

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2026**

State of Minnesota,
Respondent,

vs.

David Earl Peguse,
Appellant.

**Filed January 19, 2021
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-CR-18-6968

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Tracy M. Smith, Judge; and
Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Ramsey County jury found David Earl Peguse guilty of second-degree assault with a dangerous weapon. The conviction is based on evidence that Peguse used his vehicle to chase a man across a grassy area of a city park and either hit the man with his vehicle, attempt to do so, or cause the man to fear that he would be hit. We conclude that the district court did not err by denying Peguse's motion for a new trial, which was based on the state's non-disclosure of evidence that Peguse could have used to impeach two of the state's witnesses. We also conclude that the district court did not err by not instructing the jury on Peguse's defense-of-others defense or by admitting evidence that Peguse has a prior conviction. Therefore, we affirm.

FACTS

This appeal arises from an altercation between Peguse and a man, W.R., who was in a relationship with a woman, M.F., with whom Peguse previously had been in a relationship. According to Peguse's trial testimony, he and M.F. were in a relationship from the summer of 2017 to early 2018. They did not communicate with each other between March and August of 2018. During that period, Peguse learned that M.F. was pregnant, and he believed that he was the biological father of the child. In approximately mid-September 2018, Peguse saw M.F. at Heritage Park in St. Paul, shortly after she had given birth. Peguse noticed bruises and bite marks on M.F.'s arms, so he offered her a temporary place to stay, and she accepted the offer. Peguse and M.F. moved some of her belongings to his home, but she later decided not to stay with Peguse.

Peguse testified at trial as follows about the incident for which he was convicted: On September 23, 2018, he tried to contact M.F. so that he could return some of her possessions. He dropped off the items at her residence, but she was not there. Peguse received a text message from M.F. and drove to meet her at Heritage Park. Upon arriving there at approximately 8:00 p.m., he parked his sport-utility vehicle in a parking lot near a pavilion. M.F. approached his vehicle with an open can of beer in her hand and sat in the passenger seat. After a short conversation, M.F. exited Peguse's vehicle, leaving the can of beer in Peguse's cup-holder. Peguse watched M.F. walk toward the pavilion, where she spoke with a man, later identified as W.R. From his vehicle, Peguse saw an argument and a physical altercation between M.F. and W.R. Peguse pointed his headlights at the pavilion and honked his horn, intending to distract W.R. and deter him from attacking M.F. When W.R. did not stop attacking M.F., Peguse drove his vehicle through the park on a sidewalk to create a "diversion" that would allow M.F. to "get away" from W.R. and "scare [him] off." Peguse testified that, as he was driving away from the pavilion, W.R. ran toward his truck. According to Peguse, when his vehicle came to a stop, W.R. "flew in front of" it. Peguse testified that his vehicle did not come into contact with W.R.

At that particular moment, two St. Paul police officers—Officer Grundei and Officer Wild—were traveling in a squad car in the westbound lanes of Phalen Boulevard, which passes along the southern side of Heritage Park. Officer Wild testified at trial that he saw a vehicle speed through the park, take a sharp right turn, and hit a person. Officer Wild lost visual contact with the person when the person fell into tall grass. Officer Grundei testified similarly that he saw a vehicle driving through the park on the grass,

following closely behind a person who was running. As the officers stopped their squad car and activated the emergency lights, Officer Grundei saw both the person and the vehicle turn right, toward the north, and saw that the person was thrown forward into tall grass, “much faster than when he was running,” which caused Officer Grundei to believe that the vehicle had struck the person. The officers exited their squad car, drew their handguns, and ordered the driver to exit the vehicle. The driver looked at the officers and drove away, so the officers returned to their squad car and pursued him.

The incident at the park was recorded by the officers’ squad car’s dashboard videocamera. The video-recording, which was introduced into evidence and played for the jury, shows that a vehicle drove through the park and made a sharp right turn. As it did so, its headlights illuminated a person who was in front of the vehicle until the person disappeared from view. The vehicle backed up, the driver looked in the direction of the dashboard videocamera, and then the vehicle drove away across the park, exited the park, and drove through a nearby intersection before coming to a stop. Another officer found a can of beer in Peguse’s vehicle, detected the odor of alcohol on Peguse, and saw that he had bloodshot eyes. The officers arrested Peguse for driving while impaired and obtained a search warrant authorizing a blood draw. Peguse refused to submit to the blood draw.

