STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1499

State of Minnesota,
Respondent,

vs.

Shane Kenneth Halverson,
Appellant.

Filed July 24, 2017
Affirmed
Rodenberg, Judge

Kandiyohi County District Court
File No. 34-CR-15-550

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Shane Baker, Kandiyohi County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

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

RODENBERG, Judge

Appellant challenges the district court's denial of his request for a voluntary-intoxication jury instruction and its denial of his request for a bifurcated trial to allow him to present a mental-illness defense. We affirm.

FACTS

On June 20, 2015, appellant Shane Halverson stole a car in St. Cloud, Minnesota. The owner immediately reported the theft. Less than an hour later, a police sergeant attempted to stop appellant for speeding. Appellant fled in the car. In marked police vehicles with lights and sirens activated, multiple officers pursued appellant at speeds of up to 90 miles per hour from Spicer to Willmar. During the chase, the sergeant pulled his patrol car next to the stolen vehicle and witnessed appellant stick his head out of the window and yell at the sergeant.

Officers in Willmar were informed that the chase was leading into the town so they placed "stop sticks" in two areas of the town in an attempt to stop appellant. Appellant drove around the first set of stop sticks by driving into the opposing lane of traffic. Appellant attempted to maneuver around the second set of stop sticks, but as he did so the stolen car jumped a curb and came to a stop.

Appellant "bore his teeth and screamed" at the officers when they approached. A police vehicle was driven against the door of the stolen car in an attempt to prevent appellant from exiting the vehicle. Appellant then climbed through the window of the car and onto the hood of the police car. Because the officers believed that appellant intended

to fight them, a Taser was used to subdue appellant. When asked for his identity, appellant stated, "You all know who I am."

Appellant was charged with theft of a motor vehicle, fleeing a police officer in a motor vehicle, reckless driving, and driving after cancellation. At appellant's request, the district court ordered a mental examination of him under Minn. R. Crim. P. 20.02. Appellant was evaluated by a clinical and forensic psychologist who diagnosed appellant with a "history of substance/medication-induced psychotic disorder." The psychologist reported that appellant's history of hallucinations and delusional beliefs was related to his substance use and occurred in close temporal association with such use. The psychologist concluded that appellant was suffering from the effects of an intoxicating substance at the time of the charged offenses, but that he was not suffering from such a defect of reason so as not to know the nature of his acts or that they were wrong.

Following the issuance of the psychologist's report, appellant requested and was granted a continuance in order to explore a defense related to "meth psychosis." Appellant thereafter asserted that he was not guilty and that he was not guilty by reason of mental illness or defect because he was suffering from a psychosis brought on by the use of methamphetamine. Appellant requested both a voluntary-intoxication instruction and a bifurcated trial on the mental-illness defense. At a pretrial hearing held a week before the trial started, defense counsel was unable to identify an expert who would testify concerning substance-induced psychosis. The district court reserved its decision concerning a voluntary-intoxication instruction until trial, and it denied the request for a bifurcated trial

for a mental-illness defense unless appellant made a showing sufficient to support the mental-illness defense.

Appellant testified at trial that he had used drugs, including methamphetamine, heavily for several years, but that he had not used drugs for several days prior to the night of the charged offenses. Appellant testified that he had started to believe that he was being followed, and that people had been watching him for his whole life. He testified that, on the night of the charged offenses, he heard voices in his head telling him to get into a vehicle and leave town. He believed that his life was in danger and that someone had left a vehicle for him to take. He admitted to breaking the window of the car and taking it without permission. He testified that he did not stop for the police because he did not know if they were truly the police or someone out to get him. He testified that he was not going to stop for anyone. When appellant was asked by the prosecutor if he was intoxicated while driving the vehicle that night, appellant responded that he had not been intoxicated while driving.

At the close of the evidence, the district court ruled that the requested voluntary-intoxication jury instruction would not be given, because appellant testified that he was not intoxicated or using drugs at the time of the conduct in question. Because appellant had not produced any expert testimony to support his mental-illness defense, the district court declined to separately submit to the jury a question concerning appellant's claimed mental illness. The jury returned guilty verdicts on all counts.

