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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0181**

State of Minnesota,
Respondent,

vs.

Eddie Bee Forrest,
Appellant.

**Filed January 22, 2019
Affirmed
Jesson, Judge**

Otter Tail County District Court
File No. 56-CR-17-1013

Keith M. Ellison, Attorney General, Michael Everson, Assistant Attorney General,
St. Paul, Minnesota; and

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Halbrooks, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

JESSON, Judge

Eddie Bee Forrest challenges his conviction of first-degree criminal sexual conduct
based on the sexual abuse of C.F. and B.W. Forrest argues that the district court erred by

allowing improper vouching testimony from two witnesses. Because any error in admitting the police officer's testimony did not affect Forrest's substantial rights and because it was not error for the district court to admit the testimony of the social worker, we affirm.

FACTS

Appellant Eddie Bee Forrest is 49 years old and moved to Minnesota around the spring of 2016. Although he originally lived with his brother, Forrest moved in with his niece, the mother of B.W. (age 9 at the time) and C.F. (age 4 at the time), sometime in the early summer of 2016. Forrest stayed in an upstairs bedroom, and B.W. and C.F. shared the other upstairs bedroom next to Forrest's room.

In February 2017, B.W. and C.F. were removed from their mother's care and placed with their aunt and uncle.¹ A few months later, the children's aunt discovered a video that the children were in, showing them dancing inappropriately and pulling down their pants. When their aunt questioned the children about the video, C.F. stated that Forrest made her "suck his thing that he peed out of," and B.W. stated that Forrest stuck his thing in her "second hole." The girls' aunt alerted the police.

Police arranged for both girls to be interviewed by a social worker trained in the Cornerhouse interviewing method.² The girls were interviewed separately and did not talk to one another between the interviews. During her interview, C.F. stated that she knew she was there to talk about what Forrest did and asked the social worker if she was going to go

¹ The children were removed from their mother's care after she allowed C.F.'s father to be around the children after he was released from prison for malicious punishment of C.F.

² The Cornerhouse method is a forensic interviewing technique used to interview victims of sexual abuse.

to jail or die. After the social worker assured her she would not, C.F. disclosed that Forrest told her to “suck his thing.” C.F. also told the social worker that she saw bumps on Forrest’s thing, that she saw white stuff on his thing, and that the white stuff tasted weird. C.F. said that everything happened in Forrest’s bedroom, that it happened a lot, and that she tried to tell her mom while she was sleeping. C.F. also told the social worker to ask her sister what happened because she would remember. B.W. disclosed to the social worker that Forrest asked both the girls to “suck his thing,” and said that Forrest had touched her butt and put his thing in her butt. B.W. told the social worker that they did what Forrest told them to do because they did not want Forrest to kill them. B.W. said the abuse happened in Forrest’s bedroom and that it happened more than once.³

Based on the girls’ statements, the police interviewed Forrest, who voluntarily went to the police station with officers. Forrest denied all allegations. During the interview, Forrest appeared nervous and was shaking his leg. The officer questioned Forrest about his leg-shaking, and Forrest said it was hereditary, but the officer said he did not believe him. Forrest was taken into custody and charged with 12 counts of criminal sexual conduct.⁴

Before the trial began, the district court determined that both girls were competent to be called as witnesses. At trial, C.F., then age 5, testified first. She testified that Forrest

³ B.W. also disclosed that her cousins, Forrest’s children who temporarily lived with the family, sexually abused her as well. The cousins returned to Mississippi, and a report was sent to the proper agency there.

⁴ Forrest was charged with three counts of first-degree criminal sexual conduct and three counts of second-degree criminal sexual conduct for each child, for a total of 12 counts.

touched her on her private parts, that he touched his “wing-dingy” to her butt, and that he put it inside her butt. She stated that this happened in Forrest’s bedroom and that it happened “a lot of times.” She testified that it made her feel weird and she did not like what he was doing, and that she tried to tell her mom but her mom would not believe her. When asked about more specific details, C.F. stated that Forrest unzipped his pants and pulled his “wing-ding” out, but then C.F. said, “I don’t want to talk about it anymore. I’m sort of about to cry.” C.F. also testified that her cousins sexually abused her.

B.W., then age 10, testified next. She testified that Forrest put his thing in her “coo-coo” (her word for her vagina) and her butt, that it felt bad, and that she told him to stop. B.W. also stated that she told her mom about the abuse but that her mom did not believe her, and that Forrest told her nobody would believe her. B.W. also testified that the abuse occurred in Forrest’s bedroom, and that both she and C.F. sucked Forrest’s thing. Similar to C.F., B.W. testified that her cousins sexually abused her as well.

In addition to the girls’ testimony, the state presented several other witnesses. First, the nurse practitioner who physically examined the girls testified that both exams were normal, which was not unusual. The officer who interviewed Forrest also testified, including that he did not believe what Forrest was telling him during the interview. During cross-examination, the officer further testified that he “absolutely” told Forrest that he thought he was lying. Finally, the state presented the testimony of the social worker who interviewed the girls. The social worker testified that she determined maltreatment of each child had occurred and that the demeanor of the children and their consistent statements helped her reach this conclusion.

