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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0328**

State of Minnesota,
Appellant,

vs.

Abdilahi Muse Ibrahim,
Respondent.

**Filed August 31, 2020
Appeal dismissed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-19-8238

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

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Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

In this pretrial appeal, appellant-state argues that the erroneous exclusion of evidence linking respondent's brother to a prior gang-related shooting significantly

reduced the likelihood that the state can successfully prosecute respondent for murder. Because the state has not established that the excluded evidence will have a critical impact on its ability to prosecute the case, we dismiss the appeal.

FACTS

Two shootings occurred in Minneapolis on the evening of March 1, 2019. The first took place at about 9:17 p.m. at the Karmel Mall; the second occurred at the Red Sea Bar and Restaurant (Red Sea) just before midnight. Appellant State of Minnesota alleges that respondent Abdilahi Muse Ibrahim participated in the second shooting.

Both shootings involved suspected gang members and took place within five miles of each other. The victim of the first shooting told the police that he was “targeted by members of the 1627 Boys Street Gang, because some people believed that he was a member of the Somali Outlaw[s] gang.” That victim was taken to a Minneapolis hospital. Hospital surveillance footage from 9:50 to 10:30 p.m. shows a group of approximately 20 young men of Somali descent arriving in five different vehicles and congregating outside the hospital.

Two members of the group, later identified as Ibrahim and his co-defendant Omar Hassan, are seen talking near the hospital. A Minneapolis police officer stationed at the hospital overheard Hassan say that the shooting victim is his cousin. And the video shows Hassan “visibly crying at times.” At 10:32 p.m., Hassan and Ibrahim left the hospital together in a light-colored Chevrolet sedan.

The second shooting occurred shortly after a Toyota Camry containing six individuals parked behind the Red Sea. Surveillance footage shows a lighter colored

Chevrolet sedan following the Camry. Two people exited the Camry and walked toward the restaurant. Then two men got out of the Chevrolet. They approached the Camry and opened fire, shooting 26 rounds into the vehicle. The shots killed one of its occupants and injured two others. Witnesses at the scene could not identify the shooters, and police did not find any weapons. But police recovered 26 discharged cartridge casings. The casings revealed that each shooter had fired 13 times; one from a .40 caliber handgun and the other from a 9mm handgun.

Police investigators identified Ibrahim and Hassan as the shooting suspects primarily through examination of surveillance footage from the hospital and the crime scene. These recordings show a light-colored Chevrolet sedan with a “distinctive triangle shaped snow cover on the passenger side of the hood,” parked outside the hospital and later behind the Red Sea. The two men captured on the hospital footage “appeared to be dressed in an identical manner” as the men seen in the Red Sea footage. From the footage, police described Ibrahim as a “black male with a light complexion, wearing a darker colored parka style jacket, with his [fur-lined] hood up,” and “dark pants with white shoes that had a distinctive dark stripe near the sole.” And police described Hassan as “a black male with a light complexion,” “wearing a darker jacket (not a parka) with the hood up,” “dark colored shoes with a loop on the back portion of the heel,” “dark sweatpants that rested just above his ankles,” and “white or light colored socks.” Hassan’s cell phone records place him at the hospital while the group of young men congregated there and at the Red Sea at the time of the shooting.

The ballistics investigation revealed that the .40 caliber casings found at the Red Sea have “matching features” to casings found at another “Somali related shooting” that had occurred two weeks earlier, on February 19. The victim of the February 19 shooting (Witness 1) identified Ibrahim’s brother as the shooter and Ahmed Rashad Ahmed as the driver. The two men abandoned their vehicle at the scene. Police found an apartment rental agreement bearing Ibrahim’s name inside the vehicle. And they located a soda bottle with a DNA profile that ruled out over 99.99% of the general population, but not Ibrahim’s brother or Ahmed.

A grand jury indicted Ibrahim on 12 counts of intentional and unintentional murder for the Red Sea shooting, including two counts of first-degree murder (premeditated and murder committed for the benefit of a gang), two counts of second-degree murder (intentional and for the benefit of a gang), two counts of attempted first-degree murder for the benefit of a gang, two counts of attempted first-degree premeditated murder, two counts of attempted second-degree murder for the benefit of a gang, and two counts of attempted second-degree murder.

