*This opinion is nonprecedential except as provided by Minn.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**
**A24-1302**

State of Minnesota,
Respondent,

vs.

Daud Yasin Hashi,
Appellant.

**Filed August 4, 2025**
**Affirmed in part, reversed in part, and remanded**
**Ede, Judge**

Hennepin County District Court
File No. 27-CR-23-22076

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steve P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Slieter, Judge; and Kirk, Judge.*

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

## NONPRECEDENTIAL OPINION

**EDE**, Judge

In this direct appeal from final judgments of conviction for felony threats of violence and misdemeanor domestic assault, appellant argues: (1) that the district court prejudicially abused its discretion in admitting certain hearsay evidence; (2) that appellant's substantial rights were affected by prosecutorial misconduct in cross-examination and closing argument; and (3) that the district court erred by imposing sentences for both offenses. We affirm in part because appellant's first two claims of error do not warrant reversal. But because we conclude that the district court erred by sentencing appellant for both offenses, we reverse in part and remand with instructions for the court to vacate the misdemeanor domestic-assault sentence.

## FACTS

Respondent State of Minnesota charged appellant Daud Yasin Hashi with felony threats of violence, in violation of Minnesota Statutes section 609.713, subdivision 1 (2022), and misdemeanor domestic assault, in violation of Minnesota Statutes section 609.2242, subdivision 1(2) (2022). The matter proceeded to a jury trial. The following factual summary stems from the trial evidence.

On October 9, 2023, Hashi went unannounced into the home of his estranged wife, A.A. At the time, A.A. and Hashi were separated and Hashi did not live in the home. The couple argued; Hashi pushed A.A. and punched her in the head, chest, stomach, and back. Hashi also followed A.A. into the kitchen and threatened her with a knife.

After Hashi left the home, A.A. went to the hospital. A.A. told a registered nurse who was assisting her that she was pregnant and experiencing abdominal pain. At trial, the nurse testified that A.A. said her husband had "punched her repeatedly in the stomach and on the face" during an argument and threatened her with a knife.

A.A. also consulted with a social worker at the hospital. The social worker described A.A. as "fearful" and crying. The social worker "was informed that [A.A.] had been threatened with a knife by the father of her baby" and that the father had stated that he was "going to kill her and her kids." According to the social worker, A.A. said that she did not feel safe in her home. The social worker believed that A.A. wanted to get an order for protection (OFP) against Hashi and advised A.A. to file a police report.

An Edina police officer spoke with A.A. at the hospital. The officer testified that A.A. had told him Hashi pushed her, punched her with a closed fist, and threatened her with a knife. And the officer stated that A.A. seemed "very sad" and was "crying" during their conversation. Based on his interview with A.A., the officer determined that there was probable cause to believe that a crime had occurred.

Three days after she went to the hospital, A.A. was interviewed by a Hennepin County child-protection investigator. The child-protection investigator testified that A.A. reported Hashi had punched her in the head, chest, and stomach. She also said that A.A. told her Hashi took a kitchen knife and threatened to kill her if she left him. A.A. told the child-protection investigator that she was concerned for her unborn child.

An Edina police detective later interviewed Hashi as part of the investigation. The detective testified that Hashi admitted there had been an argument but denied that he had hit A.A. In addition, the detective interviewed A.A. The detective stated that A.A. was "frustrated" because she only wanted to get an order for protection (OFP) against Hashi but did not want him to be incarcerated. But the detective did not consider A.A.'s statements unusual because of the detective's experience that "victims recant in domestic-assault . . . situation[s]." The detective affirmed that it was "extremely common" for a victim to report domestic violence and later say that they do not want the alleged aggressor to be charged with a crime.

Following the investigation, the state filed the felony threats-of-violence and domestic-assault charges against Hashi, and the matter was ultimately tried before a jury in March 2024. During the four-day trial, the jury heard testimony from A.A., Hashi, the couple's oldest son, police officers, the nurse, the social worker, and the child-protection investigator.

During direct examination, A.A. confirmed that she did not want to testify. She denied arguing with Hashi but acknowledged that she told the nurse Hashi "threw a punch at [her]" and "pushed away the baby" while she was changing the baby's diaper. She likewise admitted telling the police officer that Hashi pushed her, punched her, and threatened her with a knife in the kitchen. But A.A. testified that she lied to the nurse and that her accusations against Hashi were "not true." Moreover, A.A. stated that she was untruthful in her statements to the child-protection investigator. And she said that "actually, [Hashi] did not hit [her]," explaining that she "totally" "made up all those lies because that was [her] tactics to find a way to get [Hashi] to leave [her] alone" and "to find a reason to get . . . a divorce."

