STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1580

State of Minnesota,
Respondent,

vs.

Cory Clifford Morris,
Appellant.

Filed October 29, 2018
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CR-16-21659

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Reilly, Judge; and Jesson, Judge.

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

REILLY, Judge

On appeal from his conviction of second-degree intentional murder, appellant Cory Clifford Morris argues that the evidence presented during the second phase of a bifurcated

trial was sufficient to prove by a preponderance of the evidence that he was not guilty by reason of mental illness. Because we conclude that the district court did not clearly err by determining that appellant failed to satisfy his burden of proof, we affirm.

FACTS

On August 13, 2016, appellant was arrested for killing his four-month-old daughter. Three days later, the state charged him with second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2016). Based on his behavior while in custody, the district court ordered a Minnesota Rule of Criminal Procedure 20.01 competency examination to consider appellant's competency to proceed to trial.[1] The district court appointed Dr. Lawrence Panciera, a court psychologist, to conduct the examination. On August 23, Dr. Panciera concluded that appellant was not competent to proceed. The district court found that appellant was not competent to proceed to trial on the basis of this report. The Hennepin County Medical Center initiated a petition for civil commitment and began emergency treatment. On September 15, appellant was civilly committed as mentally ill. The district court held a review hearing on September 20 and determined that appellant was responding to the treatment and was competent to proceed.

On October 31, Dr. Panciera filed a Minnesota Rule of Criminal Procedure 20.02 mental-examination report opining that appellant was suffering from schizoaffective

[1] A district court may order a competency examination under Minnesota Rule of Criminal Procedure 20.01 to ensure that only competent defendants are tried or sentenced for a crime. Under Minnesota Rule of Criminal Procedure 20.02, the district court also may order a mental examination of defendant if the defendant offers evidence of mental illness at the time of the commission of the offense or asserts a mental-illness defense at trial.

disorder at the time of the offense and was "laboring under such a defect of reason as not to know the nature of the act constituting the offense or that it was wrong because of mental illness." Appellant was also examined by Dr. Shane Wernsing, a forensic psychiatrist, who diagnosed appellant with schizoaffective disorder and agreed that appellant had a mental illness that was "likely active (or symptomatic)" when he killed his daughter. However, Dr. Wernsing did not agree that appellant failed to understand the wrongfulness of his act at the time he killed his daughter.

On April 3, 2017, appellant waived his right to a jury trial and the case proceeded to a bifurcated trial, with the first phase considering appellant's guilt and the second phase considering whether appellant was not legally responsible for his criminal actions due to mental illness. During the first phase of the bifurcated trial, the district court found that the state proved each element of second-degree intentional murder beyond a reasonable doubt. During the second phase of the trial, appellant presented a defense of not guilty by reason of mental illness. The district court heard testimony from Drs. Panciera and Wernsing. The experts agreed that appellant suffered from active symptoms of a mental illness at the time of the crime, but offered conflicting opinions concerning whether appellant knew that his actions were wrong. The district court weighed the evidence and the conflicting expert testimony and determined that appellant failed to establish the mental-illness defense by a preponderance of the evidence. The court determined that appellant knew the nature of his act—that is, he knew that he was striking his daughter, and he knew that striking her could cause her harm. The court further determined that

appellant knew his actions were morally wrong. The district court imposed the presumptive sentence of 306 months in prison, and this appeal follows.

D E C I S I O N

Appellant argues that the district court clearly erred by rejecting his mental-illness defense during the second phase of his bifurcated court trial for second-degree intentional murder. "A criminal defendant is presumed sane and responsible for his acts," and "bears the burden of proving a mental-illness defense by a preponderance of the evidence." *State v. Roberts*, 876 N.W.2d 863, 867 (Minn. 2016); *see also* Minn. Stat. § 611.025 (2016); *State v. Linder*, 304 N.W.2d 902, 907 (Minn. 1981). The mental-illness defense is a question of fact to be resolved by the factfinder and "a finding that a defendant failed to meet his or her burden to prove a mental-illness defense should not be disturbed unless it is clearly erroneous." *Roberts*, 876 N.W.2d at 868. "A factual finding is clearly erroneous if it does not have evidentiary support in the record or if it was induced by an erroneous view of the law." *Id.*

Minnesota follows the test articulated in *Daniel M'Naghten's Case*, 8 Eng. Rep. 718 (1843), and codified in statute as follows:

> 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 (2016). The word "wrong" means that a criminal defendant "must know that his act was wrong in a moral sense and not merely know that he has violated a statute." *Roberts*, 876 N.W.2d at 868 (citations omitted).

On review, this court conducts "a rigorous review of the record to determine whether the evidence, direct and circumstantial, viewed most favorably to support a finding of guilt, was sufficient to permit the [district] court to reach its conclusion." *State v. Odell*, 676 N.W.2d 646, 648 (Minn. 2004) (quotation omitted). The issue of mental illness is one for the factfinder to resolve, *State v. Brom*, 463 N.W.2d 758, 764 (Minn. 1990), and a reviewing court therefore gives "broad deference" to the factfinder's determination as to the appropriate weight assigned to various testimony, *State v. Peterson*, 764 N.W.2d 816, 822-23 (Minn. 2009). In particular, we afford broad deference "to the fact-finder in determining the appropriate weight to assign expert psychiatric testimony" and, moreover, "the factfinder is not bound by expert psychiatric testimony and may reject it entirely, even when the only experts who testify support the defendant's assertion of a mental-illness defense." *Roberts*, 876 N.W.2d at 868 (citations omitted).

