



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00883-CR

April Loreace **WILLIAMS**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the 25th Judicial District Court, Guadalupe County, Texas
Trial Court No. 18-0874-CR-B
Honorable Jessica Crawford, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: May 20, 2020

REVERSED AND REMANDED

A jury convicted appellant April Williams of the offense of delivery of a controlled substance (cocaine) between the amounts of four grams and two hundred grams, and the trial court assessed punishment at twenty years' imprisonment. On appeal, Williams raises three issues challenging her conviction. For the reasons described below, we reverse the trial court's judgment and remand the case for a new trial.

BACKGROUND

On August 4, 2016, Seguin Police Department Detective Jaime Diaz utilized a confidential informant to make a controlled buy of a “quarter ounce” of crack cocaine from April Williams. Based upon the evidence collected during that transaction, the State charged Williams with delivery of a controlled substance (cocaine) in an amount between four grams and two hundred grams. A jury found Williams guilty of the indicted offense, and Williams elected for the trial court to assess punishment. The trial court sentenced Williams to twenty years’ imprisonment. This appeal followed.

RIGHT TO PUBLIC TRIAL

We first address Williams’s second issue regarding the exclusion of one of Williams’s family members from the courtroom during the testimony of the State’s confidential informant witness.

Standard of Review

In *Cameron v. State*, the Texas Court of Criminal Appeals clarified the standard of review applicable to public-trial claims. 490 S.W.3d 57, 70 (Tex. Crim. App. 2016) (op. on reh’g). According to the court, “the question of whether a defendant’s trial was closed to the public is a mixed question of law and fact that does not turn on credibility and demeanor.” *Id.* “[W]hen dealing with the Sixth Amendment right to a public trial, deferring to the [trial] court’s findings of fact that are supported by the record is a necessary prerequisite before [we] can resolve whether a defendant met [her] burden to show [her] trial was closed to the public based on the totality of the evidence, and then the ultimate legal question of whether a defendant’s public-trial right was violated.” *Id.*

Applicable Law

Under the Sixth Amendment’s public trial provision, which is applicable to the states as a component of due process under the Fourteenth Amendment, an accused has the constitutional right to a public trial of his case. *Lilly v. State*, 365 S.W.3d 321, 328 (Tex. Crim. App. 2012); *see also Waller v. Georgia*, 467 U.S. 39, 41, 43-44 (1984). “[T]he purpose of the Sixth Amendment right to a public trial is to guarantee that the accused will be fairly dealt with and not unjustly condemned.” *Dixon v. State*, 595 S.W.3d 216, 224-25 (Tex. Crim. App. 2020) (citing *Estes v. Texas*, 381 U.S. 532, 538-39 (1965)). “It is the danger of secret trials ... that the right to a public trial was meant to address.” *Id.* Further, this right prevents the abuse of judicial power, discourages perjury, encourages unidentified potential witnesses to come forward, and instills in the public the perception that their courts are acting fairly. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 569-71 (1980). It also ensures prosecutors carry out their duties responsibly. *Waller*, 467 U.S. at 46. “The right to a public trial is not absolute and may be outweighed by other competing rights or interests, such as interests in security, preventing disclosure of non-public information, or ensuring that a defendant receives a fair trial.” *Lilly*, 365 S.W.3d at 328. However, “[t]he balance of interests must be struck with special care.” *Waller*, 467 U.S. at 45.

We determine whether a defendant’s right to a public trial was violated using a sequential two-step analysis. *Cameron*, 490 S.W.3d at 68-69. In the first step, “[t]o determine if a trial was closed, [we] should look to the totality of the evidence, rather than whether a spectator was actually excluded from trial.” *Id.* at 68 (citing *Lilly*, 365 S.W.3d at 331). The defendant bears the initial burden of showing that her trial was closed to the public. *Id.* at 69. If the defendant fails to carry that burden, the analysis is concluded. *Id.* If the totality of the evidence shows the defendant’s trial was closed to the public, then we proceed to the second step and determine whether the closure was justified. *Id.* at 68. Only if a trial is actually closed to the public is it necessary to determine

whether the closure was justified. *Id.* at 69. In the second step, we determine whether the trial court took every reasonable measure to accommodate public attendance before closing the courtroom. *Id.* at 63. (citing *Presley v. Georgia*, 558 U.S. 209, 215 (2010)). To close court proceedings over a defendant's objection, (1) the party seeking closure must advance that the closure is necessary to protect a substantial interest that is likely to be prejudiced; (2) the closure must be no broader than necessary; (3) the trial court must consider all reasonable alternatives to closing the courtroom; and (4) the trial court must make findings adequate to support the closure. *Waller*, 467 U.S. at 48; *Lilly*, 365 S.W.3d at 330-31; *see also United States v. Cervantes*, 706 F.3d 603, 611-12 (5th Cir. 2013) (requiring that the "lower court had a 'substantial reason' for partially closing a proceeding").

