2025 IL App (4th) 240915-U

NO. 4-24-0915

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
May 22, 2025
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
JAMAR RAUL CORREA,	)	No. 17CF863
Defendant-Appellant.	)	
	)	Honorable
	)	John Casey Costigan,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Lannerd and Cavanagh concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding defendant had not established a clear or obvious error pertaining to his sixth amendment (U.S. Const., amend. VI) right to a public trial.

¶ 2 Following a jury trial, defendant, Jamar Raul Correa, was found guilty of three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)) and sentenced to three consecutive terms of 14 years in prison. Defendant appeals, arguing the trial court denied him the right to a public trial by forcing his family members to leave the courtroom during the testimony of the minors. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Charges

¶ 5 In August 2017, a grand jury returned an indictment charging defendant with three counts of predatory criminal sexual assault of a child (*id.*) and one count of aggravated criminal

sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)). The alleged victims were the children of defendant's ex-girlfriend, Shirline D. Specifically, the victim of the three counts of predatory criminal sexual assault was E.A. (born May 2007), and the victim of the aggravated criminal sexual abuse count was J.D. (born March 2006). The conduct involving E.A. was alleged to have occurred between May 5, 2014, and May 5, 2015, and the conduct involving J.D. was alleged to have occurred between March 5, 2013, and March 5, 2014. The sexual abuse charge involving J.D. was later severed on motion of defendant and then, following a trial on the sexual assault charges involving E.A., nol-prossed by the State.

¶ 6 B. Pretrial Proceedings

¶ 7 The State filed a pretrial motion, seeking to introduce evidence at defendant's trial of other sex offenses allegedly committed by defendant pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.3 (West 2018)). In part, the State sought to present testimony from another child of Shirline D., D.B. (born September 2004), about sexual conduct committed against D.B. by defendant in Kane County. The State explained D.B.'s disclosure of the conduct led to a similar disclosure by E.A. The State also indicated D.B.'s disclosure resulted in a criminal case being filed against defendant in Kane County, which was pending at the time of defendant's trial in this case. Following a hearing, the trial court granted the State's motion and allowed the testimony of D.B. at defendant's trial.

¶ 8 C. Jury Trial

¶ 9 In February 2019, the trial court held a jury trial on the sexual assault charges involving E.A. Defendant was represented by counsel at the trial.

¶ 10 At the outset of the proceeding, the trial court, when discussing the pending plea offers with defendant, noted, "In these types of cases, *** the State certainly *** has an interest

in protecting the alleged victims from having to come into court and testify, from having to go ahead and go through this process." Defendant ultimately rejected the plea offers.

¶ 11 Before the State presented its witnesses, it moved to exclude witnesses and requested the courtroom be "closed" during the testimony of E.A. and D.B.:

> "[THE STATE]: *** The State would be moving to make a motion to exclude witnesses. Also, the State is requesting that the courtroom be closed for the testimony of the victims in the case, the minor victims in the case. We are asking for during the minor victims' testimony that [Sophia D.], [Christian D.] and Kay (inaudible) be allowed to stay in the courtroom. None of those are listed witnesses.
>
> THE COURT: Any objection ***?
>
> [TRIAL COUNSEL]: The motion to exclude witnesses, I join in. I don't have a position on the exclusion of the general public during the children's testimony.
>
> THE COURT: All right. The court understands the motion to exclude witnesses will be allowed. The motion to exclude or to close the courtroom except for media, except for the representatives for the minor victims, will be allowed as well. So those individuals will be allowed to stay. Otherwise the courtroom will be closed for the minor victims.
>
> Anything further for the State before we bring in the jurors ***?
>
> [THE STATE]: No Your Honor.
>
> THE COURT: *** [A]nything for the defense before we get started?
>
> [TRIAL COUNSEL]: The defendant has a concern that the individuals that would be present during the testimony of the children might go out and

communicate with other witnesses about the substance of what the children say. I have no reason to believe that would be the case, but I want the record to reflect that the defendant is raising this as a concern.

THE COURT: All right. [The State] will instruct her witnesses not to go ahead and communicate this to, what the children have said to representatives. So—

[THE STATE]: I don't anticipate that being a problem, but can I have two seconds?

THE COURT: You may.

[THE STATE]: Your Honor, I communicated directly with everyone but [Christian D.]. He's downstairs right now changing a diaper. I've informed the [Children's Advocacy Center] staff to inform him.

THE COURT: Thank you."

¶ 12 The State, after presenting testimony from an adult witness, indicated it would call E.A. as its next witness. At that point, the following discussion was held at the bench:

"THE COURT: She's a minor at this point so this is where we are asking the courtroom be closed?

