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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0947**

State of Minnesota,
Respondent,

vs.

Mario Alejandro Lanas,
Appellant.

**Filed March 25, 2019
Affirmed
Cleary, Chief Judge**

Scott County District Court
File No. 70-CR-16-11287

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Cleary, Chief Judge; and
Halbrooks, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

In this appeal from convictions of second-degree assault with a dangerous weapon
and intentional discharge of a firearm in a manner that endangered the safety of others,

appellant Mario Alejandro Lanas argues that the district court deprived him of his right to present a complete defense by excluding evidence of the victim's pending charges for second-degree assault with a dangerous weapon and kidnapping. Because the victim's pending charges are inadmissible character evidence, we affirm.

FACTS

On January 26, 2016, A.A. contacted Lanas in response to Lanas's advertisement for a cell phone on Craigslist, and they arranged to meet at the Walmart in Shakopee later that evening. Around 6:30 p.m., Lanas met A.A. inside the Walmart entrance. After meeting inside, Lanas and A.A. walked to Lanas's car to examine the phone. As they were discussing the phone, A.A. grabbed the phone and ran away. Lanas yelled for A.A. to stop and started to chase him. As A.A. ran toward and entered a waiting vehicle, Lanas fired 14 shots with a handgun¹ at A.A. and the moving vehicle. At least three bullets hit A.A.'s vehicle, and one of those shots resulted in a flat tire as the vehicle drove away. Lanas entered his own vehicle and sped off. He then called 911 and returned to the Walmart parking lot to speak with law enforcement.

Respondent State of Minnesota charged Lanas with (1) second-degree assault with a dangerous weapon in violation of Minn. Stat. § 609.222, subd. 1 (2016), and (2) intentional discharge of a firearm in a manner that endangered the safety of others in

¹ At the time of the incident, Lanas had a permit to carry a pistol pursuant to Minn. Stat. § 624.714 (2016).

violation of Minn. Stat. § 609.66, subd. 1a(a)(2) (2016). In August 2017, Lanas gave notice of his intent to rely upon the affirmative defense of self-defense at trial.

On January 17, 2018, one day before trial commenced, Lanas orally requested to cross-examine A.A. regarding pending charges for second-degree assault with a dangerous weapon and kidnapping, stemming from an incident that occurred in November 2017 in Hennepin County. The state objected to Lanas's request, arguing that there was no legal support for A.A. to be questioned about the allegations, and that A.A.'s counsel in the pending matter may want to be present if he were to be questioned regarding the charges. In response, Lanas asserted that under Minn. R. Evid. 404(b), A.A.'s pending charges were probative of A.A.'s "knowledge and plan and motivation to commit assaults with dangerous weapons." The district court denied Lanas's request, stating, "[W]ith respect to [A.A.]'s charges that are simply charges, it would be improper to allow any cross-examination on that."

The jury found Lanas guilty of the charged offenses. The district court sentenced Lanas to a 36-month term of imprisonment for second-degree assault with a dangerous weapon and a concurrent one-year-and-one-day term for intentional discharge of a firearm that endangered the safety of others. This appeal follows.

DECISION

The parties dispute the standard of review. Lanas appears to argue that the plain error standard of review applies because the alleged error in excluding the cross-examination of A.A.'s pending charges was not objected to at trial and the line of

questioning affects Lanas's constitutional rights to present a complete defense. Despite his plain-error argument, Lanas contends throughout the remainder of his brief that the district court abused its discretion. The state maintains that the district court's evidentiary ruling is reviewed for an abuse of discretion.

When a defendant fails to object to the admission of evidence, an appellate court applies the plain-error standard. Minn. R. Crim. P. 31.02. But here, Lanas requested to introduce evidence of A.A.'s pending charges through cross-examination. Lanas was therefore unable to object to evidence that he offered, and plain-error review is inapplicable. And while generally we review the district court's evidentiary rulings for an abuse of discretion, *State v. Anderson*, 789 N.W.2d 227, 234 (Minn. 2010), where the district court's evidentiary ruling results in the erroneous exclusion of defense evidence in violation of the defendant's constitutional rights, the verdict must be reversed if "there is a reasonable possibility that the verdict might have been different if the evidence had been admitted." *State v. Graham*, 764 N.W.2d 340, 351 (Minn. 2009) (quotation omitted). "In other words, the reviewing court must be satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, an average jury (*i.e.*, a reasonable jury) would have reached the same verdict." *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (footnote omitted).²

² Although neither party includes this standard of review in their respective briefs, appellate courts decide cases in accordance with the law. *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (applying a legal doctrine that the parties failed to argue in their briefs or at oral argument because appellate courts have a responsibility to decide cases in accordance with the law).

