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Supreme Court No. 92571-2  
COA No. 26476-9-III (consolidated with No. 27294-0-III)

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Plaintiff/Respondent

v.

ANTHONY PARKS,

Defendant/Petitioner.

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ANSWER TO DEFENDANT'S PETITION FOR REVIEW

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**INDEX**

**I. IDENTITY OF PARTY ..... 1**

**II. STATEMENT OF RELIEF SOUGHT..... 1**

**III. ISSUE PRESENTED..... 1**

**IV. STATEMENT OF THE CASE ..... 1**

**V. ARGUMENT ..... 2**

    A. THERE WAS NO CLOSURE..... 4

    B. EXPERIENCE AND LOGIC TEST..... 5

    C. LOGIC PRONG..... 6

**VI. CONCLUSION..... 7**

**TABLE OF AUTHORITIES**

**WASHINGTON CASES**

*State v. Brightman*, 155 Wn.2d 506, 122 P.3d 150 (2005).....4

*State v. Koss*, 181 Wn.2d 493, 334 P.3d 1042 (2014) .....5

*State v. Njonge*, 181 Wn.2d 546, 334 P.3d 1068 (2014), *cert. denied*, — U.S. —, 135 S.Ct. 880, — L.Ed.2d —, 2014 WL 5502481 (2014).....5

*State v. Parks*, No. 26476-9-III, 2015 WL 6686880 (Wash. Ct. App. Oct. 29, 2015).....2, 4, 6

*State v. Russell*, 183 Wn.2d 720, 357 P.3d 38, 42-43 (2015) .....4, 6

*State v. Sublett*, 176 Wn.2d 58, 292 P.2d 715 (2012).....3

**STATUTES**

RCW 4.44.260 ..... 4

**RULES**

RAP 13.4..... 7

## **I. IDENTITY OF PARTY**

Respondent, State of Washington, was the plaintiff in the trial court and the respondent in the Court of Appeals.

## **II. STATEMENT OF RELIEF SOUGHT**

Respondent seeks denial of Defendant Park's petition for review of the opinion issued by the Court of Appeals on October 29, 2015.

## **III. ISSUE PRESENTED**

Whether the defendant's right to a public trial was violated when the trial court swore in the venire in the jury assembly room.

## **IV. STATEMENT OF THE CASE**

On the evening of March 26, 2007, J.M. called the police to report she had been raped.<sup>1</sup> J.M. told the responding police officer that the man who raped her had stolen some money and condoms from her immediately after the rape. During this interview, J.M. noticed Mr. Parks riding by on a bicycle and J.M. told the officer that the bicyclist was the rapist. Mr. Parks was arrested and charged with first degree rape.

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<sup>1</sup> These facts are taken from the opinion with little modification. *State v. Parks*, 26476-9-III, 2015 WL 6686880, at \*1 (Wash. Ct. App. Oct. 29, 2015).

Before voir dire, the court apparently<sup>2</sup> swore in the venire and gave the venire questionnaires in the jury assembly room because the venire would not fit in the courtroom. Mr. Parks agreed to the process. Nothing in the record shows whether the door to the jury assembly room was open or closed during this process or if any members of the press or public requested or were denied access to the process. General voir dire then occurred in open court, and the juror's oath was administered in open court. *State v. Parks*, No. 26476-9-III, 2015 WL 6686880, at \*1 (Wash. Ct. App. Oct. 29, 2015).

## V. ARGUMENT

Petitioner argues that the decision of the Court of Appeals is in conflict with the decisions of the Supreme Court. Def.'s Pet. for Review, p. 2. He claims both prongs of the experience and logic test articulated in

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<sup>2</sup> The Court of Appeals noted:

The sole indication of this in the record is the following statement by the court:

There is a large jury panel. We probably can't get them all in the courtroom at any one time. And I would propose that—I would ask if you have any objection to me swearing the jury in the jury assembly room and handing them a questionnaire regarding their history of involvement in sexual abuse.... (Pause in proceeding.)

Report of Proceedings (RP) at 1.

*Parks*, at \*5.

this Court's decision in *State v. Sublett*, 176 Wn.2d 58,73-75, 292 P.2d 715 (2012), were satisfied in the instant case. Def.'s Pet. for Review, p. 6. The Petitioner is incorrect – there is no conflict with this Court's open court jurisprudence.

The experience and logic test requires a court to consider (1) whether the process and place of a proceeding historically have been open to the press and general public (experience prong) and (2) whether access to the public plays a significant positive role in the functioning of the proceeding (logic prong). *Sublett*, 176 Wn.2d at 73. If the answer to both prongs is yes, then the defendant's public trial right “attaches” and a trial court must apply the *Bone-Club* factors before closing the proceeding to the public.

THE COURT: Those of you who have not been selected, if you would take your numbers off, please, and hand them to Ms. Kilham. You are to call in after 5:30 this evening for your next assignment. Thank you. (Remainder of jury panel excused.)

THE COURT: All right. Ladies and gentlemen, you are about to become officers of this court. And that means you take an oath similar to mine. Would you please stand, and raise your right hand, face the clerk to be sworn. (Jury complies with request.)

THE CLERK: Do you and each of you solemnly swear or affirm that you will well and truly try the issue between the state and the defendant, according to the evidence and the instructions of the Court, so help you God, or, under the penalty of perjury? If so, say I do.

JURY (IN UNISON): I do.

RP 225-26.

