

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0129**

State of Minnesota,
Respondent,

vs.

Fawaz Mohamed Abukar,
Appellant.

**Filed February 3, 2025
Reversed and remanded
Ross, Judge**

Olmsted County District Court
File No. 55-CR-23-2432

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Patrick Monnens, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Harris, Judge.

SYLLABUS

A district court's midtrial order prohibiting spectators from entering the courtroom except each morning before the proceedings begin and during the three scheduled daily breaks constitutes a true closure of the courtroom that implicates the criminal defendant's Sixth Amendment right to a public trial.

OPINION

ROSS, Judge

Midway through appellant Fawaz Abukar's three-day criminal trial, the district court prohibited any member of the public from entering the courtroom except before the trial day commenced and during scheduled breaks in the proceedings. On appeal from his convictions, Abukar argues that the district court violated his constitutional right to a public trial and erroneously calculated his criminal-history score for sentencing. Because we hold that the district court violated Abukar's right to a public trial by closing the courtroom without adequate justification, and because the violation constitutes a structural error, we reverse Abukar's convictions and remand for a new trial without addressing his sentencing argument.

FACTS

The state charged Fawaz Abukar with two counts each of first-degree burglary, felony domestic assault, and violation of a domestic-abuse no-contact order (DANCO) after incidents in which Abukar allegedly entered the home of his child's mother without consent and assaulted her. Abukar pleaded not guilty and his case proceeded to a jury trial.

During an afternoon break the first day of trial, the prosecutor brought to the district court's attention her concerns that "supporters of Mr. Abukar[]" had been engaging with the state's witnesses in the courthouse hallway. The court addressed Abukar's sister to express its concern about witness interference, explaining the importance of prospective witnesses not being informed about the content of other witnesses' testimony.

Over the lunch break on the second day of trial, the district court explained to the parties that the court's witness-interference concerns discussed the previous day were unfounded but that the court perceived there to be courtroom distractions:

[Y]esterday and then again this morning . . . as our lay witnesses were coming and going from the courtroom, there were members of the gallery that were also coming and going from the courtroom with those lay witnesses. That activity stopped once our law enforcement officers started taking the stand. I did not have people coming and going from the courtroom at that time.

The district court then orally ordered that no one other than trial counsel and testifying witnesses could enter or re-enter the courtroom except in the morning before the proceedings began and during the planned midmorning, lunch, and midafternoon breaks. The court maintained that the described activity had been distracting to the jury, to court personnel, and to the judge herself. The district court said that it was "not closing the courtroom" by its order but that it was "going to limit folks coming and going in the courtroom so that we can pay attention to what's going on in the courtroom."

Abukar's attorney moved the district court to declare a mistrial, challenging the district court's assertion that any improper spectator behavior had occurred and arguing that the district court was violating Abukar's right to a public trial by closing the courtroom without adequate justification. The district court denied Abukar's motion. It reasoned that it was distracting "to have people coming and going from the trial while we were undergoing," that these distractions had occurred throughout the trial, and that the court was therefore limiting the public's access to the courtroom during proceedings. The district court again asserted that its order had not actually closed the courtroom:

People were allowed to be present and to be in once we started going. They were not allowed to continue to come and go from the session. We did have members of the public present and with us during session yesterday afternoon. There were members of the public as well as members of various offices present during the trial yesterday afternoon. It was not a closed courtroom. People were simply not allowed to come and go as they desired.

It also announced that its order would continue for the remainder of the trial, emphasizing, “If you are in, you are in. If you are out, you are out. Those changes and transitions can be made at our scheduled breaks during the day.”

The trial concluded later that same day, and the jury found Abukar guilty on all charges. The district court sentenced Abukar to concurrent executed prison terms, the longest being 108 months.

Abukar appeals.

ISSUE

Did the district court violate Abukar’s constitutional right to a public trial by restricting public access to the courtroom during the second half of his trial, permitting entrance only before each day’s proceedings and during scheduled breaks?

