This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1410

State of Minnesota,
Respondent,

vs.

Alexander Charles Leboeuf,
Appellant.

Filed October 4, 2021
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CR-20-1594

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Ross, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

The state charged appellant with multiple drug- and firearm-related offenses, based on evidence obtained from the search of an apartment and two vehicles associated with appellant. At the close of the state's case at trial, the district court granted appellant's motion for judgment of acquittal related to the counts arising from the drugs found in the

two vehicles. But the district court did not instruct the jury that it could not consider the evidence obtained from the vehicles. In this appeal from the judgment of conviction on the remaining counts, appellant argues that the district court committed plain error by failing to instruct the jury on this point. We affirm.

FACTS

In January 2020, law enforcement officers executed a search warrant on an apartment and two vehicles believed to be linked to appellant Alexander LeBoeuf.[1] The officers discovered cocaine, a firearm, and ammunition in the apartment bedroom, and they found more cocaine in the two vehicles. Respondent State of Minnesota later charged LeBoeuf with four counts: second-degree sale and third-degree possession of ten or more grams of a narcotic drug other than heroin (counts I and II), in violation of Minn. Stat. §§ 152.022, subd. 1(1), .023, subd. 2(a)(1) (2018); and two counts of unlawful possession of a firearm or ammunition (counts III and IV), in violation of Minn. Stat. § 624.713, subd. 1(2) (2018). In June 2020, the state amended the criminal complaint to add three more counts: first-degree sale of 17 grams or more of cocaine (count V) and two counts of fifth-degree possession of a controlled substance (counts VI and VII), in violation of Minn. Stat. §§ 152.021, subd. 1(1), .025, subd. 2(1) (2018). The amended complaint specified that counts I and II were based on the cocaine discovered in the bedroom, counts VI and VII were based on the cocaine discovered in the vehicles, and count V was based on the

[1] The caption of this opinion spells appellant's name as "Leboeuf." The caption on appeal must match the caption as it appeared before the district court. *See* Minn. R. Civ. App. P. 143.01. In appellant's brief and in the transcripts, however, appellant spells his name as "LeBoeuf." We therefore use that spelling throughout this opinion.

total amount of cocaine found in the apartment and the vehicles. Counts III and IV were based on the firearm and ammunition found in the bedroom.

Jury Trial

The case proceeded to a jury trial. The state presented the following evidence. In January 2020, law enforcement officers obtained a warrant to search an apartment unit in St. Louis Park and two vehicles. When the officers arrived at the apartment to execute the warrant, four individuals were sitting in the living room—LeBoeuf, his fiancée, and two children. The fiancée rented the apartment. It was a "very small" one-bedroom apartment, consisting of a living room, a bedroom, a kitchen area, and a bathroom.

During a search of the apartment, the officers discovered many illegally possessed items. A semiautomatic assault rifle was found in the bedroom closet, on the left side. The rifle was loaded with ammunition. The left side of the closet also held men's shirts and a shoebox for men's shoes, but contained no women's clothing. The right side of the closet, on the other hand, held women's clothing and shoes. There were no firearms, ammunition, or drugs on the right side of the closet.

The officers found a magazine for the rifle in the drawer of a nightstand on the left side of the bed. An unspent round of ammunition was also in the drawer. Men's clothing was on top of the nightstand and on the left side of the bed. On the ground next to the nightstand was a letter from the Minnesota Department of Public Safety addressed to LeBoeuf at that apartment unit. On the right side of the bed were children's clothing, women's hair extensions, and a breast pump, but no adult men's items. The officers also found a shoebox at the foot of the bed containing live rounds of ammunition.

The officers found more contraband in and around two dressers in the bedroom. On top of one dresser were two shoeboxes, which contained crack cocaine, narcotics packaging, baggies commonly used for narcotics packaging, a small digital scale with cocaine residue, and more than $7,000 in cash. A mailing addressed to LeBoeuf at that apartment was also on the dresser near the shoeboxes. Underneath the other dresser was a cereal bowl with a "yellow substance and residue in the bottom" that was found to be crack cocaine. Men's clothing was inside that dresser and on the floor around it. Also inside the dresser was a wallet containing a Hennepin County library card for LeBoeuf.

Officers also executed the search warrants on the two vehicles, which were owned by LeBoeuf's fiancée. The vehicles were parked next to each other outside the apartment building. The officers found cocaine in both vehicles—inside a "little green tube" in the driver's side door of one vehicle, and in an identical green tube underneath the front passenger seat of the other vehicle. LeBoeuf's driver's license was in the cup holder of one vehicle. In the other vehicle was a plastic bag containing an identification bracelet for LeBoeuf.

The state introduced evidence that, in November 2019—about two months before the search warrants were executed—LeBoeuf was driving one of the vehicles when police stopped him for speeding. During that encounter, LeBoeuf told the officer that his fiancée was the owner of the vehicle, and he gave as his address the apartment complex that was the subject of the search warrant.

