

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1910**

State of Minnesota,
Respondent,

vs.

Kim Dale Thompson,
Appellant.

**Filed January 11, 2021
Affirmed
Larkin, Judge**

Mille Lacs County District Court
File No. 48-CR-16-1907

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

Joe Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Christopher B. Sailors, SailorsAllen Law, Milaca, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his convictions for criminal sexual conduct, arguing that the district court erred by admitting relationship evidence under Minn. Stat. § 634.20 (2018),

the prosecutor engaged in misconduct during closing arguments, the district court erred by admitting evidence of his religious beliefs, the evidence was insufficient to sustain his convictions, and the cumulative errors deprived him of the right to a fair trial. We affirm.

FACTS

Respondent State of Minnesota charged appellant Kim Dale Thompson with four counts of criminal sexual conduct. The complaint alleged that Thompson sexually abused his daughter, R.T., between 2003 and 2009, when she was a minor. R.T. first reported Thompson's conduct to the police in September 2016.

Before the trial, Thompson filed a motion in limine raising numerous evidentiary issues. As is relevant here, Thompson asked the court to exclude evidence regarding his physical abuse of his other children, his domestic violence against R.T., and his religious beliefs. The district court denied that request but did not expressly rule on the admissibility of evidence of domestic violence against R.T.

The case was tried to a jury over the course of four days. The evidence established that R.T. has seven siblings: three older brothers, three younger brothers, and one younger sister. She also has an older half-sister, J.M.T. R.T. testified that Thompson was "controlling" and that he rarely allowed her to go anywhere with her friends and did not allow her to have a boyfriend. R.T. testified that Thompson disciplined her by hitting her and spanking her, sometimes with a horse crop. R.T. also testified that Thompson was religious and that he told her that he was a prophet and that "God gives him messages and he brings them to churches and leaders in the churches and gives them messages from God."

R.T. described Thompson's sexual abuse, which began when she was 14 or 15. Thompson would enter the bathroom while R.T. was taking a bath and tell her that she had a "very beautiful body" and was "very sexy." He also watched her dress while hiding inside her closet or standing outside her window. Thompson used to "wrestle" with R.T. and pin her down on her back. While doing so, he pulled up her clothes, touched her bare breasts, and commented that grabbing her stomach would make her "boobs jiggle."

R.T. explained other instances of sexual abuse that occurred while she was sleeping. She sometimes woke up to find Thompson "hitting [her] cheek" with his penis or "rubbing it across [her] mouth." Thompson would pull up R.T.'s shirt and rub her breasts. He also rubbed her vagina with his fingers, and he twice stuck his fingers inside her vagina. On one occasion, R.T. woke up to find Thompson "sucking" on her breasts while she was on the couch in the sunroom. Aside from that incident in the sunroom, the sexual abuse that occurred while R.T. was sleeping occurred in R.T.'s bedroom. R.T. shared the bedroom with her younger sister J.T., who slept in a separate bed. Initially, R.T. pretended to sleep through the sexual abuse. As she grew older, she told Thompson to get away from her when he attempted to abuse her. But she did not scream or yell because she did not want to wake J.T.

R.T. testified that shortly after she turned 18, she started dating M.T., her current husband. Thompson was upset when he learned of the relationship. On one occasion, Thompson saw R.T. and M.T. together in public. He yelled at M.T. to stay away from R.T. and ordered R.T. to go home. Once at home, Thompson yelled at R.T. and called her a "bitch," "slut," and "whore." That night, he grabbed R.T. by the hair and dragged her out

of bed. Thompson hit her in the face, kicked her in the ribs, and said that he wanted to break her nose so that she would not be attractive. Afterward, Thompson forced R.T. to stay in a car for three days and then confined her to the sunroom for one month. R.T. acknowledged that she could have left the car or the sunroom at any point, but she testified that she did not do so because she was frightened and had nowhere to go. The following year, R.T. attended college for the spring semester. Shortly after the semester ended, when the rest of her family was not home, she loaded her belongings into M.T.'s vehicle and left home.

R.T. did not tell anyone about the sexual abuse when it occurred because she was "scared and embarrassed." As the years passed, she eventually told M.T., her mother, and her oldest brother K.T. R.T. finally reported the sexual abuse to the police in September 2016, approximately seven years after she left home. Before contacting the police, R.T. spoke with a prosecutor from the county attorney's office and asked about the statute of limitations. The prosecutor encouraged R.T. to report the abuse to the police. Additionally, R.T. told a social worker about the abuse and asked if her mother could lose her job as the Director of Public Health and Human Services for Kanabec County if Thompson were convicted.

