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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1474**

State of Minnesota,
Respondent,

vs.

Shawn Henry Wellner,
Appellant.

**Filed August 28, 2017
Reversed and remanded
Ross, Judge**

Aitkin County District Court
File No. 01-CR-15-844

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

James P. Ratz, Aitkin County Attorney, Nathan T. Benusa, Assistant County Attorney,
Aitkin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Leon P. Wells IV, Fabyanske, Westra, Hart & Thomson, Special Assistant Public
Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Worke, Judge; and Ross, Judge.

UNPUBLISHED OPINION

ROSS, Judge

When sheriff's deputies arrived at Shawn Wellner's house to arrest Sheila Misquadace, Wellner allegedly told the deputies that Misquadace was in a different house.

In Wellner's trial on the charge of aiding an offender to avoid arrest, Misquadace testified that she had been hiding in a crawl space in Wellner's home and that Wellner helped her escape by misdirecting the deputies. After Wellner announced that he would testify in his own defense, the district court restricted his testimony only to "facts and circumstances that occurred outside . . . his home," attempting to limit Wellner in the same way the court had suppressed evidence that the state had unconstitutionally obtained. Wellner decided not to testify, and the jury found him guilty. On appeal, we hold that the district court's testimonial restriction was too broad and infringed on Wellner's constitutional right to present his defense. We therefore reverse Wellner's conviction and remand for a new trial.

FACTS

The state charged Shawn Wellner with aiding an offender to avoid arrest in violation of Minnesota Statutes section 609.495, subdivision 1(a) (2014). The complaint alleged that Wellner distracted sheriff's deputies to allow Sheila Misquadace to escape.

The district court granted Wellner's pretrial motion to suppress evidence obtained when deputies illegally entered his residence without a warrant to search for Misquadace. The district court's suppression order barred the state from presenting "any and all evidence found as a result of that unlawful entry."

Before giving opening statements at trial, the parties discussed Misquadace's expected testimony as it related to the suppression order. The prosecutor indicated her understanding that "the state is not allowed to discuss [the deputies'] entry into the home and that the state can discuss what occurred outside the home." She also explained that "the state wasn't planning to try and elicit any testimony about [Misquadace's] hearing law

enforcement walking within the home.” Wellner’s attorney pointed out that Misquadace had given a statement to deputies regarding other events that occurred inside the house. The prosecutor and the district court believed that this testimony was not precluded by the suppression order because it had nothing to do with the deputies’ activity inside the house. The prosecutor then clarified that she would “specifically tell [Misquadace] that she is not allowed to talk about law enforcement being within the house.” The district court indicated that this restriction was appropriate.

The prosecutor elicited testimony from witnesses who saw Misquadace and Wellner enter Wellner’s home, from the two deputies who told Wellner that Misquadace was the subject of a felony arrest warrant, and from other witnesses who saw Misquadace flee from Wellner’s home.

Misquadace testified about events that occurred inside Wellner’s home. She said that she had been there to fix her tire in his driveway. She implied that she went into Wellner’s house because she believed her mother was calling the police to report her. She panicked when she saw the deputies arrive, ran around inside the house, and entered a crawl space in one of Wellner’s bedroom closets. Misquadace testified that Wellner eventually opened the door to the crawl space where she was hiding, told her that she had to leave, and explained that he had bought her enough time to get away by misdirecting the deputies to search another house. Misquadace said she fled out Wellner’s back door.

After the prosecutor rested the state’s case, Wellner indicated that he wanted to testify and “tell his side of what happened.” He also requested “that the evidence that was suppressed at omnibus stage be brought back in” and to “open the door . . . and have Deputy

Asmus testify to what went on in Mr. Wellner's house." The prosecutor objected, arguing that allowing Wellner to present suppressed evidence after the state complied with the suppression order would prompt the jury to infer that the state had tried to hide evidence. Wellner's attorney indicated that she had "no intention of eliciting testimony that the deputies' actions were illegal." The district court judge began, "Generally speaking I cannot imagine circumstances where I would not allow that kind of testimony to come in," but then reasoned that allowing Wellner to present evidence that had been suppressed would be unfair. The district court curtailed Wellner's potential testimony, ordering that "if Mr. Wellner's going to testify, he's going to testify as to the facts and circumstances that occurred outside the door of his home." After that order, Wellner chose not to testify.

The jury found Wellner guilty, and the district court sentenced him to 19 months in prison. Wellner appeals.

DECISION

Wellner requests a new trial, arguing that the district court's evidentiary ruling limiting his testimony violated his constitutional right to testify in his own defense. We review evidentiary rulings for an abuse of discretion, even when a constitutional violation is alleged. *State v. Wenthe*, 865 N.W.2d 293, 306 (Minn. 2015). But we decide de novo whether an evidentiary ruling violates a defendant's constitutional rights. *State v. Anderson*, 789 N.W.2d 227, 235 (Minn. 2010).

