Summary of SC98295, *State of Missouri v. Rashidi Don Loper*
Appeal from the St. Louis circuit court, Judge Thomas C. Clark II
Argued and submitted June 23, 2020; opinion issued October 13, 2020

Attorneys: Loper was represented by Susan A. DeGeorge of the public defender's office in St. Louis, (314) 340-7662; and Mary L. Bruntrager and Jonathan N. Bruntrager of Bruntrager & Billings PC in Clayton, (314) 646-0066. The state was represented by Garrick Aplin of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A man convicted of attempted rape, domestic assault and armed criminal action appeals, challenging the circuit court's evidentiary rulings during his trial. In a unanimous decision written by Chief Justice George W. Draper III, the Supreme Court of Missouri affirms the judgment. The circuit court did not abuse its discretion or plainly err in admitting testimony from a police officer and detective, from an emergency room doctor, and from the director of a domestic violence shelter, nor did it abuse its discretion in excluding evidence of the victim's misconduct from two years after the charged offense.

Facts: Rashidi Don Loper was in an on-and-off relationship beginning in 2009 with a woman he ultimately married. Based on an April 2015 incident between them, the state charged Loper with first-degree attempted rape, two counts each of first-degree domestic assault and armed criminal action, and victim tampering. At trial, the woman testified Loper came to her apartment, where she fought him off as he attempted to rape her. She testified Loper choked her until she lost consciousness, she woke up in the bathtub with a deep cut to her wrist, then she called 911. She denied the injury was self-inflicted. The responding officer testified a doctor at the hospital told him the wrist injury was not self-inflicted, prompting him to refer the case to a detective with the domestic assault response team. The detective testified about her investigation and how she believed characteristics of power and control were manifested in the case. The doctor who treated the woman at the hospital opined – based on her experience as well as the woman's own reporting – the wrist injury was not self-inflicted. An expert in the general behaviors and characteristics of domestic assault victims testified how power and control worked in domestic violence cases involving strangulation and sexual assault, but she did not testify about the facts of this case or the specifics of the couple's relationship. Loper testified his relationship with the woman was tumultuous, and they both engaged in domestic violence, but he denied using force during sex, cutting the woman's wrist or choking her until she lost consciousness. The jury found Loper guilty as charged, except for one count of first-degree domestic assault for which the jury found him guilty of second-degree domestic assault. The circuit court sentenced him to a total of 22 years in prison. Loper appeals.

AFFIRMED.

Court en banc holds: (1) The circuit court did not plainly err in overruling Loper's objection to the detective's testimony that Loper exercised "power and control" over the woman. His

objection was neither timely nor specific, depriving the circuit court of the opportunity to correct any potential error at the earliest possible point. He also failed to show manifest injustice occurred. The detective did not comment about the woman's credibility or implicate Loper as a perpetrator of domestic violence, and the state did not rely on the detective's testimony about the woman's wrist injury as proof the injury was not self-inflicted.

(2) The circuit court did not abuse its discretion in allowing the director of a domestic violence shelter to testify as an expert in domestic violence or plainly err in admitting her testimony. Following a pretrial hearing about the director's qualifications as an expert, the circuit court determined her testimony would assist the jury because domestic violence is beyond an ordinary person's understanding and general profile evidence, such as explaining different behaviors involving domestic violence, can be a proper topic for the jury. Loper cites no case requiring an expert to have formal education or licensure, and the plain language of section 490.065, RSMo, contemplates an expert may be qualified based solely on training or experience. Loper had the opportunity to cross-examine the director about her qualifications but failed to do so. The expert's testimony was not unreliable or irrelevant and did not bolster the woman's credibility.

(3) The circuit court did not abuse its discretion in admitting the officer's testimony or relying on it to admit the doctor's testimony. The officer's hearsay testimony about a "doctor" telling him the woman's wrist injury was not self-inflicted was admissible to explain subsequent police conduct about how the case proceeded from a possible suicide attempt to a criminal investigation. While the parties dispute whether the injury was self-inflicted, other evidence presented addressed this issue, and the emergency room doctor who treated the injury was called as a witness and was subject to cross-examination.

(4) The circuit court did not abuse its discretion in finding the state complied with Rule 25.03 in making pretrial disclosure to Loper or in permitting the emergency room doctor to testify. The doctor's testimony was not a surprise. The state endorsed the doctor as a witness and disclosed the police report and all of the woman's medical records, including the records from the doctor's treatment. There is no evidence the doctor or any other healthcare provider created a formal report that the woman's injury was not self-inflicted or that the state possessed or withheld any such undisclosed report or statement. The police report disclosed to Loper included a statement that a doctor indicated the wrist injury was not self-inflicted, identified the emergency room doctor who treated the woman, and included the doctor's medical reports about the extent of the injury. Loper has not demonstrated fundamental unfairness occurred when the doctor testified.

(5) The circuit court did not plainly err in excluding evidence of the woman's misconduct that occurred two years after the charged offenses. Loper did not seek to admit the evidence to challenge the woman's veracity about the charged offenses, and her actions two years after the charged offenses would not have demonstrated her state of mind at the time Loper assaulted her.