STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0845

In the Matter of the Welfare of:
A. X. T., Child.

Filed June 3, 2008
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-JV-06-14943

Leonardo Castro, Chief Public Defender, James Kamin, Barbara S. Isaacman, Assistant Public Defenders, Hennepin County Fourth Judicial District, 317 Second Avenue South, Suite 200, Minneapolis, MN 55401-2700 (for appellant)

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Michael O. Freeman, Hennepin County Attorney, J. Michael Richardson, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

Considered and decided by Johnson, Presiding Judge; Lansing, Judge; and Collins, Judge.

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

COLLINS, Judge

On appeal from his conviction of theft from person and his adjudication as delinquent, A.X.T. argues that the district court (1) was biased and thus violated A.X.T.'s

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

right to a fair trial, (2) received inadmissible evidence, (3) refused to appoint an interpreter for a witness, and (4) erred by imposing and staying an out-of-home placement. A.X.T. also challenges the sufficiency of the evidence. Because the district court did not exhibit bias or abuse its discretion and the evidence was sufficient to convict A.X.T., we affirm.

D E C I S I O N

This case arises from a purse-snatching in Minneapolis in October 2006. A woman (N.B.) was in a bus-stop shelter waiting for transportation home from work when a young male grabbed her purse and ran away. N.B. ran after him. A.X.T. was apprehended, and N.B. positively identified him as the person who stole her purse. In a delinquency petition, A.X.T. was charged with theft from person. Following a bench trial, A.X.T. was convicted and adjudicated as delinquent.

I.

A.X.T. claims that his right to a fair trial was compromised by the conduct of the district court in several respects. We discuss each assertion in turn.

A.X.T. contends that the district court "took over the role of prosecutor" by questioning witnesses. The state counters that the trial judge may interrogate witnesses. Minn. R. Evid. 614(b). The Minnesota Supreme Court has held that it is within the district court's discretion whether to question a witness called by either party. *Olson v. Blue Cross & Blue Shield*, 269 N.W.2d 697, 702 (Minn. 1978). "Trials, after all, are not simply courtroom dramas but a search for justice. If a trial court is doubtful about the testimony of any witness in a court trial, he may have not only the right but the

duty to interrogate a witness." *Id.* In each instance when A.X.T. complains that the district court improperly questioned witnesses, the trial judge was essentially seeking clarification of the witness's testimony. Nothing in the record indicates that the court's questions show bias or prejudice. As in *Olson,* the district court here was merely exercising its prerogative to question witnesses for legitimate purposes. A.X.T. fails to prove that the court acted improperly by its limited questioning of witnesses.

A.X.T. claims that the district court relinquished its impartiality when it "informed the prosecutor multiple times that she was making the record unclear." But A.X.T. specifies only one instance in the trial when this occurred, and the transcript belies his claim that the court acted improperly. The prosecutor asked N.B. how far away A.X.T. was from her at a certain time. N.B. answered, "Just about [the] distance between you and me now." The prosecutor thought this meant the distance between N.B. and her in-court interpreter, but the court believed the meaning to be the distance between N.B. and the prosecutor. The court stated, "Okay. I'm not sure who she meant because the record is unclear." It does not appear that this statement was intended to lead the prosecutor or disadvantage A.X.T., nor does it suggest that the court was biased toward either party.

Next, A.X.T. argues that the district court demonstrated partiality by responding to a question asked by N.B. We disagree. A.X.T. cites the instance during N.B.'s testimony when she was directed to refer to a map to describe her location at the bus stop. N.B. asked which way was east; the court explained that the top was north, the

bottom south, and the right of the map was east. Nothing indicates that the district court's impartiality was impaired by simply orienting the witness to the map.

A.X.T.'s next contention is that he was denied his right to a fair trial because the district court placed on the record its interpretation of a witness's physical gestures. We disagree. While testifying, a witness referred to a location on a map by pointing. The prosecutor believed that the witness was pointing to the intersection of 15th Avenue South and Franklin Avenue East; the district court corrected her and stated that the witness was pointing to the middle of the block between 14th and 15th Avenues on Franklin. Again, this was merely clarifying the record and does not demonstrate partiality favoring either party.

A.X.T. complains that on two occasions the district court improperly told the prosecutor to "direct the witness." One was to require a witness to be responsive, and the other appears to have been to cut off a narrative. In each instance, the district court acted within its discretion and did not reveal bias or prejudice.

