

*This opinion is nonprecedential except as provided by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
A20-0137**

State of Minnesota,
Respondent,

vs.

Curtis James Rath,
Appellant.

**Filed February 1, 2021
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CR-19-4382

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Senior Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

NONPRECEDENTIAL OPINION
BRATVOLD, Judge

In this appeal from his final judgment of conviction for failure to register as a
predatory offender, appellant argues he is entitled to a new trial because (1) the district
court overruled his objection to evidence that his registration term had been extended,

allowing the jury to infer a previous conviction; and (2) the prosecuting attorney during closing arguments vouched for the credibility of the state's primary witness. Appellant's first argument fails because, even if we assume that the district court erred in admitting evidence of appellant's prior bad acts, any error did not prejudice the trial outcome. Appellant's second argument also fails because, while the prosecuting attorney impermissibly vouched for a witness's credibility, the state establishes there is no reasonable likelihood this plain error affected the jury's verdict. Thus, we affirm.

FACTS

The jury found appellant Curtis James Rath guilty of violating his registration requirements, Minn. Stat. § 243.166, subd. 5(a) (2018). The following summarizes the evidence received during Rath's jury trial.

Before trial and outside the jury's presence, the parties stipulated that Rath was required to register as a predatory offender as the result of his 1998 conviction, and that, in 2003, Rath was convicted for failing to register.¹ The district court later read a sanitized version of the stipulation to the jury: "the State and the defense have stipulated that, one, Mr. Rath was required to register as an offender including registering his address; and, two, Mr. Rath was required to register during the period of August 10th, 2018, to February 21st, 2019."

¹ The district court also read the stipulation into the record on the first day of trial outside the jury's presence. While the transcript indicates the offense occurred in 1997, court file No. 27-CR-98-057784 indicates the offense occurred in 1998.

During its case in chief, the state called three witnesses: N.G., Rath's former girlfriend and mother of his children; a Minnesota Bureau of Criminal Apprehension (BCA) agent; and a police detective. N.G. testified that she and Rath had an "on-and-off" relationship for twelve years and have two children together. Rath moved into her house in Brooklyn Center in 2004, but they separated in 2016. N.G. testified that Rath did not live with her between August 2018 and February 2019, except for one night in September 2018.

N.G. testified that she received a letter from the BCA addressed to Rath "sometime in 2018," requesting that Rath register his address. N.G. informed the BCA that Rath was not living with her. In early 2019, a detective from the Brooklyn Center Police Department contacted N.G. and she told the detective that Rath did not live with her and she did not know where he was.

During cross-examination, Rath's attorney questioned N.G. about possible bias and financial motives for her testimony. N.G. testified that she has been "on and off food stamps for quite some time." N.G. also testified that she was eligible for food stamps because she was the sole wage earner, even when Rath was living with her. N.G. agreed that, if another wage earner moved into the house, the state required her to report it, and this could affect her benefit eligibility.

The BCA agent testified that Rath was required to register from August 2018 until February 2019. The BCA agent also testified that Rath was required to register with the BCA until 2034. The BCA agent explained that the BCA receives registration documents and investigates required registrants for noncompliance. Following usual procedure, the

BCA agent testified that she filed a noncompliance report about Rath with the Brooklyn Center Police Department, requesting a compliance check.

The police detective testified that he investigated Rath's registration compliance by checking public records and contacting Rath's probation officer. The police detective also contacted N.G., as summarized above, and Rath's employer, who said that Rath no longer worked for him. The state then rested.

Before Rath offered any evidence, the district court addressed the state's motion to impeach Rath with his 2003 conviction for failing to register. Referring to Minn. R. Evid. 609 and *State v. Jones*, 271 N.W.2d 534, 537-38 (Minn. 1978), the district court determined that "the probative value of [Rath's] 2003 conviction does not substantially outweigh its prejudicial effect," and denied the state's motion. Rath then waived his right to remain silent and testified.

Rath testified that he knew he had to register and that, during the relevant time for the pending charge, he was living with N.G. at her house. Rath testified that he had spent most of the previous two years in and out of jail, including the Hennepin County Workhouse. Rath explained that, even before he went to jail, they struggled financially and N.G.'s home was near foreclosure. Rath testified that N.G. lied about where he lived because she feared she would "get in trouble with the county," affecting her eligibility for food stamps.

After the jury found Rath guilty, the district court sentenced Rath to 24 months in prison. Rath appeals.

DECISION

I. The admission of evidence about the state extending Rath’s registration period was harmless error, at most.

Rath argues the district court abused its discretion by allowing the state to cross-examine him about his extended registration period because this evidence allowed the jury to infer that Rath had committed a second offense requiring registration. Rath also contends that he was prejudiced by the admission of this evidence, requiring a new trial. The state argues that the district court did not abuse its discretion by admitting the evidence and, even if the district court erred, Rath was not prejudiced.

