ADVANCE SHEET HEADNOTE
June 23, 2025

2025 CO 45

No. 23SC520, *People v. Bialas* — Constitutional Law — Sixth Amendment — Right to Public Trial — Courtroom Closures — *Waller* Test

The supreme court granted certiorari to determine whether the removal of all members of the public, including members of the defendant's family, from the physical courtroom during her jury trial violated her Sixth Amendment right to a public trial even though the proceedings remained accessible to the public virtually.

Following the principles set forth in *Rios v. People*, 2025 CO 46, __ P.3d __, also announced today, the supreme court concludes that the availability of free, contemporaneous virtual access alone does not satisfy a defendant's Sixth Amendment right to a public trial. Here, the trial court's decision to remove all spectators from the courtroom and to fully close the courtroom for the remainder of the trial based on misconduct by some of the spectators was a nontrivial closure that violated Bialas's Sixth Amendment right because the closure was not justified

under the factors set forth in *Waller v. Georgia*, 467 U.S. 39, 48 (1984). Accordingly, the supreme court affirms the judgment of the court of appeals.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 45

Supreme Court Case No. 23SC520
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 21CA1645

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Michelle Re Nae Bialas.

Judgment Affirmed
en banc
June 23, 2025

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JUSTICE BERKENKOTTER delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, and **JUSTICE GABRIEL** joined.
JUSTICE HART, joined by **JUSTICE BOATRIGHT**, and **JUSTICE SAMOUR** dissented.

JUSTICE BERKENKOTTER delivered the Opinion of the Court.

¶1 We granted certiorari to review the decision of a division of the court of appeals, concluding that the trial court violated Michelle Re Nae Bialas's Sixth Amendment right to a public trial. *People v. Bialas*, 2023 COA 50, ¶ 6, 535 P.3d 999, 1002. The trial court erred, the division decided, when it removed all members of the public, including members of Bialas's family, from the physical courtroom during her jury trial, even though the proceedings remained accessible to the public virtually on Webex and via video and audio streaming in an auxiliary courtroom. *Id.* The division reversed Bialas's conviction and remanded her case for a new trial after it determined that a nontrivial partial courtroom closure occurred and that the closure was not justified under the factors articulated by the Supreme Court in *Waller v. Georgia*, 467 U.S. 39, 48 (1984). *Bialas*, ¶¶ 20, 27–28, 535 P.3d at 1004–05.

¶2 We now conclude, for the reasons we explain in *Rios v. People*, 2025 CO 46, __ P.3d __, which we announce today, that the availability of free, contemporaneous virtual access *alone* does not satisfy a defendant's Sixth Amendment right to a public trial. We additionally conclude that the trial court's decision to remove all spectators from the courtroom and to fully close the courtroom based on misconduct by some of the spectators was a nontrivial closure that violated Bialas's Sixth Amendment right. And because the closure here was

not justified under the factors set forth in *Waller*, we affirm the judgment of the court of appeals.

I. Facts and Procedural History

¶3 In 2017, a jury convicted Bialas of multiple charges related to an assault on her ex-boyfriend, James Bynum. After a division of the court of appeals reversed the conviction, *People v. Bialas*, No. 17CA1841 (Dec. 17, 2020), the prosecution retried Bialas. The second trial commenced in July 2021 during the COVID-19 pandemic. During a pretrial conference, the court explained that because of social distancing requirements, the jurors would be dispersed throughout the courtroom, reducing the space available for potential spectators to one row at the back of the gallery. The court added that anyone who could not find a seat in the courtroom could watch the trial virtually on Webex or via video and audio streaming in an auxiliary courtroom.[1] Certain members of Bialas's and Bynum's families attended the trial in person in the physical courtroom.

