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OFFICE OF APPELLATE COURTS

No. A20-1638

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Abraham Isaac Bell,

Appellant.

RESPONDENT'S BRIEF

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STATEMENT OF LEGAL ISSUE

Jury trials were banned in Minnesota during the COVID-19 pandemic. Scott County received approval to conduct one trial. This approval required the district court to maintain strict physical spacing between people, and because of the size of the courtroom, the plan prohibited friends and family from being present in the same courtroom. The approved plan required the trial to be live-streamed to the courtroom next door. Was Appellant's right to a public trial violated?

> The district court denied Appellant's pretrial motion to allow more people to be in the same courtroom due to COVID-19 safety restrictions, and instead live-streamed the trial to the courtroom next door pursuant to the approved Scott County Jury Trial Plan.
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> > Pulczinski v. State, 972 N.W.2d 347 (Minn. 2022).
> > State v. Benton, 858 N.W.2d 535 (Minn. 2015).
> > State v. Schmit, 139 N.W.2d 800 (Minn. 1966).
> > Vazquez Diaz v. Commonwealth, 167 N.E.3d 822 (Mass. 2021).

STATEMENT OF FACTS

COVID-19 is a deadly virus that has so far killed over one million Americans.[1] COVID-19 was first detected in China in January of 2020.[2] The virus spread quickly around the world, and reached the United States by early February. By late February or early March, COVID-19 had reached Minnesota.

Minnesota's court system posted awareness of the COVID-19 threat on March 11, 2020. "The Minnesota Judicial Branch continues to monitor the most current statements and recommendations regarding COVID-19 in Minnesota. ... Currently, there has been no adjustment in court operations, and court calendars are continuing as usual."

Continuing-as-usual ended two days later. On March 13, 2020, the President of the United States declared a national emergency in response to COVID-19. Governor Walz declared a peacetime emergency. See Walz Emergency Executive Order 20-01. And Chief Justice Gildea issued an order limiting jury trials to High Priority and Super High Priority only. Lower priority jury trials were suspended for 14 days, and no new jury trials were to be scheduled for the next 30 days. See Order dated March 13, 2020.[3] Further restrictions were placed on March 16, and again on March 20, 2020.

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[1] https://covid.cdc.gov/covid-data-tracker/#datatracker-home

[2] www.reuters.com/article/us-health-coronavirus-who-china-factbox/factbox-the-origins-of-covid-19-idUSKBN29O08P

[3] Continuing Operations of the Courts of the State of Minnesota Under a Statewide Peacetime Declaration of Emergency, ADM20-8001 (Minn. filed March 13, 2020).

As the COVID-19 pandemic continued worsen, Governor Walz first closed Minnesota's schools, bars, restaurants, and other places of public accommodation. See Walz Emergency Executive Orders 20-02, 20-04. Governor Walz then issued an emergency executive order delaying inpatient and outpatient surgeries and medical care to preserve hospital supplies. See Walz Emergency Executive Order 20-09. Then, on March 25, Governor Walz simply ordered Minnesotans to stay at home. See Walz Emergency Executive Order 20-20. Governor Walz extended his stay-at-home order on April 8, 2020. See Walz Emergency Executive Order 20-33.

Following the extension of the stay-at-home order, Chief Justice Gildea issued a new order for the Minnesota court system that prohibited any new jury trials from starting before May 4, 2020. See Order dated April 9, 2020.[4]

On May 1, 2020, the Minnesota Judicial Council continued to ban all new jury trials until June 1, but authorized several counties to try "a pilot program to evaluate processes for jury trials in criminal cases. Those pilots will not start before June 2, 2020." On May 15 and June 3, 2020, the Minnesota Judicial Council continued the jury trial ban to July 6, but continued to allow several counties to apply for approval to conduct pilot jury trials.

In the midst of this pandemic, Appellant Abraham Bell was in various jails and prisons in Minnesota. He was charged in Scott County with First Degree Aggravated

[4] Continuing Operations of the Courts of the State of Minnesota Under Emergency Executive Order 20-33, ADM20-8001 (Minn. filed April 9, 2020).

