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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0866**

State of Minnesota,
Respondent,

vs.

Ruben Montoya Carbajal,
Appellant.

**Filed May 26, 2020
Affirmed
Cochran, Judge**

Mower County District Court
File No. 50-CR-17-2227

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Segal, Chief Judge, and Ross, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant was convicted of four counts of criminal sexual conduct. On appeal, he argues that he is entitled to a new trial because his appearance in jail clothes during trial

violated Minn. R. Crim. Pro. 26.03 and because the prosecutor committed misconduct. Appellant further contends that the cumulative effect of these errors denied him a fair trial. We affirm.

FACTS

In September 2017, L.R.C. reported to police that appellant Ruben Montoya Carbajal sexually assaulted her on multiple occasions when she was eleven and twice when she was fourteen. The state charged Carbajal with two counts of first-degree criminal sexual conduct (CSC) and two counts of second-degree CSC. Carbajal requested a jury trial.

At a pretrial hearing, the prosecutor raised the issue of whether Carbajal had clothing other than his jail clothes to wear at trial. The prosecutor noted that this was “a concern” and that he did not think anything was being done by defense counsel to ensure that Carbajal had civilian clothing available for trial. In response, the district court informed defense counsel that if Carbajal planned to wear civilian attire, Carbajal needed to provide it. Defense counsel responded, “Okay, Your Honor.”

On the first day of a two-day trial, before voir dire began, Carbajal appeared in his orange jail clothes. The district court asked Carbajal if he would prefer to wear “street clothes” for the trial. Carbajal responded: “No, this is fine.” The prosecutor then requested that the court give a cautionary instruction to the jury to disregard Carbajal’s clothing, but defense counsel argued against an instruction. Defense counsel asserted that an instruction would call more attention to Carbajal’s clothing. The district court told the parties that the court preferred that Carbajal wear civilian attire, not his orange jail clothes, during the trial.

The district court stated that the jail could wash the clothes that Carbajal wore when he was brought into custody. Defense counsel did not request to have Carbajal's civilian clothes washed or indicate that Carbajal wanted to change out of the jail clothes. The district court took the state's request for a cautionary instruction under advisement. Carbajal wore his jail clothing for the first day of trial, but he wore civilian attire for the second day.

At trial, L.R.C. testified that the first instance of sexual conduct occurred on her 11th birthday. Carbajal, who was married to L.R.C.'s mother, entered L.R.C.'s bedroom, kissed her on the mouth, and then proceeded to touch her breasts and vagina. Carbajal's fingers penetrated L.R.C.'s vagina. The incident ended once L.R.C.'s brother knocked on the bedroom door. L.R.C. testified that Carbajal repeated this behavior for several months. On two occasions, Carbajal "slightly" penetrated L.R.C.'s vagina. The incidents ceased when the mother discovered Carbajal in L.R.C.'s bedroom. The mother testified that she entered the bedroom and saw Carbajal sitting at the foot of L.R.C.'s bed, and L.R.C. was naked. The mother told Carbajal to leave, but allowed him to move back into the family home a few months later.

L.R.C. testified that Carbajal resumed the sexual misconduct approximately three years later when L.R.C. was 14 years old. L.R.C. recounted two specific incidents. During the first incident, Carbajal entered L.R.C.'s bedroom, kissed her on the mouth, and touched her sexually. During the second incident, Carbajal and L.R.C. were in a car at the public library when he kissed her, fondled her, and penetrated her vagina with his hands and penis. L.R.C. told him to stop. Shortly after this incident, the mother witnessed Carbajal hugging L.R.C. at a retail store and once again ordered him to move out of their home.

During the cross-examination of L.R.C.'s mother, defense counsel concluded his questioning by asking if she was divorcing Carbajal because she wanted to have sole custody of their youngest son. Mother responded: "Yes, correct." On redirect examination, the prosecutor then asked if she wanted sole custody of their child because she did not want her son "being raised by a child molester?" Defense counsel objected to the question as leading, which the court sustained. In a bench conference immediately following this question, the court warned the prosecutor to not use the language "child molester" again. The prosecutor complied.

At the end of the two-day trial, the case was submitted to the jury without a cautionary instruction regarding Carbajal's clothing. The jury found Carbajal guilty of all counts. The district court convicted Carbajal of one count of first-degree CSC and sentenced him to 172 months' imprisonment.

