STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1436

Ronald L. Roner, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed June 17, 2008
Affirmed
Hudson, Judge

St. Louis County District Court
File No. K4-05-6000133

Lawrence Hammerling, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant)

Lori Swanson, Attorney General, Kimberly Parker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2134; and

Melanie S. Ford, St. Louis County Attorney, St. Louis County Courthouse, 100 North Fifth Avenue West, Suite 501, Duluth, Minnesota 55802 (for respondent)

Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

On appeal from the denial of his postconviction petition challenging his 2005 conviction for first-degree aggravated robbery and second-degree assault, appellant argues that the district court abused its discretion by granting the state's motion to preclude defense evidence of appellant's mental illness. Appellant argues that he had a constitutional right to present evidence of mental illness to show the "whole man" charged with the crime, and the limited defense evidence he sought to introduce was admissible under one of the exceptions to the general rule against admitting mental-illness evidence in the guilt phase of trial. Appellant also argues that the ruling violated his due-process right to explain his conduct to a jury. Because the postconviction court did not abuse its discretion and because appellant's right to testify was not violated, we affirm.

FACTS

On January 31, 2005, appellant Ronald Lamar Roner attempted to steal some DVDs from the West Duluth K-Mart. As he was leaving the store, he was stopped by a K-Mart loss-prevention manager. The loss-prevention manager grabbed appellant's jacket and tried to get him to return to the store. After a brief struggle, appellant told the loss-prevention manager that he had a knife. The loss-prevention manager saw appellant raise the knife over his head, and, fearing for his own safety, let go of appellant. Appellant then ran away, but he was arrested a short time later by a Duluth police officer.

St. Louis County charged appellant with first-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2004), and second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2004).

In February 2005, appellant was sent to the Brainerd Regional Treatment Center after being civilly committed as a paranoid schizophrenic. Appellant was discharged in May 2005. The parties do not dispute that appellant was competent to stand trial.

Before appellant's September 2005 trial began, appellant's counsel gave notice that appellant intended to introduce documents from the Brainerd Regional Treatment Center and present witnesses who would testify about appellant's mental illness. The state then filed a motion in limine to exclude all evidence regarding appellant's mental illness, arguing that evidence of appellant's mental illness was "not relevant" and its introduction was precluded by caselaw.

The district court heard arguments on the state's motion on the morning of trial. Appellant's counsel informed the district court that appellant was not going to raise a mental-illness defense. But appellant's counsel explained that appellant did want to present testimony from appellant's social worker and appellant's mother regarding appellant's mental-illness diagnosis, commitment, and medications. Appellant also wanted to present evidence regarding his behavior while on medication and whether he was taking his medications at the time of the offense. Counsel maintained that what appellant wanted to introduce was "the kind of lay evidence that's admitted in every case." Counsel argued that

> [w]hat we're talking about is . . . [appellant's] state of mind. The state can't say he intentionally—he intended to assault this person, he intended to do this, and not let the jury hear what was going on with him . . . . It is not fair for the jury to not have a context for him when he testifies . . . . They're entitled to . . . know his state of mind at the time.

Counsel told the district court that appellant was not attempting to introduce psychiatric testimony, but instead simply wanted the jury to hear "the entire context" in which the crime took place:

> I think we should be able to talk about the fact that he is mentally ill and the fact that he wasn't taking his medications as prescribed at the time and the fact that the people who watch over him, who help him with this stuff, had decided that he was in—that he was in a state where he needed to be committed again and get back on his medication, that he wasn't functioning, wasn't functioning well, and I think the jury is entitled to hear that when they're making determinations regarding his intent.

Counsel also maintained that appellant was not attempting to make a "diminished capacity" argument. The district court told the parties that it needed time to consider the arguments, and the parties began jury selection.

Midway through voir dire, the parties met in chambers to continue the discussion regarding the state's motion in limine. The district court stated:

> I don't know if I am going to grant it or deny it here, but I guess I am going to basically grant the state's motion. I am going to preclude any reference to psychiatric information or testimony in terms of his overall competence or his ability to form intent[.]
>
> I would permit you to use certain things that would tend to establish whether or not on the specific occasion with regard to the specific act he had formed intent and they characterize that as physical evidence in the [caselaw]. And I am not looking for anything very remote.

The district court then attempted to elicit information from appellant's counsel regarding the nature of the testimony appellant wanted to present:

> THE COURT: Is mom going to testify about January 31st, number one, before we start talking about what she would testify to. What is she going to tell us about when?
> COUNSEL: I don't know the answer to that question.
> THE COURT: Okay. The social worker, what contact did he have with [appellant] on or about the day in question?
> COUNSEL: And I don't know the answer to that question.