R.T. gave a statement to an investigator from the sheriff's office. During the subsequent investigation, the police discovered that R.T.'s half-sister, J.M.T., had made similar allegations against Thompson in 2001. The police arrested Thompson a couple days later. On the day of his arrest, the investigator had another law enforcement officer pick up R.T.'s mother at work and bring her to the family's home so that the police could

talk with her and the children together. R.T. went to the home to participate in the police meeting with her family.

R.T.'s oldest brother, K.T., testified that Thompson physically disciplined him with spankings, using sticks or belts, and that Thompson once or twice used his fist in response to "something severe." K.T. conceded, however, that society's views on parental discipline have changed in recent years. K.T. testified that in 2013, R.T. informed him that she had been molested and kept in a car at home while growing up, but she did not go into detail.

R.T.'s half-sister, J.M.T., also testified. J.M.T. is Thompson's daughter from his first marriage. She is 12 years older than R.T. J.M.T. described numerous instances of physical and sexual abuse by Thompson that occurred when she was 14. At the time, she lived with Thompson, her stepmother (R.T.'s mother), and her half-siblings, including R.T., who was an infant. Thompson usually disciplined J.M.T. with spankings, but he sometimes became more violent and punched, kicked, and hit her, using horse crops and croquet mallets. He also wrestled her and pinned her down to demonstrate his "dominance and control," and he commented on the size of her breasts while doing so. In addition, Thompson spied on J.M.T. when she was taking a shower in the bathroom and changing clothes in her bedroom. J.M.T. testified that Thompson used to climb into her bed at night and touch her breasts. Sometimes he pulled on J.M.T.'s waistband and looked down her pants. Thompson never put his hands down J.M.T.'s pants or penetrated her.

J.M.T. testified that she did not report the abuse to the police when it occurred because she wanted to continue seeing her siblings. At the end of the school year during which the abuse occurred, she left Thompson's home to live with her biological mother.

J.M.T. reported the abuse to the police in 2001, eight years after she moved out of Thompson's home. Nothing happened as a result of her allegations. J.M.T. and R.T. testified that they were unaware of each other's accusations before R.T. contacted the police in 2016, and they insisted that they had never discussed the abuse.

The state introduced expert testimony from a program director and forensic interviewer for a child-advocacy center, who testified regarding why children delay reporting sexual abuse. She explained that one major reason is that they have a close relationship with the perpetrator. Most children "don't go against an authoritative person." She further explained that many children "still feel love and affection towards an abuser" and therefore are afraid of what will happen to the abuser if they report the abuse. The forensic interviewer also noted that religious and cultural beliefs can affect whether a child reports sexual abuse. And she stated that children who are sexually abused are much more likely to experience physical abuse or other violence in the home as well.

Several of Thompson's family members testified in his defense. R.T.'s younger sister, J.T., testified that she shared a bedroom with R.T. J.T. testified that she was a light sleeper and that she never saw Thompson come into the bedroom at night, crawl into R.T.'s bed, or inappropriately touch R.T. One of R.T.'s older brothers, S.T., testified that he never saw any unusual or inappropriate behavior between Thompson and R.T. R.T.'s mother, W.T., testified that she was shocked when she learned of R.T.'s allegations and did not observe anything in the home suggesting that Thompson was sexually abusing R.T. For example, she never noticed Thompson leave their bed in the middle of the night. J.T., S.T.,

and W.T. testified that R.T. and J.M.T. had a reputation for dishonesty. Two of R.T.'s younger brothers also testified that R.T. had a reputation for dishonesty.

The jury found Thompson guilty of all four counts of criminal sexual conduct. The district court entered judgments of conviction for second- and third-degree criminal sexual conduct and sentenced Thompson to serve 90 months in prison. Thompson appeals.

DECISION

I.

Thompson contends that the district court abused its discretion by allowing J.M.T., K.T., and R.T. to testify regarding Thompson's use of physical discipline. Thompson filed a motion in limine requesting, in part, that the district court exclude such evidence. The district court issued a written order indicating that it would allow evidence regarding physical discipline of J.M.T. and K.T. for the purposes described in Minn. Stat. § 634.20. The order did not address Thompson's request to exclude evidence regarding Thompson's physical discipline of R.T.