Robbery. Bell demanded a speedy jury trial on March 31, 2020, which was scheduled to begin in Scott County on May 12, 2020. But his first trial date was canceled because of the pandemic. See Pandemic Cancellation (R.A. 48).[5]

On May 22, 2020, Bell learned that Scott County had applied to the Minnesota Judicial Council to conduct a jury trial as part of the pilot program. R. 4.[6] But Bell was cautioned that "[w]e have an international pandemic, a national emergency, and a statewide shutdown. Our courthouse is closed. And COVID-19 cases are spiking up in Scott County." R. 8. "We certainly don't want to violate anybody's constitutional rights, but this is unprecedented." R. 9.

On June 1, 2020, Bell's jury trial was tentatively scheduled to begin on June 19, 2020, with the hope that the Minnesota Judicial Council would approve Scott County's Jury Trial Plan as a pilot project. R2. 4.[7] Scott County's Jury Trial Plan was approved, and Bell's pilot jury trial was scheduled to start on June 15, 2020.[8]

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[5] "R.A." refers to Respondent's Addendum.

[6] "R." refers to the transcript of the Review Hearing held on May 22, 2020.

[7] "R2." refers to the transcript of the second Review Hearing held on June 2, 2020.

[8] It is not clear where the Scott County Jury Trial Plan was filed, but it had to have been filed in order to be approved. And it had to have been approved since there was a trial. The Jury Trial Pilot Checklist submitted to receive approval requires the local jury trial pilot plan to be submitted with it, and that Checklist was signed by First Judicial District Chief Judge Messerich and Scott County District Court Administrator Jones. See Checklist (R.A. 40). And finally, as Bell notes in footnote 1 of his brief, it is readily apparent that the parties and the district court had all reviewed the jury trial plan. App. Br. at 6. In fact, Bell's Objection refers to specific page numbers. R.A. 45.

Bell then brought a pretrial Motion for a Public Trial and Objection to Jury Trial Plan that objected to the Scott County Jury Trial Plan to allow the public to view his trial live-streamed in the courtroom next door. See Motion (R.A. 45). Bell's motion focused on "*friends*, relatives and counsel" that he wanted in the courtroom, while at the motion hearing he said that he wanted some family members and some members of the public to be in the same courtroom. M. 25-26; Motion at 2 (emphasis in original).[9] The district court denied Bell's request based on safety concerns: "for everybody in there, every human I add to that courtroom I've got to now space and buffer by 6 feet." M. 26. The district court explained that "…if I had another 100 feet, I might be able to do that." M. 27. But the request was denied because "people's safety is paramount in this case." Id.

Bell's live-streamed jury trial began on June 22, 2020. The district court explained the courtroom setup – "right next door in Courtroom 4 all of what's happening in Courtroom 3, which is where we're at, is being broadcast live with audio and video for any members of the public or patrons that want to view today's trial." T. 2.[10] "We had the Department of Health come in here and spent an hour and a half with me, step by step, place by place, as to where I could seat my jurors and where they, the experts were comfortable with, okay. Uh, a lot of work has gone into kind of what we're doing." T. 20. The district court explained that members of the public usually sit in the back of the courtroom, but now "[w]e have set up a virtual courtroom in the next courtroom so

[9] "M." refers to the transcript of the pretrial Motion Hearing held on June 18, 2020.

[10] "T." refers to the trial transcript.

everything that we're doing, members of the public want to come in and watch trial, they can go to the next courtroom and watch it virtually." Id.

After a three-day trial, the jury convicted bell of First Degree Aggravated Robbery. T. 424. The district court then sentenced Bell to prison for 105 months. S. 13.[11]

Bell appealed to the Minnesota Court of Appeals. Bell argued that his right to a speedy trial was violated, and that his right to a public trial was violated. The Court of Appeals rejected both arguments.

Bell petitioned for review to this Court, which ultimately granted review of the public trial issue.

ARGUMENT

Bell's pretrial Motion for a Public Trial and Objection to Jury Trial Plan requested to have friends and family members in court with him – he objected to the Scott County Jury Trial Plan to live-stream his trial to the courtroom next door. Bell claims that the plan amounted to a complete closure of the court, and he asks for a new trial. Bell's arguments should be rejected, and the district court should be affirmed.

I. The standards of review.

Bell objected to not having friends, family, and members of the public in the courtroom with him, so if the restrictions were not trivial, then this argument is subject to

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[11] "S." refers to the transcript of the Sentencing Hearing held on September 30, 2020.

the four-factor Waller review, and is not subject to harmless-error analysis. Waller v. Georgia, 467 U.S. 39 (1984).

Bell failed to object to not using two-way video, so this argument is subject to plain-error review. Pulczinski v. State, 972 N.W.2d 347 (Minn. 2022).

