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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2080**

State of Minnesota,
Respondent,

vs.

Massoud Amin,
Appellant.

**Filed May 4, 2020
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-CR-17-14532

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Max A. Keller, Keller Law Offices, Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Jesson, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

BRYAN, Judge

Appellant argues that this court must reverse his three convictions for the following reasons: (1) the record contains insufficient evidence to support the three convictions; (2) the district court mischaracterized his defense strategy as an alternative-perpetrator

defense; (3) the district court made four evidentiary rulings adverse to appellant; (4) the district court failed to instruct the jury regarding the defense of impossibility and incorrectly instructed the jury regarding the definition of marital property; (5) the district court sustained respondent's objections to appellant's closing argument; (6) respondent committed prosecutorial misconduct during its closing argument; and (7) the cumulative impact of these errors denied appellant a fair trial. None of these arguments has merit, and we affirm appellant's three convictions.

FACTS

Appellant Dr. Massoud Amin and Dr. Elizabeth Ambrose married in 1994. Both were professors at the University of Minnesota. Dr. Amin has a Ph.D. in system science and mathematics and worked as the Director of the Technological Leadership Institute. Dr. Ambrose has a Ph.D. in chemistry and a second in dramatic languages and literatures. She is an associate professor of medicinal chemistry. Dr. Amin and Dr. Ambrose divorced in 2016. During the informal discovery process in the dissolution matter, Dr. Ambrose and her attorney learned that two documents produced by Dr. Amin regarding Dr. Amin's retirement accounts included false information. After the divorce, respondent State of Minnesota charged Dr. Amin with one count of attempted theft by swindle and two counts of aggravated forgery related to the disclosure of these false documents. The charges did not include an allegation that Dr. Amin forged or altered the documents, only that he uttered the altered documents. The case proceeded to trial, and the jury returned guilty verdicts on all three counts. The district court stayed imposition of sentence, placed Dr. Amin on four

years' probation, and required Dr. Amin to serve 120 days of local incarceration. Dr. Amin appeals the three convictions.

A. Motion in Limine Regarding Alternative Perpetrator Defense

Prior to trial, the state made a motion to prohibit evidence of an alternative perpetrator unless Dr. Amin satisfied the procedural requirements for asserting an affirmative defense:

[T]he State will move the Court for an order granting the following relief:

. . . .

7. Prohibiting testimony or argument tending to suggest that the person who committed any of the charged offenses was any person other than Defendant, in the absence of notice by defense of an affirmative alternative-perpetrator defense and a sufficient showing that Defendant meets the foundational requirements to raise such a defense.

During the oral argument regarding this motion, Dr. Amin's counsel argued that at trial he would introduce evidence that someone other than Dr. Amin forged the documents and passed those to Dr. Amin. Dr. Amin's attorney also acknowledged that in the divorce trial, Dr. Amin testified that he obtained the documents and then turned them over to his divorce attorney. The district court granted the motion, ruling that it would "prohibit testimony or argument that the person who committed any of the charged offenses was somebody else in the absence of a notice by Defense by affirmative alternative-perpetrator defense." Dr. Amin made the requisite disclosures to support his theory that someone other than Dr. Amin forged the two documents and gave the documents to him.

B. Evidence Admitted at Trial Regarding Utterance of Forged Documents

At trial, the parties introduced documentary and testimonial evidence regarding the dissolution matter and the disclosure of the two forged documents. According to trial testimony of Dr. Ambrose's divorce counsel and other witnesses, at the time of their separation, Dr. Amin had a nonmarital interest in the portion of his retirement assets acquired prior to the marriage. He also shared a marital interest in the portion of his retirement assets acquired after the marriage to Dr. Ambrose. Dr. Ambrose testified that Dr. Amin was aware of how his retirement investments performed, regularly reviewing his statement each quarter and sometimes calculating how much retirement income he would have. According to Dr. Ambrose, she and Dr. Amin regularly discussed the performance of their retirement accounts, and whether to change their investments.

