

No.
IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES C. GORE, Petitioner,
-vs-

PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the right to a public trial is violated when the trial court closes the courtroom while addressing questions posed by the jury during deliberations, a critical stage of trial that implicates both the defendant's substantial rights and the interests of public accountability.

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The petitioner, Charles C. Gore, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The decision of the Illinois Appellate Court (Appendix A) is reported at 2018 IL App (3d) 150627, ___ N.E.3d ___, and is published. The order of the Illinois Supreme Court denying leave to appeal (Appendix B) is reported at 2018 WL 4699657(Table), ___ N.E.3d ___.

JURISDICTION

On April 18, 2018, the Appellate Court of Illinois issued its decision. No petition for rehearing was filed. The Illinois Supreme Court denied a timely filed petition for leave to appeal on September 26, 2018. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. Amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Defendant Charles Gore was charged with the crimes of attempt first degree murder, home invasion, and aggravated domestic battery. *People v. Gore*, 2018 IL App (3d) 150627, ¶ 3. The charges alleged that Gore entered the dwelling place of Melissa Stenger, a member of Gore's family, knowing that she was home, and stabbed her in the neck and chest. *Id.* at ¶ 3.

The State's evidence tended to establish that Stenger and Gore, who had a 12-year-old daughter together, had recently ended their 14-year relationship. *Id.* at ¶ 4. Gore initially lived in the couple's home, while Stenger and their daughter lived with Stenger's father. *Id.* at ¶ 4. Gore eventually moved out and Stenger moved back in. *Id.* at ¶ 4. Stenger believed Gore owed her money, including for unpaid bills and for personal property Gore had not returned to her. *Id.* at ¶ 4.

The night before the incident, Stenger had spent time with a man who ultimately stayed the night at the home. *Id.* at ¶ 4. After the man left in the morning, Gore entered the home, confronted her about the man, and attacked her. *Id.* at ¶ 5. He hit her in the head, choked her, and dragged her through the home to the kitchen, where he took a knife from a drawer. *Id.* at ¶ 5. The two struggled over the knife before Stenger was able to escape. *Id.* at ¶ 5. She then realized she had been stabbed. *Id.* at ¶ 5.

Gore testified that he had gone to retrieve his property after Stenger told him to remove all of his belongings remaining in the home. *Id.* at ¶ 7. While there, Stenger demanded money. *Id.* at ¶ 7. She screamed at him and grabbed him by the shirt. *Id.* at ¶ 7. When he said he was leaving, she grabbed a knife and attacked him. *Id.* at ¶ 7.

In the ensuing struggle, Stenger pushed Gore over a chair. *Id.* at ¶ 7. When he got up, he saw a pool of blood. *Id.* at ¶ 7. He speculated that Stenger had been stabbed or cut while she was swinging the knife. *Id.* at ¶ 7. Gore eventually left the home. *Id.* at ¶ 7.

During deliberations, the jury asked a question. *Id.* at ¶ 8. The trial court stated: “They have a question, and I’m reviewing that question in the presence of the defendant and his counsel and the state’s attorney.” *Id.* at ¶ 8. The parties decided on an answer to the question. *Id.* at ¶ 8. When the jury was brought into the courtroom to receive the answer, the trial court announced that it had closed the courtroom because it considered the question “a private matter.” *Id.* at ¶ 9. When the jury asked a second question, the trial court again closed the courtroom, noting that the parties and the jury were present, but that “everyone else” had been excluded. *Id.* at ¶ 10. When the jury asked a third question, the trial court again closed the courtroom, and in response to the questions, allowed the jury to listen to an audio recording of Stenger’s testimony in the presence of the parties. *Id.* at ¶ 10; see also R1129 (closing the courtroom).

The jury acquitted Gore of attempt murder, but found him guilty of aggravated domestic battery and home invasion. *Id.* at ¶ 11. He was sentenced to seven years’ incarceration for aggravated domestic battery and eleven years’ incarceration for home invasion. *Id.* at ¶ 16.

On appeal, the Illinois Appellate Court remanded for a hearing at which the trial court will examine whether Gore is entitled to new counsel to argue certain ineffective assistance of counsel claims Gore had raised *pro se* after his trial. *Id.* at ¶¶ 36-39. However, it rejected Gore’s argument that the courtroom closures that occurred

while the trial court and the parties resolved the jury's questions denied him his right to a public trial. According to the Appellate Court, because jury deliberations are private, the right to counsel simply did not attach to answering inter-deliberational questions. *Id.* at ¶¶ 22-35. The Illinois Supreme Court denied leave to appeal on September 26, 2018. *People v. Gore*, No. 123566, order of Sept. 26, 2018 (Appendix).

