STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2290

State of Minnesota,
Respondent,

vs.

Deangelio Tyree Smith,
Appellant.

Filed October 19, 2010
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-CR-09-8132

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

Gerald T. Hendrickson, St. Paul City Attorney, James F.X. Jerskey, Assistant City Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Ross, Judge; and Johnson, Judge.

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

JOHNSON, Judge

A Ramsey County jury found Deangelio Tyree Smith guilty of obstructing legal process with force based on evidence that he fought with police officers who entered his home in response to a report of a domestic assault. On appeal, Smith argues that the district court denied him his constitutional right to present a complete defense by not permitting him to pursue the affirmative defense of self-defense. He also argues that the district court denied him his constitutional right to testify by excluding some of his testimony about the incident. We affirm.

FACTS

On April 25, 2009, St. Paul police officers went to Smith's home in response to a report of a domestic assault in progress. When Officer Dominic Dzik arrived, he noticed that the frame of the front door and the dead-bolt lock had been damaged, as if someone had kicked in the door. Officer Dzik entered the home and announced his presence. Officer Dzik heard a male voice upstairs. Officer Dzik asked the man to show himself at the top of the stairs. When the man did not do so, Officer Dzik and two other officers walked up the stairs.

Officer Dzik found Smith in an upstairs room, talking on the telephone in a loud voice. Officer Dzik pointed his handgun at Smith and ordered him to turn around and put his hands behind his back. Smith did not comply with the order but, instead, began walking toward Officer Dzik. Officer Dzik holstered his handgun because Smith was unarmed. Officer Dzik grabbed Smith's left arm for the purpose of placing handcuffs on Smith. But

Smith resisted Officer Dzik, and a scuffle ensued. Another police officer became concerned for Officer Dzik's safety and used a Taser on Smith. Smith fell to the ground, which allowed the officers to place him in handcuffs.

The officers then escorted Smith outside to a squad car while Smith continued to resist, which made it difficult for the officers to escort him down the stairs. While outside, Smith continued to struggle by resisting forward movement, pushing Officer Dzik, and kicking Officer Dzik's legs. At one point, Smith broke away from Officer Dzik and began to flee. Officer Dzik stopped Smith's flight with another Taser burst. Smith continued to resist such that several officers had to force him into a squad car.

The state charged Smith with obstruction of legal process with force, a violation of Minn. Stat. § 609.50, subd. 1(2) (2008). After a two-day trial in October 2009, the jury returned a verdict of guilty. In December 2009, the district court sentenced Smith to one year in jail, with all but 30 days stayed. Smith appeals.

D E C I S I O N

I. Right to Present Complete Defense

Smith first argues that the district court deprived him of his federal constitutional right to present a complete defense by not permitting him to pursue the affirmative defense of self-defense.

A defendant in a criminal trial has a federal constitutional right "to a meaningful opportunity to present a complete defense." *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006); *see also State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1993). The right to present a complete defense includes "the right to a fair opportunity to defend against the State's

accusations." *Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 1045 (1973). The right to present a complete defense, however, "is not without limitation." *State v. Buchanan*, 431 N.W.2d 542, 550 (Minn. 1988). The right "must be balanced against interests served by imposing strict relevancy requirements on the defendant's testimony." *Id.*

As a practical matter, Smith challenges the district court's refusal to instruct the jury on the law of self-defense. But Smith does not base his argument on the Minnesota caselaw concerning a defendant's right to a jury instruction on self-defense. Rather, Smith bases his argument on the federal constitutional right to present a complete defense. Regardless how the argument is packaged, it is necessary to consider Minnesota law concerning the defense of self-defense.

A district court's obligations in instructing the jury naturally depend on the information available to the district court at the time of trial. In this case, it is significant that Smith did not request an instruction on the law of self-defense. Smith requested an instruction on the law of defense-of-dwelling. The two defenses are distinct. *Compare* Minn. Stat. § 609.06, subd. 1(3) (2008) (providing that person may use reasonable force "to resist an offense against the person"), *with* Minn. Stat. § 609.06, subd. 1(4) (2008) (providing that person in lawful possession of real property may use reasonable force to resist trespass). Smith's trial counsel clearly stated, "the only thing we are asking" for is an instruction "that reasonable force is authorized by any person in lawful possession of real or personal property in resisting a trespass upon or other unlawful interference with such property."

