

*This opinion is nonprecedential except as provided by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
A24-0227**

State of Minnesota,
Respondent,

vs.

Lukas Devlen Fineday,
Appellant.

**Filed December 16, 2024
Affirmed in part, reversed in part, and remanded
Larson, Judge**

Becker County District Court
File No. 03-CR-23-845

Keith Ellison, Attorney General, Jacob Campion, Assistant Attorney General, St. Paul, Minnesota; and

Brian W. McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

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

Considered and decided by Larson, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Following a jury trial, appellant Lukas Devlen Fineday was convicted of domestic assault by strangulation pursuant to Minn. Stat. § 609.2247, subd. 2 (2022), domestic assault pursuant to Minn. Stat. § 609.2242, subd. 4 (2022), and false imprisonment

pursuant to Minn. Stat. § 609.255, subd. 2 (2022). On direct appeal, Fineday argues that we must reverse his convictions and remand for a new trial because the district court erroneously admitted unredacted body-camera video containing the alleged victim's out-of-court statements. In the alternative, Fineday challenges his domestic-assault conviction on the ground that it is a lesser-included offense to domestic assault by strangulation. *See* Minn. Stat. § 609.04 (2022). Because we conclude that admitting the body-camera video did not affect Fineday's substantial rights, we affirm in part. But because Fineday's warrant of commitment incorrectly reflects convictions for both domestic assault by strangulation and domestic assault, we reverse in part and remand.

FACTS

S.H. and Fineday started dating on February 15, 2023. In May 2023, Fineday was charged with domestic assault by strangulation, domestic assault, and false imprisonment. Fineday's charges arose from two incidents involving S.H. The false-imprisonment charge related to an incident on April 24, 2023. The domestic-assault-by-strangulation and domestic-assault charges stemmed from an incident that occurred on or around May 19, 2023 (the May 19 incident).

Prior to trial, the state filed a motion in limine seeking to admit unredacted body-camera video from May 19, 2023, wherein S.H. made statements to a sheriff's deputy regarding the May 19 incident. The body-camera video shows roughly 20 minutes of emotional conversation between the sheriff's deputy and S.H. In the body-camera video, S.H. mentions incidents that she did not testify about at trial. At the pretrial hearing,

Fineday argued the body-camera video was inadmissible, but conceded that admissibility largely depended on S.H.'s testimony. The district court reserved its ruling.

During trial, the state moved to the admit the body-camera video through the sheriff's deputy's testimony. Fineday did not object. The state then played the entire body-camera video. After the body-camera video was played and outside the presence of the jury, the district court explained to the state that it was concerned about the length of the body-camera video and that it intended to give—and did give—a curative instruction.¹ But the district court explicitly stated on the record that Fineday failed to object to the admission of the body-camera video. The district court then explained that it admitted the body-camera video under Minn. R. Evid. 801(d)(1)(B) (prior consistent statement), 801(d)(1)(D) (present-sense impression), 803(2) (excited utterance), and 807 (residual exception).

The jury found Fineday guilty on all three charges. At the sentencing hearing, the district court entered convictions for domestic assault by strangulation and false imprisonment. The district court sentenced Fineday to 28 months in prison for the domestic-assault-by-strangulation conviction and 17 months in prison for the false-imprisonment conviction, to be served concurrently. Despite the district court not entering a conviction for domestic assault, Fineday's warrant of commitment reflects such a conviction.

¹ The district court also excluded two other body-camera videos depicting conversations between the sheriff's deputy and S.H. on May 20, 2023. The district court reasoned that allowing other body-camera videos may have a prejudicial effect.

Fineday appeals.

DECISION

Fineday challenges his convictions on the ground that the district court erred when it admitted the body-camera video containing S.H.'s out-of-court statements. In the alternative, Fineday challenges his domestic-assault conviction on the ground that it is the lesser-included offense of domestic assault by strangulation. *See* Minn. Stat. § 609.04. We address each argument in turn below.

I.

Fineday challenges the district court's decision to admit the body-camera video. To resolve this issue, we first address the correct standard of review and then address the merits.

A. Standard of Review

The parties dispute the appropriate standard of review to apply to the district court's decision to admit the body-camera video. Fineday contends that we should review the district court's decision for an abuse of discretion. The state asserts that we should review for plain error. We agree with the state.

Generally, we review evidentiary rulings for an abuse of discretion. *State v. Penkaty*, 708 N.W.2d 185, 201 (Minn. 2006). But where a district court reserves its ruling and counsel fails to object at the time the evidence is admitted, we apply the plain-error standard of review. *See State v. Word*, 755 N.W.2d 776, 783 (Minn. App. 2008).

Here, we conclude that plain error is the appropriate standard of review. Although Fineday objected to the state's motion in limine regarding the body-camera video, the

district court reserved ruling pending proper foundation. The record reflects that when the state offered the body-camera video, Fineday did not object:

STATE: Your Honor, I'd offer Exhibit 8.

FINEDAY'S COUNSEL: No objection.

DISTRICT COURT: All right. No objection. Exhibit 8 is received. . . . It was offered, no objection, it is received.

The district court later noted again for the record that Fineday did not object to the body-camera video's admission.

Because Fineday failed to object to the body-camera video at the time it was admitted, we apply the plain-error standard of review. *See Pulczinski v. State*, 972 N.W.2d 347, 355-56 (Minn. 2022).