Minn. Stat. § 634.20 is a rule of evidence that allows evidence of domestic conduct by the defendant against the victim or other family or household members. *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015). It provides, "Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice" Minn. Stat. § 634.20. "Domestic conduct" includes, among other things, "evidence of domestic abuse." *Id.* "Domestic abuse" includes "physical harm, bodily injury, or assault," when committed against a family or household

member. Minn. Stat. § 518B.01, subd. 2(a)(1) (2018); *see also* Minn. Stat. § 634.20 (incorporating that definition of domestic abuse). “[T]he rationale for admitting relationship evidence under section 634.20 is to illuminate the relationship between the defendant and the alleged victim and to put the alleged crime in the context of that relationship.” *State v. Valentine*, 787 N.W.2d 630, 637 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010).

Minn. Stat. § 634.20 allows for the admission of evidence of domestic conduct by the defendant not only against the victim, but also against other members of the defendant’s family. *Id.* “[E]vidence showing how a defendant treats his family or household members . . . sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim.” *Id.*

A district court’s evidentiary ruling is reviewed for an abuse of discretion. *State v. Nunn*, 561 N.W.2d 902, 906-07 (Minn. 1997). A defendant challenging the admission of evidence must show that the district court abused its discretion and that he was prejudiced as a result. *Id.* at 907. When the alleged error does not implicate a constitutional right, the defendant must prove “there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Matthews*, 800 N.W.2d 629, 633 (Minn. 2011) (quotations omitted).

Testimony of J.M.T. and K.T. Regarding Physical Discipline

Thompson argues that the district court erred by allowing evidence regarding his physical discipline of J.M.T. and K.T. because the probative value of that evidence was substantially outweighed by the danger of unfair prejudice. Relationship evidence under

Minn. Stat. § 634.20 involving a family or household member has a high probative value because it demonstrates how the defendant interacts with people close to him. *State v. Ware*, 856 N.W.2d 719, 729-30 (Minn. App. 2014). Such evidence is admissible “unless the probative value is substantially outweighed by the danger of unfair prejudice.” Minn. Stat. § 634.20. “[U]nfair prejudice is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage.” *Ware*, 856 N.W.2d at 729 (quotation omitted). The danger of unfair prejudice is low when the district court provides a limiting instruction to the jury. *Id.* at 730.

Before J.M.T. testified that Thompson physically disciplined her by spanking or punching her, the district court instructed the jury that her testimony was “offered for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and other household members.” The district court reiterated that instruction at the end of the trial, emphasizing that the jury could not punish Thompson for any conduct he committed during the 1990s. The district court did not provide a similar limiting instruction before K.T. testified that Thompson physically disciplined him by spanking him with sticks or belts and that he once or twice used his fist in response to “something severe.”¹ But K.T.’s testimony was brief, and K.T. conceded that societal views regarding parental discipline have changed in recent years.

¹ At oral argument, Thompson acknowledged that he did not object to the lack of a limiting instruction and that he made a strategic decision not to request a limiting instruction.

Given the recognized probative value of relationship evidence regarding how a defendant interacts with his family members, the district court's provision of a limiting instruction regarding J.M.T.'s testimony, the brevity of K.T.'s testimony, and the context provided by K.T.'s concession regarding changing societal views of physical discipline, we conclude that the evidence did not persuade by illegitimate means. Thus, the district court did not err by admitting evidence regarding Thompson's physical discipline of J.M.T. and K.T.

Testimony of R.T. Regarding Physical Discipline

Thompson argues that the district court erred by allowing evidence that Thompson disciplined R.T. by spanking her, sometimes with a horse crop, and that Thompson once hit her because he was angry that she had a boyfriend. Thompson asserts that the evidence was "highly prejudicial." Again, such evidence is admissible under section 634.20 unless "the probative value is substantially outweighed by the danger of unfair prejudice." Minn. Stat. § 634.20.

R.T.'s testimony was generally probative because it shed light on R.T.'s relationship with Thompson. More specifically, R.T.'s testimony regarding physical discipline provided context for her sexual-abuse allegations and was consistent with the expert testimony of the forensic interviewer that children who experience sexual abuse at home are significantly more likely to experience physical abuse as well. It also helped to explain why R.T. did not report the abuse when it occurred. Although that evidence was damaging, it did not persuade by illegitimate means. See *Valentine*, 787 N.W.2d at 637 ("[T]he rationale for admitting relationship evidence under section 634.20 is to illuminate the

relationship between the defendant and the alleged victim and to put the alleged crime in the context of that relationship.”).

