STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1973

State of Minnesota,
Respondent,

vs.

Julius Wayne Willis, Jr.,
Appellant.

Filed November 26, 2012
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-10-30822

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

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

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

WORKE, Judge

Appellant challenges his second-degree-felony-murder conviction, arguing that the district court (1) abused its discretion by admitting statements that appellant's attorney made after appellant invoked his right to remain silent; (2) erred by allowing witnesses to testify in detail regarding an assault that may have instigated the current offense; and (3) plainly erred by instructing the jury that appellant had a duty to retreat before defending another. We affirm.

D E C I S I O N

Adoptive admissions and authorized admissions

A jury found appellant Julius Wayne Willis, Jr., guilty of second-degree felony murder. He argues that he is entitled to a new trial, asserting that the district court abused its discretion when it admitted statements made by appellant's attorney, Mark Miller, after appellant invoked his right to remain silent. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. . . . [A]ppellant 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).

On July 2, 2010, L.F. and J.R. confronted appellant and T.M. regarding their possible involvement in an assault of an individual known as Makavelli. An argument ensued and appellant stabbed L.F. with a knife; L.F. died as a result. The next day, appellant and T.M. appeared at police headquarters with attorney Miller. A police

sergeant read appellant his *Miranda* warning. Miller stated that appellant did "not wish to speak to [the sergeant]," but was there to "cooperate" and to "try to present information [that is] helpful to [the] investigation through [Miller]." Miller then responded on appellant's behalf to the sergeant's questions. The district court admitted Miller's statements, concluding that appellant waived his right to remain silent when he adopted and authorized Miller's statements.

The district court determined that Miller's statements were adoptive admissions. Under Minn. R. Evid. 801(d)(2)(B), a statement is not hearsay if it is offered against a party and is "a statement of which the party has manifested an adoption or belief in its truth." The district court also determined that appellant authorized these statements.[1] Under Minn. R. Evid. 801(d)(2)(C), a statement is not hearsay if it is offered against a party and is "a statement by a person authorized by the party to make a statement concerning the subject."

In deciding whether a statement is an adoptive admission, the district court "must first determine that the defendant exhibited conduct or made statements that were unequivocal, positive and definite in nature clearly indicating that the defendant adopted the hearsay statements as his own." *State v. Flores*, 595 N.W.2d 860, 867 (Minn. 1999); *see State v. Roan*, 532 N.W.2d 563, 573 (Minn. 1995) (determining that a hand gesture was a definite indication of adoption); *State v. Shoop*, 441 N.W.2d 475, 482 (Minn. 1989)

[1] The district court did not make a finding on each specific statement Miller made; rather, the district court determined that the statement as a whole was an adoptive admission and an authorized statement. Because there is no difference in our review of the admission of this evidence, we conclude that, although it would have been helpful, it was not necessary for the district court to independently rule on each specific statement.

(determining that a head nod was a definite indication of adoption). In *Flores*, the supreme court concluded that the appellant adopted the admissions by "actively participating in the conversation," and by failing to "give any indication that he disagreed with or denied" the statement. 595 N.W.2d at 868. Likewise, an individual authorizes statements made by his attorney if the statements are made in an unequivocal manner and relate to a matter within the scope of the attorney's authority. *See U.S. v. Ojala*, 544 F.2d 940, 946 (8th Cir. 1976).

The record supports the district court's rulings that appellant adopted and authorized Miller's statements. First, Miller stated that appellant was there to cooperate with and to aid the officers in their investigation. Appellant did not disagree with this statement, nor did he disagree with or correct any other of Miller's statements. Second, appellant was present during the entire interview and actively conversed with Miller. There are several instances when appellant and Miller consulted prior to Miller responding to a question. Appellant and Miller consulted privately before Miller responded to the sergeant's inquiries about whether appellant had any injuries, where the weapon was located, and whether appellant was wearing the shirt he wore the night before. Thus, there were frequent whispered conversations between appellant and Miller before or after Miller spoke on appellant's behalf. Finally, Miller stated that appellant and T.M. must have offended a large group of people, and then consulted privately with appellant before offering details about the confrontation. Miller stated that appellant and T.M. had been confronted and "boxed" in by more than five people, that appellant acted in self-defense, and that L.F. ran into the knife. Thus, appellant used the interview as an

opportunity to establish a defense and intended that the sergeant rely on his statements. The district court did not abuse its discretion in admitting these statements.

