STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1393

State of Minnesota,
Respondent,

vs.

Michael Anthony Pitts,
Appellant.

Filed August 27, 2012
Affirmed
Schellhas, Judge

Hennepin County District Court
File No. 27-CR-10-54413

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

Appellant challenges his second-degree controlled-substance-possession conviction under Minn. Stat. § 152.022, subds. 2(1), 3(b) (2010), arguing that the district

court violated his right to a public trial by locking the courtroom before reading jury instructions. We affirm.

FACTS

Respondent State of Minnesota charged appellant Michael Pitts on November 23, 2010, with, among other crimes, first-degree controlled-substance sale under Minn. Stat. § 152.01, subds. 1(1), 3(b) (2010), and second-degree controlled-substance possession under Minn. Stat. § 152.022, subds. 2(1), 3(b). At trial, after the parties delivered closing arguments, the district court asked, "Will one of the deputies secure the door, please?" and then stated, "If anyone is not going to be waiting through the instructions, I ask you to leave so we don't interrupt our instructions to the jury." The court paused for a moment and then provided instructions to the jury. The jury convicted Pitts of second-degree controlled-substance possession but acquitted him of first-degree controlled-substance sale.

This appeal follows.

D E C I S I O N

Pitts's sole argument on appeal is that the district court violated his right to a public trial by locking the courtroom before giving jury instructions. Appellate courts review de novo whether a defendant's right to a public trial has been violated. *State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012). "In all criminal prosecutions, the accused shall enjoy the right to a . . . public trial . . . ." U.S. Const. amend VI; *see* Minn. Const. art. I, § 6 (same). "Denials of the public trial guarantee constitute structural error not subject to harmless error review." *Brown*, 815 N.W.2d at 616.

> To close proceedings a party 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.

State v. Bobo, 770 N.W.2d 129, 139 (Minn. 2009) (quoting *Waller v. Georgia*, 467 U.S. 39, 48, 104 S. Ct. 2210, 2216 (1984)). But "[n]ot all courtroom restrictions implicate a defendant's right to a public trial." *Brown*, 815 N.W.2d at 617. A district court does not implicate a defendant's right to a public trial by

> lock[ing] the courtroom doors during jury instructions[;] [when] the courtroom was never cleared of all spectators[;] . . . the judge in fact told the people in the courtroom that they were "welcome to stay"[;] [t]he trial remained open to the public and press already in the courtroom[;] . . . the trial court never ordered the removal of any member of the public, the press, or the defendant's family[; and] the jury instructions did not comprise a proportionately large portion of the trial proceedings.

Id. (quotation omitted).

In this case, jury instructions comprised less than 20 pages of the over 600-page trial transcript. Although the district court did not expressly state that the trial spectators were welcome to stay, the court's statement did indicate that the only persons who were not welcome to stay were those who were "not going to be waiting through the instructions." Absent from the record is any indication that the district court ordered the removal of any member of the public, press, or Pitts's family.

Pitts asserts that "members of the public and the press not already inside" were excluded, but Pitts does not support that assertion with record evidence, nor does the

record support that assertion. *See id.*, 815 N.W.2d at 618 n.5 (rejecting defendant's argument that "because the doors were locked, any family member or friend that tried to enter the courtroom during the jury instructions was prevented from doing so" because "nothing in the trial court or postconviction court record provides factual support for any claim that any particular person was denied entrance"); *see also United States v. Scott*, 564 F.3d 34, 38 (1st Cir. 2009) ("That a hypothetical member of the public who arrived late for the jury charge might have been barred from the proceedings does not undermine the public nature of the proceedings as they were actually conducted . . . ."). In light of *Brown*, the district court's conduct did not implicate Pitts's right to a public trial.

Affirmed.