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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0447**

State of Minnesota,
Respondent,

vs.

Tyrell Deon Wilson,
Appellant.

**Filed March 27, 2017
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CR-15-2534

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his conviction of possession of a firearm by an ineligible
person, arguing that the district court erred by permitting testimony that the officers who

searched his apartment were assigned to the violent-crime enforcement team and evidence of approximately \$5,000 in cash that was found in appellant's closet. We affirm.

FACTS

On January 20, 2015, Investigator Neng Vang obtained a warrant to search appellant Tyrell Deon Wilson, his vehicle, and his residence based on information that Wilson was selling cocaine. That same day, a police officer searched Wilson's vehicle, and Wilson provided the officer with a key to his apartment. When Investigator Vang and other officers searched Wilson's apartment, they found a pistol wrapped in a sock on a lower shelf in his bedroom closet. Subsequent testing established that Wilson's DNA was on the pistol. The officers also found a box containing about \$5,000 in cash on the top shelf in Wilson's bedroom closet. Wilson was later arrested.

Investigator Vang and Officer Joseph Steiner interviewed Wilson. Wilson claimed that he did not know about the gun and stated that his friends may have left it there. Wilson said that he had earned the cash by shoveling snow and mowing grass. Officer Steiner responded to Wilson that he had been watching him and never saw Wilson shovel snow or mow grass. Wilson was charged with possession of a firearm by an ineligible person under Minn. Stat. § 624.713, subd. 2(b) (2014).

At trial, the prosecutor called Investigator Vang and Officer Rigoberto Aguirre as witnesses. In response to introductory questions on direct examination, Investigator Vang and Officer Aguirre testified that they investigate violent offenders. Investigator Vang also testified that they found approximately \$5,000 in cash in a box in Wilson's bedroom closet. In addition, the prosecutor played a recording of Wilson's police interview for the jury.

The jury found Wilson guilty of possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2). This appeal follows.

D E C I S I O N

I.

Wilson argues that the district court plainly erred by permitting the two officers to testify that they worked on the violent-crime enforcement team and investigated high-level narcotics dealers and violent offenders and by allowing the prosecutor to refer to these teams in opening and closing statements because the references were irrelevant and unfairly prejudicial.

In her opening statement, the prosecutor noted that “members of the violent crime enforcement team secured a search warrant” to search Wilson, his car, and his apartment. When the prosecutor asked Investigator Vang on direct examination what he did for a living, Investigator Vang testified that he worked as “an investigator for the violent crime enforcement team” in Ramsey County. Officer Aguirre testified that the task force to which he was assigned “go[es] after high-level narcotics dealers, violent offenders, and anything else that would fit a role that [the task force] might be asked to work with.” In her closing argument, the prosecutor noted that “law enforcement officers belonging to the violent crime enforcement team” searched Wilson’s apartment. Wilson failed to object to any of these statements at trial, but he now challenges these statements on the grounds that they were irrelevant and unfairly prejudicial.

When a party fails to object to the admission of evidence, we review an assertion of error under the plain-error standard. Minn. R. Crim. P. 31.02; *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). “The plain error standard requires that the defendant show: (1) error, (2) that was plain, and (3) that affected substantial rights.” *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). We need not address the remaining prongs if Wilson fails to satisfy one of them. *Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011).

A. Relevance

Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence,” and it is generally admissible. Minn. R. Evid. 401, 402. “Generally, evidence is relevant if in some degree it advances the inquiry and thus has probative value.” *State v. Harris*, 521 N.W.2d 348, 351 (Minn. 1994) (quotation omitted). “The rule adopts a liberal as opposed to restrictive approach to the question of relevancy.” Minn. R. Evid. 401 cmt. “Rule 401 adopts a minimal relevancy approach.” *State v. Ture*, 632 N.W.2d 621, 631 (Minn. 2001) (quotation omitted).

To prove the crime of possession of a firearm by an ineligible person, the state had to establish that Wilson knowingly possessed a firearm or consciously exercised dominion or control over it and that he was ineligible to possess a firearm. See Minn. Stat. § 624.713, subds. 1(2), 2(b); *State v. Olson*, 326 N.W.2d 661, 663 (Minn. 1982). The parties stipulated that Wilson was ineligible to possess a firearm. Wilson asserts that, because the only issue for trial was whether he possessed the firearm, evidence regarding the violent-crime enforcement team was not relevant. The state argues that it was relevant because it helped

to establish the foundation necessary for the officers to testify about the search they conducted.

