

No. 46445-4-II

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

STATE OF WASHINGTON,

Respondent,

v.

RYAN EFFINGER,

Appellant.

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

The Honorable Anne Hirsch, Judge
Cause No. 13-1-01630-7

SUPPLEMENTAL BRIEF OF RESPONDENT

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A. ISSUE ADDRESSED.

How do the opinions of the Supreme Court in State v. Love and the Court of Appeals in State v. Anderson affect the open courtroom and right to be present claims made by Effinger?

B. STATEMENT OF THE CASE.

For purposes of this issue, Effinger has adequately set forth the facts of the case in his Supplemental Brief filed on April 10, 2015, at 2-3.

C. ARGUMENT.

1. The Supreme Court opinion in State v. Love controls the decision in this case regarding the claims of an open courtroom violation and a violation of the right to be present.

This court has offered the parties the opportunity to address the impact of State v. Love, 183 Wn.2d 598, 254 P.3d 841 (2015), on the claims raised by Effinger in this appeal. The facts of Love are very similar to the facts in this case. Challenges for cause as well as peremptory challenges to the jury venire were taken at sidebar, out of the hearing of the prospective jurors and any spectators. Voir Dire RP at 74, 76; Love, 183 Wn.2d at 602-03. The document recording the strikes to the panel was filed in the court record. CP 90-91; Love, 183 Wn.2d at 603.

Effinger has argued that taking the juror challenges at sidebar constituted a courtroom closure. Love held that it does not. Love, 183 Wn.2d at 607. Where there is no closure there is no public trial violation.

Effinger also argued that his right to be present at all critical stages of his trial was violated because he was not physically present at the sidebar. The record is silent as to that fact, but the State agrees that it would be so unusual for a represented defendant to be present at a sidebar that if he had been, it would be reflected in the record. In Love, the defendant had asked the court for permission to approach the bench and the court had denied it. State v. Love, 176 Wn. App. 911, 914, 309 P.3d 1209 (2013). The Supreme Court found that Love's right to be present was not violated. Being present in the courtroom throughout voir dire, with no suggestion that he was unable to consult with his attorney or "meaningfully participate in the process," satisfies the requirements of the Sixth and Fourteenth Amendments as well as article I, section 22 of the Washington Constitution. Love, 183 Wn.2d at 608.


2. The opinion in State v. Anderson does not control the resolution of Effinger's open trial and right to be present claims.

In State v. Anderson, 187 Wn. App. 706, 350 P.3d 255 (2015), the Court of Appeals held that taking challenges to the jury panel at sidebar constituted a courtroom closure. Id. at 714. The decision in Anderson was issued on May 19, 2015, and was overruled when State v. Love was issued by the Supreme Court on July 16, 2015. Further, the State sought review of Anderson in the Supreme Court. Review was granted and the matter remanded to the Court of Appeals for reconsideration in light of State v. Love on November 4, 2015. Order No. 91814-7. Given the current status of the Anderson decision, as issued in May of 2015, it should have no bearing on the similar claims in Effinger's case.

D. CONCLUSION.

The Supreme Court decision in State v. Love controls the open courtroom and right to be present claims raised by Effinger. There was no courtroom closure, and thus no public trial violation. Effinger was present in the courtroom and his constitutional right to be present at all critical stages of the proceedings was protected.

Respectfully submitted this 5th day of November, 2015.



Carol La Verne, WSBA# 19229
Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I served a copy of the State's Supplemental Brief on the date below as follows:

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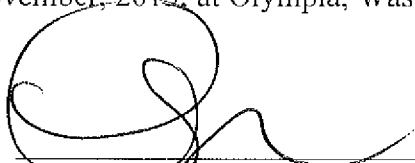
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--AND TO--

JARED BERKELEY STEED
EMAIL: STEEDJ@NWATTORNEY.NET

I certify under penalty of perjury under laws of the State of Washington that the foregoing is true and correct.

Dated this 5 day of November, 2015, at Olympia, Washington.



Caroline Jones

THURSTON COUNTY PROSECUTOR

November 05, 2015 - 4:17 PM

Transmittal Letter

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