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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1445**

State of Minnesota,
Respondent,

vs.

Lazarous Lazaro Thomas,
Appellant.

**Filed September 8, 2026
Affirmed
Beane, Judge**

Blue Earth County District Court
File No. 07-CR-23-2677

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

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

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Beane, Presiding Judge; Smith, Tracy M., Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

BEANE, Judge

Appellant Lazarous Lazaro Thomas challenges his conviction, following a court trial, for first-degree criminal sexual conduct. Thomas argues that the district court's

comments and questions during trial interfered with his constitutional right to an impartial judge and, alternatively, that he is entitled to an additional 96 days of custody credit. Thomas also raises several issues in a pro se supplemental brief. We affirm.

FACTS

In 2015, the victim in this case, who was 14 years old at the time, was sexually assaulted by a man she did not know who entered her bedroom through a window while she was asleep. She called 911 after the assault, and officers from the Blue Earth Police Department (the department) arrived shortly thereafter. She then went to the hospital for a sexual-assault examination, during which multiple DNA swabs were collected from her body. The samples were secured by law enforcement and stored in evidence at the department.

The samples collected during the victim's sexual-assault exam were not sent to the Minnesota Bureau of Criminal Apprehension (BCA) for DNA testing until October 2021, when the department received funds to address untested evidence kits. After testing the samples in May 2022, the BCA concluded that two samples contained the DNA profile of an unidentified male. A month later, the unidentified male DNA profile was matched to DNA samples in Minnesota's DNA database and the National DNA Index System.

At some point after that testing was completed, the BCA sent the reports from its DNA testing to the department. The department assigned an officer to the case in early 2023, and in March 2023, that officer reviewed the BCA report—which identified Thomas as the source of male DNA in the samples from the victim's sexual-assault exam—and obtained a search warrant to collect a buccal swab from Thomas. The BCA tested Thomas's

saliva sample and, in July 2023, concluded that it matched the DNA profile found in the samples taken from the victim's body after the assault. Respondent State of Minnesota then charged Thomas with four counts of criminal sexual conduct: first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivision 1(c) (2014); second-degree criminal sexual conduct under Minnesota Statutes section 609.343, subdivision 1(c) (2014); third-degree criminal sexual conduct under Minnesota Statutes section 609.344, subdivision 1(b) (2014); and fourth-degree criminal sexual conduct under Minnesota Statutes section 609.345, subdivision 1(b) (2014). Thomas waived his right to a jury trial, and the case proceeded to a court trial.

During the three-day trial, the state presented testimony from several witnesses, including the victim, several police officers who participated in the investigation, the nurse who performed the sexual-assault investigation of the victim, and the BCA forensic scientists who tested the DNA samples and analyzed the results. Relevant here, BCA forensic scientist G.F. testified about the procedures used by the BCA to test the samples collected during the victim's sexual-assault exam. Then another BCA forensic scientist, B.K., testified regarding her interpretation of the results of the DNA testing performed by G.F.

Thomas's theory of defense seemed to shift during trial. In their¹ opening statement, defense counsel stated that "Thomas has not, at this point, denied the intercourse" and that they intended to present "a defense of mistake of age." On the second day of trial, defense

¹ Thomas was represented by two attorneys at trial. Since their identities are irrelevant to the issues on appeal, we do not distinguish between them.

counsel began cross-examining G.F. regarding the DNA test results and the adequacy of the BCA's DNA testing procedures. The district court interrupted this line of questioning and instructed the attorneys to approach the bench. The following discussion ensued:

THE COURT: When you did your opening statement, you conceded sexual intercourse or sexual contact. You said . . . in your opening statement that [Thomas] initially denied it in an interview during the investigative process, but he's seen pictures, it jogged his memory, and he doesn't deny the contact.

DEFENSE COUNSEL: Yes.

THE COURT: What are we doing here?

DEFENSE COUNSEL: There—I understand that. It's just the way that the presumably some of the other reports are going to come in, they're calling things, frankly, I'll be giving away my case, Your Honor, but there is an issue with how they're calling some of the DNA, and I just want to make clear—

THE COURT: If he concedes the sexual intercourse, why do I care whether there's any DNA evidence at all?

DEFENSE COUNSEL: I don't know, but they're presenting it.

PROSECUTOR: Corroboration.

DEFENSE COUNSEL: So I want to be careful about what they say certain things are and what they say certain things are not.

PROSECUTOR: This guy (inaudible) what he said, and then my next witness, [B.K.], will (inaudible) everything next.

THE COURT: I get it.

