

ALABAMA COURT OF CRIMINAL APPEALS ORAL  
ARGUMENT PREVIEW: *DARBY V. STATE*

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I. INTRODUCTION\*\*

The Sixth Amendment of the United States Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.”<sup>1</sup> The Alabama Rules of Criminal Procedure reaffirm this right by providing that “[a]ll proceedings shall be open to the public, unless otherwise provided by law.”<sup>2</sup> The violation of this right is deemed structural error and is remedied by automatic reversal.<sup>3</sup>

*Darby v. State* illustrates a unique issue posed to Alabama courts in the wake of COVID-19. The effects of the pandemic are seen throughout this case and could potentially influence the scope of a defendant’s right to a public trial. At oral argument, the Alabama Court of Criminal Appeals will address this issue as well as issues relating to transferring jury instructions from civil actions to criminal cases.<sup>4</sup>

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On April 3, 2018, Officers Genisha Pegues and Justin Beckles arrived at Jeffery Parker’s house in response to a 911 suicide call from Parker.<sup>5</sup> Upon arrival, Officer Beckles announced the officer’s presence, and, after receiving no response, Officer Pegues entered Parker’s home.<sup>6</sup> She observed Parker sitting down and holding a gun to his head.<sup>7</sup> Because she was the first officer inside the house, Officer

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\*\*This article mirrors the summary provided by the Alabama Court of Criminal Appeals and is solely for the purpose of providing spectators a neutral and objective summary of the general facts, issues, and arguments presented. It is not intended to reflect all possible issues or arguments the court may consider when adjudicating this case.

<sup>1</sup> U.S. CONST. amend. VI.

<sup>2</sup> Ala. R. Crim. P. 9.3(b).

<sup>3</sup> *Waller v. Georgia*, 467 U.S. 39, 49 (1984).

<sup>4</sup> *See* Order Granting Oral Arguments, *Darby v. State*, CR-20-2019 (Ala. Crim. App. Aug. 29, 2022).

<sup>5</sup> Brief of Appellant at 7, *Darby v. State*, No. CR-2020-0919 (Ala. Crim. App., Feb. 1, 2022); Brief of Appellee at 6, *Darby v. State*, No. CR-20-0919 (Ala. Crim. App., Mar. 22, 2022).

<sup>6</sup> Brief of Appellant, *supra* note 5, at 7–8; Brief of Appellee, *supra* note 5, at 8–9.

<sup>7</sup> Brief of Appellant, *supra* note 5, at 8; Brief of Appellee, *supra* note 5, at 9.

Pegues became the lead officer on the scene and began communicating the events occurring inside the house with Officer Beckles via radio.<sup>8</sup> Officer Beckles in turn communicated the events to other officers.<sup>9</sup> Parker told Officer Pegues that he did not want to hurt anyone, although Appellant contends that Officer Pegues did not relay this information to Officer Beckles, who in turn did not communicate this to the other officers.<sup>10</sup>

William Darby was the third officer who responded to the scene.<sup>11</sup> Arming himself with his department shotgun, he joined Officer Pegues inside the home.<sup>12</sup> Darby commanded Officer Pegues to point her gun toward Parker.<sup>13</sup> When Parker did not drop his gun after Officers Pegues and Darby repeatedly asked him to do so, Darby shot Parker with the shotgun, killing him.<sup>14</sup>

A grand jury indicted Darby with murder in July of 2018.<sup>15</sup> Darby then moved for “Stand Your Ground” immunity pursuant to Ala. Code § 13A-3-23(a)(1).<sup>16</sup> After a hearing, the trial court denied immunity.<sup>17</sup> Darby then proceeded to trial in May of 2021.<sup>18</sup> Due to the COVID-19 pandemic, only the parties, jury members, and court staff were permitted to enter the courtroom; the district court allowed the public to view the trial in a separate room by streaming audio and video feeds.<sup>19</sup> During the trial, Darby requested several jury instructions—which originated from civil actions—relating to law enforcement officers’ use of force, three of which the district court rejected.<sup>20</sup> The trial concluded, and a jury convicted Darby of murder.<sup>21</sup>

Shortly after the trial, Darby moved for a new trial based on reports that the district court cut off livestream feeds during portions of the trial, arguing that the district court violated his right to a public

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<sup>8</sup> See Brief of Appellant, *supra* note 5, at 8; see Brief of Appellee, *supra* note 5, at 9.