II. Bell forfeited or waived the two-way video argument.

Bell's primary argument to the Court of Appeals was that the district court failed to use two-way video. But Bell never made that argument in the district court. Bell did not object on that basis in his Motion for a Public Trial and Objection to Jury Trial Plan. And Bell never suggested to the district court that two-way video should be added. M. 24-28. He simply objected that by placing the public in the courtroom next door, witnesses would not be able to see the public and the defendant would not see family support. M. 25, 26. Because Bell never suggested to the district court that two-way video was important, that argument should be waived. State v. Benton, 858 N.W.2d 535, 540 (Minn. 2015) ("As a general rule 'a party cannot assert on appeal an error that he invited or that could have been prevented at the district court.' … This rule 'discourage[s] litigants from intentionally creating appealable issues.' …. We have applied the invited-error doctrine to courtroom closures in the past." (internal citations omitted)). Cf. People v. Hernandez, 488 P.3d 1055 (Colo. 2021) (finding defendant's claim that using WebEx was an unconstitutional closure was waived).

And there are sound tactical reasons a defense attorney might not want to demand two-way video in the district court. This is especially true if two-way video would simply show an empty courtroom. That would have the opposite of the intended effect –

rather than showing the presence of interested spectators keeping his triers keenly alive to a sense of their responsibility and to the importance of their functions, it would show that there were no interested spectators and nobody was watching. One-way video creates the illusion of interested spectators that two-way video could destroy.

The Court of Appeals declined to address this issue because it substantively ruled for the State under Waller. State v. Bell, No. A20-1638 n.4 (Minn. App. Dec. 27, 2021) ("Because we resolve the appellant's public-trial claim in the state's favor, we need not address the potential waiver issue here."). But the waiver issue determines the proper standard of review for the two-way video claim. Pulczinski v. State, 972 N.W.2d 347, 356 (Minn. 2022) ("…appellate courts have a limited discretionary power to grant relief based on an unobjected-to error, which may be exercised only when a plain error affected a particular defendant's substantial rights *and* a failure to correct the error would have an impact beyond the current case by causing the public to seriously question the fairness and integrity of our judicial system."). And once placed in the proper standard of review, Bell's two-way video argument fails. Id. ("Although Pulczinski asserts that he was personally prejudiced by the lack of a two-way video feed between the trial courtroom and the viewing rooms in the courthouse and by the exclusion of a few members of his family from the courtroom, he makes no argument that a failure to correct those errors will seriously affect the fairness, integrity, or public reputation of judicial proceedings generally.").

III. Live-streaming the trial to the courtroom next door was too trivial a restriction to create a courtroom closure that implicated Bell's right to a public trial.

The right to a public trial is not absolute. It is a limited privilege, and "subject to the inherent power of the court to restrict attendance as the conditions and circumstances reasonably require for the preservation of order and decorum in the courtroom and to protect the rights of parties and witnesses. ...[R]estrictions on attendance may be imposed because of the limited seating capacity of the courtroom, to prevent overcrowding, or in the interests of health or for sanitary reasons." State v. Schmit, 139 N.W.2d 800, 803 (Minn. 1966). The first step is to determine whether a "true closure" of the courtroom occurred which would require an analysis of the Waller factors, or whether the restriction was so insignificant that it did not actually implicate his right to a public trial. State v. Taylor, 869 N.W.2d 1, 11 (Minn. 2015) ("But before we can apply the Waller test to determine if a closure is justified, we must determine whether a closure even occurred.").[12] Whether the right to a public trial has been violated is a constitutional issue that this court reviews *de novo*. Id. at 10.

"Not all courtroom restrictions implicate a defendant's right to a public trial." State v. Brown, 815 N.W.2d 609, 617 (Minn. 2012). Some restrictions are too trivial to

[12] Pulczinski did not find that live-streaming a trial is a constitutional closure that requires analysis of the Waller factors. Pulczinski simply decided that limitations on the right to a public trial are subject to plain error review if there is no objection. Pulczinski, 972 N.W.2d at 357 ("...based on our resolution of the case, we need not reach the issue of whether the district court's directive placing limitations on public presence in the trial courtroom was justified under the Waller test.").

