In re Welfare of A.J.G.

Unpublished opinion (2019)

Minnesota Court of Appeals

A18-1854 | July 8, 2019

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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1854

In the Matter of the Welfare of: A. J. G.

Filed July 8, 2019
Reversed and remanded
Smith, Tracy M., Judge

Dodge County District Court
File No. 20-JV-18-695
Goodhue County District Court
File No. 25-JV-18-2

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Considered and decided by Schellhas, Presiding Judge; Jesson, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant A.J.G. challenges his adjudication of juvenile delinquency, arguing that the district court made a number of errors at trial. He also challenges the disposition, arguing that the district court abused its discretion by not considering a stay of adjudication. We conclude that the district court made a structural error at trial by independently Source PDF page 2 investigating a factual assertion made by A.J.G. and revealing the results of the investigation to the parties. We therefore reverse and remand for a new trial.

FACTS

In August 2017, staff at a school in Goodhue County reported to the police that the concession building next to the school's football field had been broken into overnight and bottles of soda were stolen. Kenyon Police Chief Lee Sjolander responded to the report. As part of the investigation, Sjolander took pictures of a hammer that had been recovered near the concession building and posted the pictures on social media to induce information from the public. A woman identified the hammer as belonging to her family and contacted the police. She also said that she found numerous bottles of soda in her house. Sjolander interviewed the woman and her juvenile son. The son, T.R.P., stated that he and his two friends, A.J.G. and D.M.C.J., played football at the field on the date of the incident and that they broke into the concession building together. Sjolander also spoke with A.J.G. during the investigation. A.J.G. admitted that he played football with T.R.P. at the field but denied breaking into the concession building. Specifically, A.J.G. stated that he walked away because he was on probation (Sjolander's report added that A.J.G. said the probation was in Rice County) and he did not want to get into more trouble.

A juvenile-delinquency petition was filed in Goodhue County, and a bench trial was held in August 2018. At trial, A.J.G. denied knowing about a plan for a break-in and denied telling Sjolander that he was on probation. A.J.G.'s probation status thus became an issue. After many questions, A.J.G.'s position was that he was on probation in Dodge County but not in Rice County. After closing arguments, the district court stated that it had further questions for A.J.G. The following colloquy ensued with the district court:

Source PDF page 3

> Q: [A.J.G.], you have testified under oath that you did not tell . . . Sjolander you were on probation in Rice County; correct.
>
> A: Yes.
>
> Q: And that perhaps . . . you were placed on probation in Dodge County, or you had a charge in Dodge County in September of last year?
>
> A: I think so. I don't remember.
>
> Q: Financial transaction card fraud. State lottery fraud.
>
> A: Yes.
>
> Q: Okay. What I want to ask you about is, were you also charged with a theft charge in Rice County in July of last year?
>
> A: I was. But I don't think I was on probation for that. And I've never told anybody about that. I was with friends at the time. And I didn't take anything. I was just with the wrong people and got in trouble with them because I was with them.

None of the information from A.J.G.'s prior delinquency record was introduced by the parties.

The district court issued an order finding A.J.G. guilty of two counts of burglary. The case was then transferred from Goodhue County to Dodge County for disposition. At the disposition hearing, A.J.G. asked the district court to consider a stay of adjudication. The Dodge County judge refused to consider the request, stating that it was "out of [her] hands because the judge in Goodhue already adjudicated [A.L.G.] delinquent." The judge placed A.J.G. on probation.

This appeal follows.

DECISION

I.

A.J.G. argues that the district court made a structural error by investigating his delinquency record on its own. Structural errors are "errors that necessarily render a trial fundamentally unfair or deprive defendants of basic protections without which a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence." Source PDF page 4 *State v. Flucker*, 781 N.W.2d 397, 400-01 (Minn. App. 2010) (quoting *Neder v. United States*, 527 U.S. 1, 8-9, 119 S. Ct. 1827, 1833 (1999)) (quotation marks omitted). When a district court makes a structural error, the case should automatically be reversed without regard to the error's effect on the outcome. *Id.* In other words, the prejudice analysis does not apply to structural errors. Violation of the fundamental right to a fair trial before an impartial judge is a structural error. *State v. Dorsey*, 701 N.W.2d 238, 252 (Minn. 2005); *see also Gray v. Mississippi*, 481 U.S. 648, 668, 107 S. Ct. 2045, 2057 (1987) ("We have recognized that some constitutional rights [including the right to an impartial adjudicator] are so basic to a fair trial that their infraction can never be treated as harmless error." (quotation omitted)).

In *Dorsey*, the defendant was charged with felony possession of marijuana. 701 N.W.2d at 241. One of the issues at the bench trial was whether the defendant had possessed a firearm in conjunction with the marijuana. *Id.* The police had found a handgun between the cushions of a black leather couch near the marijuana, but Dorsey argued that the gun did not belong to him. *Id.* at 241-42. A defense witness testified that the handgun found in the couch might belong to her late boyfriend because, after the boyfriend died, she sold Dorsey two black leather couches that had been at the boyfriend's place. *Id.* at 242-43. The defense witness then testified that her boyfriend died in May 1999. *Id.* at 243.

