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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0894**

State of Minnesota,
Respondent,

vs.

Mohammad Beliad,
Appellant.

**Filed April 22, 2019
Affirmed
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-17-14573

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Patrick R. Lofton, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

In this direct appeal from final judgment of conviction and sentence for second-degree assault, appellant argues that he is entitled to a new trial because the prosecutor committed unobjected-to prejudicial misconduct amounting to plain error affecting his substantial rights by (1) vouching for the truthfulness of a state witness, (2) disparaging the defense, and (3) encouraging the jury to use evidence of appellant's post-offense assault for prohibited purposes. Because appellant has not shown that his substantial rights were affected, we affirm.

FACTS

Appellant Mohammad Beliad married N.M. in Iran in 2005. Escaping religious persecution, Beliad and N.M. fled to Turkey in 2011 where they met A.E., an adult male refugee. In June 2016, Beliad, N.M., and their son moved to Brooklyn Center, Minnesota. Soon thereafter, A.E. asked if he could move in with appellant and his family. Appellant agreed, and A.E. moved into Beliad and N.M.'s home in approximately April of 2017.

On the morning of June 12, 2017, N.M. put her and appellant's son on the bus to preschool, returned to their apartment bedroom, told appellant that she had an OB/GYN appointment that afternoon, and said A.E. was taking her to the appointment. Having seen text messages between A.E. and N.M. using affectionate emoji's, appellant believed that A.E. and N.M. were having an affair. A.E. taking N.M. to her appointment strengthened appellant's belief that A.E. and N.M. were romantically involved.

Appellant proceeded to call N.M. a tramp, and N.M. told appellant that she wanted a divorce. N.M. alleges that appellant became violent after hearing she wanted to divorce him. N.M. testified that appellant clutched her throat, pushed her against the wall, and proceeded to kick her after she fell to the floor. When A.E. said he was going to call the police, appellant grabbed a sharp butcher knife, shoved N.M. against the wall with his forearm, and held the knife up to her face. A.E. pulled appellant away, and appellant left the apartment. A few hours later, N.M. reported the incident at the Hennepin County Service Center. Appellant was questioned by police and taken into custody. A Domestic Abuse No Contact Order (“DANCO”) was filed against appellant on N.M.’s behalf, and appellant was charged with felony second-degree assault with a dangerous weapon (Minn. Stat. § 609.222, subd. 1 (2016)), felony threat to commit a crime of violence (Minn. Stat. § 609.713, subd. 1 (2016)), misdemeanor domestic assault with the intent to inflict bodily harm (Minn. Stat. § 609.2242, subd. 1(2) (2016)), and misdemeanor domestic assault with intent to cause fear (Minn. Stat. § 609.2242, subd. 1(1) (2016)).

After the June 12th assault but before the trial, appellant saw A.E. and N.M. sitting in Maple Grove Park holding hands and kissing. Appellant attacked A.E. who was sitting next to N.M. Coming up from behind, appellant knocked A.E. to the ground and proceeded to attack him and yell that he was going to kill A.E. The altercation was captured by a park surveillance camera.

At the jury trial, the defense made a pretrial objection to the use of relationship evidence including evidence of the park attack of A.E. (park incident). The district court held that evidence of the park incident was not to be introduced in the case-in-chief; it

could only be used if the appellant opened the door by impeaching N.M. or A.E.'s credibility or as rebuttal evidence to appellant's own character testimony. Appellant's counsel referred to the park incident during his opening statements and brought the evidence further into question by his use of character witnesses to testify about appellant's reputation for peacefulness. The court ruled that this opened the door and that evidence of the park incident could be used as rebuttal evidence. Appellant's counsel did not object.

Appellant was convicted on all charged counts. Appellant was sentenced to 21 months in prison for second-degree assault with a dangerous weapon. He was not sentenced on the other counts. This appeal followed.

D E C I S I O N

Appellant asserts that he is entitled to a new trial because of three instances of prosecutorial misconduct: (1) vouching for the truthfulness of A.E.'s testimony, (2) disparaging the defense, and (3) encouraging the jury to use evidence of appellant's post-offense assault for prohibited purposes. Appellant did not object to the alleged misconduct during his trial.

