STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0680

State of Minnesota,
Respondent,

vs.

William Kenneth Pike,
Appellant.

Filed July 1, 2024
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Isanti County District Court
File No. 30-CR-20-398

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

Jeffrey R. Edblad, Isanti County Attorney, Cambridge, Minnesota; and

Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal from appellant's convictions for first- and second-degree criminal sexual conduct, appellant raises two issues. First, appellant argues that the

prosecuting attorney committed misconduct during the examination of an expert witness by eliciting inadmissible character evidence. Second, appellant argues that the district court erred by entering a conviction for second-degree criminal sexual conduct. We first conclude that, although the prosecuting attorney committed misconduct by eliciting some inadmissible character evidence, this error did not affect appellant's substantial rights. Second, we conclude that the district court erred by entering a conviction for the lesser included offense of second-degree criminal sexual conduct. Thus, we affirm in part, reverse in part, and remand.

FACTS

On May 26, 2020, respondent State of Minnesota charged appellant William Kenneth Pike with two counts of first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) (2018), and two counts of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) (2018). All counts involved Pike's daughter (daughter), who was ten years old at the time of the charges. The following summarizes the evidence received at trial and relevant procedural history.

In June 2018, Pike and his wife Cynthia Pike[1] (collectively, the Pikes) began fostering daughter after Isanti County (the county) removed her from her biological parents because of neglect. Daughter's four siblings were also removed; three siblings were placed with the Pikes while one sibling was placed with grandparents. The Pikes lived on a farm in Ogilvie with five children: daughter, her three siblings, and another child. In October

[1] This opinion will refer to appellant as Pike and to his wife as Cynthia.

2019, the Pikes adopted daughter and her three siblings. Daughter suffered from post-traumatic stress disorder (PTSD) due to "past experiences with her [biological] home environment" and was in therapy.

One night in November or December 2019, while Cynthia was visiting her sick father, daughter went to Pike's bedroom to watch a movie. Daughter fell asleep during the movie and woke up because Pike "was pulling down" her "[pajama] pants." Pike then "used his fingers to penetrate [her] vagina." Pike told daughter that she "shouldn't tell [Cynthia] because she would be fine with it" and threatened to "whip" daughter "if [she] told anyone."

"[T]he same night or the next night," Pike asked daughter to "watch another movie" in his bedroom, and she agreed because she "thought that something would happen to [her] if [she] didn't." Daughter "woke up again to the same thing happening." Pike "was pulling down [her] pants" and "put his fingers in [her] vagina again." Pike told daughter that "no one would believe [her] if [she] told anyone."

In January 2020, daughter harmed herself by cutting her arms while at a friend's house. In May 2020, daughter "told [Cynthia] what happened" with Pike. According to daughter's testimony, Cynthia was "angry," seemed like she did not believe daughter, and said that Pike "could get in a lot of trouble." Cynthia then informed daughter's skills worker about what daughter had said, and the skills worker reported the information to the police. Based on the alleged sexual abuse, the county removed daughter from the Pikes' home and placed her with a second foster family.

Before trial, the state moved to admit expert testimony on child sexual abuse and forensic interviewing. At a hearing on the motion, Pike's attorney objected only to the expert "testifying about what the alleged victim specifically is testifying to" and stated that he did not "have much of an objection" if the expert was "just speaking in generalities." The state confirmed that there would not "be any specific testimony from [the expert] regarding the specific allegations or alleged facts in [the] case." The district court ruled that the expert could testify if the state laid foundation and the expert's testimony provided "relevant and helpful information to the jury."

The case proceeded to a jury trial in which the state called, among others, daughter; daughter's second foster mother; Cynthia; an investigator; a mental-health worker; daughter's skills worker; the expert; daughter's therapist; and daughter's case manager. A CornerHouse interview of daughter conducted in May 2020 was also played for the jury.[2]

Along with facts detailed above, witnesses testified about daughter's behavior in the second foster home compared to her behavior in the Pikes' home. Daughter's therapist testified that she started working with daughter in 2019 while daughter lived with the Pikes. At that time, daughter "was defiant," argued with the Pikes "a lot," and "was withdrawn" and "depressed." After December 2019, daughter "got more depressed" and "started to backslide quite a bit."

[2] The state's expert testified that "CornerHouse is an advocacy center" that provides "a variety of different services . . . in cases where there have been allegations of possible child maltreatment."