The district court then stated: "Okay. I don't know if I'm giving you very much help, so I don't know where that leaves you because I need more specificity. I am concerned about relevancy and remoteness and things like that." The district court indicated that appellant could not introduce psychiatric evidence but could introduce "physical evidence of present intent," such as "the way people perceived him to act on a particular occasion or the way the person, the alleged victim, perceived him to react." The district court also indicated that it would not allow any testimony about the effects of appellant's medication unless an expert testified, which the court noted, "[is] not even being proffered."

The parties resumed voir dire, and trial began. The state presented the testimony of two K-Mart employees and a Duluth police officer, as well as a videotape from K-Mart's surveillance system showing appellant taking the DVDs.

During trial, the parties met in chambers to discuss possible testimony regarding whether appellant was taking his medication at the time of the crime. The district court indicated that appellant could present such testimony in the context of a temporary

insanity argument because such an argument is permitted in the guilt phase of a trial. But appellant's counsel told the district court that appellant was not attempting to present such an argument:

> COUNSEL: I am not arguing he shouldn't be guilty because he . . . didn't know what he was doing. That's not what I am saying.
> THE COURT: You're saying he didn't form the intent because he . . . couldn't form the intent on that occasion?
> COUNSEL: No.
> THE COURT: What are you saying?
> COUNSEL: I am saying when you're judging whether or not he had that intent, you're entitled to know what his thought processes were. You're entitled to know what was going on. I am not saying he couldn't form the intent. I am saying when you're deciding whether or not he did –
> THE COURT: Well, he can tell them what was going on.
> COUNSEL: Absolutely he can, but if they don't know that he suffers under a mental illness, what he tells them may not sound so rational.
> THE COURT: Mental illness is off the table.
> COUNSEL: I understand, but that's where I was coming from. I was not, and I am still not, and I never was intending to say he had some kind of diminished ability to form intent.

Appellant's counsel also stated that appellant "would like to be able to mention the fact that he's on medication now because it[] . . . affects his rate of speech." The district court indicated that appellant could testify that he is taking medication for a medical condition that affects his rate of speech, but not what the medication is because that "is irrelevant."

Appellant then took the stand and testified that he takes medication and that, sometimes, it affects how long it takes him to respond to questions. Appellant then told the jury that he went to K-Mart on January 31 "[s]o I could take some things because I

ran out of money" and that he was going to sell whatever he took. Appellant explained that he carried a knife in his jacket pocket "for protection." Appellant also stated that, in the past, he had seen the loss-prevention manager "tackle" someone else at that K-Mart and was fearful that if the loss-prevention manager tackled him, his knife would injure him:

> I just took [the knife] out of my pocket and he happened to see it and must have got scared. I was scared he was going to tackle me because that's why I took it out of my pocket so it wouldn't fall on me and stab me in the gut.

Appellant explained to the jury that he never meant to threaten or harm the loss-prevention manager and that he never raised the knife up over his head. Appellant stated, "I had no intentions of threatening his life with [the knife]." Appellant's mother also testified and explained that, before this incident, she and appellant had seen two K-Mart employees tackling a person who had apparently stolen something from the store.

The jury found appellant guilty of both second-degree assault and first-degree aggravated robbery. In November 2005, the district court sentenced appellant to a 48-month prison sentence.

In August 2006, appellant filed a petition for postconviction relief, seeking vacation of his convictions and a new trial. In his postconviction petition, appellant argued that the district court erroneously excluded all evidence regarding appellant's mental illness and that the district court violated his right to testify by preventing him from telling the jury about his mental illness. Appellant argued that "[t]he evidence at issue was observational evidence of [appellant's] behaviors and actions and was not

expert psychological testimony on [appellant's] ability to form the requisite intent." And appellant attempted to distinguish the evidence he wanted to present from that prohibited as psychiatric evidence:

> The proffered evidence is not mental-disease evidence or capacity evidence because the witnesses were not being asked to give their opinions as experts on [appellant's] mental condition. Unlike mental-disease evidence, which is based on examinations and factual reports where a witness may conclude that a defendant suffered from a mental illness, [appellant's] proffered evidence was based upon facts and observations. Unlike capacity evidence, which asks of the witness to state his or her opinion of whether the defendant has the mental capacity to perform particular acts, [appellant's] proffered evidence would have come via those who had the opportunities to observe [appellant] when he had stopped taking his medication for his mental condition.

The state objected to appellant's petition for postconviction relief, arguing that "[t]he testimony being offered by [appellant] was expert testimony in nature and, therefore, not admissible through lay testimony."

