STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1772

State of Minnesota,
Respondent,

vs.

Sarah Curtis Martin,
Appellant,
Susan Ann Martinson,
Appellant,
and Lucia Wilkes Smith,
Appellant.

Filed September 7, 2010
Affirmed
Stauber, Judge

Hennepin County District Court
File No. 27CR0923959; 27CR0921020; 27CR0921021

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Andrew M. Small, St. Louis Park City Attorney, Tania K. M. Lex, Assistant City Attorney, Colich & Associates, Minneapolis, Minnesota (for respondent)

Robert J. Kolstad, John Kvinge, Certified Student Attorney, Minneapolis, Minnesota (for appellants)

Considered and decided by Stauber, Presiding Judge; Lansing, Judge; and Peterson, Judge.

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

STAUBER, Judge

Appellants challenge their convictions of trespassing at the Knollwood Army Recruiting Station. Because the district court did not abuse its discretion in sustaining objections to some of appellants' testimony, we affirm.

FACTS

The Knollwood Army Recruiting Station is located in the Knollwood Mall in St. Louis Park. Its purpose is to "facilitate the enlistment on a volunteer basis of young men and women who are looking to serve their country." The United States Army leases the space. Sergeant Jeremy Karr was the station commander at the office on the day of the incident.

On April 23, 2009, appellants Sarah Martin, age 69, Susan Martinson, age 66, and Lucia Smith entered the Knollwood Army Recruiting Station and stated that "their purpose was to enlist." They were accompanied by a number of other persons who appeared to be of similar age and were also apparently intending to enlist. The station staff, believing that based on their appearances the three women did not meet the age requirements, informed them that in accordance with Army Regulation 601-210, "they did not meet the age requirements." Sergeant Karr testified that after receiving the age requirement information, the women "kind of went away from the age question to you know we are here to enlist so that our grandkids don't have to continue dying in foreign countries." Karr further stated that the women had fliers, pamphlets, and signs that made

clear that the purpose of the women's visit to the station was the "protest of the war in Afghanistan and Iraq."

Sergeant Karr testified that he was concerned about the safety of the office because of the large number of people in the facility. He stated that they were all asked to leave at least five times but they refused. Following their refusal to leave the station, a staff member called the St. Louis Park Police Department. Upon arrival of the officers, Sergeant Karr informed an officer that he did not want the people in the office. The officers informed the group that they would be arrested if they refused to leave. All of the people left the station except for the appellants. Appellants were subsequently arrested for trespassing and charged with violations of Minn. Stat. § 609.605, subd. 1(b)(3) (2008). Appellants were tried by a jury on September 15–16, 2009, and convicted. This appeal followed.

D E C I S I O N

I.

Appellants argue that the district court's repeated sustaining of objections during appellants' direct testimony violated their due-process rights to explain their conduct to the jury. 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). 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). 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).

Appellants argue that the district court abused its discretion in sustaining four objections during appellant Smith's direct testimony, preventing her "from fully explaining her intent to the jury." Evidentiary rulings rest within the sound discretion of the district court. *State v. Williams*, 586 N.W.2d 123, 126 (Minn. 1998). This court reviews a district court's evidentiary rulings for abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

A. Relevancy

Appellants first contend that the district court abused its discretion in sustaining the state's objection on relevancy grounds when appellant Smith was describing the effect the number of war deaths and injuries had on "her decision to enlist." Evidence is relevant if it makes the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Minn. R. Evid. 401; *McKay's Family Dodge v. Hardrives, Inc.*, 480 N.W.2d 141, 147–48 (Minn. App. 1992), *review denied* (Minn. Mar. 26, 1992). A district court's decision on relevancy objections will not be reversed unless there is an abuse of discretion. *Bresson v. Stoskoph*, 370 N.W.2d 80, 83 (Minn. App. 1985), *review. denied* (Minn. Sep. 13, 1985);

see also Raleigh v. Independent Sch. Dist. No. 625, 275 N.W.2d 572, 576 (Minn. 1978) (a trial court has "wide latitude in determining relevant evidence, and its decision controls unless this discretion was abused").