[THE STATE]: Yes.

THE COURT: You've got how many representatives?

[THE STATE]: Three. Tammy, Sophia and Christian. Two of them are here.

THE COURT: You can let them know they can stay. Otherwise—"

The following discussion then occurred in the presence of the jury:

"THE COURT: Ladies and gentlemen, the court is going to close the courtroom at this point in time and I'm going to ask, unless you're a representative

who has been allowed to stay, that you wait out in the hall, please.

SPECTATOR: Your Honor—

THE COURT: Unless you've been given previous permission to stay, ma'am, I'll need you to wait out in the hall for the next couple of witnesses.

SPECTATOR: Okay.

THE COURT: I'll need you to wait out in the hall please, ma'am."

The jury then heard from E.A.

¶ 13 After E.A.'s testimony, the following discussion was held at the bench:

"[THE STATE]: One of the other minors.

THE COURT: So leaving the courtroom closed?

[THE STATE]: Yeah."

The jury then heard from D.B., after which the court fully opened the courtroom.

¶ 14 At the conclusion of the trial, the jury found defendant guilty of all three counts of predatory criminal sexual assault of a child.

¶ 15 Throughout the trial, the trial court repeatedly admonished the jury not to review any media associated with the case. At one point, the court noted the following when addressing the parties: "The court is, even though it has admonished the jury a number of times, has seen a reporter in here so I do want to admonish them one more time not to review any media overnight."

¶ 16 D. Posttrial Proceedings

¶ 17 Defendant, through his trial counsel, filed a timely motion for judgment notwithstanding the verdict or, in the alternative, a motion for a new trial. In addition, defendant filed multiple *pro se* motions, one of which raised a challenge to the trial court's exclusion of his mother and other relatives from the courtroom during the testimony of the minors. Defendant's

counsel later adopted defendant's argument concerning the exclusion of his family members.

¶ 18 The trial court, after continuing the matter until the supreme court issued its decision in *People v. Schoonover*, 2021 IL 124832, conducted a hearing on defendant's posttrial motion. During the hearing, the court received an excerpt of the trial transcripts and, over the State's objection, heard testimony from defendant's mother, Theresa Correa, and brother, Javar Correa.

¶ 19 Theresa testified she was present at trial with her husband and Javar and stated:

> "Well, the court went on, and then when the kid witnesses were coming to the stand they asked to clear the courtroom. And of course I didn't think that they were speaking of me, because, I mean, that is my son and I am his support system. But then the judge said again, we need to clear the courtroom. And I stood up and I was, like, Your Honor, I am his mother. And then the bailiff came to me and he just basically, like, come on, let's go. We have to clear the courtroom."

Theresa further testified she returned to the courtroom "[a]fter the kid left the stand." Javar, in turn, testified he was present at trial with Theresa and his stepfather and stated:

> "[A] [correctional officer (CO)] had approached me and my mother exclusively, and told us that if you weren't a part of the case or had any interest, or you weren't family, you had to be excluded out of the courtroom. They also guarded the door the whole time, the potential alleged victim—the youth victim was testifying the whole time. We actually weren't allowed to even see through the windows, because there was two guys standing outside the door the whole time supervising until they finished their testimony, in which afterwards we were admitted back in."

When asked if he was aware the court made a ruling regarding the exclusion of persons from the

courtroom, Javar testified:

> "We were approached by COs exclusively and were told, if we were not family, or had the best interest of the case we had to be excluded. In which, as I said, we were very confused, because we are his support system. I am probably one of the backbones to his case. I've been supportive since it started, sending him case laws. Anything sufficient to help his case out, I've been there."

¶ 20 Based upon the testimony and the record, defendant argued, in part, the trial court denied him the right to a public trial by forcing his family members to leave the courtroom during the testimony of the minors. Defendant specifically asserted the court erroneously excluded family members who had a direct interest in the case during the testimony of the victim, E.A., and then erroneously extended that exclusion through the testimony of a propensity witness, D.B. The State, in response, argued defendant had waived or, alternatively, forfeited the issue. The State further argued the issue should be viewed based upon the facts before the court at the time of the exclusion, which, it asserted, showed an absence of error. The State contended defendant's alternative approach would encourage a defendant to "idly sit by and say nothing while his family members exit the courtroom, and if the trial doesn't go in his favor then he can subsequently make these claims." In reply, defendant "acknowledge[d] that there was a forfeiture" but maintained there was no "waiver."

