A25-0420

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

Adam Taylor Fravel,

Appellant,

APPELLANT'S BRIEF

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE

MINNESOTA STATUTES

MINNESOTA DECISIONS

FOREIGN DECISIONS

OTHER

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PROCEDURAL HISTORY

March 31, 2023: Date of the charged offenses.

June 9, 2023: Respondent State of Minnesota filed a complaint in Winona County District Court charging Appellant Adam Fravel with one count of Second-Degree Intentional Murder under Minn. Stat. § 609.19, subd. 1, and one count of Second-Degree Unintentional Murder under Minn. Stat. § 609.19, subd. 2(1), for the death of MK.

Oct. 2, 2023: A Winona County grand jury indicted Appellant for the same two second-degree counts and two additional counts: First-Degree Murder under Minn. Stat. § 609.185(a)(6) (Past Pattern of Domestic Abuse) and First-Degree Murder under § 609.185(a)(1) (Premeditation).

June 12, 2024:	The district court, the Honorable Nancy L. Buytendorp, granted a motion by Appellant for a change of venue.
Sep. 3-4	The court held a pretrial evidentiary hearing on the admissibility of testimony offered by the state and objected to by Appellant.
Oct. 7, 2024:	Trial commenced in Blue Earth County, the Honorable Nancy L. Buytendorp presiding.
Nov. 7, 2024:	The jury returned a verdict of guilt on each count.
Dec. 17, 2024:	The court entered a conviction and sentence on Count 2, First-Degree Premeditated Murder.
Mar. 17, 2025:	Appellant filed notice of appeal from judgment of conviction.
June 12, 2025:	The district court completed the filing of all requested transcripts.
August 6, 2025:	The Supreme Court granted Appellant's motion for an extension of time to file a brief and ordered it filed on or before September 22.
Sep. 22, 2025:	Appellant filed a brief with the Supreme Court.

ISSUES PRESENTED

I. Trial included erroneous admission of 1) statements MK made to others about the "Gabby Petito" incident that were not more probative than other evidence, 2) expert evidence on "commonalities" in domestic abuse that lacked foundational reliability and was not helpful to the jury, and 3) medical examiner testimony constituting an expert inference on Fravel's intent to kill MK. Must Fravel be granted a new trial?

Ruling below: The court allowed the Gabby Petito and commonalities evidence after defense objection and extensive litigation. The defense did not object to the statement by the medical examiner.

Apposite authority:

State v. Dao Xiong, 829 N.W.2d 391 (Minn. 2013)
State v. Chambers, 507 N.W.2d 237 (Minn. 1993)
Minn. R. Evid. 807

II. The state committed prosecutorial misconduct by 1) eliciting inadmissible, un-noticed, and inflammatory character evidence about sexual abuse by domestic abusers 2) in closing argument, contradicting a ruling by the court and misleading jurors on proof beyond a reasonable doubt.

Ruling below: The district court was not asked to rule.

Apposite authority:

Glossip v. Oklahoma, 145 S. Ct. 612 (2025)
State v. Portillo, 998 N.W.2d 242, 248 (Minn. 2023)
State v. Jaros, 932 N.W.2d 466 (Minn. 2019)
State v. Harris, 521 N.W.2d 348 (Minn. 1994).
State v. Williams, 525 N.W.2d 538 (Minn. 1994)
State v. Morgan, 51 N.W.2d 61, 62 (1952)
State v. Vue, 606 N.W.2d 719 (Minn. App. 2000)
Minn. R. Crim. P 9.01

III. If no individual error requires a new trial, the cumulative effect of errors requires a new trial.

Ruling below: The district court was not asked to rule.

Apposite authority:

State v. Bustos, 861 N.W.2d 655, 661 (Minn. 2015)

IV. The circumstances proved allow a reasonable inference that MK's death was not intentional. Must this court vacate Appellant's conviction or finding of guilt for the premeditated murder, domestic-abuse murder, and intentional murder counts?

Ruling below: The district court was not asked to rule.

Apposite authority:

State v. Harris, 895 N.W.2d 592, 600 (Minn. 2017)

STATEMENT OF THE CASE

Respondent State of Minnesota indicted Appellant Adam Fravel for First-Degree Murder under Minn. Stat. § 609.185(a)(6) (Past Pattern of Domestic Abuse), First-Degree Murder under § 609.185(a)(1) (Premeditation), Second-Degree Intentional Murder under Minn. Stat. § 609.19 and Second-Degree Felony Murder under Minn. Stat. § 60.19, subd. 2(1). The charges were based on the Winona County death of MK. The district court, the Honorable Nancy L. Buytendorp, after a change of venue the case was tried in Blue Earth County. Appellant here challenges the sufficiency of the evidence for the top three counts.

Ahead of trial, the state filed notice of intent to offer prior statements of MK under Minnesota Rule of Evidence 807 and Minn. Stat. § 634.20. Appellant filed a motion objecting to reliance on Rule 807 for admission of decedent's hearsay statements. After a pretrial evidentiary hearing, the district court issued an order finding almost all of the relationship testimony admissible under Rule 807. Appellant here challenges admission of the hearsay statements about what came to be call the "Gabby Petito" incident.

The state sought to offer expert testimony on "commonalities" in domestic abuse. The witness testified at the pretrial hearing. Appellant filed a motion objecting to admission of the expert testimony. The district court found the testimony admissible. Appellant challenges admission of this testimony.

Appellant challenges numerous trial errors: plain-error admission of the medical examiner's expert opinion on the manner of death, and instances of plain-error prosecutorial misconduct involving inadmissible sexual abuse evidence and misleading the jury about the meaning of "beyond a reasonable doubt."

STATEMENT OF FACTS

On June 7th of 2023, Investigator Dan Dornink found the deceased body of MK partially crammed into a culvert under a gravel lane in rural Fillmore County. (T[1] 2723-24). There were logs and branches loosely piled on top of the body. (T 4598). The body had badly decomposed since MK had last been seen alive on March 31st. (T 2937). MK was dressed in leggings, panties, a t-shirt, bra, and socks, and had been wrapped in a sheet that matched ones from the home she shared with Appellant Adam Fravel. (T 2774, 2939).

The gravel lane where MK was found, designated as 198th Street, is a minimum maintenance road that connects highway 43 to two different tracts of private property. (T 2877) (T 2714). It extends about 300 feet from the highway, past the first property and then onto the beginning of the second, which is marked by a red gate. (T 2606, 2625-26, 3028, 2869-70). The culvert did not have a sign marking it. (T 2745). The distance between the culvert and the red gate was described at trial as being about half the distance between the prosecutor and the witness. (T 2745 3028). The top of the culvert was a foot or so below road level on the right side, where the body was found. (T 2866). That hillside running up from that side of the road is wooded and fairly steep. (T 2767).

Highway 43 is a southwesterly route from the city of Winona through Rushford to the Minnesota/Iowa border just south of the town of Mabel. (Exh. 1283). Fravel had grown up in Mabel and, as of March 31st, 2023, his parents still lived there. (Omn Exh. 1B[2], p 2).

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[1] "T" refers to the trial transcript, which is successively paginated. Volume 1 of the trial transcripts includes on pages iv through xiii provides a list of witnesses and the page numbers by trial volume.

[2] Omn. Exh. 1B is the transcript of a statement gave to law enforcement on April 2nd.

(T 2070). Fravel had been MK's significant other steadily, with some breaks, since their college days in Winona. (PT[3] 72). (T 4141). They met through a mutual friend, HS, when he was in his second year of college and she was in her first. (Omn. Exh 1B, pp 1-2). They had two children together, born in March of 2018 and December of 2020. (T 2039-40).

On the morning of Friday, March 31st, Fravel and MK had together dropped off the children at daycare. (T 2493). MK was scheduled to work at her job in Rochester that day but did not show. (Omn Exh. 1B, pp 3-4) That evening the plan was that Fravel was going to take the younger child to his parents' house and MK was going to take the older child to her mother's house. (T 3899). As the day passed, her mother became concerned because MK was not responding when she tried to reach her, which was very unusual. (T 3901).

Fravel went by himself that afternoon to get the kids from daycare. (T 2497). He picked them up and took them both to his parents' home. (*Id*). MK's activity tracker on her phone, which monitored steps and other activity, last tracked anything at 8:13 a.m. that day. (T 3542). (Exh. 1161). The call log showed no answered calls. (T 3556). (Exh. 1164). The last text sent, with the question "why am I si [sic] ugly," was sent to MK's sister at 8:14. (T 3563). (Exh. 1298).

