STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0023

State of Minnesota,
Respondent,

vs.

Joseph Loren Allen Maine,
Appellant.

Filed September 13, 2021
Reversed and remanded
Bryan, Judge

Jackson County District Court
File No. 32-CR-18-181

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

Thomas J. Prochazka, Jackson County Attorney, Jackson, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Reilly, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the district court's decision to close the courtroom during voir dire, arguing that this decision violated his constitutional right to a public trial. We reverse

the district court's decision and remand for a new trial because the circumstances of this case do not warrant an exception to appellant's right to a public trial.

FACTS

Appellant Joseph Loren Allen Maine was charged with first- and second-degree criminal sexual conduct. After a trial in 2019, Maine was convicted of both charges and appealed to this court. Among other arguments, Maine contended that the district court violated his right to a public trial when it conducted individual voir dire of 18 prospective jurors without making case-specific findings to exclude the public. *State v. Maine*, No. A19-1474, 2020 WL 3042248, at *8 (Minn. App. June 8, 2020), *rev. denied* (Minn. Aug. 25, 2020). We concluded that a true closure of the courtroom occurred and remanded to the district court for a possible evidentiary hearing and further findings "concerning the reasons for closing the courtroom, the necessary breadth of the closure, and the existence or absence of reasonable alternatives to closure." *Id.* at *9. After remand, the district court issued an order explaining its decision to close the courtroom. Maine now appeals from that order. Given the issue on appeal, we first summarize the process used to select the jury and then discuss the district court's order after remand.

Because the case involved criminal sexual conduct of minor victims, the district court selected a jury using written questionnaires. The three-page questionnaire asked prospective jurors seven questions regarding their experience with sexual assault and sexual abuse. Nothing in the written questionnaire informed the prospective jurors that they could request an opportunity to address the court in camera, with counsel and defendant present, or otherwise asked the prospective jurors to indicate whether they could

be honest and forthright responding to questions about sexual assault in open court. The district court also provided a verbal explanation of the voir dire process and told the prospective jurors that a questionnaire would be used because it might be uncomfortable to answer in front of the other jurors:

> To ensure both the Defendant and the State receive a fair trial by an impartial jury, the rules provide for me and for counsel to ask certain questions. Because of the nature of this case, there may be certain questions that would be asked that a juror might find uncomfortable answering while in a group of people; therefore, the questions have been put in written format.
>
> . . . .
>
> After the attorneys and I have reviewed the questionnaires, we may have some follow-up questions with some of the jurors. If we do, I will ask the juror to meet with me and the attorneys in a separate room. After any follow-up questions have been asked, we will return to the courtroom and begin voir dire or general questioning. I do want to assure you that your answers on the questionnaire are kept confidential. Only I, the attorneys, and my staff will see them. No copies will be made of the questionnaires.

The district court did not ask the prospective jurors whether any of them had a concern about answering questions in open court. The parties reviewed the completed jury questionnaires and 18 prospective jurors were selected for individual voir dire.

The district court then held individual voir dire of jurors in a separate courtroom that was closed to the public. The district court, and the attorneys for both the state and Maine, questioned 18 potential jurors about their responses to the questionnaires for approximately two hours. Then the district court proceeded with general voir dire for an additional hour and a half in the original courtroom. Six of the eighteen jurors questioned

in private were ultimately selected as jurors. The jury found Maine guilty of all charged counts.

After the initial appeal and remand, the district court made the following findings based on the record: the panel of prospective jurors were "placed under oath" and provided a questionnaire; after the panel had completed the questionnaires, "counsel for the State and Maine reviewed the questionnaires and determined which jurors they wanted to individually question based on their responses . . . relating to sexual abuse;" "[e]ighteen jurors were questioned individually;" these eighteen jurors were "brought to the smaller courtroom where Maine, his counsel, counsel for the State, and the court were present;"[1] these jurors were "questioned only about their response to the sexual abuse questions and not any other general voir dire;" "[c]ounsel for both sides were given an opportunity to question the juror on the issue;" and "[a]fter the individual questioning was concluded, general voir dire was conducted in the main courtroom." The district court explained that the closure was necessary to ensure selection of a fair jury and to protect juror privacy. In the district court's view, the nature of criminal sexual conduct cases makes juror responses "potentially very private and sensitive," and a "potential juror, who may have never disclosed the information before, has a strong interest in keeping the matter private or limiting" the disclosure. The district court continued that "[r]evealing such private