ANALYSIS

Abukar argues that the district court improperly closed the courtroom in violation of his right to a public trial. The federal and state constitutions afford Abukar the right to a public criminal trial. U.S. Const. amend. VI; Minn. Const. art. I, § 6. The Sixth Amendment public-trial right “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.” *Waller v. Georgia*, 467 U.S. 39, 46 (1984) (quotation omitted). Whether the district court violated a defendant’s constitutional right to a public trial is a legal question that we review *de novo*. *State v. Brown*, 815 N.W.2d 609, 616 (Minn. 2012). A violation of the right to a public trial is a structural error, which entitles the defendant to relief without a showing of prejudice. *State v. Bobo*, 770 N.W.2d 129, 139 (Minn. 2009). But the district court can close the courtroom without violating the defendant’s public-trial right by identifying an overriding interest and making “findings specific enough that a reviewing court can determine whether the closure order was properly entered.” *Waller*, 467 U.S. at 45 (quotation omitted). Our *de novo* review leads us to conclude that the district court closed the courtroom without adequate justification, violating Abukar’s right to a public trial.

The entry restriction was a courtroom closure implicating the right to a public trial.

We must first address the threshold question of whether the district court’s actions constituted a courtroom closure substantial enough to implicate Abukar’s public-trial right. This is because a restriction on courtroom access in Minnesota does not implicate a defendant’s right to a public trial when it is too insignificant to “amount to a ‘true closure’ of the courtroom and, thus, do[es] not require” the district court to justify it. *State v. Petersen*, 933 N.W.2d 545, 551 (Minn. App. 2019); *see also State v. Taylor*, 869 N.W.2d 1, 11 (Minn. 2015) (recognizing the preliminary issue of “whether a closure was too trivial to amount to a violation of the Sixth Amendment”) (quotation and alteration omitted). To determine whether a “true closure” occurred here, we must consider factors such as

whether the courtroom was “cleared of all spectators,” whether the proceedings remained “open to the general public and the press at all times,” whether members of the public were absent during any stage of trial, and whether the defendant, his friends or family, or any witnesses were excluded from the courtroom. *State v. Lindsey*, 632 N.W.2d 652, 660–61 (Minn. 2001). The main focus of this analysis is to determine whether “the values sought to be protected by a public trial right were in fact protected.” *Id.* The attendant factors in this case present a close question, but after careful consideration we conclude that the district court’s entry restrictions during the latter half of Abukar’s trial are of a nature that triggers Sixth Amendment protection.

We reach this conclusion by comparing the circumstances of this case to those addressed by the state supreme court in *Brown*, *Caldwell*, and *Silvernail*. The court has consistently concluded that closing the courtroom for discrete trial segments does not implicate the right to a public trial. In *State v. Brown*, the court held that the district court did not implicate the defendant’s right to a public trial by closing the courtroom for jury instructions but allowing the spectators already present to stay. 815 N.W.2d at 617–18. The *Brown* court reasoned that the trial stayed open to those members of the public who remained in the courtroom during the instructions, that it never ordered any specific person to be removed, and that the jury instructions “did not comprise a proportionately large portion of the trial proceedings.” *Id.* at 618. In *State v. Caldwell*, the court held that excluding the defendant’s mother from trial after she repeatedly disrupted proceedings and closing the courtroom for jury instructions did not violate the defendant’s public-trial right because the district court excluded only a specific individual “and never excluded all

spectators from the courtroom even when the court locked the courtroom doors.” 803 N.W.2d 373, 390 (Minn. 2011). And in *State v. Silvernail*, the court concluded that locking the courtroom during the state’s closing argument was “trivial” because the district court did not remove any spectators before doing so and because the record included no evidence that any member of the public was actually denied access. 831 N.W.2d 594, 600–01 (Minn. 2013). These cases all bear some minor similarities to this case. But for the following reasons we see fundamental distinctions that lead us to conclude that the scope of the district court’s restrictions here are not the sort of trivial restrictions that escape the need for justification.