Forrest testified on his own behalf. He stated that he spent most of his time working and that he did not have much time to spend with the girls. He explained that he never did anything inappropriate to the girls, never told them to suck his penis, never put his penis inside either child, and that he loved C.F. and B.W. like his own children.

The jury found Forrest guilty of all 12 counts of criminal sexual conduct. The district court adjudicated Forrest guilty of one count of first-degree criminal sexual conduct for each child.⁵ The district court sentenced Forrest to 144 months in prison for each count, to be served consecutively. Forrest appeals.

D E C I S I O N

Forrest argues that the district court erred by allowing two instances of improper vouching testimony.⁶ First, Forrest contends that the district court erred by allowing the police officer to testify that he did not believe what Forrest told him during his initial interview. Second, Forrest maintains that the social worker improperly vouched for the credibility of C.F. and B.W. Forrest alleges that these errors and their cumulative effect affected his substantial rights and require a new trial.

Forrest did not object to the testimony of the officer or the social worker at trial. We review claims of unobjected-to error under the plain error standard of review. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). Under this standard, there must be “(1) error;

⁵ The district court did not adjudicate the remaining ten counts because they were included offenses.

⁶ Although allegations of improper vouching are typically raised as allegations of prosecutorial misconduct, Forrest raises them as plain error and we address his arguments as such.

(2) that is plain; and (3) the error must affect substantial rights.” *Id.* If each of these three prongs is met, this court then determines whether to address the error to “ensure fairness and the integrity of the judicial proceedings.” *Id.* Because Forrest alleges two instances of error, we review each one in turn.

I. Even if the district court erred by allowing the police officer’s testimony, any error did not affect Forrest’s substantial rights.

Forrest argues that it was error for the district court to allow the police officer’s testimony that during his interview with Forrest, he did not believe what Forrest was telling him. At trial, the officer recounted his interview with Forrest as follows:

Q. And what, if anything, did you learn from Mr. Forrest during the interview? What kind of information did he share?

A. He denied it. He denied all allegations.

Q. Specific to what the girls had said?

A. Yep.

....

Q. And so you said you’ve had this time with Mr. Forrest. Did you make any observations, I guess, about his person during the interview, even though he said he didn’t—what was significant to you?

A. He—from the beginning, he would not make eye contact with me in any way. He would not look at me. He would look at the floor, the walls, door, and he just—and he was very, very overly nervous.

Q. And how do you describe that? Tell us more.

A. His leg was bouncing up and down. Like, you know, some people, when they sit there, if you put your leg in the right position, it will bounce a little bit, but it was so much where on

the audio you can hear it just constantly shaking hardcore. And he even brought it up that “I’m not nervous; it’s a hereditary thing.”

Q. Did you confront him about that?

A. I confronted him. I said—you know, *because I told him I didn’t believe what he was telling me.* (Emphasis added.)

Q. And what did you say in regard to the shaking and those things?

A. “You’re shaking like that,” and then I said, “You won’t even look at me. You won’t even make eye contact with me.” And then he would look up at me for a short period of time, but then he’d turn away again. And then he brought up saying he’s not nervous; it’s a hereditary thing.

Q. And so anything else significant about the interview other than the things—did he share anything else about the girls and the home or anything like that?

A. No, not really.

Forrest contends that the officer’s statement that “[he] didn’t believe what [Forrest] was telling [him]” was impermissible because it commented on the credibility of Forrest’s version of events. When reviewing an alleged error under the plain-error rule, “[i]f a defendant fails to establish that the claimed error affected his substantial rights, we need not consider the other factors.” *State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007). Therefore, assuming without deciding that it was plain error for the district court to admit the police officer’s testimony, we consider whether the error affected Forrest’s substantial rights. An error affects substantial rights if “there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury’s verdict.” *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted). When evaluating whether

the error significantly affected the verdict, we review “the strength of the [s]tate’s case, the pervasiveness of the error, and whether the defendant had an opportunity to respond to the testimony.” *State v. Sontoya*, 788 N.W.2d 868, 873 (Minn. 2010).

Here, the police officer’s testimony did not affect Forrest’s substantial rights. The state presented significant evidence against Forrest, including the testimony of C.F. and B.W., the forensic interviews the social worker conducted with the girls, and testimony from the social worker who interviewed them. Although C.F. and B.W. were somewhat inconsistent in describing what happened to them, they never wavered in stating that Forrest sexually abused them in some manner in his bedroom, and their testimonies corroborated each other.

Further, the alleged error in the police officer’s testimony was a brief, one-sentence response to a question about Forrest’s demeanor during his initial interview with police. The state did not dwell on or emphasize the officer’s statement and did not reference that testimony in its closing argument. Further, Forrest had the opportunity to cross-examine the police officer and respond to his testimony. Because of the strength of the state’s case and the brevity of and lack of emphasis on the officer’s statement, the officer’s testimony did not have a significant impact on the jury’s verdict.

