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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-82**

State of Minnesota,
Respondent,

vs.

Christopher James Hyden,
Appellant.

**Filed January 25, 2011
Affirmed
Stoneburner, Judge**

Big Stone County District Court
File No. 06CR08270

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

William J. Watson, Big Stone County Attorney, Ortonville, Minnesota (for respondent)

David W. Merchant, Interim Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Toussaint, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

In this appeal from convictions of first-degree criminal sexual conduct, attempted first-degree murder and attempted second-degree murder, appellant argues that his due-

process rights were violated by the district court's denial of expert-witness fees that appellant sought to use in establishing a demonic-possession defense. Appellant also challenges his sentence to life in prison without the possibility of release. We affirm.

FACTS

In the summer of 2008, appellant Christopher James Hyden did occasional maintenance work on a rental home owned by his employer in Clinton. The home was rented by D.B., who lived there with her fiancé and their two children, six-year-old V.B., and two-year-old M.B. Hyden became friends with D.B. and often played with the children and gave them rides on his employer's four-wheeler.

On August 1, 2008, Hyden took V.B. for a ride on the four-wheeler. He stopped at an isolated portion of the county fairgrounds. He placed V.B. on the ground and raped her, tearing the hymen area at the vaginal opening and causing injuries throughout the vaginal wall. Hyden then slashed V.B.'s throat with a knife. V.B. pretended to be dead, and Hyden left the scene on the four-wheeler. V.B. walked almost one mile to find help.

Hyden returned to D.B.'s home and stabbed D.B. several times with his pocket knife and then slashed two deep lacerations into D.B.'s neck—near D.B.'s throat—while repeatedly stating that he had to kill her. D.B.'s friend arrived and interrupted the assault. D.B.'s friend and a number of witnesses, who were outside a church located across the street from D.B.'s home, watched as Hyden fled on the four-wheeler. As D.B.'s friend was providing first aid to her, the friend's husband arrived with V.B., who had managed to get to their house located approximately a mile from where Hyden had left her for dead. D.B. and V.B. were taken to the Graceville Hospital emergency room, and from

there, airlifted to MeritCare in Fargo, North Dakota. Evidence of a sexual assault on V.B. was documented at the hospital. All other forensic evidence gathered was consistent with Hyden's having committed the sexual assault on V.B. and the physical assaults on both victims. Both victims suffered life-threatening injuries that resulted in permanent scarring.

Law-enforcement officers located Hyden, who was driving the four-wheeler on the highway. Hyden drove into a corn field. Eventually, Hyden surrendered to the police, throwing a pocket knife onto the highway as he walked out of the corn field. Hyden eventually confessed that he remembered being on top of V.B. as she was putting her underwear back on, and he later confessed that he had attacked V.B. and attempted to kill her mother. Hyden blamed his conduct, in part, on his anger at being investigated in connection with the unrelated sexual assault of a four-year-old child. Hyden also stated that "voices in his head" told him to commit the crimes against V.B. and D.B. While in the corn field, Hyden had called his girlfriend and had asked her to tell the police that he had been hearing voices. His girlfriend testified that, other than this phone call, she did not recall that Hyden had ever told her about hearing voices.

On August 4, 2008, Hyden was charged by complaint with two counts of attempted first-degree premeditated murder in violation of Minn. Stat. §§ 609.17, .185(a)(1) (2008); one count of attempted first-degree murder in violation of Minn. Stat. §§ 609.17, .185(a)(2) (2008) (for attempting murder while committing criminal sexual conduct with force or violence); two counts of attempted second-degree murder in violation of Minn. Stat. §§ 609.17, .19, subd. 1(1) (2008); and two counts of first-degree

assault in violation of Minn. Stat. § 609.221, subd. 1 (2008). The district court granted Hyden's motion for a psychological examination pursuant to Minn. R. Crim. P. 20.01. The district court appointed Dr. Edmund Nadolny, a clinical and forensic psychologist, to conduct the examination. Hyden did not object to the appointment and did not request a second examiner.

