

*This opinion is nonprecedential except as provided by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
A20-1624**

State of Minnesota,
Respondent,

vs.

Gary Alonzo Jones,
Appellant.

**Filed December 6, 2021
Reversed and remanded
Jesson, Judge**

Ramsey County District Court
File No. 62-CR-18-6270

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Gary Jones fell into a gas station worker as she assisted Jones with a purchase of 12-packs of pop. Jones claims the fall (which was captured, in part, on two surveillance cameras) was accidental due to his disability. During the subsequent trial, the

jury viewed the surveillance videos, as well as body-camera footage in which officers questioned Jones shortly after the fall. During the bodycam footage, one officer exclaimed that the surveillance videos showed Jones “groping” the worker.

Jones was convicted of fifth-degree criminal sexual conduct. He now appeals, arguing that the inclusion of the body-camera footage showing the officer commenting on the ultimate issue of his sexual intent was harmful error, and that the fall was accidental, so the evidence was not sufficient to show he fell with sexual intent. Although we conclude the evidence was sufficient, because the admission of the body-camera footage was prejudicial, we reverse and remand.

FACTS

Jones was a regular customer at a gas station and convenience store in White Bear Lake. On August 27, 2018, D.L. was working as the overnight shift lead. Sometime after 11 p.m., Jones entered the store and tried to purchase pop that was advertised as on sale. But Jones mistook which brand was discounted and brought two 12-packs to the counter that were not on sale. After being informed of his mistake, Jones (who has had over 25 procedures on his right leg, which is 3.5 inches shorter than his left leg due to a car accident) asked for D.L.’s assistance in bringing the 12-packs back and exchanging them for the on-sale pop.

But suddenly, Jones fell into D.L., with his arm reaching around her backside and grabbing her buttocks. It is disputed whether Jones intentionally touched D.L. It is also disputed whether Jones fell intentionally, or whether he fell accidentally because of his disability.

After they both regained their footing, D.L. guided Jones to the pop display and explained which 12-packs were on sale. Jones then told D.L. that “your husband is a lucky man.” Jones checked out, left the store, and crossed the street to look at cars at a dealership.

Once he left the store, D.L. phoned her supervisor, who came to the gas station to review the security videos. The supervisor then called the police. Law enforcement officers came to the store, spoke with D.L., and reviewed the surveillance footage taken at the gas station. After the supervisor noticed Jones’s car parked at the car dealership, the officers crossed the street to question Jones about the encounter. Jones denied any contact with D.L. and explained that he had a spinal cord injection earlier that day, as well as showing his leg deformity. The officers arrested Jones. The state charged Jones with fifth-degree criminal sexual conduct.¹

The Trial

At trial, D.L. described Jones’s fall as though he “launched” at her. Further, she stated that, as she tried to brace herself to prevent both of them from falling to the ground,

[h]e firmly grasped my butt, and then in pulling back, he grazed up against my hip. And I don’t remember where his hand went from there, but I do firmly remember him grabbing my butt and then pulling it away and dragging his hand across my body.

D.L. also noted that she did not think the conduct was harassment until Jones’s “lucky husband” comment, stating after “that statement, I knew it was an intentional fall.”

¹ Minn. Stat. § 609.3451, subd. 1(1) (2018).

The officer who confronted Jones in the parking lot testified as well. During this testimony, the state offered both the store surveillance videos—one from behind the counter, and the other from the far end of the store. Neither video showed the entire encounter. The state also offered the body-camera footage of the officers questioning Jones. The footage showed the officers confronting Jones at the car dealership. Crucially, the footage captures the responding officer say to Jones “this is why I’m talking to you ‘cause I saw the surveillance video . . . it showed you groping her butt and your head was in her breasts.”

Jones sought to block the body-camera footage with a pretrial motion in limine.² Jones argued that the statement from the officer was more prejudicial than probative because—since the officers were not present for the underlying interaction—D.L. more appropriately should be testifying about what happened. But the district court approved the exhibit, reasoning that “I think that the officer’s testimony is rationally based on his perception of the video and will be helpful for the jury’s understanding of his testimony regarding the investigation and the decision to go forward with the investigation and charges.”

Following the admission of the body-camera footage, the district court gave a limiting instruction to the jury, explaining that:

Now, within the video that just played, you heard a statement by a police officer regarding his perception of what the surveillance video showed. Those statements were admitted for the sole purpose of assisting with your

² The motion in limine was for the whole video, but the arguments focus on the officer’s statement to Jones that commented on the ultimate issue of guilt.

understanding of the officer's testimony regarding why the police were conducting the investigation and to give you the proper context for the defendant's statement. You are not to rely on [the officer's] perception of what the surveillance video showed. You must reach your own conclusions about the facts of this case.

Following the state's case, Jones testified that he suffers from leg and back injuries caused by being hit by a car. These injuries required multiple spinal cord injections, including one on the day of the incident. He claimed that his contact with D.L. was an accident and not sexual. Jones also said that he meant nothing sexual from his "lucky husband" comment, but instead was meant to show appreciation for D.L. helping him. He explained that when he denied he had any contact with D.L. to the officers, it was because he was anxious from how they "came fast" at him. Jones also claimed that the officer did not give him the chance to explain the full details of what happened at the scene.

