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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0598**

Muhamud Ahmed Hirsi, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed August 24, 2020
Affirmed
Ross, Judge**

Otter Tail County District Court
File No. 56-CR-15-2492

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Michelle M. Eldien, Otter Tail County Attorney, Benjamin G. A. Olson, Assistant County Attorney, Fergus Falls, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

ROSS, Judge

A jury found Muhamud Hirsi guilty of impaired driving and fifth-degree possession of a controlled substance after hearing evidence that police saw him drive erratically and discovered a substance containing cathinone in the center console and a matching green

leafy substance in Hirsi's teeth. Defense counsel had urged the jury to consider all circumstances separately, while the prosecutor had urged the jury to consider the evidence in its entirety and had suggested that Hirsi was attempting to distract the jury. Hirsi petitioned for postconviction relief, arguing that the prosecutor's argument constituted prejudicial misconduct. We affirm the district court's denial of the postconviction petition because the prosecutor did not engage in misconduct.

FACTS

The state charged Muhamud Hirsi with driving under the influence of any amount of a Schedule I or II controlled substance, driving under the influence of a combination of alcohol and a controlled substance, and fifth-degree possession of a controlled substance. *See* Minn. Stat. §§ 152.025, subd. 2(a)(1), 169A.20, subd. 1(4), (7) (2014). The charges arose from a traffic stop in April 2015 and proceeded to a jury trial during which Hirsi admitted to driving while impaired but contested the drug-possession charge.

The state's case-in-chief comprised testimony from the arresting officer and two forensic analysts. Otter Tail County Sheriff's Deputy Jeremiah Krupich told the jury that he stopped a swerving vehicle and encountered Hirsi, who was the driver, and four passengers. The deputy smelled the odor of an alcoholic beverage, saw that Hirsi's eyes were watery and bloodshot, noticed that Hirsi's pupils were dilated, and observed a "clear water bottle with a green chunky liquid in it" next to Hirsi. Deputy Krupich asked Hirsi if the substance was khat—a plant containing the controlled substance cathinone—which Hirsi denied. The deputy also saw open alcoholic-beverage containers on the floor behind

the front seats. Other officers arrived, Deputy Krupich removed Hirsi from the car, and the deputy saw a leafy green substance in his teeth. Deputy Krupich arrested Hirsi on suspicion of driving while impaired, conducted a pat search of the passengers, and searched the car. He found a sandwich bag containing a leafy green substance in the console between the driver and passenger seats.

Hirsi agreed to provide a urine sample, which was tested by forensic scientist Donna Zittel. Zittel told the jury that the test revealed the presence of cathinone and an alcohol concentration of 0.06. Forensic scientist Amy Granlund told the jury that she analyzed the plant material recovered from the bag inside the car and that it also tested positive for cathinone.

During his closing argument, the prosecutor argued that the jury could find Hirsi guilty of fifth-degree possession based on either his exclusive or joint possession of a substance containing cathinone. He emphasized that Hirsi drove erratically, that the substance containing cathinone and the spit bottle were directly beside Hirsi, and that Hirsi had a khat-like substance in his mouth. Defense counsel countered by urging the jury to consider numerous circumstances separately. She argued that the jury could not infer that Hirsi possessed cathinone merely based on the presence of the unidentified, untested substance in his mouth. And she argued that a reasonable doubt existed about whether Hirsi, rather than one of his passengers, possessed the bag containing cathinone.

The state's rebuttal argument included the following exchange:

PROSECUTOR: [T]here is absolutely no reason that you are obligated to not look at the evidence in its entirety. . . . [T]hat's why all the evidence was

given to you and not just parts of it. To ignore the bottle, to ignore the substance in his mouth, to ignore that he was driving the car, to ignore that it was in his console next to him, next to the bottle, you don't have to ignore all that evidence and facts. That is what I meant by 'overwhelming evidence.' . . . You have all those facts, all that evidence.

The only reason they ask you to separate that is to deter you from looking at the factual evidence as a whole, all of the evidence. And the only reason to ask you to find him guilty of the DUI counts is so you go back there and settle --

DEFENSE: Objection, Your Honor.

