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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0710**

State of Minnesota,
Respondent,

vs.

Bashir Abdirashid Mohamed,
Appellant.

**Filed August 5, 2024
Affirmed
Bratvold, Judge**

Blue Earth County District Court
File No. 07-CR-22-3252

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Patrick McDermott, Blue Earth County Attorney, Mankato, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant asks this court to reverse his judgments of conviction for second-degree assault and unlawful possession of a firearm. Appellant argues that the district court abused its discretion by overruling his objection and allowing the prosecuting attorney to

cross-examine appellant's character witness with specific instances of criminal conduct. In his pro se brief, appellant also argues that the prosecuting attorney committed misconduct during the direct examination of the witness who testified that appellant shot him. We first conclude that the district court did not abuse its discretion during the cross-examination of appellant's character witness because the specific instances were relevant to the character trait at issue. We also conclude that any alleged misconduct by the prosecuting attorney in asking a single leading question was harmless. Thus, we affirm.

FACTS

The following summarizes the evidence received during the jury trial along with relevant procedural history. Appellant Bashir Abdirashid Mohamed lived in an apartment building in Mankato in which M.H. also lived. The two men were friends. On September 15, 2022, Mohamed and M.H. were socializing in M.H.'s apartment and drinking alcohol. Mohamed and M.H. argued, Mohamed threw M.H.'s ring, and M.H. took Mohamed's cell phone. Mohamed then left M.H.'s apartment.

The next day, Mohamed returned to M.H.'s apartment and asked for his cell phone back. The two argued again. M.H. had a knife, and Mohamed had a small 9mm black gun. After some back and forth, Mohamed and M.H. agreed to fight. They walked down the hall of the apartment building and entered the stairwell. Mohamed turned around and shot M.H, who was hit in his upper leg near his left hip. Mohamed then ran away. Police responded to a 911 call; M.H. told responding officers that Mohamed shot him. Law enforcement apprehended Mohamed the next day.

Respondent State of Minnesota charged Mohamed with attempted second-degree murder under Minn. Stat. § 609.19, subd. 1(1) (2022) (count one), possession of a firearm by an ineligible person on the day of the shooting, September 16, under Minn. Stat. § 624.713, subd. 1(2) (2022) (count two), second-degree assault with a dangerous weapon under Minn. Stat. § 609.222, subd. 1 (2022) (count three), and possession of a firearm by an ineligible person on the day Mohamed was apprehended, September 17, under Minn. Stat. § 624.713, subd. 1(2) (count four).

This case was tried to a jury over three days in December 2022. On the first day of trial, Mohamed stipulated that he was ineligible to possess a firearm. The state offered testimony, as summarized above, from M.H. and an apartment-building neighbor who was present for some events just before the shooting.

The state also called a law-enforcement officer who testified that, while executing a search warrant at the apartment building, he discovered a bullet hole in the wall of the hallway near the stairway where the shooting occurred. A janitor's closet was behind the hole, and when he searched inside the closet, he found "a shot projectile from a bullet cartridge," which was later submitted for testing. A detective testified that he searched Mohamed's apartment and found Hornady 9mm Luger ammunition. During a search of the vehicle that Mohamed was occupying when he was arrested, law enforcement found a loaded .38 Taurus revolver.

The state also called a witness from the Minnesota Bureau of Criminal Apprehension (BCA witness), who testified that the shot projectile found in the janitor's closet "was consistent with having seated in a 9mm Luger caliber cartridge," the type of

ammunition found in Mohamed's apartment. The BCA witness also testified that Mohamed's DNA "could not be excluded" from the DNA sample found on the Taurus revolver. She added that the "the bullet [that injured M.H.] was not fired from [the Taurus] revolver."

Mohamed called two witnesses in his case in chief—a neighbor, M.G., whose testimony is at issue on appeal and summarized below, and Mohamed, who testified in his own defense. Mohamed testified that, as he walked away from M.H. and toward the stairwell, he heard M.H. following him and then heard a gunshot as he neared the stairwell. He ran away because he thought someone was shooting at him.

The jury found Mohamed guilty of possession of a firearm by an ineligible person on the day of the shooting, September 16, (count two) and second-degree assault (count three). The jury found Mohamed not guilty of attempted murder (count one) and possession of a firearm by an ineligible person on the day he was apprehended, September 17 (count four). Mohamed was sentenced to a 60-month prison term.

Mohamed appeals.

DECISION

I. The district court did not abuse its discretion by allowing the state to cross-examine Mohamed's character witness with specific instances of conduct.

