IN THE COURT OF APPEALS
FOR THE STATE OF GEORGIA

NO. A24A1125

AYLA ELEGIA KING,

Defendant-Appellant,

v.

STATE OF GEORGIA,

Appellee.

BRIEF OF THE ATLANTA JOURNAL CONSTITUTION AND WSB-TV AS AMICI CURIAE

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IDENTITY AND INTEREST OF AMICI CURIAE

Pursuant to Rule 26, Atlanta Journal-Constitution, LLC, on behalf of its news organization *The Atlanta Journal-Constitution*; and CMG Media Corporation, on behalf of its television station WSB-TV, submit this brief as amici curiae in support of Appellant Ayla Elegia King on the limited issue of the trial court's closure of the courtroom during jury selection, as identified in Mx. King's Enumeration of Error II.

The Atlanta Journal-Constitution and WSB-TV have a strong and valid interest in ensuring courts operate in the open. As part of their missions as news organizations, Amici routinely attend court proceedings in Georgia, including jury selection. Through their reporters and photographers, Amici attempted to attend jury selection in this action, but the trial court's improper closure of the courtroom prevented their reporters from being present in the courtroom. The closure order should be reversed.

INTRODUCTION

Open access to judicial proceedings is a hallmark of the American judicial system. As the United States Supreme Court has stated, public scrutiny of the court system is essential to its institutional well-being for numerous reasons, including because it is vital to obtaining the public's trust. "People in an open society do not demand infallibility from their institutions, but it is difficult for them

to accept what they are prohibited from observing." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 572 (1980). This is especially true in Georgia, where our courts have repeatedly declared that "Georgia law…regarding the public aspect of hearings in criminal cases is more protective of the concept of open courtrooms than federal law." *State v. Purvis*, 288 Ga. 865, 866 (2011) (citation omitted).

In this instance, the trial court closed the courtroom during different portions of jury selection in violation of both the United States and Georgia Constitutions. In fact, the trial court's improper closure of the courtroom was squarely at odds with United States Supreme Court precedent, including a decision issued under virtually identical circumstances in the Superior Court of DeKalb County. *See Presley v. Georgia*, 558 U.S. 209, 215 (2010) (reversing a DeKalb County Superior Court's improper closure of the courtroom for alleged space considerations). Notwithstanding this precedent, the trial court closed the courtroom without requiring the State to file a motion, without holding a hearing, without issuing a written order, and without considering less extreme alternatives.

The trial court's closure of the courtroom violated the Sixth Amendment rights of Mx. King, the First Amendment rights of the public and press, and the public trial requirements of the Georgia Constitution.

RELEVANT FACTUAL BACKGROUND

On December 11, 2023, the trial court began jury selection for the trial of Mx. King.

Numerous members of the media and the public were present to attend the trial. However, neither the public nor representatives from news organizations were permitted to enter the courtroom at the start of jury selection. *See* V4-10-13; V3-466. Over objection of counsel for Mx. King, the trial judge closed the courtroom, citing, in comments from the bench, "space considerations" and "safety concerns." V4-12-13, 323.

In advance of the trial court's closure of the courtroom, no party had filed a written motion for closure, and the court had provided no public notice that it was considering closing the courtroom. To the contrary, the trial court had signed orders indicative of an open courtroom proceeding. Specifically, the trail court had signed Rule 22 requests from media organizations, including Amici, indicating that the trial court anticipated cameras would be allowed in the courtroom pursuant to Uniform Superior Court Rule 22, which governs the use of electronic and recording devices in the courtroom. *See, e.g.*, V3-463-64.

Without conducting a hearing, the trial court refused to let any members of the public and press into the courtroom and instead confined the public and media's presence to a separate, courtroom on the same floor. *See* V4-13; V3-466.

In the separate courtroom, an audio and video signal of *voir dire* was streamed to a single television screen, with the video signal showing only the Judge's image and not the image of any other participant in the proceedings. Not counsel. Not the Defendant. Not the potential jurors. *See* V4-12-13, 323; *see also* V3-449 (streaming "video [was] focused on the Judge's face and did not visually depict the attorneys, defendant, or other courtroom proceedings."). The trial court noted that there were upwards of 20 people, both members of the media and public, excluded from the courtroom and instead directed into the separate courtroom containing the streamed signal. *See* V4-13.

The closure of the courtroom in this manner not only dramatically reduced the media's ability to observe the proceedings, but it also required the Defendant to conduct jury selection in a courtroom bereft of the public and press, as though there was no public interest in the case and no supporters interested in the outcome. At the conclusion of general *voir dire* involving questioning of the entire prospective jury panel, the trial court belatedly opened the courtroom to members of the media and public during questioning of individual jurors. *See* V3-470-71; V4-323, V5-409. Because neither the public nor press had been notified that the trial court would alter its prior actions closing the courtroom, almost none of the interested members of the public or press remained at the courthouse. *See* V4-323-24, V5-406.

