STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1360

State of Minnesota,
Respondent,

vs.

Awil Said Yusuf,
Appellant.

Filed May 21, 2012
Affirmed
Collins, Judge[*]

Hennepin County District Court
File No. 27-CR-10-48103

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Daniel B. Allard, Assistant County Attorneys, Minneapolis, Minnesota (for respondent)

Karen E. Mohrlant, F. Clayton Tyler, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Wright, Judge; and Collins, Judge.

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellant Awil Said Yusuf challenges his conviction of second-degree assault of B.T., arguing that the district court abused its discretion by (1) precluding the introduction of evidence of B.T.'s activities prior to the encounter and (2) limiting the scope of Yusuf's cross-examination of B.T. Because the district court did not abuse its discretion by precluding evidence or by limiting cross-examination, we affirm.

FACTS

At approximately 2:00 a.m. on October 13, 2010, B.T. got into Yusuf's taxicab to go to a distant casino. Yusuf and B.T. argued after Yusuf drove B.T. to an ATM and B.T. was unable to get enough money to advance the anticipated $30 fare. The two got out of the cab and fought, and Yusuf stabbed B.T. in the back. The state charged Yusuf with second-degree assault, in violation of Minn. Stat. § 609.222, subd. 1 (2010). Yusuf admitted stabbing B.T., but asserted a claim of self-defense.

Due to alcohol-induced blackouts, B.T. does not remember all of his activities occurring on the night of October 12-13, including parts of his involvement with Yusuf. It is known that at approximately 9:30 p.m., B.T. was evicted from a Bloomington bar where he had been drinking and having trouble with other bar patrons. B.T. then rode his bicycle to the local police station to lodge a complaint. When he was told to leave the station or be taken to detox, B.T. rode home. He called for the cab at approximately 1:30 a.m.

The state moved in limine to preclude any testimony about B.T.'s activities that night before getting into Yusuf's cab, contending that it was irrelevant and improper character evidence. The district court granted the motion.

In cross-examining B.T., Yusuf's trial attorney broached the subject of B.T.'s activities before calling for the cab, eliciting testimony from B.T. that he had left a bar in Bloomington and biked to the police station. The district court sustained the state's objection to furthering this line of questioning, based on the prior ruling.

A jury found Yusuf guilty of second-degree assault. The district court imposed and executed a sentence of 18 months. This appeal followed.

D E C I S I O N

I.

Yusuf contends that the district court improperly precluded the introduction of evidence of B.T.'s activities prior to their encounter. Evidentiary rulings lie within the district court's discretion and "will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). An appellant must demonstrate both an abuse of discretion and resulting prejudice. *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

Yusuf argues that because he asserted self-defense and the evidence would show that B.T. was intoxicated, belligerent, and physically aggressive, the proposed evidence was relevant. We disagree. The evidence was not relevant to B.T.'s state of intoxication, because that was not in question. Minn. R. Evid. 401. B.T. readily admitted to being intoxicated to the point of blackouts, and admitted his resulting lack of memory of details

of his encounter with Yusuf and earlier activities. Moreover, as the district court noted, the proposed evidence did not prove that B.T. was physically aggressive because it did not show that B.T. had any physical involvement with anyone at the bar.

Yusuf next argues that such evidence should have been admitted as "immediate-episode" evidence because there was a close temporal connection between the times B.T. was evicted from the bar and when he encountered Yusuf. We disagree. "Immediate-episode evidence is a narrow exception to the general character evidence rule." *State v. Riddley*, 776 N.W.2d 419, 425 (Minn. 2009). Such evidence is admissible when there is a "close causal and temporal connection between the prior bad act and the charged crime." *Id.* Here, approximately five hours had elapsed and no causal connection is shown between B.T.'s behavior at the bar and his encounter with Yusuf. And there is no indication that B.T.'s conduct during the encounter with Yusuf was either motivated by his earlier activities or committed to conceal them. *See State v. Kendell*, 723 N.W.2d 597, 608 (Minn. 2009) (allowing immediate-episode evidence regarding a murder committed to avoid apprehension for other murders committed nearby); *State v. Fardan*, 773 N.W.2d 303, 317 (Minn. 2009) (rejecting immediate-episode argument because, although committed in temporal proximity, the charged offense "was not committed to facilitate the other offenses, and the other offenses were not committed to facilitate [the charged offense]"). Therefore, the proposed evidence does not fall within the immediate-episode exception.

