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Court of Appeals No.: 65564-7-I

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Petitioner,

v.

HENRY GRISBY, III,

Respondent.

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ANSWER TO STATE'S PETITION FOR REVIEW

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Marla L. Zink  
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WASHINGTON APPELLATE PROJECT  
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*[Signature]*

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A. IDENTITY OF RESPONDENT AND DECISION BELOW

The respondent in this matter, Henry Grisby, III, asks this Court to deny the State's request for a stay and review of the unpublished Court of Appeals opinion that applied settled open courtroom principles to reverse and remand for a new trial. A copy of the decision below is attached as an appendix.

B. ISSUES PRESENTED FOR REVIEW

1. Should the Court allow the Court of Appeals decision to become final where pending cases present distinct factual and legal issues, the outcome of which would not affect the decision below in this case?

2. Should this Court decline review where this case presents no distinct factual issues and the Court of Appeals decision follows clear and extensive precedent, including *State v. Bone-Club*, *State v. Strode*, *In re Pers. Restraint of Orange*, and *Presley v. Georgia*, to reverse and remand for a new trial because the trial court held part of voir dire in chambers, closed from the public and without a court reporter, in violation of Mr. Grisby's right to an open trial?

3. Should review under article I, section 10 be denied because the Court of Appeals decision does not address this constitutional right,

reversing solely based on Mr. Grisby's article I, section 22 right to a public trial?

4. Should this Court decline to consider creating new exceptions to the constitutional public trial rights where the facts of this case render it an ineffective vehicle for a contemporary waiver or de minimis exemption?

C. STATEMENT OF THE CASE

The facts relevant to the State's petition are limited, in large part because there is no record of the closed proceedings held during voir dire.

Mr. Grisby was charged with Violation of the Uniform Controlled Substances Act. CP 1-5. During voir dire, the trial court held an in-chambers conference with prospective juror number 18. 3/11/10RP 25. The court did not conduct any analysis prior to closing the proceedings. *See id.* The only record of the event is as follows:

The court: I was going to ask juror number 18, if you and counsel and Mr. Grisgsby [sic] would come into chambers for a moment?

COURT, COUNSEL, JUROR 18 MEET IN CHAMBERS

(Off the record discussion)

The court: I apologize for the interruption.

*Id.* When the court resumed in open session, there was no further discussion of the in-chambers conference. *Id.*

The selected jury subsequently convicted Mr. Grisby. CP 17. Because the trial court closed voir dire without analysis, without findings, and without any hint that it considered the constitutional right to a public trial and because there was no record of the in-chambers proceedings, the Court of Appeals reversed Mr. Grisby's conviction and remanded for a new trial. *State v. Grisby*, No. 65564-7-I, Slip Op. (Mar. 12, 2012) (attached as an appendix).

#### D. ARGUMENT WHY REVIEW SHOULD BE DENIED

It is well settled that because a defendant has the right to a public, open trial, a closure of voir dire without considering the public trial right and the least restrictive method of curtailing access, among other things, requires reversal of a resulting conviction and remand for a new trial. The Court of Appeals followed the extensive open courtroom precedent and this case does not warrant a new rule.

Without any hint of analysis, or any findings, the trial court closed a portion of voir dire. Because the court reporter was among the excluded, there is no record of what occurred during the in-chambers inquiry. Thus, this case is like *State v. Strobe*, 167 Wn.2d 222, 217

P.3d 310 (2009). Moreover, absent a record of what occurred in chambers, this case is an inappropriate vehicle to create a *de minimis* exception, as the State urges.

**I. The State's request for a stay should be denied because the pending cases present distinct factual and legal issues.**

At the outset, contrary to the State's request, this case should not be stayed pending final disposition in *State v. Wise*, No. 82802-4, and *State v. Paumier*, No. 84585-9. Because those cases are factually and legally distinguishable from Mr. Grisby's case, their outcome is not likely to affect the Court of Appeals decision below.

In *Wise*, appellant asks the Court to abandon *State v. Momah*, 167 Wn.2d 140, 217 P.3d 321 (2009). But *Momah* does not control Mr. Grisby's case. Instead, Mr. Grisby's case is analogous to *Strode*, 167 Wn.2d 222. Moreover, in *Wise*, unlike in the instant case, the in-chambers voir dire of prospective jurors was conducted on the record. Because it was on the record, the public could later access the proceedings and appellate courts can review a transcript of what occurred in chambers. The Court's decision in *Wise* is thus unlikely to control this case.

