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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0071**

State of Minnesota,
Respondent,

vs.

Theodore James Warren,
Appellant.

**Filed December 31, 2018
Affirmed
Worke, Judge
Concurring specially, Randall, Judge***

Hennepin County District Court
File No. 27-CR-16-19903

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

Michael O. Freeman, Hennepin County Attorney, Sean P. Cahill, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Randall, Judge.

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his second-degree assault conviction, arguing that he was deprived of his right to present a complete defense when the district court ordered portions of his interrogation video be fast-forwarded during the jury trial. We affirm.

FACTS

On November 19, 2015, three men assaulted and robbed J.L. Appellant, Theodore James Warren, was identified as one of the assailants. He was arrested and interviewed by law enforcement on June 26, 2016.

Warren initially denied any involvement, but as the interview continued, he admitted that he was asked to help collect money that J.L. owed. Warren stated that he and his brother were present during the assault, but did not touch J.L.

Warren was charged with aiding and abetting first-degree aggravated robbery and aiding and abetting second-degree assault. At trial, the state called Sergeant Suchta, the investigator who interviewed Warren. During Sergeant Suchta's testimony, the state offered into evidence Warren's videotaped interview. Warren's counsel requested that the entire tape be played so the jury could get the "sense of the timing." The state did not object and the district court agreed to play the video in its entirety. The video played uninterrupted for the jury from 9:35 a.m. to 10:02 a.m. and then again from 10:03 a.m. to 10:17 a.m. About 18 minutes of that time were silent, as Warren sat in the interview room

alone. The district court then excused the jury to speak to the parties about the video. The district court stated:

I'm not going to continue having us sitting here watching this thing while nothing is happening. It's right here in the transcript how long is elapsed time between when the cop leaves and when the cop comes back, and I will instruct the jury that there is a ten-minute time lapse.

But this is not a good use of anybody's time to sit here and watch nothing happening.

Warren's attorney argued that "the jury needs to experience what my client did, but the [c]ourt will make whatever orders you need." The district court stated: "I think they've gotten a flavor for that in the past hour." And then noted,

Just to complete the record regarding my choice to skip portions of the tape, in looking forward, I note, based on the brackets in the transcript, a total of 40 minutes of time that nothing is apparently happening in the interview room and the defendant is left alone, and I do not think it's a good use of anybody's time to simply sit here in silence for 40 minutes.

The district court instructed the jury of the change, stating that the video will be fast-forwarded during breaks in the interrogation, and the jury will be informed of the length of the breaks. The district court then played the video, fast-forwarding each time Sergeant Suchta left the room, and noting how much time elapsed. Sergeant Suchta explained that he questioned Warren and his brother at the same time, so the pauses in the interview were partly because Sergeant Suchta was leaving the room to go speak with Warren's brother. No further objections were made concerning the video.

Warren testified that on the day of the assault, he was sleeping at his mother's house, that he took no part in the assault, and that he had never heard of J.L. until a week after the assault. He further testified that his videotaped statement to police was not the truth.

The jury found Warren guilty of aiding and abetting second-degree assault and not guilty of aiding and abetting first-degree aggravated robbery. The district court sentenced Warren to 71 months in prison. This appeal followed.

D E C I S I O N

Warren argues that the district court violated his constitutional right to present a defense by preventing the jury from watching the entirety of his interrogation video.

“The fair opportunity to defend against criminal charges is a right guaranteed by constitutional due process.” *State v. Jones*, 678 N.W.2d 1, 15-16 (Minn. 2004). However, this right is not absolute, and a defendant is still “subject to rules of procedure and evidence designed to assure fairness and reliability in the determination of guilt.” *State v. Hannon*, 703 N.W. 2d 498, 506 (Minn. 2005). This court reviews “a district court’s evidentiary rulings for abuse of discretion, even when, as here, the [appellant] claims that the exclusion of evidence deprived him of his constitutional right to a meaningful opportunity to present a complete defense.” *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). If an objection was made and the district court abused its discretion in its evidentiary ruling, this court will reverse only if the exclusion of the evidence was not harmless beyond a reasonable doubt. *Id.*

Warren argues that the district court erroneously forwarded through 40 minutes of the recorded interview with law enforcement, which was approximately two hours and 14

minutes long, because the “evidence of the circumstances surrounding the interrogation was highly relevant to the reliability of his statement.” Warren wanted the jury to watch the entire interview in real time, even the stretches of time when he was left alone and nothing happened, in order to understand what he was experiencing during the interrogation. Warren’s goal was to cast doubt on the reliability of those statements made during the interview, because they contradicted his trial testimony.

