STATE OF MINNESOTA

IN SUPREME COURT

A20-1638

Court of Appeals

Thissen, J.
Dissenting, McKeig, J., Gildea, C.J.

State of Minnesota,

Respondent,

vs.

Filed: July 26, 2023
Office of Appellate Courts

Abraham Isaac Bell,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

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

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant State Public Defender, Saint Paul, Minnesota, for appellant.

S Y L L A B U S

1. The exclusion of the public from a courtroom during the COVID-19 pandemic was a closure implicating appellant's right to a public trial.

2. The findings of the district court are insufficient to evaluate whether the appellant's public trial right was violated.

3. The appropriate remedy under the circumstances present here is a remand to the district court to make sufficient factual findings about the decision to close the courtroom.

Reversed and remanded.

O P I N I O N

THISSEN, Justice.

This case requires us to analyze the impact of COVID-19 pandemic restrictions on a defendant's right to a public trial under the Sixth Amendment to the U.S. Constitution and Article I, Section 6, of the Minnesota State Constitution. Appellant Abraham Isaac Bell was charged in Scott County with first-degree aggravated robbery in December 2019. Pursuant to the restrictions placed on trials due to the COVID-19 pandemic, Scott County submitted a trial plan for Bell's trial that excluded all spectators from the courtroom but included a one-way video feed that would broadcast his trial in an adjacent courtroom. Bell objected to the plan as a violation of his right to a public trial, but the objection was overruled, and the trial proceeded beginning in June 2020. Following the trial, Bell was convicted of first-degree aggravated robbery.

Bell now seeks a new trial based on an alleged violation of his right to a public trial. The State argues that the restrictions implemented by the district court were too trivial to be a closure subject to analysis under the Sixth Amendment, but that, even if a closure occurred, it was constitutionally justifiable. We conclude that the restrictions put in place by the district court due to the COVID-19 pandemic amounted to a closure that implicated Bell's public trial right. But we further conclude that the record before us is insufficient to

determine whether Bell's public trial right was violated. Due to this insufficient record, we reverse the court of appeals and remand to the district court for additional findings on the decision to close the courtroom.

FACTS

In December 2019, respondent State of Minnesota charged appellant Abraham Isaac Bell with first-degree aggravated robbery in violation of Minnesota Statutes section 609.245, subdivision 1 (2022). The complaint alleged that Bell had robbed a victim at gunpoint in Prior Lake, Minnesota. Bell entered a not guilty plea, and the case was set for trial.

On March 13, 2020, Governor Tim Walz issued Emergency Executive Order No. 20-01, which declared a peacetime emergency due to the spread of COVID-19 and the resulting pandemic. Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency and Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020). On the same day, the Chief Justice issued an order stating that "no new jury trials will begin or be scheduled on or after March 16, 2020, for the next 30 days." Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency, No. ADM20-8001, Order at 2 (Minn. filed Mar. 13, 2020). A week later, another order was issued prohibiting new trials before April 22, 2020, or further order of the court, whichever occurred first. Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency, No. ADM20-8001, Order at 3 (Minn. filed Mar. 20, 2020). On March 31, 2020, Bell demanded a speedy trial.

On May 15, 2020, the Chief Justice issued another order authorizing a pilot program for jury trials. *See* Operations of the Minnesota Judicial Branch Under Emerg. Exec. Order Nos. 20-53, 20-56, ADM20-8001, Order at 2–3 (Minn. filed May 15, 2020). Under the order, no jury trial could be held before July 6, 2020, unless it fell within the scope of the pilot program. *Id.* In accordance with the order establishing the pilot program, Scott County submitted a "MJB Jury Trial Pilot Checklist" to the Minnesota Judicial Branch Executive Council for approval. The checklist included a requirement to "[m]ap out [the] courtroom to allow for strict physical distancing of 6 feet (360 degrees) for all panel members and court staff through all points in the jury process."

