STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0686

State of Minnesota,
Respondent,

vs.

Dedric Maurice Willis,
Appellant.

Filed July 22, 2024
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-22-8424

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

Mary F. Moriarty, Hennepin County Attorney, Elizabeth Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this appeal from appellant's judgment of conviction for second-degree unintentional felony murder, appellant argues that the district court abused its discretion by (1) excluding evidence of a toxicology analysis showing that the victim had cocaine in

his body and (2) denying his request for a *Schwartz* hearing for juror misconduct.[1] Because any error in excluding the toxicology analysis was harmless beyond a reasonable doubt and appellant did not make a prima facie case for a *Schwartz* hearing, we affirm.

FACTS

Respondent State of Minnesota charged appellant Dedric Maurice Willis with one count of second-degree murder with intent, not premediated, under Minn. Stat. § 609.19, subd. 1(1) (2020). Before trial, the state orally amended the charge to "add a second count of murder in the second degree, unintentional," under Minn. Stat. § 609.19, subd. 2(1) (2020). The following summarizes the evidence received at Willis's jury trial.

In April 2022, Willis was living with his girlfriend, D.M., at an apartment in Minneapolis along with their infant daughter and two of D.M.'s sons, son 1 and son 2, who were ten and eleven years old. On the morning of April 29, 2022, Willis and D.M. were "getting ready for work" and the "children were getting ready for school." D.M. asked son 1 to take out the trash, which he was supposed to do the night before. Son 1 "stormed off," and D.M. told son 1 to put his phone down on her bed. While son 1 left his phone inside and took the trash out, son 1's father, T.C., called him. When son 1 returned, Willis told son 1 to "give [his] dad a call back."

[1] "A *Schwartz* hearing is a procedure in which a [district] court may investigate alleged juror misconduct by summoning a juror for questioning about the alleged misconduct in the presence of counsel for both parties." *Martin v. State*, 969 N.W.2d 361, 363 n.1 (Minn. 2022); *see Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960).

Son 1 called T.C. on speakerphone. T.C. became "upset" when son 1 reported that Willis "took" son 1's cell phone. T.C., who paid for the cell phone, told Willis not to take son 1's cell phone. The conversation escalated, and D.M. and T.C. were "combative with each other." T.C. told Willis that he had "been giving [Willis] a pass for too long" and that "he was ready to beat [Willis's] ass" because Willis thought he was "a father to [T.C.'s] kids." The call ended with T.C. saying "that he was going to just come over and get the phone." Willis did not expect that T.C. would come over because T.C. had never been to their home before.

After the call, the children got into D.M.'s car. When D.M. followed them outside, she saw T.C.'s car parked across the street and T.C. "standing over by [her] car on the passenger side, talking to" son 2. D.M. and T.C. started arguing. Willis then came outside. Willis had a permit to carry a concealed firearm, and he was carrying a firearm that day. When Willis approached, T.C. "came around the vehicle" and got into Willis's "personal space." Willis testified that T.C. "was angry," "his eyes [were] bloodshot [and] red," and he "seemed really agitated."

Willis testified that he asked T.C. to "please get out of [his] face" and that T.C. struck Willis "relatively hard" on his cheek. Willis "fell back." T.C. "kept coming and . . . had his hand up like he was about to hit [Willis] again." "[A]s [T.C.] was about to strike, [Willis] drew [his] weapon and fired." T.C. and Willis were about three feet apart when Willis fired. T.C. "ran behind [D.M.'s] car." Willis "fired multiple rounds in the air" to "scare [T.C.] off" and "to alert the police to come to the scene."

Willis saw T.C. lying on the ground, and D.M. called 911. While Willis and D.M. were waiting for emergency services to arrive, "another car pulled up." T.C.'s fiancée got out of the car "with a gun in her hand." She pointed the gun at Willis, who ran away. As he ran, Willis saw a marked squad car and "released [the] magazine" from his gun, "threw it on the ground, . . . put the gun on the ground, and got on [his] stomach." Law enforcement took Willis into custody. T.C. later died from the gunshot wound.

During Willis's jury trial in November 2022, the state called 14 witnesses, including the 911 dispatcher, T.C.'s sibling, several law-enforcement officers, T.C.'s fiancée, three forensic scientists, and the medical examiner. D.M. and Willis also testified. The district court instructed the jury on self-defense. The jury found Willis not guilty of second-degree intentional murder and guilty of second-degree unintentional felony murder. The district court convicted Willis and sentenced him to 150 months in prison.

Willis appeals.

DECISION

I. Any error in the district court's exclusion of the toxicology analysis showing that cocaine was in T.C.'s blood was harmless beyond a reasonable doubt.

