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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1402**

State of Minnesota,
Respondent,

vs.

Michelle Sanford,
Appellant.

**Filed November 4, 2008
Reversed and remanded
Connolly, Judge**

Nicollet County District Court
File No. K5-04-519

Lori Swanson, Attorney General, Rita Coyle Demeules, Assistant Attorney General, 445 Minnesota Street, Bremer Tower, Suite 1800, St. Paul, MN 55101; and

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Lawrence Hammerling, Chief Appellate Public Defender, Theodora Gaïtas, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and Minge, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges her criminal conviction, arguing that (1) the district court abused its discretion by excluding expert testimony that would have addressed appellant's post-traumatic stress disorder, (2) she was denied her right to an impartial judge, (3) the district court committed plain error by failing to issue an instruction on accomplice testimony, and (4) the evidence is insufficient to support her conviction. Because the district court abused its discretion by excluding expert testimony concerning appellant's post-traumatic stress disorder, we reverse and remand for a new trial.

FACTS

Appellant Michelle Sanford was charged with three counts of felony first-degree controlled-substance crime;¹ one count of felony second-degree controlled substance crime;² and one count of misdemeanor disorderly conduct.³

The incident leading to appellant's arrest stemmed from a dispute between herself and her ex-boyfriend, R.P. The incident occurred on farmland owned by R.P.'s father. While the events that precipitated the dispute are not entirely clear from the record, it appears that at some point during the dispute between appellant and R.P., R.P.'s father came home, saw appellant and R.P. engaged in a heated verbal confrontation, and called 911.

¹ Minn. Stat. § 152.021, subds. 2(1), 2a, 3 (2002) (manufacture of methamphetamine, possession of methamphetamine, and possession of precursors to methamphetamine manufacturing).

² Minn. Stat. § 152.022, subds. 2(1), 3 (2002) (possession of methamphetamine).

³ Minn. Stat. § 609.72, subd. 1(3) (2002).

The officers who responded to the 911 call testified that there were jars in a bag on the ground “right adjacent” to appellant. At least one of the jars was later found to contain methamphetamine. The officers also testified that appellant was “hysterical,” “belligerent,” “yelling,” and “incoherent” when they arrived at the scene. As a result of a cut on her arm sustained during the course of the dispute, appellant was placed in an ambulance so that she could be taken to a hospital. An audiotape recording was made during the ambulance ride from the farm to the hospital.

R.P. was never charged. A year after the incident, appellant was charged. Following a jury trial, appellant was acquitted of the first-degree controlled substance charges, but convicted of the second-degree controlled substance crime and disorderly conduct. This appeal follows.

DECISION

“Admission of an expert’s opinion testimony generally rests within the sound discretion of the trial court and will not be reversed unless there is clear error.” *State v. Koskela*, 536 N.W.2d 625, 629 (Minn. 1995). The ultimate question of admissibility is whether the expert testimony will assist the jury in resolving the factual questions presented. *State v. Myers*, 359 N.W.2d 604, 609 (Minn. 1984); Minn. R. Evid. 702. When appealing an evidentiary ruling, “the appellant has the burden of establishing that the trial court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

If the district court abused its discretion in excluding defense evidence, then we apply a harmless-error analysis to determine if a defendant was prejudiced by the

exclusion. *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994). The erroneous exclusion of evidence is harmless only if we are “satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, an average jury (*i.e.*, a reasonable jury) would have reached the same verdict.” *Id.* But if “there is a reasonable possibility that the verdict might have been different if the evidence had been admitted, then the erroneous exclusion of the evidence is prejudicial.” *Id.*

At trial, the prosecutor presented the jury with evidence suggesting that appellant was under the influence of methamphetamine at the time of her arrest. One deputy testified that appellant informed him that she was under the influence of methamphetamine. The 911 operator’s testimony also suggested to the jury that appellant was acting under the influence of some substance:

PROSECUTOR: Would it be fair to say that, in this case, based on what you were hearing from [appellant], you question whether she was normal or whether she was either drunk, high, or something else was causing her problem?

WITNESS: For the purpose of a medical assessment, yes.

....

PROSECUTOR: But you were pretty clear that [appellant] was not normal from the conversation you were getting?

WITNESS: Yes.

