STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1161

State of Minnesota,
Respondent,

vs.

Michael Lawrence Benson,
Appellant.

Filed August 1, 2022
Affirmed
Rodenberg, Judge[*]

St. Louis County District Court
File No. 69DU-CR-20-384

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

Kimberly J. Maki, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Rodenberg, Judge.

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

NONPRECEDENTIAL OPINION

RODENBERG, Judge

Appellant Michael Lawrence Benson appeals from his conviction for second-degree assault with a dangerous weapon. He argues that the state's circumstantial evidence is insufficient to prove beyond a reasonable doubt that he had the requisite specific intent to commit second-degree assault with a dangerous weapon, that the evidence is insufficient to prove beyond a reasonable doubt that he did not act in self-defense, and that the district court erred when it prohibited the defense from cross-examining the victim, R.N., about an incident of untruthfulness. We affirm.

FACTS

On January 28, 2020, appellant entered a Holiday gas station and asked the clerk and assistant manager, R.N., for matches. When R.N. declined the request unless appellant purchased cigarettes, appellant left the store and knocked over a container of windshield washer fluid on a shelf outside the store. R.N. followed appellant to the parking lot. R.N. gave four recorded statements to police the night of the incident describing what happened. Appellant likewise gave recorded statements with his version of events the night of the incident. Those recorded statements, captured by the 911 call and on an officer's body and squad cameras, were played for the jury at trial, without objection.

R.N. reported to police that he told appellant to leave the property, appellant came toward him, and he pushed appellant away. Appellant then grabbed a small pocketknife and "charged" R.N. R.N. accurately described the knife as a "small" folding knife that appellant "slapped" open. R.N. turned and ran, eventually calling the police.

Appellant told police that R.N. followed him out of the store and attacked him by putting him in a headlock and hitting him. He claimed that he acted in self-defense by pulling out a knife and "chased [R.N.] away." Appellant told police where he threw the talon-shaped folding knife after leaving the parking lot and police located the knife.

Appellant was charged with second-degree assault under Minn. Stat. § 609.222, subd. 1 (2018). Appellant gave notice that he intended to argue self-defense at trial. B.S., a witness present during the encounter, testified at trial. B.S. was outside the store when he saw R.N. and appellant arguing. B.S. approached the men, attempting to "defuse the situation." He did not observe any physical contact between R.N. and appellant. B.S. testified that "less than a minute later" when appellant was about a foot or two away from R.N., appellant declared that he had a knife and pulled it from his pocket. B.S. stated that appellant lost a shoe while leaving the parking lot and that appellant returned to get it and got a light for his cigarette from B.S.

R.N. testified at trial that he followed appellant into the parking lot to ensure the safety of other customers. He testified that he pushed appellant to the ground and that he did not see the knife after appellant drew it. This testimony was inconsistent with his statements to the police the night of the incident when he claimed that "no one fell" when he pushed appellant and that he "turned around when he saw the knife."

On cross-examination, defense counsel attempted to question R.N. about the circumstances of the termination of his employment with Holiday. The state objected and a discussion was held off the record. The district court sustained the objection and instructed the jury to disregard the question. Out of the presence of the jury, the district

court and counsel returned to the matter because the district court wanted "to make a short record about the objection regarding the cross of [R.N.]." The district court clarified that R.N.'s employment had been terminated because of an allegation "that he had been stealing." The district court "didn't believe that was relevant." Defense counsel argued that this was a "specific incident of untruthfulness," and that it was "well within" appellant's rights to inquire about the incident in examining R.N. The state countered that the information was irrelevant and that "it's an incident for which [R.N.] has pending charges within the city of Duluth. That matter is unresolved." The district court maintained its prior ruling.

A jury found appellant guilty of second-degree assault with a dangerous weapon. Appellant was sentenced to 45 months in prison.

This appeal followed.

DECISION

I. The state proved beyond a reasonable doubt that appellant had the requisite specific intent to commit second-degree assault with a dangerous weapon.

Appellant challenges the sufficiency of the evidence against him on the charge of second-degree assault with a dangerous weapon. He specifically argues that the state's circumstantial evidence is insufficient to prove the requisite specific intent element, namely that he intended to cause R.N. fear of immediate bodily harm or death.