A medical examiner and pathologist conducted an autopsy of T.C. and prepared a report. Among other things, the report included a toxicology analysis, which showed that T.C. had 130 ng/ml of cocaine in his blood.[2] The medical examiner's office also provided

[2] Cocaine is a controlled substance in Minnesota. *See* Minn. Stat. § 152.02, subd. 3(b)(4) (2022).

a toxicology report, which stated that "[e]ffects following cocaine use can include euphoria, excitement, restlessness, risk taking, sleep disturbance, and aggression."

The state moved in limine to "preclude [Willis] from referring to [T.C.'s] toxicology test results." The state argued that the evidence was not relevant because there was "no suggestion that any toxicology-related information had any relevant causation towards the manner of death." Willis opposed the state's motion and argued that the toxicology analysis was relevant to show that T.C. "was the aggressor in this incident." The district court determined that the toxicology analysis "may have some probative value," but the "probative value is outweighed by potential unfair prejudice, confusion of the issues, or misleading the jury." The district court pointed out "prejudicial concerns"—namely, that presentation of this evidence could confuse the jury, given that "the people present can testify to what they observed, saw, [and] felt at the time. And they had no idea that [T.C.] may have ingested any type of substance."

Willis argues in his brief to this court that the district court abused its discretion by determining that the toxicology analysis was more prejudicial than probative. We review a district court's evidentiary ruling for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

Generally, relevant evidence is admissible. Minn. R. Evid. 402. Minnesota Rule of Evidence 401 defines "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more

probable or less probable than it would be without the evidence." Under Minn. R. Evid. 403, "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury."

Willis makes three main arguments. First, Willis argues that "the [toxicology] evidence was at least minimally relevant to [the jury's] determination regarding self-defense." Second, he argues that the district court "did not correctly apply rule 403" because it determined that the "probative value [of the evidence] is outweighed by potential for unfair prejudice," rather than that the "probative value is *substantially* outweighed by the danger of unfair prejudice," as Minn. R. Evid. 403 requires. (Emphasis added.) Third, Willis argues that the probative value is not substantially outweighed by the risk of unfair prejudice.

The state contends that the district court correctly determined that the toxicology analysis was more prejudicial than probative. The state asserts that the record does not show that the medical examiner could testify about the effects of cocaine on T.C. or that the amount of cocaine found in T.C.'s blood would have made T.C. "aggressive rather than euphoric or excited." The state also maintains that "[t]here is no evidence in the record about when T.C. ingested cocaine, how he typically acted when on cocaine, if he was an experienced cocaine user, or if he was in fact still under the influence of cocaine when the shooting occurred."

Willis emphasizes that excluding the toxicology analysis "deprived Willis of his right to present a complete defense." First, to better understand the context of the parties'

arguments, we briefly consider the relevant law on self-defense, which Willis asserted and on which the district court instructed the jury. Under Minn. Stat. § 609.06, subd. 1(3) (2020), "reasonable force may be used upon or toward the person of another without the other's consent" if someone is "resisting or aiding another to resist an offense against the person." There are four elements to self-defense: "(1) the absence of aggression or provocation on the part of the defendant," meaning that the victim must be the initial aggressor; (2) "the defendant's actual and honest belief that he or she was in imminent danger of death or great bodily harm"; (3) "the existence of reasonable grounds for that belief"; and (4) "the absence of a reasonable possibility of retreat to avoid the danger." *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997). "The degree of force used in self-defense must not exceed that which appears to be necessary to a reasonable person under similar circumstances." *Id.* at 286. "Once it is raised, the state has the burden of disproving one or more of these elements beyond a reasonable doubt." *Id.*

Second, we assume, without deciding, that the district court abused its discretion by excluding the toxicology analysis. On appeal, however, evidentiary error alone is not enough to grant relief; the appellant must also show that the error was prejudicial. *State v. Blom*, 682 N.W.2d 578, 623 (Minn. 2004). "A harmless error analysis applies to the erroneous exclusion of evidence that violates the defendant's right to present evidence." *Id.* at 622. Under a harmless-error analysis, an appellate court "must be satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, an average jury . . . would have reached the same verdict. Only

then can it be said that the erroneous exclusion of evidence was harmless." *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994).

Willis argued to the district court and on appeal that the toxicology analysis would tend to prove that T.C. was the initial aggressor, the first element of self-defense. But the record included ample evidence that T.C. was the initial aggressor and was angry and aggressive. Willis testified that T.C. hit Willis first. No witness testified that Willis was the aggressor or that he provoked T.C.