DEFENSE COUNSEL: But there's been a lot of testimony from—on direct about how good the BCA is, how they're accredited, all this. And I understand you're not a normal finder of fact, but I have to make clear what the BCA really is, and what accreditation really means, and what the testing was. He

said there were no issues with the positive controls, and now he's saying he never interpreted it.

THE COURT: Does he concede the sexual intercourse or not? Because what I've got here is a trial within a trial, if there's a concession. If there's not a concession, and the Court has to determine whether there was sexual contact based upon whether or not this witness is credible or etc., then I get it. But you see my dilemma, I hope. Does he concede it or not?

DEFENSE COUNSEL: So, we talked to him this morning, and we're not sure anymore. So, things have changed, so.

THE COURT: Alright. That's fair enough. You can proceed.

Defense counsel's cross-examination of G.F. continued, even after the court noted that "a lot of the terms still mean nothing to the court," until the prosecutor asked to approach for another bench conference. During that bench conference, the following exchange occurred:

THE COURT: . . . And just for the unique situation where I'm the fact finder, and you'd never hear this from a jury, there are questions that I don't understand. Even though this witness is probably not on your witness list as an expert, I think it's fair for you to say, there was a term you used that I'm not familiar with, to say, what's that? And then maybe a cross on it. You'll never hear that from a jury, but I think it's fair for you to tell you that sometimes I don't get the terms.

DEFENSE COUNSEL: I'm going to wait for the next witness for that.

THE COURT: Fair enough. Alright.

Defense counsel then proceeded to complete their cross-examination of G.F.

The state next called B.K. After both parties completed their questioning, the judge asked B.K., "Has there been any issue brought to your attention today that would lead you

to think that the calculations and conclusions in your reports might need to be modified or altered in any way?” B.K. responded, “No, not at all.” The district court then asked whether the attorneys on either side had any further questions. At no point during or after the trial did defense counsel object to the judge’s comments or questions. During closing argument, defense counsel did not concede that sexual contact occurred between Thomas and the victim and did not mention the mistake-of-age defense previewed in their opening statement. Instead, defense counsel disputed the credibility of the victim’s account and characterized the DNA evidence as “questionable,” based on the testimony elicited from G.F. and B.K.

The district court found Thomas guilty of four counts of criminal sexual conduct and convicted him on the first-degree count. At sentencing, defense counsel argued that Thomas—who spent time in custody for unrelated offenses between 2015 and the date he was charged in this case—should receive more custody credit than was calculated by the state. He argued that, if not for the state’s delay in testing the DNA samples from the victim’s sexual-assault exam, the state would have had probable cause to charge Thomas “within months” after the assault and that Thomas should therefore receive credit for time he spent in custody between the date of the offense and the date he was charged. According to the presentence investigation report, Thomas had been in custody several times between the offense date and July 10, 2023, when the BCA matched the known sample of his DNA to the samples taken during the victim’s sexual-assault exam—including for 96 days between June 2022 (when the BCA’s testing first identified him as a suspect) and July 10, 2023. The district court calculated Thomas’s custody credit starting from July 10, 2023,

based on its conclusion that the state lacked probable cause to charge Thomas until the BCA completed its DNA testing. And the district court found nothing in the record indicating that the state intentionally delayed its investigation to prevent Thomas from receiving custody credit to which he otherwise would have been entitled. The district court sentenced Thomas to 360 months in prison, with 694 days of credit for time served.

Thomas appeals.

DECISION

Thomas raises several arguments on appeal. First, he contends that he is entitled to a new trial because the district court violated his due-process right to a fair and impartial judge by asking questions of defense counsel and a witness that interfered with his defense and helped the state. Next, he argues that, even if his conviction is affirmed, his sentence should be corrected because he is entitled to more custody credit than the district court awarded. And finally, in a pro se supplemental brief, Thomas asserts that he received ineffective assistance of counsel, the judge was biased against him and incorrectly evaluated certain evidence, he should have received more custody credit, and the district court incorrectly calculated his criminal-history score.

I.

We first consider Thomas's constitutional challenge to the district court judge's conduct during trial. He contends that the judge interfered with his defense and assisted the prosecution. Criminal defendants are entitled to due process, a right which courts have recognized includes "the fundamental right to a fair trial and a fair and impartial judge." *State v. Duol*, 25 N.W.3d 135, 141 (Minn. 2025) (quotation omitted); *see also* U.S. Const.

amend. XIV; Minn. Const. art. 1, § 7. “A judge’s conduct must be fair to both sides, and a judge should refrain from remarks which might injure either of the parties to the litigation.” *State v. Dorsey*, 701 N.W.2d 238, 250 (Minn. 2005) (quotations omitted). We review de novo whether a district court denied a criminal defendant the constitutional right to an impartial judge. *Duol*, 25 N.W.3d at 141. The denial of that right is a structural error and requires automatic reversal of the conviction and a new trial, without harmless-error review. *Id.* at 143-44.

