STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1638

State of Minnesota,
Respondent,

vs.

Abraham Isaac Bell,
Appellant.

Filed December 27, 2021
Affirmed
Smith, John, Judge[*]

Scott County District Court
File No. 70-CR-19-20254

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

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Frisch, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the conviction of appellant for aggravated robbery because the district court's COVID-19 precautions did not violate his constitutional rights to a speedy and public trial.

FACTS

Appellant Abraham Isaac Bell was convicted of aggravated robbery following a jury trial in June 2020. He was initially charged in December 2019. On March 13, 2020, Minnesota Governor Tim Walz issued a peacetime emergency in response to the COVID-19 pandemic, and Minnesota Supreme Court Chief Justice Lori Gildea issued an order limiting jury trials and suspending most jury trials. The pandemic worsened, prompting Governor Walz to issue a stay-at-home order on March 25. The Chief Justice prohibited all new jury trials from starting before May 4, 2020. On March 31, 2020, Bell demanded a speedy trial. In June 2020, some courts were able to begin pilot jury trials. Bell continued to demand a speedy trial. Bell's jury trial began in Scott County on June 22.

The district court determined, with the assistance of public-health experts, that the safest way to conduct Bell's jury trial required spectators to watch a live video of the trial from an adjacent courtroom. Bell moved to allow at least one member of the public into the courtroom, but the district court responded that there was no safe way to accommodate any spectators because the courtroom was too small, and moreover the livestream effectively meant that the courtroom was not closed so Bell's public-trial rights were intact.

DECISION

I. Bell's right to a speedy trial was not violated.

The United States and Minnesota Constitutions guarantee a criminal defendant the right to a speedy trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. "Whether a defendant has been denied a speedy trial is a constitutional question subject to de novo review." *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).[1]

In determining whether a defendant's right to a speedy trial has been violated, Minnesota courts apply the four-factor balancing test set forth in *Barker v. Wingo*. 407 U.S. 514, 530 (1972); *State v. Widell*, 258 N.W.2d 795, 796 (Minn. 1977) (using the *Barker* standard to evaluate a defendant's right to a speedy trial). Those four factors are "(1) the length of the delay; (2) the reason for the delay; (3) whether the defendant asserted his or her right to a speedy trial; and (4) whether the delay prejudiced the defendant." *State v. Windish*, 590 N.W.2d 311, 315 (Minn. 1999) (citing *Barker*, 407 U.S. at 530). A speedy-

[1] Each party relies on nonprecedential cases regarding whether a speedy-trial-violation claim has been waived if the defendant failed to move for dismissal on that ground before the district court. *State v. Morgart*, No. A10-511, 2011 WL 500009, at *2 (Minn. App. Feb. 15, 2011) ("Because appellant has failed to show that it is in the interest of justice to disregard the general rule that failure to raise an issue before the district court waives the issue on appeal, we decline to address whether appellant's speedy-trial right was violated."); *State v. Clinton*, No. A08-2000, 2009 WL 3077991, at *5 (Minn. App. Sept. 29, 2009) (We noted that the failure to move for dismissal at the time the case is called for trial may "'constitute a waiver of a defendant's right to a speedy trial.'" (quoting *State v. Walter,* 184 N.W.2d 426, 429 (1971)), *rev. denied* (Minn. Nov. 24, 2009). But "no Minnesota appellate court has expressly required a defendant to move for dismissal in district court to preserve a speedy-trial claim on appeal." *Id.* Because we resolved the appellant's speedy-trial claim in the state's favor, we did not address the potential waiver issue in *Clinton*, and for the same reason we need not address the potential waiver issue here.

trial determination involves "a difficult and sensitive balancing process." *Barker*, 407 U.S. at 533.

Bell argues that he was denied his right to a speedy trial. It is uncontested that Bell asserted his speedy trial right on March 31, 2020 and, although his trial was initially scheduled for May 21, 2020, his trial was delayed due to COVID-19 and did not start until June 22, 2020, 83 days later. Under Minnesota law, if a defendant is not tried within 60 days of issuing a speedy trial demand, the delay raises a presumption that a violation has occurred.[2] *State v. Taylor*, 869 N.W.2d 1, 19 (Minn. 2015); *see also* Minn. R. Crim. P. 11.09(b). But "[t]he threshold conclusion that a delay is presumptively prejudicial does not end our consideration of the length of the delay in the weighing of the *Barker* factors" because the longer a delay stretches, the less likely it can be justified by other factors. *Mikell*, 960 N.W.2d at 250. Although the delay surpassed 60 days, the state correctly notes that the trial began 23 days beyond the 60-day limit. The supreme court has considered delays of 87 days and 85 days to be not "particularly protracted in comparison to recent speedy trial cases," suggesting that the delay here is similarly not "particularly protracted." *Id.* at 255-256.

[2] The state argues that there is a difference between a presumptive speedy trial violation and presumptive prejudice due to a delay of 60 days after an accused demands a speedy trial. The supreme court's recent case *Mikell* confirms that a delay longer than 60 days after an accused demanded a speedy trial raises "the presumption that a violation has occurred" and requires further inquiry to "determine if there has been a violation of the defendant's right to a speedy trial." *State v. Mikell*, 960 N.W.2d 230, 246 (Minn. 2021). Then we apply the *Barker* factors to determine whether good cause existed for the later trial date.

