State v. Scudder

Nonprecedential opinion (2022)

Minnesota Court of Appeals

A21-1081 | May 16, 2022

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STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1081

State of Minnesota,
Respondent,
vs.
Allison Feierabend Scudder,
Appellant.

Filed May 16, 2022
Reversed and remanded
Johnson, Judge

Ramsey County District Court
File No. 62-CR-19-5073

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Jeffrey A. Wald, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Rodenberg, Judge.*

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NONPRECEDENTIAL OPINION

JOHNSON, Judge

Allison Feierabend Scudder pleaded guilty to one count of felony theft based on her admission that she stole several pieces of jewelry from a woman who employed her at a home-based business. The district court ordered Scudder to pay restitution. We conclude that Scudder was denied her right to an impartial judge at the restitution hearing because the district court judge independently investigated facts and revealed the results of the investigation in open court during the restitution hearing. Because that error is a structural error, we reverse and remand for a new restitution hearing.

FACTS

For approximately two months in 2019, Scudder worked at S.N.'s home-based child-care business in the city of Shoreview. During her employment there, Scudder took at least 100 pieces of jewelry belonging to S.N. Scudder sold the jewelry to two pawn shops and on an online marketplace.

In November 2019, Scudder pleaded guilty pursuant to a plea agreement to one count of felony theft, in violation of Minn. Stat. § 609.52, subds. 2(a)(1), 3(3)(a) (2018). In January 2020, the district court ordered, among other things, a stay of imposition of sentence, three years of probation, three days of jail time, and payment of restitution. At the state's request, the district court left restitution "open" for 90 days.

S.N. requested restitution in the amount of $12,333. A probation officer recommended that the district court order restitution of at least $3,459 for S.N. Scudder Source PDF page 3 requested a hearing and asserted objections to the number of items included in the restitution request and their claimed values.

The district court scheduled a restitution hearing for September 2020. At the outset of the hearing, the district court expressed its concerns that the restitution request included some items that were claimed more than once and some items that law enforcement had recovered from Scudder and presumably returned to S.N. The district court continued the hearing to allow the certified student attorney representing the state and S.N. to better organize the evidence of S.N.'s losses.

The restitution hearing resumed in March 2021. S.N. was the state's sole witness. During S.N.'s testimony, the state offered a 37-page document consisting of a compilation of receipts and website print-outs, which had been assembled by S.N. Scudder objected on foundation and hearsay grounds. The state questioned S.N. to lay a foundation for each page of the exhibit. In doing so, the state questioned S.N. about a print-out from the Kohl's retail store's website that depicted a pair of tri-tone, triple-oval, hoop earrings. The website print-out states the regular price of those earrings as $325 and the discounted price as $104. The district court received the exhibit into evidence. On cross-examination, Scudder's attorney asked S.N. questions about the price of the tri-tone, triple-oval, hoop earrings. Scudder did not testify and did not introduce any other evidence.

At the conclusion of the hearing, the district court stated that it would take the matter under advisement. The district court judge then stated, "You know, I'd be remiss if I didn't note a simple Google search shows, for example, tri-tone hoop earrings have a value of $400 today on the Kohl's website with a sale price of 20 percent off and buy one, get a Source PDF page 4 second 50 percent off. So I agree that I am in quite a position to try to determine what the value of these items is." Scudder did not object or otherwise respond.

In June 2021, the district court filed an order that requires Scudder to pay S.N. restitution in the amount of $9,741. The district court made a finding of the value of each of the 18 pieces of jewelry for which restitution was awarded. The district court found that the value of the tri-tone, triple-oval, hoop earrings is $104, which is the lesser amount shown on the Kohl's print-out in the state's composite exhibit. The district court's order does not refer to a Google search or to the prices mentioned by the district court judge at the conclusion of the hearing. Scudder appeals.

DECISION

Scudder makes four arguments for reversal of the district court's restitution order: (1) the district court deprived Scudder of her constitutional right to an impartial judge by independently investigating relevant factual issues; (2) the district court did not conduct the hearing in an impartial manner because it repeatedly coached the certified student attorney representing the state; (3) the district court erred by awarding, for certain items, more in restitution than S.N. paid; and (4) the district court erred by reserving the issue of restitution for a particular piece of jewelry.

