

*This opinion is nonprecedential except as provided by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
A22-1473**

State of Minnesota,
Respondent,

vs.

Clifton Scott Campbell,
Appellant.

**Filed August 21, 2023
Affirmed
Klaphake, Judge ***

St. Louis County District Court
File No. 69DU-CR-21-2164

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

Kimberly J. Maki, St. Louis County Attorney, Michael D. Hagley, Assistant County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant challenges his gross-misdemeanor domestic assault and first-degree burglary convictions, arguing the district court erred by admitting testimony prohibited by a pretrial stipulation, the state engaged in prejudicial prosecutorial misconduct, and the district court erred by admitting relationship evidence. Because the alleged errors were harmless and the alleged misconduct did not affect appellant's substantial rights, we affirm.

FACTS

In 2021, appellant Clifton Scott Campbell was in a romantic relationship with S.M.B. On July 17, S.M.B. reported that Campbell knocked on the door to her apartment and they began arguing. After trying to shut her door, Campbell pushed S.M.B. inside her apartment, slapped her, and pulled her to the ground by her hair. Campbell pulled some of S.M.B.'s hair out in the process. Campbell left, but when S.M.B. went downstairs in her apartment building she encountered Campbell again. Soon after, officers arrived and interviewed Campbell and S.M.B. about the altercation. Respondent State of Minnesota charged Campbell with gross misdemeanor domestic assault and first-degree burglary.

One month later, the state received a letter by mail from S.M.B. indicating that Campbell did not assault her, explaining her mental illness caused her to lie, and refusing to testify. On the same day, S.M.B. called the state and told the prosecutor's office that Campbell had been writing her letters and threatening her. S.M.B. provided these letters to police. Following trial, the jury found Campbell guilty of both charged offenses and the district court imposed an 81-month prison sentence. This appeal follows.

DECISION

Campbell argues that three errors were made at trial: (1) the district court admitted testimony that violated a pretrial stipulation; (2) the state engaged in prosecutorial misconduct by eliciting testimony that violated a pretrial stipulation; and (3) the district court admitted nine unauthenticated letters as relationship evidence. Assuming without deciding that the district court erred and the state engaged in prosecutorial misconduct, we conclude that Campbell is not entitled to relief because the errors were harmless and Campbell's substantial rights were not prejudiced.

I. Officers' Testimony

Campbell argues the district court erred by admitting testimony from two police officers that violated the parties' pretrial stipulation and the errors had a significant impact on the verdict. The state's criminal complaint included an allegation that Campbell pulled out a knife when he confronted S.M.B. downstairs. However, officers were unable to find a knife after executing a search warrant. Campbell filed a pretrial motion to exclude "testimony and exhibits which reference a knife or knives" at trial. The state agreed that any "reference to a knife does not and should not come in" to evidence because the allegation Campbell possessed a knife was irrelevant, prejudicial, and related to "a threats of violence count that ultimately was not charged." The district court acknowledged the parties' stipulation on the issue. At trial, two officers testified they responded to a call for a "domestic with weapons."

"Evidentiary rulings rest within the sound discretion of the district court" and we will not reverse "absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249

(Minn. 2014). Because Campbell’s pretrial motion to prohibit testimony involving a weapon operates as a timely objection, *State v. McNeil*, 658 N.W.2d 228, 232 n.1 (Minn. App. 2003), we review under the harmless-error standard, *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011). Under this standard, Campbell has the burden to show “that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury’s verdict.” *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016). Assuming without deciding the district court erred by admitting the testimony despite the parties’ stipulation, any errors were harmless.

When determining if erroneously admitted evidence significantly affected the verdict, we may consider “(1) the manner in which the [s]tate presented the testimony; (2) whether the testimony was highly persuasive; (3) whether the [s]tate used the testimony in closing argument, and (4) whether the defense effectively countered the testimony.” *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016) (citation omitted). Here, the prosecutor elicited the testimony through a single preliminary question to each officer about what they understood the nature of the call for emergency services to be before they arrived. The officers’ testimony stated that they believed the call to be for a “domestic with weapons” was not expanded upon by further questions or testimony, nor any reference to a knife or knives. Moreover, the district court did not read the criminal complaint’s probable cause statement that alleged Campbell used a knife into the record. Campbell did not counter the testimony and the prosecutor did not reference the testimony in her closing argument.

The officers’ two isolated references to their understanding that the call was for a “domestic with weapons” amounted to a small portion of the evidence presented at trial.

We are satisfied that the challenged testimony did not significantly affect the verdict and any error was harmless.

II. Prosecutorial Misconduct

Campbell also contends the state committed misconduct by intentionally eliciting inadmissible testimony that the officers responded to a “domestic with weapons” and failing to prepare her witnesses. For unobjected-to claims of prosecutorial misconduct, we apply a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 296 (Minn. 2006) (noting that under this standard we consider whether there is (1) error, (2) that is plain, and (3) that affects the defendant’s substantial rights). When misconduct is plain error, the burden shifts to the state to demonstrate that its misconduct did not prejudice the defendant’s substantial rights. *Id.* at 298. We will reverse only when the defendant was denied a fair trial. *State v. Porter*, 526 N.W.2d 359, 365 (Minn. 1995). Assuming without deciding that the prosecutor committed misconduct, we conclude that the misconduct did not prejudice Campbell’s substantial rights.

