This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0354

State of Minnesota,
Respondent,

vs.

Eddie Kamor James,
Appellant.

Filed March 25, 2019
Affirmed in part, reversed in part, and remanded
Jesson, Judge

Hennepin County District Court
File No. 27-CR-17-9656

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

Michael O. Freeman, Hennepin County Attorney, Patrick Lofton, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Jesson, Judge.

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

JESSON, Judge

After an argument at a bar, appellant Eddie Kamor James chased L.L.'s car, grabbed her by the hair, forced her into a van, and sexually assaulted her. A jury convicted James of first-degree criminal sexual conduct and kidnapping, convictions which he now appeals. Because we conclude that the district court did not abuse its discretion during voir dire or by admitting evidence that members of James's family threatened a state witness, and because James's pro se claims do not warrant relief, we affirm James's convictions. But we reverse and remand for resentencing because the district court erred by sentencing James for first-degree criminal sexual conduct before sentencing him for kidnapping.

FACTS

On March 7, 2017, after having a few drinks at her cousin's house, 32-year-old L.L. and her cousin went to a bar in Minneapolis for last call. At the bar, L.L. continued drinking. She testified that although she was tipsy, she was not intoxicated.

The events surrounding L.L.'s departure from the bar are disputed. But what is not in question is that at some point when L.L. and her cousin were leaving, L.L. began talking to appellant Eddie Kamor James. L.L. testified that she did not know James well, but that she had known of him for several years because he previously dated her best friend's sister.

According to L.L., shortly after she left the bar with her cousin and got into her cousin's car, James came out as well. He then approached their car, and the group had a conversation. The conversation became heated. L.L.'s cousin's fiancé and a group of other people approached the car. James then became belligerent, started shouting, and L.L. saw James go to his vehicle and pop the trunk, which she thought meant he was getting a gun. L.L. and her cousin drove away.

While they were driving, L.L. and her cousin noticed headlights behind them and thought it might be James chasing them. The vehicle, a white van, pulled alongside their car. Once the van was next to their car, L.L. could tell that James was the driver and noticed that he had his hand down as if he had a weapon. Although L.L. tried to call the police, she panicked and dropped her phone. L.L.'s cousin, attempting to get away from James, pulled over in a lawn, jumped out of the vehicle, and ran away, leaving the driver's door open. L.L. testified that she stayed in the car because she was afraid she might get shot. According to L.L., James then got out of his van, took L.L.'s wallet and both women's cell phones, and grabbed her by her hair and made her get in the white van. L.L. testified that she pleaded with James to not hurt her, but that he told her "[b]-tch, come on" and "[i]f you try to run, I'll shoot you."

Once L.L. was in the passenger seat of the white van, James drove away quickly, eventually stopping on a side street. During the drive, L.L. stated that she was crying and that James continued to threaten her. When James stopped the van, he asked L.L. to "suck his dick," and when she told him no, he backhanded her in the face. Scared, L.L. performed oral sex on James. Afterwards, James ordered L.L. to take her pants off and climb in the back seat of the van. L.L., afraid that James would shoot her, did so. James proceeded to rape L.L., putting his penis in her vagina while saying "[y]ou know I wanted this." James did not ejaculate and eventually became "limp," so he asked L.L. to "suck it again." L.L. refused and told James she needed to urinate. After L.L. urinated a bit in the van, James let her out of the van to finish urinating.

While L.L. urinated outside the van, James went through her wallet and the phones, and eventually drove away with the van's passenger door still open. James then shut the passenger door, backed up, asked L.L. if she wanted to get something to eat, and drove off.

L.L. hid between two houses, and when she felt that it was safe, knocked on a stranger's door, who called the police. During that call, L.L. gave police the van's license plate number—which she memorized—and told them she was assaulted by a man named Eddie. She later went to a hospital, where a sexual assault exam was performed.

Based on L.L.'s statement to police, police identified James as a potential suspect. L.L. identified James from a photo police showed her. Police officers arrested James, and the state charged him with one count of first-degree criminal sexual conduct[1] and one count of kidnapping.[2]

At trial, L.L. testified about what happened, as described above. L.L. further testified that she never consented to having sex with James, that she had never previously hung-out with James or had consensual sex with him, that she had never met his family, and that she never agreed to give James money to purchase cocaine. And L.L. testified that she did not meet up with James at any point after that night.

