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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A24-1629**

State of Minnesota,  
Respondent,

vs.

Abdirahman Mohamed Abdi,  
Appellant.

**Filed September 2, 2025  
Affirmed  
Harris, Judge**

Clay County District Court  
File No. 14-CR-21-964

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

Brian J. Melton, Clay County Attorney, Megan J. Kelly, Assistant County Attorney,  
Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Joseph McInnis, Assistant Public  
Defender, St. Paul, Minnesota (for appellant)

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

**NONPRECEDENTIAL OPINION**

**HARRIS**, Judge

Appellant argues that his third-degree burglary and theft convictions must be reversed because a retrial, which led to his convictions, was barred by the Double Jeopardy Clauses of the United States and Minnesota Constitutions. He argues that (1) the district

court abused its discretion by sua sponte declaring a mistrial during his first trial without his consent and without a manifest necessity for doing so, and (2) the retrial violated his right against double jeopardy because the prosecutor intentionally provoked the mistrial. We affirm.

## FACTS

In March 2021, respondent State of Minnesota charged appellant Abdirahman Mohamed Abdi with third-degree burglary under Minnesota Statutes section 609.582, subdivision 3 (2020). The complaint alleged that Abdi shoplifted from Walmart and that he did not have permission to be in the store because he was previously given a trespass notice.

Prior to trial, the district court prohibited the state from introducing any evidence about when Abdi received the trespass notice or any prior bad acts. The district court stated:

We are not going to talk about why he was given that trespass notice, and we're not going to talk about what happened when he was given that trespass notice. What the jury can know is that a trespass was provided to Mr. Abdi. I mean, and I don't know how that was given to him, if it was handed to him in person, if it was mailed to him, I'm not sure. But certainly, you can talk about how it was given to Mr. Abdi such that he would have known about it, if that's what the State's trying to prove. But nothing about why he was given [the trespass notice] *or any prior bad acts* is going to come in. That would be highly prejudicial to Mr. Abdi.

(Emphasis added.)

The district court also told the prosecutor to instruct its witnesses not to testify about what led up to the trespass notice. The district court stated that the witnesses were “not to

get into anything other than this situation,” and that it did not “want to hear any information about prior experiences [the witnesses] had with Mr. Abdi.”

During the two-day jury trial, there were four instances in which evidence of Abdi’s prior bad acts was elicited. This caused the district court to sua sponte declare a mistrial on the second, and final, day of trial. The first instance occurred when an officer testified that he knew Abdi from prior interactions. Prior to trial, the prosecutor informed the district court and defense counsel that it intended to elicit testimony from an officer that he was familiar with Abdi, but that the state would “not go any further than that.” The district court gave the prosecutor time to discuss the district court’s rulings prohibiting testimony about Abdi’s prior bad acts with the officer before he testified. On direct examination, the officer testified that he “identified [Abdi] from prior interactions with him, and [he] issued [Abdi] a trespass notice.” The defense objected and moved for a mistrial. The district court denied the mistrial because the officer “did not discuss what those prior interactions were, [or] the nature of those prior interactions,” and noted to the parties that it would be willing to issue a curative instruction. The defense declined the district court’s invitation for a curative instruction.

The state’s next witness was a Walmart asset protection associate. The district court also gave the prosecutor time to discuss the district court’s rulings on Abdi’s prior bad acts before calling this witness. On direct examination, the prosecutor elicited the following testimony:

Q: And what happened when you were at work that day?

A: I know it was about 1:00 or so. I was walking through the soft lines area of the store, so, like clothing, and I had recognized Mr. Abdi in the department.

Q: And how did you – so, you recognized he was in the store?

A: Yes.

Q: And what was particular about that? Why did you specifically see him in the store or what came to your attention regarding that?

A: I know who Mr. Abdi is.

Q: And why do you know who Mr. Abdi is?

A: *From a previous shoplifting.*

(Emphasis added.)

The district court asked the parties to approach and then instructed the jury that it was “not to consider that answer in any way, shape or form.” The district court also told the jury: “Mr. Abdi is not being tried for and may not be convicted of any offense other than the offense for which . . . we are holding this trial for.”

The third instance of inadmissible testimony occurred when, on cross-examination, defense counsel asked the asset protection associate, “what did you say to [Abdi]?” The witness responded, “I said, ‘Abdi,’ like, he knows who I am. I’ve – yeah, I can’t – I’m sorry. I can’t say that. And he knows . . . .” The defense again requested a mistrial because of “three instances from two witnesses discussing prior involvement with Mr. Abdi after the Court’s instruction that witnesses are not to do that.” Defense counsel was concerned “that the whole jury [was] now tainted.”

