STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0098

State of Minnesota,
Respondent,

vs.

Randy Harris,
Appellant.

Filed June 16, 2009
Affirmed
Collins, Judge[*]

Ramsey County District Court
File No. KX-06-570

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 560, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Jodie L. Carlson, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Johnson, Judge; and Collins, Judge.

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

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Appellant challenges his conviction of first-degree criminal sexual assault, arguing that (1) his conviction is not supported by sufficient evidence; (2) the prosecutor committed misconduct by misstating the weight of the state's evidence and improperly injecting emotion into the case; and (3) the district court erred by imposing a separate sentence for the domestic-assault conviction. Appellant also raises a number of pro se arguments. We affirm.

FACTS

Appellant Randy Harris was charged with kidnapping and first-degree criminal sexual assault stemming from an incident on January 28, 2006, in which he attacked S.N., a woman with whom he had a three-year relationship. After being attacked by Harris, S.N. asked her daughter to call for help because she "needed to go to the hospital." Police arrived and found S.N. sitting on the living room floor badly beaten. She was transported to North Memorial Hospital where she remained for four days.

S.N. described the details of the assault to Officer Brian Dedominces, Detective Gary Lee Sykes, emergency room nurse Lisa Brandt, and emergency room physician Craig Beilman. Each testified at trial, and their testimony is detailed below. Prior to trial, S.N. recanted her story, urged the prosecutor to drop the charges, wrote letters to judges asking for Harris's release from custody, and sought Harris's reprieve from the governor.

The state persisted in the prosecution, and S.N. was subpoenaed to testify at trial. Because she was not a voluntary witness, S.N. was less than cooperative. Indeed, for the most part, S.N. testified that she could not remember much of anything. For example, S.N. testified that she did not remember where she felt pain, who called the ambulance, whether she went to the emergency room, whom she spoke to at the hospital, how long she was in the hospital, whether she spoke with doctors or police, how her injuries were caused or whether Harris caused them, whether she ever got into a car with Harris the evening of the attack, or what she told Detective Sykes when he came to the hospital. When asked if Harris forced her to engage in oral sex she stated, "I don't know." S.N. testified that she had told so many different stories that she didn't remember what happened and that she told so many stories because she was angry at Harris and wanted to get him into trouble.

Because S.N.'s testimony was of such little value, the state relied heavily on the testimony of the responding officers and medical personnel. Officer Dedominces, the officer who responded to the emergency call, testified that when he arrived at the scene he saw S.N. sitting on the living room floor, visibly upset, with significant bruising and swelling "all about her face, neck, [and] hands." S.N. told Officer Dedominces that she left her apartment and went out to the car with Harris and that "he hit her, punched her, slapped her and choked her." Harris then drove the car to an area approximately one and one-half miles away and continued to assault her. S.N. told Officer Dedominces that she was hit with a wooden cane or stick and a metal baseball bat, and that she believed she lost consciousness at some point. S.N. also stated that Harris told her that he would kill

her if she did not perform oral sex, and that "he pulled her head down or held her head down . . . [a]nd then if she was doing it in a way that he didn't prefer, he'd hit her in the head." In the course of all this, Harris also urinated on her.

Detective Sykes testified that, two days later, S.N. had no difficulty answering his questions or describing the events of the incident. According to Detective Sykes, S.N. reported that Harris "grabbed her by the throat and hit her a couple of times in the head. He then started the car and drove to a business in New Brighton." While driving, Harris continued accusing S.N. of being unfaithful to him and hitting and punching her, and "at one point [he] took out a stick, a walking stick or cane and began hitting her with that." S.N. finally tried to bring things to an end by admitting cheating on Harris. But Harris responded by stating, "Since you're—you give other men [oral sex], you're going to give [it to] me," and then forced S.N. to do so. Harris continued to beat S.N. and eventually made her "get up in the seat and pull her shirt up," and then he "urinated in her mouth and on her face." Harris eventually returned S.N. to her apartment.

