No. 19-7487

IN THE SUPREME COURT OF THE UNITED STATES

JONATHAN BLADES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA
COURT OF APPEALS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the District of Columbia Superior Court violated petitioner's Sixth Amendment right to a public trial when it conducted voir dire by first presenting the jury venire with questions as a group, and then discussing individual jurors' answers at the bench using a white-noise "husher" to encourage candor, allowing members of the public to observe all proceedings.

ADDITIONAL RELATED PROCEEDINGS

District of Columbia Superior Court (D.C. Sup. Ct.):

United States v. Blades, No. 14-CF1-2153 (April 20, 2015)

District of Columbia Court of Appeals (D.C.):

Blades v. United States, No. 15-CF-663 (Jan. 23, 2019)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-62a) is reported at 200 A.3d 230.

JURISDICTION

The judgment of the court of appeals was entered on January 23, 2019. A petition for rehearing en banc was denied on October 1, 2019 (Pet. App. 63a). On December 11, 2019, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including January 29, 2020, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATEMENT

Following a jury trial in the District of Columbia Superior Court, petitioner was convicted of one count of assault with intent to kill while armed, in violation of D.C. Code § 22-401 (Supp. 2014); two counts of possessing a firearm during a crime of violence, in violation of D.C. Code § 22-4504(b) (Supp. 2014); one count of possessing an unregistered firearm, in violation of D.C. Code § 7-2502.01(a) (Supp. 2014); and one count of unlawfully possessing ammunition, in violation of D.C. Code § 7-2506.01(3) (Supp. 2014). Judgment 1; see Indictment. He was sentenced to 120 months of imprisonment, to be followed by five years of supervised release. Judgment 1. The District of Columbia Court of Appeals affirmed. Pet. App. 1a-62a.

1. In the early morning hours of February 2, 2014, Johnny Campbell and two friends were leaving the Look Lounge in Washington, D.C. Pet. App. 2a. The group encountered Areka Mitchell, a high-school classmate of Campbell's, who introduced petitioner to Campbell as her fiancé. Id. at 2a-3a. Campbell later recalled that petitioner responded in an angry voice and said, "'What are you all, like school buddies or study buddies?'" Id. at 3a. Petitioner then struck Campbell in the face, and a fight ensued. Ibid. After Campbell had sustained multiple blows to the head, he heard petitioner make statements indicating that petitioner was about to retrieve his gun, and Mitchell stated,

"[h]e's getting ready to bust your ass." Ibid. (brackets in original).

As Campbell started to run away, he heard gun shots and saw petitioner "'with [his] car door open . . . [and] fire coming from the gun' in [petitioner's] hand." Pet. App. 3a (first set of brackets in original). At some point, Campbell noticed "'a hole in [his] back' and that he 'couldn't lift [his] arm up.'" Id. at 3a-4a (brackets in original). Campbell then ran to a nearby gas station and was taken by ambulance to the hospital. Id. at 4a.

When Campbell arrived at the hospital, doctors found that a bullet had pierced the left side of his body and saw wounds on his shoulder and back. Pet. App. 6a. A subsequent police investigation at the scene of the shooting uncovered nine cartridge casings, one bullet fragment, and two bullets. Id. at 5a. All nine cartridge casings were the same caliber and from the same manufacturer as casings recovered from inside a semiautomatic weapon later found in petitioner's residence. Id. at 5a-6a.

2. A District of Columbia grand jury charged petitioner with two counts of assault with intent to kill while armed, in violation of D.C. Code § 22-401 (Supp. 2014); three counts of possessing a firearm during a crime of violence, in violation of D.C. Code. § 22-4504(b) (Supp. 2014); aggravated assault while armed, in violation of D.C. Code § 22-404.01 (Supp. 2014); possessing an unregistered firearm, in violation of D.C. Code § 7-2502.01(a)

(Supp. 2014); and unlawfully possessing ammunition, in violation of D.C. Code § 7-2506.01(2) (Supp. 2014). Indictment.

Petitioner proceeded to trial. During voir dire, the trial court posed questions to prospective jurors in open court. Pet. App. 10a. The court then discussed the answers with individual jurors at the bench using a "husher," which is a "'white noise device intended to foster the confidentiality of conversations at the bench.'" Id. at 10a & n.4 (quoting Barrows v. United States, 15 A.3d 673, 681 n.13 (D.C. 2011)). The husher limited the audibility of the exchanges to petitioner, the court, the attorneys, and the court reporter. Id. at 10a.