The state charged Peguse with second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2018); fleeing a peace officer in a motor vehicle, in violation of Minn. Stat. § 609.487, subd. 3 (2018); and driving while impaired (DWI) based on his refusal to submit to chemical testing, in violation of Minn. Stat. § 169A.20, subd. 2(2) (2018).

The case was tried to a jury on two days in May 2019. The state called five witnesses: Officers Grundei and Wild as well as Officers Becerra, Mena-Carrion, and Avent. The state did not call either W.R. or M.F., both of whom were uncooperative, according to the prosecutor's opening statement. Peguse testified in his own defense, as described above, but did not present any other evidence.

The jury found Peguse guilty on all counts. After a post-trial motion for a new trial (which is discussed below in part I), the district court imposed an executed sentence of 29 months of imprisonment on the conviction of second-degree assault, a stayed sentence of 15 months on the conviction of fleeing a police officer in a motor vehicle, and a sentence of 365 days in jail on the DWI conviction. Peguse appeals.

DECISION

I. Motion for New Trial

Peguse first argues that the district court erred by denying his motion for a new trial based on the state's non-disclosure of evidence that would have allowed Peguse to impeach two of the state's witnesses, in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1104 (1963). He seeks a new trial only with respect to his conviction of second-degree assault.

This issue arose after trial and before sentencing when Peguse's trial attorney saw a newspaper article reporting that the St. Paul Police Department had terminated the employment of five officers—including Officers Grundei and Wild, who testified for the state in this case—after an internal investigation revealed that they had engaged in misconduct in a different matter. Peguse promptly moved for a new trial and for post-trial discovery into the other matter, and the district court allowed Peguse to conduct discovery.

After doing so, Peguse supplemented his new-trial motion with evidence that the internal investigation led to the conclusion that Officer Grundei and Officer Wild “had submitted multiple untruthful statements to internal affairs investigators.” He argued that the state had breached its duty to disclose evidence in this case. He argued further that, if the evidence had been disclosed before trial, he could have impeached the two officers’ testimony about the key facts of this case. The district court denied the motion in a detailed 18-page order.

The supreme court has summarized the applicable law as follows:

In *Brady*, the United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Id.* at 87, 83 S. Ct. at 1196-97. The Court has subsequently defined three components necessary for a “true *Brady* violation.” *Strickler v. Greene*, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 1948 (1999). First, the evidence at issue must be favorable to the accused, either because it is exculpatory or it is impeaching. *Id.* Second, the evidence must have been suppressed by the state, either willfully or inadvertently. *Id.* at 282, 119 S. Ct. at 1948. Third, prejudice to the accused must have resulted. *Id.* All three components must be met in order for a *Brady* violation to be found. *Id.*

Pederson v. State, 692 N.W.2d 452, 459 (Minn. 2005).

In this case, the district court reasoned that Peguse had established the first and second requirements of a *Brady* violation but that he had not established the third requirement. On appeal, the state disagrees with the district court’s analysis with respect to each of the three requirements. But the state’s primary argument for affirmance is that the district court correctly analyzed the third requirement. Thus, we focus on the question

whether Peguse has established the third requirement. Because Peguse seeks a new trial only with respect to his conviction of second-degree assault, we confine our analysis to the question whether the *Brady* violation prejudiced his ability to defend against that charge.

To satisfy the third requirement of the three-part *Brady* test, “the evidence must be ‘material.’” *Id.* at 460 (citation omitted). “Evidence is material ‘only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’” *Id.* (quoting *U.S. v. Bagley*, 473 U.S. 667, 682, 105 S. Ct. 3375, 3383 (1985)). “A ‘reasonable probability’ is one that is ‘sufficient to undermine confidence in the outcome.’” *Id.* (quoting *Bagley*, 473 U.S. at 682, 105 S. Ct. at 3383). We apply a *de novo* standard of review to a district court’s determination as to whether the third requirement of the *Brady* test is satisfied. *Id.*

In analyzing the third requirement of the *Brady* test with respect to the conviction of second-degree assault, the district court reviewed the testimony of each of the state’s witnesses as well as Peguse’s testimony. The district court reasoned that the testimony of Officer Grundei and Officer Wild, that Peguse’s vehicle struck W.R., was “important” but also was “corroborated to a very significant degree by” the video-recording created by their squad car’s dashboard videocamera as well as other video evidence of the aftermath of the incident. The district court reasoned that the video evidence “is quite inconsistent with Defendant’s testimony that he did not hit [W.R.] and that [W.R.] ‘flew in front of my truck’ . . . and ‘land[ed] on the sidewalk.’”