Thompson also argues that the district court erred because it did not document its balancing of the evidence’s probative value and prejudicial impact or adequately explain why it allowed the evidence. This court has rejected the contention that a district court must make express findings regarding the probative value and prejudicial impact of evidence offered under section 634.20. *State v. Meyer*, 749 N.W.2d 844, 850 (Minn. App. 2008). Moreover, at the hearing on Thompson’s motion in limine, the district court acknowledged that when applying section 634.20, it had to balance the probative value and potential prejudice of each proffered form of relationship evidence. The district court was not required to further explain its decision on the record.²

In sum, the district court did not err by admitting evidence of Thompson’s physical discipline of R.T.

II.

Thompson contends that the prosecutor engaged in misconduct during closing arguments. The standard of review for prosecutorial misconduct depends on whether the defendant objected at trial. *State v. Martin*, 773 N.W.2d 89, 104 (Minn. 2009). When the defendant objected, we apply a two-tiered harmless-error analysis. *Id.* For cases that

² Nonetheless, we observe that a more thorough explanation is the better practice because it shows proper application of the governing rule of law. *See In re Comm’r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007) (stating that a district court abuses its discretion by “improperly applying the law”).

involve “unusually serious prosecutorial misconduct,” we determine whether the misconduct was harmless beyond a reasonable doubt. *Id.* For less serious misconduct, we determine whether the misconduct “likely played a substantial part in influencing the jury to convict.” *Id.*

If the defendant did not object to alleged prosecutorial misconduct at trial, we apply a modified plain-error test. *Id.* (citing *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006)). Under that test, the defendant must demonstrate that there was an error and that it was plain. *Id.* An error is plain if it is “‘clear’ or ‘obvious,’ which is typically established ‘if the error contravenes case law, a rule, or a standard of conduct.’” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quoting *Ramey*, 721 N.W.2d at 302). If a plain error is shown, then the state has the burden to demonstrate that the error did not affect the defendant’s substantial rights. *Martin*, 773 N.W.2d at 104. If the state does not meet its burden, then this court determines whether to address the error “to ensure fairness and the integrity of the judicial proceedings.” *Id.* (quotation omitted).

We consider a closing argument as a whole when evaluating alleged prosecutorial misconduct. *State v. Pendleton*, 759 N.W.2d 900, 911 (Minn. 2009).

Vouching for Witness Credibility

Thompson argues that the prosecutor impermissibly endorsed R.T.’s credibility. “A prosecutor may not personally endorse the credibility of witnesses.” *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006). The prosecutor may, however, argue that particular witnesses were or were not credible. *State v. Fields*, 730 N.W.2d 777, 785 (Minn. 2007). Here, the prosecutor made the challenged statement when describing R.T.’s testimony that

Thompson kept her in a car and sunroom. He noted that R.T. probably could have escaped those situations physically, but he then said, “Where was she going to go? She’s very honest about that.” Defense counsel objected to that statement as impermissible vouching and requested that it be stricken from the record. The prosecutor agreed, and the district court told the jury to disregard the comment.

Because the district court sustained Thompson’s objection, we focus on whether the challenged statement was prejudicial or harmless, without reviewing the ruling itself. The supreme court has indicated that impermissible vouching is harmless when the jury is instructed to disregard those statements. *Martin*, 773 N.W.2d at 107. Because the district court told the jury to disregard the challenged statement, any error was harmless.

Belittling the Defense

Thompson argues that the prosecutor impermissibly disparaged and belittled his defense strategy. Prosecutors may argue that a specific defense raised by the defendant has no merit, but they may not “belittle either the defendant or a particular defense in the abstract.” *State v. Matthews*, 779 N.W.2d 543, 552 (Minn. 2010). For example, a prosecutor may not suggest that the defendant raised a particular defense because it was the only defense that “might work.” *State v. Williams*, 525 N.W.2d 538, 549 (Minn. 1994).

Here, the challenged statements occurred when the prosecutor discussed defense counsel’s criticism of law enforcement’s investigation of R.T.’s allegations. The prosecutor stated, “It’s the defense counsel’s job to try to poke holes in the investigation. It is. So a defense might come up here and argue that this was an improper way to investigate the case. But we haven’t heard that from anybody except the defense counsel.”