Dr. Nadolny concluded from his examination that Hyden was competent to stand trial and that he did not suffer from such a severe mental disorder at the time of the charged acts that he did not know the nature of his acts or that they were wrong. Dr. Nadolny concluded that Hyden may have been feigning symptoms of mental illness. Based on the examination, the district court found Hyden competent to stand trial.

Ten days after Hyden was found competent to stand trial, a Big Stone County grand jury returned an indictment against Hyden for attempted first- and second-degree murder, as charged in the complaint, and one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2008) (sexual penetration accomplished by force or coercion and resulting in personal injury to the victim). The complaint was dismissed.

Approximately two weeks after the indictment was returned, Hyden moved for another psychological evaluation, asserting that he was entitled to a second examination because the original complaint had been discharged and he had been indicted on a charge carrying a potential life sentence. The district court denied the motion. Approximately two months later, Hyden applied to the district court for funds to hire an expert to conduct an evaluation to determine whether there was a basis for Hyden to assert a

defense of “demonic possession.” A few weeks later, Hyden noticed his intent to raise a mental-illness defense. The district court denied Hyden’s application for funds to hire a “demonic-possession” expert, noting that the district court was unaware of any reputable scientific support for the condition of “demonic possession.”

Hyden waived his right to a jury trial. The parties stipulated that guilt, the mental-illness defense, and the existence of heinous elements exposing Hyden to the possibility of a life sentence without the possibility of release, would be tried to the district court in a single proceeding. At trial, Hyden did not pursue a mental-illness defense, and the defense rested without calling any witnesses. In closing argument, Hyden’s counsel stated that Hyden committed the acts charged. But Hyden’s counsel asserted that Hyden acted without premeditation and that the heinous elements required for sentence enhancement were elements of the crimes charged and could not be applied a second time to enhance the sentence.

The district court found Hyden not guilty of attempted first-degree premeditated murder of V.B., but guilty of all other charges. And the district court found that the state had proved the existence of two heinous elements relating to the first-degree criminal sexual conduct, requiring the district court to impose a life sentence without the possibility of release. Hyden was subsequently sentenced to life without possibility of release. The district court also imposed a concurrent 219-month sentence for attempted second-degree murder of V.B. and a consecutive 216-month sentence for attempted first-degree premeditated murder of D.B. In this appeal, Hyden challenges denial of funds to

hire a “demonic-possession” expert and imposition of the sentence of life without the possibility of release.

D E C I S I O N

I. Denial of expert-witness fees

Hyden argues that denial of his request for expert-witness fees prevented him from presenting a complete defense, violating his constitutional right to due process. A financially qualifying defendant¹ may request expert or other services necessary to an adequate defense. Minn. Stat. § 611.21(a) (2008). On finding that the requested services are necessary, “the court shall authorize counsel to obtain the services on behalf of the defendant.” *Id.* This court reviews a district court’s determination concerning section 611.21(a) expert-witness fees under an abuse-of-discretion standard. *In re Jobe*, 477 N.W.2d 723, 725 (Minn. App. 1991). The defendant has the burden of making a threshold showing to the trial court of the need for expert assistance. *State v. Volker*, 477 N.W.2d 909, 911 (Minn. App. 1991).

Hyden has not appealed the district court’s denial of his request for a second competency evaluation under Minn. R. Crim. P. 20.01, but on appeal, Hyden appears to treat the denial of his motion for a second rule-20 examination and the denial of his request for funds for a “demonic-possession” expert as a single legal determination. They were not. The motion for a second rule-20 examination was denied on November 24, 2008. Hyden’s request for “demonic-possession” expert-witness fees was made on

¹ The state does not dispute that, having qualified for the services of a public defender, Hyden was financially qualified to seek funding for an expert witness under section 611.21(a).

January 14, 2009, and heard on February 12, 2009. At that hearing, Hyden's counsel acknowledged that "there is not in the State of Minnesota a separate defense of demonic possession." The only assertion of need by Hyden was his argument that he "has to be able to present his version of the facts of the case. And we don't believe that the first evaluation was adequate." The only person identified by Hyden as a potential demonic-possession expert was Hyden's minister. There is nothing in the record explaining the basis of the minister's expertise in demonic possession.