During the divorce litigation, Dr. Amin's divorce attorney disclosed two financial documents: (1) a quarterly retirement statement dated December 31, 2014 (admitted as exhibit 15); and (2) a letter purportedly written by Steve Cotner dated August 5, 2014 (admitted as exhibit 26). The December 31, 2014 retirement statement showed that the marital value of Dr. Amin's retirement accounts was \$745,012.36. The August 5, 2014 letter showed that the premarital value of Dr. Amin's retirement assets was \$361,944.98.

Dr. Amin claimed that he received both exhibits 15 and 26 and then provided them to his attorney for disclosure to Dr. Ambrose and her divorce attorney.¹ Multiple witnesses

¹ Dr. Amin did not testify at the criminal trial. Dr. Ambrose's divorce attorney testified at the criminal trial and recounted Dr. Amin's dissolution testimony for the jury. At one point, Dr. Ambrose's divorce attorney referred to the dissolution trial transcripts to refresh her recollection of Dr. Amin's testimony regarding his receipt and transfer of exhibits 15

testified that exhibit 15 was inaccurate and had been altered. One described how the barcode and the watermark on exhibit 15 had been used prior to 2014, but were no longer in use when the investment company would have prepared the statement. In addition, the amounts listed did not add up to the sums represented. The district court received the correct December 2014 statement into evidence at exhibit 22. The correct statement reflected a balance of \$891,116.44. The actual amount of the marital portion of Dr. Amin's retirement assets was \$146,104.08 more than the amount reflected in the version of the December 2014 statement that Dr. Amin disclosed in the dissolution proceeding.

The August 5, 2014 Cotner letter had also been altered. It lacked Mr. Cotner's license number and contact information, had formatting and font differences, and lacked disclosures and labeling nomenclature required for regulatory compliance. The district court received the correct version of the letter at exhibit 28. The correct letter reflected a balance of \$127,557.93. The actual amount of the premarital portion of Dr. Amin's retirement assets was \$234,387.05 lower than the amount reflected in the version of the Cotner letter that Dr. Amin disclosed in the dissolution proceedings.

C. Contested Evidentiary Rulings

Dr. Amin challenges four evidentiary rulings that the district court made. First, the district court prevented Dr. Amin from impeaching a law enforcement witness with reference to previous versions of the criminal complaint. Prior to the commencement of

and 26. Dr. Amin does not challenge the introduction of his dissolution testimony in this way. Dr. Amin does not dispute that he gave exhibits 15 and 26 to Dr. Ambrose and her divorce attorney. Nor does Dr. Amin contest the fact that exhibits 15 and 26 included false information.

trial, the state moved to prohibit Dr. Amin from referring to prior versions of the complaint. The state argued that the previous versions of the complaint lacked relevance and would confuse the jury. Dr. Amin opposed this motion, arguing that previous “different iterations of inaccurate Complaints” would cast doubt on the integrity of the investigation. The district court granted the state’s motion, noting that the state could add or subtract charges during trial and ruling that previous versions of the complaint were irrelevant. After the direct testimony of law enforcement officer Sergeant Christopher Abbas, Dr. Amin sought to cross-examine Sergeant Abbas by reference to previous versions of the complaint. The state objected. Dr. Amin’s counsel argued that the purpose of this confrontation was to impugn Sergeant Abbas’s credibility by inquiring about previous versions of the complaint, which alleged that Dr. Amin violated different statutory provisions and committed different crimes than those in the final amended complaint. The district court denied this request, ruling that previous versions of the complaint could not be used to impeach Sergeant Abbas because the county attorney decided what charges to bring, not Sergeant Abbas.

