STATE OF MINNESOTA
IN COURT OF APPEALS
A10-83

State of Minnesota,
Respondent,

vs.

Julius Merriweather Sewell,
Appellant.

Filed April 19, 2011
Affirmed
Peterson, Judge

Ramsey County District Court
File No. 62-CR-09-6912

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

John J. Choi, Ramsey County Attorney, Thomas Rolf Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle Rene Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Klaphake, Judge; and Toussaint, Judge.

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

PETERSON, Judge

In this appeal from convictions of first-degree criminal sexual conduct and kidnapping, appellant argues that he is entitled to a new trial because the prosecutor

committed misconduct by eliciting from a police officer testimony that appellant had prior contacts with police. We affirm.

FACTS

An employee found the victim in an office parking lot and brought her inside to the office manager, who described the victim as hysterical and crying. The victim stated that she had escaped from the apartment building across the street and kept repeating that she had been tortured and abused. The account of sexual abuse that the victim provided to police and a sexual-assault nurse examiner and at trial was consistent with the victim's injuries and with evidence found at appellant Julius Merriweather Sewell's apartment.

Appellant was arrested and charged with one count each of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2008), and kidnapping in violation of Minn. Stat. § 609.25, subd. 1(2) (2008). The charges were tried to a jury. The jury found appellant guilty as charged. The district court sentenced appellant to an executed term of 144 months for the criminal-sexual-conduct offense and a concurrent term of 21 months for the kidnapping offense. This appeal followed.

D E C I S I O N

Appellate courts "review any objected-to prosecutorial misconduct to determine whether the misconduct is harmless beyond a reasonable doubt." *State v. Dobbins*, 725 N.W.2d 492, 506 (Minn. 2006) (quotation omitted). Prosecutorial misconduct is harmless beyond a reasonable doubt if the verdict rendered was surely unattributable to the error. *State v. Mayhorn*, 720 N.W.2d 776, 785 (Minn. 2006). When determining whether the jury's verdict was surely unattributable to an error, we consider the manner

in which the evidence was presented and the strength of the evidence of guilt. *State v. Sanders*, 775 N.W.2d 883, 893 (Minn. 2009).

Appellant argues that the prosecutor committed misconduct by eliciting inadmissible evidence about a previous contact appellant had with police. It is improper for a prosecutor to elicit inadmissible evidence. *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). Prosecutors also have a duty to prepare witnesses so that they do not give improper testimony. *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003). For the purpose of analyzing appellant's argument, we will assume, without deciding, that the prosecutor committed misconduct.

An officer who responded to the 911 call testified at trial: "Then we approached [appellant's] apartment, listened, to make sure we weren't rushing into anything. I heard him talking to somebody, and then we knocked on the door, and [another officer], actually, knew him from a previous incident." The district court sustained appellant's objection to the testimony and gave a curative instruction. Appellant argues that the testimony was prejudicial, particularly in light of the responding officer's earlier testimony about using appellant's phone number to identify him. On that point, the officer testified:

> I checked our RMS System, our Records Management System, and we're able to plug in a phone number. And if it's ever been used in any report or victim or suspect or anybody, that it will pop up and tell us where it registers to and who it registers to.

Most significantly, appellant testified at trial and was impeached with a prior conviction for offering a forged check, so his own testimony showed that he had a

criminal record. In contrast, the testimony about a responding officer knowing appellant and appellant's phone number being in the RMS system did not even imply that appellant had a criminal record. *See State v. Clark*, 486 N.W.2d 166, 170 (Minn. App. 1992) (noting that reference to previous contact between defendant and police was only passing remark that could have described many types of interactions between defendant and police). Also, there were only two brief references to prior contact between appellant and police during a five-day trial. Finally, the district court gave a curative instruction, and this court presumes that the jury follows the court's instructions. *State v. Budreau*, 641 N.W.2d 919, 926 (Minn. 2002).

The evidence against appellant was extremely strong. Although there were minor inconsistencies between the victim's statements to police and her trial testimony as to the amount of another person's participation in the offenses, the statements and testimony were consistent as to the other person leaving, appellant's violence escalating after the other person left, the details of the acts that were committed, and the location where the offense occurred. Also, the victim's injuries were consistent with her account of the offenses and with evidence found at appellant's apartment.

In contrast, appellant gave inconsistent statements to police, and his statements and trial testimony were inconsistent with each other and with other evidence. Initially, appellant stated to police that no one else had been in his apartment, denied that he had been bleeding, and denied knowing anything about blood in the apartment. In a later statement to police, appellant admitted that another person and the victim had been in his apartment. When asked to explain blood found in the apartment, appellant said that he

had had a bloody nose, but the blood spatter on the wall was inconsistent with that explanation. At trial, appellant claimed that the blood came from the victim tripping and cutting herself and that he had forgotten about the victim falling when he spoke to police.

Because the evidence against appellant was extremely strong and the references to appellant's prior contact with police were brief and innocuous, there is no reason to believe that those references affected the jurors' opinions of a person known to have a criminal record. We, therefore, conclude that the verdict was surely unattributable to prosecutorial misconduct.

Affirmed.