No. 124832

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court
	)	of Illinois, Fourth Judicial District,
	)	No. 4-16-0882
Plaintiff-Appellant,	)	
	)	There on Appeal from the Circuit
	)	Court of the Sixth Judicial Circuit,
v.	)	Champaign County, Illinois
	)	No. 15 CF 1388
	)	
HAYZE L. SCHOONOVER,	)	The Honorable
	)	Thomas J. Difanis,
Defendant-Appellee.	)	Judge Presiding.

PLAINTIFF-APPELLANT'S REPLY BRIEF AND RESPONSE TO REQUEST FOR CROSS-RELIEF

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I. Defendant's Courtroom Closure Claims Are Forfeited.

Defendant forfeited his statutory and constitutional claims by failing to raise them both at trial and then again in a post-trial motion. *See* Peo. Br. 11-12[1]; *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) ("the presence of both a trial objection and a written post-trial motion raising the issue are necessary to preserve an issue for review"); *see also People v. McLaurin*, 235 Ill. 2d 478, 488-89 (2009) (emphasizing "the importance of uniform application of the forfeiture rule"). Defendant is therefore incorrect that he was not "required to invoke his right to a public trial," Def. Br. 8; *see, e.g.*, *People v. Radford*, 2020 IL 123975, ¶¶ 22-42 (finding public trial claim forfeited due to failure to object), and that "a formal objection by defense counsel was not necessary to preserve the [725 ILCS 5/115-11] issue for review," Def. Br. 12. Moreover, even if, as defendant asserts, *id.*, his request for clarification of the trial court's stated intent to partially close the courtroom, Vol. XIX at 3, could be construed as an adequate objection to the court's § 115-11 order or an assertion of his Sixth Amendment right to a public trial, defendant still did not preserve his courtroom closure claims because he failed to include them in his post-trial motion, *Enoch*, 122 Ill. 2d at 186.

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[1] Peo. Br. __," "A__," "Def. Br. __," "C__," "Vol.__ at __," and "Exh. __" refer to the People's opening brief, the People's appendix, defendant's brief, the common law record, the report of proceedings, and the exhibits, respectively.

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II. Defendant Failed to Make a Record that Satisfies His Burden to Prove that the Partial and Temporary Courtroom Closure Clearly and Obviously Exceeded the Scope of § 115-11 and Denied Him a Public Trial.

Defendant has failed to make a record that proves that the partial and temporary courtroom closure clearly and obviously (1) exceeded § 115-11's scope because it excluded the media or persons with a direct interest in the case; and (2) deprived defendant of his Sixth Amendment right to a public trial. Therefore, this Court should enforce defendant's forfeiture of his § 115-11 claim.

A. The record does not establish that the limited closure clearly and obviously exceeded § 115-11's scope.

Defendant failed to make a record that clearly and obviously shows noncompliance with § 115-11. Peo. Br. 16-20. The record does not prove that the media or directly-interested persons were excluded from the courtroom when M.L. first testified. *Id.* Absent this showing, defendant cannot establish that the courtroom closure plainly exceeded § 115-11's scope. *Id.*

Defendant concedes that (1) not all of his family members have a direct interest in the case, Def. Br. 9-11; (2) the record does not disclose which of his family members were present and which were excluded from the courtroom when M.L. first testified, *id.* at 13-14; (3) he had the opportunity to place this information on the record but did not, *id.* at 9-11; and (4) when a defendant does not "inform the court on the record when spectators wish to remain in the courtroom," a reviewing court may not "be able to determine if persons

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were excluded from the proceedings," *id.* at 9. Yet defendant argues that none of this matters because the trial court knew that he "wished for members of his family to be present" and failed to satisfy its "statutory duty to exercise discretion" by seeking more information to avoid error. *Id.* at 10-14. Defendant's position is untenable.