Even if we assume that excluding the toxicology analysis prejudiced Willis on the first element of self-defense, the record includes strong evidence against Willis's claim on the third and fourth elements of self-defense. Also, the toxicology analysis is not relevant to either of those elements. Under the third element, a defendant must have a reasonable belief that they are in imminent danger of death or great bodily harm. *Basting*, 572 N.W.2d at 285. No record evidence tends to prove that it was reasonable for Willis to believe that he was in imminent danger of death or great bodily harm. T.C. did not brandish a weapon and was not armed. Under the fourth element, a defendant must not have a reasonable opportunity to retreat. *Id.* All record evidence tends to prove that Willis had a reasonable opportunity to retreat. Willis did, in fact, retreat when T.C.'s fiancée brandished a gun.

In short, the state has the burden to disprove an element of self-defense, but it needs to disprove only one element. *Id.* at 286. We conclude that, at the very least, the record evidence disproved elements three and four. Therefore, even if we assume that the district court erred by excluding the toxicology analysis, the error is harmless because we are satisfied beyond a reasonable doubt that the jury would have rejected Willis's claim of

self-defense and reached the same verdict. *See, e.g.*, *State v. Dick*, 419 N.W.2d 828, 831-32 (Minn. App. 1988) (determining that the district court's exclusion of expert testimony offered to show that a defendant was justified in shooting in self-defense was harmless error because the record evidence suggested that the defendant was the aggressor), *rev. denied* (Minn. Apr. 15, 1988).

II. The district court did not abuse its discretion by denying Willis's request for a *Schwartz* hearing.

"The purpose of a *Schwartz* hearing is to determine whether a jury verdict is the product of misconduct." *State v. Greer*, 635 N.W.2d 82, 93 (Minn. 2001). "A *Schwartz* hearing is not mandated until a defendant establishes a prima facie case of jury misconduct." *State v. Anderson*, 379 N.W.2d 70, 80 (Minn. 1985). "To establish a prima facie case, sufficient evidence which, standing alone and unchallenged would warrant the conclusion of jury misconduct must be submitted." *Id.* (quotation omitted). *Schwartz* hearings "are to be liberally granted." *Id.* We review a district court's denial of a request for a *Schwartz* hearing for an abuse of discretion. *See State v. Benedict*, 397 N.W.2d 337, 340 (Minn. 1986).

During jury deliberations, a juror wrote and submitted the following question to the district court:

> We have been informed that one of the jurors has been using marijuana throughout the duration of our deliberations. He says he has a medical card and disclosed this to the jury

> office in response to his jury summons. Is it ok for a juror to be under the influence of medical marijuana while deliberating?

At the time that the district court received this note, it was presiding over a hearing in another matter. The jury reached a verdict in Willis's case before the district court and the parties reached an agreement on how to address the issue.

After some discussion with the parties, the district court placed each juror under oath and asked two questions: (1) "During the course of trial and deliberations, were you under the influence of anything, including prescriptions, that may have impaired your ability to deliberate?" and (2) "Do you believe that any other juror was under the influence and impaired during deliberations?" No juror testified that they believed another juror was impaired during deliberations or that they noticed any juror displaying behaviors indicating that they were impaired or inattentive. No juror testified that they themself were impaired during deliberations.

Juror 12 testified that she believed another juror was "under the influence" but was not sure if that juror was "impaired." She stated that she was "coming through security" with two other jurors, and the three of them got in the elevator together. Upon entering the elevator, Juror 12 smelled marijuana. When they reached the jury room to start deliberating, Juror 12 asked the other jurors if "anyone was high." In response, "one juror raised his hand" and explained that he had a medical card for marijuana and had informed the court about it. Following this exchange, Juror 12 submitted the written question to the district court.

Juror 14 testified that he had been under the influence of medical marijuana during trial and deliberations and that he has a prescription for the medication. Upon questioning by the district court, Juror 14 explained that his prescription was not for a specific form of cannabis, that he could use "flower" or "edibles," and that he uses edibles. He testified that he did not believe that medical marijuana impaired his ability to pay attention at trial or to deliberate. He added that he did not consider himself impaired, even though he raised his hand when another juror asked if anyone was high. Juror 14 said that he "wouldn't consider [himself] high."

After the jurors were questioned, Willis's attorney requested that Jurors 12 and 14 return for further inquiry, and the district court took a recess. When the proceedings resumed, Willis's attorney asked to call a witness to testify about the differences in odor from edible and flower marijuana.[3]

"[T]o supplement the record," the district court summarized the attorneys' off-the-record discussion "regarding the odor of cannabis or marijuana." The district court noted that Willis's attorney said that only smokeable marijuana would leave an odor on the user, not edible marijuana. The prosecuting attorney and the district court stated that, on many occasions, they had smelled marijuana in the courthouse. Based on this, the prosecuting attorney argued that "there's no indication that" the marijuana odor that Juror 12 reported could "be attributed to one person and not another who was previously in the elevator."

[3] Willis's attorney stated that he sought to prove that edible marijuana does not have the same odor as "burnt [flower] marijuana."