Second, the district court prohibited Dr. Amin from using a document to impeach an expert witness. David Kiwus testified in the state’s case-in-chief regarding his physical examination of the December 2014 statement disclosed during the dissolution proceedings. By physically comparing the different versions of the document, he concluded that the document had been altered before its disclosure to Dr. Ambrose and her counsel. Mr. Kiwus testified that he did not determine who altered the false documents. On cross-examination, Mr. Kiwus agreed that he could not provide any opinion on who altered the documents, how the documents were altered, or when they were altered. On appeal, Dr.

Amin argues that despite this testimony, Mr. Kiwus's conclusion that the documents were altered created an inference that Dr. Amin himself forged or altered the documents. To rebut this inference, Dr. Amin intended to impeach Mr. Kiwus using a document regarding industry standards for certified fraud examiners like Mr. Kiwus. The standard practices included determination of the origin of forged documents. The state objected and the district court sustained the objection.

Third, the district court prevented Dr. Amin from impeaching Dr. Ambrose's divorce attorney, Laura Fretland, who testified on behalf of the state. Ms. Fretland testified that, in her experience, attorneys make requests for attorney fees with some frequency. However, they do not usually use the threat of conduct-based attorney fees to discourage a party from pursuing a certain course of litigation conduct. When asked on direct examination whether "that kind of threat [was] common in divorce litigation," Ms. Fretland answered, "Oh, not really, no." On cross-examination, Ms. Fretland was asked whether she "testified on direct examination that threats to seek attorney's fees are not common in divorce litigation," and she again said that such requests were not commonly made in that manner:

Oh, you know, I don't know. Threats. They're frequently requests made for people to pay legal fees, but not in the manner that was in that letter, which is designed to discourage a certain course of conduct versus my lawyer, my client needs legal fees. That is typical, but going to the statement of if you pursue something, we are going to seek legal fees, I find that a lot less common at least in my practice.

Dr. Amin argues that in this testimony, Ms. Fretland characterized Dr. Amin's request for attorney fees as "highly unusual" and "extraordinary misconduct." Dr. Amin then sought

to show that requests for attorney fees were not highly unusual or extraordinary by asking Ms. Fretland about specific occasions in which she had threatened conduct-based attorney fees during the course of litigating other dissolutions. The state objected and the district court sustained the objection.

Fourth, the district court precluded Dr. Amin from introducing a letter showing that he listed Dr. Ambrose as a beneficiary of his retirement plan. The letter stated, “The University does not maintain beneficiary designations. Therefore I obtained both the TIAA and Vanguard information via my online access with those two vendors. If you have specific questions regarding the designations, it would be most efficient to speak directly with the vendor in question.” The state objected on hearsay and relevancy grounds, and Dr. Amin argued that the document was a business record. The district court sustained the objection, finding that the letter contained hearsay within hearsay and rejecting Dr. Amin’s contention that the letter satisfied the requirements of the business-records exception to the hearsay rule.

D. Jury Instructions

Dr. Amin also challenges two jury instructions. First, the district court denied Dr. Amin’s request to instruct the jury regarding the defense of impossibility relating to the charge of attempted theft by swindle. Dr. Amin requested the following instruction, modified from model criminal jury instruction 5.03:

Mr. Amin cannot be convicted of an attempt to commit theft by swindle if, because of the circumstances of the act that the State calls an attempt, or the means used to perform the act that the State calls an attempt, commission of the crime was not

possible and the impossibility would have been clearly evident to a person of normal understanding.

The district court found that the facts submitted did not support giving an instruction on the defense of impossibility.

Second, the district court instructed the jury regarding the definition of marital property. Dr. Amin requested that the jury instructions include a sentence from Minnesota Statutes, section 518.003, subdivision 3(b) (2018), which states, “The extent of the vested interest shall be determined and made final by the court pursuant to section 518.58.” The district court concluded that the jury would be confused by the term “vested interest” and the citation to the division of marital property statute, section 518.58. The district court gave the following instruction:

Under Minnesota law, upon a dissolution of marriage, the family court shall make a just and equitable division of the marital property of the parties; at which time, the extent of the ownership interests of the parties will be determined and made final. It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife.

