STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1233

State of Minnesota,
Respondent,

vs.

Johann Richard Sebastian,
Appellant.

Filed September 10, 2018
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Washington County District Court
File No. 82-CR-16-1187

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

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

BRATVOLD, Judge

Appellant Johann Richard Sebastian challenges his sentence for one count of second-degree assault with a dangerous weapon against R.E. and two counts of terroristic

threats of violence, one against R.E. and the other against P.B. Sebastian argues that the district court improperly excluded expert and lay witness testimony about his mental illness, and that the district court unlawfully sentenced him for two convictions that involve the same victim, R.E. Because the district court did not abuse its discretion by excluding testimony on Sebastian's mental illness, we affirm. But because the convictions for the offenses regarding R.E. arose out of a single behavioral incident, we reverse in part and remand to the district court with instructions to vacate the sentence for terroristic threats of violence involving R.E., and to leave the conviction in place.

FACTS

Sebastian and his closest neighbor live in a wooded area where the homes are some distance apart. Before leaving town for a ten-day vacation in March 2016, Sebastian's neighbor asked him to look after his property and address anything unusual "in some reasonable fashion." At approximately 6:45 p.m. on March 4, Sebastian saw a vehicle drive toward his neighbor's home and park in the driveway. Sebastian walked over and approached R.E., a man Sebastian did not know, as he entered the neighbor's home. Sebastian asked who he was and what was happening. R.E. did not answer. R.E. asked Sebastian the same question, and Sebastian did not answer.

The two men entered the foyer. P.B., the neighbor's girlfriend who often stayed in the house, joined them in the foyer. Sebastian asked P.B. what was going on. She said that she had invited R.E.'s wife over to celebrate her birthday and R.E. was the "designated driver." R.E. testified that Sebastian said that he had a high-powered rifle and that he could kill R.E. and throw his body over the hill and no one would find him. Then, R.E. saw out

of the corner of his eye, a flash of metal from a knife blade and felt Sebastian run it across his shoulders. P.B. testified that she heard Sebastian tell R.E. that he could kill someone, and then Sebastian leaned toward R.E. and told him not to forget it. Then, Sebastian turned and left the house. P.B. immediately locked the front door. Later that night, P.B. told the neighbor, her boyfriend, about the incident, and the neighbor called the police the next morning.

Deputy Manis investigated the incident and testified that R.E. appeared fearful and that P.B. was "very shocked." When Manis spoke to Sebastian, he said that "nothing happened" at his neighbor's house the day before. Manis testified that Sebastian said that, when he took out his knife, he kept it in its sheath, and tapped it on R.E.'s back. Sebastian also told Manis that he should receive "an award for stupid move" because he was joking when he tapped R.E. on the back with his knife.

The state charged Sebastian with six counts, two counts for each of three charges involving his conduct toward R.E. and P.B. First, the state charged Sebastian with second-degree assault with a non-firearm dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2014). Second, the state charged Sebastian with terroristic threats to commit a violent crime, second-degree murder under Minn. Stat. § 609.713, subd. 1 (2014). Finally, the state charged Sebastian with terroristic threats to commit a violent crime, second-degree assault under Minn. Stat. § 609.713, subd. 1 (2014).

Before trial, the state filed a motion in limine to exclude testimony about Sebastian's mental illness, including post-traumatic stress disorder (PTSD) and bipolar disorder, from Dr. Goodman, Sebastian's treating physician. The state's motion argued Sebastian had not

asserted a mental-illness defense and Goodman's testimony would confuse the jury and lead them to consider "diminished capacity," which Minnesota does not recognize as a defense. After a hearing, the district court granted the state's motion.

The case was tried to a jury over two days in December 2016. Sebastian testified that he first was diagnosed with mental illness when he was nine years old, and again later while serving in the military. Sebastian also struggles with manic depression, personal relationships, employment, and has been treated by a psychiatrist since 2000.