REASON FOR GRANTING CERTIORARI

Every criminal defendant is constitutionally guaranteed a personal right to a public trial. U.S. Const. Amends. VI, XIV; *Presley v. Georgia*, 558 U.S. 209, 212 (2010); *Duncan v. Louisiana*, 391 U.S. 145, 148 (1968). The right is not absolute, and may give way in certain cases to other rights or interests. *Presley*, 558 U.S. at 213-14 (citing *Waller v. Georgia*, 467 U.S. 39, 45 (1984)). However, “[c]losed proceedings, although not absolutely precluded, must be rare and only for cause shown that outweighs the value of openness.” *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 509 (1984).

Before excluding the public from any stage of a criminal trial, the trial court must apply the following standards: (1) the party who wishes to close the proceedings must show an overriding interest that is likely to be prejudiced by a public trial; (2) the closure must be narrowly tailored to protect that interest; (3) alternatives to closure must be considered by the trial court; and (4) the court must make findings sufficient to support the closure. *Presley*, 558 U.S. at 213-14; *Waller*, 467 U.S. at 48. In applying these standards, the trial court is obligated to take every reasonable measure to accommodate public attendance, and must consider alternatives to closing the trial even when none have been offered by the parties. *Presley*, 588 U.S. at 215. A trial court’s “broad and general” findings will not justify closure. *Waller*, 457 U.S. at 48.

This Court explained the interests underlying the right to a public trial in *Waller*:

“““The requirement of a public trial is for the benefit of the accused; 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...." ' " Ibid. (quoting *In re Oliver*, 333 U.S. 257, 270, n. 25, 68 S.Ct. 499, 506, n. 25, 92 L.Ed. 682 (1948), in turn quoting T Cooley, *Constitutional Limitations* 647 (8th ed. 1927)).

Waller, 467 U.S. at 46; see also *id.* at 46 n.4 ("Essentially, the public-trial guarantee embodies 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 . . . The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power," quoting *Estes v. Texas*, 381 U.S. 532, 588 (1965), and *Oliver*, 333 U.S. at 270, citations and punctuation omitted).

All of these interests are present when the jury asks, and the trial court answers, a question during deliberations. Answering the jury's questions fairly and correctly is a crucial goal undertaken by the defense, the prosecution, and the judge. It is therefore important that those parties understand that their actions are public and accountable to the community, and making the answering of jury questions public serves that function in the same way as making any other part of the trial public. *Waller*, 467 U.S. at 46. That is, it ensures that the project of answering the questions is carried out responsibly. *Waller*, 467 U.S. at 46 n.4 (quoting *Estes*, 381 U.S. at 588). The questions themselves, as well as the process of answering them, can reveal the jury's concerns about the case and the strengths and weaknesses of the evidence in a way that keeps the jury insulated from undue influence. This, in turn, can encourage public intervention, the same way that keeping the evidentiary portions of the trial public can encourage new witnesses to come forward and discourage perjury. Imagine, for example, a reluctant witness, having acquiesced to testifying in a certain way,

learning through the question answering process that his or her misleading testimony is critical to the result. See *Waller*, 467 U.S. at 46 (“In addition to ensuring that judge and prosecutor carry out their duties responsibly, a public trial encourages witnesses to come forward and discourages perjury.”). And it vindicates both the defendant’s and the public’s interest in transparency in proceedings that touch on the defendant’s guilt. See *Press-Enterprise Co.*, 464 U.S. at 509 (“Proceedings held in secret would deny this outlet and frustrate the broad public interest; by contrast, public proceedings vindicate the concerns of the victims and the community in knowing that offenders are being brought to account for their criminal conduct by jurors fairly and openly selected.”). Finally, there should rarely be a compelling need to close the courtroom to answer jury questions. Written answers sent back to the deliberation room will almost always be a reasonable alternative to shutting out the public, particularly since answering a question in person could create a conflict between the right to a public trial and the need to insulate the jury (a point the Appellate Court implicitly acknowledged in this case). See *Gore*, 2018 IL App (3d) 150627, ¶¶ 33-34 (reviewing Illinois cases finding error in allowing the jury to review evidence or otherwise deliberate in the presence of third parties).