Scott County was approved to hold jury trials as part of the pilot program and Bell's case was selected for the pilot. Bell filed a series of motions in limine before trial, including a motion for a public trial. The court heard argument on the motion for a public trial at a pretrial hearing on June 18. The district court stated that it would hold a "public trial," explaining that a one-way video feed would be set up in the courtroom next door and that "somebody will be able to see and hear everything that's happening within the courtroom both audio and video if anybody is interested in attending." Bell's attorney acknowledged that the trial would be public "in the general sense of the public" but that "the importance of a public trial means that the witness can see the public and that the defendant can see and have family support." Bell's attorney pointed out that the Scott County jury plan would require all spectators, including Bell's family, to be in a different courtroom. Bell's attorney insisted that "some accommodation needs to be made" and refined his request, asking the district court to allow one or two seats in the courtroom.

The district court responded that "[t]here is no case law because . . . this is our first pandemic." It further explained that "if I had a square mile courtroom, we could probably get this done but out of safety precautions for your client, for you, for the prosecution, for everybody in there, every human I add to that courtroom I've got to now space and buffer by 6 feet." The district court also said that "the importance of the public trial is so that everybody can see what is happening within our court system," and that "it's my position that I'm not closing the courtroom. In fact, it's open." The district court concluded by stating that, "if I had another 100 feet, I might be able to do that," and "if Scott County would have built a much bigger courtroom, I know I could have accommodated that," but "safety is paramount in this case."

In short, the district court determined that prohibiting the public from being in the courtroom was not a closure and that the interest in public health prevented it from allowing the public to be in the actual trial courtroom. Bell took the position that allowing no member of the public (even one or two family members) to be in the courtroom was a closure under the Sixth Amendment and that any plan required not only that the public see the trial but that participants in the trial (witnesses, the defendant, jurors) could see the public.

Following the hearing, the district court issued a written order denying Bell's objection that the trial protocols violated his right to a public trial. The district court stated that it "collaborated extensively with public health officials to institute safety protocols to protect all necessary parties." The court concluded that "there is no way to safely accommodate members of the public or Defendant's family inside the courtroom," and that

therefore the court had arranged for the trial to be live-streamed in an adjacent courtroom that would remain open to the public. The district court reasoned that the one-way livestream "satisfies the predominant policy considerations involved here" including protecting against abuse of power, encouraging witnesses to be truthful, and giving confidence in the system. The court therefore denied Bell's motion for in-person viewing.

Bell appealed and the court of appeals affirmed. The court recognized that "physical *presence* of the public observing the trial is part of the public trial expectation." *State v. Bell*, No. A20-1638, 2021 WL 6110117, at *4 (Minn. App. Dec. 27, 2021). It concluded that the trial was partially closed and moved on to consider whether the partial closure was justified. *Id.*

In assessing the constitutionality of the partial closure, the court of appeals noted that the district court had considered allowing one or two spectators, but ultimately found the courtroom was simply not big enough to accommodate Bell's request. *Id.* The court of appeals determined that the district court's analysis was courtroom specific and therefore cases from other jurisdictions where spectators were allowed were not instructive. *Id.* at *4–5. The court therefore concluded that Bell's public trial right had not been violated. *Id.* at *5.

Bell appealed to our court, and we granted his petition for review.

ANALYSIS

The federal and Minnesota state constitutions each protect a criminal defendant's right to a public trial. Minn. Const. art. I, § 6; U.S. Const. amend. VI; *see also Gannett Co. v. DePasquale*, 443 U.S. 368, 379 (1979) (stating that the guarantees of the Sixth

Amendment apply to each state under the Fourteenth Amendment). We review de novo any alleged denial of a defendant's constitutional public trial right. *State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012).

The constitutional preference and presumption captured in the Sixth Amendment is that trials be held in courtrooms where the public can be present both to observe the trial and ensure participants in the trial—witnesses, jurors, the judge—know they are being observed. We have stated that the right to a public trial is "for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, *and* that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions." *State v. Lindsey*, 632 N.W.2d 652, 660 (Minn. 2001) (emphasis added) (quoting *Waller v. Georgia*, 467 U.S. 39, 46 (1984)). The constitutional insistence that trials be public "embodies a view of human nature, true as a general rule, that judges, lawyers, witnesses, and jurors will perform their respective functions more responsibly in an open court than in secret proceedings. . . . [P]ublic trial is an institutional safeguard for attaining it." *Estes v. Texas*, 381 U.S. 532, 588 (1965) (Harlan, J., concurring) (citation omitted) (internal quotation marks omitted). "The knowledge that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power." *In re Oliver*, 333 U.S. 257, 270 (1948). We have also suggested the importance of family presence to the defendant as one of the values underpinning the public trial right. *See State v. Schmit*, 139 N.W.2d 800, 806 (Minn. 1966) (stating that relatives and friends of the defendant are permitted in the courtroom in "most cases of general exclusion"); *see also State ex rel.*

