UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1309

September Term, 2014

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MICHAEL WYNTER

v.

STATE OF MARYLAND

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Krauser, C.J.,
Berger,
Reed,

JJ.

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Opinion by Berger, J.

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Filed: November 23, 2015

A jury in the Circuit Court for Prince George's County convicted Michael Wynter ("Wynter"), Appellant, of trespassing on private property. Wynter was sentenced to ten days' imprisonment. Wynter filed a motion for a new trial on the grounds that, during jury instructions, the courtroom doors were locked. The trial court denied Wynter's motion. Appellant appealed and presents the following question for our review, which we rephrase[1]:

> Whether the trial court erred or abused its discretion in denying Wynter's motion for a new trial.

For reasons to follow, we answer Appellant's question in the negative and affirm the judgment of the circuit court.

## BACKGROUND

On March 10, 2014, Wynter was tried on one count of second-degree assault and one count of private-property trespass. During the trial, Paul Batchelor, an Assistant Public Defender, attempted to gain access to the courtroom, but he found the doors locked.[2] Appellant was not made aware of the closure until after the trial was concluded, at which time defense counsel filed its motion for a new trial.

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[1] Appellant phrased the questions as:

> Was it error or an abuse of discretion to deny the motion for new trial, where the courtroom door was locked during closing arguments, in violation of Appellant's Sixth Amendment right to a public trial?

[2] Mr. Batchelor was not the counsel of record for Appellant, who was represented at trial by private counsel. Mr. Batchelor arranged for counsel to represent the Appellant through the Public Defender's "pro bono" program.

At the subsequent motions hearing, the trial court established that it was standard practice in Prince George's County to lock the courtroom doors during jury instructions. The court explained that the purpose was to prevent the jury from being distracted by the opening and closing of the courtroom doors while the court was instructing the jury. Mr. Batchelor confirmed that, despite the doors being locked, he could see through a small opening in the doors that the court was in the process of instructing the jury when he attempted to enter the courtroom.

The record does not reflect the length of time the doors were locked. Nevertheless, the trial court maintained that the closure lasted only as long as the jury instructions. Indeed, the only direct evidence that the doors were locked at all came from Mr. Batchelor, who, based on the record of the proceedings, is the only person who claims to have been barred from the courtroom during the jury instructions. Several members of Wynter's family and several spectators were present in the courtroom at the start of the jury instructions, and none were asked to leave. Following jury instructions, several additional spectators entered the courtroom during closing arguments.

Additional facts will be introduced in the discussion as they become relevant.

## STANDARD OF REVIEW

The decision whether to grant a new trial rests within the discretion of the trial court, and such a decision is ordinarily reviewed for abuse of discretion. *Cooley v. State,* 385 Md. 165, 175 (2005). On the other hand, the question of whether a constitutional right has been violated generally requires the reviewing court to make "its own independent constitutional appraisal, by reviewing the law and applying it to the peculiar facts of the

particular case." *Jones, v. State,* 343 Md. 448, 457 (1996). Therefore, when a trial court's decision to grant a new trial is based on a public-trial claim, we review the court's decision *de novo*, but we defer to the trial court's findings of fact "unless they are clearly erroneous." *Id.* at 457-458.

**DISCUSSION**

Appellant argues that the trial court's locking of the courtroom doors was a violation of his Sixth Amendment right to a public trial, as at least one member of the public was prevented from entering the courtroom during jury instructions. Appellant contends that this alleged constitutional violation mandates that he be granted a new trial because the trial court neither established that the closure was narrowly tailored to serve an overriding interest nor considered reasonable alternatives to closure.

The State argues that the Sixth Amendment right to a public trial is not absolute, and trivial courtroom closures should not trigger constitutional analysis. The State claims that the closure in this case was trivial, as it was relatively brief and did not result in any spectators being removed from the courtroom. Thus, according to the State, Appellant's trial was, for all intents and purposes, "public," despite the fact that one member of the public was unable to gain access for a brief period of time.

The Sixth Amendment to the United States Constitution states that, "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" U.S. CONST. Amend. VI. The Supreme Court has made clear that, while the public may have a First Amendment right of access to a criminal trial, the Sixth Amendment public-trial guarantee was created for the benefit of the defendant, so that "the public may see he is fairly dealt

with and not unjustly condemned." *Waller v. Georgia*, 467 U.S. 39, 45 (1984). The Court also emphasized that "the presence of interested spectators may keep [the defendant's] triers keenly alive to a sense of their responsibility and to the importance of their functions. In addition…, a public trial encourages witnesses to come forward and discourages perjury." *Id.* at 46 (internal quotations and citations omitted).

The Court, however, cautioned that this right is not absolute, explaining that "the right to an open trial 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." *Id.* at 45. In such instances, the presumption of openness may be overcome, and a trial court may exclude the public from a trial. *Id.* "Such circumstances will be rare, however, and the balance of interests must be struck with special care." *Id.*

The Court encapsulated this balance of interests in a four-part test, which, if satisfied, allows a trial court to infringe on a defendant's right to a public trial:

> The 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.