Section 115-11 permits a court to "exclude from the proceedings while the [minor] 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. The statute balances the competing interests of the minor victim, the public, and the defendant, by limiting the closure to persons other than those directly interested in the case and the media. *See* Peo. Br. 12-15. It focuses on who is excluded and is silent as to the process that a court should use in determining who should remain. Peo. Br. 21-22. Therefore, the statute is satisfied when the courtroom has not been closed to the media or persons with a direct interest in the case, regardless of how this result is reached. *See People v. Falaster*, 173 Ill. 2d 220, 228 (1996) (examining who was actually excluded from courtroom pursuant to court's order); *cf. People v. Hartfield*, 2020 IL App (4th) 170787, ¶¶ 48-49 (record insufficient to support defendant's public-trial claim because it did not show whether any spectators were actually excluded), *People's PLA allowed*, No. 126729 (Ill. Jan. 27, 2021). Indeed, in the cases that defendant cites, *see* Def. Br. 10-11 & nn.1 & 2, the courts refused to grant relief because the record did not establish that the

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defendant's immediate family members or other directly-interested persons had been excluded,[2] or granted relief because the record showed that the defendant's directly-interested family members were present at the courthouse, were not potential trial witnesses, and were actually excluded, *People v. Revelo*, 286 Ill. App. 3d 258, 266-67 (2d Dist. 1996). Thus, to meet the threshold showing of noncompliance with § 115-11, a defendant must make a sufficient record to establish that the media or directly-interested persons were actually excluded from the courtroom during the minor victim's testimony. Peo. Br. 16-22. Defendant concedes that he has not made this showing, Def. Br. 13-14, so his § 115-11 claim fails.

Contrary to defendant's suggestion, Def. Br. 9-11, § 115-11's plain language does not dictate how a trial court should determine who has a direct interest in the case, so the trial court may properly rely on the parties to

[2] *See Falaster*, 173 Ill. 2d at 228 (no error where defendant's nephews and a nephew's grandfather were excluded); *People v. Martinez*, 2021 IL App (1st) 172097, ¶¶ 48-56 (same where defendant failed to identify any directly-interested person who was improperly excluded and record showed that excluded persons were not his immediate family members); *People v. Burman*, 2013 IL App (2d) 110807, ¶¶ 5, 53-57 (same where defendant objected and stated reasons for objection, but presented no evidence that anyone was excluded from courtroom); *People v. Benson*, 251 Ill. App. 3d 144, 149-50 (4th Dist. 1993) ("defendant's vague reference to his collateral kin, neighbors, and acquaintances made no distinction between those possibly having a direct interest in the proceeding and those who did not" and was insufficient to show error); *People v. Niford*, 2016 IL App (2d) 140832-U, ¶¶ 68-70 (no error where "court cleared the courtroom," but "defendant made no record or offer of proof as to whom, if anyone was excluded"); *People v. Gambaiani*, 2016 IL App (2d) 140124-U, ¶¶ 16-17 (no error where defendant agreed to closure, trial court allowed defendant's father to remain, and defendant failed to show anyone was erroneously excluded).

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provide this information, Peo. Br. 21-22. Here, defendant had no fewer than three opportunities to identify the relationship and/or interest of his family members, but he remained silent — even after the prosecutor twice asked for members of the victim's family to stay — and he failed include the necessary information in a post-trial motion. *Id.* at 17-22. Defendant's request for clarification when the trial court stated its intent to partially close the courtroom did not, as defendant asserts, clearly express that he "wished for members of his family to be present during M.L.'s testimony," Def. Br. 11, and he concedes that he never identified his relationship to those family members on the record, *id.* at 13-14. Nor would it have been "foolishly redundant" for him to do so, *id.* at 11 (citing *Fullerton v. Robson*, 61 Ill. App. 3d 93, 97-98 (1st Dist. 1978)), because he never "properly made" his purported objection by expressing it "'in such a manner as to inform the court of the point being urged,'" *Fullerton*, 61 Ill. App. 3d at 97; *see* Peo. Br. 18-19.

Moreover, the trial court *did* exercise its discretion under § 115-11: in excluding them, the court necessarily concluded that defendant's unidentified family members did not have a direct interest in the case. As discussed, defendant failed to produce a record that affirmatively shows that this was incorrect, *i.e.*, he does not establish that the persons who were temporarily excluded from the proceedings were members of his immediate family or otherwise had a direct interest in the case. *Falaster*, 173 Ill. 2d at 228; Peo. Br. 19-20. Defendant thus cannot show that the closure clearly and obviously

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exceeded § 115-11's scope. Peo. Br. 19-20. Accordingly, because defendant fails to meet the threshold showing of noncompliance with § 115-11, his statutory claim fails.