Here, the testimony at issue consisted of the following:

> I live in Minneapolis where one of my neighbors, who lives on a corner that has lots of pedestrian and dog walking traffic, has a big sign on his garage. He is on the corner house and many people walk along his sidewalk. There is an American flag and a great big sign. And on that sign he posts and continually updates the total of U.S. soldiers in the wars in Iraq and Afghanistan. Today the number is 5,174 killed. I know that for every one of those 5,174 American military deaths there are seven additional troops who have been wounded, and 310,000 of those –

Although the district court sustained the state's relevancy objection, appellant Smith testified to her motivation for attempting to enlist in the army, which in part included the following testimony: (1) that a number of grandmothers and great aunts decided that on zero recruitment day, rather than try to stop recruitment they would "instead offer ourselves to apply for recruitment;" (2) that she has taken other action "to end the illegal wars in Iraq and Afghanistan," including letter writing, emailing congressmen, leafleting, writing newspaper articles, and working on campaigns; (3) that any person should have the right to apply for enlistment, "whether that individual is choosing a military career or whether that person is acting symbolically;" and (4) her niece's son enlisted in the Minnesota National Guard and will probably be sent to Afghanistan. Given this testimony by appellant Smith, the testimony regarding her neighbor's sign is irrelevant because the neighbor's sign does not bear on her intent and, thus, is excludable within the

district court's discretion. Even if the neighbor's sign did bear on appellant's intent, the district court did not abuse its discretion in excluding this evidence because it was also cumulative. *See* Minn. R. Evid. 403 (providing that "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the . . . needless presentation of cumulative evidence").

B. Foundation

Appellants next argue that the district court abused its discretion in sustaining the state's foundation objection to testimony regarding two newspaper articles because (1) the testimony was intended to "clarify [Smith's] state of mind and intent" and (2) the district court was ignoring the highly probative impact of the offered testimony on appellant Smith's state of mind. Evidentiary rulings on foundation are committed to the sound discretion of the trial judge and are not the basis for reversal unless that discretion has been clearly abused. *State v. Ritt*, 599 N.W.2d 802, 810 (Minn. 1999).

Here, appellants did not call the authors of the articles to provide proper foundation, but instead attempted to testify as to the content of the newspaper articles. *See Kelzer v. Wachholz*, 381 N.W.2d 852, 854–55 (Minn. App. 1986) (noting that district court's exclusion of report on foundational grounds was within its discretion when appellant had tried to admit report through someone with no knowledge or relationship to report); *see also* Minn. R. Evid. 901 (discussing authentication and identification requirements). Because appellant Smith lacked the necessary knowledge to establish foundation for the articles, the district court did not abuse its discretion in determining that appellant Smith could not lay proper foundation for the articles.

Appellants also argue that the district court abused its discretion in sustaining the state's foundation objection when Martinson "attempted to explain how her knowledge of infant mortality rates in Afghanistan motivated her to enlist." Appellant Martinson testified as follows:

> I am particularly concerned about the children. UNICEF periodically conducts studies on infant mortality rates and Under-Five mortality rates by country worldwide. These statistics are available on the Web, the Worldwide Web, by the UNICEF website. Afghanistan has the second highest Under-5 –

Here again, as with appellant Smith's testimony, appellant Martinson attempted to testify about a report of which she had no knowledge. Moreover, because appellant Martinson only offered that *she* could provide hearsay foundation for the report, the district court did not abuse its discretion in determining that appellant lacked foundation.

C. Hearsay

Appellants contend that the district court erred in sustaining the state's objection to testimony regarding what appellant Smith's relative's experience with military recruiters had on her motive and intent. A statement is hearsay if it was made outside of court and is offered in evidence to prove what it asserts. Minn. R. Evid. 801(c). Evidentiary rulings on hearsay statements are reviewed for clear abuse of discretion. *State v. Burrell*, 772 N.W.2d 459, 469 (Minn. 2009). Appellant Smith offered the following testimony:

> He enlisted in the Minnesota National Guard to give himself time and income. And this winter, in December, January probably, he will be sent probably to Afghanistan. He was hoping that by the time his – because he was recruited or because he was promised by a recruiter when enlisted in the Guard that –

The district court sustained the state's hearsay objection. Here, it is clear, that appellant Smith was attempting to testify to what a recruiter told her niece's son. That is clearly hearsay under Minn. R. Evid. 801(c), and the district court did not abuse its discretion in ruling the testimony inadmissible.