Defense counsel objected to that statement as belittling the defense, but the district court allowed it and instructed the prosecutor to keep it in “fair terms.”

We agree with the district court’s conclusion that the prosecutor did not improperly belittle the defense. The prosecutor did not discuss any defense in the abstract; he argued that Thompson’s specific inadequate-investigation defense had no merit. Moreover, the prosecutor’s statement was not disparaging or demeaning. Indeed, the statement arguably suggested that defense counsel’s approach was proper.

Thompson also challenges some of the prosecutor’s statements during rebuttal argument. The prosecutor began that argument as follows:

I’ll never say anything is the stupidest thing I’ve ever heard, because that’s not my job as an attorney. It’s to present facts. I try to call your attention to what was said, not insert my own opinion about whether something is the stupidest thing I’ve ever heard. He’s a defense attorney. He’s defending his client. Of course it’s going to be the stupidest things he’s ever heard.

Defense counsel objected that the prosecutor was belittling the defense, and the prosecutor said he would move on. The prosecutor reiterated his argument later in the rebuttal saying, “Ladies and gentlemen, I can’t tell you who I believe. A, I’m not allowed to do that. B, that’s your job. I -- I’m on one side. The defense attorney’s on the other side. Of course defense attorney’s going to say it’s the stupidest thing he’s ever heard.”

The prosecutor’s comments were a direct response to the defense’s closing argument that J.T. would have known about any sexual abuse because she shared a room with R.T. Defense counsel argued that “to say that [J.T.] wouldn’t wake up during that, oh, my gosh, that is insane. That’s the stupidest thing I’ve ever heard.” Although the

prosecutor criticized defense counsel for opining that a certain assertion was the “stupidest thing” that defense counsel had ever heard, the prosecutor did not impermissibly belittle Thompson or any of his defenses in the abstract.

Shifting the Burden of Proof

Thompson argues that the prosecutor shifted the burden of proof by indicating that he had to disprove the state’s evidence. The state has the burden of proving all elements of a crime beyond a reasonable doubt, and the prosecutor cannot shift the burden of proof to the defendant to prove his innocence. *State v. Gassler*, 505 N.W.2d 62, 69 (Minn. 1993). A prosecutor does not shift the burden of proof if he merely argues that there is no evidence to support the defense’s theory of the case. *Id.*

Thompson once again points to the prosecutor’s argument that “[i]t’s the defense counsel’s job to try to poke holes in the investigation. It is. So a defense might come up here and argue that this was an improper way to investigate the case. But we haven’t heard that from anybody except the defense counsel.”

One of Thompson’s theories was that the police improperly investigated R.T.’s allegations. As to that defense, the prosecutor did not suggest that Thompson had to prove his innocence or disprove the state’s evidence. The prosecutor argued that the record did not support Thompson’s defense theory. Moreover, a prosecutor’s comments, taken as a whole, do not shift the burden of proof when the prosecutor also explains that the state has the burden of proof. *State v. Tate*, 682 N.W.2d 169, 178-79 (Minn. App. 2004), *review denied* (Minn. Sept. 24, 2004). Here, the prosecutor told the jury during his closing

argument that the state bore the burden of proving guilt. In sum, the record does not support Thompson's assertion that the prosecutor improperly shifted the burden of proof.

Arguing Relationship Evidence as Propensity Evidence

Thompson argues that the prosecutor improperly urged the jury to consider evidence that he abused J.M.T. during the 1990s as propensity evidence. That evidence was admitted as relationship evidence under Minn. Stat. § 634.20.

The supreme court has indicated that evidence admitted under Minn. Stat. § 634.20 can assist the jury "by providing a context with which it could better judge the credibility of the principals in the relationship." *State v. McCoy*, 682 N.W.2d 153, 161 (Minn. 2004). And evidence of the defendant's conduct toward his other family or household members "sheds light on how the defendant interacts with those close to him, which in turn suggests how the defendant may interact with the victim." *Valentine*, 787 N.W.2d at 637.

Here, the prosecutor observed the similarities between R.T.'s 2016 allegations against Thompson and J.M.T.'s 2001 allegations against Thompson. He noted that the "same things were happening" to J.M.T. in the early 1990s as happened to R.T., and he called the similarities "a heck of a coincidence." The prosecutor also explained the purpose for which the jury could use J.M.T.'s testimony:

Now, you were instructed that you cannot convict the defendant for what he did to [J.M.T.] back in the early '90s. That's correct. You cannot convict him of those instances that [J.M.T.] testified about. That would result in unfair double punishment.

