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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1581**

State of Minnesota,
Respondent,

vs.

Simon Benjamin Danquah,
Appellant.

**Filed July 22, 2019
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-17-22811

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, 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 Florey, Presiding Judge; Worke, Judge; and Cochran,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his criminal-sexual-conduct convictions, arguing that the district court erred by admitting, as prior consistent statements, the victims' CornerHouse interviews; and that the prosecutor committed misconduct in closing argument. We affirm.

FACTS

In 2011, appellant Simon Benjamin Danquah moved in with C.S. and her children. Danquah and C.S. married in 2014, but divorced in 2015. In 2017, C.S.'s daughters, U.S. and O.S., alleged that Danquah sexually abused them. Danquah was charged with three counts of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1(a) (2010), and two counts of second-degree criminal sexual conduct, in violation of Minn. Stat. § 609.343, subd. 1(h)(iii) (2010).

At Danquah's jury trial, a child-protection investigator testified that the investigation began after U.S. displayed regressive behavior and there were concerns of possible sexual abuse. The child-protection investigator testified that U.S. reported that Danquah took off the girls' clothes and "slapped their butts." U.S. also reported that Danquah would help the girls take baths, even though they did not need help, and wanted to put lotion or oil on them. U.S. refused to respond when asked what happened after Danquah put oil on her. The child-protection investigator testified that O.S. disclosed that Danquah took off her clothes and "put pepper in her pants." O.S. indicated that Danquah touched her buttocks and vagina.

The doctor who conducted medical examinations of the girls testified that O.S. disclosed that Danquah touched her private part on “the inside.” O.S. stated that “it [then] felt hot” when she went to the bathroom, a symptom that the doctor testified is consistent with genitalia contact. O.S. also reported that she had seen Danquah’s private part and that Danquah’s private part touched her private part and her lips.

U.S., then 14 years old, testified that Danquah “attempted to punch [her] and force [her] into tile.” U.S. testified that Danquah covered her body in soap during a bath and “engaged in sexual assault using male reproductive organ.” U.S. testified that Danquah “put his male reproductive organ [inside] . . . [her] gluteus maximus.” U.S. testified that Danquah once entered her room and attempted to touch her under a blanket. U.S. tried to stop Danquah, but her pants were removed and he put his mouth on her private part. U.S. testified that another time, Danquah touched his “male reproductive organ” to her private part. U.S. testified that she told her mom, but Danquah continued to live with the family.

O.S., then nine years old, testified that Danquah touched her “in a way that [she] didn’t like,” and that Danquah’s hand would go “inside” her private part “[a]ll the times.” O.S. testified that Danquah once touched her “private part . . . when he was using pepper in his hands.” O.S. testified that Danquah had a key to the bathroom, but she could not remember if Danquah touched her when she took a bath. O.S. also could not remember if she saw Danquah’s private part, if his private part touched her, or if he ever told her not to tell her mom about him touching her.

Danquah objected to the admission of the girls’ CornerHouse interviews, arguing that they were admissible only to the extent that they were consistent with trial testimony.

The district court acknowledged that the girls' trial testimony was not "near as complete" as the interviews, but recognized the difficulty a child experiences when testifying about a traumatic event in front of the accused. The district court ruled that the interviews were "consistent enough" to be admissible as prior consistent statements. The CornerHouse interviews were played for the jury.

C.S. testified that O.S. was "terrified" of Danquah and would "shake" around him. C.S. testified that U.S. wore a lot of clothing to bed, wanted blankets all over her, and did not want the light off. If C.S. noticed U.S. sweating while she slept and tried to remove a blanket, U.S. would jump.

The prosecutor began her closing argument by stating that men who sexually assault children "prey" upon them because they are the "perfect victim." In his closing argument, Danquah's attorney pointed out inconsistencies between the CornerHouse interviews and the girls' testimonies and argued that the disclosure date raised doubt about the veracity of the claims. The jury found Danquah guilty of five counts of criminal sexual conduct. The district court sentenced Danquah to 234 months in prison. This appeal followed.

D E C I S I O N

Evidence

Danquah argues that the district court abused its discretion by admitting the CornerHouse interviews. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Danquah has the burden of establishing that the

district court abused its discretion and that he was prejudiced. *See State v. Hall*, 764 N.W.2d 837, 841 (Minn. 2009).