Several witnesses corroborated L.L.'s account. L.L.'s cousin testified, describing how she saw L.L. and James arguing at the bar, that she saw James open his trunk and thought he had a gun, and that James followed them in his white van. She further testified that L.L. later told her that she was raped. Both police officers who encountered L.L. testified about what she told them, which was consistent with L.L.'s testimony. Additionally, the state played the 911 call and police officer body camera footage from the night of the incident for the jury.

[1] In violation of Minn. Stat. § 609.342, subd. 1(c) (2016).
[2] In violation of Minn. Stat. § 609.25, subd. 1(2) (2016).

The state also presented testimony from the sexual assault nurse examiner, who testified that L.L. did not appear intoxicated and was crying throughout the exam. L.L. allowed the nurse to take perineal and perianal swabs. A Bureau of Criminal Apprehension (BCA) scientist testified that DNA obtained from those swabs showed a combination of DNA from two or more males, but that the major profile matched a DNA sample from James.[3]

Finally, the state presented testimony from L.W., the owner of the white van with whom James was living at the time of the alleged sexual assault. L.W. testified that James had occasional access to the white van but that she did not give him permission to use it on the night of the alleged assault. L.W. also testified that James's mother and brother contacted her and told her to tell police that she didn't know James, that he never used her van, or that he stole it. These statements, which she interpreted as threats, made her uneasy and uncomfortable. Finally, L.W. testified that she noticed cocaine residue in her van but that she did not notice any bodily fluids.[4]

James testified that he was a drug addict whose drug of choice was cocaine, he had known L.L. for about twelve years, and at times, they were in a consensual, sexual relationship. In February 2017, James testified, he ran into L.L., and the two used cocaine together and discussed a deal in which L.L. would loan him money to buy and resell

---

[3] According to the BCA scientist, this meant that James and any of his paternal relatives could not be excluded as the source of the major DNA profile found on the swabs.
[4] A police officer testified that police never obtained a search warrant for the van.

cocaine. Although L.L. did not give James any money that day, James testified that the plan was for L.L. to give him the money she got from her tax refund.

On March 7, 2017, James testified, he went to L.L.'s apartment, where they used cocaine, drank alcohol, and had consensual sex. L.L. gave him about $1,200 cash in accordance with their deal, and James told her that he would return the money in a few hours. Later that night, James saw L.L. at the bar, and was worried because he had yet to sell all of the cocaine, and as a result, he did not have L.L.'s money. James testified that he and L.L. got into an argument about money. James stated that because the argument was drawing attention to them, he went to his car to put the drugs he was carrying in his trunk, and that he followed L.L. and her cousin after they drove away from the bar to "make sure everything was cool." According to James, L.L.'s cousin pulled over and ran away for no reason. James testified that he never got out of his van, but that L.L. approached and got in the van. James was going to take L.L. back to her aunt's house, but testified that the two decided to park and use cocaine first. James testified that L.L. was upset he was talking to a girl at the bar and that she kept asking him about her money, which was "blowin' [his] high," so he tricked her into getting out of the car. James then drove away.

James stated that he saw L.L. again on April 12, 2017 and that they checked into a motel together where they engaged in consensual sex. James testified that he never threatened L.L. with a gun, pulled her by her hair, told her to suck his penis, or had sex with her in the van.

Several witnesses testified on James's behalf. James's mother, cousin, and a few friends all testified that they had seen James with L.L. on prior occasions and that the two had some type of relationship. Additionally, a motel employee testified that L.L. checked in from April 12-14, 2017, and James entered into evidence exhibits showing L.L.'s driver's license and information card filled out at the motel. James's friends testified that James and L.L. were together at that motel on those dates.