Baker v. Utecht, 21 N.W.2d 328, 331 (Minn. 1946) (holding that courts should exercise extreme caution when excluding the public so as not to deprive the defendant of "presence, aid, or counsel of any person whose presence might be of advantage"); *State v. Callahan*, 110 N.W. 342, 344 (Minn. 1907) (finding no infringement of public trial right when "officers of the court, press reporters, friends of defendant, and persons necessary for him" were not excluded).

The right to a public trial is not absolute. *State v. Fageroos*, 531 N.W.2d 199, 201 (Minn. 1995). In *Schmit*, we stated that the right to a public trial is a "limited privilege accorded to an accused," which is "subject to the inherent power of the court to restrict attendance as the conditions and circumstances reasonably require for the preservation of order and decorum in the courtroom." 139 N.W.2d at 803. That inherent power, however, must be exercised with "extreme caution." *Utecht*, 21 N.W.2d at 331.

I.

We first turn to the question of whether the restrictions imposed on courtroom attendance in this case resulted in a closure. *See State v. Taylor*, 869 N.W.2d 1, 11 (Minn. 2015) (analyzing whether a closure occurred before deciding whether the limitations on a public trial were justified). We do so because we have recognized that some limitations on public attendance at a court proceeding—those that fall short of a closure—are too trivial to implicate the Sixth Amendment right to a public trial. *Lindsey*, 632 N.W.2d at 660–61.

We conclude that the district court's decision to completely exclude the public, including family members, from the courtroom where the trial occurred was not trivial.

Indeed, a complete prohibition on public attendance inside the courtroom for an entire trial is far greater than restrictions we have previously deemed "trivial." *See, e.g.*, *Lindsey*, 632 N.W.2d at 660–61 (stating that excluding two children of unknown age and unknown relationship to the defendant was not a restriction significant enough to be considered a "true closure"); *Taylor*, 869 N.W.2d at 11–12 (holding that a photo identification requirement to enter a courtroom "did not constitute a 'true' closure" when there was no evidence anyone was actually excluded); *Brown*, 815 N.W.2d at 617–18 (holding that locking the courtroom doors during jury instructions without clearing the courtroom of spectators did not implicate defendant's right to a public trial).

No spectators, including Bell's family, were allowed in the courtroom at any time during the trial. *See State v. Silvernail*, 831 N.W.2d 594, 601 (Minn. 2013) (assessing whether a closure occurred by considering: whether the courtroom was cleared of all spectators; whether the trial remained open to the general public and the press; whether there was a period of the trial in which members of the public were absent; and whether the defendant, the defendant's family or friends, or any witnesses were improperly excluded from the trial). And while it is true that the district court allowed Bell's family, the press, and the public to view the trial via a one-way video feed, that fact alone is insufficient to remove from constitutional scrutiny the district court's decision to exclude the public from the courtroom where the trial occurred. The constitutional values underlying the right to a public trial include both the opportunity for the public to view a trial and the protection afforded when witnesses, jurors, and other trial participants understand that they are being watched. As we observed in *Schmit*:

> In our opinion the constitutional mandate contemplates that an accused be afforded all possible benefits that a trial open to the public is designed to assure. Unrestricted public scrutiny of judicial action is a meaningful assurance to an accused that he will be dealt with justly, protected not only against gross abuses of judicial power but also petty arbitrariness. The presence of an audience does have a wholesome effect on trustworthiness since witnesses are less likely to testify falsely before a public gathering.