B. Even if the closure plainly exceeded § 115-11's scope, defendant is not entitled to automatic reversal of his convictions.

The People's opening brief established that, although compliance with § 115-11 satisfies the Sixth Amendment, noncompliance with the statute is not sufficient in and of itself to warrant reversal of a conviction. Peo. Br. 12-16. Rather, to obtain relief, a defendant who has established that a closure exceeded § 115-11's scope must further demonstrate that it violated his Sixth Amendment right to a public trial. *Id.* at 15-16. Here, even if the partial and temporary courtroom closure did not comply with § 115-11, defendant fails to show that it deprived him of his Sixth Amendment right to a public trial. *See* Peo. Br. 20, 23-29; *infra*, Part III. Therefore, defendant has not established second-prong plain error and this Court should enforce defendant's forfeiture of his § 115-11 claim.

Defendant counters that strict compliance with § 115-11 is required and any noncompliance mandates automatic reversal. Def. Br. 13, 15-16, 18. But § 115-11 is a permissive, not mandatory, statute. *People v. Holveck*, 141 Ill. 2d 84, 102-03 (1990); *see also People v. Reed*, 177 Ill. 2d 389, 394-95 (1997) (use of word "may" is ordinarily permissive). "It does not prohibit anything, in and of itself. It does not mandate anything, either. It has no sanction for

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noncompliance. It is nothing more than an authorizing statute." *In re Jawan S.*, 2018 IL App (1st) 172955, ¶ 45 (discussing a different permissive statute); *see People v. Ousley*, 235 Ill. 2d 299, 311, 313-14 (2009) (permissive statute "refers to a discretionary power, which a governmental entity may exercise or not as it chooses" (quotation marks and citations omitted)). Thus, "nothing requires the trial court to follow [§ 115-11] to the letter." *Jawan S.*, 2018 IL App (1st) 172955, ¶ 46; *see also People v. Robinson*, 217 Ill. 2d 43, 52 (2005) (permissive statute "is merely a grant of permission or a suggestion, which therefore imposes no obligation"). Accordingly, if a courtroom closure deviates from § 115-11, then the defendant is entitled to reversal only if the deviation violated his Sixth Amendment right to a public trial. Peo. Br. 14-15, 23; *see, e.g.*, *People v. Latimore*, 33 Ill. App. 3d 812, 818-19 (5th Dist. 1975) (recognizing trial court's authority to close courtroom in sex offense prosecutions prior to § 115-11's enactment and that such authority is subject to constitutional limitations).

For his part, defendant identifies no authority that would support requiring strict compliance with § 115-11. He cites the Speedy Trial Act, 725 ILCS 5/103-5, *see* Def. Br. 16, but that statute is mandatory, not permissive, *People v. Staten*, 159 Ill. 2d 419, 424-29 (1994); *People v. House*, 10 Ill. 2d 556, 558 (1957). In addition, "a statutory speedy trial violation in itself is sufficient to require reversal," Def. Br. 16, because the Act dictates it, 725 ILCS 5/103-5(d) ("Every person not tried in accordance with [the statutory

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time limits] shall be discharged from custody or released from the obligations of his bail or recognizance."). And, unlike § 115-11, the legislature enacted the Act specifically to implement and give effect to the state constitutional provision. *People v. Stuckey*, 34 Ill. 2d 521, 523 (1966). Section 115-11 is thus not analogous to the Speedy Trial Act.

Moreover, defendant is incorrect that "the failure to meet [§ 115-11's] provisions would also result in failing to meet the constitutional test" because "this Court has stated that the constitutional standards are more stringent tha[n] the statutory provisions." Def. Br. 6, 16 (citing *Falaster*, 173 Ill. 2d at 228). The "more stringent limitations" apply to "instances in which the press *and* public are barred from judicial proceedings," *Falaster*, 173 Ill. 2d at 226, 228 (emphasis added), *i.e.*, to *total* courtroom closures, Peo. Br. 13-14, 25-26; *infra*, Part III. These limitations do not apply when a court closes a courtroom in compliance with § 115-11, because § 115-11 prohibits exclusion of the media and limits the breadth and duration of any closure. *Falaster*, 173 Ill. 2d at 227-28; Peo. Br. 13-14. Thus, if a trial court closes a courtroom in compliance with § 115-11, then the partial and temporary closure satisfies the Sixth Amendment. *Falaster*, 173 Ill. 2d at 227-28 (compliance with § 115-11 is sufficient to satisfy the Sixth Amendment); Peo. Br. 13-14. But that does not mean, as defendant argues, Def. Br. 6, 16, that the inverse is always true: as discussed above and in the People's opening brief, a closure that excludes the media and/or directly-interested persons will not comply with

