Criminal Law: Behind Closed Doors: Expanding the Triviality Doctrine to Intentional Closures—State v. Brown

Zach Cronen

Follow this and additional works at: http://open.mitchellhamline.edu/wmlr

Recommended Citation
Available at: http://open.mitchellhamline.edu/wmlr/vol40/iss1/8
CRIMINAL LAW: BEHIND CLOSED DOORS: EXPANDING THE TRIVIALITY DOCTRINE TO INTENTIONAL CLOSURES—STATE V. BROWN

Zach Cronen†

I. INTRODUCTION .................................................................253

II. HISTORY OF THE RIGHT TO A PUBLIC TRIAL ..................254
    A. Origins of the Right to a Public Trial ..........................254
    B. The Public Trial Guarantee in the United States .............254
    C. The Waller Test ....................................................256
    D. The Public Trial Guarantee in Minnesota .....................258
    E. The Triviality Doctrine .............................................258
       1. Scope of the Triviality Doctrine .............................259
    F. Harmless Error Framework ......................................261

III. THE BROWN DECISION ..................................................264
    A. Facts and Procedural Posture ..................................264
    B. The Supreme Court’s Decision .................................265

IV. ANALYSIS ........................................................................266
    A. Locking the Courtroom During Jury Instructions ..........266
    B. Too Trivial to Affect the Defendant’s Rights: How the
       Minnesota Supreme Court Applied the Triviality Doctrine
       in Brown .................................................................268
       1. The Triviality Doctrine’s Expanding Scope
          in Minnesota .......................................................269
       2. Different Types of Closures and Their Effect on a
          Trivial Closure Analysis .........................................270
       3. The Closure in Brown Analyzed ...............................273
    C. Advocating for an Alternative Rule: Applying the
       Triviality Doctrine Only to Inadvertent Closures ..........274
    D. Blurring the Line Between the Triviality Doctrine and a
       Harmless Error Analysis ...........................................277

† JD Candidate, William Mitchell College of Law, 2015; BA Political Science, University of Minnesota, 2012. I would like to thank the members of the William Mitchell Law Review for their help and guidance. I would like to also thank my friends and family for their never-ending support and patience.
I. INTRODUCTION

Public trials ensure that a defendant is fairly dealt with and not unjustly condemned, while reminding the prosecutor and judge of the importance of their functions. Though public trials are guaranteed in the U.S. and Minnesota Constitutions, trial court judges and appellate courts are at times hesitant to enforce this fundamental right, leading to improper closures. The Minnesota Supreme Court recently held in State v. Brown that intentionally locking the doors of a courtroom during jury instructions does not implicate a defendant’s right to a public trial. The majority found that the trial court’s actions were too trivial to affect any of the defendant’s public trial rights. Because the Minnesota Supreme Court adopted the triviality doctrine, it did not apply the traditional test for alleged Sixth Amendment violations.

This case note begins by exploring the history of the right to a public trial in the United States. Next, it introduces the triviality doctrine. Then it discusses the facts of Brown and the Minnesota Supreme Court’s rationale for the decision. It then argues that the Minnesota Supreme Court expanded the triviality doctrine’s

1. See, e.g., Waller v. Georgia, 467 U.S. 39, 46 (1984) (noting that the purpose of the public trial guarantee is “for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned” (quoting Gannett Co. v. DePasquale, 443 U.S. 368, 380 (1979))).
3. See Logan Munroe Chandler, Sixth Amendment—Public Trial Guarantee Applies to Pretrial Suppression Hearings, 75 J. CRIM. L. & CRIMINOLOGY 802, 809 (1984) (noting how the Waller court did not provide much guidance for determining what is an overriding interest, which “may cause trial judges to close judicial proceedings for reasons that do not sufficiently outweigh the strong societal interests weighing in favor of open trials”).
4. 815 N.W.2d 609 (Minn. 2012).
5. Id. at 617–18.
6. Id.
7. See id.
8. See infra Part II.
9. See infra Part II.
10. See infra Part III.
scope beyond its proper application. Next, it argues that the expansion blurs the analysis between trivial closures and harmless errors. Finally, this note concludes that Brown will lead to many unwarranted courtroom closures and advocates for a new rule; the triviality doctrine should only apply to unintentional closures.

II. HISTORY OF THE RIGHT TO A PUBLIC TRIAL

A. Origins of the Right to a Public Trial

The guarantee to a speedy and public trial is generally seen as a common law privilege originating in England. English judges consistently applied the guarantee throughout the late seventeenth and eighteenth centuries. The right was not seen as a benefit for the accused but rather as a way to reinforce the legitimacy of convictions. Though the original purpose of the public trial is not the same as it is today, it is often seen as an important aspect of the American legal system. As one scholar noted, “Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account.”

B. The Public Trial Guarantee in the United States

The founding fathers recognized that the public trial guarantee provided important safeguards to freedom and chose to adopt it into the Bill of Rights. In America, the right has...
The Sixth Amendment of the U.S. Constitution and Article I, Section 6 of the Minnesota Constitution confer on criminal defendants the right to a public trial, with identical language: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” A public trial is defined as a “trial that anyone may attend or observe.” The guarantee is not absolute and at times it must yield to important government interests. According to the American Bar Association, all judicial proceedings must be made accessible to the public, unless the closure follows the proper procedures. Access is defined as “the most direct and immediate opportunity as is reasonably available to observe and examine for purposes of gathering and disseminating information.”

Though courts took up the issue throughout the late-nineteenth and early-twentieth centuries, Davis v. United States provided the initial framework for modern jurisprudence. The court in Davis held that alleged public trial violations were not harmless errors. Therefore, a defendant does not need to show
actual harm to prevail. The Sixth Amendment right was applied to state criminal proceedings through the Fourteenth Amendment in the 1948 U.S. Supreme Court case *In re Oliver*.

The right of the public and press to attend trials was not guaranteed until the 1980 U.S. Supreme Court case *Richmond Newspapers, Inc. v. Virginia*. The right was applied under the First Amendment. The plurality opinion found that there was a long history of open criminal trials and that the fundamental right to attend criminal trials was implicit in the First Amendment. The U.S. Supreme Court found the closure at issue invalid because the “trial judge made no findings to support closure; no inquiry was made as to whether alternative solutions would have met the need to ensure fairness; [and] there was no recognition of any right under the Constitution for the public or press to attend the trial.” Though the U.S. Supreme Court found that the public and press had the right to attend criminal proceedings under the First Amendment, it still grappled with issues of whether the same right applied under the Sixth Amendment.

C. *The Waller Test*

In 1984, the U.S. Supreme Court held that the broad courtroom closure of a seven-day suppression hearing during a criminal trial was unconstitutional. *Waller v. Georgia* synthesized prior holdings to provide a clear rule for all alleged First and Sixth Amendment public trial violations. Writing for the majority in

30. *Id.* at 398–99.
33. See G. Michael Fenner & James L. Koley, *Access to Judicial Proceedings: To Richmond Newspapers and Beyond*, 16 Harv. C.R.-C.L. L. Rev. 415, 418 (noting that the right of the public and press to attend was first recognized under the First Amendment in *Richmond Newspapers*). Prior to *Richmond Newspapers*, cases such as Gannett Co. v. DePasquale, 443 U.S. 368 (1979), held that neither the public nor the press had a Sixth Amendment right to attend proceedings. *Id.*
35. *Id.* at 580–81.
36. See Gannett, 443 U.S. at 381 & n.9 (noting that there is no “correlative right in members of the public to insist upon a public trial” and that “only a defendant has a right to a public trial under the Sixth Amendment”).
38. Levitas, *supra* note 17, at 518.
Waller v. Georgia, Justice Powell outlined the current four-part test.  