139 N.W.2d at 806–07 (footnote omitted). The U.S. Supreme Court has also noted that, "without exception all courts have held that an accused is at the very least entitled to have his friends, relatives and counsel present, no matter with what offense he may be charged." *In re Oliver*, 333 U.S. at 271–72. The constitutional values of having trial participants understand they are being observed and providing the support of family to the defendant—values that are best served when the public is physically present in the courtroom—are undermined when the public is only allowed to view the proceedings from a secondary location via a one-way video feed. Accordingly, we conclude that the district court's order is a true closure subject to constitutional scrutiny under the Sixth Amendment and Article I, Section 6, of the Minnesota Constitution.

II.

As discussed earlier, the right to a public trial is not absolute, even for true closures subject to constitutional scrutiny. A trial may be closed if there is an overriding interest that is likely to be prejudiced if the public is allowed in the courtroom without any limitations. *Waller*, 467 U.S. at 48. Preventing the spread of COVID-19 and ensuring the safety of trial participants and the public during the pandemic was an overriding interest that justified at least some restrictions on attendance. *See Schmit*, 139 N.W.2d at 803

(stating that the court may adopt restrictions "to prevent overcrowding, or in the interests of health or for sanitary reasons" (citations omitted)). No party contests this conclusion.

But even if there is an overriding interest in limiting public presence in the courtroom, such restrictions are not constitutional unless (1) the restrictions are no broader than necessary to protect the overriding interest and (2) the district court considered reasonable alternatives to closure. *Waller*, 467 U.S. at 48. Further, a district court must make specific and detailed findings identifying the overriding interest requiring the closure, disclosing that the district court considered reasonable alternatives to closure and explaining why the limitations adopted were no broader than necessary to serve the interest that prompted the closure. *Id.*; *Fageroos*, 531 N.W.2d at 202 (stating that the district court "must articulate its findings with specificity and detail supporting the need for closure").

We have previously addressed the sufficiency of findings under *Waller*. In *State v. McRae*, we considered a courtroom closure ordered while a minor complainant was testifying. 494 N.W.2d 252, 259 (Minn. 1992). Though the district court concluded that the courtroom should be ordered closed following an interview with the minor, no findings or evidence were included in the record explaining why the closure was necessary. *Id.* We held that, "[o]n the record before us we cannot say that there has been compliance with the requirements set out in *Waller*." *Id.*

In *State v. Mahkuk*, we similarly concluded that the district court's findings were inadequate to support a courtroom closure. 736 N.W.2d 675, 685 (Minn. 2007). The district court ordered certain spectators excluded from the courtroom based on alleged

threats and intimidation of witnesses. *Id.* at 683–85. We found the district court's decision insufficiently supported for constitutional purposes:

> Determining whether the closure was no broader than necessary and whether there were reasonable alternatives to closure is also made more difficult, if not impossible, by the lack of specific findings by the trial court with respect to specifically who was intimidating and threatening witnesses, which witnesses . . . were being intimidated or threatened, and what the nature of the intimidation and threats was. We therefore conclude that the trial court failed to make findings adequate to support its closure decision. We are not saying that closure may not have been warranted. We are simply saying that, absent evidence in the record and adequate findings by the trial court, we cannot say that the closure decision by the trial court was proper.

Id. at 685. *Mahkuk* clarifies that a broad, general statement or an implicit finding is not enough to justify a closure; "specific findings" by the trial court are required. *Id.*

We conclude that the district court's determination that it was necessary to prohibit all spectators, including two members of Bell's family, from being physically present in the courtroom, was properly supported by findings. The court explained that it had "collaborated extensively with public health officials to institute safety protocols to protect all necessary parties." Public health precautions required, among other things, that persons in the courtroom be separated from each other by 6 feet. The district court developed a plan that allowed for the defendant, his lawyer and the State's lawyer, the judge and other necessary court staff, and the jurors to be in the courtroom with necessary spacing. The court specifically noted the space limitations of the courtroom, stating that "if I had another 100 feet, I might be able to do that," and "if Scott County would have built a much bigger courtroom, I know I could have accommodated that," but "safety is paramount in this case." Accordingly, the district court's order stated that "there is no way to safely accommodate

members of the public or Defendant's family inside the courtroom." The court's findings support a conclusion that the physical exclusion of all spectators from the courtroom was no broader than necessary to prevent the spread of COVID-19 and keep trial participants safe from the disease, and that loosening the restrictions, even slightly, was not possible.

