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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0732**

State of Minnesota,
Respondent,

vs.

William Matthew Keys,
Appellant.

**Filed April 30, 2018
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 27-CR-16-897

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from his convictions of second-degree assault and prohibited person in possession of a firearm, appellant argues that he was denied a fair trial because a juror was dismissed during the prosecutor's closing argument. We affirm.

FACTS

Appellant William Matthew Keys and T.K. were married in 2005; they have three children together. According to T.K., Keys engaged in numerous incidents of domestic abuse against her. In one instance, Keys “g[ot] physical” early in the marriage, and in 2010 he pushed her onto a bed and choked her. T.K. described Keys as having “chemical use issues” with cocaine and marijuana, and mental-health issues that began in 2010. She testified that she “walk[ed] on eggshells” due to his volatile behavior from 2010 to 2015.

On November 17, 2015, Keys, who had gotten hurt at work, got into an argument with T.K. while they were on the way to a medical appointment. In response to the argument, T.K. decided to return home. After she went inside, Keys came into the house yelling, she ignored him, and he approached her and pushed her into a chair on her shoulder and face. He then left home, police were called, and two officers later listened in on a telephone conversation Keys had with T.K. The officers overheard Keys threaten to “shoot [T.K.] in the head” and “have a shootout with the police” if they came near him. When T.K. moved out of the family's home that day, she realized that her tan Taurus handgun was missing. T.K. obtained an order for protection (OFP), which Keys repeatedly violated by having in-person and telephone contact with T.K.

On January 6, 2016, Keys' van was not working, and, through their oldest child, he asked T.K. to pick up the children from school. Keys was waiting outside on the porch when T.K. drove up to the house, and, after the children went inside, he got into her car, pulled a gun out of his pocket, and pressed the gun "against [her] forehead and asked [her] if [she] wanted to die tonight." T.K. recognized the gun as her missing handgun. T.K. contacted police, and, following further investigation, Keys was arrested later in January 2016 and charged with second-degree assault and prohibited person in possession of a firearm.

In the days following Keys' arrest, he repeatedly contacted his oldest child and a friend from jail, asking them to retrieve some of his personal items from the family's home, including a printer that was not operational. After the friend got some of the items and the printer was not among them, Keys repeatedly called his oldest child, asking if the child was in trouble. T.K. was curious about why Keys so urgently wanted the nonoperational printer, so she went to the home, searched the printer, and discovered her handgun hidden inside it.

At Keys' jury trial on the January 2016 charges, T.K., three police officers, and two forensic scientists testified. The district court also received into evidence transcripts of Keys' phone calls from jail, and DNA evidence that suggested that Keys' fingerprints were on the handgun.

Near the end of trial, during the prosecutor's closing argument, a juror suddenly interrupted and asked to be excused, stating that he felt physically ill, like he "might have a stroke or high blood pressure, or . . . [e]ven a heart attack." Outside the presence of the

jury, the judge questioned the juror and learned that the juror was very stressed and, in the past, had both sought and been the subject of a restraining order. After conferring with counsel off the record, the district court again questioned the juror, as follows:

THE COURT: . . . [Juror], I'm sorry, just a couple more questions. Have you spoken to any of the other jurors about your feelings or about your, how you've been feeling?

JUROR: Yeah. Well, people have said did you sleep last night, well no, but I told people, somebody, I was feeling sick.

THE COURT: Okay. So you've just said you were feeling ill and you haven't --

JUROR: I told her.

THE COURT: Okay. And I'm sorry, I guess I did hear that someone was indicating if they weren't feeling well and I apologize, I didn't realize it was this kind of circumstance and I don't think my staff did either. But let's just, what I want to address is can you tell me exactly what you may have said to the other jurors about your circumstance?

JUROR: (Inaudible.)

THE COURT: What have you said to the other jurors about your situation?

JUROR: I just told them I wasn't feeling good today.

THE COURT: Okay.

JUROR: I thought I was coming down with a cold but it seems to get more (inaudible).

THE COURT: All right. So you just said you were physically ill. Did you mention anything about this history that you conveyed to us today?

JUROR: That what?

THE COURT: Did you mention anything about your history that you conveyed to us today?

JUROR: No.

THE COURT: Okay. Counsel, did you have any questions for [juror]?

[THE PROSECUTOR]: No questions, Your Honor.

[DEFENSE COUNSEL]: Just one.

I'm sorry you're going through this but did you talk to any of the jurors about how the stress of the trial was keeping you up at night and how you couldn't sleep?

JUROR: A little.