That evening, police acted on concerned calls from MK's friends and family and went to the townhome. (T 2025) Officer Ethan Sense noticed some vomit on the ground in the backyard. (T 2044). Fravel was not present and there were no signs of a struggle inside. (T 2044-45).

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[3] "PT" refers to the successively paginated transcript of the two-day pretrial hearing held September 3 and 4, 2024.

Officer Sense was able to reach Fravel by phone at his parents' home. (Exh. 1001). Fravel said he last saw MK at the townhome at 10:00 a.m. before taking stuff to his parents' house and that she still was not there when he got back. (T 2037). He said he had reached out to one of MK's friends and to her sister, to no avail. (T 2038, 2041).

Officers spoke to Fravel again the next day at his parent's home. (T 2070). He gave an account of whereabouts in the late morning on the 31st, namely, that he drove toward his parent's house in Mabel to store some items but turned around and came back because he had brought the wrong items with him. (2087-88). Fravel had a second conversation with police the next day, during which police made it clear that they thought his account was not adding up and that they believed he knew something about or was responsible for whatever happened to MK. (T 2087, 2197, 2199 2202). Four days later, after obtaining a warrant, police collected a DNA swab from Fravel and took photos of small scratches on his face and neck and yellowing bruises on his arms and torso. (T 3764, 3766-67). (Exhs. 1173-79).

Throughout April, law enforcement scoured the region for surveillance video or doorbell-type cameras that might have captured Fravel's movements on March 31st. They found video that showed him changing license plates on the van before leaving the townhome heading out of Winona toward 43 south. (T 2398-99). Video captured his van at various points on the route, ending with video from a private residence north of 198th street, where they captured his van heading southbound and then northbound again on the way back to Winona. (T 2394-98). The video timing showed the van took 44 minutes for the round trip. (T 2701). An officer timed the drive from this last camera to 198th street

and back at 24 minutes, which left 18 minutes "unaccounted for". (T 2745 4577). Once the videos were reviewed and compiled officers went back to 198th street again, resulting in them finding MK's body on June 7th. (T 2723-24).

Two days after the body was found, the state charged Fravel by complaint with counts of intentional and unintentional second-degree murder. (Index 1, p 1). In October of 2023, a Winona County Grand Jury returned indictments for those two counts and for two counts of first-degree murder, based respectively on premeditation and on a past pattern of domestic abuse. (Index 25, pp 1-2). Defense counsel moved for a change of venue based on publicity and general awareness of the case in Winona County. (Index 71). The district court granted the venue motion and trial ultimately commenced October 7, 2024, in Blue Earth County. (Index 115). (T 1). Two days of testimony on the pretrial evidentiary issues, held September 3rd and 4th, were the last hearings held in Winona County.

Pretrial Issue: Hearsay Statements by MK Offered under Rule 807

In November of 2023, the state filed notice of its intent to rely on Minnesota Rule of Evidence 807 to offer at trial numerous out-of-court statements MK had made to friends and family members about her relationship with Fravel. (Index 40, pp 1-2). The state said the evidence would consist of MK's descriptions of instances of domestic violence, other abuse, the ongoing relationship, things Fravel said about what he would do if she ended the relationship, MK's intent to find separate housing, and MK's intent to end the relationship permanently. (Index 40 p 2). The defense's written response demanded that MK's hearsay statements should only be allowed, as set forth in Rule 807, if they showed

circumstantial guarantees of trustworthiness that are the equivalent to the rationales under exceptions in 803 and 804. (Index 134, p 1, ¶ 2). The defense also moved to exclude the statements under Rule 403 because the probative value was substantially outweighed by the danger of unfair prejudice, the potential to confuse issues or mislead the jury, or its cumulative nature. (*Id.* p 1-2, ¶ 3). The defense also argued that the evidence did not satisfy the pre-conditions for admissibility, stating that statement by MK to friends and family "are not all more probative than any other evidence." (Index 145, p 9). Counsel argued that "the State cannot be permitted to introduce hearsay just because that is the only evidence that the State has to prove the charges." (*Id.*, p 11).

At the pretrial evidentiary hearing, the earliest of the offered statements by MK was described by HS. (PT). The conversation occurred around August of 2018[4] when HS noticed discoloration on MK's neck. (PT 366). MK told her that "while being intimate" with Fravel things "got out of hand." (PT 367). HS joked with MK, saying she was not aware MK was "into that kind of stuff." (*Id.*) HS testified that MK laughed and characterized MK's response as "neither was she[5]." (*Id.*)

Three witnesses, HRS[6], LD, and MS, described incidents of physical assault, the first two of which occurred while the witnesses were talking with MK over Facetime and saw Fravel assault MK. The first, witnessed by HRS, was in December of 2020. (PT 262).

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[4] Specifically, she said it was about six months after the older child was born.
[5] This statement was not included in HS's account at trial and is an exception to the statement below that the trial testimony about the domestic relationship was generally consistent with pretrial testimony
[6] "HRS" is used for this witness to distinguish her from "HS." "HRS" includes an "R" to indicate her last name before she was married. (PT 254-55).

HRS heard Fravel complain about the messiness of the house and then saw him walk into the kitchen where MK was Facetiming and slap MK with the back of his hand. (PT 262-63). MK told HRS that this sort of thing did not happen often. (PT 265). The second Facetime incident was similar, witnessed in "2021 or 2022" by LD. (PT 298). The only difference was that Fravel shoved MK instead of slapping her. (PT 299) The third account was by MS, who testified that MK told her that Fravel pushed her into a wall, hurting her shoulder, adding that she said he had hurt her on previous occasions. (PT 338).

All ten[7] of the domestic-relationship witnesses described an incident from September 21st of 2021 that referenced Gabby Petito, the victim in a widely publicized news story who had been choked to death by her boyfriend. (T 4532). MK's statements about this incident, as reported by the witnesses, all contained the common elements that Fravel's hand was on her neck when he told her if she did not behave she would end up like Gabby Petito. MK's mother testified that MK said Fravel pushed her and "put [his] hands up to her neck". (PT 30). MK's father, MKH, testified that MK said Fravel "choked her." (PT 63) MK's stepmom testified that MK said Fravel "tried to strangle" her. (PT 96). KK testified that MK said "pushed her down and choked her." (PT 208). HRS testified that MK said Fravel "grabbed her by the throat, and pinned her to the couch." (PT 267). LD testified that MK said Fravel "grabbed her on the throat under the chin." (PT 302). MS testified that MK said Fravel "put a hand around her throat and pressed her back onto the couch." (PT 335). And HS testified that MK said Fravel put his "hand around

[7] The district court excluded SS's testimony about the incident.

her throat." (PT 364). Some witnesses were unsure when MK made these statements to them while others said MK told them the same day, the next morning, a day or two after, "pretty far after the fact," or something similar. (PT 43, 63, 130-31, 219). Her stepmom and sister said that the incident was something MK was or "might have been" embarrassed about. (PT 107, 116). SS, MK's other romantic interest at the time of her death, was the only witness who did not hear about the incident until early 2023 and testified that MK told him Fravel "placed his hands around her throat and threw her on the ground." (PT 207). Of these ten witnesses, eight of them were asked at the pretrial hearing about MK's general reputation for honesty and truthfulness and all provided positive responses. (PT 39, 78, 113, 135, 235, 275-76, 313, 371).

Pretrial evidence on the Gabby Petito incident also established that, the night it happened, MK had chastised Fravel in a heated exchange. (PT 180-186). By text, she told him she was "not really okay with the fact that you put your hand around my neck and pushed me down in front of the kids." (*Id.*) She told him she was "not okay with it all but especially with them there." (*Id.*) She said, "You do that again without asking me and you can go somewhere else." (*Id.*) To his responses, which were both dismissive and menacing, MK said he was patronizing her and told him that he had "crossed a line." (*Id.*)

Though not offered at the pretrial hearing, law enforcement investigation had also revealed other evidence about MK and Fravel's relationship, including references to the sexual conduct between MK and Fravel. In November of 2022, at around 2:00 in the afternoon, MK texted Fravel, "I want to have sex" followed by "But like a little rough but not like choking me." (T 3400-01). (Exh 1152). He replied "Ha ha, well get on home

then. (T 3402). (Exh. 1152). November of 2023 is also when MK's relationship with SS became sexually intimate. (T 4045). SS acknowledged at trial seeing the whole of MK's body during these encounters and never saw any bruising. (T 4043). In December, in a series of text exchanges, MK told Fravel she wanted to end their relationship. His response was to send her dozens and dozens of photos spanning their relationship and implying that she could have them because he was deleting them all. (T 4535). (Exh. 1295). Her responses to this said that he was making her feel like "a garbage person" who was "ruining everything for everyone." (*Id.*). In that same series of texts, she agreed to the two of them seeking therapy.

