STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1025

State of Minnesota,
Respondent,

vs.

Luis J. Alford,
Appellant.

Filed September 2, 2008
Affirmed
Schellhas, Judge

Ramsey County District Court
File No. K0-06-318

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Melissa Sheridan, Assistant Public Defender, 1380 Corporate Ctr. Curve # 320, Eagan, MN 55121 (for appellant)

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

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

SCHELLHAS, Judge

Appellant was convicted and sentenced on two counts of second-degree murder and the lesser-included offense of accomplice after the fact. Because appellant was 17 years old at the time of the offense, he was automatically certified as an adult and tried in district court. Appellant challenges the district court's (1) denial of his motion to dismiss, which was based on his claim that the automatic-certification statutes are unconstitutional; (2) denial of his request to modify the jury instruction regarding defense of another to include a reasonable-juvenile standard; (3) denial of his request to offer expert testimony regarding adolescent-brain development; and (4) imposition of a restitution order that requires him to pay for damage caused by a fire even though he was acquitted of an arson charge. Because we find no error or abuse of discretion in the district court's rulings and because appellant's trial was fair, we affirm.

FACTS

Appellant Luis J. Alford was indicted for aiding and abetting first-degree intentional murder, second-degree intentional murder, and first-degree arson, after the body of a man with whom appellant and his brother were living was found in the man's burning mobile home. *See* Minn. Stat. §§ 609.05, subd. 1 (2004), 609.185(a)(3) (Supp. 2005), 609.19, subd. 1(1) (2004), 609.561, subd. 1 (2004). Prior to trial, the indictment was amended to add a count of second-degree unintentional murder. *See* Minn. Stat. § 609.19, subd. 2(1) (2004).

On the evening of November 3, 2005, police received a report that a mobile home was burning in a mobile home park in New Brighton. When firefighters arrived, they found the body of the mobile-home resident, D.M., age 32, in the burning home.

Police soon learned that 17-year-old appellant and his 23-year-old brother, Jeramy Alford, (Jeramy) had been living in the mobile home with D.M. and that D.M.'s work van was missing. Because the Alford brothers had previously resided in Iowa, police contacted the Iowa authorities and asked them to be on the look-out for the Alford brothers. The next day, D.M.'s van was found in a river about ten miles from Cedar Rapids, Iowa. Within hours, Iowa authorities found appellant at his sister's apartment in Van Horne, Iowa, about 15 minutes away from the location of the van. Jeramy was found later the same day hiding in an attic at his mother's home in Van Horne.

In an interview following his arrest,[1] appellant stated that he and Jeramy had been living at the mobile home but that D.M. had recently told them that they had to move out. When asked what had happened at the mobile home, appellant claimed that D.M. "started it" by hitting appellant in the face. Appellant admitted that he kicked D.M. in the head, but claimed that he then walked out the door. Upon further questioning, appellant admitted throwing a case of pop at D.M., hitting him with a hammer, and poking him with a barbeque fork. Appellant conceded that his actions, along with Jeramy's, resulted in D.M.'s death but claimed that he did not know D.M. would die and that he believed D.M. was still alive when he left the mobile home.

[1] A videotape of this interview was played for the jury at trial.

At trial, the medical examiner who performed the autopsy testified that D.M. suffered multiple injuries: a broken nose; fractured skull; 18 blunt-force wounds to his head; and 17 sharp-force injuries to his back, head, the back of his legs, and his hands. The medical examiner concluded that D.M. died as a result of the "multiple blunt and sharp force injuries due to a physical assault." An assistant medical examiner called by the defense opined that based on her review of the autopsy report and photos, the blunt-force injuries to D.M.'s head were not consistent with a hammer and were likely caused by a heavy elongated object.

Two forensic scientists from the Bureau of Criminal Apprehension (BCA) analyzed the physical evidence in the case. One scientist, who compared the blood found on various pieces of physical evidence with biological samples from D.M., Jeramy, and appellant, testified that blood found on appellant's socks[2] and on one of his shoes matched D.M.'s DNA profile. The other scientist, who analyzed fingerprints found at the crime scene, testified that a bloody fingerprint found on a wall in the mobile home matched Jeramy's right-hand fifth finger, and that two prints found on the wooden handle of a metal rod found in the mobile home matched appellant's thumb prints.