Evidence of previous assault

Appellant next argues that the district court abused its discretion when it permitted testimony regarding the assault of Makavelli and appellant's alleged involvement. Evidentiary rulings rest within the discretion of the district court and will not be reversed absent a clear abuse of discretion. *Amos*, 658 N.W.2d at 203.

The parties stipulated that evidence related to an assault of Makavelli would be admitted to provide context because appellant's alleged involvement in that assault may have instigated the confrontation that led to the current offense. Appellant also stipulated to the evidence of the assault to support his claim that he acted in self-defense when confronted and accused of committing the assault of Makavelli.

The prosecutor asked one of the state's witnesses if something had happened in the community earlier that week. The witness replied that Makavelli had been assaulted. The prosecutor asked how the community felt about the assault, and the witness replied that people were saying that the assault was not honorable. The prosecutor asked who assaulted Makavelli and the witness replied that appellant and "some other people" had "beat him down . . . sent him to the hospital in critical condition." Another witness testified that people in the community liked Makavelli and that his assault was on their minds. This witness also testified that the word on the street was that T.M. and appellant assaulted Makavelli. A police sergeant testified that a police report had been filed

regarding Makavelli's assault, and the report reflected that Makavelli had been "seriously injured." He further testified that nobody had been charged in that matter.

Appellant claims that the jury needed to hear only that the current offense was initiated by appellant's alleged involvement in an assault; he asserts that he was prejudiced when the jury heard the extent of Makavelli's injuries, and that people in the community thought that appellant had been involved in the assault. Appellant is correct in arguing that to establish context, the jury needed to hear only that there had been a previous assault that may have instigated the current offense. But appellant fails to show that he was prejudiced. The witnesses stated that an assault occurred and that it was assumed that appellant assaulted Makavelli. But none of the witnesses stated that appellant was involved, and the police sergeant testified that nobody had been charged in the matter. And the district court properly instructed the jury on how to use the evidence: "[t]his evidence was received for the limited purpose of putting the events of July 2, 2010, into context. [Appellant] is not on trial and may not be convicted of any offense other than what has been charged in this case." *See State v. Ferguson*, 581 N.W.2d 824, 833 (Minn. 1998) (stating that we assume that the jury follows the district court's instructions). Appellant stipulated to the admission of some evidence regarding the assault, and the additional evidence regarding the assault was not prejudicial. *See Amos*, 658 N.W.2d at 203 (stating that appellant must show that the district court abused its discretion in admitting evidence and that appellant was thereby prejudiced). Therefore, the district court did not abuse its discretion in admitting this evidence.

Jury instructions

Finally, appellant argues that the district court plainly erred when it instructed the jury that before appellant had a right to defend another, T.M., he had a duty to retreat. Because appellant failed to object to the jury instructions, we review for plain error. *See State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). Plain error exists if there is clear or obvious error, and the error affects substantial rights. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Even if these elements are met, this court will reverse only if necessary to ensure the fairness and integrity of the judicial proceedings. *Id.*

District courts are allowed "considerable latitude" in the selection of language for the jury instructions. *State v. Baird*, 654 N.W.2d 105, 113 (Minn. 2002). "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 instructed the jury on defense of another, stating:

> [Appellant] is not guilty of a crime if [he] used reasonable force . . . to resist or aid another in resisting an offense against a person, and such an offense was being committed or [appellant] reasonably believed that it was.
>
> . . . .
>
> The legal excuse of self-defense is available only to those that act honestly and in good faith. This includes the duty to retreat or avoid the danger if reasonably possible.

This language mirrors the standard jury instruction. *See* 10 *Minnesota Practice*, CRIMJIG 7.08 (2006). The legal justification of defense of another parallels that of self-defense. *State v. Richardson*, 670 N.W.2d 267, 278 (Minn. 2003). This includes a duty to retreat. Therefore, the district court did not materially misstate the law.

Appellant argues, however, that a duty to retreat in defense of another is incompatible because if appellant retreated, the other person would be left to defend himself. Appellant likens his claim to that of an individual who has no duty to retreat when preventing the commission of a crime in a dwelling. *See State v. Glowacki*, 630 N.W.2d 392, 402 (Minn. 2001) ("There is no duty to retreat from one's own home when acting in self-defense in the home, regardless of whether the aggressor is a co-resident."). But one does not have a duty to retreat from one's dwelling because the law presumes that is the safest place to be—in one's own home. *See id.* at 401. The district court properly instructed the jury that appellant had a duty to retreat before defending another, because the self-defense and defense-of-another legal justifications parallel each other.

Affirmed.