Appellant does not challenge the district court's determination that appellant knew the nature of the act constituting the offense. Thus, the only issue raised in this appeal is whether the greater weight of the evidence established that, at the time of the offense, appellant knew his actions were wrong. The district court found that appellant failed to establish his mental-illness defense by a preponderance of the evidence.

Sufficient evidence in the record supports the district court's decision. During the second phase of the bifurcated trial, the district court heard testimony from two expert

witnesses, Dr. Panciera and Dr. Wernsing. The district court acknowledged that there were conflicting expert opinions concerning whether appellant knew that his actions were wrong when he killed his daughter. Dr. Panciera appeared for the defense and testified that he believed appellant was "very confused and psychotic" when he killed his daughter. However, the doctor agreed that a person who is suffering from mental illness may retain the ability to know right from wrong. Dr. Wernsing appeared as a witness for the state and testified that, in his opinion, appellant's delusions did not impact his ability to think rationally. The doctor noted that appellant appeared to be "doing most of the regular day-to-day events in his life without great impairment" leading up to August 13, and further testified that it's possible for an individual experiencing auditory hallucinations to still engage in rational thought and decision-making. Dr. Wernsing testified that, in his opinion, appellant understood what he was doing when he killed his daughter and understood the wrongfulness of his act. The prosecutor asked, "[W]as [appellant] laboring under such a defective reasoning from his mental illness that he didn't know that his act was wrong?" Dr. Wernsing, replied, "Again, no."

Roberts provides that the district court is "free to reject" aspects of an expert's testimony, particularly when the expert's testimony is contradicted by other competent evidence. 876 N.W.2d at 870-71; *see also DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984) (recognizing that a factfinder is not bound by expert testimony that defendant was mentally ill because evidence of defendant's conduct supported a determination that he knew his conduct was wrong). In addition to the experts' testimony, the district court also considered testimony from the child's mother, appellant's neighbors, the 911 operator, and

responding paramedics. After killing his daughter, appellant began walking around his neighborhood. His neighbor testified that appellant stated he had "a lot of sh_t to deal with." The baby's mother testified that she spoke on the phone with appellant around the same time and appellant stated that he would have to "live with what [he] did" and was "going to jail." Appellant later returned home, called 911, and told the dispatcher that he killed his daughter by punching her "repeatedly." When the first responders arrived at the home, appellant told one of the paramedics that he beat his daughter "too many times." Viewing the evidence as a whole, the district court determined that this evidence "indicate[s] [he] knew his act was wrong, understood he had options and made the choice to hit and ultimately kill his daughter."

The district court also considered appellant's conduct before and after the murder. "A district court may reject a mental-illness defense based on evidence of a defendant's behavior before and after crimes, including evidence that the defendant was aware of the consequences of her actions." *State v. Hall*, 915 N.W.2d 528, 538 (Minn. App. 2018) (citing *Roberts*, 876 N.W.2d at 869); *see also Davis v. State*, 595 N.W.2d 520, 527 (Minn. 1999) ("[T]he trial court can look to events surrounding the crime in making a determination about appellant's sanity."); *State v. Wilson*, 539 N.W.2d 241, 245 (Minn. 1995) ("[C]ircumstances surrounding the crime may shed light on defendant's mental state at the time of the murders."). Here, the court found that appellant's "first recorded statements" after killing his daughter are captured in his 911 call and his interview with the police. During his 911 call, appellant stated, "I did something very horrible . . . I killed my daughter." During the police interview several hours later, appellant told the officers

that, "I was doing things that I wouldn't and that I don't think I should ever do." Appellant stated that he would carry the memory of killing his daughter "for the rest of [his] life," and felt he should "probably go to jail."

The district court determined that it could infer from appellant's "conduct surrounding the attack"—such as attempting to clean up the splattered blood in the child's bedroom, calling 911 to report that he killed his daughter, and stating that he believed he should go to jail for killing her—that he "knew his act was morally wrong." *See Hall*, 915 N.W.2d at 539 (noting that court properly considered circumstantial evidence in its decision that appellant understood "moral wrongness" of actions). Based on this evidence, the district court determined that appellant failed to prove by a preponderance of the evidence that he was not responsible for his actions. We discern no clear error in the district court's decision. The record reveals that the district court thoughtfully, thoroughly, and carefully weighed the testimony provided by both expert witnesses and lay witnesses and considered evidence of appellant's behavior before and after the murder. Further, the district court made specific credibility findings.

Appellant argues that the greater weight of the evidence supports a conclusion that his cognitive impairment prevented him from understanding that his actions were wrong. We decline to reweigh the evidence and substitute our judgment for that of the factfinder. We afford "substantial deference to the district court's evaluation of the evidence of mental illness and the weight to assign to expert psychiatric testimony." *Roberts*, 876 N.W.2d at 871. Here, the district court carefully and thoroughly considered the testimony and evidence presented by the expert witnesses, as well as the testimony presented through the

lay witnesses regarding appellant's conduct before and after the murder. *See id.* We defer to the district court's informed credibility determinations.

Given the record as a whole and the instruction to view the evidence in the light most favorable to the verdict, *Peterson*, 764 N.W.2d at 823, we conclude that the district court did not clearly err in determining that appellant failed to meet his burden of establishing a mental-illness defense by a preponderance of the evidence, and we affirm.

Affirmed.