STATE OF MINNESOTA
IN COURT OF APPEALS
A10-623

State of Minnesota,
Respondent,

vs.

Ronald Boyd Ramey,
Appellant.

Filed May 23, 2011
Affirmed
Schellhas, Judge

Otter Tail County District Court
File No. 56-CR-08-3004

David J. Hauser, Otter Tail County Attorney, Fergus Falls, Minnesota; and

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Mark D. Nyvold, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Shumaker, Judge; and Halbrooks, Judge.

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

SCHELLHAS, Judge

Appellant challenges his conviction of first-degree criminal sexual conduct, arguing that the district court erred by admitting *Spreigl* evidence and that his trial was affected by prosecutorial error. We affirm.

FACTS

Complainant T.A. was born to C.W. in 1994. In 1997, T.A.'s maternal grandfather, appellant Ronald Ramey, along with his third wife, Ja.R., gained custody of T.A., as foster parents. T.A. lived with Ramey and Ja.R. until August 2001, when T.A.'s maternal grandmother, R.A., and her second husband, W.A., gained custody of her during an adoption proceeding.

In February 2008, when R.A. argued with T.A. about T.A. wearing too much makeup, W.A. took T.A. gently by the arm and asked her to sit down to talk about it. T.A. became upset and said, "[D]on't do that. [Ramey] used to do that." T.A. testified that the event "triggered" her and "it just came out." R.A. asked C.W. to come over, and T.A. told R.A. and C.W. that Ramey would call her "worthless," enter her bedroom in the dark, and take off her clothes. T.A. became increasingly upset, so R.A. stopped the conversation and tried to arrange for T.A. to see a counselor. T.A. did not want to participate in counseling, but the counselor advised R.A. and W.A. to contact their lawyer, who advised them to contact the county attorney, who advised them to contact the police.

After T.A. told a detective that Ramey had fondled her and put his fingers and penis in her vagina, the state charged Ramey with three counts of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(a), (g), and (h)(iii) (1996),

and three counts of second-degree criminal sexual conduct in violation of Minn. Stat. § 609.343, subd. 1(a), (g), and (h)(iii) (1996).[1]

Prior to trial, the state moved to admit *Spreigl* evidence of Ramey's abuse of K.D. and J.H., daughters of Ramey's second wife, Ju.R., when they lived with Ramey as children between 1979 and 1983.[2] The state also moved to admit evidence that Ramey may have sexually abused his daughters, W.B. and C.W. (T.A.'s biological mother), when they were children. The district court admitted evidence of Ramey's abuse of K.D. and J.H., after finding:

> [T]he similarity of the *Spreigl* incidents to the offenses charged are markedly similar in modus operandi. In reaching this conclusion, the Court relies on the State's allegations that the defendant hypnotized or attempted to hypnotize [T.A.], his granddaughter, and sexually touched and penetrated her for a period of several years while she was in his care and custody. Similarly, [K.D.], [Ramey's] stepdaughter, alleges that [Ramey] attempted to hypnotize her prior to sexually touching her while she was a juvenile in his care and custody; [J.H.], [Ramey's] stepdaughter, alleges that [Ramey] attempted to hypnotize her prior to sexually touching and penetrating her while she was a juvenile in [Ramey's] care and custody.
>
> . . . In other words, the marked similarity in modus operandi between the alleged sexual abuse of [T.A.] by [Ramey] and the described sexual abuse of [K.D.] and [J.H.] by [Ramey] makes this *Spreigl* evidence relevant and material to the State's case to show [Ramey's] common scheme or plan to, under the guise of hypnosis, sexually abuse young, female family members who were in his home and custody.

[1] None of the relevant paragraphs of sections 609.342 and .343 was modified during the period of the charged conduct in this case, 1997–2001.

[2] T.A.'s adoptive father W.A., who is now married to R.A., was Ju.R.'s first husband and is the biological father of K.D. and J.H.

Ramey argued that the 20-year gap in time between the *Spreigl* incidents and the charged incident rendered the events insufficiently similar to be admissible. But the district court ruled that given the other similarities, the evidence was admissible despite the lapse in time.