Unlike the cases mentioned, the restriction on courtroom access here was not for a discrete segment of the trial proceedings, such as only jury instructions or only a party’s closing argument. The district court in this case issued a plenary restriction on the public’s entry into the courtroom for what turned out to be the entire second half of Abukar’s trial. This included a substantial portion of the state’s presentation of its evidence as well as the parties’ closing arguments, the court’s instructions to the jury, a hearing on Abukar’s mistrial motion, the jury’s in-court review of a video exhibit, and the jury’s return of its verdicts. So while the district court’s actions in *Brown* could be described as trivial because they “did not comprise a proportionately large portion of the trial proceedings,” 815 N.W.2d at 618, the same cannot be said here.

Locking the courtroom during trial to allow the attendance of only those who had entered before the closure is no substitute for an open proceeding. At oral argument, counsel for the state attempted to justify this sort of closure by analogizing the district

court's action here to a trial during which the courtroom gallery is so full that no additional member of the public could enter. The analogy's flaw is similar to the irony that infects the (purported) Yogiism, "Nobody goes there anymore. It's too crowded." It fails as a constitutional argument for the obvious reason that a courtroom closed to additional public attendees because it has too many public attendees is, necessarily, a courtroom where the defendant's right to a public trial is being vindicated as much as it physically can be. By contrast here, it was the district court's choice rather than the physical restraint of capacity that closed the courtroom to more entrants.

Despite the state's contrary assertion, it is self-evident to us that the values that the public-trial right seeks to protect are not, in fact, protected by allowing entry to the courtroom only during intermissions. It is true that, as in the cases discussed, the district court did not oust those who were already present before it imposed its restriction. And as the state asserts, at least some members of the public—including Abukar's family and friends—were present throughout the trial. But none of the cases we have reviewed suggest that these circumstances render an entry restriction trivial and free from Sixth Amendment scrutiny.

The public inaccessibility during the evidentiary and other segments of the trial indicates the nontrivial nature of the closure here. The district court's entry prohibition was broad and threatened to prevent all public access to key trial segments if no spectator made it back in time after a break. We do not believe that the mere presence of several members of the public in a courtroom from which all others have been barred during "a proportionately large portion of the trial proceedings," *Brown*, 815 N.W.2d at 618, can

shield the restriction from Sixth Amendment review. As the supreme court cautioned in *Brown*, the locking of the courtroom doors—even for the limited duration while instructing the jury—will “create[] the appearance that Minnesota’s courtrooms are closed or inaccessible to the public,” and “[t]rial courts should therefore commit such acts carefully and sparingly.” 815 N.W.2d at 618. Holding that the closure in Abukar’s trial was trivial would undermine that principle and implicitly preauthorize district courts statewide to employ an intermission-only admission policy as a matter of course in every case, regardless of the circumstances. We are convinced that approving that sort of unfettered exclusionary power would necessarily and improperly dilute Minnesota criminal defendants’ constitutional right to a public trial. For these reasons, we hold that the restriction employed here was a “true closure” of the proceedings that implicated Sixth Amendment protection and obligated the district court to provide a sufficient justification.

The courtroom closure was not justified.

Having determined that the district court’s restriction was a closure that implicated Abukar’s right to a public trial, we turn to consider the circumstances and district court’s rationale for the closure. This is because the right to a public trial is not absolute and “may give way in certain cases to other rights or interests, such as the defendant’s right to a fair trial or the government’s interest in inhibiting disclosure of sensitive information.” *Waller*, 467 U.S. at 45. The Supreme Court cautions that “[s]uch circumstances will be rare, however, and the balance of interests must be struck with special care.” *Id.* To this end, criminal proceedings enjoy a “presumption of openness,” which “may be overcome only by an overriding interest based on findings that closure is essential to preserve higher