Daughter's therapist testified that, once daughter moved to the second foster home, she "had some struggles at first" but then "progressed really, really quickly." Daughter's skills worker testified that daughter "flourished" at the second foster home and that "[i]t was like day and night." Daughter's case manager testified that when she visited daughter in the second foster home, daughter seemed "lighter," like she had "some weight off her shoulders."

Daughter's second foster mother testified that, when daughter first arrived at their home, she "was very shy and timid" and "very jumpy," that, "anytime she did something wrong, [daughter] would cry and hide" and that, "[d]uring the night, [daughter] would barricade her doors." She testified that daughter initially "wouldn't be left alone with" her second foster father or brother and that, "[i]f they would come into a room," daughter "would move to the opposite side of the room." Daughter's second foster mother also testified that, with some prompting, daughter told her "what had happened" with Pike and that, while recalling the incidents, daughter initially "couldn't even get through all of it," "started physically vomiting," "couldn't look at [her second foster mother]," and "said she was embarrassed."

Witnesses also testified about daughter's relationship with Cynthia and her siblings after daughter reported Pike's abuse. Daughter's therapist testified that "[i]t was very difficult for" Cynthia "not to express her frustration with the situation" and that daughter's siblings "heard a lot of it, so they would call [daughter] names" like "slut" and "whore" and "tell her that she was destroying the family." Daughter's case manager testified that, after daughter's allegations against Pike, the county had concerns about Cynthia's "ability

to be a support person" for daughter because she "didn't believe" daughter and thatdaughter was "targeted in the home by the other siblings." Daughter's skills worker testified that daughter's siblings treated daughter differently as "punishment." A mental-health worker testified that daughter's siblings "were allowed to call her names" like "liar" and "lying b-tch" because Cynthia "believed [daughter] was lying" about the sexual abuse. The mental-health worker also testified that she believed daughter's siblings "were coached in being told to not believe" daughter.[3]

The state's expert—a forensic interviewer and trainer at CornerHouse—testified about children's inability to protect themselves from sexual abuse, children's difficultly in recalling the details of the sexual abuse, coping mechanisms of children subject to sexual abuse, and the lack of physical evidence in child-sexual-abuse cases. The expert also testified about some reasons for a child's delayed disclosure of sexual abuse, such as "a significant relationship" with the alleged offender, whether the child has been threatened and instructed not to disclose, and "fear or concern about responses and reactions."

As relevant to the issue on appeal, the expert testified that, "in situations of child sexual abuse, grooming or manipulation is a process that an individual utilizes to gain trust . . . with the purpose of creating a situation where . . . there is increased access and opportunity for abuse" and "decreased likelihood that [the victim] will actually report or

[3] Both the skills worker and mental-health worker testified that they observed the Pike family while working with daughter in the home.

tell someone."[4] The expert testified that an abuser may manipulate the victim's family. The expert stated that "it is not unusual for other children to be present when maltreatment occurs" and "receive messages about what is happening" and about the victim.

Pike testified in his defense and denied the abuse allegations. Cynthia and one of the Pikes' children also testified in Pike's defense. The jury found Pike guilty of one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct and not guilty of the other two counts of first- and second-degree criminal sexual conduct. The district court sentenced Pike to 172 months in prison for first-degree criminal sexual conduct. In the warrant of commitment, the district court entered convictions for one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct.

Pike appeals.

DECISION

I. While some unobjected-to character evidence was improperly elicited during expert testimony, the prosecuting attorney's misconduct did not affect Pike's substantial rights.

Pike argues that the "prosecutor committed prejudicial plain error by eliciting expert testimony about 'grooming' or 'manipulation' behavior by child sexual abusers because it was improper profile evidence." The state's brief submitted to this court likewise analyzes

[4] The expert testified that "the language has changed within the last few years" and what was "referred to in the field as 'grooming'" is now called "manipulation."

the expert's testimony under the standard for prosecutorial misconduct. Accordingly, we will assume that the standard for prosecutorial misconduct applies.[5]

Pike concedes that he failed to object to the alleged error. Appellate courts review a claim of unobjected-to prosecutorial misconduct under the modified plain-error standard. *State v. Epps*, 964 N.W.2d 419, 423 (Minn. 2021). The defendant has the burden to demonstrate that the prosecuting attorney's misconduct was error and that it was plain. *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). "If the defendant is successful, the burden then shifts to the State to demonstrate that the error did not affect the defendant's substantial rights." *Id.* (quotation omitted). If the state fails to do so, appellate courts consider "whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted).