The district court, however, did not make sufficient findings under *Waller* to allow us to assess whether the district court considered reasonable alternatives to closure that would have allowed members of the public to be present for the trial. *See Waller*, 467 U.S. at 48 (stating that a court must make findings that it considered reasonable alternatives to closing the proceeding). For instance, the district court made no findings to suggest that it *considered* holding trials in a venue other than a courtroom at the Scott County courthouse that would have accommodated members of the public in the space where the trial occurred. This is not an inquiry the district court can take lightly. In *Presley v. Georgia*, 558 U.S. 209, 216 (2010) (per curiam), the court stated that it was "incumbent upon [the district court] to consider *all* reasonable alternatives to closure." (Emphasis added.) District courts must "take every reasonable measure to accommodate public attendance at criminal trials." *Id.* at 215. In *Presley*, the Supreme Court explicitly stated that trial courts are required to consider alternatives to closure, "even when they are not offered by the parties." *Id.* at 214.

Furthermore, the district court did not make findings to explain why a one-way video feed from the trial courtroom to the viewing courtroom made the closure no broader than necessary to protect the governmental interest in reducing the spread of COVID-19. *See Waller*, 467 U.S. at 48. As Bell pointed out to the district court, its plan did not allow

participants in the trial (witnesses, the defendant, jurors) to see the public watching the trial. The district court had to consider whether there was a way to allow trial participants to see the spectators watching them perform their roles and responsibilities. And, as Bell notes on appeal, a two-way video feed (as an example of a mechanism to allow participants to see spectators) would impinge far less on the values underlying the public trial right—specifically the values of ensuring that trial participants see and understand that the public is watching them and of providing the support of family to the defendant during the trial—than a one-way video feed. Of course, public health is served equally well by segregating the public in a location remote from the trial courtroom with a two-way video feed as it is with a one-way feed. Stated another way, using a one-way video feed is broader than necessary to serve the interest in protecting public health if implementing some method allowing trial participants to view spectators, such as a two-way feed, had been reasonably possible under the circumstances existing in Scott County in the summer of 2020.

The State claims that the failure of the district court to consider two-way video does not matter because Bell failed to specifically suggest two-way video at trial and so forfeited the argument. We disagree. Bell broadly (and correctly) objected that the district court's closure plan did not allow the trial participants to see the public during the trial. *See Schmit*, 139 N.W.2d at 806–07; *In re Oliver*, 333 U.S. at 271–72. Moreover, the district court has an independent responsibility to consider ways to limit the impact of a closure even if the defendant does not raise the specific alternative. *See Presley*, 558 U.S. at 215 ("Trial courts are obligated to take every reasonable measure to accommodate public attendance at

criminal trials."). Accordingly, we conclude that Bell's argument on this point is not forfeited.

The dissent's analysis appears to focus on what was reasonable in the context of the COVID-19 pandemic. Even if the district court adhered to the Judicial Council's COVID-19 protocols and consulted with public health officials in a manner one might consider reasonable, that does not exempt the district court from its responsibilities under the Minnesota and U.S. Constitutions. Our precedent is clear that a closure must be no broader than necessary (even if a broader closure might seem reasonable). *Mahkuk*, 736 N.W.2d at 685; *see Waller*, 467 U.S. at 48. And we have also been clear that district courts must make express, specific findings to that effect. *See Mahkuk*, 736 N.W.2d at 685; *McRae*, 494 N.W.2d at 259. Implicit findings or speculation as to what the district court "undoubtedly" considered is not enough to fulfill this constitutional mandate.

Although the need to protect public health during the pandemic is an overriding interest that may require that the public trial right be limited, the pandemic does not eliminate the district court's constitutional responsibility to make adequate findings justifying the need for, and scope of, the restrictions placed on the public trial right. *See Kurtenbach v. Howell*, 509 F. Supp. 3d 1145, 1152 (D.S.D. 2020) ("There is no pandemic exception to the Constitution." (quoting *Carson v. Simon*, 978 F.3d 1051, 1060 (8th Cir. 2020))); *see also Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. __, 141 S. Ct. 63, 68 (2020) (per curiam) ("[E]ven in a pandemic, the Constitution cannot be put away and forgotten."). We hold that the district court's decision to close the courtroom despite the constitutional right to a public trial was insufficient under *Waller* because the district

court made insufficient findings to show that (1) it considered reasonable alternatives that would have allowed it to hold a trial with public spectators in the courtroom[1] and (2) there was no way for the trial participants to see the public observing the trial even though it was necessary for the public to be segregated in a room different from the trial courtroom.