Discussion

Prior to the testimony of the State's confidential informant, the State requested "that the courtroom be closed to Jerry Williams in the interest of not intimidating [the] witness to testify." The prosecutor pointed out that "the fact [that the witness is] a confidential informant has been proffered to the Court." The prosecutor related to the trial court that the State had "credible and reliable information that it would be very intimidating to [the] witness for [Williams's family member] to be in the courtroom" Additionally, the prosecutor informed the trial court, generally, that witness intimidation had occurred in her previous position prosecuting drug and murder cases and in past cases not involving either Jerry Williams or this confidential informant. The State further informed the trial court that it "set up [live video streaming] so that [Jerry Williams] can watch it from another room." Over trial counsel's objections, the trial court granted the State's request and made the following ruling on the record:

The Court finds that the State's interest outweighs the defendant's right of — to public scrutiny. The Court finds that exclusion of Jerry Williams from the courtroom during the testimony of the confidential informant is necessary to protect

the confidential informant from intimidation that would traumatize him or render him unable to testify. This exclusion from the courtroom is temporary and only for the testimony of the confidential informant, and the Court finds that a reasonable alternative for Jerry Williams would be to watch the testimony in a live video stream feed from another room.

Immediately after making its findings, the trial court offered Jerry Williams the opportunity to watch the proceedings from another room, which he accepted.

Was the Courtroom Closed?

First, we must determine whether Williams met her burden of establishing that her trial was closed to the public. *Cameron*, 490 S.W.3d at 68. The record establishes that the trial court closed the courtroom to one person during the testimony of one witness. “The exclusion of even a single person from court proceedings can violate a person’s Sixth Amendment right to a public trial.” *Turner v. State*, 413 S.W.3d 442, 449 (Tex. App.—Fort Worth 2012, no pet.) (citing *Presley*, 558 U.S. at 212); *see also Woods v. State*, 383 S.W.3d 775, 781 (Tex. App.—Houston [14th Dist.] 2012, pet. ref’d) (“The exclusion of a specific person or group, even if only temporary, constitutes a partial closure.”). Here, there is no question that the exclusion of Williams’s family member partially closed Williams’s trial.

Was the Closure Justified?

Having determined that Williams met her burden to establish the trial was partially closed, we turn to whether the partial closure of the courtroom was justified. Here, following the framework laid out in *Lilly*, we first examine whether the trial court satisfied the fourth requirement set out in *Waller* by making findings adequate to support the closure. *Lilly*, 365 S.W.3d at 329; *see also Waller*, 467 U.S. at 46. The trial court’s findings are the linchpin of the analysis. *Lilly*, 365 S.W.3d at 329.

The trial court’s findings in this case identify the reason for excluding Williams’s family member from the courtroom as the protection of the confidential informant from intimidation. On

a proper factual showing, preventing the intimidation of a confidential informant may support a partial courtroom closure. *Addy v. State*, 849 S.W.2d 425, 429 (Tex. App.—Houston [1st Dist.] 1993, no pet.) (citing *Rovinsky v. McKaskle*, 722 F.2d 197, 200 (5th Cir. 1984) (stating that protecting witnesses from intimidation that would traumatize them or render them unable to testify justifies courtroom closure)). However, case law is clear that the trial court’s findings must express more than a generic concern. *See Lilly*, 365 S.W.3d at 329; *Steadman*, 306 S.W.3d 499, 506 (Tex. Crim. App. 2012). Here, the trial court made no specific factual findings describing how the interest advanced by the State relates specifically to the requested exclusion. *Press-Enterprise Co. v. Superior Court of California*, 464 U.S. 501, 510 (1984) (stating that findings must be “specific enough that a reviewing court can determine whether the closure order was properly entered.” (internal quotations omitted)). Thus, the record before us contains no findings that provide sufficient information to permit review. Further, even upon examining the totality of the record before us, we are unable to discern any evidence indicating a nexus between the exclusion of Williams’s family member and the interest advanced by the State. *See Lilly*, 365 S.W.3d at 329 (describing the attributes of proper findings); *see e.g. Ali v. United States*, 398 F. Supp. 3d 1200, 1225 (CMCR 2019) (finding the lack of specificity in the trial court’s findings prevented review); *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 705 (6th Cir. 2002) (requiring findings specific enough for review when addressing a courtroom closure relating to the First Amendment).

We do not diminish the need to protect confidential informants. However, in this case, the record lacks specific factual findings, or any other evidence, identifying how the exclusion of Williams’s family member from the courtroom serves the interest advanced by the State of preventing intimidation of the confidential informant. *Lilly*, 365 S.W.3d at 329 (“Proper findings will identify the overriding interest and how that interest would be prejudiced”); *see e.g. Dhiab. v. Obama*, 70 F. Supp. 3d 465, 468 (D.D.C. 2014) (stating the government bears the

“burden of establishing a substantial probability of prejudice to a compelling interest” when addressing a complete courtroom closure); *Detroit Free Press*, 303 F.3d at 707 (stating the government must provide more than an expression of concern to justify closure).

Therefore, given the record before us, we must find Williams’s Sixth Amendment right to a public trial was violated. The violation of a defendant’s public trial right is structural error that does not require a showing of harm. *Waller*, 467 U.S. at 49-50; *Lilly*, 365 S.W.3d at 328. We sustain Williams’s second issue. For that reason also, Williams is entitled to a new trial.

CONCLUSION

We have addressed the sole issue raised that is necessary to the disposition of the appeal. *See* TEX. R. APP. P. 47. Having sustained issue two, we reverse the trial court’s judgment of conviction and remand the cause for a new trial.

Irene Rios, Justice

Do Not Publish