The Fourteenth Amendment affords a criminal defendant "due process of law," *see* U.S. Const. amend. XIV, § 1, which includes the right to explain his conduct to the jury. *State v. Brechon*, 352 N.W.2d 745, 751 (Minn. 1984); *see also In re Welfare of M.P.Y.*,

630 N.W.2d 411, 416 (Minn. 2001) (“[T]he Fourteenth Amendment protects a defendant’s right to testify in his own defense.”). This right has limits. *See State v. Richardson*, 670 N.W.2d 267, 282 (Minn. 2003). A defendant must generally conform his testimony to the rules of evidence, and when the right to testify conflicts with evidentiary rules, restrictions on testimony cannot be arbitrary or disproportionate. *Id.* (quoting *Rock v. Arkansas*, 483 U.S. 44, 55–56, 107 S. Ct. 2704, 2711 (1987)).

We first observe that “[t]he established principle is that suppression of the product of a Fourth Amendment violation can be successfully urged only by those whose rights were violated by the search itself.” *Alderman v. United States*, 394 U.S. 165, 171–72, 89 S. Ct. 961, 965 (1969). That a trial court rightly prevents the state from introducing evidence that it obtained in violation of a defendant’s Fourth Amendment rights does not support preventing the *defendant* from presenting evidence obtained in violation of his rights. Here the prosecutor urged the district court to preclude Wellner from testifying about matters about which the *state* was precluded from eliciting testimony as a matter of “fairness” to the state, and the district court agreed with the prosecutor’s reasoning. We need not decide whether mutually suppressing evidence out of fairness to the state is consistent with “the established principle” that suppression is designed to protect “only . . . those whose rights were violated.” This is because, even assuming the prosecutor’s fairness argument merited a restriction on Wellner’s testimony, the district court’s actual restriction was disproportionate to the stated fairness concern.

The restriction was disproportionate because it was overly broad, preventing Wellner from presenting *any* testimony about *any* fact or circumstance inside his house,

while the suppression order restricted the state only from eliciting testimony about *some* of the circumstances occurring in the house. Before the district court restricted Wellner to testifying only “to the facts and circumstances that occurred outside the door of his home,” it had allowed the prosecutor to elicit Misquadace’s testimony about the critical moment inside the home when Wellner allegedly found her in the crawl space and there told her he had bought her time to escape. The ruling broadly overstates what the district court likely intended based on the prosecutor’s argument, which was to apply the same limit on Wellner’s testimony that it had applied to the state’s witnesses.

The state argues that Wellner was not harmed by the excessive restriction on his testimony as stated by the district court because Wellner should have known that the district court intended instead to establish a lesser restriction, identical to the restriction the court had previously applied to Misquadace. The argument urges us essentially to hold Wellner accountable not to the words the district court actually communicated but to the thoughts the district court must have entertained; that is, not what the district court said, but what it may have intended to say. The argument would suppose that defendants should apply a degree of Holmesian (Sherlock, not Oliver) reasoning that the law does not require.

We recognize that the district court likely issued its overbroad ruling as a reaction to fluid and imprecise arguments presented to it without notice immediately at the close of the state’s case. Wellner’s offer of proof, for example, was vague and broad. He said that he wanted to explain “his side of what happened,” and that he wanted to “open the door” to introduce the previously suppressed evidence. On that suggestion, the prosecutor had reason to suspect gamesmanship and therefore argued that the district court should prevent

Wellner's testimony. In any event, although the district court's rationale fit the circumstances, its broad restriction did not.

We must decide whether the erroneous restriction prejudiced Wellner. *See Wenthe*, 865 N.W.2d at 306. An erroneous evidentiary ruling that implicates a constitutional right mandates reversal unless it is "harmless beyond a reasonable doubt," meaning that the verdict was surely unattributable to the error. *Id.* at 306, 308.

This case is somewhat similar to *State v. Wiltse*, where we reversed a conviction after the district court excluded the defendant's testimony about his intent in his defense of a charge that he violated a protective order. 386 N.W.2d 315, 316–17 (Minn. App. 1986), *review denied* (Minn. June 30, 1986). We reasoned, "It is difficult to imagine a situation where, when an essential element of a crime turns on the presence of a defendant, the defendant could be prevented from explaining his presence at the scene to the jury." *Id.* at 318. Wellner told the district court that he wanted to present "his side of what happened," which might have included his version of what, if anything, transpired between him and Misquadace near the crawl space. Misquadace's testimony was the state's only direct evidence that Wellner intentionally aided her escape. Precluding him from testifying about any circumstance in the house prevented him from attempting to explain either Misquadace's presence or his alleged statements to her, among other circumstances that might be relevant to whether he intentionally aided in the escape. The state fails to persuade us that the restriction could not have reasonably impacted the jury's decision.

Reversed and remanded.