III.

We now turn to the proper remedy for the district court's failure to make adequate findings discussing the lack of reasonable alternatives to closure and the scope of the closure.

Unjustified or overbroad closure of a trial is structural error and not subject to harmless error review. *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009). Nonetheless, *Waller* and our precedent make clear that the remedy for a public trial right violation should be appropriate to the violation. *Waller*, 467 U.S. at 49–50; *State v. Jackson*, 977 N.W.2d

[1] Relying on *State v. Brimmer*, 983 N.W.2d 247, 269–70 (Iowa 2022), the dissent posits that the district court complied with court orders related to the conduct of trials in the summer of 2020 and asserts that fact should alleviate our concern about the requirement that the district court make factual findings on less restrictive alternatives. We are not so easily assuaged. First, the *Brimmer* court was criticizing the district court for *not* complying with court orders on the conduct of trials during COVID-19. *Id.* at 267 (concluding that a defendant's public-trial rights were violated when the district court excluded his mother from the courtroom, despite having space available and a directive "to permit public attendance as space allowed"). We are not claiming the district court failed to comply with court orders in this case. Second, nothing in any of the COVID-19-motivated court orders mandated that trials be held in the manner allowed by the district court in this case. The orders were much more general. Finally, there is nothing in the record concerning whether the district court considered other reasonable alternatives when it established the plan for courtroom trials in Scott County. We are remanding this case to the district court precisely to allow for such findings to be made as required under *Waller*.

169, 174–76 (Minn. 2022), *cert. denied*, 143 S. Ct. 500 (2022); *see also Bobo*, 770 N.W.2d at 139.

A remand for further findings on the need for, and scope of, a closure may be more appropriate than a new trial to remedy inadequate findings under *Waller*, 467 U.S. at 50. In *State v. Biebinger*, we used this precise remedy following a jury trial. 585 N.W.2d 384 (Minn. 1998). The district court in *Biebinger* ordered the courtroom closed during the testimony of the victim but failed to make "adequate findings of necessity and availability of other, better alternatives to closure." *Id.* at 385. We remanded the case for an evidentiary hearing for findings on the closure, stating that doing so was the "appropriate initial remedy." *Id.*; *see also State v. Petersen*, 933 N.W.2d 545, 552 (Minn. App. 2019) (citing *Biebinger* for the rule that "if a district court does not make findings to justify the closure of the courtroom, the appropriate initial remedy is a remand to the district court for an evidentiary hearing and findings concerning the closure").

We similarly conclude that the appropriate initial remedy here is to remand this case to the district court. On remand, the district court must address objective questions about what was reasonably possible in the summer of 2020. Accordingly, we see no unfairness in giving the district court judge a second opportunity to make an explicit record on the reasonable alternatives to closure that it considered before issuing its order closing the trial and on whether the trial closure was broader than necessary.[2]

[2] One reason the district court did not include the specific findings required under the fourth factor of *Waller* may be that it had mistakenly concluded there was no closure at all. If no closure occurred, no findings are required under *Waller*. Asking the district court to go back and make these findings is not, as the dissent alleges, "moving the goalposts." At

As an appellate court, we are "mindful of the dynamic circumstances in which district court judges must make decisions." *State v. Dorsey*, 701 N.W.2d 238, 250 n.7 (Minn. 2005). The district court was facing a global pandemic; a circumstance that our courts have not faced in at least several generations. There was little understanding about the mechanisms by which the COVID-19 virus spread and no vaccine was available when the district court had to make its decision. The district court—indeed, our entire state court system—was also acting under pressure to get criminal trials restarted for constitutional reasons; Bell himself had demanded a speedy trial. *See generally State v. Tate*, 985 N.W.2d 291, 301–04 (Minn. 2023) (outlining the challenges created by the COVID-19 pandemic in the context of a challenge to a conviction under the Sixth Amendment Confrontation Clause). In that context, balancing the competing challenges of moving criminal trials forward and keeping trial participants safe, while remaining true to constitutionally guaranteed fundamental rights, was not easy; certainly, it is much harder than it is for us reviewing those decisions from our perch of "evaluating a static, unchanging record" after the fact. But insisting that those fundamental constitutional rights be respected is our job. *Dorsey*, 701 N.W.2d at 250 n.7.