In a criminal case, due process requires the prosecution to prove every element of the charged crime beyond a reasonable doubt. *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). When evaluating a claim of insufficiency of the evidence, appellate courts

"carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the fact[-]finder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). Appellate courts review the evidence "in the light most favorable to the conviction . . . [and] assume the jury believed the [s]tate's witnesses and disbelieved any evidence to the contrary." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (citations and quotation omitted). "[W]e will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Id.*

In cases where a conviction is based on circumstantial evidence, reviewing courts apply a heightened level of scrutiny. *Id.* Circumstantial evidence is "evidence from which the fact[-]finder can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017) (quotation omitted). Under the heightened standard, appellate courts "consider whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt." *State v. Allwine*, 963 N.W.2d 178, 186 (Minn. 2021). We apply a two-step analysis when evaluating the sufficiency of circumstantial evidence. First, we must "identify the circumstances proved, giving deference to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate." *Id.* (quotation omitted). Second, we must "independently examine the reasonableness of all inferences that might be drawn from the circumstances proved,

including inferences consistent with a hypothesis other than guilt." *Id.* (quotation omitted). "[A] conviction based on circumstantial evidence may stand only where the facts and circumstances disclosed by the circumstantial evidence form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994) (quotation omitted). We apply the circumstantial-evidence standard of review when the state presents solely circumstantial evidence on one or more elements of an offense. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013).

"Whoever assaults another with a dangerous weapon" commits second-degree assault. Minn. Stat. § 609.222, subd. 1. Because the state charged appellant with fear-based assault, the state was required to prove beyond a reasonable doubt that appellant acted "with intent to cause fear in [R.N.] of immediate bodily harm or death." *See* Minn. Stat. § 609.02, subd. 10(1) (2018). Fear-based assault, as defined by Minn. Stat. § 609.02, subd. 10(1), is a specific intent crime. *State v. Fleck*, 810 N.W.2d 303, 309 (Minn. 2012). "'With intent to' . . . means that the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2018).

"Intent is a state of mind . . . frequently proven with circumstantial evidence." *State v. Irby*, 967 N.W.2d 389, 396 (Minn. 2021). Such evidence includes, "drawing inferences from the defendant's conduct, the character of the assault, and the events occurring before and after the crime." *In re Welfare of T.N.Y.*, 632 N.W.2d 765, 769 (Minn. App. 2001).

The jury may infer that a person intends the natural and probable consequences of his actions. *Irby*, 967 N.W.2d at 396.

Appellant contends that the circumstantial evidence is insufficient to prove that he had the requisite specific intent to cause R.N. fear of immediate bodily harm or death. He argues that there exists an alternative reasonable inference that he drew the knife during his encounter with R.N. only with the intent to stop R.N. from pursuing him further and to prevent more harm to himself.

The first step of the circumstantial-evidence test requires us to identify the circumstances proved, giving deference to the jury's determinations and disregarding evidence in the record that conflicts with the circumstances proved by the state. *Ortega*, 813 N.W.2d at 100.

Deferring to the jury's guilty verdict, the circumstances proved are that appellant entered the gas station to get matches for free and got upset when his request was rejected. He swore at R.N., left the building, and knocked down bottles of windshield wiper fluid. R.N. followed appellant into the parking lot to ensure the safety of other customers. R.N. yelled at appellant to leave the property. Appellant responded, "no are you f-cking gonna make me?" before taking a few running steps toward R.N. R.N. pushed appellant back. B.S. approached the men, attempting to "defuse the situation." B.S. did not see the physical contact between R.N. and appellant. After a minute-long pause, appellant stated he had a knife and pulled it from his pocket. He was about a foot or two away from R.N. He "started running at [R.N.]". Appellant said, "hey you want to go at this, you want to go at this?" R.N. turned and ran. Although some of R.N.'s trial testimony was inconsistent with his

statements to police on the night of the incident, those statements to police were admitted at trial and, supporting the jury's verdict as they obviously do, are a circumstance proved at trial.[1] R.N. accurately described the knife that he said appellant had "pulled," and did so even before the knife was located by police. While leaving the parking lot, appellant lost a shoe. He went back to get it and got a light for his cigarette from B.S. When interviewed by police, appellant stated that he pulled the knife and "chased" R.N. away from him. He told police where he threw the talon-shaped knife after leaving the parking lot and police located it at that place. Consciousness-of-guilt evidence, such as flight from the scene of a crime, may be circumstantial evidence of guilt. *See State v. Mosby*, 450 N.W.2d 629, 633 (Minn. App. 1990), *rev. denied* (Minn. Mar. 19, 1990).