The United States Supreme Court has determined that “evidence about the manner in which a confession was secured will often be germane to its probative weight, a matter that is exclusively for the jury to assess.” *Crane v. Kentucky*, 476 U.S. 683, 688, 106 S. Ct. 2142, 2145 (1986). A defendant is therefore allowed to present evidence of involuntariness to the jury, to explain why, if innocent, he confessed. *State v. Hurd*, 763 N.W.2d 17, 29 (Minn. 2009).

However, Warren did not actually confess during the police interview. He admitted that he was present at the scene during the assault, but maintained that he did not participate in the beating. Instead, he attempts to discredit the statements he made to police because they contradict his trial testimony. It is not clear whether the rule from *Crane* applies when the defendant’s statement during an interrogation does not amount to a confession. *See id.* (declining to decide whether *Crane* applies when the defendant did not confess, but attempts to discredit statements made to police that are inconsistent with testimony at trial). The court in *Hurd* concluded that even if *Crane* was applicable, and the district court erred in excluding evidence of the circumstances surrounding Hurd’s statements to police, any

error was harmless because Hurd had “ample opportunity to explain the physical and psychological environment of the interview.” *Id.*

The same can be said here. While forwarding through the periods of time when the sergeant left the room, the district court noted for the jury the amount of lapsed time during each break. For example, after the video played for the jury, the district court noted a “lapse of 16 minutes and 68 seconds.” After the video continued playing, the district court noted “a 13-minute and ten-second break.”

In forwarding through the silent periods, the district court summarized to the jury that those periods of isolation occurred, without making the jury sit through 40 minutes of silence. The district court also allowed defense counsel to make arguments about the implications of those stretches of silence.

Even if the video had probative value in establishing the circumstances surrounding Warren’s statements to police, the district court reasonably excluded it under rule 403 as being a waste of time and needlessly duplicative. *See* Minn. R. Evid. 403 (stating that a district court may exclude relevant evidence “if its probative value is substantially outweighed . . . by considerations of . . . waste of time, or needless presentation of cumulative evidence”). The district court first played the video for 42 minutes straight, during which time there were periods of silence. Finding that the jury had gotten a “flavor” of the circumstances surrounding the interview, the district court decided to fast-forward the periods of silence going forward, and instructed the jury on how long those silences lasted in real time. The district court made this decision in the interest of efficiency and judicial economy, exactly what rule 403 is designed to promote.

Furthermore, even if the district court did err when it forwarded through the periods of silence in the video, such error was harmless. If a district court abuses its discretion in excluding evidence, a reviewing court reverses “only if the exclusion of evidence was not harmless beyond a reasonable doubt.” *Zumberge*, 888 N.W.2d at 694. “An error is not harmless beyond a reasonable doubt when there is a reasonable possibility that the [error] complained of may have contributed to the conviction.” *Id.* (quotation omitted).

Here, if Warren wanted to argue that the lengthy periods of isolation in the interrogation room impacted his statement, and why he was not honest, that information was in evidence and available to the jury. The jury first watched the video for 42 minutes straight, during which time there was a period of silence when the sergeant left the room. After that, the district court instructed the jury on how long each subsequent period of silence lasted. Warren was free to argue how those periods of isolation impacted him as he would have if they had been played for the jury in real time. Furthermore, it is unlikely that any error could have contributed to Warren’s conviction. The jury heard that leaving a suspect alone is an interrogation tactic. The jury also heard Warren testify that he lied during the interview. He changed his reasons for doing so repeatedly. First, he testified that he was confused because the sergeant kept “coming at [him] . . . with all different types of angles.” He then stated that he lied because, at the time, he “wasn’t in [his] right frame of mind” because he was drinking alcohol and doing drugs before the interview. Warren later testified that he lied to “take the rap” for his brother. The jury had a significant amount of evidence that would have helped it make a credibility determination about Warren’s testimony. It is therefore unlikely that fast-forwarding periods of silence during the

interrogation video impacted the outcome of this case. If the district court's decision to fast-forward the periods of silence in the video was an abuse of discretion, it was harmless.

Affirmed.

RANDALL, Judge (concurring specially)

I concur specially in the result—close call but error can be considered harmless based on the entire record. In a criminal trial, it is the state’s burden to prove that the accused is guilty beyond a reasonable doubt. *State v. Robinson*, 604 N.W.2d 355, 362 (Minn. 2000). The videotaped interview is part of the record. Appellant wanted the entire video played to the jury. The state did not object. The district court *agreed* to play the video in its entirety. Midway through the trial, the court changed its mind and short-circuited the process. I agree with the majority that the conviction, based on the entire record, should be affirmed. But I write specially to point out that once a motion to play the entire video was granted by the court, the court should not have changed its mind midstream just based on the perception that the jury might be bored. Any criminal trial may contain admissible evidence offered that *bore*s the jury. It is still admissible evidence and it goes on the record.