Thomas argues that the district court judge here was not impartial because (1) the judge improperly asked defense counsel to explain why they were cross-examining G.F. about DNA evidence when defense counsel had previously conceded that he had sexual intercourse with the victim; (2) the judge informed defense counsel that he did not understand many of the terms that G.F. used and instructed defense counsel to define the terms on further cross-examination; and (3) the judge’s question to B.K. helped the prosecution by negating defense counsel’s line of questioning that showed potential irregularities in the DNA testing linking Thomas to the victim. We address each instance of alleged partiality in turn.

A.

Thomas contends that the judge interfered with defense counsel’s ability to make strategic choices by asking defense counsel why they were questioning the validity of the DNA evidence, given the representation in their opening statement that Thomas did not deny having sexual intercourse with the victim. We are not convinced that this exchange shows that the judge was not impartial. The full context of the exchange, which occurred

during a bench conference with both attorneys present, shows that the judge sought to clarify whether defense counsel’s opening statement—that their defense was based on a mistake of age—remained accurate. The transcript of this exchange shows that the judge was trying to understand the scope of what Thomas was asking the district court to decide. The judge expressed concern about avoiding “a trial within a trial, if there’s a concession” that sexual contact occurred, but acknowledged that without such a concession, the judge would have to “determine whether there was sexual contact based upon whether or not this witness is credible or etc.”

Contrary to Thomas’s assertion, the judge’s question did not force defense counsel to change their defense strategy. Rather, defense counsel seemed to have already changed their strategy. After stating in their opening that they would pursue a mistake-of-age defense because Thomas had not then “denied the intercourse,” they seemed to shift their defense and sought to discredit the DNA evidence linking Thomas to the victim on the night of the assault. Nothing in the judge’s question to defense counsel suggests bias in favor of either party but instead reflects the judge’s concern about avoiding potentially unnecessary and distracting evidence. *See generally State v. Smith*, 876 N.W.2d 310, 332 (Minn. 2016) (affirming the exclusion of evidence that risked creating a “trial-within-a-trial” that “would misdirect the jury away from the key inquiry” (quotation omitted)).

B.

Next, Thomas contends that the judge interfered with his defense when the judge twice told defense counsel, during cross-examination of a forensic scientist regarding some technical aspects of DNA testing, that “a lot of the terms still mean nothing to the Court.”

Thomas’s argument here seems to be that the judge exhibited bias because he did not also tell the state that the terms were unclear. But the context of the judge’s second such comment, which immediately followed the state’s objection to a question it argued was unclear, shows that the judge sought clarity on the forensic scientist’s testimony because he did not know what many of the terms being used by the witness and defense counsel meant. Thomas cites no authority supporting that a judge asking a clarifying question of one side and not the other establishes bias. This is not a situation in which the judge suggested arguments helpful to the prosecution that the prosecution had not raised. *See, e.g., State v. Schlien*, 774 N.W.2d 361, 369 (Minn. 2009) (concluding that judge’s ex parte communication with prosecutor about how to oppose a motion deprived the defendant of the right to a fair hearing before an impartial decision-maker). Instead, the judge advised defense counsel that he was struggling to understand defense counsel’s efforts to undermine the state’s DNA evidence because the judge was unfamiliar with the technical language being used. Nothing about this statement violated Thomas’s right to an impartial judge.

C.

Finally, Thomas asserts that the judge assisted the state by asking B.K. this question: “Has there been any issue brought to your attention today that would lead you to think that the calculations and conclusions in your reports might need to be modified or altered in any way?” In concluding that the judge’s single question did not violate Thomas’s right to an impartial judge, we find persuasive the reasoning of our nonprecedential decision in *State v. Murray*. No. A23-0117, 2024 WL 764009 (Minn. App. Feb. 24, 2024), *rev. denied* (Minn. June 18, 2024). In *Murray*, the appellant argued that the trial judge violated his

constitutional right to an impartial judge, in part “by extensively questioning trial witnesses.” 2024 WL 764009, at *3. We rejected this argument, relying on two principles: (1) as permitted by the Minnesota Rules of Evidence, a trial judge may question witnesses, *id.* at *4 (citing Minn. R. Evid. 614(b)), and (2) while a judge may question witnesses, they “must not act in a manner that intrudes on the state’s burden of proof,” *id.* at *5 (citing *Dorsey*, 701 N.W.2d at 251). Applying those two principles here, we conclude that the judge’s single question to B.K. did not violate Thomas’s right to an impartial judge.