Petitioner objected to that procedure, arguing that his constitutional right to a "fair and open trial" would be violated if jury selection were conducted at the bench with the husher on, even in view of the public, because "the matters c[ould] be seen but not heard." 1/6/15 Tr. 166. Petitioner instead asked the court to follow the example of another trial judge, who had recently implemented a new voir dire procedure in which the venire panel sat outside the courtroom while each prospective juror was brought into the courtroom to answer individual voir dire questions in open court. Id. at 164. The government opposed petitioner's request, observing that open questioning followed by bench discussion would enable petitioner himself to hear the individual voir dire and members of the public to observe from the courtroom. Id. at 167.

The trial court acknowledged the independent value of public trials, including the encouragement of fair treatment by judges. 1/6/15 Tr. 167-168. The court, however, observed:

> I have to tell you that my reaction to many of these new attempted procedures is that matters which are particularly personal and traumatic in a prospective juror's background, it's likely will be less forthcomingly disclosed in the type of scenario that you have suggested in open [c]ourt. I regularly hear from people who have been sexually assaulted in their youth and at other times and those are traumatic events that affect them to this date. I just have to tell you that I think that people will be less forthcoming in the type of atmosphere that you suggest. It is not abundantly clear to me whether * * * being less forthcoming inures to the benefit or the detriment of either side. But, I think that it means that there is less useful information for both sides. So, I am hesitant to engage in that process. I am more inclined to do what I have done in the past which is to always leave four or five seats in the back open to the public and at the very least to do the [question about whether the prospective juror or a family member has been a crime victim] up here * * * and to encourage [prospective] jurors to speak freely * * * . In the long run, the public does have a right to participate and that right can get effectuated in different ways. The press access cases suggest that a local newspaper has every right to get every syllable of those conversations. Those local newspapers also have a responsibility to the privacy rights of non-public figures who happen to be responding to a jury summons and to come in here.

1/6/15 Tr. 165-166.

Petitioner asserted that even voir dire questions concerning a prospective juror's personal experience with crime or the criminal justice system should be answered publicly, denying any "compelling interest to exclude the public even with" respect to that subject. 1/6/15 Tr. 238-239. The trial court disagreed, explaining that petitioner's "proposal would have a chilling

effect on the candor with which people would answer questions." Id. at 243. The court further observed that the public could obtain access to everything said at the bench, but that questioning jurors in open court would "put[] the jurors in a stressful position." Id. at 241.

The following day, the court repeated its "concerns * * * related to the candor of prospective jurors." 1/7/15 Tr. 252. The court stated that based on its experience, prospective jurors would be "less forthcoming in response especially to sensitive questions when they don't have, at least, the cover of the husher and being up at the bench." Id. at 253. The court again noted that the public "ha[d] access to everything that happens at the bench." Ibid. It accordingly determined that it would continue the practice of conducting individual voir dire at the bench. Ibid. The court emphasized, however, that it would leave seats open for the public in the back of the courtroom during voir dire, and "authoriz[e] access to the proceedings as appropriate or where requests [we]re made." Ibid.

At the conclusion of the trial, the jury acquitted petitioner of three charged offenses, and found him guilty of one count of assault with intent to kill while armed, in violation of D.C. Code § 22-401 (Supp. 2014); two counts of possessing a firearm during a crime of violence, in violation of D.C. Code § 22-4504(b) (Supp. 2014); one count of possessing an unregistered firearm, in violation of D.C. Code § 7-2502.01(a) (Supp. 2014); and one count

of unlawfully possessing ammunition, in violation of D.C. Code § 7-2506.01(3) (Supp. 2014). 1/16/15 Tr. 10-12.