The district court was concerned that the “jury . . . [was] left with a very keen sense that Mr. Abdi ha[d] previously shoplifted from Walmart.” But the district court also explained:

I think the issue is that the witnesses have been instructed. I don't have any concern that they weren't instructed appropriately. I don't think that the State is attempting to elicit the information in contradiction to the Court's ruling. But the questions that are being asked are confusing the witnesses because they are thinking that they don't know how to answer the question without saying what they want to say. So, the questions have to be very direct.

The next morning, the district court denied the defense's motion for a mistrial. Defense counsel repeated the concern “that the entire jury panel has been tainted and [the jury is] well aware of Mr. Abdi's criminal history.”

Then, the state called its last witness, an officer who responded to a report of a shoplifter at Walmart and found Abdi in a ditch near the store. The previous day, the prosecutor clarified that it intended to introduce four minutes of the officer's 16-minute body-worn camera (BWC) video. The district court instructed the parties to make sure defense counsel was aware of which four minutes of the video the state intended to play for the jury.

During the officer's testimony, the prosecutor introduced the four-minute portion of the BWC video into evidence and played it for the jury. The defense did not object. In the BWC video, an officer tells Abdi, “You just shoplifted at the Cashwise Liquor Store.” The defense objected to this statement as another improper reference to Abdi's prior bad acts.

The district court “questioned how both people who have reviewed th[e] video, [and] agreed to the video coming in, allowed [the inadmissible] information to be in the video.”

After a ten-minute recess, the district court and parties discussed how to proceed. Defense counsel did not renew their previous two mistrial motions, but pointed out that Abdi was on trial for an allegation that he stole from Walmart, not Cashwise. Defense counsel suggested that the officer’s statement could be corrected by acknowledging that the statement about Cashwise was a separate store and a separate allegation. The prosecutor agreed, stating that the officer could clarify that “we are not talking about [the Cashwise] incident. We are talking about a shoplifting from Walmart incident.” The prosecutor acknowledged that this would still point out a prior bad act for the jury, but that it would be the best way to correct the issue, in addition to a curative instruction.

Following this discussion, the district court sua sponte declared a mistrial. The district court explained:

Well, I find that this time, that a mistrial is necessary. I find that the jury has now heard four different references to prior bad acts, one being prior incidents from a law enforcement officer, one being prior shoplifting from the loss prevention person, employee, of Walmart. That person, also referencing Mr. Abdi knows me, and then now, as I indicated earlier, the most blatant reference, which is an officer indicating in the video and referencing that Mr. Abdi had just shoplifted from the Cashwise Liquor Store.

....

There is no possible way, after now the jury hearing this, I can say with a straight face that I have a jury that isn’t prejudiced by this information that . . . was not to be admitted into evidence at this trial.

So, I am left with no other option but to grant – to declare a mistrial. I don’t hear a motion before me, so . . . I’m declaring it myself, and I think quite frankly, it would be a miscarriage of justice to not do it for Mr. Abdi. He has the right to a fair trial, to a jury that is fair and impartial, and I don’t think we are going to have a jury that could give him that fair trial based upon the information that has now been presented to – to them.

In January 2022, Abdi filed a motion to dismiss the charges on double-jeopardy grounds. After a motion hearing, the district court took the matter under advisement.

In March 2022, the district court found Abdi incompetent and informed the parties that the pending motion to dismiss would no longer be under advisement. Two years later, Abdi was found competent. Defense counsel did not contest competency and requested that the matter be set for trial. The jury found Abdi guilty of third-degree burglary and a lesser-included theft offense. The district court sentenced Abdi to 21 months in prison. The sentence was fully satisfied because Abdi had 799 days custody credit for the time he was in custody between the two trials.

Abdi appeals.

## **DECISION**

Abdi argues that his convictions must be reversed because a retrial was barred by the Double Jeopardy Clauses of the United States and Minnesota Constitutions, which protect criminal defendants from multiple punishments and multiple prosecutions. U.S. Const. amend. V; Minn. Const. art. I, § 7; *see also State v. Chavarria-Cruz*, 839 N.W.2d 515, 520 (Minn. 2013); *State v. Schmidt*, 612 N.W.2d 871, 876 (Minn. 2000). We review the district court’s application of the constitutional protection against double jeopardy de

novo. *State v. Gouleed*, 720 N.W.2d 794, 800 (Minn. 2006). But we review the district court’s decision to sua sponte declare a mistrial for an abuse of discretion. *Id.*

Abdi argues that (1) the district court abused its discretion by sua sponte declaring a mistrial during his first trial without his consent and without a manifest necessity for doing so, and (2) the retrial violated his right against double jeopardy because the prosecutor intentionally provoked the mistrial. We address each argument in turn.

