Presley v. Georgia
558 U.S. --- (2010)
Decided January 19, 2010

FACTS: Presley was scheduled to stand trial in DeKalb County, Georgia. During jury selection the judge noticed a lone courtroom observer." The judge "explained the prospective jurors were about to enter and instructed the man that he was not allowed in the courtroom, and had to leave that floor of the courthouse entirely." The Court discovered that he was Presley's uncle. Upon objection by Presley's attorney, the judge explained that the courtroom would be fully occupied by jurors, and that the "uncle cannot sit and intermingle with members of the jury panel." The judge did state that the uncle could return when the trial actually started.

Presley was convicted, and moved for a new trial "based on the exclusion of the public from the juror *voir dire*." He presented evidence that there would have been plenty of space for observers. The trial court denied it, and Presley appealed. The Georgia Court of Appeals upheld the trial court's decision, as did the Georgia Supreme Court.

Presley appealed to the U.S. Supreme Court, which accepted the case.

ISSUE: May a judge exclude observers from jury selection?

HOLDING: No (but see discussion)

DISCUSSION: The Court first noted that the question before it is "whether the right to a public trial in criminal cases extends to the jury selection phase of trial, and in particular the *voir dire* of prospective jurors." The Court noted that question was addressed in the affirmative, in the First Amendment context, by Press-Enterprise Co. v. Superior Court of Cal., Riverside Cty.[1] A later case, in the same term, ruled that the "Sixth Amendment right to a public trial extends beyond the actual proof at trial, and included a "pretrial hearing on a motion to suppress certain evidence."[2]

The Court concluded the point of whether the public is entitled to observe voir dire was "well settled" and that the defendant had a constitutional right to insist upon it. The Court agreed that there might be, on occasion, an exception to that rule, but that "such circumstances will be rare … and the balance of interests must be struck with special care." Further, the Court noted, it had held that "the trial court must consider reasonable alternatives to closing the proceeding," and emphasized that it is not the responsibility of the parties to offer up such

[1] 464 U.S. 501 (1984)
[2] Waller v. Georgia, 467 U.S. 39 (1984).

alternatives. The Court noted that the “public has a right to be present whether or not any party has asserted the right.”

Specifically, the Court stated, “[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials.” The record indicated that the trial court could have easily accommodated observers, and that the jury could have been instructed “not to engage or interact with audience members.”

The decision of the Georgia Supreme Court was reversed and the case remanded.

FULL TEXT OF OPINION: **http://www.supremecourtus.gov/opinions/09pdf/09-5270.pdf**