At trial, T.A. testified that, 6 to 12 months after she moved in with Ramey in 1997, he began entering her room at night and touching her body, including her genital area. Later, Ramey began putting his fingers and penis inside her vagina and anus. T.A. testified that Ramey abused her as often as nightly as long as she lived with him. T.A. neither testified nor denied that Ramey ever attempted to hypnotize her, but one of her friends testified that T.A. told her that Ramey tried to hypnotize her, and a detective testified that another friend told the detective that Ramey tried to hypnotize her. T.A. told a social worker that Ramey would use "wizard things" on her, including "a picture of an octopus, . . . pendants, [and] dust," but T.A. did not recall Ramey "ever asking her to do specific things." The state did not offer evidence of the relation between Ramey's attempted hypnosis or the "wizard things" and his abuse of T.A.

A detective, who interviewed Ramey, testified that Ramey denied having sexually touched T.A. and said "four or five different times that if you tell a child enough things or ask them enough things, they're going to admit to it or make a story up." Ramey told the detective that the inquiry about his abuse of T.A. was the result of R.A.'s "just keeping asking and asking and asking." He told the detective that "[i]t was all in [R.A.'s] head."

Prior to the admission of the *Spreigl* testimony of K.D. and J.H., Ramey renewed his objection to the evidence on the basis of the lapse in time but did not argue that the

state had failed to establish that Ramey had used hypnosis to abuse T.A. The district court reaffirmed its decision to admit the evidence, relying on several similarities to show a common scheme or plan: the familial relationship between Ramey and his victims; the location of the abuse in Ramey and the victims' home; the progression from inappropriate touching to penetration; all of the victims' being juveniles who were dependent on Ramey; and the "use of hypnosis or attempted use of hypnosis, or at least the existence of hypnosis within the relationships in this . . . extended family unit."

K.D. testified that when she was in ninth grade, approximately six months after her mother married Ramey, she got up during the night because she was scared by a storm. Ramey carried her back to bed, lay down beside her, unzipped his pants, put her hand on his penis, touched her pubic area, and asked her to stroke him. K.D. was terrified and froze. Eventually Ramey left her bedroom. Then, on two or three occasions also while K.D. was in ninth grade, Ramey attempted to hypnotize her, and when he thought she was hypnotized, he touched her breasts and pubic area with his hand underneath her clothing. He then said, "When you wake up, you'll have no memory of this." But K.D. was not actually hypnotized at the time. K.D. testified that Ramey did not penetrate her.

J.H. testified that on two occasions when she was in third or fourth grade and her mother, sister K.D., and she were living with Ramey, he took her into a bedroom and attempted to hypnotize her. J.H. pretended to go along with it but was not actually hypnotized. Ramey put his penis in her vagina and once tried to put it in her anus. When

he was finished, Ramey said, "When you are awake, you're not going to remember any of this."

Following trial, the jury found Ramey guilty on all six counts. The district court convicted him of one count of first-degree criminal sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(h)(iii), and sentenced him to 86 months' imprisonment. This appeal follows.

D E C I S I O N

Admission of *Spreigl* Evidence

Ramey first argues that the district court erred by admitting *Spreigl* evidence in the form of K.D.'s and J.H.'s testimony. Evidence of prior bad acts "is not admissible to prove the character of a person in order to show action in conformity therewith." Minn. R. Evid. 404(b); *see also State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965). "It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Minn. R. Evid. 404(b). The evidence may also be used to show "a common scheme or plan." *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006). *Spreigl* evidence may not be admitted unless:

> (1) the prosecutor gives notice of its intent to admit the evidence consistent with the Rules of Criminal Procedure; (2) the prosecutor clearly indicates what the evidence will be offered to prove; (3) the other crime, wrong, or act and the participation in it by a relevant person are proven by clear and convincing evidence; (4) the evidence is relevant to the prosecutor's case; and (5) the probative value of the evidence is not outweighed by its potential for unfair prejudice to the defendant.

Minn. R. Evid. 404(b); *see also Ness*, 707 N.W.2d at 685–86 (listing the same five requirements prior to their codification in the rules of evidence). This court "reviews the district court's decision to admit *Spreigl* evidence for an abuse of discretion." *Ness*, 707 N.W.2d at 685.

