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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A16-1359**

State of Minnesota,  
Respondent,

vs.

Christina Schmiedt,  
Appellant.

**Filed July 3, 2017  
Affirmed  
Toussaint, Judge\***

Polk County District Court  
File No. 60-CR-13-2438

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Gregory Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney,  
Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Bjorkman, Judge; and Toussaint,  
Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

TOUSSAINT, Judge

Appellant Christina Schmiedt challenges her conviction of second-degree assault, arguing that she is entitled to a new trial because respondent State of Minnesota committed misconduct when the prosecutor stated multiple times during closing argument that appellant lied when she testified and that the jury should reject her self-defense claim because she lied. Because we conclude that the prosecutor's unobjected-to statements were not error, we affirm.

## DECISION

This court may review unobjected-to prosecutorial misconduct under a modified plain-error test. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Before we review unobjected-to error, “there must be (1) error; (2) that is plain; and (3) the error must affect substantial rights.” *State v. Griller*, 583 N.W.2d 738, 740 (Minn. 1998). It is appellant's burden to establish an error that is plain. *Ramey*, 721 N.W.2d at 302. Then, the burden shifts to the state to prove that the error did not affect appellant's substantial rights. *Id.* If the plain error affects appellant's substantial rights, then we assess “whether the error should be addressed to ensure fairness and integrity of the judicial proceedings.” *Id.* When reviewing alleged prosecutorial misconduct at closing argument, we look at the whole argument in context. *State v. McNeil*, 658 N.W.2d 228, 234 (Minn. App. 2003).

At trial, appellant testified that in the early morning hours of December 13, 2013, she woke to the victim pinning her down and attempting to perform sexual acts on her. Appellant began to scream at the victim and attempted to get him off of her. Appellant

then removed a knife from under her pillow and stabbed the victim. Appellant testified that her actions were justified as self-defense.

During cross-examination, appellant denied telling a responding police officer that she acted in “retaliation” when she stabbed the victim. The prosecutor then introduced a recorded statement in which appellant said to the officer that “what she did was retaliation. . . . [She] retaliated and [she] shouldn’t have.”

Appellant argues that the prosecutor committed error at closing argument when he provided his personal opinion of appellant’s credibility by stating that she lied and when he argued that the jury should discredit appellant’s self-defense claim because she lied. The statements that appellant alleges were error occurred on three transcribed pages of the prosecutor’s closing argument and include the following: “she did not tell the truth”; “[s]he lied”; “[s]he gave an oath to tell the truth, and she got up here and lied about retaliation”; “but when she won’t tell you the truth when she is under oath about something so fundamental to what she’s claiming here, self-defense, why would you believe her with respect to her other testimony, and you’re under no obligation to believe her when you—she would lie on something like that”; “Ms. Schmiedt lied to you”; “. . . but you know is not the truth, should lead you to conclude she’s not being truthful with you about what occurred that night”; and “the fact that she’s willing to lie to you about that on the stand under oath, should lead you to reject her testimony with respect to this claim of self-defense.”

It is error for a prosecutor to give his or her personal opinion on the credibility of a witness. *State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984). But a prosecutor may

vigorously argue that a particular witness was not credible, *State v. Googins*, 255 N.W.2d 805, 806 (Minn. 1977), and “point to circumstances which cast doubt on a witness’s veracity.” *Ture*, 353 N.W.2d at 516. It is also error for a prosecutor to disparage the defense. *State v. Peltier*, 874 N.W.2d 792, 804 (Minn. 2016). The prosecutor may, however, argue that there is no merit to a particular defense based on the evidence. *Id.*

Despite the prosecutor’s constant attack on appellant’s credibility, the prosecutor did not make personal suggestions on the subject. *Cf. Ture*, 353 N.W.2d at 516 (concluding that prosecutor’s statements were improper where prosecutor characterized defendant’s testimony as “incredible” and personally suggested that defendant was not testifying truthfully). Throughout his closing argument, the prosecutor challenged the veracity of appellant’s testimony, including stating that “[h]er stories aren’t consistent.” The prosecutor also frequently stated to the jury that they must determine the credibility of the testimony with reference to the events that took place on December 13 and whether appellant acted in self-defense. Further, the prosecutor drew a reasonable inference from the inconsistency between appellant’s testimony and her recorded statement to the responding officer and argued to the jury that appellant’s testimony was not credible.

In addition, the prosecutor did not disparage the defense. The prosecutor’s challenge to appellant’s self-defense claim focused on the merits of the claim in that the prosecutor vigorously argued that “retaliation isn’t self-defense.” *See State v. Davis*, 735 N.W.2d 674, 682-83 (Minn. 2007) (concluding that prosecutor’s arguments about defendant’s self-defense claim were not erroneous because prosecutor’s arguments were

about merits of claim). Thus, the prosecutor's statements that appellant lied and that the jury should reject appellant's self-defense claim were not error.

**Affirmed.**