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SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,) No. 89321-7
Petitioner,)
v.) MOTION TO STRIKE
MARTIN JONES,) EXHIBIT C OF STATE'S
Respondent.) PETITION FOR REVIEW
(RAP 10.7)

I. IDENTITY OF MOVING PARTY

The respondent, Martin Jones asks this Court for the relief designated in Part II of this motion.

II. STATEMENT OF RELIEF SOUGHT

Mr. Jones moves this Court to strike Exhibit C of the State's Petition for Review on the basis that it is irrelevant to the determination of the issue in the State's petition, and that it was not offered or considered by the trial court or the Court of Appeals.

III. FACTS RELEVANT TO THE MOTION

Mr. Jones was found guilty of attempted first degree murder following a jury trial. The Court of Appeals reversed Mr. Jones' conviction based upon the trial court clerk's selecting the alternate jurors in a closed court room where none of the

partiers were present. *State v. Jones*, 175 Wn.App. 87, 303 P.3d 1084 (2013).

The State has filed a Petition for Review in this Court on the issue. Attached as an exhibit to the State's Petition is Exhibit C, which includes documents pertaining to general jury selection in Pierce County. The contents of this Exhibit are not necessary for the determination of the issue in the petition, thus they are irrelevant. In addition, they were not offered or considered by either the trial court or the Court of Appeals, thus the Exhibit fails to comply with the Rules Of Appellate Procedure. Mr. Jones asks this Court to strike Exhibit C.

IV. GROUNDS FOR RELIEF AND ARGUMENT

EXHIBIT C IS IRRELEVANT TO THE ISSUE PRESENTED AND FAILS TO COMPLY WITH RAP 10.3 AND RAP 10.4

In reversing Mr. Jones' conviction, the Court of Appeals applied this Court's experience and logic test announced in *State v. Sublett*, 176 Wn.2d 58, 292 P.3d 715 (2012). The State has petitioned that issue. Thus, the only question to be determined by this Court is whether the Court of Appeals correctly applied the experience and logic test.

Exhibit C was never presented to, or considered by, the trial court, nor was it ever offered or provided to the Court of Appeals by the State in either its Brief of Respondent or its Motion for Reconsideration.

Under RAP 10.3(a)(8) and RAP 10.4(c), “[a]n appendix may not include materials not contained in the record on review without permission from the appellate court,” unless the material is text from “a statute, rule, jury instruction, finding of fact, exhibit, or the like.”¹

Pursuant to RAP 10.7, this Court may strike a brief or portions of a brief that fail to comply with Title 10. While this is an “exhibit,” it is not an exhibit that was before either the trial court or the Court of Appeals. As such, its inclusion in the Petition for Review fails to comply with RAP 10.3 or RAP 10.4. Further, the exhibit is not necessary or helpful to this Court’s determination of whether to grant or deny review. This Court should strike Exhibit C.

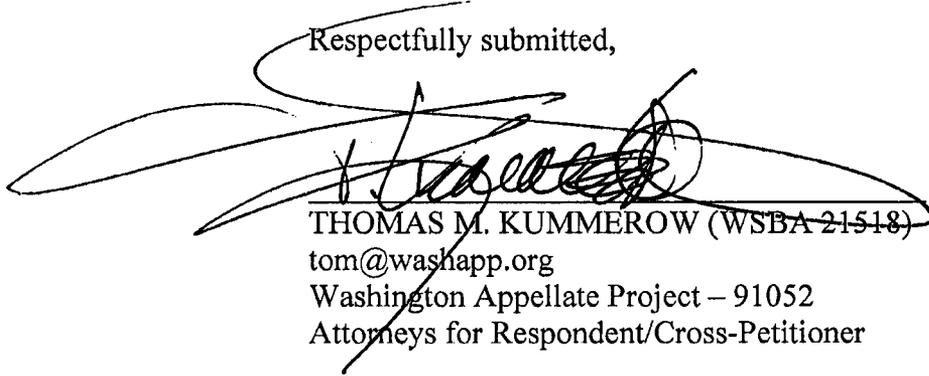
¹ A petition for review must comply with RAP 10.3 and RAP 10.4. RAP 13.4(e).

V. CONCLUSION

For the reasons stated, Mr. Jones requests this Court strike Exhibit C of the State's Petition for Review.

DATED this 25th day of October 2013.

Respectfully submitted,



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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, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 89321-7**, 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:

- petitioner John Hillman, AAG,
Office of the Attorney General – Criminal Justice Division
- respondent
- Attorney for other party


MARIA ANA ARRIANZA RILEY, Legal Assistant
Washington Appellate Project

Date: October 28, 2013

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Please accept the attached document for filing in the above-subject case:

Motion to Strike Exhibit C of State's Petition for Review

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