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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1707**

State of Minnesota,
Respondent,

vs.

Myron Alexander Bruss,
Appellant.

**Filed November 25, 2019
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-17-9288

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, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges his judgment of conviction for first-degree criminal sexual conduct, arguing that he is entitled to a new trial because the prosecutor committed

misconduct during closing argument by mischaracterizing evidence, vouching for the victim's credibility, and disparaging the defense. We conclude that no prosecutorial misconduct occurred. Appellant also attempts to raise additional issues in his pro se supplemental brief, but fails to identify a legal error, cite the record, or support his arguments with any legal authority. Thus, we decline to consider the issues raised in appellant's pro se supplemental brief. Therefore, we affirm.

FACTS

Appellant Myron Alexander Bruss's conviction is for the sexual abuse of his daughter, M.B., who was born in 1993. Bruss also has a son, A.B., born in 2000; he parented both children with his ex-wife, S.B. Bruss and S.B. separated when M.B. was nine or ten years old and divorced in 2005. After the separation, both children initially resided with S.B. in Delano. In April or May 2007, when M.B. was 13 years old, she and A.B. moved into Bruss's Minneapolis home to attend school. In July 2008, the children returned to live with S.B. They have not resided with Bruss since July 2008.

Dr. Adamski was M.B.'s primary physician from birth to age 21 or 22, and, among other things, treated her for Tourette's Syndrome and anxiety. In about June 2014, when M.B. was 20 years old, Dr. Adamski noticed an increase in M.B.'s tics and anxiety and referred M.B. to a therapist. On June 16, 2014, M.B. told her therapist, Dr. Reed, that Bruss had sexually abused her during the time that she lived with him. The next day, M.B. experienced her first seizure. Just before the seizure, M.B. left work because she felt nauseous. M.B.'s mother testified that M.B. was having "massive tics, which she's never

had before.” Police stopped M.B., who was driving. M.B. began to seize and was taken by ambulance to the hospital.

M.B. suffered seizures over the next few days, including a seizure while at her primary-care clinic. Treating physicians ultimately determined that M.B. was experiencing “psychological nonepileptic seizures.” M.B. sought care from Dr. Sa, a psychologist, in November 2015. Dr. Sa diagnosed M.B. with post-traumatic stress disorder (PTSD) and reported M.B.’s sexual abuse to law enforcement in October 2016.

The state filed a complaint against Bruss in April 2017, alleging four counts: first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a) (2006), penetration of a person under the age of 13 years by an actor more than 36 months older (count one); first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(a), sexual contact with a person under the age of 13 years by an actor more than 36 months older (count two); first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(b) (2006), penetration of a person between the ages of 13 and 16 by an actor more than 48 months older and in a position of authority (count three); and first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(b), sexual contact with a person between the ages of 13 and 16 by an actor more than 48 months older and in a position of authority (count four).

The district court heard pretrial motions in February 2018. Relevant to the issue on appeal, the state sought to admit expert testimony from Dr. Adamski and Dr. Sa. Bruss’s attorney objected, arguing that Dr. Sa should not be permitted to opine that M.B.’s symptoms are consistent with or caused by sexual abuse. The district court ruled that Dr. Sa

could testify regarding whether M.B. had suffered trauma, but was “not permitted to vouch” or opine whether M.B.’s trauma was from sexual abuse. The district court reserved its ruling on whether Dr. Sa could testify that M.B.’s symptoms were consistent with sexual abuse.

The five-day jury trial began May 30, 2018. The state called M.B., A.B., S.B., Dr. Sa, Dr. Adamski, a forensic interviewer from CornerHouse, and a law-enforcement detective. In addition to the facts described above, M.B. testified that during the approximately 15 months she lived with him, Bruss penetrated her anus with his penis, used a vibrator on her vagina, digitally penetrated her vagina, and made her perform oral sex on him. M.B.’s medical records were received into evidence and reflected that she had no history of seizures before June 2014, when she first disclosed abuse to Dr. Reed.

The state elicited testimony from Dr. Sa about whether M.B.’s symptoms were consistent with sexual abuse. Defense counsel objected and the district court ruled that caselaw permitted Dr. Sa to testify about whether a victim’s traits or characteristics “are consistent or inconsistent with sexual abuse” and that Dr. Sa’s testimony about M.B.’s symptoms was not vouching.

The forensic interviewer testified that she conducted a CornerHouse interview of M.B. and, at times, M.B. had a childlike affect in “the words that she used and the way that she used them.” The recording of the interview shows that M.B. displayed minimal tics until the interviewer inquired about sexual abuse. At that point, M.B. began to cry, her tics escalated, and she hyperventilated. During the interview, M.B. stated Bruss touched her breasts, penetrated her anus with his penis, digitally penetrated her vagina, forced her to

perform oral sex on him, and that he performed oral sex on her. The district court received a recording of the forensic interview into evidence and the jury viewed the recording. Bruss testified in his own defense and denied any abuse occurred.

