STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1708

State of Minnesota,
Respondent,

vs.

Bruce Francis Gatten,
Appellant.

Filed December 8, 2009
Affirmed
Ross, Judge

Anoka County District Court
File No. 01-K9-06-010149

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

Robert M.A. Johnson, Anoka County Attorney, Kathryn M. Timm, Assistant County Attorney, Anoka County Government Center, 2100 Third Avenue, Suite 720, Anoka, MN 55303-5025 (for respondent)

Marie L. Wolf, Interim Chief Public Defender, Davi E. Axelson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

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

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

ROSS, Judge

Bruce Gatten, 35 years old, struck his 70-year-old mother in the face so hard that she collapsed immediately to the floor bleeding with a broken nose and requiring stitches in both lips. Gatten's 78-year-old father ordered Gatten to leave the house, and he picked up the phone and dialed 911. Gatten attempted to disconnect the call and punched his father in the face five or six times. His father fell to the floor, and Gatten continued to punch him. Police arrived, arranged for ambulance transportation of the beaten couple, and arrested Gatten. The jury apparently was not convinced by Gatten's trial theory: self-defense.

This appeal arises from Gatten's conviction of third-degree assault, gross misdemeanor interference with a 911 call, and misdemeanor domestic assault. Gatten argues (1) that he was denied his constitutional right to fully present his self-defense theory when the district court prohibited him from discussing an alleged threat his father made against him two months earlier, (2) that he was denied his constitutional right to represent himself when the district court stopped his closing argument and directed his advisory counsel to conclude the argument, and (3) that the district court erred by sentencing him for domestic assault against his father because that offense arose from the same behavioral incident as Gatten's interference with the 911 phone call. Because the district court's decisions were sound and did not deprive Gatten of any constitutional rights, we affirm.

FACTS

In September 2006, Bruce Gatten was staying at the home of his 78-year-old father and 70-year-old mother in Spring Lake Park when he attacked them. That morning, mother Muriel entered the kitchen where father Robert was preparing his insulin shot and Gatten was making popcorn. Gatten asked Robert how long he had been taking insulin shots. Muriel understood this as Gatten's challenging whether Robert should be taking insulin shots. So she stated, "If you feel that way, maybe you shouldn't be here." Gatten responded by asking Muriel how many lies she had told about him since 1971, the year he was born. Gatten then struck Muriel in the face, knocking her against the refrigerator and down to the floor. Muriel stayed on the floor, dazed and bleeding from her mouth and nose.

Robert heard the blow and turned to see his wife fall to the floor and become quickly covered in blood. He pointed to the door and ordered Gatten to leave. Gatten stayed. Robert dialed 911, but Gatten attempted to push the phone's release button to disconnect the call. While Robert was on the phone, Gatten punched him in the face. By Gatten's own account, he punched his father five or six times. One of the punches landed over the eye, sending Robert to the floor. Gatten punched Robert several more times while he was down.

Spring Lake Park Police Sergeant Doug Ebeltoft arrived and saw Muriel sitting on the kitchen floor with blood covering her face and soaking her clothes. She seemed stunned and was crying. Sergeant Ebeltoft found Gatten in the bathroom, upset, loud, and boisterous. Police arrested Gatten and arranged for emergency medical care for his

parents. Muriel was taken by ambulance to the hospital. She received stitches in both lips and was treated for a broken nose, which is now permanently crooked.

At trial, Gatten testified to his version of the events. According to Gatten, he was a victim who had to defend his life from his parents. He claimed that he asked about his father's syringes merely out of his concern for his father's health. He told the jury that Muriel suddenly stabbed him in the hand with a knife, and that Robert threatened that if Gatten didn't watch what he said, he could be shot and killed that day. He testified that Robert said that Gatten would be killed and put in a box in the basement if he said more about the syringes. Gatten told jurors that because of the stabbing and Robert's comments, Gatten feared for his life. He said that Muriel attacked again, stabbing him in his other hand. He testified that he left the kitchen, gathered his things, and attempted to leave. He said that Muriel told him that she would not let him leave, and she put her hand on his shoulder. Gatten then backhanded Muriel only to protect himself, and he again attempted to leave. By now, however, Robert joined the attack, charging him with a knife and a syringe.