Both parties agree that the reason for the delay was the COVID-19 pandemic. Bell argues that the delay is attributable to the state because it was the government that decided to delay trials.[3] Bell's argument that delaying due to the COVID-19 pandemic was attributable to the government is unconvincing because the COVID-19 pandemic was wholly unprecedented, and, especially at the beginning of the pandemic, required significant flexibility when even public-health experts did not know how the disease was transmitted or how to prevent that transmission. We recently reviewed this issue in the precedential case *State v. Jackson*, where we found that the COVID-19 pandemic was a valid reason for a delay, and therefore a neutral factor in balancing the *Barker* factors. *State v. Jackson*, __ N.W.2d __, __, 2021 WL 5173146, at *3 (Minn. App. Nov. 8, 2021). Because Bell's trial was delayed solely due to the COVID-19 pandemic and the resulting state-wide suspension of new trials, the reason for the delay is not attributable to either Bell or the state, and this *Barker* factor is neutral.

[3] Bell also argues that even though the pandemic is a national crisis, such a crisis does not suspend fundamental constitutional rights, which, he argues, is what happened here. Bell compares the delay to U.S. Supreme Court cases regarding the free exercise of religion. *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (applying strict scrutiny to grant an injunction against a law preventing plaintiffs from gathering for at-home religious exercise due to the COVID-19 pandemic); *Calvary Chapel Dayton Valley v. Sisolak*, 140 S. Ct. 2603 (2020) (denying plaintiffs an injunction against Nevada's religious services attendance limits due to COVID-19). These cases are distinguishable because the plaintiffs were applying for injunctive relief that was subject to strict scrutiny analysis and the cases do not stand for the proposition that all constitutional rights must remain wholly unaffected by COVID-19 precautions. For example, *Tandon* does not require that COVID-19 precautions must not affect the manner of practicing religion in any way, *Tandon* instead requires "the government to show that measures less restrictive of the First Amendment activity could not address its interest in reducing the spread of COVID." *Tandon*, 141 S. Ct. at 1296-97.

Finally, Bell argues that he was prejudiced by the delay. "We consider three interests when determining whether a defendant has suffered prejudice: (1) preventing oppressive pretrial incarceration; (2) minimizing the anxiety and concern of the accused; and (3) preventing the possibility that the defense will be impaired." *Mikell*, 960 N.W.2d at 253 (quotation omitted). The third factor is the most serious. *Windish*, 590 N.W.2d at 318 (citing *Doggett v. United States*, 505 U.S. 647, 655 (1992)). And "If a defendant is already in custody for another offense . . . the first two interests are not implicated." *Taylor*, 869 N.W.2d at 20. Bell argues that enduring pretrial incarceration during the COVID-19 pandemic was oppressive and anxiety-producing, and his requests to be released on house arrest were denied. But comments by both parties at pretrial hearings indicate that Bell was incarcerated on other charges and parole violations during at least part of the delay.

Based on the record, Bell was in custody in Hennepin County for some amount of time, posted bail in that case in the days preceding a pretrial hearing in Scott County on May 22, 2020, and was then released back to Scott County because he had not satisfied the conditions for the Scott County charge, including monetary bail. At the May 22 hearing the state shared its understanding that Bell had a Department of Corrections hold in the event that Bell would be released from Hennepin County, and that hold would likely be in place if Bell were released by Scott County, suggesting that Bell would remain in custody on an unrelated matter. When considering whether to alter Bell's bail conditions, the district court also considered that while COVID-19 cases were spiking in Scott County, there had been none in the jail at that time. The record suggests that, for at least part of the

time, appellant was in custody or would have been in custody on other matters which minimizes prejudice under the first two factors. Bell does not argue that his defense was impaired by the 83-day delay. We are therefore unconvinced that Bell suffered prejudice due to the delay.

In sum, Bell's trial was delayed after he issued a speedy trial demand, but because the delay was not unnecessarily long, was due to a worldwide pandemic, and was not the cause of significant prejudice, the delay did not violate his constitutional right to a speedy trial.

II. Bell was not denied his right to a public trial.

Whether the district court violated a defendant's right to a public trial is a constitutional question that we review de novo. *State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012). A violation of the public-trial right "is considered a structural error that is not subject to a harmless error analysis." *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009) (quotation omitted).

The United States and Minnesota Constitutions grant criminal defendants the right to a public trial, but the right to a public trial is not absolute. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *Taylor*, 869 N.W.2d at 10. The closure of a courtroom during a criminal proceeding may be justified if (1) "'the party seeking to close the hearing . . . advance[s] 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 considers "'reasonable alternatives to closing the proceeding,'" and (4) the district court makes "'findings adequate to support

the closure.'" *State v. Fageroos*, 531 N.W.2d 199, 201 (Minn. 1995) (alteration omitted) (quoting *Waller v. Georgia*, 467 U.S. 39, 48 (1984)).