Here, Ramey does not dispute that the state gave the required notice, clearly indicated that it was offering the evidence to show a common scheme or plan, and established the *Spreigl* acts by clear and convincing evidence. The district court therefore was left to determine only whether the evidence was relevant and whether its probative value outweighed its prejudicial effect.

"[I]n prosecutions for rape and sexual abuse, *Spreigl* evidence may be introduced to establish, by showing a common scheme or plan[,] that a sexual act occurred." *State v. Clark*, 738 N.W.2d 316, 346 (Minn. 2007) (citing *State v. Wermerskirchen*, 497 N.W.2d 235, 240–41 (Minn. 1993)). In particular, "when a defendant contends that the conduct on which the charge was based was 'a fabrication,' *Spreigl* evidence is admissible to rebut that contention as long as the district court is satisfied that the evidence is sufficiently relevant to the charged crime." *Id.* (quoting *Wermerskirchen*, 497 N.W.2d at 241–42). "The closer the relationship between the past misconduct and the charged offense, 'in terms of time, place, or modus operandi, the greater the relevance and probative value of the [*Spreigl*] evidence.'" *Id.* (quoting *Ness*, 707 N.W.2d at 688) (modification in *Clark*). To be admissible under the common-scheme-or-plan exception, the other "acts must have a marked similarity in modus operandi to the charged offense." *Ness*, 707 N.W.2d at 688.

The district court found that the *Spreigl* acts were sufficiently similar in time, place, and modus operandi to be admissible based on the familial relationship between Ramey and his victims, similar location of the abuse in Ramey and victims' home, progression from inappropriate touching to penetration, the fact that his victims were all juveniles who were dependent on Ramey, and the "use of hypnosis or attempted use of hypnosis, or at least the existence of hypnosis within the relationships in this . . . extended family unit." On appeal, Ramey focuses his challenge on the hypnosis basis, arguing that the only evidence that T.A. was exposed to hypnosis was inadmissible, albeit unobjected-to, hearsay, and that the state offered no evidence that the hypnosis was connected to the abuse. Ramey also argues that the *Spreigl* acts were too remote in time and that there was no evidence of progression from touching to penetration with respect to the *Spreigl* victims.

Ramey acknowledges that he did not challenge the hypnosis basis before the district court, and that appellate review of the district court's reliance on this basis would therefore be limited to plain error.[3] But the purported hypnosis connection was only one factor among many that the district court considered in deciding whether the *Spreigl* acts were sufficiently related in time, place, and modus operandi to the charged acts for their probative value to outweigh any prejudice. Here, the similarity that was truly central to the abuse was that the victims were living as dependants in Ramey's home at the time the

[3] Ramey did raise the hypnosis issue in a post-trial motion, but a post-trial motion alone is insufficient to preserve error for appeal. *See* Minn. R. Crim. P. 31.02 (stating that plain-error standard would apply to a post-trial motion where defect was not brought to the attention of the court during trial); *State v. Pak*, 787 N.W.2d 623, 629 (Minn. App. 2010) (applying plain-error standard on review of issue raised only in post-trial motion).

abuse occurred. We conclude that this marked similarity in modus operandi, together with identity of place, was sufficient even without the hypnosis connection, to support the district court's decision to admit the evidence. Ramey has pointed to no authority suggesting that, in order for there to be a marked similarity in modus operandi, the specific *mechanics* of his abuse of children living in his home must be identical; the existence of evidence that Ramey previously abused children with whom he had a similar familial caretaker relationship is sufficiently probative to be admissible to corroborate T.A.'s testimony.

Ramey similarly places undue focus on the age of the *Spreigl* acts. No "bright-line rule for determining when a prior bad act has lost its relevance on the basis of remoteness" exists. *Ness*, 707 N.W.2d at 688. Instead, time is one factor to be considered along with place and modus operandi in determining the probative value of the proffered evidence. *Id*. at 688-89. Here, the acts were identical in place and markedly similar in modus operandi. The remoteness in time alone is not enough to render the district court's decision an abuse of discretion.