Dismissal of Three Counts and Jury Instructions

After the state rested its case in chief, defense counsel moved for judgment of acquittal on the five drug-related charges. The district court agreed that there was insufficient evidence to support a guilty verdict on counts VI and VII, which were based on the cocaine found in the two vehicles. The district court reasoned that the state had introduced evidence that LeBoeuf had access to the vehicles, but that it failed to meet its burden to show that he exercised dominion or control over any of the drugs recovered from the vehicles. The state then agreed to dismiss the first-degree sale charge (count V) because, without the cocaine from the vehicles, the weight of the drugs did not reach the 17-gram threshold necessary for first-degree sale. The district court denied the motion for judgment of acquittal as to counts I and II, relating to the drugs found in the apartment.

The prosecutor asked the district court to permit the state to rely on the evidence discovered during the searches of the vehicles, and to discuss that evidence before the jury during closing argument. The prosecutor likened the evidence of the drugs in the vehicles to *Spreigl* evidence of "other acts," which need only be proven by clear and convincing evidence. The district court disagreed. It explained that, because the state could not prove LeBoeuf's exclusive control over the vehicles, that evidence was "too prejudicial" to LeBoeuf, and the district court was "not going to allow [the state] to talk about the drugs in the car." The district court told the attorneys that "[t]he cars, the whole entire vehicles, are out."

LeBoeuf waived his right to testify, and he did not call any witnesses. During closing arguments, the prosecutor told the jury that it was being asked to consider counts I

through IV, which "all relate to the evidence about what was inside the apartment." The prosecutor summarized the evidence about the drugs found in the apartment and explained that counts I and II "relate[] to the approximately 16.2 grams of cocaine that was in the Nike shoebox on the dresser drawer." Defense counsel similarly told the jury that "[t]here are four charges that we're dealing with that all occurred in the apartment." The prosecutor urged the jury to conclude that LeBoeuf possessed the drugs, firearm, and ammunition because mailings were found associating him with the apartment and because the illegal items were near men's clothing rather than women's clothing.

During the jury instructions, the district court told the jury that some counts had been dismissed:

> At the beginning of the trial, I described the charges against the defendant. For reasons that do not concern you, count 5, drugs in the first degree, possession with intent to sell; count 6, drugs in the fifth degree, possession; and count 7, drugs in the fifth degree, possession, are no longer before you. Do not speculate about why the charges are no longer part of this trial.
>
> The defendant is on trial only for the charges of remaining counts 1 through 4. You may consider the evidence presented only as it relates to the remaining counts.

The district court did not instruct the jury that it could not consider the evidence obtained from the searches of the vehicles. The jury found LeBoeuf guilty on the remaining counts.

The district court entered convictions on counts I, III, and IV. It sentenced LeBoeuf to 78 months in prison on the second-degree sale conviction and to 60 months in prison on the unlawful-possession conviction, with the sentences to be served concurrently. This appeal follows.

DECISION

LeBoeuf urges us to reverse his convictions, arguing that the district court erred by failing to instruct the jury that it could not consider the evidence seized from the two vehicles after the district court granted LeBoeuf's motion for judgment of acquittal on the three counts connected to the vehicle searches. Because LeBoeuf did not object to the jury instructions at trial, we review the alleged error under the plain-error standard. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Under this standard, we determine whether there was (1) error, (2) that was plain, and (3) that affects the defendant's substantial rights. *Id.* If these three prongs are satisfied, we then consider "whether [we] should address the error to ensure fairness and the integrity of the judicial proceedings." *Id.* If any requirement of the plain-error standard is not satisfied, we need not consider the other requirements. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). We examine each requirement of the plain-error standard in turn.

We agree with LeBoeuf that the district court's failure to instruct the jury not to consider the evidence obtained from the vehicle searches was error. The state does not argue otherwise. The district court granted LeBoeuf's motion for judgment of acquittal on three counts based on the determination that the state had not presented sufficient evidence to prove LeBoeuf's dominion or control over the cocaine in the vehicles. The district court emphatically told the attorneys that they could not discuss the evidence from the vehicles and that none of that evidence could be considered in deciding LeBoeuf's guilt on the remaining charges. The district court should have communicated this information to the jury. Because the district court acquitted LeBoeuf on the charges connected with the drugs

found in the vehicles, it was erroneous not to instruct the jury that it could not consider that evidence. LeBoeuf satisfies the first prong of the plain-error standard.

LeBoeuf cannot, however, satisfy the second prong, that the error was plain. "An error is plain if it was clear or obvious." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotations omitted). This prong is met when the error "violates or contradicts case law, a rule, or an applicable standard of conduct." *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014).

