

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1281**

State of Minnesota,
Respondent,

vs.

Tialee Marie Grassini,
Appellant.

**Filed September 6, 2022
Affirmed
Reyes, Judge**

Isanti County District Court
File No. 30-CR-19-156

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

Jeffery R. Edblad, Isanti County Attorney, Jacob J. Kimmes, Assistant County Attorney,
Cambridge, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues on direct appeal that she is entitled to a new trial because the prosecutor committed misconduct during her jury trial for gross-misdemeanor driving while intoxicated (DWI). We affirm.

FACTS

Respondent State of Minnesota charged appellant Tiale Marie Grassini with one count of gross-misdemeanor DWI. During the jury trial, appellant, the arresting officer, and a Bureau of Criminal Apprehension (BCA) analyst testified.

The officer testified that at approximately 9:30 a.m. on the date of the offense, having responded to a call, he found an unoccupied vehicle in a snowbank ditch that had hit a fire hydrant. He searched the vehicle and found multiple sealed single-serving bottles of whiskey. After further investigation, he discovered that the vehicle belonged to appellant.

The officer then went to appellant's residence. Once there, he spoke with appellant about the incident. He observed that she smelled like alcohol, slurred her speech, had watery eyes, and had trouble balancing. He asked appellant if she had consumed any alcohol since the incident, and appellant replied that she had not. Having concluded that appellant had been intoxicated while driving, the officer arrested her. The officer later obtained a warrant to have her blood drawn, which, according to the BCA analyst's testimony, showed that at approximately 12:35 p.m., appellant had an alcohol concentration of 0.322.

During the officer's testimony, the state inquired "how [the officer] knew" that he was speaking with appellant when he arrived at her residence. The officer replied that he had "dealt with her numerous times since [he has] started." Appellant promptly objected. The district court sustained the objection and gave the jury a curative instruction.

Next, appellant testified that she had been driving home after working an overnight shift, and given the snowy weather conditions, her vehicle spun out into a ditch when she made a right-hand turn. Appellant then walked to her house “two blocks away” to call a family member for help. The officer arrived approximately 45 minutes later, during which time appellant claimed that she had consumed one pint of Fireball whiskey. Appellant testified that she told the officer that she “had started drinking when [she] got home,” but not before or while driving.

Following the trial, the jury found appellant guilty of gross-misdemeanor DWI, in violation of Minn. Stat. § 169A.20, subd. 1(1) (2018).¹ The district court convicted appellant of the DWI offense, imposed a 365-day jail sentence with 305 of those days stayed, and placed appellant on probation for four years. This appeal follows.

DECISION

The prosecutor’s misconduct was harmless beyond a reasonable doubt.

Appellant argues that the prosecutor committed misconduct that is not harmless beyond a reasonable doubt. We conclude that the prosecutorial misconduct was harmless beyond a reasonable doubt.

When reviewing objected-to prosecutorial misconduct, as is the case here, Minnesota appellate courts use a two-tiered approach that depends on the severity of the misconduct. *See State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974). In cases involving serious prosecutorial misconduct, appellate courts consider whether the misconduct was

¹ Appellant also has two prior DWI convictions from 2013 and 2016.

harmless beyond a reasonable doubt, but in cases involving less serious misconduct, they consider whether the misconduct likely played a substantial part in influencing the jury to convict. *Id.* Yet it is unclear whether the two-tiered test still applies. *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012). Recently, the supreme court has applied the standard for serious misconduct and concluded that if the misconduct is harmless under that standard, there is no reason to address the standard for less serious misconduct because it could not be satisfied. *Id.*

A. The prosecutor committed misconduct.

Appellant argues that the prosecutor committed misconduct when it elicited inadmissible testimony from the officer that the officer knew appellant from having dealt with her on prior occasions and failed in its duty to prepare the officer. We agree.

A prosecutor engages in misconduct when they violate clear or established standards of conduct, including rules, laws, or orders by a district court. *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008). Attempting to elicit *or actually* eliciting inadmissible evidence may constitute prosecutorial misconduct. *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). “Minnesota law is crystal clear . . . [that] the state has an absolute duty to prepare its witnesses to ensure that they are aware of the limits of permissible testimony.” *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003). The state must prepare its witnesses so they “will not blurt out anything that might be inadmissible and prejudicial.” *State v. Carlson*, 264 N.W.2d 639, 641 (Minn. 1978).