Before the case was submitted to the jury, the state dismissed counts one, two, and four. On June 5, 2018, the jury convicted Bruss of count three, first-degree criminal sexual conduct under Minn. Stat. § 609.342, subd. 1(b), penetration of a person between the ages of 13 and 16 by an actor more than 48 months older and in a position of authority. This appeal follows.

D E C I S I O N

I. The prosecutor did not commit misconduct during closing argument.

Bruss did not object during or after the prosecutor’s closing argument and raises prosecutorial misconduct for the first time in this appeal. When an appellant seeks review of prosecutorial misconduct but did not object during closing argument, we apply a modified plain-error standard to review the issue. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). An appellant must demonstrate an error occurred, that the error was plain, and if those elements are established, then the burden shifts to the state to show the conduct did not affect the appellant’s substantial rights. *Id.* An error is plain if the prosecutor’s conduct “contravenes case law, a rule, or a standard of conduct” and it is “clear or obvious.” *Id.* If the three elements of the modified plain-error test are met, this court must decide whether it should address the error “to ensure fairness and the integrity of the judicial proceedings.” *Id.*

Bruss argues the prosecutor committed misconduct during closing argument by “mischaracterizing the evidence, vouching for the complainant’s credibility, and disparaging the defense.” We discuss each argument in turn.

A. Mischaracterizing expert evidence

The prosecution’s closing argument “may include conclusions and inferences that are reasonably drawn from the facts in evidence.” *State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010). But “a lawyer may not speculate without a factual basis.” *State v. Peltier*, 874 N.W.2d 792, 804 (Minn. 2016). When this court reviews a closing argument for prosecutorial misconduct, “we look to the closing argument as a whole, rather than to selected phrases and remarks.” *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008).

Bruss argues the prosecutor mischaracterized expert evidence, contending that she argued during closing that M.B.’s seizures were a “direct result of sexual abuse.” We disagree with Bruss’s description of the prosecutor’s closing argument. The prosecutor did not state that M.B.’s seizures were a “direct result” of sexual abuse; in fact, the prosecutor stated, “You can’t say [M.B.] has seizures; ergo, she was sexually assaulted as a child.” When the prosecutor’s argument is read in context, the prosecutor argued that the jury should infer M.B.’s seizures corroborated her statements that Bruss sexually abused her. This is not misconduct because the prosecutor was entitled to argue that the jury should draw an inference based on record evidence. *See Matthews*, 779 N.W.2d at 551. Here, the prosecutor disavowed a causal relationship between the sexual abuse and the seizures but nonetheless properly argued corroboration based on evidence that M.B.’s first seizure

occurred immediately after she first disclosed Bruss's conduct to her therapist and that M.B.'s medical records documented no history of seizures before June 2014.

Bruss also argues the prosecutor's closing argument mischaracterized the evidence by arguing that the sexual abuse was the "only trauma" that M.B. had experienced when she had her first seizure. Bruss points to the following statements by the prosecutor:

And what did Dr. Sa further tell you? That [M.B.'s] presentation is not inconsistent with a person who suffered sexual abuse as a child. *That is the only trauma [M.B.] has disclosed. That is the only trauma [M.B.] has discussed and is working through. There is no other trauma other than the repeated sexual assault by her father when she was a child.*

(Emphasis added.) When arguing that M.B.'s "presentation" was "not inconsistent" with sexual abuse, the prosecutor accurately summarized Dr. Sa's testimony. Dr. Sa was asked on direct-examination whether M.B.'s symptoms were "consistent with someone who has undergone a trauma" and "with someone who [has] experienced a sexual assault[,]" and she replied "[y]es" to both questions.¹ The prosecutor did not argue that Dr. Sa had opined M.B.'s trauma was from sexual abuse, which adheres to the district court's in limine ruling.

But Bruss contends that the prosecutor misstated the evidence by referring to Dr. Sa's testimony and, in the next sentence, arguing that the "only trauma" M.B. disclosed was sexual abuse. Dr. Sa agreed on cross-examination that M.B. experienced other anxiety "triggers" around the time of her seizures, such as roommate problems, living on her own,

¹ To be clear, in his appeal to this court, Bruss does not challenge the admissibility of the expert's testimony. Therefore, we do not consider or address the admissibility of the expert's testimony.

difficulties at work, and, much earlier, her grandmother's death during her childhood. Similarly, M.B. testified to struggling with work stress, relationship problems, and roommate issues. Still, when the prosecutor's argument is read in context, we conclude that the prosecutor's statements were fair argument because she asked the jury to differentiate between "triggers," stress, and trauma, a distinction that finds support in the testimony. We conclude that the prosecutor did not mischaracterize expert evidence during closing argument.