The postconviction court denied appellant's petition for postconviction relief. In its order, the postconviction court noted that "[t]he trial court did not make a ruling on most of the issues that were discussed outside the presence of the jury," and that "[t]he court's only final rulings were that [appellant's] mental illness diagnosis was inadmissible and he could testify regarding how the medications affected his speech." The postconviction court concluded that

> [t]he result is that the court did not exclude any evidence at all except the defendant's "mental illness" which clearly was not relevant or admissible. Because the defense did not seek to introduce any of the disputed evidence, the court made no rulings regarding physical evidence, relevance, remoteness, or

> the like. [Appellant's] argument regarding all observational, intent, or physical evidence being excluded is mistaken.

The postconviction court also noted that

> The fact of [appellant's] diagnosis itself is irrelevant on the question of his intent. Observations of a lay witness regarding [appellant's] behavior at the time of the offense would be admissible "physical evidence." That type of testimony was not offered or excluded or even preserved by an offer of proof.

The order denying postconviction relief was originally filed in February 2007, but because copies of the order were not properly provided to the parties, the district court vacated and reissued the February order in July 2007. This appeal follows.

D E C I S I O N

I

Appellant argues that the postconviction court abused its discretion by denying his petition for postconviction relief because the district court erroneously excluded all evidence regarding appellant's mental illness. Generally, "[e]videntiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).[1]

[1] Appellant argues that the district court's decision should be reviewed de novo. The Minnesota Supreme Court recently held that a district court's legal decision, made without exercising any discretion, is reviewed de novo. *State v. Robinson*, 718 N.W.2d 400, 404 (Minn. 2006). The *Robinson* court so decided because, in that case, the district court did not apply the relevant legal authority to the facts of the case, but instead, "adopted a categorical rule of admissibility under the medical diagnosis exception for statements of identification by victims of domestic abuse." *Id*. Here, in contrast, the district court applied the relevant legal authority to the facts of the case, using its discretion to address relevancy and remoteness. Therefore, the district court's decision is properly reviewed under the abuse-of-discretion standard.

A petitioner seeking a postconviction remedy has the burden of establishing, by a fair preponderance of the evidence, facts that warrant relief. Minn. Stat. § 590.04, subd. 3 (2004). This court reviews "a postconviction court's findings to determine whether there is sufficient evidentiary support in the record. We afford great deference to a district court's findings of fact and will not reverse the findings unless they are clearly erroneous." *Dukes v. State*, 621 N.W.2d 246, 251 (Minn. 2001) (citation omitted). We review the denial of a postconviction petition under an abuse-of-discretion standard. *Powers v. State*, 695 N.W.2d 371, 374 (Minn. 2005). But this court "review[s] a postconviction court's determinations of legal issues de novo." *Schleicher v. State*, 718 N.W.2d 440, 445 (Minn. 2006) (quotation omitted).

Minnesota courts reject "the doctrine of diminished responsibility." *State v. Bouwman*, 328 N.W.2d 703, 706 (Minn. 1982). "[I]t is generally assumed that all those who commit the same acts with the same mens rea are guilty of the same offense, regardless of differences in upbringing, mental condition, or environmental background, so long as they understand the nature of their act and that it was wrong." *State v. Provost*, 490 N.W.2d 93, 100 (Minn. 1992).

> Within this ambit of normality or sanity, jurors, relying on their sensory perceptions, experiences in life, and their common sense, consider the manifestations of the defendant's conduct and determine if the defendant formed the specific intent to do what he did. *The defendant has the right to offer evidence which disputes the physical facts upon which the inference of the fact of intent is sought to be established by the prosecution. However, psychiatric evidence is of no value at this part of the trial since it does not relate to the physical evidence upon which the jury is to determine the issue of intent.*

Bouwman, 328 N.W.2d at 705 (emphasis added). But psychiatric evidence has some probative value when a mental-illness defense is asserted, because then "[t]he inquiry is no longer on the direction the defendant's mind took but on how the defendant's mind worked." *Id*.

The Minnesota Supreme Court has also specifically rejected the "strict mens rea model" in which "expert [psychiatric] testimony is not being offered to show diminished capacity or diminished responsibility, but only to show whether the defendant, in fact, formed the guilty mind which is an element of the crime charged." *Provost*, 490 N.W.2d at 98. "Even when mental illness impairs a defendant's capacity for forming criminal intent, such intent is still determined from what a defendant says and does." *Id*. Therefore, when determining a defendant's guilt when no mental-illness defense has been asserted, a jury must base its decision on the "physical evidence" of the defendant's actions and demeanor:

> In a sense, evidence of defendant's statements, actions, and demeanor is "psychiatric evidence" because it is the kind of clinical detail psychiatrists rely on for diagnosis and treatment. But it is also the kind of "lay evidence" admitted in every criminal case. *Bouwman*, of course, admits this kind of evidence, referring to it (perhaps inaptly) as "physical evidence." What *Bouwman* disallows is "expert psychiatric opinion testimony."

