Supreme Court Affirms Right to Attend Jury Selection

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The U.S. Supreme Court today issued a 7-2 per curiam opinion summarily reversing a Georgia Supreme Court decision that had found no error in a lower court ruling that emptied a courtroom during jury selection in a criminal case. The case was notable in the short work the majority made of the notion that the Sixth Amendment right to a public trial somehow may not include the voir dire process or that applicable test is not clear. The case therefore represents an important victory for access to court proceedings.

The case, Presley v. Georgia, involved a criminal trial in which a single person was present in the courtroom during the voir dire of potential jurors. The presiding judge asked who the man was, and he answered he was the defendant's (Presley's) uncle. The judge then instructed the man to leave while the jury was being picked, over the objection of the defendant's counsel, suggesting there "just isn't space for them to sit in the audience." The judge made clear that the defendant's uncle could return "once the trial starts." After Presley was convicted, he moved for a new trial based on the exclusion of his uncle, presenting evidence that there had been adequate room for members of the public to attend voir dire. The trial court denied the motion, and, on appeal, the intermediate and highest courts of Georgia found no error.

The focus of the case was on whether the trial court was obligated to consider alternatives to closure despite the fact that Presley's counsel had not suggested any.

The Supreme Court began its discussion by reaffirming that the right to a public trial flows not just from the Sixth Amendment rights of the accused, but also from the free-speech protections of the First Amendment. The Court then explained that in the Press Enterprise I case, it had held that the First Amendment requires access to voir dire. Despite the fact that Presley was asserting a violation of his Sixth Amendment rights, the Court held "there is no legitimate reason, at least in the context of juror selection proceedings, to give one who asserts a First Amendment privilege greater rights to insist on public proceedings than the accused has."

The Court went on to acknowledge that under both the First and Sixth Amendments, there may be exceptions to the right to insist that voir dire be public; however, "such circumstances will be rare," and "the balance of interests must be struck with special care." The test sets a high bar, in that the party seeking to close the proceedings must "advance an overriding interest that is likely to be prejudiced," "closure must be no broader than necessary," and the judge "must consider reasonable

alternatives to closing the proceedings" and "make findings adequate to support closure."

The Court brushed aside the suggestion from the Georgia Supreme Court that a court need not consider alternatives if the party opposing closure fails to suggest them. The Court underscored that the teaching of Press Enterprise I was clear -- "the public has a right to be present whether or not any party has asserted the right." Thus, "[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials." In Presley, the Court explained, the trial judge not only failed to make any attempt to accommodate public attendance, it also failed to articulate an overriding interest in closure through specific findings. There was no evidence in the record that the presence of the defendant's uncle in the courtroom gallery threatened the fairness of the trial or the impartiality of the potential jurors.

In dissent, Justices Thomas and Scalia complained that the majority summarily disposed of the case, without Presley even asking that they do so. Justice Thomas, who wrote the dissenting opinion, went on to argue that there was some lingering question after Press Enterprise I and its progeny as to the Sixth Amendment right to public juror selection proceedings and therefore that the majority should not have ruled summarily.

Justice Thomas, a Georgia native, appears to have been motivated to dissent in part by a desire to defend jurists from his home state. He closed his dissent by accusing the majority of "belittl[ing] the efforts of our judicial colleagues who have struggled with these issues in attempting to interpret and apply the same opinions upon which the Court so confidently relies today." However, while he and Justice Scalia may have felt that Presley presented a close constitutional question, the other seven Justices clearly did not. It is heartening to see a healthy majority of the Court act with dispatch to correct the failure of a state court to apply the clear holdings of Press Enterprise I and other courtroom access cases. The Supreme Court deserves high marks for its summary treatment of the issues in Presley.