STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1862

State of Minnesota,
Respondent,

vs.

Steven LeCuyer,
Appellant.

Filed December 7, 2020
Affirmed in part, reversed in part, and remanded
Jesson, Judge

Freeborn County District Court
File No. 24-CR-17-1572

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

David Walker, Freeborn County Attorney, Abigail H. Lambert, Assistant County Attorney, Albert Lea, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

JESSON, Judge

After returning from watching "Bachelor in Paradise" with her sister-in-law, K.L. believed she was home alone. Then her ex-husband, appellant Steven LeCuyer, appeared

in her bedroom. K.L. escaped two hours later. LeCuyer was charged with false imprisonment, domestic assault (fear), and stalking (while possessing a dangerous weapon). Based on an errant statement involving LeCuyer's past behavior which was played for the jury, LeCuyer argues that the lack of redaction amounts to prosecutorial error. In addition, he challenges the district court's refusal to disclose the victim's medical records and the entry of multiple convictions for included offenses. Because the prosecutorial error was not prejudicial and the medical records did not contain relevant evidence, we affirm in part. But because stalking is an included offense of false imprisonment, we reverse in part and remand for resentencing.

FACTS

In 2017, LeCuyer and his wife, K.L., separated. LeCuyer lived with his sister in the Twin Cities and K.L. remained in the residence they had shared on her family's farm in Albert Lea. Following the separation, they still communicated frequently and LeCuyer regularly spent time during the summer with K.L., including overnight stays.

In September 2017, around 6:30 p.m., LeCuyer arrived at K.L.'s residence to retrieve some personal property. K.L. and LeCuyer had corresponded earlier that day, so she knew he would be arriving. They briefly spoke in her driveway before K.L. left to watch "Bachelor in Paradise" with her sister-in-law at her brother's house. While she was away, K.L. received several texts from LeCuyer regarding her dogs and his safe. Following the last text exchange at 8:09 p.m., K.L. believed that LeCuyer had left her house. When K.L. returned to her locked home at around 9:20 p.m., LeCuyer's truck was no longer in

the driveway. His boots, however, stood next to the dining room table. K.L. called LeCuyer twice, but the calls went straight to voicemail. What transpired next is disputed.

According to K.L., she then walked into the bedroom only to be thrown onto the bed by LeCuyer, who had emerged from the closet. LeCuyer wore a cut-off T-shirt with several curtain ties knotted around his neck. But he was naked from the waist down. K.L. then noticed an engraved golden gun in LeCuyer's hand and proceeded to scream. LeCuyer took her phone away, telling her to calm down, shut up, and that she would not be calling anyone. K.L. started gagging as a ruse to go to the bathroom, but LeCuyer said he would follow her into the room. He then sat at the foot of the bed, between K.L. and the bedroom door, and they talked for about two hours. K.L. believed that LeCuyer was suicidal based on their conversation, which included his anger about their marriage and how K.L. had "betrayed" him. When asked about the gun, LeCuyer said it was for him and not for K.L., and eventually he placed the gun in a dresser drawer. K.L. admits that LeCuyer never pointed the gun at her.

It is undisputed that around 11:30 p.m., LeCuyer allowed K.L. to go to the bathroom to change into her pajamas. After putting on her pajama pants, K.L. realized she could escape. K.L. left the bathroom, grabbed her car keys, and sped to the police station. When she arrived, she was wearing her work top, pajama bottoms, and no shoes. K.L. gave a statement to the police about the previous two hours.

The following morning, LeCuyer met with a detective and recounted the night before. According to LeCuyer, K.L. called him at 9:02 p.m. and asked him to stay at her house and "hang out." Once she arrived home, they talked about their relationship for a

few hours before she left and he went to bed. LeCuyer said that he regularly deleted his call log and text messages, including from that morning, so there was no proof of the call. He claimed he never had a gun.

Police conducted a forensic search of LeCuyer's cell phone records and determined there was no call from K.L.'s phone to LeCuyer's phone at 9:02 p.m. Officers also discovered LeCuyer's truck behind a barn. Police searched LeCuyer's truck and K.L.'s residence and outbuildings. Only one curtain tie was located, and no gun or ammunition was recovered.

The state charged LeCuyer with false imprisonment,[1] domestic assault (fear),[2] and stalking (while possessing a dangerous weapon).[3] LeCuyer pleaded not guilty.