The district court found that "all twelve jurors responded that no one was impaired," Juror 14 "acknowledged that he has a medical cannabis prescription and that he has been using it during the course of the trial, as well as during deliberations," and Juror 14 "stated under oath that it did not impair his ability to deliberate in this trial [or] . . . his ability to be attentive during the trial or during testimony." The district court determined that Juror 14's cannabis prescription was "like any other medication or prescription" and that no additional inquiry or evidence was necessary. The district court instructed Willis that, if he believed a *Schwartz* hearing was "warranted, [he] may file the appropriate motion." Willis did not move for a *Schwartz* hearing.

In his brief to this court, Willis argues that "the district court should have granted a *Schwartz* hearing." Willis argues that Juror 14 was under the influence of a controlled substance and could have been removed for cause for having "a physical or mental disability that renders the juror incapable of performing the duties of a juror" under Minn. R. Crim P. 26.02, subd. 5(1)(4). Willis also contends that "the record before this court indicates that Juror 14 was untruthful," which is "the type of misconduct that qualifies a potential juror for removal for cause" under Minn. R. Crim. P. 26.02, subd. 5(1)(1). Willis claims that, because another juror smelled marijuana in the elevator, Juror 14 was dishonest about consuming only edibles because edibles do not have an odor.

The state counters that Willis did not make a prima facie case that Juror 14 was untruthful or impaired. The state asserts that Juror 14 "was forthright about his use of medical marijuana, and reported it to the jury office, the other jurors, and the trial court"

and that no evidence suggests Juror 14 appeared impaired during deliberations or during trial.

We first observe that Willis did not accept the court's invitation to file a motion for a *Schwartz* hearing during district court proceedings. Willis's attorney asked to re-call Jurors 12 and 14 but did not indicate what additional questioning was sought. Willis also asked to call a witness to testify about the differences in odor from edible and flower marijuana, but a *Schwartz* hearing involves "summoning a *juror* for questioning about . . . alleged misconduct." *Martin*, 969 N.W.2d at 363 n.1 (emphasis added).

The district court denied Willis's requests after it had summoned the jurors and elicited testimony about whether any juror was impaired during deliberations or whether they believed any other juror was impaired during deliberations.[4] None of the jurors testified to being impaired or to believing any other juror was impaired. The district court noted that, if Willis believed "a *Schwartz* hearing is warranted, [he] may file the appropriate motion," but Willis did not do so. Thus, Willis failed to properly request a *Schwartz* hearing. We generally address only those questions raised before the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

Second, even if we assume that Willis's attorney requested a *Schwartz* hearing, we are not persuaded that Willis made a prima facie case for doing so. We find guidance in *State v. Green*, in which the district court denied Green's request for a *Schwartz* hearing after "one of the jurors 'thought she smelled alcohol' on another juror." 719 N.W.2d 664,

[4] We note that the district court's questioning of the jurors in this case appears similar to a *Schwartz* hearing, although neither the parties nor the district court labeled it as such.

673 (Minn. 2006). On appeal, Green argued that "one of the jurors could have been intoxicated during deliberations" but "did not explain how this affected the verdict." *Id.*

The supreme court rejected Green's argument on appeal that the district court erred by not conducting a *Schwartz* hearing. *Id.* The supreme court stated that a "juror's consumption of alcohol is not a ground for a new trial unless it is shown that the juror was thereby incapacitated or rendered unfit to discharge his duties intelligently." *Id.* Here, as in *Green*, the record supports the district court's decision. Even though Juror 14 testified that he consumed marijuana, he did so under a prescription, and there was no evidence that he was impaired or that the marijuana affected his ability to discharge his duties as a juror. After a careful review of the record, we discern no abuse of discretion in the district court's handling of proceedings after Juror 12 submitted a written question about the use of medical marijuana by Juror 14.

Willis also alleges that the district court should have conducted further inquiries because, according to Willis, Juror 14 committed misconduct by lying about what type of marijuana he consumed. Although Juror 12 testified that she smelled marijuana while in the elevator with two other jurors, no evidence suggests that the odor came from Juror 14. Juror 12 did not specify that Juror 14 was one of the two other jurors in the elevator with her. Even assuming that he was, there was at least one other juror in the elevator, and the district court and prosecuting attorney noted that the courthouse often smells of marijuana. Accordingly, Willis's claims about Juror 14's dishonesty do not amount to "sufficient evidence which, standing alone and unchallenged would warrant the conclusion of jury misconduct." *Anderson*, 379 N.W.2d at 80 (quotation omitted).

We therefore conclude that Willis did not make a prima facie case for a *Schwartz* hearing and that the district court did not abuse its discretion by denying Willis's request to re-call the jurors and to call an additional witness.

Affirmed.