This appeal followed.

D E C I S I O N

I. Mental-illness defense

We review a district court's decision on whether a defendant established a prima facie showing of mental illness for abuse of discretion. *State v. McClenton*, 781 N.W.2d 181, 189 (Minn. App. 2010), *review denied* (Minn. June 29, 2010); *see also State v. Voorhees*, 596 N.W.2d 241, 251 (Minn. 1999) (holding that a district court abused its discretion by instructing the jury on involuntary intoxication when the defendant had failed to make a prima facie showing of temporary mental illness).

"Defendants have a due process right under the federal and Minnesota constitutions to assert a mental illness defense." *State v. Martin*, 591 N.W.2d 481, 486 (Minn. 1999). Minnesota law provides:

> No person having a mental illness or cognitive impairment so as to be incapable of understanding the proceedings or making a defense shall be tried, sentenced, or punished for any crime; but the person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of these causes, as not to know the nature of the act, or that it was wrong.

Minn. Stat. § 611.026 (2014). If a defendant raises both a mental-illness defense and maintains a not-guilty plea, the trial must be bifurcated into a guilt phase of trial and a mental-illness phase of trial. Minn. R. Crim. P. 20.02, subd. 7(a); *Martin*, 591 N.W.2d at 486.

The right to present a mental-illness defense is not absolute. *McClenton*, 781 N.W.2d at 189. Before a trial will be bifurcated, "[a] defendant must allege threshold

evidence of mental illness or mental deficiency sufficient to raise a defense under each of the elements found in section 611.026." *Martin*, 591 N.W.2d at 487. The defendant must establish that, at the time of the offense,

> (1) the defendant did not know the nature of the act; (2) even if the defendant did, the defendant did not understand that the act was wrong; and (3) the defendant's failure to know the nature of the act or that it was wrong was the result of a defect of reason caused by mental illness or mental deficiency.

Id. at 486. In considering whether a defendant has met his burden of production under section 611.026, the district court is not to weigh the evidence offered by a defendant in support of his mental-illness claim. *Id.* at 487.

Appellant argues that he made a prima facie showing that he suffered from a mental illness which prevented him from understanding the wrongfulness of his actions. He cites the psychologist's rule 20 report and the reported "history of Substance/Medication-Induced Psychotic Disorder" in support of his argument that he was suffering from a mental illness or mental deficiency on June 20. He also argues that his testimony was sufficient to permit a jury to find that this disorder caused him to not understand, at the time of the offenses, that his actions were wrong.

The rule 20 examiner reported that appellant had experienced hallucinations and "possible delusional thought processes at the time of the offenses," but opined that appellant's "psychotic symptoms stem from the direct physiological effects of the substances he was using." The examiner concluded that appellant had been suffering "the effects of an intoxicating substance" at the time of the events, but he was able to understand the nature of his acts and that they were wrong.

Minnesota law does not permit a mental-illness defense if the mental illness was caused by voluntary intoxication. *Martin*, 591 N.W.2d at 486 ("[M]ental illness caused by voluntary intoxication is not a defense."); *State v. Patch*, 329 N.W.2d 833, 836 (Minn. 1983); *State v. Clarken*, 260 N.W.2d 463, 463 (Minn. 1977). The psychologist's report indicates that appellant was suffering from the effects of his apparent past voluntary drug use. It does not suffice as a prima facie showing of mental illness.

The Minnesota Supreme Court has recognized that "mental illness is a specialized field where expert knowledge and experience are required." *State v. Fratzke*, 354 N.W.2d 402, 409 (Minn. 1984). The district court afforded appellant ample time to locate an expert witness to support his mental-illness defense. No such expert was ever identified. At the close of the evidence at trial, the district court noted that appellant had not proffered expert testimony in support of his defense. The *only* expert opinion in the record concerning the cause of appellant's behavior is that of the rule 20 examiner, who concluded that appellant was able to understand the wrongfulness of his actions on June 20.