By late February things had changed somewhat. On February 25 of 2023, MK did an internet search on her phone using the phrase "coming clean about cheating.' (T 3622-23). (Exh. 2007). The next day MK texted MKH and said things between MK and Fravel were a lot better and that therapy had been really helpful. (T 3600-01). (Exh. 2005). MKH asked if MK thought they would get married at some point and MK said, "Probably, yeah." (T 3604-05). (Exh. 2005).

In a text exchange with Fravel two days later, MK and Fravel were both at home and she invited him to "come [upstairs] whenever if you are interested" in having sex. (T 3607). (Exh. 2033). At different times that day MK's phone showed searches on pornography websites, including a "porn for women" site, with search terms that included "manhandle me" and "rough sex." (T3615-20) (Exh 2006).

By late March, MK was once again expressing "indecisiveness" in a text to KK. (T 3626). (Exh 2009). She also texted her sister that "being in the house with [Fravel] is not

fun for me" but adding, "Not that he is mean or anything, it's just awkward." (T 3631). (Exh. 2009).

The district court issued its ruling on the admissibility of the pretrial relationship-evidence five days before trial began. (Index 161). The court found that the witnesses' testimony about MK's statements was credible. (*Id.* p 8). The court also found that MK, in making these statements to family and friends, had no motive to fabricate. (*Id.*). Based on these and other factors the court found that the statements had circumstantial guarantees of trustworthiness. (*Id.*). The court found that the evidence was material to "determining elements such as premeditation, motive, and the pattern of domestic abuse." (*Id.*). The court noted that Fravel admitted to the conduct constituting the Gabby Petito incident and that there were "a couple of text messages referencing it." (*Id.*, p 9). The court found MK's statements to family and friends "crucial in illustrating a pattern of domestic abuse and premeditation, which outweighs any other reasonably available evidence." (*Id.*).

The trial testimony of these witnesses was generally consistent with their pretrial testimony. When instances of physical abuse were offered the court provided a cautionary instruction close in time to when the evidence was introduced. It read:

> "Ladies and gentlemen of the jury, you are about to hear evidence of conduct of the defendant on one or more separate occasions. The evidence is being offered for the limited purpose of demonstrating whether a past pattern of domestic abuse exists in this case and or the nature and extent of the relationship between the defendant and [MK] in order to assist you in whether the defendant committed those acts with which the defendant is charged in the indictment. This evidence is not to be used to prove the character of the defendant or that the defendant acted in conformity."

(T 2392-93). The instruction was read for all relevant instances of domestic-relationship testimony. [8]

Pretrial Issue: Testimony on Commonalities of Domestic Abuse Victims

At the pretrial hearing on domestic-relationship evidence, the state also called as a witness its proposed domestic-abuse expert, Melissa Scaia. (PT 380). The record does not reflect that the state had previously given notice of its intent to call her as an expert witness at trial. The state's first witness list for trial was not filed until September 23, and it included Scaia. (Index 155, p 4).

At the hearing the state offered Scaia's curriculum vitae as an exhibit. (PT Exh 4) (PT 386). She testified she works as a group facilitator for victims of domestic violence, coordinates with government entities on responses to domestic violence, and is on an international roster of experts in domestic violence. (PT 380-83). She estimated that in her twenty-five years of work with victims and intervention programs, she had direct contact with over 2000 victims. (*Id.* 384, 389). She has no specific licensure but performed duties that did not require it. (*Id.* 384-85) When asked how she keeps up to date on literature in this area, she said, "I rely on my own specialized knowledge from my own experience primarily," adding later that she "I have most certainly not read everything and not up to date with everything." (*Id.* 389, 406).

[8] The citation to transcript pages 2392-93 refers to when the instruction was read before offering the text conversation between MK and Fravel about the Gabby Petito incident, exhibit 1148. The citation is used only to provide the text of the instruction and not to imply that it was read only once.

Scaia's testimony about the so-called commonalities of domestic-abuse relationships showed almost no commonality at all. The duration of a relationship could explain whether or to whom women report domestic violence but "is not a primary factor" like having children in common, living together, being married, or sharing fiscal responsibilities. (*Id.* 391). They report it to police as a "last resort" because they have been threatened by the abuser not to do so. (*Id.* 392-93). Shame and blame are reasons they might not tell "everything" to friends and family. (*Id.* 394) It is not common for victims to tell a lot of friends or family members. (*Id.* 397). Victims who want to stay in a relationship are more likely to tell friends and family. (*Id.* 398) They are "generally but not always" more forthcoming if they are confident in the relationship. (*Id.* 399) Having children with the abuser is "a really big consideration." (*Id.* 401). Recanting a report is so common that it was added to training curriculum. (*Id.* 402). There are "commonalities" and there are differences with each case. (*Id.* 406). As for a victim remaining in a relationship, the "strongest" factor cannot be identified but there are "five to ten…you know, really strong things or strong common ones that we hear." (418-419). The victim might stay in the relationship if all the strong factors are present or if none of them are. (419).

The defense argued that Scaia's testimony was not relevant and not helpful to the trier of fact and that the prejudicial effect of this testimony is substantially outweighed by its probative value. (Index 147, p 2). Counsel provided examples to argue that there is no predictability provided by her opinions about traits in domestic abuse relationships. (*Id.*). Counsel argued there was no science or methodology as compared to, for example, accident

reconstruction to determine how fast a car was going. (*Id.*). Counsel likened her testimony to "telling a jury that 3 + x could be six, but it also might not be." (*Id.*). The state's response argued that courts "consistently admit expert testimony regarding battered women's syndrome and/or counterintuitive behavior." (Index 165, p 4). The response also argued that the expert testimony would assist the jury in determining "the trustworthiness of [MK's] statements" about past abuse. (*Id.*, p 4).

The district court's order on admissibility allowed the testimony. (Index 178, p 4). The court found that the state intended to call Scaia to testify about "battered women's syndrome." (*Id.* p 1). The court noted that despite the alleged abuse MK "continued her relationship with the defendant, did not report incidents of domestic abuse to law enforcement, blamed herself, or minimized and justified the injuries resulting from [Fravel's] abusive actions." (*Id.* p 2) Scaia's testimony at the pretrial hearing was on the topic of "generalizations about domestic violence relationships and the traits of parties to a relationship" that may make it difficult to leave. (*Id.* 2). Because the trial included testimony that MK did not leave Fravel despite others' requests, Scaia's testimony would be "relevant and helpful" to the jury. (*Id.* p 2). The court also thought that expert Testimony is admissible if it helps the jury understand behaviors that might otherwise "undermine the victim's credibility." (*Id.* p 3). The court thought Scaia was reliable based on her years of experience and the relevant clinical and research literature she has read and managed. (*Id.*, p 3). The court's order also stated that "The testimony shall be limited to the nature of domestic violence and battered women's syndrome and its general effect." (*Id.* 4).

At trial, Scaia's testimony was consistent with the above, with one significant exception. While asking Scaia about the idea that victims minimize or normalize abusive behavior, the prosecutor asked if that includes "normalizing violence in the sexual relationship." (T 4207). Scaia said "yes," and the prosecutor asked her to "tell the jury" more about that. Scaia replied by describing a "relationship of dominance" in which:

> "[W]hat often happens then is victims are…scared to speak up. So, when their partner wants them to do things that they don't want to do, victims have said …I wasn't going to say no. Or, you know, the abuser said they would do something to me, you know, and that I had to agree to this… [a] lot of victims…don't even want to talk about this…[T]he thing that is important to understand is that in relationships of domestic violence, it does not go from, you know, a relationship of dominance, you know, outside the bedroom and then in the bedroom, all of a sudden it's a relationship of equality."

(T 4207-08). The prosecutor continued by asking, "Do you ever see the victims requesting violence in their sexual relationship or certain acts?" (T 4209). Scaia said, "I can't think of a victim off hand who has ever told me that." (*Id.*) She continued, "some victims have told me that "their partners have asked them to reenact pornographic acts…[for example] where the victim is expected, you know, to, you know, ask, you know, like, hey, hit me, you know, wherever sort of thing." (T 4209-10).