Thomas argues that the judge’s question was “not meaningfully different than the judge’s conduct in *Dorsey*.” But *Dorsey* is readily distinguishable. In *Dorsey*, while presiding over a bench trial in a criminal case, the judge directed a clerk to investigate a fact not introduced into evidence and then announced the results of the investigation to counsel in open court. 701 N.W.2d at 243-44. The supreme court concluded that the judge’s conduct amounted to a structural error and reversed because Dorsey’s right to an impartial judge “was compromised by the conduct of a district court judge who, sitting as the finder of fact, openly questioned the veracity of a factual assertion made by a key defense witness, independently investigated that fact, then reported the results of her investigation to counsel.” *Id.* at 241, 253.

Here, unlike in *Dorsey*, nothing in the record indicates that the judge independently investigated facts not in evidence, reported results of that investigation to counsel, or relied on that investigation in finding Thomas guilty. Instead, the judge asked a question of a witness based on what the witness was asked about during her testimony. As explained in *Murray*, Minnesota Rule of Evidence 614(b) and relevant caselaw “allows a district court

judge to interrogate witnesses, whether called by itself or by a party.” 2024 WL 764009, at *4 (quotation omitted). That the judge asked a question of a witness is not, by itself, sufficient for us to conclude that the judge violated Thomas’s constitutional right to an impartial judge.

We are also not convinced that the judge’s question encroached on the state’s burden of proof. As in *Murray*, the judge’s question here “merely confirmed evidence that had already been introduced or inferences from that evidence.” *Id.* at *5. In questioning B.K. in court, while both attorneys were present, the judge “did not investigate or produce new evidence for the prosecution.” *Id.*; *see also Dorsey*, 701 N.W.2d at 249-50 (explaining that “conclusions reached by the trier of fact [must] be based upon the facts in evidence” and not “evidence sought or obtained beyond that adduced in court”). Instead, the judge used this single question “to further understand the evidence presented.” *Murray*, 2024 WL 764009, at *5. Nothing about the judge asking a single clarifying question of a witness who had testified at length about technical scientific concepts encroached on the state’s burden of proof or otherwise exhibited bias.

We are therefore not persuaded that any of the district court judge’s statements identified here—either individually or taken together—violated Thomas’s constitutional right to a fair and impartial judge.

II.

We next address Thomas’s contention that he is entitled to an additional 96 days of custody credit because law enforcement intentionally manipulated its investigation by delaying the collection of his DNA until after he was released from custody for a different

offense. A defendant is entitled to credit against their sentence for time spent in custody “in connection with the offense or behavioral incident being sentenced.” Minn. R. Crim. P. 27.03, subd. 4(B). But a defendant may receive credit for time spent in custody on a separate offense beginning on the date “when (1) the State has completed its investigation in a manner that does not suggest manipulation by the State, and (2) the State has probable cause and sufficient evidence to prosecute its case against the defendant with a reasonable likelihood of actually convicting the defendant of the offense for which he is charged.” *State v. Clarkin*, 817 N.W.2d 678, 689 (Minn. 2012). The district court lacks discretion in awarding custody credit. *Id.* at 687. “A district court’s decision whether to award custody credit is a mixed question of fact and law; the court must determine the circumstances of the custody the defendant seeks credit for, and then apply the rules to those circumstances.” *State v. Johnson*, 744 N.W.2d 376, 379 (Minn. 2008). The defendant bears the burden of establishing their entitlement to custody credit. *Id.* In reviewing a district court’s decision whether to award custody credit, we review the district court’s factual findings for clear error and questions of law de novo. *Clarkin*, 817 N.W.2d at 687.

Thomas argues that the state manipulated its investigation to prevent him from receiving credit for time he spent in custody in 2022. Thomas was in custody for unrelated offenses and released in late 2022. The BCA tested the samples collected from the victim in May 2022 and matched those samples to DNA samples in state and federal DNA databases in June. But law enforcement did not obtain a warrant to collect a sample of Thomas’s DNA until April 2023—nearly four months after he was released. The district court concluded that custody credit should be counted from the date on which the state had

probable cause to charge Thomas, which was “no earlier than July 10, 2023, when the admissible BCA DNA test was completed indicating a match between [Thomas] and the DNA obtained” from the victim. The district court also found no indication “that there was delay that was intentionally engaged in or with any intent to prejudice” Thomas and that the investigation into the 2015 assault was in no way “complete until DNA testing was received in July of 2023.”