*Paumier* is similarly inapposite. First, like in *Wise*, the in-chambers voir dire of prospective jurors was conducted on the record. As discussed, the court reporter was not present during the closed proceedings in Mr. Grisby's trial and no subsequent record was made. Additionally, courtroom closure is not the only issue before the Court in *Paumier*. In that case, the Court is also considering whether the defendant was denied his right to self-representation. Accordingly, the Court could resolve that issue without resolving the alleged courtroom closure error.

A stay of the Court of Appeals decision pending the outcome of *Wise* and *Paumier* would prejudice Mr. Grisby by requiring his continued confinement and delaying his constitutionally-required new trial. See *King v. Olympic Pipeline*, 104 Wn. App. 338, 352-53, 16 P.3d 45 (evaluation of a request for a stay requires balancing of interests and factors, including prejudice), *rev. denied* 143 Wn.2d 1012, 21 P.3d 290 (2001); *Landis v. North Am. Co.*, 299 U.S. 248, 254-55, 57 S. Ct. 163, 81 L. Ed. 153 (1936) (same).

Because delaying proceedings is unlikely to affect the outcome in Mr. Grisby's case and because such a delay would prejudice him, the Court should decline to grant the requested stay.

**II. This case does not warrant review because the Court of Appeals correctly applied longstanding precedent to enforce Mr. Grisby's Article I, Section 22 right to a public trial.**

Both the federal and state constitutions guarantee the accused the right to a public trial. U.S. Const. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . ."); Const. art. I, § 22 ("[i]n criminal prosecutions, the accused shall have the right to . . . a speedy public trial").<sup>1</sup>

The defendant's right to a public trial and the public's right to open access to the court system serve "complementary and interdependent functions in assuring the fairness of our judicial system." *State v. Bone-Club*, 128 Wn.2d 254, 259, 906 P.2d 325 (1995); Const. art. I, § 10; Const. art I, § 5; U.S. Const. amend. I. The guarantee of a public trial benefits the accused by ensuring "that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions." *Bone-Club*, 128 Wn.2d at 259 (quoting *In re Oliver*, 333

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<sup>1</sup> The Court of Appeals decision did not address Mr. Grisby's argument under article I, section 10, therefore the State's argument to accept review of that issue should be denied. *Compare* Slip Op. at 2 n.2 with Petition at 7-9.

U.S. 257, 270 n.25, 68 S. Ct. 499, 92 L. Ed. 682 (1948)). “Openness thus enhances both the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.” *Press-Enterprise v. Superior Court*, 464 U.S. 501, 508, 104 S. Ct. 819, 78 L. Ed. 2d 629 (1984).

Precedent plainly establishes that the right to a public trial includes the right to have public access to pretrial proceedings, including jury selection. *E.g.*, *State v. Lormor*, 172 Wn.2d 85, 93, 257 P.3d 624 (2011); *Strode*, 167 Wn.2d at 226-27 (citing cases); *In re Pers. Restraint of Orange*, 152 Wn.2d 795, 804, 100 P.3d 291 (2004) (quoting *Press-Enterprise*, 464 U.S. at 505); *Presley v. Georgia*, 558 U.S. \_\_\_, 130 S. Ct. 721, 724-25, \_\_\_ L. Ed. 2d \_\_\_ (2010) (“Trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials[,]” including the voir dire of prospective jurors.). “[A] closed jury selection process harms the defendant by preventing his or her family from contributing their knowledge or insight to jury selection and by preventing the venire from seeing the interested individuals.” *State v. Brightman*, 155 Wn.2d 506, 515, 122 P.3d 150 (2005) (citing *Orange*, 152 Wn.2d at 812); accord Const. art.

I, § 35 (victims of crimes have the right to “attend trial and all other court proceedings the defendant has the right to attend”).