Gatten told the jury that he then decided not to leave and that he instead tried to assist Robert to dial 911. But Robert lunged at Gatten with the knife and syringe when Gatten, who was merely trying to be helpful, attempted to take the phone to make the call. Gatten testified that he was the one who dialed 911 but that Robert again lunged at him with the knife and syringe. Gatten, having no other choice, punched Robert in the face five or six times. After Robert went down, Gatten continued to punch him two or three more times. He told the jury that this extra pounding was necessary to ensure that

Robert would not get control of any weapons in the house. Gatten testified that he then went outside to hide guns that Robert had left unsecured. And he testified that he was locked safely in the bathroom nursing his multiple stab wounds when the police arrived.

Gatten's account of his heroic, desperate defense in the face of his parents' brutality differed markedly from the testimony of others and from the most reasonable interpretation of the physical evidence. Sergeant Ebeltoft testified that he did not see any knives or any other sharp objects on Robert's or Muriel's person or anywhere near them. Gatten had not mentioned anything to Sergeant Ebeltoft about guns in or near the house, about fearing guns, about hiding guns, about being injured, about being stabbed, or even about acting in self-defense. Sergeant Ebeltoft observed no blood or injuries on Gatten. There was some evidence that the day after the assault, and again nine days later, Gatten pointed out to jail staff a small abrasion on a right-hand finger and a tiny bruise at the base of his thumb about half a centimeter in diameter. (The jail nurse noted that Gatten was "very threatening and inappropriate," and she ended the evaluation fearing for her safety.) But other than these "wounds," which one might reasonably expect to find on an assailant's recently applied fists, the record includes no evidence even remotely corroborating Gatten's claims of multiple stabbings. Muriel and Robert both testified that on the morning of the incident, neither of them said anything angrily to Gatten, made any aggressive moves, or had any knives or sharp objects in their hands immediately before Gatten began striking them.

The jury quickly rejected Gatten's claim that he battered his aging parents in self-defense. It convicted Gatten of third-degree assault, gross misdemeanor interference with a 911 call, and misdemeanor domestic assault. This appeal follows.

D E C I S I O N

Gatten raises three issues on appeal. First, he argues that he was deprived of his constitutional right to present a defense because he could not testify about or introduce evidence of his father's supposed threatening comment to him made two months before the assault. Second, he argues that he was deprived of his constitutional right to represent himself when the district court interrupted his closing argument and directed his advisory counsel to conclude the argument for him. And third, Gatten argues that the assault of his father and interference with the 911 call arose from the same behavioral incident and that the district court therefore erred by imposing sentences for both offenses.

I

Self-defense was the only defense theory Gatten raised to the assault charges at trial. Gatten argues that by prohibiting him from discussing a supposed death threat made by his father, specifically that his father said, "I'm going to send the towel heads after you," the district court interfered with his constitutional right to fully present his self-defense theory. The argument lacks any merit.

"Evidentiary 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). A successful self-defense assertion requires the defendant to establish that he acted out of a reasonable belief that he otherwise would suffer imminent bodily injury.

State v. Love, 285 Minn. 444, 449–50, 173 N.W.2d 423, 426 (1970). Even if Gatten's father said two months earlier that he would send "towel heads" after Gatten, the comment is not relevant to whether Gatten reasonably believed that his parents were about to injure him the moment he struck them.

Gatten testified at length to numerous alleged events that were relevant to the reasonableness of his belief. He took advantage of his opportunity to convince the jury that his parents threatened and then violently attacked him and that he believed his pummeling of them was necessary to save his own life. He spoke of his parents' supposed contemporaneous death threats, multiple stabbings, and repeated lunges. Gatten testified that his mother twice stabbed him in the hand, that his father twice stabbed him in the hand, that his father threatened to shoot him and put his body in a box, and that his father lunged at him twice with a syringe and knife when Gatten attempted to dial 911. The jury found either that Gatten's account was not accurate or that it was accurate but did not justify the beatings. The alleged "towel head" general comment would have added nothing to the elaborate self-defense theory. The district court did not abuse its discretion by excluding the evidence because the alleged vague threat made in July was not relevant to the reasonableness of Gatten's belief that he must defend himself from imminent bodily harm in September.

II

We turn to Gatten's constitutional argument about self-representation. A criminal defendant is guaranteed the right to the assistance of counsel. U.S. Const. amend. VI; Minn. Const. art. I, § 6. Included in the right to counsel is the defendant's related right to

waive assistance of counsel and to conduct his own defense. *United States v. Mentzos*, 462 F.3d 830, 838 (8th Cir. 2006) (citing *Faretta v. California*, 422 U.S. 806, 835, 95 S. Ct. 2525, 2541 (1975)). Deprivation of the right of self-representation is subject to review for clear error. *State v. Christian*, 657 N.W.2d 186, 190 (Minn. 2003). We find no error, clear or not.