On appeal, Mohamed argues that the district court erred when it overruled his attorney's objection and allowed the prosecuting attorney to cross-examine his character witness, M.G., by asking about Mohamed's prior convictions. The state argues that its cross-examination of M.G. followed the rules of evidence. Before trial, Mohamed notified

the state that he claimed self-defense, and in pretrial motions, Mohamed asked to offer testimony about his reputation for peacefulness from a character witness. The district court granted Mohamed's motion to call a character witness. Although Mohamed withdrew his self-defense claim on the first day of trial, the district court and the parties agreed that Mohamed could call the character witness.

A. Direct and Cross-Examination of M.G.

Mohamed called M.G., his neighbor, as a character witness. M.G. testified that she lived in the same apartment building as Mohamed and first met Mohamed by the building elevator. They talked about the kitten he was carrying in a fanny pack. M.G. testified that, after meeting Mohamed, she would talk to him "any time [they] saw each other" about "[e]veryday stuff." When asked, "How is [Mohamed] to interact with?" M.G. testified that he was "[p]leasant," "[a]lways polite," and "very nice."

Mohamed's attorney then asked, "Without getting into any specifics . . . what do you think of his character, is he fairly peaceful?" M.G. responded, "Anytime I've ever come across [Mohamed], which was quite often living there, he was always pleasant, always nice, always soft spoken, well demeanor, good morning, hello, how is it going, how is your day. Yeah, very nice to interact with." M.G. also testified about her observations on the day of the shooting.

On cross-examination, the prosecuting attorney asked M.G. about her opinion of Mohamed's character, including questions about Mohamed's prior convictions:

Prosecuting Attorney: And you testified to, that it is your opinion that he's peaceful essentially and pleasant based on your interactions with him in that apartment building.

M.G.: Always with me.

Prosecuting Attorney: Okay. Are you aware that on April 14, 2010, . . . he was found guilty in King County, Washington, for robbery in the second degree?

M.G.: I am not.

Prosecuting Attorney: Are you aware that on June 17, 2014, he was found guilty in King County, Washington, for robbery in the first degree?

M.G.: I was not.

Mohamed's Attorney: Objection, Your Honor, can we approach?

A sidebar discussion followed, and then the district court excused the jury so it could hear additional arguments outside its presence. Mohamed's attorney objected to any references to Mohamed's prior convictions that exceeded the scope of the district court's related ruling allowing some "sanitized" testimony about Mohamed's felony convictions.¹ After also hearing from the prosecuting attorney, the district court ruled that the prosecuting attorney must "narrow[]" questions to "specific instances of conduct which

¹ Before the trial, the district court ruled that the state could impeach Mohamed with three prior convictions, so long as the questions only referred to the fact of the felony convictions. During Mohamed's cross-examination, the following exchange occurred:

Prosecuting Attorney: Mr. Mohamed you have three prior felony convictions in the last ten years?

Mohamed: Correct.

Prosecuting Attorney: No further questions, Your Honor.

ultimately were adjudicated” but to not go “beyond that with other various police reports.” When Mohamed’s attorney again objected to relevance of the questioning, the district court asked whether “the door has not been open to allow the state to ask these questions?” Mohamed’s attorney stated, “No,” and argued that the state “can ask questions that are, again, relevant to the inquiry pursuant to Rule 405(a).” The district court then discussed giving the jury limiting instructions about the anticipated testimony.

After the jury returned, the prosecuting attorney continued their cross-examination of M.G.:

Prosecuting Attorney: [M.G.], I believe before we took a break there, I had asked about a 2010 incident and you said you are not aware of it, correct?

M.G.: Correct.

Prosecuting Attorney: Are you aware that on June 17, 2014, the defendant was found guilty in King County, Washington, for robbery in the first degree?²

Are you aware that on October 1, 2014, he was found guilty in King County, Washington, for robbery in the first degree and unlawful possession of a firearm in the first degree?

M.G.: I am not. I did not know him back then.

Prosecuting Attorney: Are you aware that on May 15, 2020, he assaulted his ex-girlfriend to the point that she had to grab a gun to protect herself?

M.G.: I was not.

Prosecuting Attorney: And he was found guilty of domestic assault out of that incident, were you aware of that?

M.G.: I was not.

² The transcript does not include an answer to this question.

Prosecuting Attorney: So, knowing these incidents does that change your overall opinion that he is peaceful and pleasant?

M.G.: When I judge somebody it is how they treat me, and we all make mistakes and I know those are big ones, but we've all made mistakes. I judge people on how they treat me. I've seen how he treats animals and that is a big tell for me. So, how he treated me is how I judge him.

Prosecuting Attorney: Okay, I just want to make sure I understand your testimony. So, your opinion is still that he is peaceful?