Sebastian admitted that he told P.B. and R.E. about his special operations military training and that he "may have said" something about "killing someone and dumping their body over the bluff," just "[n]ot in those exact words." He testified, "I felt like I had done what I was asked to do," which was "to look after the house and protect the property." Sebastian also testified that he had no malicious intent and that he "might have even been just trying to joke around foolishly."

The jury found Sebastian guilty of three offenses: (1) count I, second-degree assault with a dangerous weapon against R.E.; (2) count V, terroristic threats to commit a violent crime, second-degree assault against R.E.; and (3) count VI, terroristic threats to commit a violent crime, second-degree assault against P.B. The jury found Sebastian not guilty of the other three counts.

At sentencing on May 8, 2017, the district court imposed a guidelines sentence for count I of 21 months and 1 day in prison. The district court found that counts I and V both involved Sebastian's conduct toward R.E. and came "out of the same act." But the district

court nonetheless imposed two stayed sentences of 12 months and 1 day for counts V and VI. Sebastian appeals.

D E C I S I O N

I. The district court properly excluded Sebastian's evidence regarding his mental illness.

During the pretrial hearing on the first day of trial, the state argued its motion in limine, adding that the prosecutor understood, if the court excluded Goodman's testimony, then the defense intended to call J.B., a long-time friend of Sebastian's. The state also argued, even if Goodman's testimony had a "hint of probative value," it was "by far overruled by the possibility of prejudice." The state contended the same reasoning supported excluding J.B.'s testimony.

Sebastian's attorney responded, initially stating that Sebastian did not intend to assert an insanity defense. But Sebastian asked the district court to deny the state's motion because the state had charged Sebastian with an intent crime—second-degree assault. Goodman's testimony about Sebastian's mental-illness diagnosis would be helpful to the jury, Sebastian's attorney argued, because Goodman's testimony would explain "[w]hat [PTSD], in combination with bipolar disease, does to a human being's thought process and their intent."

The district court inquired whether the proposed testimony would relate to "what a person's subjective intent is in light of his medical diagnosis." Sebastian's attorney agreed Goodman's reports suggested the same. The district court also inquired whether it understood correctly that, if Goodman's testimony was excluded, Sebastian intended to

offer testimony from a long-time friend, J.B. Sebastian's attorney agreed that was the defense plan and provided an offer of proof by describing J.B.'s testimony, as follows: "She's been a close friend of [ ] Sebastian for a couple of decades. [She] [w]ould describe his—the mental health issues that he has dealt with and how he . . . acts. Just a history of how he acts and how that has impacted other people in unintended ways." Sebastian provided the district court with copies of letters from Goodman and medical notes from Sebastian's appointments. The district court took the motion under advisement and recessed to review the submissions and the caselaw.

Before jury selection began, the district court granted the state's motion, first stating that Goodman's proposed testimony was probative to establishing the "subjective state of mind of the defendant with regard to the formation of intent." But, after reading Goodman's letters, the district court determined that the evidence also would have the effect of suggesting that Sebastian had "diminished capacity for forming the intent." Thus, the district court excluded Goodman's testimony because the probative value of the evidence was outweighed by the likelihood of unfair prejudice and jury confusion. The district court excluded J.B.'s testimony for the same reason. The district court stated that Sebastian would be allowed to testify about his state of mind, his mental health history, "the reason he might have had a knife with him," and what he "didn't intend." But Sebastian would not be allowed to testify about "the medical reason" for "lack of intent."

On appeal, Sebastian argues the district court erred by excluding evidence about his mental health because it prevented him from presenting a complete defense. The state contends that, even assuming Sebastian's proposed evidence was probative, the district

court properly excluded the evidence under rule 403 because "the danger of unfair prejudice or confusion of the issues . . . [substantially] outweighs its probative value." The state also argues any error was not prejudicial because Sebastian was allowed to testify about his mental health.