The district court has broad discretion in dealing with disruptive and defiant defendants, and Gatten concedes that the district court acted properly by placing a time limit on, and later stopping, his closing argument. *See State v. Richards*, 495 N.W.2d 187, 197 (Minn. 1992) (stating that limiting the time for arguments is within the sound discretion of the district court). Gatten's grievance is that after truncating the argument the district court then directed his advisory counsel to complete his argument, essentially depriving him of his right to represent himself by replacing him with an attorney. The argument fails.

A defendant's disruptive conduct at trial may effectively constitute a waiver of his Sixth Amendment right to self-representation. *State v. Holland*, 421 N.W.2d 382, 387 (Minn. App. 1988) (citing *Illinois v. Allen*, 397 U.S. 337, 342, 90 S. Ct. 1057, 1060 (1970)). The district court warned Gatten both before and during trial that if he did not behave appropriately in court or follow the court's rulings, the district court would direct advisory counsel to assume his defense. Gatten did not behave appropriately or follow the district court's direct and unambiguous orders, and the district court followed through on its warning. One example of Gatten's insolent conduct was his open defiance of the court's numerous orders to refrain from suggesting that his parents were "mentally ill."

After the district court sustained repeated objections to Gatten's unsubstantiated references to his parents' supposed "mental illness," Gatten audaciously began using the word "crazy" instead. We have reviewed the transcript and conclude that the district court exercised considerable patience by allowing Gatten to continue his argument for as long as it did. It appears that Gatten's response to the district court's attempts to require only proper argument was defiance. Because the record supports the district court's holding that Gatten forfeited his right to represent himself, Gatten was not deprived of his constitutional right to self-representation when the district court directed advisory counsel to conclude Gatten's closing argument.

III

We last address Gatten's argument that the district court erroneously sentenced him twice for a single behavioral incident. When a single behavioral incident results in the violation of multiple criminal statutes, the offender may be punished for only one of the offenses. Minn. Stat. § 609.035, subd. 1 (2006). This rule avoids exaggerating the criminality of the defendant's conduct and makes punishment and prosecution proportionate to culpability. *State v. Johnson*, 653 N.W.2d 646, 651 (Minn. App. 2002). The district court's finding that two of Gatten's offenses did not constitute a single behavioral incident is a factual determination, which this court reviews for clear error. *See Effinger v. State*, 380 N.W.2d 483, 489 (Minn. 1986). The district court's determination of whether multiple offenses were committed in a single behavioral act involves an examination of all the facts and circumstances of the case. *State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997). In making this determination, the district court "must

consider whether the offenses (1) arose from a continuous and uninterrupted course of conduct, (2) occurred at substantially the same time and place, and (3) manifested an indivisible state of mind, or were motivated by a single criminal objective." *State v. Suhon*, 742 N.W.2d 16, 24 (Minn. App. 2007), *review denied* (Minn. Feb. 19, 2008).

Gatten now asserts that he assaulted his father with the intent to interfere with the emergency call and that his motive for both crimes was the same: he wanted to prevent the police from responding to the scene. *See State v. Gibson*, 478 N.W.2d 496, 497 (Minn. 1991) (holding that multiple sentences could not punish two offenses because the defendant "substantially contemporaneously committed the second offense in order to avoid apprehension for the first offense"); *cf. State v. McAdoo*, 330 N.W.2d 104, 109 (Minn. 1983) (holding that defendant's conduct was divisible because it was "not motivated solely by a desire to avoid apprehension but represented an escalation of the incident to a far more serious level"). The district court found that the offenses did not have a single objective. It reasoned that Gatten had independent goals to harm his father and to interfere with his ability to summon police.

The evidence, including Gatten's own testimony, supports this finding. Gatten testified that once his father was on the floor after the first barrage of punches, Gatten punched him two or three more times. By Robert's account, by then the emergency call had already been interrupted, and by Gatten's account, he continued punching his father so that his father could not get control of any weapons. By either account, Gatten did not throw the additional two or three punches to avoid apprehension. There are only two

plausible explanations for the additional punches—self-defense or malice. The jury reasonably rejected the self-defense theory.

The evidence supports the district court's finding that Gatten's assault on his father and his interference with a 911 call were separate offenses with independent goals. The finding is therefore not clearly erroneous, and the district court did not err by sentencing Gatten for both offenses.

Affirmed.