[5] We question whether the prosecutorial-misconduct rather than the plain-error standard is appropriate here. As summarized above, the state moved to admit the expert's testimony before trial. During a pretrial hearing, Pike's attorney made a limited objection to the expert "testifying about what the alleged victim specifically is testifying to." The district court allowed the expert to testify provided that the state laid foundation and the testimony was "relevant and helpful" to the jury, noting that the expert could not "vouch for the victim's testimony."

On appeal, Pike argues that some of the expert's testimony was "improper profile evidence"—an issue that was not raised at any point during pretrial or trial—and does not claim that the prosecuting attorney elicited testimony beyond the scope of what the district court had ruled admissible. In *State v. Williams*, 525 N.W.2d 538, 545 (Minn. 1994), the supreme court applied the prosecutorial-misconduct standard where, for the first time on appeal, the appellant argued that the prosecuting attorney elicited testimony "that defendant fit a so-called 'drug courier profile.'" Because Pike contends that the expert testimony was also improper profile evidence and the state does not dispute the application of the prosecutorial-misconduct standard, we apply this standard in considering the expert's testimony.

A. Pike has met his burden to demonstrate that some plain error occurred.

"An error is plain if it was clear or obvious," which generally "is shown if the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotations omitted). "[A]ttempting to elicit or actually eliciting clearly inadmissible evidence may constitute misconduct" by a prosecutor. *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). A prosecuting attorney "has a duty to prepare [their] witnesses, prior to testifying, to avoid inadmissible or prejudicial statements." *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003) (citing *State v. Carlson*, 264 N.W.2d 639, 641 (Minn. 1978)).

Minnesota Rule of Evidence 702 governs the admissibility of expert testimony and provides that an expert may give their opinion if their "scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue." "[E]xpert testimony is admissible under Minn. R. Evid. 702 when it is helpful to the jury." *State v. Obeta*, 796 N.W.2d 282, 289 (Minn. 2011). "[E]xpert testimony is not helpful if the expert opinion is within the knowledge and experience of a lay jury and the testimony of the expert will not add precision or depth to the jury's ability to reach conclusions." *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (quotation omitted).

Generally, "[e]vidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion." Minn. R. Evid. 404(a). For example, this court held that evidence of pornographic magazines and a child's underwear found in a defendant's footlocker was inadmissible "to show that

[defendant] had a propensity to abuse children sexually." *State v. Miggler*, 419 N.W.2d 81, 83, 85 (Minn. App. 1988).

The supreme court has stated that, "in cases where a sexual assault victim is an adolescent, expert testimony as to the reporting conduct of such victims and as to continued contact by the adolescent with the assailant is admissible in the proper exercise of discretion by the trial court." *State v. Hall*, 406 N.W.2d 503, 505 (Minn. 1987). Further, expert testimony providing "relevant insight into the puzzling aspects of [a] child's conduct and demeanor which the jury could not otherwise bring to its evaluation of [a child's] credibility is helpful and appropriate in cases of sexual abuse of children." *State v. Myers*, 359 N.W.2d 604, 610 (Minn. 1984). In other words, caselaw has condoned the admission of expert testimony to help the jury understand a child-sexual-abuse victim's behavior. *See Hall*, 406 N.W.2d at 505 (determining that expert testimony about a child sexual-assault victim's "reporting conduct" and "continued contact" with the abuser was admissible); *Myers*, 359 N.W.2d at 609 (concluding that the district court's admission of expert testimony describing "the traits and characteristics typically found in sexually abused children . . . was not erroneous").

But the supreme court has distinguished between "the admission of expert opinion testimony bearing on whether sexual abuse has occurred" and expert testimony "on the issue of who it was who abused the children," noting that the latter "was objectionable." *State v. Dana*, 422 N.W.2d 246, 250 (Minn. 1988).

Pike's brief to this court focuses on the admission of expert testimony about an abuser's conduct. Pike argues that "the prosecutor plainly erred by introducing [the

expert's] testimony about 'grooming' and 'manipulation'" because testimony "describing how *a typical child sexual abuser* acts is not helpful" and constitutes improper character evidence. The state argues that "the prosecutor's examination of [the expert] did not constitute plain error" because her testimony was "helpful to the jury" in understanding "the characteristics of child sexual abuse victims and the reasons for delayed disclosures of abuse." The state also contends that some testimony about how abusers "create circumstances that decrease the chance" that a victim will report abuse "is inextricably intertwined with the explanation of how the sexual abuse is able to occur, as well as the victim's behaviors."