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§ 115-11 but it may nevertheless satisfy the Sixth Amendment, Peo. Br. 13-15, 22-23, 28-29.

In fact, adopting defendant's strict compliance rule would unduly constrain the trial court's inherent authority to manage its courtroom, threatening the separation of powers, for it would mean that the court could never exclude the media or persons with a direct interest in the case, even if the circumstances warrant it and the Sixth Amendment would permit it. *See* Peo. Br. 13-14, 22-23.[3] Defendant responds that strict compliance with § 115-11 raises no separation of powers concerns because, like statutes that require bifurcated or speedy trials, a "court can plan ahead for the procedure." Def. Br. 17-18. But, unlike the bifurcated- and speedy-trial provisions, § 115-11 does not relate to the *scheduling* of trials. Rather, it concerns a court's inherent authority to manage the courtroom during the trial itself, which lies at the core of the trial court's judicial function. *See Flores*, 104 Ill. 2d at 49-50; *see also People v. Peterson*, 2017 IL 120331, ¶ 29 (citing *Kunkel v. Walton*, 179 Ill. 2d 519, 528 (1997), and *People v. Cox*, 82 Ill.

[3] Contrary to defendant's assertion, Def. Br. 16-17, the People did not forfeit their argument that construing § 115-11 "as supplanting or constraining the trial court's inherent authority to manage its courtroom and effectuate closures within constitutional limits when necessary would raise separation of powers concerns," Peo. Br. 14 (citing *People v. Flores*, 104 Ill. 2d 40, 50 (1984)). The argument is grounded in the canon of statutory construction that "[a] statute should be interpreted so as to avoid a construction which would raise doubts as to its validity," *Flores*, 104 Ill. 2d at 46, and "[c]anons of statutory construction cannot be forfeited because they are not arguments," *JPMorgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 462 (2010).

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2d 268, 274 (1980)). Strict compliance with § 115-11 would compel the trial court to include media and directly-interested persons in a courtroom during a minor victim's testimony, even when circumstances arise at trial that would require their exclusion to safeguard the defendant's right to a fair trial and preserve the integrity of the judicial process. *See Waller v. Georgia*, 467 U.S. 39, 45 (1984) (right to public trial may give way to other rights or interests, including defendant's right to a fair trial); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 564 (1980) ("conflicts between publicity and a defendant's right to a fair trial" are "'problems . . . almost as old as the Republic'" (citations omitted)); *see also* Peo. Br. 12-16, 22-23. For example, applying defendant's interpretation would preclude a court from exercising its "long-recognized" authority to exclude a defendant's immediate family members when they are potential trial witnesses, *Revelo*, 286 Ill. App. 3d at 266 (consistent with § 115-11, court may exclude potential witnesses, including defendant's immediate family members, to preserve integrity of judicial process), or disruptive, *see, e.g.*, *United States v. Sherlock*, 962 F.2d 1349, 1356-57 (9th Cir. 1992); *United States ex rel. Orlando v. Fay*, 350 F.2d 967, 970 (2d Cir. 1965).

Ultimately, defendant concedes that a trial court may close the courtroom in a manner broader than that contemplated by § 115-11. Def. Br. 16, 18. But he argues that if a court seeks to partially close a courtroom during a minor victim's testimony in a manner that is broader than the

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statute's terms, the court must "ignore section 115-11 completely," because a mere citation to § 115-11 in these circumstances warrants automatic reversal of the conviction. *Id.* However, a statute that is permissive does not become mandatory merely because a court relies on it. *See Robinson*, 217 Ill. 2d at 51-52; *Jawan S.*, 2018 IL App (1st) 172955, ¶¶ 45-46. Nor does a statute that provides no consequences for noncompliance warrant automatic reversal when a court chooses another path, unless the challenger demonstrates that the other path violates the Constitution. *See People v. Delvillar*, 235 Ill. 2d 507, 525-26 (2009) (Freeman, J., specially concurring); *Jawan S.*, 2018 IL App (1st) 172955, ¶ 46.