Generally, hearsay, an out-of-court statement offered “to prove the truth of the matter asserted,” is not admissible. Minn. R. Evid. 801(c), 802. But a prior out-of-court statement is not hearsay if “[t]he declarant testifies . . . and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant’s testimony and helpful to the trier of fact in evaluating the declarant’s credibility.” Minn. R. Evid. 801(d)(1)(B).

In considering whether to admit a prior consistent statement, the district court determines whether the witness’s credibility has been challenged and whether the prior statement would “bolster the witness’ credibility with respect to that aspect of the witness’ credibility that was challenged.” *State v. Fields*, 679 N.W.2d 341, 347-48 (Minn. 2004) (quotation omitted). Trial testimony and prior statements need not be verbatim to be considered consistent. *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *review denied* (Minn. Feb. 24, 2000). Rather, the prior statements must be “reasonably consistent” with the declarant’s trial testimony. *In re Welfare of K.A.S.*, 585 N.W.2d 71, 76 (Minn. App. 1998). But when inconsistencies “directly affect the elements of the criminal charge,” a prior statement is not admissible as a prior consistent statement. *Bakken*, 604 N.W.2d at 110.

Danquah asserts that the district court erred in two ways when it admitted the interviews. First, Danquah argues that the district court failed to analyze the “individual

statements” to determine whether they were consistent with the trial testimony.¹ But this assertion is not accurate because the district court indicated that it analyzed the individual statements. The district court acknowledged that it is especially difficult for a child to feel comfortable testifying completely about a traumatic event in front of strangers and the accused. The district court also recognized that “there is no such thing as a completely consistent statement in terms of identical statements,” and told defense counsel that he could use inconsistencies in arguing to the jury that the victims were unreliable. The district court also ordered portions of the interviews unrelated to the allegations redacted. Thus, the district court properly analyzed the interviews and determined that they were “consistent enough” with the trial testimony.

Danquah argues, however, that because the district court ruled that the majority of the interviews were admissible, some inconsistent statements were admitted. Danquah points to two examples that he claims show that inconsistent statements were admitted into evidence. He states that “O.S. testified that Danquah touched her vagina, with pepper in his hands, while the two were in [her] bedroom[,] [b]ut to CornerHouse, O.S. claimed that Danquah threatened her at knifepoint during the alleged touching, and threatened to kill [C.S.] if O.S. told anyone.” But these statements are unrelated.

O.S. testified that Danquah touched her in a way that she did not like, and that he touched her “private part” “when he was using pepper in his hands.” O.S. did not testify

¹ Danquah did not object to each individual statement. Appellate counsel claims that trial counsel relied on a “blanket objection” to the interviews in their entirety. But to now argue that the district court failed to analyze each specific statement and to challenge specific statements required a proper objection at trial.

that Danquah ever threatened her with a knife. In her interview, O.S. stated that Danquah touched her private part with his hand, and that it felt bad. O.S. was asked if Danquah said anything while he was “doing this.” O.S. replied: “No.” O.S. did not state that Danquah had pepper in his hands when he touched her. O.S. was then asked if Danquah “ever [said] anything about telling or not telling.” O.S. replied: “He threaten[ed] me with a knife.”

Danquah combines the statements, claiming that O.S. stated in the interview that “Danquah threatened her at knifepoint during the alleged touching.” But that is inaccurate. O.S. did not state that Danquah threatened her with a knife *during* the alleged touching. She stated that Danquah threatened her with a knife when he talked with her about not telling. To the extent that O.S.’s statements are inconsistent, the inconsistencies do not affect the elements of the criminal charges. *See id.* at 110 (stating that when an inconsistency affects the elements of the criminal charge, a prior statement is inconsistent and inadmissible as substantive evidence).

The second inconsistency that Danquah claims makes the interviews inadmissible relates to U.S. Danquah argues that U.S. testified that Danquah “put his mouth on her vagina,” but at CornerHouse she claimed that he “bit her vagina.” U.S. testified that Danquah put his mouth on her private part. During her interview, U.S. stated that Danquah “put mouth on me, bit me.” These statements are not inconsistent. *See id.* at 109 (stating that testimony and prior statements need not be verbatim to be consistent).