The district court also instructed the jury that to convict Dr. Amin of attempted theft by swindle, the state must show that the “defendant acted with the intention of obtaining for himself, sole possession of or title to property which Dr. Ambrose was legally entitled.”

E. Closing Arguments

During Dr. Amin’s closing argument, Dr. Amin’s counsel made statements regarding the state’s failure to prove who made the forged documents. The state objected

on the grounds that this misstated the elements of the offense. The district court sustained the objection.

During the state's closing argument, the state claimed that Dr. Amin "confessed under oath" at the dissolution trial that he obtained the forged documents and gave them to his attorney. The defense approached the bench to pursue an additional rebuttal under Minnesota Rules of Criminal Procedure, rule 26.03, subdivision 12(k), on the basis that the state's use of the word "confess" was severe and inflammatory. At the bench, the prosecutor told the judge that he meant "admitted under oath" rather than "confessed under oath." The judge did not permit a rebuttal argument but did give the following instruction to the jury: "If the attorneys have said anything in their closings that differ from your recollection of the evidence, then you should disregard that statement and just proceed on your collective recollection of the evidence." The judge regarded this statement as a curative instruction and regarded this action as sustaining Dr. Amin's objection. No further action was taken before the jury returned its verdict.

D E C I S I O N

Dr. Amin requests reversal of his convictions for the following reasons: (1) the record contains insufficient evidence to support the three convictions; (2) the district court mischaracterized his defense as an alternative-perpetrator defense; (3) the district court made four evidentiary rulings adverse to Dr. Amin; (4) the district court failed to instruct the jury regarding the defense of impossibility and incorrectly instructed the jury regarding the definition of marital property; (5) the district court sustained respondent's objections to Dr. Amin's closing argument; (6) the state committed prosecutorial misconduct during

its closing argument; and (7) the cumulative impact of these errors denied Dr. Amin a fair trial.

I. Sufficiency of the Evidence

Dr. Amin argues that the circumstantial evidence of knowledge and intent was insufficient to support his convictions for aggravated forgery and attempted theft by swindle. We conclude that the record contains sufficient evidence.

When evaluating the sufficiency of the evidence to prove an element of the offense by circumstantial evidence, we apply the rational hypothesis standard of review. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). The rational hypothesis standard requires a “review [of] the sufficiency of the evidence using a two-step analysis.” *State v. Barshaw*, 879 N.W.2d 356, 363 (Minn. 2016). The first step is to “identify the circumstances proved, deferring to the fact-finder’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* (quotation omitted). Under the second step, we “independently examine the reasonableness of all inferences that might be drawn from the circumstances proved . . . to determin[e] whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (alteration in original) (quotation omitted). “Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). In this second step, no deference is given to the jury’s verdict, *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017), although we will not overturn a

verdict based on mere conjecture or speculation, *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010).

Here, the state proved the following circumstances at trial: (1) Dr. Amin has advanced degrees and is a professor at the University of Minnesota; (2) Dr. Amin was aware of how his retirement investments performed, regularly reviewing the statements each quarter; (3) Dr. Amin and Dr. Ambrose regularly discussed how their retirement accounts were performing and whether to make investment changes; (4) Dr. Amin had a nonmarital interest in a portion of his retirement assets acquired prior to the marriage; (5) Dr. Amin also shared a marital interest in the portion of his retirement assets acquired after the marriage; (6) Dr. Amin received exhibits 15 and 26 and then provided them to his attorney for disclosure to Dr. Ambrose and her divorce attorney; (7) exhibit 15 reflected a value of \$745,012.36 for Dr. Amin's marital retirement assets; (8) exhibit 15 was inaccurate and had been altered; (9) the correct version of exhibit 15, received into evidence at exhibit 22, reflected an actual value of \$891,116.44; (10) exhibit 15 understated the correct value of Dr. Amin's marital retirement assets by \$146,104.08; (11) exhibit 26 reflected a value of \$361,944.98 for Dr. Amin's premarital retirement assets; (12) exhibit 26 was inaccurate and had been altered; (13) the correct version of exhibit 26, received into evidence at exhibit 28, reflected an actual value of \$127,557.93; and (14) exhibit 26 overstated the correct value of Dr. Amin's premarital retirement assets by \$234,387.05.

