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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0635**

State of Minnesota,  
Appellant,

vs.

Taylor James Pass,  
Respondent.

**Filed August 27, 2012  
Affirmed  
Worke, Judge**

Dakota County District Court  
File No. 19HA-CR-09-1823

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

James C. Backstrom, Dakota County Attorney, Phillip D. Prokopowicz, Assistant County Attorney, Hastings, Minnesota (for appellant)

Mark D. Nyvold, Special Assistant State Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and  
Worke, Judge.

**UNPUBLISHED OPINION**

**WORKE**, Judge

In this pretrial appeal, the state argues that the district court clearly and unequivocally erred by dismissing a criminal complaint against respondent that charged

him with attempted second-degree murder and assault. The district court ruled that the parties could not present evidence that would reveal evidence of another offense for which respondent was tried and acquitted. Because the district court did not clearly and unequivocally err, we affirm.

## FACTS

On April 7, 2009, T.S.R. and O.A.-R. were stabbed. O.A.-R. survived the attack, but T.S.R. died from her injuries. The state charged respondent Taylor James Pass with two counts of second-degree murder, one count of attempted second-degree murder, and one count of second-degree assault. A jury found respondent not guilty of murdering T.S.R. but was deadlocked on the charges against him for harm to O.A.-R. The district court scheduled a retrial.

Before the second trial, the state moved to admit evidence of T.S.R.'s murder to prove respondent's motive in stabbing O.A.-R., asserting that respondent intended to kill O.A.-R. to eliminate him as a witness to respondent's murder of T.S.R. The district court denied the state's motion. The court ruled that such evidence was inadmissible under *State v. Wakefield*, 278 N.W.2d 307, 309 (Minn. 1979), which holds that "under no circumstances is evidence of a crime other than that for which a defendant is on trial admissible when the defendant has been acquitted of that other offense."

This court affirmed as modified, ruling that while the district court properly excluded evidence "limited to the specific acts constituting the crime itself," the district court overextended *Wakefield* by summarily excluding all evidence related to T.S.R.'s murder. *State v. Pass*, No. A10-1134, 2011 WL 1236143, at \*4 (Minn. App. Apr. 5,

2011). This court noted that evidence in question, as immediate-episode evidence, could be admissible to show “the factual context and background of the charged offense,” and that the balancing test required for admission of this evidence could not be “speculatively determined” when the evidence had not yet been identified “through offers of proof and motions in limine.” *Id.* at \*4-5.

Thereafter, the district court received offers of proof and heard testimony from O.A.-R., a police officer, and firefighter/paramedics. The district court summarized the documentary evidence included in the parties’ offers of proof:

The [s]tate indicates that it does not seek to present any evidence regarding the stabbing and subsequent death of [T.S.R.].

[Respondent’s] offer of proof for retrial includes the following, un-redacted evidence: the transcript from [O.A.-R.’s] phone call to 911; [O.A.-R.’s] medical records generated from his hospitalization at Hennepin County Medical Center; transcripts from law enforcement interviews of [O.A.-R.]; a letter from [O.A.-R.] to the prosecution in which he describes the alleged attacks; investigation notes from defense interviews of [O.A.-R.]; and DNA evidence collected from various items and from [T.S.R.’s] fingernail scrapings.

The district court found that the probative value of the state’s evidence was “substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury.” The court also found that the matter could not be “presented to the jury without admitting evidence regarding [T.S.R.’s] unsolved murder, including the facts related to the investigation and trial.” The district court dismissed the complaint in the interests of

justice, concluding that prosecution of the case would violate respondent's due-process rights.