Following A.A.'s direct examination, the state moved to admit A.A.'s statements to the nurse as statements made for the purpose of medical diagnosis and treatment. The state also sought to admit A.A.'s statements to the social worker, the police officer, and the child-protection investigator under the residual exception to the hearsay rule.[1] The district court determined that A.A.'s out-of-court statement to the nurse was admissible under the medical-diagnosis exception to the hearsay rule and that the remaining statements were admissible under the residual exception.

Hashi testified in his own defense at trial. He stated that he visited with A.A. and their oldest son in the living room. Hashi said that, after their oldest son left to go to work, Hashi and A.A. began arguing. But he denied hitting, punching, shoving, or threatening A.A. Hashi also disavowed threatening to kill A.A. or the children. He testified that he left the house about an hour after he arrived.

The couple's oldest son testified for Hashi. He was home on the morning of the charged incident and visited with his parents. The oldest son neither saw his parents argue nor witnessed any abuse. He left the house before Hashi and was not at home when A.A. went to the hospital. A.A. later told the oldest son that she had lied about Hashi hitting her and threatening her with a knife.

The jury found Hashi guilty of both offenses. The district court stayed imposition of sentence on the felony threats-of-violence offense. And the district court sentenced

[1] Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). Hearsay statements are inadmissible unless they fall within a recognized exception to the hearsay rule. Minn. R. Evid. 802; *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006).

Hashi to 90 days' imprisonment in the workhouse for the misdemeanor domestic-assault charge, but stayed execution of that sentence for one year, instead placing Hashi on probation and ordering him to serve 30 days of electronic home monitoring. Hashi appeals.

## DECISION

### I. The district court did not prejudicially abuse its discretion in admitting hearsay evidence.

Hashi argues that the district court prejudicially abused its discretion by admitting certain hearsay statements as substantive evidence. In particular, Hashi challenges the admission of A.A.'s statements to the police officer, the social worker, and the child-protection investigator under Minnesota Rule of Evidence 807 (the residual-hearsay exception), as well as A.A.'s statements to the nurse under Minnesota Rule of Evidence 803(4) (the medical-diagnosis exception). We conclude that the district court did not prejudicially abuse its discretion in admitting the challenged hearsay evidence.

"Determinations regarding hearsay evidence are largely within the discretion of the [district] court." *State v. Whiteside*, 400 N.W.2d 140, 145 (Minn. App. 1987), *rev. denied* (Minn. Mar. 18, 1987). An appellate court reviews such determinations for an abuse of discretion, and an appellant must show that the admission of the evidence was in error and that the appellant was prejudiced as a result. *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009).

Below, we consider whether the district court abused its discretion and prejudicially erred by admitting the statements that Hashi challenges on appeal under (A) the residual-hearsay and (B) medical-diagnosis exceptions.

### A. The district court acted within its discretion by admitting evidence under the residual-hearsay exception.

Statements not covered under a specific hearsay exception may be admissible under the residual-hearsay exception outlined in Minnesota Rule of Evidence 807. A reviewing court conducts a two-step analysis when assessing a district court's decision to admit evidence per the residual-hearsay exception. *State v. Hallmark*, 927 N.W.2d 281, 292 (Minn. 2019). "First, the district court must look at the totality of the circumstances to determine whether the hearsay statement has circumstantial guarantees of trustworthiness." *Id.* (quotations omitted). Second, the district court "determine[s] whether the three enumerated requirements of [r]ule 807 are met." *Id.* at 293. But the district court's failure to conduct the two-step residual-hearsay analysis does not automatically constitute an abuse of discretion and a reviewing court may independently evaluate whether the statements are admissible under rule 807. *Id.* at 294.