Danquah argues that the district court’s second error was admitting the interviews that included “reams of material to which the declarants did not testify.” The state cites *State v. Zulu* to support its argument that when inconsistencies are not substantial, a

videotaped interview is properly admitted as a prior consistent statement. 706 N.W.2d 919, 924-25 (Minn. App. 2005). In *Zulu*, the appellant argued that there were several inconsistencies between the interview and the victim's testimony, or in the form of statements in the interview that were not testified about at trial, or trial testimony that was not previously disclosed during the interview. *Id.* This court agreed with the district court that the interview was admissible because the interview and trial testimony were "reasonably consistent," the victim was subject to cross-examination, and the appellant was allowed to argue all inconsistencies to the jury. *Id.* at 925. Similarly here, the victims were subject to cross-examination and Danquah was allowed to argue inconsistencies to the jury.

Danquah argues, however, that the statements were not consistent because the interviews include statements that the victims did not testify about, including: (1) U.S. stated that Danquah "drilled through [O.S.'s] leggings," (2) O.S. stated that Danquah threw her outside and made her sleep there, and (3) O.S. stated that Danquah threatened her with a knife if she told anyone. But these statements do not affect the elements of the criminal charges. Rather, they relate to relationship evidence. Before Danquah's jury trial, the state moved to admit statements the victims made in the interviews describing Danquah's acts of physical violence. The district court ruled that the relationship evidence was admissible to establish context and cautioned the jury on how to use it.

Danquah points to several other statements that he claims are assertions about events that were not described by the witnesses' testimony. But the record shows that any inconsistency is not substantial. For example: U.S. stated in her interview that Danquah knocked her down on the tile and punched her face with a closed fist; U.S. testified that

Danquah attempted to punch her and forced her onto the tile. U.S. stated in her interview that Danquah touched her rear end with his hand in her bedroom; U.S. testified that Danquah entered her bedroom, her pants were removed, Danquah's mouth touched her private part, and that it was "not known" if any other part of his body touched her. O.S. stated that Danquah touched her butt seven times; O.S. testified that Danquah disciplined her on her butt a few times. O.S. stated that Danquah put his fingers or hand inside her vagina five times; O.S. testified that Danquah put his hand inside her private part "[a]ll the times." O.S. stated that Danquah exposed himself and wiggled his penis at her; O.S. testified that, "maybe" she saw Danquah's private part. The differences between the statements are not substantial and they do not affect the elements of the offense. Accordingly, the district court did not abuse its discretion in admitting the interviews as prior consistent statements.

Without an abuse of discretion, we do not need to review for prejudice. *See id.* But in considering any prejudice, the record shows that the victims' trial testimony, which was corroborated by the child-protection investigator, the doctor who examined the girls, and C.S., was sufficient to support the convictions.

Prosecutor's closing argument

Danquah next challenges the prosecutor's closing argument, although he did not object at trial. Without an objection, this court reviews allegations of prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Plain error is clear or obvious, and "contravenes case law, a rule, or a

standard of conduct.” *Id.* If Danquah establishes plain error, the burden shifts to the state to demonstrate that the misconduct did not affect substantial rights. *See id.*

A plain error affects substantial rights when “it was prejudicial and affected the outcome of the case,” meaning “there is a reasonable likelihood that the error had a significant effect on the jury’s verdict.” *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017) (quotations omitted). In reviewing whether plain error affected substantial rights, this court considers “(1) the strength of the state’s evidence; (2) the pervasiveness of the erroneous conduct; and (3) whether the defendant had an opportunity to rebut any improper remarks.” *State v. Longo*, 909 N.W.2d 599, 609 (Minn. App. 2018) (quotation omitted). If the three elements—error, that is plain, and that affected substantial rights—are satisfied, this court “may correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.” *State v. Peltier*, 874 N.W.2d 792, 804 (Minn. 2016) (quotations omitted).