Several months prior to appellant's trial, Jeramy pleaded guilty to first-degree murder and first-degree arson. Jeramy testified at appellant's trial and took responsibility for the murder of the victim. Jeramy testified that on the day of the murder, he had been drinking alcohol and using drugs, and that at about 7:45 p.m., D.M. got into a confrontation with appellant and hit him. Jeramy testified that he grabbed a long heavy

[2] Appellant was putting on these socks and shoes at the time of his arrest.

steel pipe and began to hit D.M. in the head; that he then "lost control" and hit D.M. several more times with the pipe and stabbed and hit him with "anything I could get my hands a hold of." Jeramy testified that he stabbed D.M. with a knife, barbeque fork, and screwdriver and that appellant tried to pull him off of D.M. But Jeramy also admitted that appellant kicked and hit D.M. in the shoulder with a hammer because D.M. was on top of Jeramy with a knife. Jeramy testified that when he finally stopped hitting D.M., appellant had left the mobile home and was outside. Jeramy testified that he believed that the fire in the mobile home started because he had thrown a cigarette on the floor when the fighting first began.

Appellant testified in his own defense and explained that his family had moved around a lot because his father beat his mother all the time. Appellant testified that he started smoking marijuana at age 12 and, by the time he was 17, he was using it every day. In addition, appellant testified that he regularly drank alcohol and used methamphetamine, cocaine, mushrooms, embalming fluid, opium, and peyote, frequently binging for days on methamphetamine, which caused him to not sleep or eat and to be tired, confused, and dazed afterwards. Appellant testified that he and Jeramy were living on the streets and in shelters when they moved into the mobile home with D.M. Appellant testified that he spent the day of the murder smoking marijuana, using methamphetamine, and drinking alcohol, having spent the previous three or four days using methamphetamine.

Appellant testified that he and D.M. got into an argument and D.M. hit him on the back of the head. Before appellant had time to react, Jeramy pulled appellant out of the

way, and appellant ran outside. When he returned, he saw D.M. on top of Jeramy with a knife and kicked D.M. off of Jeramy and tried to get Jeramy to leave, but Jeramy just threw him off. Appellant testified that he grabbed his and Jeramy's things and ran out the door and that D.M. was still standing when he left. After a while, Jeramy came outside and he and Jeramy drove to Iowa in D.M.'s van. Appellant maintained that he did not know anything about a fire until he was arrested the next day. Appellant testified that he was just trying to keep his brother from getting hurt because he believed his brother was in mortal danger. He denied hitting D.M. with a hammer or stabbing him with a knife, and said that when he was interviewed in Iowa, he was tired and confused.

The defense called Joel Oberstar, a child and adolescent psychiatrist, who testified about the effects of alcohol and drugs on an individual's behavior. Dr. Oberstar testified that chronic use of marijuana can cause problems with the ability to understand a situation and consider decisions and can cause psychotic symptoms such as paranoia and hallucinations. He also testified that chronic use of methamphetamine can cause significant insomnia, irritability, and deficits in thought processing that can include psychotic symptoms. He also testified that individuals coming down from stimulants are profoundly irritable and fatigued, which can lead to disorientation and ongoing psychotic symptoms. The district court refused to allow Dr. Oberstar to testify regarding recent research on adolescent-brain development; appellant made an offer of proof and submitted an affidavit following trial setting out the substance of Dr. Oberstar's proposed testimony.

After deliberating for nearly three days, the jury acquitted appellant of first-degree murder and arson, but convicted him of second-degree murder and accomplice after the fact. Appellant was sentenced to the presumptive prison term of 367 months' imprisonment and ordered to pay restitution that included $1,900 to the victim's sister, who owned the mobile home damaged in the fire. This appeal follows.

D E C I S I O N

I.

In a pretrial motion, appellant moved to dismiss the indictment, arguing that the automatic-certification statutes violate his constitutional rights to due process and equal protection. The district court denied his motion and allowed the state to prosecute appellant as an adult in district court. Appellant asserts that the district court's ruling was wrong under *Roper v. Simmons*, 543 U.S. 551, 570-71, 125 S. Ct. 1183, 1196 (2005), which held that execution of individuals who are under the age of eighteen at the time of a capital offense is prohibited as cruel and unusual punishment under the Eighth Amendment.

But the Minnesota Supreme Court has held that sentencing under the automatic-certification statutes does not violate procedural or substantive due process rights, or the guarantee of equal protection. *State v. Behl*, 564 N.W.2d 560, 566-69 (Minn. 1997). While *Behl* predates *Roper*, it remains good law in Minnesota.