You can only consider about what the defendant did to [R.T.] between 2003 and 2008. But what you can consider from [J.M.T.'s] testimony is whether what happened to

[J.M.T.], based on her testimony -- and how that relates to what may have happened to [R.T.] between 2003 and 2008.

The prosecutor's argument that J.M.T.'s allegations buttressed R.T.'s allegations because they were so similar was within the recognized purpose of evidence admitted under Minn. Stat. § 634.20. *See id.*; *see also McCoy*, 682 N.W.2d at 161. There was no misconduct here.

Misrepresenting the Evidence

Thompson argues that the prosecutor misrepresented testimony from R.T.'s mother, W.T. A prosecutor may not intentionally misstate the evidence or mislead the jury regarding the inferences that may be drawn from it. *State v. Peltier*, 874 N.W.2d 792, 805 (Minn. 2016).

During the cross-examination of W.T., the prosecutor mentioned that W.T. was suing Mille Lacs and Kanabec County, and he suggested that she had a "financial and professional incentive for [R.T.] to be considered a liar." W.T. denied the prosecutor's contention that Kanabec County had fired her for failing to report abuse that she knew was occurring in her household. She explained, "They terminated me because Mille Lacs County provided information that they should not have to Kanabec County." The prosecutor asked whether that information related to "these allegations in this proceeding," and W.T. answered, "Yes." W.T. added that her lawsuit involved "Data Practices Act violations."

In the closing argument, the prosecutor argued that W.T. was not credible because she had a motive to refute the allegations against Thompson. The prosecutor first stated

that W.T. “got fired from her job and is suing the County, this County, because she was fired because of allegations that surfaced.” Defense counsel objected that those facts were not in evidence, and the district court sustained the objection. The prosecutor then said that W.T. “was fired from Kanabec County because of an investigation that occurred in Mille Lacs County.” Defense counsel again objected that those facts were not in evidence and stated that “data practices” was the reason for W.T.’s termination from her job. The district court agreed. The prosecutor finally stated that a “[d]ata practices violation that led to [W.T.] being fired, the data practices violation that, according to the lawsuit, Mille Lacs County violated. You know that’s where [W.T.’s] coming from when she’s testifying.”

W.T. testified that the reason for her termination was related to the allegations against Thompson, but she denied that those allegations caused her to lose her job with the county. Thus, the prosecutor appears to have initially misstated W.T.’s testimony during the closing argument, but only slightly. Moreover, the district court sustained Thompson’s objection to the statements. And, we cannot overlook the damage to W.T.’s credibility that likely resulted from her testimony that even though she was a mandated reporter, she did not report R.T.’s allegations because she did not believe them. That testimony was much more damaging to W.T.’s credibility than the brief and somewhat confusing line of questioning regarding W.T.’s lawsuit against Kanabec and Mille Lacs County.

This court has indicated that statements misrepresenting evidence are harmless if the district court instructed the jury to disregard statements that differ from its recollection of the evidence. *In re Welfare of D.D.R.*, 713 N.W.2d 891, 901 (Minn. App. 2006). Before closing argument, the district court instructed the jury that if the attorneys were to make

any statement that differs from its recollection of the evidence, the jurors should “disregard the statement and rely solely on [their] own memory.” We therefore conclude that the prosecutor’s inaccurate statements regarding W.T.’s testimony, to which objection was sustained, did not “likely play[] a substantial part in influencing the jury to convict,” *Martin*, 773 N.W.2d at 104, and that the error was harmless.

III.

Thompson contends that the district court erred by admitting evidence regarding his religious beliefs. Thompson moved the district court to exclude testimony about his religious beliefs, arguing that such testimony “would have no relevance” and would be introduced “with the anticipated effect to paint with the untrue allegation that [he] is a cult leader.” The district court ruled that testimony regarding Thompson’s religious beliefs would be allowed “so long as it is offered for the purpose of providing context to his alleged actions.” We review a district court’s evidentiary ruling for an abuse of discretion. *Nunn*, 561 N.W.2d at 906-07.

R.T. testified about Thompson’s religious beliefs as follows:

PROSECUTOR: Okay. Is your father religious?