Dr. Amin argues that "without any evidence connecting Dr. Amin to the actual forgeries, it is equally likely that the complainant, Dr. Ambrose, created the altered documents." This is not a reasonable inference to draw from the circumstances proved.

The circumstances proved show that the altered documents would have reduced the value of the marital estate, thereby significantly reducing Dr. Ambrose's property award in the dissolution matter. The suggested inference requires a belief that Dr. Ambrose acted against her own financial interest. In addition, the suggested inference conflicts with Dr. Ambrose's testimony that Dr. Amin was aware of how the investments were performing, that he regularly reviewed the quarterly statements, and that he regularly discussed with Dr. Ambrose how the retirement accounts were performing and whether to make investment changes. The reasonable inferences that one can draw from the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except guilt.

II. Alternative-Perpetrator Defense

Dr. Amin argues that the district court incorrectly characterized his "not guilty" defense as an alternative-perpetrator defense, requiring premature disclosure of defense strategy and evidence. Because the district court did not abuse its discretion in classifying the defense as an alternative-perpetrator defense, we conclude that the disclosure requirements for affirmative defenses applied in this case.

We review the district court's decision to grant the state's motion in limine for an abuse of discretion. *See State v. Jenkins*, 782 N.W.2d 211, 224 (Minn. 2010); *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009). Dr. Amin has the burden of establishing both an abuse of discretion and prejudice as a result of the erroneous ruling. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). A defendant has a constitutional right to present a complete defense, *Jenkins*, 782 N.W.2d at 224, but that right is not absolute, *State v. Hannon*, 703 N.W.2d 498, 506 (Minn. 2005). Courts may limit the scope of a defendant's

arguments to ensure that the defendant does not confuse the jury with misleading inferences. *State v. Davidson*, 351 N.W.2d 8, 13 (Minn. 1984). In addition, the rules balance a defendant's right to present a complete defense with the need to avoid trial by surprise:

All defense witnesses in a criminal case must be disclosed pursuant to Minn. R. Crim. P. 9.02. Discovery rules are based on the proposition that the ends of justice will best be served by a system of liberal discovery which gives both parties the maximum possible amount of information with which to prepare their cases and thereby reduces the possibility of surprise at trial and are designed to enhance the search for truth.

State v. Patterson, 587 N.W.2d 45, 50 (Minn. 1998) (quotations omitted). Rule 9.02 requires that any defense that is not a “not guilty” defense must be disclosed in writing prior to trial. Minn. R. Crim. P. 9.02, subd. 1(5).² “Alternative perpetrator evidence is admissible if it has an inherent tendency to connect [an] alternative party with the commission of the crime.” *State v. Jones*, 678 N.W.2d 1, 16 (Minn. 2004).

In this case, Dr. Amin argues that the district court incorrectly classified his “not guilty” defense as an alternative perpetrator defense. We agree with the district court. At the hearing on the state's motion to require disclosures of affirmative defenses, Dr. Amin's counsel argued that, at trial, he would introduce evidence that someone other than Dr. Amin forged the documents. Dr. Amin's counsel also acknowledged that they intended to introduce evidence that someone passed the forged documents to Dr. Amin. Such evidence

² Although the alternative perpetrator defense is not specifically listed in the rule, it is a defense “other than that of not guilty” and is similar to the alibi defense. *State v. Sailee*, 792 N.W.2d 90, 94 (Minn. App. 2010) *review denied* (Minn. March 15, 2011).

