

*This opinion is nonprecedential except as provided by  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  
A25-1110**

State of Minnesota,  
Respondent,

vs.

Bradley Loren Owens,  
Appellant.

**Filed July 27, 2026  
Affirmed in part, reversed in part, and remanded  
Larson, Judge**

Carlton County District Court  
File No. 09-CR-23-762

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

Jeffrey Boucher, Carlton County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Patrick Monnens, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Wheelock, Judge; and Harris, Judge.

**NONPRECEDENTIAL OPINION**

**LARSON**, Judge

Following a jury trial, appellant Bradley Loren Owens challenges his conviction for first-degree criminal sexual conduct and four convictions for second-degree criminal sexual conduct. Owens argues that he is entitled to a new trial because the district court

abused its discretion when it allowed an expert to testify, and that respondent State of Minnesota committed plain-error prosecutorial misconduct during closing argument. In the alternative, Owens argues the district court erred when it entered certain convictions and imposed a lifetime conditional-release term. Because the district court did not abuse its discretion when it allowed the expert to testify, and the state did not commit plain-error prosecutorial misconduct, we affirm in part. But because the district court erred when it entered certain convictions and imposed a lifetime conditional-release term, we reverse in part and remand.

## **FACTS**

In an amended complaint, the state charged Owens with seven counts of criminal-sexual conduct. Prior to trial, Owens filed a motion to prohibit the state from calling an expert witness on the basis that the state failed to comply with the notice requirements set forth in Minn. R. Crim. P. 9.01, subd. 1(4)(c). After a hearing, the district court reserved ruling on the motion until trial.

Twelve days before trial, the state filed a notice of a new expert witness to testify in the original expert's place. Owens filed a motion to exclude the new expert from testifying on the same grounds as the original motion. The district court denied Owens' motion to exclude, reserved ruling on the state's request to present the new expert until trial, and—should the expert testify—explicitly limited the scope of the expert's testimony. At trial, the district court permitted the new expert to testify but reaffirmed the limitation on the scope of the testimony.

The following evidence was elicited at trial. A.R. (victim) was born in July 2010. From ages nine to 12 victim lived with her mother, Owens (her stepfather), and her four siblings. During this time, Owens sexually assaulted victim multiple times until she was 12 years old. The incidents often occurred in the morning after victim's mother went to work or while victim played video games in her bedroom. At first, Owens told victim to remove her clothes and would then look at her. The abuse escalated, including incidents where Owens: rubbed his penis on victim's pants; licked her vagina; penetrated her vagina with his finger; exposed his penis and told victim to touch his penis with her hands; grabbed her breasts with his hands; "spank[ed]" her buttocks with his hands; and kissed her on her mouth. Owens also showed pornographic videos to victim on multiple occasions. On one occasion, while victim watched the videos, Owens exposed his penis and almost touched victim's mouth with it. Owens suggested that victim and Owens perform the acts that appeared in the pornographic videos.

The last incident occurred in May 2023. During that incident, Owens came into victim's bedroom after she showered. Owens told victim to drop her towel and lean against her bed. At that point, Owens approached victim from behind and rubbed his exposed penis against her buttocks. After victim went to school, Owens messaged her saying that he wanted to "do that to [her] a-- later." Following this incident, victim sent a text message to her mother asking what to do if "someone says they want to f-ck my a--." Eventually, victim reported this incident to her teacher, her school counselor, law enforcement, and a forensic interviewer.

Based upon these facts, the district court submitted five counts to the jury:<sup>1</sup>

- Count I: first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1a(g) (penetration – under age 16 – significant relationship);
- Count III: second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1a(g) (Supp. 2021) (sexual contact – under age 16 – significant relationship);
- Count IV: second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1a(g) (sexual contact – under age 16 – significant relationship);
- Count V: second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1a(h)(iii) (Supp. 2021) (multiple instances of sexual contact – under age 16 – significant relationship);
- Count VI: second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1a(h)(iii) (multiple instances of sexual contact – under age 16 – significant relationship).