On December 12, 2023, the second day of jury selection, at least one individual was not permitted to enter the courtroom but was instructed that he must observe the proceedings remotely from the other room. *See* V3-449. In addition, although some observers were permitted to be present for the morning portion of jury selection, the trial court again ordered all members of the media and public to leave the courtroom during for the final striking of the panel. *See* V5-371 ("When we get to the point that we are seating the jury – as you know from yesterday, there is insufficient space because we have 60 jurors and they occupy each row of the gallery."); *id.* at 410 ("Also, for those individuals who are in the courtroom, you will be required to leave when we begin the strike of the jury because we don't have any extra space.").

During the entirety of the *voir dire* process, the trial court did not hold a hearing to consider alternatives to closure of the courtroom or to consider limitations on electronic and photographic coverage pursuant to Uniform Superior Court Rule 22.

ARGUMENT AND CITATION OF AUTHORITIES

I. The Trial Court's Closure of the Courtroom During Jury Selection Violated the First and Sixth Amendments to the U.S. Constitution and the Georgia Constitution.

Operating the judicial branch of government in an open and public manner is fundamental to our system of justice as a matter of both federal and state constitutional law.

The United States Supreme Court has repeatedly recognized that public access to the judicial system is not only deeply ingrained in the history of our system but is an "indispensable attribute" of our judicial system protected by the First and Sixth Amendments to the United States Constitution. *See, e.g., Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 573 (1980) ("From this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice."); *Waller v. Georgia*, 467 U.S. 39, 46 (1984) ("[T]here can be little doubt that the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public.").

In addition to the protections afforded by the United States Constitution, the Georgia Supreme Court has held that the Georgia Constitution independently requires our judicial system to operate in an open and public manner.

> This court has sought to open the doors of Georgia's courtrooms to the public and to attract public interest in all courtroom proceedings because it is believed that open courtrooms are a *sine qua non* of an effective and respected judicial system which, in turn, is one of the principal cornerstones of a free society.

R.W. Page Corp. v. Lumpkin, 249 Ga 576 (1982); *see also* GA. CONST. Art. 1, § 1, ¶ XI ("In criminal cases, the defendant shall have a public and speedy trial by an impartial jury…"); GA CONST Art. 1, § 1, ¶ V ("No law shall be passed to curtail or restrain the freedom of speech or of the press.").

Indeed, *Page* and later decisions repeatedly make clear that Georgia law is "more protective of the concept of open courtrooms than federal law." 249 Ga. at 579 ("We see no friction between these state and federal constitutional provisions, properly interpreted, since the objectives of both are identical: access to judicial hearings for the public and fair trials for criminal defendants."); *see also State v. Purvis*, 288 Ga. 865, 866 (2011) ("Georgia law…regarding the public aspect of hearings in criminal cases is more protective of the concept of open courtrooms than federal law.") (citation omitted).

"Trial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials." *Presley v. Georgia*, 558 U.S. 209, 215 (2010). Accordingly, in order to close any portion of a judicial proceedings, including jury selection:

> [T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader

> than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure.

Presley, 558 U.S. at 214 (citation omitted); *see also R.W. Page*, 249 Ga. at 580 (requiring "'clear and convincing proof' that no means other than closure of the hearing will serve to protect the right of the movant"); *see also id.* at 579 ("A Georgia trial court judge must approach these issues possessed of less discretion than his federal counterpart because our constitution commands that open hearings are the nearly absolute rule and closed hearings the very rarest of exceptions.").

In this case, the trial court improperly closed the courtroom as both a procedural and substantive matter.

First, as a procedural matter, the trial court failed to take the steps necessary to even consider closure. Under Georgia law, "[a] motion for closure shall receive no consideration by a trial court unless it is in writing, has been served upon the opposing party, has been filed with the clerk of the court and posted on the case docket (as notice to the press and the public) for at least one twenty-four hour period in advance of the time when the motion will be heard, and unless it alleges grounds for relief with that degree of particularity required under [the law]." *R.W. Page*, 249 Ga. at 580. None of those steps were taken here. *See generally* V4-10-13; V3-466.

Moreover, as a substantive matter, the trial court's closure, over Mx. King's objection, was improper. Indeed, the trial court's stated basis for closure, "space considerations" and "safety concerns," are virtually identical to those found insufficient by the Court in *Presley.* 558 U.S. at 214.

In *Presley*, the Supreme Court addressed the closure of a DeKalb County courtroom during *voir dire* due to lack of "space." *Presley*, 558 U.S. at 210. As the Court found:

> Nothing in the record shows that the trial court could not have accommodated the public at Presley's trial. Without knowing the precise circumstances, some possibilities include reserving one or more rows for the public; dividing the jury venire panel to reduce courtroom congestion; or instructing prospective jurors not to engage or interact with audience members.

Presley, 558 U.S. at 215; *see also Reid v. State*, 286 Ga. 484, 487 (2010) ("The United States Supreme Court recently reversed a decision from this Court involving closure of a courtroom during *voir dire*….The Supreme Court held that trial courts are required to consider alternatives to closure even when they are not offered by the parties, and that this Court erred in concluding otherwise."); *Spikes v. State*, 353 Ga. App. 454, 360 (2020) (closure was "reversible error" where findings were insufficient and not specific).