rise to that level. Id. In this case, the district court determined that because Bell's trial was live-streamed, the restriction was so insignificant that it did not implicate his right to a public trial. The district court explained that the courtroom was not being closed – in fact, "it's open." M. 27. Other courts have reached the same conclusion. See Vazquez Diaz v. Commonwealth, 167 N.E.3d 822, 838 (Mass. 2021) ("He contends that the manner in which the public can attend, either through a Zoom link where nonparticipants' video displays are turned off and sound is muted, or through an audio-only telephone line, will prevent the public hearing from serving as an effective check upon the judicial process. We disagree and conclude that a virtual hearing does not constitute a closure in the constitutional sense."); United States v. Huling, CV119CR00037MSMPAS, 2021 WL 2291836, at *2 (D.R.I. June 4, 2021) ("To best comply with the Constitution and Fed. R. Crim. P. 53, the Court will reserve a separate viewing room in the courthouse for the public and the press to watch a closed-circuit, live video and audio feed of the trial.").[13] The district court's decision should be affirmed – live-streaming the trial to the courtroom next door was too trivial a limitation to constitute a constitutional closure.

Bell argues that he is "unaware of any non-Minnesota decision that has held the use of one-way video in lieu of public attendance at trial was constitutionally sufficient under Waller." App. Br. at 27. That might be because such restrictions have not risen to

[13] When comparing cases, the details of how a system works in a particular case cannot be assumed from the name of the system being used. Zoom, for example, is not automatically two-way live streaming video. Zoom can be audio-only, video-only, one-way, or two-way, or a combination of all of these. The same is true of WebEx and other popular Internet based systems.

the level of a Waller analysis in most courts. See Vazquez Diaz, 167 N.E.3d at 838; Huling, CV119CR00037MSMPAS; United States v. Hwa, 18-CR-538 (MKB), 2022 WL 420403, at *2 (E.D.N.Y. Feb. 11, 2022) ("Despite the lack of space in the courtroom due to COVID-19 safety protocols, the Court has nevertheless preserved the right of access to criminal trials by establishing an overflow room with monitors, which will display a live video and audio feed of the proceeding."); People v. Paul, 5-21-0297, 2022 WL 3903547, at *3 (Ill. App. Ct. Aug. 30, 2022) ("In light of the universal acceptance of video streaming as a means of accommodating defendants' interest in a public trial and the overriding need of protecting public health, there is no merit to an argument that the trial court's order violated defendant's right to a public trial.").[14]

IV. Even if there was a constitutional courtroom closure, it was justified by the deadly pandemic.

Even if this were found to be a closure, it would be justified under these extraordinary circumstances. The United States Supreme Court set a four-part test to determine if a closure complies with the Sixth Amendment right to a public trial: (1) the party seeking closure 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 district court must consider reasonable alternatives, and (4) the district court must make findings

[14] Of the four cases cited by Bell as supporting a two-way video requirement, two of them – Davis and Sapalasan – are from the same district court judge in Alaska, who never found two-way video was constitutionally required. One – Bobichenko – was a preliminary order to open the issue for further briefing. And one – Huling – did not provide for two-way video at all. App. Br. at 23-24.

adequate to support the closure. Waller v. Georgia, 467 U.S. 39, 47 (1984). Each of those factors are satisfied in this case.

As summarized by a recent law review:

> Although the Waller test anticipates a case-by-case review of courtroom closure decisions, COVID closures should lend themselves to almost categorical approval. The strong governmental interest in public health is the same from case to case; there can be no difference in the analysis of that factor. Moreover, in terms of tailoring, there are few tools for a court to deploy in lieu of closure, partial or complete. Add to these easily satisfied (under these circumstances) criteria the protection of alternative means of making proceedings publicly available, and closures should not be considered the obstacle they might be in normal times. A court should not be required to take courtroom measurements--of space, of participants, of furniture--to determine with precision the physical distance between essential participants and would-be spectators. No math should be required of a judge--trying to both hear a trial and maintain safety--to determine if, just maybe, an extra person could have fit inside the room. It is by now a truism that "while the Constitution protects against invasions of individual rights, it is not a suicide pact."

Stephen E. Smith, The Right to A Public Trial in the Time of Covid-19, 77 Wash. & Lee L. Rev. Online 1, 15 (2020). In this case, the overriding interest was to protect human life during a deadly pandemic; the closure was no broader than necessary; there were no alternatives at that time; and the district court's findings were adequate. The Scott County Jury Trial Plan – approved by the Minnesota Judicial Council – satisfies the Waller factors.

