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COA NO. 41505-4-II

IN THE COURT OF APPEALS OF THE STATE OF

BY WASHINGTON  
DEPUTY

STATE OF WASHINGTON,  
RESPONDENT,

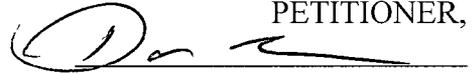
v.

DANIEL RAYMOND LONGAN,  
PETITIONER,

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

SUPPLEMENTAL APPELLANT'S BRIEF

DANIEL LONGAN  
PETITIONER,



DANIEL LONGAN # 827885  
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**A. SUPPLEMENTAL ISSUE**

**Whether, under Leyerle, the trial court denied Mr. Longan a public trial by conducting individual Voir Dire in a hallway outside of the courtroom without giving any consideration to Mr. Longan's public trial right?**

**B. SUPPLEMENTAL ARGUMENT**

**The arbitrary closure of Mr. Longan's courtroom during Voir Dire violated Leyerle.**

**1. Mr. Longan is entitled to a public trial.**

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a .. Public trial." Article I, Sec. 22 of the Washington Constitution similarly guarantees that "[i]n criminal prosecutions the accused shall have the right .. to have a .. public trial." Article I, Sec. 10 of the Washington Constitution also provides that "[j]ustice in all cases shall be administered openly." The presumption of openness extends to Voir Dire because the "[t]he process of jury selection.... is itself a matter of importance, not simply to the adversaries but to the criminal justice system.'" State V. Leyerle, 158 Wn. App. 474;242 P.3d 921;(2010)(quoting Press-Enter. Co. V. Superior Court, 464 U.S. 501, 104S. Ct. 819, 78 L. Ed.2d 629 (1984).

**2. A defendant's right to a public trial is violated if the trial court does not weigh the public trial right using Bone-Club.**

While the right to a public trial is not absolute, it is strictly guarded to assure that the proceedings occur outside the public courtroom in only the most unusual circumstances. This is shown in Division Two's decision in State V. Leverle, 158 Wn. App. 474; 242 P.3d 921 (2010). To prevent closure of a trial under less than unusual circumstances, the trial courts must engage in an analysis using the factors set out in Bone-Club:

1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than the accused's right to a fair trial, the proponent must show a 'serious and imminent threat to that right.
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.
4. The court must weigh the competing interests of the proponent of closure and the public.
5. The order must be no broader in its application or duration than is necessary to serve its purpose.

**State V. Bone-Club**, 128 Wn.2d at 258-59, 906 P.2d 325 (1995).

Mr. Longan's case, like Leyerle is a typical case. Mr. Longan was charged with 3 1<sup>st</sup> degree assaults and taking a motor vehicle without owner permission, as well as attempted eluding. All with gun enhancements. (CP Mon. June 23<sup>rd</sup>, 2008 pg 12 line 24 through 25, and Pg 107 line 19, through pg 109 line 14.) During Jury Voir Dire Janis Rea Wood asked to talk privately with the Judge. The trial judge later took said juror into a restricted hallway to talk outside the public forum of the courtroom, away from not only other potential juror's but also the public view. There were no other individual juror conferences outside of the courtroom. The court's only consideration in this manner was to say they would speak privately with Ms. Wood then finish Voir Dire, and to ask Longan if he would like to be present for this questioning about Ms. Wood's private matter. Longan (at his attorney's suggestion) declined to be present. The trial court's behavior in Leyerle is not only very similar in its scope it happened in the same county shortly after. Under almost exactly the same set of circumstances. This court held that the trial court in Leyerle was in violation and should do the same here.

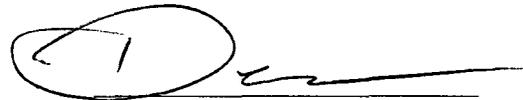
Mr. Longan's case is of the common variety, the type of case heard every court day in Washington. There is nothing unusual about it and nothing that justified a courtroom closure to discuss Ms. Wood's possible medical issues without first weighing the issue on the record using the

Bone-Club factors. Because, as in Leyerle, the closure is a structural error, no prejudice need be proven. Finally Mr. Longan did not waive his right to challenge the closure by declining to go out in the hallway for the individual Voir Dire. Just as in Leyerle, nothing in the record suggests that Mr. Longan made a knowing, intelligent, and voluntary waiver of his right to an open courtroom and a public trial.

### C. CONCLUSION

Because the trial court violated Mr. Longan's and the public's right to a public trial, Mr. Longan's conviction should be reversed.

Respectfully submitted this 25<sup>th</sup> day of August 2011.

A handwritten signature in black ink, consisting of a large, stylized initial 'D' followed by a long, horizontal flourish.

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