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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1641**

State of Minnesota,
Respondent,

vs.

Meng Vang,
Appellant.

**Filed July 29, 2019
Affirmed
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-CR-18-366

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

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

John Arechigo, Arechigo & Stokka, P.A., St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Schellhas, Judge; and Smith,
Tracy M., Judge.

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

SMITH, TRACY M., Judge

Appellant Meng Vang was charged with terroristic threats, fifth-degree assault, and false imprisonment, based on an incident in which he restrained S.T. in a bathroom in her home. Following a jury trial, Vang was found guilty and convicted of false imprisonment

and was acquitted of the other charges. In this direct appeal, Vang argues that (1) the district court abused its discretion by not removing a juror who raised a question about the interpretation of a witness's testimony during trial, (2) the evidence was insufficient to support his false-imprisonment conviction, and (3) the district court abused its discretion by not granting a downward departure from the sentencing guidelines. We affirm.

FACTS

Vang was charged with making terroristic threats in reckless disregard of the risk of causing terror in another, assault in the fifth degree, and false imprisonment, following an incident that occurred in the home of S.T. and her husband, A.Y., in January 2018. S.T. and A.Y. had some guests over for dinner and karaoke. Their guests included, among others, R.C.; and two people whom another guest brought along but who were not invited directly—K.Y. and Vang. Vang was a stranger to S.T.

Two versions of what happened at the gathering were presented at trial. According to respondent State of Minnesota, S.T. went to use the toilet but, after entering the bathroom and locking the door, noticed that Vang was also in the bathroom. Vang then said that he loved S.T. She asked him to leave. S.T. opened the door, but Vang pushed it shut, relocked it, hit S.T. in the face, and then shoved her backward. S.T. fell into the shower door, breaking it. Vang then said that he was going to have sex with her and tried to touch her. S.T. began crying and yelling for help. A.Y. was outside the house with R.C. and K.Y., and when he came in he heard his wife calling for help. A.Y. used a tool to unlock the bathroom door from the outside and got into a fistfight with Vang. After A.Y., R.C., and K.Y. were able to get Vang out of the house, A.Y. called 911.

Though Vang himself did not testify, his version of events was introduced to the jury by the testimony of K.Y. and by a recording of a police interview with Vang. In Vang's telling, he thought that S.T. was inappropriately flirting with R.C. Vang spoke with K.Y. about what he noticed. While K.Y. noticed the same thing, he told Vang not to get involved. Nonetheless, Vang asked S.T. to talk, and she voluntarily went with him into the bathroom. Vang then asked if she was cheating on A.Y. with R.C., told her that she should not do that, and tried to show her a video that he had taken which he said showed S.T. being too affectionate toward R.C. S.T. then slapped the phone and left the bathroom. A.Y. did not have to unlock the bathroom door because Vang unlocked it after A.Y. tried to open it. But when Vang tried to leave the bathroom, A.Y. and R.C. started fighting with him. It was during this fighting that the shower door was broken.

The jury found Vang guilty of false imprisonment but not guilty of making terroristic threats or assault. Before sentencing, Vang moved for a downward durational departure—he sought sentencing as a gross misdemeanor although the offense is a felony. But the district court adhered to the sentencing guidelines, ordering a stay of imposition of sentence and three years' probation. Vang appeals.

D E C I S I O N

I. The district court did not abuse its discretion by keeping M.X.-Y. on the jury.

Vang's first argument is that the district court erred in handling a situation when a juror expressed concerns about the interpretation of S.T.'s testimony during trial.

S.T. testified in Hmong through an interpreter. On the second day of S.T.'s testimony, one of the jurors, M.X.-Y., who spoke Hmong, approached the clerk and raised

concerns that the interpreter was summarizing S.T.'s testimony on at least one point. The district court, with the attorneys but outside the presence of the jury, took two steps to determine what to do.

First, the district court questioned S.T. and the interpreter about the adequacy of the interpretation. Both S.T. and the interpreter indicated that they believed they were speaking the same dialect, did not have difficulty understanding what the other was saying, and believed the other understood what they were saying. Additionally, the interpreter denied summarizing S.T.'s testimony, saying that "[p]retty much everything was literally interpret[ed]." Further, S.T. testified that she understood some English and believed that the interpreter was saying her answers word for word.