B. Body-Camera Video

Fineday next argues that, regardless of the standard of review, the district court erred when it admitted the body-camera video. Under the plain-error test, a defendant must establish (1) an error, (2) that is plain, and (3) that affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). "When the defendant satisfies these requirements, [we] may correct the error *only* when it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Pulczinski*, 972 N.W.2d at 356.

If a defendant fails to meet their burden to show an alleged error affected their substantial rights, we need not evaluate the other plain-error factors. *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007). "Plain error affects a defendant's substantial rights if there is a reasonable likelihood that the error had a significant effect on the jury's verdict." *State*

v. Bustos, 861 N.W.2d 655, 663 (Minn. 2015) (quotation omitted). In making this determination, we consider “the strength of the [s]tate’s case, the pervasiveness of the error, and whether the defendant had an opportunity to respond.” *State v. Sontoya*, 788 N.W.2d 868, 873 (Minn. 2010). Here, we conclude that Fineday failed to demonstrate that the district court’s decision to admit the body-camera video affected his substantial rights.

First, the state presented a strong case against Fineday. *See State v. Noor*, 907 N.W.2d 646, 657 (Minn. App. 2018), *rev. denied* (Minn. Apr. 25, 2018). S.H. testified at trial and recounted the May 19 incident, specifically testifying that Fineday choked her and caused bruising to her shoulder. S.H. testified that she feared Fineday and referenced other incidents where Fineday had physically assaulted her. S.H.’s testimony was corroborated by her friend, who testified that “probably not long after [S.H.] got with [Fineday],” friend started receiving pictures from S.H. documenting physical assaults. The sheriff’s deputy also testified. He indicated that when he responded to the May 19 incident, S.H. told him that Fineday strangled her. He also testified that he observed bruises “all over [S.H.’s] body,” including bruising consistent with strangulation. He indicated his belief that S.H. feared Fineday and testified that S.H. reported previous assaults by Fineday. Further, the state offered into evidence several pictures taken after the May 19 incident depicting bruises on S.H.’s collarbones, neck, and left bicep.

Second, while the state featured evidence from the body-camera video throughout trial, Fineday had multiple opportunities to respond. In fact, Fineday specifically addressed the body-camera video during his cross-examination of the sheriff’s deputy and during closing argument.

Finally, the district court gave a curative instruction, directing the jury that any statements made in the body-camera video were admitted solely for the purpose of demonstrating the nature and extent of Fineday's relationship with S.H. and should not form the basis for a conviction. This instruction minimized any potential prejudicial impact the body-camera video had on the verdict. *See State v. Gatson*, 801 N.W.2d 134, 151 (Minn. 2011) ("We presume that juries follow instructions given by the court and thereby recognize the effectiveness of curative instructions." (quotation omitted)); *State v. Weaver*, A17-1993, 2018 WL 6442166, at *4 (Minn. App. Dec. 10, 2018) (relying, in part, on a curative instruction when concluding a defendant's substantial rights were not affected).²

For these reasons, we conclude that admitting the body-camera video did not affect Fineday's substantial rights and affirm the district court.³

II.

We agree with the parties that reversal is necessary for the district court to correct Fineday's warrant of commitment. Minnesota law prohibits multiple convictions for lesser-included offenses, defined as "a crime necessarily proved if the crime charged were proved." Minn. Stat. § 609.04, subd. 1(4). Whether the entry of multiple convictions

² This opinion is nonprecedential and, therefore, not binding. We cite *Weaver* for its persuasive value only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

³ If we had applied the abuse-of-discretion standard, we would have reached the same conclusion because Fineday failed to demonstrate that admitting the body-camera video was not harmless beyond a reasonable doubt. *See State v. Vance*, 734 N.W.2d 650, 660 n.8 (Minn. 2007) ("Although the harmless error standard differs from the plain error standard, both the harmless error standard and the third prong of the plain error test consider whether the error contributed to the verdict.").

violates Minn. Stat. § 609.04 is a question of law that we review de novo. *State v. Bonkowske*, 957 N.W.2d 437, 443 (Minn. App. 2021).

The proper procedure for district courts “when the defendant is convicted on more than one charge for the same act is for the [district] court to adjudicate formally and impose sentence on one count only,” retaining the guilty verdicts on remaining charges, but not formally adjudicating them. *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). “When [the] official judgment order states that a party has been convicted of or sentenced for more than one included offense,” we reverse and remand with instructions to vacate the erroneous conviction. *State v. Pflepsen*, 590 N.W.2d 759, 767 (Minn. 1999); *State v. Crockson*, 854 N.W.2d 244, 248 (Minn. App. 2014), *rev. denied* (Minn. Dec. 16, 2014).

The sentencing transcript demonstrates that the district court followed the proper *LaTourelle* procedure. The district court only pronounced that Fineday was convicted of the false-imprisonment and domestic-assault-by-strangulation charges and sentenced him for the same. Nevertheless, the disposition set forth on the warrant of commitment reflects convictions for both domestic assault by strangulation and domestic assault. Accordingly, we reverse and remand for the district court to vacate the conviction for domestic assault and to issue a new warrant of commitment consistent with this opinion. *Pflepsen*, 590 N.W.2d at 767. Consistent with *LaTourelle*, we instruct the district court to preserve the underlying guilty verdict. *E.g.*, *State v. Walker*, 913 N.W.2d 463, 469 (Minn. App. 2019).

Affirmed in part, reversed in part, and remanded.