Attorneys have considerable latitude in closing arguments. *State v. Smith*, 541 N.W.2d 584, 589 (Minn. 1996). The state may “present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence” but may not “misstate the evidence.” *Peltier*, 874 N.W.2d at 804-05 (quotations omitted). When reviewing whether a prosecutor’s argument overstepped these lines, this court considers “the argument as a whole, rather than focusing on particular phrases or remarks.” *State v. Jones*, 753 N.W.2d 677, 691 (Minn. 2008) (quotations omitted); *see Montanaro v. State*, 802 N.W.2d 726, 734 (Minn. 2011) (concluding that after reviewing the prosecutor’s closing argument in light of the entire record, any misconduct viewed in isolation or

collectively did not have a significant impact on the jury's verdict and did not affect substantial rights). To warrant reversal, "the prosecutor's misconduct—placed into the context of the entire trial—must be so serious and prejudicial that it impairs a person's constitutional right to a fair trial." *State v. Banks*, 875 N.W.2d 338, 348 (Minn. App. 2016), *review denied* (Minn. Sept. 28, 2016).

Danquah claims that the prosecutor committed misconduct by presenting a "general, emotionally charged argument" focused on men who prey on children. The prosecutor made the following argument:

Children speak quietly, and so we have to listen to them. We have to listen because the men who sexually assault children are counting on their silence, that is why they pick them. Men who sexually assault children pick children because they can be frightened or persuaded into staying quiet. They can be confused about the appropriate role of a parent or stepparent or caregiver.

They prey upon children because they are going to be uncomfortable talking about what happened to them. Children don't want to say penis. They don't want to say vagina. It's embarrassing. They prey on children because they don't have a linear or sequential presentation of their stories. They can't say: Well, on this date, at this time, he came into my room and started with this and ended with that.

They don't talk that way. They don't think that way. They are going to mix up details. They're going to mix up events. And they are easily dismissed. It is so easy to dismiss the word of a child. Oh, they're just attention-seeking or they've been coached. And men who prey upon children know that there isn't a child out there that hasn't told some kind of lie. Who took the cookie? We joke about it. Oh, children lie. That's why they pick them. Children are the perfect victim.

Danquah claims that the prosecutor sought to appeal to the jury's passions and prejudices by evoking "imagery of men 'prey[ing]' on children" and equating "criminal

defendants to hungry animals.” See *State v. Mayhorn*, 720 N.W.2d 776, 786-87 (Minn. 2006) (stating that prosecutor must not appeal to passions of the jury). Danquah also claims that the prosecutor used general terms to divert the jury from deciding the case on the evidence, rather than focusing on Danquah and U.S. and O.S.

In unpublished cases, this court has had the opportunity to review closing arguments that included predator-prey analogies. In one such case, a jury found the defendant guilty of theft-by-swindle for convincing an elderly couple to loan him money. *State v. Chauvin*, No. A05-726, 2005 WL 2979382, at *1 (Minn. App. Nov. 8, 2001), *aff’d* 723 N.W.2d 20 (Minn. Oct. 26, 2006). During closing argument in the second-stage of trial, in which the jury was asked to determine whether the particular-vulnerability aggravating factor existed, the prosecutor told the jury they would have to decide if the couple was similar to animals vulnerable to lion attacks. *Id.* at *2. Chauvin argued that the prosecutor committed misconduct by comparing him to an animal preying on more vulnerable animals. *Id.* at *6. This court stated that the analogy was not improper because the issue before the jury was the victims’ vulnerability, as well as Chauvin’s knowledge and exploitation of that vulnerability. *Id.*

In another unpublished case, the appellant challenging his criminal-sexual-conduct conviction argued that the prosecutor committed misconduct by referring to him as a “predator.” *State v. Chaney*, No. A14-1513, 2015 WL 5088943, at *1-2 (Minn. App. Aug. 31, 2015), *review denied* (Minn. Nov. 17, 2015). In *Chaney*, the victim was extremely intoxicated, less able to perceive or prevent a physical attack, and the evidence indicated that Chaney followed the victim and isolated her. *Id.* at *7. Based on this

evidence, the state argued that Chaney acted like a predator. *Id.* This court determined that, although the use of the term “predator” in closing argument is problematic, it was not plain error given the facts. *Id.*

There are similarities between this case and the unpublished cases, but the differences support Danquah’s argument that the prosecutor committed misconduct. First, in *Chauvin*, this court noted that it mattered that the argument was raised when the jury was deciding the existence of the particular-vulnerability aggravating factor for sentencing, and not in deciding culpability. 2005 WL 2979382, at *2. Second, in *Chaney*, this court determined that although the use of the term “predator” in closing argument was problematic, it was not plain error given that the state argued how Chaney acted like a predator when he followed, isolated, and sexually assaulted the victim. 2015 WL 5088943, at *7. Here, the prosecutor spoke generally about men who sexually assault children because they can be frightened into silence, are confused about their caregiver’s role, are uncomfortable speaking about the topic, are disorganized in the presentation of their stories, and can be disbelieved.