**I. The district court did not abuse its discretion by sua sponte declaring a mistrial during Abdi’s first trial.**

If the defendant requests, or consents, to a mistrial, the double-jeopardy clause does not bar a retrial because the defendant is deemed to have waived their double-jeopardy claim. *State v. White*, 369 N.W.2d 301, 304 (Minn. App. 1985), *rev. denied* (Minn. Aug. 20, 1985). If a defendant objects to the mistrial, “double jeopardy bars a second trial unless a ‘manifest necessity’ required the first trial to be terminated.” *State v. Hunter*, 815 N.W.2d 518, 522 (Minn. App. 2012) (quoting *State v. Fuller*, 374 N.W.2d 722, 726 (Minn. 1985) (*Fuller II*)). Here, we conclude that the district court acted within its discretion when it determined a mistrial manifestly necessary.

**A. Abdi did not consent to the mistrial.**

The parties disagree whether Abdi consented to the mistrial. Abdi argues that the totality of the circumstances demonstrate that he did not consent to the mistrial because Abdi never “made an affirmative, fully informed, intelligent decision to consent to the mistrial with the explicit understanding that he could now be tried again.” *State v. Olson*,



609 N.W.2d 293, 300-01 (Minn. App. 2000), *rev. denied* (Minn. July 25, 2000). The state argues that Abdi's consent is implied from the totality of the circumstances.

Whether a defendant consented to a mistrial is a factual question that we review for clear error. *Hunter*, 815 N.W.2d at 522. The defendant need not expressly consent to a mistrial; but consent can be implied from the totality of the circumstances, including whether there was an opportunity to object and an opportunity for the defendant to confer with counsel about the implications of the mistrial. *Olson*, 609 N.W.2d at 300-02; *White*, 369 N.W.2d at 304.

When considering the totality of these circumstances, we conclude that Abdi did not consent to the mistrial. Abdi's consent could be implied from some circumstances. For example, defense counsel had moved for two mistrials based on the same issue the previous day. And when the district court denied the mistrial, defense counsel stated they were "surprised by the Court's ruling that there [was] not a mistrial, given the three instances." Defense counsel "firmly believe[d] that the entire jury panel ha[d] been tainted and [that] they [were] well aware of Mr. Abdi's criminal history." The district court then informed the parties that another similar instance may "tip the scales the other way," meaning it may grant a mistrial. And after the district court sua sponte declared the mistrial, defense counsel did not expressly object or explain why they no longer believed the jury was "tainted," despite having the opportunity to do so.

But the defendant's "failure to object to a mistrial, may not, standing alone, constitute consent." *Olson*, 609 N.W.2d at 300. After the fourth instance, defense counsel did not renew their request for a mistrial, but offered an alternative remedy, explaining that

the situation could be “potentially corrected.” The district court also took a ten-minute recess, during which defense counsel could have discussed the implications of a mistrial with Abdi, but the record does not demonstrate whether this happened. And there was no discussion on the record of whether the state intended a retrial. *Hunter*, 815 N.W.2d at 522.

Overall, the totality of the circumstances reflect that Abdi asserted that he wanted to continue with trial. The district court appeared to recognize this, when it explained, “I don’t hear a motion before me, so . . . I’m declaring it myself, and I think, quite frankly, it would be a miscarriage of justice to not do it for Mr. Abdi.” And the record does not show “that defense counsel understood that the district court and prosecutor intended a retrial.” *Id.* (quotation omitted). Therefore, we conclude that Abdi did not consent to the mistrial and did not waive his double-jeopardy claim.

**B. The district court did not abuse its discretion by determining a mistrial was manifestly necessary.**

Abdi argues that because he did not consent to the mistrial, the district court abused its discretion by declaring a mistrial when there was no manifest necessity for doing so. A “manifest necessity” means “[a] high degree of necessity—not absolute necessity.” *State v. Long*, 562 N.W.2d 292, 296 (Minn. 1997). “The manifest-necessity standard is flexible and fact intensive, and seeks to achieve fairness for the prosecution, the defendant, and the public interest.” *State v. Roeschelein*, 776 N.W.2d 480, 484 (Minn. App. 2009) (quotation omitted). A district court acts within its discretion when it engages in a “thoughtful and

thorough evaluation” of the less drastic alternatives and the defendant’s interest in having the issue decided in one trial. *Long*, 562 N.W.2d at 297-98.

Abdi argues that the district court abused its discretion by sua sponte declaring a mistrial because the inadmissible prior bad acts evidence was not prejudicial to the defense, and the district court failed to consider less drastic alternatives and Abdi’s interest in having the allegations against him concluded in a single proceeding. We are unpersuaded.

The record shows that the district court thoughtfully considered Abdi’s rights and alternatives before declaring a mistrial. Before making its decision, the district court took a recess to consider how to proceed and gave both parties the opportunity to make a record. The district court ultimately determined a mistrial was necessary because the jury heard four different references to Abdi’s prior bad acts, an issue present throughout the trial, and Abdi would no longer have a fair trial. The district court explained:

There was no objection to the video. Everyone agreed and this was after – this morning, the Court was very clear that were – I thought at that point, those three incidences that had already happened could be cured with an instruction and we could move forward, and [defense counsel], you disagreed at that point, quite frankly, and you said the jury was tainted.