Accordingly, even if a defendant shows noncompliance with § 115-11, automatic reversal of a conviction is unwarranted unless the defendant establishes that the courtroom closure also violated his Sixth Amendment right to a public trial. Peo. Br. 12-16, 23. Here, even if the partial and temporary closure plainly exceeded § 115-11's scope, defendant fails to prove that it deprived him of his Sixth Amendment right to a public trial. *See* Peo. Br. 20, 23-29; *infra*, Part III. Therefore, defendant has not established second-prong plain error and this Court should enforce defendant's forfeiture of his § 115-11 claim.

III. Defendant Failed to Prove a Clear and Obvious Denial of His Sixth Amendment Right to a Public Trial.

Because defendant has not proved that the limited courtroom closure plainly failed to comply with § 115-11, *see* Peo. Br. 15-23; *supra*, Part II.A, he

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also has not established a clear and obvious Sixth Amendment violation, *see Falaster*, 173 Ill. 2d at 226-28 (compliance with § 115-11 is sufficient to satisfy the Sixth Amendment); Peo. Br. 15-23.

Regardless of § 115-11 compliance, however, defendant has failed to prove that the partial and temporary closure plainly deprived him of his Sixth Amendment right to a public trial. *See Radford*, 2020 IL 123975, ¶¶ 41-42. Contrary to defendant's assertion, Def. Br. 19-20, this Court has, consistent with the majority of courts, declined to apply the *Waller* test to closures that do not exclude *both* the public and press, where, like here, the defendant has failed to preserve the claim. *See* Peo. Br. 24-27. In *Falaster*, this Court held that the *Waller* test does not apply to a partial closure effectuated under § 115-11 because allowing the media to be present preserves the defendant's Sixth Amendment right to a public trial. 173 Ill. 2d at 227-28. And recently, in *Radford*, this Court rejected the defendant's request "to apply the same legal framework that would be applicable to review of a complete courtroom closure, over a defendant's timely objection," 2020 IL 123975, ¶ 36, reiterating that the presence of the media preserves the defendant's Sixth Amendment right, *id.* ¶ 40; *see also Richmond Newspapers,* 448 U.S. at 573 (observing that media "function[] as surrogates for the public"). Similar to those cases, defendant's trial "was not conducted in secret or in a remote place," *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1913 (2017), the media was not excluded, and M.L.'s grandmother, the

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attorneys, judge, court personnel, and jury were present for M.L.'s testimony. Peo. Br. 28.[4] The *Waller* test thus does not apply to the partial and temporary closure here.

Defendant also faults the trial court for not making adequate findings to support the closure. Def. Br. 20-21. But the trial court's invocation of § 115-11 and the temporary nature of the closure demonstrate that the court believed that the closure was necessary to minimize the psychological and emotional harm to 13-year-old M.L. Peo. Br. 27-28. Moreover, as in *Radford*, 2020 IL 123975, ¶¶ 36-38, defendant's failure to contemporaneously object on the basis that the closure violated his Sixth Amendment right to a public trial deprived the court of the opportunity to choose a different path or further justify its decision, Peo. Br. 26-27. Significantly, defendant never asserted his constitutional right or explained to the trial court why it was wrong to believe that it had complied with § 115-11, such that the court could have cured any deficiencies in its decision. *See* Peo. Br. 23-24, 26-29; *supra*, Part II.A. And a judge's failure "to announce factual findings before making an otherwise valid decision to order the courtroom temporarily closed" does not by itself "deem a trial fundamentally unfair." *Weaver*, 137 S. Ct. at 1909-10; *see also Radford*, 2020 IL 123975, ¶ 36.

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[4] Defendant asserts that M.L.'s father and stepfather were present, Def. Br. 21, but the record does not establish that the trial court granted the prosecutor's request that they remain, Vol. XIX at 11, 18-19. If they were present, however, their presence would further undermine defendant's claim that he was deprived of a public trial.

