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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2063**

State of Minnesota,
Respondent,

vs.

Generson Mauriclo Ruiz-Lainez,
Appellant.

**Filed December 7, 2020
Affirmed
Segal, Chief Judge**

Nobles County District Court
File No. 53-CR-18-978

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

Joseph M. Sanow, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Smith & Johnson, Slayton, 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 Smith, Tracy M., Presiding Judge; Segal, Chief Judge;
and Connolly, Judge.

UNPUBLISHED OPINION

SEGAL, Chief Judge

Appellant challenges his five convictions of third-degree criminal sexual conduct, arguing that the physician assistant who interviewed the two complainants impermissibly vouched for their credibility in her trial testimony. We affirm.

FACTS

Appellant Generson Mauricio¹ Ruiz-Lainez was charged with five counts of third-degree criminal sexual conduct and one count of distributing material that relates to the sexual conduct of a child. The charges involved two victims, P.H.P. and V.P.A., who were both 13 years old when the alleged offenses occurred. The police became involved following a report to the police by V.P.A. that Ruiz-Lainez had sexual intercourse with her. She provided the police with a condom that she said Ruiz-Lainez had used when he had intercourse with her. DNA from the condom matched Ruiz-Lainez. V.P.A. also informed the investigating officer that Ruiz-Lainez was “dating” P.H.P., her close family friend. V.P.A. and P.H.P. were then both interviewed at Child’s Voice.

A jury trial was held on the five counts of third-degree criminal sexual conduct.² Both P.H.P. and V.P.A. testified at the trial. P.H.P. testified that during the summer of 2018 she and Ruiz-Lainez were dating and had sex on four occasions. V.P.A. testified that

¹ Ruiz-Lainez’s middle name is listed as “Mauriclo” in the caption of the district court file, but the record indicates the correct name is “Mauricio.”

² The state dismissed the charge of distributing material that related to the sexual conduct of a child prior to trial.

Ruiz-Lainez came to her house and they had sex on one occasion. The physician assistant from Child's Voice who had interviewed the two girls also testified at the trial. She testified that P.H.P. consented to an anal-genital exam and the results neither confirmed nor excluded the possibility that she had been sexually abused. She also testified about her interviews with P.H.P. and V.P.A. and stated, in response to questioning from the prosecutor, that the disclosures by the two girls were "consistent with sexual abuse."

The jury found Ruiz-Lainez guilty of all five counts of third-degree criminal sexual conduct under Minn. Stat. § 609.344, subds. 1(b), 2(1) (2016). Ruiz-Lainez was sentenced to 60 months in prison for three counts and the sentences were stayed for the remaining two counts. This appeal follows.

D E C I S I O N

Ruiz-Lainez argues that the convictions must be reversed because the physician assistant impermissibly vouched during her testimony for the credibility of V.P.A. and P.H.P. Ruiz-Lainez did not object to that portion of the testimony at trial and therefore we review the testimony for plain error. *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007).

The United States Supreme Court has established a three-prong test for plain error, requiring that before an appellate court reviews an unobjected-to error, there must be (1) error; (2) that is plain; and (3) the error must affect substantial rights. If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.

State v. Griller, 583 N.W.2d 736, 740 (Minn. 1998) (footnotes omitted). Under the third prong, Ruiz-Lainez bears the burden of establishing that the error had a significant effect on the jury's verdict. *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016).

Generally, vouching for the credibility of a witness is impermissible because assessing credibility is in the exclusive province of the jury. *State v. Koskela*, 536 N.W.2d 625, 630 (Minn. 1995). “[O]ne witness cannot vouch for or against the credibility of another witness.” *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998).

Here, the challenged testimony occurred when the prosecutor asked the physician assistant whether she had formed any impressions during her interviews of P.H.P. and V.P.A. With respect to P.H.P., the physician assistant testified that during her interview, P.H.P. “disclosed penile-oral penetration, digital-vaginal penetration, penile-vaginal penetration, and that disclosure is consistent with sexual abuse.” With respect to V.P.A., the physician assistant testified that V.P.A. “disclosed penile-vaginal penetration . . . and that disclosure is consistent with sexual abuse.”

Ruiz-Lainez argues that the testimony by the physician assistant that P.H.P. and V.P.A. made disclosures that were “consistent with sexual abuse” constitutes impermissible vouching testimony. He argues that the testimony “can reasonably be construed as [the physician assistant’s] own conclusion that the complainants were sexually abused based on their disclosures.”

Ruiz-Lainez relies on *State v. Morales-Mulato*, in which this court determined that an expert witness impermissibly vouched for the credibility of a child who alleged she had been sexually abused. 744 N.W.2d 679, 688 (Minn. App. 2008), *review denied* (Minn. Apr. 29, 2008). But the impermissible testimony in *Morales-Mulato* is distinguishable from the challenged testimony at issue here. In that case, the individual who conducted the CornerHouse interview with the complainant testified as an expert witness on sexual

abuse and opined that, based on the interview, the child had been sexually abused. *Id.* at 684. She further testified that she had some training in “truth-detecting” and how to obtain accurate information from children during interviews, and that she could “form an opinion” about truthfulness. *Id.* Thus, the expert directly testified in support of the credibility of the child, stated that she believed the child was telling the truth, and provided background as to her training in assessing truthfulness.

The testimony of the physician assistant in this case did not rise to the same level. She did not offer an opinion on whether V.P.A. and P.H.P. were telling the truth, but stated that the disclosures made were “consistent with sexual abuse.” *See State v. Goldenstein*, 505 N.W.2d 332, 338 (Minn. App. 1993) (noting that the expert witness testified that the results of an examination were “consistent with” sexual abuse), *review denied* (Minn. Oct. 19, 1993). We acknowledge that the testimony is concerning since it was in the nature of confirmatory evidence, putting the label of “sexual abuse” on the statements made by P.H.P. and V.P.A. in the interviews. Nevertheless, even if the testimony constitutes impermissible vouching, we conclude that the two additional prongs of the “plain error” standard—that the error is “clear or obvious” and that it affected Ruiz-Lainez’s “substantial rights”—have not been met. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).

Here, as the state notes, the testimony can also reasonably be construed as a statement that the conduct alleged, *if it occurred*, was consistent with acts of sexual abuse. The physician assistant did not offer a conclusion about whether V.P.A. and P.H.P. were telling the truth or whether the alleged abuse actually occurred, but rather stated that what they disclosed during their interviews was consistent with sexual abuse. Moreover, the

testimony was brief and the prosecutor did not emphasize the testimony or suggest that the physician assistant vouched for V.P.A.'s and P.H.P.'s credibility. The prosecutor also made no mention of it in the state's closing argument.

Finally, as in the case of *Morales-Mulato*, we conclude that the testimony did not have a significant effect on the jury's verdict. The jury was presented with the DNA evidence from the condom showing a match with Ruiz-Lainez with regard to the charge involving V.P.A. The jury heard testimony from both of the victims and was able to view and assess for themselves the tape of the forensic interview conducted at Child's Voice. In addition, defense counsel had the opportunity to cross-examine V.P.A. and P.H.P., along with the physician assistant, and in the closing argument emphasized the portion of the physician assistant testimony that the results of the physical examination of P.H.P. did not reveal signs of sexual abuse. On this record, we cannot conclude that the challenged testimony constitutes a plain error requiring reversal of Ruiz-Lainez's convictions.

Affirmed.