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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0107**

State of Minnesota,
Respondent,

vs.

Tom Gbanlue Wylie,
Appellant.

**Filed February 19, 2013
Affirmed
Collins, Judge***

Hennepin County District Court
File No. 27-CR-08-23887

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and
Collins, Judge.

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant Tom Wylie challenges the district court's ruling that he forfeited his right to continue his direct testimony, arguing this ruling violated his due-process right to testify. Because the district court did not err in terminating Wylie's testimony when, despite numerous warnings, Wylie repeatedly disrupted the jury trial and persisted in referencing suppressed evidence, we affirm.

FACTS

For an incident in January 2008, the state charged Wylie with first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(g) (2006). The charge was based on information provided by E.B., who was 14 years old at the time of the incident, with whom Wylie had a significant relationship as defined by Minn. Stat. § 609.341, subd. 15(2) (2006). Wylie ultimately admitted the alleged sexual intercourse but asserted it was consensual.

During jury selection for his September 2011 trial, Wylie disrupted the proceedings in various ways, including slamming his hand on the counsel table, yelling, insisting the district court call him by another name, and stating his brother was "gonna shoot in this place." The district court declared a mistrial and dismissed the jury panel after several members affirmed that Wylie's conduct had affected their ability to give him a fair trial. A new jury panel was made available the next day, and the district court proceeded with jury selection by individual voir dire of prospective jurors. Wylie

resumed his obstreperous behavior. As a prospective juror was being examined, Wylie left the counsel table, ran toward the bench, was apprehended by deputies, and was removed from the courtroom. In a holding cell, Wylie took off his pants, tore them, and lashed out at the deputies with his belt. The district court ordered Wylie's absence from the courtroom during the proceedings for the rest of the day.

The next day, Wylie entered the courtroom and promptly made an obscene gesture toward the district court. Before resuming jury selection, the district court warned Wylie that if he didn't stop the disruption he could be bound to his chair and gagged, and repeatedly informed Wylie that the proceedings could be conducted in his absence. Wylie indicated that he understood. But again, due to an outburst by Wylie, the district court had to excuse a prospective juror. Thereafter, Wylie was bound to his chair and later gagged, and eventually he was removed from the courtroom, yelling and swearing. Following completion of jury selection, Wylie was allowed to return to the courtroom. But once again, due to his verbal outburst during opening statements, Wylie had to be removed. The district court later permitted him to return to the courtroom, and for a time Wylie maintained self-control.

The district court had found Wylie competent to stand trial under Minn. R. Crim. P. 20.01. During the trial, the district court found Wylie competent to proceed pro se and ultimately granted Wylie's request to waive his right to counsel and represent himself, with the public defender present as standby counsel. Wylie cross-examined the state's witnesses and was permitted to present his direct testimony in narrative form. A pretrial

ruling precluded any reference to a prior allegation of assault that E.B. had made against another person. During Wylie's direct testimony, the following exchange occurred, with Wylie raising his voice before the district court excused the jurors from the courtroom:

MR. WYLIE: I know I have sex with her. And I know this sex was willing. But she was someones like a robot that striked and turned a report and there are several cases where she report other people in the families of—

[PROSECUTOR]: Objection.

THE COURT: Just a minute. Mr. Wylie—

MR. WYLIE: She reported people that she was—they force her and they rape her. And she was not raped by them.

THE COURT: Mr. Wylie—

MR. WYLIE: And it was in that same house.

[PROSECUTOR]: Your honor.

THE COURT: Mr. Wylie—

MR. WYLIE: Yes. I'm sorry, your honor.

THE COURT: I'm instructing you to quit speaking.

Jurors, you are ordered to disregard the last portion of Mr. Wylie's testimony. I have previously ruled that the subject matter that he has just spoken about was irrelevant to this trial. I so advised him—

MR. WYLIE: It was in that same house though, your honor.

THE COURT: Mr. Wylie—

MR. WYLIE: It was—it was—

THE COURT: Jurors—

MR. WYLIE: It was the same—

[PROSECUTOR]: Your honor—

MR. WYLIE: —family, your honor.

THE COURT: Just a minute. Jurors, I'm going to ask you to return to the jury room.

With that, the district court ruled that Wylie had “given up the right to testify further[,]” and, after the jurors returned, the district court instructed the jury to disregard the previous exchange. Wylie was then cross-examined by the state, given an opportunity to present additional witnesses, and gave his closing argument. The jury found Wylie guilty as charged. The district court adjudicated the conviction and sentenced Wylie in accordance with the sentencing guidelines to 144 months' imprisonment. This appeal followed.

DECISION

Wylie argues that the district court violated his due-process right to testify. He asserts that the district court prevented him from “telling [the] whole story” and explaining why he believes E.B. is older than reported. Before reaching the substantive issue raised by this appeal, we first address the state's argument that Wylie forfeited his claim by failing to make an offer of proof when his testimony was terminated. *See In re Welfare of M.P.Y.*, 630 N.W.2d 411, 415 (Minn. 2001). A party fails to preserve an issue for appeal on a ruling excluding evidence unless that party makes an offer of proof showing the nature of the evidence excluded. *State v. Wolf*, 605 N.W.2d 381, 385 (Minn.

