STATE OF MINNESOTA
IN COURT OF APPEALS
A11-93

State of Minnesota,
Respondent,

vs.

Aaron Timothy Forcier, f/k/a Aaron Timothy Foshaug,
Appellant.

Filed November 7, 2011
Affirmed
Larkin, Judge

Stearns County District Court
File No. 73-CR-08-6702

Lori A. Swanson, Attorney General, Kimberly R. Parker, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Jennifer H. Chaplinski, Special Assistant Public Defender, Office of the Stearns County Public Defender, St. Cloud, Minnesota (for appellant)

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

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

LARKIN, Judge

Appellant challenges his conviction of second-degree assault, arguing that the district court erred in excluding proffered defense testimony at his jury trial. Appellant contends that the district court abused its discretion in excluding the testimony as irrelevant, speculative, and confusing, and that he therefore was unable to present a complete defense. We affirm.

FACTS

A jury convicted appellant Aaron Timothy Forcier of second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2006); J.H. was the victim of the assault. J.H. testified that he was employed by Twin City Lawmen, a company that provided loss-prevention services to Cub Foods. When working as a loss-prevention officer, J.H. wore plain clothes and carried an identification badge. He also carried handcuffs and pepper spray.

On May 23, 2008, J.H. was working at a Cub Foods store and saw a woman put items into her purse. The woman was shopping with appellant and three children. Appellant and the woman paid for the items in their shopping cart but did not pay for the items in the woman's purse. J.H. testified that he approached the woman outside of Cub Foods, identified himself as a loss-prevention officer, and attempted to detain her for theft. The woman became upset and resisted his attempts. After J.H. grabbed the cart that appellant was pushing, appellant left the cart and walked away.

J.H. pursued appellant, grabbed his wrist, and told him to stay until the police arrived. J.H. testified that at this point, appellant became aggressive and "positioned himself into a fighting stance." J.H. put appellant into an "arm bar" hold, grabbing one of appellant's arms with both of his hands. J.H. testified that this type of hold is used to control individuals who become overly aggressive and that it is not meant to cause pain. After J.H. grabbed appellant's arm, appellant "swung his body over" and hit J.H. on the side of the head with a pair of brass knuckles. The blow left J.H. with a lacerated and bloody forehead.

J.E., a bystander, was in the Cub Foods entryway and saw appellant strike J.H. J.E. testified that he saw J.H. reach for appellant's shoulder or upper arm, at which point appellant turned around and struck J.H. in the head, causing J.H. to stagger. Because J.H. appeared to need help, J.E. ran outside to assist J.H. When he arrived, J.E. saw that appellant had brass knuckles in his right hand. J.E. grabbed appellant from behind, took him down to the ground, and followed J.H.'s instructions to use J.H.'s handcuffs to restrain appellant. J.E. testified that appellant was "uncontrollable" and was yelling and waving his fists. Once appellant was handcuffed, J.E. helped J.H. escort appellant back to the store. The police arrived and took J.H. to a hospital and appellant into custody.

Appellant presented a self-defense theory at trial, and the district court instructed the jury in accord. Appellant testified that J.H. did not identify himself as a loss-prevention officer, that J.H. approached appellant's friend wearing plain clothes and looking "scruffy," and that J.H. grabbed at his friend's purse. Appellant also testified that J.H. grabbed appellant's arm from behind and put him into a headlock. Appellant

testified that he was frightened by J.H.'s actions and that when he saw another man approach, he decided to hit J.H. in the face with his brass knuckles.

In support of his self-defense claim, appellant offered the testimony of M.O., the executive director of the Minnesota Board of Private Detectives and Protective Agent Services. In a proffer outside of the jury's presence, M.O. testified that Twin City Lawmen was required to provide licensing information regarding its employees every two years, including an affidavit identifying "all employees who are charged with employment duties that are protective in nature, whether they are armed or unarmed." According to M.O., she examined the most recent documentation provided by Twin City Lawmen at appellant's request, and J.H. was not listed as an employee of Twin City Lawmen, nor was he identified in its affidavit as an employee who carried weapons. The district court excluded the proffered testimony, finding it to be irrelevant, speculative, and confusing.

The jury rejected appellant's self-defense claim and found him guilty of second-degree assault. The district court imposed a probationary sentence, and this appeal follows.

