SINCE 1854

Chicago Daily Law Bulletin

Volume 150, No. 54 Thursday, March 18, 2004

Trial wasn't public, thus is void: panel

By PATRICIA MANSON
Law Bulletin staff writer

A man ultimately convicted of charges that put him behind bars for life was denied his constitutional right to a public trial when spectators were locked out of the courthouse, a federal appeals court has ruled.

The 7th U.S. Circuit Court of Appeals on Wednesday directed that Johnnie Walton be freed unless the State of Illinois chooses to retry him within 120 days.

The court rejected arguments that Walton had waived his right to a public trial by failing to object at the time to the exclusion of the public.

Quoting *Hodges v. Easton*, 106 U.S. 408 (1882), the court said "every reasonable presumption should be indulged against" a finding that a defendant has waived a fundamental trial right.

"This heightened standard of waiver has been applied to plea agreements, the right against self-incrimination, the right to a trial, the right to a trial by jury, the right to an attorney and the right to confront witnesses," Judge William J. Bauer wrote for a three-member panel of the 7th Circuit, citing *Brady v. U.S.*, 397 U.S. 742 (1970); *Miranda v. Arizona*, 384 U.S. 436 (1966); and *Moltke v. Gillies*, 332 U.S. 708 (1948).

Citing *Carnley v. Cochran*, 369 U.S. 506 (1962), the panel also said that "in dealing with the fundamental trial right to representation by counsel, the Supreme Court has held that presumption of waiver from a silent record is impermissible."

The "common element" in these cases "is the fact that the rights with which they deal all concern the fairness of the trial," the panel said.

"The right to a *public* trial also concerns the right to a *fair* trial," the panel continued, citing *Waller v. Georgia*, 467 U.S. 39 (1984). "So, like other fundamental trial rights, a right to a public trial may be relinquished only upon a showing that the defendant knowingly and voluntarily waived such a right."

No such showing was made in Walton's case merely because his trial lawyer failed to object to the exclusion of the public, the panel held.

Joining the opinion were Judges Richard A. Posner and Frank H. Easterbrook. *Johnnie Walton v. Kenneth R. Briley*, No. 01-2928.

Melissa Merz, press secretary for Illinois Attorney General Lisa M. Madigan, said Thursday that no decision has been made on whether to appeal the 7th Circuit's decision,

Attorney William C. Paxton, who represented Walton before the 7th Circuit, said he was pleased with the court's decision.

Paxton, an associate in the Washington, D.C., office of Mayer, Brown, Rowe & Maw LLP, handled the case as part of the law firm's pro bono program.

Walton ended up on trial in 1989 after he allegedly delivered a large amount of PCP to an undercover police officer.

The prosecution completed its case in the first two sessions of the bench trial, which Cook County Circuit Judge Ralph Reyna conducted in the evenings.

Walton's fiancee twice tried to attend the trial, but could not get into the courthouse because it had already been locked up for the night.

Also prevented from entering the courthouse was a confidential informant involved in the case.

Walton was convicted and sentenced to life in prison without the possibility of parole.

After unsuccessfully challenging his conviction in the Illinois courts, Walton turned to federal court for relief.

But U.S. District Judge John F. Grady concluded that Walton's failure to object to the inadvertent exclusion of the public from the trial constituted a waiver of the issue.

In overturning that ruling, the 7th Circuit panel said public trials are an essential element of the justice system.

Citing *Waller*, the panel said public trials help to prevent perjury and "unjust condemnation" and serve to remind those trying the defendant of their responsibilities.

Public trials also "may encourage unknown witnesses to come forward and further serve to preserve the integrity of the judicial system in the eyes of the public," the panel said.

But the panel said there was no indication in the record that Reyna considered the test set out in *Waller*.

That test requires a party seeking to close a criminal trial to show "an overriding interest which is likely to be prejudiced by a public trial," according to the panel.

The panel said the judge presiding over the trial must consider alternatives to closing the proceedings.

A judge who decides to bar the public from a trial must narrowly tailor the closure and must make findings to support the closure, the panel said.

The panel acknowledged that Reyna in holding trial after the courthouse closed for the day was motivated not by a desire to keep spectators out but by an "honorable desire" to keep the proceedings moving.

But, the panel said, "the judge's devotion to work is not an interest sufficient to overcome Walton's constitutional guarantee of a public trial."