STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2112

State of Minnesota,
Respondent,

vs.

Frances Catherine Steckelberg,
Appellant.

Filed September 6, 2011
Affirmed
Johnson, Chief Judge

Stearns County District Court
File No. 73-CR-09-318

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

Janelle P. Kendall, Stearns County Attorney, Joshua J. Kannegieter, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Douglas R. Carlson, Jennifer H. Chaplinski, Assistant Stearns County Public Defenders, St. Cloud, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Johnson, Chief Judge; and Stoneburner, Judge.

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

JOHNSON, Chief Judge

A Stearns County jury found Frances Catherine Steckelberg guilty of neglect of a child based on evidence that she failed to supervise her two-year-old son, who wandered away from home three times during a four-day period. On appeal, Steckelberg argues that the district court erred by not allowing her to cross-examine a county child-protection investigator about the conclusion reached at the end of her investigation. Steckelberg also argues that the prosecutor misstated the law during closing argument. We affirm.

FACTS

On July 17, 2008, at approximately 7:00 a.m., an employee of a school near Steckelberg's home found W.C.P., a two-year-old boy, in the school's parking lot. He contacted police. At about the same time, Steckelberg called the police department to report that her son was missing. Steckelberg picked up W.C.P. a short time later and told police that W.C.P. had left home by himself through a propped-open door while she was using a bathroom.

Three days later, on July 20, at approximately noon, a woman found W.C.P. walking in the midst of vehicle traffic along a four-lane road near her home. The woman took W.C.P. to her home while a neighbor called the police. A police dispatcher contacted Steckelberg, who went to pick up the boy. A police officer testified at trial that Steckelberg told him that she was sleeping when the boy left home.

The following day, July 21, at approximately 5:15 a.m., a woman found W.C.P. as he stepped off the curb of a median onto a roadway. The woman called police, and Sgt. Jesse Douvier of the St. Cloud Police Department responded to the call. The boy was unable to provide Sgt. Douvier with his address or the name of a parent. Steckelberg also called the police department to report that W.C.P. was missing. Steckelberg later told police officers that the boy had left home by himself through an unlocked door.

After the third incident, the Stearns County Department of Human Services took custody of W.C.P. and conducted an investigation to determine whether the boy was neglected and whether child-protective services were needed. On August 7, 2008, Sharon Knutson, a child-protection worker, informed Steckelberg by letter that the department did not determine that Steckelberg had neglected W.C.P. but did determine that child-protective services were needed. The letter stated that "there was not a preponderance of evidence to indicate that [W.C.P.] getting out of your apartment building was due to your lack of supervision." The letter also stated that the county would provide "follow up services . . . to work with you on a safety plan."

In January 2009, the state charged Steckelberg with one count of neglect of a child, a violation of Minn. Stat. § 609.378 (2008). The case was tried to a jury over two days in November 2010. Before trial, the state moved *in limine* to exclude evidence concerning Knutson's investigation on the ground that it is "irrelevant, based on different standards, misleading, and [would] invade[] the province of the jury." The district court granted the motion in part, ruling that Knutson could testify about her observations and the facts she gathered during her investigation but could not testify about the ultimate

conclusion of the investigation, *i.e.*, the determination as to whether Steckelberg neglected the child.

The jury found Steckelberg guilty. The district court imposed a sentence of 30 days in jail, which was stayed for one year while Steckelberg is on probation. Steckelberg appeals.

D E C I S I O N

I. Cross-Examination of Investigator

Steckelberg first argues that the district court erred by not allowing her to cross-examine Knutson concerning the conclusion reached at the end of her investigation. Steckelberg contends that she should have been allowed to cross-examine Knutson about her conclusion because the state "opened the door" to her proposed line of questioning. Steckelberg contends that the state opened the door in two ways: first, "by inquiring of [Knutson] in such a manner that inferred that [Knutson] found child neglect as the result of her investigation," and, second, by eliciting testimony from a police officer that he referred the third incident involving W.C.P. to Knutson before a charging decision would be made. We apply an abuse-of-discretion standard of review to a district court's evidentiary rulings. *State v. Matthews*, 779 N.W.2d 543, 553 (Minn. 2010).