During a pretrial motion hearing, the state informed the court that it planned on playing eight separate portions of video of K.L. reporting the incident to the police. According to the state this amounted to roughly 40 minutes of the recording, and references to prior criminal cases involving LeCuyer were omitted. The defense counsel looked at the video transcript and approved the portion that was to be introduced into evidence.

In a second pretrial motion hearing, LeCuyer requested a release of K.L.'s medical records. Specifically, LeCuyer believed that there could be relevant evidence, due to K.L.'s history of brain lesions from multiple sclerosis, such that she might experience memory lapse, substantial cognitive impairment, or episodes of psychosis and delusions

[1] Minn. Stat. § 609.255, subd. 2 (2016).
[2] Minn. Stat. § 609.2242, subd. 1(1) (2016).
[3] Minn. Stat. § 609.749, subd. 3(a)(3) (2016).

that could undercut her credibility. The district court performed an in camera review of the records and denied the motion, concluding that the medical records did not contain relevant evidence.

At trial, held over two days in April 2019, the jury heard from eight witnesses, including police officers, friends and family, as well as LeCuyer and K.L. In addition, the prosecution played the partially redacted video of K.L.'s report to the police. One portion of the 40-minute video included this exchange between K.L. and Deputy Hable that revealed LeCuyer had a recent brush with authorities. The deputy questioned K.L. as follows:

> Q: —to see if there's vehicles coming or going, or whatnot. I would almost bet on that. But I'm sure that Sergeant Bennett's coordinating enough manpower to get out there. If he's—if he says he's going to commit suicide—.
>
> . . . .
>
> A: Yep. He knows what's going to happen. We just got done—*he was facing life in prison two months ago*.
>
> Q: Okay. *Does he have a parole agent—*

(Emphasis added.) The prosecutor stopped the recording and asked to approach the bench, where the prosecutor and defense counsel argued over whose fault it was that a "clearly inadmissible" section was included and not flagged for redaction.

Outside the presence of the jury, defense counsel requested that the court skip to the next portion of the video and then discuss solutions for the errant section in chambers. Later, when asked by the court about a possible solution, defense counsel suggested that

he ask LeCuyer whether or not he has any criminal convictions as a mitigation to the disclosure. A cautionary instruction, defense counsel stated, might further draw attention to the statements that "some jurors, frankly, may not have even heard." The court decided against a cautionary instruction, and instead let LeCuyer testify about not having prior convictions. Later, when questioned, LeCuyer affirmed that he had never "had any criminal convictions of any kind."

The jury acquitted LeCuyer of stalking (while possessing a dangerous weapon), but found him guilty of the lesser-included offense of stalking (without a dangerous weapon), false imprisonment, and domestic assault (fear). The district court entered convictions for all three verdicts, but only sentenced on the felony count of false imprisonment to time served and probation. LeCuyer appeals.

D E C I S I O N

LeCuyer challenges the errant playing of video testimony as a prosecutorial error and evidence of ineffective assistance of counsel. Additionally, he requests reversal of the district court's decision to withhold confidential medical records as possibly containing relevant information for his defense, as well as for entering too many convictions in violation of Minnesota Statute section 609.04 (2016). We address each issue in turn.

I. Playing a clip of inadmissible evidence by the prosecution amounts to plain error but it did not affect LeCuyer's substantial rights.

LeCuyer first contends that he should be afforded a new trial because the prosecutor committed prejudicial plain error by introducing a recorded statement from K.L. to police

without redacting references to LeCuyer "facing life in prison" and having a "parole agent."

Defense counsel did not object to the admission of the portion of the police statement at trial. This court reviews unobjected-to claims of prosecutorial error under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under this standard, LeCuyer must establish that the error was plain. *Id.* An error is plain if it is "clear or obvious." *State v. Waiters*, 929 N.W.2d 895, 901 (Minn. 2019) (quotations omitted). Then the burden shifts to the state to demonstrate "that there is no reasonable likelihood that the absence of the [error] would have had a significant effect on the [jury's verdict]." *Ramey*, 721 N.W.2d at 302 (quotations omitted).[4]

Plain Error

First, the court must consider whether the playing of the offending portion of video constitutes an error. In general, "eliciting inadmissible evidence" is a form of improper conduct for prosecutors that is considered error. *Id.* at 300 (citing *State v. Harris*, 521 N.W.2d 348, 353–54 (Minn. 1994)). And it is undisputed that the clip was inadmissible.

Next, the court must consider whether the committed error constitutes plain error. Here, the error is clear and obvious. The Minnesota Rules of Evidence outline strict guidelines for admitting evidence of a defendant's prior bad acts. *See* Minn. R.