Lisa Brandt, a nurse specializing in treating sexual assault victims, testified that when S.N. initially arrived at the emergency room she was "[e]xtremely upset and crying and soft spoken," but cooperated with Brandt's questioning and examination. Brandt's physical examination revealed "[g]ross bruising and swelling, discoloration everywhere in her body, her face, her arms, her legs . . . . All over her whole body." S.N. stated that while in the car she was "hit with multiple different objects," choked, and forced to unzip Harris's pants and he held her head down so she would perform oral sex. S.N. also told Brandt that if she was not "doing it correctly or wasn't doing it the right way," Harris

would hit her. Although Harris did not ejaculate, "when he was finished, he . . . peed in her mouth and on her clothes." Harris also spit on her face multiple times. Doctor Craig Beilman similarly testified that when S.N. arrived at the hospital she "was crying, [and] very upset" and told him that "her boyfriend had assaulted her, had hit her with an aluminum baseball bat, and had forced her to deliver oral sex."

Harris testified that he and S.N. had consensual sexual intercourse on January 28, but that when they were in the bedroom S.N. began discussing another man. Harris then got up from the bed, went to the bathroom, continued thinking about this other man, returned to S.N., and out of anger urinated on her. Afraid that he may have made S.N. angry, Harris left the apartment. But S.N. followed him outside, where the conflict continued. Harris admitted slapping S.N. with an open hand but denied striking her with a bat or a cane, or hitting her with a closed fist. Harris also denied forcing S.N. to engage in oral sex.

The jury acquitted Harris of kidnapping, but found him guilty of first-degree criminal sexual conduct and domestic assault. Harris was sentenced to 158 months' imprisonment and a lifetime of conditional release for the first-degree criminal sexual conduct conviction, and a concurrent 90-day sentence for the domestic assault conviction. This appeal followed.

D E C I S I O N

I.

Harris challenges his conviction of first-degree criminal sexual conduct, arguing that the verdict is not supported by sufficient evidence. Our review of a claim of

insufficient evidence is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach a guilty verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988). On review, we assume that the jury believed the state's witnesses and rejected any contrary evidence. *State v. Jackson*, 726 N.W.2d 454, 460 (Minn. 2007).

Harris contends that there is no substantive evidence in the record to support the charge. Although S.N.'s out-of-court statements were admitted initially for impeachment purposes, the district court was not asked to, and did not provide, a limiting instruction to the jury indicating that any testimony given was for impeachment purposes only. Thus, the substantive evidence before the jury was the testimony of Officer Dedominces and Detective Sykes as well as the medical personnel who treated S.N. Each witness testified similarly that S.N. told them that Harris had beaten her, urinated on her, and forced her to perform oral sex. The jury also heard from S.N., who did not deny that Harris had forced her to perform oral sex—stating instead that she "did not know" if he did.

Harris also asserts that there was no corroborating evidence of the assault. It is well-established that "'a conviction can rest on the uncorroborated testimony of a single credible witness.'" *See State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004) (quotation omitted); *see also* Minn. Stat. § 609.347, subd. 1 (Supp. 2005) (providing that in

prosecutions of fourth-degree criminal sexual conduct, the victim's testimony need not be corroborated). Harris, however, points this court to supreme court cases noting that a lack of corroboration creates doubts as to an individual's guilt. But even assuming a need for corroborating evidence, corroborating evidence is broadly defined, and includes a prompt complaint, the complainant's emotional state after the assault, and the presence or absence of physical and medical evidence. *State v. Stafford*, 404 N.W.2d 918, 922 (Minn. App. 1987), *review denied* (Minn. May 5, 1987); *see also State v. Johnson*, 679 N.W.2d 378, 387 (Minn. App. 2004) (finding that a sexual assault was corroborated by a prompt complaint by victim and testimony regarding the victim's emotional condition after the assault, even after victim recanted), *review denied* (Minn. Aug. 17, 2004).

