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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1937**

Shannon Lee Christianson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 26, 2008
Affirmed
Shumaker, Judge**

Hennepin County District Court
File No. 27CR02063212

Lawrence Hammerling, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

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Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

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

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant contends that he is entitled to a new trial on a felony charge because the record fails to support the district court's decision to close the courtroom during his codefendant's testimony. Because the supplemental record supports the district court's decision and the courtroom closure was proper, we affirm.

FACTS

On February 21, 2002, appellant Shannon Christianson proposed to his friends, LaMonica Bryan and Cory Collins, that they rob Lorenzo McClellon, a drug dealer. Christianson and Collins are both members of a gang called the Rolling 30's Bloods. They added Dameaon Henderson to the plan, and he provided a gun.

The group entered McClellon's residence intending to rob him. Christianson carried the gun. Already inside the house were V.D., J.M., J.T., and McClellon. The robbery attempt turned into a physical struggle, and Christianson shot and killed McClellon.

Christianson was tried for first-degree murder, attempted first-degree murder, and first-degree aggravated robbery. Upon the prosecution's request, the district court gave the jury instructions on the lesser-included offenses of second-degree intentional murder and second-degree unintentional murder. At the time of Christianson's trial, general security screening procedures outside courtrooms were not yet in place at the Hennepin County Government Center. Prior to trial, the prosecution requested that the court install a portable metal detector outside the courtroom, and the court denied that request. The

court said that it would consider an alternative measure, closure of the courtroom, for an individual witness.

Collins was hesitant to testify at trial because he claimed to have been threatened by Reginald Ferguson, family member and fellow gang member of Christianson, who regularly attended the trial. Ferguson was the leader of the Rolling 30's Bloods at this time.

During Christianson's six-day trial, 26 witnesses testified. Family and supporters of both Christianson and McClellon attended most of the trial.

On the morning of Collins's testimony, the prosecutor requested closure of the courtroom during his testimony. The request was not made on the record. The defense opposed the request but did not ask for an evidentiary hearing. The court granted the request to close the courtroom during Collins's testimony after hearing the arguments of both counsel. The testimony lasted approximately an hour and a half. After the state had rested and during discussions of legal matters in preparation for closing arguments, the prosecutor noted for the record that the courtroom had been closed during Collins's testimony. Defense counsel noted her objection to the closure.

In his testimony, Collins described how, right after the killing, Obuatawan Holt ("Bone"), Christianson's family member and a member of the gang, threatened Collins by holding his hands like a gun and telling Collins that he knows what will happen if he says anything. The next day Ferguson renewed the threat to Collins. Ferguson reminded Collins of a man who was shot after snitching on someone in the gang. A transcript of Collins's testimony was available to appellant after the trial.

The jury found Christianson guilty of second-degree unintentional murder and first-degree aggravated robbery. The district court sentenced Christianson to serve concurrent sentences of 165 months for the second-degree unintentional murder conviction and 78 months for the first-degree aggravated robbery conviction. Christianson had 90 days to file an appeal from the final judgment, but he did not do so. Minn. R. Crim. P. 28.02, subd. 4(3). Rather he filed a petition for postconviction relief on June 28, 2005, approximately 15 months after the final disposition of the case.

On September 1, 2005, the postconviction court entered an order denying Christianson's request for postconviction relief, without an evidentiary hearing. Christianson appealed. This court remanded the case for an evidentiary hearing to determine whether the courtroom closure was proper. *Christianson v. State*, No. A05-1853, 2006 WL 1867640, at *4, (Minn. App. June 30, 2006), *review denied* (Minn. Sept. 19, 2006).

On remand, the postconviction court held two evidentiary hearings, during which several people testified. Based on the information obtained at the hearings, the court affirmed its decision that the courtroom closure was proper.

The postconviction court concluded that Christianson failed to prove by a preponderance of the evidence that there are facts that warranted reopening the case. The court also concluded that the testimony and court records indicated that a brief closure of the courtroom during Collins's testimony was necessary. The postconviction court addressed the concerns that this court had on the first appeal and determined that the district court closed the courtroom in the interest of protecting the witness from gang

reprisal after testifying against his codefendant; the closure was narrowly tailored to facilitate clear and accurate witness testimony and maintain proper courtroom decorum; and the court had considered reasonable alternatives, but decided to close the courtroom in the interest of fairness to Christianson and the convenience of the parties. Based on these findings the court denied Christianson's petition for postconviction relief. Christianson now appeals for the second time.