Ordinarily, an appellant may not object to evidence on appeal if he or she did not object to the use of the evidence at trial. *State v. Barnslater*, 786 N.W.2d 646, 653 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010). This court reviews unobjected-to prosecutorial misconduct under a modified plain-error standard where the appellant must show that there was “(1) [an] error; (2) that [was] plain; and (3) the error . . . affect[ed] substantial rights.” *State v. Ramey*, 721 N.W.2d 294, 298 (Minn. 2006) (quotation

omitted). An error is plain if it is “clear” or “obvious” and “contravenes case law, a rule or a standard of conduct.” *Id.* at 302.

If the appellant establishes that prosecutorial misconduct was plain error, the respondent must show that the prosecutorial misconduct did not prejudice the appellant’s substantial rights. *Id.* at 300, 302. To do this, the respondent must show that there is no “reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Id.* at 302 (quotation omitted). If all three prongs are met, the court assesses whether the error “should be addressed to ensure fairness and the integrity of the judicial proceedings.” *Id.*; *State v. Mayhorn*, 720 N.W.2d 776, 785 (Minn. 2006) (holding that no new trial will be ordered unless the verdict rendered may be attributable to the error in question).

I. Credibility of the Witnesses

Appellant contends that the state impermissibly vouched for the credibility of witnesses during its closing argument. Specifically, appellant argues that the state vouched for A.E. and told the jury that A.E. was “someone who was telling the truth about what happened.” We agree that this was plain error.

While prosecutors may show circumstances which either substantiate or cast doubt on a witness’s veracity during closing arguments, they may not “throw onto the scales of credibility the weight of [their] own personal opinion.” *State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984). “It is improper for a prosecutor to give her own opinion about the credibility of a witness in closing argument.” *Mayhorn*, 720 N.W.2d at 791; *Ture*, 353 N.W.2d at 516 (holding that endorsing witnesses’ credibility is plain error). Saying that a

witness “told the truth” or was “very believable” during closing arguments is also plain error. *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006); *State v. Hobbs*, 713 N.W.2d 884, 888-89 (Minn. App. 2006), *vacated in part* (Minn. Dec. 12, 2006). The credibility of witnesses is to be determined by the jury. *Ture*, 353 N.W.2d at 516.

The state’s remarks during closing arguments were plain error contravening caselaw and standards of conduct. *See Ramey*, 721 N.W.2d at 302. When the prosecutor stated that A.E. was “genuine with you, very frank . . .” and that A.E. was “someone who was telling the truth,” she crossed the line by giving her opinion about the witness’s credibility.

However, neither statement affected appellant’s substantial rights or affected the jury’s verdict. *See id.* The jury instructions were clear on how the jury was to weigh the credibility of witness testimony and relationship evidence.¹ *See State v. Ferguson*, 581 N.W.2d 824, 833 (Minn. 1998) (assuming that jurors follow jury instructions). Even though this case hinged on whether the jury believed appellant or N.M. and A.E., the combination of jury instructions and the use of park-incident evidence provided a firm basis on which the jury could make their decision regarding witness credibility. Furthermore, two brief comments that a witness was “frank” and “telling the truth” do not rise to the level of prosecutorial misconduct that affects substantial rights. *See Ture v. State*, 681 N.W.2d 9, 19 (Minn. 2004) (noting that courts look at “the closing argument as a whole, rather than to selected phrases and remarks.”). Thus, the state’s comments did

¹ “[Relationship evidence of occurrences on another date] was admitted for the limited purpose of demonstrating the nature and extent of the relationship . . . to assist you in determining whether Mr. Beliad committed those acts with which he is charged in this case.”

not significantly prejudice appellant or affect the jury's decision. *See State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998); *Ramey*, 721 N.W.2d at 302.

II. Disparaging the Defense

Appellant also contends that the state disparaged the defense during closing arguments when the prosecutor stated that appellant was “admit[ting] what [he] can’t deny and deny[ing] what [he] can’t admit,” and trying to “pull the wool over [the jury’s] eyes.” This does not constitute plain error.