Furthermore, when the jury asks a question, a defendant’s substantive rights are at stake, and the response can influence the outcome of the trial. Accordingly, the highest courts of many jurisdictions have said that jury deliberations, at least in certain circumstances, are a critical stage at which other fundamental constitutional rights attach, such as the right to be present with counsel. See *Com. v. Valentin*, 23 N.E.3d 61, 70 (Mass. 2014); *State v. Herbel*, 299 P.3d 292, 297-98 (Kan. 2013); *Com. v.*

Johnson, 828 A.2d 1009, 1011, 1014-16 (Penn. 2003); *People v. Childs*, 636 N.E.2d 534, 538, 542 (Ill. 1994); *Key v. People*, 865 P.2d 822, 825-26 (Colo. 1994); *State v. Savage*, 577 A.2d 455, 466 (N.J. 1990); *State v. Smuda*, 419 N.W.2d 166, 168 (N.D. 1988); *People v. Hogan*, 647 P.2d 93, 112-13 (Cal. 1982); *Dixon v. State*, 605 P.2d 882, 884-89 (Alaska 1980); *cf. State v. Crabtree*, 482 S.E.2d 605, 613-16 (W.V. 1996) (analyzing prejudice after prosecution conceded right to be present while addressing questions from jury); *State v. Kaiser*, 504 N.W.2d 96, 100 (S.D. 1993) (saying jury deliberations are critical stage, but not addressing the rights involved); but see *Stouffer v. State*, 147 P.3d 245, 271 (Okla. Crim. App. 2006); *Ridley v. State*, 690 N.E.2d 177, 179-81 (Ind. 1997), overruled on other grounds, *Whedon v. State*, 765 N.E.2d 1276 (Ind. 2002).

A split of authority exists at the state level as to whether the right to a public trial is among the rights that attach during jury deliberations. That split, however, is not well-balanced. No right to a public trial during jury deliberations exists in Washington. *State v. Sublett*, 292 P.3d 715, 721-25 (Wash. 2012). The state of the law in Kansas is ambiguous: the Supreme Court of Kansas has generally addressed the question in terms of the statutory and constitutional right to be present, but has generally refused to analyze the question in terms of the right to a public trial. See, e.g., *State v. Cooper*, 366 P.3d 232, 236 (Kan. 2016). Colorado, Montana, and Massachusetts all recognize the constitutional right to a public trial during proceedings related to jury deliberations. *People v. Lujan*, ___ P.3d ___, 2018 COA 95, ¶¶ 9-19 (Colo. App. 2018); *State v. Tapson*, 41 P.3d 305, 309 (Mont. 2001); *Com. v. Patry*, 722 N.E.2d 979, 982-83 (Mass. 2000). While the Intermediate Court of Appeals of Hawai‘i has speculated in *dicta* that the public trial right does not attach during deliberations,

State v. Swanson, 145 P.3d 886, 897 (Haw. Ct. App. 2006), the Supreme Court of Hawai'i has recognized that the corollary First Amendment right of the public to access a criminal trial does attach to certain proceedings involving jury deliberations. *Oahu Publications Inc. v. Ahn*, 331 P.3d 460, 471-82 (Haw. 2014). And until the Illinois Appellate Court rejected the public trial right in this case, the Illinois Supreme Court had clearly stated, in cases going back to the Civil War, that responses to questions from the jury must be answered in open court. See, e.g., *People v. Beck*, 137 N.E. 454, 456 (1922) (“The policy of the law requires that all the proceedings of the court should be open and notorious and in the presence of the party, so that, if he is not satisfied with it, he may take exceptions to it in the mode pointed out by the law, and not be put to extraneous proof to show that an error has been committed in a secret proceeding, and, in fact, out of court,” quoting *Crabtree v. Hagenbaugh*, 76 Am. Dec. 694 (Ill. 1860)).

Gore’s case provides an ideal vehicle by which to resolve this important question of constitutional law. In this case, after the jury retired to deliberate, it sent a series of three questions to the trial court. *People v. Gore*, 2018 IL App (3d) 150627, ¶¶ 8, 10. The trial court closed the courtroom in order to address the jury’s questions because it considered the matter “private.” *Id.* at ¶ 9. Specifically, while it is unclear whether the discussion leading to the first answer was in open court (the trial court said it was holding the discussion “in the presence of the defendant and his counsel and the state’s attorney”), the first answer was given to the jury in the closed courtroom, and the entirety of the proceedings on the other two questions were held in the closed courtroom. *Id.* at ¶¶ 8-10; R1129. The trial court made no other findings other than the jury’s privacy to justify the closure, and no other interests or alternatives are obvious

on the record. Thus, this case presents a pure question of law. Since the trial court did not follow the proper procedures to justify the closure, and since the record does not support a closure in spite of that, there are no questions of fact for this Court to resolve. The only question is whether the right to a public trial attached to these proceedings. If the right to a public trial attached, that right was violated. This Court should therefore grant certiorari in this case in order to resolve this important question.

CONCLUSION

For the foregoing reasons, petitioner, Charles C. Gore, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court.

Respectfully submitted,



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