¶ 21 The trial court, after considering the evidence and arguments presented, denied defendant's posttrial motion. With respect to defendant's claim concerning the exclusion of his family members, the court ruled as follows:

> "First of all, with regard to the minor other than the victim in this case. [Section 115-11 of the Code (725 ILCS 5/115-11 (West 2018))] was enacted to protect these

minor victims so they would be able to come in and testify during the course of a trial. And it was enacted to protect these minors. And that's what the purpose behind the statute is. And here, to go ahead and say, well, we can have victims come in and testify and close the courtroom but not witnesses who are minors, quite frankly would just sidestep what the legislature in the Court's view was trying to do here in terms of the statute, in terms of protecting minors and their ability to come in and testify in the courtroom. Court thinks that [section] 115-11 not only applies to victims, but the—the word victims can include other people, other than the person whose [*sic*] named in the bill of indictment. And the Court thinks it was appropriate for that person—for it to be closed as well.

With regard to the closure of the defendant's family. There's been some testimony here today. I—Mr. Javar Correa testified. I do recall the closure being—or the courtroom being closed. I don't specifically recall it happening the way that was indicated there. I have no doubt that there were deputies outside the courtroom, that once the courtroom was closed, to prevent people from coming in, or prevent people from looking through the windows. I have no doubt that that probably was the case, in terms of that. But then again, that goes to the purpose behind the statute here, to protect the minor victims to come in and freely testify as to what allegedly occurred under the circumstances.

However, with regard to the exclusion of the family, the Court believes, and I understand that there's disagreement with this, that the Court did give the opportunity to call to the Court's attention, anybody who had an interest, who should be staying in the courtroom during the course of the minor's testimony in

> the case. And I think the record bears that out, in terms of the—whether there was objection to the closure of the courtroom. And if that wasn't the case, these cases generally draw attention from the public and from people coming in and out of the courtroom. And if it's not called to the Court's attention in terms of who's in the courtroom and who's allowed to stay, and who has an interest the case, then the Court would be left in a position to where I would have to inquire of every member of the public who is the in courtroom in terms of what their interest is in the case. It has to be called to the Court's attention. It wasn't called to the Court's attention in terms of somebody who had a right to stay in the courtroom for the hearing. The Court thinks that it appropriately closed the courtroom."

¶ 22 After denying defendant's posttrial motion, the trial court conducted a sentencing hearing. Based upon the evidence and arguments presented, the court sentenced defendant to three terms of 14 years in prison, to be served consecutively.

¶ 23 Defendant, through trial counsel, filed a timely motion to reconsider his sentence. In addition, defendant filed a *pro se* motion to vacate the judgment, raising an ineffective assistance of counsel claim. Following a hearing, the trial court denied defendant's motions, and defendant appealed.

¶ 24 E. Initial Appeal

¶ 25 On appeal, defendant argued the trial court (1) failed to properly conduct a full *Krankel* inquiry (*People v. Krankel*, 102 Ill. 2d 181 (1984)) and (2) denied him the right to a public trial by forcing his family members to leave the courtroom during the testimony of the minors. *People v. Correa*, 2023 IL App (4th) 220493-U, ¶ 3. This court agreed with defendant's first argument and remanded the case for the limited purpose of conducting a new *Krankel* inquiry. *Id.*

¶ 17. As a result, we declined to address defendant's second argument on appeal but retained jurisdiction of it. *Id.* ¶ 18.

¶ 26 F. Remand Proceedings

¶ 27 Following our remand, the trial court appointed defendant new counsel, and defendant, through new counsel, filed a motion asserting ineffective assistance of trial counsel. Amongst other reasons, defendant asserted trial counsel provided ineffective assistance by failing to object to the removal of interested persons who had the right to remain within the courtroom.

¶ 28 In addition to his motion asserting ineffective assistance of counsel, defendant filed a *pro se* "Motion to Certify bystanders report." In his motion, defendant asserted he was seeking to "supplement" the record due to "material omissions, inaccuracies, and improper authentication." Amongst other things, defendant sought to alter the statement made by the unidentified spectator at the time the trial court advised those present at trial that they would have to leave the courtroom. Specifically, defendant sought to amend the statement to read: "Spectator—Your [H]onor 'I'm the defendants [*sic*] mother.' " In support of the requested alteration, defendant attached a statement and affidavit of his brother, Javar, an affidavit of his stepfather, Homer Rouse, and an affidavit of his mother, Theresa. According to Javar, he was in the courtroom when "the Judge and a [CO]" instructed people to leave and the "direct words" of Theresa were, " 'But Your Honor I'm His Mother.' " According to Rouse, Theresa stated to the judge, "[Y]our [H]onor that's my son, why do I have to leave, I'm his mother." And finally, according to Theresa, she said to the judge, " 'Your Honor why do I have to go—this is my son, I am his mother?' "

¶ 29 In April 2024, the trial court conducted a hearing on defendant's motion asserting ineffective assistance of trial counsel. During the hearing, the court heard testimony from defendant and defendant's trial counsel.