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[1] Webex is a video conferencing platform that allows a spectator to see and hear what is happening in a physical courtroom in real time virtually via a computer or phone. Depending on the placement of the camera or cameras providing the live feed, spectators may be able to see the entire courtroom or only a small part of it. In addition to allowing for virtual courtroom observation, Webex can also be configured with two-way video and audio to allow virtual courtroom participation. It is not ordinarily configured this way during jury trials given the very real risk of disruption and the potential for mistrials. This means that jurors cannot see when there are virtual spectators. Livestreaming is a term used to describe the real-time broadcasting of video and audio content over the internet. Livestreaming allows a spectator to remotely watch a court proceeding in real

¶4 On the third day of trial, during defense counsel's direct examination of Bialas, the court held a bench conference. Because the court was unable to mute the microphones it normally used for such conferences, it held the bench conference with the attorneys outside of the courtroom. When the judge, attorneys, and court reporter returned, a juror passed the court a note that stated, "[T]he spectators behind me were discussing the history of this case and we could hear them." The court asked everyone other than the trial participants to leave the courtroom and explained to the members of the public that they could watch the rest of the trial virtually in the auxiliary courtroom.

¶5 After clearing the room, the court brought the jurors who were within earshot of the spectators back to the courtroom and questioned them regarding what they had heard. Two of the jurors indicated that they heard the alleged victim's family comment about a previous trial. One juror said they heard someone say that there had been a previous trial and the word "guilty." That juror added that "there was some indication as to the bias of this trial being[,] you know[,] being in favor of the defendant." Another juror indicated that the juror could hear the spectators "snicker [at] whatever the defense attorney would say."

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time. The video and audio are, however, not two-way. That is, the people in the courtroom, including the jurors and the judge, cannot see that they are being watched.

¶6 After the jurors were questioned, neither party requested a mistrial, although defense counsel asked that Bialas's family be allowed to return to the courtroom since the jurors had indicated that it was members of Bynum's family, not Bialas's, who had made the comments. The district court denied defense counsel's request to allow Bialas's family to remain, stating:

> All spectators will be banned from the courtroom for the rest of the day and they can be across the hall and watch the proceedings via Web[e]x just like anybody else, but I'm not going to now inquire from each one of the spectators who is at fault. It is my province to govern what [is] happening here in the courtroom and something has happened which is not proper . . . and I'm not going to sit around and try and determine who is at fault for making comments or not. The best, easiest, and uniform [rule] is that there will be no further spectators for the rest of the trial in the courtroom.

¶7 Defense counsel objected, claiming that the exclusion of the public violated Bialas's right to a public trial. The court overruled the objection, and the trial proceeded. Bialas's family and Bynum's family watched the remainder of the trial virtually from the auxiliary courtroom. The jury subsequently convicted Bialas of second degree assault and violation of a protection order.

¶8 A division of the court of appeals reversed Bialas's conviction and remanded the case for a new trial. *Bialas*, ¶ 28, 535 P.3d at 1005. First, the division concluded that the removal of members of the two families from the courtroom constituted a partial closure despite the availability of a live video and audio stream of the proceeding. *Id.* at ¶ 15, 535 P.3d at 1003. It further held that the

closure was nontrivial because the closure lasted for part of Bialas's testimony and the entirety of both closing arguments, which undercut the assurance of a fair trial. *Id.* at ¶¶ 18, 20, 535 P.3d at 1003–04. Additionally, the division reasoned that the closure was intentional, and it caused Bialas's family to move to the auxiliary courtroom. *Id.* at ¶ 19, 535 P.3d at 1004. Relying on *People v. Jones*, 2020 CO 45, 464 P.3d 735, the division noted the importance placed upon "the presence of a defendant's family . . . in ensuring a fair trial." *Id.* at ¶ 12, 535 P.3d at 1003 (omission in original) (quoting *Jones*, ¶ 41, 464 P.3d at 744). Thus, it found that by removing Bialas's family during her testimony, they no longer served as a reminder to the judge, prosecutor, and jury regarding their responsibility to treat Bialas fairly, undercutting the assurance of a public trial. *Id.* at ¶¶ 18–19, 535 P.3d at 1003–04.

¶9 Last, the division applied the *Waller* factors and concluded that the closure was not justified and thus violated Bialas's right to a public trial. *Id.* at ¶¶ 21–27, 535 P.3d at 1004–05. Specifically, the division determined that (1) because Bialas's family had not made the improper comments, there was no overriding interest in removing them; (2) the closure was broader than necessary because it was based on the misbehavior of a few spectators; (3) allowing Bialas's family to remain was a reasonable alternative to complete removal of the public; and (4) the court did not make sufficient findings in support of the closure. *Id.* at ¶¶ 22–25, 535 P.3d at

1004–05. Thus, the division held that the partial closure was unconstitutional and, as such, was structural error. *Id.* at ¶ 27, 535 P.3d at 1005. Accordingly, it reversed the judgment of conviction and remanded the case for a new trial. *Id.* at ¶ 28, 535 P.3d at 1005.