In *State v. Duncan*, the appellant, challenging criminal-sexual-conduct convictions, claimed several instances of misconduct in the prosecutor’s closing argument. 608 N.W.2d 551, 555 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). Among the challenges, Duncan argued that the prosecutor improperly referred to Duncan as a “predator” and used various synonyms of the word throughout closing argument. *Id.* at 556. This court stated that, although the record had evidence of “the predatory behavior of child molesters,” the prosecutor intended to inflame the prejudices of the jury. *Id.* The same is true here; the

prosecutor intended to appeal to the passions of the jury. The prosecutor's comments were therefore misconduct.

But while Danquah has shown an error that is plain, the state has similarly met its burden in demonstrating that the misconduct did not affect Danquah's substantial rights. In another unpublished case, this court reviewed a challenge to a prosecutor's reference to the defendant as a "predator." *State v. Dahl*, No. A10-1813, 2011 WL 4435325, at *4 (Minn. App. Sept. 26, 2011). The prosecutor stated: "This case is about a predator. It's about a human predator. [Appellant] selected [the victim] when she was 14 years old. She was the perfect prey." *Id.* This court determined that the statement was harmless beyond a reasonable doubt because the district court instructed the jury that the attorneys' statements were not evidence; the "predator-prey analogy was brief"; the district court instructed the jury to not allow "sympathy, prejudice, or emotion to influence [their] verdict"; and the evidence supporting the conviction was strong. *Id.*

Similarly here, the district court instructed the jury that the attorneys' arguments are not evidence, and that "[t]he law does not permit jurors to be governed by sympathy, prejudice, or public opinion." Further, the state's case against Danquah was strong, the alleged misconduct was not pervasive, and Danquah's attorney had an opportunity to address the prosecutor's comments in his closing argument. *See Longo*, 909 N.W.2d at 609. Thus, the prosecutor's argument did not deprive Danquah of a fair trial. *See Banks*, 875 N.W.2d at 348. Finally, this is but one statement in a lengthy closing argument, and

in reviewing the closing as a whole, rather than focusing on the particular remark, and in context of the entire trial, the misconduct does not warrant reversal.²

Danquah also argues that the prosecutor committed misconduct by aligning herself with the jury and against him and his attorney. In his closing argument, defense counsel raised the disclosure date, and stated: “If there was evidence that [the girls] were suffering from sexual abuse, someone would have done something about it. No one was told anything. No one noticed anything, and it wasn’t until 2017 that these allegations first surfaced.” In rebuttal, the prosecutor stated:

[W]ouldn’t it be awesome if we lived in [defense counsel’s] world. If we lived in a world where children are observed; and tended to; and questioned; and listened to; and people are attentive to the signs that are being shown? Signs like [U.S.] wearing multiple layers of clothing and pulling her sheets down over her feet.

Wouldn’t it be awesome if we lived in a world where . . . every child grew up in a safe and supportive, nontoxic environment where they felt comfortable and free to express themselves. Wouldn’t that be great? We don’t live in that world, ladies and gentlemen.

We live in a world where children do grow up in homes where they are subject to physical abuse and . . . observe physical abuse of other people in their homes. That’s the world we live in. We live in a world where children do try, they tried. [U.S.] told [C.S.] that [Danquah] stood over her in her room; nothing happened.

The prosecutor replied to Danquah’s argument that if the abuse had occurred when it did, the girls would have told someone, and something would have been done about it

² In a case with less evidence supporting the convictions, we may not be so inclined to conclude that the misconduct was not prejudicial.

then. The prosecutor pointed out that that is not how the world works; in reality, some children grow up in unsafe, unsupportive homes where they are abused and ignored. The prosecutor did not suggest that Danquah and his attorney live in one world and the prosecutor and jury live in a different world. The prosecutor argued that the world defense counsel described does not exist. Danquah has failed to show plain error in this segment of the prosecutor's closing argument.

Affirmed.