This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0323

State of Minnesota,
Respondent,

vs.

Kenneth James Holcomb, Jr.,
Appellant.

Filed January 21, 2025
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-22-20142

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Klaphake, Judge.[*]

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction of third-degree criminal sexual conduct, arguing that the district court violated his right to a public trial by partially closing the courtroom during voir dire. We affirm.

FACTS

In October 2022, appellant Kenneth James Holcomb, Jr. was charged with third-degree criminal sexual conduct under Minn. Stat. § 609.344, subd. 1(b) (2022). The complaint alleged that Holcomb had sexually assaulted his cousin while she was asleep on a couch.

The case proceeded to a jury trial, and voir dire commenced on September 5, 2023. The jury pool first received a written questionnaire, which included questions about whether they had personally experienced a sexual assault. Several prospective jurors responded in the affirmative; counsel asked to question them individually about their experiences outside of the presence of the other jurors. The next day, the district court conducted a sequestered voir dire but did not close the courtroom.

While counsel questioned individual prospective jurors about their experience with sexual assault, three courtroom observers, later identified as members of Holcomb's family (family members), began to engage in disruptive and disrespectful behavior. The behavior included making comments and exaggerated facial expressions in response to the prospective jurors' answers, loudly discussing the case with each other in and near the

courtroom, using cellphones inside the courtroom, and failing to stand when instructed to "[a]ll rise for the jury."

Following the first disruptive outburst, the district court warned both an individual family member and the gallery at large that they may not comment or speak in the courtroom and that failing to abide by this rule would result in their removal. The court also told the gallery that they must stand when members of the jury enter the courtroom and reiterated that cellphone use is prohibited.

Despite these warnings, one of the family members caused yet another disruption by loudly exclaiming, "[o]h, no," and "[r]acist as hell" as the district court discussed a motion to dismiss a prospective juror. The district court subsequently noted this outburst on the record and stated that the two other family members had recently left the courtroom and could be heard loudly discussing the case in the hallway where individual prospective jurors could hear them. After expressing concern that these disruptive individuals may taint the jury pool, the district court excluded them from the courtroom for the rest of the afternoon. The court advised them that they could return as observers the following morning. A nondisruptive member of the public was also present in the gallery and was allowed to remain for the rest of the day. Because the district court determined that its action was a "partial [courtroom] closure," it issued written findings of fact in support of its decision later that afternoon.

Defense counsel did not object to the district court's warnings or to the exclusion of the family members. Rather, defense counsel appeared to acknowledge the inappropriate

nature of the family members' conduct by reporting to the court that he "had a good chat with the family," and believed it would be "smoother sailing from here on out."

The rest of the trial proceeded without disruption. On September 12, the jury found Holcomb guilty of third-degree criminal sexual conduct. The district court convicted him of the offense and sentenced him to 42 months in prison.

Holcomb appeals.

DECISION

The United States and Minnesota Constitutions provide criminal defendants with the right to a public trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. But this right is not absolute and may give way to other rights or interests in certain cases. *State v. Fageroos*, 531 N.W.2d 199, 201 (Minn. 1995). Our supreme court has adopted the factors articulated in *Waller v. Georgia*, 467 U.S. 39 (1984), for determining when a courtroom closure is justified. *Id.* *Waller* requires that (1) the party seeking closure "advance an overriding interest that is likely to be prejudiced," (2) the closure is "no broader than necessary to protect that interest," (3) the district court "consider reasonable alternatives to closing the proceeding," and (4) the district court make "findings adequate to support the closure." *Id.* (quoting *Waller*, 467 U.S. at 48).

When, as here, a defendant fails to object to a courtroom closure in the district court, we review for plain error. *Pulczinski v. State*, 972 N.W.2d 347, 357-59 (Minn. 2022). To meet this standard, a defendant must show that (1) there was error, (2) the error was plain, and (3) it affected their substantial rights. *Id.* at 356. Even if the defendant satisfies all

three of these prongs, we will only correct the error if it "seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Id.*

Holcomb suggests that the district court plainly erred because the exclusion of his three disruptive family members was an unjustified violation of his public-trial right.[1] Accordingly, he contends that he is entitled to a new trial or, at a minimum, a remand for additional findings in line with *Waller*. We disagree for two reasons.

