

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

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW AHO,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT
OF PIERCE COUNTY

The Honorable Beverly G. Grant

SUPPLEMENTAL REPLY BRIEF

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A. REPLY ARGUMENT

> **STATE V. ANDERSON**, *Ct. of Appeals Div. II (May 19, 2015)*

> **STATE V. LOVE**, *Wash. Supreme Court (July 16, 2015)*

THIS CASE INVOLVES UNRECORDED FOR-CAUSE CHALLENGES AT SIDEBAR WITH NO COURT REPORTER, CONSTITUTING A “CLOSURE” UNDER THIS COURT’S ANDERSON DECISION, AND UNDER THE SUPREME COURT’S LOVE ANALYSIS.

1. The Supreme Court in *State v. Love* found no closure where for-cause challenges at sidebar were on the record in the presence of the court reporter and available for scrutiny by transcript, thus comporting with the public trial right’s “minimum” guarantee.

However, as argued, this Court’s recent decision in State v. Calvert Anderson, COA No. 45497-1-II (May 19, 2015), makes clear that the process of taking for-cause challenges at a side-bar that impedes public scrutiny is a closure and a violation of the public trial right, requiring reversal of all of Matthew Aho’s convictions. State v. Anderson, Slip Op., at pp. 2-3.

(i) Closure. The issue whether a procedure constitutes a “closure” of the courtroom is a legal one, reviewed *de novo*. State v. Love, Supreme Court No. 86919-4 (July 16, 2015) (Slip Op., at pp. 1-2) (citing State v. Irby, 170 Wn.2d 874, 880, 246 P.3d 796 (2011)).

In Matthew Aho’s case, the legal question is answered correctly in Anderson. The recent case of Love addresses a circumstance where

additional and determinative procedural facts led to a different result -- in Love, the Supreme Court found that “minimum” public trial rights protection had been provided where for-cause challenges at sidebar were “on the record,” ultimately allowing the public to scrutinize the procedure resulting in jury selection. State v. Love, No. 86919-4 (Slip Op., at pp. 1-2, 4). The Court noted that observers could watch the trial judge and counsel exercise challenges at the bench and – even more importantly -- “[t]he transcript of the discussion about for cause challenges and the struck juror sheet showing the peremptory challenges [we]re both publically available.” Love, Slip Op., at p. 4.

There was no closure in Love, but there was a closure in Anderson and likewise in Mr. Aho’s trial below.

(ii) No justification for Closure. As argued, here, per the standards and analysis in both Anderson and Love, there was a “closure,” and the trial court did not offer any justifying reasons. Certainly, the trial court did not analyze the Bone-Club factors. There was no given justification for holding the process at unrecorded side-bar impeding ultimate public scrutiny, therefore there was a violation upon further review of all evaluative factors. See State v. Momah, 167 Wn.2d 140, 156, 217 P.3d 321 (2009).

2. Reversal is required. The trial court erred in holding the for-cause challenge process at unrecorded side-bar, and reversal of Mr. Aho's convictions is required. State v. Anderson, Slip Op., at pp. 3, 14.

B. CONCLUSION

Based on the foregoing and on Mr. Aho's Supplemental Brief on Anderson, this Court should reverse Matthew Aho's convictions.

DATED this 6th day of August, 2015.

Respectfully submitted,

s/ Oliver Davis
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DIVISION TWO**

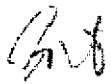
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 43932-8-II
v.)	
)	
MATTHEW AHO,)	
)	
Appellant.)	

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