

Georgia Supreme Court Addresses Exclusion of the Public from Criminal Voir Dire Proceedings

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Before the prospective jurors were brought into the courtroom for voir dire in the trial of Eric Presley for cocaine trafficking, the trial court excluded all spectators from the courtroom, including Mr. Presley's uncle, for the time period of the voir dire proceedings. The court announced that Mr. Presley's uncle and the other spectators could return to the courtroom after jury selection had been completed. Defense counsel objected to the exclusion of the public from the courtroom. In response, the judge explained that the courtroom was "very small" and that "... witnesses and relatives cannot sit in the audience beside the potential jurors. That will be grounds for a mistrial... ." *Presley v. State*, 285 Ga. 270, 271 (2009).

Defense counsel then inquired whether "some accommodation could not be made for both, some of those members of the family and the jurors?" *Id.* The court indicated that "the uncle can certainly come back in once the trial starts. There's no, really no need for the uncle to be present during jury selection... . [W]e have 42 jurors coming up. Each of these rows will be occupied by jurors. And his uncle cannot sit and intermingle with members of the jury panel." *Id.*

Mr. Presley was found guilty, he moved for a new trial and argued that the trial court erred in refusing to make an accommodation so as to allow observers at all phases of his trial. The Court of Appeals of Georgia held that the trial court had not abused its discretion and noted that "[t]he single purpose for voir dire is the ascertainment of the impartiality of jurors, their ability to treat the cause on the merits with objectivity and freedom from bias and prior inclination." *Presley v. State*, 290 Ga. App. 99, 100 (2008).

The defendant then appealed to the Georgia Supreme Court, which affirmed. Despite

evidence presented by Presley that 58 people could be comfortably accommodated in the courtroom and that additional seating could have been brought into the courtroom, the Georgia Supreme Court noted that "the trial court certainly had an overriding interest in ensuring that potential jurors heard no inherently prejudicial remarks from observers during voir dire." *Presley*, 285 Ga. at 272.

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Presley, 285 Ga. at 276

Two justices dissented from the majority opinion, reasoning that the United States Supreme Court's decision in *Waller v. Georgia* requires the court to consider, *sua sponte*, alternatives to closing the proceeding. The dissenting justices stated that "it was the trial court's sole decision to conduct voir dire with 42 potential jurors in the courtroom at a time that created the overcrowding, a decision wholly within the trial court's control." *Presley*, 285 Ga. at 274. Furthermore, the dissenting justices expressed concern about the precedent set by the majority opinion, noting that "the majority's reasoning permits the closure of voir dire in every criminal case conducted in this courtroom whenever the trial judge decides, for whatever reason,... to fill the courtroom with potential jurors rather than spectators... . The majority today gives the trial courts in these cases the green light to exclude the public entirely from voir dire in all of them, contrary to the express commands of the Sixth Amendment... " *Id.* at 276 (emphasis in original).