The petitioner attempts to cast the pre voir dire swearing in of the jury as implicating the public trial right because it involves a “juror.” As a general proposition, jury selection, especially voir dire, implicates the right to a public trial. *State v. Brightman*, 155 Wn.2d 506, 515, 122 P.3d 150 (2005). “However, ‘jury selection’ encompasses significantly more than attorney voir dire, and the mere label of ‘jury selection’ does not mean the public trial right is automatically implicated.” *State v. Russell*, 183 Wn.2d 720, 357 P.3d 38, 42-43 (2015), quoting *State v. Wilson*, 174 Wn. App. 328, 338, 298 P.3d 148 (2013). Here, no voir dire or questioning was had or discussed in the juror assembly room. There is no showing that anyone from the public was excluded from the juror assembly room. The general voir dire occurred in court. Immediately thereafter, the jury was properly sworn in. The juror’s oath, *required by law*, was administered in open court. RP 225-226. *See* RCW 4.44.260.

a. There was no closure.

The Court of Appeals correctly determined that the Petitioner failed to show that a closure occurred. *Parks*, at \*2. As this Court has stated, the defendant has the burden of providing a record that shows a

courtroom closure occurred. *See State v. Koss*, 181 Wn.2d 493, 503, 334 P.3d 1042 (2014); *State v. Njonge*, 181 Wn.2d 546, 556, 334 P.3d 1068 (2014), *cert. denied*, — U.S. —, 135 S.Ct. 880, — L.Ed.2d —, 2014 WL 5502481 (2014). Petitioner failed to provide either a record establishing any type of closure, or a record of what type of oral instruction was given to the jurors. Critically, the petitioner failed to establish that anyone was excluded from the juror assembly room. Without a closure, there is no open court issue.

b. Experience and logic test.

There is no showing that the pre voir dire educational and informational advisement is a “proceeding” to which the open court doctrine applies.<sup>3</sup> The Court of Appeals noted that it could not find any

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<sup>3</sup> Jurors are summoned by the county clerk and are educated regarding the process of jury service. RCW 2.36.095 (summons); CrR 6.2 (Jurors’ Orientation). There is no legal requirement that jurors be administered an oath or addressed by the judge prior to voir dire. *See* Note on Use and Comments to Oral Jury Instruction 1.01. Part 1 of the instruction is informational, concluding with an oath. The oath is not required by statute or case law. However, it aids the potential jury in any case by informing the potential jurors before the trial begins, before voir dire, of what they can expect. All of this takes part before voir dire begins. The oath that jurors are *legally* required to receive occurs, as it did in the instant case, at the close of voir dire. *See* RP 225-26; *and see* RCW 4.44.260. While *State v. Frawley*, 181 Wn.2d 452, 334 P.3d 1022 (2014) reemphasizes that voir dire is a stage to which the open court doctrines apply, nothing in *Frawley* suggests that these same doctrines apply to the juror educational processes occurring *prior to voir dire*. This pre voir dire informational process is more administrative and educational than it is judicial.

authority holding the pre voir dire swearing in of the jury (not required by law) as being a proceeding historically open to the public, especially where it is not a part of the jury selection process. *Parks*, at \*3. The Court of Appeals then noted the preliminary instruction was educational and more analogous to an administrative component of the jury process to which the public trial right does not attach. *Id.* citing *Wilson*, 174 Wn. App. at 342–47. In the instant case, the *pre voir dire* delivery of an oath, not required by law, was an administrative function that is qualitatively different from “challenging a juror’s ability to serve as a neutral factfinder in a particular case (as in peremptory and for-cause challenges).” *Russell*, 183 Wn.2d at 730-31 (citing case law, court rules and statutes) (emphasis the Court’s).

c. Logic prong.

The Court of Appeals properly and succinctly determined that the logic prong of the public trial right is not implicated:

Likewise, Mr. Parks cannot satisfy the logic prong. When considering this prong, courts should consider “the values served by open courts.” *Sublett*, 176 Wn.2d at 74, 292 P.3d 715. Mr. Parks has not shown (1) public access plays a significant positive role in the functioning of the swearing in a venire, (2) swearing in a venire is a proceeding similar to the trial itself, or (3) openness during swearing in would enhance the basic fairness of his trial and the appearance of fairness. *See Wilson*, 174 Wn. App. at 346, 298 P.3d 148.

*Parks*, at \*3 (footnote omitted).

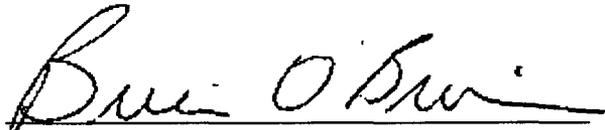
There is no conflict with decisional law in this holding. Accordingly, there is no conflict with existing authority. *See* RAP 13.4 (b)(1) and (2). This Court should deny the defendant's petition for review.

## VI. CONCLUSION

For the reasons stated above, Respondent requests the Court deny the petitioner's request for review.

Dated this 22 day of December, 2015.

LAWRENCE H. HASKELL  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

Brian C. O'Brien #14921  
Deputy Prosecuting Attorney  
Attorney for Respondent

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

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v.

ANTHONY PARKS,

Appellant.

NO. 92571-2

COA 26476-9-III (cons. w/27294-0-III)

CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on December 22, 2015, I e-mailed a copy of the Answer to Defendant's Petition for Review in this matter, pursuant to the parties' agreement, to:

David N. Gasch  
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12/22/2015  
(Date)

Spokane, WA  
(Place)

Kim Cornelius  
(Signature)

## OFFICE RECEPTIONIST, CLERK

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Attached for filing please find the Respondent's Answer to Defendant's Petition for Review.

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