*Id.* at 48.

The failure of a trial court to meet any of the above standards is a *per se* Sixth Amendment violation, which "carr[ies] with it a presumption of prejudice to the defendant and therefore requir[es] the granting of appropriate relief." *Watters v. State,* 328 Md. 38, 46 (1992). In other words, a violation of a defendant's Sixth Amendment right to a public

trial is a structural defect and cannot be harmless error. *See Waller*, 467 U.S. at 49 ("[T]he defendant should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee.").

Appellant argues that the trial court in his case failed to meet the standard set forth by the Supreme Court in *Waller*, and as a result, a new trial is required.[3] Appellant argues that the trial court's interest in maintaining the jury's attention during instructions was not "overriding," and that locking the courtroom doors at all times during instructions was not "narrowly tailored." Appellant further argues that the trial court did not consider reasonable alternatives to closing the court, nor did it make adequate findings to support the closure. We are unpersuaded.

Appellant overlooks several key factual distinctions between his case and the *Waller* case that make application of the *Waller* standard problematic. In *Waller*, the defendants were charged with violating the Georgia RICO Act and other state gambling statutes after court-authorized wiretaps uncovered a large lottery operation. *Waller*, 467 U.S. at 41. Prior to trial, the defendants moved to suppress the wiretaps and other evidence, and a suppression hearing was scheduled. *Id.* The State requested that the suppression hearing be closed to the public, arguing that the wiretaps contained evidence that might involve a reasonable expectation of privacy of persons other than the defendants. *Id.* The trial court

[3] The *Waller* Court did not say that a public-trial violation necessarily warrants a new trial, only that "the remedy should be appropriate to the violation." *Waller*, 467 U.S. at 50. In that case, a new suppression hearing was ordered; however, "no such limited relief is available where the public-trial guarantee was violated during [trial.]" *Watters*, 328 Md. at 51, n. 4.

agreed and closed the courtroom for the suppression hearing, which lasted seven days. *Id.* at 42.

In holding that the trial court erred by closing the courtroom during the suppression hearing, the Supreme Court focused on the scope and severity of the closure. *Id.* at 48. The court noted that "closure of the **entire** suppression hearing plainly was unjustified" and that the trial court's findings in support of closure "did not purport to justify closure of the **entire** hearing." *Id.* (Emphasis added). Moreover, arguments related to the wiretap recordings consumed only two-and-one-half hours of the seven-day hearing. *Id.* Because of this fact, the Court suggested, as an alternative to closing the entire hearing, "closing only those parts of the hearing that jeopardized the interests advanced." *Id.* at 48-49.

The Court in *Waller* also stressed that the trial court's actions were in direct conflict with the aims of the accused's rights to a public trial. In that case, the trial court removed the entire public from the suppression hearing, thereby preventing them from scrutinizing the proceedings to ensure that the defendants were not unjustly condemned and the triers of fact were aware of their responsibilities. *Id.* at 46. In addition, the public was unable to witness *any* of the hearing, which the Court likened to a bench trial, where "witnesses are sworn and testify. . . . counsel argue their positions…[and] the outcome frequently depends on a resolution of factual matters." *Id.* at 47. This exclusion was egregious because, according to the Court, "in many cases, the suppression hearing [is] the only trial, because the defendants thereafter [plead] guilty pursuant to a plea bargain." *Id.*

In the present case, none of the above concerns are implicated. The jury instructions lasted a mere 12 minutes, which is the only time period during which the courtroom was

closed.[4] In addition, the closure lasted only as long as necessary to ensure that the jury remain focused during the trial court's instructions. Critically, no one was removed from the courtroom prior to the locking of the doors to the courtroom. Several members of the public, including a number of Appellant's family members, were in the courtroom prior to the locking of the doors, and these same individuals remained in the courtroom until the conclusion of jury instructions, at which time the doors were unlocked. Therefore, any concerns regarding the lack of a "public eye" were of no real concern in the present case, even though one member of the public, Mr. Batchelor, was unable to witness the court's instructions.

Appellant nonetheless argues that, even if locking the courtroom doors did not amount to a "closure," Appellant still suffered a constitutional violation because the court did not provide notice or explanation prior to locking the doors. Appellant relies primarily on the Court of Appeals' holding in *Longus v. State*, 416 Md. 433 (2010), in which the Court held that a *post hoc* rationale for why a trial court would close a trial is not sufficient to support the "overriding interest" component of the *Waller* test. *Id.* at 456-457. Even so, both this Court and the Court of Appeals have made clear that not every technical violation of a defendant's right to a public trial is a *per se* violation resulting in a presumption of prejudice.

