

*This opinion is nonprecedential except as provided by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
A22-1214**

State of Minnesota,
Respondent,

vs.

Olok Lero Olok,
Appellant.

**Filed September 11, 2023
Affirmed
Halbrooks, Judge***

Blue Earth County District Court
File No. 07-CR-20-4013

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Patrick McDermott, Blue Earth County Attorney, Mankato, Minnesota (for respondent)

Daniel P. Repka, Baxter R. Zaiger, Repka Law, LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and
Halbrooks, Judge.

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

In this direct appeal from final judgment of convictions for first-degree criminal sexual conduct, appellant argues that the district court erred by instructing him to wait to complete his cross-examination of two witnesses until after the defense rested and the state recalled them as rebuttal witnesses. Because we conclude that (1) a structural error did not occur and (2) appellant is not entitled to relief under the plain-error doctrine, we affirm.

FACTS

In July 2020, police officers received a report that appellant Olok Lero Olok sexually assaulted two victims, S.C. and V.R. The victims were at Olok's apartment following a party. Olok cornered S.C. and V.R. in the bathroom where they had been showering. Although the victims attempted to lock Olok out of the bathroom, he broke through the door. Once inside, Olok hit S.C., covered her mouth and nose with his hand, and forced her to perform oral sex on him. He also pulled S.C. by her hair and hit her head against the side of the toilet.

Olok then went over to V.R. and placed his hands around her neck. Olok forced V.R. to engage in sexual intercourse with him and threatened to hurt her if she kept screaming. Olok then returned to S.C. and forced her to engage in sexual intercourse with him. Eventually, S.C. and V.R. were able to escape from Olok's apartment, and S.C. called the police to report the sexual assault.

Respondent State of Minnesota charged Olok with (1) first-degree criminal sexual conduct—force or coercion—against S.C., (2) first-degree criminal sexual conduct—force

or coercion—against V.R., (3) first-degree criminal sexual conduct—fear of great bodily harm—against S.C., and (4) first-degree criminal sexual conduct—fear of great bodily harm—against V.R.

Olok entered a plea of not guilty, and the case proceeded to a jury trial. Before trial, police officers reviewed a surveillance video of the exterior of Olok’s apartment building that purportedly showed one of the victims running out of his apartment naked. The police department subsequently lost the video, and the prosecutor informed the district court that it would not solicit testimony regarding the video at trial. But on the second day of trial—after the victims testified—the prosecutor learned that the police department had found the surveillance video. The prosecutor shared this information with the district court and the defense. Defense counsel asked for permission to cross-examine the victims again. The prosecutor and the district court agreed to this request, and the district court briefly recessed the hearing.

Following a break, the defense asked to complete additional cross-examination of the victims. The district court stated:

So, the plan would be for the state to finish its last two witnesses this afternoon, then [the defense] witnesses could testify today and then rebuttal of [S.C. and V.R.] could be called by the state on rebuttal at some point tomorrow that could determine at the end of today when we know timing better.

Defense counsel responded, “I think that should be okay.”

The prosecutor then called his final witnesses, including a police officer who participated in the sexual-assault investigation. During the cross-examination of the

officer, the defense played portions of the surveillance video and asked the officer questions about the people depicted in the video. The district court accepted the video into evidence. The prosecutor rested his case following this testimony and the district court excused the jury for the day.

The following day of trial, Olok waived his right to remain silent and indicated that he wanted to testify in his own defense. Defense counsel stated that they would not call any other witnesses. The defense expressed concern about presenting its case-in-chief before having the opportunity to further cross-examine the victims about the video. The district court stated that Olok would testify first and that the trial would then continue with the state's rebuttal witnesses, including the two victims.

Defense counsel stated, "it is weird to me that [Olok] testifies first before I complete my cross-examination of [the victims]." The district court explained, "Well, that's because everyone agreed. So, the state rested, now it is your turn to present your case calling your client and then the state will go back to rebuttal. [The state] will . . . recall their witnesses to permit you to cross examine them." Defense counsel responded, "Okay." Olok then testified in his own defense. He denied raping or assaulting the victims and accused them of fabricating the sexual-assault allegations in an effort to retaliate against him.