He held that

the party seeking to close the hearing must [1] advance an overriding interest that is likely to be prejudiced, [2] the closure must be no broader than necessary to protect that interest, [3] the trial court must consider reasonable alternatives to closing the proceeding, and [4] it must make findings adequate to support the closure.

The Court held that a violation of the public trial guarantee does not necessarily require a new trial. “Rather, the remedy should be appropriate to the violation.” The Court reasoned that automatic reversal would give defendants unfair windfalls that would not be in the public interest, but reiterated that the defendant does not need to show actual harm.

The Supreme Court recently emphasized the rigidity of the rule and applied it to every stage of a trial. In Presley v. Georgia, the Supreme Court reaffirmed that every closure must meet the Waller test. In the brief per curium decision, the Court stated that “[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials.” It also noted that every closure must be accompanied by “findings specific enough that a reviewing court can determine whether the closure order was properly entered.” The majority also held that trial courts must consider reasonable alternatives for every closure, even if the parties do not offer them.

39. Waller, 467 U.S. at 48.
40. Id.
41. Id. at 49–50.
42. Id. at 50. See generally Tom Stacy & Kim Dayton, Rethinking Harmless Constitutional Error, 88 Colum. L. Rev. 79, 113–14 (1988) (discussing the appropriate remedy for Sixth Amendment violations).
43. See Waller, 467 U.S. at 50.
44. Id. 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.”).
45. See Presley v. Georgia, 558 U.S. 209, 214–15 (2010) (holding that a trial court’s closure during voir dire violated the defendant’s Sixth Amendment rights because the court did not take into account alternatives and did not articulate a specific enough finding).
46. Id. at 213.
47. Id. at 215.
49. Id. at 216.
D. The Public Trial Guarantee in Minnesota

Minnesota has generally followed the *Waller* test, though recent jurisprudence has allowed more opportunities for courtroom closure. Specifically, Minnesota now recognizes that some closures are too trivial to amount to a violation of the Sixth Amendment. In accord with U.S. Supreme Court precedent, Minnesota also recognizes that public trial violations are not subject to harmless error analysis.

E. The Triviality Doctrine

The triviality doctrine holds that certain courtroom closures are too trivial to affect a defendant’s public trial rights. The doctrine was developed from the often-cited case *Peterson v. Williams*. In *Peterson*, a courtroom was closed during the testimony of an undercover agent. The judge inadvertently forgot to reopen the courtroom prior to the testimony by the defendant. Thus, for fifteen to twenty minutes, the defendant testified in a closed

---

50. See, e.g., State v. Mahkuk, 736 N.W.2d 675, 685 (Minn. 2007) (holding that the trial court failed to provide adequate findings for the closure as required by *Waller*); State v. Fageroos, 531 N.W.2d 199, 203 (Minn. 1995) (remanding the case in order for the prosecutor to have the opportunity to establish, if he could, that closure was necessary under *Waller*); State v. McRae, 494 N.W.2d 252, 260 (Minn. 1992) (holding that the trial court did not comply with the requirements of *Waller*).

51. See, e.g., State v. Caldwell, 803 N.W.2d 373, 390 (Minn. 2011) (holding that the values sought to be protected by a public trial are not implicated when some spectators are excluded from the courtroom); State v. Lindsey, 632 N.W.2d 652, 660–61 (Minn. 2001) (holding that the closure in question was so trivial that it did not implicate the right to a public trial).

52. See, e.g., State v. Brown, 815 N.W.2d 609, 617–18 (Minn. 2012) (locking the doors of a courtroom during jury instructions); *Caldwell*, 803 N.W.2d at 390 (removing the mother of the defendant and locking the doors of a courtroom during jury instructions); *Lindsey*, 632 N.W.2d at 660–61 (removing two children from courtroom during testimony of a witness).


54. See, e.g., *Brown*, 815 N.W.2d at 617 (discussing trivial closures); Recent Cases, *Criminal Law—Sixth Amendment—Second Circuit Affirms Conviction Despite Closure to the Public of a Voir Dire—United States v. Gupta, 125 HARV. L. REV. 1072, 1072 (2012) (noting that the closure in *Gupta* was too trivial to affect the defendant’s Sixth Amendment rights).

55. 85 F.3d 39 (2d Cir. 1996).

56. *Id.* at 41–42 (protecting the identity of the undercover agent is a valid reason for courtroom closure).

57. *Id.* (stating that failure to reopen was an oversight).
When the judge became aware of the closure, she immediately took steps to reopen the courtroom, and the defense counsel repeated all of the defendant’s relevant testimony in summation.

The appellate court in Peterson did not articulate a specific test for determining a trivial closure, but held that because the closure was extremely short, followed by a helpful summation, and entirely inadvertent, the defendant’s Sixth Amendment rights were not infringed upon. The court found that a defendant’s Sixth Amendment public trial rights are only implicated when a closure affects the values protected by the right. In trivial closure cases, there are no actual closures for purposes of the Sixth Amendment. Thus, trivial closures are not subject to the Waller test.

1. Scope of the Triviality Doctrine

Because the Waller test involves weighing a number of different interests, “[t]he precise contours of a defendant’s Sixth Amendment public trial rights are ill-defined.” There is no specific test for reviewing a closure to determine whether it is trivial. A recent Florida case presented a helpful three-part framework to facilitate appellate review. First, a court should determine whether the public trial guarantee extends to the part of the trial in question. Second, a court should determine whether a closure actually occurred for purposes of the Sixth Amendment. Lastly, if there was a closure, a court should determine whether the closure met the Waller test and was therefore valid. The first issue is generally not in dispute, as the U.S. Supreme Court in Presley summarily stated that the Waller standard applies to every stage of a...

58. Id. at 41.
59. Id. at 42–43.
60. Id. at 44.
61. Id. at 43–44.
62. State v. Brown, 815 N.W.2d 609, 617 (Minn. 2012) (noting that certain actions by trial courts are not considered “true closures”).
63. See Peterson, 85 F.3d at 43–44.
65. Id. The majority in Brown followed a similar analysis, though it did not lay out an explicit three-part framework.
66. Id.
67. Id. at 1302.
68. See id.
The last issue is often contested but is not the focus of this note. The second issue—determining whether a closure occurred for Sixth Amendment purposes—is where the triviality doctrine comes into play. If an appellate court finds that the trial court’s actions were de minimis or trivial, then there is no closure for purposes of this analysis. If there is no closure, then there is no constitutional violation and no need to proceed to the Waller test.

Courts are reluctant to make a specific test for determining whether a closure is trivial. Instead, the determination is a fact-intensive issue for each case. Because there is no set rule, jurisdictions across the country have addressed the issue differently. Some courts are extremely hesitant to broaden the scope or even adopt the doctrine, while others have used it to allow for more judicial discretion in courtroom closures.