2000). Error may not be predicated upon a ruling that excludes evidence unless (1) a substantial right of the party is affected and (2) “the substance of the evidence was made known to the [district] court by offer [of proof] or was apparent from the context within which questions were asked.” Minn. R. Evid. 103(a).

Here, the rule’s first prong is met because the ruling at issue affects a substantial right of Wylie’s—his right to testify on his own behalf. The second prong is also met because, although no offer of proof was made, the substance of Wylie’s intended ongoing testimony was readily apparent—Wylie indicated that he doubted E.B.’s reported age during his opening statement, cross-examination of witnesses, direct testimony, and closing argument. Thus, we conclude that a formal offer of proof was not necessary to preserve the issue for appeal. *See M.P.Y.*, 630 N.W.2d at 415.

We now turn to the substantive issue raised by this appeal. Wylie contends that the district court’s decision to terminate his direct testimony was arbitrary and disproportionate. The state responds that terminating Wylie’s testimony was warranted given the district court’s numerous warnings and because Wylie persisted in his references to ruled-out subject matter in the presence of the jury.

A defendant’s right to testify in his or her own defense is protected by the Fourteenth Amendment Due Process Clause. *Rock v. Arkansas*, 483 U.S. 44, 49, 51, 107 S. Ct. 2704, 2708-09 (1987); *State v. Ihnot*, 575 N.W.2d 581, 587 (Minn. 1998). On appeal, evidentiary rulings are reviewed under an abuse of discretion standard. *M.P.Y.*, 630 N.W.2d at 415. If the exclusion of evidence violated the defendant’s constitutional

right to present a defense, this court reverses the conviction unless the error is harmless beyond a reasonable doubt. *Id.*

Although a defendant has the right to testify on his or her own behalf, the testimony may be limited to “accommodate other legitimate interests in the criminal trial process” so long as the limitations are not “arbitrary or disproportionate.” *Rock*, 483 U.S. at 55-56, 107 S. Ct. at 2711 (quotation omitted). “The [district] court has broad discretion in dealing with ‘disruptive, contumacious, stubbornly defiant defendants.’” *State v. Richards*, 495 N.W.2d 187, 197 (Minn. 1992) (quoting *Illinois v. Allen*, 397 U.S. 337, 343, 90 S. Ct. 1057, 1061 (1970)).

In *Richards*, the defendant was permitted to testify until his testimony ran afoul of the rules of evidence. 495 N.W.2d at 192. Although the district court cut Richards’s testimony short, the supreme court concluded that the limitations placed on his testimony “were not arbitrarily made by a trial court judge keeping an eye on the clock” and that “[m]ost of the excluded testimony was irrelevant, inadmissible hearsay, or capable of creating confusion or undue delay.” *Id.* at 193.

Courts have discussed issues regarding disruptive defendants and have repeatedly held that the defendant may be banished from the courtroom altogether if the behavior warrants such action. For example,

a defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive and disrespectful of the court that his trial cannot be carried on with him in the courtroom.

Allen, 397 U.S. at 343, 90 S. Ct. at 1060-61. In *Allen*, the defendant argued with the judge in an “abusive and disrespectful manner,” threatened to kill the judge, threw his attorney’s papers, and promised to continue to disrupt the proceedings. *Id.* at 339-40, 90 S. Ct. at 1059. The Supreme Court concluded that, because of his behavior, “Allen lost his right guaranteed by the Sixth and Fourteenth Amendments to be present throughout his trial.” *Id.* at 346, 90 S. Ct. at 1062. Similarly, in a Minnesota case the defendant was repeatedly defiant, yelled obscenities, made obscene gestures, interrupted the state’s opening argument, and refused to stop talking. *State v. Gillam*, 629 N.W.2d 440, 447-48 (Minn. 2001). Gillam’s claim of constitutional violation was unsuccessful because “Gillam’s conduct warranted his exclusion.” *Id.* at 452.

We disagree with Wylie’s contention that the district court acted arbitrarily and disproportionately in terminating his direct testimony. Wylie was not prevented from continuing his testimony due to an isolated breach of a rule; rather, it was because he repeatedly disrupted the proceedings, culminating in revealing to the jury E.B.’s irrelevant accusation in direct violation of the district court’s known prior ruling. Nor was the district court’s action reflexive; indeed, the district court displayed remarkable self-control in repeatedly warning Wylie and providing him ample opportunities to curtail his behavior throughout the proceedings. In the end, Wylie’s persistent reference to inadmissible evidence, if unchecked, created a genuine risk of unfair and unredeemable prejudice to the state’s case. On this record, we conclude that the district court acted well

within its discretion in ruling that Wylie forfeited his right to continue his direct testimony.

Affirmed.