Thus, necessarily or not, S.N.'s original report of the incident is corroborated: S.N. made a prompt complaint by reporting the assault to Officer Dedominces, she described the assault to medical personnel immediately thereafter, and repeated it in similar detail to Detective Sykes two days later; Nurse Brandt's testimony established that S.N.'s emotional state was consistent with that of other sexual-assault victims; and, the scientific evidence does not exclude Harris. From this record, we conclude that there is ample corroborated substantive evidence supporting Harris's conviction.

II.

Harris asserts that the prosecutor committed misconduct during the opening statement and closing arguments by misstating evidence and impermissibly "inject[ing] emotion into the case." It is error to intentionally misstate the evidence. *State v. Torres*, 632 N.W.2d 609, 618 (Minn. 2001). When determining whether prosecutorial

misconduct occurred during closing argument, we examine "the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence." *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993). A prosecutor's closing argument need not be colorless. *Id.* A prosecutor may make "unartful" statements that do not constitute misconduct, even though they misstate the law. *State v. Atkins*, 543 N.W.2d 642, 648 (Minn. 1996). "A prosecutor's closing argument should be based on the evidence presented at trial and inferences reasonably drawn from that evidence." *State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990). And appeals to common sense are not prohibited. *See State v. Starkey*, 516 N.W.2d 918, 927 (Minn. 1994) (concluding that prosecutor did not commit misconduct in arguing that defense would try to divert jury's attention "from the real facts, the real logic and the real common sense of this case").

Appellate courts reviewing claims of prosecutorial misconduct "will reverse only if the misconduct, when considered in light of the whole trial, impaired the defendant's right to a fair trial." *State v. Powers*, 654 N.W.2d 667, 678 (Minn. 2003) (citing *State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000)).

A. Unobjected-to misconduct

Unobjected-to prosecutorial misconduct is waived, but may be reviewed under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 797–99 (Minn. 2006). Plain error exists if there is an error that is plain and that affects the defendant's substantial rights. *State v. Washington*, 725 N.W.2d 125, 133 (Minn. App. 2006), *review denied* (Minn. Mar. 20, 2007). An error is plain if, under current law, it is clear or

obvious. *Johnson v. United States*, 520 U.S. 461, 467, 117 S. Ct. 1544, 1549 (1997). An error is clear or obvious if it "contravenes case law, a rule, or a standard of conduct." *Ramey*, 721 N.W.2d at 302. An alleged error does not contravene caselaw unless the issue is "conclusively resolved." *State v. Jones*, 753 N.W.2d 677, 689 (Minn. 2008).

The defendant bears the initial burden of demonstrating plain error, but upon satisfying this obligation, the burden shifts to the state to show that the error did not affect the defendant's substantial rights. *Ramey*, 721 N.W.2d at 302. If the defendant satisfies his burden of proving that "the prosecutor's actions constitute plain error, and the state is unable to meet the burden of showing that there is no reasonable likelihood of a significant effect, the appellate courts then assess whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Washington*, 725 N.W.2d at 133-34 (quotation omitted).

The first alleged instance of misconduct occurred during the opening statement when the prosecutor stated that S.N. "described to medical staff that [Harris] *stabbed* her in the face about ten times." (Emphasis added.) Although the state claims that there was a transcription error and the prosecutor actually said "slapped," we will assume that the trial transcript is accurate. Because there is no evidence that S.N. was stabbed, Harris satisfies his burden of proving that a misstatement was made. However, because Harris points us to nothing supporting a claim that this misstatement was intentional, and there is no evidence in the record to support such a finding, the prosecutor's statement does not amount to plain error.

Also in the opening statement, the prosecutor stated that "there was a match to [Harris's] DNA, from the saliva substance that was taken from [S.N.'s] face." Harris asserts that characterizing the DNA evidence as a "match" "overstates the significance of the BCA analyst's testimony." We disagree.