When evaluating whether a statement is reliable at the first step of the residual-hearsay analysis, an appellate court focuses on the totality of the circumstances, "looking to all relevant factors bearing on trustworthiness to determine whether the extrajudicial statement has circumstantial guarantees of trustworthiness." *State v. Robinson*, 718 N.W.2d 400, 408 (Minn. 2006) (quotations omitted). A statement may be considered inherently trustworthy when: (1) there is no Confrontation Clause issue because the declarant testifies, admits to making the statement, or is available for cross-examination; (2) the statement is recorded, removing any real dispute about what the declarant said; (3) the statement is against the declarant's penal interest; and (4) the statement is consistent with all the other evidence presented by the state that strongly points toward the defendant's guilt. *State v. Ortlepp*, 363 N.W.2d 39, 44 (Minn. 1985). These are known as the *Ortlepp* factors. *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020). The *Ortlepp* factors are nonexclusive. *State v. Martinez*, 725 N.W.2d 733, 738 (Minn. 2007) (applying a totality-of-the-circumstances analysis). By contrast, circumstances tending to undermine a statement's trustworthiness include a significant period between the event and the statement, an unsworn statement that cannot be tested by cross-examination, a statement offered without firsthand knowledge, and a showing that the declarant had a strong incentive to make a false statement. *State v. Hansen*, 312 N.W.2d 96, 101–02 (Minn. 1981). Focusing on the third and fourth *Ortlepp* factors, Hashi challenges the admission of A.A.'s statements to the police officer, the social worker, and the child-protection investigator under the residual-hearsay exception.

As to the third *Ortlepp* factor, Hashi asserts that A.A.'s statements were not against her penal interest. Although this factor generally requires that a declarant's statements be against their own penal interests, we have also determined that it encompasses a statement perceived to be against a declarant's romantic interest, *see State v. Plantin*, 682 N.W.2d 653, 659 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004), and a statement by a defendant's girlfriend implicating the defendant, *see Whiteside*, 400 N.W.2d at 146. During her testimony, A.A. stated that she did not want to be in court and did not want Hashi to be incarcerated. She characterized the underlying incident as "a misunderstanding" and stated that she wanted to "take . . . back" her accusations against Hashi. Because the record evinces A.A.'s interest in protecting Hashi and maintaining her relationship with him, we conclude that the third factor—whether the statement is against A.A.'s interest—is sufficiently satisfied. *See Whiteside*, 400 N.W.2d at 146.

Regarding the fourth factor, Hashi argues that A.A.'s statements are untrustworthy because they conflict with the rest of the state's evidence. Hashi asserts that the state's case was not strong because A.A. had no visible injuries, police officers did not obtain any eyewitness statements, and Hashi did not admit guilt. He also contends that A.A.'s trial testimony differed from her accounts to the witnesses through whom her hearsay statements were admitted. The supreme court has recognized, however, that jurors "may accept as the truth the earlier statements in preference to those made upon the stand" and "[t]here is no mythical necessity that the case must be decided only in accordance with the truth of words uttered under oath in court." *Ortlepp*, 363 N.W.2d at 44 n.1 (quotation omitted). And the trustworthiness of the challenged hearsay evidence is bolstered by the temporal connection between A.A.'s statements and the date of the offense. *See State v. Tate*, 682 N.W.2d 169, 177 (Minn. App. 2004) (determining a statement made one day after the incident indicates circumstantial trustworthiness), *rev. denied* (Minn. Sept. 29, 2004).

We therefore conclude that the *Ortlepp* factors support the district court's determination that the challenged hearsay statements were trustworthy under the totality of the circumstances and that the first step of the residual-hearsay analysis is satisfied. *Hallmark*, 927 N.W.2d at 292.

At the second step, we consider whether the statements meet the three requirements set forth in rule 807. *Id.* at 293. Under this rule, statements with "equivalent circumstantial guarantees of trustworthiness" to those admissible under the specific hearsay exceptions are not excluded by the hearsay rule if the district court determines that:

> (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

Minn. R. Evid. 807.

We conclude that the district court acted within its discretion in determining that A.A.'s statements to the officer, social worker, and child-protection investigator were admissible under rule 807. First, A.A.'s hearsay statements were offered to prove a material fact—whether Hashi assaulted A.A. Second, the hearsay statements were more probative than other evidence that could be procured through reasonable efforts because A.A. made these statements on the day of the underlying incident and during the investigation that immediately followed. Third, the interests of justice were served by admitting A.A.'s statements because the statements "promote the growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined." *Hallmark*, 927 N.W.2d at 294 (quotation omitted).

For these reasons, the district court did not abuse its discretion by admitting A.A.'s statements to the officer, social worker, and child-protection investigator under the residual-hearsay exception.