The state presented rebuttal testimony from L.L.'s mother, who suffers from end-stage multiple sclerosis, that she lived with L.L. and never saw James at the apartment. The state also re-called L.L., who testified that she never went to a motel with James and that the identification presented to the motel was stolen from her on that night of the assault.[5]

The jury found James guilty of both first-degree criminal sexual conduct and kidnapping, and found on a special verdict form that James did not release L.L. in a safe place. The district court sentenced James to 306 months for the first-degree criminal-sexual-conduct charge and 48 months for the kidnapping charge, to be served consecutively, for a total of 354 months. James appeals.

D E C I S I O N

James argues that the district court abused its discretion in two ways: by limiting his ability to question jurors during voir dire and by admitting evidence that members of his family threatened a witness, L.W. In a pro se supplemental brief, James also contends that his convictions are not supported by sufficient evidence and that the district court made

---

[5] L.L. also signed a paper and compared that signature with the signature from the motel, her signature from her driver's license, and her signature on the sexual assault exam form, noting that the signature from the motel did not match the other signatures.

several evidentiary errors. Finally, James maintains that the district court erred by sentencing him for first-degree criminal sexual conduct before sentencing him for kidnapping because the kidnapping was completed first. We review each argument in turn.

I. The district court did not abuse its discretion during voir dire.

James first argues that the district court unduly limited his ability to question jurors during voir dire, preventing him from making informed peremptory challenges and challenges for cause. James contends the district court's restrictions on voir dire violated his right to a fair trial and warrant reversal of his convictions. We review a district court's decisions regarding how voir dire is conducted for an abuse of discretion. *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001).

Both the United States and Minnesota Constitutions guarantee the right to a fair trial by an impartial jury. U.S. Const. amend. VI; Minn. Const. art. I, § 6. As part of this right, criminal defendants are entitled "to conduct an adequate voir dire to identify unqualified jurors." *Greer*, 635 N.W.2d at 87 (quotation omitted). Accordingly, it is an abuse of discretion for the district court to "frustrate the purposes of voir dire by preventing discovery of bases for challenge or inhibiting a defendant's ability to make an informed exercise of peremptory challenges." *Id.* But district courts have the responsibility "to 'restrict or prohibit questions [during voir dire] that are repetitious, irrelevant, or otherwise improper.'" *Id.* (quoting Minn. R. Crim. P. 26.02, cmt.).

Here, during voir dire, James asked the panel if any of them knew someone whose life was affected by addiction. Several jurors raised their hands, and defense counsel questioned four jurors about the topic, particularly inquiring whether it would affect their ability to be a fair juror. During defense counsel's questioning of a fifth juror on the topic of drug addiction—and after that juror stated that he could be fair—the district court interrupted defense counsel, stating "[w]hy don't you move on to a different area." A brief discussion was held off the record, and defense counsel moved on to different potential jurors, ultimately questioning nine more potential jurors about drug addiction and if their experiences would prevent them from being fair jurors. All of the jurors indicated that they could be fair and impartial jurors despite the fact that drug addiction had impacted their lives.

James's counsel then asked the potential jurors if they would have an issue if James decided not to testify. Before James began his voir dire, the district court asked the potential jurors if anyone could not accept the rule that James was presumed innocent and that he did not have to present any evidence. At that time, none of the potential jurors indicated that they had an issue with this rule. But when James's counsel prompted one potential juror on the subject, she stated that "I think as long as we're getting the facts from reliable sources from both sides, then that would be sufficient, sir." As a follow-up question, defense counsel asked how potential jurors would feel if the defense did not submit any evidence, but the district court again interrupted counsel by suggesting he move on to a different area. Another juror attempted to make a comment on this topic, but the district court stated that it was going to move on. The next day, one potential juror indicated that she had a question regarding defense counsel's questioning about James's right not to testify, but the district court stated that because the court did not require an answer to that question the previous day, the potential juror did not have to volunteer any information about that topic. None of the jurors who commented or attempted to comment on the topic of James's right not to testify or present evidence were seated as members of the jury.[6]

James contends that the district court's interruption of his counsel's questioning on the topics of drug addiction and James's right not to testify unduly limited his ability to conduct voir dire and denied him the right to a fair trial. But on the issue of drug addiction, the district court allowed defense counsel to extensively question the potential jurors, permitting individual questioning of fourteen total potential jurors, including nine potential jurors after the district court suggested that defense counsel "move on." Accordingly, the district court properly exercised its discretion to conduct voir dire. *See Greer*, 635 N.W.2d at 87-89 (holding that the district court did not abuse its discretion by limiting voir dire of six potential jurors about the credibility of police officers where it was clear from the record that counsel was permitted to extensively question potential jurors about police credibility).

