

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1006**

State of Minnesota,
Respondent,

vs.

Jermaine Harry Rudolph,
Appellant.

**Filed May 29, 2018
Affirmed in part, reversed in part and remanded
Kalitowski, Judge***

Ramsey County District Court
File No. 62-CR-16-8676

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

John J. Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reyes, Judge; and Kalitowski, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

On appeal from his convictions of two counts of first-degree criminal sexual conduct, appellant argues that he is entitled to a new trial because the prosecutor committed prejudicial unobjected-to misconduct, and the district court erred by entering two convictions for the same conduct under Minn. Stat. § 609.04 (2016). Appellant also filed a pro se supplemental brief in which he challenged his conviction. We affirm one of the convictions and reverse and remand to correct the warrant of commitment.

DECISION

I.

Appellant Jermaine Harry Rudolph was charged with two counts of first-degree criminal sexual conduct. Before trial, the district court ruled that respondent State of Minnesota could impeach Rudolph with four of his prior convictions, but that the state could only elicit evidence of the date of conviction, the offense of conviction, and that Rudolph was the person convicted. At trial, during examination by defense counsel, Rudolph was asked if he was “a rapist.” Rudolph replied that he “ain’t never . . . made no female do anything that she didn’t want to do.” The prosecutor responded on cross-examination by eliciting testimony from Rudolph that the victims in his prior domestic-assault convictions were females.

Rudolph argues that the prosecutor committed prejudicial misconduct by eliciting evidence about the underlying facts of his prior convictions in violation of the district court’s order prohibiting the admission of such evidence. But Rudolph did not object to

the alleged prosecutorial misconduct. Under these circumstances, we apply a “modified plain-error test.” *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012). To prevail under this test, Rudolph must first establish that there is an error and that the error is plain. *Id.* (explaining the modified plain-error test). An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *Id.* (quotation omitted). If Rudolph is able to satisfy that burden, the state would need to show that the error did not affect Rudolph’s substantial rights. *See id.* (explaining the third prong of the plain-error test). “If all three prongs of the test are met, [the reviewing court] may correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.” *State v. Peltier*, 874 N.W.2d 792, 804 (Minn. 2016) (quotations omitted).

We conclude that even if the prosecutor engaged in misconduct, the misconduct did not affect Rudolph’s substantial rights. Such a conclusion required us to consider (1) the strength of the state’s evidence; (2) “the pervasiveness of the erroneous conduct”; and (3) whether the defendant “had an opportunity to rebut any improper remarks.” *Id.* at 805-06. The record here reflects that the prosecutorial misconduct was not pervasive. The jury was already apprised of Rudolph’s prior convictions, and in cross-examining Rudolph, the prosecutor elicited minimal information about the prior convictions—only that the victims were female. Moreover, the prosecutor did not dwell on or emphasize this information, nor mention it in the closing argument. And none of the alleged misconduct was central to the state’s case. *See id.* at 806 (concluding that prosecutorial misconduct did not affect substantial rights when the “prosecutor did not unduly emphasize, or repeat” any of the improper remarks, and none of the misconduct “was central to the State’s case”).

The record also indicates that Rudolph had the opportunity to rebut the elicitation of the improper evidence, but declined, likely because the alleged misconduct was not pervasive. In addition, the district court gave the jury a cautionary instruction not to use the evidence of Rudolph's prior convictions as evidence of guilt for his criminal-sexual-conduct offense. Finally, the evidence against Rudolph was compelling. The victim recounted the events of the sexual assault in great detail, and her testimony was corroborated by area surveillance video photos, as well as DNA samples taken from the victim's hands that matched DNA taken from Rudolph. Although Rudolph testified at trial that the sexual contact was consensual, Rudolph's trial testimony was inconsistent with a statement he previously made to police. On this record, there is no reasonable likelihood that the outcome of the case would have been different absent the alleged prosecutorial misconduct. Accordingly, Rudolph is not entitled to a new trial.

II.

Under Minnesota Law, a criminal defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1. A conviction is the district court's formal adjudication of the verdict through the filing of the official judgment of conviction. See *State v. Pflepsen*, 590 N.W.2d 759, 767 (Minn. 1999) (directing courts issuing conviction orders to be “very clear” about the offense of which the defendant is formally adjudicated guilty). “When the defendant is convicted on more than one charge for the same act the court is to adjudicate formally and impose sentence on one count only.” *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (quotation omitted). “[A] defendant may not be convicted of two counts of criminal sexual conduct

(different sections of the same statute or different subsections) on the basis of the same act or unitary course of conduct.” *State v. Folley*, 438 N.W.2d 372, 373 (Minn. 1989).

Here, the record indicates that after the jury found Rudolph guilty of both charged counts of first-degree criminal sexual conduct, the district court sentenced Rudolph on only count II. But the warrant of commitment reflects that the district court entered convictions for both counts of first-degree criminal sexual conduct.

Rudolph argues that the district court erred by entering convictions for both counts of first-degree criminal sexual conduct because they arose from the same behavioral act. We agree. In *Spann*, the supreme court stated that a reviewing court may “look to the official judgment of conviction in the district court file as conclusive evidence of whether an offense has been formally adjudicated.” 740 N.W.2d at 573, (quotations omitted); see also *Pflepsen*, 590 N.W.2d at 567 (“Because the testimony and statements recorded in hearing and trial transcripts are often imprecise and unclear with respect to sentencing and convictions orders, [appellate courts] typically look to the official judgment of conviction, which generally appears as a separate entry in the file, as conclusive evidence of whether an offense has been formally adjudicated.”). Here, the warrant of commitment provides that Rudolph was convicted of both counts of criminal sexual conduct. Because Rudolph could only be convicted of one of the first-degree criminal-sexual-conduct charges, the district court erred by entering convictions on both counts. We, therefore, affirm one of appellant’s convictions for first-degree criminal sexual conduct and reverse and remand with instructions to correct the warrant of commitment to reflect judgment of conviction of one count of first-degree criminal sexual conduct.

III.

Rudolph filed a pro se supplemental brief in which he challenges the sufficiency of the evidence sustaining his conviction by repeating his trial testimony and attacking the victim's credibility. But Rudolph's pro se brief includes no arguments in support of his position, nor citations to legal authority. The Minnesota Supreme Court has stated:

General allegations of error, without detailing specific factual or legal errors, do not aid our review of the lower court's proceedings and consequently, almost never aid an appellant's cause. Therefore, we will not consider any claim lacking supporting argument or authority unless prejudicial error appears obvious upon inspection in the record.

Nelson v. State, 880 N.W.2d 852, 859 n.2 (Minn. 2016) (quotation omitted). Because no such error is obvious here, we need not consider Rudolph's argument.

Affirmed in part, reversed in part, and remanded.