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Indeed, contrary to defendant's assertion, Def. Br. 21-22, to establish second-prong plain error, he must show that the closure rose to the level of a Sixth Amendment violation because it "call[ed] into question the confidence of the public in the integrity and impartiality of the court system" and thus rendered his trial unfair. *Radford*, 2020 IL 123975, ¶¶ 41-42; *see also Weaver*, 137 S. Ct. at 1913 (closure did not render trial unfair where the defendant failed to show "that the potential harms flowing from a courtroom closure came to pass"). "[T]he right to a public trial helps to ensure a fair trial, reminds the State and judge of their responsibility to the accused and the importance of their functions, encourages witnesses to come forward, and discourages perjury." *Radford*, 2020 IL 123975, ¶ 42 (citing *Waller*, 467 U.S. at 46). But "not every courtroom closure results in an unfair trial, nor does each closure affect the values underlying the sixth amendment's public trial guarantee." *Id.* ¶ 33 (discussing *Weaver*). Thus, where a partial closure does "not pervade the whole trial or lead to basic unfairness," *Weaver*, 137 S. Ct. at 1913, and "none of the evils of a closed trial [a]re implicated" by the closure, there is no clear and obvious deprivation of a defendant's Sixth Amendment right to a public trial under second-prong plain-error review, *Radford*, 2020 IL 123975 ¶ 42 (citing *Falaster*, 173 Ill. 2d at 227).[5]

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[5] Like *Radford*, the United States Supreme Court and the majority of jurisdictions to have addressed similar questions have held that public-trial claims may be deemed forfeited when a defendant fails to show that the courtroom closure rendered his trial unfair. *See Levine v. United States*, 362 U.S. 610, 619 (1960) (enforcing forfeiture where record failed to show

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Defendant does not argue that the trial court should not have closed the courtroom at all, but merely that exclusion of unidentified relatives deprived him of a public trial. *See* Def. Br. 18-20. He claims that the evils of a closed trial were implicated because his relatives were not present to discourage M.L. from committing perjury, while M.L.'s family was present to pressure her to testify consistently with her prior statements, even if untruthful. Def. Br. 20-21. The Court should reject defendant's speculative assertions.

M.L.'s grandmother was allowed to remain because she was directly interested in the case, *see* Vol. XIX at 11; *Falaster*, 173 Ill. 2d at 228, and nothing in the record supports defendant's conjecture that she encouraged M.L. to testify untruthfully. Moreover, in *Holveck*, this Court found no Sixth Amendment violation where the court excluded everyone from the courtroom

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"prejudice" of an amount "sufficiently impressive to render irrelevant failure to" object); *United States v. Santos*, 501 F. App'x 630, 632-33 (9th Cir. 2012) (nonprecedential) (enforcing forfeiture where closure did not seriously affect fairness, integrity, or public reputation of the judicial proceedings); *Peyronel v. State*, 465 S.W.3d 650, 652-53 & n.8 (Tex. Crim. App. 2015) (collecting cases); *see also People v. Priola*, 203 Ill. App. 3d 401, 420-21 (2d Dist. 1990); *Barrows v. United States*, 15 A.3d 673, 680-81 (D.C. 2011); *People v. Vaughn*, 821 N.W.2d 288, 304 (Mich. 2012); *Jeremias v. State*, 412 P.3d 43, 51-53 (Nev. 2018); *State v. Bauer*, 851 N.W.2d 711, 718 (S.D. 2014). In fact, "the majority view across the country is that a failure to object to a [known] closure of the trial waives the right to a public trial," foreclosing review altogether. *Alvarez v. State*, 827 So. 2d 269, 274 (Fla. Dist. Ct. App. 2002) (collecting cases); *see also United States v. Hitt*, 473 F.3d 146, 155 (5th Cir. 2006); *Stackhouse v. People*, 386 P.3d 440, 443-46 (Colo. 2015); *Robinson v. State*, 976 A.2d 1072, 1083-84 (Md. 2009); *Commonwealth v. Alebord*, 4 N.E.3d 248, 254-55 (Mass. 2014); *State v. Pinno*, 850 N.W.2d 207, 225-26 & n.20, 228-29 (Wis. 2014); *State v. Butterfield*, 784 P.2d 153, 157 (Utah 1989).