***Spreigl* Jury Instruction**

Ramey argues that he is entitled to a new trial because the district court's failure to read his requested jury instruction relating to the *Spreigl* evidence was prejudicial. "District courts are allowed considerable discretion in the selection of language for the jury instructions and a conviction will not be reversed absent an abuse of discretion." *State v. Babcock*, 685 N.W.2d 36, 40 (Minn. App. 2004), *review denied* (Minn. Oct. 19, 2004). "An error in the application of law, however, is an abuse of discretion." *Id.*

Minnesota's pattern final jury instruction for *Spreigl* evidence provides, in relevant part:

> The State had introduced evidence of an occurrence on ____ at ____. As I told you at the time this evidence was offered, it was admitted for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the (indictment) (complaint). . . .
>
> The defendant is not being tried for and may not be convicted of any offense other than the charged offense(s). You are not to convict the defendant on the basis of any occurrence on ____ at ____. To do so might result in unjust, double punishment.

10 *Minnesota Practice*, CRIMJIG 3.16 (2006). Ramey proposed that in addition to or in lieu of this instruction, the district court provide an instruction modeled on one used by the federal district courts of the Eighth Circuit, which provides, in relevant part:

> You [are about to hear] [have heard] evidence that the defendant previously committed [an act] [acts] similar to [the one] [those] charged in this case. You may use this evidence to help you decide [manner in which the evidence will be used to prove identity—e.g., whether the similarity between the acts previously committed and the one[s] charged in this case suggests that the same person committed all of them]. . . .
>
> The defendant is on trial for the crime[s] charged and for [that] [those] crime[s] alone. You may not convict a person simply because you believe [he] [she] may have committed some act[s], even bad act[s], in the past.

Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit, Instruction 2.09 (2009) (footnotes omitted) (brackets in original). Ramey made clear that the reason he wanted to use a form of the Eighth Circuit instruction was that it included

language limiting the jury's consideration of the *Spreigl* evidence to the issue it was offered to prove—identity in the model instruction, and common scheme or plan in this case.

The district court agreed to provide Ramey's "proposed instruction," but did not specify whether it meant that it would give the Eighth Circuit instruction instead of CRIMJIG 3.16, in addition to it, or something else. When orally instructing the jury, the court started out with CRIMJIG 3.16, stating:

> The State has introduced evidence of an occurrence on or before 1982 at Alexandria, Minnesota. As I told you at the time this evidence was offered, it was admitted for the limited purpose of assisting you in determining whether the defendant committed those acts with which the defendant is charged in the Complaint.
>
> The defendant is not being tried for and may not be convicted of any offense other than the charged offense. You are not to convict the defendant on the basis of any occurrence on or before 1982 at Alexandria, Minnesota. To do so might result in unjust double punishment.

The court then added the following, based on the second paragraph of the Eighth Circuit instruction:

> The mere fact that the defendant may have committed similar acts in the past is not evidence that he committed such acts in this case. The defendant is on trial for the crimes charged and for those crimes alone. You may not convict a person simply because he may have committed some acts, even bad acts, in the past.

The court omitted the first paragraph of the Eighth Circuit instruction, which contained the language Ramey requested related to the jury's using the evidence to help it decide whether there had been a common scheme or plan.

After the jury left the courtroom, the district court acknowledged that it had not read the instruction as intended. The court decided that, as a remedy, the CRIMJIG 3.16–based instruction would be removed from the written instructions to be provided to the jury, and that both paragraphs of the Eighth Circuit–based instruction would be provided instead. The written instructions finally sent to the jury read:

> You have heard evidence that the defendant previously committed acts similar to those charged in this case. *You may use this evidence to decide whether there was a common scheme or plan.*
>
> Remember, however, that the mere fact that the defendant may have committed similar acts in the past is not evidence that he committed such acts in this case.[4] The defendant is on trial for the crimes charged and for those crimes alone. You may not convict a person simply because you believe he may have committed some acts, even bad acts, in the past.