<sup>9</sup> Brief of Appellant, *supra* note 5, at 8; see Brief of Appellee, *supra* note 5, at 9, 11.

<sup>10</sup> Brief of Appellant, *supra* note 5, at 9; Brief of Appellee, *supra* note 5, at 13.

<sup>11</sup> See Brief of Appellant, *supra* note 5, at 9, 13; Brief of Appellee, *supra* note 5, at 11.

<sup>12</sup> Brief of Appellant, *supra* note 5, at 13; Brief of Appellee, *supra* note 5, at 13.

<sup>13</sup> Brief of Appellant, *supra* note 5, at 15; Brief of Appellee, *supra* note 5, at 13.

<sup>14</sup> Brief of Appellant, *supra* note 5, at 16–17; Brief of Appellee, *supra* note 5, at 17.

<sup>15</sup> Brief of Appellant, *supra* note 5, at 1; Brief of Appellee, *supra* note 5, at 1.

<sup>16</sup> Brief of Appellee, *supra* note 5, at 1; see Brief of Appellant, *supra* note 5, at 1.

<sup>17</sup> Brief of Appellant, *supra* note 5, at 1; Brief of Appellee, *supra* note 5, at 2.

<sup>18</sup> Brief of Appellant, *supra* note 5, at 2; Brief of Appellee, *supra* note 5, at 2.

<sup>19</sup> See Brief of Appellant, *supra* note 5, at 2; Brief of Appellee, *supra* note 5, at 3 n.1.

<sup>20</sup> Brief of Appellant, *supra* note 5, at 2; Brief of Appellee, *supra* note 5, at 2.

<sup>21</sup> Brief of Appellant, *supra* note 5, at 3; Brief of Appellee, *supra* note 5, at 3.

trial.<sup>22</sup> The trial court denied the motion.<sup>23</sup> Darby then appealed to the Alabama Court of Criminal Appeals.<sup>24</sup>

### III. APPELLANT'S ARGUMENT

On appeal, Darby raises two pertinent issues: (1) that his right to a public trial was violated and (2) that the district court erred in refusing his proposed jury instructions.<sup>25</sup>

#### A. Right to Public Trial

Darby first asserts that the trial court abused its discretion in denying his motion for a new trial because his right to a public trial was violated.<sup>26</sup> Darby does not find issue with video and audio feeds streaming the trial to a separate location but instead asserts that the court violated his constitutional rights by cutting off the feeds during the trial.<sup>27</sup>

Darby explains that both federal and Alabama law ensure a defendant the right to a public trial.<sup>28</sup> He goes further to explain that Alabama law offers very limited exceptions for this right.<sup>29</sup> Alabama Rule of Criminal Procedure 9.3 states that, “[a]ll proceedings shall be open to the public, unless otherwise provided by law.”<sup>30</sup> Ala. Code § 12-21-202 provides an exception that allows a court to exclude any person from the courtroom who is not necessary to the trial, but this exception only applies to “prosecutions for rape and assault with intent to ravish.”<sup>31</sup> Section 12-21-202 also allows a court to clear the courtroom of unnecessary parties when “the evidence is vulgar, obscene or relates to the improper acts of the sexes and tends to debauch the morals of the young.”<sup>32</sup> However, this provision is only applicable in *civil* cases.<sup>33</sup> Therefore, Darby argues that the trial court here had no

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<sup>22</sup> Brief of Appellant, *supra* note 5, at 23–24; Brief of Appellee, *supra* note 5, at 3–4.

<sup>23</sup> Brief of Appellant, *supra* note 5, at 26–27; Brief of Appellee, *supra* note 5, at 4.

<sup>24</sup> See Brief of Appellant, *supra* note 5.

<sup>25</sup> *Id.* at 20–21. Darby also argued that the trial court abused its discretion in denying the motion for a new trial on the grounds that the jury’s verdict went against the great weight of the evidence. *Id.* at 52. However, these arguments are not summarized in this preview because they do not appear to be central to the core of this appeal. See Order Granting Oral Arguments, *supra* note 4 (specifying only two issues that should be argued on appeal).

<sup>26</sup> See Brief of Appellant, *supra* note 5, at 22; see also Order Granting Oral Arguments, *supra* note 4.

<sup>27</sup> Brief of Appellant, *supra* note 5, at 22–23.