D E C I S I O N

"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). Even when it is claimed that the exclusion of evidence deprived a criminal

defendant of his or her constitutional rights, we review the ruling under the abuse-of-discretion standard. *See State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006) (citing *State v. Profit*, 591 N.W.2d 451, 463 (Minn. 1999)) (applying abuse-of-discretion standard when defendant claimed exclusion of evidence deprived him of his constitutional right to present a complete defense).

A criminal defendant is constitutionally "afforded a meaningful opportunity to present a complete defense." *State v. Quick*, 659 N.W.2d 701, 712 (Minn. 2003) (quotations omitted) (citing U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7). But a defendant has no right to introduce irrelevant or otherwise excludable evidence. *See Chambers v. Mississippi*, 410 U.S. 284, 302, 93 S. Ct. 1038, 1049 (1973) ("In the exercise of [the right to present witnesses in his own defense], the accused . . . must comply with established rules of procedure and evidence . . . ."); *State v. Crims*, 540 N.W.2d 860, 866 (Minn. App. 1995) ("[A] defendant has *no* right to introduce evidence that either is irrelevant, or whose prejudicial effect outweighs its probative value."), *review denied* (Minn. Jan. 23, 1996). Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Irrelevant evidence is inadmissible. Minn. R. Evid. 402.

A person may use reasonable force toward another when the person is, or reasonably believes he is, "resisting or aiding another to resist an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2006). Self-defense is available "only to those who act honestly and in good faith," and requires

> (1) the absence of aggression or provocation on the part of the [defendant]; (2) the actual and honest belief of the [defendant] that he was in imminent danger of death, great bodily harm, or some felony and it was necessary to take the action he did; (3) the existence of reasonable grounds for such belief; and (4) the . . . [defendant] to retreat or avoid the danger if reasonably possible.

State v. Johnson, 277 Minn. 368, 373, 152 N.W.2d 529, 532 (1967). "The degree of force used in self-defense must not exceed that which appears to be necessary to a reasonable person under similar circumstances." *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997).

Appellant contends that the district court erred in excluding M.O.'s proffered testimony because evidence that J.H. was not listed as an employee of Twin City Lawmen and that he had not completed the training necessary to work in private security was relevant to his self-defense claim. Specifically, appellant asserts that J.H.'s purported lack of training in the use of handcuffs shows that J.H. behaved inappropriately during the incident. The state counters that J.H.'s employment and training records were irrelevant because they "shed no light on the amount of force used by J.H." We agree.

The issue for the jury was not whether J.H. behaved appropriately—the issue was whether appellant reasonably responded to J.H.'s use of force. Although evidence regarding J.H.'s use of force tends to show whether appellant reasonably believed that he was in imminent danger of death or great bodily harm and whether appellant used a reasonable amount of force, J.H.'s purported exclusion from a list of Twin City Lawmen employees who carry weapons does not have any bearing on these issues. Moreover, M.O.'s proffered testimony could not establish appellant's state of mind where appellant

had no knowledge of J.H.'s employment status and training history at the time of the assault. *See State v. Cabrales*, 392 N.W.2d 347, 351 (Minn. App. 1986) (stating that evidence of a victim's prior violent acts may be relevant to show the reasonableness of the defendant's belief in imminent bodily harm, but only when the defendant has knowledge of the prior acts), *review denied* (Minn. Oct. 17, 1986). Thus, the district court did not abuse its discretion in excluding M.O.'s testimony as irrelevant.

Nor did the district court abuse its discretion in excluding M.O.'s testimony as speculative and confusing. *See* Minn. R. Evid. 403 (providing that relevant evidence may be excluded if its probative value is substantially outweighed by the danger of confusion of the issues); Minn. R. Evid. 602 (providing that a witness may not testify regarding a matter unless the witness has personal knowledge of the matter). During appellant's proffer, M.O. acknowledged that, based on her review of the documentation, she could not say with any certainty whether J.H. was listed as an employee of Twin City Lawmen or authorized to use weapons *at the time of the offense*. All M.O. could say was that as of January 22, 2010, J.H. was not referenced in her records from Twin City Lawmen. Thus, assuming for the sake of argument that the proffered evidence was relevant, the district court did not abuse its discretion in excluding it as speculative and confusing.

Because the district court acted within its discretion in excluding appellant's proffered witness testimony, we affirm.

Affirmed.

Dated:

Judge Michelle A. Larkin