"Match" is not limited to an exact likeness. According to the American Heritage Dictionary "match" means either (1) "One that is exactly like another," or (2) "One that is like another in one or more specified qualities." *The American Heritage Dictionary* 1108 (3d ed. 1992). At trial, Jacquelyn Kuriger, a former forensic scientist with the Minnesota Bureau of Criminal Apprehension, testified that using the DNA testing method employed in this case enabled the BCA "to get information about a male contributor of DNA to a specific mixture[.]" The DNA test performed here allowed the BCA to get needed DNA information with a very small sample of DNA. The DNA test indicated that the DNA profile obtained from S.N. "did match Randy Harris." And Kuriger's report indicated that "Randy Harris could be a contributor of that DNA that was detected in [the sample taken from S.N.]." Therefore, because the testing indicated that the DNA found on face swabs taken from S.N. "matched" Harris's DNA, the prosecutor did not misstate the evidence by stating that "there was a match to [Harris's] DNA, from the saliva substance that was taken from [S.N.'s] face."

Finally, during the closing and rebuttal arguments, the prosecutor stated that S.N.'s daughter witnessed the assault. Harris asserts that because there is no evidence in the record establishing that S.N.'s daughter actually witnessed the attack, the prosecutor misstated the evidence.

S.N.'s daughter was summoned to aid her mother in the aftermath of the assault. Because there is no evidence indicating that she was present during the assault, the prosecutor misstated the evidence. However, Harris again has pointed us to nothing indicating that the misstatement was intentional. The prosecutor must be given some leeway in presenting his closing argument, and a single misstatement, taken in isolation, without regard to the rest of the argument, and without any deceitful intent, does not rise to the level of prosecutorial misconduct. We cannot find that the prosecutor's statement amounts to plain error.

B. Objected-to misconduct

Harris also contends that on two occasions defense counsel objected to behavior that amounts to reversible prosecutorial misconduct. First, contrary to S.N.'s testimony, during rebuttal the prosecutor argued that S.N. did not appear in court when originally subpoenaed "because of Randy Harris, it's about control." Second, although S.N. did not read the letter to the jury, and she testified that she wrote the letter to a friend not because he was someone she could trust, but because he was "someone she could talk to," the prosecutor argued: "She read the letter before you on the stand. She said—I asked her why she wrote this letter, she said 'Because he's my friend, he was my ex-boyfriend, and he's someone that I could talk to or I could trust.'"

There are two distinct standards for *objected-to* prosecutorial misconduct; serious misconduct will be found "harmless beyond a reasonable doubt if the verdict rendered was surely unattributable to the error," while for less serious misconduct, the standard is "whether the misconduct likely played a substantial part in influencing the jury to

convict." *Id.* (citing *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000)).

First, although the prosecutor's statement conflicts with S.N.'s testimony, the statement was consistent with the other evidence presented during trial. For example, the jury heard tape recordings of numerous telephone conversations between S.N. and Harris made while Harris was incarcerated that demonstrated a controlling and abusive relationship. The jury also heard of Harris's prior history of domestic violence. In addition, S.N. and Harris both testified about their volatile romantic relationship. The jury also witnessed S.N.'s reluctance to testify against Harris as they listened to her answer to nearly every question posed by the prosecutor that she could "not remember." That evidence does not diminish even if the prosecutor had not improperly asserted during rebuttal that S.N.'s failure to appear at trial was because Harris was controlling. Given the strength of the evidence, it can be said that the conviction was surely unattributable to the state's mischaracterization of S.N.'s testimony.

Second, although the prosecutor incorrectly stated that S.N. read a letter to the jury and that she wrote the letter to the friend "[b]ecause he's my friend, he was my ex-boyfriend, and he's someone that I could talk to or I could trust," when in fact S.N. was only asked about the letter and testified that she wrote the letter to this friend because "[h]e was somebody that I could talk to," we view this as nothing more than a summary of the testimony. The prosecutor's statement does not exaggerate the relationship, alter the substance of the statements made in the letter, or change the reason for which the letter was written. Because we find it unreasonable to believe that such a minor misstatement could have impacted the jury's decision, the verdict rendered surely was

unattributable to the error. Like the first alleged misconduct, this alleged misconduct is harmless beyond a reasonable doubt.