Appellant insists that *Behl* must be "reconsidered" in light of *Roper*. But this court generally is "not in position to overturn established supreme court precedent." *State v. Ward*, 580 N.W.2d 67, 74 (Minn. App. 1998). And even if this court were to

reconsider the constitutionality of the automatic-certification statutes, *Roper* is largely inapplicable to the issue of certification because it appears limited to issues involving the Eighth Amendment's prohibition against cruel and unusual punishment. *Roper*, 543 U.S. at 578-79, 125 S. Ct. at 1200. *Roper* did not discuss the issue of certification or the appropriateness of adult sentences for minors. *Id.*

Because the Minnesota Supreme Court has rejected constitutional challenges to the automatic-certification statutes in *Behl*, and because the discussion and analysis in *Roper* does not apply to a determination of the validity of Minnesota's certification statutes, we conclude that the automatic-certification statutes are constitutional and do not violate principles of due process or equal protection.

II.

Appellant argues that the district court abused its discretion in denying his request to modify the jury instruction regarding defense of others from a "reasonable person" standard to a "reasonable juvenile" standard. The district court gave the jury the standard instruction, which states in pertinent part that "the defendant's election to defend must have been such as a *reasonable person* would have made in light of the danger perceived and the existence of any alternative way of avoiding the peril." 10 *Minnesota Practice*, CRIMJIG 7.05 (Supp. 2007) (emphasis added).

"A district court's refusal to give a [requested] jury instruction is evaluated using an abuse of discretion standard." *State v. Swanson*, 707 N.W.2d 645, 653 (Minn. 2006). A court abuses its discretion when it refuses to give an instruction on the defendant's theory of the case if there is evidence to support that theory and if the requested

instruction is an accurate statement of the law. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006); *State v. Hannon*, 703 N.W.2d 498, 509 (Minn. 2005).

In Minnesota, claims of self-defense and defense of others are evaluated under a reasonable-person standard. *E.g., Johnson*, 719 N.W.2d at 631; *State v. Carothers*, 594 N.W.2d 897, 904 (Minn. 1999); *State v. Dodis*, 314 N.W.2d 233, 237 (Minn. 1982). The state likens appellant's request for application of a "reasonable juvenile" standard to an attempt to create a diminished-capacity defense for juveniles. But "Minnesota has not approved [use of] the diminished capacity doctrine." *Cuypers v. State*, 711 N.W.2d 100, 105 (Minn. 2006). Thus, appellant's requested modification is not an accurate statement of current law in Minnesota.

The cases cited by appellant as support for his requested modification are distinguishable because they do not involve a determination of guilt in adult court. *See, e.g., State v. Burrell*, 697 N.W.2d 579, 593-95 (Minn. 2005) (applying reasonable-juvenile standard in determining that juvenile defendant's *Miranda* waiver was invalid because his request to talk to his mother was ignored); *In re Welfare of S.W.T.*, 277 N.W.2d 507, 514 (Minn. 1979) (applying reasonable-juvenile standard to question involving culpable negligence in delinquency proceeding); *In re Welfare of A.A.M.*, 684 N.W.2d 925, 927-28 (Minn. App. 2004) (recognizing that reasonable-juvenile standard has been used in context of juvenile delinquency proceeding, but rejecting use of that standard to element of consent in criminal sexual conduct case), *review denied* (Minn. Oct. 27, 2004). Thus, the district court did not abuse its discretion in denying appellant's request to modify CRIMJIG 7.05 to include a "reasonable juvenile" standard.

And, even if the district court erred in denying appellant's requested instruction, that error was harmless. *See State v. Mahkuk*, 736 N.W.2d 675, 683 (Minn. 2007) (giving of erroneous jury instruction requires new trial if error was not harmless beyond a reasonable doubt). Appellant was given wide latitude to present his theory of the case, which was that he acted in defense of his brother, Jeramy. But little evidence was presented from which the jury could conclude that appellant's actions were reasonable for a juvenile but not reasonable for an adult. Appellant did more than just get the victim off Jeramy: he admitted to police that he hit the victim with a hammer, stabbed him with a barbeque fork, and kicked him. The physical evidence showed that the victim sustained multiple, severe injuries, some of which were consistent with having been beaten with the metal rod on which appellant's bloody fingerprints were found. Under either standard, the jury would have found that appellant acted unreasonably and would have rejected appellant's claim of defense of another.

III.

Appellant argues that the district court abused its discretion in excluding expert testimony about adolescent-brain development. Appellant sought to present additional testimony by Dr. Oberstar on recent research on the physiological differences between adolescent and adult brains. The substance of Dr. Oberstar's proposed testimony was set out at the omnibus hearing and in an affidavit making an offer of proof submitted to the district court after the trial.

Evidence of a defendant's state of mind, motive, and intent is relevant in a self-defense or defense-of-another case because "[t]he elements of self defense are by nature

very specific to the person apprehending fear and the very particular circumstances causing fear." *State v. Bjork*, 610 N.W.2d 632, 636-37 (Minn. 2000). To prevail on a claim of self-defense or defense of another, a defendant must show that he had an actual and honest belief that he or another person was in imminent danger of death or great bodily harm and that he had reasonable grounds for that belief. *Id.* at 637.