70. See, e.g., Hoi Man Yung v. Walker, 468 F.3d 169, 171 (2d Cir. 2006) (noting that the trial court did not make findings adequate to support closure); Sevencan v. Herbert, 342 F.3d 69, 73 (2d Cir. 2003) (finding that the closure was necessary to protect an overriding interest).
71. See Flanders, 845 F. Supp. 2d at 1302 (discussing whether the closure was so insignificant that it did not constitute a closure).
72. Id.
73. See Peterson v. Williams, 85 F.3d 39, 44 (2d Cir. 1996) (finding that because the defendant’s Sixth Amendment public trial rights were not violated, there was no need to proceed further).
74. See, e.g., United States v. Gupta, 699 F.3d 682, 689 (2d Cir. 2012) (“Whatever the outer boundaries of our ‘triviality standard’ may be . . . we see no reason to define the[m] . . . .”); Peterson, 85 F.3d at 44. See generally John M. Walker, Jr., Foreword, Harmless Error Review in the Second Circuit, 63 BROOK. L. REV. 395, 403–04 (1997) (discussing the different factors that can be used for determining a trivial closure).
75. See Peterson, 85 F.3d at 44.
76. See generally H.D. Warren, Annotation, Exclusion of Public During Criminal Trial, 156 A.L.R. 265 (1945) (discussing triviality cases from different jurisdictions).
77. Gupta, 699 F.3d at 688 (“We have repeatedly emphasized, however, the triviality doctrine’s narrow application.”).
78. See State v. Lormor, 257 P.3d 624, 630 (Wash. 2011) (“While this court has occasionally suggested that a closure might be trivial or de minimis, we have not yet been presented with a case or facts that warrant the adoption of this rule.”); State v. Easterling, 137 P.3d 825, 831–32 (Wash. 2006) (noting that a majority of the Supreme Court of Washington has never found a public trial right violation to be de minimis).
79. See, e.g., People v. Colon, 521 N.E.2d 1075, 1080 (N.Y. 1988) (holding that it is within trial court’s discretion to monitor admittance to the courtroom and therefore not a closure).
The doctrine is most often cited in cases involving unintentional closures for short periods of time. 80

F. Harmless Error Framework

Throughout the early twentieth century, appellate courts routinely overturned convictions for seemingly meaningless trial court errors, such as omitting the word “the” from a charging indictment. 81 Any technical error often resulted in an automatic reversal. 82 This led to many decisions that gave men and women convicted of crimes unfair loopholes to get their cases overturned. 83 In 1919, Congress sought to combat this problem. 84 Rule 52(a) of the Federal Rules of Criminal Procedure states that “[a]ny error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.” 85 This rule was seen as a way to substitute the harsh “automatic reversal” rule in favor of appellate court judgment. 86 Congress hoped to preserve judicial resources and improve public confidence in the criminal trial process by preventing parties from gaming the system by purposely “sowing reversible error in the record.” 87 The harmless error rule is meant to apply to errors that are merely technical and do not obstruct the fair determination on the merits of the case. 88 Only when an error affects substantial rights is remedial action available. 89

Prior to 1967, all fifty states had some form of a harmless error rule, though the rule did not apply to federal constitutional error. 90

80. Recent Cases, supra note 54, at 1076 (2012) (citing United States v. Gupta, 650 F.3d 863, 874 (2d Cir. 2011) (Parker, J., dissenting)) (finding that in eighteen cases in which a voir dire proceeding was closed to the public but found too trivial to implicate the defendant’s public trial rights, many involved an inadvertent closure).
82. Id.
83. Id. at 77 (citing Kotzebakes v. United States, 328 U.S. 750, 759–60 (1946)) (discussing the policy reasons behind Congress’ decision to pass the harmless error rule).
84. Id. at 73.
85. FED. R. CRIM. P. 52(a).
86. Wicht, supra note 81, at 77.
89. Id.
90. Wicht, supra note 81, at 79.
In *Chapman v. California*, the U.S. Supreme Court first acknowledged that, under certain circumstances, violations of the defendant’s constitutional rights could qualify as harmless error.\(^91\) For the next twenty-five years, courts interpreted *Chapman*, each jurisdiction applying harmless error to some rights and not to others.\(^92\) During this time period, the U.S. Supreme Court found only five instances, in addition to the examples specifically listed in *Chapman*, in which constitutional error was reversible per se:\(^93\) abridgment of the right to self-representation,\(^94\) abridgment of the right to a public trial,\(^95\) unlawful exclusion of members of the defendant’s race from a grand jury,\(^96\) failure to assure an impartial jury in a capital case,\(^97\) and appointment of an interested party’s attorney as a prosecutor for contempt charges.\(^98\) In 1991, the U.S. Supreme Court sought to provide a general rule for determining whether a particular constitutional violation was subject to a harmless error analysis.\(^99\)

In *Arizona v. Fulminante*, a defendant was incarcerated in New Jersey on a felon in possession of a firearm conviction.\(^100\) In return for protection from other inmates, the defendant confessed to an Arizona murder to a paid informant of the FBI.\(^101\) Using the confession, the defendant was convicted of the murder and sentenced to death.\(^102\) The Arizona Supreme Court held that a harmless error analysis was inappropriate for an alleged coerced confession and that the confession was coerced due to the

---

\(^91\) See *Chapman*, 386 U.S. at 22 (noting that all fifty states at that time had some form of a harmless error rule and that the Federal Constitution should receive similar treatment).


\(^93\) *Id.*


\(^99\) McCord, *supra* note 92, at 1401 (noting the *Chapman* court created a purported bright-line rule for applying different analyses based on whether a structural or trial error occurred).


\(^101\) *Id.* at 283.

\(^102\) *Id.* at 284.
psychological pressure the informant placed on the defendant, and ordered a new trial.\(^{103}\)

Writing for the majority, Chief Justice Rehnquist held that the harmless error analysis applies to alleged coerced confessions.\(^{104}\) In his opinion, the Chief Justice attempted to create a bright-line rule to guide future decisions.\(^{105}\) The majority held that each constitutional violation is characterized as either a structural error or a trial error.\(^{106}\) Structural errors are reversible per se, while trial errors are subject to a harmless error analysis.\(^{107}\) Trial errors occur during the presentation of evidence to the jury and therefore may be assessed in the context of other evidence presented to the jury.\(^{108}\) Structural errors affect the entire framework of the trial proceeding.\(^{109}\) The majority found that an involuntary confession was a trial error and thus subject to a harmless error analysis.\(^{110}\) The U.S. Supreme Court ultimately ruled that the confession was coerced and that the defendant must get a new trial.\(^{111}\)

The right to a public trial is considered a structural error and would normally be reversible per se.\(^{112}\) In Waller, the U.S. Supreme Court held that the remedy must be appropriate to the violation.\(^{113}\) Thus, a defendant does not need to show harm to prevail, but he or she is also not entitled to automatic reversal.\(^{114}\) Minnesota has followed this rule and does not apply a harmless error analysis or an automatic reversal to public trial violations.\(^{115}\)

\(^{103}\) Id.

\(^{104}\) Id. at 296.

\(^{105}\) McCord, supra note 92, at 1410–11.

\(^{106}\) Id. at 1411.

\(^{107}\) Id. at 1401.

\(^{108}\) Fulminante, 499 U.S. at 307–08.

\(^{109}\) Id. at 310.

\(^{110}\) Id.

\(^{111}\) Id.

\(^{112}\) See id. at 309–10.


\(^{114}\) See id.