[1] In his brief, Maine states that "the court and attorneys met privately." In addition, in the initial appeal, this court noted that "only the juror, the judge, and the attorneys were present" and "the courtroom was not open to the public or the press, to appellant or any of appellant's friends or family, or to any other witnesses." *Maine*, 2020 WL 3042248, at *9. After remand, however, the district court found that Maine was present during the closed voir dire, and Maine does not challenge this finding.

information in a public setting might discourage a potential juror from full[y] discussing any possible biases or concerns because it would require them to state [such information] in front of a public audience." The district court also concluded that there were "no other reasonable alternatives" to the courtroom closure.

DECISION

Maine argues that the district court closed the courtroom during voir dire without justification. We agree. The circumstances of this case do not satisfy the constitutional requirements to close the courtroom and conduct criminal proceedings in private.

The United States and Minnesota Constitutions require criminal trials to be conducted in open court. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *Waller v. Georgia*, 467 U.S. 39, 46 (1984). This constitutional guarantee "applies to all phases of trial, including . . . jury voir dire." *State v. Brown*, 815 N.W.2d 609, 617 (Minn. 2012); *see also Presley v. Georgia*, 558 U.S. 209, 213 (2010) (extending the right to a public trial to voir dire proceedings). The requirement of a public trial, however, is not absolute: "the right to an open trial may give way in certain cases to other rights or interests." *Waller*, 467 U.S. at 45. "Such circumstances will be rare," and the district court must balance the competing interests "with special care." *Id.* In *Waller*, the United States Supreme Court articulated the appropriate standard for determining whether a true closure[2] of the courtroom is justified:

[2] This court previously determined that a true closure occurred. *Maine*, 2020 WL 3042248, at *9; *see also State v. Taylor*, 869 N.W.2d 1, 11 (Minn. 2015) (holding that the *Waller* standard applies to a "true closure").

> [T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure.

Waller, 467 U.S. at 48 (citing *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 510 (1984)); *see also State v. Fageroos*, 531 N.W.2d 199, 201-02 (Minn. 1995). We apply a de novo standard of review in this case. *Maine*, 2020 WL 3042248, at *8-9.[3]

We first address whether public voir dire of the 18 jurors threatened the competing interests advanced by the state. We conclude that the state did not advance an overriding interest because there is no indication that any prospective jurors actually had privacy

[3] We previously considered whether to apply a de novo standard of review or a plain error standard of review to the district court's decision to close the courtroom. *Maine*, 2020 WL 3042248, at *8-9 (discussing *State v. Benton*, 858 N.W.2d 535, 540 (Minn. 2015) (applying the plain error standard of review) and *State v. Petersen*, 933 N.W.2d 545, 551 (Minn. App. 2019) (applying a de novo standard of review)). We concluded that a de novo standard of review applied in this case because the actions of Maine's attorney more closely resembled those of the trial attorney in *Petersen* than those of the attorney in *Benton*:

> Here, the record reveals, and appellant concedes, that he made no objection on the record to the district court questioning jurors in private about their questionnaire responses. However, as noted by appellant, nothing in the record suggests that appellant "actively sought" questioning of jurors in private. Thus, despite the state's contention that this case is more similar to *Benton*, in which Benton "actively sought" closure of the courtroom two times, we conclude this case is more like *Petersen*, in which there was "equivocal objection and arguable acquiescence to the courtroom closure." Accordingly, we apply the de novo standard of review.

Id. at *9 (citations omitted).

concerns. Next, we discuss the breadth of the exclusion of the public in this case and the existence of reasonable alternatives.[4] We conclude that the closure of the courtroom was too broad given alternative limitations that the district court declined to impose.

A. Likelihood of False or Withheld Information

The state argued before the district court that closure was necessary based on a concern that the 18 jurors would be dishonest or would conceal their true beliefs if questioned in open court. The state advanced two related interests based on this concern: protecting juror privacy and ensuring a fair process for selecting jurors. Neither stated interest justifies closing the courtroom in this case.