D E C I S I O N

Appellate courts “review a postconviction court’s findings to determine whether there is sufficient evidentiary support in the record.” *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001). “We afford great deference to a district court’s findings of fact and will not reverse the findings unless they are clearly erroneous.” *Id.* “The decisions of a postconviction court will not be disturbed unless the court abused its discretion.” *Id.*

The United States and Minnesota Constitutions guarantee the right to a public trial for the purposes of ensuring a fair and accurate process. U.S. Const. amend. VI; Minn. Const. art. I § 6. A public trial is required so the public will see the accused is “not unjustly condemned, and . . . 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, 104 S. Ct. 2210, 2215 (1984) (quotations omitted). This right to a public trial, however, is not absolute and “may give way in certain cases to other rights or interests.” *Id.* at 45, 104 S. Ct. at 2215.

To justify closing a courtroom, 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.

Id. at 48, 104 S. Ct. at 2216; *see also State v. McRae*, 494 N.W.2d 252, 259 (Minn. 1992) (applying the *Waller* standard).

An evidentiary hearing shall be held before closure of a courtroom, whether or not the defendant asks for it. *See State v. Fageroos*, 531 N.W.2d 199, 203 (Minn. 1995) (remanding to district court for hearing after it closed courtroom without making proper findings). Where the trial court has not conducted a hearing and the record is not sufficient in itself to support closure, the remedy on review is remand to the court for an evidentiary hearing and specific findings. *See State v. Biebinger*, 585 N.W.2d 384, 385 (Minn. 1998) (remanding to district court for hearing to determine appropriateness of courtroom closing).

It is appropriate to remand a courtroom closure case for additional findings and an evidentiary hearing to give the prosecutor the opportunity to show that courtroom closure was proper. *Fageroos*, 531 N.W.2d at 202. “If the state cannot establish that closure was necessary, then defendant is entitled to a new trial.” *Id.* at 200. This is because “denial of the sixth amendment right to a public trial is not subject to harmless error impact analysis.” *McRae*, 494 N.W.2d at 260.

Because all of the spectators were excluded during Collins’s testimony, this was a full closure to be analyzed under *McRae*. Thus, the district court should have conducted

an evidentiary hearing prior to closing the courtroom, regardless of whether or not one was requested, when Christianson objected to the closure.

On Christianson's first appeal, we were not able to decide whether the closure was proper because the record was deficient on that issue. We remanded for an "evidentiary hearing to determine whether the closure was necessary and to make findings that permit a reviewing court to determine whether the closure was proper." *Christianson*, 2006 WL 1867640, at *4. Specifically, we needed more information regarding: "the interest that warranted the closure, [] whether the closure was broader than necessary to protect that interest, and [] whether the district court considered any alternatives to closure other than metal detectors." *Id.*

During the evidentiary hearings following Christianson's first appeal, the record was supplemented with sufficient findings of fact to support the courtroom closure: Collins was a codefendant who agreed to testify against Christianson; Collins had received death threats from Christianson's family and gang members; Collins was in fact afraid to testify after receiving the death threats from gang members; the prospect of testifying in open court before Christianson's family and members of Christianson's gang made Collins visibly anxious and frightened; the clarity and accuracy of Collins's testimony would likely be negatively impacted by his fear of reprisal; there was no general weapons screening at the time of the trial and it was possible that an observer could have secretly brought a weapon into the courtroom; tension existed between Christianson's supporters and McClellon's supporters; excluding one group from the proceeding while allowing the other group to remain in the courtroom would have given

the appearance of preferential treatment; at least one person who threatened Collins, Ferguson, consistently attended the trial and sat with Christianson's supporters; and transcripts of Collins' testimony have never been sealed and are and always have been public record since their creation.

These findings, which are substantiated by the record, clearly support the courtroom closure under *McRae*. The state had an overriding interest to protect Collins during his testimony, and there were no security measures at the Hennepin County Government Center at that time; the courtroom closure was limited to an hour and a half while Collins testified; the district court considered installing metal detectors and making only Christianson's supporters leave; and the district court made several findings to support the closure decision during the evidentiary hearings. *See McRae*, 494 N.W.2d at 259 (noting the necessity of adequate findings by the district court). Because these findings are sufficient to support courtroom closure under *McRae*, a new trial is not appropriate.

Affirmed.