\(^{115}\) See State v. McRae, 494 N.W.2d 252, 259–61 (Minn. 1992) (discussing Fulminante and other U.S. Supreme Court precedent to determine that public trial violations are not subject to harmless error analysis or automatic reversal).
III. THE \textit{BROWN} \textbf{DECISION}

\textbf{A. Facts and Procedural Posture}

On August 29, 2008, Darius Miller was shot and killed outside Whispers Gentlemen’s Club in Minneapolis.\textsuperscript{116} The State charged Jerrell Michael Brown with first-degree premeditated murder, first-degree premeditated murder committed for the benefit of a gang, second-degree intentional murder, and second-degree intentional murder committed for the benefit of a gang.\textsuperscript{117}

The State presented evidence that just prior to the murder, three of Brown’s acquaintances attacked Miller.\textsuperscript{118} During the fight, someone yelled, “You better go get a gun.”\textsuperscript{119} Immediately preceding the gunshots, an eyewitness reported seeing an individual wearing a white undershirt and a large necklace, with his hair in a ponytail, come up the club stairs.\textsuperscript{120} The State introduced jail security camera footage that showed Brown leaving jail twelve hours before Miller’s murder, with his hair in a ponytail and wearing a large necklace, white tank top, and dark pants.\textsuperscript{121} Additionally, the State presented evidence showing that a car seen near the murder scene was registered to the sister of one of Brown’s acquaintances.\textsuperscript{122} The State had an expert testify that a bullet casing, recovered from a shooting that Brown pleaded guilty to in 2008, matched that of a casing found near Miller’s body.\textsuperscript{123}

Following closing arguments, the trial court ordered the courtroom door be locked for the duration of the jury instructions.\textsuperscript{124} To explain the situation, the judge stated on the record:

\begin{quote}
For the benefit of those in the back. I am going to begin giving jury instructions. While that is going on the courtroom is going to be locked and people are not going to be allowed to go in and out.
\end{quote}

\begin{flushright}
\textsuperscript{117} \textit{Id}.
\textsuperscript{118} \textit{Brown}, 815 N.W.2d at 614.
\textsuperscript{119} \textit{Id}.
\textsuperscript{120} \textit{Id}.
\textsuperscript{121} \textit{Id}.
\textsuperscript{122} \textit{Id}.
\textsuperscript{123} \textit{Id} at 612, 614.
\textsuperscript{124} \textit{Id} at 614.
\end{flushright}
So, if anybody has to leave, now would be the time. You are welcome to stay. But I just want to make sure that everybody knows that the courtroom is going to be locked. We are all good? Deputy? 

For the duration of the jury instructions, no spectators were let in or allowed out of the courtroom. The jury found Brown guilty on all four counts of murder. The trial court sentenced him to life imprisonment for first-degree murder, plus an additional year of imprisonment because the murder was committed for the benefit of a gang.

B. The Supreme Court’s Decision

After the sentence, Brown filed a direct appeal to the Minnesota Supreme Court. Before the Minnesota Supreme Court, Brown argued that he was entitled to a new trial for five reasons. The court addressed issues of admissibility of evidence, jury instructions, testimony, impeachment evidence, and the right to a public trial. The court ruled in favor of the State on all five issues. This note focuses on the Minnesota Supreme Court’s reasoning in regards to the public trial issue.

The Minnesota Supreme Court noted that denials of the public trial guarantee constitute structural error and are not subject to harmless error review. The court then addressed the purpose of the public trial guarantee, citing the Waller standard. The court explained that “[n]ot all courtroom restrictions implicate a defendant’s right to a public trial.” The court focused on two recent Minnesota decisions, which found that certain closures can be “too trivial to amount to a violation of the [Sixth] Amendment.” The court cited several factors for determining that the trial court’s actions were trivial, including that the

125. Id. (alteration in original).
126. Id. at 614–15.
127. Appellant’s Brief, supra note 116, at 8.
128. Brown, 815 N.W.2d at 615.
129. Id.
130. Id.
131. See id.
132. See id.
133. Id. at 616 (citing State v. Bobo, 770 N.W.2d 129, 139 (Minn. 2009)).
134. See id. at 616–17.
135. Id. at 617.
136. Id. (alteration in original) (internal quotation marks omitted) (quoting Peterson v. Williams, 85 F.3d 39, 42 (2d Cir. 1996)).
courtroom was never cleared of all spectators; the trial remained open to the general public and press; there was no period of the trial in which members of the general public were absent; and at no time was the defendant or his family excluded. 137 Thus, the court found that locking the courtroom doors did not implicate Brown’s right to a public trial. 138

Writing for the majority, Justice Page also cautioned that the act of “locking courtroom doors during jury instructions creates the appearance that Minnesota’s courtrooms are closed or inaccessible to the public.” 139 The majority concluded by noting that in future cases, the “better practice” is for the trial court to expressly state on the record why it locked the courtroom doors. 140

IV. ANALYSIS

The majority erred by finding that locking a courtroom is too trivial to implicate a defendant’s Sixth Amendment rights. First, this section discusses the act of locking the doors of a courtroom. Second, this section discusses the scope of the triviality doctrine, specifically addressing what is considered a closure. Then it discusses intentional actions by trial courts and whether the triviality doctrine should apply. Though public trials are not subject to harmless error analysis, this section argues that Brown blurs the line between trivial closures and harmless errors. This section concludes by arguing that the triviality doctrine should be applied only to inadvertent closures and discusses the implications of the Brown decision on future courtroom closures.

A. Locking the Courtroom During Jury Instructions

Locking a courtroom’s doors during jury instructions is a relatively common procedure in state courts. 141 The practice

137. Id.
138. Id. at 617–18 (“[T]he courtroom was never cleared of all spectators . . . . The trial remained open to the public and press already in the courtroom . . . . [T]he jury instructions did not comprise a proportionately large portion of the trial proceedings.”).
139. Id. at 618.
140. Id.
141. See, e.g., id. at 614; People v. Venters, 511 N.Y.S.2d 283, 283 (App. Div. 1987) (“[D]efendant has raised a serious constitutional and statutory challenge to the practice, almost universally applied in criminal trials conducted in this State, of automatically closing and locking the courtroom doors during the Judge’s charge to the jury.”); Nicholas A. Pellegrini, Extension of a Criminal Defendant’s Right
prohibits spectators from entering or leaving the courtroom during the entirety of the jury instructions. This type of closure has been justified as a “time honored” tradition that seeks to avoid jury distraction during a critical phase of the trial. This portion of the trial is of vital importance because a jury must understand all of the legal issues prior to entering deliberations. Thus, trial judges lock the doors in order to maintain the jury’s attention.

The majority in Brown did not explicitly discuss the role of discretion by trial court judges, though it appears to give deference to the trial court judge’s decision. Additionally, other courts in trivial closure cases have explicitly noted that they defer to the trial court judge’s discretion in matters of maintaining decorum. Limiting the scope of trivial closures would not take away discretion from trial court judges. Rather, it would require the judge to follow the Waller test whenever he or she attempted to close or lock

---

142. See Brown, 815 N.W.2d at 614–15 (noting that the courtroom would be locked until the jury instructions were complete).
143. People v. Colon, 521 N.E.2d 1075, 1079–80 (N.Y. 1988); Venters, 511 N.Y.S.2d at 283 (“[C]ourtroom closure during the charge in a criminal case, however hoary and time honored such a practice may be, does not pass constitutional or statutory muster.”).
144. See Colon, 521 N.E.2d at 1079 (“The charge to the jury is a solemn and comparatively complex phase of the trial requiring precision and concentration on the part of both the jury and the Trial Judge.”).
145. See id.
146. Brown, 815 N.W.2d at 614 (noting that the reason for the closure according to the trial judge was for the “benefit of those in the back” and not going further into the reason behind the locking of the courtroom).
147. See, e.g., Davidson v. State, 591 So. 2d 901, 902–03 (Ala. Crim. App. 1991) (finding it is generally recognized that judges have the discretion to lock the courtroom during jury instructions); People v. Hughes, 657 N.Y.S.2d 695, 696 (App. Div. 1997) (finding that it was within the trial judge’s discretion to lock the courtroom); Renzo D. Bowers, The Judicial Discretion of Trial Courts: A Treatise for Trial Judges and Trial Lawyers § 262, at 296 (1931) (recognizing the inherent power of the trial court to preserve order and decorum in the courtroom).
148. See William K. Meyer, Note, Evaluating Court Closures After Richmond Newspapers: Using Sixth Amendment Standards to Enforce a First Amendment Right, 50 Geo. Wash. L. Rev. 304, 308 (1982) (stating that “[w]hen a judge has discretion to exclude the public from a criminal proceeding, he must balance the policies favoring closure against competing interests,” but discretion is allowed unless the closure extends “beyond [its] necessary scope”).
Thus, when there are valid reasons to close the courtroom, the trial court judge would have discretion to maintain order and decorum.