Further, the district court did not abuse its discretion with respect to the topic of James's right not to testify. The district court inquired if any members of the panel had any issues with the fact that James was presumed innocent and did not have to present any evidence. No potential juror indicated a problem with that rule.

But James argues that the district court's refusal to allow defense counsel to further question jurors who appeared to indicate they had a question or comment about James's

[6] The juror who commented about being presented with facts from reliable sources from both sides was the alternate juror but was dismissed before the jury began deliberations.

right not to testify is analogous to *State v. Ritter*, 719 N.W.2d 216 (Minn. App. 2006). In *Ritter*, this court held the district court abused its discretion by not allowing a defendant to question jurors regarding potential biases in favor of police officers. 719 N.W.2d at 221. This court reasoned that by not allowing the question, the district court prevented the defendant from discovering if any of the potential jurors were biased in favor of law enforcement, which was particularly relevant given that the state's case was based solely on the testimony of police officers. *Id.* at 220.

Ritter is distinguishable from the voir dire conducted here. In James's case, before the parties conducted voir dire, the district court asked the potential jurors about James not being required to present evidence. The district court's questioning sufficiently covered James's right not to testify. And our review of the record on appeal does not lead us to the conclusion that the district court's limitations "prevent[ed] discovery of bases for challenge or inhibit[ed] [James's] ability to make an informed exercise of peremptory challenges." *Greer*, 635 N.W.2d at 87. As such, the district court did not abuse its discretion in the way it conducted voir dire. *See State v. Owens*, 373 N.W.2d 313, 315 (Minn. 1985) (noting that the district court instructed the jury panel about the burden of proof, presumption of innocence, and other legal principles before concluding that it was not an abuse of discretion for the district court to disallow two questions).

Finally, we note that even if we concluded that the district court improperly limited James's questioning regarding his right not to testify, none of the jurors who indicated that they may have had comments or concerns were members of the jury that convicted James.

Because none of these individuals were ultimately on the jury, we are confident that James was not prejudiced by any alleged limitation of his ability to conduct voir dire.

II. The district court did not abuse its discretion by admitting evidence that members of James's family contacted a witness and made her feel threatened.

James further contends that the district court abused its discretion by allowing a witness to testify that members of James's family contacted her, causing her to feel uneasy and uncomfortable. James argues that this "threat" evidence was not necessary to explain inconsistencies or hesitancies in the witness's testimony and that it was inadmissible as consciousness-of-guilt evidence because the threats were not connected to James.

A district court's evidentiary rulings will not be reversed "absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). A district court abuses its discretion when its decision is contrary to facts in the record or based on an erroneous view of the law. *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). James bears the burden of establishing an abuse of discretion and resulting prejudice. *Amos*, 658 N.W.2d at 203.

Evidence of threats is admissible when directly related to witness credibility, inconsistent statements, or a hesitancy in coming forward to speak to police. *State v. Hayes*, 826 N.W.2d 799, 807 (Minn. 2013). While alleged threats against witnesses are typically relevant, the threats must be traced directly to a defendant in order for a proper inference of a defendant's knowledge or guilt to be made. *State v. McArthur*, 730 N.W.2d 44, 52 (Minn. 2007). Further, in most cases, the supreme court has stated that a witness's testimony about threats is best left for cross-examination. *Id.* And in cases where threat evidence is admissible, the district court should provide "cautionary instructions to prevent the evidence from being misused." *State v. Clifton*, 701 N.W.2d 793, 797 (Minn. 2005).

Here, the district court allowed the state to elicit testimony about the perceived threats during its direct examination of L.W., the owner of the van. James objected to this testimony on relevancy and hearsay grounds and on the basis that the threats were not connected to him.