The trial court concluded that the courtroom was not closed because there was a separate room where *voir dire* would be streamed with only the Judge's face

shown. This is legally insufficient. As explained by the Ninth Circuit in *United States v. Allen*,

> For purposes of the public trial right, an audio stream is not substantially different than a public transcript. Although a listener may be able to detect vocal inflections or emphases that could not be discerned from a cold transcript, an audio stream deprives the listener of information regarding the trial participant's demeanor and body language. Nor can a listener observe the judge's attitude or the reactions of the jury to a witness's testimony, or scan any visual exhibits. Like a transcript, then, an audio stream cannot "fully reflect what was communicated by the testifying witness." *In re Schoenfield*, 608 F.2d at 935. Indeed, the district court here implicitly acknowledged the value of visual observation when it required witnesses at the suppression hearing and trial to wear clear masks. Further, any failure to make the judge, counsel, defendant and jury subject to the public's eye (as well as its ear) undermines confidence in the proceedings. *See Press-Enterprise*, 464 U.S. at 505, 104 S.Ct. 819. Therefore, the "public trial" guaranteed by the Sixth Amendment is impaired by a rule that precludes the public from observing a trial in person, regardless whether the public has access to a transcript or audio stream.

34 F. 4th 789, 796 (9th Cir. 2022) (citations omitted); *see also Waller*, 46 U.S. at 43-49 (finding right to public trial violated despite release of transcript).

Similarly here, a stream in which the media and public can only see the judge is not a reasonable alternative, especially where, as in *Presley*, the trial court could have simply conducted *voir dire* using smaller groups of jurors to allow public attendance. Simply put, there was no legal basis to close the courtroom to the public and media.

II. The Trial Court Ignored the Mandates of Uniform Superior Court Rule 22 in Excluding the Media and Public from the Courtroom.

In addition to improperly closing the courtroom, the trial court failed to meet the requirements of Uniform Superior Court Rule 22 in refusing to allow media members electronic and photographic access to the courtroom.

In order to effectuate the requirement of open courtrooms in Georgia, Uniform Superior Court Rule 22 allows the media, as the eyes and ears of the public, to be present at and unobtrusively record such proceedings through electronic and still photography. Specifically, Rule 22 permits electronic coverage of court proceedings unless the Court makes:

> specific findings on the record that there is a substantial likelihood of harm arising from one or more of the following factors, that the harm outweighs the benefit of recording to the public, and that the judge has considered more narrow restrictions on recording than a complete denial of the request:
>
> (a) The nature of the particular proceeding at issue;
> (b) The consent or objection of the parties, witnesses, or alleged victims whose testimony will be presented in the proceedings;
> (c) Whether the proposed recording will promote increased public access to the courts and openness of judicial proceedings;
> (d) The impact upon the integrity and dignity of the court;
> (e) The impact upon the administration of the court;
> (f) The impact upon due process and the truth finding function of the judicial proceeding;
> (g) Whether the proposed recording would contribute to the enhancement of or detract from the ends of justice;
> (h) Any special circumstances of the parties, witnesses, alleged victims, or other participants such as the need to protect children or factors involving the safety of participants in the judicial proceeding; and

> (i) Any other factors affecting the administration of justice or which the court may determine to be important under the circumstances of the case.

U.S.C.R. 22(G)(1); *see also Multimedia WMAX, Inc. v. State*, 256 Ga. 698, 699, (1987) (quoting prior version of Rule 22 & 22(L)); *Harris v. State*, 260 Ga. 860, 865-66 (1991) (citing *Multimedia* with approval).

A Rule 22 request should "generally be approved." U.S.C.R. 22(G); *see also Morris Communications, LLC v. Griffin*, 279 Ga. 735, 736 (2005) ("In ruling on a request for electronic and photographic coverage of judicial proceedings, a trial court should bear in mind this State's policy favoring open judicial proceedings."). "[A]lthough the decision whether to allow electronic and photographic coverage of a trial is within the discretion of the trial court, if a trial court denies such coverage, there must be a factual basis that supports the denial." *McLaurin v. Ott*, 327 Ga. App. 488, 491 (2014) (citing *Morris Communications, LLC v. Griffin*, 279 Ga. 735, 736 (2005)).

If a trial court intends to deny a Rule 22 request, it must first conduct a hearing. *See* U.S.C.R. 22(F)(3) ("The judge will promptly hold a hearing if the judge intends to deny the request or a portion of the request, or if a party, witness, or alleged victim objects to a request.").

In this instance, the trial court signed the Rule 22 requests of certain media, but proceeded to ignore them, effectively reversing itself without holding the

required hearing or making any of the required findings. *See* V3-463-64; V4-10-13. This is equally improper under the law. *See generally Savannah Morning News v. Jeffcoat*, 280 Ga. App. 634 (2006) (reversing trial court order excluding camera based on "absence of evidence").

CONCLUSION

For the reasons set out above, this Court should reverse the trial court with respect to Appellant Ayla Elegia King's Enumeration of Error II.

Respectfully submitted, this 5th day of April, 2024

This submission does not exceed the word count limit imposed by Rule 24.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has, pursuant to Rule 6, served a true and correct copy of the above via United States and Electronic Mail upon:

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