B. Too Trivial to Affect the Defendant’s Rights: How the Minnesota Supreme Court Applied the Triviality Doctrine in Brown

The majority in Brown found that locking a courtroom’s doors does not implicate a defendant’s right to a public trial, though it acknowledged that future closures of this type would “create[] the appearance that Minnesota courtrooms are closed or inaccessible.” In Waller, the U.S. Supreme Court noted “‘the great, though intangible, societal loss that flows’ from closing courthouse doors.” The closure at issue in Brown is directly akin to the harmful closure described in Waller. The majority erred by applying the triviality doctrine to this type of closure. The majority should have found that the trial court’s closure implicated the defendant’s Sixth Amendment rights and remanded the case for further proceedings to determine whether the closure satisfied the Waller test. This case note does not argue for or against the overall merits of the defendant’s public trial claim. Rather, it argues that Minnesota courts should not classify such closures as trivial and should apply the Waller test to every intentional closure.

150. Cf. Quercia v. United States, 289 U.S. 466, 470 (1933) (discussing the ability of trial court judges to comment on the facts of a case and noting that a judge’s “discretion is not arbitrary and uncontrolled, but judicial, to be exercised in conformity with the standards governing the judicial office”).
151. Brown, 815 N.W.2d at 618 (cautioning that “the act of locking courtroom doors during jury instructions creates the appearance . . . [of] closed or inaccessible” courtrooms, so courts should proceed with caution).
153. Compare id. at 42 (closing the courtroom for a suppression hearing), with Brown, 815 N.W.2d at 614 (locking courtroom during jury instructions).
154. See Brown, 815 N.W.2d at 617–18.
155. See id. at 627 (Meyer, J., dissenting).
156. See infra Part IV.C.
1. The Triviality Doctrine’s Expanding Scope in Minnesota

The majority in Brown relied heavily on the analyses of two Minnesota cases. In State v. Lindsey, the Minnesota Supreme Court held that excluding two minors from observing a criminal trial “was not a true closure, in the sense of excluding all or even a significant portion of the public from the trial.” The trial court in Lindsey relied on a Minnesota statute—which the Minnesota Supreme Court ultimately ruled unconstitutional—to exclude the two children. The Minnesota Supreme Court held that excluding “two children of unknown age and unknown relationship to [the defendant]” did not violate his right to a public trial. Though Lindsey addressed trivial closures, because it involved the removal of specific members of the public whereas Brown involved a general locking of the courtroom, its facts are distinct enough that the Brown majority should have delved further into the purpose behind the triviality doctrine.

The Brown majority also cited State v. Caldwell. The public trial portion of Caldwell involved two issues: excluding the defendant’s disruptive mother and locking the courtroom doors before jury instructions. The Caldwell court applied the limited holding of Lindsey to the broader, intentional locking of the courtroom without considering the issue further. Though the Caldwell court applied the triviality doctrine to locking a courtroom’s doors, the opinion did not devote much analysis to the issue. Additionally, the Caldwell majority’s reasoning might not be consistent with controlling precedent. The Caldwell court stated that the “‘values sought to be protected by a public trial’ are protected when not all spectators are excluded from the

157. See 815 N.W.2d at 617.
158. 632 N.W.2d 652, 660 (Minn. 2001).
159. MINN. STAT. § 631.04 (2000). Though the Lindsey court declared the statute unconstitutional, it has never been repealed by the legislature and thus remains in the law. See MINN. STAT. § 631.04 (2012).
160. Lindsey, 632 N.W.2d at 659.
161. Id. at 661.
162. Compare Brown, 815 N.W.2d at 614–15 (locking courtroom to all spectators not yet in attendance), with Lindsey, 632 N.W.2d at 657 (removing two minor spectators).
163. 803 N.W.2d 373 (Minn. 2011).
164. Id. at 390.
165. See id.
166. See id. (devoting only seven sentences to both public trial issues).
courtroom." 167 Though this statement is right in certain circumstances, many courts have held a closure does not need to exclude all spectators to violate the Sixth Amendment. 168 The Caldwell majority also noted that "a trial court may, in the appropriate exercise of its discretion, exclude spectators when necessary to preserve order in the courtroom." 169 Again, this may be true in certain circumstances. 170 But if in the exercise of discretion a trial court judge implicates a defendant’s public trial rights, as would be the case if a judge excluded all spectators as the majority noted in Caldwell, the judge must make adequate findings to satisfy the Waller test. 171 Because the two Minnesota cases cited in Brown are distinct and not in sync with precedent, the majority erred by not delving further into the purpose and scope of the triviality doctrine. 172

2. Different Types of Closures and Their Effect on a Trivial Closure Analysis

As the Peterson court noted, for a violation of the public trial guarantee to occur, there must be a closure. 173 There is no single definition of what is considered a closure for Sixth Amendment

167.   Id. (quoting Lindsey, 632 N.W.2d at 661).
168.   See, e.g., Smith v. Hollins, 448 F.3d 533, 541 (2d Cir. 2006) (holding that the exclusion of the defendant’s brother and sister violated his Sixth Amendment public trial rights because the trial court judge failed to make “requisite particularized findings”). See generally H. H. Henry, Annotation, Exclusion of Public During Criminal Trial, 48 A.L.R.2d 1436 (1956) (discussing cases from multiple jurisdictions holding that a closure does not need to exclude the entire public in order to violate the Sixth Amendment).
169.   Caldwell, 803 N.W.2d at 390 (quoting State v. Ware, 498 N.W.2d 454, 458 (Minn. 1993)).
170.   See, e.g., Presley v. Georgia, 558 U.S. 209, 213–16 (2010) (finding that it was a violation to exclude the public from the courtroom, even though the judge believed it was within his discretion).
171.   See id. While the trial court judge argued that it was “totally up to [his] discretion whether or not [he] want[s] family members in the courtroom to intermingle with the jurors,” the U.S. Supreme Court argued the trial judge did not satisfy the Waller test prior to closing the courtroom by failing to consider alternative options. Id.
172.   See State v. Brown, 815 N.W.2d 609, 626 (Minn. 2012) (Meyer, J., dissenting) (arguing that the majority’s reasoning was flawed and the actions of the Lindsey court were distinguishable).
173.   See Peterson v. Williams, 85 F.3d 39, 42–44 (2d Cir. 1996) (finding that an inadvertent closure of the courtroom did not violate defendant’s Sixth Amendment rights).
purposes.\textsuperscript{174} To complicate matters, most jurisdictions recognize two types of closures: total and partial.\textsuperscript{175} A total closure occurs when “all persons other than witnesses, court personnel, the parties and their lawyers [are] excluded for the duration of the hearing.”\textsuperscript{176} Identifying a total closure is straightforward, though disputes have arisen over how long a complete exclusion of the public must occur to be considered total.\textsuperscript{177} Recognizing a partial closure is not as clear.\textsuperscript{178} A partial closure occurs when only some members of the public, whether a class of people or specific individuals, are excluded.\textsuperscript{179} Some jurisdictions define a partial closure generally as “[w]hen access to the courtroom is retained by some spectators” but denied to others.\textsuperscript{180} This definition would appear to include locking a courtroom. Those currently in attendance would retain access, while those spectators not yet in attendance would be denied access. Black’s Law Dictionary defines the word “close” as “restricted to a particular class.”\textsuperscript{181} Again, this definition appears to include instances where a courtroom is locked from persons not yet in attendance, though some courts, such as \textit{Brown}, have held otherwise.\textsuperscript{182}