Our review of the evidence, including the video-recordings that were played for the jury, confirms the district court’s analysis. The officer’s dashboard videocamera captured

Peguse's vehicle driving at a relatively high speed in an area of the park that is not intended for vehicles. The video-recording shows that Peguse's vehicle followed a person who was on foot before the person disappeared, apparently because he fell in tall grass. That part of the video-recording gives a viewer the clear impression that Peguse used his vehicle to chase the other person. Another video-recording, recorded by Officer Mena-Carrion's body-worn camera, shows that W.R. lay on the ground after the incident, apparently unable to stand up by himself and obviously in pain. That part of the video-recording gives a viewer the impression that Peguse's vehicle actually struck and injured W.R.

Peguse attempts to persuade us that the officers' testimony was more important than the video evidence because the prosecutor emphasized the officers' testimony in closing argument. But the prosecutor actually described the video evidence first, before describing the officers' testimony. It appears from the transcript that the prosecutor played the video for the jury three times during his closing argument. Contrary to Peguse's contention, the state relied primarily on the video evidence during closing arguments.

Peguse asserts that the officers' testimony was critical because they testified that Peguse's vehicle actually struck W.R. while the video evidence is inconclusive on that point. It is true that the video evidence does not clearly show contact between Peguse's vehicle and W.R. But Peguse's conviction does not depend on evidence that his vehicle actually collided with W.R.'s body. A person may commit an assault in any of several ways: by inflicting bodily harm on another person, by attempting to do so, or by intending "to cause fear in another of immediate bodily harm or death." *See* Minn. Stat. § 609.02, subd. 10 (1) (2018). The district court instructed the jury on all of these alternative means

of committing an assault. And in closing argument, the prosecutor specifically mentioned the alternatives, stating: “[H]e doesn’t even have to have contact. He doesn’t even need to make contact with [W.R.] for it to be an assault because even the attempt is enough. Even the intent to cause fear is sufficient.”

The *Brady* caselaw concerning the materiality of undisclosed evidence favors evidence that tends to show that the defendant did not commit a crime and disfavors evidence that is merely impeaching. *See Strickler*, 527 U.S. at 289, 291, 119 S. Ct. at 1952-53. Our supreme court has summarized this principle by stating as follows:

Nondisclosure of evidence that is merely impeaching may not typically result in the kind of prejudice necessary to warrant a new trial. For example, where testimony of the witness sought to be impeached by nondisclosed evidence was not the only damning evidence against defendant, we have determined that the likelihood of prejudice is decreased.

State v. Hunt, 615 N.W.2d 294, 300-01 (Minn. 2000) (quotations omitted). In this case, the undisclosed evidence is merely impeaching and is “not the only damning evidence against” Peguse. *See id.* It was quite a coincidence that Officer Grundei and Officer Wild were driving past the relevant part of Heritage Park at the precise moment that the incident occurred, and it is fortuitous for the state that the officers’ dashboard videocamera captured Peguse’s conduct in significant, if not perfect, detail. Peguse’s own testimony confirms much of the video evidence. The jury likely relied on the video evidence to determine that Peguse assaulted W.R., which was a relatively easy inference in light of all the evidence. Consequently, there is not ““a reasonable probability that, had the evidence been disclosed

to the defense, the result of the proceeding would have been different.” *See Pederson*, 692 N.W.2d at 460 (quoting *Bagley*, 473 U.S. at 682, 105 S. Ct. at 3383).

Thus, the district court correctly determined that Peguse did not establish the third requirement of the *Brady* test. Therefore, the district court did not err by denying Peguse’s motion for a new trial.