Pike argues that the expert's testimony "encouraged the jury to infer from the 'grooming' or 'manipulation' characteristics that [Pike] is the type of person who would commit child sexual assault." Pike relies on "profile" and "syndrome" caselaw. In *Williams*, the supreme court reversed Williams's conviction for first-degree controlled-substance crime for possessing more than ten grams of cocaine with intent to sell and remanded for a new trial. 525 N.W.2d at 540, 549. The state offered testimony about a "'drug-courier profile' used by drug investigators at airports, train stations and bus terminals to help spot drug couriers" and "[t]estimony describing how [Williams's] conduct . . . fit the profile." *Id.* at 541.

The supreme court determined that the testimony of officers about how "in their experience most drug couriers behave a certain way" was "clearly and plainly inadmissible." *Id.* at 548. The supreme court observed that "evidence that a defendant has traits shared by those who in the past have acted as drug couriers seems akin to character

evidence." *Id.* at 547 (quotation omitted). The supreme court concluded that the prosecuting attorney committed misconduct "in eliciting the inadmissible evidence that [Williams] fit a drug courier profile used by the officers" and that this error, combined with others, deprived Williams of a fair trial. *Id.* at 549.

For reasons like those explained in *Williams*, the supreme court in *State v. Loebach* rejected expert evidence about "battering parent" syndrome offered during Loebach's trial for the third-degree murder of his baby. 310 N.W.2d 58, 59, 64 (Minn. 1981). At trial, an expert "was asked to state the characteristics of a 'battering parent.'" *Id.* at 62. Although the expert "did not testify that [Loebach] possessed any of these characteristics," the "obvious purpose" of other state witnesses' testimony "was to demonstrate that [Loebach] fit within the 'battering parent' profile." *Id.* at 63.

The supreme court applied plain-error review, determining that "the 'battering parent' evidence should not have been admitted." *Id.* at 64. The supreme court also determined that the error "was not prejudicial" because "there was overwhelming evidence of [Loebach's] guilt even without the 'battering parent' testimony," which was "only a small percentage of the evidence." *Id*. The supreme court stated that "in future cases the prosecution will not be permitted to introduce evidence of 'battering parent' syndrome" until "further evidence of the scientific accuracy and reliability of syndrome and profile diagnoses can be established." *Id.*

Here, the district court properly admitted the expert's testimony about the typical behaviors of a child-sexual-abuse victim and why a child may delay reporting abuse. The expert testified that, "in situations of child sexual abuse," manipulation is a process in

which an individual fosters "increased access and opportunity for abuse to occur" and "decreased likelihood that that [the child victim] will actually report or tell someone." As detailed above, the supreme court has recognized that "expert testimony on the typical behaviors of . . . child- and adolescent-victims of criminal sexual conduct" may be helpful as such behaviors are "outside the common understanding of most jurors." *Obeta*, 796 N.W.2d at 291. Thus, the expert's testimony provided helpful context for the jury's evaluation of daughter's demeanor and delayed reporting of the abuse.

The prosecuting attorney plainly erred, however, by eliciting testimony from the expert about how a typical abuser may manipulate other family members and select vulnerable children as victims. *See Dana*, 422 N.W.2d at 250 (stating that expert testimony relating to who abused the children was objectionable, unlike testimony about whether the children were abused). The expert testified that, as part of an abuser's manipulation process, the victim's siblings may "receive messages about what is happening." To be clear, the expert did not mention Pike or Pike's family by name or discuss the facts in this case. Other state witnesses testified, however, that after daughter reported that Pike abused her, daughter's siblings "were coached in being told not to believe" daughter and were "allowed to call her names" like "liar" and "whore." The prosecuting attorney's purpose, therefore, in eliciting expert testimony about a typical abuser's manipulation of siblings was to suggest that Pike fit the profile of a sexual abuser of children because he manipulated daughter's siblings. *See Williams*, 525 N.W.2d at 548; *Loebach*, 310 N.W.2d at 63. This aspect of the expert's testimony was inadmissible character evidence.

The expert also testified that "part of a manipulation process actually may be the identification and the selection" of a child victim. The expert stated that vulnerability influences an abuser's selection of "a particular child to be targeted" and that "some children have greater vulnerabilities . . . because of their life circumstances," including prior trauma. Three state witnesses testified that daughter suffered from PTSD before she was abused by Pike. And on cross-examination, the prosecuting attorney asked Pike whether he knew daughter had PTSD. Pike responded that he did not know "at first" but that he learned about her PTSD at "some point in 2019." Because the prosecuting attorney's purpose in eliciting the expert's testimony about the selection of vulnerable victims was to suggest that Pike fit the profile of an abuser based on his knowledge of daughter's preexisting PTSD, this testimony was inadmissible character evidence.