This testimony was not part of the state's proffered evidence during the pretrial hearing on which the district court ruled. The record does not reflect that the prosecutor otherwise gave notice to defense counsel of this additional testimony. To the contrary, the prosecutor had said the opposite on the sixth day of trial testimony, when the defense offered exhibits showing internet searches on MK's phone about choking and "rough sex."

The state argued against admissibility and said that based on the pretrial relationship testimony, "[T]he Court is very well aware [that] the State in no way intends to offer into evidence that…any of the abuse that was suffered was sexual in nature." (T 3280).

After trial in the final instruction on the Scaia's testimony did not address "battered women's syndrome or counterintuitive behaviors, but instead only referred to "commonalities of individuals that have suffered domestic abuse." (Index 181 p 6). The instruction stated that the "State offered evidence" on these commonalities "for the limited purpose of describing these commonalities." (*Id.*) It stated, "The admission of this testimony does not mean that [MK] suffered domestic abuse or that commonalities of domestic abuse even exist. Those are fact questions for the jury to decide."

Expert Testimony by the Medical Examiner

At trial, the state called the assistant medical examiner who reviewed the case and performed the autopsy on MK. (T 2929). Besides being a medical doctor, his experience included a residency and a two-year fellowship in forensic pathology. (*Id.*) Forensic pathology "deals specifically with changes in body fluids or body tissues from disease or injury" related to "sudden, unexpected and violent death." (T 2930). The duties of a medical examiner are "to determine the cause of death [and] give an opinion as to the manner of death." (T 2934-35). These two findings are based on "any and all of the information possible…including the 'circumstances of the death' and 'the information received from law enforcement.' (T 2896). Manner of death deals with "whether the death is due to natural causes, an accident, suicide, or a homicide." (T 2935). An autopsy entails

looking for evidence of disease or injury by looking inside and outside of the body, which includes dissecting vital organs. (*Id.*).

The body of MK was "badly decomposed" by the time of the autopsy. (T 2937). MK's face was covered with a towel wrapped around her head, tightly tied with a slip knot and covering her nose and mouth. (T 2960, 3003). There was no information establishing whether it was put there before or after death, but if it was put there before "it could have obstructed her breathing." (T 2061). There was no evidence of any physical injury on the outside of the body and, because of tissue loss, there was no way to tell if there had been marks, bruising, or other injury. (T 2965, 2968-70). No internal bleeding or internal injury could be seen for the same reasons. (T 2971). No determination could be made with respect to any significant natural disease. (T 2974).

The medical examiner offered the opinion that the cause of death was "likely asphyxia." (T 2989). He repeated the four categories for manner of death—natural causes, accident, suicide, or homicide—and said his opinion was a medical determination not a legal one. (T 2986). He defined "homicide" as "death at the hands of another person." (T 2987). He repeated the four categories again, this time adding "undetermined." (*Id.*) He then stated that the manner[9] of death was "homicidal violence" based on the "circumstances of the death, the finding of the body, and appearance of the body." (T 2988). He said he did not know "whether it was a form of asphyxia or what the mechanism was." (*Id.*)

[9] The transcript here indicates that the prosecutor asked, and the witness responded, using the words "cause of death" not "manner of death." The context is clear that they meant "manner" of death.

Closing Argument at Trial

The prosecutor in closing argument addressed the meaning of "beyond a reasonable doubt" and noted that the court would instruct jurors to approach their decision "as you do the [with] some of the most important affairs of your life." (T 4521) He said, "if you have doubt, it is based on reason and common sense [and] does not mean beyond all possibility of doubt." (*Id.*) He gave some examples and described corresponding doubts people might have. (T 4522). He then said that "even though we have lingering doubts, we move forward with the decision, because based on the information we have at the time, we have confidence it is the right decision." (*Id.*)

Defense counsel told jurors that when considering every element of the charged offenses, "all reasonable doubts have to be vanquished from your mind." (T 4606). The prosecutor objected and claimed this was a "misstatement of the law" and the district court overruled the objection. (*Id.*)

The prosecutor began his rebuttal argument by returning to defense counsel's statement that to return a verdict jurors "have to vanquish all reason of doubt [sic[10]]". (T 4613). He said, "that's not the instruction you're going to hear from the Judge." (*Id.*) He reminded jurors of something "important" he had said at the beginning of his closing, namely, "that we ask you to listen closely to the instruction." (*Id.*) He told jurors the judge would tell them that "beyond a reasonable doubt does not mean beyond all possibility of doubt [and] that if you have doubt, you have some reason and common sense to support

[10] This may simply be an error in transcription, as the prosecutor likely said "reasonable" doubt. It is not an important difference either way.

that doubt." (*Id.*) The court's final instruction was the standard instruction, titled "Proof Beyond a reasonable doubt. (Index 181, p 2). It reads, "A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt." (*Id.*)

The prosecutor also recounted the "common characteristics" of domestic abuse victims from Scaia's testimony. (T 4621) He referred to Scaia soon thereafter while talking about the evidence of MK's sex life. He told jurors to "recall the testimony of Melissa Scaia how sometimes acting out pornographic sexual activities is not that uncommon." (T 4622).

Verdict

The jury returned a verdict of guilty on all four counts and the court made a finding that Fravel "is in fact guilty of each of these four offenses. (T 4668) At sentencing the court imposed lifetime imprisonment for the premeditation count and vacated the remaining charges as lesser included offenses. (Index 229).

Fravel now appeals.

ARGUMENT

I. Evidentiary errors in admitting past-pattern evidence under Rule 807, expert testimony on commonalities in domestic abuse, and an expert's opinion on the manner of death require a new trial.

A. Standard of review

When evidence is objected to in district court, the court's ruling on its admissibility is reviewed for abuse of discretion. *State v. Glover*, 4 N.W.3d 124, 134 (Minn. 2024). A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record. *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020). Wrongly admitted evidence requires a new trial unless there is no reasonable possibility that the evidence significantly affected the verdict. *State v. Robinson*, 718 N.W.2d 400, 407 (Minn. 2006). Even if individual errors are not alone sufficient to warrant a new trial, the errors might require that result when their effect is considered cumulatively. *State v. Keeton*, 589 N.W.2d 85, 91 (Minn.1998).

Failure to object to the admission of evidence generally constitutes a waiver of the right to appeal on that basis. *State v. Tscheu*, 758 N.W.2d 849, 863 (Minn. 2008). The Court will nonetheless consider an unobjected-to admission of evidence if three conditions are met: 1) there was error, 2) the error was plain, and 3) the error affected the defendant's substantial rights. *Id.* An error is "plain" when it is clear or obvious. *State v. Strommen*, 648 NW.2d 681, 688 (Minn. 2002). Plain error affects substantial rights when "there is a reasonable likelihood that the error had a significant effect on the jury's verdict." *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010). If all three conditions are satisfied, the court determines whether the error is such that the court should address it "to ensure fairness and

the integrity of the judicial proceedings." *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

B. The district court abused its discretion by admitting MK's hearsay statements to others about the Gabby Petito incident because they were not more probative than other evidence on the point they were offered to prove.

Hearsay is an out-of-court statement offered for the truth of the matter asserted. Minn. R. Evid. 801(c). Hearsay is generally not admissible. Minn. R. Evid. 802. The Rules provide for numerous established exceptions to the bar against hearsay based on admissibility under Rules 803 and 804. *Id.* Hearsay statements that do not fall under an exception in Rules 803 or 804 might nonetheless be admissible under Rule 807, the "residual exception." Minn. R. Evid. 807.

The preliminary criteria for admissibility under Rule 807 are that (1) the statement is offered as evidence of a material fact, (2) the statement is more probative on the point for which it is offered than any other evidence to be had through reasonable efforts, and (3) the general purpose behind the Minnesota Rules of Evidence and the interests of justice are served by the admission of the statement into evidence. Minn. R. Evid. 807.

If these three criteria are met, the court must further determine that the offered statement has "circumstantial guarantees of trustworthiness" equivalent to the delineated exceptions in the other rules. Minn. R. Evid. 807. In assessing trustworthiness, courts "balance the totality of the circumstances surrounding the statement at the time it was made," which requires considering all factors that are relevant. *State v. Vangrevenhof*, 941

N.W.2d 730, 737 (Minn. 2020); *see also Robinson*, 718 N.W.2d at 408 (noting that state had relied on too narrow an understanding of cases discussing only a few factors).

The district court erred by admitting evidence of the statements MK allegedly made to family and friends about the Gabby Petito incident. The statements were not admissible under Rule 807 because they do not satisfy the requirement that they are more probative on the point for which they are offered than any other available evidence.