Second, the district court asked M.X.-Y. about what she heard and instructed her to rely only on the English-language interpretation of S.T.'s testimony. The court asked M.X.-Y. generally what her concerns were. M.X.-Y. said that she believed the interpreter skipped over some details in the testimony and that she believed that S.T. could tell the interpreter was summarizing and that S.T. had become frustrated. M.X.-Y. said that she would be able to follow the evidence as it came in in English and would not tell the other jurors about her personal understanding of S.T.'s Hmong-language testimony. But when pressed by defense counsel, she was less sure, saying that her recollection might be based on what S.T. was saying in Hmong and that it might be hard for her not to pay attention directly to S.T.'s testimony. On further questioning by the prosecutor, M.X.-Y. said that she understood English, knew what the interpreter was saying, would be able to rely on what the interpreter said when deliberating, and would not share her own interpretation with other jurors.

After hearing from M.X.-Y., the defense attorney asked for her to be removed from the jury, citing her statement that her recollection might be based on what S.T. said rather than what the interpreter said. The prosecutor argued in response that M.X.-Y. had said that she paid attention to the interpretation and had been “pretty quick and confident to say that she could rely just on the English interpretation.” The district court did not decide at that time whether to remove the juror, and the trial continued.

Just before submitting the case to the jury, the district court again discussed with the parties whether M.X.-Y. should remain on the jury. The prosecutor argued that M.X.-Y. should remain because her responses to his question indicated that she could base her decision only on the English interpretation of S.T.’s testimony. Defense counsel argued the opposite, contending that the juror had “a completely separate source of information in her deliberations” from the other jurors and that it would be better to have an alternate juror deliberate. The district court found that M.X.-Y. was credible when she said that she could follow the court’s instruction and base her deliberation only on the English-language version of the testimony. The district court did not remove M.X.-Y.

Though not clearly differentiated, Vang’s argument is actually composed of three subarguments: first, a challenge to adequacy of the interpretation; second, an argument that M.X.-Y. should have been removed because she could not rely on the English interpretation; and, finally, an argument that she should have been removed for bias.

A. Adequacy of the interpretation

Vang’s first argument is that M.X.-Y. was not, but should have been, given the opportunity to tell the court what, exactly, she believed had been misinterpreted. Vang’s

only basis for this assertion is an analogy to *People v. Johnson*, 120 Cal. Rptr. 372, 373-74 (Cal. Ct. App. 1975), a case decided by the California Court of Appeal, which is not binding on this court and is, at best, persuasive authority. See *Mahowald v. Minn. Gas Co.*, 344 N.W.2d 856, 861 (Minn. 1984) (stating that foreign authority is not binding, but may be persuasive). But *Johnson* is not even persuasive given the facts here.

In *Johnson*, the appellants offered evidence that may have tended to show inaccuracies in the interpretation of certain critical testimony. 120 Cal. Rptr. at 373. The district court refused to admit the evidence, and the appellate court ruled that it was error to bar the evidence. *Id.* at 373-74. Here, however, Vang did not argue to the district court that it should evaluate the nature of the misinterpretations reported by M.X.-Y., nor did he attempt to introduce evidence showing the nature of the mistranslations. In fact, though the off-the-record discussion was not memorialized, it appears to have been Vang's counsel himself who suggested to the district court that M.X.-Y. should be instructed not to specifically describe the purported misinterpretations. The district court asked M.X.-Y. a general question about her concern with the interpretation, and, as M.X.-Y. started to answer, defense counsel asked for a bench conference, after which the district court instructed M.X.-Y. not to tell the court "exactly . . . what [she] heard that was different." Vang cannot argue that the district court should have admitted certain evidence when no one ever tried to introduce it. This court cannot assume that M.X.-Y.'s description of the purported discrepancies would have been material or that the exclusion of such evidence was prejudicial. See *State v. Anderson*, 395 N.W.2d 83, 85 (Minn. App. 1986) (holding that the appellant had forfeited review of the admissibility of a videotape because of the absence

of an offer of proof). To the extent Vang argues that the district court erred by not discovering the nature of the purported misinterpretations, his argument fails.

B. Nonreliance on the English translation

Vang's second argument is that his conviction must be reversed because M.X.-Y. may have relied on S.T.'s Hmong-language testimony rather than on the English-language interpretation of that testimony. He argues that the district court abused its discretion by not dismissing M.X.-Y. after she indicated that she understood and recalled S.T.'s Hmong-language testimony and that she might have difficulty relying only on the English-language interpretation of the testimony.