[4] If the state fails to meet this burden, this court then considers whether to address the error "to ensure fairness and the integrity of judicial proceedings." *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017).

Evid. 404(b) ("Evidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith."). The video here clearly depicts both an officer and K.L. discussing LeCuyer's prior bad acts involving an arrest—a topic that both the parties and judge appeared to agree was inadmissible at trial. But unlike cases involving witnesses giving unexpected, inadmissible testimony, this was a video that had been reviewed multiple times by the prosecutor. *See State v. Huffstutler*, 130 N.W.2d 347, 348 (Minn. 1964) (stating that "the prosecution is entirely responsible for [the inadmissible evidence's] presence in the record").

In sum, because the prosecutor submitted the video without redacting the prejudicial references to criminal conduct, the error was plain.

Substantial Rights

Because the facts establish plain error, the burden shifts to the state to demonstrate that the error did not affect LeCuyer's substantial rights. *Ramey*, 721 N.W.2d at 302. When evaluating the effect of alleged error on a defendant's substantial rights, this court considers the pervasiveness of improper suggestions and the strength of evidence against the defendant. *Parker*, 901 N.W.2d at 926. We also consider a defendant's opportunity to rebut the improper evidence. *State v. Mosley*, 853 N.W.2d 789, 803 (Minn. 2014).

We turn first to consider the pervasiveness factor. The video clip was played only once. The statements consumed less than 30 seconds in an over 40-minute video played for the jury. And the erroneous comments of LeCuyer's prior act were neither addressed by any other witness nor used by the prosecutor in closing argument.

With this context in mind, we consider the strength of the evidence against LeCuyer. Here, the evidence was relatively strong. The jury not only heard testimony from K.L. describing the events, but also considered physical evidence, including a photograph and video of what K.L. wore to the police station (work top, pajama bottoms, no shoes), photographs of the curtains before and after the disappearance of the curtain ties, and photographs of the disheveled closet the following morning—all potentially corroborative of her testimony. And while LeCuyer contends that this is a "close case in which credibility was the central issue," we note that the jury had far more evidence than the fleeting recording upon which to question LeCuyer's credibility. LeCuyer's own testimony included admissions that he lied to police about a phone call from K.L.—which he asserts was the sole reason why he claimed to have stayed in K.L.'s residence—and that he deleted his call and text logs after being contacted by police but before questioning.

Finally, we observe that LeCuyer had an opportunity to rebut. The cure proposed by defense counsel was that LeCuyer testify that he does not have any criminal convictions, and he did so.

In sum, we conclude that the error did not impact LeCuyer's substantial rights. The error was not pervasive, the state's evidence was sufficiently strong, and LeCuyer had an opportunity to rebut the evidence. This instance of prosecutorial error does not require reversal.

II. LeCuyer did not receive ineffective assistance of counsel when defense counsel failed to discover, redact, and react to prejudicial statements in the video.

Next, LeCuyer argues that his conviction should be reversed due to ineffective assistance of counsel for his attorney's failure to discover the prejudicial statements played in the video, as well as the failure to remedy the disclosure.

Minnesota courts have adopted the two-prong *Strickland* test when reviewing a claim of ineffective assistance of counsel. *Bobo v. State*, 820 N.W.2d 511, 516 (Minn. 2012) (citing *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984)). The two prongs of the *Strickland* test are: (1) the defendant must prove that counsel's representation fell below an objective standard of reasonableness; and (2) the defendant must prove there was a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 687–96, 104 S. Ct. at 2064–70. We need not address both the performance and prejudice prongs if one is determinative. *Id.* at 697, 104 S. Ct. at 2069. In this case, the prejudice prong is determinative.

While not precisely the same, the prejudice prong analysis is similar to that of the substantial rights portion of the plain error analysis. As discussed above, the state's evidence against LeCuyer is strong. Because LeCuyer could not show that the prosecutorial error was prejudicial and affected his substantial rights, similarly there is not prejudice under the *Strickland* test.

III. The district court did not abuse its discretion in determining that there was no relevant information in K.L.'s medical records.

LeCuyer also contends that this court should conduct an independent review of K.L.'s medical records. Specifically, his defense relies on his knowledge of K.L.'s multiple-sclerosis-induced brain lesions which he argues can cause memory lapse, substantial cognitive impairment, and episodes of psychosis and delusions that could undercut her credibility.