On appeal, Lanas argues that the district court deprived him of his right to present a complete defense by excluding evidence of A.A.’s pending charges. The due-process clauses of the Fourteenth Amendment of the United States Constitution and article I, section 7 of the Minnesota Constitution require that every criminal defendant be “afforded a meaningful opportunity to present a complete defense.” *California v. Trombetta*, 467 U.S. 479, 485, 104 S. Ct. 2528, 2532 (1984); *State v. Richards*, 495 N.W.2d 187, 191 (Minn. 1992). “A criminal defendant’s right to present a complete defense includes the right to call and examine witnesses.” *State v. Munt*, 831 N.W.2d 569, 585 (Minn. 2013). “But the evidence proffered in support of the defense must still comply with the rules of evidence.” *State v. Nissalke*, 801 N.W.2d 82, 102 (Minn. 2011).

Evidence of other crimes, wrongs, or acts is not admissible to prove bad character or a propensity to commit the charged crime. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). But such evidence may be admissible for other, limited purposes. *State v. Fardan*, 773 N.W.2d 303, 315-16 (Minn. 2009) (discussing *State v. Spreigl*, 139 N.W.2d 167, 171 (Minn. 1965)). These purposes include evidence offered as “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* at 316 (quoting Minn. R. Evid. 404(b)).

Lanas asserts that A.A.’s pending charges are admissible under Minn. R. Evid. 404(b) as proof of A.A.’s knowledge, plan, and motivation. Lanass further argues that A.A.’s pending charges were otherwise relevant to his claim of self-defense because the

evidence “went to the precise disputed fact of whether [A.A.] had a weapon when he engaged in the criminal behavior of stealing Lanas’s phone.”

While pending charges may be used as other-crimes evidence, A.A.’s pending charges, including second-degree assault with a dangerous weapon and kidnapping, are inadmissible character evidence. *See State v. Gustafson*, 379 N.W.2d 81, 84 (Minn. 1985) (concluding that the district court did not abuse its discretion in excluding evidence of witnesses’ pending charges that did not go to prove motive, opportunity, or plan). At the district court, Lanas argued that A.A.’s pending charges were probative to show “his knowledge and plan and motivation to commit assaults with dangerous weapons.” But the fact that A.A. allegedly possessed a dangerous weapon on one occasion may not be used to prove that A.A. possessed a gun on the night that he met Lanas in the Walmart parking lot. By Lanas’s own argument, the purpose of introducing evidence of A.A.’s pending second-degree assault with a dangerous weapon is to show A.A.’s propensity to carry dangerous weapons. Moreover, Lanas fails to explain how A.A.’s pending charge for second-degree assault with a dangerous weapon evidences knowledge, plan, or motivation. The district court did not err in excluding A.A.’s pending charges under Minn. R. Evid. 404(b).

While Lanas sought to introduce the pending charges under Minn. R. Evid. 404(b) at the district court, his proffered use of the evidence appears to go to A.A.’s reputation for violence. Evidence of other specific crimes or bad acts is not admissible to prove that a person acted in conformity therewith on a particular occasion. Minn. R. Evid. 404(b). But

“evidence of the victim’s reputation for violence and quarrelsomeness may be admitted in self-defense cases for the purpose of determining (1) whether the defendant was reasonably put in apprehension of serious bodily harm or (2) who was the aggressor.” *State v. Bland*, 337 N.W.2d 378, 382 (Minn. 1983) (emphasis omitted). The defendant must have had prior knowledge of the victim’s reputation in order to show reasonable apprehension, but “it is not necessary that the defendant knew the victim’s reputation” beforehand to show that the victim was the aggressor. *Id.* Nonetheless, “evidence of a specific act of violence is not admissible to prove who was the aggressor.” *Id.*

Here, there are no facts to indicate that Lanas was aware of A.A.’s reputation prior to the incident. At trial, Lanas testified that he did not know the individual with whom he arranged to meet at Walmart, and that he identified A.A. a few days after the incident in a police photographic lineup. Moreover, the date of the offense for which A.A. was charged for second-degree assault with a dangerous weapon and kidnapping occurred in November 2017—months after the incident in the Walmart parking lot. A.A.’s pending charges are inadmissible to establish that A.A.’s propensity for violence placed Lanas in reasonable apprehension so as to justify defensive action. *See State v. Irby*, 368 N.W.2d 19, 23 (Minn. App. 1985) (holding that evidence of specific instances of conduct of the victim offered by the defendant to prove he had a reasonable apprehension of harm “may be admissible if the prior conduct indicates a violent or quarrelsome disposition and if the defendant is aware of the prior conduct”), *review denied* (Minn. July 11, 1985).