### B. Even if the district court abused its discretion by admitting A.A.'s hearsay statements through the nurse's testimony under the medical-diagnosis exception, Hashi was not prejudiced by the admission of that evidence.

Under the medical-diagnosis exception, "[s]tatements made for purposes of medical diagnosis or treatment and describing medical history" are not excluded by the hearsay rule. Minn. R. Evid. 803(4). This rule allows for the admissibility of statements "describing medical history, or past or present symptoms, pain, or sensations." *Id.* It likewise allows for statements bearing on the "general character of the cause or external source" of a person's medical history, "insofar as reasonably pertinent to diagnosis or treatment." *Id.* "The rationale behind the rule is the patient's belief that accuracy is essential to effective treatment." *Robinson*, 718 N.W.2d at 404 (quotation omitted).

But this rule is not without limitation. *Id.* Courts must distinguish between statements that describe the injury or the cause of the injury—which are generally admissible—and statements that attribute fault or identify the perpetrator of a person's injuries. *Id.* In *Robinson*, the Minnesota Supreme Court held that a domestic-abuse victim could describe that she had been "slapped . . . really hard on the face" because that information was pertinent to her medical diagnosis and treatment. *Id.* at 403–04. But the supreme court also held that, when "there is an insufficient evidentiary foundation to establish that the identity of the person who caused an injury was reasonably pertinent to the medical diagnosis or treatment of that injury, the statement of identity is not admissible under Rule 803(4)." *Id.* at 407.

Hashi acknowledges that A.A.'s statements to the nurse that she was punched in the stomach and face "clearly fall within the parameters of the medical diagnosis or treatment expectation" because they "show the 'mechanism' of [A.A.'s] physical injuries." Yet Hashi contends that the district court should have excluded A.A.'s statements identifying him as the perpetrator because those statements were not pertinent to the nurse's medical diagnosis or treatment of A.A.'s injuries.

We need not decide whether there is an insufficient evidentiary foundation to establish that the identification of Hashi as the person who caused A.A.'s injuries was reasonably pertinent to the medical diagnosis and treatment that A.A. received. *See id.* This is because, even if the district court abused its discretion by permitting the nurse to testify that A.A. identified Hashi as the perpetrator of her injuries, we conclude that Hashi was not prejudiced.

To demonstrate that a new trial is warranted, an appellant must show that "there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Jaros*, 932 N.W.2d 466, 473–74 (Minn. 2019) (quotation omitted). This is known as the harmless-error standard of review. *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011). It is Hashi's burden "to establish a reasonable possibility that the jury would have reached a different verdict had the wrongfully admitted testimony not come in." *Jaros*, 932 N.W.2d at 472. When conducting harmless-error review, appellate courts consider factors such as how the evidence was presented, whether the evidence was persuasive, whether the evidence was mentioned in the closing argument, whether the evidence was countered, and the strength of the evidence supporting the state's case. *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024).

Based on our review of these factors, we conclude that Hashi has not carried his burden of establishing a reasonable possibility that the jury would have reached a different verdict had A.A.'s hearsay statements not come in through the nurse's testimony. *See Jaros*, 932 N.W.2d at 472. As just noted, evidence was presented through the testimony of the nurse who assisted A.A. at the hospital—almost all of which was undisputedly admissible, except for the hearsay statements by A.A. identifying Hashi as the perpetrator that we have assumed without deciding were erroneously admitted. While the nurse's testimony may have been persuasive, A.A.'s direct testimony was likely more persuasive. And A.A. testified that she identified Hashi as the person who assaulted her. She discussed the actions she took after the incident, which included immediately going to the hospital with complaints that she had been repeatedly punched in the face and stomach and was concerned for her pregnancy. Thus, even if the nurse had not testified to A.A.'s hearsay statements, the jury would still have heard A.A. herself admit that she had told multiple people that Hashi hit her. While the state mentioned the nurse's testimony in closing, most of the prosecutor's eight-page argument focused on whether A.A.'s testimony was credible. The record also reflects that the defense effectively countered the challenged hearsay evidence during the nurse's cross-examination. Finally, the evidence supporting the state's case was strong on this point, as the jury heard several other witnesses testify that A.A. had identified Hashi as the perpetrator: the police officer; the social worker; the child-protection investigator; and A.A. herself.

