STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1048

State of Minnesota,
Respondent,

vs.

Michael Angel Serrata,
Appellant.

Filed July 3, 2017
Affirmed
Reyes, Judge

Ramsey County District Court
File No. 62-CR-14-8817

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Hooten, Judge; and Reyes, Judge.

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

REYES, Judge

On appeal from his convictions of malicious punishment of a child and first-degree assault, appellant argues that the district court unfairly limited his ability to present a

complete defense by erroneously ruling that (1) appellant's medical expert could not testify about a journal article that supported his testimony and (2) defense counsel could not impeach the state's medical experts about their medical opinions with learned treatises. We affirm.

FACTS

After a jury trial, appellant Michael Angel Serrata was convicted of malicious punishment of a child pursuant to Minn. Stat. § 609.377, subd. 1 (2014), and first-degree assault pursuant to Minn. Stat. § 609.221, subd. 1 (2014) (great bodily harm). The convictions stem from incidents surrounding his care of K.P., the two-year-old daughter of T.K., his girlfriend at the time. T.K. and appellant met around the time she moved to St. Paul, Minnesota, in August 2014. As appellant and T.K.'s relationship developed, appellant began spending more time with K.P. and would occasionally watch her for short periods.

The testimony at trial established that on October 27, 2014, appellant began caring for K.P. while T.K. was at work because T.K. did not want to spend considerable time driving to her grandmother C.C.'s home to have her watch K.P. On the first day that appellant cared for K.P., T.K. observed that K.P.'s fingers "were super swollen." When asked about K.P.'s fingers, appellant said that she possibly hurt them by putting her hand in the fan. T.K. took K.P. to the hospital and, after an examination, an emergency-room pediatrician believed that K.P.'s swelling was not a result of prior medical conditions and that her fingers looked like they had been pinched.

On the following day, T.K. went to work and again left K.P. in appellant's care. While T.K. was at work, appellant sent her a Facebook message stating, "Why does baby have a bruise on her right cheek? She fell off of the couch. I don't think . . . I don't want to watch her no more, babe. I think I can't do it." At home, T.K. saw bruising on K.P.'s right cheek. T.K. testified that she remembered asking appellant about a bump she observed on K.P.'s forehead but she could not recall whether that happened on the day K.P. allegedly fell off the couch or the following day. The next day, T.K. noticed that K.P. seemed tired, groggy, and weak.

On October 30, 2014, shortly after 11:00 a.m., T.K. received a number of missed calls from appellant. When T.K. was able to speak with appellant, he was emotional and told T.K. that she needed to come home because something was wrong with K.P. T.K. arrived at her home, and appellant was sitting on the couch holding K.P., who was having a seizure. T.K. wrapped K.P. in a blanket and left with appellant to go to the emergency room at Children's Hospital.

Upon arrival, K.P. was immediately treated by two emergency-room doctors. One of the treating doctors, Dr. Eugene Yates, testified that K.P. "had all this bruising on her head and that was the obvious cause for her seizure." Dr. Yates also testified that, although he had been informed by T.K. and appellant that K.P. had fallen off the couch a couple of days earlier, these injuries "look[ed] non-accidental."

K.P. underwent CT and MRI scans. Dr. Richard Patterson, a pediatric neuroradiologist who interpreted K.P.'s scans, testified that the scans revealed "impressive scalp swelling," and an acute "fresh" subdural hematoma. He also testified that subdural

hematomas in infants, without a skull fracture, tend to indicate non-accidental head trauma. Ultimately, Dr. Patterson concluded that K.P.'s injuries were the result of abusive head trauma.

During his defense, appellant presented an alternate theory as to the cause of K.P.'s injuries through the testimony of his expert, Dr. Thomas Young. At the conclusion of trial, the jury found appellant guilty of both malicious punishment of a child and first-degree assault. The district court sentenced appellant to a 74-month prison term on the assault count. This appeal follows.

D E C I S I O N

Appellant argues that the district court committed reversible error because it made two evidentiary rulings that negatively impacted appellant's ability to present a complete defense. It is well established that criminal defendants are afforded a constitutional due-process right to present a meaningful defense. *See Chambers v. Mississippi*, 410 U.S. 284, 294, 93 S. Ct. 1038, 1045 (1973); *State v. Reese*, 692 N.W.2d 736, 740 (Minn. 2005). This includes the right to offer witness testimony. *State v. Mosley*, 853 N.W.2d 789, 798 (Minn. 2014). This right, however, is not absolute and it is "subject to the limitations imposed by the rules of evidence." *Id.* We are unpersuaded by appellant's argument for the following reasons.