M.G.: In my encounters with him, yes.

Mohamed's attorney asked questions on redirect, which concluded M.G.'s testimony. The district court immediately instructed the jury to "not consider the incidents as evidence of the defendant's character or conduct except as you may think it reflects on the witness's credibility" and only consider the "specific . . . incidents . . . in testing the witness's knowledge and credibility."³ After M.G. finished testifying, Mohamed moved for a mistrial based on cumulative prejudicial errors, including the state's cross-examination of M.G. The district court denied the motion.

After both sides rested, the district court gave its final jury instructions. As for character evidence, the district court stated that "[t]he prosecutor's inquiry of specific

³ This largely mirrors the pattern jury instruction for considering impeachment evidence of a witness's or defendant's prior convictions, in which a district court instructs the jury:

The evidence concerning a prior conviction of (the defendant) [or name of witness] is admitted only for your consideration in deciding whether (the defendant) [or name of witness] is telling the truth in this case. You must not consider this conviction as evidence of the defendant's character or conduct except as you may think it reflects on (believability), (credibility).

10 *Minnesota Practice*, CRIMJIG 2.02 (2015).

incidents of conduct is admitted only for your consideration in testing the witness' knowledge and credibility" and that the jury was "not [to] consider the incidents as evidence of Mr. Mohamed's character or conduct except as you may think it reflects on the witness' credibility."

B. Analysis

"Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except . . . [e]vidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same." Minn. R. Evid. 404(a)(1). "In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion." Minn. R. Evid. 405(a). "On cross-examination, inquiry is allowable into relevant specific instances of conduct." *Id.*

"[T]he specific instance of conduct brought out on cross-examination must be relevant to the character trait the accused has offered." *State v. Leutschaft*, 759 N.W.2d 414, 424 (Minn. App. 2009), *rev. denied* (Minn. Mar. 17, 2009). To be relevant, evidence must have "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Based on *Leutschaft* and rule 401, we conclude that a specific instance of conduct under rule 405 must have "any tendency to make" the character trait more or less likely than without the introduction of the specific instance of conduct. *See* Minn. R. Evid. 401. Still, even relevant evidence "may be excluded if its probative

value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403.

“Evidentiary rulings rest within the sound discretion of the district court,” and appellate courts “will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “[W]hen dealing with a claim of erroneous admission of evidence . . . the question is whether there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict” *State v. Post*, 512 N.W.2d 99, 102 n.2 (Minn. 1994) (emphasis omitted); accord *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011). In other words, “if there is a reasonable possibility that the verdict might have been more favorable to the defendant if the evidence had not been admitted, then the error in admitting the evidence was prejudicial error.” *Post*, 512 N.W.2d at 102 n.2. When an error does not implicate a constitutional right, the defendant bears the burden of proving that a new trial is required because the error substantially influenced the jury’s verdict. See *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009).

Mohamed’s brief to this court acknowledges “that he put his character at issue at his trial.” Mohamed argues the district court abused its discretion by overruling his objection to the prosecuting attorney’s cross-examination of M.G. because the specific instances of conduct—his prior convictions—were “not relevant to the character trait brought out on direct examination.” He argues that M.G. “testified that [Mohamed] was pleasant, polite, and nice,” but “never used the words ‘peaceful’ or ‘nonviolent.’” He urges that when the

state cross-examined M.G. on Mohamed's prior convictions for robbery, domestic assault, and firearm possession, it "exceeded the bounds of rule 405(a)."

The state counters that M.G. testified about Mohamed's character for peacefulness, pointing out that, in pretrial motions, Mohamed stated the character trait at issue was peacefulness and that, at trial, M.G. was specifically asked about Mohamed's reputation for peacefulness. The state argues that, "[a]lthough M.G. did not use the words 'peaceful' or 'nonviolent,' . . . [her] testimony nonetheless reflects her opinion on [Mohamed]'s character for peacefulness."

We agree with the state that M.G. testified about Mohamed's character for peacefulness. Mohamed's attorney asked M.G., "[H]ow is [Mohamed] to interact with?"—to which she responded that he was "pleasant," "[a]lways polite," and "very nice." Mohamed's attorney also asked, "Without getting into any specifics . . . what do you think of his character, *is he fairly peaceful?*" (Emphasis added.) M.G. responded, "Anytime I've ever come across [Mohamed], which was quite often living there, he was always pleasant, always nice, always soft spoken, well demeanor, good morning, hello, how is it going, how is your day. Yeah, very nice to interact with." Therefore, we reject Mohamed's argument that M.G. only testified to Mohamed's politeness.