Our analysis of these factors therefore leads us to conclude that Hashi has not established a reasonable possibility that the jury would have reached a different result if the district court had not admitted A.A.'s hearsay statements identifying Hashi as the perpetrator through the nurse's testimony. Because any assumed abuse of discretion by the district court in admitting the challenged hearsay evidence was harmless, reversal is unwarranted.

## II. The state committed prosecutorial misconduct that did not prejudice Hashi's substantial rights.

Hashi maintains that the prosecutor committed misconduct in cross-examining him by asking if Hashi could think of any reason his 13-year-old son—who did not testify—would say that Hashi had hit A.A. in the past. And Hashi asserts that the prosecutor committed misconduct by arguing in closing that an OFP or restraining order had been issued in connection with this case. Hashi objected to the prosecutor's cross-examination but did not object to the prosecutor's closing. We conclude that the objected-to prosecutorial misconduct was harmless beyond a reasonable doubt and that the unobjected-to prosecutorial misconduct did not prejudice Hashi's substantial rights.

To begin, we address (A) whether the prosecution engaged in misconduct before turning to (B) whether such misconduct warrants a new trial.

### A. The state committed prosecutorial misconduct.

#### 1. Cross-Examination

"A new trial may be required for prosecutorial misconduct where the state asks questions which by innuendo may lead to a prejudicial supposition as to the existence of facts that cannot be proved." *State v. Goldenstein*, 505 N.W.2d 332, 345–46 (Minn. App. 1993) (citing *State v. Currie*, 126 N.W.2d 389, 395 (Minn. 1964)), *rev. denied* (Minn. Oct. 19, 1993)). "Even though [an] objection to [a] question [may be] sustained by the [district] court, the mere asking of a question[,] which by innuendo may leave a prejudicial supposition as to the existence of facts that cannot be proved[,] has frequently been held sufficiently damaging to require a new trial." *Currie*, 126 N.W.2d at 395 (footnote omitted).

During cross-examination, the prosecutor asked Hashi about the events of October 9, 2023. Hashi responded, "Nothing happened." The prosecutor then asked Hashi if he could "think of any reason why [his] 13-year-old son . . . would say that [Hashi] had hit [A.A.] before?" The defense objected to the prosecutor's question and the district court sustained the objection.

The state concedes that the prosecutor's question was "improper." And it is uncontested that Hashi's 13-year-old son did not testify at trial. Under these circumstances—when the prosecutor's question assumed a highly prejudicial and disputed fact that was not in evidence—we agree that the prosecutor committed misconduct by asking Hashi if he could think of any reason his 13-year-old son would say that Hashi had hit A.A. in the past. *See Currie*, 126 N.W.2d at 395; *Goldenstein*, 505 N.W.2d at 345–46.

**2. Closing Argument**

If a criminal defendant does not object to alleged prosecutorial misconduct during trial, an appellate court "review[s] the prosecutor's statements under a modified plain error analysis." *State v. Davis*, 982 N.W.2d 716, 726 (Minn. 2022) (citing *State v. Ramey*, 721

N.W.2d 294, 299–300 (Minn. 2006). Under this test, the defendant must first establish that the prosecutor erred and then show that the error was plain. *Ramey*, 721 N.W.2d at 302. An error is plain if it "contravenes case law, a rule, or a standard of conduct." *Id.* "A proper closing argument should focus on the evidence and reasonable inferences drawn from the evidence." *State v. Yang*, 627 N.W.2d 666, 679 (Minn. App. 2001), *rev. denied* (Minn. July 24, 2001). The state "may not make arguments that are not supported by evidence." *State v. Bobo*, 770 N.W.2d 129, 142 (Minn. 2009).

Hashi contends that the prosecutor committed misconduct two times during closing argument. First, the prosecutor argued in closing that A.A. "sought an order for protection" against Hashi. Later, the prosecutor told the jury during rebuttal that an OFP or restraining order had been issued "in connection with this case." Hashi did not object to either of these statements.

We conclude that Hashi has satisfied his burden of establishing that the prosecutor committed misconduct that is plainly erroneous. Despite the prohibition on "arguments that are not supported by evidence," *Id.* at 142, the prosecutor made statements that there was a restraining order or OFP issued "in connection with this case"—without any evidence supporting those statements in the record. Because the prosecutor's statements were not supported by the evidence, they contravened caselaw and satisfy the first two prongs of the modified plain-error test. *See Ramey*, 721 N.W.2d at 302.