THE COURT: Sustained.

PROSECUTOR: -- so that you deliberate and don't focus on Count 1.

DEFENSE: Objection, Your Honor. It's the same argument.

The jury found Hirsi guilty of all three charges. The district court stayed adjudication of the fifth-degree possession offense and placed Hirsi on probation. But Hirsi violated probation and the district court revoked the stay in January 2018. It adjudicated Hirsi's conviction of fifth-degree controlled-substance possession.

Hirsi petitioned for postconviction relief in January 2020. He argued that the prosecutor committed prejudicial misconduct by improperly disparaging his defense strategy, and he asked the district court to vacate his fifth-degree drug-possession conviction. The district court denied the petition. Hirsi appeals.

DECISION

Hirsi challenges the district court's denial of his petition for postconviction relief, arguing that the prosecutor's rebuttal argument during closing constituted prejudicial prosecutorial misconduct. We typically review a district court's denial of a postconviction petition for an abuse of discretion. *State v. Whitson*, 876 N.W.2d 297, 303 (Minn. 2016). But we review legal conclusions de novo. *Greer v. State*, 836 N.W.2d 520, 522 (Minn. 2013). We review claims of objected-to prosecutorial misconduct to determine first whether misconduct occurred, and second whether the error warrants reversal. *See State v. Carridine*, 812 N.W.2d 130, 150 (Minn. 2012). We have no trouble concluding that the prosecutor's challenged argument was not prosecutorial misconduct, and so we need not consider the argument's potential prejudicial effect.

Prosecutors must vindicate a defendant's right to a fair trial, and prosecutorial misconduct may deprive a defendant of that right. *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). We reject Hirsi's argument that the prosecutor's argument impermissibly disparaged his defense. A prosecutor is entitled to vigorously argue the state's case, but he cannot belittle defense tactics abstractly or suggest that a defense was raised "because it was the only defense that may be successful." *Carridine*, 812 N.W.2d at 149 (quotation omitted); *see also State v. Griesse*, 565 N.W.2d 419, 427 (Minn. 1997). Nor can a prosecutor insinuate that defense tactics are merely a standard strategy in the type of criminal case the jury is considering. *State v. Salitros*, 499 N.W.2d 815, 818 (Minn. 1993). We are satisfied that these types of generalized disparagement did not occur here.

The prosecutor's comments instead followed in reasoned response to Hirsi's counsel's suggestion that the jury should consider separately the circumstances supporting each charge. Defense counsel had urged the jury not to infer Hirsi's guilt by connecting the substances "in his system . . . in his mouth . . . [and] in his car." Hirsi's attorney was asking the jury not to reason that the drugs in his system and in his car were connected to the untested green substance stuck in his teeth. The prosecutor responded to this suggested approach to the evidence, countering, "[T]here is absolutely no reason that you are obligated to not look at the evidence in its entirety," and, "The only reason they ask you to separate [the evidence] is to deter you from looking at the factual evidence as a whole, all of the evidence." The argument was not an impermissible, generalized swipe at the way defense attorneys argue or a generalized disparagement of the type of argument raised. It was instead a point-to-point rebuttal to the contentions of Hirsi's counsel and, as such, it was the prosecutor exercising his "right to fairly meet the arguments of the defendant." *State v. Martin*, 773 N.W.2d 89, 106 (Minn. 2009).

We understand the prosecutor's remark regarding Hirsi's impaired-driving concession in this context. We consider a prosecutor's closing argument in its entirety rather than focusing on "selective phrases or remarks that may be taken out of context or given undue prominence." *State v. Waiters*, 929 N.W.2d 895, 901 (Minn. 2019) (quotation omitted). The prosecutor was emphasizing that the evidence most relevant to the impaired-driving charges remained relevant to the drug-possession charge. The prosecutor was not disparaging Hirsi's trial strategy; he was urging the jury to consider all relevant evidence.

We hold that the challenged argument was not prosecutorial misconduct. We therefore have no need to consider any potential resulting prejudice.

Affirmed.