And because we conclude that any alleged misconduct was "harmless beyond a reasonable doubt," the higher standard, it is not necessary to determine whether this alleged misconduct was "serious" or "less serious."

C. Improperly Injecting Emotion

Finally, Harris asserts that the prosecutor committed misconduct by "inject[ing] emotion into the case by encouraging the jurors to convict [Harris] to hold him accountable and to protect the complainant." Closing arguments should not be calculated to inflame the passions of the jury or prejudice the jury against the defendant. *State v. Clark*, 296 N.W.2d 359, 371 (Minn. 1980). A prosecutor's closing argument may not "ask[ ] the jury to teach the defendant a lesson." *State v. Gates*, 615 N.W.2d 331, 341 (Minn. 2000) (citing *State v. Montjoy*, 366 N.W.2d 103, 108-09 (Minn. 1985)), *overruled on other grounds by Crawford v. Washington*, 541 U.S. 36, 124 S. Ct. 1354 (2004). Although the prosecutor may ask the jury to hold the defendant accountable for his actions rather than acquit based on sympathy, the prosecutor may not "emphasize accountability to such an extent as to divert the jury's attention from its true role of deciding whether the state has met its burden of proving [the] defendant guilty beyond a reasonable doubt." *Montjoy*, 366 N.W.2d at 109.

During closing argument, the prosecutor was required to explain to the jury why a sexual assault victim would require a subpoena to testify at her attacker's trial and then testify that she did not remember anything about the assault. To do so, the prosecutor

emphasized S.N.'s statements to responding officers and medical personnel, focused the jury on S.N's injuries, which witnesses testified were consistent with S.N.'s statements to police, and reminded the jury of the telephone conversations that occurred between Harris and S.N. while Harris was in jail wherein Harris urged S.N. to contact the judge, listen to his advice, and do what he told her to do. That is nothing more than the prosecutor's legitimate attempt to convince the jury that the evidence in this case is sufficient to convict Harris despite S.N.'s reluctance to testify. The prosecutor's argument was passionate and asserted that S.N.'s story changed after speaking with Harris, but the assertions were not unfounded. Moreover, the prosecutor never stated that the jury should convict Harris because he has a history of violence, or because a conviction would somehow teach Harris a lesson, or even because they felt sympathy for S.N. On this record, we cannot find that the prosecutor improperly injected emotion to secure a conviction.

III.

Harris maintains that he was improperly sentenced for both first-degree criminal sexual conduct and a lesser-included crime of domestic assault. A defendant "may be convicted of either the crime charged or an included offense, but not both." Minn. Stat. § 609.04, subd. 1 (2004). An included offense is a "crime necessarily proved if the crime charged were proved." *Id.*, subd. 1(4); *see State v. Roden*, 384 N.W.2d 456, 457 (Minn. 1986) ("A lesser offense is necessarily included in a greater offense if it is impossible to commit the latter without also committing the former."). A person commits first-degree criminal sexual conduct if he "causes personal injury" and "uses force or coercion to

accomplish sexual penetration." Minn. Stat. § 609.342, subd. 1(e)(i) (2004). And a person commits domestic assault if he "intentionally inflicts or attempts to inflict bodily harm" on a family or household member. Minn. Stat. § 609.2242, subd. 1(2) (2004).

Proving that a domestic assault occurred necessarily requires proof of an additional element, the victim's status as a family or household member, which is not required to prove first-degree criminal sexual conduct. As such, domestic assault is not a lesser-included offense of criminal sexual conduct, and thus the district court did not err by convicting and sentencing Harris for both first-degree criminal sexual conduct and domestic assault.

IV.