A defendant has the constitutional right to present a complete defense. *State v. Jenkins*, 782 N.W.2d 211, 224-25 (Minn. 2010). But a defendant's constitutional right to a fair trial "is shaped by the rules of evidence." *State v. Anderson*, 789 N.W.2d 227, 235 (Minn. 2010). We review a district court's decision to exclude testimony for abuse of discretion. *See State v. Bird*, 734 N.W.2d 664, 672 (Minn. 2007). A district court abuses its discretion when it bases its decision "on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). We conduct a harmless-error analysis to any finding of error. *Bird*, 734 N.W.2d at 672. The appellant "bears the burden of showing the error and any resulting prejudice." *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006) (quotation omitted).

When a defendant pleads not guilty by reason of mental illness, expert psychiatric testimony is admissible during the mental illness phase of trial to establish that the defendant "was laboring under such a defect of reason that he lacked the capacity to form the intent that was otherwise manifested." *State v. Bouwman*, 328 N.W.2d 703, 705 (Minn. 1982); *see also* Minn. R. Crim. P. 20.02, subd. 7 (providing for a bifurcated trial for defendant who pleads not guilty by reason of mental illness). In contrast, expert psychiatric testimony is *not* admissible during the guilt phase of trial to establish the defendant's "capacity to form the requisite subjective state of mind" and "on the ultimate question of

whether in fact the defendant had the requisite mens rea when he committed the crime." *State v. Provost*, 490 N.W.2d 93, 101 (Minn. 1992).

Here, Sebastian did not raise a mental-illness or lack-of-capacity defense. Instead, he sought to admit evidence about his mental illness to help the jury determine his "thought process" and "intent." A district court may permit psychiatric testimony in rare cases "to explain a particular mental disorder characterized by a specific intent different from the requisite mens rea, or where aspects of a defendant's past mental illness history are relevant" to explain "'the whole man' as he was before the events of the crime." *Id.* at 104.

But the relevance of a defendant's mental illness is not the only consideration. *Bird*, 734 N.W.2d at 675. A court also must consider whether mental health evidence, although relevant, should be excluded because "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. R. Evid. 403; *see also Provost*, 490 N.W.2d at 99 (discussing rules 401 and 403 and holding that determining "psychiatric testimony may have some relevance to a guilty mind is only the beginning, not the end, of any inquiry into admissibility of that testimony"). The probative value of expert psychiatric testimony may be substantially outweighed by the risk that it "would inevitably open the door to jury verdicts influenced by the doctrine of diminished capacity or responsibility—a doctrine not recognized in Minnesota law." *Bird*, 734 N.W.2d at 675 (affirming district court's decision to exclude psychiatric testimony under rule 403); *see also Anderson*, 789 N.W.2d at 236 (same).

We conclude that the district court did not abuse its discretion by excluding Sebastian's proposed expert and lay witness testimony. Sebastian sought to introduce testimony from Goodman and J.B., as argued during the pretrial hearing, because the testimony would explain how Sebastian's diagnoses affected "a human being's thought process and [ ] intent." In his brief to this court, Sebastian describes the testimony a little differently, arguing that the proposed evidence would have explained "why Sebastian talked about inappropriate things . . ., why he acted strangely . . ., why he did not relate well with others . . . and why he had not had normal interactions with others in the past."

The district court recognized the proposed testimony had some probative value, but excluded this evidence under rule 403. The district court determined the probative value of the proposed evidence was substantially outweighed by the risk of jury confusion and unfair prejudice because, after reviewing Goodman's letters about Sebastian, the district court concluded that the proposed testimony would likely lead the jury to consider whether Sebastian had diminished capacity, which is not a defense recognized in Minnesota. *See Leake v. State*, 737 N.W.2d 531, 542 (Minn. 2007). The district court made a similar conclusion about J.B.'s proposed testimony. Neither decision was an abuse of discretion.

