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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0793**

State of Minnesota,
Respondent,

vs.

William Joseph Netz,
Appellant.

**Filed April 15, 2019
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-17-22332

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that he is entitled to a new trial because the district court failed to give a limiting instruction to the jury immediately after he testified about his prior convictions, but did include the limiting instruction in final instructions. We affirm.

FACTS

On September 5, 2017, Officer Wong of the Minneapolis Police Department responded to a call from a local business owner, and found appellant William Joseph Netz sitting on the ground with an open bottle of liquor next to him. Officer Wong asked Netz for his identification so he could issue Netz a citation. Netz began screaming hysterically at Officer Wong and flailing around on the sidewalk after he was instructed to place his arms behind his back. Officer Wong attempted to hold Netz down, at which point Netz turned, looked Officer Wong in the eye, and spit in his face. The spit landed in the corner of Officer Wong's mouth. Netz can be heard yelling, "that's right. I spit right on you, a--hole" on Officer Wong's body camera. Netz denied making the statement, but conceded that it is his voice on the recording. He testified that he was merely trying to get dirt out of his mouth, and did not intend to spit on the officer.

At the outset of trial, the state moved to impeach Netz with two prior felony convictions. In response, Netz requested that the district court sanitize the convictions if they were deemed admissible, but did not request a limiting instruction. The district court granted the state's motion and stated, "Of course, if Mr. Netz decides to testify, I will

instruct the jury both at the time of testimony and in final instruction regarding that impeachment.”

Netz testified that he has two prior convictions. The district court did not give the limiting instruction to the jury at that time, and Netz’s attorney continued with direct examination without requesting the instruction. The district court did give the limiting instruction during its final instructions to the jury.

The jury found Netz guilty of fourth-degree assault—intentionally throwing or transferring bodily fluids at a peace officer. The district court sentenced Netz to a term of 17 months in prison, stayed for three years, with 180 days in jail. This appeal followed.

D E C I S I O N

Netz argues that the district court committed reversible error when it failed to give the jury a limiting instruction immediately following the admission of impeachment evidence. Netz’s prior felony convictions—for mail theft and drug possession—were admissible “[f]or the purpose of attacking the credibility of [Netz as] a witness.” Minn. R. Evid. 609(a). Rule 609 impeachment evidence is admissible “only for a limited purpose and the giving of a contemporaneous limiting instruction helps ensure that the evidence will not be used inappropriately.” *State v. Bissell*, 368 N.W.2d 281, 283 (Minn. 1985); *see also* Minn. R. Evid. 105.

A district court errs when it refuses to give a requested¹ mid-trial limiting instruction on the proper use of prior-conviction impeachment testimony. *Bissell*, 368 N.W.2d at 283.

¹ The district court decided that it would give the limiting instruction to the jury following any prior-conviction impeachment testimony, as well as in its final instructions. It would

An appellate court “evaluate[s] the erroneous omission of a jury instruction under a harmless error analysis.” *State v. Lee*, 683 N.W.2d 309, 316 (Minn. 2004). Reversal is not warranted when, “beyond a reasonable doubt[,] the omission did not have a significant impact on the verdict.” *Id.* (quotation omitted).

The state, relying on *State v. Taylor*, asserts that because Netz never formally requested the limiting instruction, plain-error analysis should apply. *See* 869 N.W.2d 1, 17 (Minn. 2015). *Taylor*, however, is distinguishable, because in that case, the district court never decided to give the instruction sua sponte, as it did here. *Id.* at 18.

While the district court failed to give the limiting instruction immediately following Netz’s testimony regarding his prior felonies, it did give the instruction during its final instructions to the jury. The only references made during trial to Netz’s prior convictions were by his attorney² at the outset of Netz’s direct examination, and by the state during its closing argument. The state mentioned Netz’s prior convictions in its closing argument in the permissible context of evaluating his testimony as a witness: “look at the instruction that the [district] [c]ourt gives you regarding evaluating the testimony of witnesses in this case. Some of the factors you can consider include impeachment of any witnesses. That

have been impractical for Netz to request an instruction that the district court sua sponte determined it would provide.

² Because Netz’s attorney did not pause during his examination to request the limiting instruction, it is possible that this was trial strategy, and would therefore constitute invited error. *See State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007) (“The invited error doctrine prevents a party from asserting an error on appeal that he invited or could have prevented in the court below. This court has held that a defendant cannot on appeal raise his own trial strategy as a basis for reversal.” (citations omitted)). Because the failure to give the mid-trial limiting instruction does not warrant reversal under a harmless-error analysis, we do not reach whether the failure to object was trial strategy.

includes their felony convictions, which we heard testimony regarding the defendant's two felony convictions."

Because no improper use was ever made of the testimony regarding Netz's prior convictions, and because the district court included the limiting instruction in its final instructions, Netz was not prejudiced by the district court's failure to give a mid-trial limiting instruction. *See Bissell*, 368 N.W.2d at 283 (concluding that failure to give a mid-trial limiting instruction "clearly was not prejudicial since the court did give such an instruction as part of its final instructions to the jury and since no one suggested that the evidence should be used for any purpose other than determining [appellant's] credibility as a witness").

In addition to the lack of prejudice, the evidence against Netz shows that the verdict was not attributable to the erroneous omission of the mid-trial limiting instruction. The only issue in dispute was whether Netz intended to spit on the officer. Netz testified that he is the person depicted on Officer Wong's body camera, and that it is his voice captured on the recording. Netz can be heard yelling, "that's right, I spit right on you a--hole." Therefore, beyond a reasonable doubt, the erroneous omission of the mid-trial limiting instruction did not impact the verdict.

Affirmed.