

*This opinion is nonprecedential except as provided by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
A20-0897**

State of Minnesota,
Respondent,

vs.

Shuxin Lan,
Appellant.

**Filed May 10, 2021
Affirmed
Florey, Judge**

Washington County District Court
File No. 82-CR-18-3783

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa Sheridan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Reilly, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this direct appeal from final judgments of conviction for two counts of promoting the prostitution of an individual and two counts of receiving profits from prostitution, appellant argues that she is entitled to a new trial because it was plain error affecting her

substantial rights for the prosecutor in closing argument to encourage jurors to consider the broad social problem of sex trafficking and to invite jurors to put themselves in the victims' shoes. Because we determine the state did not commit prosecutorial misconduct, we affirm.

FACTS

Appellant Shuxin Lan owned and operated two massage businesses. Following an approximately yearlong investigation into the businesses, the state charged Lan with two counts of promoting the prostitution of an individual and two counts of receiving profits from prostitution, one count for each of the two massage parlors.

In his opening statement, defense counsel made the following statement:

Sex trafficking, human trafficking, massage parlors, they are great buzz words, you hear about them on the news. Suddenly someone gets arrested and it's all over. Prosecutors walk her out on the perp walk.

. . . .

And somehow [Lan] got caught up in this country and this — our national hysteria with sex trafficking. What you're going to hear from is a lot of experts — so called experts. They are going to tell you all sorts of stuff about sex trafficking. You know what they are not going to tell you about? Anything my client did wrong.

In his closing argument, the prosecutor made the following comments:

Human trafficking is a problem. And we have heard about that problem now on our fourth day. It's a problem in Minnesota and it's a problem in Washington County.

Human trafficking takes different forms. Some of those forms involve force — and we heard from police officers like [the detective] on cases he's investigated involving that

force —fraud, coercive acts and also those that are promoted. That’s the umbrella of human trafficking.

Now imagine this: Imagine a female being recruited online, offered up to \$6,000.00 a month, travelling one-way to Minnesota, being picked up from the airport and dropped off at a massage parlor and working a 12-hour day, six to seven days a week.

Now imagine that same female not speaking English, having no ties to the community and living in the same place. Working every day, 12 hours. We heard from the defendant how difficult that was because she’s done it before.

And the only way that they get paid is if they have enough clients and they get enough tips. There is no hourly rate. There is no commission. It’s who you bring in the door every single day.

Now imagine waking up in that parlor, turning the open sign on and [men] coming in. That’s what these females endure every single day.

In his closing argument, Lan’s counsel said:

Now, the State opened their closing by telling you that human [trafficking] is a problem. Okay. My first thought was “why?” Why is it a problem? And when did it suddenly become a problem? Well, we all know the answer. Last three or four years, human trafficking, everywhere in the news. And when you hear the words “human trafficking,” and the State [alluded] to this, you don’t think of Chinese massage parlors you think of women chained to a bed coming in cargo containers. That’s what you think of.

You hear about these horrible, horrible stories about how these women are rescued from these horrible people that are trafficking them and that’s what we hear about. Whether that’s true or false is irrelevant, but that is what you hear about.

And then what happens? And what’s happened? Well, we have this problem. Why? State says we have a problem. Very important. So we have a problem as a nation. What do

we do? We create a task force. We've got to do something about it. And that's what happened.

....

And when you interview [the victim-employees], according to [the detective], not only do they think they are not victims, they are going to tell you nothing happened. So these women are too stupid to know that they are a victim. That's what the State is telling you. That's what human [trafficking] — that's the entire basis. These women don't know they are victims.

In his rebuttal, the prosecutor commented:

Human trafficking is a problem. This is real. It's happening in Washington County. These three pages tell you it's happening.

If you all don't think or believe that human trafficking is a problem and think what [defense counsel] said that this is all made up, I don't know what a problem is, then.

The jury found Lan guilty all four charged offenses. This appeal follows.

DECISION

Lan argues that she is entitled to a new trial because the prosecutor committed prejudicial misconduct during closing argument by “encourag[ing] the jurors to consider broad social issues” and “invit[ing] jurors to put themselves in the victim's shoes.”

Because Lan did not object to the statements at trial, we review under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under that standard, the defendant must demonstrate error that is plain because it “contravenes case law, a rule, or a standard of conduct.” *Id.* at 302. If the defendant is able to make this showing, the burden shifts to the state to demonstrate a lack of prejudice by showing “that

there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Id.* (quotations omitted). “In assessing whether there is a reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury’s verdict, we consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions.” *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007). If the state fails to demonstrate that substantial rights were not affected, “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). When reviewing alleged misconduct in closing statements, this court must look at the whole argument in context, not just selective phrases or remarks. *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993).