We note that Peguse also argues that this court should reverse all of his convictions and remand for a new trial “in the interests of justice.” He relies primarily on caselaw concerning the supreme court’s supervisory authority over the state courts. *See State v. Kaiser*, 486 N.W.2d 384, 387 (Minn. 1992); *State v. Schwantes*, 314 N.W.2d 243, 245 (Minn. 1982); *State v. Zeimet*, 310 N.W.2d 552, 553 (Minn. 1981). But this court may not exercise that type of authority. *See, e.g., State v. Ramey*, 721 N.W.2d 294, 302 n.6 (Minn. 2006); *State v. Stewart*, 923 N.W.2d 668, 677 n.8 (Minn. App. 2019), *review denied* (Minn. Apr. 16, 2019); *State v. Gilmartin*, 535 N.W.2d 650, 653 (Minn. App. 1995), *review denied* (Minn. Sept. 20, 1995). In the alternative, Peguse suggests that this court should grant him a new trial based on a rule of criminal procedure that authorizes such relief in “[t]he interests of justice,” Minn. R. Crim. P. 26.04, subd. 1(1), or based on a rule of appellate procedure that authorizes appellate relief “as the interest of justice may require,” Minn. R. Civ. App. P. 103.04 (first paragraph). We decline Peguse’s request for relief on those general grounds because we have concluded that he is not entitled to a new trial based on the more-specific criteria of the well-developed *Brady* caselaw.

II. Defense-of-Others Defense

Peguse next argues that the district court erred by not giving the jury an instruction on the law of defense-of-others. In conjunction with that argument, he argues that the district court erred by not allowing him to introduce the testimony of a police officer who, one week before the incident at Heritage Park, had responded to a report of domestic abuse by W.R. against M.F., which, Peguse asserts, would have helped him prove the defense of defense-of-others.

A defendant is entitled to an instruction on his theory of the case “if there is evidence to support it.” *State v. Ruud*, 259 N.W.2d 567, 578 (Minn. 1977). The defendant has the burden of producing evidence to support a claim of defense-of-others. *See State v. Basting*, 572 N.W.2d 281, 286 (Minn. 1997); *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). The elements of the defense of defense-of-others are

(1) the absence of aggression or provocation on the part of the defendant; (2) the defendant’s actual and honest belief that [another person] was in imminent danger of death or great bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

See Basting, 572 N.W.2d at 285; *see also State v. Zumberge*, 888 N.W.2d 688, 694 (Minn. 2017); *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014). If a defendant has produced evidence to support a defense, “the State bears the burden to disprove, beyond a reasonable doubt, one or more of the . . . elements” of the defense. *Devens*, 852 N.W.2d at 258.

This issue arose at the pre-trial conference, when Peguse gave notice of his intent to call Officer Obrestad. According to Peguse’s proffer, the officer would have testified that, on a prior occasion, W.R. injured M.F. in a domestic dispute but M.F. resisted the officer’s

attempt to take photographs of the injuries. The district court reserved ruling on the admissibility of the officer's testimony. Peguse raised the issue again during the defense case. The district court ruled that it would not instruct the jury on the law of defense-of-others because there was insufficient evidence to support the instruction in light of the evidence that M.F. was not in danger because she was quite distant from W.R. when Peguse drove his vehicle at W.R. The district court also ruled that it would not admit the testimony of Officer Obrestad because it would be irrelevant in light of the fact that she was not present for any of the incident at Heritage Park.

Peguse contends that the district court erred by weighing Peguse's evidence relevant to the defense rather than viewing the evidence in the light most favorable to him. The question is whether a reasonable juror could find that the evidence satisfies the elements of the defense. *See State v. Gray*, 456 N.W.2d 251, 257-58 (Minn. 1990). Peguse's testimony might have supported a defense-of-others instruction if he had assaulted W.R. near the pavilion while M.F. was still in danger. But according to his testimony, he effectively broke up that altercation. The question is whether Peguse was justified in assaulting W.R. at a later moment in time in a different place. On that point, his testimony does not allow a reasonable jury to find that the third or fourth elements were satisfied when he drove his vehicle at W.R. The evidence shows that Peguse did not have a reasonable belief that M.F. was "in imminent danger of death or great bodily harm" at the relevant time. *See Devens*, 852 N.W.2d at 258. Similarly, the evidence does not show that there was an "absence of a reasonable possibility of retreat to avoid danger" in light of the evidence that Peguse was in a vehicle and W.R. was on foot. *See id.*

Peguse contends that the district court erred by excluding the testimony of Officer Obrestad. Given the district court's reasons for not giving a defense-of-others instruction to the jury, there was no other reason for Officer Obrestad's testimony. Peguse contends that the officer's testimony would have helped him develop his defense-of-others defense by corroborating his testimony that he believed that M.F. previously had been injured in a quarrel with W.R. The officer's testimony might have corroborated Peguse's testimony about his general concern for M.F.'s safety. But Officer Obrestad's testimony could not have filled the gaps in the evidence with respect to the third and fourth elements of the defense. *See id.* Because Officer Obrestad had no apparent knowledge of the Heritage Park incident, the district court did not abuse its discretion by ruling that her testimony would be irrelevant. *See* Minn. R. Evid. 401, 403.