Appellant argues that his proffered expert testimony on the physiological characteristics of adolescent-brain development and the way premature birth and chemical use affect brain development was relevant and critical to his defense. He asserts that the proffered testimony would have explained why his response to the fight between Jeramy and D.M. was reasonable and why he reasonably perceived that D.M. was about to inflict death or great bodily harm on Jeramy.

The state counters that Dr. Oberstar's expert testimony on adolescent-brain development was properly excluded as irrelevant. As already discussed, the issue here was whether appellant's claim of defense of another was that of a reasonable person, not that of a reasonable juvenile. Appellant was free to present testimony, and he did so, regarding the incident and the harm that he believed Jeramy faced. He testified and presented evidence on his deprived childhood, his low IQ, and his history of drug and alcohol use. Dr. Oberstar was allowed to testify regarding the effects of marijuana and methamphetamine on a person's judgment in general. Thus, expert testimony about adolescent-brain development simply was not relevant.

Nor was expert testimony about adolescent-brain development necessary to assist the jury under Minn. R. Evid. 702. "The basic consideration in admitting expert

testimony under [r]ule 702 is the helpfulness test–that is, whether the testimony will assist the jury in resolving factual questions presented." *State v. Grecinger*, 569 N.W.2d 189, 195 (Minn. 1997). Expert testimony should add "precision or depth to the jury's ability to reach conclusions about matters that are not within its experience." *State v. DeShay*, 669 N.W.2d 878, 888 (Minn. 2003).

As the district court reasoned, "we, as well as every juror, have all been adolescents at some point in our lives" and "these things are all within the knowledge of the average lay person." Similar to the intoxication defense, expert testimony is not necessary to explain the effects of alcohol on behavior and judgment. *Cf. State v. Bouwman*, 328 N.W.2d 703, 706 (Minn. 1982) (noting that evidence of intoxication could be admitted and "the effects of age and of intoxicants upon state of mind is a part of common human experience which fact finders can understand and apply") (quotation omitted). And unlike cases involving the battered-woman or battered-child syndrome, which has been held to be beyond the understanding of an ordinary lay person, every parent and person who has gone through adolescence is familiar with and can understand the immaturity and impulsive responses of adolescents. *See, e.g., State v. MacLennan*, 702 N.W.2d 219, 234 (Minn. 2005) (allowing expert testimony on battered-child syndrome to help explain phenomenon not within understanding of ordinary lay person); *State v. Hennum*, 441 N.W.2d 793, 798-99 (Minn. 1989) (holding that expert testimony on battered-woman syndrome is admissible in self-defense cases, but limiting that testimony to a general description of the syndrome and characteristics of a person suffering from it).

Finally, even if the district court erred in excluding expert testimony on adolescent-brain development, we conclude that any error was harmless. Appellant insists that had the jurors been fully informed about the physiology of adolescents' brains, they easily could have found that appellant's actions were reasonable in light of the danger he apprehended. But appellant was given ample leeway to present evidence and testimony about his state of mind, motives, and intent. And Dr. Oberstar was allowed to testify regarding the effects of chronic drug use on an individual's thought processes and behavior, particularly when that use begins at an early age. Thus, even if the district court had allowed the proffered expert testimony by Dr. Oberstar, it is likely that the jury still would have rejected appellant's claim that he acted reasonably in defense of his brother.

IV.

Appellant argues that the district court abused its discretion in ordering him to pay $1,900 to the victim's sister, who owned the mobile home that was damaged in the fire. Appellant argues that this is not a compensable loss because he was acquitted of the arson charge; he does not question whether D.M.'s sister is properly a "victim" in this case.

The purpose of restitution is to compensate victims for losses incurred as a result of crime. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999); *State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984); *see also* Minn. Stat. § 611A.045, subd. 1(a)(1) (2006) (when determining the amount of restitution, the court shall consider "the amount of economic loss sustained by the victim as a result of the offense"). In *State v. Palubicki*, the supreme court addressed the issue of whether a murder victim's children were entitled

to restitution for the wage loss incurred while attending the defendant's trial. 727 N.W.2d 662, 667 (Minn. 2007). While the supreme court rejected the application of a "but-for" test as too broad, it allowed compensation for the wage loss as not "too attenuated from the criminal act." *Id.* Similarly, appellant's criminal act is not too attenuated from the fire loss to the mobile home: the fire was set by appellant's brother to cover up the murder in which they had both participated. We therefore affirm the order for restitution.

Affirmed.