On remand, the district court should make express findings concerning reasonable alternatives to closure that it considered before issuing its order closing the trial. The district court should also make findings on whether the trial closure was broader than

---

this point, we are not deciding whether the restrictions were justified. We are merely asking the district court to make findings it understandably did not make at the time given the incorrect conclusion under which the district court was operating.

necessary, including specific findings regarding whether two-way video (or some other mechanism to make trial participants aware that they were being watched by the public and provide Bell with the support of his family) was reasonably possible during Bell's trial. Before making these findings, the district court should allow input from both Bell and the State. Assuming there was no reasonable alternative to holding trial in the Scott County courtroom, the district court need not make further findings on whether there was room in the courtroom for spectators including one or two members of Bell's family. As we discussed, its findings on that point are sufficient.

If the district court did consider reasonable alternatives to closing the trial and determines with specific findings that the closure was no broader than what was necessary to protect against the spread of COVID-19, Bell's conviction stands (subject, of course, to further appeal). If the district court did not consider reasonable alternatives to closing the trial or if it determines that the closure was broader than needed to protect against the spread of COVID-19 (for instance, if it concludes that two-way video was a reasonable option in the summer of 2020), then it must hold a new trial.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court for further proceedings consistent with this opinion.

Reversed and remanded.

D I S S E N T

McKEIG, Justice (dissenting).

The COVID-19 pandemic upended countless parts of society, including the court system. This court recognizes this cataclysmic shift in our world, yet uses the benefit of its current vantage point to assess the actions of a district court at the height of the pandemic. With the benefit of hindsight, the court ultimately concludes that the district court failed to make adequate findings as required by *Waller v. Georgia*, 467 U.S. 39, 48 (1984). I disagree with this conclusion. The findings of the district court are sufficient to hold that Bell's public trial right was not violated. I therefore respectfully dissent.[1]

The United States and Minnesota Constitutions guarantee criminal defendants the right to a public trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. But the right to a public trial under the Sixth Amendment is not an absolute right. *State v. Taylor*, 869 N.W.2d 1, 10 (Minn. 2015). The court may adopt restrictions "to prevent overcrowding, or *in the interests of health or for sanitary reasons*." *State v. Schmit*, 139 N.W.2d 800, 803 (1966) (footnotes omitted) (emphasis added). To determine if there is a violation of the defendant's right to a public trial, the court applies a four-factor test, set forth in *Waller v. Georgia*: (1) the party seeking closure advances an overriding interest that is likely to be prejudiced; (2) the closure is no broader than necessary to protect that interest; (3) the court considers reasonable alternatives to closure; and (4) the court makes adequate findings that support the closure. *State v. Fageroos*, 531 N.W.2d 199, 201 (Minn.

[1] I assume without deciding that the limitations in the courtroom were a closure.

1995) (citing *Waller*, 467 U.S. at 48). District courts determine whether closure is necessary on a case-by-case basis. *See Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 608 (1982); *Fageroos*, 531 N.W.2d at 202.

I agree with the majority that the goal of curbing the spread of the COVID-19 pandemic and ensuring the safety of trial participants in this case was an overriding governmental interest that justified restrictions on attendance, which therefore satisfies the first *Waller* factor. *See Waller*, 467 U.S. at 48. But I disagree with the majority's determination that the district court did not satisfy the fourth *Waller* factor by failing to make sufficient findings.

The purpose of the fourth *Waller* factor is to ensure that reviewing courts have findings with enough specificity to determine that the other three *Waller* factors justified the closure imposed in a particular case. *See Fageroos*, 531 N.W.2d at 202 (explaining that the decision to close a courtroom must involve a "case-by-case" determination). The majority claims that the findings are inadequate because we lack the necessary information to determine whether the closure was no broader than necessary under the second factor of *Waller* and whether all reasonable alternatives were considered under the third factor of *Waller*. But from the record before us, we have enough information to conclude that the district court satisfied both factors.