## DECISION

On appeal of a pretrial order, the state must make a threshold showing of critical impact in order for the appellate court to retain jurisdiction. *State v. Baxter*, 686 N.W.2d 846, 850 (Minn. App. 2004). An appellate court “will reverse the order of the [district] court only if the state demonstrates clearly and unequivocally that the [district] court erred and its error will have a critical impact on the outcome of the case.” *State v. Schmidt*, 612 N.W.2d 871, 875 (Minn. 2000); see *State v. Varnado*, 582 N.W.2d 886, 889, 889 n.1 (Minn. 1998) (noting that critical-impact test was met when the district court dismissed a criminal complaint after suppressing the state's evidence). These legal questions are subject to de novo review. *Schmidt*, 612 N.W.2d at 875.

The district court's pretrial order effectively bars the state from introducing evidence related to T.S.R.'s murder. Because this evidence includes the bulk of the state's case and its exclusion could affect respondent's constitutional right to present exonerating evidence, the critical-impact test is satisfied.

The state must also show that the district court “clearly and unequivocally” erred in the pretrial ruling. *Schmidt*, 612 N.W.2d at 875. Here, the district court made a pretrial ruling to exclude immediate-episode evidence that preceded respondent's alleged attack of O.A.-R. Immediate-episode evidence may be admissible to prove an element of an offense when the evidence is connected causally and temporally to the immediate incident from which criminal charges were drawn. *State v. Riddley*, 776 N.W.2d 419,

426 (Minn. 2009); *see State v. Leecy*, 294 N.W.2d 280, 281-82 (Minn. 1980) (admitting defendant's threats against store customer that preceded defendant's assault on the customer and were part of the immediate episode that led to charges). The district court has discretion in making evidentiary rulings, and we will not reverse absent an abuse of that discretion. *State v. Pearson*, 775 N.W.2d 155, 160 (Minn. 2009).

In deciding to exclude the immediate-episode evidence, the district court noted that respondent's acquittal on the murder charges prohibited the state from offering immediate-episode evidence to show that respondent's motive in committing the offense against O.A.-R. was to cover up his role in T.S.R.'s murder. But the district court found that the state's proffered reason, "to provide the jury a complete picture of the events immediately preceding the attack on [O.A.-R.]," was of such marginal evidentiary value that it "erode[d] the probative value of the [s]tate's evidence [and] [] sever[ed] the causal connection required to be admissible as immediate[-]episode evidence."

The district court was also persuaded by respondent's claim that he would be unduly prejudiced by exclusion of evidence related to T.S.R.'s murder. Due process requires the right to present a defense, including the right to present evidence showing that a charged crime was committed by another. *State v. Swaney*, 787 N.W.2d 541, 556-57 (Minn. 2010); *see State v. Ferguson*, 804 N.W.2d 586, 590-91 (Minn. 2011) (stating that a criminal defendant has a constitutional right to present a complete defense). The court enumerated evidence that implicated O.A.-R. in T.S.R.'s murder, as follows:

The presence of [O.A.-R.'s] DNA on both ends of a knife used in the attacks; testimony from [T.S.R.'s] neighbors suggesting that it took [O.A.-R.] 15-20 minutes to call 911

after [respondent] left the scene; [T.S.R.] was somehow able to crawl or drag herself from the garage and into the home and call 911 before [O.A.-R. did]; [T.S.R.'s] body was found in the home and not in the garage where [O.A.-R.] alleged the crimes occurred; testimony from [T.S.R.'s] ex-husband rais[ed] a possible theory of motive for [O.A.-R.] to assault [T.S.R.]; and numerous inconsistent statements and some untruths in [O.A.-R.'s] statements to police.

On this record, we conclude that the district court did not clearly and unequivocally err by dismissing the criminal complaint. *See State v. Aubid*, 591 N.W.2d 472, 478 (Minn. 1999) (stating that appellate courts may not substitute their judgment for district court's judgment). The court applied the balancing test required for admission of evidence, ruled that it was more prejudicial than probative to admit the evidence given the reason advanced by the state for its admission, and concluded that exclusion of some of the evidence would violate respondent's constitutional right to present a complete defense.

**Affirmed.**