3. The District of Columbia Court of Appeals affirmed. Pet. App. 1a-62a.

As relevant here, the court of appeals rejected petitioner's argument that the trial court's procedures for voir dire violated petitioner's Sixth Amendment right to a public trial. Pet. App. 9a-20a. The court recognized that the Sixth Amendment right to a public trial "extends to the voir dire examination of potential jurors." Id. at 12a (citing Presley v. Georgia, 558 U.S. 209, 213 (2010) (per curiam); Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 504-510 (1984)). And the court reiterated its prior observations that "it is only under the most exceptional circumstances that limited portions of a criminal trial may be closed even partially to the public," and that prejudice is presumed when the public has been improperly excluded from the courtroom during a criminal trial. Id. at 13a (quoting Kleinbart v. United States, 388 A.2d 878, 883 (D.C. 1978)). But it noted that it had previously considered the "long-standing practice in this jurisdiction of conducting individual voir dire at the bench, within the view but outside the hearing of the public," and found no constitutional violation in that procedure. Ibid. (quoting Copeland v. United States, 111 A.3d 627 (D.C.), cert. denied, 136 S. Ct. 434 (2015)).

The court of appeals observed that "[w]hen questioning occurs at the bench, the public can still observe the proceedings" and "hear the general questions posed to the jury panel," thus "further[ing] the values that the public trial right is designed to protect." Pet. App. 14a (quoting Copeland, 111 A.3d at 634) (brackets in original). And it explained that "the husher procedure is 'designed, in part, to protect a juror's privacy and to encourage potential jurors to be forthright,'" as well as "'to prevent a potential juror's answers to voir dire questions from prejudicing other members of the venire.'" Id. at 14a-15a (quoting Copeland, 111 A.3d at 634). The court acknowledged that one court of appeals has held "that use of a white noise device during voir dire violates the First Amendment in the absence of findings of fact supporting that restriction on the right of access." Id. at 15a n.6 (citing In re Petitions of Memphis Pub. Co., 887 F.2d 646 (6th Cir. 1989)). But it found that the case law overall "supports a conclusion that the husher procedure employed in this case * * * does not amount to a closure or partial closure of the courtroom, but is more appropriately viewed as an alternative to closure." Id. at 18a; see id. at 15a-18a.

"In general," the court of appeals stated, "courts have found there to be full or partial courtroom closures only where some or all members of the public are precluded from perceiving contemporaneously what is transpiring in the courtroom, because they can neither see nor hear what is going on." Pet. App. 15a;

see id. at 15a-16a (discussing Presley, 558 U.S. 209; ABC, Inc. v. Stewart, 360 F.3d 90, 95 (2d Cir. 2004); and Cable News Network, Inc. v. United States, 824 F.2d 1046 (D.C. Cir.) (per curiam), cert. denied, 484 U.S. 914 (1987)). "By contrast," the court continued, "where proceedings are conducted in the open courtroom but with some members of the public having an obstructed view, courts have generally concluded that the process is an alternative to closure rather than a closure subject to the requirements of Waller [v. Georgia, 467 U.S. 39, 48 (1984)]." Pet. App. 17a; see id. at 17a-18a (citing Rodriguez v. Miller, 537 F.3d 102, 103-110 (2d Cir. 2008); Pearson v. James, 105 F.3d 828, 830 (2d Cir. 1997); United States v. Lucas, 932 F.2d 1210, 1217 (8th Cir.), cert. denied, 502 U.S. 869, 502 U.S. 929, 502 U.S. 949, 502 U.S. 991 (1991), and 502 U.S. 1100 (1992); and State v. Schultzen, 522 N.W.2d 833, 836 (Iowa 1994)).

The court of appeals explained that the voir dire procedures employed at petitioner's trial, combined with the availability of transcripts of the individual juror examinations, "is a reasonable alternative to closure of the courtroom that enables the public to see the court proceedings, including facial expressions and body language of at least some of the participants at the bench, and thus honors the defendant's right to a public trial." Pet. App. 19a. The court also noted that unlike the alternative procedure that petitioner himself had proposed, the procedure employed by the trial court here enabled other members of the venire --

themselves members of the public -- to view the voir dire proceedings. Id. at 19a. The court of appeals accordingly found that the procedure constituted a "'reasonable alternative[] to closing the proceeding'" that "protected [petitioner's] public-trial right." Id. at 19a-20a (quoting Waller, 467 U.S. at 48).

4. Judge Beckwith dissented. Pet. App. 39a-62a. In her view, the routine use of a husher during voir dire, if not supported by individualized findings about a case-specific privacy interest, violated petitioner's right to a public trial. Id. at 39a-51a.