Mohamed relies on *Leutschaft* and argues that Mohamed's prior convictions were not relevant to M.G.'s "specific and limited character trait testi[mony]" that he was pleasant, polite, and nice. Leutschaft appealed his second-degree-assault conviction for pointing a handgun at a driver he passed on the highway and argued that the prosecuting attorney committed misconduct by improperly cross-examining Leutschaft about specific

instances relating to his character. *Leutschaft*, 759 N.W.2d at 417, 424. During trial, Leutschaft testified about his history of owning guns and, specifically, his “sensitivity to gun safety,” including his belief that “every gun should be treated as if it were loaded and should be pointed in a safe direction.” *Id.* at 423 (quotation marks omitted). The state then cross-examined Leutschaft, who testified that he did not have a permit to carry a gun even though he knew that he needed to have one. *Id.* at 423-24.

We first determined that, because Leutschaft offered character evidence of his “adherence to gun safety,” the state was allowed to ask about specific instances of conduct. *Id.* at 424. We concluded that the prosecuting attorney erred by asking about Leutschaft’s lack of a gun permit; “[t]he character trait Leutschaft offered was that of safety in handling firearms,” and whether Leutschaft carried a gun without a permit was not relevant because doing so would not make it more or less likely that Leutschaft handled the gun as charged. *Id.* But we also concluded that the prosecuting attorney’s error likely did not have a significant effect on the jury’s verdict. *Id.*

The state’s cross-examination of M.G. differs from the cross-examination analyzed in *Leutschaft*. Leutschaft testified about his adherence to gun safety, and the prosecuting attorney cross-examined him on his lack of a gun permit. *Id.* These are two different topics. In this case, Mohamed’s attorney and the prosecuting attorney questioned M.G. about the same topic. Mohamed’s attorney examined M.G. about Mohamed’s character for peacefulness, asking, “[I]s [Mohamed] fairly peaceful?” The prosecuting attorney cross-examined M.G. about Mohamed’s prior convictions, which are specific instances relevant to Mohamed’s character for peacefulness.

Mohamed's brief to this court does not argue that the convictions are not relevant to peacefulness. That M.G.'s testimony used the words "polite" and "nice" does not change the fact that Mohamed's direct examination elicited testimony on Mohamed's character for peacefulness. We conclude that the district court did not abuse its discretion by allowing the state to cross-examine M.G. about specific instances of conduct—here, Mohamed's prior convictions for domestic assault, robbery, and unlawful possession of a firearm—because these instances were relevant to Mohamed's character for peacefulness.

Mohamed next argues that the specific-instance impeachment of M.G. was unfairly prejudicial under rule 403 and "undoubtedly" impacted the jury for three reasons. First, when the state impeached Mohamed with his prior convictions, the convictions were "sanitized" with no reference to the crime of conviction, but when the state questioned M.G., it referred to the actual crimes of conviction. Second, because the state referred to the crimes of conviction, the jury would infer Mohamed had a propensity for violence even with a limiting instruction. Third, the state's other evidence in support of Mohamed's conviction "had holes" because there were no witnesses to the shooting other than M.H. and Mohamed, the gun that shot M.H. was not recovered, and M.H. also had a weapon.

Because we conclude that the district court did not abuse its discretion by allowing the specific-instance impeachment, we need not consider Mohamed's prejudicial-error arguments. *See Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011) (noting that if any requirement of the test is not satisfied, we need not address the remaining elements). But in an abundance of caution and because Mohamed also raises rule 403, we consider the prejudicial effect of the specific-instance impeachment of M.G. Mohamed bears the burden

of proving that a new trial is required because the error substantially influenced the jury's verdict. *See Sanders*, 775 N.W.2d at 887. We conclude that Mohamed's prejudice argument fails.

First, the state's cross-examination of M.G. about Mohamed's prior convictions was only about 1.5 pages of transcript.⁴ Second, M.G.'s opinion of Mohamed was not shaken, and she did not change her testimony about Mohamed's character for peacefulness. Third, the district court gave limiting instructions after M.G. testified and again before jury deliberations. The district court specifically instructed the jury to "not consider the incidents as evidence of the defendant's character or conduct except as you may think it reflects on the witness's credibility" and only consider the "specific . . . incidents . . . in testing the witness's knowledge and credibility." We assume that the jury followed these instructions. *See Francis v. State*, 729 N.W.2d 584, 590 (Minn. 2007) (concluding that the state's questioning of a defense character witness regarding the defendant's specific prior acts of violence was not prejudicial because "the district court confined the prosecutor's cross-examination of the defense character witness to the scope of the direct examination and also provided limiting instructions to the jury").