1. *MK's statements to others about the Gabby Petition incident were not more probative than other evidence, which included her own statements about the incident.*

The state sought to offer evidence of an incident MK described to friends and family an incident where Fravel put his hands on her throat and threatened that if she did not behave she would end up like Gabby Petito. The state's theory was that Fravel's "regular way of acting" impliedly included, among other things, assaulting MK by choking her. This act, if indicative of domestic assault, strongly suggests that later instances in which MK was seen with bruises or marks on her neck were repeated assaults that involved choking her. MK made statements to Fravel at the time of the incident demonstrating that agreed-to choking was part of their intimate activity. The question is whether the statements to others about the incident, which left this detail out, are more probative of choking behavior in the relationship than "any other evidence." They are not.

The primary reason MK's statements to friends and family about the incident were not the most probative evidence of the incident is that in her statements to friends and family MK intentionally omitted, for reasons important to MK, critical context. MK's own statements made to Fravel immediately after, particularly in light of her conversation three

years earlier with HS, tell the whole story. MK asserted herself in her text to Fravel, rebuking him for two reasons: that he choked her without her agreement and that he did so when the children were present. These statements, along with other evidence, show that choking in their relationship was reserved for consensual, intimate moments only. Although MK mentioned the children's presence in some of the statements to others, none of them included the presence of agreed-upon choking in her intimate relations with Fravel. Her statements to others about the incident evince her understandable desire to keep her sex life private. The statements to them were not more probative on the point for which they were offered: the true nature of this kind of conduct in their relationship. This alone is sufficient to conclude that admission of the testimony was an abuse of discretion.

There are other reasons. First, the court order found that *each one* of the nine admitted statements about the incident to others was "more probative" than any other available evidence. But each statement, in relation to any other statement, is "other available evidence." It defies logic, and is therefore an abuse of discretion, to hold that all ten of them were more probative than any one of the others. Second, the court ignored the other facts in the record. The court's order did not even discuss, let alone compare, the probative value of any witnesses' statement about the incident to that of statements MK made to Fravel. The court did not mention that Fravel admitted to the incident himself. The court's order only noted this other evidence as "a couple of text messages referencing it." More generally, the offered domestic-relationship evidence included a wealth of evidence, including MK's statements to others, about a variety of abuse. MK only directly mentioned choking for sexual arousal to HS, in 2018, and to Fravel immediately after the

Gabby Petito incident. It is helpful to present a full picture of any given circumstance that modern technology provides a lot of evidence by way of text messages and other electronic communication. Instead of being given less relevance, this evidence at minimum has the distinct advantage that there can be no dispute, assuming proper foundation, about what exactly was said.

2. *The inadmissible evidence significantly affected the verdict.*

Asphyxiation was not the only type of domestic conduct at issue in the case. It should not have been the most important contribution to "past pattern" evidence that included demonstrably assaultive behavior in other instances. But the state here needed to foreground the asphyxiation in their sexual behavior because that was the conduct presumed to be the cause of MK's death. Portraying "choking" as necessarily violent, un-consented to, and assaultive was necessary to the state's theory. And choking, thus characterized, pervaded every aspect of the case.

The record here honestly understood shows that MK and Fravel to some extent engaged in the practice of "achieving sexual arousal related to restriction of breathing," defined in the Diagnostic and Statistical Manual as "asphyxiophilia." Am. Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders (6th ed. Release pending[11]). Asphyxiophilia is a sexual paraphilia in the new DSM, a subcategory of Sexual Masochism disorder. *Id.* The disorder is present when the behavior causes "clinically significant distress or impairment in social, occupational, or other important areas of functioning." *Id.*

[11] DSM 6 has not yet been formally published. Appellant cites to it here in any event because the cited text represents a change as compared to DSM 5.

The disorder is defined as being in "full remission" when there "has been no distress or impairment in social, occupational, or other areas of functioning for at least 5 years."

Five days before her death, MK confided in a text to KK that she had "let [herself] do something I never ever thought I would" and had "hid things." (T 2009). She acknowledged that she had things to "work on" and that her relationship with Fravel "isn't right right now." But she had maintained friendships, family relationships, and gainful, skilled employment for the entirety of her relationship with Fravel, despite it all. She had confronted Fravel sternly when he "crossed a line." Late in the relationship she told him when she didn't want choking to be a part of their rough sex and went to therapy with him. They adapted and they were contemplating marriage months later. In short, her sex life was not disordered.

Nonetheless, she understandably kept the presence of consensual choking behavior hidden from almost all her friends and family, and did so in her statements about the Gabby Petitio incident to them. People are generally fairly private about their sex lives and those whose practices might be deemed particularly shameful or deviant are even more likely to keep those practices "in the closet" as many homosexuals did for decades. These other statements should not have been admitted and others' voluminous testimony about the Gabby Petito incident constituted a majority of the "past pattern" evidence on the whole. It tainted everything else that the jurors heard about. It unfairly tapped into mass hysteria about a case that had very little to say, beyond the incident itself, about her relationship with Fravel. The mass hysteria in this case included the evidence presented by the defense to obtain a change in venue. The others' statements did nothing except foreground the

incorrect and unhelpful notions of shame, innuendo, and lack of consent. It minimized the understandable secrecy one expects in one's intimate life. It prejudiced Fravel's case.

The conduct being addressed in the Gabby Petito incident, fairly presented and understood exclusively though her own words, would have created a reasonable likelihood that the verdict here would have been different.

C. Expert Testimony on Commonalities in Domestic Abuse

A person may testify as an expert based on knowledge, skill, experience, training, or education if it will help the jury "to understand the evidence or to determine a fact in issue." Minn. R. Evid 702. The expert's opinion must have foundational reliability. *Id.*. "The required foundation will vary depending on the context of the opinion, but must lead to an opinion that will assist the trier of fact." *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 166 (Minn. 2012). "At a minimum, foundational reliability must require that the theory forming the basis for the expert's opinion…is reliable." *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 166 (Minn. 2012). More generally, expert testimony is not helpful to the jury if it "will not add precision or depth to the jury's ability to reach conclusions." *State v. Garland*, 942 N.W.2d 732, 746 (Minn. 2020).

Evidence about common behaviors of sexual-assault victims may be admissible when they are "contrary to society's expectations of how a person who was sexually assaulted would behave." *State v. Obeta*, 796 N.W2d 282, 290 (Minn. 2011). Citing battered woman's syndrome as an example, the Court in *Obeta* stated expert testimony can help the jury understand counterintuitive behaviors that "might otherwise be interpreted as a lack of credibility." *Id.* at 291 (discussing *State v. Grecinger*, 569 N.W.2d 189 (Minn.

1997)). The Court in *Obeta* discussed other contexts in which such testimony has been allowed, including abuse and sexual assaults involving children. *Id.* at 292. In addressing expert testimony about counterintutive behaviors of rape victims, the court stated these "are not counseling tools used in the recovery or healing process. Instead, they involve behaviors and beliefs that social scientists have observed." *Id.* 290 (Minn. 2011) (citing published research).

1. *Melissa Scaia's Testimony Lacked Foundational Reliability.*

Scaia's testimony is not reliable for many reasons. Her education and research do not make her testimony reliable. First, she does not have a degree in sociology, social work, or psychology and holds no licensure that would require ongoing education. (PT Exh. 4, p 1). She is not a scientist or social scientist. She is not a researcher on the topic she testified about; she has not contributed as a writer or editor to any published research that addresses domestic abuse "commonalities." *Id.* p 2-3. She did not identify any social science research on "commonalities" among domestic abuse victims. She has published papers on how to be an expert witness. *Id.* p 2. She acknowledged she is not "up to date" where research is concerned. Second, her work experience, though laudable, does not make her testimony here reliable. She is an advocate and an administrator of responses to domestic violence. She is surely competent in both respects. But in this case she only spoke in vague generalities. She is not objective and not scientific. There is no "method." Her "maybe, maybe-not" explication of "commonalities" utterly lacked "precision or depth" with respect to any question at issue in this case. She did not even define the terms the prosecutor provided her with. She did not say what "commonalities" means. She did

not attempt to articulate what the word "common" means with any level of specificity. It could be twenty per cent of the time or ninety per cent. Typically, she says it just "depends" on the circumstances. That is useful in her work but useless for a jury. Lastly, the lack of any predictability or usable application to given facts makes her testimony unreliable. She could not narrow down predicable results with respect to any particular commonality or number of commonalities other than to say there are five to ten that were "strong" factors. And even that does not matter, according to her own words. She acknowledged no predictability at all even if all the "strong factors" are present. In short, her testimony wasn't helpful because she couldn't explain what was and wasn't relevant and could not articulate anything akin to what social science research in other cases has shown.