By happenstance, the district court judge recognized the name of the boyfriend from one of her other cases and suspected that the boyfriend had died more recently than 1999. *Id.* While continuing to preside over the trial, the judge had her clerk check when the boyfriend had died through court records and learned that he had died in December 2001. *Id.* The judge revealed her discovery to the attorneys. *Id.* at 243-44. The district court Source PDF page 5 eventually found that Dorsey possessed the handgun in conjunction with the marijuana. *Id.* at 245. In reaching that determination, the judge noted that the defense witness lacked credibility in part because court records indicated that the boyfriend had died far later than the date given by the witness. *Id.* The supreme court held that the district court judge's conduct constituted a structural error. *Id.* at 253. Specifically, the supreme court concluded "that Dorsey was deprived of the 'basic protection' of an

impartial judge and finder of fact when the judge independently investigated a factual assertion made by a key defense witness and revealed the results of her investigation to counsel." *Id.*

In this case, A.J.G. made a factual assertion that, at relevant times, he was on probation in Dodge County but not in Rice County. It is undisputed that the district court judge independently investigated that assertion and revealed the results of its investigation by introducing the nature of the offenses previously charged against A.J.G., which was not made known before, and questioning A.J.G. on whether he was on probation for those offenses. In key ways—a judge's independent investigation of a defense witness's assertion and revelation of the investigation's result—this case is indistinguishable from *Dorsey*. But the district court judge's investigation in this case did not disprove any defense testimony. The district court did not discover that A.J.G. was in fact on probation in Rice County. The question therefore is whether a *Dorsey*-type error that does not disprove defense testimony is still a structural error. We conclude that it is.

First, we note that, even if the district court's investigation did not disprove A.J.G's factual assertion, it may not have been entirely innocuous. The district court learned of and introduced the offenses previously charged against A.J.G.—financial transaction card fraud, state lottery fraud, and theft. It is not clear whether the district judge, sitting as the Source PDF page 6 sole fact-finder, considered the previous charges in making its credibility decision regarding A.J.G.'s testimony.

Second, even if the district court's investigation was innocuous, the holding of *Dorsey*, as expressed by the supreme court, did not include an exception for an innocuous investigation. The *Dorsey* court stated that the defendant was deprived of the right to an impartial judge "when the judge independently investigated a factual assertion made by a key defense witness and revealed the results of her investigation to counsel." *Id.* It did not state that the conclusion depends on whether the independent investigation verified or contradicted the testimony. *Id.* ("[T]he judge's investigation as a result of [knowing the boyfriend's approximate date of death] . . . has caused us to hold that Dorsey did not receive a fair trial before an impartial finder of fact.").

Third, the *Dorsey* majority's response to the dissent in that case confirms the emphasis on the act of investigation itself, not the motivation for it or the effect of it. The dissent argued that "the judge's verification of [the] date of death 'was more akin to a confirmatory follow-up of an immutable fact and not an independent investigation.'" *Id.* at 250-51. While acknowledging that "the dissent's position may result in a less distasteful outcome in the case at hand," the majority refused to adopt it because "it would permanently compromise the bedrock principle in our criminal justice system"—"that judges may not investigate or rely upon extra-record knowledge when sitting as the finder of fact." *Id.* at 251. The majority characterized its position as "preserving the bright-line rule that judges may not engage in independent investigations of facts in evidence." *Id.*

Fourth, as a general principle, "[a]n error can count as structural even if the error does not lead to fundamental unfairness in every case." *Weaver v. Massachusetts*, 137 Source PDF page 7 S. Ct. 1899, 1908 (2017). For example, denial of a defendant's right to conduct his own defense is a structural error even if the right, when exercised, "usually increases the likelihood of a trial outcome unfavorable to the defendant." *Id.* (quotation omitted). In this case, because the district court's

investigation did not disprove A.J.G.'s testimony, it arguably did not make A.J.G.'s trial substantively less fair. However, the same behavior in another case may well disprove the factual assertion made by a defense witness. The fact that the district court's investigation did not contradict A.J.G.'s testimony does not, by itself, make the error nonstructural.

Because the district court committed a structural error by independently investigating A.J.G.'s probation status and delinquency record and revealing the results of its investigation, the adjudication of delinquency must be reversed.

II.

A.J.G. also argues that (1) the adjudication of delinquency must be reversed because the district court assumed the role of the prosecution by questioning him too extensively during trial, (2) the adjudication must be reversed because the district court improperly reopened the case and elicited inadmissible testimony after the closing arguments, and (3) the Dodge County judge abused its discretion by refusing to consider his request for a stay of adjudication based on an incorrect understanding that the Goodhue County judge had already adjudicated A.J.G. to be delinquent. We need not address these arguments because we conclude that a structural error was made requiring reversal and remand for a new trial.

Reversed and remanded.