Bell argues that the Scott County plan failed to meet the Waller factors in several ways. First, Bell asserts that the court could have fit one or two more people in the courtroom. App. Br. at 16. But the district court specifically considered that, and specifically rejected it. The district court explained that "for everybody in there, every human I add to that courtroom I've got to now space and buffer by 6 feet." M. 26. The

district court explained that "…if I had another 100 feet, I might be able to do that." M. 27. But the request was denied because "people's safety is paramount in this case." Id. So the district court considered an alternative suggested by Bell – that one or two more people could have been squeezed into the courtroom – and specifically rejected it.

Bell next argues that the district court's restriction was not narrowly tailored because some courts around the country allowed more people into their courtrooms, and some courtrooms used two-way video technology to an overflow room. App. Br. at 19, 30. In this case, the district court judge was not making up the rules as it went along with the trial. The alternatives were considered at the time the court applied for and received permission from the Minnesota Judicial Council to hold the trial in the midst of the pandemic. This is similar to Kentucky, where the "application of the [Waller] test to the circumstances in our case is imperfect because the closure … was not a matter of the trial court's judicial discretion but instead a matter of the trial court's adherence to this Court's emergency administrative orders." Henson v. Commonwealth, 2020-SC-0343-MR, 2021 WL 5984690, at *3 (Ky. Dec. 16, 2021) (finding no public trial violation).

Minnesota was the same. Minnesota's district courts were closed not because they chose to be closed, but because they were ordered closed by the Minnesota Judicial Council. This was not a decision by each individual judge. Then, to partially re-open and hold a trial as a pilot project, Scott County was required to follow all of the MJB COVID-19 Preparedness Plan, all of the recommendations in the JMRT Re-starting Jury Trials during COVID-19 Document, all of the recommendations in the MJB Jury Trial Pilot Checklist, and adhere to the submitted and approved Scott County Jury Trial Plan.

This required the district court to "[m]ap out courtroom to allow for strict physical distancing of 6 feet (360 degrees) for all panel members and court staff through all points in the jury process." MJB Jury Trial Pilot Checklist (R.A. 40). The district court was required to implement "all recommendations in MJB COVID-19 Preparedness Plan," and "all recommendations in JMRT 'Re-starting Jury Trials during COVID-19' Document." MJB Jury Trial Pilot Checklist. The district court was required to construct physical barriers as needed, and submit a facilities cleaning and sanitation plan. Id. And the district court did all of those things to receive approval to hold Bell's trial.[15]

Bell quotes In re Oliver, 333 U.S. 257 (1948) as creating a constitutional mandate that "without exception all courts have held that an accused is at the very least entitled to have his friends, relatives and counsel present" in the courtroom. Id. at 271–72. But no court has ever held that friends and family members must be present in the same courtroom during the early stages of the COVID-19 pandemic.[16] And this exposes an

[15] Bell argues that the district court myopically followed the submitted and approved Jury Trial Plan and failed to consider alternatives to closing a courtroom before ordering the courtroom closed. App. Br. at 28. This argument fails to recognize that this was not a question of going from open to closed, but of going from closed to open. The starting point is a pandemic freeze across the entire State of Minnesota for all trials. The district court was only allowed to reopen and hold one special trial pursuant to the approved Jury Trial Plan.

[16] There are other significant differences between Oliver and Bell. Oliver was charged, tried, convicted, and sentenced in complete secrecy, denied friends, denied family, and denied even a lawyer to represent him. In contrast, Bell was charged in public, always represented by one or more lawyers, and his trial was live-streamed for all to see. Bell's public trial where he was represented by multiple lawyers bears no resemblance to Oliver's total secrecy and denial of representation.

important flaw in Bell's argument. Cases must be placed in the context of the COVID-19 pandemic at the time. What was known about COVID-19 at the time? What were the community infection rates? Was there a vaccine, and if so, what were the community vaccination rates? Bell's reliance on cases and rules from 2021 – cases when there were multiple vaccines widely available and where the adult vaccination rates were over 60% – shed little light on what was reasonable at the time of Bell's trial in June of 2020, when nobody was vaccinated because there was no vaccine. The Fifth Circuit recognized this and cautioned that it "bears repeating that the Sixth Amendment courtroom-closure analysis is intensely case-specific. What this panel has deemed reasonable for this trial in May of 2021 may be patently unreasonable in May of *2023.*" United States v. Ansari, 48 F.4th 393, 402 n.10 (5th Cir. 2022).

