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ARGUMENT

The State relies upon facts which have no bearing on the trial court's closure of open proceedings in order to conduct individual *voir dire* over a two (2) day period of time. (01/10/06 RP1 *et seq*; 01/11/06 RP1 *et seq*.)

The Sixth Amendment to the United States Constitution states, in part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...."

Const. art. I, § 10 provides: "Justice in all cases shall be administered openly, and without unnecessary delay."

Const. art. I, § 22 states, in part: "In criminal prosecutions the accused shall have the right... to have a speedy public trial...."

Mr. Devon's constitutional right to a public trial was violated when the trial court allowed individual *voir dire* of potential jurors in chambers. The presence of the judge, the court clerk, a court reporter, Mr. and Mrs. Devon, the prosecuting attorney, and the defense attorneys does not constitute a public and open proceeding. *See: In Re Personal Restraint of Orange*, 152 Wn. 795, 804-05, 100 P.3d 219 (2004); *State v. Brightman*, 155 Wn. 2d. 506, 517, 122 P.3d 150 (2005); *State v. Easterling*, 157 Wn. 2d. 167, 179-82, 137 P.2d 825 (2006).

If there had been individual *voir dire* in an open courtroom then Mr. Devon would not have an argument. However, the *voir dire* was conducted in chambers and the public was excluded. The Court allowed *voir dire* of the

entire panel in chambers. When court convened on January 10, 2006 the record indicates that individual juror questioning immediately commenced with juror number one (1). It proceeded the rest of the day. The individual questioning of all members of the jury venire was not completed until January 11.

The State claims that Mr. Devon did not preserve the right to raise this issue on appeal.

The State also asserts that the Court's automatic reversal doctrine conflicts with existing precedent and federal case law.

Finally, the State claims only a limited closure occurred. As indicated above, the closure was not limited. Individual questioning of each member of the jury panel was conducted in chambers outside the presence of the public.

The State requests that the Supreme Court overturn precedent that clearly holds that violation of the public trial right is a constitutional issue which may be raised for the first time on appeal. See: *State v. Wise*, 176 Wn. 2d. 1, 9, 288 P.3d 1113 (2012); *State v. Paumier*, 176 Wn. 2d. 29, 34, 288 P.3d 1126 (2012); *State v. Frawley*, 181 Wn. 2d 452, 458-60, 334 P.3d 1022 (2014).

Mr. Devon asserts that the State's claim, that the doctrine of issue preservation precludes review, is contrary to constitutional mandates and existing caselaw. This issue does not constitute a basis to accept review.

The State's claim that Mr. Devon's lack of objection precludes

review is contrary to Supreme Court precedent.

A comprehensive analysis of waiver as set forth is *State v. Frawley*, *supra* 461-64, negates the State's position on that issue. No colloquy was conducted by the trial court. Waiver cannot be implied. The facts in Mr. Devon's case substantially differ from the State's reliance upon *State v. Momah*, 167 Wn. 2d 140, 217 P.3d 321 (2009).

The State's request that the Supreme Court step away from the automatic reversal doctrine was recently negated by the cases of *Personal Restraint of Speight*, 182 Wn. 103 (2014); *Personal Restraint of Coggins*, 182 Wn. 2d 115 (2014); and *State v. Shearer*, 181 Wn. 2d 564 (2014).

Finally, other than *State v. Momah*, *supra*, the State fails to point out under RAP 13.4 (b) that the Court of Appeals decision in this case is in conflict with the Supreme Court decision.

Moreover, the State fails to point out that the decision by the Court of Appeal is in conflict with any other decision of another division of the Court of Appeals.

The State does not claim that the issue is of substantial public interest. It is an issue of constitutional magnitude. However, the Court of Appeals decision is in alignment with existing decisions of this State's and the United State's Supreme Court.

Mr. Devon urges the Court to deny the State's Petition for Review.

DATED this 2nd day of September, 2015.

Respectfully submitted,

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant.

P.O. Box 1019

Republic, WA 99166

(509) 775-0777

(509) 775-0776

nodblspk@rcabletv.com

NO. 91996-8

SUPREME COURT

STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	OKANOGAN COUNTY
)	NO. 05 1 00059 5
Petitioner,)	
)	CERTIFICATE OF SERVICE
JON GABRIEL DEVON,)	
)	COURT OF APPEALS NO. 24958-1-III
Respondent.)	
)	
)	
)	

I certify under penalty of perjury under the laws of the State of Washington that on this 2nd day of September, 2015, I caused a true and correct copy of the *ANSWER OF RESPONDENT* to be served on:

WASHINGTON STATE SUPREME COURT
Temple of Justice
Attention: Susan L. Carlson, Deputy Clerk
PO Box 40929
Olympia, WA 98504-0929
supreme@courts.wa.gov

E-MAIL

CERTIFICATE OF SERVICE

OKANOGAN COUNTY PROSECUTOR'S OFFICE

Attn: Karl F. Sloan

PO Box 1130

Okanogan, Washington 98840

ksloan@co.okanogan.wa.us

E-FILE

(per agreement)

JON GABRIEL DEVON #772952

Washington State Penitentiary

1313 North 13th Avenue

Walla Walla, Washington 98362

U.S.MAIL

s/ Dennis W. Morgan

DENNIS W. MORGAN WSBA #5286

Attorney for Defendant/Appellant.

P.O. Box 1019

Republic, WA 99166

(509) 775-0777

(509) 775-0776

nodblspk@rcabletv.com

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