

# SUPREME COURT OF COLORADO

## People v. Jones

2020 CO 45 · No. 18SC445 · Decided June 1, 2020

### SUMMARY

The Colorado Supreme Court held that excluding the defendant’s parents during the testimony of two of his children constituted a partial courtroom closure violating the defendant’s Sixth Amendment right to a public trial. Because the trial court made no findings under *Waller v. Georgia* before the closure, and the error was structural, the defendant was entitled to a new trial. The court also vacated the child-abuse conviction under the rule of lenity and held that the defendant could not be retried on that charge.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Colorado                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Justice Hood; Chief Justice Coats; Justice Boatright; Justice Samour                                                                                                                                                                                                                   |
| JURISDICTION          | Colorado                                                                                                                                                                                                                                                                               |
| DECIDED               | June 1, 2020                                                                                                                                                                                                                                                                           |
| DOCKET                | 18SC445                                                                                                                                                                                                                                                                                |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | The prosecution petitioned for certiorari review of a Colorado Court of Appeals decision reversing Jones's convictions and remanding for a new trial, including the court of appeals' conclusion that Jones could not be retried for child abuse based on injuries inflicted in utero. |
| STANDARD OF REVIEW    | Courtroom closure is reviewed as a mixed question of law and fact: factual findings are accepted absent an abuse of discretion, while legal conclusions are reviewed de novo. Statutory interpretation is reviewed de novo.                                                            |
| PRECEDENTIAL VALUE    | Published, precedential en banc opinion of the Supreme Court of Colorado                                                                                                                                                                                                               |
| PARTIES               | The People of the State of Colorado v. Andre Demetrius Willi Jones                                                                                                                                                                                                                     |

### TOPICS

sixth amendment

criminal procedure

statutory interpretation

rule of lenity

constitutional law

## PRACTICE AREAS

criminal law

criminal procedure

constitutional law

statutory interpretation

## QUESTIONS PRESENTED

1. Whether excluding the defendant's parents from the courtroom during the testimony of two children constituted a partial courtroom closure implicating the Sixth Amendment right to a public trial.
2. Whether the trial court's failure to make the findings required by *Waller v. Georgia* could be remedied by remand for additional findings.
3. Whether the Colorado child abuse statute's term "person" includes a fetus injured in utero who is later born alive.
4. Whether the rule of lenity barred retrial on the child abuse charge.

## HOLDINGS

1. The exclusion of Jones's parents during the children's testimony was a partial closure of the courtroom implicating Jones's Sixth Amendment right to a public trial.
2. The public-trial violation was structural error requiring automatic reversal, and the error could not be cured by remand for additional *Waller* findings in this case.
3. The term "person" in Colorado's child abuse statute does not include an unborn fetus who is later born alive when the alleged injury was inflicted in utero.
4. Jones could not be retried for child abuse based on the alleged prenatal injuries because the statute does not encompass a fetus later born alive and lenity barred the broader criminal interpretation.

## KEY QUOTATIONS

*"We join these courts in recognizing the potential constitutional significance of partial closures, but we save for another day the decision regarding whether the first Waller factor requires a "substantial reason" or an "overriding interest" in this context." (§ 27)*

*"Therefore, because the trial court violated Jones's right to a public trial by excluding Jones's parents from the proceedings without first justifying that decision under Waller, and because such a violation constitutes structural error that cannot be cured by a remand in this instance, we reverse Jones's convictions and remand the case for a new trial." (§ 51)*

*"The rule of lenity provides that, when we cannot discern the legislature's intent, "ambiguity in the meaning of a criminal statute must be interpreted in favor of the defendant."" (§ 70)*

## FACTUAL BACKGROUND

Jones broke into his estranged wife's apartment, waited for her to return, and shot her through the door in the abdomen. She died shortly after reaching the hospital, but medical personnel delivered her approximately thirty-week-old fetus alive. The child suffered severe, permanent neurological and physical impairments because of

oxygen deprivation caused by the shooting. During trial, the court excluded Jones's parents from the courtroom while two of his children testified.

## PROCEDURAL HISTORY

A jury convicted Jones of multiple offenses arising from the shooting of his estranged pregnant wife, including child abuse resulting in serious bodily injury. The Colorado Court of Appeals held that excluding Jones's parents during the testimony of two children violated his Sixth Amendment right to a public trial and warranted a new trial; it also held that the child abuse statute did not permit retrial for injuries inflicted on a fetus later born alive. The Colorado Supreme Court affirmed the court of appeals' judgment, though it reached the child-abuse statutory issue on somewhat different reasoning.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The case was remanded for a new trial. The prosecution may not retry Jones for child abuse based on the conduct underlying the original charge. The other convictions were reversed and the sentences vacated because of the structural public-trial violation.

## CASES CITED

- Waller v. Georgia, 467 U.S. 39 (1984)
- People v. Hassen, 2015 CO 49, 351 P.3d 418
- Pena-Rodriguez v. People, 2015 CO 31, 350 P.3d 287, rev'd on other grounds, 137 S. Ct. 855 (2017)
- Presley v. Georgia, 558 U.S. 209 (2010)
- In re Oliver, 333 U.S. 257 (1948)
- United States v. Rivera, 682 F.3d 1223 (9th Cir. 2012)
- Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982)
- Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555 (1980)
- People v. Jones, 750 N.E.2d 524 (N.Y. 2001)
- United States v. Osborne, 68 F.3d 94 (5th Cir. 1995)
- People v. Lujan, 2020 CO 26, 461 P.3d 494
- Peterson v. Williams, 85 F.3d 39 (2d Cir. 1996)
- Hagos v. People, 2012 CO 63, 288 P.3d 116
- Griego v. People, 19 P.3d 1 (Colo. 2001)
- McCoy v. People, 2019 CO 44, 442 P.3d 379
- Walgreen Co. v. Charnes, 819 P.2d 1039 (Colo. 1991)
- People v. Thornton, 929 P.2d 729 (Colo. 1996)
- People v. Lage, 232 P.3d 138 (Colo. App. 2009)

- People v. Summers, 208 P.3d 251 (Colo. 2009)
- People v. Thoro Prods. Co., 70 P.3d 1188 (Colo. 2003)
- Gross v. FBL Fin. Servs., Inc., 557 U.S. 167 (2009)
- Taylor v. United States, 495 U.S. 575 (1990)

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