**B. The state's prosecutorial misconduct does not warrant a new trial.**

We next turn to whether the identified prosecutorial misconduct warrants a new trial, concluding that it does not.

### 1. Cross-Examination

"When reviewing objected-to alleged prosecutorial misconduct, [appellate courts] have utilized a harmless-error test, the application of which varies based on the severity of the misconduct." *State v. Carridine*, 812 N.W.2d 130, 150 (Minn. 2012). "In cases involving unusually serious prosecutorial misconduct, [appellate courts] require certainty beyond a reasonable doubt that the misconduct was harmless before [an appellate court will] affirm." *Id.* (citing *State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974)). "On the other hand, in cases involving less serious prosecutorial misconduct, [appellate courts] apply the test of whether the misconduct likely played a substantial part in influencing the jury to convict." *Id.* (citing *Caron*, 218 N.W.2d at 200). Because we conclude that the objected-to prosecutorial misconduct during the prosecutor's cross-examination of Hashi is harmless even under the standard for more serious misconduct, we need not grapple with the continued viability of the two-tiered *Caron* test and assume without deciding that the harmless-error test for unusually serious misconduct applies here.[2]

"Prosecutorial misconduct is harmless beyond a reasonable doubt if the jury's verdict was 'surely unattributable' to the misconduct." *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (quoting *State v. Nissalke*, 801 N.W.2d 82, 106 (Minn. 2011)). "Factors relevant to the determination of whether prosecutorial misconduct is harmless beyond a reasonable doubt include how the improper evidence was presented, whether the State

[2] *See Ramey*, 721 N.W.2d at 299 n.4 ("We leave for another day the question of whether the *Caron* two-tiered approach should continue to apply to cases involving objected-to prosecutorial misconduct.").

emphasized it, whether it was highly persuasive, and whether the defendant countered it." *Id.* (citing *State v. Wren*, 738 N.W.2d 378, 394 (Minn. 2007)). "The strength of the other evidence supporting the verdict is also a factor in the analysis, but it is not dispositive." *Id.* "Finally, the prejudicial effect of misconduct can be cured by proper instructions to the jury." *Id.* (citing *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005)). Appellate courts "presume that jurors follow the [district] court's instructions." *Id.* at 305.

The state's improper question about Hashi's 13-year-old son was presented once during the prosecutor's cross-examination of Hashi—a single comment in a multi-day trial involving several witnesses, amounting to one three-line paragraph on one page of a 449-page trial transcript. After the district court sustained Hashi's objection, the state did not emphasize the improper premise of its question. The question was not highly persuasive in the context of the trial evidence as a whole. And Hashi countered it through his testimony denying the charged criminal conduct, his thorough cross-examination of A.A., his presentation of his oldest son's testimony that the oldest son did not witness any abuse, and his objection to the challenged question, which the district court sustained.

Moreover, the state's case against Hashi was strong. A.A. testified that she went to the hospital on October 9 to seek medical treatment. The nurse told the jury that A.A. had been punched and threatened with a knife. In addition, the social worker, police officer, and child-protection investigator all testified about A.A.'s disclosures to them that Hashi had assaulted her. The district court also instructed the jury before closing arguments that the jurors were "not to speculate as to possible answers to questions [that the district court] did not require to be answered," that "the arguments or other remarks of an attorney are not evidence," and that, "[i]f the attorneys . . . made or should make any statement as to what the evidence is that differs from [the jury's] recollection of the evidence, [the jurors] should disregard the statement and rely solely on [their] own memory."[3]

Based on our careful consideration of the foregoing, we conclude that, because the jury's verdict was surely unattributable to the prosecutorial misconduct that occurred during the cross-examination of Hashi, the misconduct is harmless beyond a reasonable doubt. *See id.* at 304. Our conclusion aligns with the Minnesota Supreme Court's decision in *Whitson*. There, the supreme court concluded that alleged misconduct was harmless beyond a reasonable doubt because: (1) "the alleged misconduct was a single question" and "[t]he prosecutor made no attempt to elicit the answer again after the defense objection was sustained and did not refer to the answer at any other point in the trial"; (2) "the [district] court's instructions to the jury adequately ameliorated the risk of prejudice" by, among other things, "instruct[ing] the jury to disregard the witness's answer"; (3) "the strength of the other evidence against [the defendant] . . . strongly support[ed] the conclusion that any prosecutorial misconduct was harmless beyond a reasonable doubt";