R.T.: Yes.

PROSECUTOR: Can you talk about his religious beliefs?

DEFENSE COUNSEL: Your Honor, I would object to this line of questioning at this point.

DISTRICT COURT: On what basis?

DEFENSE COUNSEL: First Amendment. Freedom of religion. Can we approach?

DISTRICT COURT: You may.

(A Bench discussion was held off the record.)

....

PROSECUTOR: Did your father ever tell you that he was a profit [sic]?

R.T.: Yes.

PROSECUTOR: What did he say about that?

DEFENSE COUNSEL: Objection; hearsay.

DISTRICT COURT: Again, it doesn't go to prove the matter asserted. It's allowable.

R.T.: He says that God gives him messages and he brings them to churches and leaders in the churches and gives them messages from God.

Thompson argues that R.T.'s testimony about his religious beliefs was irrelevant, and that even if it was relevant, its probative value was substantially outweighed by the potential for prejudice. Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Irrelevant evidence is inadmissible. Minn. R. Evid. 402. Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 403. And "[e]vidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced." Minn. R. Evid. 610.

Thompson argues that the evidence regarding his religious beliefs was irrelevant because the state failed to "tie the evidence to the commission of the charged offense." He insists that the evidence "painted [him] in a negative light by associating him with violent and zealot like religious beliefs." The state counters that evidence regarding Thompson's religious beliefs "was relevant to help explain why R.T. did not report the abuse sooner, as well as why she maintained contact with [Thompson] despite the abuse."

At trial, defense counsel emphasized R.T.'s delay in reporting. During closing argument, the prosecutor argued that Thompson was R.T.'s "religious leader." Thompson asserts that such an argument was meant to vilify his religious beliefs. We are not persuaded. The record demonstrates that the prosecutor referenced Thompson's religious beliefs to explain why R.T. did not leave her home despite the sexual abuse or report the abuse earlier. The prosecutor described Thompson as "the man that [R.T.] put her faith into; her father, her teacher, her protector, her religious guide, her everything." He then argued that R.T. "didn't tell anybody because he was her protector, because he was her religious leader, because he was her teacher, her everything." Later in the closing argument, the prosecutor acknowledged that R.T. could have left her home at any time but argued that she did not do so because "she had nowhere else to go. She's a scared teenager when her father, her protector, her religious guide, her teacher, her person that cares for her tells her: You can't go."

We note that Thompson entered a journal into evidence that R.T. wrote during a family road trip when she was 18 years old, in which she noted that Thompson had talked about the Bible with a waitress at a restaurant. In response to defense counsel's questions about the journal, R.T. said, "I think it's good to talk about the Bible," suggesting that R.T. agreed with Thompson's religious views to some extent. The forensic interviewer testified that religious and cultural beliefs can impact whether children report sexual abuse. Thus, evidence regarding Thompson's religious beliefs and R.T.'s agreement with those beliefs tended to explain why R.T. did not report the abuse sooner. Moreover, the evidence did

not vilify Thompson. Instead, it showed that religion was a component of Thompson's relationship with R.T., which may have affected her unwillingness to report the abuse.

In sum, given the defense's challenge to R.T.'s credibility based on her delayed report, as well as the expert testimony that religious beliefs may impact whether a child reports sexual abuse, we cannot say that the district court abused its discretion by allowing limited evidence regarding Thompson's religious beliefs to provide context for R.T.'s allegations.

IV.

Thompson contends that the evidence was insufficient to sustain his convictions. He concedes that R.T.'s testimony—if believed—established that he committed the offenses. But Thompson argues that there were significant reasons to question R.T.'s credibility and that there was no corroborating evidence.

When evaluating the sufficiency of the evidence, we “review the evidence to determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). We will uphold the jury's verdict if the jury reasonably could have found the defendant guilty, consistent with the presumption of innocence and the state's burden of proof beyond a reasonable doubt. *Id.*

We view the evidence in the light most favorable to the verdict and assume that the fact-finder did not believe any testimony that conflicts with the verdict. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). It is the duty of the jury, not appellate courts, to weigh

the credibility of witnesses. *State v. Reichenberger*, 182 N.W.2d 692, 695 (Minn. 1970). In cases involving criminal sexual conduct, the jury weighs the credibility of a victim who gives conflicting stories, and the absence of a physical examination does not prevent the jury from finding the defendant guilty. *Id.* In fact, a conviction can rest on the uncorroborated testimony of a single credible witness. *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004).