The vagueness of her testimony was evident in the fact that the state could not even nail down what they were offering it for. Indeed, the state did not file any formal notice ahead of her testifying at the pretrial or being added to the witness list. The topic started as "battered women's syndrome," morphed to "counterintuitive behaviors," and ended up with the meaningless designation of "commonalities." That is what the court instructed the jury about at trial. And even if the state had settled on "counterintuitive behaviors," the pretrial hearing did not establish that concept is applicable here and it was not mentioned in any aspect of trial. That is, for its proffer at the pretrial hearing, the state did not claim that the testimony would bolster MK's credibility in light of any supposed "counterintuitive behaviors" MK might have engaged in. The state was not claiming that MK's behaviors had a tendency to undermine the credibility of here accounts to others. Instead, the state argued and the court agreed that MK's statements had "circumstantial

guarantees of trustworthiness." The state, and the district court, cannot have it both ways. The court cannot make a finding that the state's evidence of MK's statements has circumstantial guarantees of trustworthiness and then admit Scaia's testimony because it would help bolster MK's credibility in light of "counterintuitive behaviors." These conclusions were made on the pretrial record, where admissibility at trial was to be determined, contradict each other and cannot both be true on the same record. It was an abuse of discretion.

Scaia's testimony at the pretrial hearing did not offer anything whatsoever that would be helpful to a jury because it was not reliable. The court's order allowing her testimony is against the logic and facts in the record and was an abuse of discretion.

2. *The inadmissible evidence significantly affected the verdict.*

When domestic-abuse evidence is offered to explain why a battered woman might assault her abuser or why testimony of the abused should be believed despite other conduct or lack thereof, it serves an important purpose. But where there is no method or reliability in the vague testimony concerning abuse by an abuser of an abused person, the fact of the matter is that jurors, who are tasked with using reason and common sense, fill in the gaps. This is not cured by the fact that Scaia did not know the facts about the case. The prosecutor did and fed her mostly leading questions aligned with the abuse being testified to in this case. The jurors were asked to find whether "commonalities" exist. They used their common sense to fill in the rest. Scaia's unwarranted imprimatur on what looks and sounds like character evidence surely created a reasonable possibility of affecting the verdict. Fravel must be granted a new trial.

D. Expert testimony on manner of death

As above, a person may testify as an expert based on knowledge, skill, experience, training, or education if it will help the jury "to understand the evidence or to determine a fact in issue." An expert's opinion or inference that is otherwise admissible "is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." Minn. R. Evid. 704. An expert is not qualified to testify as to a conclusion if he does not "have any knowledge superior to that of the jury" on that conclusion. *State v. Dao Xiong*, 829 N.W.2d 391, 396 (Minn. 2013); *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (stating that expert testimony is inadmissible if "the jury is in as good a position to reach a decision as the expert"). Application of Rule 704 requires distinguishing between a question of fact on one hand and "an opinion involving a legal analysis or mixed questions of law and fact" on the other. *Dao Xiong*, 829 N.W.2d at 396 (Minn. 2013). Mens rea is a mixed question of law and fact. *State v. Chambers*, 507 N.W.2d 237, 239 (Minn. 1993). For example, a medical examiner might testify to the condition of a body because they are qualified by training and experience to do so, but it is error to allow a medical examiner to offer an "expert inference" that a killing was intentional. *Chambers*, 507 N.W.2d at 239 (relying on *State v. Provost*, 490 N.W.2d 93 (Minn. 1992)).

1. *The medical examiner's expert inference of intent was plain error that requires a new trial.*

Here, when offering his expert opinion on the manner of death, Zumwalt did not state his opinion in terms of the available options. He cited the options as natural causes, accident, homicide, or suicide. He correctly defined "homicide" simply as death at the

hands of another. This definition is very limited and merely makes the distinction between homicide and suicide. It does not purport to express a conclusion or inference about intent and the Court in *Chambers* was clear that a medical examiner is not permitted to do so.

After repeating the available options, Zumwalt testified that the manner of death here was not merely homicide, but "homicidal violence." The common usage of "violence" is "[b]ehavior or treatment in which physical force is exerted *for the purpose of causing damage or injury*." American Heritage Dictionary of the English Language 1934 (4th ed. 2006) (emphasis added). *See also State v. Dao Xiong*, 829 N.W.2d 391, 397 (Minn. 2013) (relying on "common usage" from a dictionary to decide how jurors would understand the term "homicide" as a "manner of death"). The jury would have understood here that the common usage of "violence" denotes a purpose to cause injury. One of the definitions of "intentionally" that was provided to jurors was that "the defendant had a purpose to do the thing or cause the result specified." Index 181 p 8. Zumwalt, by stating the manner of death was "homicidal violence" offered an expert opinion that the person who caused MK's death did so with a purpose to cause damage or injury. Death is "damage or injury."

The jury would have understand Zumwalt's opinion as an expert inference that Fravel exerted physical force for the purpose of causing death. There is no other way to understand Zumwalt's testimony under *Chambers* and the "common usage" principal in *Dao Xiong*. It was therefore error and the error was plain.

2. *The inadmissible evidence significantly affected the verdict.*

This affected Fravel's substantial rights. In *Chambers*, the Court found that the erroneous expert inference on intent was harmless because, "given the number and nature

of the wounds, the jury readily could have found that whoever inflicted the wounds did so with an intent to kill." *Chambers*, 507 N.W.2d at 238. The evidence in this case, as noted elsewhere, established that no discernable injuries were observed and that the mechanism of death could not be determined by the expert. There is a reasonable likelihood that the error had a significant effect on the jury's verdict, affecting Fravel's substantial rights.

3. *This Court should correct the error to preserve the fairness, integrity, and reputation of judicial proceedings.*

Medical examiners testify in myriad criminal cases involving death. Their training, profession, and public duty on the behalf of criminal courts brings with it a lot of persuasive power and a commensurate duty to remain objective and avoid any suggestion they are unfairly tipping the scales. The medical examiner here plainly went beyond his own stated parameters to offer an inadmissible opinion helpful to one party and prejudicial to the other. This impugns the fairness, integrity, and public reputation of judicial proceedings and the court must correct the error.

Fravel must be granted a new trial.

II. The prosecutor committed reversible plain error by offering expert testimony asserting Fravel was a sexual abuser and by misleading jurors about the "proof beyond a reasonable doubt" standard.

The elements of the charge required the prosecutor to prove Fravel was a domestic abuser. The prosecutor elicited testimony from Melissa Scaia that the abusers also commit sexual abuse and force the abused to perform pornographic acts. In closing argument, the prosecutor misled jurors about the beyond-a-reasonable-doubt standard of proof. The prosecutor committed plain-error misconduct that requires a new trial.

A. Standard of review

When the defense does not object to alleged trial misconduct by the prosecutor, the court on appeal applies a modified plain-error analysis. *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). The defense carries the initial burden to demonstrate that the misconduct constituted (1) error, (2) that was plain. *Id.* If the defense establishes error that was plain, the state bears the burden of demonstrating that the error did not affect the defendant's substantial rights. *Id.* To assess the effect on defendant's rights, the court considers "the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007). If the state fails to meet its burden, then the court assesses whether it should address the error to ensure the fairness, integrity, and public reputation of judicial proceedings. *Pulczinski v. State*, 972 N.W.2d 347, 356 (Minn. 2022). This analysis does not focus on whether the alleged error resulted in harm to the outcome for the particular defendant, but instead whether the misconduct would have wider ramifications affecting the public's trust in the judicial system. *Id.*

B. Prosecutorial error in the presentation of evidence and in closing argument requires a new trial.

1. *The prosecutor elicited expert domestic-abuse testimony that was not proffered, not ruled on by the district court, not supported by the record, inadmissible, and inflammatory. The defense objected to the expert testimony proffered by the state.*

As noted above, a person may testify as an expert based on knowledge, skill, experience, training, or education if it will help the jury "to understand the evidence or to determine a fact in issue." Minn. R. Evid 702. When a potential expert witness "created no results or reports in connection with the case" he or she is required to provide the prosecutor with a written summary of the subject matter and any "findings, opinions, or conclusions the expert will give." Minn. R. Crim. P. 9.01(4)(c). The prosecutor must disclose these to the defense. *Id.*

It is reversible error to invite a jury to infer that defendant's conduct fit a "profile of a certain kind of criminal" in order to insinuate his guilt in the charged offense. *State v. Williams*, 525 N.W.2d 538, 548 (Minn. 1994). Character evidence concerning a defendant's pornographic images are plainly inadmissible and prejudicial when they suggest to the jury "a general propensity for violence towards women." *State v. Jaros*, 932 N.W.2d 466, 472 (Minn. 2019). Inflammatory descriptions of or insinuations about a defendant can render "a sober and detached consideration of the evidence…impossible." *State v. Morgan*, 51 N.W.2d 61, 62 (1952). Testimony is not admissible when it is "based on generalizations that [defendant] is part of a guilty class of spouse-abusers and the victim is part of a victim class of abused women." *State v. Vue*, 606 N.W.2d 719 (Minn. App. 2000). It violates due process when "the prosecution knowingly solicit[s] false testimony. *Glossip v. Oklahoma*, 145 S. Ct. 612, 626–27 (2025).