<sup>28</sup> *Id.* at 27.

<sup>29</sup> *Id.* at 28.

<sup>30</sup> Ala. R. Crim. P. 9.3(b).

<sup>31</sup> ALA. CODE § 12-21-202.

<sup>32</sup> *Id.*

<sup>33</sup> *Ex parte* Easterwood, 980 So. 2d 367, 372 (Ala. 2007).

discretion to effectively clear the courtroom by cutting off the video feed.<sup>34</sup> “Because violations of the right to a public trial constitute structural error, the United States Supreme Court has made clear that ‘where there is an objection at trial and the issue is raised on appeal[,] the defendant generally is entitled to automatic reversal regardless of the error’s actual effect on the outcome.’”<sup>35</sup>

Darby notes that the United States Supreme Court has held there are requirements a court must meet before clearing the courtroom.<sup>36</sup> Darby contends that a court may deny attendance to a proceeding when a party has shown that an overriding interest exists, the closure is narrowly tailored to protect that interest, the court has considered reasonable alternatives, and the court makes findings that are adequate to support the closure.<sup>37</sup> Darby argues that those requirements were not met.<sup>38</sup> Therefore, Darby argues that he is entitled to automatic reversal and a new public trial because a violation of the right to a public trial is a structural error.<sup>39</sup>

### *B. Jury Instructions*

Darby’s next argument is that the trial court improperly denied his requested jury instructions.<sup>40</sup> The instruction reads: “The reasonableness of an [officer’s] actions in using deadly force may be objectively reasonable judged from the perspective of a reasonable officer on the scene, the fact that officers are forced to make split second decisions, [and] in light of the facts and circumstances confronting them at the time.”<sup>41</sup>

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<sup>34</sup> See Brief of Appellant, *supra* note 5, at 29.

<sup>35</sup> *Id.* at 31 (quoting *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1910 (2017)).

<sup>36</sup> *Id.* at 29 (citing *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 510 (1984)).

<sup>37</sup> *Id.* (citing *Press-Enterprise*, 464 U.S. at 510–11).

<sup>38</sup> See *id.* at 32, 35. Darby distinguishes between total closures of the courtroom and partial closures—where members of the press and families are allowed to remain in the courtroom—but Darby argues the court executed a *total* closure because all spectators were confined to the viewing room and the feed to the viewing room was completely cut off during portions of the trial. *Id.* at 33–35 (citing *Douglas v. Wainwright*, 739 F.2d 531, 532 (11th Cir. 1984)).

<sup>39</sup> See Brief of Appellant, *supra* note 5, at 30–31, 35 (first quoting *Judd v. Haley*, 250 F.3d 1308, 1315 (11th Cir. 2002); then citing *Waller v. Georgia*, 467 U.S. 49, 49–50 (1984); then citing *Ex parte Easterwood*, 980 So. 2d 367, 374 (Ala. 2007); and then citing *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1910 (2017)).

<sup>40</sup> *Id.* at 39. Although Appellant argues that the district court improperly denied three of his proposed jury instructions, the Alabama Court of Criminal Appeals only addresses one in its summary of the case. See Order Granting Oral Argument, *supra* note 4. Therefore, only one jury instruction is highlighted in this preview.

<sup>41</sup> See Brief of Appellant, *supra* note 5, at 49 (alteration in original).

The State objected to these instructions on the grounds they originated in civil cases where the burden of proof is different than the burden in criminal cases.<sup>42</sup> However, Darby argues in this appeal that, while the trial court has broad discretion over jury instructions, a defendant is entitled to have the court instruct the jury on his theory of defense so long as the instruction is correct, not substantially covered by other instructions, and concerns a point so important that, if the instruction is not given, it would “seriously impair[] [a] defendant’s ability to defend himself.”<sup>43</sup> Darby contends that all three of his requested instructions fulfill those criteria.<sup>44</sup> Darby avers that “[t]his instruction was . . . a correct statement of law, not covered by another instruction, and critical to Mr. Darby’s defense.”<sup>45</sup> Darby therefore contends that the court erred when it denied these instructions.<sup>46</sup>

For these reasons, Darby argues that the district court erred in denying his motion for a new trial.