The second step of the circumstantial-evidence test requires that we "independently examine the reasonableness of all inferences that might be drawn from the circumstances proved." *Id.* at 100 (quotation omitted). Drawing inferences from appellant's conduct, "the character of the assault, and the events occurring before and after the crime," it is reasonable to infer from the circumstances that appellant possessed the requisite state of mind to cause R.N. fear of imminent bodily harm. *T.N.Y.*, 632 N.W.2d at 769.

Appellant was upset after leaving the gas station. He swore at R.N. and knocked down merchandise on an outside table. When followed and told to leave the property by

[1] Although inconsistent, R.N.'s statements to police were admitted without objection as prior consistent statements at trial. Appellant makes no argument on appeal that this was plain error. These immediate-impact statements were likely deemed significant by the jury as reflected in the verdict. R.N.'s trial testimony was *inconsistent* with his statements immediately after the incident and cannot be considered as a circumstance proved. *Ortega*, 813 N.W.2d at 100.

R.N., appellant replied, "no are you f-cking gonna make me?" and took a few running steps toward R.N. He opened the folding knife and threatened R.N. with it. Bystander B.S. testified that, about a minute after B.S. approached the men, appellant drew the knife. That pause, between the push and when appellant drew the knife, establishes that appellant intended to cause R.N. fear of imminent bodily harm. Appellant himself stated that he "chased" R.N. with the knife so that R.N. would "get back, get away" from him. Moreover, appellant's own statement the night of the incident was that he threw the knife, implying that appellant was trying to dispose of evidence of the assault—evidence of the awareness of his guilt.

Appellant argues that, even if the inferences to be drawn from the circumstances above are consistent with his intent to cause R.N. fear of immediate bodily harm, those circumstances are also consistent with the reasonable inference that he was acting to stop R.N. from pursuing him and to stop any further harm by R.N. Much of appellant's argument, however, relies on evidence that we must reject based on our standard of review because that evidence is inconsistent with the jury's verdict.

Appellant's words—swearing at R.N. in the store, responding to R.N.'s attempts to get appellant to leave with "are you f-cking gonna make me?" and saying, "hey you want to go at this, you want to go at this?"—coupled with his actions—taking running steps toward R.N., and then a minute later pulling a knife and "chasing" R.N.—establish that he did not act merely to stop R.N. from pursuing him. *See State v. Boitnott*, 443 N.W.2d 527, 531 (Minn. 1989) ("Intent is a state of mind and is, therefore, generally provable only by

inferences drawn from a person's words or actions in light of all the surrounding circumstances.").

Considering the evidence at trial that is consistent with the jury's verdict, we see no reasonable or rational inference other than that appellant acted with the specific intent to cause fear to R.N. of immediate bodily harm or death. The jury's verdict establishes that it rejected appellant's alternative theory, which largely relies on evaluation and interpretation of evidence and circumstances inconsistent with the jury's verdict.

When viewed as a whole, the circumstances proved by the state are consistent with guilt and inconsistent with any other rational inference. The only reasonable inference that can be drawn from the evidence and circumstances proved is that appellant intended to cause R.N. fear of immediate bodily harm.

II. The state proved beyond a reasonable doubt that appellant was not acting in self-defense.

Appellant next argues that the state failed to disprove beyond a reasonable doubt one or more of the four elements of a self-defense claim.

A person may use reasonable force to "resist an offense against the person." Minn. Stat. § 609.06, subd. 1(3) (2018). The amount of force used must be that which is "reasonably necessary to prevent the bodily harm feared." *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014). Self-defense has four elements:

> (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he or she was in imminent danger of . . . 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.