This Court has repeatedly held that to protect the accused’s constitutional right to a public trial, a trial court may not conduct secret or closed proceedings “without, first, applying and weighing five requirements as set forth in *Bone-Club* and, second, entering specific findings justifying the closure order.” *State v. Easterling*, 157 Wn.2d 167, 175, 137 P.3d 825 (2006). The presumption of openness may be overcome only by a finding that closure is necessary to “preserve higher values” and the closure must be narrowly tailored to serve that interest. *Waller v. Georgia*, 467 U.S. 39, 45, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984) (quoting *Press-Enterprise*, 464 U.S. at 510).

If proceedings are closed, the trial court must enter specific findings justifying the closure so that a reviewing court may determine if it was proper. When the record “lacks any hint that the trial court considered [the defendant’s] public trial right as required by *Bone-Club*, [the appellate court] cannot determine whether the closure was warranted” and reversal is required. *Brightman*, 155 Wn.2d at 515-16, 122 P.3d 150 (citing *Bone-Club*, 128 Wn.2d at 261); accord *Strode*, 167 Wn.2d at 229; *Easterling*, 157 Wn.2d at 181 (“The denial of the

constitutional right to a public trial is one of the limited classes of fundamental rights not subject to harmless error analysis.”).

This extensive line of federal and state court precedent clearly compel the result adhered to by the Court of Appeals. Like in *Strode* and *Easterling*, voir dire proceedings were closed without any analysis of the public trial right. Like in *Strode*, *Easterling*, *Brightman* and *Bone-Club*, for example, there is no record supporting the basis for the closure or what transpired during the in-chambers proceedings.<sup>2</sup> Thus, like in these cases, the Court of Appeals properly reversed Mr. Grisby’s conviction and remanded for a new trial. Consequently, the petition for review should be denied.

**III. This case is an inappropriate vehicle to break with clearly-established precedent and create new exceptions.**

Echoing its pleas in *Paumier*, *Wise*, *State v. Lormor*, No. 84319-8 (opinion issued July 21, 2011) and *State v. Sublett*, No. 84856-4, the State asks this Court to overturn precedent and create new exceptions to

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<sup>2</sup> The record available for review here is even more deficient than in *Strode*, where this Court could review some detailed content and procedure of the in-chambers proceedings. 167 Wn.2d at 224, 228 (discussing the in-chambers voir dire as addressing whether prospective jurors had any personal experience with sexual abuse and setting forth the procedure adhered to during the closed proceedings). Here, the State’s petition presents inconsistent information based even on the limited record available for review. *Compare* Petition at 2 (closed proceedings lasted five minutes) *with id.* at 3 (closed proceedings lasted four minutes).

an accused and the public's right to an open trial. Neither exception is justified. Further, this case presents an improper vehicle to break with precedent.

- a. Because extensive open courtroom precedent properly allocates the burden of ensuring an open court on the trial court, appellate review is not dependent upon a contemporaneous objection.

The State's request for an overhaul of jurisprudence under article I, sections 10 and 22 to severely limit defendants' and the public's right to open trials should be rejected.

The State makes the same argument here as has been repeated in the Washington Association of Prosecuting Attorneys' *amicus curiae* briefs in *State v. Wise*, No. 82802-4, *State v. Paumier*, No. 84585-9, and *State v. Lormor*, No. 84319-8, and which was rejected recently in *Strode*, 167 Wn.2d at 229. Contrary to the State and WAPA's argument that this Court's extensive line of cases, including *Bone-Club*, *Brightman* and *Strode* constitute a new regime, in *Bone-Club* itself this Court noted the historical roots of its holding by relying on *State v. Marsh*, 126 Wash. 142, 146-47, 217 P. 705 (1923). In *Marsh*, this Court explicitly decided (in the face of the State's similar waiver argument) that the defendant could raise the constitutional claim of courtroom closure for the first time on appeal. 126 Wash. at 144-47.

The State provides no justification for abandoning those holdings that a defendant can generally raise a violation of his right to a public trial for the first time on appeal. *See, e.g., Strode*, 167 Wn.2d at 229; *Bone-Club*, 128 Wn.2d at 261; *Marsh*, 126 Wash. at 144-47.

