

NO. 67357-2-I

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

STATE OF WASHINGTON,

Respondent,

v.

RAMOS ORTIZ-LOPEZ,

Appellant.

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

The Honorable John M. Meyer, Judge

REPLY BRIEF OF APPELLANT

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A. ISSUE IN REPLY

Should this Court reject the State's unsupported assertion that clerk's minutes do not constitute a portion of the record, or constitute an inferior portion of the record, on a direct appeal?

B. ARGUMENT IN REPLY

THE CLERK'S MINUTES CONSTITUTE A PORTION OF THE RECORD THAT THIS COURT MAY CONSIDER IN EVALUATING CLAIMS ON APPEAL.

The State argues that because the trial court's order to seal the jury questionnaires appears in the clerk's minutes but not the verbatim report, the "full record" does not support the appellant's claim, and therefore the claim should be rejected.¹ Brief of Respondent at 17, 26-27.

The State cites no authority for this novel proposition, nor could it.² Clerk's minutes are filed in the superior court file and may be

¹ Mr. Ortiz has also raised a claim based in part on the record set forth in the clerk's minutes in a supplemental brief filed June 22, 2012. Supp. Brief of Appellant at 2-3. The State has not yet filed its supplemental response brief.

This Court has ordered that no reply brief be filed on the issues raised in the supplemental brief, unless requested by this Court. Should the State make a similar argument in its supplemental response brief, however, the argument should likewise be rejected for the reasons set forth in this brief.

² See State v. Dennison, 115 Wn.2d 609, 629, 801 P.2d 193 (1990) (this Court need not consider an argument absent argument and citation to legal authority).

designated to this Court as part of the record on appeal, as they were in this case. RAP 9.1(b); RAP 9.6; CP 133-49.

Moreover, courts of this state routinely rely on the clerk's minutes in evaluating appellants' claims on appeal See, e.g., State v. Irby, 170 Wn.2d 874, 878-79, 246 P.3d 796 (2011) (claim of denial of right of accused to be present reviewed based in part on clerk's minutes).

Finally, by statute, the sealing of the jury questionnaire is precisely the type of event court clerks are directed to record. RCW 2.32.050 provides in part that:

[I]t is the duty of the clerk of the supreme court, each clerk of the court of appeals, and of each county clerk for each of the courts for which he or she is clerk:

-
- (2) To record the proceedings of the court;
- (3) To keep the records, files, and other books and papers appertaining to the court;
- (4) To file all papers delivered to him or her for that purpose in any action or proceeding in the court as directed by court rule or statute;
- (5) To attend the court of which he or she is clerk
- ..;
- (6) To keep the journal of the proceedings of the court, and, under the direction of the court, to enter its orders, judgments, and decrees; [and]. . . .
- (9) In the performance of his or her duties to conform to the direction of the court[.]

Because the appellant's claim is supported by the record -- in particular, the clerk's minutes -- and because the State has provided no authority for the proposition that clerk's minutes do not constitute "the

record” or are an inferior facet thereof, the State’s argument should be rejected.

C. CONCLUSION

For the reasons set forth above and in the appellant’s opening and supplemental briefs, Mr. Ortiz’s convictions should be reversed or other appropriate relief granted.

DATED this 7th day of July, 2012.

Respectfully submitted,

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DIVISION ONE**

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
v.)	COA NO. 67357-2-1
)	
RAMOS ORTIZ-LOPEZ,)	
)	
Appellant.)	

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 2ND DAY OF JULY 2012, 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] ERIK PEDERSEN
SKAGIT COUNTY PROSECUTOR'S OFFICE
COURTHOUSE ANNEX
605 S. THIRD
MOUNT VERNON, WA 98273

- [X] RAMOS ORTIZ-LOPEZ
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P.O. BOX 769
CONNELL, WA 99326

SIGNED IN SEATTLE WASHINGTON, THIS 2ND DAY OF JULY 2012.

x 