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except the three minor victims' family members, a psychologist, and the media. 141 Ill. 2d at 92-93, 100-02. Defendant offers no reason to believe that like those victims, M.L. was not sufficiently discouraged from perjury when she testified under oath in front of the judge, jury, court personnel, defendant, defense counsel, the prosecutor, her grandmother, and any media present, but would have been had defendant's unidentified relatives been present. Notably, the courtroom was open when M.L. later testified about the notebook pages, a topic that she had not previously discussed with her family and that corroborated her testimony about defendant's offenses. Peo. Br. 5-8; Vol. XIX at 113-19, 122-23, 140-42, 158-59, 178-79.

In sum, the partial closure here did not pervade the whole trial, lead to basic unfairness, call into question the public's confidence in the integrity and impartiality of the court system, or implicate any of the evils of a closed trial. Peo. Br. 28-29. The fact that defendant's unidentified relatives were excluded does not establish otherwise. *See id.* at 23-29; *cf. Weaver*, 137 S. Ct. at 1906, 1913 (closure of courtroom for two-day jury selection, which barred "any member of the public who was not a potential juror," including defendant's mother and her minister, did not result in fundamental unfairness).

Accordingly, for the reasons set forth above and in the People's opening brief, defendant cannot show that the limited closure plainly deprived him of his Sixth Amendment right to a public trial. Therefore, this Court should enforce defendant's forfeiture and reverse the appellate court's judgment.

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IV. This Court Should Remand to the Appellate Court for Consideration of Defendant's Cross-Relief Claims.

Defendant requests cross-relief on issues that the appellate court declined to reach due to its resolution of his § 115-11 claim. *Compare* Def. Br. 23-48 (seeking cross-relief on claims that trial counsel was ineffective and the sentencing court abused its discretion), *with* A20 ("Given our resolution of th[e] [§ 115-11] issue, we find it unnecessary to address the remaining claims of error raised by defendant on appeal regarding allegations of ineffective assistance of trial counsel and an abuse of the trial court's discretion during sentencing."). This Court should decline to consider defendant's claims in the first instance and, upon reversing the appellate court's judgment, remand to the appellate court for consideration of these unaddressed claims.

"It is well settled that argument of counsel on questions other than the one decided by the Appellate Court is not properly directed to this [C]ourt until they have been decided by th[e] [Appellate] [C]ourt." *People ex rel. Hahn v. Hurley*, 9 Ill. 2d 74, 79 (1956). Thus, where the appellate court reverses a judgment "based upon an erroneous view of the law with respect to one branch of the case, and it appears from the opinion that for such reason it has refused to consider and pass upon other assignments of error which it should consider," the ordinary remedy is to reverse the appellate court's judgment and remand the case with directions for the appellate court to consider and pass upon the undecided questions. *Id.*; *see People v. Janis*, 139 Ill. 2d 300, 320-21 (1990) ("in cases where trial errors were raised but not

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ruled upon in the appellate court, it is ordinarily appropriate to remand the cause to the appellate court for consideration of the alleged errors"); *see also, e.g.*, *People v. Clendenin*, 238 Ill. 2d 302, 331 (2010) ("Because the appellate court declined to reach the remainder of the issues raised in defendant[-appellee]'s brief, we remand this cause to the appellate court to dispose of those claims raised before that court, but not previously ruled upon."); *People v. Lowery*, 178 Ill. 2d 462, 473 (1997) ("where trial errors were raised but not ruled upon in the appellate court, it is appropriate for this [C]ourt to remand the cause to the appellate court for resolution of those remaining issues"). Accordingly, this Court should reverse the appellate court's judgment and "remand[] to the appellate court for consideration of the remaining issues raised in defendant's appeal." *People v. Johnson*, 75 Ill. 2d 180, 189 (1979).

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CONCLUSION

This Court should reverse the appellate court's judgment and remand to the appellate court for consideration of the remaining issues that defendant raised on appeal.

August 20, 2021

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RULE 341(c) CERTIFICATE OF COMPLIANCE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of filing and service, and those matters to be appended to the brief under Rule 342(a), is 19 pages.

/s/ Gopi Kashyap
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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On August 20, 2021, the **Plaintiff-Appellant's Reply Brief and Response to Request for Cross-Relief** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email address:

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