⁴ Mohamed argues that "the questions regarding [M.G.]'s knowledge about the particular facts of the domestic assault—that [Mohamed] allegedly 'assaulted his ex-girlfriend to the point that she had to grab a gun to protect herself'—were inflammatory and unfairly prejudicial." The prosecuting attorney asked M.G., "Are you aware that on May 15, 2020, [Mohamed] assaulted his ex-girlfriend to the point that she had to grab a gun to protect herself?" Even if we assume that this inquiry went beyond the scope of appropriate impeachment under rule 405(a), we still conclude that any error was not prejudicial.

Fourth, the state's case rested on M.H.'s testimony, and it is unlikely that the specific-instance impeachment of M.G. affected the jury's verdict. Both M.H. and Mohamed testified, giving the jury ample opportunity to assess their credibility and determine whether Mohamed assaulted M.H. and possessed a firearm on the day of the incident. Thus, even if we assume that the district court abused its discretion by allowing the state to cross-examine M.G. about specific instances including Mohamed's prior convictions, we conclude that any error did not substantially influence the jury's verdict.

II. The prosecuting attorney did not commit misconduct by asking M.H. a leading question during direct examination.

In his pro se brief, Mohamed argues that the state committed prosecutorial misconduct because the prosecuting attorney asked M.H. a leading question: "And then he shot you?" Mohamed objected to the question, and the district court overruled the objection. The state argues that Mohamed's pro se brief takes this exchange out of context, no misconduct occurred, and any error was harmless.

A. M.H.'s Direct Examination

At trial, the following exchange occurred while the state was conducting its direct examination of M.H.:

Prosecuting Attorney: Okay, so you went down the hallway after you agreed to fight him is that correct?

M.H.: Yeah, once down the stairs it goes down through the hallway.

Prosecuting Attorney: And your understanding was you guys were going to go fist fight, right?

M.H.: Yes.

Prosecuting Attorney: What happened then when you got to the stairs?

M.H.: I was behind him, and he went, started going downstairs, I was opening the door before I had a chance to go down the stairs he went, he turned around and he shot me.

Prosecuting Attorney: I just to make sure I understand this correct. You were by the top of the stairs by the door, is that right?

M.H.: Yes, I was holding the door.

Prosecuting Attorney: And he was a couple steps, a few steps down the door or stairs?

M.H.: Two or three steps.

Prosecuting Attorney: Two or three steps you're saying?

M.H.: We were not that far about I'd say two or three steps down.

Prosecuting Attorney: And then he shot you?

Mohamed's Attorney: Objection.

Prosecuting Attorney: I'm just clarifying.

District Court: It is allowed, overruled. You may answer, Sir.

M.H.: What was the question?

Prosecuting Attorney: And that's when he turned around and shot you?

M.H.: Yes.

B. Analysis

Mohamed argues that the prosecuting attorney's examination of M.H. was "improper under the rules of evidence." Mohamed's pro se brief to this court does not cite a specific rule or any caselaw. We infer that Mohamed relies on Minn. R. Evid. 611(c), which states that "[l]eading questions should not be used on the direct examination of a witness *except as may be necessary to develop the witness' testimony.*" (Emphasis added.)

We first briefly note that the prosecuting attorney's question was "to develop the witness' testimony" in response to M.H.'s testimony about where he was standing at the time of shooting. Minn. R. Evid. 611(c). Therefore, the prosecuting attorney's question likely was not error. Even if we assume that asking one leading question was prosecutorial misconduct, we conclude that the alleged prosecutorial misconduct was harmless error.

Objected-to prosecutorial misconduct is reviewed for harmless error. *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012). The standard for determining whether an error was harmless varies based on the severity of the misconduct. *State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974).⁵ In cases involving "unusually serious prosecutorial misconduct," appellate courts have "required certainty beyond a reasonable doubt that the misconduct was harmless before affirming." *Id.* But "in cases involving less serious prosecutorial misconduct," appellate courts have "applied the test of whether the misconduct likely played a substantial part in influencing the jury to convict." *Id.*

Mohamed's pro se argument fails for two reasons. First, Mohamed's pro se brief does not argue that this ruling substantially affected the jury's verdict. Second, the question and witness testimony merely repeated earlier testimony. The transcript shows that the prosecuting attorney's question led M.H. to briefly repeat testimony that M.H. gave in

⁵ We note that the supreme court has "le[ft] for another day the question of whether the *Caron* two-tiered approach should continue to apply to cases involving objected-to prosecutorial misconduct." *State v. Ramey*, 721 N.W.2d 294, 299 n.4 (Minn. 2006).

response to an earlier nonleading question. Thus, even if we assume prosecutorial misconduct occurred, it was harmless.

Affirmed.