Thomas has not identified anything in the record from which we could conclude that the district court’s factual findings were clearly erroneous. And the evidence in the record supports the district court’s findings. The district court heard testimony that, in May 2022, the BCA reported an unidentified male DNA profile in two of the samples taken from the victim’s body and then, a month later, matched that unidentified male DNA profile against a database, which suggested Thomas was the source of the DNA. The BCA returned the samples to the department in August 2022, but the record is not clear as to when the department was notified of the results. The record shows that the department assigned an officer to the case in early 2023, the officer reviewed reports of the BCA’s DNA testing results in March 2023, and the officer then sought a search warrant to obtain a DNA sample from Thomas. In other words, nothing in the record indicates that the department considered Thomas a suspect until March 2023, well after he was released from custody in late 2022. Based on this evidence and Thomas’s failure to point to any evidence that the department manipulated its investigation or had probable cause to charge him before July 10, 2023, we discern no clear error in the district court’s findings.

The district court therefore did not err in awarding Thomas 694 days of custody credit.²

III.

Finally, we address the issues Thomas raises in a pro se supplemental brief. He contends that he received ineffective assistance of counsel; the judge was biased against him and ignored certain evidence; the victim’s testimony was inconsistent; he “should have more time served”; and he had a lower criminal-history score.

As to Thomas’s first contention, that counsel was ineffective, he argues there were “many things” that “could have been done” but were not. But because Thomas does not identify what aspects of defense counsel’s performance were ineffective or how any ineffective assistance prejudiced the outcome of his trial, we cannot address the merits of Thomas’s claim.³ *See State v. Nyonteh*, 24 N.W.3d 271, 287 (Minn. 2025) (declining to address an ineffective-assistance-of-counsel claim raised in a pro se supplemental brief because the appellant did “not identify any specific conduct by his attorney,” nor did he “include argument or citation to legal authority”).

² Thomas does not dispute the district court’s calculation of 694 days of custody credit based on a starting date of July 10, 2023. Instead, he argues only that he should have been awarded an additional 96 days of credit for time spent in custody before July 10, 2023.

³ Because we do not address the merits of Thomas’s ineffective-assistance-of-counsel claim here, we note that he is not foreclosed from pursuing this claim in a postconviction proceeding. *See State v. Jackson*, 726 N.W.2d 454, 463 (Minn. 2007) (denying ineffective-assistance-of-counsel claims on direct appeal “without prejudice to [appellant’s] right to raise them in a postconviction proceeding”).

Thomas next asserts that the judge favored the victim’s “story before hearing everything,” did not review police and nurse reports, and ignored “the lies in the victim’s statements.” The record shows that the victim was the first of many witnesses from whom the judge heard testimony during trial, that the judge heard testimony from several police officers and from the nurse who examined the victim in the hospital following the assault, and that reports from the police and the nurse were admitted into evidence. We see no indication that the judge failed to review all of the admitted evidence. Thomas points to nothing supporting his assertion that the judge was biased, and we do not “presume error by the district court.” *Butler v. Jakes*, 977 N.W.2d 867, 873 (Minn. App. 2022) (citing *Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968)).

As to Thomas’s contention that he “should have more time served than what they gave me,” we understand this to be an argument that he should have received more custody credit than what the district court awarded. We addressed this argument above.

Lastly, Thomas argues that he should have a lower criminal-history score—specifically, fewer “felony conviction points.” When a district court relies on its interpretation of the sentencing guidelines, as it did here, we review its criminal-history-score calculation de novo. *State v. Strobel*, 932 N.W.2d 303, 306 (Minn. 2019). The district court concluded that Thomas had 4 felony points, 1.5 of which were based on 3 past convictions—in 2015, 2018, and 2022—of fifth-degree possession of a controlled substance. As the supreme court explained in *State v. Scovel*, “the classification of prior offenses for the purpose of calculating a defendant’s criminal history score is based on . . . offense definitions and sentencing policies in effect when the defendant committed

the current crime.” 916 N.W.2d 550, 559 (Minn. 2018). Thomas was convicted of possessing marijuana, which, under sentencing policies effective at the time of the instant offense, subjected him “to imprisonment for not more than five years” for each offense. Minn. Stat. § 152.025, subd. 2(a)(1) (2014). And the sentences for each offense were imposed before Thomas was sentenced in this case, so the prior convictions were properly included in calculating Thomas’s criminal-history score. Minn. Sent’g Guidelines 2.B.1 (Supp. 2015). Having reviewed the information in the sentencing worksheet and presentence investigation report, we conclude that the district court did not err in categorizing those three past controlled-substance convictions as felonies.

Affirmed.