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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1039**

State of Minnesota,
Respondent,

vs.

James William Leeson,
Appellant.

**Filed March 11, 2013
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-CR-11-575

Lori Swanson, Attorney General, Karen B. Andrews, Assistant Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Robert E. Mathias, Duluth, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Stauber, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions of false imprisonment and domestic assault, arguing that the district court abused its discretion by excluding evidence of the victim's

alleged abuse of appellant and permitting only general evidence of their relationship in the year prior to the charged offenses as context for appellant's self-defense claim. Appellant also argues that his trial counsel was ineffective. We affirm.

FACTS

Late in the evening on February 4, 2011, J.L. and his wife returned home and heard noises coming from their detached garage. J.L. went to investigate. He opened the service door and saw their son, appellant James Leeson, who was living with them at the time. According to J.L., Leeson yelled, "Get out of here." J.L. did not say anything but shut the door and started to walk back toward the house. Leeson then opened the door, so J.L. stopped, turned around, and "tried to console" Leeson by putting his arms around him. Leeson "jumped on" him, began "throwing fists," and the two men fell to the ground. Leeson pinned J.L. down and continued to hit him in the face, knocking his glasses off and breaking them. Leeson then released J.L. and directed him to go into the garage, which he did.

Leeson told J.L. to sit on a chair. Leeson then grabbed a shovel with a three-foot-long wooden handle, swung the shovel against the concrete floor and broke the handle, leaving a sharp point. He jabbed the broken handle toward J.L., saying, "I could do you in right now, just run this in your neck." Instead, Leeson punched J.L. in the side of the head. J.L. asked to leave the garage but Leeson denied his requests. After approximately 20 minutes, Leeson finally permitted J.L. to return to the house. J.L. sustained multiple injuries: his right eye was swollen shut, he had large bruises on his head, and there was gravel embedded in his knee.

Leeson was charged with second-degree assault, terroristic threats, false imprisonment, and two counts of misdemeanor domestic assault. He claimed self-defense based on an alleged history of abuse by J.L. Before trial, defense counsel explained that she expected Leeson to testify that J.L. “was mean to him and he views him to be a mean guy.” The prosecutor indicated that she also intended to inquire about “tension in the home” during the last few years and agreed that Leeson could testify that his father “is mean.” But she objected to evidence of “any prior allegations of abuse” because Leeson had not given the required notice. Defense counsel clarified that she did not intend to elicit evidence of specific incidents, only testimony that Leeson fears his father, has a “tense relationship” with him, and that “as a child, [his] father was abusive towards him.” The prosecutor argued that this proposed testimony went beyond the first-aggressor argument permitted in support of a self-defense claim.

The district court ruled that Leeson could not offer evidence of specific instances of claimed abuse dating back to Leeson’s childhood but that both parties could present “general information . . . regarding the relationship between these people, but only for about a year prior to the alleged incident.” The district court also ruled that if Leeson offered evidence of J.L.’s character, the state could introduce additional evidence of J.L.’s character in rebuttal.

At trial, Leeson described his relationship with his father as scary, tense, and “volatile at times.” According to Leeson, on the night in question J.L. came out to the garage and began arguing with him, “screaming, puffing up, . . . posturing,” and giving him a look he had seen “all [his] life,” that meant “you’re going to get a beating.” Leeson

testified that he believed J.L. was going to punch him and that they “both went at it.” Leeson’s version of the altercation differed from J.L.’s in several respects, but Leeson conceded that he pinned his father down at one point, that he broke the shovel, and that he punched his father. Leeson also testified that he “wasn’t trying to get away” from his father.

The state called Leeson’s sister and his niece in rebuttal. Leeson’s sister testified that J.L. was the primary disciplinarian when they were children, that she received spankings, but that she did not recall ever seeing their father “being abusive toward [Leeson] physically.” Leeson’s niece testified that her grandparents raised her for 14 years, that J.L. “is a wonderful grandfather,” and that she never saw J.L. “behaving in a physically abusive way towards” Leeson. Asked for her opinion as to J.L.’s “character for peacefulness,” she testified that he “didn’t want animosity” and “didn’t want tension.”

The jury found Leeson guilty of false imprisonment and domestic assault (harm) but acquitted Leeson of the other offenses. Leeson moved for a new trial, arguing, among other things, that his trial counsel was ineffective. The district court denied the motion, sentenced Leeson to a stayed prison term of 12 months and 1 day, and placed Leeson on probation for three years. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by limiting evidence of J.L.’s character and relationship with Leeson.

“Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the

burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted).

Character evidence is generally inadmissible. Minn. R. Evid. 404(a). But a defendant claiming self-defense may present evidence “of a pertinent trait of character of the victim,” such as the victim’s reputation for violence, to show that the victim was the aggressor or that the defendant was reasonably put in apprehension of serious bodily harm. Minn. R. Evid. 404(a)(2); *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). If the defendant offers evidence of the victim’s character, the state may rebut that evidence with evidence of the victim’s character for peacefulness. Minn. R. Evid. 404(a)(2).

Leeson argues that the district court abused its discretion by excluding evidence that his father abused him when he was a child, permitting him to testify only to tension between them in the year prior to the incident. Leeson contends that this ruling prevented him from “tell[ing] the jury why he reacted as he did when he saw [J.L.’s look].” We disagree. Reflected in the district court’s temporal restriction is a determination that evidence of abuse Leeson allegedly suffered at his father’s hands more than 30 years ago is not relevant to Leeson’s self-defense claim. The district court instead permitted evidence of the recent relationship between the two men to establish the context for Leeson’s self-defense claim. We discern no abuse of discretion in the district court’s analysis and ruling.