[DEFENSE COUNSEL]: What did you tell them in that regard?

JUROR: Well, I just said this thing was so emotional that I was having a hard time sleeping. We didn't discuss the case, we were discussing how I felt.

[DEFENSE COUNSEL]: Did you tell them anything about why it was hard for you?

JUROR: No. Well, except for just being super stressful, sensitive to this kind of case, I guess.

Following this discussion, the judge excused the juror, and defense counsel moved for a mistrial, which the district court denied. The judge then instructed the jurors not to let the excused juror's "comments or his condition" affect their deliberations. The judge directed the jury to "limit [their] considerations . . . to the evidence and the law."

Keys was convicted of both offenses. This appeal follows.

D E C I S I O N

"Criminal defendants have due process rights to a fair trial and an impartial jury." *State v. Varner*, 643 N.W.2d 298, 304 (Minn. 2002) (citing U.S. Const. amends. VI, XIV; Minn. Const. art. I, §§ 6, 7). "The trial judge is in the best position to determine whether an outburst creates sufficient prejudice to deny the defendant a fair trial such that a mistrial should be granted." *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). Further, "[a] mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different' if the event that prompted the motion had not occurred." *Id.* (quoting *State v. Spann*, 574 N.W.2d 47, 53 (Minn. 1998)). A reviewing "court reviews a trial court's denial of a motion for a mistrial for abuse of discretion." *Id.*

The rules of criminal procedure address the questioning of jurors when they are exposed to potentially prejudicial information during a trial. The applicable rule states:

If the court determines that material disseminated outside the trial proceedings raises questions of possible prejudice, the court may on its initiative, and must on the motion of either party, question each juror, out of the presence of the others, about the juror's exposure to that material. The examination must take place in the presence of counsel, and a record of the examination must be made.

Minn. R. Crim. P. 26.03, subd. 10.

The juror who became ill did not commit any sort of misconduct, and, by questioning that juror, the district court determined that there was no question of possible prejudice caused by that juror's statements to other jurors. The ill juror merely reported to fellow jurors that he was feeling sick and that the trial was too stressful for him. He did not share with other jurors his experiences with restraining orders. While the juror's interruption of the proceedings created an unusual situation in the courtroom, his remarks did not prejudice Keys.

Rule 26.03, subdivision 10, requires the district court to question each juror only after determining that the jury may have been exposed to possibly prejudicial information. The language of the rule establishes a condition precedent that must occur before the remaining requirements of the rule apply: the directive to question individual jurors on the record arises only "if" the district court determines that there is a question of possible prejudice. Because the district court concluded that there was no question of possible prejudice, the district court did not need to question the jurors on its own initiative. Defense counsel asked if the court "would . . . allow any examination of the other jurors to determine what extent they may have talked with [the excused juror] about this," but neither party moved to have the court question the jurors. There was no factual basis to support further

application of the rule. Also, the district court's instructions to the jury to disregard the incident and to deliberate on the facts and the law redirected their attention to their proper role. See *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005) ("It is presumed that the jury follows the court's instructions."). Finally, there is no possibility that the juror's statements had any effect on the verdict. T.K.'s testimony and the supporting circumstantial evidence provided strong evidence of Keys' guilt on both offenses.

Keys relies on *Varner*, a case involving juror misconduct that necessitated a retrial. 643 N.W.2d at 306-07. There, a juror made a racially biased statement to other jurors, and the supreme court ruled that the district court erred by failing to poll the jury to determine the possible prejudicial impact of the statement. *Id.* at 306. Consistent with the requirements of Minn. R. Crim. P. 26.03, subd. 10,¹ questioning the jurors in *Varner* was required because the jury was exposed to possibly prejudicial material. *Id.* at 305-06. *Varner* does not control here because the juror's statements were not in any way prejudicial to Keys.

The district court did not abuse its discretion by denying Keys' motion for a mistrial. See *Burns v. Kvernstoen*, 246 Minn. 75, 81-82, 74 N.W.2d 398, 403 (1955) (affirming denial of mistrial motion when juror overheard a witness state that he had given truthful testimony); *State v. Peterson*, 167 Minn. 216, 221, 208 N.W. 761, 764 (1926) (affirming denial of mistrial motion for juror misconduct in conversing with the state's witnesses, stating, "The incident was casual. There was no intention of any improper conduct and

¹ When *Varner* was decided, the rule for questioning jurors about exposure to potentially prejudicial material was Minn. R. Crim. P. 26.03, subd. 9.

there was in fact nothing said touching the merits of the case or relating to any of the facts or claims of either side.”).

Affirmed.