In deciding whether the state has met this burden, we may consider “(1) the strength of the evidence against the defendant; (2) the pervasiveness of the improper conduct; and (3) whether the defendant had an opportunity (or made efforts) to rebut the prosecutor’s improper suggestions.” *State v. Hill*, 801 N.W.2d 646, 654-55 (Minn. 2011).

While this case involved competing narratives from Campbell and S.M.B., the state’s case against Campbell was moderately strong. S.M.B.’s trial testimony was consistent with the statements she gave to officers that arrived on the scene and what was captured by the apartment building’s hallway security camera. The camera did not capture

the physical altercation that took place inside S.M.B.'s apartment, but showed Campbell push S.M.B. inside and emerge a few seconds later. S.M.B. picked up the portion of hair pulled out by Campbell and later placed it back on the ground while explaining to officers where the altercation occurred. The officers testified they observed no blood or redness from S.M.B.'s hair being pulled out. Campbell impeached S.M.B.'s credibility by asking about a conviction for a crime of dishonesty in 2002, but S.M.B. also testified she had no additional convictions for similar crimes since that date. Another resident in the building testified that he observed a chunk of S.M.B.'s hair missing from the back of her head two days before the altercation and presumed she cut it.

The prosecutor's conduct was not pervasive because she elicited the challenged testimony only through preliminary questions without dwelling on or additional reference to the testimony. *See State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (determining the alleged misconduct was harmless because the prosecutor made no attempt to elicit the impermissible testimony again after the objection was sustained and did not refer to the answer at any other point during trial); *see also State v. Atkinson*, 774 N.W.2d 584, 596 (Minn. 2009) (noting where a police officer's reference to prohibited testimony was "fleeting, nonspecific, and minimally prejudicial . . . , " an appellant's substantial rights are not affected). Additionally, Campbell had two opportunities during cross-examination to rebut the officers' testimony and declined to do so.

Based on the entire record and the "fleeting . . . minimally prejudicial" references to weapons in the officers' testimony elicited by the prosecutor, we conclude that the alleged misconduct did not prejudice Campbell's substantial rights.

III. Letters

Finally, Campbell argues the district court abused its discretion by admitting unauthenticated letters allegedly from Campbell to S.M.B. as relationship evidence. At trial, the state introduced letters delivered to S.M.B. after the offense by third parties in the apartment building and purportedly signed by Campbell. The letters contained declarations of love for S.M.B., threats, and detailed instructions for S.M.B. to contact attorneys to recant her statements and get Campbell's charges dropped. Specifically, Campbell contends that because the case involved S.M.B. and Campbell's competing narratives, the "inflammatory nature" of the letters "tipped the scale by leading the jury to conclude that Campbell is generally a bad person who deserves punishment and probably committed the charged offense."

Relationship evidence "illuminate[s] the history of the relationship" and "put[s] the crime charged in the context of the relationship." *State v. McCoy*, 682 N.W.2d 153, 159 (Minn. 2004). Relationship evidence is generally admissible, "unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury." Minn. Stat. § 634.20 (2020). Here too, we need not determine whether the district court erred by admitting the letters as relationship evidence because we are satisfied that such error was harmless as the evidence did not significantly affect the verdict.¹

¹ Campbell also contends that the letters to S.M.B. are unfairly prejudicial and inherently violate the probative/prejudicial balancing test because they formed the basis for a witness tampering charge in another case against Campbell that was ultimately dismissed by the state. Campbell cites to *State v. O'Meara*, which held "[p]rior 'similar conduct' by a

After the letters were introduced by the state, the district court mitigated the risk of unfair prejudice by instructing the jury that it was not to convict Campbell “on the basis of any occurrences subsequent to the date of the alleged offense.” *See State v. Tomlinson*, 938 N.W.2d 279, 287-88 (Minn. App. 2019) (noting that cautionary instructions reduce risk of unfair prejudice), *rev. denied* (Minn. Feb. 26, 2020); *see State v. Fardan*, 773 N.W.2d 303, 317 (Minn. 2009) (stating that juries presumably follow instructions). S.M.B. did not testify as to the content of the letters or that she had written to the state to recant her statements approximately one month after the offense, rather her testimony focused on the July 17 altercation. Given the strength of the state’s case and the district court’s limiting instruction, we conclude the letters did not significantly affect the verdict and any error was harmless.

Affirmed.

defendant is inadmissible as relationship evidence . . . when the defendant previously has been acquitted of criminal charges based on that conduct.” 755 N.W.2d 29, 33 (Minn. App. 2008). But, as Campbell acknowledges, he was not acquitted of his witness tampering charge. We conclude *O’Meara* does not apply to render the letters unfairly prejudicial and warrant their exclusion.