would have an “inherent tendency to connect an alternate party with the commission of” aggravated forgery relating to the December 2014 statement and the August 5, 2014 Cotner letter. Therefore, the district court did not abuse its discretion characterizing this evidence as alternative-perpetrator evidence and serving the “ends of justice” by requiring Dr. Amin to satisfy the procedural requirements that apply to affirmative defenses.³

III. Contested Evidentiary Rulings

Dr. Amin challenges four evidentiary rulings that the district court made. We conclude that the district did not abuse its discretion in preventing Dr. Amin from impeaching Sergeant Abbas, Mr. Kiwus, or Ms. Fretland, and that the district court did not abuse its discretion in excluding the University of Minnesota letter regarding the beneficiary of the retirement assets.

“Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). “On appeal, the appellant has the burden of establishing that the trial court abused its discretion and that appellant was thereby prejudiced.” *Id.* Even if the court’s error is prejudicial, it will not warrant reversal if the error was harmless. *State v. Blasus*, 445 N.W.2d 535, 540 (Minn. 1989). Whether an error in excluding defense evidence was

³ Defense counsel argues that the anticipated evidence does not constitute alternative-perpetrator evidence because multiple people can be guilty of uttering the same forged document at the same time. Dr. Amin cites no legal authority in support of this argument. Accordingly, we decline to adopt Dr. Amin’s proposed rule, which would restrict the application of the alternative-perpetrator defense to only a small number of offenses and which conflicts with our case law protecting a defendant’s right to introduce evidence that has “an inherent tendency to connect [an] alternative party with the commission of the crime.” *Jones*, 678 N.W.2d at 16.

harmless depends on whether there is any reasonable doubt the result would have been different if the evidence had been allowed to be admitted. *See id.*; *see also, e.g., State v. Robinson*, 718 N.W.2d 400, 407-10 (Minn. 2006) (affirming as harmless error the admission of evidence under an improper hearsay exception because the evidence was admissible under a different exception not mentioned by the district court); *State v. Ortlepp*, 363 N.W.2d 39, 43-44 (Minn. 1985) (affirming where a statement was inappropriately admitted under an impeachment exception but was admissible under the residual exception); *State v. Hogetvedt*, 623 N.W.2d 909, 913-14 (Minn. App. 2001) (upholding the district court's admission of out-of-court statements because, contrary to the district court's ruling, the evidence was not hearsay, and thus admissible), *review denied* (Minn. May 29, 2001).

First, Dr. Amin argues that the district court erred by preventing him from impeaching a law enforcement witness by reference to previous versions of the criminal complaint. Dr. Amin hoped to impeach Sergeant Abbas's credibility with these documents. The state objected and moved to prohibit Dr. Amin from referring to previous versions of the complaint, arguing that the previous versions of the complaint lacked relevance and would confuse the jury. The district court granted the state's motion, noting that the state could add or subtract charges during trial and ruling that previous versions of the complaint were irrelevant. Later the district court sustained the state's objections to the cross-examination of Sergeant Abbas on the same grounds. While "credibility evidence is almost always relevant," *see State v. Blasus*, 445 N.W.2d 535, 545 (Minn. 1989) (Kelley, J., dissenting), Dr. Amin cannot establish an abuse of discretion because he has not shown

that the discrepancies between the final amended complaint and the previous versions resulted from or included changes to the substance of Sergeant Abbas's statement. The county attorney ultimately decides what charges to bring, and the differences between versions of the complaint could relate to the exercise of the prosecutor's discretion and not to changes in Sergeant Abbas's statement.⁴

Second, Dr. Amin argues that the district court erred by prohibiting him from using a document to impeach an expert witness on fraud. Dr. Amin claims that the direct examination and Mr. Kiwus's conclusion that the documents were altered created an inference that Dr. Amin himself forged or altered the documents. The line of impeachment inquiry would have addressed this inference. Dr. Amin cannot establish an abuse of discretion, however, because the testimony did not create an inference that Dr. Amin created the forged documents. Instead, on both direct and cross-examination, Mr. Kiwus made clear that he could not provide any opinion on who altered the documents, how the documents were altered, or when they were altered. The district court acted within its discretion to exclude impeachment based on the standard practices to investigate the origin of an altered document.