Carbajal appeals.

D E C I S I O N

I. The district court did not err by permitting Carbajal to appear in jail clothing.

Carbajal argues that the district court erred by allowing him to appear in jail clothing on the first day of trial because it violated the protections of Minn. R. Crim. P. 26.03, subd. 2(b). Because Carbajal did not object to wearing jail clothing at trial, we review the district court's decision for plain error. *State v. Hazley*, 901 N.W.2d 452, 453 (Minn. App. 2017), *review denied* (Minn. Nov. 14, 2017); Minn. R. Crim. P. 31.02. The plain-error standard requires Carbajal to show: "(1) error; (2) that was plain; and (3) that affected substantial rights." *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). "If

the first three prongs are satisfied, the appellate court considers whether reversal is required to ensure the fairness, integrity, or public reputation of judicial proceedings.” *State v. Zinski*, 927 N.W.2d 272, 275 n.5 (Minn. 2019) (quotation omitted). As explained below, we conclude that Carbajal has not established an error by the district court because Carbajal waived his right to wear civilian clothes on the first day of trial.

The Minnesota Rules of Criminal Procedure require that “[d]uring trial, an incarcerated defendant or witness must not appear in court in the distinctive attire of a prisoner.” Minn. R. Crim. P. 26.03, subd. 2(b). But a defendant can waive the protections of rule 26.03, subdivision 2(b) if the defendant “refuses” to wear civilian clothes at trial. *Hazley*, 901 N.W.2d at 455 (citing to Minn. R. Crim. P. 26 cmt.). A district court is not required to inquire, or seek a waiver, about a defendant’s choice to wear jail clothes. *Estelle v. Williams*, 425 U.S. 501, 512, 96 S. Ct. 1691, 1697 (1976).

Carbajal argues that the district court committed plain error because he did not “refuse” to wear street clothes and therefore did not waive his rights under rule 26.03. Carbajal relies on *Hazley* to assert that he did not waive his rule 26.03 protections, but his reliance on *Hazley* is misplaced. In *Hazley*, the district court informed the defendant that he would need to wear street clothes for the trial, but *Hazley* appeared for trial in jail clothing without comment or explanation. 901 N.W.2d at 453. On appeal, *Hazley* argued that his appearance in jail clothes during trial violated his due-process right to a fair trial under the Fourteenth Amendment and violated rule 26.03. *Id.* We held that the *Hazley*’s Fourteenth Amendment rights were not violated because *Hazley* was not compelled to wear jail clothes at trial. *Id.* at 454. With regard to *Hazley*’s rule 26.03 argument, we recognized

that “the record does not reveal that [Hazley] refused to wear street clothes” given that he did so without comment or explanation. *Id.* at 454-55. But, we did not decide whether there was a violation of rule 26.03, subdivision 2(b). *Id.* at 455. Instead, we held that “*even if* there was a rule violation, we see no reversible error” because any rule violation did not have a significant effect on the verdict. *Id.* (emphasis added). Thus, the *Hazley* case did not decide the question at issue here—whether the defendant’s rights under rule 26.03, subdivision 2(b) were violated or whether the defendant waived those rights.

In this case, the record demonstrates that Carbajal waived the protections of rule 26.03, subdivision 2(b). The district court informed Carbajal of his right to wear civilian clothes at trial. In fact, the district court made multiple inquiries into Carbajal’s decision to wear jail clothes, and told Carbajal that the court would prefer that Carbajal appear in civilian clothes. But Carbajal expressly stated that wearing jail clothing was fine. And defense counsel indicated the same even after the district court expressed its preference and offered to wash Carbajal’s civilian clothing for Carbajal to wear. And, unlike in *Hazley*, where the defendant wore jail clothing without an explanation, Carbajal informed the district court that he would proceed in jail clothing. Finally, we note that the district court and the prosecutor made efforts to ensure that Carbajal’s rights under rule 26.03, subdivision 2(b) were protected. Consequently, we conclude that the district court’s multiple inquiries, combined with Carbajal’s indication that he wanted to proceed in jail clothing, constitute a waiver of the rule 26.03, subdivision 2(b) protections. *See Hazley*, 901 N.W.2d at 455. As a result, the district court did not err when it allowed Carbajal to appear in jail clothing. Because Carbajal has not established any error, it is not

necessary to address the other prongs of the plain-error analysis. *See Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011) (stating that all three prongs of the plain-error test must be satisfied to merit reversal of a conviction, and if an appellate court determines that “any one of the requirements is not satisfied, [it] need not address any of the others”). Carbajal is not entitled to a new trial on the basis of his rule 26.03 claim.