The jury found Jones guilty. The district court sentenced Jones to a 365-day sentence to be stayed for two years, and two years of supervised probation including attending a sex-offender program.

Jones appeals.

DECISION

I. The district court erroneously admitted prejudicial evidence.

First, Jones challenges the admission of the body-camera footage as constituting harmful error. We review the district court's evidentiary rulings for an abuse of discretion. *State v. Smith*, 940 N.W.2d 497, 505 (Minn. 2020). The appellant bears the burden of demonstrating both that the district court abused its discretion by admitting the evidence at

issue, and that he was prejudiced by the evidence. *State v. Sanders*, 775 N.W.2d 883, 887 (Minn. 2009).

Because Jones objected to the admission of the footage at trial, we apply the harmless-error standard. *Id.* Under this standard, an appellant who alleges an error must prove that there is “a reasonable possibility that the wrongfully admitted evidence *significantly affected the verdict.*” *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011) (emphasis added) (quotation omitted). We look to the following factors when determining whether testimony significantly affected a verdict: (1) how the state presented the testimony; (2) whether the state used the testimony in closing argument; (3) whether the testimony was highly persuasive; and (4) whether the defense effectively countered the testimony (*Matthews* factors). *Id.* at 634. If an error is not harmless beyond a reasonable doubt, we reverse and remand for a new trial. *State v. Juarez*, 572 N.W.2d 286, 291 (Minn. 1997).

With this standard of review in mind, we consider the evidentiary issue raised here. Jones challenged the use of the body-camera footage in a motion in limine, and the court denied the motion.³ Because motions in limine are considered objections for the purposes of harmless-error review, we first turn to whether admitting the evidence constituted error. Here, the evidence in question is the body-camera footage of the officer questioning Jones across the street from the gas station—specifically the statement from the officer that “this

³ “Once the court makes a definitive ruling on the record admitting . . . evidence, either at or before trial, a party need not renew an objection . . . to preserve a claim of error.” Minn. R. Evid. 103(a).

is why I'm talking to you 'cause I saw the surveillance video . . . it showed you groping her butt and your head was in her breasts." We generally do not allow ultimate-conclusion testimony which embraces legal conclusions. Minn. R. Evid. 704. Because the officer (by using the word "groping") was commenting on the ultimate legal conclusion of whether Jones intentionally touched D.L., admission of this statement constitutes error.

But this does not end our analysis. Under harmless-error review, we look to the *Matthews* factors to determine whether the error was indeed harmless, starting with how the state presented the video. The body-camera footage was played for the jury and was described as a "statement by a police officer regarding his perception of what the surveillance video showed." The district court included a limiting instruction on the video. While we are to believe the jury followed those instructions, the footage was played right before Jones's testimony, with the exception of a short cross examination of the officer. *State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009). Jones was the only witness for the defense.

Then, considering the state's use of the testimony in the closing argument, we note that the footage was played again in closing arguments, this time without a limiting instruction. Thus, the footage was one of the last things that the jury saw before breaking into deliberations. In contrast, the surveillance videos, which showed the interaction between Jones and D.L., were not played during closing, highlighting the importance of the body-camera footage to the state's case.

Looking next at whether the testimony was highly persuasive, the officer in the video comments on the ultimate issue of Jones's criminal trial: whether Jones acted with

sexual intent.⁴ And while the officer stated “I saw the surveillance video,” the surveillance videos are not clear. They do not show Jones’s head in D.L.’s breasts as the officer describes in the body-camera footage. Considering the weight that juries give to the testimony of law enforcement officials, the officer’s statements have a high persuasive value. *See, e.g., State v. Hogetvedt*, 623 N.W.2d 909, 915 (Minn. App. 2001) (stating that, “[g]iven [the officer]’s status as a police officer,” his opinion as to guilt “may have unduly influenced the jury”), *rev. denied* (Minn. May 29, 2001).

And, evaluating whether the defense effectively countered the testimony, the defense did not counter the body-camera footage explicitly, but instead only attempted to counter the underlying ultimate issue of Jones’s intent. Jones’s testimony also did not refute the officer’s perception that Jones groped D.L., so the prejudicial aspect of the evidence was not effectively countered.

Considering all four factors, because of the significant inclusion of the video in a case with a limited factual record, and the highly persuasive value placed on the officer’s testimony—in this case, commenting on the ultimate issue in a video emphasized in closing arguments—it is likely that the verdict was significantly affected by the playing of the body-camera footage.

⁴ Both parties dispute the applicability of *State v. Clement*, A14-1646, 2015 WL 4393559, at *5 (Minn. App. July 20, 2015), *rev. denied* (Minn. Oct. 20, 2015). But not only is *Clement* nonprecedential and of limited value to this court, the case is also factually distinct as the evidence was viewed under the plain-error standard, not the harmless-error standard applicable here.