After final jury instructions, each party presented their closing argument. During the state’s closing argument and rebuttal, as relevant here, the prosecutor used the words “we” and “you” multiple times. The jury returned guilty verdicts, and the district court entered convictions, on all five counts. The district court sentenced Owens to a 144-month prison term on count I and a 150-month prison term on count V, to be served concurrently. The district court did not impose sentences on counts III, IV, and VI.

Owens appeals.

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<sup>1</sup> The state filed three amended complaints; each included seven counts. The district court granted Owens’ motion to dismiss count VII for a lack of probable cause. The remaining six counts proceeded to trial. Before the final jury instructions, the state moved to dismiss count II. The district court granted the motion.

## DECISION

Owens raises four arguments on appeal. First, he argues the district court abused its discretion when it allowed the state’s new expert to testify. Second, he asserts the state committed plain-error prosecutorial misconduct when the prosecutor used the words “we” and “you” during closing arguments. Third, he contends, and the state agrees, that the district court erred when it entered convictions for counts III, IV, and VI because they were part of the same behavioral incident as count V. Fourth, he argues, and the state agrees, that the district court erred when it sentenced him to a lifetime conditional-release term. We address his arguments in turn.

### I.

Owens first argues the district court abused its discretion when it allowed the state’s new expert to testify. Specifically, Owens challenges the district court’s decision that no discovery violation occurred when, less than two weeks before trial, the state filed a notice of a new expert witness with an allegedly inadequate written summary of the subject matter of the expert’s testimony. Owens also argues that, if a violation did occur, the district court abused its discretion in its selection of the appropriate remedy—limiting the scope of the expert’s testimony.

Minnesota Rule of Criminal Procedure 9.01 sets out the state’s discovery obligations. The rule provides that the state must disclose “[t]he names and addresses of witnesses who may be called at trial . . . within the prosecutor’s actual knowledge.” Minn. R. Crim. P. 9.01, subd. 1(1)(a). Additionally, subdivision 1(4)(c) provides:

A person who will testify as an expert but who created no results or reports in connection with the case must provide to the prosecutor for disclosure to the defense a written summary of the subject matter of the expert's testimony, along with any findings, opinions, or conclusions the expert will give, the basis for them, and the expert's qualifications.

*Id.*, subd. 1(4)(c). This summary must be disclosed “at the defense’s request and before the Rule 11 Omnibus Hearing,” Minn. R. Crim. P. 9.01, subd. 1, but “in time to afford counsel the opportunity to make beneficial use of it,” Minn. R. Crim. P. 9.03, subd. 2(a).

When a prosecutor fails to comply with this rule, it is a discovery violation, and the district court must determine the appropriate remedy. *State v. Freeman*, 531 N.W.2d 190, 197-98 (Minn. 1995). Appropriate remedies include allowing additional discovery, granting a continuance, or entering “any order it deems just in the circumstances.” Minn. R. Crim. P. 9.03, subd. 8. When deciding the appropriate remedy, the district court must assess whether the discovery violation harmed the defendant and “the extent to which th[e] harm can be eliminated or otherwise alleviated.” *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979). To do so, the district court should consider “(1) the reason why disclosure was not made; (2) the extent of prejudice to the opposing party; (3) the feasibility of rectifying that prejudice by a continuance; and (4) any other relevant factors.” *Id.*

Here, we assume without deciding that a discovery violation occurred because the district court did not abuse its discretion in its selection of the appropriate remedy. The district court found that (1) the state disclosed the new expert so close to trial “due to the unavailability of the [s]tate’s previously-disclosed expert witness”; (2) Owens was prejudiced because of the short timeline for defense counsel to prepare for cross-

examination; and (3) continuing the trial was “not feasible” and “not practical” because a jury had been sworn in and had answered questionnaires, and the interest of “fairness to the parties, the witnesses, and the alleged victim.” As to other relevant factors, the district court found it “relevant that the proposed expert witness [was] similar to the previously-disclosed expert witness” and that “the expert testimony, if needed at all, [would] be limited in scope.” Based upon this record, we conclude the district court did not abuse its discretion when it determined that the appropriate remedy for any discovery violation was limiting the scope of the expert witness’s testimony.