In sum, most of the evidence offered by the state's expert was properly admitted to help the jury understand daughter's behavior, demeanor, and delay in reporting. Pike has met his burden, however, to show that the prosecuting attorney plainly erred by eliciting expert testimony about a typical abuser's manipulation of siblings and selection of vulnerable victims.[6]

[6] We note that the state argues: "An expert on child sexual abuse cannot fully explain the counterintuitive behaviors of child sexual abuse victims without at least referring to the actions and statements of the abuser that are integral to the often-puzzling behaviors of child victims." This is a valid point. We do not imply by our ruling that no expert testimony may be offered regarding an abuser's conduct where the evidence is otherwise relevant to explain the victim's behavior.

B. Prejudice

Under the modified plain-error standard, the state has the burden to show that the prosecuting attorney's misconduct did not affect Pike's substantial rights. *Portillo*, 998 N.W.2d at 251. Prosecutorial misconduct affects a defendant's substantial rights "if there is a reasonable likelihood that the absence of misconduct would have had a significant effect on the jury's verdict." *State v. Davis*, 735 N.W.2d 674, 681-82 (Minn. 2007). To determine "whether there is a reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict," appellate courts consider (1) "the strength of the evidence against the defendant," (2) "the pervasiveness of the improper suggestions," and (3) "whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *Id.* at 682.

Pike argues that "the state cannot demonstrate that its introduction of [the] inadmissible evidence did not affect Pike's substantial rights" because this "is not a case where the evidence of guilt is overwhelming." Rather, Pike urges that this was "a close case in which credibility was the central issue" and that "the jury received improper evidence bearing on that issue that portrayed Pike as the type of person who would commit the charged crime." The state disagrees, arguing that the expert's testimony about manipulation was not prejudicial because it "constituted a small percentage of the evidence," the prosecuting attorney did not mention manipulation in his closing argument or rebuttal, and the "evidence against [Pike] was strong."

We analyze each of the three considerations detailed above. *See Davis*, 735 N.W.2d at 682. First, the evidence against Pike was strong. Although the victim's testimony in a

criminal-sexual-conduct case "need not be corroborated," Minn. Stat. § 609.347, subd. 1 (2022), daughter's testimony was corroborated. Daughter testified that in November or December 2019, Pike "used his fingers to penetrate [her] vagina." Her testimony was corroborated by her CornerHouse interview in May 2020, during which she stated that Pike had touched her "crotch" between November and December 2019. *See State v. Garrett*, 479 N.W.2d 745, 747 (Minn. App. 1992) (determining that a sexual-assault victim's testimony was corroborated by her consistent prior statements), *rev. denied* (Minn. Mar. 19, 1992).

Daughter's testimony was also corroborated by the testimony of other witnesses who described her changed demeanor and behavior following the alleged abuse. *See State v. Wright*, 679 N.W.2d 186, 190 (Minn. App. 2004) (stating that testimony about a victim's "demeanor, emotional condition, and change in behavior after the sexual assault . . . is strong corroborative evidence"), *rev. denied* (Minn. June 29, 2004). Daughter's therapist testified that daughter "got more depressed" and "started to backslide quite a bit." Cynthia testified that daughter harmed herself by cutting her arms at a friend's house. Daughter's second foster mother testified that after being removed from the Pikes' home, daughter at first barricaded her door at night and refused to be left alone with her second foster father or brother. Daughter's second foster mother also testified that, when daughter tried to tell her about the sexual-abuse incident, daughter vomited, could not look at her second foster mother, and was not able to "get through all of it."

Second, the expert evidence about manipulation was only a small part of the state's case. The expert's testimony about manipulation covered about six of the 60 pages of her

testimony. *See State v. Cao*, 788 N.W.2d 710, 718 (Minn. 2010) (concluding that prosecutorial misconduct was not prejudicial and noting that "the prosecutor's statement was not pervasive" where it "cover[ed] three lines of a 15-page closing argument); *Davis*, 735 N.W.2d at 682 (determining the prosecuting attorney's misconduct did not affect the defendant's substantial rights where "the prosecutor's improper suggestions were not pervasive, covering less than one of the 64 pages of the transcript"). And the expert was only one of the state's ten witnesses. *But see Obeta*, 796 N.W.2d at 289 (recognizing that "an expert with special knowledge has the potential to influence a jury unduly" (quotation omitted)).