On rebuttal, the prosecutor recalled S.C. to testify about the video. S.C. watched a portion of the video and testified that it showed her running out of Olok's apartment after the sexual assault. The defense cross-examined S.C. and asked, "[B]efore today had you seen the video?" S.C. responded, "Yes." The defense counsel asked, "[W]ho showed you the video?" S.C. testified that the police officer had shown her the video. Following S.C.'s

testimony, the prosecutor indicated that V.R. was also available to testify. The defense indicated that it did not wish to question V.R. and was willing to release her.

The prosecutor then dismissed two of the four counts, one relating to each victim. The jury returned a verdict finding Olok guilty of the remaining two counts, and the district court imposed two consecutive sentences of 144 months' imprisonment.

This appeal follows.

DECISION

Olok argues that he is entitled to a new trial because the district court committed a structural error by requiring him to present his case-in-chief before giving the defense the opportunity to complete additional cross-examination of the victims. Our resolution of this matter turns on two issues: (1) whether the district court committed a structural error in its trial procedures and (2) whether Olok is entitled to relief under the plain-error doctrine.

I. The district court did not commit structural error.

There are two types of error: trial error and structural error. *State v. Kuhlmann*, 806 N.W.2d 844, 851 (Minn. 2011). “Structural error consists of defects in the constitution of the trial mechanism, which defy analysis by harmless-error standards because the entire conduct of the trial from beginning to end is obviously affected.” *State v. Dalbec*, 800 N.W.2d 624, 627 (Minn. 2011) (quotation omitted). Such errors are rare and automatically entitle a defendant to a new trial. *Kuhlmann*, 806 N.W.2d at 851. Structural errors are “very limited” in scope. *State v. Bey*, 975 N.W.2d 511, 520 (Minn. 2022). Thus, most errors are trial errors. *State v. Watkins*, 840 N.W.2d 21, 25-26 (Minn. 2013). We review

a claimed structural error de novo. *State v. Petersen*, 933 N.W.2d 545, 551 (Minn. App. 2019).

Olok argues that the district court committed a structural error by violating Minnesota Rule of Criminal Procedure 26.03, subdivision 12, which articulates the order of testimony in a jury trial. The relevant portions of the rule are:

e. The prosecutor presents evidence in support of the state's case.

f. The defendant may offer evidence in defense.

g. The prosecutor may rebut the defense evidence, and, the defense may rebut the prosecutor's evidence. In the interests of justice, the court may allow any party to reopen that party's case to offer additional evidence.

Minn. R. Crim. P. 26.03, subd. 12.

Olok claims that the district court structurally erred because the defense could not question the victims about the surveillance video until the state presented rebuttal testimony. We are not persuaded. Olok cites no authority, and we are aware of none, to support his argument that a district court commits structural error by instructing the defense to complete its cross-examination during rebuttal testimony.

Courts have found only a few errors to be so detrimental as to constitute structural error. *See, e.g., Sullivan v. Louisiana*, 508 U.S. 275, 281-82 (1993) (constitutionally deficient reasonable-doubt jury instruction); *Waller v. Georgia*, 467 U.S. 39, 49-50 (1984) (denial of a public trial); *McKaskle v. Wiggins*, 465 U.S. 168, 177 n.8 (1984) (denial of the right to self-representation at trial); *Gideon v. Wainwright*, 372 U.S. 335, 345 (1963) (denial of counsel); *State v. Dorsey*, 701 N.W.2d 238, 252-53 (Minn. 2005) (presence of a

biased judge as fact-finder); *State v. Logan*, 535 N.W.2d 320, 324-25 (Minn. 1995) (denial of right to an impartial jury). The trial proceedings in this case were very different from the cases where courts have found structural error. Because the order of testimony in this case did not affect “the entire conduct of the trial from beginning to end,” *Dalbey*, 800 N.W.2d at 627, we conclude that a structural error did not occur.

II. Olok is not entitled to relief under the plain-error doctrine.

Because Olok did not object to the order of the witness testimony during trial, we review this issue for plain error. *See* Minn. R. Crim. P. 31.02 (permitting appellate review of a plain error affecting a defendant’s substantial rights even if the error was not brought to the trial court’s attention). A plain error is (1) an error, (2) that is plain, and (3) affects the party’s substantial rights. *Watkins*, 840 N.W.2d at 28. Even if these three prongs are established, a plain error does not justify granting a new trial unless “our failure to do so will cause the public to seriously question the fairness and integrity of our judicial system.” *Bey*, 975 N.W.2d at 521 (quotation omitted); *see also Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022) (noting that this consideration “does not focus on whether the alleged error affected the outcome resulting in harm to the defendant in the particular case,” but rather “whether failing to correct the error would have an impact beyond the current case”).