Neither Vang nor the state cites any Minnesota caselaw governing when a juror who understands non-English testimony that is being translated for the record must be removed, and our review reveals none. Nonetheless, we believe that it is appropriate to draw an analogy to cases concerning juror consideration of extra-record evidence. A similar analogy was used by the supreme court in *State v. Bowles*, in which the court treated "race-based pressure" within the jury as if it was evidence from outside the record that was relied upon by the jury. 530 N.W.2d 521, 536 & n.22 (Minn. 1995). Other states treat a juror's ability to directly understand non-English testimony as an extra-record source of knowledge. See, e.g., *People v. Cabrera*, 281 Cal. Rptr. 238, 240 (Cal. Ct. App. 1991) (holding that it was juror misconduct for a juror (1) to not rely on the appointed interpreter's translation, and (2) to share her own interpretation with other jurors, with citation to cases prohibiting juries from relying on outside evidence); *State v. Powers*, 164 N.W. 856, 857-58 (Iowa 1917) (comparing the presence of German-speaking jurors who had said they

would rely on German-language testimony rather than its English interpretation to a Texas case where jurors engaged in personal inspection of purportedly stolen property outside the courtroom, because both would result in “a verdict upon facts . . . known only to the jury, not publicly developed on the trial”).

“An impartial trial requires that conclusions reached by the trier of fact be based upon the facts in evidence and prohibits the trier of fact from reaching conclusions based on evidence sought or obtained beyond that adduced in court.” *State v. Dorsey*, 701 N.W.2d 238, 249-50 (Minn. 2005) (citation omitted). If the untranslated testimony of a non-English-speaking witness is considered extra-record evidence, removal of a bilingual juror who is not willing and able to use only the English-language testimony as translated by the interpreter may be required in order to ensure that a verdict is made based only on the record evidence.

But even under this theory, Vang’s argument fails because the district court did not abuse its discretion when it credited M.X.-Y.’s affirmation that she would rely only on the English interpretation. Appellate courts are “especially deferential” to district courts’ determinations of jurors’ credibility. *State v. Munt*, 831 N.W.2d 569, 576 (Minn. 2013). Vang notes that M.X.-Y. was “hesitant” when saying that she could rely only on what the interpreter said and said that it would be “kind of hard for” her to focus on the interpreter’s words because she also understood S.T.’s testimony directly. But when the state subsequently questioned M.X.-Y., she definitively affirmed that she was paying attention to the interpreter, knew what he was saying, would not share the Hmong-language testimony with the other jurors, and would rely on the English interpretation. Vang has not

shown this court any reason that would justify reversing the district court's credibility determination. The district court did not abuse its discretion by declining to remove M.X.-Y. from the jury.

C. Bias

Vang's final argument relating to the interpretation of S.T.'s testimony is that M.X.-Y. exhibited actual bias in favor of S.T. and that her presence on the jury violated Vang's Sixth Amendment right to be tried by an impartial jury. Vang's assertion turns on M.X.-Y.'s statement that she believed S.T. was frustrated by the perceived mistranslations and that M.X.-Y. understood that frustration.

Vang did not argue to the district court that M.X.-Y. was actually biased. It is an unsettled question whether the plain-error rule permits review of an unpreserved, but not expressly waived, claim of juror bias. *State v. Geleneau*, 873 N.W.2d 373, 382 n.3 (Minn. App. 2015), *review denied* (Minn. Mar. 29, 2016). But we need not address that question here. The parties do not argue it, and deciding it would make no difference to the outcome: even if the plain-error doctrine applies and Vang is permitted to argue that M.X.-Y. was actually biased, the district court did not plainly err by keeping M.X.-Y. on the jury.

To show plain error, a defendant must establish "(1) an error, (2) that is plain, and (3) that affects the defendant's substantial rights." *State v. Beaulieu*, 859 N.W.2d 275, 279 (Minn. 2015). If all three prongs of the plain-error test are satisfied, "we may correct the error only if it seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (quotations omitted).