Prosecutors may not inject their opinion about the defendant’s credibility. *Ture*, 353 N.W.2d at 516; *Mayhorn*, 720 N.W.2d at 786. While the prosecutor is given considerable latitude in closing arguments and need not make a colorless argument, the state may not “belittle the defense, either in abstract or by suggesting the defendant raised the defense because it was the only defense that may be successful.” *State v. Graham*, 764 N.W.2d 340, 356 (Minn. 2009) (quotation omitted). “Prosecutors tread on dangerous grounds when they resort to epithets to drive home the falsity of defense evidence.” *State v. Googins*, 255 N.W.2d 805, 806 (Minn. 1977) (quotation omitted). However, caselaw is unsettled on which epithets cross the line into prosecutorial misconduct. *See, e.g., State v. Lasnetski*, 696 N.W.2d 387, 397-98 (Minn. App. 2005) (holding that prosecutor’s statements about defense “hiding the ball” via their defense strategy were permissible); *State v. Brown*, 368 N.W.2d 12, 13 (Minn. App. 2015) (holding that prosecutor calling defendant’s closing argument a “smoke screen” and “non-issue” was permissible conduct). The court looks at “the closing argument as a whole, rather than to selected phrases and

remarks” to determine whether it amounted to prosecutorial misconduct. *Ture*, 681 N.W.2d at 19.

During closing arguments the state argued that the appellant was “pull[ing] the wool” over the jury’s eyes by minimally admitting facts which he could not deny. This is similar to what was permitted in *Brown*. 368 N.W.2d at 13; *see also Lasnetski*, 696 N.W.2d at 397-98. “[P]ulling the wool” over the jury’s eyes is not the type of epithet that amounts to plain error. It is also not clear that the state impermissibly attacked appellant’s defense strategy in these statements. *See Graham*, 764 N.W.2d at 356. For this reason, the statements do not amount to plain error. *See Ramey*, 721 N.W.2d at 302.

III. The July 23 Incident as Relationship Evidence

Appellant also contends that the state used the July 23rd park incident for impermissible purposes during closing arguments. The district court’s pretrial ruling held that evidence of the park incident was inadmissible as evidence in the case-in-chief and would likely mislead the jury. When appellant’s counsel argued that he was a peaceful person in his opening argument, he opened the door for the state to use evidence of the park incident as rebuttal evidence. Appellant argues that the state encouraged the jury to use the July 23rd evidence improperly by making statements such as “[t]he defendant can’t deny beating up [A.E.] on July 23, 2017, at that park in Maple Grove, it’s on video,” and “[h]e’s doing this in an effort to minimize his responsibility both for the assault in this case and what happened on July 23rd. He’s hoping . . . he can pull the wool over your eyes.” Appellant argues that the state was urging the jury to use the incident as substantive

evidence instead of character rebuttal evidence. The state's conduct did not amount to plain error.

It is “unprofessional conduct for a prosecutor to knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury to . . . make other impermissible comments or arguments,” during closing arguments. *State v. Johnson*, 616 N.W.2d 720, 729 (Minn. 2000) (quotation omitted). Prosecutors commit misconduct when they violate an evidentiary order. *State v. McRae*, 494 N.W.2d 252, 259 (Minn. 1992). The prosecution did not commit any of these errors.

Appellant argues that the state's juxtaposition of the offense in question and the park incident encouraged the jury to use the post-offense assault as relationship evidence instead of only using the incident as a rebuttal of appellant's reputation for peacefulness. In doing so, the state “invited comparisons between the two . . . and argued a nexus between the charged offense and the July 23rd alleged assault.” The district court held that evidence of the park incident could be used to show A.E. or N.M.'s fear of the defendant which could impact their testimony or for impeachment purposes such as rebutting defendant's assertions of peacefulness.

The evidence the prosecutor referenced in closing arguments cited by the appellant was indeed offered as rebuttal evidence. Consequently, based on appellant's failure to object to the introduction of the evidence of the park incident, failure to object to the detailed jury instructions, and because appellant's counsel opened the door to the park incident in opening arguments and through his use of character witnesses to demonstrate

appellant's peacefulness, we conclude that this is not plain error. *See Ramey*, 721 N.W.2d at 302.

Affirmed.