Smith's failure to request an instruction on self-defense raises the question whether Smith sufficiently preserved for appellate review a challenge to the district court's jury instructions. A defendant's failure to request a jury instruction typically allows for appellate review of limited scope. *See* Minn. R. Crim. P. 31.02 (providing for review for plain error); *State v. Bolte*, 530 N.W.2d 191, 199 (Minn. 1995) (analyzing district court's "failure to give [an] instruction *sua sponte*" to determine whether it constituted plain error). In this particular context, however, a defendant's failure to request a jury instruction on the defense of self-defense precludes appellate review entirely. In *State v. Gustafson*, 610 N.W.2d 314 (Minn. 2000), the supreme court stated that "while the trial court has the ultimate responsibility to ensure that all essential instructions are given under the law, that responsibility does not require the court to instruct the jury, sua sponte, on the affirmative defense of self-defense when it was not raised, argued, or requested." *Id.* at 320 (quotation omitted). The supreme court noted that Gustafson was required to give notice to the state of his intent to rely on the defense of self-defense but that he did not give such notice. *Id.*; *see also* Minn. R. Crim. P. 9.02, subd. 1(3)(a) (2009). The supreme court rejected Gustafson's argument without considering whether the evidence in the record justified a self-defense instruction. *Id.*

The procedural posture of *Gustafson* is indistinguishable from that of this case. Smith did not give notice to the state of his intent to rely on the defense of self-defense. Smith's proposed instructions did not include an instruction on self-defense; rather, Smith sought an instruction on defense-of-dwelling. Thus, Smith cannot establish that the district court violated Minnesota law by not instructing the jury, *sua sponte*, on the law of self-

defense. The futility of such an argument likely explains why Smith has not sought reversal on that ground.[1]

We return to Smith's argument that the district court, by not allowing him to pursue the defense of self-defense, deprived him of his federal constitutional right to present a complete defense. Smith relies on a line of United States Supreme Court cases that analyze this right in the context of state laws governing the admission or exclusion of evidence. *See, e.g., Chambers v. Mississippi*, 410 U.S. 284, 93 S. Ct. 1038 (1973). But Smith has not cited any cases that apply the right in the context of state laws governing jury instructions. It appears that the United States Supreme Court never has recognized the right in that context, although a small number of federal appellate courts may have done so. *See Taylor v. Withrow*, 288 F.3d 846, 851-53 (6th Cir. 2002) (citing cases).

We need not decide whether the right Smith asserts -- a federal constitutional right to present a complete defense by obtaining a jury instruction -- exists. Even if it does exist, the right could not be successfully asserted in this case. Smith cannot prevail on his federal constitutional argument because he did not request a self-defense instruction. "In the exercise of this right [to present a complete defense], the accused . . . *must comply with established rules of procedure* and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Chambers*, 410 U.S. at 302, 93 S. Ct. at 1049 (emphasis added); *see also State v. Richardson*, 670 N.W.2d 267, 277 (Minn. 2003).

[1]We note that Smith ultimately would need to satisfy the four-part test applicable to all requests for self-defense instructions, *see State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997), and, in addition, would need to satisfy the heightened standard applicable to claims of self-defense against a police officer, *see State v. Kutchara*, 350 N.W.2d 924, 927 (Minn. 1984); *see also City of St. Louis Park v. Berg*, 433 N.W.2d 87, 92 (Minn. 1988).

Because Smith failed to comply with the requirements of Minnesota law for requesting an instruction on self-defense, he cannot establish that the district court, by not giving such an instruction, violated his federal constitutional right to present a complete defense. *See Chambers*, 410 U.S. at 302, 93 S. Ct. at 1049; *People v. Rogers*, 141 P.3d 135, 169-70 (Cal. 2006).

Smith argues further that the district court excluded evidence that would have allowed him to satisfy his burden of production with respect to a self-defense instruction. The district court sustained several of the state's objections to direct-examination questions concerning the police officers' actions. These rulings occurred after Smith was denied an instruction on defense-of-dwelling. Thus, at the time the rulings were made, self-defense was not an issue in the case and was not even foreseeable. Because the direct-examination questions at issue were not intended to elicit evidence relevant to a defense theory, the district court did not err by sustaining the state's objections. *See State v. Robinson*, 539 N.W.2d 231, 240-41 (Minn. 1995).