....

PROSECUTOR: Okay. You deal commonly with people in shock, don’t you?

WITNESS: Not commonly, probably more often than the person in the street.

PROSECUTOR: [A]re there tell tail signs that would tell you that someone might either be in shock or intoxicated?

WITNESS: There are. It helps if you have a standard, if you knew the person on a regular day.

....

PROSECUTOR: [D]o you know [appellant]?

WITNESS: Yes.

PROSECUTOR: From what you know of appellant, do you know if she had any mental problems or anything like that?

WITNESS: I don't know.

....

PROSECUTOR: [C]an you tell me what you heard that made you question her, whether she was okay or not?

WITNESS: Well, certainly the fact that she was extremely agitated, the conversation didn't always follow in order, difficulty in relation to me what was happening, and sometimes—I think, if you recall on the tape, I had to say, [appellant], listen to me.

Additionally, the prosecutor, during his case-in-chief and during his closing argument, played the audiotape recording of appellant's ambulance ride. During this audiotape recording, appellant is clearly agitated and frequently incoherent.

In order to provide the jury with an explanation for her behavior, appellant sought to introduce the testimony of her treating psychologist, Jean Fortune. At the start of appellant's trial, the prosecutor brought a motion before the district court to preclude Ms. Fortune from testifying. The district court granted this motion. After appellant sought leave to file a pretrial appeal on this issue, the district court reversed its ruling and reconsidered the issue after the state had presented its case-in-chief. After the defense called Ms. Fortune to testify at a hearing outside the presence of the jury to make an offer of proof, the district court excluded Ms. Fortune from testifying at the trial.

Had Ms. Fortune been allowed to testify, she would have informed the jury that appellant has been diagnosed with post-traumatic stress disorder. In her offer of proof, she stated that, when a person with post-traumatic stress disorder becomes threatened, "the person becomes very agitated, and then you see the rage and anger." She explained that a person undergoing an anxiety attack stemming from post-traumatic stress disorder

experiences “emotional flooding” and has “difficulty holding back tears and will not be able to stop crying.” She also testified that additional symptoms include sweating, trembling, screaming, and agitation.

After listening to the audiotape recording of appellant’s ambulance ride to the hospital, Ms. Fortune testified that in her opinion appellant was suffering an anxiety attack caused by her post-traumatic stress disorder. When asked by the prosecutor if methamphetamine would induce the type of attack appellant had experienced, Ms. Fortune replied “I don’t think so.”

Based upon the unique facts of this case, the district court’s failure to permit appellant’s expert witness to testify was an abuse of discretion. During the trial, much of the evidence introduced by the state cast appellant in a light that strongly indicated that she was under the influence of methamphetamine. This created the risk that the jury would assume that, because appellant was under the influence of methamphetamine, she was more likely to have possessed it. Ms. Fortune’s testimony would have provided an alternative explanation for appellant’s behavior. Specifically, it would have demonstrated that appellant’s erratic behavior was a consequence of her post-traumatic stress disorder rather than her methamphetamine use. In a case such as this, it was an abuse-of-discretion by the district court to fail to let appellant’s expert witness present an alternative explanation of her behavior.

We also cannot say that the district court’s decision to prohibit the testimony of Ms. Fortune was harmless error because there is a reasonable possibility that the verdict might have been different if the evidence had been admitted. *See Post*, 512 N.W.2d at

102. The state's case against appellant was relatively thin. Its evidence consisted of the testimony of her ex-boyfriend and his father whose credibility was impeached at trial, the fact that appellant was standing next to the jars, and the audiotape recording of the ambulance ride. Therefore, it is possible, if not likely, that the state's suggestion that appellant was under the influence of methamphetamine influenced the jury's verdict. The testimony of Ms. Fortune would have clearly countered the suggestion that appellant was under the influence of methamphetamine by providing the jury with a reasonable alternative explanation for appellant's behavior. As a result, we conclude that there is a reasonable possibility that the verdict might have been different if Ms. Fortune's testimony had been admitted.

Because the district court's failure to permit appellant's expert witness to testify was an abuse of discretion that prejudiced appellant, we reverse and remand for a new trial. Because we are reversing on this issue, we need not reach the other arguments advanced by appellant.

Reversed and remanded.