Moreover, the State ignores that *Bone-Club* properly placed the responsibility on the trial court to ensure that at least five factors are weighed on the record prior to closing a court proceeding. *E.g., Strode*, 167 Wn.2d at 228-29 (“The determination of a compelling interest for courtroom closure is ‘the affirmative duty of the trial court, not the court of appeals.’ *Bone-Club*, 128 Wn.2d at 261.”); *Momah*, 167 Wn.2d at 158-59 (Alexander, C.J., dissenting) (emphasizing trial court’s responsibility for propriety of closing courtroom to public); *Easterling*, 157 Wn.2d at 187, 137 P.3d 825 (2006) (Chambers, J., concurring) (same).<sup>3</sup> Thus, it is the trial court’s responsibility to ensure the *Bone-Club* procedures are followed prior to any courtroom closure. Applying a contemporaneous waiver rule would severely weaken this allocation.

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<sup>3</sup> In *Strode*, this Court further reasoned that a contemporaneous objection rule is not warranted because a defendant cannot waive the public’s article I, section 10 right to a public trial. 167 Wn.2d at 229-30 (citing *Bone-Club*, 128 Wn.2d at 261).

Finally, a lack of objection, such as occurred here and in *Strode*, 167 Wn.2d at 229, is distinct from a defendant's active participation in the courtroom closure, which occurred in *Momah*, 167 Wn.2d at 155, and *Keddington v. State*, 19 Ariz. 457, 172 P. 273 (1918).<sup>4</sup> This case does not present an appropriate vehicle for considering the State's unsupported argument

- b. A de minimis rule contravenes longstanding precedent and would not resolve the issue here because a complete lack of record precludes a finding that the closure here was de minimis.

The closure here cannot be characterized as de minimis.

Without conducting any weighing of the *Bone-Club* factors or apparently giving any consideration to the public trial rights, the court unilaterally took proceedings into chambers, excluding the public and the court reporter. Not only is there no record of the considerations meriting closure but there is no record of the ensuing in-chambers proceedings. Contrary to the State's argument, therefore, this Court cannot find that the closed proceedings "had nothing to do with the

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<sup>4</sup> *Keddington* is also distinguishable because the court there considered only a partial closure—that is not all of the public was excluded. Likewise, only a partial closure was considered in *State v. Collins*, 50 Wn.2d 740, 747-48, 314 P.2d 660 (1957). Additionally, the *Keddington* court stated in dicta that a different rule would likely result in the event of full closure. 19 Ariz. at 459, 464. Here, the entire public, including the press and court reporter, were excluded during the trial court's in-chambers voir dire. These cases are therefore inapposite.

truth-seeking function of the trial” or were merely “ministerial.”

Petition at 3, 6. Thus, the Court should not accept review to consider the State’s attempt to create a further de minimis exception to the constitutional public trial right.

Further, precedent does not support such an exception. In fact, the State argued for a de minimis rule in *Strode*, and it was appropriately rejected by this Court. 167 Wn.2d at 230. Like in other structural error contexts, violation of public trial rights mandates reversal because where no record is made and no weighing and balancing performed it is impossible for an appellate court to determine prejudice. In *Easterling*, the court rejected the possibility that a courtroom closure may be de minimis, even for a limited closure applicable to a limited hearing for a separately charged co-defendant. 157 Wn.2d at 180 (“a majority of this court has never found a public trial right violation to be de minimus”). Similarly, in *Strode*, the closed voir dire proceedings were not de minimis. 167 Wn.2d at 223, 230. When the record “lacks any hint that the trial court considered [the defendant’s] public trial right as required by *Bone-Club*, [the appellate court] cannot determine whether the closure was warranted.” *Brightman*, 155 Wn.2d at 515-16.

A de minimis exception would also thwart the purpose of the constitutional open court guarantee, which serves to “ensure a fair trial, to remind the officers of the court of the importance of their functions, to encourage witnesses to come forward, and to discourage perjury.” *Strode*, 167 Wn.2d at 226 (quoting *Brightman*, 155 Wn.2d at 514, 122 P.3d 150); *see also id.* (quoting *Waller*, 467 U.S. at n.4) (“the United States Supreme Court has stated that public trials embody a ‘view of human nature, true as a general rule, that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings’”). Because these principles are contravened by even a temporary closure, closure of the courtroom during voir dire “is a structural error that cannot be considered harmless.” *Strode*, 167 Wn.2d at 223; *accord Easterling*, 157 Wn.2d at 181 (“The denial of the constitutional right to a public trial is one of the limited classes of fundamental rights not subject to harmless error analysis.”).