¶10 The People petitioned this court for a writ of certiorari, which we granted.[2]

II. Analysis

¶11 We begin by setting out the appropriate standard of review. We then describe the applicable law regarding a defendant's constitutional right to a public trial. Next, we address whether a courtroom closure occurred when the trial court excluded Bialas's family and Bynum's family and closed the physical courtroom to all other spectators but provided virtual access to the trial. After concluding that a courtroom closure occurred, we apply the triviality standard set forth in *People v. Lujan*, 2020 CO 26, 461 P.3d 494, to determine whether the closure violated Bialas's right to a public trial. We go on to conclude that the courtroom

[2] We granted certiorari to review the following issues:

1. Whether moving the defendant's family from the physical courtroom to a livestream viewing room constituted a closure under the Sixth Amendment when the defendant agreed that the viewing room was an appropriate accommodation for the public.
2. Whether the court of appeals erred in determining that a courtroom closure was nontrivial when the persons "excluded" maintained access to the proceedings through real-time video and audio livestreaming.

closure was nontrivial and not justified under *Waller*. Finally, because the closure violated Bialas's right to a public trial, we affirm the judgment of the court of appeals.

A. Standard of Review

¶12 Our review of a trial court's decision to close the courtroom involves a mixed question of fact and law. *Rios*, ¶ 17. We defer to the trial court's factual findings absent an abuse of discretion, but we review its legal conclusions de novo. *Id.*

B. Sixth Amendment Right to a Public Trial

¶13 Both the U.S. and Colorado Constitutions guarantee criminal defendants the right to a public trial. U.S. Const. amends. VI, XIV; Colo. Const. art. II, § 16. In *Rios*, we explained the importance of the right to a public trial and the purposes it serves. ¶¶ 19–20. One such purpose is to ensure the presence of interested spectators "for the benefit of the accused." *Waller*, 467 U.S. at 46 (quoting *Gannett Co. v. DePasquale*, 443 U.S. 368, 380 (1979)). The presence of such spectators serves, among other things, to keep an accused's "triers keenly alive to a sense of their responsibility and to the importance of their functions." *Id.* (quoting *Gannett Co.*, 443 U.S. at 380). This, in turn, provides a safeguard against any attempt to employ our courts as instruments of persecution. *In re Oliver*, 333 U.S. 257, 270 (1948).

¶14 However, the Supreme Court has emphasized that the purpose of the right to a public trial extends beyond the accused. "[I]n the broadest terms, public access to criminal trials permits the public to participate in and serve as a check upon the judicial process—an essential component in our structure of self-government." *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606 (1982). For example, the right to a public trial maintains public faith and confidence in the justice system by allowing the public to see that the accused is fairly dealt with, ensuring that judges and prosecutors discharge their duties responsibly, encouraging witnesses to come forward, and discouraging perjury. *Waller*, 467 U.S. at 46. The right also "vindicate[s] the concerns of the victims and the community in knowing that offenders are being brought to account for their criminal conduct by jurors fairly and openly selected." *Press-Enter. Co. v. Super. Ct.*, 464 U.S. 501, 509 (1984).

¶15 With these purposes in mind, we turn to the facts of this case.

C. Whether a Closure Occurred

¶16 The People argue that the removal of Bialas's family from the physical courtroom did not constitute a closure because the public had free and contemporaneous access to observe the proceedings virtually. For the reasons we explain in our opinion in *Rios*, announced today, we disagree.