Id. at 101 (citations omitted). But occasionally, psychiatric opinion testimony may be admissible when

> the defendant has a past history of mental illness. If the past history includes a clinical record wherein psychiatric opinions appear (such as a diagnosis), it may be that such evidence

> would be admissible. This evidence is in the nature of factual background to explain "the whole man" as he was before the events of the crime and before the miasma of after-the-crime rationalizations.

Id. at 103–04 (citation omitted). In determining whether to admit such evidence, the district court should require an offer of proof on the admissibility of the evidence and must "carefully weigh[] the relevancy and probative value of the proffered evidence against the likelihood of prejudice or confusion." *Id.* at 104.

Although *Provost* acknowledges that such evidence *may* be admitted, it does not mandate that such evidence shall always be admitted. Indeed, the *Provost* court went on to note that in that case, the proffered psychiatric testimony "lacked sufficient probative value" because "[i]t consisted of a diagnosis of a mental condition and an opinion on how schizophrenics typically function," which had "no probative value on which intent the defendant actually had in mind when he [committed the crime]." *Id*. at 104; *cf. State v. Bird*, 734 N.W.2d 664, 675 (Minn. 2007) (affirming district court's exclusion of expert psychiatric testimony of defendant's psychosis at time of shooting incident, concluding that probative value of such testimony was outweighed by risk it would "lead the jury to undertake an impermissible inquiry into [the defendant's] capacity to form the intent required for first-degree murder").

Here, appellant is correct in asserting that "physical evidence" of his behavior is admissible. But this is not the type of evidence appellant sought to present to the jury. Appellant was not attempting to present evidence of his actions and demeanor at the time of the offense. Instead, appellant wanted to present lay testimony regarding appellant's

psychiatric diagnosis, his psychiatric medications, and the effect of those psychiatric medications on appellant. And appellant did not explain how the proffered testimony would offer any helpful insight into his behaviors, manner, or thoughts at or near the time of the crime. The fact that appellant had been diagnosed with a mental illness and had previously been committed was not relevant to what he did or thought at the time of the offense. The district court recognized this when it stated that it was "concerned about remoteness and relevancy."

Appellant argues that such testimony was admissible as lay opinion testimony based on "the witnesses' opportunities to observe [appellant]." Aside from the fact that it is unclear whether lay witnesses would have been competent to testify about appellant's mental-health diagnosis, psychiatric medication, and the effects of that medication, the caselaw in Minnesota clearly establishes that this type of evidence is not relevant in a proceeding where no mental-illness defense has been asserted. We conclude that the postconviction court did not abuse its discretion in denying appellant's petition for postconviction relief on this basis.

II

Appellant argues that the postconviction court abused its discretion in denying his petition for postconviction relief because the district court violated his right to testify when it precluded him from testifying about his mental illness. We disagree.

The Due Process Clauses of the United States and Minnesota constitutions mandate that criminal defendants be treated with fundamental fairness. *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992); *accord* U.S. Const. amend. XIV, § 1; Minn. Const.

art. I, § 7. This standard of fairness requires that criminal defendants be "'afforded a meaningful opportunity to present a complete defense.'" *Id.* (quoting *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532 (1984)). Criminal defendants have a due-process right to give the jury an explanation of their conduct even if their motive is not a valid defense. *State v. Rein*, 477 N.W.2d 716, 719 (Minn. App. 1991), *review denied* (Minn. Jan. 30, 1992). But, although a "defendant's constitutional right to give testimony regarding his intent and motivation is very broad," it is "not without limitation . . . and must be balanced against interests served by imposing strict relevancy requirements on the defendant's testimony." *State v. Buchanan*, 431 N.W.2d 542, 550 (Minn. 1988).

Here, appellant was allowed to explain his actions and intent to the jury. Appellant told the jury why he went to the Duluth K-Mart, why he chose to steal DVDs, why he was carrying a knife, why he took the knife out of his pocket while struggling with the loss-prevention manager, and that he did not intend to harm or threaten the loss-prevention manager. Appellant was able to testify thoroughly and completely about his thought processes at the time of the offense.

Appellant maintains that he was not able to "give the jury all of the relevant information about him[self]" because he was not permitted to explain that "he suffered from a serious, debilitating mental illness." But, as noted above, in the absence of a mental-illness defense, psychiatric evidence is not relevant to a defendant's intent. *Bouwman*, 328 N.W.2d at 705.

Appellant also argues that he was unable to explain the effects of failing to take his medication. But the record shows that the district court informed appellant that it would allow testimony about his medication and its effects on him if he presented an expert competent to testify on such matters. Appellant did not do so.

We conclude appellant's right to testify was not violated when he was prevented from testifying about his mental illness, and therefore, the postconviction court did not abuse its discretion in denying appellant's petition for postconviction relief on this basis.

Affirmed.