¶ 30 Defendant's trial counsel, when asked about defendant having concerns about his family members being removed from the courtroom, testified, "Well, at the time that the Court ruled on that motion from the State, I don't think there was anyone who voiced any concern." When asked if he recalled whether defendant's family members were removed from the courtroom, counsel testified:

> "You know, I acknowledge that they probably were, although I was seated in a location similar to where you are seated. My attention was focused forward, not backward. And I didn't know who was present in the courtroom at the time. I hadn't taken any accounting of that. But his family was very diligent about attending court proceedings. So I don't doubt that someone from members of his family were present."

When asked if anyone from defendant's family brought to counsel's attention a concern about being removed "before actually being removed," counsel testified:

> "After the fact, someone mentioned that they—I think it was his mother mentioned that she was excluded and that she objected to that. And there was a transcript of that point in the trial. And I think the court reporter refers to a spectator who interjected a concern, and whoever that was, the spectator, which I acknowledge could have been and probably was his mother, was told that she would need to leave the courtroom."

When asked if he would have taken additional steps to ensure defendant's mother would remain in the courtroom had he known she was present, counsel testified:

> "I think I probably would have or at least would have addressed it further with the Court. I think the record reflects that when the motion was initially made,

> what I said in response was I didn't object to the general public being excluded. I didn't concede that the family should be excluded. However, I probably could have done more in that regard. I probably could have raised that issue at that point in time, and I didn't."

¶ 31 Based upon the testimony and record, defendant argued, in part, trial counsel provided ineffective assistance by not ensuring his family members were not removed from the courtroom at trial. Defendant noted trial counsel admitted it "probably likely was his mother [who] was removed from the courtroom." The State, in response, argued counsel's performance did not amount to ineffective assistance.

¶ 32 The trial court, after considering the evidence and arguments presented, denied defendant's motion asserting ineffective assistance of trial counsel. In rejecting defendant's claim concerning the failure to object to the removal of interested persons from the courtroom, the court noted neither defendant nor his counsel directed the court to individuals in the courtroom whom defendant desired to remain in the courtroom. The court also noted it did not delay the trial to allow an unknown spectator to address the court during the removal of the spectators. The court concluded:

> "If Defendant wanted his family to remain in the courtroom and listen to the [minors] testify as to the assault, he ha[d] ample opportunity to express that to his attorney or the Court. He did neither. Finally, it is reasonable that this is the exact testimony Defendant would not want him [*sic*] family members to hear. The issue needed to be raised so Counsel could raise it with the Court. It was not. Court does not find a *Strickland* [(see *Strickland v. Washington*, 466 U.S. 668 (1984))] violation with this issue."

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 On appeal, defendant, as he did in his initial appeal, argues the trial court denied him the right to a public trial by forcing his family members to leave the courtroom during the testimony of the minors. Specifically, defendant argues the trial court's act of forcing his family members to leave the courtroom resulted in a violation of his sixth amendment (U.S. Const., amend. VI) right to a public trial because it was done outside the authority granted by section 115-11 of the Code (725 ILCS 5/115-11 (West 2018)) and without performing the constitutionally required balancing test set forth in *Waller v. Georgia*, 467 U.S. 39, 48 (1984). Defendant maintains this issue has been "fully preserved" but asserts, to the extent it is forfeited, it is reviewable under either the constitutional-issue exception or the plain-error doctrine, as a matter of second-prong plain error.

¶ 36 The State, in response, argues defendant has waived the issue presented in this appeal through his actions and those of his trial counsel at trial, and, because he is not pursuing his related claim of ineffective assistance on appeal, this court should decline to review the issue. Alternatively, the State argues defendant has forfeited the issue by failing to raise it at trial, the issue is not reviewable under the constitutional-issue exception, and defendant has not established a clear or obvious error under the plain-error doctrine.