#### IV. APPELLEE’S ARGUMENT

Appellee argues that the district court’s denial should not be reversed because: (1) Darby invited the district court’s error, (2) Darby’s right to a public trial was not violated, and (3) the district court properly rejected the proposed jury instructions.<sup>47</sup>

##### *A. Invitation of Error*

The State next counters that Darby cannot claim error for erroneous actions he invited the trial court to commit.<sup>48</sup> There were several moments throughout the trial when the court noted microphone issues.<sup>49</sup> The State also adds there were also several moments where defense counsel was either aware the feed was turned off or acquiesced to the feed being muted or turned off.<sup>50</sup> As such, the State contends

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<sup>42</sup> *Id.* at 41.

<sup>43</sup> *Id.* at 44 (citing *Ex parte R.D.W.*, 773 So. 2d 426, 429 (Ala. 2000)).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 51.

<sup>47</sup> Brief of Appellee, *supra* note 5, at 37–38. Appellee also contends that Darby’s motion was properly denied because it was not verified. *Id.* at 40, 45. This argument is not addressed in this preview based on the Order provided by the Alabama Court of Criminal Appeals. See Order Granting Oral Argument, *supra* note 4.

<sup>48</sup> Brief of Appellee, *supra* note 5, at 45–46 (quoting *Todd v. State*, 342 So. 3d 602, 610 (Ala. Crim. App. 2021)).

<sup>49</sup> *Id.* at 47.

<sup>50</sup> *Id.* at 47–51.

that Darby invited—and thus cannot now seek to profit from—the error.<sup>51</sup>

### *B. Right to Public Trial*

The State next argues that any closures were brief and therefore did not implicate the Sixth Amendment.<sup>52</sup> The State cited to multiple persuasive authorities that held short or inadvertent closures during a trial did not violate one’s right to a public trial.<sup>53</sup> Specifically, Appellee argues that “[s]hort closures, particularly where logistical or legal issues are being discussed by the parties, do not implicate the Sixth Amendment.”<sup>54</sup> Thus, the “brief ‘closure’ . . . would not amount to a constitutional deprivation, nor would the complete closing of the video feed . . . during discussions of technical legal issues.”<sup>55</sup> Because there was no violation of Darby’s right to a public trial, the State contends his motion for new trial was properly denied.<sup>56</sup>

### *C. Jury Instructions*

The State next avers the court did not abuse its discretion in rejecting Darby’s suggested jury instructions.<sup>57</sup> Because the district court gave essentially the pattern jury instructions for Alabama’s self-defense law and further instructed the jury that Darby’s actions “may and must act on the reasonable appearance of things,” the State argues the suggested instructions were unnecessary.<sup>58</sup> Further the State argues that because there is no Alabama law requiring the court to include jury instructions arising civil actions, it is not an abuse of discretion for the judge to reject such instructions.<sup>59</sup> The State adds that if Darby is attempting to provide new unique standards under which law enforcement ought to be judged in self-defense cases, that decision is for the Alabama Legislature, not its courts, to decide.<sup>60</sup>

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<sup>51</sup> *Id.* at 51 (quoting *Acklin v. State*, 266 So. 3d 89, 109 (Ala. Crim. App. 2017) (explaining that a party cannot “invite error and then seek to profit thereby”).

<sup>52</sup> *Id.* at 53.

<sup>53</sup> *Id.* at 53–54.

<sup>54</sup> Brief of Appellee, *supra* note 5, at 53 (first quoting *Peterson v. Williams*, 85 F.3d 9, 43 (2d Cir. 1996); then citing *Snyder v. Coinder*, 510 F.2d 224, 230 (4th Cir. 1975); and then citing *United States v. Al-Smadi*, 15 F.3d 154–55 (10th Cir. 1994)).

<sup>55</sup> *Id.* at 54–55.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 55.

<sup>58</sup> *Id.* at 59–60 (quoting jury instructions from the record of the trial).

<sup>59</sup> *Id.* at 60.

<sup>60</sup> Brief of Appellee, *supra* note 5, at 60–61.

## V. CONCLUSION

While there are several issues at play within this case, the standard of review—abuse of discretion—presents a significant hurdle for the Appellant to overcome. Whatever the outcome, this case will have implications for future cases that might also deal with issues created within the judicial system because of the COVID-19 pandemic. Oral arguments are open discussions and may bring about issues that are not anticipated; thus, oral arguments will provide great insight into how the Alabama Supreme Court is looking to address the issues presented in this appeal.