The district court did not abuse its discretion by admitting this evidence. As the state notes, the evidence that members of James's family contacted L.W. and made her feel uncomfortable was relevant to both the credibility of L.W. and James's mother. *See Hayes*, 826 N.W.2d at 807. Because L.W.'s testimony was important in order to establish that James was the man driving the white van on the night of the alleged assault, her credibility was essential to the state's case.[7] Further, because L.W. had a previous relationship with James, it was reasonable to think that she might change her story. *See McArthur*, 730 N.W.2d at 51 (recognizing that in some cases, it "may be appropriate for a party to anticipate a challenge to witness credibility and to attempt to explain expected issues of credibility on direct examination").[8] Accordingly, the threat evidence was relevant to

---

[7] Although James later testified that he was driving the van, the state had the obligation to prove this fact.

[8] James contends that the threat evidence was not necessary to explain any inconsistencies or hesitancies in L.W.'s testimony because her testimony was consistent. But we note that inconsistencies or hesitancies in testimony are not the *only* reasons that threat evidence may be admitted as relevant. The threat evidence was relevant to the credibility of L.W. and to James's mother, and the district court properly admitted it as such. *See McArthur*, 730 N.W.2d at 52 (stating that "[e]vidence of witnesses' fears of testifying and of purported threats against witnesses both tend to be relevant to general witness credibility"). Further, because we affirm the admission of the threat evidence as relevant to witness credibility,

bolster L.W.'s credibility. And the threat evidence was relevant to the credibility of James's mother, who testified as a defense witness. It was not an abuse of discretion for the district court to admit the evidence.

Finally, although the district court did not give a cautionary instruction regarding the threat evidence, district courts have discretion to "fashion appropriate safeguards" when threat evidence is admitted. *McArthur*, 730 N.W.2d at 52. While a cautionary instruction would have been prudent, James did not request such an instruction and the district court's failure to sua sponte give one does not rise to the level of plain error. *Id.* at 53.

III. James's pro se arguments do not warrant relief.

In addition to the arguments raised by his attorney, James raises several arguments in a pro se brief. James contends that there is not sufficient evidence to support his conviction, the district court made several evidentiary errors, and the cumulative effect of the errors prejudiced him and require a new trial.[9]

Sufficiency of the evidence

James first argues that there was not sufficient evidence to support his conviction. James appears to contend that his conviction was based on circumstantial evidence and that the "rational hypothesis" standard of review is applicable.

---

we do not address James's argument regarding whether the evidence was properly admitted as consciousness-of-guilt evidence.

[9] Because we conclude that the district court's alleged errors were not, in fact, errors, we do not reach James's cumulative effect argument.

But James's conviction is supported by direct testimony from L.L. And while corroboration of L.L.'s testimony is not required pursuant to Minnesota Statutes section 609.347, subdivision 1 (2016), several witnesses including L.L.'s cousin, the officers who interacted with L.L., and the sexual assault nurse corroborated L.L.'s testimony. The state also presented circumstantial evidence—primarily the DNA evidence—of James's guilt. When considered in sum, we are satisfied that sufficient evidence supports James's convictions.

Evidentiary arguments

James also maintains that the district court erred in its evidentiary decisions, including its decision to exclude evidence that L.L. reported domestic abuse by her boyfriend to police, its ruling that certain evidence was inadmissible pursuant to rule 412 of the Minnesota Rules of Evidence, and its decision to allow the state to present handwriting evidence. We review each claim in turn.

Domestic abuse evidence

James argues that the district court erred by preventing him from introducing evidence about prior domestic abuse from L.L.'s boyfriend. He sought to call two police officers to testify that L.L. reported domestic abuse in 2009 and 2012 in order to support his theory that L.L. was afraid of her boyfriend and did not want him to find out she had sex with James or loaned him money. The district court allowed James to question L.L. about how she did not want her boyfriend to find out about the assault, but sustained the state's objection to a question about the previous domestic abuse because the domestic incidents were too collateral and remote. We agree with the district court. The domestic abuse incidents were five and eight years old at the time of trial and likely would have distracted or confused the jury about the issue at hand. *See* Minn. R. Evid. 403 (stating that a district court may exclude evidence if its probative value is outweighed by the risk of confusion or misleading the jury). Accordingly, it was not an abuse of discretion for the district court to determine that the reports of domestic abuse were too collateral and remote. *See State v. Tovar*, 605 N.W.2d 717, 722 (Minn. 2000) (noting that district courts have considerable latitude in evidentiary rulings).

