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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-1372**

State of Minnesota,  
Respondent,

vs.

Stephen William Adams,  
Appellant.

**Filed July 30, 2012  
Affirmed  
Muehlberg, Judge\***

Ramsey County District Court  
File No. 62-CR-11-275

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,  
St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public  
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Ross, Judge; and  
Muehlberg, Judge.

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

## UNPUBLISHED OPINION

MUEHLBERG, Judge

Appellant challenges his conviction of second-degree assault, arguing that the district court erred by denying his motion for a new trial based on improper contact between the bailiff and the jury. We affirm.

### FACTS

In January 2010, appellant Stephen Adams's adult son, S.A., was unemployed and living with Adams. One day, S.A. was using Adams's computer for a job search. Adams objected, and the two men argued. Adams told S.A., "You want some help? I'll help you right now." Adams then went into another room and returned with a gun, which he pointed at S.A., saying "Here, I'll give it to you right now." S.A. fled to the apartment building's laundry room and called 911.

Adams was charged with terroristic threats and second-degree assault for the incident with his son. The jury acquitted Adams of terroristic threats but found him guilty on the assault charge.

After the jury was discharged, juror S.L. contacted the district court regarding concerns he had about communication between a bailiff and the jury. The district court conducted a limited *Schwartz* hearing.<sup>1</sup> S.L. testified that when the bailiff brought the jury the written jury instructions, another juror asked the bailiff, "If we need further clarification, what's the process?" According to S.L., the bailiff responded, "Hey, you

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<sup>1</sup> *Schwartz v. Minneapolis Suburban Bus Co.*, 258 Minn. 325, 328, 104 N.W.2d 301, 303 (1960).

don't want to do that. I'd advise against that. It's going to take too long. It's going to take a long time to get the, uhm, all the involved parties back, you know, into the courtroom." The bailiff testified that his memory of the events was not clear, but he did remember telling the jurors that if they had questions, they should write them down and that it takes time to get everyone back to the courtroom. The bailiff explained that he "could have said that it would take some time to get everybody back. And from past experiences with questions, the judge will say you have your information and you need to rely on your memory. That's the only other thing I could think of that I said."

Adams moved for a new trial.<sup>2</sup> The district court denied the motion, reasoning that the bailiff's comments were "clearly inappropriate," but nothing indicated that the comments affected the jury's fact-finding, interpretation of the court's instructions, or verdict. This appeal follows.

## DECISION

"The appellate court reviews a district court's decision whether to grant a new trial because of a court official's improper prejudicial remarks made in the presence of the jury under an abuse of discretion standard of review." *State v. Hanke*, 712 N.W.2d 211, 214 (Minn. App. 2006) (citing *State v. Cox*, 322 N.W.2d 555, 560 (Minn. 1982)).

Private communication about a case between a court official, such as a bailiff, and the jury is improper and presumptively prejudicial. *Id.* To rebut that presumption, the state must show beyond a reasonable doubt that the asserted error did not contribute to

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<sup>2</sup> Alternatively, Adams requested an extended *Schwartz* hearing to interview additional jurors. The district court denied that request, and Adams does not challenge that ruling on appeal.

the verdict obtained. *Cox*, 322 N.W.2d at 558. To determine the probable effect of the asserted error on the jury, the district court considers four factors: (1) “the nature and source of the prejudicial matter,” (2) the number of jurors exposed to the prejudicial matter, (3) the weight of the evidence properly before the jury, and (4) “the likelihood that curative measures were effective in reducing the prejudice.” *Id.* at 559.

The state does not dispute that the contact was improper and agrees that two of the *Cox* factors indicate prejudice. First, the bailiff made the improper comments to or at least in the hearing of the entire jury. Second, no curative measures were possible since the district court was not made aware of the error until after the jury had delivered its verdict and was dismissed. The state contends, however, that the nature and source of the improper comments and the weight of the evidence properly before the jury sufficiently counteract those prejudicial factors and establish beyond a reasonable doubt that the error did not contribute to the verdict obtained. We agree.

### **Nature and source**

The procedural nature of the bailiff’s comments makes it unlikely that they influenced the jury. The comments were not directly related to Adams’s guilt. *See Hanke*, 712 N.W.2d at 214-15 (ordering a new trial where bailiff made comments to several jurors about methamphetamine, which was implicated in the case, the evidence was circumstantial, and there was no opportunity for a curative instruction). Nor did they concern his character or race. *See State v. Watkins*, 526 N.W.2d 638, 641-42 (Minn. App. 1995) (requiring a new trial where bailiff used racial epithets to refer to the defendant in the presence of the entire jury, credibility was important, and there was no

chance for a curative instruction). Rather, the comments concerned only a hypothetical procedural issue regarding communication with the court. They therefore did not pose a risk of prejudicing the jury against Adams personally.

Adams asserts that the bailiff's comments prejudiced him by limiting the jurors' ability to ask questions. *See Stayberg v. Henderson*, 277 Minn. 16, 18-20, 151 N.W.2d 290, 292-93 (1967) (finding prejudicial error when a bailiff failed to inform the district court of a jury request for further instructions); *State v. Jurek*, 376 N.W.2d 233, 236 (Minn. App. 1985) (holding that bailiff telling the jury "to rely on its own recollection of the evidence and the trial court's instructions" was prejudicial substantive communication). The record supports the district court's finding to the contrary. The bailiff's comments were not directed at a specific question from the jury. Nor does the record indicate that the jury had questions during deliberations that they declined to ask because of the bailiff's comments. To the contrary, S.L. testified that he did not refrain from asking any questions because of the bailiff's comments and the jury never discussed the bailiff's comments. This record does not indicate that the bailiff's comments discouraged the jurors from asking questions.

### **Weight of evidence**

The weight of the evidence before the jury also weighs against granting a new trial. Adams admitted that he owned the gun and that he went to retrieve it from another room while arguing with S.A. S.A. testified that Adams said he would "help" him, then got the gun and pointed it at him, saying, "I'll give it to you right now." Adams claimed that he retrieved the gun because S.A. threatened to hurt him and that S.A. never saw the

gun because he had left the apartment by the time he returned. The jury not only was permitted to reject Adams's explanation but likely did so in light of the significant evidence corroborating S.A.'s account, including the recording of the 911 call and the testimony of the responding officer that S.A. was visibly shaken. Viewing the record as a whole, the state presented strong evidence of Adams's guilt.

In sum, the record amply establishes that the bailiff improperly advised the entire jury not to ask questions but does not indicate prejudice from that error. While we agree with the district court that the bailiff's conduct was "clearly inappropriate" and are concerned that the timing of S.L.'s disclosure made curative measures impossible, the record does not indicate that any jurors were actually discouraged from asking clarifying questions because of the bailiff's comments, and the corroborated testimony of S.A. provides a strong evidentiary basis for the jury's verdict. We discern no abuse of discretion in the district court's determination that Adams is not entitled to a new trial.

**Affirmed.**