[3] The district court similarly instructed the jury before opening statements: that "[i]t is the function of the jury to decide from the evidence presented to [it] and only from that evidence what the facts of the case are"; that "[e]vidence is what the witnesses say on the witness stand, which is called testimony, and tangible items like photographs and documents admitted in the trial, which are called exhibits"; that "[t]here are some things [the jury would] hear in [the] trial that are not evidence," e.g., "nothing the attorneys say during the trial is evidence" and "[t]he attorney's questions are not evidence"; that, "[i]f [the district court] sustain[s an] . . . objection, it means that the question may not be answered," the jury "must ignore the question" and, "[i]f no answer was given before the objection was made, [the jury] should not speculate about what the possible answer might have been"; and that, "[f]rom the evidence, [the jury would] . . . decide what the facts are."

and (4) "[t]he inadmissible testimony consisted of only one answer in the course of an 11–day trial covering over 1,400 pages of transcript." *Id.* at 304–05. As in *Whitson*, we conclude that the objected-to prosecutorial misconduct in the state's cross-examination of Hashi was harmless beyond a reasonable doubt.

### 2. Closing Argument

If a defendant establishes plain error, the burden shifts to the state to show that "the plain error *did not* affect the defendant's substantial rights." *State v. Epps*, 964 N.W.2d 419, 423 (Minn. 2021). A defendant's substantial rights are affected by unobjected-to prosecutorial misconduct in closing argument "when there is a reasonable likelihood that the error substantially affected the verdict." *Matthews*, 800 N.W.2d at 634 (quotation omitted). "To meet its burden, the [s]tate must show that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *State v. Thompson*, 3 N.W.3d 257, 264 (Minn. 2024) (quotation omitted). To determine whether the state has met its burden, appellate courts consider "(1) the strength of the evidence against the defendant; (2) the pervasiveness of the erroneous conduct; and (3) whether the defendant had an opportunity to rebut any improper remarks." *Id.* (quotation omitted).

For similar reasons as explained in section II.B.1, we conclude that the state has satisfied its burden of establishing that there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict. *See id.* The evidence against Hashi was strong, as explained above. As for the pervasiveness of the erroneous conduct, appellate courts "consider the closing argument as a whole rather than focus on particular phrases or remarks that may be taken out of context or given undue prominence." *State v. Johnson*, 616 N.W.2d 720, 728 (Minn. 2000) (quotation omitted). Here, the prosecutor made only limited references to an OFP or restraining order. These brief references—considered in light of the state's closing argument as a whole—do not compel the conclusion that the erroneous conduct was pervasive. And although he could not respond further to the state's rebuttal argument that there was an OFP or restraining order "in connection with this case," Hashi did expressly rebut the substance of the state's improper remarks in his summation by stating: "[T]here isn't an O[F]P, or a restraining order or, in fact, divorce papers. None of these things had happened."[4] Considering the strong evidence against Hashi, the limited pervasiveness of the state's prosecutorial misconduct in its closing argument, and Hashi's opportunity to rebut the state's improper remarks, we conclude that the unobjected-to misconduct did not affect Hashi's substantial rights and do not entitle him to a new trial. *See Thompson*, 3 N.W.3d at 264. In short, "[t]here is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Ramey*, 721 N.W.2d at 302 (quotation omitted).[5]

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[4] Although the state objected to Hashi's argument in this regard by asserting that Hashi had misstated the evidence, the district court instructed the jurors that they "should rely on [their] own memory of what the testimony was." As noted above, appellate courts "presume that jurors follow the [district] court's instructions." *Whitson*, 876 N.W.2d at 305.

[5] Hashi also argues that the cumulative effect of the identified prosecutorial misconduct violated his right to a fair trial. A defendant "is entitled to a new trial if the errors, when taken cumulatively, had the effect of denying [the defendant] a fair trial." *State v. Yang*, 774 N.W.2d 539, 560 (Minn. 2009) (quotation omitted). "When considering a claim of

## III. The district court erred in sentencing Hashi on both counts.

Lastly, Hashi contends that the district court erred by imposing separate sentences for each of his convictions because the offenses arose from the same behavioral incident. More specifically, Hashi urges us to vacate his sentence for domestic assault because the offenses did not arise from different behavioral incidents. The state does not dispute that the charges arose from a single behavioral incident but nonetheless asserts that the stay of imposition on the threats-of-violence offense is not a sentence. Based on our review of the record, we conclude that the district court erred in sentencing Hashi on both counts.