(Emphasis added.) Ramey argues that the district court abused its discretion by excluding the italicized language from its oral instructions to the jury.[5]

"When evidence which is admissible . . . for one purpose but not admissible . . . for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly." Minn. R. Evid. 105. "Because *Spreigl* evidence cannot be admitted unless it falls under a specific exception, the proper scope of that evidence is limited to the purpose, or purposes, for which it was admitted." *Babcock*,

[4] This sentence is not in either of Ramey's proposed instructions. It appears to have been sourced from Eighth Circuit Model Criminal Jury Instruction 2.08.

[5] Ramey claims that he "requested the court to re-read the instruction to make sure the jury heard it." But a review of the transcript reveals not only that Ramey did not make this request, but that he in fact agreed with the judge's decision *not* to re-read the instructions so as "to do this without drawing too much attention to it."

685 N.W.2d at 40. Therefore, "a district court errs when it denies a defendant's request for a specific limiting instruction regarding *Spreigl* evidence." *Id.* at 41.

Here, Ramey argues that the district court erred by failing to orally instruct the jury that it was limited to using the *Spreigl* evidence to determine whether there was a common scheme or plan. But as discussed above, in sexual abuse cases, "*Spreigl* evidence may be introduced *to establish*, by showing a common scheme or plan[,] *that a sexual act occurred*." *Clark*, 738 N.W.2d at 346 (emphasis added). The court instructed the jury that it might use the *Spreigl* evidence to "determin[e] whether the defendant committed those acts with which the defendant is charged in the Complaint." In the context of this sexual-abuse case, the district court's instruction explained the specific purpose for which the evidence was being admitted and was consistent with the law. It was therefore not an abuse of discretion.

Prosecutorial Error

Ramey argues that he is entitled to a new trial due to several instances of prosecutorial error during the trial.[6] "The prosecutor is an officer of the court charged with the affirmative obligation to achieve justice and fair adjudication, not merely

[6] Ramey characterizes his complaints as being about prosecutorial "misconduct." "[T]here is an important distinction . . . between prosecutorial misconduct and prosecutorial error." *State v. Leutschaft*, 759 N.W.2d 414, 418 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009). The term prosecutorial misconduct "implies a deliberate violation of a rule or practice, or perhaps a grossly negligent transgression," while the term prosecutorial error "suggests merely a mistake of some sort, a misstep of a type all trial lawyers make from time to time." *Id.* We apply the same standard to charges of both prosecutorial misconduct and prosecutorial error. *Id.* Here, because none of the instances of which Ramey complains rises to the level of deliberate rule violations or gross negligence, we use the term "prosecutorial error."

convictions." *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). Generally, a prosecutor's acts may constitute error "if they have the effect of materially undermining the fairness of a trial." *Id.* Error may result from violations of "rules, laws, orders by a district court, or clear commands in this state's case law." *Id.*

Ramey objected to some of the alleged errors at trial,[7] but did not object to most of them. Objected-to errors or misconduct are reviewed under a two-tiered harmless-error test: "For cases involving claims of unusually serious prosecutorial misconduct, there must be certainty beyond a reasonable doubt that misconduct was harmless. We review cases involving claims of less-serious prosecutorial misconduct to determine whether the misconduct likely played a substantial part in influencing the jury to convict." *State v. Yang*, 774 N.W.2d 539, 559 (Minn. 2009) (citing *State v. Caron*, 300 Minn. 123, 127–28, 218 N.W.2d 197, 200 (1974)). Unobjected-to prosecutorial error is reviewed under a modified plain-error test, in which the defendant has the burden to show plain error. Then the burden shifts to the state to show that the error did not affect the defendant's substantial rights, i.e., "that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted).

[7] The state points out that the objections took the form of objections to the admission of the evidence, rather than to the prosecutor's conduct per se. Because eliciting "clearly and plainly inadmissible" evidence is prosecutorial error, *State v. Williams*, 525 N.W.2d 538, 548, 549 (Minn. 1994), this distinction is immaterial.

Fabrication Statistic

Ramey first argues that the prosecutor erred by eliciting testimony from a child psychologist regarding the frequency that people fabricate reports of child sex abuse. The state examined the psychologist as follows, in relevant part:

> Q: Now, . . . as far as any research, if you're familiar with it as far as fabrication, can you tell us about that? Are you aware of statistics or information concerning that kind of issue?
> A: . . . If we look at all of the cases across child abuse and neglect reporting in a year, the percentage of fabrications is consistently, over the last 13 years in various studies that have been done, under 10 percent. It is sometimes under 5 percent. And most of the fabricated reports come from adults, not children.

Ramey did not object, but now argues that eliciting this testimony was prosecutorial error. This allegation must therefore be reviewed under the *Ramey* modified plain-error test.

Was there error?

In *State v. Oslund*, this court considered whether the district court erred by admitting expert testimony that "less than two percent of sexual abuse allegations by preschoolers are fabricated." 469 N.W.2d 489, 495 (Minn. App. 1991), *review denied* (Minn. July 24, 1991). This court held that admitting the evidence was error, explaining that "[i]t is error to admit expert opinion testimony on the truth or falsity of a witness's allegations about a crime, 'for the expert's status may lend an unwarranted "stamp of scientific legitimacy" to the allegations.'" *Id.* (quoting *State v. Myers*, 359 N.W.2d 604, 611 (Minn. 1984)).

A prosecutor errs when he or she elicits "clearly and plainly inadmissible" evidence. *State v. Williams*, 525 N.W.2d 538, 548, 549 (Minn. 1994). Under *Oslund*, the psychologist's testimony about the percent of abuse fabrications was clearly and plainly inadmissible. The prosecutor therefore erred by eliciting the testimony.

Was the error plain?

"An error is plain if it was clear or obvious." *Ramey*, 721 N.W.2d at 302 (quotation omitted). "Usually this is shown if the error contravenes case law, a rule, or a standard of conduct." *Id.* Here, the error contravened the clear holding in *Oslund*. It was therefore plain.

Did the error affect Ramey's substantial rights?

In order to meet its burden under the third prong of the modified plain-error test for prosecutorial misconduct, the state must demonstrate that "there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict." *Ramey*, 721 N.W.2d at 302 (quotation omitted).

The state argues that the erroneously admitted evidence did not likely affect the jury's verdict because, on cross-examination of the same witness, Ramey elicited testimony that 1/3 to 2/3 of sexually abused female children do not report the abuse during childhood, and that 20 to 75 percent of children delay reporting abuse for more than one year. The state argues that these "wide swings and variations in the statistics" mean that the jury probably did not give much weight to the statistics elicited by the state. But the statistics elicited by Ramey, which had to do with reporting delays, had no apparent relation to the statistic elicited by the state, which had to do with the likelihood

that T.A. was fabricating the abuse. The state does not explain why the jury would have discounted the fabrication statistic—which did not have "wide swings and variations"—based on the other, unrelated statistics.

But, under all the circumstances of this case, we conclude that there was not a reasonable likelihood that exclusion of the fabrication statistic would have had a significant effect on the verdict. First, the testimony of the *Spreigl* witnesses—which, as discussed above, was properly admitted—so corroborated T.A.'s testimony that the expert's statistic was unlikely to have had any significant effect on the jury's decision to believe T.A. Second, the expert made only a single reference to the fabrication statistic in 69 pages of testimony, and the state did not mention it in closing argument. *See Oslund*, 469 N.W.2d at 496 ("[The expert's] testimony was a single reference in the course of her voluminous testimony . . . [and] [t]he state did not refer to the testimony in closing arguments. Given the extensive evidence justifying the jury's verdict, we conclude the error is harmless."). Finally, as the jury was instructed in this case, "[p]roof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs." Ramey could have argued that a 5- to 10-percent chance of fabrication creates reasonable doubt—arguably, an ordinarily prudent person would not entrust his or her most important affairs to something with a 5- to 10- percent chance of failure. Given that the fabrication statistic arguably cut in Ramey's favor, and that Ramey could have argued this point but apparently chose not to, absence of the error in eliciting this evidence would not be reasonably likely to have a significant effect on the verdict in this case. The error therefore is not reversible.

Remaining Allegations of Prosecutorial Error

Ramey raises over a dozen additional instances of alleged prosecutorial error. Our careful review of the record and applicable law persuades us that Ramey's remaining allegations are without merit.

Affirmed.