E. CONCLUSION

This Court should deny the State's request to review the unpublished Court of Appeals decision, which adhered to settled precedent and constitutional principles.

DATED this 2nd day of May, 2012.

Respectfully submitted,



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Attorney for Petitioner

# APPENDIX

**FILED**  
**COURT OF APPEALS**  
**DIVISION ONE**  
**MAR 12 2012**

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	DIVISION ONE
	)	
Respondent,	)	No. 65564-7-1
	)	
v.	)	
	)	
HENRY GRISBY, III,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: March 12, 2012
_____	)	

DWYER, C.J. — Henry Grisby, III appeals from his conviction of delivery of a controlled substance in violation of the Uniform Controlled Substances Act.<sup>1</sup> During voir dire, the trial court interviewed in chambers a prospective juror without first conducting an analysis regarding closure of the pretrial proceeding. Absent such an analysis, the closure of criminal trial proceedings constitutes reversible error in all but the most exceptional circumstances. Accordingly, we reverse Grisby's conviction and remand for a new trial.

The facts relevant to Grisby's appeal are few and concern only the trial court's in-chambers conference with a prospective juror,

<sup>1</sup> Ch. 69.50 RCW.

The State charged Grisby with delivery of a controlled substance in violation of the Uniform Controlled Substances Act. Jury selection for Grisby's trial was held on March 10 and 11, 2010. At the end of the first day of voir dire, after the jury was excused, the trial court and parties' counsel discussed some confusion that had arisen regarding whether one of the potential jurors had a prior criminal conviction rendering him ineligible for jury service. The parties determined that the potential juror should be questioned regarding the possible conviction during voir dire the next day.

On the following morning, the trial court asked the potential juror to accompany counsel and Grisby into chambers "just for a moment." Report of Proceedings (RP) (March 11, 2010) at 3. The record then notes a four minute recess. The trial court thereafter stated on the record, "I apologize for the interruption," and voir dire continued. RP at 3. No record was made of the in-chambers proceeding, brief as it was.

The jury convicted Grisby as charged. He appeals.

II

Grisby contends that the trial court violated his article I, section 22 right to a public trial by conducting a portion of voir dire in chambers, thus temporarily restricting public access to the pretrial proceeding, without first conducting the required analysis for courtroom closure.<sup>2</sup> We agree.

We review de novo whether a trial court procedure violates a criminal

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<sup>2</sup> Grisby also contends that the public's article I, section 10 right to open courtroom proceedings was violated by the in-chambers voir dire. Because we resolve this case based upon Grisby's right to a public trial, we do not address this separate contention.

defendant's right to a public trial. State v. Easterling, 157 Wn.2d 167, 173-74, 137 P.3d 825 (2006). That right is secured by article I, section 22 of our state's constitution, which provides that "[i]n criminal prosecutions the accused shall have the right . . . to have a speedy public trial." "While the right to a public trial is not absolute, it is strictly guarded to assure that proceedings occur outside the public courtroom in only the most unusual circumstances." State v. Strode, 167 Wn.2d 222, 226, 217 P.3d 310 (2009) (citing Easterling, 157 Wn.2d at 174-75). Moreover, the right to a public trial is not implicated solely by proceedings occurring after the commencement of trial; rather, the right "extends in criminal cases to '[t]he process of juror selection,' which 'is itself a matter of importance, not simply to the adversaries but to the criminal justice system.'" Strode, 167 Wn.2d at 226 (alteration in original) (internal quotation marks omitted) (quoting In re Pers. Restraint of Orange, 152 Wn.2d 795, 804, 100 P.3d 291 (2004)); see also State v. Tinh Trinh Lam, 161 Wn. App. 299, 254 P.3d 891 (2011).

The presumption of openness of criminal trial proceedings may be overcome "only by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest. The interest is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered." State v. Bone-Club, 128 Wn.2d 254, 260, 906 P.2d 325 (1995) (internal quotation marks omitted) (quoting Waller v. Georgia, 467 U.S. 39, 45, 104 S. Ct. 2210, 81 L. Ed. 2d 31 (1984)). Accordingly, in Bone-Club, our Supreme Court held that "the five criteria a trial court must obey to protect the public's right of access

before granting a motion to close are likewise mandated to protect a defendant's right to public trial." 128 Wn.2d at 259.<sup>3</sup> The trial court must also enter specific findings justifying its closure order. Easterling, 157 Wn.2d at 175 (citing Bone-Club, 128 Wn.2d at 258-59). Where a defendant is denied the constitutional right to a public trial, prejudice is necessarily presumed. Bone-Club, 128 Wn.2d at 261-62.

