

SUPREME COURT OF NORTH DAKOTA

State v. Walbert

2021 ND 49 (2021) · No. 20200197 · Decided March 24, 2021

SUMMARY

The North Dakota Supreme Court affirmed Russell Walbert’s amended criminal judgment following his convictions for gross sexual imposition. The court held that temporarily restricting courtroom ingress and egress during the child victim’s testimony was a reasonable courtroom-management measure, not a courtroom closure requiring analysis under Waller v. Georgia, and therefore did not create structural error.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Daniel J. Crothers, Justice; Jon J. Jensen, Chief Justice; Gerald W. VandeWalle; Daniel J. Crothers; Lisa Fair McEvers; Jerod E. Tufte
JURISDICTION	North Dakota
DECIDED	March 24, 2021
DOCKET	20200197
DISPOSITION	affirmed
PROCEDURAL POSTURE	Russell Walbert appealed from an amended criminal judgment entered after a jury convicted him of four counts of gross sexual imposition. He argued that the district court violated his Sixth Amendment right to a public trial by restricting courtroom ingress and egress during the child victim's testimony.
STANDARD OF REVIEW	Whether the facts rise to the level of a constitutional violation is reviewed de novo.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential.
PARTIES	Russell Walbert v. State of North Dakota

TOPICS

- criminal procedure
- sixth amendment
- appellate procedure
- standard of review
- harmless error

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether restricting ingress and egress during a child victim's testimony constituted a closure of the courtroom implicating Walbert's constitutional right to a public trial.
2. Whether the district court was required to conduct the four-factor Waller analysis before imposing the restriction.
3. Whether the failure to conduct a Waller analysis constituted structural error requiring reversal.

HOLDINGS

1. The district court's limited restriction on entering and exiting the courtroom during the victim's testimony did not constitute a courtroom closure; it was a reasonable time-and-manner restriction imposed to minimize disruptions and maintain courtroom order.
2. Because the district court did not close the courtroom, it was not required to conduct the four-factor Waller analysis.
3. The district court's failure to conduct a Waller analysis did not constitute structural error, and the amended criminal judgment was affirmed.

KEY QUOTATIONS

“The district court’s actions here did not constitute a closure. Instead, the court restricted ingress and egress for a limited period to minimize disruptions during the child victim’s testimony.” (¶ 11)

“Because there was no closure, the district court was not required to engage in a Waller analysis.” (¶ 11)

FACTUAL BACKGROUND

During the victim's testimony at Walbert's jury trial for gross sexual imposition, the State asked the district court to prevent interruptions by restricting people from entering or exiting the courtroom. The court permitted spectators already present to remain, allowed them to leave if they wished, and barred new entrants until the testimony was completed. The record did not establish whether the doors were locked or whether anyone was actually prevented from entering.

PROCEDURAL HISTORY

Walbert was charged on July 3, 2019, waived a preliminary hearing, and proceeded to a jury trial on November 19, 2019. Before trial, the State requested that persons in the courtroom remain there and that no additional persons enter while the victim testified; Walbert agreed, and the court imposed the restriction without conducting a Waller analysis. The jury convicted Walbert, he was sentenced to prison, and he appealed from the amended criminal judgment.

DISPOSITION

affirmed

CASES CITED

- Waller v. Georgia, 467 U.S. 39, 48 (1984)
- State v. Morales, 2019 ND 206, ¶¶ 14-15, 932 N.W.2d 106
- In re Oliver, 333 U.S. 257, 270 (1948)
- Press-Enterprise Co. v. Superior Court of California, 478 U.S. 1, 7 (1986)
- State v. Rogers, 2018 ND 244, ¶ 3, 919 N.W.2d 193
- State v. Rende, 2018 ND 56, ¶ 8, 907 N.W.2d 361
- State v. Decker, 2018 ND 43, ¶ 8, 907 N.W.2d 378
- State v. White Bird, 2015 ND 41, ¶ 24, 858 N.W.2d 642
- State v. Martinez, 2021 ND 42, ¶ 3
- United States v. Lampley, 127 F.3d 1231, 1239 (10th Cir. 1997)
- Bell v. Evatt, 72 F.3d 421, 433 (4th Cir. 1995)
- Herring v. Meachum, 11 F.3d 374, 379-80 (2d Cir. 1993)
- People v. Esquibel, 82 Cal. Rptr. 3d 803, 814 (Cal. Ct. App. 2008)
- McCrae v. State, 908 So. 2d 1095, 1096 (Fla. Dist. Ct. App. 2005)
- State v. Caldwell, 803 N.W.2d 373, 390 (Minn. 2011)
- State v. Ware, 498 N.W.2d 454, 458 (Minn. 1993)
- State v. Stark, 334 P.3d 1196, 1201 (Wash. Ct. App. 2014)
- People v. Woodward, 841 P.2d 954, 959 (Cal. 1992)