Third, Dr. Amin also argues that the district court erred by preventing him from impeaching the Dr. Ambrose's divorce attorney who testified on behalf of the state. Dr. Amin claims that Ms. Fretland characterized his legal strategy and litigation action during

⁴ Even assuming that the district court did commit error, we conclude that it was harmless error because the evidence was properly excluded on a separate ground: it would likely confuse the jury. *See, e.g., Robinson*, 718 N.W.2d at 407-10.

the dissolution matter as “highly unusual” and “extraordinary misconduct.” Dr. Amin hoped to impeach this witness by referring to examples in which she herself had engaged in similar legal strategy and threatened to seek attorney fees. Dr. Amin cannot establish an abuse of discretion regarding this witness because his argument mischaracterizes her testimony. When asked on direct examination whether “that kind of threat [was] common in divorce litigation,” Ms. Fretland answered, “Oh, not really, no.” On cross-examination, Ms. Fretland was asked whether she “testified on direct examination that threats to seek attorney’s fees are not common in divorce litigation,” and she again said that such requests were not commonly made in that manner. Ms. Fretland did not characterize Dr. Amin’s litigation conduct as “highly unusual” or as “extraordinary misconduct.” The district court acted within its discretion in preventing Dr. Amin from impeaching Ms. Fretland.

Fourth, Dr. Amin argues that the district court erred by precluding him from introducing a letter showing that Dr. Amin listed Dr. Ambrose as a beneficiary of his retirement plan. Dr. Amin argued that the letter, written by an employee of the University of Minnesota, satisfied the business-records exception to the hearsay rule. The district court ruled that the letter contained double hearsay and excluded it. Dr. Amin cannot establish an abuse of discretion regarding the district court’s decision to exclude the letter because the text of the letter itself shows it does not satisfy the requirements of the business-records exception. For the business-records exception to apply, “a qualified witness must testify that the records were kept in the course of a regularly-conducted business activity, and that it was the normal practice of that business to keep such records.” *In re Welfare of Child of J.K.T.*, 814 N.W.2d 76, 95 (Minn. App. 2012). In this case, the letter stated, “The

University does not maintain beneficiary designations. Therefore I obtained both the TIAA and Vanguard information via my online access with those two vendors. If you have specific questions regarding the designations, it would be most efficient to speak directly with the vendor in question.” The district court did not abuse its discretion because the letter itself indicated that the University of Minnesota did not keep records of the beneficiary information.

IV. Jury Instructions

Dr. Amin argues that the district court erred by failing to instruct the jury regarding the defense of impossibility and incorrectly instructed the jury regarding the definition of marital property. We conclude that the district court did not exceed its broad discretion and properly instructed the jury.

“The district court has broad discretion in determining jury instructions and we will not reverse in the absence of abuse of discretion.” *Hilligoss v. Cargill, Inc.*, 649 N.W.2d 142, 147 (Minn. 2002). “District courts are allowed considerable latitude in selecting language used in the jury charge and determining the propriety of a specific instruction.” *Morlock v. St. Paul Guardian Ins. Co.*, 650 N.W.2d 154, 159 (Minn. 2002).

In this case, Dr. Amin initially argues that the district court should have instructed the jury as to the defense of impossibility relating to the attempted theft by swindle charge. The district court correctly denied the requested instruction because the defense of impossibility does not apply to an attempt. Minn. Stat. § 609.17, subd. 2 (2018); *see also State v. Bird*, 285 N.W.2d 481, 482-83 (Minn. 1979) (recognizing that neither factual nor legal impossibility is a defense to an attempt charge).