Regarding the first two prongs of the test, Olok argues that the district court plainly erred by instructing the defense to question the victims about the surveillance video during rebuttal testimony. Error is plain when it “is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted).

Olok has not identified any authority establishing that a district court plainly errs by instructing the defendant to complete limited cross-examination following the state's rebuttal case. Olok contends that the district court violated Minn. R. Crim. P. 26.03, subd. 12, which sets forth the general order of trial proceedings. But rule 26.03 does not prescribe a rigid method for conducting cross-examination. We therefore reject Olok's argument that the district court violated rule 26.03. Without any authority that stands for the proposition that Olok now asserts, he cannot show that the district court committed a clear or obvious error. We therefore conclude that Olok has not met his burden of demonstrating plain error.

Citing *State v. Spencer*, Olok contends that caselaw provides that a defendant must be permitted to fully complete their cross-examination before presenting their case-in-chief. 248 N.W.2d 915, 919 (Minn. 1976). We do not agree. *Spencer* stands for the principle that a district court has a duty to protect a witness's Fifth Amendment privilege by disallowing questions that would invade upon a witness's Fifth Amendment rights. *Id.* *Spencer* does not apply in the context of this case because Olok's Fifth Amendment rights were not implicated.

While we need not reach the third prong of the plain-error test, we also conclude that the order of proceedings did not affect Olok's substantial rights. An error affects a party's substantial rights when there is a reasonable likelihood that the error influenced the verdict. *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007). Olok bears a "heavy burden" of proof on this element. *State v. Campbell*, 861 N.W.2d 95, 101 (Minn. 2015).

Olok has not satisfied this burden. The record shows that Olok agreed to the order of witnesses. The district court indicated that it would allow Olok to call defense witnesses and then permit the state to call S.C. and V.R. as rebuttal witnesses. The defense responded, “I think that should be okay.” The following day, the defense indicated that it did not have any witnesses and only intended to call Olok to testify on his own behalf.

Defense counsel expressed concern about presenting their case-in-chief before the prosecutor presented the rebuttal testimony. Defense counsel argued that it would be “weird” for Olok to testify before completing the cross-examination of S.C. and V.R. The district court countered, “Well, that’s because everyone agreed. So, the state rested, now it is your turn to present your case calling your client and then the state will go back to rebuttal. They will . . . recall their witnesses to permit you to cross[-]examine them.” Defense counsel responded, “Okay.”

The defense then briefly cross-examined S.C., asking her only three questions. The defense asked S.C. if she had seen the video before trial, who had shown her the video, and if S.C. and V.R. were outside of Olok’s apartment. The prosecutor indicated that V.R. was also available to testify, but the defense declined to question her and agreed to release her.

In reviewing whether the verdict was unattributable to the error, we examine the nature of the error in light of the entire record, including the evidence of the defendant’s guilt. *State v. Courtney*, 696 N.W.2d 73, 80 (Minn. 2005). The evidence of Olok’s guilt was strong. S.C. testified that she was in the bathroom with V.R. when Olok broke through the door. Once inside the bathroom, S.C. testified that Olok ripped off her clothing, hit her, and slapped her, giving her a black eye. Olok also covered S.C.’s nose and mouth

with his hand. Olok forced S.C. to perform oral sex on him and forced her to engage in sexual intercourse. V.R. testified that Olok placed his hands around her neck, threatened to hurt her if she did not stop screaming, attempted to anally penetrate her, and forced her to have sexual intercourse. The jury also heard testimony from the investigating police officers and the nurse who performed a sexual-assault examination on S.C.

Olok denied that he sexually assaulted the victims. But the jury credited the testimony presented by the state and did not credit the testimony presented by Olok. We defer to those credibility determinations. *See State v. Pendleton*, 706 N.W.2d 500, 512 (Minn. 2005) (stating a reviewing court defers to the jury's credibility determinations and will not reweigh the evidence on appeal). We conclude that the order of witness testimony did not affect appellant's substantial rights.

Affirmed.