STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0458

State of Minnesota,
Respondent,

vs.

Winlaw Barratt Bramley, III,
Appellant.

Filed March 18, 2024
Affirmed
Schmidt, Judge

Stearns County District Court
File No. 73-CR-21-6265

Keith Ellison, Attorney General, Thomas R. Ragatz, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Wheelock, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

In this direct appeal from a conviction for first-degree criminal sexual conduct, appellant Winlaw Barratt Bramley argues he is entitled to a new trial because the prosecutor committed misconduct by eliciting expert testimony in violation of a court order and by

eliciting impermissible character evidence. Bramley also argues the cumulative effect of these errors entitle him to a new trial. Finally, Bramley argues that the district court erred in entering a judgment on a lesser included offense. We affirm.

FACTS

Bramley and M.H. had been dating for two years. While at Bramley's apartment, the two went to the bedroom to have sex. After M.H. removed her clothes, Bramley began to have sex with her "without foreplay or warning." M.H. tried to say no and reach for her phone, but Bramley pushed her face down. M.H. described being in pain and bleeding.

M.H. reported the assault to the police about two months later. Respondent State of Minnesota subsequently charged Bramley with two counts of criminal sexual conduct.

Before trial, the state filed a motion noticing its intent to introduce testimony from an expert who would explain "victim behaviors in domestic violence situations." Bramley opposed the expert testimony. The district court granted the state's motion, finding that expert testimony would be helpful to the jury's understanding of the counter-intuitive behavior demonstrated by sexual assault victims.

At trial, M.H. testified that she did not bring Bramley around certain friends due to an incident during a river trip when Bramley became inebriated, turned into "somebody else," and almost drowned. M.H. also testified that she applied for a restraining order before reporting the assault to the police because she believed Bramley could "come after" her since she had previously heard him talk violently and threaten people.

At the second day of trial, the district court stated that it had "some reservations with regard to [the] scope of the testimony involving" the state's expert witness. The prosecutor

told the district court that the expert's testimony would be "regarding victim behavior." Bramley's attorney argued that there was no victim behavior involved in the case, but stated he would "defer to the court's ruling." The defense attorney also stated he was "prepared to object where [he] felt like the relevance threshold is crossed."

The district court cautioned the prosecutor that the expert should be careful with the words used because the term "domestic abuse" could suggest "some kind of a pattern or ongoing thing, rather than an assault" as was alleged in this case. The district court stated that if the expert's testimony helped the jury understand a victim's delay in reporting an assault or a victim's desire to stay in the relationship after an assault, the court "may permit some of that." The district court clarified that it was not going to let the testimony go "much beyond" the expert's area of expertise regarding victims of an assault.

In testifying, the expert explained the likelihood of victims reporting a sexual assault to the police, the typical victim disclosures to family members and friends, victims leaving or staying in a relationship after an assault, and victims blaming themselves. Bramley's attorney did not object at any point during the expert's testimony. In cross-examination, Bramley's attorney asked the expert two questions, both of which concerned whether the expert knew anything about the facts of this case.

The jury found Bramley guilty on both counts and the district court sentenced him to 144 months in prison. The district court did not clarify on the record the offense for which it sentenced Bramley, but the order of commitment shows that Bramley was convicted of, and sentenced on, the first-degree criminal sexual conduct guilty verdict.

This appeal follows.

DECISION

I. The prosecutor did not commit misconduct regarding the testimony of the state's expert witness.

A. Bramley did not object to the alleged misconduct.

The applicable standard of review regarding allegations of prosecutorial misconduct depends upon whether defense objected to the alleged misconduct. Bramley argues that his attorney lodged an objection to admitting any testimony by the expert. But Bramley conflates the objection to the admission of the expert's testimony with an objection to the prosecutor's conduct while questioning that expert. Since Bramley's attorney did not object during the prosecutor's questioning, Bramley cannot rely on the objection to the admissibility of the expert's testimony to argue that the prosecutor committed misconduct in soliciting testimony that the district court ruled was admissible.[1] Because there was no objection to the prosecutor's questioning, we must apply the modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).

Under the modified plain-error standard, the appellant must establish an error that is plain. *Id.* An error is plain if it is clear or obvious, which is established "if the error contravenes case law, a rule, or a standard of conduct." *Id.* If the defendant meets this burden, the state must then prove there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict. *Id.*

[1] Bramley raises no assertion of error in this appeal as to the district court's ruling on the admissibility of the expert's testimony. Accordingly, we do not address the question of whether the district court abused its discretion in allowing the expert to testify.

B. The prosecutor did not elicit improper testimony from the expert.

A "prosecutor's acts may constitute misconduct if they have the effect of materially undermining the fairness of a trial." *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). Misconduct can result from "violations of clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state's case law." *Id.*

Bramley argues that the prosecutor "flouted the court's limitations" on the expert's testimony, the expert witness "explained 'counter intuitive behaviors' that were not present in the case," and the expert left the jurors with the "impression there was a history of domestic abuse in Bramley's relationship with [M.H.]." Bramley contends the prosecutor's alleged misconduct entitles him to a new trial. We disagree.