First, we are not persuaded that the district court's exclusion of some, but not all, members of the public for part of a day constitutes a true closure of the courtroom. Not every restriction on courtroom access amounts to a violation of a defendant's right to a public trial. *State v. Lindsey*, 632 N.W.2d 652, 660 (Minn. 2001). Some restrictions are "too trivial" to deprive a defendant of the protections guaranteed by the Sixth Amendment. *Id.* (quoting *Peterson v. Williams*, 85 F.3d 39, 42 (2d Cir. 1996)). Therefore, we must first determine "whether a closure even occurred." *State v. Taylor*, 869 N.W.2d 1, 11 (Minn. 2015).

When determining whether a restriction on courtroom access constitutes a "true closure" in violation of a defendant's right to a public trial, we consider several factors first articulated in *Lindsey*, 632 N.W.2d at 660-61. These factors include that

> (1) the courtroom was never cleared of all spectators; (2) the trial remained open to the general public and the press; (3) there was no period of the trial in which members of the general public were absent; and (4) neither the defendant, the

[1] Neither party articulated the correct plain-error standard of review under *Pulczinski* in their briefing to this court. Nevertheless, we construe their arguments under the plain-error standard.

> defendant's family or friends, nor any witnesses were improperly excluded from the trial.

State v. Silvernail, 831 N.W.2d 594, 601 (Minn. 2013) (quotation omitted) (summarizing the *Lindsey* factors). In *Lindsey*, the district court excluded two children who had no known relationship to the defendant from the courtroom. 632 N.W.2d at 657. The supreme court reasoned that such an exclusion was too trivial to amount to a true closure because the record did not indicate that the defendant's friends or family were improperly excluded and because the courtroom was never cleared of all spectators and was open to the general public and press at all times. *Id.* at 660-61.

Relying on *Lindsey*, Holcomb argues that the district court's exclusion of the three disruptive individuals cannot be considered too trivial to violate his public-trial right because they were his family members. *See id.* at 661. This argument is unavailing because it ignores the focus of the fourth *Lindsey* factor—whether a person within one of the enumerated categories was "*improperly* excluded from the trial." *Silvernail*, 831 N.W.2d at 601 (emphasis added).

State v. Caldwell guides our analysis. 803 N.W.2d 373 (Minn. 2011). In that case, the district court removed Caldwell's mother from the courtroom after she made several disruptive remarks during pretrial courtroom proceedings. *Id.* at 390. The supreme court concluded that this exclusion did not violate Caldwell's right to a public trial, reasoning that, because Caldwell's mother repeatedly disrupted the proceedings and because the district court did not bar all trial observers, it appropriately exercised its discretion to "exclude spectators to preserve order in the courtroom." *Id*. (quoting *State v. Ware*, 498

N.W.2d 454, 458 (Minn. 1993)). *Caldwell* clearly distinguishes the exclusion of *disruptive* family members from the exclusion of family members generally. *Id.*

As in *Caldwell*, the district court excluded the three family members only after they repeatedly engaged in disruptive and disrespectful behavior. The courtroom was never closed to the general public or the press, and at no point were all spectators excluded. Moreover, the three family members were only excluded for a very limited time—a single afternoon out of a six-day jury trial. *See State v. Brown*, 815 N.W.2d 609, 618 (Minn. 2012) (concluding no public-trial-right violation in part because the closure occurred only during the jury instructions, which "did not comprise a proportionately large portion of the trial proceedings").

On this record, we conclude that the district's court's limited exclusion of Holcomb's three family members from the courtroom due to their repeated, disruptive behavior does not amount to a true closure that implicated Holcomb's right to a public trial.