Asserting his Sixth Amendment right to a public trial, Bell moved to allow members of his family and the general public to observe his trial from within the courtroom. The district court issued findings of fact and conclusions of law on this issue, finding that after collaborating "extensively with public health officials to institute safety protocols to protect all necessary parties" there was no way to safely accommodate members of the public within the courtroom but livestreaming the proceedings in an adjacent courtroom satisfied the "predominant policy considerations" of Bell's constitutional rights.

The state argues that there was no implication of Bell's right to a public trial because the trial was livestreamed to the public in an adjacent courtroom. To determine whether a "true closure" occurred, we review several factors, including whether: (1) the courtroom was cleared of all spectators; (2) the proceedings remained open to the public and press; (3) there were periods where the public was absent; and (4) the defendant, the defendant's family and friends, or other witnesses were excluded. *State v. Petersen*, 933 N.W.2d 545, 551 (Minn. App. 2019). Although the state is correct that the experience was likely effectively the same for the public watching the trial, and the trial participants had the same awareness that the public was watching that they would have during a typical trial, previous opinions indicate that the physical *presence* of the public observing the trial is part of the public trial expectation. *See Waller,* 467 U.S. at 46 (stating "the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions" (quotation omitted)); *State v. Schmit*, 139 N.W.2d 800, 806-

07 (Minn. 1966) (suggesting that "[t]he presence of an audience does have a wholesome effect on trustworthiness since witnesses are less likely to testify falsely before a public gathering."). Because the public was not present in the room and were in fact not visible, they were partially absent and partially excluded, indicating that the trial was partially closed. We therefore evaluate the four *Waller* factors to determine if the partial closure was justified.

The overriding interest put forth by the district court supporting the closure was to safeguard both the trial participants and the public from COVID-19. The district court explained that it had worked with public health experts to ensure the safety of all participants, and that there was no way to "safely accommodate members of the public or [Bell's] family inside the courtroom." At the motion hearing, Bell argued that there should be accommodation made in the courtroom for at least one or two members of the public. But the district court responded that the courtroom was simply not big enough for the requisite COVID-19 precautions because for every added person, the court had to "space and buffer by [six] feet" and "people's safety is paramount." Based on this record, we conclude the closure was narrowly tailored to the situation, and the district court considered reasonable alternatives such as allowing one or two spectators. *See Waller*, 467 U.S. at 48.

Bell's primary argument is that the district court did not sufficiently consider allowing at least one member of Bell's family to observe the trial in person,[4] and thereby

[4] The state argues that because Bell did not suggest before the trial that the district court implement two-way video, Bell waived that argument. The state also suggests that Bell did not argue that a family member should be present at his trial. Because we resolve the

failed to meet the final three *Waller* factors because the closure was broader than necessary, the district court did not consider reasonable alternatives, and the district court did not make adequate findings to support the closure. Bell's argument is unavailing on this record.

Bell relies on recent examples and persuasive federal opinions in which the court found that despite the COVID-19 pandemic, the defendant was entitled to have one or two family members present at trial. However, none of these opinions stand for the proposition that by not allowing Bell's family members in-person, the district court's closure and related findings necessarily failed to satisfy the *Waller* factors. *See United States v. Bledson*, No. 2:20-CR-99-RAH, 2021 WL 1152431, at *3 (M.D. Ala. Mar. 25, 2021) (holding that closing trial proceedings to spectators except for the defendant's family members while making the trial available for viewing through a live video stream in another courtroom and on the court's website was "not broader than necessary to protect the court's interest."); *United States v. Richards*, No. 2:19-CR-353-RAH, 2020 WL 5219537, at *3 (M.D. Ala. Sept. 1, 2020) (same). Furthermore, the district court found that it could not safely accommodate any spectators—not even one—within the courtroom while maintaining the protections in place to protect all participants from the COVID-19 pandemic.

Bell's argument that another Minnesota district court case, *State v. Chauvin*, 27-CR-20-12646, did allow one family member of the defendant and one family member of the

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appellant's public-trial claim in the state's favor, we need not address the potential waiver issue here.

victim to watch the trial in person fails to convince us that the district court was required to do the same in this case. First, the district court's analysis here was specific to that courtroom, and the court even stated that "if Scott County would have built a much bigger courtroom, I know I could have accommodated that but people's safety is paramount in this case." In addition, Bell's jury trial in June 2020 was among the first allowed to commence after the Minnesota Chief Justice delayed jury trials in response to the COVID-19 pandemic. In contrast, Chauvin's trial occurred nearly a year later in March and April 2021. At the time of Bell's trial, public-health experts were still learning how to prevent infections from COVID-19, and there was reason to be more cautious in 2020 than in 2021 after many adults had access to the vaccine and more was known about the virus.

Ultimately, the district court justified its decision to restrict the public to viewing Bell's trial from an adjacent courtroom. It put forth an overriding reason, the closure was no broader than necessary to protect the interest, the district court considered reasonable alternatives such as letting in one or two spectators, and the district court made adequate findings supporting these conclusions.

Affirmed.