At trial, the state called ten witnesses. The state's third witness was Sgt. Douvier, who testified about the third incident. After Sgt. Douvier had described the events of July 21, the prosecutor asked, "Who did you turn the case over [to] for investigative purposes?" Sgt. Douvier responded by saying, "we forwarded our case to Social

Services." The prosecutor followed up by asking, "And they took over the investigation at that point?" Sgt. Douvier responded in the affirmative.

The state's ninth witness was Knutson. Consistent with the district court's pretrial ruling, Knutson testified about the facts she gathered and observed during her investigation but did not testify in any way about the conclusion of her investigation. On cross-examination, however, Steckelberg's attorney asked Knutson whether she had reached the conclusion that Steckelberg did not neglect W.C.P. Steckelberg's attorney asked, "Isn't it true that you determined [W.C.P.] getting out was not Ms. Steckelberg's fault[?]" The prosecutor objected to the question, and the district court sustained the objection. The district court and counsel then had a sidebar conference, which was not reported.

At the next break in trial, the district court explained for the record that Steckelberg's attorney sought to cross-examine Knutson about the conclusion of her investigation because the state had introduced evidence that the matter was referred to Knutson for an investigation. The district court stated that Steckelberg's attorney was allowed "to inquire as to whether or not any further action was taken or recommended based upon the investigation" but only because Steckelberg's attorney had raised the issue in the question to which the state objected. The district court reasoned that "otherwise that would be kind of an open question in the minds of the jurors as to what happened, and I didn't want them speculating or implying anything."

After the sidebar conference, the district court instructed the jury to disregard the question asked of Knutson by Steckelberg's attorney. Steckelberg's attorney then asked

only two more questions of Knutson. He asked whether she prepared a report after concluding the investigation; Knutson answered in the affirmative. And he asked whether Knutson's report recommended further action; Knutson testified that she recommended that a child-protection worker conduct a follow-up visit with Steckelberg to discuss safety issues and to ensure that exterior doors have locks.

A party "opens the door" by introducing evidence that "creates in the opponent a right to respond with material that would otherwise have been inadmissible." *State v. Bailey*, 732 N.W.2d 612, 622 (Minn. 2007) (quotation omitted). We determine whether a party opened the door to otherwise inadmissible evidence according to principles of "fairness and common sense, based on the proposition that one party should not have an unfair advantage . . . and that the factfinder should not be presented with a misleading or distorted representation of reality." *Id.* (quotation omitted).

The pertinent issue is whether the state's examination of Sgt. Douvier or Knutson gave the state an "unfair advantage" by presenting "a misleading or distorted representation of reality," such as the impression that Knutson formed the conclusion that Steckelberg *had* committed neglect of a child. *See id.* Steckelberg contends that the state elicited testimony from Sgt. Douvier that "he referred the investigation of the matter to the child-protection worker before a charging decision was made," which implied that Knutson had concluded that Steckelberg committed neglect. But Steckelberg's argument misstates Sgt. Douvier's testimony. Sgt. Douvier did not refer to a charging decision or imply that Knutson had input into that decision. The prosecutor's direct examination of Sgt. Douvier simply elicited testimony that the officer's last action in connection with

this matter was to refer it to the county's department of human services for further investigation. Neither the prosecutor's questions nor Sgt. Douvier's answers suggest that Knutson came to a conclusion at the end of her investigation or that she concluded that Steckelberg had committed neglect of a child. Likewise, the state's direct examination of Knutson did not give rise to any such suggestion.

Thus, the state did not gain "an unfair advantage" or present the jury "with a misleading or distorted representation of reality" and thereby "open the door." *See Bailey*, 732 N.W.2d at 622. Accordingly, the district court did not abuse its discretion by not allowing Steckelberg to cross-examine Knutson about the conclusion of her investigation.

II. Claim of Prosecutorial Misconduct

Steckelberg also argues that the prosecutor engaged in prosecutorial misconduct by misstating the law during closing argument. Specifically, Steckelberg contends that the prosecutor inaccurately stated that neglect of a child is a general-intent crime, not a specific-intent crime.