Id. (quoting *State v. Basting*, 572 N.W.2d 281, 285-86 (Minn. 1997)). Once a defendant meets his burden of presenting evidence to support a claim of self-defense, the state "bears the burden to disprove, beyond a reasonable doubt, one or more of the four elements." *Id.*

A. The state proved that appellant was the initial aggressor.

Appellant argues that he was not the initial aggressor. A valid claim of self-defense requires "the absence of aggression or provocation" by the defendant. *Id.* Appellate courts focus on who was the "original aggressor in the incident." *State v. Johnson*, 719 N.W.2d 619, 630 (Minn. 2006). Appellant claims that R.N. was the original aggressor by following him into the parking lot and pushing him. And it appears to us that appellant's statements on the scene are stronger evidence of self-defense than of the absence of the specific intent required to support the charge. Appellant told the officer that he pulled the knife "so [R.N.]'d stop f-cking attacking me." That statement shows that appellant intended to cause R.N. to fear immediate bodily harm, but for the lawful purpose of defending himself.

But, if the jury accepted the on-the-scene statement of R.N., as it appears from the verdict that it did, it was R.N.'s actions that were defensive. Appellant became belligerent, calling R.N. names like "Mother f-cker, you piece of sh-t," and damaging merchandise. R.N. pursued appellant into the parking lot out of concern for other customers and to ensure that appellant would leave the property. R.N. only pushed appellant when appellant took a few running steps toward him. The pause between the push and appellant pulling out the knife to "chase" R.N. also points to appellant as the aggressor in the escalation of force. Appellant's producing a knife and chasing R.N.—in the context of what, until then, had been an unarmed verbal dispute—was not "reasonably necessary to prevent the bodily

harm feared." *Devens*, 852 N.W.2d at 258. Appellant was the original aggressor, and the state met its burden to disprove this element.

Minnesota law is well settled that the state "need only disprove beyond a reasonable doubt at least one of the elements of self-defense." *Radke*, 821 N.W.2d at 324. Even though we conclude that the state met its burden to disprove this element, we briefly address the remaining self-defense elements in turn, because the evidence is sufficient for the jury to have found that any or all of the self-defense elements were disproved beyond reasonable doubt.

B. The state disproved that appellant actually and honestly believed that he was in imminent danger.

Appellant argues that he actually and honestly believed that he was in imminent danger of bodily harm. *See Devens*, 852 N.W.2d at 258. "[T]his element of the self-defense claim is subjective and depends upon the defendant's state of mind." *Johnson*, 719 N.W.2d at 630. Again, "[i]ntent is a state of mind and is, therefore, generally provable only by inferences drawn from a person's words or actions in light of all the surrounding circumstances." *Boitnott*, 443 N.W.2d at 531.

Appellant contends that he had an actual and honest belief that he was in danger of bodily harm when R.N. followed him as he left the store, yelled at him, and pushed him. But the minute-long pause separating any physical contact between R.N. and appellant before appellant drew the knife removes any reasonable doubt about whether appellant had an actual or honest fear. Moreover, appellant's taunting R.N. and running toward him and

then coming back to the property and taking the time to light a cigarette, disprove his claimed fear. *See id.* at 531. The state disproved this element beyond a reasonable doubt.

C. The state disproved that reasonable grounds supported appellant's belief.

Appellant contends that it was reasonable for him to fear imminent bodily harm when he left the store and was pursued by R.N. Appellant argues that R.N. escalated the situation by approaching him while he retreated and by pushing him to the ground. Even if we were to accept appellant's version of events—which the jury by its verdict rejected—the minute-long pause with no physical interaction between the men disproves appellant's claim that reasonable grounds supported his belief. The state disproved this element beyond a reasonable doubt.

D. The state also easily disproved the absence of a reasonable possibility of retreat.

Finally, appellant argues that he lacked a reasonable means to retreat or avoid physical conflict. He argues that snowbanks in the vicinity and his sense that R.N. desired "to attack again" impeded him from leaving the scene. But appellant was outdoors. Not only was there an avenue of retreat, but appellant actually did leave the area only to return to retrieve his shoe and get a light for his cigarette. Appellant had a readily available option to retreat to avoid confrontation with R.N. He chose not to retreat and instead charged with a knife. The state met its burden to disprove this element beyond a reasonable doubt.

Sufficient evidence exists in the record to support the jury's rejection of appellant's self-defense claim. Considering the evidence in the light most favorable to the verdict, we conclude that the state adequately disproved appellant's self-defense claim.