I. The district court's evidentiary ruling limiting appellant's expert testimony was not an abuse of discretion.

Appellant argues that the district court abused its discretion by preventing Dr. Young from testifying about "the Squier article"[1] to support his alternative theory for K.P.'s injuries. We disagree.

"Rulings concerning the admission of expert testimony generally rest within the sound discretion of the district court and will not be reversed absent a clear abuse of discretion." *Mosley*, 853 N.W.2d at 798-99. Prior to trial, the district court heard arguments from appellant and respondent State of Minnesota about the Squier article that Dr. Young intended to discuss during his testimony. The state expressed concerns about the reliability of the Squier article and the credibility of one of the authors. The district court also expressed concern about the foundational reliability of this author's opinion. Appellant denied that Dr. Young would be "relying upon that article." Nonetheless, due to concerns with the author's credibility, the district court ruled that Dr. Young could not refer to the Squier article or cite it as authority without establishing that its opinion was foundationally reliable and that the underlying scientific evidence was generally accepted in the scientific community under Minn. R. Evid. 702.

During trial, and prior to Dr. Young's testimony, the district court amended its ruling and determined that Dr. Young could testify about his opinions as to the cause of

[1] Appellant asserted that a 2009 article by Dr. Waney Squier and Dr. Julie Mack published in *Forensic Science International* and titled "The Neuropathology of Infant Subdural Haemorrhage" (Squier article), supported Dr. Young's theory that subdural hemorrhages can be caused by different factors in children due to the developmental differences between children and adults.

K.P.'s subdural hematoma but that Dr. Young could not reference the Squier article. Dr. Young testified that he disagreed that a doctor could state with a reasonable degree of medical certainty that K.P.'s subdural hematoma was caused by non-accidental trauma because it is also commonly caused by hypoxia ischemia. Dr. Young offered his expert opinion that it would be reasonable for a physician presented with these facts to suspect child abuse, but it is not reasonable to opine with a degree of medical certainty the existence of child abuse "by looking at a scan or simply examining a patient."

Assuming, without deciding, that the district court erred in preventing Dr. Young from testifying about the Squier article under Minn. R. Evid. 702, it still had discretion to exclude the evidence under Minn. R. Evid. 403. *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987). Even if a district court's reasoning is incorrect, its decision will be affirmed if it can be upheld on other grounds. *See Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) ("[W]e will not reverse a correct decision simply because it is based on incorrect reasons."); *see also State v. Robinson*, 699 N.W.2d 790, 799 (Minn. App. 2005) (declining to reverse district court's admission of statement even though reasoning was erroneous because statement was admissible on other grounds), *aff'd*, 718 N.W.2d 400 (Minn. 2006).

Under rule 403, "[i]f the probative value of the testimony is substantially outweighed by the danger of unfair prejudice, confusion, or misleading the jury, the testimony may be excluded." *State v. Hakala*, 763 N.W.2d 346, 350 (Minn. App. 2009). Here, the district court presumably made a determination that reference to the Squier article would have little probative value since it was not limiting Dr. Young's testimony in any fundamental way. Moreover, Dr. Young testified as to his opinions about the potential

sources of K.P.'s injuries. Furthermore, the record is not clear to what extent Dr. Young was going to rely on the Squier article. Therefore, given that it is well established that we must apply a deferential standard to a district court's evidentiary rulings, we conclude that the district court's ruling was within its discretion.

Even if the district court erred, it was harmless beyond a reasonable doubt. The erroneous exclusion of testimony that amounts to a violation of defendant's right to present a complete defense is subject to harmless-error review. *State v. Quick*, 659 N.W.2d 701, 716 (Minn. 2003). Application of the harmless-error test requires us to "look to the basis on which the jury rested its verdict and determine what effect the error had on the actual verdict. If the verdict actually rendered was surely unattributable to the error, the error is harmless beyond a reasonable doubt." *State v. Juarez*, 572 N.W.2d 286, 292 (Minn. 1997) (quotation omitted).

Appellant argues that the district court's rulings gave the state an unfair advantage "because defense counsel was not able to provide the jury with all the information it needed to fully evaluate one of Dr. Young's main alternative theories on how K.P. sustained her injuries." We are not persuaded.

The record demonstrates that Dr. Young was able to testify about his opinion on the varying potential causes of K.P.'s injuries. Furthermore, the two doctors who treated K.P. testified consistently as expert witnesses that they believed K.P.'s injuries were caused by non-accidental trauma. Appellant had the opportunity to and did cross-examine them. The state also introduced evidence that appellant was the only person caring for K.P. while T.K. was at work. Additionally, the state presented circumstantial evidence that, prior to K.P.'s

seizure, K.P. exhibited injuries that were not commonly caused by accidental trauma. Accordingly, we conclude that any alleged error was harmless beyond a reasonable doubt.