Moreover, Leeson exceeded the limits of the district court’s ruling by testifying that J.L. approached him on the night in question with a look he had seen all his life that

meant “a beating” would follow. Not only does this testimony undermine Leeson’s argument that the district court prevented him from telling the jury why he reacted as he did, but it also supports the district court’s decision to afford the state wide latitude in its rebuttal testimony.

The district court initially ruled, consistent with rule 404(a)(2), that the state could rebut Leeson’s testimony as to his father’s character and their recent relationship by offering the testimony of Leeson’s sister as to J.L.’s character, subject to the same time limitation. But because Leeson essentially testified to a lifetime of violence at his father’s hands, the district court reasoned that he opened the door to testimony by Leeson’s sister and his niece that they never saw J.L. abuse Leeson. *See State v. Valtierra*, 718 N.W.2d 425, 436 (Minn. 2006) (explaining that the opening-the-door doctrine ensures that one party does not gain an unfair advantage by presenting the jury with an un rebutted, “distorted representation of reality,” by permitting the other party to respond with material that otherwise would have been inadmissible). Accordingly, the district court did not abuse its discretion by allowing the state to present rebuttal evidence concerning the time period about which Leeson testified.

Finally, Leeson cannot demonstrate that any error in the district court’s evidentiary rulings prejudiced him by impairing his self-defense claim. First, as noted above, Leeson presented the very evidence that he now complains was improperly excluded. Having informed the jury of his claimed long history of abuse at the hands of J.L., he cannot now claim prejudice from the district court’s contrary ruling. *See State v. Bland*, 337 N.W.2d 378, 384 (Minn. 1983) (holding that “given the wealth of evidence that was admitted

relating to the victim's violent past, it would be hard to find any prejudice" in limitations on evidence of two prior acts by the victim). Second, Leeson's testimony that he and his father simultaneously engaged each other and continued to do so even after breaks in the violence, and his admission that he "wasn't trying to get away" from his father are inconsistent with his claim of self-defense. *See State v. Radke*, 821 N.W.2d 316, 324 (Minn. 2012) (stating self-defense elements). On this record, it is unlikely that the admission of additional evidence about prior abuse between J.L. and Leeson, or exclusion of evidence that others did not witness any such abuse, would have materially affected Leeson's self-defense claim. Accordingly, we conclude that Leeson is not entitled to relief based on the district court's evidentiary rulings.

II. Leeson's trial counsel was not ineffective.

To establish ineffective assistance of counsel, a defendant "must show that (1) counsel's performance fell below an objective standard of reasonableness, and (2) that a reasonable probability exists that the outcome would have been different but for counsel's errors." *State v. Caldwell*, 803 N.W.2d 373, 386 (Minn. 2011). An attorney acts within an objective standard of reasonableness by exercising the customary skills and diligence of a reasonably competent attorney under similar circumstances. *State v. Bobo*, 770 N.W.2d 129, 138 (Minn. 2009). There is a strong presumption that counsel's representation was reasonable. *State v. Pearson*, 775 N.W.2d 155, 165 (Minn. 2009).

On appeal, Leeson claims that his trial counsel was ineffective for agreeing to the district court's rulings regarding character evidence; failing to object more, particularly during the testimony of the state's rebuttal witnesses; and failing to more aggressively

cross-examine the state's witnesses, particularly J.L.¹ All of these assertions of error challenge defense counsel's trial strategy. *See Boitnott v. State*, 631 N.W.2d 362, 370 (Minn. 2001) (stating that "the level of investigation and whether to object" are matters of trial strategy); *State v. Doppler*, 590 N.W.2d 627, 633 (Minn. 1999) (stating that trial strategy includes determining what evidence to present to the jury). We generally will not review matters of trial strategy for competence. *Voorhees v. State*, 627 N.W.2d 642, 651 (Minn. 2001). This reluctance to scrutinize trial strategy is "grounded in the public policy of allowing counsel to have the flexibility to represent a client to the fullest extent possible." *Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004) (quotation omitted). Leeson cannot establish that his trial counsel was ineffective by arguing only that she should have employed a different strategy.

Moreover, our careful review of the record reveals no indication of deficient performance. Defense counsel repeatedly addressed the evidentiary issues regarding Leeson's relationship with J.L., arguing motions in limine to clarify the issues before trial and reasserting and questioning the scope of the district court's ruling after the state's case in chief. Defense counsel cross-examined each witness, including J.L. and the police officer who took J.L.'s statement on February 5 to highlight inconsistencies between J.L.'s accounts of the incident. Defense counsel also probed J.L. as to why he would go into the garage with Leeson after Leeson allegedly assaulted him. And we observe that defense counsel successfully countered a motion to amend the domestic-

¹ Leeson claimed ineffective assistance of counsel on different grounds in his new-trial motion. Those arguments that Leeson did not brief on appeal are waived. *See State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997).

assault charges to gross-misdemeanor level offenses and obtained acquittals on three of the five charges against Leeson. On this record, we conclude that Leeson's ineffective-assistance-of-counsel claim fails.

Affirmed.