At trial the prosecutor intentionally elicited from Scaia evidence that was not proffered and not ruled admissible by the court: an opinion that domestic abusers create dominance in the relationship that also expresses itself in intimate relations. The

prosecutor went on to elicit the expert's confirmation that this includes forcing the abused to perform pornographic acts. Because the state did not provide any pretrial notice of intent to admit such evidence and because the expert did not proffer this evidence pretrial, the defense was prevented from objecting and arguing this specific evidence in pretrial litigation.

This evidence was inflammatory and it was plainly inadmissible under several theories. First, the prosecutor did not give the defense or the court notice of this evidence as required under the rule. It was not and could not have been encompassed by the court's ruling on Scaia's testimony. Second, the prosecutor averred to the court that, even with the voluminous relationship testimony, there was no evidence of sexual abuse in this case. Third, the district court ruled the expert domestic-abuse evidence admissible here only on the grounds that it pertained to the effect of abuse on the victim, not on the conduct of the abuser. Any assertion that suggests the defendant committed abusive sexual acts, even an assertion phrased as a potential for that sort of behavior, is inadmissible evidence of a defendant's propensity to act a certain way based on his character. Fourth, the prosecutor had told the judge, in defense counsel's presence, that there was no evidence of sexual abuse in this case, and an insinuation of sexual abuse by Fravel is false testimony under *Glossip*. Lastly, the sex-abuse and pornographic-acts testimony was inadmissible by analogy to *Vue* and *Williams*. In those cases, the evidence was admitted in error because it described general characteristics of people who are from a certain culture or who commit a certain kind of crime, to prove aspects of their conduct in the charged case.

The 807 evidence here was offered to establish Fravel was a domestic abuser. This testimony falsely added an inference of a further category of abuse. The prosecutor elicited the sex-abuse response with a leading question and did not stop there. The prosecutor followed up with a leading question about pornographic acts. The testimony was inadmissible and the prosecutor knew it.

2. *The inadmissible evidence significantly affected the verdict.*

"The state will not be permitted to deprive a defendant of a fair trial by means of insinuations and innuendos which plant in the minds of the jury a prejudicial belief in the existence of evidence which is otherwise inadmissible." *State v. Harris*, 521 N.W.2d 348, 354 (Minn. 1994). The role of prosecutors "is not simply to convict the guilty, they are also responsible for providing a procedurally fair trial". *Id.* Even if the evidence against Fravel is considered strong, "to allow factually strong cases to erode such a basic right is to deny the existence of the right." *Id.* Fravel must be granted a new trial.

3. *The prosecutor misstated the meaning of proof beyond a reasonable doubt in closing argument and a correct instruction on the question did not clear up the misstatement. It was plain error requiring reversal.*

In *State v. Portillo*, the prosecutor argued during his closing argument that the defendant was no longer presumed to be innocent. *Portillo,* 998 N.W.2d at 250. The Supreme Court held this was error because a defendant is no longer presumed innocent only once the jury has deliberated and reached a verdict of guilty. *Id.* The Court found this to be plain error that affected Portillo's substantial rights. *Id.* 251-252. The Court held that the state could not meet its burden to show that there was no reasonable likelihood that

the absence of misconduct would have had an effect on the jury, even though the district court's final instruction was a correct statement of the law. *Id.* at 254. The instruction, though accurate, failed to clearly correct the error. *Id.* And this Court concluded the error must be addressed in the interests of judicial fairness and integrity because "misstating the presumption of innocence strikes at that bedrock axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law." *Id. at 256* (citing *In re Winship*, 397 U.S. 358, 363 (1970).

Here the prosecutor misstated what "proof beyond a reasonable doubt" means when he told jurors they can confidently reach a verdict even with "lingering doubts." He doubled down on this notion by objecting when defense counsel correctly paraphrased the rule as a requirement to "vanquish all reasonable doubt." The district court overruled the objection, but the prosecutor in rebuttal only continued the deceit by equating reasonable doubt with "all possibility of doubt." This is a misstatement of the law.

Although the state's proof does not need to eliminate capricious doubt, fanciful doubt, or all possibility of doubt, defense counsel was correct that the state's proof must eliminate, vanquish, overcome, or otherwise elevate jurors "beyond" all reasonable doubt. "Beyond a reasonable doubt" means no reasonable doubts can "linger" in the minds of the jury. Under *Portillo*, the state's mischaracterization was error and the error was plain. In *Portillo*, the Court ordered a new trial because the state's evidence was not strong. The same is true here. The circumstances and mechanism of MK's death were extremely thin. The evidence was therefore not strong the elements of intent and extreme indifference,

which requires something more than mere negligence. These are elements necessary to convict on the three most serious charges. The error requires a new trial.

The court must correct this error to protect the fairness and integrity of the judicial proceedings. *Portillo* recently reaffirmed the conclusion that the fairness and integrity of judicial proceedings is adversely affected when a prosecutor misstates a rule setting forth a foundational constitutional principle and that rule is not clearly remedied by the district court's instructions. *Portillo*, 998 N.W.2d at 256 (citing *State v. Baird*, 654 N.W.2d 105, 114 (Minn. 2002)). The same is true here. This Court must order a new trial.

III. The cumulative effect of the errors in sections I and II above requires a new trial even if any individual error is insufficient on its own to warrant that result.

When the cumulative effect of prosecutorial misconduct and other errors deny the defendant's right to a fair trial, remand for a new trial is required. *State v. Mayhorn*, 720 N.W.2d 776, 792 (Minn. 2006). The district court here permitted inadmissible and prejudicial evidence under Rule 807. It wrongly allowed expert testimony on commonalities in domestic abuse relationships, including sex abuse and the forced performance of pornographic acts. The medical examiner offered an expert inference of intent that was plainly erroneous. The prosecutor impermissibly elicited the sex-abuse testimony and misled the jury about proof beyond a reasonable doubt. If any of these errors is alone insufficient to require a new trial, their cumulative effect tips the scales. The errors amplified each other: the errors related to MK and Fravel's sex life, which was central to whether asphyxiation was intended to cause death or showed extreme indifference to human life, as opposed to being a careless attempt to engage in erotic asphyxiation. *State*

v. Bustos, 861 N.W.2d 655, 661 (Minn. 2015) (ordering a new trial based on the "interrelatedness and serious nature" of errors). Based on these errors, considered individually or cumulatively, Fravel must be granted a new trial.

IV. The evidence was insufficient to prove that MK's death was not an accident and the convictions for premeditated murder, domestic-abuse murder, and intentional murder must be vacated.

The circumstances proved on the elements of intent to effect the death or extreme indifference to human life were insufficient. Reasonable inferences based on the circumstances proved allow the theory of innocence that MK death happened unintentionally as a result of ordinary negligence.

A. Standard of review

In a criminal case, the Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the State to prove beyond a reasonable doubt every element of the charged offense. *In re Winship*, 397 U.S. 358, 368 (1970). The analysis for determining whether the state's evidence at trial was sufficient to prove an offense depends on the nature of the evidence. *State v. Segura*, 2 N.W.3d 142, 155 (Minn. 2024). For elements of the crime that were proved by direct evidence, the court's task is to "painstakingly review the record to determine whether that evidence, viewed in the light most favorable to the verdict, was sufficient to permit the jurors to reach the verdict that they did." *Id.* (*citing State v. Hassan*, 977 N.W.2d 633, 639–40 (Minn. 2022)). When a necessary element was proved by circumstantial evidence, review for sufficiency involves "a heightened two-step process" *Id.* For each element to be proven, therefore, review for sufficiency necessitates a determination whether direct evidence on its own established the

element of the crime or if proof also had to rest on circumstantial evidence. Because intent is a state of mind, it is generally proved circumstantially. *State v. McInnis*, 962 N.W.2d 874, 890 (Minn. 2021).