A juror may be challenged for bias if “[t]he juror’s state of mind—in reference to the case or to either party—satisfies the court that the juror cannot try the case impartially and without prejudice to the substantial rights of the challenging party.” Minn. R. Crim. P. 26.02, subd. 5(1). “To prove actual bias, the challenging party must show that the juror exhibited strong and deep impressions that would prevent her from laying aside her impression or opinion and rendering a verdict based on the evidence presented in court.” *State v. Fraga*, 864 N.W.2d 615, 623 (Minn. 2015) (quotations omitted).

A reviewing court follows a two-step process to determine whether a juror should have been removed for actual bias. *Id.* The first step requires the reviewing court to “view the juror’s voir dire answers in context” and determine whether “the juror expressed actual bias.” *Id.* If the juror did express actual bias, then the reviewing court must “determine whether the juror was properly rehabilitated.” *Id.* A juror is properly rehabilitated if the juror “states unequivocally that he or she will follow the district court’s instructions and will set aside any preconceived notions and fairly evaluate the evidence.” *State v. Prtine*, 784 N.W.2d 303, 310 (Minn. 2010).

Vang’s argument fails at the first step: M.X.-Y. did not express actual bias. M.X.-Y.’s statements show that she believed S.T. was frustrated by testifying through an interpreter and that she understood that perceived frustration. M.X.-Y. did not say that she was sympathetic toward S.T. personally, that she was predisposed to believe S.T.’s testimony, or that her understanding of S.T.’s testimony in Hmong affected in any way her ability to be impartial. Because M.X.-Y. did not express actual bias, the district court did

not err by not removing her for bias and her presence on the jury did not violate Vang's Sixth Amendment right to an impartial jury.

II. Vang's conviction is supported by sufficient evidence.

Vang argues that his conviction must be reversed because the evidence is insufficient to prove false imprisonment beyond a reasonable doubt.

When an appellant challenges the sufficiency of the evidence, appellate courts

undertake a painstaking review of the record, and review the evidence to determine whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a fact-finder could reasonably conclude that the defendant was guilty of the offense charged.

State v. Barshaw, 879 N.W.2d 356, 362 (Minn. 2016) (quotations omitted). Appellate courts view the evidence in the light most favorable to the verdict and assume that “the factfinder disbelieved any evidence that conflicted with the verdict.” *Id.* at 363 (quotation omitted).

The false-imprisonment statute provides: “Whoever, knowingly lacking lawful authority to do so, intentionally confines or restrains . . . any . . . person without the person's consent, is guilty of false imprisonment.” Minn. Stat. § 609.255, subd. 2 (2016). Vang breaks down the offense in this case into the following three substantive elements plus a jurisdictional element: first, that he “intentionally confined or restrained S.T.”; second, that he “knew that he had no lawful authority” to do so; third, that “S.T. did not consent to the confinement or restraint”; and fourth, that his acts took place on the specified date in Ramsey County. He concedes the second and fourth elements but argues that there

was insufficient evidence to show either that he confined or restrained S.T. or that she did not consent to being confined or restrained.

S.T. testified to both of those elements. She said that, after finding Vang in the bathroom and asking him to leave, she opened the door but he pushed the door shut and locked it. She indicated that he stood between her and the door so that she could not open it. She also said that she asked Vang to open the door and that he would not let her, which was when she started was crying and yelling. She testified that the door was eventually opened when her husband came with a tool to open it.

Vang contends that this court should disregard S.T.'s direct evidence, which shows both intentional confinement or restraint and lack of consent, because it is inconsistent with the jury's verdict on the other counts. He argues that, in order to find him not guilty of terroristic threats and not guilty of fifth-degree assault, the jury must have disbelieved S.T.'s testimony that he hit her, pushed her down, and threatened to sexually assault her. Because the jury disbelieved that testimony, he argues, the jury must not have believed S.T.'s testimony that Vang would not let her leave the bathroom. Vang goes on to argue that the remaining evidence, which is circumstantial, fails to rule out the inference that S.T. was willingly in the bathroom with him.

But Vang's argument fails without the need to reach his circumstantial-evidence argument. "As the fact finder, the jury is in a unique position to determine the credibility of the witnesses and weigh the evidence before it." *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). "A jury, as the sole judge of credibility, is free to accept part and reject part of a witness'[s] testimony." *State v. Poganski*, 257 N.W.2d 578, 581 (Minn. 1977). And "a

conviction may be based on a single person's testimony." *State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010). Thus, the jury was free to accept the part of S.T.'s testimony establishing the elements of false imprisonment while disbelieving her testimony as to the other charges. Because S.T.'s testimony was direct evidence establishing the elements of false imprisonment, there was sufficient evidence to support the jury's guilty verdict.