Finally, A.X.T. argues that the district court was improperly partial when it instructed the prosecutor to lay the proper foundation for the admission of hearsay evidence. We disagree. A.X.T. correctly notes that a district court must remain impartial. *See Hansen v. St. Paul City Ry. Co.*, 234 Minn. 354, 360, 43 N.W.2d 260, 264 (1950) ("The responsibility of striving for an atmosphere of impartiality during the course of a trial rests upon the trial judge.") But the district court must exercise reasonable control over the mode and order of presenting evidence. Minn. R. Evid. 611(a). In this instance, A.X.T. objected to the admission of evidence on hearsay

grounds, and the prosecutor claimed the excited-utterance exception. The court initially sustained A.X.T.'s objection on the ground of vagueness and informed the prosecutor of the need for further foundation. Foundation was laid, and the evidence was admitted. We cannot conclude that this went beyond the district court's proper judicial role or was an abuse of discretion. Nor did the court's suggestion contravene tenets of judicial impartiality.

We are satisfied that none of the foregoing conduct demonstrated bias or partiality on the part of the district court or in any way deprived A.X.T. of a fair trial.

II.

A.X.T. contends that the district court impermissibly allowed the prosecutor to elicit double hearsay and that this evidentiary ruling was an abuse of discretion that warrants reversal. A district court has broad discretion in making evidentiary rulings. *State v. Nunn*, 561 N.W.2d 902, 906-07 (Minn. 1997). On appeal, this court will not reverse a district court's evidentiary ruling unless the appellant establishes that the court abused its discretion and that the appellant was prejudiced by that ruling. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

A.X.T. argues that the district court abused its discretion when it admitted a police officer's testimony about what N.B. told him, through a witness at the scene who acted as an interpreter, when the officer and his partner arrived on the scene. N.B. is a Somali-American who does not speak English. An observer (A.H.) was stopped in his car at the intersection of Franklin Avenue East and 15th Avenue South when he saw N.B. running with her shoes in hand, chasing two youths. One of them, wearing a black t-shirt,

was later identified as D.H.; the other, later identified as A.X.T., had on a white t-shirt. A.H., who is also Somali-American, heard N.B. hollering "Help" in Somali. A.H. followed N.B. and the two youths in his car. In the end, A.H. told the police what he had seen, and he translated between N.B. and the police to relate what N.B. said had happened: that A.X.T. had stolen her purse and run off.

A.X.T. characterizes the officer's trial testimony of what N.B. said as "double hearsay" because N.B. spoke to the officer through a translator. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Minn. R. Evid. 805 provides that "[h]earsay included within hearsay is not excluded under the hearsay rule if each part of the combined statements conforms with an exception."

There is no need to consider whether a hearsay exception applies to A.H.'s translated statements because an interpreter is "no more than a language conduit and therefore his translation [does] not create an additional level of hearsay." *United States v. Lopez,* 937 F.2d 716, 724 (2d Cir. 1991) (quotation omitted, alteration in original); *see also United States v. Sanchez-Godinez,* 444 F.3d 957, 960 (8th Cir. 2006) (determining that there were hearsay concerns because the translator was also a law-enforcement officer and not merely acting as a language conduit). Here, A.H. acted merely as a language conduit for N.B., and it is therefore inaccurate to characterize his statement to the police as hearsay. If N.B.'s statements were not hearsay, or fit an exception to the hearsay rule, they were properly admitted.

The district court admitted N.B.'s statement under the excited-utterance exception. For a statement to be admissible as an excited utterance, there must have been a startling event, the statement must relate to that event, and the statement must have been made under the stress caused by the event. Minn. R. Evid. 803(2). The theft of N.B.'s purse was a startling event. Her statements that A.X.T. was the person who stole her purse related to that event and were made while N.B. was still agitated and upset that her purse had been snatched from her person. Two police officers testified that N.B. was upset. One of them described N.B. as waving her arms around and pointing at A.X.T. A.X.T. challenges the admission of the evidence as an excited utterance, theorizing that N.B.'s mannerisms as described could have been her normal way of speaking and to wave her arms around and point. This argument is not persuasive. Based on the testimony, and given the opportunity that the district court had to observe the witnesses during the course of the trial and assess their credibility, we cannot say that the district court abused its broad discretion when it admitted the statements attributed to N.B. as excited utterances.

III.

A.X.T. argues that his right to a fair trial was violated because the district court did not provide an interpreter for A.H. We disagree.