In jurisdictions that distinguish between total and partial closures, the partial closure is held to a lesser standard.\textsuperscript{183} While a
total closure must be justified by an overriding interest, partial closures only need a substantial interest to be valid.\textsuperscript{184} The rest of the procedural elements of the Waller test apply, so the trial court must articulate its reasoning, consider alternatives, and make the closure no broader than necessary.\textsuperscript{185}

Minnesota does not recognize the distinction between total and partial closures.\textsuperscript{186} Therefore, whenever a closure occurs and “a court intends to exclude the public from a criminal proceeding, it must first analyze the Waller factors and make specific [enough] findings with regard to those factors.”\textsuperscript{187} This may complicate cases such as Brown, because the closure would need to meet the higher “overriding interest” standard.\textsuperscript{188} Other courts have held that locking courtroom doors is a closure for Sixth Amendment purposes, yet still ruled the closure valid.\textsuperscript{189} But these jurisdictions also recognize the distinction between partial and total closures.\textsuperscript{190} Thus, a judge may have a substantial interest for locking the courtroom doors during jury instructions, though it is not clear whether it would be an overriding interest.\textsuperscript{191}

This case note does not specifically advocate for or against Minnesota courts’ recognition of partial closures. Rather, this note argues that because Minnesota does not recognize the distinction, it may have affected the Brown decision and the reliance on the triviality doctrine. Courts are reluctant to order new trials or remand cases on solid convictions for relatively minor violations.\textsuperscript{192}

\textsuperscript{185}. Levitas, supra note 17, at 538.
\textsuperscript{186}. See State v. Mahkuk, 736 N.W.2d 675, 685 (Minn. 2007) (declining to adopt the substantial reason test for partial closures).
\textsuperscript{187}. United States v. Gupta, 699 F.3d 682, 687 (2d Cir. 2012); see also Brown, 815 N.W.2d at 625 (Meyer, J., dissenting) (“If the actions taken by a trial court implicate the public trial right, a trial court must apply the Waller standards before excluding the public . . . .”).
\textsuperscript{188}. See Mahkuk, 736 N.W.2d at 685.
\textsuperscript{190}. See id.
\textsuperscript{191}. Id. at 1302–03.
\textsuperscript{192}. See Levitas, supra note 17, at 497 (noting the “understandable reluctance
In *Brown*, the closure would likely not meet the high threshold for courtroom closures. But if Minnesota did recognize partial closures, the case may have been remanded and the verdict would have been affirmed, without relying on the triviality doctrine.

3. The Closure in *Brown* Analyzed

The triviality doctrine allows closures that do not undermine the “values served by the Sixth Amendment.” These values, derived from *Waller*, are: “1) to ensure a fair trial; 2) to remind the prosecutor and judge of their responsibility to the accused and the importance of their functions; 3) to encourage witnesses to come forward; and 4) to discourage perjury.” The third and fourth values are likely not implicated during jury instructions because the trial has been completed, and the focus of the proceedings is between the judge and the jury. Thus, “[t]hese values . . . do not weigh either in favor or against a triviality finding.”

The first and second values should have been the focus of the trivial closure analysis in *Brown*. The first value is meant to ensure that the defendant is fairly dealt with and that the proper procedures are followed. The second value is an effective restraint on possible abuse of judicial power. As Justice Meyer of some appellate courts to reverse convictions of appellants who appear obviously guilty”.

193. Compare *State v. Sanders*, 719 N.E.2d 619, 623 (Ohio Ct. App. 1998) (discussing why there was no overriding interest for the courtroom closure and noting that “[t]here is little evidence that supports the claim that there was an adverse atmosphere in the courtroom”), *with State v. Brown*, 815 N.W.2d 609, 626–27 (Minn. 2012) (Meyer, J., dissenting) (noting that nothing in the record indicated that there were previous issues with spectators causing distractions or creating an adverse atmosphere).

194. Compare *Levitas*, supra note 17, at 497 (reluctance to overturn solid convictions), *with Flanders*, 845 F. Supp. 2d at 1302 (locking the courtroom affirmed as a partial closure).


196. Id. (citing *Waller v. Georgia*, 467 U.S. 39, 46–47 (1984)).

197. Cf. Gibbons v. Savage, 555 F.3d 112, 121 (2d Cir. 2009) (holding that the third and fourth values served by *Waller* were not implicated during voir dire because no witnesses were testifying at that time).

198. Id.

199. See Danny J. Boggs, *The Right to a Fair Trial*, 1998 U. CHI. LEGAL F. 1, 2 (1998) (noting that “the right to a fair trial . . . is the property of the defendant” and that “our society and our Constitution generally have made the judgment that the measure of a fair trial is its adherence to stated processes”).

200. See *Waller*, 467 U.S. at 46 n.4 (citing *In re Oliver*, 333 U.S. 257, 270 (1948)).
correctly stated in her dissent, intentionally locking the doors of a courtroom goes against the values of the Sixth Amendment.201 Justice Meyer listed several relevant factors to consider in evaluating these values, including the “length of the closure, the people excluded from the courtroom, the subjects discussed during the closure, whether the trial court intended the closure to occur, and the Justifications given by the trial court for closure.”202

In order to determine whether the closure implicated the defendant’s Sixth Amendment rights, Minnesota courts should follow a similar analysis as Justice Meyer presented in her dissent.203 For Brown, the jury instructions took up a relatively small portion of the trial.204 But the subject matter discussed during the instructions is of vital importance.205 Therefore, for purposes of this analysis, neither the subject matter nor the length of time for the closure is conclusive. The trial court judge did not give a reason for intentionally locking the courtroom, which weighs against finding the closure to be trivial.206 If the majority in Brown had delved further into the rule and followed a similar analysis as Justice Meyer, it would have likely found that the closure was not trivial and remanded the case.

C. Advocating for an Alternative Rule: Applying the Triviality Doctrine Only to Inadvertent Closures

This note advocates for a simpler rule: Minnesota courts should not apply the triviality doctrine to intentional closures. Other courts are in disagreement about the implication of judicial intent for courtroom closures.207 Some courts have questioned the

201. State v. Brown, 815 N.W.2d 609, 626 (Minn. 2012) (Meyer, J., dissenting) (“[T]he values of the public trial guarantee are sufficiently implicated under the facts of this case such that a Waller analysis is required.”).
202. Id. at 624 (citing United States v. Perry, 479 F.3d 885, 890–91 (D.C. Cir. 2007); Carson v. Fischer, 421 F.3d 83, 93–94 (2d Cir. 2005); Peterson v. Williams, 85 F.3d 39, 43 (2d Cir. 1996)).
203. See Brown, 815 N.W.2d at 624.
204. See id. at 618 (majority opinion) (“In addition, the jury instructions did not comprise a proportionately large portion of the trial proceedings.”).
206. Brown, 815 N.W.2d at 614.
207. See, e.g., Gonzalez v. Quinones, 211 F.3d 735, 737–38 (2d Cir. 2000) (“In Peterson, the problematic closure occurred as the result of the accidental failure to reopen after a properly ordered closure, whereas here the door was intentionally locked by court personnel . . . . In view of these differences, we do
applicability of Peterson to intentional courtroom closures.\textsuperscript{208} The Peterson court itself acknowledged that it was ruling specifically on inadvertent closures and not other types of closures.\textsuperscript{209} It also noted that an “intentional (not inadvertent) improper closure could threaten a defendant’s right to a fair trial, even when the closure is for a brief time . . . .”\textsuperscript{210} The triviality doctrine is most often cited in cases of accidental or inadvertent closures.\textsuperscript{211} In general, courtrooms should be closed in only the most limited set of circumstances.\textsuperscript{212} Because the triviality doctrine is an exception to the general rule of protecting public trials, it should be “applie[d] only rarely and to truly trivial closings.”\textsuperscript{213} Undisclosed exclusions of the public from trials “without the knowledge or assent of the accused . . . seriously undermine[] the basic fairness of a criminal trial and the appearance of fairness so essential to public confidence in the system.”\textsuperscript{214}