¶ 37 A. Standard of Review

¶ 38 This appeal presents questions of law subject to *de novo* review. Specifically, the primary question before this court is whether defendant's constitutional right to a public trial was violated. See *Schoonover*, 2021 IL 124832, ¶ 19 ("Whether an individual's constitutional rights have been violated is subject to *de novo* review."). In addressing that question, we are also

presented with questions of statutory construction concerning section 115-11. See *id.*; see also *People v. Stewart*, 2022 IL 126116, ¶ 13 ("The construction of a statute is a question of law that is reviewed *de novo*."). Additionally, we are presented with questions concerning the applicability of the doctrines of waiver and forfeiture, as well as the applicability of certain exceptions to the doctrine of forfeiture. See *People v. Brown*, 2020 IL 125203, ¶ 25 ("A claim of forfeiture raises a question of law, which this court reviews *de novo*."); *People v. Johnson*, 238 Ill. 2d 478, 485 (2010) ("The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law that is reviewed *de novo*.").

¶ 39 B. Waiver

¶ 40 The State argues defendant has waived the issue presented in this appeal through his actions and those of his trial counsel at trial, and, because he is not pursuing his related claim of ineffective assistance on appeal, this court should decline to review the issue. Defendant disagrees.

¶ 41 "[W]aiver is the voluntary relinquishment of a known right." *People v. Phipps*, 238 Ill. 2d 54, 62 (2010). It arises from an affirmative, consensual act consisting of an intentional relinquishment or abandonment of a known right. *Id.*; see *Center Partners, Ltd. v. Growth Head GP, LLC*, 2012 IL 113107, ¶ 66. In determining whether an issue has been waived, "courts examine the particular facts and circumstances of the case." *Phipps*, 238 Ill. 2d at 62. "Waiver principles are construed liberally in favor of the defendant." *Id.*

¶ 42 In this case, neither defendant nor his trial counsel agreed to the exclusion of defendant's family members from the courtroom during the testimony of the minors. The record shows, before the State presented its witnesses, it moved to exclude witnesses, requested the courtroom be "closed" during the testimony of the minors, and requested certain representatives

of the minors to be allowed to remain in the courtroom. Defendant's counsel, in response, expressly joined in the motion to exclude witnesses but indicated he was not taking a position on the exclusion of the general public during the minors' testimony. The trial court granted the State's motions and noted only the media and the representatives for the minors would be allowed to stay in the courtroom during the minors' testimony. The State's second witness was the alleged victim, E.A., and the court excluded those from the courtroom who did not have permission to stay. A spectator sought to talk, and the court replied, unless the spectator had been given permission to stay, the spectator had to leave. The spectator complied. After E.A.'s testimony, another minor, D.B., testified. The court then fully opened the courtroom. While, as discussed below, defendant and his counsel sat idly by during the exclusion of the spectators, including his alleged family, from the courtroom, we find such conduct does not amount to an affirmative, consensual act consisting of an intentional relinquishment or abandonment of a known right.

¶ 43 The State, in support of its argument, cites several cases wherein the reviewing courts found the defendants waived their right to challenge a lower court's ruling. See *People v. Godinez*, 91 Ill. 2d 47, 57 (1982); *People v. Page*, 2022 IL App (4th) 210374, ¶ 27; *People v. Stewart*, 2018 IL App (3d) 160205, ¶ 20; *People v. Dunlap*, 2013 IL App (4th) 110892, ¶ 11; *People v. Stephens*, 2024 IL App (4th) 230144-U, ¶¶ 63-64; see also Ill. S. Ct. R. 23 (eff. Feb. 1, 2023) (providing "a nonprecedential order entered under subpart (b) of this rule on or after January 1, 2021, may be cited for persuasive purposes"). We find each of the cases cited by the State are distinguishable from the present case. Initially, with respect to the 1982 Illinois Supreme Court case, that case preceded our courts clarifying the dichotomy between the doctrines of waiver and forfeiture, and a review of the case demonstrates the defendant had forfeited rather than waived the issue by failing to object. *Godinez*, 91 Ill. 2d at 57; see *People v. Hughes*, 2015 IL 117242,

¶ 37 (recognizing the terms forfeiture and waiver "have been used interchangeably at times, particularly in the criminal context, despite representing distinct doctrines"); *People v. Brown*, 2020 IL 125203, ¶ 25 (observing "the terms forfeiture and waiver have been used at times interchangeably, and often incorrectly, in criminal cases"). As for the various appellate court cases, each of them involved the defendants making some affirmative statement agreeing to the lower court's rulings. See *Page*, 2022 IL App (4th) 210374, ¶ 26; *Stewart*, 2018 IL App (3d) 160205, ¶ 20; *Dunlap*, 2013 IL App (4th) 110892, ¶ 11; *Stephens*, 2024 IL App (4th) 230144-U, ¶ 64. In this case, neither defendant nor his trial counsel made an affirmative statement agreeing to the exclusion of defendant's family members from the courtroom during the testimony of the minors.

