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*Carter v. State***To Overcome a Defendant's Sixth Amendment Right to a Public Trial, the Court Must Provide a Compelling Interest Evidenced by Case-Specific Reasons**

By Akia Fox

The Court of Appeals of Maryland held that a defendant's Sixth Amendment right to a public trial can only be set aside by providing a compelling state interest supported by case-specific reasons and findings of fact. *Carter v. State*, 356 Md. 207, 738 A.2d 871 (1999). The court opined that a trial court's closure of a courtroom during the testimony of a fourteen year old sexual abuse victim, without the support of case-specific reasons in the record demonstrating a sufficient basis for the action, violated the accused's Sixth Amendment right. In so holding, the court of appeals determined that in the absence of a hearing and case-specific findings at the trial level, an appellate court's post hoc rationale would not be sufficient to deny the accused of his constitutional right to a public trial.

Robert Ciana Carter ("Petitioner"), was charged in a nine-count indictment for rape, second and third degree sexual offenses, attempted sodomy and child abuse of his wife's daughter. Before the fourteen year old victim testified, the state moved to clear the courtroom due to her age and the sensitive nature of her testimony. In response to the state's motion, defense counsel objected on the basis of defendant's constitutional right to a public trial. However, the trial court granted the

state's motion and subsequently cleared the courtroom. The defendant was convicted in the Circuit Court for Harford County of three counts of second degree sexual offense, three counts of third degree sexual offense, and child abuse. The court of special appeals affirmed the circuit court's ruling. The Court of Appeals of Maryland granted certiorari.

The court of appeals began its analysis by looking at the presumptive right of the accused to a public trial. The court recognized that the presumption that the accused is entitled to a public trial has been deeply embedded into our criminal justice system. *Carter*, 356 Md. at 214, 738 A.2d at 874. The Sixth Amendment of the United States Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right to a public trial." *Id.* In creating this right, the court noted, the Framers of the Constitution found it necessary to establish a judicial system that did not resemble the unfair criminal proceedings conducted by the Spanish Inquisition and English Court of Star Chamber. *Id.*

In examining the value of public trials in our judicial system, the court of appeals discussed the Supreme Court case *In Re Oliver*, 333 U.S. 257 (1948), in which the Supreme Court described the value of a public

trial as being "a safeguard against any attempt to employ our courts as instruments of persecution." *Id.* at 215, 738 A.2d at 875 (quoting *In Re Oliver*, at 270). The court of appeals noted that the Supreme Court further recognized that a public trial could also serve as an "effective restraint on possible abuse of judicial power." *Id.* (quoting *In Re Oliver*, at 270).

In reviewing its own case law, however, the court of appeals recognized that the right to a public trial is not absolute. *Id.* at 216, 738 A.2d at 875. In *Baltimore Sun Co. v. Colbert*, 323 Md. 290, 593 A.2d 224 (1991), the court held that in order to overcome the defendant's Sixth Amendment right, the burden is on the moving party to show that it had an overriding interest and that no reasonable alternatives existed. *Id.* at 216, 738 A.2d at 875. In order to ensure that the moving party met its burden, the court concluded that it was incumbent upon the trial judge to make specific findings of fact upon the record to support its decision to set aside a defendant's Sixth Amendment rights. *Id.* If that burden was not satisfied, the accused's right to a public trial could not be denied. *Id.*

In applying the above analysis to the instant case, the court of appeals examined the procedure that

the trial court followed in rendering its decision. *Id.* at 219, 738 A.2d at 877. The court of appeals found that the circuit court record failed to show whether the court gave case-specific findings of fact to support its decision to deny the defendant his Sixth Amendment rights, as well as whether the trial court explored reasonable alternatives to closure. *Id.* Although the court of appeals recognized that the state had a compelling interest to protect child victims, it declined to lightly disregard the rights of the accused by deviating from its previously established procedural standards.

The court of special appeals defended the trial court's ruling by stating that the "victim's trial testimony ultimately bore out the appropriateness of the judge's decision to clear the courtroom." *Id.* at 220, 738 A.2d at 878. In her testimony, the child indicated that she was relieved that the courtroom had been cleared. *Id.* The court of appeals, however, disagreed with this reasoning, holding that the requirement of a case-specific finding is to ensure that the reviewing court will be able to evaluate the accurateness of the lower court's ruling by analyzing the record. *Id.* Furthermore, the court clearly stated that "an appellate court may not provide a post hoc rationale for why the trial judge would have closed the trial had it held a hearing and made findings." *Id.* In the absence of a record that supports the lower court's ruling, the appellate court cannot exercise its function. *Id.* Therefore, in light of the absence of case-specific findings, the court of

appeals concluded that the defendant's Sixth Amendment rights were violated and ordered a new trial. *Id.* at 226, 738 A.2d at 881.

The Court of Appeals of Maryland's holding in *Carter* strikes a damaging blow to the prosecution of sexual and other highly sensitive criminal cases in Maryland. Fearing that the courts may not protect their interests, victims of sexual crimes, especially young victims, may be less likely to report these crimes and later testify. In order to protect the interests of both the victim and state, state's attorneys must insure that findings of fact are on the record before calling witnesses that require them to ask the judge to clear the courtroom. If the court of appeals's ruling proves to be detrimental to both victims and the state, the legislature may find it necessary to revise the rules of criminal procedure, to reflect the requirement that judges must make the necessary findings of fact on the record before ordering a clearance of the courtroom.