“Evidentiary rulings rest within the sound discretion of the trial court and will not be reversed absent a clear abuse of discretion.” *State v. Carridine*, 812 N.W.2d 130, 141 (Minn. 2012) (quotation omitted). Even when a district court has erred by admitting improper evidence, appellate courts will not require a new trial “unless there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Jaros*, 932 N.W.2d 466, 472 (Minn. 2019) (quotation omitted).

Rath bears the burden of proving both that the district court abused its discretion by admitting the challenged evidence and that he was prejudiced as a result. *See State v. Swinger*, 800 N.W.2d 833, 838 (Minn. App. 2011), *review denied* (Minn. Sept. 28, 2011). To show prejudice, Rath must show “a reasonable possibility that the jury would have reached a different verdict had the wrongfully admitted testimony not come in.” *Jaros*, 932 N.W.2d at 472. “The error and its impact are to be examined within the context of the record as a whole.” *State v. VanWagner*, 504 N.W.2d 746, 749 (Minn. 1993).

During the state's cross-examination of Rath, the following exchange occurred:

PROSECUTING ATTORNEY: Mr. Rath, you were initially required to register your address beginning in 1997; is that correct?

RATH: Yes. I was 18.

PROSECUTING ATTORNEY: And how long was that initial registration period? How many years?

DEFENSE ATTORNEY: Objection; relevance.

THE COURT: Overruled.

RATH: At the time, it was a period of 5 years, so until I was 23.

PROSECUTING ATTORNEY: And you currently have to register until 2034; is that accurate?

DEFENSE ATTORNEY: Objection; relevance.

THE COURT: Overruled.

RATH: Yes. That's accurate.

Outside the jury's presence, Rath's attorney argued that the testimony gave the jury "the wrong impression" that Rath had committed a second offense that required registration. The district court first observed that Rath's attorney "had inquired into these exact issues on [his] direct examination."² Rath's attorney disagreed and asked the district court to instruct the jury that Rath had not committed an offense requiring registration after his 1998 offense.

The district court overruled the objection and denied the request for a curative instruction, explaining that it disagreed that the "inference drawn from [the state's line of questioning] is that [Rath] must have committed new offenses." The district court also

² To the contrary, the BCA agent testified that Rath was obligated to register until 2034 in response to a general question by the prosecuting attorney. Rath's attorney did not inquire of any witness about the registration period.

stated that “there’s been previous testimony regarding what the past registration requirements were . . . that have not only been elicited by the State, but have also been elicited by the defense.” On appeal, Rath argues that the district court abused its discretion by allowing the state to introduce this evidence. Rath also contends that he was prejudiced as a result because the adverse inference from the 2003 extension undercuts his sanitized stipulation to a prior offense and contradicts the district court’s ruling that the state could not impeach Rath with his prior failure-to-register conviction.

We need not decide whether the district court abused its discretion by admitting the challenged evidence because we conclude that Rath was not prejudiced by its admission. *See State v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015) (holding it was “unnecessary to decide whether the district court abused its discretion in excluding” evidence because even if it did, “the error was harmless and does not warrant reversal”).

Even if we assume the jury inferred that Rath committed a new offense requiring registration based on the 2003 extension, this evidence did not affect the jury’s verdict because other evidence suggested the same thing. The stipulation established that Rath was required to register in 2018 and 2019. During the BCA agent’s testimony, the prosecuting attorney asked how long Rath’s registration requirement continued, and she responded, “[a]t this time he’s required to register until 2034.” Rath’s attorney made no objection. Taken together with Rath’s testimony that his initial registration period was five years, the jury could have drawn the same inference based on other evidence for which there was no objection during trial. Rath also does not argue on appeal that this other evidence was plain error affecting his substantial rights.

Also, Rath and his attorney stated during trial that Rath had committed several prior bad acts. First, during jury selection, Rath's attorney told potential jurors that Rath was incarcerated "for certain periods of time during the time period that we're going to be discussing in this case," and asked whether they would "hold that against him" and "still presume him innocent." Rath's attorney also asked prospective jurors if their judgment would be affected "if you find out that Mr. Rath was put in jail for, like, a DWI." The entire venire was present for these questions.

Second, in Rath's attorney's opening statement, he explained that "[o]n March 22nd, 2018, okay, Mr. Rath has had issues with a DWI, being on probation, getting picked up, put in jail," and that he was in the workhouse for five months. Upon the state's objection and ensuing bench discussion, Rath's attorney argued to the district court that this information explained why N.G. applied for county assistance and was offered to show the financial reasons for her testimony to undercut her credibility.³

Third, Rath testified that he was committed to the workhouse in March 2018 and released in August 2018.⁴ Rath also testified that, upon his release, he knew he had to

³ Rath's attorney explained:

Mr. Rath goes to the workhouse on March 22nd, 2018, and he's there for five months. All right. He's not supporting the family, he's not working. He's away from work, out of the house. So she—and I think the evidence will show—that she took steps to apply for child support, apply for food stamps, apply for county benefits that you can only get if your wage-earner in the house is out of the house.