Juror privacy and ensuring a fair selection process can theoretically establish an overriding interest that justifies an in camera voir dire. *Waller*, 467 U.S. at 45. However, there must be a valid basis in fact to conclude that an actual and significant privacy interest is implicated:

> Based on our review of the record, we conclude that the *Waller* standard for closing the courtroom has not been met. The problem is that . . . there is no evidence from any witness asserting that a witness had been intimidated or threatened. Nor is there any evidence indicating who specifically was intimidating or threatening witnesses or what the nature of the intimidation and threats was. Further, with the exception of [one witness], there is no indication as to which specific witnesses had been intimidated or threatened. The only thing in the record regarding intimidation and threats made against witnesses consists of the prosecutor's assertions . . . . [T]here

[4] Given our review of the state's stated interests in closing the courtroom, the breadth of the closure, and the existence of reasonable alternatives, in addition to the previous decision by this court to remand the matter for further findings, we need not otherwise address the adequacy of the district court's findings supporting the closure.

> is no indication in the record as to what it was about [the witness's] testimony that supported the closure.

State v. Mahkuk, 736 N.W.2d 675, 685 (Minn. 2007) (reversing the closure of a courtroom in the absence of evidence of actual threat to a witness's privacy or safety); *State v. McRae*, 494 N.W.2d 252, 259 (Minn. 1992) (reversing the closure of a courtroom in the absence of "a showing that closure was necessary to protect the witness or ensure fairness in the trial"); *see also Press-Enter. Co.*, 464 U.S. at 512 (concluding that requiring a "prospective juror to make an affirmative request" to provide an answer in private "can ensure that there is *in fact a valid basis* for a belief that disclosure infringes a *significant* interest in privacy" (emphasis added)).

In this case, none of the questions or statements in the questionnaire asked the prospective jurors whether they had any concerns about discussing sexual assault in public. Instead of tying the decision to close the courtroom to specific jurors or to specific answers on the questionnaire, the district court reasoned that the nature of the charges alone justified the courtroom closure.[5] While the charges involve traumatic and deeply personal experiences, we do not agree that the charges alone support a generalized concern that the 18 jurors were likely to provide false information or withhold information if questioned in open court. Like in *Mahkuk*, we find no indication or evidence that conducting a public proceeding would actually implicate the state's theoretical concern. In the absence of a

[5] We also observe that certain statements in the record reveal the state's concern about requiring a juror to answer a sensitive question in front of other jurors. The impact of one prospective juror's statement on the rest of the prospective jurors may be a reason to conduct individual voir dire, but it is not a reason to exclude the public from the courtroom.

showing that "there is in fact a valid basis for [the state's] belief that disclosure infringes a significant interest in privacy," *Press-Enter. Co.*, 464 U.S. at 512, we cannot conclude that an overriding interest justified the closure of the courtroom.

B. Breadth of Closure given Reasonable Alternatives

Next, we turn to the second and third components of the *Waller* standard, which are closely related and require a district court to narrowly tailor its restrictions to the identified interest. *Fageroos*, 531 N.W.2d at 201 (adopting *Waller* requirements that the closure must not be any broader than necessary to protect the identified interest and that the district court must consider reasonable alternatives to closing the proceeding (quotations omitted)); *see also* Minn. R. Crim. P. 26.02, subd. 4(4)(c) ("Any closure must be no broader than necessary to protect the overriding interest."). In the voir dire context, these aspects of the *Waller* standard require an assessment of what steps a court can take to address the state's concerns without infringing on a defendant's right to a public trial.

In this case, the closure extended to all of the 18 jurors in question and it applied to all categories of the public. Reasonable alternatives to this broad closure included asking jurors to affirmatively request or otherwise note their preference to answer questions in camera. *See* Minn. R. Crim. P. 26.02, subd. 2(3) (stating that when using questionnaires, the district court "*must* tell prospective jurors that if sensitive or embarrassing questions are included on the questionnaire, instead of answering any particular questions in writing *they may request an opportunity to address the court in camera*, with counsel and the defendant present, concerning their desire that the answers not be public" (emphasis added)). In addition, the district court could have considered whether to exclude only

certain members of the public. For example, when deciding whether to close the courtroom, the presence of a defendant's close friends and family members might present different privacy concerns than the presence of the close friends or family of a victim. We agree with Maine that the district court in this case did not specifically consider these or other alternatives to the broad closure of the courtroom applying to all 18 jurors and all members of the public. For these reasons, the broad courtroom closure ordered in this case infringed Maine's right to a public trial.

Reversed and remanded.