

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 3, 2012

v

ALEXANDER CHRISTIAN BOWERS,

Defendant-Appellant.

No. 301811
Ingham Circuit Court
LC No. 10-000560-FC

AFTER REMAND

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

We previously remanded this case in order for the trial court to state on the record the factual findings upon which it concluded that the courtroom should be closed during the complainant's testimony. *People v Bowers*, unpublished opinion per curiam of the Court of Appeals issued January 24, 2012 (Docket No. 301811). We conclude that under the circumstances, the trial court did not violate defendant's right to a public trial.

We review de novo trial court decisions that invoke constitutional questions or statutory interpretations. *People v Rose*, 289 Mich App 499, 505; 808 NW2d 301 (2010). "However, this Court reviews for clear error the trial court's findings of fact underlying the application of constitutional law." *Id.* As we stated in our prior opinion:

Criminal defendants are constitutionally entitled to a public trial; this right may only be abrogated under limited circumstances. US Const, Am 6; *Waller v Georgia*, 467 US 39, 48-49; 104 S Ct 2210; 81 L Ed 2d 31 (1984). MCL 600.2163(a)(15) and (16) permit a party to move for special arrangements to protect the welfare of a witness; one such arrangement is to close the courtroom and exclude unnecessary parties during the witness's testimony. In order to do so, the trial court must make findings on the record to establish that the special arrangement is: (1) justified by the government's substantial interest (for partial closure) or a compelling interest (for total closure); and is (2) is narrowly tailored towards protecting the welfare of the witness. MCL 600.2163(a)(16); *People v Kline*, 197 Mich App 165, 168-171; 494 NW2d 756 (1992). Specifically, the court must weigh the following factors against the right of the accused to a public

trial: (1) the age of the witness; (2) the nature of the offense; and (3) the potential harm to the witness. *Id.* at 171.

On remand, the trial court stated:

The victim . . . was twelve years old at the time she testified. . . . She was eleven years old when the alleged acts occurred. And the alleged—well, the offense involved one count of criminal sexual conduct in the first degree involving sexual penetration against a child under the age of thirteen, the Defendant being an adult at that time. And the testimony was certainly expected and was, in fact, especially sensitive, and it would be difficult for the minor child, and the parents also requested it on behalf of the minor child.

* * *

So it was to protect the victim from further . . . embarrassment and shame from—you know, in testifying regarding sensitive issues in front of strangers.

The court also stated that it did not consider allowing the public to watch the complainant's testimony from outside the courtroom via closed circuit television, at least in part because no one requested such a measure.

The trial court addressed the three factors described in *Kline* and concluded that there were sufficient grounds to justify a partial closure of the courtroom. We do not find that the trial court clearly erred in its factual findings, and agree that under the circumstances as found by the trial court, it was permissible to close the courtroom during the complainant's testimony.

Affirmed. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro