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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1353**

State of Minnesota,
Respondent,

vs.

Geral Leanerd Halbert,
Appellant.

**Filed June 4, 2018
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-17-2085

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Schellhas, Presiding Judge; Reyes, Judge; and Randall, Judge.*

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

UNPUBLISHED OPINION

REYES, Judge

On appeal from his conviction of first-degree criminal-sexual conduct, appellant argues that the district court's admission of an audiotape of an investigating police officer's interview interrogation of appellant contained vouching statements about the victim's credibility that implicated his right to a fair trial and therefore was reversible error. We affirm.

FACTS

On January 21, 2017, K.H. was drinking with appellant Geral Leanerd Halbert, who is her twin brother, and her other three brothers. She fell asleep but later awoke to find appellant grabbing her. Appellant wrestled her off the bed, dragged her into the next room, punched her in the face, and told her that she was going to "give it up." He choked her with a scarf, smothered her face with a pillow, told her he was going to kill her, and ripped her bra and shirt off. When he hit her in the face, he broke her teeth. She wasn't sure how, but her pants were pulled down.

Appellant then attempted to anally rape K.H. but failed. He then told K.H. to perform oral sex on him. She did not want to, but placed appellant's penis in her mouth so appellant would stop punching her. She bit down hard on appellant's penis, and he began punching her again. After he stopped punching her, appellant went into the bathroom. K.H. grabbed her coat, ran to neighboring houses, and knocked on five doors for help. At the fifth house, K.H.'s neighbor answered the door and called the police. The police took both K.H. and appellant to the hospital for an examination.

On January 24, the state charged appellant with first-degree criminal-sexual conduct in violation of Minn. Stat. § 609.342, subd. 1(e)(i) (2016). After a three-day trial, the jury found appellant guilty, and the district court sentenced appellant to 280 months in prison. This appeal follows.

D E C I S I O N

Appellant argues that the district court plainly erred in admitting an audiotape recording of the investigating police officer's interrogation of appellant, which affected his substantial rights. We disagree.

When an appellant fails to object to an alleged error at trial that does not involve prosecutorial misconduct, he or she has the burden of proving (1) an error; (2) that was plain; and (3) that affected the appellant's substantial rights. *State v. Dao Xiong*, 829 N.W.2d 391, 395 (Minn. 2013). Plain error must be clear or obvious and must clearly contradict caselaw, a rule, or a standard of conduct. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). A plain error affects appellant's substantial rights if the absence of the error would have had a significant effect on the verdict. *Id.* If all three prongs are met, this court may address the error to ensure fairness and preserve the integrity of the proceeding. *Id.* If "any one of the requirements" for plain error is not satisfied, we "need not address any of the others." *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted).

"It is well settled that one witness may not vouch for or against the credibility of another witness." *State v. Vick*, 632 N.W.2d 676, 689 (Minn. 2001) (quotation omitted). Instead, the credibility of a witness and the weight to be given to their testimony is for the jury to decide. *State v. Pendleton*, 706 N.W.2d 500, 512 (Minn. 2005). Improper vouching

testimony is testimony that another witness is telling the truth or testimony that one believes one witness over another. *State v. Ferguson*, 581 N.W.2d 824, 836 (Minn. 1998).

During appellant's trial, the jury heard the interrogating officer make the following statements in the audiotape:

- I don't think she's gonna make all this stuff about you raping her.
- Well there's a reason she's . . . said that your had sex—sexually assaulted her.
- But you—you didn't have any problem with your sister So there's no reason she would make this up.

Appellant argues that these statements vouched for the victim's credibility. Appellant relies on *Van Buren v. State*, 556 N.W.2d 548 (Minn. 1996), to support his argument. In *Van Buren*, the supreme court held that the appellant was entitled to a new trial because of the admission of improper vouching testimony from three witnesses, including a police officer, who testified that certain members of the victim's family believed that the victim was sexually abused by the appellant. *Id.* at 550-52. But appellant's reliance on *Van Buren* is misguided because that case's holding was limited to in-person testimony during trial and did not involve a recording of a police interrogation. *Id.* at 550.

Instead, *Auringer v. State* is dispositive of appellant's argument. 695 N.W.2d 640 (Minn. App. 2005), *review denied* (Minn. July 19, 2005). In *Auringer*, the appellant challenged the district court's admission of an audiotape recording of a police investigator's interrogation of the appellant. *Id.* at 645. The appellant claimed that the investigator made impermissible comments about the credibility of the victim during the

interrogation. *Id.* The investigator commented that the victim gave a “convincing story” three times during the interrogation. *Id.* We held that the investigator’s statements were not error, much less reversible error, because the statements were made in the context of the officer’s attempt to persuade the appellant to be forthcoming during the interrogation, not during the officer’s trial testimony. *Id.* at 645-46.

Like *Auringer*, here, the officer made three passing comments in an attempt to persuade appellant to be forthcoming during the interrogation, and the context of those statements in the audiotaped interview was made clear to the jury. *See id.* The jury had the necessary information to understand that the detective’s statements were made as an investigative technique and were not necessarily indicative of his personal opinion. *See id.*; *Ferguson*, 581 N.W.2d at 835-36 (concluding that because defendant was at police station, jury could have understood officer’s statements about credibility of defendant and other witnesses as mere attempt to elicit defendant’s confession). The district court’s admission of the officer’s statements did not contradict case law and was not error, much less plain error, thus ending our analysis.

Affirmed.