III. The district court's refusal to depart from the sentencing guidelines was not an abuse of discretion.

Vang's final argument is that the district court abused its discretion by declining to depart from the sentencing guidelines for felony false imprisonment.

In his sentencing motion to the district court, Vang argued that the district court should grant a downward durational departure because his conduct was significantly less serious than the typical case of false imprisonment and because there were other substantial grounds mitigating his culpability. The district court ordered a stay of imposition pending three years of probation, a sentence that conformed to the sentencing guidelines. Vang appeals, arguing that the district court erred by not granting his motion for a downward durational departure.

A district court may impose a gross-misdemeanor sentence for a felony conviction, but doing so is a departure. See Minn. Sent. Guidelines 2.D.1 (2016) ("A pronounced sentence for a felony conviction that is outside the appropriate range on the applicable Grid, including a stayed or imposed gross misdemeanor or misdemeanor sentence, is a departure from the Guidelines."). A district court "has broad discretion to depart *only if* aggravating or mitigating circumstances are present." *State v. Best*, 449 N.W.2d 426, 427 (Minn. 1989).

Those mitigating circumstances must be “substantial and compelling,” meaning that they make “the facts of a particular case different from a typical case.” *State v. Olson*, 765 N.W.2d 662, 664 (Minn. App. 2009) (quotation omitted). “Ordinarily, a reviewing court will not interfere” with a presumptive guidelines sentence, even if mitigating circumstances are present. *State v. Quast*, 381 N.W.2d 20, 22 (Minn. App. 1986), *review denied* (Minn. Mar. 14, 1986). However, there may occasionally be a “rare case” in which refusal to depart is an abuse of discretion. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981). Such a case is not present when there are “valid reasons for adhering to the presumptive sentence.” *Id.*

In an attempt to show that his offense was less serious than the typical case of false imprisonment, Vang refers to a number of cases of false imprisonment with worse facts than these. Vang argues that he did not physically hold S.T. captive and did not physically assault or threaten her, so his conduct is less serious than the typical case of false imprisonment. But he did “confine or restrain” her, *see* Minn. Stat. § 609.255, subd. 2, and he did so within her own home. And, in many of the cases Vang cites, the more offensive conduct is generally from crimes committed in addition to false imprisonment, such as sexual assault, *State v. Muckle*, A17-0029, 2017 WL 6272932 (Minn. App. Dec. 11, 2017), *review denied* (Minn. Feb. 20, 2018); or burglary, *State v. Mason*, A08-0620, 2009 WL 1918722 (Minn. App. July 7, 2009), *review denied* (Minn. Sept. 16, 2009). In some cases, the imprisonment appears to be similar to that here, as when a high school student duct-taped a classmate and left him in a stairwell, believing it to be an acceptable school tradition. *In re Welfare of R.W.C.*, C0-96-630, 1997 WL 3366 (Minn. App. Jan. 7, 1997). Additionally, in one of the burglary cases, the restraint only ended when the police entered

and forcibly released the restrained party. *Mason*, 2009 WL 1918722, at *6. That situation is comparable to this one, in that Vang did not release S.T. until the other people in the house forced their way into the bathroom and let her out. The district court's conclusion that Vang's conduct was not substantially or compellingly less serious than the typical case of false imprisonment was not an abuse of discretion.

Vang also argues that his culpability was mitigated because he had innocent aims—to speak to S.T. in private about what he believed to be inappropriate conduct. But the district court considered the motives he claims and viewed them as less innocent. In the district court's view, Vang's motives were sexist or misogynistic and did not mitigate his culpability. That view was entirely reasonable. Even assuming those were Vang's motives, the fact that Vang imprisoned S.T.—a stranger to him before that night—in order to chastise her for her personal conduct in no way mitigates the invasion of S.T.'s freedom of movement or the emotional and psychological harm and harm to S.T.'s dignity from being restrained.

Vang's imprisonment of S.T. was not significantly less serious than the typical false imprisonment, and the district court was within its discretion in rejecting Vang's arguments for reduced culpability. The district court did not abuse its discretion by declining to sentence Vang's conviction as a gross misdemeanor.

Affirmed.