A.A.'s pending charges are also inadmissible to show A.A.'s character as a witness. Under Minn. R. Evid. 404(a)(3), evidence of the character of a witness is admissible as provided in rules 607, 608, 609. Minn. R. Evid. 607 provides that the credibility of a witness may be attacked by any party, including the party calling the witness. Lanas sought to attack A.A.'s credibility with evidence of his pending charges for second-degree assault with a dangerous weapon and kidnapping. But this rule does not provide a basis to admit evidence of A.A.'s pending charges.

Minn. R. Evid. 608(a) states that "[t]he credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation," provided that the evidence refers to the witness's character for truthfulness or untruthfulness and the witness's character for truthfulness has been attacked by reputation or opinion evidence. Similarly, Minn. R. Evid. 608(b) provides that specific instances of conduct, for the purpose of attacking a witness's character for truthfulness, may not be proven by extrinsic evidence. A.A.'s pending charges for second-degree assault with a dangerous weapon and kidnapping do not pertain to his character for truthfulness, but rather tend to show a character for violence. Evidence of A.A.'s pending charges are inadmissible under Minn. R. Evid. 608.

Under Minn. R. Evid. 609(a), a witness may be impeached by evidence that the witness has been convicted of (1) a felony, if the probative value of the evidence outweighs its prejudicial effect, or (2) any crime involving dishonesty or false statement. Evidence of a pending charge is not admissible as impeachment evidence under Minn. R. Evid. 609,

which requires that the witness be convicted of an offense. *See Gustafson*, 379 N.W.2d at 84 (stating that dismissed charges that are not convictions are not admissible under Minn. R. Evid. 609). Because A.A.’s charges were pending at the time of trial, Minn. R. Evid. 609 does not provide a basis for introduction of A.A.’s charges.

Lanas further contends that the district court erred because cross-examination of A.A. regarding his pending charges was relevant to show his bias as a witness. Lanas did not present the argument that A.A.’s pending charges showed his bias as a witness at the district court. Generally, this court will not decide issues which were not raised before the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

Nonetheless, even if Lanas’s bias argument had not been forfeited for failure to raise the issue below, it is unpersuasive. The Sixth Amendment of the United States Constitution guarantees a criminal defendant the right to confront and cross-examine witnesses. *Davis v. Alaska*, 415 U.S. 308, 315, 94 S. Ct. 1105, 1110 (1974). “In criminal cases, the Confrontation Clause contemplates a cross-examination of the witness in which the defendant has the opportunity to reveal a prototypical form of bias on the part of the witness.” *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995); *see also* Minn. R. Evid. 616 (“For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible.”). “Bias is a catchall term describing attitudes, feelings, or emotions of a witness that might affect [the witness’s] testimony, leading [the witness] to be more or less favorable to the position of a party for reasons other than the merits.” *Lanz-Terry*, 535 N.W.2d at 640 (quotation

omitted). “But not everything tends to show bias, and courts may exclude evidence that is only marginally useful for this purpose.” *Id.* And “[i]n determining whether a restriction of cross-examination violates the defendant’s right to confront witnesses, a distinction must be made between general credibility attacks and attacks on a witness’s testimony designed to reveal bias.” *Id.*

Lanas argues that A.A.’s pending charges showed A.A.’s bias as a witness because he “had a motive to avoid further harming his pending criminal matter, which involved a charge of second-degree assault with a dangerous weapon, which could happen if he admitted in this case to similar behavior of possessing a gun while robbing someone.” Beyond his inherent bias as a victim, A.A.’s pending charges fail to show bias against Lanas; instead, the pending charges are relevant for general credibility impeachment. Even if bias had been considered by the district court, it would not have erred in prohibiting the introduction of A.A.’s pending charges into evidence.

Even if there was error in excluding evidence of A.A.’s pending charges, which we conclude there was not, that error would have been harmless beyond a reasonable doubt. Lanas was given the opportunity at trial to impeach the credibility of A.A. on his theft conviction for stealing Lanas’s phone and false statements given to police officers when he was first questioned about the incident. Additionally, the state produced testimony refuting Lanas’s claim that he acted in self-defense because A.A. flashed a weapon: a bystander witnessed the encounter in the parking lot and testified that she did not see A.A. threaten Lanas; another bystander testified that he did not see Lanas make any evasive

movements; and A.A. and his two companions testified that A.A. did not have a gun on the night of the incident. Detective Sergeant John Buetow of the Shakopee Police Department also testified that he interviewed Lanas after the incident, and that Lanas told him “he was attempting to engage the vehicle that was . . . leaving and disable it and remove the passengers out of the vehicle at gunpoint.” Moreover, the fact that Lanas fired 14 shots, some of which were fired after A.A. jumped into the van and drove away, negates his claim of self-defense. Any error in limiting the cross-examination of A.A. to preclude the introduction of his pending charges into evidence was harmless beyond a reasonable doubt.

Affirmed.