The district court denied the request, noting that the proposed testimony on demonic possession would not be admissible because "it is unclear what personal knowledge [Hyden]'s minister could possibly have about the subjective condition of [Hyden]'s alleged demonic possession." The district court also found that Hyden had not made a showing of need because "[t]he conclusions in Dr. Nadolny's report have not been meaningfully challenged, nor has any new evidence been offered in support of the argument that there has been a subsequent change in [Hyden's] competence to stand trial or with regard to his mental state at the time of the alleged offenses."

On appeal, Hyden argues that he did not have the same opportunity to present expert testimony that a non-indigent defendant would have because the non-indigent defendant could presumably pay for further psychological examinations. But this argument does not explain how a demonic-possession expert's testimony is the equivalent of a psychological evaluation, or why such evidence offered by a non-indigent defendant would be likely to be admitted. Hyden argues that "it was unfair of the district court not to allow [Hyden] the funds necessary to pursue his only viable defense to

crimes that would require him to spend the rest of his life in prison.” But Hyden does not present any authority that demonic possession is a legally recognized defense. On this record, we conclude that the district court did not abuse its discretion by denying Hyden’s request for expert-witness fees.

II. Existence of sentence-enhancing heinous elements

A district court’s statutory interpretation is reviewed de novo by appellate courts. *State v. Zacher*, 504 N.W.2d 468, 470 (Minn. 1993). Minn. Stat. § 609.3455, subd. 2(1) (2008), provides that a defendant convicted of first-degree criminal sexual conduct must receive a life sentence without possibility of release if two or more heinous elements exist. A heinous element exists when:

- (1) the offender tortured the complainant;
- (2) the offender intentionally inflicted great bodily harm upon the complainant; [or] . . .
- (4) the offender exposed the complainant to extreme inhumane conditions.

Minn. Stat. § 609.3455, subd. 1(d) (2008). The district court found that the heinous elements of intentional infliction of great bodily harm and exposure to extreme inhumane conditions were satisfied by Hyden’s actions toward V.B. Hyden’s challenge to the heinous-elements enhancement correctly asserts that “[t]he fact finder may not consider a heinous element if it is an element of the underlying specified violation of section 609.342 or 609.343.” Minn. Stat. § 609.3455, subd. 3(b) (2008). Hyden does not challenge the district court’s finding of exposure to extreme inhumane conditions, but argues that the district court erred in using infliction of great bodily harm as a heinous element. Hyden asserts that his act constituting infliction of great bodily harm was

unavailable as a heinous element because it was an element of the underlying first-degree criminal sexual conduct. We disagree.

To prove that Hyden committed first-degree criminal sexual conduct, the state was required to prove beyond a reasonable doubt that Hyden's sexual assault resulted in personal injury to V.B. Minn. Stat. § 609.342, subd.1(e) (2008). "'Personal injury' means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy." Minn. Stat. § 609.341, subd. 8 (2008). Minn. Stat. § 609.02, subd. 7, (2008), defines "[b]odily harm" as "physical pain or injury, illness, or any impairment of physical condition." By comparison, "'[g]reat bodily harm' means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily harm." *Id.*, subd. 8 (2008).

The district court found that Hyden "caused personal injury to V.B. during the sexual penetration by causing tears and bleeding on her hymen and vaginal area." And the district court found that Hyden's act of intentionally slashing V.B.'s neck with a knife, causing serious permanent disfigurement, constituted the heinous element of great bodily harm. Hyden argues that because the throat slashing was "sufficiently related to the sexual assault, it was part of the personal injury element of the first-degree criminal sexual conduct charge" and, therefore, could not be considered a heinous element. But the throat slashing plainly constitutes great bodily harm and the infliction of great bodily harm is plainly not an element of first-degree criminal sexual conduct. We find no merit in Hyden's argument to the contrary. Because two heinous elements were present, the

district court did not err or abuse its discretion in sentencing Hyden to life in prison without possibility of release.

Affirmed.