Finally, Yusuf argues that the proposed evidence falls within the limited exceptions to character evidence under Minn. R. Evid. 404(b), because it shows "the

presence of mistake." We disagree. The presence of a mistake is not one of the enumerated exceptions to character evidence listed in rule 404(b). Furthermore, in a self-defense case, specific-act evidence is not admissible to show that the victim was the aggressor. *State v. Penkaty*, 708 N.W.2d 185, 202 (Minn. 2006). While character evidence by means of reputation or opinion testimony might have been admissible, evidence of specific instances of misconduct for the purpose of showing B.T. was the aggressor would have been impermissible. *See id.*

We conclude that the district court did not abuse its discretion by ruling against the introduction of evidence of B.T.'s activities prior to encountering Yusuf. Moreover, any error in precluding the evidence would have been harmless. Had the proposed evidence been admitted, no doubt the jury would have reached the same verdict because the evidence against Yusuf was compelling (particularly the showing of unreasonable use of force evidenced by Yusuf's admitted use of a dangerous weapon), and Yusuf's testimony was unpersuasive and contradicted by substantial evidence in the record. *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994) (stating error is harmless if the reviewing court is "satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized," a reasonable jury "would have reached the same verdict").

II.

Yusuf contends that the district court improperly limited the scope of his cross-examination of B.T. "The scope of cross-examination is largely left to the discretion of the trial court, and the trial court's ruling will not be overturned absent a clear abuse of

discretion." *State v. Parker*, 585 N.W.2d 398, 406 (Minn. 1998); *see also State v. Lanz-Terry*, 535 N.W.2d 635, 639 (Minn. 1995) ("[T]he trial court possesses wide latitude to impose reasonable limits on cross-examination of a prosecution witness.").

Yusuf argues that by preventing him from attacking B.T.'s credibility, the district court limited the scope of cross-examination in violation of the Confrontation Clause. We disagree. While the Confrontation Clause limits the discretionary authority of the court to control the scope of cross-examination, it "guarantees only an opportunity for cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *State v. DeVerny*, 592 N.W.2d 837, 845 (Minn. 1999) (quoting *Kentucky v. Stincer*, 482 U.S. 730, 739, 107 S. Ct. 2658, 2664 (1987) (other quotation omitted)).

B.T.'s testimony as a whole demonstrates that his credibility as a witness was impeached. B.T. repeatedly testified that he did not remember all of the events of the night due to intoxication and that he was in a "blackout" state. The record shows that Yusuf's trial attorney effectively cross-examined B.T. regarding his impairment and inability to perceive and recall events. The district court's limitation on cross-examination did not prevent Yusuf's attorney from discrediting B.T.'s testimony. Thus, we conclude that the district court did not violate the Confrontation Clause by limiting the scope of Yusuf's cross-examination of B.T.

Yusuf also argues that the state opened the door for evidence of specific acts when B.T. testified to his character for peacefulness. We disagree. The prosecution may offer evidence of a pertinent character trait. Minn. R. Evid. 404(a)(2). Once character

evidence has been admitted, inquiry may be made on cross-examination into relevant specific instances of conduct. Minn. R. Evid. 405(a). But here, the state did not inquire into B.T.'s general character; B.T.'s testimony regarding his character was unsolicited. *Cf. State v. Richmond*, 298 Minn. 561, 563, 214 N.W.2d 694, 695 (1974) ("In cases involving the erroneous admission of [inadmissible] evidence, this court has attached importance to whether the prosecutor intentionally elicited such testimony."). Moreover, had the state opened the door for specific act evidence, the proposed evidence would not have been admissible. *See supra* § I; *Penkaty*, 708 N.W.2d at 202. We conclude that the district court did not abuse its discretion by limiting the scope of Yusuf's cross-examination of B.T.

Affirmed.