⁴ During his testimony, Rath admitted to being held in three different county jails at various times.

register and did so from the workhouse. Rath also testified that he had filled out the BCA registration form “a dozen—a thousand times, it seems like.” When the police came to N.G.’s house to arrest him in 2018 for a different offense, Rath admitted that he hid and asked N.G. to lie and say he was not there. Rath admitted he had active arrest warrants and that he learned about this charge in 2019 when he was released from Anoka County: “they told me that I had a warrant in Hennepin County for the failure to register.”

All of these references to Rath’s prior offenses occurred *before* the prosecuting attorney cross-examined Rath about his registration period. The other evidence about Rath’s prior offenses likely had a greater impact on the jury than any inference the jury might have drawn from Rath’s statement that his registration period had been extended.

After examining the impact of any error within the context of the whole record, we conclude that no reasonable possibility exists the challenged evidence affected the jury’s verdict. Thus, even if we assume error, Rath is not entitled to a new trial. *See Carridine*, 812 N.W.2d at 141 (quotation omitted) (stating that an appellate court will not reverse a district court’s evidentiary ruling “unless the error substantially influenced the jury’s verdict”).

II. Plain error during the prosecuting attorney’s closing argument did not have a significant effect on the jury’s verdict.

Rath argues the prosecuting attorney impermissibly vouched for the credibility of a witness by arguing during closing that the state’s main witness “testified truthfully.” The state argues the prosecuting attorney’s one-time comment was not vouching and, even if

we determine otherwise, the state has shown that the prosecuting attorney's comment did not significantly affect the jury's verdict.

When the appellant fails to object to alleged prosecutorial misconduct during trial, as here, the appellate court reviews under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under the modified plain-error standard, the appellant bears the burden of establishing that (1) an error occurred and (2) the error was plain. *Id.* Upon making this showing, the burden shifts to the state to prove that (3) there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict. *Id.*; see *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006) (defining the third prong as whether "the error affected the defendant's substantial rights").

A. The prosecuting attorney impermissibly vouched for the state's witness.

A prosecuting attorney may not place the prestige of the government behind a witness by giving personal assurances of veracity. *State v. Patterson*, 577 N.W.2d 494, 497 (Minn. 1998) (citing *United States v. Tate*, 915 F.2d 400, 401 (8th Cir. 1990)). A prosecuting attorney improperly vouches for a witness when the attorney "“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.”" *Id.* (quoting *United States v. Beasley*, 102 F.3d 1440, 1449 (8th Cir. 1996)). A prosecuting attorney, however, may argue that particular witnesses were or were not credible. *State v. Fields*, 730 N.W.2d 777, 785 (Minn. 2007) (citation omitted). When evaluating alleged vouching, "a court will look at the closing argument as a whole." *Id.*

During closing arguments, the prosecuting attorney stated:

You get to judge what [N.G.'s] interest is in the outcome of this case, and whether she has any reason to come in, take the stand under oath, and not be truthful. Or, as you heard her testify, she was here under subpoena. They sent a sheriff's deputy to her house and served her 13-year-old son with a subpoena and that's why she came. *And she testified truthfully on that stand.*

(Emphasis added.) To determine whether the prosecuting attorney's statement that N.G. "testified truthfully" amounted to witness vouching, we turn to precedent.

In *Swanson*, the Minnesota Supreme Court considered whether the prosecuting attorney vouched for a witness during the state's closing argument. 707 N.W.2d at 656. There, the prosecuting attorney stated, "Candice Hansen, very believable. Very believable witness." *Id.* Later, the prosecuting attorney stated, "The believability of Karol House. The state believes she is very believable, primarily because her case is done." *Id.* The supreme court determined that this statement "is impermissible vouching on its face" because the state directly endorsed the credibility of a witness. *Id.* But the supreme court affirmed Swanson's conviction after considering "the strength of the evidence," and determining that "the impermissible vouching constituted only a small part of the prosecuting attorney's closing argument." *Id.* Thus, the supreme court held that the statements, while plain error, were not sufficiently prejudicial to warrant a new trial. *Id.*

On the other hand, in *State v. Smith*, we considered similar arguments by the prosecuting attorney and determined they were not impermissible vouching. 825 N.W.2d 131, 139 (Minn. App. 2012), *review denied* (Minn. Mar. 19, 2013). There, during the closing argument, the prosecuting attorney stated that the state's main witness was "very

sincere” and “very frank in his testimony.” *Id.* Appellant’s counsel did not object at trial and this court reviewed under the modified plain-error standard. *Id.* We determined that the prosecuting attorney’s brief statements were not improper vouching because the attorney did not directly endorse the witness’s credibility. *Id.*

Lastly, in *In re Welfare of D.D.R.*, we reviewed somewhat different statements about a witness’s credibility. 713 N.W.2d 891 (Minn. App. 2006). There, the prosecuting attorney stated:

It’s difficult to say and keep the exact same facts in order over and over and over again. A 12-year old girl can’t do that. She can’t keep straight things that aren’t true . . . You all know it’s easier to keep the truth straight than it ever could be to keep the details of a lie straight.