Bell's comparisons to the Chauvin trial in 2021 are similarly flawed. In Chauvin, State resources were essentially unlimited – almost a million dollars was spent on fencing alone, and the entire Hennepin County Government Center was closed for all but Chauvin's trial.[17] "Even the judge presiding over the case, 61-year-old Peter Cahill, has felt compelled to tell jurors he has received his first COVID-19 vaccine shot." ABC News March 24, 2021.[18] The Chauvin trial was extraordinary, and a poor example of what is reasonable for other cases.

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[17] https://knsiradio.com/2021/03/05/minneapolis-has-spent-1-million-on-fencing-and-barricades-for-chauvin-trial/

[18] abcnews.go.com/US/pandemic-looms-derek-chauvins-trial-george-floyds-death/story?id=76395755

But the other pilot jury trials that were held in Minnesota at the same time as Bell's trial are a good guide of what was reasonable. And these trials demonstrate that even all of these safety measures were no guaranty of safety. Hennepin County's first pilot jury trial "resulted in quarantine for the Hennepin County district judge presiding over it, after a member of her staff tested positive for the coronavirus." Star Tribune June 11, 2020.[19] "For State Public Defender Bill Ward, the incident 'certainly sheds light on how scary this is.'" Id. Other jury trials resulted in mistrials when "people had symptoms after the trials had begun...." ABC News March 24, 2021.[20] The same was true in Federal court in Minnesota, despite similar courtroom renovations and similar space limitations.[21]

Bell's attempt to resurrect his two-way video argument as a less restrictive alternative to one-way video should also be rejected. No court has held that two-way video is required by Waller. No court has even held that two-way video is a less restrictive alternative to one-way video. One court found that audio-only was unsupported by the record in that case because it was not visual, but suggested that a live-

[19] www.startribune.com/first-hennepin-county-jury-trial-since-pandemic-results-in-quarantine-for-judge-and-her-staff/571165002/

[20] https://abcnews.go.com/US/pandemic-looms-derek-chauvins-trial-george-floyds-death/story?id=76395755

[21] "As cases hit the highest levels seen in Minnesota late last year, a juror in a criminal trial tested positive after coming down the symptoms. 'We stopped the trial for a period and had all the other jurors get tested, and two of them tested positive,' Tunheim said. 'We were able to just barely eek it over the line. If we'd had another juror test positive, it would have been tough to finish the trial.'" https://.com/news/courts-prepared-to-address-potential-covid-19-outbreaks-as-chauvin-trial-starts/6053857/

stream video to a different room would be constitutionally sufficient. United States v. Allen, 34 F.4th 789, 799–800 (9th Cir. 2022) (audio-only by phone violated right to public trial under those circumstances, but a live-streamed video to a separate room would probably not).

The public health crisis created by the COVID-19 pandemic established good cause to limit who could be in the courtroom. And the district court's adherence to the limitations in the approved Scott County Jury Trial Plan was reasonable in light of the COVID-19 risk at the time. The district court should be affirmed.

CONCLUSION

It's easy to forget the Plexiglas barriers, and the tape on the floor governing where you could stand. It's easy to forget that we didn't know how COVID spread, or how deadly it was, and to whom. It's easy to forget that we disinfected doorknobs, and wore masks, and ran out of hand sanitizer and toilet paper. It's easy to forget that we weren't always good at Zoom court because there was no Zoom court.[22] And it was in that early stage of the pandemic that Bell's trial was held in Scott County.

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[22] "Even after video conferencing became widely available, the need for extensive use of this technology in our judicial system was not present until the onset of COVID-19…." Vazquez Diaz v. Commonwealth, 167 N.E.3d 822, 837 (Mass. 2021). See also [www.youtube.com/watch?v=TDNP-SWgn2w] ("I'm here live, I'm not a cat.").

The COVID-19 pandemic is not a monolithic event. Its impact on the court system has fluctuated with many factors, including what was known about the virus at the time. Under the circumstances of this case, Bell's right to a public trial was vindicated and his conviction should be affirmed.

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Date: Dec. 14, 2022

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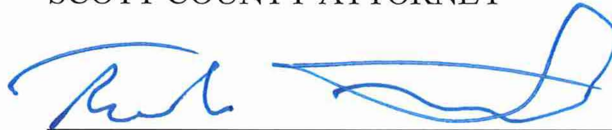

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