In addition, Smith did not properly preserve the alleged errors in the district court's evidentiary rulings. If a district court excludes evidence, the party offering the evidence must, to preserve an objection for appellate review, ensure that "the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked." Minn. R. Evid. 103(a)(2). If an offer of proof is not made, an appellate court "cannot assess the significance of the excluded testimony," "unless the substance of the evidence is apparent from the context." *State v. Harris*, 713 N.W.2d 844, 849 (Minn. 2006). In this case, the district court gave Smith's trial counsel an opportunity

to make an offer of proof, but no offer of proof was made. The substance of the testimony Smith would have given is not apparent from the context. Thus, Smith's failure to make an offer of proof prevents us from concluding that the district court erred. *See id.* at 848-49; *State v. Wolf*, 605 N.W.2d 381, 385 (Minn. 2000); *State v. Lee*, 494 N.W.2d 475, 479 (Minn. 1992).

In sum, the district court did not violate Smith's federal constitutional right to present a complete defense by not permitting him to pursue the affirmative defense of self-defense.

II. Right to Testify

Smith also argues that the district court deprived him of his federal constitutional right to testify. Smith argues that the district court "limited [his] ability to tell his story to the jury" and "prevented [him] from giving his version of what happened" even if such evidence was not relevant to the issue of self-defense. More specifically, Smith asserts that the district court erroneously excluded his testimony "about the police officers' actions, [his] resulting injuries and medical treatment, and his thoughts about the incident."

"[A] defendant in a criminal case has the right to take the witness stand and to testify in his or her own defense." *Rock v. Arkansas*, 483 U.S. 44, 49, 107 S. Ct. 2704, 2708 (1987); *see also Richards*, 495 N.W.2d at 192 (quoting *Rock*). A defendant's right to testify is part of the right to call witnesses in his defense. *Rock*, 483 U.S. at 52, 107 S. Ct. at 2709. The right to testify includes "an accused's right to present his own version of events in his own words." *Id.* at 52, 107 S. Ct. at 2709. Furthermore, "criminal defendants have a . . . right to explain their conduct to a jury." *State v. Brechon*, 352 N.W.2d 745, 751 (Minn. 1984). "This right is not without limitation, however, and must be balanced against

interests served by imposing strict relevancy requirements on the defendant's testimony." *Buchanan*, 431 N.W.2d at 550. State laws that restrict a defendant's right to testify "'may not be arbitrary or disproportionate to the purposes they are designed to serve.'" *In re Welfare of M.P.Y.*, 630 N.W.2d 411, 416 (Minn. 2001) (quoting *Rock*, 483 U.S. at 56, 107 S. Ct. at 2711).

In *Rock*, the United States Supreme Court addressed the question "whether a criminal defendant's right to testify may be restricted by a state rule that excludes her posthypnosis testimony." *Rock*, 483 U.S. at 53, 107 S. Ct. at 2710. The Court concluded that "Arkansas' *per se* rule excluding all posthypnosis testimony infringes impermissibly on the right of a defendant to testify on his own behalf." *Id.* at 62, 107 S. Ct. at 2714. The *Rock* Court relied in part on *Washington v. Texas*, 388 U.S. 14, 87 S. Ct. 1920 (1967), in which the Court held that "a state statute that prevented persons charged as principals, accomplices, or accessories in the same crime from being introduced as witnesses for one another" violated a defendant's right to present a complete defense because it "*arbitrarily*" denied him the right to present the testimony of an otherwise competent witness. *Rock*, 483 U.S. at 53-54, 107 S. Ct. at 2710-11 (citing *Washington*, 388 U.S. at 21, 23, 87 S. Ct. at 1924-25). The *Rock* Court also relied in part on *Chambers*, in which the Court held that a Mississippi law, which prevented Chambers from cross-examining a person who had confessed to the murder of which Chambers was convicted, "conflicts with the right to present witnesses" and, thus, may "'not be applied mechanistically.'" *Rock*, 483 U.S. at 55, 107 S. Ct. at 2711 (quoting *Chambers*, 410 U.S. at 302, 93 S. Ct. at 1049). In another case based on *Chambers*, the Supreme Court held that a state trial court's "blanket exclusion" of the defendant's

testimony concerning the reliability of his own confession deprived him of his constitutional rights by excluding evidence "central to the defendant's claim of innocence" without "any valid state justification." *Crane v. Kentucky*, 476 U.S. 683, 690, 106 S. Ct. 2142, 2146-47 (1986). This body of caselaw essentially stands for "the proposition that states may not impede a defendant's right to put on a defense by imposing mechanistic . . . or arbitrary . . . rules of evidence." *LaGrand v. Stewart*, 133 F.3d 1253, 1266 (9th Cir. 1998); *see also Holmes v. South Carolina*, 547 U.S. 319, 326, 126 S. Ct. 1727, 1732 (2006) (stating that constitutional right to present complete defense "prohibits the exclusion of defense evidence under rules that serve no legitimate purpose or that are disproportionate to the ends that they are asserted to promote").