We agree with the state that the officers' references to the violent-crime enforcement team were foundational in nature. Investigator Vang testified that he was assigned to the violent-crime enforcement team in response to the prosecutor's second question to him on direct examination. His response was brief and made no reference to Wilson. When the prosecutor asked Officer Aguirre about his assignment, the officer stated that his unit investigated "high-level narcotics dealers, violent offenders, and anything else that would fit a role that [the unit] might be asked to work with." This inquiry, again, as background information about the witness. The prosecutor mentioned the violent-crime enforcement team in the first sentence of her opening statement and closing argument, in the context of informing the jury that the law-enforcement team secured a search warrant and subsequently searched Wilson's apartment. We therefore conclude that the evidence was relevant.

B. Unfair Prejudice

But even if evidence is relevant, it "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Minn. R. Evid. 403. Unfair prejudice is "the unfair advantage that results from the capacity of the evidence to persuade by illegitimate means." *State v. Yang*, 644 N.W.2d 808, 817 (Minn. 2002).

Wilson cites *Strommen* and *State v. Smith* in support of his argument that the references to the violent-crime enforcement team were unfairly prejudicial because they amounted to bad-character evidence and implied that he had engaged in prior violent bad acts or acts of high-level drug dealing. *Strommen*, 648 N.W.2d at 688; *State v. Smith*, 749 N.W.2d 88, 95 (Minn. App. 2008). Evidence of a person's character is inadmissible to prove that the person acted in conformity with his character. Minn. R. Evid. 404(a); *State v. Bland*, 337 N.W.2d 378, 382 (Minn. 1983).

In *Strommen*, the supreme court held that it was plain error to allow an officer to testify that he knew the defendant “on a first-name basis and from prior contacts and incidents,” that the defendant had kicked in doors, and that the defendant had previously killed someone. 648 N.W.2d at 687-88 (quotation omitted). The supreme court noted that the purpose for eliciting the testimony appeared to be to suggest that Strommen was a person of bad character who had frequent contacts with the police. *Id.* at 688. Therefore, the supreme court held that the district court erred by admitting the testimony. *Id.*

In *Smith*, the defendant was convicted of possession of a firearm by an ineligible person. 749 N.W.2d at 91. The district court permitted the state to offer evidence of Smith's prior conviction of the same offense on the grounds that the state's case was “fairly weak” and defense counsel did not disclose certain witnesses until “just prior to beginning trial.” *Id.* at 91-92. The district court also admitted a photograph into evidence showing the defendant and another man covering their faces, making apparent gang signs, and standing next to a table on which there were two handguns, cash, plastic bags, and other items. *Id.* at 96. On appeal, we reversed and remanded for a new trial, concluding that

because the current and prior charges were identical, “that in itself might have been enough to lure a juror into a sequence of bad character reasoning,” and that the photograph had “substantial potential for activating a sequence of impermissible character reasoning” because it depicted Smith as a criminal. *Id.* at 95-96 (quotation omitted).

Here, the evidence was not unfairly prejudicial. The prosecutor elicited the testimony about the violent-crime enforcement team when asking what each officer’s job entailed. In contrast to *Strommen*, the prosecutor did not ask the officers how they knew Wilson. *See* 648 N.W.2d at 685, 688. Further, the prosecutor did not use the officers’ testimony to explain why Wilson was being investigated by the violent-crime enforcement team or whether Wilson had previously been convicted of other violent crimes. Unlike *Smith*, the challenged evidence is not evidence of Wilson’s prior identical crime, but identification of the unit of officers who secured the search warrant and searched Wilson’s apartment. 749 N.W.2d at 92. Unlike the photograph in *Smith*, this evidence did not convey that Wilson is a “gun-toting gangster[.]” *Id.* at 96.

In addition, the prosecutor and the officers often used the acronym VCET when discussing the violent-crime enforcement team. As a result, the officers only twice mentioned violent crimes and criminals in their combined 50 pages of testimony. The prosecutor mentioned the violent-crime enforcement team as a means to identify the officers who secured the search warrant and conducted the search. She did not describe its purpose or discuss violent criminals. Because the evidence was relevant and not prejudicial, we conclude that the district court did not err by failing to sua sponte strike the testimony or the prosecutor’s brief mention of it in her opening statement and closing

argument. We therefore do not address the other prongs of the plain-error analysis. See *Montanaro*, 802 N.W.2d at 732.

II.

Wilson contends that evidence that officers found a box containing \$5,000 in cash in Wilson's closet was irrelevant. Again, because Wilson did not object to this testimony at trial, we review this issue under the plain-error standard. Minn. R. Crim. P. 31.02; *Griller*, 583 N.W.2d at 740.

To establish the legal possession of a firearm, the state must prove that the defendant either physically or constructively possessed the firearm. *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975); *State v. Porter*, 674 N.W.2d 424, 429 (Minn. App. 2004) (stating that constructive-possession standards apply to both controlled substances and firearms). A person has constructive possession of an item when “there is a strong probability . . . that [the] defendant was at the time consciously exercising dominion and control over it.” *Florine*, 303 Minn. at 105, 226 N.W.2d at 611.