Second, even if we viewed the district court's exclusion of the family members as a true closure, Holcomb bears the burden of demonstrating that the closure was not justified under *Waller*. *Pulczinski*, 972 N.W.2d at 356 (stating that "a defendant must establish" that an error existed). For the reasons discussed below, we conclude that he has not met that burden.

Overriding Interest

The first *Waller* factor asks whether the closure advanced an overriding interest that was likely to be prejudiced. *Fageroos*, 531 N.W.2d at 201. Holcomb contends that the district court's articulated concern that "the jury panel [would be] tainted by disruptive

outbursts and comments" coming from the gallery is an insufficient interest under *Waller*. But he provides no legal authority to support this assertion. Instead, Holcomb suggests that the record renders it impossible "to credit the theory that avoiding jury 'taint' represented an overriding interest" because the district court failed to specifically describe the disruptive courtroom conduct.[2]

Contrary to Holcomb's suggestion, the district court did make specific findings (both orally and in writing) that, in addition to "verbal interruptions"—many of which are captured in the trial transcript—the family members were "rolling their eyes, shaking their head, and making faces during the individual voir dire process." The district court further stated that this "behavior had a clear impact on the jurors being questioned about deeply personal information," and that the family members' verbal and nonverbal signals "distracted the jurors that were being questioned and had the potential to make them nervous or fearful." We conclude that these circumstances—as clearly articulated by the district court—establish that avoiding the risk of tainting the jury was an overriding interest that justified excluding the family members.

Breadth of Closure

The second *Waller* factor asks whether the closure was broader than necessary to protect the stated overriding interest. *Fageroos*, 531 N.W.2d at 201. Holcomb does not challenge the breadth of the closure, and with good reason. The partial closure was

[2] In his principal brief to this court, Holcomb asserts that the district court "failed to make findings supporting the closure." But he recants this assertion in his reply brief and withdraws that portion of his argument.

narrowly tailored; three specific, disruptive individuals were excluded for a single afternoon of a six-day trial while other members of the public were permitted to remain in the courtroom. All three disruptive family members were permitted to return the following morning to observe the rest of the trial. On this record, we easily conclude that the partial closure was not overbroad.

Reasonable Alternatives

The third *Waller* factor asks whether the district court considered reasonable alternatives to closing the proceeding. *Id.* "This is not an inquiry the district court can take lightly"; it must make findings showing that it considered reasonable alternatives even when none are offered by the parties. *State v. Bell*, 993 N.W.2d 418, 426 (Minn. 2023).

Holcomb asserts that the district court failed to "list or discuss" alternatives. The record defeats this assertion. Review of both the district court's oral order and written findings reveals that the court twice admonished all observers in the gallery, warning them that disruptive behavior would result in their removal from the courtroom. On one occurrence, the district court went so far as to interrupt the questioning of a prospective juror to admonish a family member. The district court's multiple warnings to the gallery demonstrate that it not only considered reasonable alternatives to a closure but pursued those alternatives until the repeated disruptions—occurring both inside and outside of the courtroom—required greater intervention. And, even then, the district court only excluded three specific individuals. *See State v. Bobo*, 770 N.W.2d 129, 141 (Minn. 2009) (describing a district court's consideration of excluding specific individuals likely to intimidate a witness as a reasonable alternative).

Because the district court provided multiple verbal warnings to the gallery—arguably the only reasonable alternative under the circumstances—we conclude that the third *Waller* factor is satisfied.

Adequate Findings

The final *Waller* factor requires the district court to make adequate findings to support the courtroom closure. *Fageroos*, 531 N.W.2d at 201. Here, the district court has provided multiple pages of detailed findings in support of its actions. It is undisputed—and we agree—that these findings are adequate under *Waller*. Because all four *Waller* factors are met, we conclude that the courtroom closure was justified. *See id.*

In sum, the district court's exclusion of three disruptive family members for a single afternoon during Holcomb's six-day jury trial did not amount to a courtroom closure in violation of his public-trial right. Moreover, even assuming the district court's actions constituted a "true closure," that closure was justified under *Waller*. Accordingly, Holcomb is not entitled to a new trial or other relief.

Affirmed.