[4] As noted above, the only factual support that the courtroom was closed came from Mr. Batchelor, who attempted to gain access to the courtroom and found the doors locked. There is no indication from the record how long Mr. Batchelor attempted to gain access or if he tried to gain access at a different time. The trial court proffered that it was standard practice to lock the doors during jury instructions and that the doors were not locked at any other time. Appellant does not dispute these facts.

In *Watters, supra,* a deputy sheriff excluded the public, including members of the defendant's family, from the courtroom during voir dire and jury selection, which lasted an entire morning. 328 Md. at 42. Although the Court of Appeals applied the four-part *Waller* test to the facts of that case, the Court noted that part of its task was to determine whether the facts of a case support the presumption of prejudice dictated by the Supreme Court in *Waller*. *Id.* at 46. Ultimately, the Court found the scope of the closure (the entire public) and the time of the closure (the entire morning) significant enough to warrant constitutional protection:

> Although we agree with the State that not every technical violation of the Sixth Amendment right of open trial requires a new proceeding or trial, we would be hard pressed to declare a violation of this magnitude *de minimus*, or otherwise not of constitutional significance. We conclude that this violation…carries with it the presumption of specific prejudice mandated by *Waller*[.]

*Id.* at 49.

Similarly, in *Kelly v. State*, 195 Md. App. 403 (2010), a sheriff's deputy prevented some members of the public, including the defendant's father, from being present in the courtroom during part of the jury selection process. *Kelly,* 195 Md. App. at 415. The sheriff's deputy did so because there was not enough room in the courtroom to accommodate all potential jurors and all interested members of the public. *Id.* After a few hours, once the jury venire thinned out and seating became less scarce, the sheriff's deputy allowed the public into the courtroom. *Id.*

Although we recognized in that case that the defendant's right to a public trial is generally governed by the standard set forth in *Waller*, we also held that some closures are

"so *de minimus* or trivial that [they do] not implicate a defendant's Sixth Amendment right to a public trial[.]" *Id* at 407. In these cases, additional factors become relevant, such as "the length of the closure, the significance of the proceedings that took place while the courtroom was closed, and the scope of the closure." *Id.* at 407.

Based on these factors, we held that the courtroom closure in that case was too trivial to trigger constitutional protection:

> In reaching this conclusion, we consider as significant: (1) the limited duration of the closure, two to three hours during voir dire; (2) that the closure did not encompass the entire proceedings of voir dire and jury selection, and that a significant portion of the proceedings during that time were not even audible to spectators in the courtroom; and (3) that the closure was a partial one, and not a total exclusion of all spectators.

*Id.* at 428-429.

We hold that the closure in the present case does not rise beyond the level of *de minimus.* The length of the closure in the present case, a mere 12 minutes, is significantly shorter than the closure in *Kelly. Id.* at 422 ("[A] closure for a shorter duration obviously is more likely to be held to be trivial or *de minimus* and not deserving of constitutional protection."). Furthermore, although jury instructions are an important aspect of criminal procedure, these instructions are prepared with the input of defense counsel and occur after the most critical phase of the trial, the evidentiary phase. *Id.* at 424-426 (discussing the aims of the public-trial guarantee, specifically encouraging witnesses to come forward and discouraging perjury). Finally, and perhaps most importantly, the only member of the "public" that was prevented from witnessing the proceedings was Mr. Batchelor; other

members of the public, including several members of Wynter's family, were in attendance for the entirety of the jury instructions. *Id.* at 428 (distinguishing itself from *Watters,* where the defendant's family, the press, and the public were excluded).

The United States Court of Appeals for the First Circuit dealt with this identical issue in *United States v. Scott,* 564 F.3d 34 (1st Cir. 2009), and, though not controlling, we find its reasoning persuasive. In that case, the trial court locked the courtroom doors to prevent the jury from being distracted during jury instructions, but the court allowed those members of the public who were in the courtroom at the start of the instructions to remain in the courtroom. *Id.* at 37-38. At the end of the court's instructions, the doors were unlocked, and members of the public were allowed to enter and exit the courtroom freely. *Id.*

Although no member of the public attempted to gain access to the courtroom during the court's instructions, the First Circuit nevertheless held "[t]hat 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[.]" *Id.* at 38. The First Circuit articulated that the public-trial protections enumerated by the Supreme Court in *Waller* were for the benefit of the accused so that the public may see that he is dealt with fairly. *Id.* Because "the public was indeed present at the jury charge and with its presence cast the sharp light of public scrutiny on the trial proceedings, [the defendant was provided] with the protections anticipated by the public trial provision of the Constitution." *Id.*

In the present case, the locking of the courtroom doors during jury instructions was limited in time and resulted in one person not gaining entry into the courtroom. No member of Wynter's family was prohibited entry to the courtroom. Under these circumstances, we hold that such a limited and relatively minor closure does not rise to a level of a constitutional violation. Accordingly, the trial court did not err in denying Appellant's motion for a new trial.

**JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**