"[I]f a person's conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses." Minn. Stat. § 609.035, subd. 1 (2022). Minnesota Statutes section 609.035 "generally prohibits multiple sentences, even concurrent sentences, for two or more offenses that were committed as part of a single behavioral incident." *State v. Ferguson*, 808 N.W.2d 586, 589 (Minn. 2012) (quotation omitted). For that reason, district courts sentence defendants on "the most serious of the offenses arising out of a single behavioral incident because imposing up to the maximum punishment for the most serious offense will include punishment for all offenses." *Id.* (quotation omitted). Whether offenses are part of a single behavioral incident is a mixed question of law and fact. *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016).

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cumulative error, we look to the egregiousness of the errors and the strength of the [s]tate's case." *State v. Williams*, 908 N.W.2d 362, 366 (Minn. 2018) (quotation omitted). Consistent with the analysis above, however, we conclude that the errors at issue were not egregious and that the state's case was strong because there is ample evidence in the record supporting the verdict. Hashi's claim that the cumulative effect of the prosecutorial misconduct violated his right to a fair trial is therefore unavailing.

Appellate courts review the district court's findings of fact for clear error and its application of the law de novo. *Id.*

The Minnesota Supreme Court has articulated two tests for determining whether multiple offenses arose from a single behavioral incident. *State v. Bauer*, 776 N.W.2d 462, 478 (Minn. App. 2009), *aff'd*, 792 N.W.2d 825 (Minn. 2011). "The test to be applied depends on whether the offenses involved are intentional crimes"—as is the case here—which require that we consider "whether the conduct (1) shares a unity of time and place and (2) was motivated by an effort to obtain a single criminal objective." *Id.*; *see also* Minn. Stat. § 609.2242, subd. 1(2) (requiring intent to inflict or attempt to inflict bodily harm upon another for misdemeanor domestic assault); Minn. Stat. § 609.713, subd. 1 (noting that the threats-of-violence offense includes threatening to commit a crime of violence with the purpose to terrorize); *State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975) (stating that to act with "[p]urpose" means to have an objective or intent). "The [s]tate bears the burden of establishing by a preponderance of the evidence that the conduct was not a single behavioral incident." *State v. Degroot*, 946 N.W.2d 354, 365 (Minn. 2020).

Here, the jury found Hashi guilty of felony threats of violence and domestic assault. The district court stayed imposition of sentence on the threats-of-violence offense for three years. On the domestic-assault offense, the district court stayed execution of a 90-day workhouse sentence for one year, placed Hashi on probation, and ordered Hashi to serve 30 days on electronic home monitoring. We conclude, however, that the state has not carried its burden of establishing by a preponderance of the evidence that Hashi's conduct occurred in more than a single behavioral incident. *See id.*

First, the evidence presented shows that the two offenses shared a unity of time and place because the incident occurred on the morning of October 9, 2023, in A.A.'s home. Second, in light of the relationship of the offenses to one another, the record supports a determination that Hashi's conduct was motivated by an effort to obtain a single criminal objective. *State v. Bauer*, 792 N.W.2d 825, 829 (Minn. 2011). In particular, the trial evidence establishes that Hashi had a singular motivation—to frighten A.A. We are therefore satisfied that Hashi's crimes arose from a single behavioral incident.

As we have previously recognized, a stay of imposition is treated as a conviction and is considered a "stayed sentence" under the Minnesota Sentencing Guidelines. *State v. Bradley*, 906 N.W.2d 856, 859–60 (Minn. App. 2017) (concluding that "a stay of imposition is an actual sentence that merely lacks a pronounced duration"), *rev. denied* (Minn. Feb. 28, 2018); *see also* Minn. Stat. § 609.14, subd. 3(1) (2022) (allowing a court to rescind a stay of imposition and "impose sentence and stay the execution thereof").

Because the two offenses arose out of the same behavioral incident, the district court erred by sentencing Hashi on both counts. We therefore reverse and remand to the district court with instructions to vacate the misdemeanor domestic-assault sentence. *See Ferguson*, 808 N.W.2d at 589.

**Affirmed in part, reversed in part, and remanded.**