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 STATE OF WASHINGTON
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SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	No.
)	(COA No. 58004-3-1)
vs.)	
)	ANSWER TO PETITION FOR
CHARLES MOMAH,)	REVIEW AND ANSWER TO
)	MOTION TO ACCELERATE
Petitioner,)	AND CONSOLIDATE REVIEW
)	
)	
)	

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Charles Momah seeks review of a decision of division I of the Court of Appeals affirming his convictions for multiple counts of rape and indecent liberties. Momah has also filed a motion to accelerate and to consolidate review with State v. Strode, Supreme Court No. 80849-0, a case in which review has already been accepted. The State filed a comprehensive brief in Momah's case in the Court of Appeals and will not repeat those arguments. Most of the issues raised on appeal were discretionary rulings that were fully supported by the record. However, the State does wish to

offer the following additional comments regarding the issue of whether Momah's right to a public trial was violated when the trial court on one day held a portion of individual voir dire in chambers and in a jury room. The State also opposes Momah's motion to accelerate and consolidate review.

ARGUMENT

1. BECAUSE THERE WAS NO COURTROOM CLOSURE, MOMAH'S CLAIM THAT HIS RIGHT TO A PUBLIC TRIAL WAS VIOLATED SHOULD BE REJECTED, AND REVIEW SHOULD BE DENIED.

It is readily apparent from the record in Momah's case that the trial judge, King County Superior Court Judge Michael Trickey, at no time closed his courtroom or prevented either spectators or the press from observing any part of jury voir dire. Thus, there was no need for the trial court to engage in the five-step procedure set forth for courtroom closures in State v. Bone-Club, 128 Wn.2d 254, 906 P.2d 325 (1995).

As the opinion of the Court of Appeals describes, on October 11, 2005, due to the number of jurors and the configurations of the various courtrooms, individual voir dire took place in either the judge's chambers adjoining the presiding courtroom, or in the jury

room of Judge Trickey's regular courtroom. 12RP 8, 19-106 (October 11, 2005); State v. Momah, ___ Wn. App. ___ (2007) (slip op. No. 58004-3-I pp. 5-7). At no time did the trial court order or rule that individual jury voir dire was closed to any member of the public or the press. Indeed, Judge Trickey was fully aware of this Court's decisions regarding the necessity for an open courtroom during jury voir dire. The court and the parties even discussed this Court's decision in State v. Brightman, 155 Wn.2d 506, 122 P.3d 150 (2005), on the very day the Brightman decision was rendered. 10RP 5, 93-94 (October 6, 2005); 15RP 2-4 (October 17, 2005). It is readily apparent from the record that Judge Trickey, at no time, closed his courtroom or ever suggested that anyone would be excluded from observing any part of jury voir dire. It is also readily apparent that the parties did not believe there was ever a closure of the courtroom.

That Judge Trickey always kept the courtroom open was also demonstrated by the events of the following day, October 12, 2005. On that day, the trial resumed in Judge Trickey's regular courtroom, after a number of jurors in this high profile case had

been excused. The jury pool was of a more manageable size. Accordingly, Judge Trickey conducted the remainder of individual voir dire in open court, while the rest of the panel was in the jury room. 13RP 11-154 (October 12, 2005). The following day, October 13, 2005, jury voir dire continued in open court in Judge Trickey's regular courtroom. 14RP 1-196 (October 13, 2005).

It is absolutely clear from the record in this case that Judge Trickey never closed his courtroom or prevented anyone from watching jury voir dire if they so desired. It is only Momah's lawyers on appeal who assert that there was a courtroom closure. Because there was no courtroom closure, the Bone-Club factors were not required to be addressed. Momah's right to a public trial was not violated at any point during the voir dire proceeding. The conclusion by the Court of Appeals that Momah's right to a public trial was not violated was absolutely correct. Momah's petition for review should be denied.

2. MOMAH'S MOTION TO ACCELERATE AND TO CONSOLIDATE REVIEW SHOULD BE DENIED.

Momah further argues that review should be accepted and his case should be joined with that of State v. Strode (Supreme Court No. 80849-0), which has been accepted for review. Strode, like State v. Frawley, 140 Wn. App. 713, 167 P.3d 593 (273)(Div. III) and State v. Duckett, __ Wn. App. __ (slip op. No. 25614-6-III, filed 11-27-07), did not turn on whether the trial court closed voir dire to the public. Rather, these cases considered whether the defendant waived his right to a public trial. The issue in Momah was different; namely, whether there was a courtroom closure at all. It is clear in Momah that there was no closure, and the issues raised in Strode, Frawley, and Duckett do not control Momah. Momah's petition for review and his motion for accelerated review and consolidation with Strode should be denied.

Submitted this 20 day of December, 2007.

DANIEL T. SATTERBERG
Prosecuting Attorney



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Attorneys for Respondent
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Sheryl Gordon McCloud, the attorney for the appellant, at 710 Cherry Street, Seattle, WA 98104-1925, containing a copy of the Answer to Petition for Review and Answer to Motion to Accelerate and Consolidate Review, in STATE V. CHARLES MOMAH, Court of Appeals Cause No. 58004-3-1, in the Supreme Court, for the State of Washington.

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

W Brame

Name

Done in Seattle, Washington

12/20/07

Date