In addition, the prosecuting attorney mentioned manipulation only briefly in closing argument. The prosecuting attorney stated that, after daughter disclosed Pike's sexual abuse to Cynthia, "instead of being supported, [daughter] was shunned by the family, including her own siblings because of the manipulation of that." The prosecutor's one-time mention of "manipulation" was vague, brief, and did not reference Pike. *See State v. Jackson*, 773 N.W.2d 111, 123 (Minn. 2009) (stating that the prosecuting attorney's improper statement in closing argument was "brief" and determining that "any potential [prosecutorial] misconduct was harmless beyond a reasonable doubt").

Third, after the expert's testimony, Pike had the opportunity to rebut any implication that he engaged in manipulation by cross-examining the expert and the fact witnesses who testified that daughter's PTSD predated the sexual abuse and that daughter's siblings shunned her after she reported the abuse. When cross-examining the expert, Pike's attorney referenced manipulation only once, asking, "Is [manipulation] always present in

allegations of sexual assault?" The expert responded, "No." Pike also chose to testify and call witnesses in his defense. And his attorney had the opportunity to respond to the prosecuting attorney's closing argument.

Thus, the state has met its burden to show that the prosecuting attorney's misconduct did not affect Pike's substantial rights. As a result, we decline to consider the final prong of the modified plain-error standard—whether the prosecuting attorney's misconduct should be addressed to ensure fairness and the integrity of the judicial proceedings. *See Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011) (stating that, if an appellate court determines "that any one of the [plain-error] requirements is not satisfied, [it] need not address any of the others").

II. The district court erred by entering convictions for both first- and second-degree criminal sexual conduct.

Pike argues that "the district court erred by entering convictions for first-degree criminal sexual conduct and the lesser-included offense of second-degree criminal sexual conduct." The state agrees that the district court erred by adjudicating Pike guilty of second-degree criminal sexual conduct.

The jury found Pike guilty of one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. At sentencing, the district court sentenced Pike to 172 months in prison for first-degree criminal sexual conduct. The

district court then stated that the jury's guilty verdict on second-degree criminal sexual conduct was "recorded and adjudicated" but that there would be "no sentence imposed."[7]

While the warrant of commitment indicates that Pike was sentenced only for one count of first-degree criminal sexual conduct, he was convicted of both first- and second-degree criminal sexual conduct. Under Minn. Stat. § 609.04, subd. 1 (2018), a defendant may not be convicted of both the crime charged and "an included offense." "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 section 609.04. *State v. Hackler*, 532 N.W.2d 559, 559 (Minn. 1995). The supreme court has stated that Minn. Stat. § 609.04, subd. 1, precludes a defendant from being "convicted of two counts of criminal sexual conduct (different sections of the statute or different subsections) on the basis of the same act or unitary course of conduct." *State v. Folley*, 438 N.W.2d 372, 373 (Minn. 1989). Whether an offense is a lesser included offense of a charged crime is legal question that appellate courts review de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

A defendant is guilty of first-degree criminal sexual conduct if they "engage[] in sexual penetration with another person, or in sexual contact with a person under 13 years

[7] The district court referred to Minn. Stat. § 609.035, subd. 1 (2018), which provides that, "if 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." This section "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). Pike does not contend that section 609.035 applies here.

of age" and "the complainant is under 13 years of age and the [defendant] is more than 36 months older than the complainant." Minn. Stat. § 609.342, subd. 1(a). A defendant is guilty of second-degree criminal sexual conduct if they "engage[] in sexual contact with another person" and "the complainant is under 13 years of age and the [defendant] is more than 36 months older than the complainant." Minn. Stat. § 609.343, subd. 1(a). Thus, second-degree criminal sexual conduct is a lesser included offense of first-degree criminal sexual conduct. *See State v. Kobow*, 466 N.W.2d 747, 751 (Minn. App. 1991) (stating that second-degree criminal sexual conduct is a lesser included offense of first-degree criminal sexual conduct), *rev. denied* (Minn. Apr. 18, 1991).

"[T]he procedure a district court should follow when a defendant is convicted of a charged offense and a lesser-included offense is to adjudicate formally and impose sentence on one count only." *Petersen v. State*, 937 N.W.2d 136, 140 (Minn. 2019) (quotation omitted). Thus, we reverse and remand to the district court to vacate Pike's conviction for second-degree criminal sexual conduct, leaving in place the jury's guilty verdict on this count.

Affirmed in part, reversed in part, and remanded.