STATE OF MINNESOTA
IN COURT OF APPEALS
A11-332

State of Minnesota,
Respondent,

vs.

Jerome Dwayne Johnson,
Appellant.

Filed January 30, 2012
Affirmed
Connolly, Judge

Ramsey County District Court
File No. 62-CR-10-5306

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County 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 Connolly, Presiding Judge; Peterson, Judge; and Wright, Judge.

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

CONNOLLY, Judge

Appellant challenges his convictions of second-degree assault and unlawful possession of a firearm, contending that the district court abused its discretion in excluding the videotape of his statements to his mother after his police interview. We conclude that the exclusion of evidence was an abuse of discretion, but, because the error was harmless beyond a reasonable doubt, we affirm.

FACTS

On July 5, 2010, O.J. asked appellant Jerome Johnson, the father of one of her children, to come to the house of S.T., where O.J. had been having an argument with S.T.'s boyfriend, J.E. Appellant, with his mother, drove to the house. A confrontation between J.E. and appellant escalated, and appellant shot J.E. with a Taser. J.E. ran into the house, with appellant in pursuit. S.T. heard a gunshot and then saw appellant emerge from the house holding a gun, which he allegedly pointed at S.T. before fleeing the scene.

J.E. called 911. The police officers who responded to the call discovered J.E. in an alley behind the house with a gunshot wound. He and S.T. identified appellant as the shooter.

The following day, appellant agreed to speak with police. During the interview, which was videotaped, appellant provided his account of the July 5 events. He said an unidentified individual holding a gun arrived on the scene while appellant was struggling with J.E. and chased appellant into the house. Appellant said he then heard gunshots and fled the house through the back door.

Based on the information provided by other witnesses, police arrested appellant after the interview. But before he was taken into custody, appellant was allowed to speak with his mother in the interview room. His statements to her included an expression of appellant's disbelief at his arrest because he was not the person shooting. The video recorder was still running when appellant made these statements.

Appellant was charged with two counts of second-degree assault and with unlawful possession of a firearm.[1] During the jury trial, he testified in his own defense, again emphasizing that an unidentified individual was responsible for the shooting. The district court allowed the jury to view only the videotape of appellant's interview with the police. Defense counsel's request that the jury see the videotape of appellant's statements to his mother was denied after the district court determined the statements were "hearsay" and "self-serving." After trial, the jury convicted appellant of one count of second-degree assault and unlawful possession of a firearm. He challenges his conviction, arguing that the exclusion of the statements to his mother denied him the right to present a complete defense.

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

[1] Appellant stipulated that he was a person ineligible to possess firearms due to a prior felony.

omitted). Even when it is claimed that the exclusion of evidence deprived a criminal defendant of constitutional rights, we review the ruling under the abuse-of-discretion standard. *See State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006) (applying abuse-of-discretion standard when defendant claimed exclusion of evidence deprived him of his constitutional right to present a complete defense).

All defendants accused of criminal behavior have the constitutional right to present a complete defense. *State v. Ferguson*, 804 N.W.2d 586, 590-91 (Minn. 2011). A defendant has the right to make "all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences to be drawn therefrom." *State v. Wahlberg*, 296 N.W.2d 408, 419 (Minn. 1980). But courts may limit the scope of a defendant's arguments to ensure that the defendant does not confuse the jury with misleading inferences. *State v. Davidson*, 351 N.W.2d 8, 13 (Minn. 1984).

The district court admitted the videotape of appellant's police interview as a prior consistent statement under Minn. R. Evid. 801(d)(1)(B). A witness's prior out-of-court statement is not hearsay if the witness testifies at trial, the witness is subject to cross-examination, and the statement is reasonably consistent with the witness's testimony. Minn. R. Evid. 801(d)(1)(B); *State v. Bakken*, 604 N.W.2d 106, 109-10 (Minn. App. 2000) *review denied* (Minn. Feb. 24, 2000). However, the district court found appellant's statements to his mother to be "self-serving" and "hearsay" and excluded them. Appellant argues that the statements are consistent with his trial testimony and equally admissible under Minn. R. Evid. 801(d)(1)(B). We agree.

First, the statements are not hearsay and are admissible as prior statements by a witness. Appellant testified at trial and was subject to cross-examination concerning the statements; the statements are "consistent with [appellant's] testimony and helpful to the trier of fact in evaluating [his] credibility as a witness." *See* Minn. R. Evid. 801(d)(1)(B). The statements echoed appellant's comments during the police interview and his testimony at trial; therefore, we conclude that the statements were admissible to assist the jury in evaluating his credibility. Second, the district court's finding that the statements were "self-serving" cannot serve as a basis to exclude otherwise admissible evidence. *See State v. Bergeron*, 452 N.W.2d 918, 926 (Minn. 1990) (noting that "self-serving" is not a valid objection to a defendant's testimony). Accordingly, we conclude that the district court abused its discretion in excluding the statements.

But appellant's conviction will stand only if this error was harmless beyond a reasonable doubt. *See State v. King*, 622 N.W.2d 800, 809 (Minn. 2001). An error is harmless if "the jury's verdict is 'surely unattributable' to [the error]." *Id.* at 811 (quotation omitted). An error is not harmless if there is "a reasonable possibility that the verdict might have been different" if the error were not committed. *State v. Quick*, 659 N.W.2d 701, 716 (Minn. 2003) (quotation omitted).

Appellant contends that he was prejudiced because the case "came down to credibility" and the jury might not have reached the same verdict if it had seen the videotape of his statements to his mother. We disagree. The jury heard appellant's version of the events through his testimony and the videotape of his police interview. The jury also heard testimony from several witnesses, including J.E., S.T., and

appellant's mother. None of that testimony supported appellant's account of an unknown assailant spontaneously arriving at the house and firing shots toward him. The jury was entitled to believe these witnesses' testimony, and we defer to the jury's credibility determinations. *State v. Buckingham*, 772 N.W.2d 64, 71 (Minn. 2009). Considering all the record evidence, we conclude that the jury's verdict is surely unattributable to the district court's exclusion of appellant's statements to his mother, and there is no reasonable possibility that the verdict would have been different had the district court admitted the statements.

Affirmed.