B. Vouching for M.B.'s credibility

The state may argue for or against a witness's credibility but cannot "personally endorse a witness's credibility[.]" *State v. Jackson*, 773 N.W.2d 111, 123 (Minn. 2009). Vouching occurs when "the prosecutor 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. Smith*, 825 N.W.2d 131, 139 (Minn. 2012).

Bruss argues that the prosecutor vouched for M.B.'s credibility. Bruss's appellate brief cites the following statements by the prosecutor during closing argument:

What do you have to corroborate this? Because, again, this is ten years ago. It's not going to be on video, and we're not going to have witnesses. Ladies and gentlemen, her body is corroboration.

... You can't say she has seizures; ergo, she was sexually assaulted as a child. But this is a piece, ladies and gentlemen, it's a piece that corroborates the information that she gave you. And you heard from Dr. Sa and Dr. Adamski [the pediatrician], despite years of medication and anxiety, years of it, eight years of it. It is not until she discloses to her therapist that the seizures start. And then they continued, and they have continued through all increased moments of anxiety of [M.B.'s] life,

including the decision to contact the police, as you heard, including the decision to participate in a CornerHouse interview. Her body is corroborative of what happened to her.

The parties agree that M.B.'s credibility was a central issue in this case. Bruss argues the prosecutor vouched for M.B.'s credibility by arguing that M.B.'s seizures corroborated her testimony about sexual abuse. This argument is very similar to Bruss's argument that the prosecutor mischaracterized the evidence and, for similar reasons, we reject Bruss's vouching argument.

First, as discussed above, the inference that the prosecutor advocated has support in the record evidence including the sequence of events and M.B.'s medical history. Second, the prosecutor followed the district court's in limine ruling and explicitly stated that M.B.'s seizures did not mean that M.B. was sexually assaulted. Third, the prosecutor did not state her personal opinion about M.B.'s credibility. Because the prosecutor argued the jury should draw an inference based on record evidence, adhered to the district court's in limine instructions, and did not state her personal opinion, we conclude the prosecutor did not vouch for M.B.'s credibility.

C. Disparaging the defense

"The State may argue that there is no merit in a particular defense, but it may not belittle that defense either in the abstract or by suggesting that the defendant raised the defense because it was the only one with any hope for success." *Peltier*, 874 N.W.2d at 804. On the other hand, the state "is free to make arguments in anticipation of the defense closing argument." *State v. Banks*, 875 N.W.2d 338, 348 (Minn. App. 2016), *review denied* (Minn. Sept. 28, 2016).

Bruss contends the prosecutor improperly disparaged Bruss's defense by stating, "I also guarantee you, that if [M.B.] had [said] every single thing exactly the same" in her prior statements, defense counsel "would stand up here and tell you that that's evidence that she's been coached." Bruss argues this statement is similar to a "when nothing else will work" argument that the Minnesota Supreme Court has described as improper disparagement. *See State v. Griese*, 565 N.W.2d 419, 427-28 (Minn. 1997). The state responds that the prosecutor anticipated defense counsel's "comment on M.B.'s credibility" during his closing argument.

After carefully considering the closing arguments of both parties, we conclude that the prosecutor's argument fairly anticipated the defense argument. The defense argued that M.B.'s testimony was fabricated, contending that M.B. "knew she shouldn't ha[ve] said what she said in the first place and she couldn't go back on it," and that M.B. had been coached because there were "multiple interviews" by her doctors about the abuse and "we know that she discussed it with her mother." When considered in context, the prosecutor's challenged statements anticipated defense counsel's argument about why M.B.'s testimony lacked credibility. Thus, we conclude the prosecutor's argument did not disparage or belittle the defense.

II. We decline to consider issues raised in Bruss's pro se supplemental brief.

Legal issues raised in an appellate brief are forfeited when the "brief contains no citation to legal authority to support his allegations." *State v. Longo*, 909 N.W.2d 599, 613 (Minn. App. 2018). "Arguments are forfeited if they are presented in a summary and

conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred.” *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017).

Bruss’s pro se supplemental brief argues, first, without any detail, that witnesses provided false information to the police and prosecution and that evidence introduced by the prosecution was incorrect or incomplete. Second, Bruss argues that, during the trial, the state dismissed three counts in its complaint and the jury never received an explanation. The pro se brief does not cite legal authority, refer to the record, or articulate a legal error. Because Bruss’s pro se supplemental brief is conclusory and does not adequately identify or support legal error, we deem the issues forfeited and do not consider them further.

Affirmed.