Prior to the testimony, the district court clarified that the expert would testify about a victim's delayed reporting and why a victim might stay in a relationship after an assault. The court noted that if the testimony went beyond the scope of the allegations against Bramley, the district court would find that such testimony was not helpful to the jury.

Consistent with the limitations imposed by the court, the state's questioning of the expert witness focused on counterintuitive behaviors of victims of sexual violence, including delayed reporting and staying in the relationship after an assault. The testimony was helpful to the trier of fact because M.H.'s testimony included a delayed disclosure of the assault and information that M.H. remained friendly with Bramley after the assault. Our review of the testimony reveals that the prosecutor did not violate the district court's order limiting the scope of the expert's testimony. As such, there was neither error, nor plain error, in the prosecutor's questioning of the expert witness.

We also conclude that there is no reasonable likelihood that the testimony had a significant effect on the jury's verdict. Both the direct and cross examinations of the expert made clear that the expert did not know anything about the facts of this case and offered testimony only about her expertise regarding victims of domestic sexual assault. In addition, the prosecutor did not mention the expert's testimony in opening statements and made only a passing reference to the testimony in closing arguments.

Beyond the expert's testimony, the jury heard testimony from M.H. regarding the assault, as well as her thoughts and actions after the assault. The jury also heard a recording of the investigating officer's initial interview with M.H. Several individuals testified about M.H. disclosing the sexual assault to them, and the details M.H. provided during each disclosure were consistent with her initial interview with police and her testimony at trial.

Given the graphic and consistent nature of M.H.'s testimony, as well as other evidence and testimony provided at trial, we conclude the expert's testimony did not substantially affect the jury's decision. *Ramey*, 721 N.W.2d at 299 ("the proper legal standard for determining prejudice is whether the plain error affected the defendant's substantial rights."); *see also State v. Epps*, 964 N.W.2d 419, 424 (Minn. 2021) (holding no prejudice where state had a strong case and prosecutor's statements about the challenged evidence were brief); *State v. McNeil*, 658 N.W.2d 228, 232-33 (Minn. App. 2003) (holding that evidence of appellant's abuse included graphic, consistent testimony from victim, such that the prosecutor's soliciting vouching testimony did not substantially affect the verdict).

II. The prosecutor did not commit misconduct by eliciting testimony about the river incident or the reasons why M.H. sought a restraining order.

Bramley argues the prosecutor committed misconduct by soliciting testimony regarding the river incident and the reasons M.H. sought a restraining order. Bramley concedes that he did not object to the conduct that he challenges on appeal. Accordingly, we review the issue under the modified plain-error standard. *Ramey*, 721 N.W.2d at 302.

Without deciding whether the prosecutor's conduct constituted an error that was plain, we conclude that there is no reasonable likelihood that the challenged testimony had a significant effect on the jury's verdict. *Id.* Given the graphic and consistent nature of the testimony provided by M.H., as well as the other evidence and testimony provided during trial, the challenged testimony did not substantially affect the jury's decision. *Id.*; *see also McNeil*, 658 N.W.2d at 232-33.

III. Bramley is not entitled to a new trial due to alleged cumulative errors.

Bramley argues the cumulative errors from the prosecutor's alleged misconduct entitles him to a new trial. When considering a claim of cumulative error, we look to the egregiousness of the errors and the strength of the state's case. *State v. Williams*, 908 N.W.2d 362, 366 (Minn. 2018) (quotations omitted).

In reviewing Bramley's two claims of prosecutorial misconduct, we have concluded that one assigned error was not an error that was plain and it also had no effect on his substantial rights. For the other alleged error, we have concluded that Bramley's substantial rights were not affected. As such, there are no cumulative errors to assess, and Bramley is not entitled to a new trial.

IV. The district court did not err in adjudicating the guilty verdicts.

A defendant may be convicted of multiple counts arising from a single incident, but the district court must formally adjudicate and impose a sentence only on one count. *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). Appellate courts typically look to the official judgment of conviction as conclusive evidence of whether an offense was formally adjudicated. *State v. Pflepsen*, 590 N.W.2d 759, 767 (Minn. 1999). When the official judgment order states that a party has been convicted of and sentenced for only one included offense, appellate courts have upheld the judgment. *See id.*; *see also State v. Fratzke*, 354 N.W.2d 402, 410 (Minn. 1984).

Bramley contends the district court erred by verbally entering convictions on both counts because the third-degree criminal sexual conduct verdict was a lesser included offense of the first-degree criminal sexual conduct verdict. While the district court did not clarify on the record at sentencing the offense for which the court imposed the sentence, the order of commitment reflects that Bramley was convicted of, and sentenced for, first-degree criminal sexual conduct. The order of commitment further shows there was no adjudication on the third-degree criminal sexual conduct verdict. Given that the order of commitment reflects that the district court adjudicated and sentenced Bramley for only one offense, we discern no error. *See Pflepsen*, 590 N.W.2d at 767.

Affirmed.