II. The district court did not abuse its discretion in preventing appellant from questioning the state's expert witness about articles with which appellant sought to impeach the witness under Minn. R. Evid. 803(18).

Appellant argues that the district court abused its discretion in preventing appellant's counsel from impeaching a state expert witness with a learned treatise under Minn. R. Evid. 803(18). We disagree.

Appellant argues that an article from the National Institute of Health (the NIH article)[2] qualified as a learned treatise under Minn. R. Evid. 803(18) and that he intended to use it to impeach all of the state's expert witnesses.

Minn. R. Evid. 803(18) provides that the following are not excluded by the hearsay rule, even if the declarant is available to testify:

> To the extent called to the attention of an expert witness upon cross-examination or relied upon by the expert witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

Dr. Stephen Jost, K.P.'s primary-care physician, testified that when K.P. was about five-weeks old, he examined her and discovered that she had a grade-one germinal-matrix

[2] The NIH article was not included as part of the record, and appellant did not make an offer of proof as to what it contained. It is also unclear from the record whether appellant was trying to introduce one NIH article or multiple NIH articles.

hemorrhage on her brain.[3] He noted that this type of condition goes away on its own and does not need to be monitored beyond normal check-ups unless it worsens into a more serious condition. Dr. Jost further testified that, after appellant's arrest and prior to trial, T.K. brought K.P. in for an examination to determine if there were any tests that could be done to provide an alternative explanation for K.P.'s brain injury. He testified that there "were no tests that [he] could do and that really there was no alternative medical explanation."

On cross-examination, appellant asked Dr. Jost about the NIH article relating to IVH conditions, and the state objected. Appellant argued that he was attempting to impeach Dr. Jost with a learned treatise, the NIH article, under Minn. R. Evid. 803(18). After hearing arguments from both sides, the district court sustained the objection primarily on the basis that appellant did not previously disclose the NIH article to the state. The district court's basis for sustaining the state's objection was erroneous because Minn. R. Evid. 803(18) does not require prior disclosure. However, similar to our analysis above, the district court has discretion to limit the scope of cross-examination by excluding evidence that is not sufficiently probative under Minn. R. Evid. 403. *See Green v. City of Coon Rapids*, 485 N.W.2d 712, 718 (Minn. App. 1992) (holding that district court properly excluded article that party sought to introduce as learned treatise on grounds that danger of confusion and prejudice outweighed probative value), *review denied* (Minn. June 30, 1992).

[3] Dr. Jost testified that there are four different grades of interventricular hemorrhage (IVH), with a grade-one germinal-matrix hemorrhage being the least significant medically and a grade-four interventricular hemorrhage being the "worst."

Here, the record demonstrates that Dr. Jost acknowledged that the NIH is an authoritative source for pediatric articles, but Dr. Jost's testimony did not establish that he considered the particular NIH article as authoritative. *See Sorensen v. Maski*, 361 N.W.2d 498, 500-01 (Minn. App. 1985) (learned treatise properly excluded where neither party's expert established treatise as authoritative). And while the district court's main reason was lack of prior disclosure, the district court also expressed concern that the NIH article was misleading because it pertained only to babies who had a shunt in place, which suggested that the article was discussing babies with a higher grade of IVH. Therefore, even though the district court's reasoning for excluding the NIH article was erroneous in part, its ruling cannot be considered an abuse of discretion due to the other significant evidentiary issues presented by the NIH article. For these reasons, we conclude that the district court acted within its discretion in preventing appellant from impeaching Dr. Jost with the NIH article because the article was more prejudicial than probative.

Additionally, appellant has failed to show how using the NIH article to impeach Dr. Jost would have affected the verdict. *See State v. Graham*, 764 N.W.2d 340, 351 (Minn. 2009) ("[W]hen the [evidentiary] ruling results in the erroneous exclusion of defense evidence in violation of the defendant's constitutional rights, the verdict must be reversed if there is a reasonable possibility that the verdict might have been different if the evidence had been admitted" (quotation omitted)). The record before this court does not allow us to review the NIH article and its impeachment value. At trial, appellant never made a proffer of evidence as to the details of the article, how this impeached Dr. Jost's testimony, or to what extent appellant intended to rely on the NIH article to impeach Dr. Jost.

Lastly, appellant argues that the district court's ruling severely limited his ability to present a complete defense because he intended to cross-examine each of the state's expert witnesses with the NIH article and with other learned treatises. We likewise find this argument unpersuasive for the same reasons stated above and because appellant failed to make an offer of proof as to any other learned treatises and we cannot speculate as to the use of these unspecified treatises. Therefore, even if it was an abuse of discretion, the district court's ruling that limited appellant from impeaching Dr. Jost with the NIH article was harmless.

Affirmed.