For these reasons, we conclude the district court did not abuse its discretion in its selection of the appropriate remedy for any discovery violation that occurred.

## II.

Owens argues second that the state committed plain-error prosecutorial misconduct during closing argument. Because Owens did not object during closing argument, we apply the modified plain-error test. *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). Under this test, the defendant must show that the prosecutor’s conduct constituted (1) an error (2) that was plain. *Id.* An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). “If the defendant is successful, the burden then shifts to the [s]tate to demonstrate that the error did not affect the defendant’s substantial rights.” *Portillo*, 998 N.W.2d at 248 (quotation omitted). Misconduct does not affect substantial rights if “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.” *Ramey*, 721 N.W.2d at 302 (quotation omitted). To determine whether a

reasonable likelihood exists, “we consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions.” *Portillo*, 998 N.W.2d at 251 (quotation omitted). If the state fails to meet its burden, we “will not grant relief to correct the error unless our failure to do so will cause the public to seriously question the fairness and integrity of our judicial system.” *Pulczynski v. State*, 972 N.W.2d 347, 359 (Minn. 2022).

Owens asserts that during closing argument and rebuttal, the prosecutor improperly invited the jurors to put themselves in victim’s shoes because they repeatedly used the words “we” and “you.” Owens highlights six instances, five during closing argument and one during rebuttal:

*We’ve* all experienced things in our lives that *we’ll* never forget. *We* may not remember every detail, but *we* will never forget that *we’ve* experienced them, events such as a wedding, a car accident, our favorite concert, or the birth of a child.

(Emphasis added.)

If she were going to lie, don’t *you* think she’d keep it simple, easier to remember, maybe one event? But she talked about so many different ways that he had touched her and penetrated her over a period of years.

If *you’re* going to tell a story, *you’re* not going to tell a story that last two years, over a period of two years that *you* have to try to remember. If she was lying, she wouldn’t minimize what Mr. Owens did to her.

(Emphasis added.)

Think how hard it was for her to come into this courtroom and testify about things that Mr. Owens did to her

two to four years ago, how nervous she must have been. And I don't know if *you* were watching her, but *you* certainly can consider just her body language as she was testify [sic].

How nervous some of *you* were even during voir dire asking questions in front of a room full of people. It's not easy to come in here. It's not easy for us as attorneys even to stand here and talk in a room full of people.

(Emphasis added.)

They're [sic] minor variations because people don't remember the exact details again. But if something happens to *you*, *you* know that it happened to *you*.

(Emphasis added.)

There's some things in life that *you* just don't forget, and *you* don't forget *your* stepdad sticking his fingers inside of *you*, kissing *you*, grabbing *your* breasts, grabbing *your* butt, rubbing his penis on *you*, and making *you* masturbate him. *You* don't forget *your* stepdad showing *you* pornography and telling *you* he wants to do those things with *you*. And while *you* may forget some of the details, *you* just don't forget that it happened.

(Emphasis added.)

[Defense counsel] talks about . . . how [victim] said it seemed like[] every night that he was in there. Maybe it felt like every night. When *you're* 11 and 12 years old and *your* stepdad comes into *your* room and wants to see *you* naked and touches *you*, it probably feels like every night.

(Emphasis added.)

"It is improper to request that the jurors put themselves in the shoes of the victim."  
*State v. Jones*, 753 N.W.2d 677, 692 (Minn. 2008) (quotation omitted). This rule specifically prohibits urging jurors to sympathize with the victim's experience of the offense. See, e.g., *State v. Thompson*, 578 N.W.2d 734, 742 (Minn. 1998) (holding that

prosecutor’s statement that victim was “awakened to probably one of the most terrible sights that any mother can see . . . your own daughter being killed right before your eyes,” was an improper invitation to stand in witness’s shoes). But it is not improper to ask the jury to consider whether a witness’s testimony made sense in light of the jury’s experience and common sense. *Jones*, 753 N.W.2d at 692. Nor does the rule preclude the prosecutor from “fairly meet[ing]” defense arguments about a victim’s credibility. *State v. Martin*, 773 N.W.2d 89, 106 (Minn. 2009). To determine whether a prosecutor struck the appropriate balance, we consider the closing argument as a whole. *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006). Three of our nonprecedential opinions are instructive to resolving this case.<sup>2</sup>