Thompson recognizes those principles, but he attempts to circumvent them by relying on *State v. Huss*, 506 N.W.2d 290 (Minn. 1993). In *Huss*, the defendant was convicted of criminal sexual conduct against his three-year-old daughter. 506 N.W.2d at 290. The only direct evidence of sexual abuse came from the child's testimony. *Id.* at 291-92. The child's testimony was "troublesome" in the following ways: (1) the child was on the stand for almost an hour before she made any accusation of abuse, (2) the child claimed that both her mother and father had touched her inappropriately, and (3) the child was unable to identify her father in the courtroom. *Id.* at 292. Most importantly, the child's mother had exposed her to a "highly suggestive book" about sexual abuse for five months, when the mother and father were engaged in a visitation dispute, before the child made any accusation of sexual abuse. *Id.* at 292-93, 293 n.3. Because those "unusual facts" raised questions about the validity of the accusations, the supreme court reversed the defendant's conviction. *Id.* at 293.

Thompson argues that this case is comparable to *Huss* because there are reasons to question R.T.'s credibility, and R.T. was the only witness who provided direct evidence of sexual abuse. He points to R.T.'s actions when reporting the sexual abuse, which included

asking a prosecutor about the statute of limitations, asking a social worker whether her mother would lose her job if Thompson were convicted, and being present when the police interviewed her family after Thompson's arrest.

R.T.'s credibility issues are not comparable to those in *Huss*. R.T. was not a toddler when the sexual abuse occurred; she was a teenager. And she was 28 when she testified at trial. Although there were some inconsistencies in R.T.'s testimony, none gives rise to the level of concern that justified reversal in *Huss*.

Thompson identifies several other flaws in the state's case including that R.T. could not remember specific details about the sexual abuse; no one else in her house of nine people recalled seeing anything inappropriate between R.T. and Thompson, including J.T., who slept in the same room as R.T.; there was no circumstantial evidence to support R.T.'s allegations; and R.T.'s testimony was inconsistent. Thompson also asserts that R.T.'s actions demonstrate that she was seeking "vengeance" against him. Thompson's arguments to the jury addressed those circumstances. The jury nonetheless believed R.T. and found Thompson guilty. Moreover, even though corroboration is not necessary, there was some corroborating evidence. K.T. testified that R.T. told him about the sexual abuse in 2013, and W.T. said that R.T. mentioned it six months before R.T. reported the abuse to the police in 2016. *See State v. Gamez*, 494 N.W.2d 84, 86-87 (Minn. App. 1992) (stating that victim's testimony of sexual assaults is corroborated when victim was consistent when telling other people of the assaults), *review denied* (Minn. Feb. 23, 1993).

Viewing the evidence in the light most favorable to the verdict, the jury reasonably could have found Thompson guilty, consistent with the presumption of innocence and the burden of proof beyond a reasonable doubt. We therefore do not disturb the verdict.

V.

Thompson contends that a new trial is warranted because the assigned errors cumulatively deprived him of his right to a fair trial. A criminal defendant may be entitled to a new trial if “the cumulative effect of [the] errors was [not] harmless beyond a reasonable doubt,” even though “the impact of any one of [the] errors, standing alone, may not have affected the verdict.” *State v. Penkaty*, 708 N.W.2d 185, 206 (Minn. 2006). Appellate courts have reversed for that reason only “in rare cases.” *State v. Davis*, 820 N.W.2d 525, 538 (Minn. 2012). For example, the supreme court reversed a conviction based on two evidentiary errors and at least ten specific instances of prosecutorial misconduct, which constituted a “pervasive force at trial.” *State v. Mayhorn*, 720 N.W.2d 776, 791-92 (Minn. 2006).

We have identified only two errors in this case: the prosecutor’s statement vouching for R.T.’s credibility and the prosecutor’s initial misrepresentation of W.T.’s testimony during the closing argument. The district court sustained Thompson’s objections to each of those errors. The district court instructed the jury to disregard the prosecutor’s statement that R.T. was “very honest.” And the district court instructed the jurors to disregard any statements of the attorneys that differed from their recollection of the evidence. Because the prosecutorial errors were limited and the district court minimized any prejudice with

its jury instructions, this is not a rare case in which a new trial is warranted based on cumulative error.

Affirmed.