Pursuant to our Supreme Court's mandate that the public trial right be "strictly guarded," we recently held that a temporary closure of a trial proceeding required reversal of the defendant's conviction because the trial court had not conducted the required Bone-Club analysis. Lam, 161 Wn. App. at 301. There, a juror was briefly questioned in chambers after expressing safety concerns to the bailiff; although the record did not indicate whether the defendant was present during the in-chambers meeting, it did indicate that defense counsel was present. Lam, 161 Wn. App. at 301-02. The State asserted that Lam had failed to preserve the public trial issue for appellate review because he had not raised the issue before the trial court. Lam, 161 Wn. App. at 304. We disagreed, observing that "[i]n three recent cases, our Supreme Court has allowed a party to assert the denial of a public trial right for the first time on appeal." Lam, 161 Wn.

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<sup>3</sup> The five criteria that must be considered by the trial court are: (1) The proponent of closure must make some showing for the need for closure. Where the need for closure is based upon any right other than an accused's right to a fair trial, a "serious and imminent threat" to that right must be demonstrated. (2) Anyone present when the closure motion is made must be given an opportunity to object. (3) The method of closure must be the least restrictive means available to protect the interest at issue. (4) The court must weigh the competing interests of the proponent of closure and the public. (5) The order must be no broader than necessary to serve its purpose. Bone-Club, 128 Wn.2d at 258-59 (quoting Allied Daily Newspapers of Wash. v. Eikenberry, 121 Wn.2d 205, 210-11, 848 P.2d 1258 (1993)).

App. at 304. Noting that our Supreme Court has strongly suggested that a de minimis standard is inapplicable to public trial right violations, we also rejected the State's contention that such a standard should be applied in order to uphold Lam's conviction. Lam, 161 Wn. App. at 305-06.

Similarly, here, in order to protect Grisby's right to a public trial, the trial court was required to conduct a Bone-Club analysis prior to the temporary closure of voir dire effected by the in-chambers conference with a prospective juror. The fact that Grisby did not object at trial to this temporary closure is of no consequence to his ability to challenge the closure on appeal. See Strode, 167 Wn.2d at 229 ("[T]he public trial right is considered an issue of such constitutional magnitude that it may be raised for the first time on appeal."). "Because the record in this case lacks any hint that the trial court considered [Grisby's] public trial right as required by Bone-Club, we cannot determine whether the closure was warranted." State v. Brightman, 155 Wn.2d 506, 518, 122 P.3d 150 (2005). Where a defendant's right to a public trial is violated, the proper remedy is a new trial. Lam, 161 Wn. App. at 307. Thus, Grisby is entitled to this remedy.<sup>4</sup>

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<sup>4</sup> The State concedes that our decision in Lam controls the disposition of this case. However, the State contends that our Supreme Court's current approach to open courts claims is flawed. Specifically, the State contends that a defendant should be required to assert his right to a public trial in the trial court in order to preserve that issue for appeal. The State additionally asserts that a defendant does not have standing to assert the article I, section 10 right of the public to open courtrooms and that a de minimis standard should apply when evaluating courtroom closures. To the extent that the State must raise these issues in this court in order to preserve them for review by our Supreme Court, we note that the State has done so.

No. 65564-7-1/6

Reversed and remanded for a new trial.

Wynne, C.D.

We concur:

Leach, J.

Becker, J.

**DECLARATION OF FILING AND MAILING OR DELIVERY**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Washington State Supreme Court** under **Case No. 87259-7**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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King County Prosecutor's Office – Appellate Unit
- petitioner
- Attorney for other party

  
MARIA ANA ARRANZA RILEY, Legal Assistant  
Washington Appellate Project

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**State v. Henry Grisby III**  
No. 87259-7

Please accept the attached documents for filing in the above-subject case:

**ANSWER TO STATE'S PETITION FOR REVIEW**

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By

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