III. The district court did not reversibly err when it prevented appellant from cross-examining R.N. about an incident of untruthfulness.

Appellant argues that the district court erred when it prevented him from inquiring into a specific incident of untruthfulness on the part of R.N., pursuant to Minn. R. Evid. 608(b).

Appellate courts review a district court's evidentiary ruling for abuse of discretion. *State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017). "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). Even if a district court abused its discretion, appellate courts reverse only if the exclusion of evidence was not harmless beyond a reasonable doubt. *Zumberge*, 888 N.W.2d at 694 (citing *State v. Richardson*, 670 N.W.2d 267, 277 (Minn. 2003)). "An error is not harmless beyond a reasonable doubt when there is a reasonable possibility that the error complained of may have contributed to the conviction." *Id.* (quotation omitted). To determine whether the erroneous omission of evidence may have influenced the jury's verdict, appellate courts assess the strength of the state's case. *State v. Larson*, 389 N.W.2d 872, 875 (Minn. 1986).

As a threshold matter, the state contends that we should not consider this argument on appeal because appellant did not make an offer of proof and because his argument on appeal relies on information not in the appellate record. We reject these arguments.

The evidence in question relates to evidence that R.N.'s employment with the Holiday store was terminated because of a criminal charge of theft lodged against R.N. by

his employer. That charge was unresolved when this case was tried and apparently related to R.N.'s actions after this second-degree assault. The state argues that this court "has no basis to review the claim of evidentiary error" because appellant "made no offer of proof." Minnesota Rule of Evidence 103, subdivision a(2) provides that the substance of the evidence erroneously not admitted must be "made known to the court by" an offer of proof or must be "apparent from the context within which questions were asked." *See also State v. Harris,* 713 N.W.2d 844, 849 (Minn. 2006) (stating that "an appellate court cannot assess the significance of the excluded testimony" without "an offer of proof" or "the substance of the evidence is apparent from the context"). "The purpose of an offer of proof is to provide 'the court with an opportunity to ascertain the admissibility of the proffered evidence' and to provide 'a record for a reviewing court to determine whether the lower court ruling was correct.'" *State v. Pak*, 787 N.W.2d 623, 627 (Minn. App. 2010) (quoting *Santiago v. State,* 644 N.W.2d 425, 442 (Minn. 2002)). "But an offer of proof is not necessary where the substance of the excluded evidence is apparent from the context." *Id.*

Appellant concedes that he made no offer of proof at trial, but argues that the substance of the excluded evidence was apparent from the context. While the record is not entirely clear, it does reflect that the district court and the parties knew what the disputed evidence was and that it related to an employee-theft allegation against R.N. that was unresolved when this case was tried. The substance of the evidence was, therefore, apparent from the context. The defense attempted to inquire of R.N. about his termination pursuant to rule 608(b). The district court held a sidebar and sustained the state's objection to the line of questioning. The district court later made a record that R.N. had been

terminated from his employment because he had been stealing. Both defense counsel and the state followed the district court's comments with clarifying information about R.N.'s termination because of theft. The state discussed R.N.'s pending criminal charges concerning the incident. Based on this context, we conclude that appellant adequately preserved the issue for appeal despite the lack of an express offer of proof.

The state next argues that appellant's appellate brief "improperly refers to matters outside the record on appeal—that being, pending charges of stealing by R.N. from his employer Holiday." The state contends that the record is limited to two statements by appellant's trial counsel. The first is when counsel asked R.N. about being "terminated" from Holiday. The second is when counsel argued that his client was entitled to inquire about the "termination" under rule 608(b).

The state's characterization of the record is too restrictive. As discussed, the district court stated on the record that R.N. was terminated from employment for stealing. Defense counsel also referenced the "specific incident of untruthfulness," apparently referring to the theft. And the state itself mentioned on the record the criminal charges pending against R.N. in Duluth.

Finally, as appellant argues, the district court's rejection of the evidence was not premised on lack of a factual proffer, but on relevance. If the state or the court had expressed concern about the accuracy of the allegation, appellant could and presumably would have provided additional information to the court. Because the record includes a discussion of R.N.'s pending theft charges between the district court, defense counsel, and

the state, and the exclusion of that evidence was not premised on the lack of a factual proffer, we conclude that the matter is properly before us.

