STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0248

State of Minnesota,
Respondent,

vs.

Guy Israel Greene,
Appellant.

Filed January 8, 2018
Affirmed
Schellhas, Judge

Carlton County District Court
File No. 09-CR-14-1518

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

Thomas H. Pertler, Carlton County Attorney, Jesse D. Berglund, Assistant County Attorney, Carlton, Minnesota (for respondent)

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

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Kirk, Judge.

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

SCHELLHAS, Judge

On appeal from his conviction of fifth-degree assault, appellant argues that the district court deprived him of his right to present a defense when it denied his request to

present testimony about the conditions of his confinement. Appellant also raised two discernible issues in a pro se supplemental brief. We affirm.

FACTS

Appellant Guy Greene and T.B. were residents at the Minnesota Sex Offender Program (MSOP) in Moose Lake when they had a physical altercation during which T.B. sustained an eye injury that required medical care. Respondent State of Minnesota consequently charged Greene with one count of third-degree assault and one count of fifth-degree assault.

Greene moved the district court to subpoena 20 witnesses for trial. The court permitted Greene to subpoena nine of the witnesses on the basis that the remaining witnesses lacked "direct knowledge of the contested facts in this criminal matter."

At Greene's jury trial, the state presented evidence that Greene and T.B. had argued over a video game in the multipurpose room at the MSOP facility and continued to argue throughout various parts of the building. The state introduced video footage that showed Greene and T.B. pacing around a common area while appearing to argue with each other. After T.B. and Greene "got up in each other's face," Greene poked T.B. in the eye, prompting T.B. to grab Greene "by the throat." The parties then grappled with each other before Greene grabbed T.B. by his hair and attempted to slam his face onto a steel table. MSOP staff quickly intervened and T.B. received stitches at a hospital for an injury to his eyelid.

Proceeding pro se, Greene claimed self-defense and testified that T.B. had a "reputation for aggression" and provoked him to the point where he felt threatened. Greene

said that he "felt like [T.B.] was lunging at me" and that he "reacted" in self-defense by poking T.B. in the eye area "to get [T.B.] away from [him]." Greene called several witnesses who testified that they observed T.B. provoking Greene. At least one of Greene's witnesses agreed that T.B. had a reputation for being aggressive toward staff and other residents.

The jury found Greene guilty of fifth-degree assault and not guilty of third-degree assault. The district court sentenced Greene to 365 days in jail. This appeal follows.

D E C I S I O N

Right to present defense

Greene argues that the district court deprived him of his right to present evidence to support his claim of self-defense by denying his request to call or otherwise elicit testimony about the conditions of his confinement. Evidentiary rulings are reviewed for an abuse of discretion. *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009). "On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). A conviction will stand if the error was harmless beyond a reasonable doubt, even if the error violated the defendant's constitutional rights. *Atkinson*, 774 N.W.2d at 589.

Criminal defendants have a "constitutional right to a meaningful opportunity to present a complete defense." *Loving v. State*, 891 N.W.2d 638, 646 (Minn. 2017) (quotation omitted). This includes the ability to present witness testimony. *Id.* But "a defendant's due process right to present a complete defense yields to the application of an evidentiary rule unless the rule 'infringe[s] upon a weighty interest of the accused and [is]

arbitrary or disproportionate to the purposes [the rule is] designed to serve.'" *State v. Pass*, 832 N.W.2d 836, 841–42 (Minn. 2013) (alteration in original) (quoting *Holmes v. South Carolina*, 547 U.S. 319, 324–25, 126 S. Ct. 1727, 1731 (2006)).

Under Minnesota law, the state had the burden to disprove at least one of the following elements of Greene's self-defense claim beyond a reasonable doubt:

> (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in imminent danger of death or great bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

Loving, 891 N.W.2d at 646−47 (quoting *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006)).[1]

Quoting *State v. Bjork*, 610 N.W.2d 632, 637 (Minn. 2000), Greene argues that testimony about the conditions of his confinement at Moose Lake was important and "necessary so jurors could properly evaluate 'the genuineness and reasonableness of [his]

[1] We note that *Loving* actually provides that the "State has the burden to disprove each of the following elements of [the defendant's] self-defense claim beyond a reasonable doubt." 891 N.W.2d at 646. But *Loving* is quoting *Johnson*, which states that the "state has the burden of disproving one or more of [the self-defense] elements beyond a reasonable doubt." *Johnson*, 719 N.W.2d at 629 (quoting *State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997)); *see also State v. Radke*, 821 N.W.2d 316, 324 (Minn. 2012) (stating that to disprove a self-defense claim, the "State need only disprove beyond a reasonable doubt at least one of the elements of self-defense"). The supreme court in *Loving* does not acknowledge that it is differentiating from the standard stated in *Johnson*, nor does it otherwise indicate that it is changing the long-standing standard that the state need only disprove one element of a self-defense claim beyond a reasonable doubt. Thus, the statement in *Loving* that the state "had the burden to disprove each of the following elements of [the defendant's] self-defense claim beyond a reasonable doubt" appears to be an inadvertent misstatement. 891 N.W.2d at 646.

fear and violent actions.'" He contends that the district court's exclusion of testimony on the alleged conditions at MSOP deprived him of his constitutional right to present evidence supporting his self-defense claim. He argues that the court "abused its discretion by not letting [him] call MSOP employees to testify or to elicit testimony from his other witnesses about the conditions of his confinement."