Dr. Amin also argues that the district court incorrectly instructed the jury regarding the definition of marital property. Dr. Amin requested that the jury instructions include the following quoted sentence from Minnesota Statutes, section 518.003, subdivision 3(b): “The extent of the vested interest shall be determined and made final by the court pursuant to section 518.58.” The district court concluded that the jury would be confused by the term “vested interest” and the citation to the division of marital property statute. The district court gave the following instruction instead:

Under Minnesota law, upon a dissolution of marriage, the family court shall make a just and equitable division of the marital property of the parties; at which time, the extent of the ownership interests of the parties will be determined and made final. It shall be conclusively presumed that each spouse made a substantial contribution to the acquisition of income and property while they were living together as husband and wife.

The district court acted within its broad discretion and considerable latitude when it instructed the jury that the family court will determine the ownership interests of the parties upon a dissolution of marriage. We conclude that the instruction accurately stated the law.

V. Objection to Dr. Amin’s Closing Arguments

Dr. Amin argues that the district court erred in sustaining objections to his closing argument. We conclude that the district court did not abuse its discretion in sustaining the state’s objection.

“We review a district court’s restricting the scope of a closing argument for an abuse of discretion.” *State v. Caldwell*, 815 N.W.2d 512, 516 (Minn. App. 2012), *review denied* (Minn. June 27, 2012). “Courts may limit the scope of a defendant’s arguments to ensure

that the defendant does not confuse the jury with misleading inferences.” *Atkinson*, 774 N.W.2d at 589.

In this case, counsel for Dr. Amin argued in closing that the state failed to prove who made the forged documents. The state objected on the grounds that this misstated the elements of the offense. The elements of the offense of uttering a forged document do not require the state to prove who made the forged document or that the person uttering the document also forged the document. Minn. Stat. § 609.625, subd. 3 (2014). It was not abuse of discretion for the district court to determine that Dr. Amin’s suggestion to the contrary would confuse the jury regarding the elements of the offense.

VI. Prosecutorial Misconduct

Dr. Amin argues that the state committed prosecutorial misconduct during its closing summation. Because any error was harmless, we do not reverse the convictions.

This court will reverse a conviction for prosecutorial misconduct “only when the misconduct, considered in the context of the trial as a whole, was so serious and prejudicial that the defendant’s constitutional right to a fair trial was impaired.” *State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000). Objected-to prosecutorial misconduct is reviewed for harmless error. *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000).

In this case, the state claimed that Dr. Amin “confessed under oath” at the dissolution trial that he obtained the forged documents and gave them to his attorney. Dr. Amin objected and requested a rebuttal argument because the state used the word “confessed” instead of a more neutral verb, such as “testified.” The evidence presented at trial showed that Dr. Amin did, in fact, testify that he obtained the forged documents and

gave them to his attorney. The judge did not permit a rebuttal argument but did give the following instruction: “If the attorneys have said anything in their closings that differ from your recollection of the evidence, then you should disregard that statement and just proceed on your collective recollection of the evidence.” We conclude that given this instruction, and the evidence showing that Dr. Amin testified that he obtained the forged documents and gave them to his attorney, any error in the prosecutor’s statement was harmless.

VII. Cumulative Impact

Dr. Amin argues that the cumulative impact of the above alleged errors deprived him of a fair trial and warrants reversal of his convictions and remand for a new trial. While appellate courts generally review each independent alleged error, we have recognized that the cumulative effect of multiple errors can require reversal. *See, e.g., State v. Peterson*, 530 N.W.2d 843, 848 (Minn. App. 1995) (quoting *State v. Post*, 512 N.W.2d 99, 104 (Minn. 1994)). In this case, however, Dr. Amin has failed to establish any trial errors that warrant reversal.

Affirmed.