A. The district court did not abuse its discretion when it sustained the state's objection to evidence of the allegation of theft.

On the merits, appellant argues that the district court abused its discretion by precluding inquiry into R.N.'s termination from Holiday for stealing. Rule 608(b) provides: "Specific instances of the conduct of the witness . . . may . . . in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness . . . concerning the witness's character for truthfulness or untruthfulness." In Minnesota, "evidence of commission of a theft, while not directly involving false statement or dishonesty, may be admitted in the discretion of the district court as evidence of truthfulness or untruthfulness." *State v. Fields*, 730 N.W.2d 777, 783 (Minn. 2007). The state concedes that legal authority supports the relevance of theft under rule 608(b). But we look to the plain language of rule 608(b) which provides that the district court has discretion to admit evidence of a theft, but it need not do so in every case. The evidence must be probative.

Here, R.N. had already been impeached by the inconsistency between his statements on the night of the incident and his trial testimony. And R.N.'s trial testimony—which came after the theft allegation—was, in fact, more favorable to appellant than was his on-the-scene statement. Evidence of employee theft *after* the incident and *before* the trial is inconsistent with the notion advanced by appellant at trial in support of admitting the alleged theft. Appellant's position was and remains that R.N. was trying to curry favor

with his employer or the police through his trial testimony. The district court could logically consider that, in context, such evidence was not particularly probative. Moreover, the district court could properly consider that any logical relevance of an as-yet-unresolved claim of employee theft would be outweighed by the countervailing considerations of jury confusion and wasting time when other and more relevant impeachment evidence was already in the record. *See State v. Jahnke*, 353 N.W.2d 606 (Minn. App. 1984) ("specific instances of misconduct of the [witness] *may* be inquired into on cross-examination at the discretion of the trial judge if it is found that such acts are relevant and probative of veracity, and the probative value outweighs the risk of undue prejudice, confusion of issues, or unnecessary delay"); *see also State v. Gress*, 84 N.W.2d 616, 621-24 (1957) (stating that, ordinarily, the district court has discretion to determine whether a witness's credibility may be challenged on cross examination using a specific instance of conduct under rule 608(b)).

Appellant cites to *State v. Clark,* 296 N.W.2d 359, 367-68 (Minn. 1980), and *Fields*, 730 N.W.2d at 783, to support his argument. But the cited cases contain instances where evidence was admitted at trial and the argument on appeal was that it should not have been admitted. *See Clark,* 296 N.W.2d at 367-68 (concluding that the district court may, in its discretion, allow cross-examination of a specific instance of theft, even if it did not result in a conviction); *Fields*, 730 N.W.2d at 782 (concluding that the district court did not abuse its discretion by admitting evidence of appellant's theft from his employer because it was probative of truthfulness). Here, the district court exercised the discretion plainly available to it under the rule to exclude the evidence. Appellant cites no authority—and we are aware

of none—holding that the plain language of the rule granting the district court discretion to admit evidence of this sort nevertheless *requires* admission of the impeaching evidence in every instance. We conclude that the district court did not abuse its discretion.

B. Even if the district court erred in excluding the evidence of R.N.'s untruthfulness, any such error was harmless.

Even if we were to conclude that the district court abused its discretion by precluding inquiry into R.N.'s character for untruthfulness, any such error was harmless. Appellant argues that not admitting this evidence prejudiced him because R.N.'s credibility was of central importance. Appellant contends that the "jurors might reasonably have decided that [R.N.]'s self-interest in reporting appellant's [actions] . . . was to protect his own job, to shine the spotlight away from himself and his shady actions as a store employee, to gain praise from his employer."

However, and as discussed above, R.N.'s trial testimony had already been impeached by the inconsistency between his statements to the police on the night of the incident and his trial testimony. And R.N.'s trial testimony was less favorable to the state than were his on-the-scene statements. Nevertheless, the jury's verdict reflects that it believed the on-the-scene statements recorded by police immediately after the incident. And the jury was best situated to resolve the apparent inconsistencies. We see no reasonable probability that the exclusion of the marginally relevant evidence in question contributed to appellant's conviction. If the district court erred, the error was harmless.

Affirmed.