Societal issue

Lan argues that the prosecutor committed misconduct by “by encouraging the jurors to consider broad social issues to decide whether to convict” during closing argument. Specifically, Lan argues that the prosecutor “exhort[ed] the jurors to address the broad social problem of sex trafficking” by telling jurors “they would be part of a societal problem if they did not believe that human trafficking is a problem, and if they did not convict Lan to address that problem.”

Generally, “it is improper for the prosecutor to urge the jury to protect society with its verdict,” or to make closing arguments that “attempt to divert the jury from the facts of the case by making broad policy arguments.” *State v. Myrland*, 681 N.W.2d 415, 421

(Minn. App. 2004) (quotation omitted), *review denied* (Minn. Aug. 25, 2004). But a defendant might make certain arguments or introduce material that “opens the door” to allow the state to “respond with material that would otherwise have been inadmissible.” *State v. Bailey*, 732 N.W.2d 612, 622 (Minn. 2007) (quotation omitted). The opening-the-door doctrine “is essentially one of fairness and common sense” so that one party does not gain an unfair advantage by introducing misleading or distorted information. *Id.* (quotation omitted).

Lan argues the prosecutor committed misconduct by making the following statement:

Human trafficking is a problem. And we have heard about that problem now on our fourth day. It’s a problem in Minnesota and it’s a problem in Washington County.

But our review of the record shows defense counsel “opened the door” to the prosecutor’s comments on the social problem of sex-trafficking in his opening statement by insinuating that sex-trafficking is nothing more than “buzz words” contributing to “our national hysteria with sex trafficking.” *See Bailey*, 732 N.W.2d at 622. Had the district court sua sponte prohibited the prosecutor from making his argument in response to defense counsel’s opening statement, it could have created an unfair advantage. Furthermore, the prosecutor’s comments were brief, covering only two pages of the 45-page closing statement, and defense counsel addressed them during his own closing argument when he emphasized that sex-trafficking has only become a “problem” because “[the] State says we have a problem.” Therefore, we conclude the state did not engage in prosecutorial misconduct during his closing argument.

Placing jurors in the victims' shoes

Lan next argues that the prosecutor committed misconduct during closing argument by inviting jurors to put themselves in the victims' shoes. Generally, "arguments that invite the jurors to put themselves in the shoes of the victim are considered improper." *State v. Johnson*, 324 N.W.2d 199, 202 (Minn. 1982); see *State v. McNeil*, 658 N.W.2d 228, 236 (Minn. App. 2003) (stating that it is misconduct for prosecutor to evoke sympathy for the victim).

Lan argues that the prosecutor impermissibly asked the members of the jury to place themselves in the victims' shoes in the following portion of the state's closing argument:

Now imagine this: Imagine a female being recruited online, offered up to \$6,000.00 a month, travelling one-way to Minnesota, being picked up from the airport and dropped off at a massage parlor and working a 12-hour day, six to seven days a week.

Now imagine that same female not speaking English, having no ties to the community and living in the same place. Working every day, 12 hours. We heard from the defendant how difficult that was because she's done it before.

And the only way that they get paid is if they have enough clients and they get enough tips. There is no hourly rate. There is no commission. It's who you bring in the door every single day.

Now imagine waking up in that parlor, turning the open sign on and [men] coming in. That's what these females endure every single day.

Review of the prosecutor's closing argument as a whole shows that, in making these statements, the prosecutor was inviting jurors to consider what it was like for the female victim-employees in this case. We determined that this type of comment is proper in *State*

v. Bashire, 606 N.W.2d 449, 454 (Minn. App. 2000), *review denied* (Minn. Mar. 28, 2000).

There, we explained that it would be improper if a prosecutor directed the jurors to imagine themselves as victims of a crime, but it was not improper to ask the jurors to consider the effect of the crime on the actual victim. *Id.* Here, because the prosecutor invited jurors to imagine what it was like for the victim-employees to experience the sex-trafficking crimes at issue, not the jurors individually, we determine no prosecutorial misconduct occurred.¹

Because Lan has not demonstrated error in the prosecutor's closing argument, we need not reach the other prongs of the plain-error test.

Affirmed.

¹ We note that while the final paragraph of the prosecutor's closing argument arguably shifted in tone, when read in the context of the passage as a whole, while inartfully stated, it was not meant to be an invitation to the jury to place themselves in the victims' shoes.