Regarding the second *Waller* factor—whether the closure was no broader than necessary—the majority acknowledges that the district court made findings adequate to support the determination that Bell could not have even a single supporter present in the courtroom. But the majority further states that we lack the findings to determine whether

a two-way video feed was considered. Bell did not raise the possibility of two-way video to the district court, but the majority cites *Presley v. Georgia*, 558 U.S. 209, 216 (2010) (per curiam), for the proposition that courts must "consider all reasonable alternatives to closure," regardless of whether they are raised by either party. Therefore, the majority concludes, the district court had to make findings on the availability of a method for trial participants to view spectators, such as two-way video.

But *Presley* requires the district court to consider "all *reasonable* alternatives" to closure—the third factor of *Waller*, not the second. *See id.* (emphasis added). Neither our court nor the U.S. Supreme Court require that the district court must independently consider *all possible* ways to limit the breadth of the closure, including those not raised by the parties. Moreover, even if we assume that the mandate in *Presley* also applies to the district court's responsibility to make sure the closure is no broader than necessary, the purpose for the analysis under the second factor would be the same as the third: that the court must act *reasonably* to vindicate the public trial right.

So what was reasonable for a district court at the height of the COVID-19 pandemic? On this issue, we have ample findings from the district court and the Judicial Council. As stated by the district court, "[t]he Court has collaborated extensively with public health officials to institute safety protocols to protect all necessary parties." Additionally, the district court's on-the-record description and acknowledgement of its limited courtroom sizes as well as the Judicial Branch COVID 19 Preparedness Plan and the Scott County Jury Trial Plan approval all implicate the *Waller* factors. The district court's explicit findings clearly demonstrate that the court followed all Judicial Orders and public health

official's guidance to develop a detailed plan for the jury trial as part of the Minnesota Jury Trial Pilots. The public access restrictions imposed in this trial were not arbitrary or impulsive; they were the result of careful collaboration between multiple entities that would have undoubtedly included conversation about potential alternatives.

But according to the majority, this is not enough. The district court was required to *sua sponte* consider two-way video, alternative venues, and numerous other hypothetical situations that would have either limited the breadth of the closure or served as an alternative to closure altogether. These hypotheticals might have been possible, but possible is not the same thing as reasonable. We have already recognized that the impact of the COVID-19 pandemic should be considered in cases involving other constitutional issues. *See generally State v. Paige*, 977 N.W.2d 829, 839–43 (Minn. 2022) (analyzing the impact of the COVID-19 pandemic on a defendant's constitutional right to a speedy trial). And other courts have held that whether a district court complies with relevant judicial orders informs whether a defendant's public trial right was violated and "whether it considered reasonable and less restrictive alternatives." *State v. Brimmer*, 983 N.W.2d 247, 269–70 (Iowa 2022); *see also State v. Modtland*, 970 N.W.2d 711, 722–23 (Minn. App. 2022), *rev. granted in part and stayed* (Apr. 27, 2022), *rev. denied* (Mar. 14, 2023) (holding that a district court's adherence to the Minnesota Judicial Branch's Preparedness Plan showed it "considered the options available to it").

Here, the district court did everything it could to rigidly adhere to the requirements set by the Judicial Council and guidance from public health officials, all while balancing Bell's other constitutional rights, including a trial by jury and a speedy trial. By concluding

that the district court failed to vindicate Bell's public trial right despite perfectly following the mandates it was given, the majority is moving the goalposts. The district court may not have considered all ways to limit the breadth of the closure. The court may not have considered all alternatives to the closure. But that is not required. Instead, we should look to what was reasonable given the surrounding circumstances of the closure. The district court's description of the restrictions imposed, how and why they were imposed, and the background of the COVID-19 pandemic and need to vindicate Bell's other constitutional rights are sufficient findings to conclude that the district court satisfied the second and third factors of *Waller*.

CONCLUSION

For the foregoing reasons, I respectfully dissent.

GILDEA, Chief Justice (dissenting).

I join in the dissent of Justice McKeig.