31215-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

SHELLYE L. STARK, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

APPELLANT'S REPLY BRIEF

Jill S. Reuter
Attorney for Appellant

Janet G. Gemberling
Attorney for Appellant

JANET GEMBERLING, P.S.
PO Box 9166
Spokane, WA 99209
(509) 838-8585

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A. FACTS

1. The relevant facts are set forth in Ms. Stark's opening brief.

B. ARGUMENT

1. THE TRIAL COURT VIOLATED MS. STARK'S CONSTITUTIONAL PUBLIC TRIAL RIGHT.

Criminal defendants and the public have a constitutional right to public trials. U.S. Const. amend. VI; Wash. Const. art. I, §§ 10, 22; *see also State v. Wise*, 176 Wn.2d 1, 9, 288 P.3d 1113 (2012). Here, the trial court closed the courtroom by prohibiting the public from entering or leaving the courtroom during closing arguments. (RP 891)

The State argues that the trial court's pronouncement was not a courtroom closure. (Resp. Br. at 6-8) The State asserts "[t]he public was not prohibited from entering or leaving the courtroom." (Resp. Br. at 7) The State also asserts "[t]he trial court's comments merely asked the present spectators to exercise good judgment in leaving from and returning to the courtroom during the arguments and to try to remain in the court for the duration, if they could do so." (Resp. Br. at 7-8).

However, contrary to the State's assertions, the trial court did not ask the present spectators to "exercise good judgment" and remain in the courtroom through the closing arguments "if they could do so." (Resp. Br. at 7-8) Instead,

the trial court told the present spectators "I don't really want people coming or going during closings." (RP 891) This was a courtroom closure. *See State v. Sublett*, 176 Wn.2d 58, 71, 292 P.3d 715 (2012) (stating that closure "occurs when the courtroom is completely and purposefully closed to spectators so that no one may enter and no one may leave.") (*quoting State v. Lormor*, 172 Wn.2d 85, 93, 257 P.3d 624 (2011)).

The State offers no evidence to support its assertions that a courtroom closure did not occur. "On appeal, a defendant claiming a violation to the public trial right is not required to prove that the trial court's order has been carried out." *State v. Brightman*, 155 Wn.2d 506, 517, 122 P.3d 150 (2005) (*citing In re Personal Restraint of Orange*, 152 Wn.2d 795, 813-14, 100 P.3d 291 (2004)). "[O]nce the plain language of the trial court's ruling imposes a closure, the burden is on the State to overcome the strong presumption that the courtroom was closed. *Id*. at 516. The State's blanket assertions that a courtroom closure did not occur does not meet this burden. (Resp. Br. at 7-8)

C. CONCLUSION

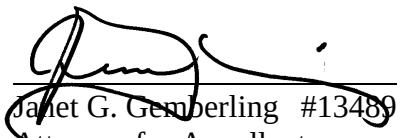
The trial court violated Ms. Stark's constitutional public trial right by prohibiting the public from entering or leaving the courtroom during closing arguments, without considering the factors set forth in *State v. Bone-Club*, 128 Wn.2d 254, 258-59, 906 P.2d 325 (1995). The State has not met its burden of

overcoming the strong presumption of courtroom closure. Ms. Stark is entitled to a new trial.

Dated this 3rd day of September, 2013.

JANET GEMBERLING, P.S.

Jill S. Reuter #38374
Attorney for Appellant



Janet G. Gemberling #13489
Attorney for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 31215-1-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
SHELLYE L. STARK,	)	
	)	
Appellant.	)	

I certify under penalty of perjury under the laws of the State of Washington that on September 3, 2013, I served a copy of the Appellant's Reply Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

Mark E. Lindsey
kowens@spokanecounty.org

I certify under penalty of perjury under the laws of the State of Washington that on September 3, 2013, I mailed a copy of the Appellant's Reply Brief in this matter to:

Shellye L. Stark
#330491
Washington Correction Center - Women
9601 Bujacich Rd NW
Gig Harbor WA 98332

Signed at Spokane, Washington on September 3, 2013.

Jill Reuter
Attorney at Law