In this case, Smith took the witness stand and testified about the incident for which he was convicted. Among other things, Smith testified about the telephone conversation that was occurring when the police officers arrived, about his response when Officer Dzik pointed his handgun at him, about his interaction with the officers before he was stunned by the Taser, about the remainder of the encounter in the home, and about whether he intended to prevent the officers from taking him to the squad car. The district court, however, sustained the state's objections to some direct-examination questions on the ground of lack of relevance. The district court did not employ a rule of exclusion that is arbitrary, mechanistic, or without valid justification. Rather, the district court made ordinary, garden-variety rulings on relevance grounds. As the Supreme Court wrote in *Crane*:

> We acknowledge . . . our traditional reluctance to impose constitutional constraints on ordinary evidentiary rulings by state trial courts. In any given criminal case the trial judge is called

> upon to make dozens, sometimes hundreds, of decisions concerning the admissibility of evidence. As we reaffirmed earlier this Term, the Constitution leaves to the judges who must make these decisions wide latitude to exclude evidence that is repetitive, only marginally relevant or poses an undue risk of harassment, prejudice, or confusion of the issues. Moreover, we have never questioned the power of States to exclude evidence through the application of evidentiary rules that themselves serve the interests of fairness and reliability -- even if the defendant would prefer to see that evidence admitted.

476 U.S. at 689-90, 106 S. Ct. at 2146 (citations, quotations, and alterations omitted). The evidentiary rulings made by the district court in this case simply are not the type of rulings that implicate constitutional concerns. In addition, for the reasons stated above in part I, Smith's argument also is flawed by the fact that his trial counsel did not make an offer of proof. *See* Minn. R. Evid. 103(a)(2); *Harris*, 713 N.W.2d at 848-49; *Wolf*, 605 N.W.2d at 385; *Lee*, 494 N.W.2d at 479.

Smith relies on two opinions of this court in which convictions were reversed on the ground that the district court erroneously excluded some of the defendant's testimony. First, in *State v. Blank*, 352 N.W.2d 91 (Minn. App. 1984), *review denied* (Minn. Sept. 20, 1984), the defendant was convicted of fifth-degree assault because of his role in a fight that followed a bar-room argument. *Id.* at 92. The district court did not allow the defendant to testify about the provocative statements that the victim made inside the bar, which the court described as "foul, vulgar, and obscene." *Id.* This court reversed, reasoning that "some latitude should be allowed . . . to show the circumstances that led to the assault." *Id.* We did not, however, base our decision on a constitutional right to testify. *See id.* at 92-93. Rather, the opinion appears to be based on basic concepts of relevance. *See id.* Smith's

argument, however, is based on the federal constitutional right to testify. Because *Blank* did not rely on that rationale, the opinion does not support Smith's argument.

Second, in *State v. Wiltse*, 386 N.W.2d 315 (Minn. App. 1986), *review denied* (Minn. June 30, 1986), the defendant was convicted of violating a protective order by entering the residence of a woman with whom he previously had lived. *Id.* at 316. Wiltse sought to testify that he drove to the residence to recover his personal property, that he sent a friend inside to retrieve the property while he waited in his car, that the woman would not give the property to Wiltse's friend, and that the woman insisted that Wiltse personally enter the residence. *Id.* The district court did not allow Wiltse to give the proffered testimony on the ground that his intent was irrelevant. *Id.* at 317. This court reversed, citing *Brechon* and *Blank* as well as cases from foreign jurisdictions. *Id.* at 317-18. We reasoned, "It is difficult to imagine a situation where, when an essential element of a crime turns on the presence of a defendant, the defendant could be prevented from explaining his presence at the scene to the jury." *Id.* at 318. We concluded by stating the narrow holding "that a defendant has the right to present evidence of the reasons for his presence at the scene of an alleged crime." *Id.* Because Smith did not seek to testify about the reasons for his presence at his own home, *Wiltse* is inapplicable.

In sum, the district court did not violate Smith's constitutional right to testify by excluding some of his testimony about the incident for which he was convicted.

Affirmed.