Where circumstantial-evidence review applies, the first step is to identify the "circumstances proved." *Hassan*, 977 N.W.2d 633 at 640). The court does this by winnowing down the evidence presented at trial by resolving all questions of fact in favor of the jury's verdict. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). This "preserve[s] the juries credibility findings" because "the jury is in a unique position to determine the credibility of the witnesses and weigh the evidence before it." *Id.* at 601. The second step is to "identify the reasonable inferences that can be drawn from the circumstances proved." *Segura*, 2 NW3d at 155. Where there is more than one reasonable inference identified, the reviewing court does not defer to the inference the jury ultimately preferred, because "the act of inferring involves the drawing of permissible deductions, not actual fact finding." *Harris*, 895 N.W.2d at *601. Thus, it is not enough for the reasonable inferences to be consistent with guilt, they must also be inconsistent with any rational hypothesis of innocence. The State's circumstantial evidence is sufficient when the reasonable inferences are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt. *Hassan*, 977 N.W.2d at 633.

B. First-Degree Premeditated and Second-Degree Intentional Murder

Convictions for first-degree premeditated murder and second-degree intentional murder both require the state to prove beyond a reasonable doubt that, *inter alia*, the defendant "cause[d] the death" of a human being "with intent to effect the death" of that

person. Minn. Stat. § 609.185(a)(1) (2022); Minn. Stat. § 609.19, subd. 1(1) (2022). The phrase "with intent to" means that "the actor either has a purpose to do the thing or cause the result specified or believes that the act, if successful, will cause that result." Minn. Stat. § 609.02, subd. 9(4) (2022).

C. First-Degree Domestic Abuse Murder

A conviction for first-degree premeditated murder and second-degree intentional murder requires the state to prove beyond a reasonable doubt that, *inter alia*, the defendant "cause[d] the death of a human being" where the death occurred "under circumstances manifesting an extreme indifference to human life." Minn. Stat. § 609.185(a)(6). Extreme indifference to human life involves "recklessness or at a minimum, gross negligence." *Lussier v. State*, 821 N.W.2d 581, 590 (Minn. 2012). "Ordinary and gross negligence differ in degree." *State v. Al-Naseer*, 690 N.W.2d 744, 752 (Minn. 2005). One way our Supreme Court has described gross negligence is "a heedless and palpable violation of legal duty respecting the rights of others." *State v. Al-Naseer*, 690 N.W.2d 744, 752 (Minn. 2005).

D. Second Degree Unintentional Murder

A conviction for second-degree unintentional murder requires the state to prove that the defendant caused the death of another "while committing or attempting to commit a felony offense." Minn. Stat. § 609.19, subd. 2(1) (2022). Third degree assault is a felony and requires proof that the defendant "assault[ed] another and inflict[ed] substantial bodily harm." Substantial bodily harm includes "a temporary but substantial loss or impairment of the function of any bodily member or organ." Minn. Stat. § 609.02, subd. 7a (2022).

E. The Circumstances Proved and the Reasonable Hypotheses of Innocence

Appellant here argues that the evidence was insufficient to prove that Fravel acted with intent or with anything more than ordinary negligence. The circumstances proved to show intent to cause death are as follows. The cause of death was likely asphyxiation, but asphyxiation does not necessarily mean intent to kill. Asphyxiation can occur either with pressure to the throat that blocks blood flow to the brain or by blocking airways. MK's body had no discernable injuries and the mechanism of death is indeterminable. At some time in the morning of March 31, 2023, either before or after she died, a towel came to be wrapped around MK's head, covering her mouth and nose. It could have restricted her breathing if it was placed over her face before she died. She was wearing leggings, panties, a bra and a shirt. The towel had a slip knot in it that was found to have been pulled tight.

On this record, there is no reasonable inference that Fravel was not involved in the fatal episode of erotic asphyxia, or that it was not an involuntary act on his part. The reasonable hypothesis of his innocence nonetheless is based on the following reasonable inferences from the circumstances proved. The evidence allows the reasonable inference that Fravel and MK at times engaged in consensual erotic asphyxiation for sexual foreplay or arousal. Over time they came to find ways to modify their practice to accommodate MK. Fravel was applying the towel around MK's face as foreplay consisting of erotic asphyxiation, which is why she still had clothes on. They were using a towel instead of choking because it was less dangerous, less damaging, and less likely to show signs that they were into this particular paraphilia. MK didn't want to be "choked," meaning by hand. But she did enjoy "rough sex." The slip knot in the towel was intended as a reasonable

precaution to allow for release of the towel before MK suffered dangerous consequences. Accidentally pulling the slip knot incorrectly would result in making the towel tight instead of loosening it. The circumstances proved do not eliminate the reasonable hypotheses that Fravel either misjudged and waited too long or pulled the wrong way on the towel and tightened it instead of loosening it. He couldn't get it undone. MK lost consciousness and could not be revived.

The impact of this conclusion on the charged offenses is straightforward. As set forth above, the first-degree premeditated and second-degree intentional counts required proof beyond a reasonable doubt that Fravel intentionally killed MK. Those counts were not proven and the jury verdicts must be vacated.

The first-degree domestic-abuse count required proof beyond a reasonable doubt that Fravel caused MK's death by acting recklessly or with gross negligence. It cannot be that the mere fact of causing MK's death established "extreme indifference to human life" because doing so would collapse two elements--causation and extreme indifference—into one. *See State v. Thonesavanh,* 904 N.W.2d 432, 437 (Minn. 2017) (discussing surplusage an intrinsic canon of construction "which favors giving each word or phrase in a statute a distinct, not an identical, meaning").

An inference of extreme indifference here is not the only reasonable one. The circumstances proved here include a prolonged period of experimentation with "rough sex" that included erotic asphyxia. The circumstances proved here also plainly do not include discernable injuries, and the circumstances as a whole allow one to infer why that would be so: a couple attempting to enhance their sexual experience, engaging in erotic

asphyxiation, and taking reasonable precautions are not acting recklessly or with gross negligence. As with skydiving or running with the bulls, it simply happens in some instances that an unintentional failure of due care causes otherwise reasonable precautions to fail. A reasonable inference that MK's death involved no more than a lack of ordinary due care here requires that the verdict on this count must also be vacated.

The remaining count, second-degree unintentional murder, was premised on MK's death occurring as a result of Fravel committing an assault that resulted in, at a minimum, substantial bodily harm. Under Minnesota law an assault, defined here as "intentionally" inflicting bodily harm, does not require that the actor intended the harm, but only that he undertook an intentional act that caused bodily harm. *State v. Fleck,* 810 N.W.2d 303, 309 (Minn. 2012) (discussing the crime of assault based on infliction of bodily harm and concluding it does not require proof that the defendant intended to cause harm). Unintentionally causing substantial bodily harm by way of an intentional act is still a third-degree assault. Erotic asphyxia is an intentional act that can cause, and here did cause, loss of consciousness at a minimum. Loss of consciousness is substantial bodily harm because it is :a temporary but substantial loss or impairment of the function of any bodily member or organ." The evidence was therefore sufficient to prove second-degree unintentional murder, but it is insufficient to prove the other murder counts. The verdict for second degree unintentional murder was proven.

The verdicts for the other three counts must be vacated.

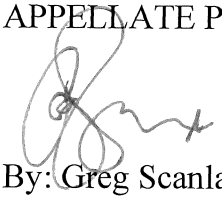
CONCLUSION

Trial errors constituting abuse of discretion or plain error, individually or cumulatively, require reversal of Fravel's convictions and a new trial. Insufficient evidence on Fravel's intent to cause the death of MK and his extreme indifference to human life requires vacating the verdicts for the counts of first-degree murder (premeditation), first degree murder (past pattern), and second-degree intentional murder.

Dated: September 22, 2025

Respectfully submitted,

OFFICE OF THE MINNESOTA
APPELLATE PUBLIC DEFENDER



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A25-0420

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

CERTIFICATE OF DOCUMENT LENGTH

Adam Taylor Fravel,

Appellant,

I hereby certify that this document conforms to the requirement of the applicable Rules, is produced with a Times New Roman, 13 pt. font, and the length of this document is 13,289 words. This document is prepared using Word Microsoft 365.

Dated: September 22, 2025

Respectfully submitted,

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