II. The prosecutor’s one-time statement is not misconduct.

Carbajal next contends that he is entitled to a new trial because the prosecutor committed misconduct during cross-examination by referring to him as a “child molester.” Because Carbajal did not object to the prosecutor’s statement at trial on the basis of prosecutorial misconduct,¹ we review the alleged misconduct under the modified plain-error standard. *State v. Peltier*, 874 N.W.2d 792, 803 (Minn. 2016). Under this standard, the appellant bears the initial burden of establishing error that is plain. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). A plain error is one that is “clear or obvious.” *Id.* (quotations omitted). If the appellant demonstrates an error that is plain, the burden then shifts to the state to demonstrate that any misconduct did not prejudice the appellant’s substantial rights. *Id.* To meet this burden, the state must show that there is no reasonable likelihood that the absence of the misconduct would have had a significant impact on the jury’s verdict. *Id.* When reviewing whether an alleged error significantly affected the jury’s decision, “we consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had

¹ Defense counsel did object to the question as leading, but did *not* object on the basis that the prosecutor’s use of the phrase “child molester” constituted misconduct.

an opportunity to (or made efforts) to rebut the improper suggestions.” *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007).

Assuming, without deciding, that the prosecutor’s use of the phrase “child molester” constitutes an error that is plain, we conclude that the state has demonstrated that the error did not prejudice Carbajal’s substantial rights. We agree with the state that there is no reasonable likelihood that the absence of the error would have significantly affected the jury’s verdict.

First, the state presented a strong and compelling case. L.R.C.’s specific and detailed account of her experiences, and the corroborating testimony by her mother, provide strong evidence of Carbajal’s guilt. Carbajal argues that the state’s evidence was not “overwhelming” because it rested largely on whether the jury found L.R.C. credible. Carbajal emphasizes that the state did not present physical evidence of his guilt. But there is no requirement that the state present physical evidence to prove a CSC charge. In fact, state law specifically provides that the “testimony of a victim need not be corroborated” in a CSC prosecution. Minn. Stat. § 609.347, subd. 1 (2018). Here, L.R.C.’s testimony was corroborated by her mother’s testimony even though the state could have relied upon L.R.C.’s testimony alone to prove its case. For these reasons, we conclude that the state presented strong evidence of Carbajal’s guilt.

Second, the error was not pervasive. The prosecutor used the phrase only once while posing a question on redirect. The phrase was not used again during the two-day trial.

Third, Carbajal had an opportunity to respond to the alleged error at trial. Defense counsel objected to the question as leading, and the district court sustained the objection. The district court then immediately told the prosecutor to refrain from using “child molester,” and the prosecutor complied.

Given the strength of the state’s case, and the limited nature of the alleged prosecutorial misconduct, we conclude that the state has demonstrated that there is no reasonable likelihood that the absence of the alleged misconduct would have had a significant impact on the jury’s verdict. Because the alleged misconduct did not prejudice Carbajal’s substantial rights, Carbajal’s claim of prosecutorial misconduct is without merit. *See Davis*, 735 N.W.2d at 682 (holding that defendant’s prosecutorial-misconduct claim failed because the state met its burden to show that the misconduct did not affect the defendant’s substantial rights).

In sum, the district court did not err in allowing Carbajal to appear in jail clothing on the first day of trial because Carbajal waived his right to appear in civilian clothing under rule 26.03, subdivision 2(b). And, the state has demonstrated that the alleged prosecutorial misconduct did not affect Carbajal’s substantial rights. Because we conclude that neither Carbajal’s appearance in jail clothing, nor the prosecutor’s statement, constitute reversible error, it cannot be said that the alleged errors, considered cumulatively, had the effect of denying Carbajal a fair trial. *See State v. Yang*, 774 N.W.2d 539, 560 (Minn. 2009) (noting that appellants may be entitled to a new trial in rare cases where the

“errors, when taken cumulatively, have the effect of denying [the] appellant a fair trial”
(quotation omitted)).

Affirmed.