The state’s obligation is especially true of officer witnesses. *See State v. Hogetvedt*, 623 N.W.2d 909, 915-16 (Minn. App. 2001) (stating that officer’s improper testimony may

unduly influence jury and require new trial), *rev. denied* (Minn. May 29, 2001). In *State ex rel. Black v. Tahash*, a police officer testified that he had asked the defendant “when was the last time he saw [the alleged accomplice], and he stated that he had only seen him once since leaving Stillwater.” 158 N.W.2d 504, 505 (Minn. 1968). The supreme court concluded that the officer’s remark was grounds for a mistrial, even though the jury needed to connect the city of Stillwater and the prison located there to infer that the defendant had a previous criminal conviction. *Id.* at 506.

At the trial here, the officer testified to the following on direct examination:

STATE:	And were you able to make contact with [appellant at her residence]?
OFFICER:	I was, yes.
STATE:	Do you recall how you knew it was her?
OFFICER:	<i>I’ve dealt with her numerous times since I’ve started.</i>

(Emphasis added.) However, the district court’s pretrial order excluded testimony and other evidence of appellant’s incarceration or convictions “prior to, unrelated to, or in conjunction with this incident” and other *Spreigl*² evidence. It also accepted appellant’s admission to her two prior DWI convictions and ordered evidence of those prior convictions inadmissible. *See State v. Clark*, 375 N.W.2d 59, 61-62 (Minn. App. 1985) (holding that district courts “must accept an unequivocal judicial admission of a prior DWI and let the defendant remove from the jury the issue of whether [s]he had prior DWI convictions”). While the officer did not explicitly testify that appellant has prior DWI or

² *Spreigl* evidence is evidence of prior crimes or other bad acts. *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)).

related convictions or other bad acts, his remark could reasonably cause a jury to infer as much. We therefore conclude that the prosecutor committed misconduct. As a result, because appellant objected to the officer's improper remark, we next consider whether the misconduct was harmless beyond a reasonable doubt.

B. The prosecutor's misconduct was harmless beyond a reasonable doubt.

Appellant argues that the prosecutor's misconduct substantially influenced the jury to convict. We conclude that the prosecutor's misconduct did not affect the jury's verdict even under the higher standard of harmless beyond a reasonable doubt.

If the misconduct is harmless beyond a reasonable doubt, then the party is not entitled to a new trial. *Carridine*, 812 N.W.2d at 146. "An error is harmless beyond a reasonable doubt only if the verdict rendered was surely unattributable to the error." *State v. Morton*, 701 N.W.2d 225, 233 (Minn. 2005). A new trial will only be granted based on objected-to prosecutorial misconduct if the misconduct, "viewed in the light of the whole record, appears to be inexcusable and so serious and prejudicial that the defendant's right to a fair trial was denied." *State v. Palubicki*, 700 N.W.2d 476, 489 (Minn. 2005) (quotation omitted).

Factors to consider when determining whether misconduct is harmless beyond a reasonable doubt include (1) the frequency of the improper remarks, *see State v. Mayhorn*, 720 N.W.2d 776, 786 (Minn. 2006), (2) whether cautionary jury instructions were given, *see id.*, and (3) the strength of the state's other evidence, *see Caron*, 218 N.W.2d at 200.

First, the prosecutor made only one objected-to improper remark. Second, the district court sustained appellant's objection and immediately instructed the jury to

disregard the remark, which “significantly reduced the impact of the state’s improper question[] on the jury verdict.” *See State v. Dobbins*, 725 N.W.2d 492, 509 (Minn. 2006); *State v. McDaniel*, 777 N.W.2d 739, 750 (Minn. 2010) (“[C]orrective instructions by the [district] court can cure prosecutorial error.”). Third, the record strongly supports that appellant had driven her vehicle while intoxicated. The officer testified that, approximately 45 minutes after appellant crashed her vehicle into a fire hydrant and left the scene, appellant smelled like alcohol, slurred her words, and exhibited other signs of intoxication. A BCA agent testified that appellant had an alcohol concentration of 0.322 nearly three hours after the incident. Moreover, the officer testified that appellant had told him that she had not consumed alcohol since arriving home but that she had drunk a “little bit” before. Although appellant contradicted that testimony, she made other statements that were unfavorable to her. She testified at length about her history with alcohol abuse, which began at 12 years old, and that she has been in *and is currently in* a treatment facility for her struggles with alcohol. Yet she claimed that on the day of the offense, “[her] drinking wasn’t as bad” because she was working. Furthermore, appellant herself referenced her prior convictions in her own testimony: “[the officer] told me that I was under arrest . . . because I smelled like alcohol and my priors.” As a result, on this record, we conclude that the jury’s verdict was surely unattributable to the officer’s improper remark and was therefore harmless beyond a reasonable doubt.

Affirmed.