First, in *State v. Santos*, a prosecutor responded to a challenge to the victim’s credibility. No. A24-1310, 2025 WL 1794044, at \*3-4 (Minn. App. June 30, 2025), *rev. denied* (Minn. Sept. 24, 2025). The prosecutor used the words “we” and “you” to ask the jurors whether an alleged “vacillation” in a witness’s testimony was understandable under the circumstances. *Id.* at \*4. After noting that the remark was made in response to the defendant’s closing argument, we determined no error occurred. *Id.* Likewise, here, the prosecutor’s statement during rebuttal was aimed at countering Owens’ attack on victim’s recollection of the incidents.

Second, in *State v. James*, a prosecutor used the word “you” to invite the jurors to consider whether the victim would fabricate the specific allegations, given the jurors’

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<sup>2</sup> We cite nonprecedential opinions as persuasive authority only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

common sense and life experiences. No. A20-0207, 2021 WL 669018, at \*8 (Minn. App. Feb. 22, 2021), *rev. denied* (Minn. May 26, 2021). We distinguished *Thompson* on the basis that “the prosecutor did not invite the jurors to imagine the sensory experience of appellant’s son,” but asked the jury to consider whether it made sense for a witness to fabricate his testimony “given the facts in evidence and the jurors’ common sense and life experiences.” *Id.* We determined that this was not an impermissible invitation to stand in the victim’s shoes. *Id.* Here, like in *James*, the prosecutor did not ask the jury to imagine the victim’s sensory experience. Rather, the remarks asked the jury to consider their common sense and life experiences in evaluating whether victim’s testimony was reasonable.

Finally, in *State v. Lan*, a prosecutor asked the jurors to consider the effect of the crime on the victim. No. A20-0897, 2021 WL 1847175, at \*3 (Minn. App. May 10, 2021), *rev. denied* (Minn. July 20, 2021). We concluded the prosecutor did not engage in prosecutorial misconduct because the remarks did not direct the jurors, as individuals, to imagine themselves as victims of a crime but asked them to consider what it was like for the victim to experience the crime. *Id.* Here, like in *Lan*, the prosecutor’s remarks do not ask the jurors to imagine themselves *individually* as a victim of the crime.

We conclude that the prosecutor’s use of the words “we” and “you” in this case is akin to *Santos*, *James*, and *Lan*. Given these prior decisions, the state did not plainly err because the closing argument did not obviously contravene “case law, a rule, or a standard of conduct.” *Ramey*, 721 N.W.2d at 302.

But even if the use of the words “we” and “you” was plain error, we would reach the same result because there is no reasonable likelihood that the alleged misconduct had a significant effect on the jury’s verdict. *See id.* First, the state’s case against Owens was strong: victim testified about the abuse, and her testimony was corroborated by the forensic interviews, her mother, her teacher, her counselor, and law enforcement. Second, the alleged misconduct was not pervasive; the prosecutor’s statements consist of a few, isolated statements in a trial transcript of over 1,100 pages and a 45-page closing argument and rebuttal. Third, Owens had an opportunity to respond to the alleged improper statements in his own closing argument. Based on this record, there is no reasonable likelihood that the absence of the alleged prosecutorial misconduct would have had a significant effect on the jury’s verdict. *See Jones*, 753 N.W.2d at 692-93.

Accordingly, Owens is not entitled to relief based upon his prosecutorial misconduct argument. *See State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012) (providing that, if any requirement in plain-error test is not satisfied, we need not consider other requirements).

### III.

Third, Owens contends, and the state agrees, that the district court erred when it entered convictions for counts III, IV, and VI because they were part of the same behavioral incident as count V. Applying our de novo review, we agree with the parties. *See State v. Bonkowske*, 957 N.W.2d 437, 443 (Minn. App. 2021) (reviewing this issue de novo).