¶ 44 Accordingly, we reject the State's argument that the issue presented in this appeal has been waived and, therefore, find the fact defendant has not pursued his related claim of ineffective assistance on appeal is of no consequence.

¶ 45 C. Forfeiture

¶ 46 The State alternatively argues defendant has forfeited the issue presented in this appeal by failing to raise it at trial. Defendant disagrees.

¶ 47 Generally, "[t]o preserve an issue for review, a defendant must object at trial and raise the alleged error in a written posttrial motion." *People v. Reese*, 2017 IL 120011, ¶ 60. The failure to do either results in forfeiture. *People v. Sebby*, 2017 IL 119445, ¶ 48. These principles have been found applicable to a challenge to an exclusion of spectators from the courtroom. See *Schoonover*, 2021 IL 124832, ¶¶ 21-23.

¶ 48 In this case, defendant did not object at trial to the exclusion of his family members from the courtroom during the testimony of the minors, instead raising the issue for the first time in his posttrial motion. Defendant, on appeal, contends the issue is nevertheless preserved

based upon the "contemporaneous objection" by his mother at trial. We reject defendant's contention. Initially, the trial transcripts do not show any objection from defendant's mother. See Ill. S. Ct. R. 329 (eff. July 1, 2017) ("The record on appeal shall be taken as true and correct unless shown to be otherwise and corrected in a manner permitted by this rule."). On this point, we note defendant apparently elected not to pursue his *pro se* post remand attempt to correct or supplement the record to show such an objection. Moreover, defendant does not cite any authority to support the proposition that a spectator to a trial has standing to object on behalf of a defendant to the exclusion of spectators from the courtroom. Our supreme court, in finding a defendant's challenge to an exclusion of spectators from the courtroom forfeited, cited the general rule that " '*a defendant* must object to the error at trial and raise the error in a posttrial motion.' " (Emphasis added.) *Schoonover*, 2021 IL 124832, ¶ 22 (quoting *Sebby*, 2017 IL 119445, ¶ 48). Finding no trial objection from defendant, we find the issue is forfeited.

¶ 49 D. Review Under the Constitutional-Issue Exception

¶ 50 Defendant asserts, despite his forfeiture, the issue presented in this appeal is reviewable under the constitutional-issue exception. The State disagrees.

¶ 51 Under the constitutional-issue exception, "constitutional issues which have properly been raised at trial and which can be raised later in a post-conviction hearing petition" may be considered on the merits despite a defendant's failure to raise those issues in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 190 (1988). This exception arises from the fact that "[i]f a defendant were precluded from raising a constitutional issue previously raised at trial on direct appeal, merely because he failed to raise it in a posttrial motion, the defendant could simply allege the issue in a later postconviction petition." *People v. Cregan*, 2014 IL 113600, ¶ 18.

¶ 52 In this case, as previously indicated, defendant did not object at trial to the exclusion

of his family members from the courtroom during the testimony of the minors. Absent such an objection, the issue was not properly raised at trial. The issue, therefore, is not reviewable under the constitutional-issue exception.

¶ 53 E. Review Under the Plain-Error Doctrine

¶ 54 Defendant also asserts, despite his forfeiture, the issue presented in this appeal is reviewable under the plain-error doctrine as a matter of second-prong plain error. The State argues defendant has not established a clear or obvious error under the plain-error doctrine.

¶ 55 The plain-error doctrine provides a "narrow and limited exception" to the general rule of forfeiture. *People v. Jackson*, 2020 IL 124112, ¶ 81. Under the plain-error doctrine, a reviewing court may consider an unpreserved issue

> "when a clear or obvious error occurred and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant (first-prong plain error) or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process (second-prong plain error)." *Schoonover*, 2021 IL 124832, ¶ 27.

The defendant bears the burden of persuasion in establishing plain error. *People v. Wilmington*, 2013 IL 112938, ¶ 43.

¶ 56 Our first step under the plain-error doctrine is to determine whether there has been a clear or obvious error. *People v. Jackson*, 2022 IL 127256, ¶ 21. Again, defendant argues the trial court's act of forcing his family members to leave the courtroom during the testimony of the minors denied him his sixth amendment right to a public trial. Specifically, defendant asserts the court's act resulted in a public-trial violation because it was done outside the authority granted by section 115-11 and without performing the constitutionally required balancing test set forth in

Waller.