"Due process guarantees in our state and federal constitutions include the right to a fair trial." *Spann v. State*, 704 N.W.2d 486, 493 (Minn. 2005). A defendant's right to a fair trial may be violated by prosecutorial misconduct. *State v. Ferguson*, 729 N.W.2d 604, 616 (Minn. App. 2007), *review denied* (Minn. June 19, 2007). A prosecutor's misstatement of the law may constitute misconduct. *See State v. Strommen*, 648 N.W.2d 681, 689-90 (Minn. 2002).

Steckelberg has not demonstrated that the prosecutor misstated the law concerning the requisite intent for the offense of neglect of a child. The statute that sets forth the offense provides as follows:

> A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health is guilty of neglect of a child . . . .

Minn. Stat. § 609.378, subd. 1(a)(1) (2008). When instructing the jury on the elements of the offense, the district court paraphrased section 609.378, subdivision 1(a)(1), read a pattern instruction for the offense of neglect of a child, and read a comment to the pattern instruction that defines the term "willfully" to mean that "[t]he Defendant must either have a purpose to do the thing or cause the result specified, or believes that the acts performed, if successful, will cause that result." *See* 10 Minn. Dist. Judges Ass'n, *Minnesota Practice -- Jury Instruction Guides*, § 13.88, at 551-52 (5th ed. 2010).

In closing argument, the prosecutor stated:

> The Defendant willfully deprived [W.P.C.]. You're told that willfully means intentional. That the Defendant must either have a purpose do the thing or cause the result specified, or believe that the acts performed, if successful, will cause that result. Now, that doesn't mean that Ms. Steckelberg had to intend that her child would get out of the house. It doesn't mean that she had to intend that her child would be on Ridgewood Road at 5:15 in the morning. It means she had to intend the choices that she makes. Those are her acts. Her choice is not to put herself between her child and the door. Her choice is not to provide the supervision necessary. She chose to wait until the next day to install a lock. Using the language of the statute, she knew or reasonably believed that

> based on that choice a lock, if she was successful in her choice, a lock wouldn't be installed until the next day. That's essentially what this means. She chose to stay up until 1:00 in the morning the night before this happened. She made that choice. If successful in that choice, she would have stayed up until 1:00 in the morning. That's all that this means is that she had to intentionally make those choices.

Steckelberg's attorney argued to the jury that, to find her guilty, the jury must conclude that she acted with the specific intent that W.C.P. leave home alone. After closing arguments, the district court and the attorneys held a sidebar conference, which is not reported. The district court then instructed the jury to disregard any statements of law made during closing arguments that differed from the instructions that the court read earlier. The district court and counsel later made a record in which Steckelberg's attorney objected to the prosecutor's alleged misstatement of the intent requirement for the offense of neglect of a child.

"Specific intent means that the defendant acted with the intent to produce a specific result, whereas general intent means only that the defendant intentionally engaged in prohibited conduct." *State v. Vance*, 734 N.W.2d 650, 656 (Minn. 2007) (emphasis omitted). Steckelberg has not cited any caselaw for the proposition that the offense of neglect of a child is a specific-intent crime, and we are not aware of any such caselaw. The language of the statute indicates that the offense is a general-intent crime. A parent may be guilty of neglect of a child if the parent willfully deprives a child of food, clothing, shelter, healthcare or age-appropriate supervision and the "deprivation harms or is likely to substantially harm" the child. Minn. Stat. § 609.378, subd. 1(a)(1). The focus of the statute is on the parent's acts, not the parent's objective. A parent may

be guilty of neglect of a child even if the parent did not intend to cause harm to a child. In fact, this court previously has stated that "[t]he child-neglect statute criminalizes negligence." *State v. Cyrette*, 636 N.W.2d 343, 348 (Minn. App. 2001), *review denied* (Minn. Feb. 19, 2002). We equated the willfulness component of the criminal offense of child neglect with the civil concept of willful negligence, which occurs when an "actor has *intentionally* done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and which thus is usually accompanied by a conscious indifference to the consequences." *Id.* (quoting *Prosser & Keeton on the Law of Torts* 213 (5th ed. 1984)).

Thus, the offense of neglect of a child is not a specific-intent crime. Accordingly, the prosecutor did not misstate the law in closing argument and, therefore, did not engage in prosecutorial misconduct.

Affirmed.