Appellant did not offer the rule 20 examiner as a witness who could testify about the diagnosis of the substance-induced psychotic disorder, despite having the ability to do so under the Minnesota Rules of Criminal Procedure. Minn. R. Crim. P. 20.02, subd. 5 ("If the defendant's mental condition is an issue, any party may call the court-appointed examiner to testify as a witness at trial . . . ."). Appellant produced no other evidence that his conduct "was the result of a defect of reason caused by mental illness or mental deficiency." *Martin*, 591 N.W.2d at 486. Appellant did not meet his burden of production to support his mental-illness defense.

II. Voluntary-intoxication instruction

"A defendant is entitled to an instruction on his theory of the case if there is evidence to support it." *State v. Lilienthal*, 889 N.W.2d 780, 787 (Minn. 2017) (quotation omitted). We review the denial of a requested jury instruction for abuse of discretion and focus our analysis "on whether the court's refusal to give [the] requested instruction resulted in error." *State v. Kuhnau*, 622 N.W.2d 552, 555 (Minn. 2001). If a district court errs by failing to instruct the jury on voluntary intoxication, we will reverse unless the evidence establishing that the defendant "formed the requisite intent is so overwhelming that the instructional error was harmless beyond a reasonable doubt." *State v. Wilson*, 830 N.W.2d 849, 857 (Minn. 2013).

Minnesota law provides:

> An act committed while in a state of voluntary intoxication is not less criminal by reason thereof, but when a particular intent or other state of mind is a necessary element to constitute a particular crime, the fact of intoxication may be taken into consideration in determining such intent or state of mind.

Minn. Stat. § 609.075 (2014). A defendant must introduce sufficient evidence to meet his burden of production before a voluntary-intoxication instruction will be provided to the jury. *Wilson*, 830 N.W.2d at 854. To receive the requested instruction, "(1) the defendant must be charged with a specific-intent crime; (2) there must be evidence sufficient to support a jury finding, by a preponderance of the evidence, that the defendant was intoxicated; and (3) the defendant must offer intoxication as an explanation for his actions." *State v. Torres*, 632 N.W.2d 609, 616 (Minn. 2001). When deciding whether a defendant

has met his burden of production, the district court must view the evidence in the light most favorable to the defendant. *Wilson*, 830 N.W.2d at 855.

The state concedes that the first element has been satisfied with regard to the charges of fleeing a peace officer in a motor vehicle and theft of a motor vehicle. *See* Minn. Stat. § 609.487, subds. 1, 3 (2014) (defining "flee" for purpose of fleeing a police officer as "with intent to attempt to elude"); Minn. Stat. § 609.52, subd. 2(17) (2014) (requiring that the defendant committed the act while knowing or having reason to know that the owner did not consent). The state argues that appellant neither met his burden of producing sufficient evidence to establish that he was intoxicated, nor offered intoxication as an explanation for his actions.

The record contains evidence that appellant was intoxicated on the night of the offenses, but also contains evidence to the contrary. The police sergeant testified that signs of methamphetamine use include paranoia, irritability, and confusion. He did not testify that appellant was exhibiting those signs, but other officers testified that appellant seemed agitated during and after the chase. Appellant testified that he had been experiencing hallucinations and believed people were following and watching him. But, significantly, appellant also testified that he had not used drugs for several days and was not intoxicated when he stole the car. Viewed in the light most favorable to the defendant, the record contains sufficient evidence to support a finding that appellant was intoxicated. *See Black's Law Dictionary* 950 (10th ed. 2014) (defining "intoxicated" as "[h]aving the brain affected by the presence in the body of a drug or alcohol"). *See also Wilson*, 830 N.W.2d at 856 (holding that, when viewed in the light most favorable to the defendant, evidence

was sufficient to meet the burden of production on the intoxication element when the defendant smelled of alcohol, looked very confused and had a different look on her face, and offered testimony that alcohol would limit her perceptions).