¶ 57 The sixth amendment guarantees a criminal defendant the right to a public trial. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. "[T]he right to a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions." (Internal quotation marks omitted.) *Schoonover*, 2021 IL 124832, ¶ 43. This right also "encourages witnesses to come forward and discourages perjury." *Id.* "Closure of a trial or courtroom is not entirely prohibited, nor does every closure violate the sixth amendment, as the right of access to criminal trials is not absolute." *Id.* ¶ 44.

¶ 58 We begin with defendant's assertion that the trial court acted outside the authority granted by section 115-11. We do so because our supreme court has held "section 115-11 to be constitutional and exclusionary orders to be valid where the order meets the requirements of the statute." *Id.* ¶ 41 (citing *People v. Falaster*, 173 Ill. 2d 220, 228 (1996)). Stated differently, the sixth amendment right to a public trial is not offended if a trial court excludes individuals from its courtroom in compliance with section 115-11.

¶ 59 Section 115-11 provides:

> "In a prosecution for [certain sex offenses, including predatory criminal sexual assault of a child (720 ILCS 5/11-1.40 (West 2014))], where the alleged victim of the offense is a minor under 18 years of age, the court may exclude from the proceedings while the victim is testifying, all persons, who, in the opinion of the court, do not have a direct interest in the case, except the media." 725 ILCS 5/115-11 (West 2018).

A trial court, in making a determination under section 115-11, must "formulate an opinion as to whether the spectators being excluded have a direct interest in the case." *Schoonover*, 2021 IL 124832, ¶ 40. This opinion, at least at the time it was rendered in this case, need not be expressed on the record. *Id.*; but see Pub. Act 102-994 (eff. May 27, 2022) (amending section 115-11 following the supreme court's decision in *Schoonover* to state "[t]he court shall enter its finding that particular parties are disinterested and the basis for that finding into the record").

¶ 60 In this case, the trial court first excluded spectators from the courtroom during the testimony of E.A. In accordance with section 115-11, the exclusion occurred in a prosecution for a qualifying offense while the alleged minor victim of the offense was testifying and did not include the media. Defendant contends the court's action nevertheless was outside the authority granted by section 115-11 because the court removed his mother and other close relatives over their protests and without forming an opinion as to their interests in the trial. We reject defendant's contention. At the time of the exclusion, the court was presented with no objection and no information indicating the spectators in the courtroom were defendant's family. To be sure, a spectator attempted to speak; however, we find no basis to conclude the court was *required* to pause the proceeding and inquire of the spectator where there had been no objection presented. Because we find our analysis must center upon the information before the court at the time of the exclusion, defendant's posttrial attempt to show his mother and other close relatives were in fact excluded from the courtroom is of no import. Based upon the information before the court at the time of the exclusion, we presume the court formulated an opinion in compliance with section 115-11 when it, without objection, excluded unidentified spectators from the courtroom. See *Schoonover*, 2021 IL 124832, ¶ 40 (presuming from a silent record that the trial court formulated an opinion). Accordingly, with respect to the exclusion of spectators during the testimony of E.A.,

we find the trial court complied with section 115-11 and its exclusion of spectators did not constitute a clear or obvious error depriving defendant of his sixth amendment right to a public trial.

¶ 61 In this case, the trial court also excluded spectators from the courtroom during the testimony of D.B. Defendant contends the court's action was outside the authority granted by section 115-11 because D.B. was not the victim of an offense charged in this case. We agree. As the State concedes, the court, in finding it had authority under section 115-11 to exclude spectators during the testimony of D.B., erroneously went beyond the plain and unambiguous language of the statute. Our supreme court has explained:

> "The best indicator of what the legislature intended in enacting a statute is simply the plain and ordinary meaning of the terms used by the legislature in the statute itself. *** When the legislature's chosen language is clear and unambiguous, courts must give effect to the statute as written and may not alter the legislature's intent by departing from the clear and unambiguous statutory language." *People v. Torres*, 2024 IL 129289, ¶ 31.

The plain and unambiguous language of section 115-11 provides it is applicable only when the victim of the offense for which the defendant is being tried is testifying. Because D.B. was not a victim of an offense for which defendant was being tried, the trial court acted outside the authority granted by section 115-11 when it excluded spectators during D.B.'s testimony. We note, while the court erroneously found it had authority under section 115-11 to exclude spectators during the testimony of D.B., it presented a persuasive argument for the legislature to consider extending section 115-11 to minor witnesses testifying pursuant to section 115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2018)).