Under Minnesota law, a defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2020). The supreme court has interpreted section 609.04 to “bar[] multiple convictions under different sections

of a criminal statute for acts committed during a single behavioral incident.” *State v. Jackson*, 363 N.W.2d 758, 760 (Minn. 1985). “If the lesser offense is a lesser degree of the same crime or a lesser degree of a multi-tier statutory scheme dealing with a particular subject, then it is an ‘included offense’ under [Minn. Stat. §] 609.04.” *State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995).

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); *see also State v. Crockson*, 854 N.W.2d 244, 248 (Minn. App. 2014), *rev. denied* (Minn. Dec. 16, 2014).

Here, the state brought charges under counts V and VI for second-degree criminal sexual conduct pursuant to Minn. Stat. § 609.343, subd. 1a(h)(iii) (multiple instances of sexual contact – under age 16 – significant relationship). For both counts, the jury instructions provided one set of elements and articulated the same timeframe. And during closing argument, the prosecutor described the conduct involved in counts V and VI by relying on the same evidence and the same acts described by victim during the same timeframe for each count. *See State v. Folley*, 438 N.W.2d 372, 373 (Minn. 1989) (holding defendant was improperly convicted of two counts of first-degree criminal sexual conduct

“based on the same evidence and the same acts, all of which occurred before complainant turned 13”).

Regarding counts III and IV, the state brought charges for two individual instances of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1a(g) (sexual contact – under age 16 – significant relationship). The complaint alleged that each incident occurred during the same timeframe as the multiple instances charged in count V. Because count V related to multiple instances of second-degree criminal sexual conduct (sexual contact – under age 16 – significant relationship), the single instances were necessarily proved as part of that conduct. *See, e.g., State v. Goggleye*, No. A15-0125, 2016 WL 102493, at \*8 (Minn. App. Jan. 11, 2016) (“[P]roof of multiple acts . . . necessarily includes proof of a single act under [the same statute], if the single act occurred during the same time period as the multiple acts”), *rev. denied* (Minn. Mar. 29, 2016).

For these reasons, we reverse and remand to vacate the convictions for counts III, IV, and VI and to issue a new warrant of commitment consistent with this opinion. *Pflepsen*, 590 N.W.2d at 767. We instruct the district court to preserve the underlying guilty verdicts for counts III, IV, and VI. *See LaTourelle*, 343 N.W.2d at 284.

#### IV.

Finally, Owens argues, and the state agrees, that the district court erred when it imposed lifetime conditional release. Again, applying our de novo review, we agree with the parties. *See State v. Williams*, 771 N.W.2d 514, 520 (Minn. 2009) (reviewing de novo whether a sentence conforms to the requirements of a statute).

A person convicted of first-degree or second-degree criminal sexual conduct is subject to a ten-year conditional-release term. Minn. Stat. § 609.3455, subd. 6 (Supp. 2021). But if “the offender has a previous or prior sex offense conviction,” the offender is subject to a lifetime conditional-release term. *Id.*, subd. 7(b) (Supp. 2021).

Owens argues that he did not have a prior sex-offense conviction at sentencing that allowed the district court to impose lifetime conditional release because the district court adjudicated him guilty of all five counts simultaneously. *See State v. Brown*, 937 N.W.2d 146, 156 (Minn. App. 2019) (“[C]onvictions adjudicated simultaneously cannot constitute both a prior conviction and a present offense.”), *rev. denied* (Minn. Feb. 18, 2020). We agree.

The jury returned guilty verdicts for all five counts. At sentencing, the district court stated, “[s]o, if it has not already been accepted, the [c]ourt will accept the verdict of the jury and ask that it be recorded.” In doing so, the district court accepted and recorded all five guilty verdicts simultaneously. Accordingly, Owens did not have a prior sex-offense conviction because there was no temporal gap between the district court’s adjudication of the offenses. *See Brown*, 937 N.W.2d at 157; *see also State v. Nodes*, 863 N.W.2d 77, 81-82 (Minn. 2015).

Therefore, we reverse and remand for the district court to impose a ten-year conditional-release term.

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