<u>Rule 412</u>

James also contends that he was prejudiced because the district court excluded certain evidence of sexual conduct pursuant to Minnesota Rule of Evidence 412, which precludes certain evidence of a victim's previous sexual conduct. But because the evidence he references *was* presented at trial, these claims fail.

James appears to argue that he should have been able to introduce evidence of his past sexual conduct with L.L. This argument is without merit because James testified at length about having a sexual relationship with L.L. on several occasions. First, James suggests that evidence should have been presented that L.L. had another man's semen on her body. But the forensic scientist did testify that DNA was found from a mixture of two or more males. Second, James references the need to introduce motel records and eyewitness testimony to corroborate his claim, but again, both motel records and eyewitness testimony about James and L.L. at the motel were presented. Third, James appears to argue that he should have been able to introduce evidence that L.L. had financial arrangements to have sex with other men, but James never attempted to introduce any such evidence at trial. Accordingly, all of James's alleged errors based on rule 412 lack a factual basis.

Handwriting evidence

James finally argues that it was an abuse of discretion to allow the jury to evaluate L.L.'s handwriting sample, but he acknowledges that he does not have any law supporting this argument. In cases where a handwriting expert does not testify, jurors may be permitted to evaluate handwriting samples on their own. *State v. Houston*, 153 N.W.2d 267, 269 (Minn. 1967). Accordingly, allowing L.L. to testify about whether her signature on the motel information form was authentic was well within the district court's discretion.

IV. The district court erred by sentencing James for first-degree criminal sexual conduct before sentencing him for kidnapping.

James argues that the district court erred by sentencing him for first-degree criminal sexual conduct before sentencing him for kidnapping. James maintains that when imposing consecutive sentences, the district court must sentence the offenses in the order in which they occurred, and that he completed the kidnapping before he completed the first-degree criminal sexual conduct. This court reviews sentencing decisions for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014).

The Minnesota Sentencing Guidelines require that when imposing consecutive sentences, the district court must sentence the offenses in the order in which they occurred. Minn. Sent. Guidelines 2.F (2016). Here, the district court imposed consecutive sentences, so it was required to sentence James in the order in which the offenses were completed.

Accordingly, the question is whether James completed the kidnapping before the first-degree criminal sexual conduct.

Under Minnesota Statutes section 609.25, subdivision 1(2), a person is guilty of kidnapping when he "confines or removes from one place to another, any person without the person's consent" in order to, among other reasons, "facilitate the commission of any felony or flight thereafter." Accordingly, under the statute, a person is guilty of kidnapping at the moment they confine or remove a person without their consent to facilitate a felony, regardless of whether the felony was actually completed.

Here, James grabbed L.L. by the hair, made her get in his van, and drove around with her, presumably with the intent to sexually assault her. Thus, before James sexually assaulted L.L., he had completed the crime of kidnapping. Because the kidnapping occurred first, the district court should have sentenced James for the kidnapping first.

The state argues that the kidnapping was not complete until James released L.L. or until L.L. escaped because the jury had to determine whether James released L.L. in a safe place. The state contends that *where* L.L. was released is a substantive element of the kidnapping offense. But this argument is contrary to the statute. The statute clearly identifies that the question of whether the victim is released in a safe place is a sentencing consideration, not a substantive element of the offense. Minn. Stat. § 609.25, subd. 2 (2016). Because the kidnapping occurred before the criminal sexual conduct, the district court should have sentenced James for the kidnapping first. Accordingly, we reverse and remand for resentencing.

In sum, the district court did not abuse its discretion during its conduct of voir dire or by admitting evidence that James's family members threatened L.W. James's pro se arguments also lack merit. Accordingly, we affirm James's convictions of first-degree criminal sexual conduct and kidnapping. But, because the district court erred by sentencing James for the first-degree criminal sexual conduct before sentencing him for the kidnapping, we reverse and remand for resentencing.

Affirmed in part, reversed in part, and remanded.