¶17 In *Rios*, we considered whether virtual access to observe courtroom proceedings *alone* could satisfy a defendant's Sixth Amendment right to a public trial. ¶ 25. To answer the question, we examined the purposes the right serves, including spectators' role in keeping the jury "keenly alive" to the importance of its function and to a sense of its responsibility. *Id.* at ¶ 27. We looked as well to its role in ensuring that judges and prosecutors carry out their duties responsibly, encouraging witnesses to come forward, and discouraging perjury. *Id.*

¶18 Ultimately, we concluded that "the Sixth Amendment right to a *public* trial is best understood as a trial that is open to the public, meaning that the public has a reasonable opportunity to be *physically present* to observe the proceedings." *Id.* at ¶ 28. That is to say, virtual access *alone* does not meet a defendant's public trial right. *Id.* at ¶ 36. We reach this conclusion for three reasons. First, this understanding hews most closely to the purposes of the right to a public trial. This connection is particularly striking as it pertains to the public's role in keeping the jury "keenly alive to a sense of their responsibility" and to the importance of their function by virtue of the public's *presence*. *Waller*, 467 U.S. at 46 (quoting *Gannett Co.*, 443 U.S. at 380). As we noted in *Rios*, screens in a courtroom, no matter their number or the nature of their display, are an inadequate substitute for the physical presence of real spectators in the gallery and the powerful reminder that those spectators provide to jurors regarding the gravity of their role. ¶ 29. Plus, this

virtual technology is typically not configured to allow jurors to see spectators due to the risk of disruption and potential mistrial.

¶19 Second, this reading comports with the ordinary understanding of the term "public," which is defined as "exposed to general view: open." *Public*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/public [https://perma.cc/9KAV-94U6]. The term "presence" is defined as "the fact or condition of being present." *Presence*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/presence [https://perma.cc/3KKL-LJ59]. The term "present" is defined as "constituting the one actually involved, at hand, or being considered." *Present*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/present [https://perma.cc/7VRZ-JQ9H]. As we explained in *Rios*, when read in tandem, these definitions support the understanding that a public trial involves the opportunity for spectators to be *physically* present to observe the proceedings. ¶ 30.

¶20 Third, and finally, the Framers saw great value in the benefits associated with a public trial. *Waller*, 467 U.S. at 49 n.9. The Framers, of course, could not have imagined a public trial that involved spectators who were not somehow physically present. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 577 (1980); *see also United States v. Haymond*, 588 U.S. 634, 642 (2019) ("[T]he Constitution's guarantees cannot mean less today than they did the day they were

adopted."). And the Framers could not have imagined the bandwidth and connectivity issues that district courts around the state face from time to time. More importantly, changes in technology do not lessen constitutional protections. Thus, we reject the People's argument that the Sixth Amendment does not require the public to have access to a physical courtroom so long as it has the free and contemporaneous opportunity to virtually observe proceedings.[3]

¶21 Because virtual access alone is not sufficient to meet a defendant's public trial right, we conclude that a closure occurred when the court excluded the Bialases and all other members of the public from the physical courtroom for the remainder of her trial.

¶22 We emphasize that it was not the court's initial order, which significantly limited the seating capacity in the courtroom due to the COVID-19 pandemic that forms the basis for our conclusion in this regard. The court's order left seats for spectators in the back of the gallery. This limit was based on the public health

[3] As we observed in *Rios*, virtual courtroom technology like the platforms utilized here can be a great convenience to litigants, lawyers, the court, and the public. ¶ 26. This technology can also advance the important goal of increasing access to justice. We are mindful that this technology can also present challenges—from bandwidth issues that undermine reliable connectivity, to disruptions intentionally caused by individuals attempting to disturb digital court proceedings. The question before us, though, is not whether this technology is useful, but rather whether its use alone is sufficient to meet a defendant's public trial right.

restrictions that required the jurors to spread out across the gallery and necessarily confined the public seating available in the courtroom. As we explained in *Rios*, that is not a closure. ¶ 33. During the COVID-19 pandemic, courtroom capacity was often limited by public health orders concerning permissible uses of indoor spaces. The inability of *some* members of the public to be physically present because of space limitations is not a closure. These limitations may exist due to health-related restrictions, as with the COVID-19 pandemic, or simply because—as with some high profile cases—there are more interested members of the public than there are available seats.

¶23 And, as we additionally observed in *Rios*, when a court offers hybrid proceedings—i.e., the courtroom remains open but there is only limited seating capacity, and the court offers access over a virtual platform—that is not a closure either, as long as the courtroom remains open. *Id.* at ¶ 36. In that instance, the virtual access options are merely additional means of viewing the proceeding that are not constitutionally required.