values and is narrowly tailored to serve that interest.” *Id.* (quotation omitted). The district court must articulate such an overriding interest “along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.” *Id.* (quotation omitted). The state supreme court has reiterated that a nontrivial courtroom closure is justified only if four conditions are met: that a party seeking closure has “advance[d] an overriding interest that is likely to be prejudiced” without the closure; that the closure is “no broader than necessary to protect that interest”; that “the trial court [has] consider[ed] reasonable alternatives to closing the proceeding”; and that the district court has “ma[d]e findings adequate to support the closure.” *State v. Fageroos*, 531 N.W.2d 199, 201–02 (Minn. 1995) (quoting *Waller*, 467 U.S. at 48). The district court’s closure here fails under these factors.

Although the district court did not specifically state that it was making the findings required by *Waller*, its justifications for the closure are nevertheless sufficient to permit appellate review of those factors. We decline the state’s request for us to remand this case for further proceedings on the ground that the district court’s reasons were insufficient to support its closure of Abukar’s trial. We have previously observed 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.” *Petersen*, 933 N.W.2d at 552. But the record here already informs us of the interest the district court believed was at stake, the circumstances inform us whether the closure was narrowly tailored to protect that interest, and the district court’s stated rationale informs us whether it considered reasonable alternatives and whether it could render

findings adequate to support the closure. We therefore need not address the fact that no party sought in advance to close the hearing or suggested that an overriding interest would be prejudiced without the closure.

The record reveals the interest the district court believed was at stake—the prevention of distractions to jurors and court staff caused by “people coming and going from the courtroom” during trial. This concern naturally derives from the district court’s “grave responsibility in overseeing and regulating courtroom conduct and procedure during trials, including criminal trials.” *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). And Minnesota has long recognized that courts have the inherent authority “to restrict attendance as the conditions and circumstances reasonably require for the preservation of order and decorum in the courtroom and to protect the rights of parties and witnesses.” *State v. Schmit*, 139 N.W.2d 800, 803 (Minn. 1966); *see also State v. Ware*, 498 N.W.2d 454, 458 (Minn. 1993) (“Without a doubt a trial court may, in the appropriate exercise of its discretion, exclude spectators when necessary to preserve order in the courtroom.”). But the supreme court has cautioned that the power to close the courtroom must be used sparingly and that “[i]t is only under very unusual circumstances that the preservation of order in the courtroom or of public morals may justify the temporary exclusion of some part or all of the general public.” *State ex rel. Baker v. Utecht*, 21 N.W.2d 328, 331 (Minn. 1946). The record does not leave us with the impression that the district court was facing or attempting to avoid likely disruptions, but only to preempt possible future distractions. We do not mean to diminish the district court’s reasonable concern that the entering and exiting of members of the public might cause some degree of distraction to the jury, to

court personnel, and to the court itself. But risk of some distraction is an inevitable consequence of a courtroom open to the public. The level of disturbance sufficient to justify broadly closing the courtroom therefore must exceed the kind of minor distractions that one might reasonably expect in all routine public-trial proceedings. Based on the district court's statements about what was occurring in the courtroom—statements that are thorough and that we accept as its findings—we can say only that the district court's interest in maintaining order was certainly a legitimate one. But the concerns described cannot constitute a finding that there was a reasonable risk to courtroom order without the closure.

And even if courtroom order was in jeopardy, we also hold that the district court's closure was not sufficiently tailored to address the risk and that the court failed to consider less restrictive alternatives. The district court did not attempt to address the gallery beforehand to express its concerns, ask observers to come and go as quietly as possible, or exclude any particularly distracting entrant. Because any of these options is less restrictive than closing the courtroom to the public and, if employed, could have effectively remedied the problem of entry distractions, the district court's closure was not justified.

DECISION

Because the district court violated Abukar's constitutional right to a public trial by closing the courtroom for the second half of his trial without adequate justification, Abukar is entitled to a new trial. And because we reverse the judgment of conviction and remand for a new trial, we decline to address Abukar's sentencing challenge.

Reversed and remanded.