The state provided notice of and moved pretrial to admit *Spreigl* evidence¹ related to the February 19 shooting, asserting:

On February 19, 2019, Defendant Ibrahim’s brother, Farhan Ibrahim, shot and paralyzed an identified male, hereinafter referred to as “Witness 1.” Witness 1 is personally familiar with Defendant Ibrahim, and positively identified his

¹ Evidence of other crimes or bad acts, also known as *Spreigl* evidence, may be admissible when offered for other purposes, such as to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. Minn. R. Evid. 404(b); see *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965).

brother, Farhan, as the person who shot him. Forensic analysis has shown that the same .40 caliber handgun used by Farhan in this February 19, 2019 shooting was used to commit the March 1, 2019 murder that Defendants Abdilahi Ibrahim and Omar Hassan are accused of committing.

Further, the vehicle that Farhan shot from crashed into a nearby snow bank immediately after shooting Witness 1. Inside the vehicle was a rental agreement in the name of Defendant Abdilahi Ibrahim. The driver of this vehicle at the time of the shooting has also been positively identified. He was Ahmed Rashad Ahmed, a well-known member of the Somali Outlaws criminal street gang. Defendant Omar Hassan has a documented history of associating with Ahmed and both Ibrahim brothers that goes back to 2015.

The state's motion indicates that "Witness 1 will also testify to the gang related motive behind these shootings, and identify individuals as members of both the Somali Outlaws and the 1627 Boys, or 'Six Rings,' criminal street gangs." Following a hearing, the district court denied the motion, in part, stating:

Evidence that the discharged cartridge casings (DCCs) from this incident match the DCCs from a prior shooting involving the same gang to show Defendant Ibrahim's access to the firearm is **GRANTED**. Further specifics of the prior shooting including the identity of the alleged shooter, his relationship to either Defendant, or the injury sustained by that victim are irrelevant and inadmissible.

The state seeks pretrial review of this ruling.²

D E C I S I O N

To appeal a pretrial order, "the state must clearly and unequivocally show both that the [district] court's order will have a critical impact on the state's ability to prosecute the

² On appeal, the state no longer contends that the excluded evidence is admissible under *Spreigl*.

defendant successfully and that the order constituted error.” *State v. Zanter*, 535 N.W.2d 624, 630 (Minn. 1995) (quotation omitted); see Minn. R. Crim. P. 28.04, subd. 2(2)(b) (requiring state to notify appellate court “how the district court’s alleged error, unless reversed, will have a critical impact on the outcome of the trial”). Because critical impact is a threshold issue, appellate courts “will not review a pretrial order absent such a showing.” *State v. Osorio*, 891 N.W.2d 620, 627 (Minn. 2017).

Critical impact is shown when suppression of the evidence “completely destroys the state’s case” or “when excluding the evidence significantly reduces the likelihood of a successful prosecution.” *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) (quotation omitted). The showing “depends in large part on the nature of the state’s evidence against the accused,” *Zanter*, 535 N.W.2d at 630, and requires examination of “all of the state’s admissible evidence as a whole,” *McLeod*, 705 N.W.2d at 785. In evaluating critical impact, we examine

the inherent qualities of the suppressed evidence itself, its relevance and probative force, its chronological proximity to the alleged crime, its effect in filling gaps in the evidence viewed as a whole, its quality as a perspective of events different than those otherwise available, its clarity and amount of detail and its origin.

In re Welfare of L.E.P., 594 N.W.2d 163, 168 (Minn. 1999) (citation omitted). Excluded evidence that “is particularly unique in nature and quality is more likely to meet the critical impact test.” *Id.*

The state contends that the suppression order critically impacts its ability to prosecute Ibrahim because it excludes evidence connecting him to the murder weapon.

According to the state, the excluded evidence is necessary to establish that Ibrahim (1) is a member of the Somali Outlaws gang and committed the Red Sea shooting to benefit that gang, and (2) possessed the gun used in the Red Sea shooting because his brother used it during the February 19 shooting. Indirect evidence of identity may be critical to a trial outcome because the loss of one link in a chain of circumstantial evidence “may prevent the state from meeting its evidentiary burden.” *McLeod*, 705 N.W.2d at 784-85 (quotation omitted). But we are not persuaded that exclusion of the evidence in question significantly reduces the likelihood the state will meet its burden of proof.