But Forrest contends that the state’s case against him was not overwhelming and argues that the jury may have relied on the officer’s statement that he did not believe what Forrest was telling him to find Forrest guilty. But if the jury relied on the officer’s testimony about not believing Forrest, it was probably not the officer’s single statement on direct examination—in the context of why Forrest was shaking his leg during the

interview—that he did not believe what Forrest was telling him. Rather, it would have been the more extensive additional testimony from the officer—developed on cross-examination—that he did not believe Forrest in the initial interview and thought he was lying. Under the invited-error doctrine, Forrest cannot assert as a basis for his appeal an error “that he invited or that could have been prevented at the district court.” *State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012). This invited error through cross-examination, in addition to the significant evidence against Forrest, makes it unlikely that the officer’s statement significantly impacted the jury’s verdict.

Because the state presented significant evidence of Forrest’s guilt and because the alleged error was brief and not emphasized by the state, the alleged error did not affect Forrest’s substantial rights. Accordingly, Forrest has failed to meet his burden under the plain-error standard of review. *See Griller*, 583 N.W.2d at 740.

II. The district court did not err by admitting the social worker’s testimony.

Forrest also contends that the district court plainly erred by allowing testimony from the social worker who interviewed C.F. and B.W. Forrest contends that the social worker’s testimony that she determined that maltreatment occurred constituted improper vouching for the credibility of C.F. and B.W. The same standard of review and analysis used for the police officer’s statement applies here.

The social worker testified about the methodology of a forensic interview of a child who may have been sexually abused and about the factors that go into a determination of whether maltreatment occurred. A video recording of her interviews with C.F. and B.W. was played for the jury. After the video, the social worker testified about her observations

that led her to determine that maltreatment occurred in each case. For C.F., the social worker noted that her statements were consistent that Forrest asked her to “suck his thing” and that it was Forrest who abused her. The social worker also testified that C.F.’s demeanor—like not wanting to talk and believing she might go to jail—aided in the determination that maltreatment occurred. For B.W., the social worker noted that her description of what happened, her demonstration of the abuse with dolls, her embarrassed demeanor, and the fact that her statements were consistent led to the determination that she was maltreated. Additionally, the social worker noted that what B.W. said corroborated C.F.’s statements. The social worker testified that these factors led her to determine that maltreatment occurred, but she did not testify that she determined Forrest abused the girls.

Witness credibility is an issue for the jury to decide. *State v. Koskela*, 536 N.W.2d 625, 630 (Minn. 1995). Accordingly, “one witness cannot vouch for or against the credibility of another witness.” *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). Vouching “occurs when the government implies a guarantee of a witness’s truthfulness, refers to facts outside the record, or expresses a personal opinion as to a witness’s credibility.” *State v. Lopez-Rios*, 669 N.W.2d 603, 614 (Minn. 2003) (quotation omitted).

Here, the social worker’s testimony did not constitute vouching. The Minnesota Supreme Court has noted that while testimony about who sexually abused a child is objectionable, expert testimony about whether a child was sexually abused is proper. *State v. Dana*, 422 N.W.2d 246, 250–51 (Minn. 1988); see also *State v. Hollander*, 590 N.W.2d 341, 349 (Minn. App. 1999) (noting that a licensed social worker and child interview specialist was qualified to opine whether the child’s allegations supported a finding of

sexual abuse). Additionally, the supreme court has stated that while in most cases, the jury's common experience is a sufficient basis to assess a witness's credibility, the nature of child sexual abuse cases places jurors at a disadvantage and their common experience may not be adequate to assess the credibility of a child who alleges sexual abuse. *State v. Myers*, 359 N.W.2d 604, 609–10 (Minn. 1984).

In this case, the social worker explained how she conducts interviews with child sexual abuse victims and explained what factors she considers when determining if maltreatment occurred. The social worker then described the specific factors that led her to conclude that maltreatment of both C.F. and B.W. occurred. The social worker testified that she recommended that the girls have no contact with Forrest, but she did not testify that she believed that Forrest sexually abused the girls. Nor did she express a personal opinion that she believed the girls were telling the truth. The social worker's testimony was consistent with what caselaw permits and was not improper vouching.⁷ Accordingly, because the social worker's testimony did not constitute vouching, it was not error for the district court to admit her testimony.

⁷ Although Forrest argues that the social worker's testimony was improper vouching, the cases he cites are distinguishable from the case here. Forrest cites *Van Buren v. State*, 556 N.W.2d 548, 551-52 (Minn. 1996), a case in which the supreme court found that testimony that family members believed a 14-year-old girl's accusations of sexual assault constituted improper vouching and warranted a new trial. But here, the social worker did not testify that she personally believed that the girls were sexually abused. Forrest also cites *State v. Myrland*, 681 N.W.2d 415, 421 (Minn. App. 2004), *review denied* (Minn. Aug. 25, 2004), a case in which this court determined that allowing testimony that an employee was fired for possessing pornography at school was improper because it could have influenced the jury to believe that the school district thought the employee was guilty of the charged crime. But again, here, the social worker did not testify that she thought Forrest sexually abused the girls or even that she personally believed the girls were sexually abused.

Because any error in admitting the police officer's testimony did not affect Forrest's substantial rights and because it was not error for the district court to admit the social worker's testimony, we affirm Forrest's convictions.

Affirmed.