ARGUMENT

Petitioner renews his contention (Pet. 6-23) that the trial court's voir dire procedures violated his Sixth Amendment right to a public trial. Those procedures were constitutionally permissible, and petitioner does not identify any conflict between the decision below and the decisions of other courts that warrants this Court's review. This case would also be an unsuitable vehicle for addressing the question presented because the findings made by the trial court justify its procedure even under petitioner's standard. The petition for a writ of certiorari should be denied.

1. a. "In all criminal prosecutions, the accused shall enjoy the right to a * * * public trial." U.S. Const. Amend. VI. The public trial right "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." Waller v. Georgia, 467 U.S. 39, 46 (1984) (citations omitted). Observance of the right "encourages witnesses to come forward and discourages perjury," ibid., and it "fosters an appearance of fairness, thereby heightening public respect for the judicial process," Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 606 (1982); see id. at 605-606.

In Presley v. Georgia, 558 U.S. 209 (2010) (per curiam), this Court confirmed "that the Sixth Amendment right to a public trial extends to the voir dire of prospective jurors." Id. at 213. In doing so, the Court looked to Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984), which "held that the voir dire of prospective jurors must be open to the public under the First Amendment," and Waller v. Georgia, supra, which held that the Sixth Amendment public trial right extends to pretrial suppression hearings. Pressley, 558 U.S. at 212. Pressley also reiterated, however, that the public trial right is not absolute. As the Court explained in Presley and Waller, the "right to an open trial may give way in certain cases to other rights or interests, such as the defendant's right to a fair trial or the government's interest in inhibiting disclosure of sensitive information." Presley, 558 U.S. at 213 (quoting Waller, 467 U.S. at 45); see id. at 215 ("There are no doubt circumstances where a judge could conclude that threats of improper communications with jurors or safety concerns are concrete enough to warrant closing voir dire."); see

also Weaver v. Massachusetts, 137 S. Ct. 1899, 1909 (2017) (explaining that "the public-trial right * * * is subject to exceptions," including where the trial court "mak[es] proper factual findings in support of the decision to" close the proceedings). In the face of "an overriding interest that is likely to be prejudiced," a court may, after "consider[ing] reasonable alternatives to closing the proceeding," order a "closure * * * no broader than necessary to protect that interest" upon "mak[ing] findings adequate to support the closure." Waller, 467 U.S. at 48; see Press-Enterprise, 464 U.S. at 511-512.

b. The court below recognized and applied those principles. The court expressly acknowledged that "the guarantee of a public trial extends to the voir dire examination of potential jurors," Pet. App. 12a (citing Press-Enterprise Co., 464 U.S. at 504-510; Presley, 558 U.S. at 213), and that "it is only under the most exceptional circumstances that limited portions of a criminal trial may be closed even partially to the public," id. at 13a (quoting Kleinbart v. United States, 388 A.2d 878, 883 (D.C. 1978)). The court determined, however, that under the procedures employed in this case -- where the public was allowed in the courtroom, could hear the initial questions posed to the jury, could observe the proceedings, and could later review a transcript of the portions of the proceedings that were not contemporaneously audible -- the courtroom was not, in fact, "closed" to the public

in a manner that violated the Sixth Amendment. Id. at 14a (citation omitted).

The procedures here contrast sharply with the full courtroom closure in Presley, where the court instructed the lone observer "that prospective jurors were about to enter and * * * that he was not allowed in the courtroom and had to leave that floor of the courthouse entirely," and refused to make any accommodation when defense counsel "objected to 'the exclusion of the public from the courtroom.'" 558 U.S. at 210 (citation omitted). This Court's other public-trial decisions likewise involve complete courtroom closure. In Press-Enterprise Co., the trial court excluded the public and press from all but three days of a six-week voir dire and denied requests for transcript access. 464 U.S. at 503-504. And in Waller, the trial court ordered a suppression hearing closed to the public. 467 U.S. at 42.