Although the record is sufficient to support a finding that appellant was intoxicated, appellant clearly and repeatedly testified at trial that his actions were *not* due to voluntary intoxication. He expressly denied having used drugs on or in the days preceding June 20. He also denied that he was intoxicated that night. Nevertheless, appellant argues on appeal that his request for a jury instruction on voluntary intoxication and his argument during summation were a sufficient offer of intoxication as an explanation for his actions.

In *Wilson*, the Minnesota Supreme Court concluded that the defendant had met the burden of establishing that she "offered intoxication as an explanation for her actions," where she requested the voluntary-intoxication instruction and made an offer of proof that she would have testified to the effect alcohol had on her ability to perceive events on the night of the incident. *Id.* at 856-57. Unlike *Wilson*, appellant did not testify that he was under the influence of drugs or that it was this intoxication that affected his actions. Therefore, and even if appellant really was using drugs on June 20, he did not claim that his criminal conduct was caused by the drug use. In *Torres*, the Minnesota Supreme Court contemplated that evidence of intoxication may be "so overwhelming as to constitute the effective offer of intoxication as an explanation for the defendant's actions." 632 N.W.2d at 617. Here, there is not overwhelming evidence of appellant's intoxication or that intoxication caused his acts. The district court did not abuse its discretion in concluding that appellant had not met his burden of production concerning the requested instruction.

Moreover, and even if the district court could be considered to have abused its discretion by not giving a voluntary-intoxication instruction, any error was harmless beyond a reasonable doubt. An erroneous omission of a requested jury instruction is harmless beyond a reasonable doubt if the omission did not have a significant impact on the verdict. *Wilson*, 830 N.W.2d at 857. The omission does not significantly impact the verdict if the evidence establishing that appellant formed the requisite intent is overwhelming. *Id.* Here, the evidence that appellant formed the requisite intent is overwhelming. Appellant acknowledged that he did not have permission to take the car, he decided to "steal" it, and he smashed the window of the car. He acknowledged that he was not going to stop for anyone, including the police officers whom he acknowledged seeing before and during the chase. "[T]he possibility of intoxication does not create the presumption that a defendant is thereby rendered incapable of intending to do a certain act." *Torres*, 632 N.W.2d at 617. Though it is possible that appellant was intoxicated on the night of the offenses, the evidence presented at trial demonstrates beyond a reasonable doubt that he intended to steal the car and flee the officers who attempted to stop him.

III. Conclusion

Appellant asks this court to recognize, for purposes of a defense under section 611.026, a mental illness or mental deficiency caused by voluntary drug use but which manifests itself post-intoxication. Appellant argues that we should apply the mental-illness standard from the state of Indiana, whereby a defendant is permitted to assert a mental-illness defense if he shows that he voluntarily used intoxicants, "to the point that it has produced mental disease," *Jackson v. State*, 402 N.E.2d 947, 949 (Ind. 1980), or the

standards applied in the states of Florida, Oklahoma, and Illinois, which permit a mental-illness defense if the defendant's voluntary drug use has caused a "fixed" mental disorder. *Cirack v. State*, 201 So.2d 706, 709 (Fla. 1967); *People v. Free*, 447 N.E.2d 218, 232 (Ill. 1983); *Jones v. State*, 648 P.2d 1251, 1255 (Okla. Crim. App. 1982). We need not reach the issue of whether such a defense is permitted under Minnesota law because appellant did not offer an expert opinion or other evidence of such a mental illness. Minn. Stat. § 611.026 requires the defendant to be "laboring under such a defect of reason . . . as not to know the nature of the act, or that it was wrong." The only expert opinion in the record is that appellant did *not* suffer from such a defect at the time of his offenses.

Applying current Minnesota law, we discern no reversible error. If the law is to be changed, that is the province of the legislature or of the Minnesota Supreme Court. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) ("The function of the court of appeals is limited to identifying errors and then correcting them." (citations omitted)); *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987).

Affirmed.