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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2043

State of Minnesota,
Respondent,

vs.

Nathaniel Aaron Scheer,
Appellant.

Filed November 10, 2009
Affirmed
Klaphake, Judge

Hennepin County District Court
File No. 27-CR-08-26351

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, C-2000 Government Center, 300 S. 6th Street, Minneapolis, MN 55487 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Stauber, Presiding Judge; Klaphake, Judge; and Minge, Judge.

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

KLAPHAKE, Judge

Appellant Nathaniel Aaron Scheer challenges his conviction for second-degree assault, Minn. Stat. § 609.222, subd. 1 (2006), arguing that the district court abused its discretion by (1) instructing the jury on the duty to retreat, despite the fact that appellant did not claim self-defense; (2) admitting testimony that appellant gave false information to the arresting police officer, despite the lack of pretrial notice; and (3) permitting the investigating officer to testify as an expert about whether the knife at issue met the legal definition of a "dangerous weapon."

Because the district court's self-defense instruction, while erroneous, was harmless, and its evidentiary decisions were not an abuse of discretion, we affirm.

D E C I S I O N

Jury Instruction

We review the district court's decision to give a particular jury instruction for an abuse of discretion. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). Generally, "the court shall state all matters of law which are necessary for the jury's information in rendering a verdict and shall inform the jury that it is the exclusive judge of all questions of fact." Minn. R. Crim. P. 26.03, subd. 18(5). The instructions, when viewed in their entirety, must adequately and fairly explain the law applicable to the case. *State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004).

The state requested an instruction on self-defense because appellant's statement to police included a claim that he carried a knife for self-defense. When instructing a jury

on self-defense, the district court "must use analytic precision" and must avoid material misstatements of law. *State v. Hare*, 575 N.W.2d 828, 833 (Minn. 1998) (quotation omitted). Here, the district court gave only a partial instruction on self-defense; it did not instruct the jury on the circumstances under which a party can claim self-defense, but only explained the party's duty to retreat. This was a material misstatement of the law, particularly when appellant did not claim self-defense, and was therefore erroneous.

Our analysis does not end here, however. "A mistaken jury instruction does not require a new trial if the error was harmless. An erroneous jury instruction is harmless only if it can be said that, beyond a reasonable doubt, the error had no significant impact on the verdict rendered." *State v. Hall*, 722 N.W.2d 472, 477 (Minn. 2006) (citations omitted). Here, the record evidence demonstrates that (1) appellant was the aggressor during the incident, (2) he threatened the victim with a knife, (3) the victim feared for his safety, and (4) appellant swore at and threatened the victim even after he was arrested and in police custody. Based on the strength of the case against appellant, it is apparent beyond a reasonable doubt that the erroneous instruction did not have a significant impact on the verdict. *See State v. Medal-Mendoza*, 718 N.W.2d 910, 919 (Minn. 2006) (stating erroneous jury instruction did not merit a new trial when error had no significant impact on verdict).

Evidentiary Rulings

Appellant next asserts that the district court abused its discretion by permitting the arresting officer to testify that appellant gave a false name when apprehended. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be

reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v.* Amos, 658 N.W.2d 201, 203 (Minn. 2003 (citation omitted).

Appellant argues that the testimony about giving a false name was evidence of other crimes, wrongs, or bad acts, and as such was subject to the procedures of Minn. R. Evid. 404(b). *See State v. Ness*, 707 N.W.2d 676, 686 (Minn. 2006) (setting forth five-part procedure for introduction of *Spreigl* evidence). But evidence of two or more offenses that are so closely linked by time or circumstances that they reasonably can be considered to be part of the same transaction can be admitted, at least for limited purposes. *Nunn*, 561 N.W.2d at 907; *see also State v. Townsend*, 546 N.W.2d 292, 296 (Minn. 1996) ("evidence relating to offenses that were part of the immediate episode for which defendant is being tried may be admissible").

In a recent opinion, this court discussed the use of evidence of another crime when that crime is intrinsic to the charged offense.

> [W]e now adopt the following definition of intrinsic evidence: In a criminal prosecution, evidence of another crime is intrinsic to the charged crime and therefore admissible without regard to Minn. R. Evid. 404 if: (1) the other crime arose out of the same transaction or series of transactions as the charged crime, and (2) either (a) the other crime is relevant to an element of the charged crime, or (b) excluding the evidence of the other crime would present an incoherent or incomplete story of the charged crime.

State v. Hollins, 765 N.W.2d 125, 131-32 (Minn. App. 2009).