¶24 However, if a court totally excludes the public from the physical courtroom, that is a closure subject to a *Waller* analysis. Relatedly, if a court ejects a particular person or group of persons from the courtroom, that is also a closure subject to a *Waller* analysis. *People v. Turner*, 2022 CO 50, ¶ 18, 519 P.3d 353, 359.

¶25 Both types of closures were implicated here. The trial court ejected Bialas's and Bynum's families from the courtroom. It also closed the courtroom to all other spectators. Thus, there was a closure.

¶26 Our analysis, however, does not stop there. To implicate a defendant's right to a public trial, the courtroom closure must be nontrivial. *Lujan*, ¶ 23, 461 P.3d at 499.

D. Whether the Closure Was Trivial

¶27 The closure of a physical courtroom can violate a defendant's constitutional right to a public trial. *Jones*, ¶ 27, 464 P.3d at 741. But "the Sixth Amendment is not necessarily violated 'every time the public is excluded from the courtroom.'" *Lujan*, ¶ 16, 461 P.3d at 498 (quoting *Peterson v. Williams*, 85 F.3d 39, 40 (2d Cir. 1996)). "[S]ome closures are simply so trivial that they do not rise to the level of a constitutional violation." *Id.* To determine whether a closure is trivial, we consider (1) the duration of the closure, (2) the substance of the proceedings that occurred during the closure, (3) whether the proceedings were later memorialized in open court or placed on the record, (4) whether the closure was intentional, and (5) whether the closure was total or partial. *Id.* at ¶ 19, 461 P.3d at 498–99. This list of factors is nonexhaustive, and no single factor is dispositive. *Id.*, 461 P.3d at 499. Further, under this standard, "we look to the closure at issue and consider

whether it implicated the protections and values of the public trial right." *Id.* at ¶ 28, 461 P.3d at 500.

¶28 Applying this standard, we conclude that the closure here was nontrivial under the totality of the circumstances. In *Lujan*, this court concluded that the trial court's decision to close the courtroom to reread a limiting instruction to the jury "that it had previously read in open court" was trivial because it lasted "only a matter of minutes." ¶ 29, 461 P.3d at 500. However, here, the closure lasted for the rest of Bialas's testimony and all of the closing arguments.

¶29 Moreover, the closure was intentional. "[I]ntentional closures during more significant, and less fleeting, testimony are generally considered not trivial because of their potential to affect the fairness of the proceedings." *Jones*, ¶ 40, 464 P.3d at 744. For example, in *People v. Hassen*, 2015 CO 49, ¶ 16, 351 P.3d 418, 422, we concluded that a closure during two witnesses' testimony, which spanned twenty-seven pages of the transcript, was not trivial. Here, Bialas's testimony spanned twenty-seven pages, and the closing arguments spanned another thirty-four. Additionally, in *Jones*, we concluded that a closure lasting almost an entire afternoon during the ten-day trial was not brief, and therefore, nontrivial. ¶ 42, 464 P.3d at 744. The closure in this case included more than half a day in a four-day trial, further indicating that the closure was nontrivial.

¶30 On these facts, we conclude that the total exclusion of the public and the expulsion of Bialas's family from the courtroom for more than half a day were both nontrivial closures.

E. Whether the Closure Was Constitutional

¶31 We next apply the four *Waller* factors to determine whether this nontrivial closure violated Bialas's constitutional right to a public trial.

¶32 In *Waller*, the Supreme Court set forth a four-part test for trial courts to determine whether a courtroom closure complies with the Sixth Amendment. 467 U.S. at 48. The test requires that (1) "the party seeking to close the [proceeding] must 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." *Id.*

¶33 We now turn to consider these factors, beginning with whether there was an overriding interest in closing the trial.[4] *Id.* Although trial judges have discretion to control their courtrooms by removing distracting spectators, *see*

[4] Many jurisdictions have considered whether the "overriding interest" standard is necessary in partial closure cases or whether a lesser standard—"substantial reason"—is more appropriate. *See Jones*, ¶¶ 24–26, 464 P.3d at 741 (collecting cases and explaining the competing views on this issue). This is an issue we need not resolve today.