To support his contention that the error was plain, LeBoeuf cites *State v. Wakefield*, in which the supreme court held that the state may not introduce evidence of a crime for which the defendant has been acquitted. 278 N.W.2d 307, 308-09 (Minn. 1979). Under this rule, LeBoeuf maintains, the jury instructions should have told the jury that it could not use the evidence from the vehicle searches after the district court granted his motion for judgment of acquittal on the charges arising from the vehicle searches. While LeBoeuf accurately characterizes the holding in *Wakefield*, that holding does not apply here. In *Wakefield*, the state introduced evidence that the defendant had allegedly committed a rape six years earlier, even though he had been found not guilty of that offense. *Id.* at 308. And the supreme court has moreover limited *Wakefield*'s application, explaining that when "there has been no acquittal before the state attempts to introduce evidence related to a separate offense . . . *Wakefield* is not a bar to its admission." *State v. Ross*, 732 N.W.2d 274, 281 (Minn. 2007). *Wakefield* therefore applies only when the acquittal occurred *before* trial. Here, there is no contention that the evidence found in the vehicles was improperly admitted at trial; the state properly introduced the evidence to prove the charges

still before the jury at that point. Instead, the alleged error is the district court's instructions to the jury after dismissing some charges. The district court did not clearly contravene the rule in *Wakefield* by failing to instruct the jury not to consider the evidence from the vehicles.

LeBoeuf cites no authorities addressing the precise issue here—whether the district court must instruct the jury not to consider evidence relating to a charge for which it has granted a motion for judgment of acquittal. To show that an error is plain, a defendant on appeal generally must show that a court has spoken directly on the issue challenged. *See State v. Milton*, 821 N.W.2d 789, 807 (Minn. 2012) (determining that district court's error in instructing jury was not plain when court had "not yet clearly required district courts to include" specific language at issue); *State v. Moore*, 863 N.W.2d 111, 122 (Minn. App. 2015) (concluding that jury-instruction error was not plain when other cases "involved an analogous situation but did not answer the question presented" by current appeal), *rev. denied* (Minn. July 21, 2015). Without any caselaw that stands for the proposition LeBoeuf asserts, he cannot show that the error was clear or obvious. LeBoeuf therefore fails to meet the plainness prong.

Even if LeBoeuf could show that the error was plain, he cannot satisfy the third prong—that the error affected his substantial rights. A criminal defendant bears a "heavy burden" to meet this prong. *Griller*, 583 N.W.2d at 741. A defendant satisfies this prong by showing that "the error was prejudicial and affected the outcome of the case." *Id.* And an error is considered prejudicial if there is a "reasonable likelihood" that the error "had a significant effect on the jury's verdict." *State v. Watkins*, 840 N.W.2d 21, 28 (Minn. 2013)

(quotation omitted). "An erroneous jury instruction will not ordinarily have a significant effect on the jury's verdict if there is considerable evidence of the defendant's guilt." *State v. Kelley*, 855 N.W.2d 269, 283-84 (Minn. 2014).

We conclude that there is no reasonable likelihood that the error had a significant effect on the jury's verdict. During closing arguments, both the prosecutor and defense counsel told the jury that the remaining counts related to the evidence found in the apartment. The attorneys properly focused their closing arguments on the evidence from the apartment, and neither mentioned the evidence from the vehicles. And the state presented strong circumstantial evidence that LeBoeuf possessed the drugs, firearm, and ammunition in the apartment. The jury could readily infer that LeBoeuf was living at the apartment based on his presence there at the time police arrived to execute the search warrant, mailings sent to him at that address, and the fact that he had given the apartment as his address when stopped by police two months earlier. The state produced evidence that the illegal items in the apartment were found in places where men's clothing was located and not women's clothing. Based on this evidence, the jury could conclude that LeBoeuf, rather than his fiancée, was the one exercising dominion or control over the contraband.

LeBoeuf maintains that the evidence from the vehicles may have improperly influenced the jury, suggesting that "[e]ven if the jury determined the state had not proved possession of the rifle and drugs found inside the apartment, it could have used the evidence from the cars and determined LeBoeuf had a propensity to commit crimes." He also posits that "the jury could have been motivated to punish LeBoeuf for the drugs found in the

vehicles even if it did not believe the state had proved he possessed the drugs, rifle, or ammunition found in the apartment." We are not persuaded. LeBoeuf's connection to the apartment was far stronger than his connection to the vehicles. The jury heard evidence that cocaine was found in both the vehicles and the apartment, but far more drugs and drug-related items were recovered from the apartment than the vehicles. With this evidence before the jury, it is hard to imagine that the jury would have believed that LeBoeuf possessed the drugs in the vehicles *but not* the drugs in the apartment. For these reasons, LeBoeuf cannot meet his heavy burden to show that he was prejudiced by the error.

Finally, even if LeBoeuf could satisfy all three prongs of the plain-error standard, we will not reverse unless it is necessary to ensure the fairness and integrity of the proceedings. *Griller*, 583 N.W.2d at 740. We have no concerns about the fairness or integrity of LeBoeuf's trial. The evidence found in the vehicles was properly admitted at trial, so there were no issues with allowing the jury to hear evidence that was improper. And after the district court dismissed the counts connected to the evidence found in the vehicles, the parties appropriately focused their closing arguments on the evidence found in the apartment. Under these circumstances, we are satisfied that LeBoeuf received a fair trial, and the error is not of the type that undermines the integrity of the proceedings.

In sum, LeBoeuf cannot show that the error was plain, that it affected his substantial rights, or that the fairness or integrity of the proceedings require reversal. Because LeBoeuf cannot satisfy all the requirements of the plain-error standard, he is not entitled to reversal of his convictions.

Affirmed.