Here, appellant was apprehended within minutes after the incident; the false statement has some relevance, because appellant's flight and subsequent assertion of a

false name could suggest guilt. Further, when the arresting officer took appellant back to the scene of the encounter, appellant became belligerent and shouted threats at the victim, so the entire transaction sheds light on appellant's aggressive conduct. We conclude that this evidence was part of the same transaction as the charged offense and is thus admissible without regard to Minn. R. Evid. 404. The district court therefore did not abuse its discretion by allowing this testimony.

Appellant further contends that the district court abused its discretion by permitting the investigating officer to give an expert opinion about whether appellant's knife was a dangerous weapon. Appellant was charged with second-degree assault, Minn. Stat. § 609.222, subd. 1 (assault with a dangerous weapon). A "[d]angerous weapon" includes "any device designed as a weapon and capable of producing death or great bodily harm." Minn. Stat. § 609.02, subd. 6 (2006).

After qualifying the officer as an expert based on his experience, the prosecutor asked him, "In your experience, what could a knife like this do if someone was stabbed with it?" The officer replied, "It could cause serious injury or death." Appellant did not object to this exchange.

The district court's decision to admit expert testimony is reviewed for an abuse of discretion. *State v. Lopez-Rios*, 669 N.W.2d 603, 612 (Minn. 2003). On appeal, the defendant has the burden of proving that the court abused its discretion. *Amos*, 658 N.W.2d at 203. Because appellant did not object, this court would review admission of the evidence under the plain error standard, requiring (1) error that was (2) plain and (3) affected substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

The district court may permit expert testimony if it will assist the jury in understanding the evidence or determining a fact in issue. Minn. R. Evid. 702. An expert may offer opinion testimony that "embraces an ultimate issue," Minn. R. Evid. 704, but the comment to that rule identifies "a distinction . . . between opinions as to factual matters, and opinions involving a legal analysis or mixed questions of law and fact," and states that "[o]pinions of the latter nature are not deemed to be of any use to the trier of fact." *Id.*, cmt. In *Lopez-Rios*, the supreme court directed courts to exclude ultimate issue testimony when it "would merely tell the jury what result to reach." 669 N.W.2d at 613. Expert testimony should not include conclusions that are "within the knowledge and expertise of a lay jury . . . [when the expert's testimony] will not add precision or depth to the jury's ability to reach conclusions about that subject." *State v. Moore*, 699 N.W.2d 733, 740 (Minn. 2005) (quotation omitted). In *Moore*, the supreme court ruled that an expert could properly discuss physical symptoms but could not offer a legal conclusion that a victim was raped.

Here, the state was obligated to offer proof that the knife in question was a dangerous weapon. *See In re Welfare of P.W.F.*, 625 N.W.2d 152, 154 (Minn. App. 2001) (reversing delinquency adjudication when state failed to sustain burden of proving that three-inch knife was a dangerous weapon). The officer's testimony avoids giving an improper ultimate-issue conclusion: he testified that such a knife could cause serious injury or death, a part of the definition of a dangerous weapon. The jury was thus left to determine the ultimate fact of whether this knife was a dangerous weapon. Admission of this testimony was not plain error.

Pro Se Issues

Appellant asserts in his pro se brief that the prosecutor committed misconduct by amending the charges against him before trial to include second-degree assault; he argues that the prosecutor acted vindictively by amending the charges after appellant failed to enter a guilty plea. According to the transcript, the prosecutor moved to amend the original complaint, which was one count of terroristic threats, to include a second count of second-degree assault; this amendment was made the day before trial and before a jury was impaneled. The district court granted the motion to amend.

We review the district court's decision to permit or deny amendment of the complaint reviewed for an abuse of discretion. *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004). The prosecutor is relatively free to amend the complaint during pretrial proceedings, when it is clear that the initial complaint does not correctly describe the offense or there is probable cause to believe that the defendant has committed a different offense. Minn. R. Crim. P. 3.04, subd. 2.

Here, the motion was made before trial and the additional offense was supported by probable cause. Although appellant's attorney objected to the amendment, she did not ask for a continuance, and the same facts supported both charges. It was within the district court's discretion to permit the amendment.

Appellant also suggests that the prosecutor acted vindictively or maliciously in seeking an amendment. Appellant has the burden of proving that the prosecutor was motivated by malice. *State v. Pettee*, 538 N.W.2d 126, 133 (Minn. 1995). In *Pettee*, the supreme court cautioned against "impos[ing] an inflexible prophylactic presumption of

vindictiveness whenever the state charges a defendant with an offense that is greater in degree than the particular offense charged in the original, dismissed complaint." *Id.* There is no record evidence of vindictive intent to support appellant's claim. *See State v. Ecker*, 524 N.W.2d 712, 719 (Minn. 1994) ("[A] threat to prosecute fully a defendant if he or she does not plead guilty is constitutional.").

Affirmed.