A crime victim's past medical records are "generally protected from disclosure by the physician-patient privilege." *State v. Kutchara*, 350 N.W.2d 924, 926 (Minn. 1984); *see* Minn. Stat. § 595.02, subd. 1(d), (g) (2016). "However, the medical privilege . . . sometimes must give way to the defendant's right to confront his accusers." *Kutchara*, 350 N.W.2d at 926. When a criminal defendant requests protected records "the district court may screen the confidential records in camera to balance the right of the defendant to prepare and present a defense against the rights of victims and witnesses to privacy." *State v. Hokanson*, 821 N.W.2d 340, 349 (Minn. 2012) (citing *State v. Paradee*, 403 N.W.2d 640, 642 (Minn. 1987)). To obtain an in camera review of protected information, the defendant must make a "plausible showing that the information sought would be both material and favorable to his defense." *Id.* (quotations omitted). When conducting in camera review, the district court is tasked with reviewing the protected information for "all relevant evidence that might help [the defendant's] defense." *Paradee*, 403 N.W.2d at 642. This factual determination is ultimately subject to judicial review by

this court. *Id.* On appeal, this court reviews the same material for an abuse of discretion. *Hokanson*, 821 N.W.2d at 349.

The district court granted LeCuyer's request for an in camera review of K.L.'s medical records. Following the district court's review, it found "that no relevant or admissible information is contained in those records and as such they shall remain private and confidential."

Having reviewed all of the confidential medical documents in the record, we similarly conclude the records simply do not contain information relevant or helpful to LeCuyer's case. The district court did not abuse its discretion in denying access to the privileged records.

IV. The district court erred by entering multiple convictions involving included offenses.

Finally, LeCuyer contends that the district court erred by entering convictions for stalking and domestic assault, arguing that these are lesser-included offenses of false imprisonment. "A lesser degree of the same crime" or "a crime necessarily proved if the crime charged were proved" constitute included offenses. Minn. Stat. § 609.04, subd. 1(1), (4). In determining whether an offense constitutes an included offense, we look to the statutory elements and apply de novo review. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

Turning to the convictions, LeCuyer was found guilty of three offenses—domestic assault, false imprisonment, and stalking. Minn. Stat. §§ 609.2242, subd. 1(1); .255,

subd. 2, .749, subd. 2(1) (2016). The district court imposed a sentence only for false imprisonment.

As a result, we begin by examining whether stalking is a lesser-included offense of false imprisonment. Someone is guilty of false imprisonment if they intentionally confine or restrain another person without their consent while knowing they lack the lawful authority to do so. Minn. Stat. § 609.255, subd. 2. Someone is guilty of stalking if they directly or indirectly intend to injure the person, property, or rights of another by the *commission of an unlawful act*. Minn. Stat. § 609.749, subd. 2(1). Here, LeCuyer's stalking charge was based upon the "unlawful act" of false imprisonment against K.L. in her bedroom. Since the stalking count was premised on the false imprisonment, the false imprisonment count was "necessarily proved" when stalking was proved and so LeCuyer cannot be convicted of both offenses. Minn. Stat. § 609.04, subd. 1(4). As a result, after the district court entered a conviction and imposed a sentence on the included offense—the felony count of false imprisonment—the stalking conviction was improper.

We turn next to whether domestic assault is a lesser-included offense of false imprisonment. Someone is guilty of domestic assault (fear) if they commit an act with intent to cause fear in another of immediate bodily harm or death. Minn. Stat. § 609.2242, subd. 1(1). It is possible to commit false imprisonment without committing domestic assault because it is possible to knowingly confine someone without intending to cause fear in another of immediate bodily harm or death. *See*, *e.g.*, *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006) ("The protections of section 609.04 will not apply if the offenses constitute separate criminal acts."). Inversely, it is possible to cause fear in another of

immediate bodily harm or death without unlawfully confining them. As a result, neither domestic assault nor false imprisonment are included offenses of the other under Minnesota Statute section 609.04, subdivision 1(4), permitting a conviction for both offenses.

Because the district court erred in entering judgment of conviction for stalking, we reverse and remand for the district court to vacate the conviction and issue an amended sentencing order.

In summary, we conclude that the prosecutorial error did not affect LeCuyer's substantial rights as to require a reversal and we determine there was no prejudice to find ineffective assistance of counsel. We affirm the counts of false imprisonment and domestic assault but reverse and remand for the district court to vacate the judgment of conviction for the count of stalking.

Affirmed in part, reversed in part, and remanded.