We begin with Scudder's first argument. The Sixth Amendment to the United States Constitution confers on criminal defendants the right to be tried by an impartial jury. U.S. Const. amend. VI; *see also* Minn. Const. art. I, § 6. Similarly, a criminal defendant has a right to an impartial judge. *State v. Dorsey*, 701 N.W.2d 238, 249 (Minn. 2005). That right is "not specifically enumerated in the Constitution" but "has long been recognized by Source PDF page 5 the United States Supreme Court." *Id.* (citing *Rose v. Clark*, 478 U.S. 570, 577 (1986) (citing *Tumey v. Ohio*, 273 U.S. 510 (1927)), and *Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004)). The right to an impartial judge is grounded in the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See Tumey*, 273 U.S. at 514-15; *Payne v. Lee*, 24 N.W.2d 259, 263-64 (Minn. 1946) (cited by *Greer*, 673 N.W.2d at 155). If an appellant has been deprived of the constitutional right to an impartial judge, the error is a structural error, which requires reversal and remand without regard for whether the appellant was prejudiced by the error. *Dorsey*, 701 N.W.2d at 253.

A.

Before considering the merits of Scudder's first argument, we will consider the state's argument concerning the scope of our review. The state argues that, because Scudder did not object to the alleged error that is the subject of her first argument, the plain-error test applies. The state further argues that Scudder cannot satisfy each requirement of the plain-error test. In her reply brief, Scudder does not claim that she objected to the alleged error; she argues only that the structural-error doctrine—not the plain-error test— applies.

The state contends that the plain-error test applies instead of the structural-error doctrine for two reasons. First, the state acknowledges that the error in *Dorsey* was a structural error but contends that *Dorsey* is distinguishable on the ground that the judge's improper investigation occurred during the guilt phase of trial, not during the sentencing phase, as in this case. There is no language in *Dorsey* expressly limiting its holding to the guilt phase of trial or making an exception for sentencing or restitution. *See* 701 N.W.2d Source PDF page 6 at 249-53. In a similar context, the supreme court has stated, "A judge must maintain the integrity of the adversary system at *all stages* of the proceedings." *State v. Schlienz*, 774 N.W.2d 361, 367 (Minn. 2009) (emphasis added). In addition, the supreme court has declined to distinguish *Dorsey* in a similar case in which the district court judge presided over a jury trial and, thus, was not the fact-finder. *See State v. Malone*, 963 N.W.2d 453, 466-67 (Minn. 2021). Accordingly, we decline to distinguish *Dorsey* in the manner urged by the state.[1]

Second, the state contends that the structural-error doctrine does not apply because the supreme court applied the plain-error test to an unobjected-to claim of judicial bias in *Schlienz*. Contrary to the state's contention, the supreme court did not state in *Schlienz* that the plain-error test necessarily applies if there is an unobjected-to claim of judicial bias. *See* 774 N.W.2d at 365. Rather, the supreme court stated that it "need not decide whether there was structural error" because reversal also was appropriate under the plain-error test. *Id*. Indeed, the state acknowledges, in a footnote, that there "appears to be an open question in Minnesota whether constitutional claims of judicial partiality are always reviewed for structural error." Accordingly, we decline to interpret *Schlienz* as having implicitly overruled *Dorsey* with respect to the relationship between the structural-error doctrine and the plain-error test.

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We note that, after the parties submitted their briefs, the supreme court issued an opinion in which it elaborated on the interplay between the structural-error doctrine and the plain-error test in the context of an argument asserting an unobjected-to violation of the Sixth Amendment right to a public trial. *See State v. Pulczinski*, _____ N.W.2d _____, _____, No. A21-0065, 2022 WL 1021049, at *5-10 (Minn. Apr. 6, 2022). The supreme court noted that "a violation of the right to a public trial is a form of structural error." *Id*. at *7. The supreme court nonetheless applied the fourth requirement of the plain-error test based on its prior caselaw and an intervening opinion of the United States Supreme Court. *Id*. at *7-9 (citing *State v. Benton*, 858 N.W.2d 535, 539-41 (Minn. 2015), and *Weaver v. Massachusetts*, 137 S. Ct. 1899, 1907-08, 1910, 1912 (2017)). The supreme court concluded that reversal was not warranted in that case because, even if the appellant could establish the first and second requirements of the plain-error test, he could not establish the fourth requirement, that "the allegedly erroneous closure seriously affected the fairness, integrity, or public reputation of judicial proceedings." *Id*. at *9. The supreme court expressly limited its holding, stating as follows: "Our analysis is specifically limited to a particular type of structural error: a violation of the right to a public trial. We do not decide today whether other types of structural errors may require automatic reversal even when those errors are unpreserved at trial." *Id*. at *9 n.9.

Because the holding in *Pulczinski* is limited to the Sixth Amendment right to a public trial, we do not apply the *Pulczinski* plain-error analysis in this appeal. Rather, we are following *Dorsey*, which applied the structural-error doctrine to an argument based on the same right on which Scudder relies: the right to an impartial judge under the Due Source PDF page 8 Process Clause of the Fourteenth Amendment. *See* 701 N.W.2d at 242-44, 249-53. The narrow, limited holding in *Pulczinski* tends to confirm that we should not apply the *Schlienz* plain-error analysis because the appellant in *Schlienz* asserted the non-constitutional right to judge who is not disqualified by the code of judicial conduct, not the constitutional right to an impartial judge. 774 N.W.2d at 366-69.