Harris attributes a variety of evidentiary errors to the district court during the trial. An appellate court will not reverse an evidentiary ruling absent a clear abuse of discretion, and the appellant has the burden to show that he was prejudiced by such an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Under this standard, "[r]eversal is warranted only when the error substantially influences the jury's decision." *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997). That is, appellate courts will reverse when there is a reasonable possibility that, had the erroneously excluded evidence been admitted, the verdict might have been more favorable to the defendant. *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994). The harmless-error analysis, however, applies when evidence is excluded in violation of a defendant's constitutional right to present a defense. *State v. Blom*, 682 N.W.2d 578, 622 (Minn. 2004); *see also Post*, 512 N.W.2d at 102 (holding that in determining whether district court's exclusion of defense

evidence constituted prejudicial error, this court must evaluate whether error was harmless beyond a reasonable doubt). If there is no reasonable possibility that the evidence would have changed the verdict, the defendant's conviction must be affirmed. *Blom*, 682 N.W.2d at 623.

Prior to trial, defense counsel moved the district court to exclude the DNA evidence because the testing method has not been proven reliable. At trial, the district court allowed some limited testimony related to the DNA testing, but did not directly address defense counsel's claim that the test itself was not reliable. Harris asserts that the district court abused its discretion by admitting the DNA evidence.

Before scientific evidence may be admitted in Minnesota courts, a two-pronged standard must be satisfied: "[F]irst whether experts in the field widely share the view that the results of scientific testing are scientifically reliable, and second whether the laboratory conducting the tests in the individual case complied with appropriate standards and controls." *State v. Roman Nose*, 649 N.W.2d 815, 819 (Minn. 2002) (referring to *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) and *State v. Mack*, 292 N.W.2d 764 (Minn. 1980)). A district court *must* hold a pretrial evidentiary hearing to determine whether the technique is generally accepted in the relevant scientific community. *Goeb v. Tharaldson*, 615 N.W.2d 800, 814 (Minn. 2000); *see also Roman Nose*, 649 N.W.2d at 823 (remanding case for evidentiary hearing to determine whether testing method used is "generally accepted").

The Minnesota Supreme Court has previously held DNA testing and PCR-STR (polymerase chain reaction-short tandem repeat) DNA testing to be generally accepted

scientific techniques that no longer require a *Frye-Mack* hearing under the first prong. *State v. Jobe*, 486 N.W.2d 407, 419-20 (Minn. 1992) (DNA testing); *State v. Traylor*, 656 N.W.2d 885, 893 (Minn. 2003) (PCR-STR testing). The Y-STR testing method, however, has not been considered by the supreme court, and thus the district court must hold an evidentiary hearing to determine whether experts in the field share the expert's view that Y-STR testing is generally accepted or scientifically reliable. Because there was no evidentiary hearing on the admissibility of the Y-STR evidence, it was error for the district court to admit the DNA evidence without first determining whether the Y-STR method is generally accepted.

However, when scientific evidence is erroneously admitted, an appellant is entitled to a new trial only if he suffered prejudice; that is, unless the jury's verdict is "surely unattributable" to the error. *State v. Jones*, 556 N.W.2d 903, 910 (Minn. 1996). Here, the BCA analyst testified that Harris, along with "any other male, generally related family member" could not be excluded as the source of DNA found on S.N., "and then there is also the possibility that that same profile would be found in the random population." The state's case does not hinge on DNA evidence. The jury was presented with a number of witnesses who testified in detail about statements S.N. made immediately following the attack. Because of the strength of the other evidence presented and the relative weakness of the DNA evidence, we conclude that the jury's verdict is not attributable to the Y-STR DNA evidence, and that Harris was not unfairly prejudiced because of its admission.

Additional issues raised by Harris in his pro se supplemental brief are unsupported by argument or legal authority. Pro se claims on appeal will not be considered if they "are unsupported by either arguments or citations to legal authority." *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008). Accordingly, we decline to address them.

Affirmed.