The Minnesota Rules of Criminal Procedure require judges to follow an analysis similar to Waller for all closures.\textsuperscript{215} Locking the

\begin{footnotesize}
\begin{enumerate}
\item[208.] See Brown v. Kuhlmann, 142 F.3d 529, 541 (2d Cir. 1998) ("It is unclear from the analysis in Peterson whether [the intentional closing] would alter the conclusion that ‘no Sixth Amendment violation occurred.’") (quoting Peterson v. Williams, 85 F.3d 39, 44 (2d Cir. 1996))); Peterson, 85 F.3d at 44 n.8 (questioning whether an intentional closure may threaten a defendant’s public trial right, even if the closure is brief).
\item[209.] See Peterson, 85 F.3d at 43 n.4 (noting that even though the defendant cited three cases in support of his argument that the closure was improper, “[n]one of them discusses inadvertent or negligent closures at all”).
\item[210.] Id. at 44 n.8.
\item[211.] See United States v. Gupta, 650 F.3d 863, 874–75 (2d Cir. 2011) (Parker, J., dissenting) (discussing cases of trivial closures during jury selection and noting that most involved inadvertent closures), vacated, 699 F.3d 682 (2d Cir. 2012); Recent Cases, supra note 54, at 1076 (noting that in many instances, the triviality doctrine is used in inadvertent closures).
\item[212.] See Waller v. Georgia, 467 U.S. 39, 45 (1984) (stating that there is a presumption of openness in trials).
\item[213.] Gupta, 650 F.3d at 874.
\item[214.] Id.
\item[215.] See MINN. R. CRIM. P. 26.02, subdiv. 4(4)(c), (e) (stating that there must
\end{enumerate}
\end{footnotesize}
courtroom doors, when the Minnesota rules governing closures and the Minnesota Supreme Court precedents are clear, creates an appearance of unfairness and a closed judiciary.\textsuperscript{216} Trial court judges who exclude some members of the public without following the proper analysis are ignoring clear precedent and creating an appearance of unfairness in the judiciary; this act goes against the values protected by the public trial guarantee and should be considered a closure for constitutional purposes.\textsuperscript{217}

Requiring trial court judges who intentionally close the courtroom to outside spectators to follow the \textit{Waller} test promotes fairness and confidence in the judiciary.\textsuperscript{218} By using the triviality doctrine only in a limited set of circumstances, Minnesota would more closely follow the U.S. Supreme Court’s precedent.\textsuperscript{219} As the U.S. Supreme Court noted in \textit{Press-Enterprise}, the value of openness that a public trial guarantees “lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that \textit{anyone} is free to attend gives assurance that established procedures are being followed and that deviations will become known.”\textsuperscript{220} Limiting the scope of the triviality doctrine would provide appellate courts a better opportunity to review the case and promote public confidence in the judiciary.\textsuperscript{221} Applying the triviality doctrine only be an overriding interest for the closure, the closure must be no broader than is necessary, the judge must consider reasonable alternatives, and the judge must make findings of fact on the record).

\textsuperscript{216} See \textit{State v. Brown} 815 N.W.2d 609, 618 (Minn. 2012) (“[W]e caution that the act of locking courtroom doors during jury instructions creates the appearance that Minnesota’s courtrooms are closed or inaccessible to the public.”).

\textsuperscript{217} \textit{Peterson v. Williams}, 85 F.3d 39, 43 (2d Cir. 1996) (observing that the second value is to remind the judge of his or her responsibility and the importance of his or her function).

\textsuperscript{218} \textit{See In re Oliver}, 333 U.S. 257, 270 n.24 (1948) (noting the societal benefits of spectators learning more about government and gaining confidence in the judiciary); Levitas, \textit{supra} note 17, at 529 (finding that the U.S. Supreme Court in \textit{Waller} and \textit{In re Oliver} incorporated the public trial right based on fairness principles).


\textsuperscript{221} \textit{Compare Brown}, 815 N.W.2d at 618 (aiming to maintain confidence in the judiciary and facilitate appellate review), \textit{with United States v. Gupta}, 699 F.3d 682, 689 (2d Cir. 2012) (citing \textit{Press-Enter.}, 464 U.S. at 687) (finding knowledge that anyone is free to attend a trial inspires confidence), \textit{and Levitas, supra} note 17, at 509–10 (noting that the elements of \textit{Waller} create a “suitable record for
to inadvertent closures would prevent the slippery slope of which the majority seems wary.

D. Blurring the Line Between the Triviality Doctrine and a Harmless Error Analysis

The triviality doctrine, as an exception to the traditional rules for public trial violations, should be used only in a limited set of circumstances, though the Brown court expanded it to intentional closures. With this expansion, the court further blurred the analysis between trivial closures and harmless errors.

The Brown court correctly stated that “[d]enials of the public trial guarantee constitute structural error not subject to harmless error review.” But later in the majority’s decision, the court noted that “nothing in the trial court or postconviction court record provides factual support for any claim that any particular person was denied entrance.” The latter statement leaves open the question of whether the decision may have come out differently if the defendant had proven that specific spectators were excluded. The two statements by the court indicate different lines of reasoning that complicate the analysis for future decisions in Minnesota.

1. Tension Between Trivial Closure Analysis and Harmless Error Analysis

Courts have recognized the tension between trivial closures and harmless errors. In explaining how the triviality doctrine differs from a harmless error analysis, the Second Circuit stated that “[t]he inquiry is not whether the defendant suffer[ed] appellate review”).


223. See Brown, 815 N.W.2d at 618.


225. Brown, 815 N.W.2d at 616 (citing State v. Bobo, 770 N.W.2d 129, 139 (Minn. 2009)).

226. Id. at 618 n.5.

227. See Recent Cases, supra note 54, at 1072 (discussing the Second Circuit’s application of the triviality doctrine and the tension it has with U.S. Supreme Court precedent).
‘prejudice’ or ‘specific injury.’” 228 Rather, regardless of whether the defendant is guilty or innocent, the court determines whether the defendant was deprived of protections provided in the Sixth Amendment. 229 Similar to the Brown court’s analysis, the Court of Appeals for the Second Circuit noted that the focus of the trivial closure analysis is on what transpired during the closed proceedings, not the impact on the overall outcome of the trial. 230 Focusing on what actually occurred during the proceeding is misguided because the openness of the proceeding itself, regardless of what actually transpired during the closure, is what promotes the appearance of fairness in the judiciary. 231

Though the triviality doctrine focuses on the rights of the defendant and not his overall guilt or innocence, deciding which errors are "so small that they do not warrant reversal inevitably invites fears of a 'slippery slope,' and comparison with the 'harmless error analysis' used for trial errors.” 232 As the majority in Waller noted, the benefits of a public trial are often intangible, yet great. 233 So, just as it is difficult to point to specific prejudice for a harmless error analysis, 234 it is also difficult for a defendant to point to specific facts that prove that the values behind the public trial guarantee were implicated. 235 Because the benefits of public trials are often intangible, courts may have difficulties properly weighing the harm and benefit of a closure. 236

In determining whether a closure is constitutional, courts do not look for actual harm because it is difficult for the defendant to

---

228.  *Id.* at 1073–74 (quoting United States v. Gupta, 650 F.3d 863, 867 (2d Cir. 2011), *vacated*, 699 F.3d 682 (2d Cir. 2012)) (second alteration in original) (internal quotation marks omitted).