Because Wilson did not physically possess the firearm in the presence of the police officers and then denied that the gun was his, the prosecutor offered evidence to prove that Wilson had constructive possession of the firearm. Minnesota appellate courts have upheld possession convictions when the state has proved constructive possession of an item with evidence that the item was in the defendant's bedroom and in the presence of other items belonging to the defendant. See, e.g., *State v. Colsch*, 284 N.W.2d 839, 841 (Minn. 1979); *State v. Mollberg*, 310 Minn. 376, 390, 246 N.W.2d 463, 472 (1976); *State v. Dickey*, 827 N.W.2d 792, 797 (Minn. App. 2013); *State v. Denison*, 607 N.W.2d 796, 800 (Minn. App.

2000), *review denied* (Minn. June 13, 2000). Here, officers found Wilson's cash in the same closet where they found the firearm. Because the location of the cash, which Wilson stated was his, tends to establish Wilson's dominion and control over the firearm, we conclude that the district court did not err in allowing evidence of the cash.

III.

Wilson next contends that a statement that Officer Steiner made in the audio recording of an interview with him, that was played for the jury, implied that Wilson may have obtained the cash found in his closet by illegal means. As a result, Wilson contends that the statement was irrelevant and constituted improper *Spreigl* evidence. Because we conclude that the statement was not relevant, we do not address Wilson's *Spreigl* argument. *State v. Vang*, 847 N.W.2d 248, 265 n.9 (Minn. 2014) (declining to address an issue that was not dispositive of the case).

In the audio recording of the interview, the police asked Wilson how he earned the cash that they found in his closet. Wilson responded, "I mean I shovel snow, grass or whatever you know what I'm saying doing that all summer. All summer that's what I do." Officer Steiner replied, "I've been watching you for a long . . . we've been watching you for a long time and never seen you shoveling no snow, cutting no grass." Wilson moved to redact Officer Steiner's response from the recording because it "is basically [Officer Steiner] alleging that [Wilson] ha[d] stolen the money, which is another bad act." The district court denied the motion, stating that it was not evidence of a prior bad act because it was only "in response to a statement made by Mr. Wilson, and there is no other underlying information." The district court directed the state not to elicit any other related

testimony and noted that it would instruct the jury not to speculate as to the meaning of the officer's statement. At the end of trial, the district court did instruct the jury that it was "not to speculate as to possible answers to questions [that the district court] did not require to be answered."

"Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted). A district court abuses its discretion when it acts arbitrarily or capriciously. *State v. Pero*, 590 N.W.2d 319, 323 (Minn. 1999).

Wilson contends that Officer Steiner's statement is not relevant because it did not relate to any of the elements of the gun-possession charge. We agree. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. While evidence of Wilson's *ownership* of the cash has a tendency to establish that Wilson also owned the firearm, evidence of *how* Wilson obtained the cash does not. For this reason, we conclude that the district court abused its discretion by admitting that portion of the audio recording into evidence.

But an erroneous admission of evidence that does not implicate a constitutional right requires reversal only "when the error substantially influenced the jury's verdict." *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009). The defendant bears the burden of establishing that the evidence affected the verdict. *State v. Peltier*, 874 N.W.2d 792, 802

(Minn. 2016). Wilson contends that the evidence had a significant effect on the verdict because it depicted him as a violent drug dealer, which lured the jury into a series of bad character reasoning that resulted in it finding him guilty.

This court considers the following factors to determine whether the error substantially influenced the jury's verdict: "(1) the manner in which the State presented the testimony, (2) whether the testimony was highly persuasive, (3) whether the State used the testimony in closing argument, and (4) whether the defense effectively countered the testimony." *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011).

Here, the jury heard a redacted version of Wilson's interview, which contained Officer Steiner's statement. The statement lasted for about six seconds of the nine-minute audio recording. The statement itself had very little, if any, persuasive value. While the full audio recording of the interview contained references to Wilson's prior drug dealing and indicated that he obtained the cash by illegal means, the redacted audio recording omitted those details. Once redacted, the audio recording only reflected that Wilson raised the issue of how he earned the cash and that the officer challenged Wilson's claim. The state did not reference Officer Steiner's statement in its closing argument.

Furthermore, the state's evidence against Wilson was strong. Officers found the firearm in Wilson's bedroom closet, where he also kept a box of cash, and it was wrapped in one of Wilson's socks. And testing revealed that Wilson's DNA was present on the firearm.

For these reasons, we conclude that the district court erred when it denied Wilson's motion to redact Officer Steiner's statement that inferred that Wilson had obtained the cash by illegal means, but that the error was harmless.

Affirmed.