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JUN 23 2015

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STATE OF WASHINGTON  
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FILED  
Jun 16 2015  
Court of Appeals  
Division I  
State of Washington

SUPREME COURT NO. 91834-1

NO. 70639-0-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

BAHADAR SINGH,

Petitioner.

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

The Honorable Barbara Linde, Judge

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PETITION FOR REVIEW

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DAVID B. KOCH  
Attorney for Petitioner

NIELSEN, BROMAN & KOCH, PLLC  
1908 East Madison  
Seattle, WA 98122  
(206) 623-2373

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A. IDENTITY OF PETITIONER

Petitioner Bahadar Singh, the appellant below, asks this Court to review the Court of Appeals decision referred to in Section B.

B. COURT OF APPEALS DECISION

Singh requests review of the Court of Appeals decision in State v. Singh, COA No. 70639-0-I, filed May 18, 2015 (attached).

C. ISSUES PRESENTED FOR REVIEW

1. The trial court conducted portions of jury selection outside the public view when peremptory challenges were made in a manner that prevented the public from scrutinizing the process. Did this violate appellant's constitutional right to public trial?

2. The public trial issue in this case is similar to that in State v. Love, 176 Wn. App. 911, 309 P.3d 1209 (2013), review granted, 181 Wn.2d 1029, 340 P.3d 228 (2015), which was argued in this Court on March 10, 2015. Since the significant constitutional questions presented in Love warranted this Court's review under RAP 13.4(b)(3), is review also warranted in Singh's case?

D. STATEMENT OF THE CASE

The King County Prosecutor's Office charged Bahadar Singh with six counts of unlawful issuance of checks or drafts and one count of conspiracy to commit first degree theft. CP 76-79.

During jury selection, the parties exercised peremptory challenges "at counsel table by passing back and forth a clipboard with a form on it" to note which party challenged whom. 1RP 13. Once finished, the trial court announced those jurors who had been excused, but not by whom. RP 101-102. The form was signed by the parties and filed at an unknown time the same day. CP 75. It reveals that the prosecution challenged five jurors and the defense challenged four. CP 75. The trial court did not first consider the Bone-Club<sup>1</sup> factors before deciding the peremptory challenge process should be shielded from public sight and hearing.

Jurors found Singh guilty as charged. CP 52-57. The trial court, using the first time offender waiver, sentenced Singh to 90 days, 45 on work release followed by 45 on electronic home detention. CP 66-72. Singh timely appealed. CP 74.

On appeal, Singh argued the trial court's method for peremptory challenges – conducted privately at sidebar – violated his public trial rights under the federal and state constitutions. See Brief of Appellant, at 4-15.

The Court of Appeals found no public trial violation based on three prior decisions rejecting similar arguments: State v. Filitaula, 184 Wn. App. 819, 339 P.3d 221 (2014); State v. Dunn, 180 Wn. App. 570, 321 P.3d 1283 (2014), review denied, 181 Wn.2d 1030, 340 P.3d 228 (2015); and State v. Love, 176 Wn. App. 911, 920, 309 P.3d 1209 (2013), review granted, 181 Wn.2d 1029, 340 P.3d 228 (2015).

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

REVIEW OF THE PUBLIC TRIAL ISSUE IS APPROPRIATE IN LIGHT OF STATE V. LOVE AND RAP 13.4(b)(3).

Under both the Washington and United States Constitutions, a defendant has a constitutional right to a speedy and public trial. Const. art. 1, § 22; U.S. Const. amend. VI. Additionally, article I, section 10 expressly guarantees to the public and press the right to open court proceedings. State v. Easterling, 157 Wn.2d 167, 174, 137 P.3d 825 (2006). The First Amendment implicitly protects the same right. Waller v. Georgia, 467 U.S. 39, 46, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984).

Whether the procedures employed at Singh's trial during the exercise of peremptory challenges violated his state and federal constitutional rights to a public trial is a significant constitutional question that should be decided by this Court. See RAP 13.4(b)(3). This is

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<sup>1</sup> State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995).

apparent based on the fact this Court accepted review in State v. Love, a case presenting a similar issue. Indeed, Singh expects that this Court's decision in Love will likely dictate the outcome in his own case.

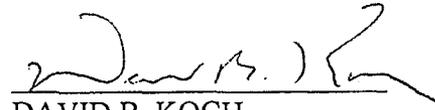
F. CONCLUSION

For the reasons discussed above, Singh respectfully asks this Court to grant his Petition and reverse the Court of Appeals.

DATED this 16<sup>th</sup> day of June, 2015.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



DAVID B. KOCH  
WSBA No. 23789  
Office ID No. 91051

Attorneys for Petitioner

## **APPENDIX**

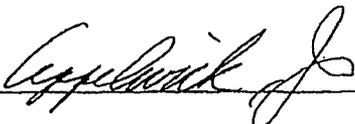
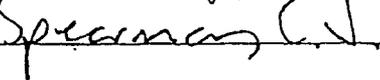
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 70639-0-1
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
BAHADAR SINGH	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: <u>MAY 18 2015</u>

PER CURIAM – Bahadar Singh appeals his convictions for six counts of unlawful issuance of checks or drafts and one count of conspiracy to commit first degree theft. He contends his right to a public trial was violated when the court took peremptory challenges in writing at sidebar and later filed the written challenges in the record. This contention is controlled by our decision in State v. Filitaula, \_\_\_ Wn. App. \_\_\_, 339 P.3d 221 (2014) (exercise of challenges for cause in writing did not constitute a courtroom closure and not implicate public trial right where form containing written challenges was filed in court record); see also State v. Dunn, 180 Wn. App. 570, 575, 321 P.3d 1283 (2014), rev. denied, 181 Wn.2d 1030, 340 P.3d 228 (2015); State v. Love, 176 Wn. App. 911, 920, 309 P.3d 1209 (2013), rev. granted in part, 181 Wn.2d 1029, 340 P.3d 228 (2015).

Affirmed.

FOR THE COURT:

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COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2015 MAY 18 AM 9:13

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON

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BAHADAR SINGH,

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SUPREME COURT NO. \_\_\_\_\_  
COA NO. 73093-2-1

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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 16<sup>TH</sup> DAY OF JUNE 2015, I CAUSED A TRUE AND CORRECT COPY OF THE **PETITION FOR REVIEW** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] BAHADAR SINGH  
11029 3<sup>RD</sup> AVENUE NE  
MAIL BOX #29  
SEATTLE, WA 98124

SIGNED IN SEATTLE WASHINGTON, THIS 16<sup>TH</sup> DAY OF JUNE 2015.

x Patrick Mayovsky

**Sanders, Laurie**

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