Still, the state argues that the body-cam footage was harmless because the district court included a limiting instruction. But this instruction was not repeated the second time the footage was played for the jury in closing arguments.⁵ Given this specific case—which relies on few facts upon which reasonable minds could disagree—the inclusion of the body-camera footage was not harmless beyond a reasonable doubt and requires a new trial. *Juarez*, 572 N.W.2d at 291.

II. There is sufficient evidence that Jones acted with sexual intent.

Jones further argues that there was insufficient circumstantial evidence that he acted with sexual intent during his fall into D.L. We address this argument because if, indeed, there is insufficient evidence, we would vacate rather than remand for a new trial.

Because intent and premeditation are states of mind, they are generally proved circumstantially by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances. *State v. Cooper*, 561 N.W.2d 175, 179 (Minn. 1997). Under the circumstantial-evidence standard, we apply a two-step analysis. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012).

The first step is to identify the circumstances proved. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). In identifying the circumstances proved, we defer “to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the state.” *Id.* (quotation omitted).

⁵ The district court’s reasoning for the inclusion of the video was to allow the jury to see the officer’s perception of the surveillance video. But the scope of the investigation was not in dispute—the actuality of Jones’s sexual intent was, which is a fact question for the jury, not an arresting officer.

As with direct evidence, we assume that the jury believed the state's witnesses and disbelieved the defense witnesses. *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Stated differently, in determining the circumstances proved, we consider only those circumstances that are consistent with the verdict. *State v. Hawes*, 801 N.W.2d 659, 668-69 (Minn. 2011). This is because the jury is in the best position to evaluate the credibility of the evidence even in cases based on circumstantial evidence. *Id.* at 670.

The second step is to “determine whether the circumstances proved are ‘consistent with guilt and inconsistent with any rational hypothesis except that of guilt.’” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quoting *Andersen*, 784 N.W.2d at 330). We review the circumstantial evidence not as isolated facts, but as a whole. *State v. Hurd*, 819 N.W.2d 591, 599 (Minn. 2012). We give no deference to the fact finder's choice between reasonable inferences. *Andersen*, 784 N.W.2d at 329-30 (quotation omitted).

Here, we first consider the circumstances proved that are consistent with the guilty verdict of fifth-degree criminal sexual conduct: (1) Jones had a recent medical procedure on his back; (2) Jones had a 3.5-inch difference in his leg length, which caused him to limp; (3) Jones went to the gas station in White Bear Lake shortly after 11 p.m. on August 27, 2018; (4) D.L. came from behind the counter to assist Jones in his pop purchase; (5) Jones fell into D.L.; (6) Jones's right arm went around D.L.'s back; (7) Jones “firmly grasped” D.L.'s buttocks and dragged his hand across her body while he pulled it away; (8) D.L. helped Jones find the correct 12-pack of pop; (9) Jones told D.L. that she had a “lucky

husband” for how helpful she was to him; and (10) Jones told law enforcement across the street from the gas station that he did not touch D.L.

Having described the circumstances proved, we turn to examine whether they are consistent with the guilty verdict of fifth-degree criminal sexual contact—specifically whether Jones had sexual intent when he touched D.L.—and inconsistent with any rational hypothesis except that of guilt. Because Jones admits that he made contact with D.L. when he fell, we only need to look to the circumstances that would establish his intent. Here, D.L. testified that Jones “firmly grasped” her buttocks. Assuming that the jury believed D.L. and did not believe Jones when he claimed this was an innocent reaction to his fall, this behavior is consistent with guilt.

To convince us otherwise, Jones argues that the state failed to eliminate the inference that Jones fell accidentally due to his disability, so Jones did not fall with sexual intent. Whether it is reasonable that Jones fell or whether his fall was accidental is a red herring. There is not sufficient evidence that the fall was intentional, but that is not the issue here. Jones could have fallen without sexual intent and still, in the moment, decided to grope D.L. What is important is what Jones’s hand was doing during the fall and why it was doing that, and D.L. testified that Jones “firmly grasped” her buttocks—testimony that under the circumstantial evidence standard we are to assume the jury believed. Jones also makes other arguments about some of the circumstances proved, such as the “lucky husband” comment and Jones’s statement to the police, and how those circumstances tie

to the likelihood that his fall was accidental.⁶ But these arguments again rely on focusing on the intention *of the fall* and do not address the ultimate issue on appeal: whether these circumstances rule out the inference of sexual intent when D.L. was touched. Because Jones has the burden to demonstrate that the state failed to eliminate this inference, Jones has not shown that there was a rational hypothesis of innocence.

Therefore, the evidence was sufficient that Jones was guilty of fifth-degree sexual contact.

Reversed and remanded.

⁶ In arguing that Jones’s statements do not rule out an inference of an accidental fall, Jones notes the “significance of a Black man being approached by police and being accused of a crime.” The articles and other studies that Jones mentions detail a serious concern in the criminal justice system. But even if the presence of police caused Jones to suffer anxiety, for the same reasons explained above, this encounter does not affect the analysis of D.L.’s description of the fall, which we are to assume the jury believed.