There is no possible way, after now the jury hearing this, I can say with a straight face that I have a jury that isn’t prejudiced by this information that . . . was not to be admitted into evidence at this trial.

The record reflects that the district court’s decision was not made “rashly or altogether without consideration of alternatives.” *Gouleed*, 720 N.W.2d at 802. The district court considered the parties’ arguments but disagreed with their suggestions and explained its decision on the record. Although Abdi now argues that the prejudice was

minimal because Abdi's defense was based on whether he understood the trespass notice and Abdi had an interest in resolving the matter in a single proceeding, "[t]he belief that another judge might have proceeded in a different fashion does not render one trial judge's declaration of mistrial error." *Long*, 562 N.W.2d at 297-98. Based on this record, we conclude that the district court did not abuse its discretion by declaring a mistrial.

**II. Abdi's retrial did not violate his right against double jeopardy because the state's conduct did not provoke the mistrial.**

The federal double-jeopardy clause bars retrial when "the error that prompted the mistrial is intended to provoke a mistrial or is motivated by bad faith or undertaken to harass or prejudice the defendant." *Oregon v. Kennedy*, 456 U.S. 667, 670 (1982). The Minnesota double-jeopardy clause bars retrial when, "the mistrial resulted from governmental misconduct intended to provoke the mistrial request." *Fuller II*, 374 N.W.2d at 726).

Abdi argues that the second trial violated his right against double jeopardy because the prosecutor provoked, either intentionally or through gross negligence constituting bad faith, the district court into declaring a mistrial. Specifically, he argues that the "objective facts and circumstances" establish that the state "sought to circumvent the [district] court's ruling excluding Abdi's prior bad acts." Abdi also argues that a retrial allowed the state to use surveillance video in the second trial that was excluded from the first trial because of a discovery violation.

While the prosecutor's conduct raises concern, the record does not establish that the conduct was intentional. The district court did not find that the prosecutor provoked the

mistrial or that the prosecutor's conduct was intentional. Nothing in the record contradicts this conclusion. Like *Fuller II*, the state warned its witnesses before they testified about the district court's ruling and thus "had no reason to expect that [its] questions would elicit the inadmissible evidence. Additionally, defense counsel did not object to the question[s], only to the answers." 374 N.W.2d at 727.

Regarding the fourth instance, the district court noted that "there was no objection to the video" before it was played for the jury. Defense counsel admitted to viewing the video before it was played and did not object. Defense counsel also admitted to having difficulty keeping Abdi's multiple open shoplifting files organized. And the district court admonished both parties, stating "if you're going to trial, you need to review every last piece of evidence and you need to be prepared, and you need to be prepared for any ruling that the Court gives you."

In sum, the record shows that the prosecutor's conduct was inadvertent or negligent, but it does not demonstrate that the prosecutor intentionally provoked a mistrial. *See, e.g., State v. Barnes*, 618 N.W.2d 805, 814 (Minn. App. 2000) (concluding that a retrial is not barred unless the misconduct was committed with the intent to provoke a mistrial and that there was "no indication that the prosecutor's apparently inadvertent pretrial discovery violation [of failing to disclose police reports to the defense] was intended to provoke a mistrial"), *rev. denied* (Minn. Jan. 16, 2001); *State v. Schroepfer*, 416 N.W.2d 491, 492-94 (Minn. App. 1987) (declining to bar the defendant's retrial on double-jeopardy grounds when the prosecutor's misconduct was merely negligent and did not rise to the level of gross negligence).

Abdi argues that, even if the prosecutor's conduct were not intentional, we should apply the gross-negligence-constituting-bad-faith standard described in *State v. Fuller*, 350 N.W.2d 382 (Minn. App. 1984) (*Fuller I*), because the prosecutor repeatedly violated the same court order. Abdi argues that the state's misconduct here "far exceeds" that in *Fuller II* and *Schroepfer*. The Minnesota Supreme Court has not decided whether Minnesota's double-jeopardy clause bars retrial when the prosecutor's conduct is grossly negligent and constitutes bad faith. *Fuller II*, 374 N.W.2d at 727. We leave to the supreme court the question whether to interpret the Minnesota Constitution in the manner discussed in *Fuller II*. See *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *rev. denied* (Minn. Dec. 18, 1987). And, as discussed above, the record does not support Abdi's argument that the prosecutor's conduct was more than negligent. Because the record does not show that the prosecutor provoked the mistrial during Abdi's first trial, double jeopardy did not bar retrial.

**Affirmed.**