Finally, appellants cite to *Rein* and *Brechon* for the proposition that they have a constitutional right to testify liberally regarding their motive and intent for failing to leave the recruiting station when asked to leave by the Sergeant Karr. These cases do state that a criminal defendant has a due-process right to explain her conduct to a jury. *State v. Brechon*, 352 N.W.2d 745, 751 (Minn. 1984); *Rein*, 477 N.W.2d at 719. But these cases also state that a district court should exclude "irrelevant testimony" and "make other rulings on admissibility as the trial proceeds." *Brechon*, 352 N.W.2d at 751; *Rein*, 477 N.W.2d at 719–20 (stating that district court may impose "reasonable limits on the testimony of each defendant").

II.

Appellants argue that the "district court's failure to provide a definition for a 'claim of right,' an essential element of [t]respassing, constitutes plain error." The district court has "considerable latitude in selecting the language of jury instructions." *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). This court reviews jury instructions "in their entirety to determine whether they fairly and adequately explain the law of the case." *State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004). "An instruction is in error if it materially misstates the law." *State v. Kuhnau*, 622 N.W.2d 552, 556 (Minn. 2001).

The district court's decision as to what jury instructions to give is reviewed for abuse of discretion. *State v. Pendleton*, 759 N.W.2d 900, 907 (Minn. 2009). Erroneous jury instructions are reviewed under a harmless-error standard. *State v. Jackson*, 746 N.W.2d 894, 898 (Minn. 2008). In assessing whether there has been harmless error, the inquiry is not whether the jury could have convicted the defendant without the error, but rather, what effect the error had on the jury's verdict, "and more specifically, whether the jury's verdict is 'surely unattributable' to [the error]." *State v. King*, 622 N.W.2d 800, 811 (Minn. 2001) (quoting *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997)).

The elements of the crime of trespass are set forth in CRIMJIG 17.22. Although "claim of right" is an element of trespass, it is not defined within the trespassing instruction. Appellants requested that the court use the following language: "A claim of right is defined as a good faith claim by defendants that permission was given to them to be upon the premises by a statute, rule, regulation or other law." The district court rejected appellants' request and instead instructed the jury as follows:

> Third, the Defendant acted without claim of right. This means that the State must prove either, a, that the Defendant did not believe she had a legal right to remain on the property after the demand to leave was made or, b, if the Defendant did so believe that such belief was unreasonable. A claim of right can exist even though based on a mistaken understanding of the law as long so the claim of right is made in good faith and is reasonable.

In the comment to CRIMJIG 17.22, it is recommended that the jury be instructed as follows:

> A bona fide claim of right exists only when the defendant is acting in good faith, as opposed to asserting a false claim. In

> order to find the defendant had a bona fide claim of right, you must find that the defendant believed he or she had a right to enter, and there were reasonable grounds for such belief.

10A *Minnesota Practice*, CRIMJIG 17.22 cmt. (2006).

Here, the district court's instruction regarding "claim of right" accurately states the law. *See id.* The district court's inclusion of the phrase "mistaken understanding of the law so long as the claim of right is made in good faith and is reasonable" does not materially misstate the law. In fact, it includes all the requisite language and fairly describes the element of claim of right.

Even if the district court erred in not following the exact phrasing of either CRIMJIG 17.22, or appellants' recommended instruction, it is harmless error, as the jury's conviction was unattributable to any error. Evidence at trial showed that appellants entered the recruiting station to purportedly enlist and were told by station staff that, pursuant to the age-requirement regulation, they were ineligible to enlist due to age and were asked to leave the property. Based on this evidence, appellants had no claim of right to remain at the station and if they believed that they did, their belief was not reasonable.

Affirmed.