Id. at 900. We held that these statements amounted to improper vouching for the witness’s credibility “by essentially guaranteeing that the victim cannot have testified untruthfully based on her age and consistency.” *Id.* We noted, however, that the prosecuting attorney partially mitigated any prejudice to the defendant by reminding the jury that “it was their duty to decide who was telling the truth.” *Id.* We ultimately reversed and remanded for other reasons, reasoning that no individual error required a new trial, but the cumulative effect of the trial errors required a new trial. *Id.* at 907.

Here, the state argues that the prosecuting attorney reminded the jury many times that they alone determine witness credibility and, when viewing the closing argument as a whole, the prosecuting attorney’s single statement was not vouching. We agree that the closing argument is reviewed as a whole. *See Fields*, 730 N.W.2d at 785. But the

prosecuting attorney may not give personal assurances of veracity or express an opinion about a witness's credibility. *Patterson*, 577 N.W.2d at 497-98.

Because the prosecuting attorney argued that N.G. “testified truthfully on that stand,” the prosecuting attorney explicitly vouched for N.G.’s truthfulness, like the prosecuting attorney in *Swanson*. We conclude that this prosecuting attorney’s single statement was impermissible witness vouching. This statement was not simply argument about a witness’s credibility, as in *Smith*. The prosecuting attorney’s transgression was brief, but, as in *D.D.R.*, it nevertheless amounted to a state-sanctioned guarantee of N.G.’s truthfulness. We conclude that Rath met his burden of showing that an error occurred and that the error was plain.

B. The state satisfied its burden of showing that the prosecuting attorney’s plain error did not have a significant effect on the jury’s verdict.

After appellant establishes that an error occurred and was plain, the burden shifts to the state to prove that there is no reasonable likelihood that the absence of misconduct would have had a significant effect on the jury’s verdict. *Ramey*, 721 N.W.2d at 302. For claims of prosecutorial misconduct, “we reverse only if the misconduct, *when considered in light of the whole trial*, impaired the defendant’s right to a fair trial.” *Swanson*, 707 N.W.2d at 658 (emphasis added).

The state argues that, viewing the closing argument as a whole, the absence of the prosecuting attorney’s single statement about N.G. would not have had a significant effect on the jury’s verdict. The state points out that, eight times, the prosecuting attorney emphasized that the jury must decide witness credibility. Indeed, on nearly every page of

the ten-page transcript of the prosecuting attorney's closing argument, she stated that the jury was the "judge" of witness credibility. In *D.D.R.*, we reasoned that the district court's jury instructions and the prosecuting attorney's argument about the jury's duty to decide the truth lessened the prejudice from the prosecuting attorney's misconduct. *D.D.R.*, 713 N.W.2d at 900. Here, the district court also instructed the jury on its duty to determine witness credibility.⁵

Rath contends that, unlike in *Swanson* where there was ample evidence against the defendant, the evidence here was not strong and the state's "proof relied solely on N.G.'s testimony." Even assuming that Rath accurately describes the evidence against him, he ignores a critical point. In *Swanson*, the supreme court held that "the impermissible vouching *constituted only a small part* of the prosecuting attorney's closing argument," and while the statements were plain error, they "were not sufficiently prejudicial to warrant a new trial." *Swanson*, 707 N.W.2d at 656 (emphasis added). Similarly, the prosecuting attorney's statement here was only one sentence in a closing argument that repeatedly reminded the jury that they were the judges of witness credibility. While plain error, the single statement did not affect the jury's verdict. The jury heard testimony from a BCA agent, a detective, N.G., and Rath. Because both Rath and N.G. testified at trial, the jury had ample opportunity to determine their credibility. We also determine that the record evidence strongly supported Rath's conviction.

⁵ The district court instructed the jury: "You are the sole judges of believability of the witnesses and the weight to be given their testimony." And the instructions discussed factors that the jury should consider in determining witness credibility.

When reviewing the closing argument and trial record as a whole, we conclude that the state met its burden of proving that there is no reasonable likelihood that the absence of the prosecutorial misconduct would have had a significant effect on the jury's verdict.

Affirmed.