Under Minnesota law, a district court is required to appoint an interpreter for a witness who is disabled in communication. Minn. Stat. § 611.32, subd. 1 (2006). But a district court has broad discretion when deciding whether to provide an interpreter for a witness. *State* v. *Cham*, 680 N.W.2d 121, 126 (Minn. App. 2004), *review denied*

(Minn. July 20, 2004). This court defers to the district court's first-hand view of the person's pronunciations, pauses, facial expressions, and gestures. *See id.; see also State v. Yang*, 627 N.W.2d 666, 676 (Minn. App. 2001) (noting that a district court has broad discretion whether to provide an interpreter and that the court's decision to not provide an interpreter was supported by the record), *review denied* (Minn. July 24, 2001). As in *Yang*, the record here amply supports the district court's decision. The court asked A.H. several questions, all of which he answered responsively. After examining A.H., the court was satisfied that he was able to comprehend the questions posed to him and answer them responsively. Thus, A.X.T. has failed to show that the court abused its discretion by not providing A.H. with an interpreter.

A.X.T. also contends that the court improperly relied on A.H.'s un-translated testimony to make factual findings that led to its determination of guilt. We will not disturb a court's factual findings unless they are clearly erroneous. *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985). Factual findings are clearly erroneous when they are manifestly against the weight of the evidence or not reasonably supported by the evidence as a whole. *Id.* Because no interpreter was needed, we conclude that the district court properly relied on A.H.'s testimony and that its factual findings based on that testimony were not clearly erroneous.

A.H. testified that he followed N.B. in his car to 22nd Street and Bloomington Avenue. He saw A.X.T.'s companion, D.H., run straight down 14th Avenue while A.X.T. ran to 22nd Street. A.H. got out of his car and followed A.X.T. to a nearby

building that A.X.T. entered. A.H. ran around to the back of the building. It was D.H.'s apartment building, and it was there that the police later discovered N.B.'s purse and the jacket that N.B. identified as A.X.T.'s. Contrary to A.X.T.'s argument, the record supports the district court's findings based, in part, on A.H.'s testimony. The court did not violate A.X.T.'s due-process rights in making the findings.

IV.

A.X.T. contends that the evidence was insufficient to convict him of theft from person. We review a claim of insufficiency of the evidence to determine whether the fact-finder could reasonably conclude that the defendant is guilty beyond a reasonable doubt in light of the facts in the record and all the legitimate inferences that can be drawn in favor of conviction from those facts. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). This court assumes that the fact-finder believed the state's witnesses and disbelieved contrary evidence. *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001). The facts in this record and reasonable inferences drawn therefrom support the district court's determination of A.X.T.'s guilt.

Eyewitness testimony supports the conviction for theft. *See State v. Daniels*, 361 N.W.2d 819, 827 (Minn. 1985) (holding that eyewitness testimony supports a conviction if a witness testifies that in his belief, opinion, and judgment the defendant is the one he saw commit the crime). From the moment that it occurred, N.B. identified A.X.T. as the thief who snatched her purse and fled, and she identified him in the courtroom at trial. She testified that during the chase she did not lose sight of A.X.T. A.H.'s testimony corroborated N.B.'s identification of A.X.T. He saw A.X.T. run to 22nd Street from

14th Avenue and enter D.H.'s apartment building near 22nd and Bloomington, outside of which N.B.'s purse and a jacket identified as A.X.T.'s were found. A.X.T. admitted that he was wearing a white t-shirt when he was chased by N.B. and was accused of stealing her purse. The district court's determinations of guilt and delinquency reflect that the court credited N.B.'s identification of A.X.T. and her testimony that A.X.T. stole her purse, and disbelieved A.X.T.'s denials. We are satisfied that the evidence in the record amply supports the determination of A.X.T's guilt and his adjudication as delinquent.

V.

Finally, A.X.T. argues that the district court stayed out-of-home placement for A.X.T. and that this was reversible error. At a minimum, A.X.T. contends that this condition must be deleted from the court's disposition order. Limiting our review to the record, it is not clear whether the district court imposed and stayed out-of-home placement for A.X.T. The disposition order does indicate that A.X.T. was to be placed at "Project Support," but it is not evident whether that is an out-of-home placement. We will not disturb a district court's disposition order absent a clear abuse of discretion, *In re Welfare of J.A.J.,* 545 N.W.2d 412, 414 (Minn. App. 1996), and because we cannot ascertain whether the court imposed and stayed out-of-home placement for A.X.T., we cannot find that the district court abused its discretion in its disposition order.

Affirmed.