We first examine the state’s admissible evidence as a whole. While the district court has not yet determined the admissibility of some of the evidence, and we are not certain the state identified the whole of the evidence, the record indicates that Ibrahim is one of the shooters. The state will offer testimony from a police sergeant who received the surveillance footage from the hospital and crime scene and will explain “why this comparison caused her to focus on these defendants.” Her testimony will likely cover the unique and nearly identical appearances of Ibrahim and Hassan as shown in the hospital and Red Sea surveillance footage. The footage includes the light-colored Chevrolet sedan that Ibrahim and Hassan entered at the hospital and exited at the crime scene, which, according to the sergeant, had a unique and remarkable snow pattern on its hood that is visible in both surveillance videos. Hassan’s cell phone records indicate he was at the hospital and then the Red Sea at the relevant times. The fact Hassan’s cousin was the victim in the first March 1 shooting provides evidence that Ibrahim had a motive to join Hassan in retaliating against rival gang members.

The record also contains evidence of Ibrahim’s gang affiliation and that the Red Sea shooting was gang-related. Indeed, the suppression order expressly permits the state to offer evidence that one of the guns involved in the Red Sea shooting was used in “a prior shooting involving the same gang.” The state intends to present testimony of a police officer who is an expert in gang-related intelligence, worked in the area where the shootings occurred, and is familiar with local gangs. He will testify that Ibrahim and Hassan are members of the Somali Outlaws. And the officer will opine that the Somali Outlaws and 1627 Boys are rivals and meet the statutory definition of gangs. The fact that the two shootings occurred hours apart on March 1 involving members of these rival gangs and the intervening gathering of 20 young males at the hospital also suggests that Ibrahim committed the Red Sea shootings to benefit a gang.

Admittedly, the excluded evidence³ that Ibrahim’s brother was involved in the February 19 shooting has probative value. It links Ibrahim to one of the weapons used in the Red Sea shooting. But we are not convinced that the quality of this evidence is so unique and differs from other evidence that its exclusion has critical impact. Ibrahim’s relationship to his brother suggests that they could have occasional contact. But the excluded evidence does not show that the Ibrahim brothers actually had any contact with each other between February 19 and March 1, during which the gun could have been

³ The parties do not agree on the scope of the suppression order. Ibrahim contends that the order permits evidence of Ibrahim’s apartment rental agreement and the soda bottle found in the vehicle left at the scene of the February 19 shooting. The state disagrees. We do not resolve this issue because it is not necessary to our analysis. But we do note that the hearing transcript and order leave open the possibility that other evidence from the February 19 shooting may be admitted at trial.

transferred. The state concedes that Ibrahim's brother "fled the state of Minnesota after the 2/19/19 shooting and was not present during the March 1, 2019 murder." And the state is otherwise able to link Ibrahim to the murder weapon by virtue of the fact he is a member of the gang responsible for both the February 19 and Red Sea shootings.

In sum, we are not persuaded that the excluded evidence will significantly reduce the likelihood that the state will successfully prosecute Ibrahim for the Red Sea murder. *See State v. Schnorr*, 403 N.W.2d 719, 720 (Minn. App. 1987) (concluding pretrial suppression of controlled substance obtained during unlawful search of driver did not have a critical impact because the state had other lawfully obtained evidence that was sufficient to support charges); *State v. Hendrickson*, 395 N.W.2d 458, 462 (Minn. App. 1986) (concluding pretrial suppression of defendant's tape-recorded statement did not have critical impact when the state failed to show how suppressed evidence would affect trial and an eyewitness was available to testify to what defendant said in the recording and could use it to refresh his recollection). Because "[c]ritical impact is a threshold issue," the state's failure to make this showing requires dismissal of the state's appeal. *McLeod*, 705 N.W.2d at 784.

By dismissing this appeal, we offer no comment on the merits of the district court's suppression ruling. But we observe that courts may revisit pretrial rulings if appropriate at trial. *See State v. Schmieg*, 344 N.W.2d 425, 427 (Minn. App. 1984) (stating a district court may reconsider a pretrial suppression ruling at trial upon proper application of the parties).

Appeal dismissed.