B.

To reiterate, Scudder argues that the district court erred by violating her constitutional right to an impartial judge. The right to an impartial judge "requires that conclusions reached by the trier of fact be based upon the facts in evidence . . . and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained beyond that adduced in court." *Dorsey*, 701 N.W.2d at 249-50 (citing *Johnson v. Hillstrom*, 33 N.W. 547, 548 (Minn. 1887), and *Spinner v. McDermott*, 251 N.W. 908, 908 (Minn. 1933)). This court applies a *de novo* standard of review to the question whether a district court deprived a criminal defendant of the constitutional right to an impartial judge. *See id.* at 249.

In *Dorsey*, the district court judge doubted the testimony of a defense witness and shared her concerns with counsel. *Id.* at 243. The district court judge asked a law clerk to investigate the fact that had caused her to doubt the witness, which was determined to be different from what the witness had stated in her testimony. *Id.* The district court judge noted the discrepancy on the record and in a written order. *Id.* at 243-45. The district court found Dorsey guilty, based in part on the defense witness's lack of credibility. *Id.* at 245. On appeal, Dorsey argued that the district court judge was not impartial because she had Source PDF page 9 openly questioned a defense witness's testimony, independently investigated a fact to which the witness had testified, and revealed the results of her investigation in open court. *Id.* at 249. The supreme court concluded that the district court judge erred for the three reasons identified by the appellant. *Id.* at 250-52.

In this case, Scudder contends that the district court erred in essentially the same way that the district court erred in *Dorsey*. Scudder contends that the district court judge "independently investigated facts at issue: how Kohl's priced its merchandise" and later "revealed her investigation and its results." The record supports Scudder's contention. The district court judge's statement at the conclusion of the hearing makes clear that the judge—like the judge in *Dorsey*—conducted an independent investigation into relevant facts and announced the results of her investigation in open court. *See id.* at 249-52. Thus, the district court denied Scudder her constitutional right to an impartial judge.[2]

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Scudder also contends that the district court judge "used the results of her investigation . . . to support a restitution award for the items without receipts." We need not determine whether the district court judge actually relied on the results of her independent investigation in making findings of fact and conclusions of law. The fact that the district court judge conducted an independent investigation into relevant facts is a sufficient reason to conclude that Scudder was denied her constitutional right to an impartial judge. *See id.* at 253 (reasoning that "the judge's investigation . . . has caused us to hold that Dorsey did not receive a fair trial before an impartial finder of fact").

Because the denial of the constitutional right to an impartial judge is a structural error, we are compelled to reverse the restitution order and remand for a new restitution hearing. *See id.* at 252-53. In light of our conclusion that Scudder is entitled to a new restitution hearing for the

reasons asserted in her first argument, we need not consider her second, third, or fourth arguments.

Reversed and remanded.

Court's footnotes

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

1 We note that our approach is consistent with prior non-precedential opinions in which this court has applied *Dorsey* to the sentencing phase and has concluded that the error was a structural error that required automatic reversal. *See State v. Leckner*, No. A19-1007, 2020 WL 3172651, at *3-4 (Minn. App. June 15, 2020); *State v. Weidenbach*, No. A16-1166, 2017 WL 1548619, at *2 (Minn. App. May 1, 2017).

2 In reaching this conclusion, we do not intend to criticize, chastise, or impugn the reputation of the district court judge. In *Dorsey*, the supreme court stated, "we are confident that the judge who presided over Dorsey's bench trial was motivated by her desire to seek the truth and be candid about what she knew." 701 N.W.2d at 250. The supreme court added that it was "mindful of the dynamic circumstances in which district court judges must make decisions" and that its opinion was "not intended to be critical of the judge's decision in this case." *Id.* at 250 n.7. Similarly, in *Malone*, the supreme court stated that it was "mindful of [the] dynamic circumstances" that existed in the district court and that its opinion was "not intended to chastise or impugn the reputations of any of the district court judges involved." 963 N.W.2d at 469 n.17. In the present case, it is apparent that the district court encountered difficulties in obtaining the information necessary to resolve the restitution issue in an accurate and thorough manner. The certified student attorney representing the state did not present evidence with the skill of an experienced prosecutor, and Scudder did not introduce any affirmative evidence of the values of the stolen items. As in *Dorsey*, we believe that the judge in this case "was motivated by her desire to seek the truth and be candid about what she knew." *See* 701 N.W.2d at 250. Nonetheless, the district court judge's actions constitute an error under *Dorsey*.