Even were we to assume that the district court erred in excluding the proposed testimony under the rule 403 balancing test, we agree with the state that any error was not prejudicial. Here, the district court permitted Sebastian to testify about his intent, his mental health history and diagnoses, and how his mental health has affected his interpersonal communication and relationships. Additionally, during Sebastian's testimony, the district court twice instructed the jury that no mental illness defense was being offered, but the

testimony was relevant as "background information." In response to objections during the defense attorney's closing argument, the district court further instructed the jury, as follows:

> Mental illness has neither been proffered or suggested as a defense, nor allowed as a defense in this case. To the extent that the [attorney's closing] comments are suggesting that mental illness is a defense, even if counsel says it's not, by what he argues you are to remember that mental illness is not a defense.

Sebastian does not object to these instructions on appeal.

We conclude that the exclusion of Sebastian's proposed expert and lay testimony did not significantly affect the jury's verdict. The district court allowed Sebastian to testify about topics that were substantially similar to the proposed testimony and to explain that his comments and actions in the foyer were intended to demonstrate that he would protect P.B. and his neighbor's property. The jury was correctly instructed that Sebastian's mental illness was not a defense. Moreover, other evidence of Sebastian's guilt was strong because Sebastian admitted making the threatening statements and touching R.E. with his knife. Thus, we affirm the district court's decision to exclude Sebastian's proposed expert and lay testimony under rule 403.

II. The district court erred in sentencing Sebastian for second-degree assault and threats of violence regarding his conduct towards R.E.

Sebastian contends that his second-degree-assault conviction and terroristic-threats conviction, which both involve his conduct towards R.E., arose out of the same behavioral

incident, thus only one sentence is permitted.[1] The state agrees. Despite the parties' agreement, we independently review the legal issue. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990). We apply a clear-error standard of review to a district court's factual findings underlying the determination whether multiple offenses constituted a single behavioral incident, *State v. O'Meara*, 755 N.W.2d 29, 37 (Minn. App. 2008), and a de novo standard of review to the ultimate determination, *State v. Bauer*, 776 N.W.2d 462, 477 (Minn. App. 2009), *aff'd*, 792 N.W.2d 825 (Minn. 2001); *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001).

When a defendant is convicted of multiple offenses, a district court may only impose a single sentence if the offenses arose out of the same behavioral incident. Minn. Stat. § 609.035, subd. 1; *State v. Williams*, 608 N.W.2d 837, 841 (Minn. 2000). A same-behavioral-incident analysis requires us to consider "factors of time and place" and "whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective." *Williams*, 608 N.W.2d at 841 (quotation omitted). *See also Bauer*, 792 N.W.2d at 828. We also consider whether the offenses "arose from a continuous and uninterrupted course of conduct" that "manifested an indivisible state of mind," *Johnson*, 653 N.W.2d at 652. The state bears the burden of proving by a preponderance of the

[1] Sebastian does not challenge his sentence for count VI, terroristic threats against P.B. *See State v. Johnson*, 653 N.W.2d 646, 653 (Minn. App. 2002) (recognizing an exception to Minn. Stat. § 609.035 (2014) that allows the district court to impose more than one sentence for convictions arising from a single behavioral incident when there are multiple victims).

evidence that the conduct underlying the offenses did not occur as part of the same behavioral incident. *Williams*, 608 N.W.2d at 841-42.

Here, the convicted offenses involving R.E. occurred at the same time and place. Both the terroristic-threats and assault offenses occurred within a matter of seconds in the neighbor's foyer. For both offenses, Sebastian had the same criminal objective—to demonstrate to P.B. and R.E. that he could protect and defend his neighbor's property.

Because the convictions for count I, second-degree assault, and count V, terroristic threats, both involve R.E. and arose out of the same behavioral incident, the district court erred by sentencing Sebastian for both convictions. Thus, we reverse, in part, and remand to the district court with instructions to vacate the lesser sentence for count V, terroristic threats against R.E., and leave the conviction in place. *See Johnson*, 653 N.W.2d at 653.

Affirmed in part, reversed in part, and remanded.