229.  *Gupta*, 699 F.3d at 688 (quoting Peterson v. Williams, 85 F.3d 39, 42 (2d Cir. 1996)).

230.  Compare Brown, 815 N.W.2d at 617–18 n.5 (noting that no one in the defendant’s party was improperly excluded and that the defendant could not point to anyone who was actually denied admittance), with Recent Cases, supra note 54, at 1076–77 (quoting *Gupta*, 650 F.3d at 869) (requiring the defendant to point to evidence showing that his rights were affected).

231.  *Gupta*, 699 F.3d at 689.


234.  *Id.*

235.  See Recent Cases, supra note 54, at 1077 (discussing the effect of requiring defendant to prove harm on the defendant’s rights).

236.  See Wicht, supra note 81, at 93–94 (arguing that appellate courts cannot effectively weigh the impact of a constitutional error).
prove. Instead, appellate courts focus on whether the trial court met its obligations before the closure. But when determining whether a closure is trivial, part of a court’s analysis looks for the defendant to show that his or her public trial rights were implicated. By looking for a tangible piece of evidence to weigh for or against a trivial closure, courts are inching closer to a harmless error analysis. When noting that the defendant did not show that any spectators were actually denied admittance, Minnesota courts are requiring a defendant to prove something that the law and precedent say he or she should not have to prove. By applying the triviality doctrine only to inadvertent closures, Minnesota courts would limit the tension between the two analyses. When these two analyses become blurred, courts are limiting the application of a defendant’s fundamental right.

E. Brown’s Expanding Role in Allowing Courtroom Closures During Jury Instructions and Other Trial Proceedings

At the end of the public trial section in the Brown opinion, the Minnesota Supreme Court appears to acknowledge that its new precedent “creates the appearance that Minnesota’s courtrooms are closed or inaccessible to the public.” Thus, the court draws on the Waller test and suggests that future courts expressly state the

237. See Recent Cases, supra note 54, at 1075–76 (noting that a defendant does not need to show actual prejudice to prevail).
238. See Waller, 467 U.S. at 48–49 (stating that the four-part test focuses on the actions of the judge prior to the closing).
239. See Recent Cases, supra note 54, at 1076 (noting two criteria for analyzing trivial closures, and stating that courts look to see “whether any specific event occurred during the closure that undermined the defendant’s Sixth Amendment protections”).
240. Id. at 1078 (discussing Gupta and finding that the analysis is “very similar to a harmless error inquiry”).
241. See Waller, 467 U.S. at 49 n.9 (noting the defendant does not need to show actual harm).
242. Compare Recent Cases, supra note 54, at 1077 (“This erosion of the defendant’s ability to remedy a violation is exacerbated by the fact that the remaining avenue—asking whether anything significant occurred—requires appellate courts to have access to information that will often be unavailable.”), with Waller, 467 U.S. at 49 n.9 (having a defendant show prejudice “would in most cases deprive [the defendant] of the [public-trial] guarantee, for it would be difficult to envisage a case in which he would have evidence available of specific injury” (quoting United States ex rel. Bennett v. Rundle, 419 F.2d 599, 608 (3d Cir. 1969)) (alterations in original) (internal quotation marks omitted)).
reasons for the closure on the record.\textsuperscript{244} But the \textit{Brown} court affirmed the trial court’s decision, which lacked any articulated reason for the closure.\textsuperscript{245} Therefore, the \textit{Brown} decision sets a very low threshold for courtroom closures and leaves open questions for how future decisions will be addressed.\textsuperscript{246} There is a strong potential that “creeping courtroom closure[s]” may become commonplace in Minnesota courts.\textsuperscript{247}

A recent Minnesota Supreme Court decision relied on \textit{Brown} to uphold a locked courtroom for the stated reason that “[g]oing in and out [during a proceeding] obviously creates some disruptions and distractions.”\textsuperscript{248} Another post-\textit{Brown} case affirmed a closure for the stated reason of “[i]t’s just a tradition.”\textsuperscript{249} The Minnesota Court of Appeals, in response to the defendant’s argument that \textit{Brown} advocates for a limited application of the triviality doctrine, noted only that “[w]e do not encourage or condone closing and locking courtroom doors during trial . . . [W]e highlight \textit{Brown}’s reference to the ‘better practice,’ but conclude it does not require reversal here.”\textsuperscript{250} While the majority in \textit{Brown} hoped to limit the application of closures without expressly stated reasons on the record, it is clear that the standard practice in Minnesota courtrooms is to lock the doors during jury instructions without any qualified reason.

Not only has \textit{Brown} been cited to allow courtroom closures during jury instructions, the Minnesota Court of Appeals cited the case to uphold locking the courtroom during closing arguments.\textsuperscript{251}

\textsuperscript{244} Compare id. (“To facilitate appellate review in future cases, we conclude the better practice is for the trial court to expressly state on the record why the court is locking the courtroom doors.”), with \textit{Waller}, 467 U.S. at 45 (“The interest [for the courtroom closure] is to be articulated along with findings specific enough that a reviewing court can determine whether the closure order was properly entered.” (quoting \textit{Press-Enter. Co. v. Superior Court}, 464 U.S. 501, 510 (1984))).

\textsuperscript{245} \textit{Brown}, 815 N.W.2d at 625 (stating on the record that the closure was “for the benefit of those in the back”).

\textsuperscript{246} See Rosenberg, supra note 232 (discussing the tensions between the triviality doctrine and automatic reversal for structural errors).

\textsuperscript{247} State v. Silvernail, 831 N.W.2d 594, 609 (Minn. 2013) (Anderson, J., dissenting).

\textsuperscript{248} \textit{Id.} at 600.


\textsuperscript{250} \textit{Id.} at *6.

The Brown decision was also cited to allow a courtroom to be locked during individual questioning of jurors regarding their exposure to potentially prejudicial material during trial. The exact scope of Brown’s precedent is unclear, but recent jurisprudence indicates that it will be used to expand the triviality doctrine to other parts of a trial.

V. CONCLUSION

The Minnesota Supreme Court was presented with the difficult question of determining whether intentionally locking the doors of a courtroom before jury instructions violates a defendant’s Sixth Amendment rights. The majority determined that the trial court’s actions were too trivial to be considered a closure, and therefore the defendant’s rights were not implicated. Though locking the courtroom is a relatively common procedure, and may be constitutional in certain circumstances, the majority failed to properly analyze the purpose and scope of the triviality doctrine when it was applied to intentional closures. The decision further muddies the analysis between trivial closures and harmless errors, running afoul of U.S. Supreme Court precedent. The Minnesota Supreme Court should have limited the scope of the triviality doctrine and applied it only to inadvertent closures. Though the majority attempted to put in checks for future cases, Brown sets a very low standard that will lead to many unwarranted courtroom closures.

254. Id. at 618.
255. See State v. Silvernail, 831 N.W.2d 594, 608 n.1 (Minn. 2013) (Anderson, J., dissenting) (“[D]uring the 2011-12 term, [the Minnesota Supreme Court] denied five petitions for review that challenged the district court’s decision to close or lock the courtroom doors during final jury instructions.”).