even as to Patrick's deposition, Ticeson did not "benefit" from the closed proceeding. As the court explained after the lunchtime discussion occurred, Patrick's deposition was withdrawn because most of her statements were hearsay. RP (2/3/2009 – p.m.) 3-4. This result would have been no different had the court and parties discussed the deposition in open court rather than in secret.

For these reasons, this Court should hold Ticeson has standing to assert the right to a public trial under article I, section 10.

Next, the state contends Ticeson waived this issue by not raising it in the trial court. Washington courts have repeatedly rejected this notion of waiver or invited error, and did so again in Strode:

[T]he public trial right is considered an issue of such constitutional magnitude that it may be raised for the first time on appeal. . . . Strode's failure to object to the closure or his counsel's participation in closed questioning of prospective jurors did not, as the dissent suggests, constitute a waiver of his right to a public trial.

Strode, 167 Wn.2d at 229 (citations omitted).

The state also contends the matters occurring in private in Ticeson's trial – discussions as to the admissibility of portions of various depositions – are pretrial discovery procedures and "are not public components of a civil trial." BOR at 41. For this contention the state cites to King v. Olympic Pipeline Co., which held:

We observe again that the article I, section 10 right of access is recognized and implemented by the discovery rules, and thus is subject to limitations authorized by those rules, which may include restrictions on dissemination of private information. So long as it is issued for good cause, a protective order maintaining the confidentiality of pretrial discovery information is not a denial of public access to the courts under article I, section 10.

104 Wn. App. 338, 374, 16 P.3d 45 (2000), review denied, 143 Wn.2d 1012 (2001). One of those discovery rules, CR 26(c), authorizes a trial court to "make any order which justice requires to protect a party or

person from annoyance, embarrassment, oppression, or undue burden or expense," including "that the contents of a deposition not be disclosed or be disclosed in a designated way[.]"

Contrary to the state's claim, this discovery restriction does no harm to Ticeson's argument. Importantly, the state did not move for a protective order to restrict disclosure of the depositions at issue here, and the record indicates no good cause for their closure. Moreover, these restrictions on access to discovery require balancing of interests by the trial court, which is exactly what the well-known Ishikawa factors are designed to do. See Allied Daily Newspapers of Washington v. Eikenberry, 121 Wn.2d 205, 211, 848 P.2d 1258 (1993) ("right of access is not absolute, however, and may be outweighed by some competing interest as determined by the trial court on a case-by-case basis according to the Ishikawa guidelines."). The problem in Ticeson's case is the court did not apply the factors before closing the deposition objections.

The state also maintains the "informal" private discussions did not qualify as "proceedings" that can be characterized as part of trial. The state compares the discussions as sidebars and cites to cases holding a defendant has no right to be present when the subjects discussed are

merely ministerial (arranging for the defendant's haircut) or purely legal matters. BOR at 46-51.<sup>10</sup>

But the public trial right applies to the evidentiary phases of the trial and to other "adversary proceedings." State v. Rivera, 108 Wn. App. 645, 652-53, 32 P.3d 292 (2001), review denied, 146 Wn.2d 1006 (2002). The discussions about the admissibility of the depositions in Ticeson's case were adversarial. The parties discussed the facts contained in the depositions, which were meant to be presented to the jury. Ticeson objected to numerous items in Tedra Howard's deposition, and the trial court made ruling on those objections. RP (2/4/2009) 2. The court noted the parties talked "a lot" about the deposition of Officer Patrick, and there "was a sharp dispute between counsel in my chambers" about what the state would be able to prove through Patrick's evidence. RP (2/3/2009 – p.m.) 2. The right to a public trial attached to the proceedings.

Next, the state claims Ticeson waived the issue by failing to object to the trial court's "discretionary courtroom closure." BOR at 51-54. For this proposition the state relies on State v. Collins, 50 Wn.2d 740, 314

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<sup>10</sup> This argument got no further than a dissenting opinion in State v. Heath, 150 Wn. App. 121, 131, 206 P.3d 712 (2009) (motions in limine that addressed purely legal matters heard in chambers). A majority of the court rejected the argument in State v. Sadler, holding the right to a public trial applied to the state's use of a peremptory challenge to excuse a venireperson. 147 Wn. App. 97, 114-16, 193 P.3d 1108 (2008).

P.2d 660 (1957), where the court locked the courtroom door due to overcrowding, the defendant did not object, and the Supreme Court found the issue waived. Apart from apparent factual distinctions between that case and this one, Collins was decided well before the current analytical framework for public trial issues. Whatever it may have once dictated, it does not represent the state of the law. Under current precedent, no objection is necessary to preserve the issue for appeal. See BOA at 34; Bone-Club, 128 Wn.2d at 258 (Collins distinguishable because trial court ordered courtroom doors locked but still allowed reasonable number of spectators to remain; Collins court held partially closed hearing did not rise to level of constitutional violation).

The state finally asserts any error in closure was de minimis. This argument has been repeatedly rejected. Strode, 167 Wn.2d at 230 (noting Supreme Court has never found violation of public trial right to be de minimis).

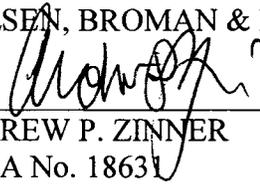
B. CONCLUSION

For the reasons cited herein and in his Brief of Appellant, Ticeson requests this Court to reverse the trial court's order of commitment and remand for a new trial.

DATED this 23 day of March, 2010.

Respectfully submitted,

NIELSEN, BROMAN & KOCH, PLLC

  
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ANDREW P. ZINNER

WSBA No. 18631

Office ID No. 91051

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

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In re the Detention of Calvin Ticeson,	)	
	)	
STATE OF WASHINGTON,	)	
	)	
Respondent,	)	
	)	
v.	)	COA NO. 631225-5-I
	)	
CALVIN TICESON,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 23<sup>RD</sup> DAY OF MARCH 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] CALVIN TICESON  
SPECIAL COMMITMENT CENTER  
P.O. BOX 88600  
STEILACOOM, WA 98388

**SIGNED** IN SEATTLE WASHINGTON, THIS 23<sup>RD</sup> DAY OF MARCH 2010.

x *Patrick Mayovsky*