Thus, the district court did not err by not instructing the jury on the law of defense-of-others or by excluding the testimony of Officer Obrestad.

III. Evidence of Prior Conviction

Peguse next argues that the district court erred by overruling his objection to the state's evidence that he has a prior conviction of violating an order for protection.

This issue arose during Peguse's trial testimony. On direct examination, Peguse testified that, because of his job, he had been "certified by the Department of Human Services [with] random background checks [and] fingerprints through the BCA." He also testified that "there is no excuse for" a man to hit a woman and that "[y]ou don't hit a woman, and especially one that just had a baby two weeks ago." When cross-examining Peguse, the state requested permission to elicit testimony from Peguse that he had pleaded

guilty to violating an order for protection for which the protected person apparently was a woman. The state argued that Peguse had “opened the door” to the issue by expressing his “disgust and horror” about W.R.’s alleged physical abuse of M.F. The district court granted the request. The prosecutor asked Peguse to admit that he had pleaded guilty in 2017 to violating an order for protection, and Peguse answered in the affirmative.

Evidence that ordinarily is inadmissible may nonetheless be admitted if the other party has “opened the door” to it. *State v. Valtierra*, 718 N.W.2d 425, 436 (Minn. 2006). “Opening the door occurs when one party by introducing certain material creates in the opponent a right to respond with material that would otherwise have been inadmissible.” *Id.* (quotations omitted). The purpose of the doctrine is to ensure that one party does “not have an unfair advantage” in their ability to offer testimony on a particular subject without providing the other party opportunity to refute or respond to the testimony. *Id.* (quotation omitted). This court applies an abuse-of-discretion standard of review to a district court’s ruling to admit evidence under the opening-the-door doctrine. *Id.* at 434.

Peguse contends that the district court misapplied the opening-the-door doctrine. First, he asserts that the district court sustained an objection to his testimony about his certification by the department of human services. That much is true, but there was no motion to strike Peguse’s testimony from the record, so it remained before the jury. Peguse also asserts that it was not unfair or misleading for him to testify as he did. The district court reasoned that Peguse’s testimony left “the impression . . . that he has got a clean record” and “that he certainly abhors any kind of violence towards women.” The connection between Peguse’s testimony on direct examination and on cross-examination

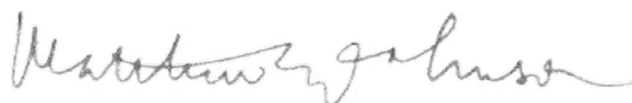
was not extremely close. Nonetheless, the district court did not abuse its discretion by determining that, given the context, Peguse might gain “an unfair advantage” if he were allowed to give the jury the impression, without any challenge, that he always has been law-abiding and that he is above reproach in his conduct toward women. *See Valtierra*, 718 N.W.2d at 436.

Thus, the district court did not err by overruling Peguse’s objection to the evidence that he has a prior conviction of violating an order for protection.

IV. Cumulative Error

Peguse last argues, in the alternative, that even if none of the issues discussed above independently requires a new trial, the cumulative effect of the district court’s multiple alleged errors requires a new trial. “Cumulative error exists when the cumulative effect of the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant’s prejudice by producing a biased jury.” *State v. Penkaty*, 708 N.W.2d 185, 200 (Minn. 2006) (quotation omitted). In other words, if an appellant establishes that a district court committed two or more procedural errors, none of which individually requires a new trial, the appellant nonetheless may be entitled to a new trial “if the errors, when taken cumulatively, had the effect of denying appellant a fair trial.” *State v. Jackson*, 714 N.W.2d 681, 698 (Minn. 2006) (quotation omitted). We have concluded, however, that the district court did not commit any error, let alone multiple errors. Thus, the cumulative-error doctrine does not apply.

Affirmed.

A handwritten signature in dark ink, appearing to read "Matthew Johnson", is written in a cursive style.