Illinois v. Allen, 397 U.S. 337, 343 (1970), and the court's concern here regarding the improper conduct was well-founded, there is no evidence in the record that the threat of disruption in this case came from Bialas's family. Rather, all signs indicated that the problematic comments were made by the victim's family. Moreover, neither party sought to remove Bialas's family after the jurors indicated that they had not made the inappropriate comments. Thus, while the trial court's concern was understandable given the potential for a mistrial, there was no reason to exclude Bialas's family or to close the entire courtroom. The first *Waller* factor, accordingly, was not met.

¶34 Next, we consider the second and third *Waller* factors: whether the closure was no broader than necessary and whether the court considered any reasonable alternatives to closing the proceeding. 467 U.S. at 48. Here, the trial court could have made findings and properly removed the victim's family to prevent further disruption of the trial, to protect the jury from ex parte communications, and to prevent a (second) mistrial, but it did not do so. Instead, it imposed a "uniform rule," declining to "take sides as to who it is or what spectators get special preference over other spectators." But in applying a blanket rule, the court not only excluded the Bynums from the courtroom, it also excluded Bialas's family members and all other potential spectators from the opportunity to observe the proceedings in person. Perhaps the court viewed the available virtual public

access as a reasonable alternative, but if so, it did not explain this on the record. And even so, as we have explained, virtual public access alone does not satisfy a defendant's right to a public trial. Because the court did not limit the scope of the closure or consider whether there were reasonable alternatives to entirely closing the courtroom, we conclude that the second and third *Waller* factors were not met.

¶35 Last, we turn to the fourth *Waller* factor—whether the court made findings adequate to support the closure. *Id.* We conclude that it did not. "[W]e gauge 'compliance by substance, not form.'" *Rios*, ¶ 52 (quoting *Turner*, ¶ 35, 519 P.3d at 362). Here, the court did not follow *Waller* in substance or form. Its findings were limited to its comment that it was not going to decide who caused the disruption. Therefore, we conclude that the fourth *Waller* factor was not satisfied.

¶36 Because the exclusion of Bialas's family and the entire public from the physical courtroom constituted a nontrivial closure that did not satisfy any of the *Waller* requirements, we conclude that the closure violated Bialas's right to a public trial.

III. Conclusion

¶37 Here, the exclusion of the public constituted a nontrivial closure that was not justified under the factors set forth in *Waller*, 467 U.S. at 48. Because Bialas's Sixth Amendment right to a public trial was violated, we affirm the judgment of the court of appeals.

JUSTICE HART, joined by **JUSTICE BOATRIGHT,** and **JUSTICE SAMOUR** dissented.

JUSTICE HART, joined by JUSTICE BOATRIGHT, and JUSTICE SAMOUR, dissenting.

¶38 For the reasons I set out in more detail in my concurring opinion in *Rios v. People*, 2025 CO 46, __ P.3d __, I disagree with the majority's conclusion that "the availability of free, contemporaneous virtual access *alone* does not satisfy a defendant's Sixth Amendment right to a public trial." Maj. op. ¶ 2.

¶39 In *Rios*, the majority concluded that application of the factors articulated by the U.S. Supreme Court in *Waller v. Georgia*, 467 U.S. 39, 48 (1984), to justify a courtroom closure warranted what it perceived as a closure of the proceedings. *Rios*, ¶ 53. Thus, although I disagreed with the majority that the proceedings were in fact closed, I concurred in the judgment. *Rios*, ¶ 68 (Hart, J., concurring).

¶40 Here, however, the majority concludes that the "closure" of the proceedings was not justified because the physical courtroom was closed to the public without sufficient justification. Maj. op. ¶ 35.

¶41 In my view, a trial has not been closed when (1) critical proceedings are open to contemporaneous public scrutiny (in-person or virtual), and (2) the participants in the process (jurors, lawyers, witnesses, and judges) are aware that those critical proceedings are subject to contemporaneous public scrutiny. When those criteria are met, a defendant's Sixth Amendment public trial right is protected. Because that was the case here, I respectfully dissent.