Presley instructs trial courts to "consider alternatives to closure" to address concerns about the public's presence during voir dire. 558 U.S. at 214. Here, the trial court identified a significant concern with conducting voir dire in the manner requested by petitioner -- namely, that jurors would be "less forthcoming in response especially to sensitive questions." 1/7/15 Tr. 253. Numerous courts have recognized that concern to be well-founded. See, e.g., United States v. King, 140 F.3d 76, 82 (2d Cir. 1998) (affirming district court's decision to question prospective jurors outside the presence of the public and press

when the district court was "concerned not merely with protecting the privacy of the jurors from public disclosure of sensitive, personal matters but also with assuring their candor in responding to questions so that a fair trial would be assured"); In re South Carolina Press Ass'n, 946 F.2d 1037, 1043 (4th Cir. 1991) ("Full and frank answers from potential jurors, when they are questioned on voir dire are essential to the process of selecting such a jury."); Coppedge v. United States, 272 F.2d 504, 508 (D.C. Cir. 1959) ("It is too much to expect of human nature that a juror would volunteer, in open court, before his fellow jurors, that he would be influenced in his verdict by a newspaper story of the trial."), cert. denied, 368 U.S. 855 (1961). The trial court accordingly adopted an alternative voir dire procedure that mitigated those concerns while still allowing the public to observe the proceedings and obtain transcripts of any obscured dialogue.

The highest courts in other jurisdictions have affirmed, and even encouraged, the use of voir dire procedures akin to those used by the trial court below. The Maryland Court of Appeals, for example, has endorsed a "best practice" of asking general questions to the venire as a whole, and then conducting individual follow-up either at the bench or in a conference room where other members of the venire cannot hear the response. Collins v. State, 158 A.3d 553, 562-564 (Md. 2017). As that court explained:

> No one can deny that open court is a formal, public place, staffed with authority figures. Persons called for jury service are among strangers and -- except for

> the rare individual who is familiar with a courtroom setting and the trial process -- may be confused by the process or substance of voir dire, much less its importance to the constitutional guarantee of a trial by an impartial jury. The setting alone is likely to intimidate many venirepersons. It is also likely that many prospective jurors have little or no experience speaking in public, much less in answer to a judge's questions, in the formality of a courtroom, and in the presence of a crowd. Finally, it goes almost without saying that the more intimidating the process, the greater the chance that a prospective juror will simply refuse to answer or shy from responding with complete candor.

Id. at 564; see, e.g., Commonwealth v. Colon, 121 N.E.3d 1157, 1170 (Mass. 2019) (holding that conducting individual voir dire at sidebar does not violate the right to a public trial because the process occurs in open court).

c. Petitioner errs in reading (Pet. 14-15) this Court's public-trial cases as imposing an inflexibly rigid rule that would foreclose the trial court's procedures here. Indeed, the implications of that all-or-nothing view of the public-trial right would be untenable.

Petitioner's (and his amici's) novel interpretation of the Sixth Amendment would apply equally not only to the use of a husher during voir dire, but to the universally accepted practice of conducting sidebars at the bench during trial. See, e.g., Wilder v. United States, 806 F.3d 653, 660 (1st Cir. 2015) (finding "no functional difference" between conducting individual voir dire in a jury deliberation room and holding a sidebar conference), cert. denied, 136 S. Ct. 2031 (2016). Trial judges commonly address

numerous issues -- including peremptory challenges to potential jurors, difficult evidentiary rulings, and matters that might prejudice the defendant if heard by the jury -- at sidebar conferences in which the public can see the attorneys, judge, and defendant conferring but cannot hear them. See, e.g., Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 598 n.23 (1980) (Brennan, J., concurring in the judgment) ("[W]hen engaging in interchanges at the bench, the trial judge is not required to allow public or press intrusion upon the huddle.").

Petitioner identifies no authority suggesting that a trial court closes the courtroom, or must make the sort of Waller findings necessary to do so, every time it conducts such a sidebar. See, e.g., United States v. Valenti, 987 F.2d 708, 713 (11th Cir.), cert. denied, 510 U.S. 907 (1993) (recognizing that a court need not "articulate findings that a closed bench conference is necessary and narrowly tailored to preserve higher values"); United States v. Smith, 787 F.2d 111, 114-115 (3d Cir. 1986) (recognizing that a trial court is permitted to satisfy the "public interest in observation and comment" on sidebar rulings "in the next best possible manner" by releasing a transcript of the hearing instead of allowing "contemporaneous observation"). Such a rule would be impractical and debilitating to standard courtroom practice. Likewise, the trial court here was not foreclosed from adopting its voir dire procedure.