¶ 62 Because the exclusion of spectators during the testimony of D.B. fell outside the authority granted by section 115-11, we next consider defendant's assertion that the trial court's failure to perform the balancing test set forth in *Waller* resulted in a violation of his right to a public trial. The State, in this respect, asserts the record shows the court acted in accordance with *Waller* even though it did not specifically engage in the analysis thereunder.

¶ 63 In *Waller*, 467 U.S. at 42, the trial court, *over the defendants' objections*, ordered a weeklong suppression hearing closed to all persons other than witnesses, court personnel, the parties, and the lawyers. On appeal, the United States Supreme Court instructed that "under the Sixth Amendment any closure of a suppression hearing *over the objections of the accused* must meet the" following test:

> "[T]he party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced, the closure must be no broader than necessary to protect that interest, the trial court must consider reasonable alternatives to closing the proceeding, and it must make findings adequate to support the closure." (Emphasis added.) *Id.* at 47-48.

See *Presley v. Georgia*, 558 U.S. 209, 214 (2010) (holding these standards apply before excluding the public from any stage of a criminal trial).

¶ 64 In this case, defendant, unlike the defendants in *Waller*, did not object to the trial court's exclusion of spectators during the testimony of D.B. As a result, we find the trial court was not required to perform the balancing test set forth in *Waller* before excluding the spectators from the courtroom. As our supreme court found in rejecting a similar claim in the context of a closure of a courtroom during jury selection without an objection from a defendant:

> "[U]nder defendant's approach, a new trial would automatically be required

whenever the trial court fails to strictly comply with the *Waller* factors before excluding any spectator from jury selection despite the lack of a contemporaneous objection. Defendant's faulty approach would be irrespective of the decision's impact on the fairness and openness of the proceeding, the reason for a defendant's lack of objection, and the fact that any possible error in partially closing the courtroom could have been cured had the defendant objected.

A contemporaneous objection is particularly crucial when challenging any courtroom closure. Defendant's arguments before us illustrate why. He criticizes the trial court for not making a more detailed finding of fact to support the closure and for not considering an alternative that would have allowed more members of the public to be present in the courtroom. Defendant fails to recognize that, if there is no objection at trial, there is no opportunity for the judge to develop an alternative plan to a partial closure or to explain in greater detail the justification for it. [Citation.] This need to lodge a contemporaneous objection to a courtroom closure also prevents a defendant from potentially remaining silent about a possible error and waiting to raise the issue, seeking automatic reversal only if the case does not conclude in his favor." *People v. Radford*, 2020 IL 123975, ¶¶ 36-37.

¶ 65 Upon reviewing the record, we find the trial court's exclusion of spectators during the testimony of D.B. did not constitute a clear or obvious error depriving defendant of his sixth amendment right to a public trial. Without objection, the court excluded the spectators from the courtroom when D.B., a minor sibling of the alleged victim in this case, testified about sexual conduct allegedly committed against her by defendant. At the time of the exclusion, the spectators had no apparent direct interest in the case. Furthermore, the court did not exclude media and,

following D.B.'s testimony, fully opened the courtroom for the remainder of the trial. See *Schoonover*, 2021 IL 124832, ¶ 46 ("By allowing the media to attend, a trial court preserves a defendant's right to a public trial."). With respect to the media, we note the record indicates the court repeatedly admonished the jury not to review any media associated with the case and, when later addressing the parties, indicated a reporter had been in the courtroom. Given these circumstances, we find the court's exclusion did not infringe on the protections conferred by the public trial guarantee.

¶ 66 In reaching this decision, we note both defendant and the State have cited this court's recent unpublished decision in *People v. Williamson*, 2024 IL App (4th) 230291-U. See Ill. S. Ct. R. 23 (eff. Feb. 1, 2023) (allowing citation of unpublished cases for persuasive purposes). In *Williamson*, 2024 IL App (4th) 230291-U, ¶¶ 36-37, this court reversed a defendant's conviction where the trial court excluded the public during the publication of a video-recorded interview of the minor victim, finding such action was done outside the authority granted by section 115-11 and without performing the balancing test set forth in *Waller*. Critically, the defendant in *Williamson* objected at the time of the exclusion. *Id.* ¶ 21. This fact makes *Williamson* distinguishable from the present case.

¶ 67 In summary, we conclude defendant has not established a clear or obvious error pertaining to his sixth amendment right to a public trial. As a result, we need not proceed further in our analysis under the plain-error doctrine.

¶ 68 III. CONCLUSION

¶ 69 For the reasons stated, we affirm the trial court's judgment.

¶ 70 Affirmed.