Greene's argument is without merit. As the state points out, the district court never explicitly ruled that all "testimony as to conditions of confinement was irrelevant." Rather, as reflected in the court's pretrial order, the court granted Greene's request to subpoena 9 of 20 witnesses, several whose testimony Greene claimed was relevant as to "conditions of [his] confinement." Greene therefore was able to present evidence regarding the "conditions of [his] confinement" at trial. For example, Greene asked his witness, D.L., how he felt about "the atmosphere at MSOP" and the type of altercations he has been in at the facility. Similarly, Greene testified at length regarding the "conditions" at MSOP, such as the "level of the tension, the anxiety, [and] the depression" at the facility.

Although the district court sustained the state's objection to some of Greene's questions of M.B. about conditions at MSOP, as well as it's "policies and procedures," the court allowed Greene to elicit other testimony from M.B. relating to the "environment" and "conditions" at MSOP. For example, M.B. testified that the environment is "created so that we are sort of . . . hostile towards each other." And Greene had the opportunity to question several other witnesses about the conditions of confinement at MSOP, but he apparently chose not to. We conclude that the court did not deprive Greene of his right to present evidence to support his defense of self-defense.

But even if the district court erroneously excluded testimony proferred by Greene, he is entitled to a new trial only if he can demonstrate that the evidentiary exclusion was an abuse of discretion *and* that the error was not harmless beyond a reasonable doubt. *See Atkinson*, 774 N.W.2d at 589 (stating that "[a] conviction will stand if the constitutional error committed was harmless beyond a reasonable doubt"). An "error is harmless if the jury's verdict is surely unattributable to the error." *Id.* (quotations omitted).

Here, video of the assault that the state introduced supports the jury's verdict and the jury's rejection of Greene's self-defense claim. The video shows Greene and T.B. walking back and forth, arguing with each other, and Greene waving his hand in T.B.'s face. The video also shows Greene, on more than one occasion, walking away from T.B. and then returning and getting in T.B.'s face. Moreover, the video shows Greene pushing T.B., and later, Greene poking T.B. in the eye, which causes the scuffle to ensue. Finally, testimony at trial indicates that both parties were calling each other names. This evidence demonstrates that Greene was the aggressor, or at the very least, disproves the absence of aggression on the part of Greene. *See Loving*, 891 N.W.2d at 646 (stating that the state has the burden to prove the "absence of aggression or provocation on the part of the defendant" (quotation omitted)).

In addition to disproving the first self-defense element beyond a reasonable doubt, the state presented evidence that Greene could have retreated. The assault occurred on the same floor as T.B.'s living unit. But according to T.B., he was unable to return to his room because his roommate had the door shut, indicating that his roommate was "using the bathroom." Conversely, Greene's room was upstairs from where the assault occurred. In

fact, Greene admitted that he could have walked away from T.B. and gone upstairs to his room, but instead he kept following and arguing with T.B. Greene's testimony demonstrates that he had a reasonable possibility to retreat to avoid the danger. As a result, the state disproved, beyond a reasonable doubt, the fourth self-defense element. *See id.* (stating that the state has the burden of disproving, beyond a reasonable doubt, "the absence of a reasonable possibility of retreat to avoid the danger" (quotation omitted)).

Because the state disproved, beyond a reasonable doubt, at least two of the self-defense elements, Greene's self-defense argument fails. *See Johnson*, 719 N.W.2d at 629 (stating that once the defendant has met his burden "of going forward with evidence to support a claim of self-defense," the "state has the burden of disproving one or more of these elements beyond a reasonable doubt" (quotation omitted)). Moreover, evidence pertaining to the "conditions of confinement" had no bearing on the evidence showing Greene as the aggressor or whether he had a reasonable possibility of retreat. Accordingly, the jury's verdict was surely unattributable to any error in the omission of evidence depicting the "conditions of [Greene's] confinement."

Pro se arguments

In a pro se supplemental brief, Greene argues that he was denied his right to a fair trial because the district court allowed the state to play the security video footage at half-speed and without audio. Greene also contends that he was denied due process and the right to a fair trial because the state violated the rules of criminal procedure by using MSOP employees to investigate his case rather than an "official investigator." Having considered

these issues carefully in light of the applicable legal standards, we conclude that Greene's pro se claims are without merit.

Affirmed.