2. Contrary to petitioner's assertion (Pet. 8-12), no conflict exists between the decision below and the decision of another court that warrants this Court's review.

Two of the three cases petitioner cites (Pet. 9) as conflicting with the decision below did not address procedures like those at issue here. In Cable News Network, Inc. v. United States, 824 F.2d 1046 (1987) (per curiam), the D.C. Circuit considered only whether conducting voir dire "in camera" -- outside the courtroom, in a private jury room from which the public was excluded entirely -- violated the public-trial right. Id. at 1047; see Cert. Pet., Deaver v. Cable News Network, Inc., 1987 WL 954872 at *9-*14 (No. 87-331). Indeed, neither the parties nor the media in that case objected to a prior stage of voir dire more similar to the procedure here, in which the court discussed individual jurors' answers to questions at the bench out of the public's earshot. Id. at *5. And in People v. Virgil, 253 P.3d 553 (2011), the Supreme Court of California stated that "as a general rule, the questioning of prospective jurors should be conducted in open court," but noted that it was aware of "no case that holds sidebar conferences to discuss sensitive or potentially prejudicial matters are akin to a closure of the courtroom." Id. at 578.

Petitioner notes (Pet. 9) that in a single decades-old decision, In re Petitions of Memphis Publishing Co., 887 F.2d 646 (1989), a divided panel of the Sixth Circuit found that the use of a husher during voir dire constituted a courtroom closure that

violated the defendant's public-trial right. But the shallow conflict between Memphis Publishing and the decision below does not require this Court's intervention. The brief majority opinion in Memphis Publishing concluded only that "the naked assertion by the district court in this case that defendant's Sixth Amendment right to a fair trial 'might well be undermined'" without the husher, "without any specific finding of fact to support that conclusion, was insufficient to justify closure." Id. at 648. The Sixth Circuit did not consider whether the husher procedure was, in fact, an "alternative[] to closure," Presley, 558 U.S. at 214, rather than a closure itself, nor address concerns like those articulated by the trial court here concerning juror candor.

3. This case would, at all events, be an unsuitable vehicle to consider the question presented. Even if petitioner were correct that the courtroom was effectively closed during voir dire, that closure was justified based on the trial court's findings.

Under Waller, the public may be excluded from a trial when (1) "the party seeking to close the hearing * * * advance[s] an overriding interest that is likely to be prejudiced"; (2) "the closure [is] no broader than necessary to protect that interest"; (3) "the trial court * * * consider[s] reasonable alternatives to closing the proceeding"; and (4) the trial court "make[s] findings adequate to support the closure." 467 U.S. at 48. If, as petitioner contends, that test applies, then the trial court's explanation of the husher procedure satisfied it.

First, the trial court adequately described the "overriding interest that [wa]s likely to be prejudiced" if individual voir dire was contemporaneously audible, by explaining at some length the court's concerns about juror candor. Waller, 467 U.S. at 48; see, e.g., 1/7/15 Tr. 252-253. Second, the trial court's procedures were precisely tailored to mitigate that concern, while leaving the pubic able to see and hear the general questioning, observe individual jurors during the bench conferences, and obtain transcripts of the proceedings at the bench. See Waller, 467 U.S. at 48 (explaining that closure must be "no broader than necessary to protect that interest"). Third, the trial court carefully considered petitioner's proposed "alternative[] to closing the proceeding," ibid., but determined that it would not reasonably assure the full candor of prospective jurors, and none is apparent. See 1/6/15 Tr. 241, 243 (finding that questioning jurors in open court would put the jurors in an unnecessarily "stressful position," thereby "hav[ing] a chilling effect on the candor with which people would answer questions"). And fourth, the trial court "ma[d]e findings adequate to support" the asserted "closure," Waller, 467 U.S. at 48, basing its decision on decades of experience with voir dire and a clear explanation that prospective jurors were far more likely to be candid in answering sensitive or embarrassing questions at the bench than in open court. See pp. 4-6, supra.

Thus even if petitioner were correct that the trial court's procedures amounted to a courtroom closure implicating the Sixth Amendment and requiring Waller findings, he would not prevail on this record. The question presented in the petition is therefore not outcome-determinative, and no further review is warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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