

*This opinion is nonprecedential except as provided by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
A20-1127**

Abdirahman Dayib Ahmed, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed April 5, 2021
Affirmed
Frisch, Judge**

Otter Tail County District Court
File No. 56-CR-18-4

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Jeffrey D. Skonseng, Pelican Rapids City Attorney, Fergus Falls, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Frisch, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

FRISCH, Judge

On appeal from an order denying his petition for postconviction relief, appellant argues that the district court abused its discretion by concluding that the prosecutor did not impermissibly vouch for a witness's credibility during closing arguments. We affirm.

FACTS

The state charged appellant Abdirahman Dayib Ahmed with misdemeanor domestic assault in violation of Minn. Stat. § 609.2242, subd. 1(2) (2016), alleging that on December 30, 2017, he assaulted his girlfriend. The case proceeded to a jury trial.

Trial, Conviction & Sentence

The victim testified that she was romantically involved with Ahmed during December 2017. On December 30, 2017, she went to Ahmed's brother's home, where Ahmed was staying. When the victim arrived, she heard Ahmed and the brother arguing in Somali and assumed she was the cause of their fight. The victim took two shots of liquor because she was "usually . . . really nervous" about going into the brother's home. Then she entered the residence and discovered that Ahmed had been drinking, causing her to become angry. Approximately ten minutes after the victim arrived, she and Ahmed began arguing. At some point, Ahmed told the victim he was "through" with her.

The victim testified that she left the living room and entered the bedroom to grab a sweater. Ahmed allegedly followed her into the bedroom and slapped her with an open hand. The victim claimed she returned to the living room, saw a bottle of vodka sitting on the dining-room table, and grabbed it. According to the victim, "[T]hat's when [Ahmed]

started hitting [her].” She claimed that Ahmed “threw [her] on the ground, and then he was kicking [her] and hitting [her] with a closed hand.” She recalled that Ahmed “was kicking [her] . . . kind of everywhere,” and that when she thought he was finished, “he kicked [her] . . . in [her] forehead.” The victim also testified that Ahmed “[p]ulled [her] hair,” ripped her jacket, and pushed and pulled her around to the point her shirt was almost off.

The victim testified that after the assault, she called 911 but hung up. Even so, an officer arrived at the brother’s home a short while later. The victim told the officer that “it was an accident.” The victim then went to a motel, where the owner allegedly gave her ice packs. The victim testified that she contacted 911 again and explained what had happened.

An officer with the Pelican Rapids Police Department testified that he responded to the brother’s home on a 911 call, met the victim at the door, and spoke with her briefly. The victim told the officer that there were no issues and informed him that she was leaving for a motel. The officer testified that he did not observe any injuries to the victim’s face. After the victim left, Ahmed’s brother answered the door and invited the officer inside. The officer spoke with Ahmed and observed a bottle of vodka on the table but did not observe visible signs of a struggle.

The officer testified that he returned to his regular duties until approximately three hours later, when the victim called 911 a second time from a motel. The officer went to the motel and met with the victim. He testified that he observed “[s]welling along [the victim’s] eyebrow line and on the upper bridge of her nose,” as well as a tear in the victim’s

jacket. The officer photographed the victim's face and jacket, and the jury viewed those photographs.

Following the close of the evidence, the district court provided instructions to the jury, including that "[d]eciding questions of fact" was their "exclusive responsibility"; "the arguments or other remarks of an attorney are not evidence"; and they were "the sole judges of whether a witness is to be believed and of the weight to be given a witness's testimony."

During closing arguments, the prosecutor urged the jury to find that Ahmed assaulted the victim, stating:

[The victim] provided testimony, *very believable and credible testimony*, that she was struck, that she was kicked, and that her clothing was ripped. She also provided testimony that she was slapped in the face

Based upon her testimony, the fact that the officer supported that testimony by indicating he could visually see the results of having been hit upon [the victim], we would submit that . . . an assault took place

(Emphasis added.) Defense counsel did not object to the argument.

Defense counsel argued that no assault occurred, emphasizing the seeming implausibility of the timing of the victim's version of events, the fact that the officer saw no signs of injury when he first encountered the victim, various inconsistencies between the victim's testimony and the officer's observations, the state's failure to call other corroborating witnesses, the state's failure to document further signs of the victim's injuries, and the victim's failure to seek immediate medical attention. He also argued that the photographs failed to demonstrate the victim's claimed injuries.

The prosecutor offered the following brief rebuttal:

The defense would have you believe . . . it's all out of revenge. [The victim] did indicate that she still loves the defendant. She stated that. She also indicated that things need to stop. She didn't look like she was having fun coming here today.

They indicate the devils are in the details. You're being told, well, [the victim] testified the bottle fell on the floor but when the officer got there it was on the table. Well, I would submit a logical conclusion is somebody picked the bottle up and put it back on the table. . . .

The testimony and the believability of [the victim]—*her testimony's credible*. And I'm asking you, when you deliberate, to recall that testimony and recall her responses and recall . . . the frankness and sincerity with which she testified.

(Emphasis added.) Again, defense counsel failed to object.

The jury found Ahmed guilty. The district court adjudicated the conviction and sentenced Ahmed to 90 days in jail with credit for time served and two years of probation.

Postconviction Proceedings

In July 2020, Ahmed filed a petition for postconviction relief, arguing in part that a new trial was necessary because the prosecutor impermissibly vouched for the victim's credibility during closing arguments and that the misconduct likely affected the verdict. The state conceded that the prosecutor's statements "could be construed as improper vouching" but urged the district court to deny the petition because the district court provided several cautionary instructions regarding closing arguments, the relevant statements were brief, and there was ample evidence of guilt.

The district court denied the petition. It concluded that "[t]he [p]rosecution never gave any guarantees or injected any personal opinions regarding the credibility of [the

victim's] testimony. Looking at the [p]rosecution's closing argument and rebuttal as a whole, the statements do not rise to the level of [prosecutorial] misconduct" The district court did not consider the prejudicial effect of any potential misconduct.

This appeal follows.

DECISION

Ahmed urges us to reverse the district court's denial of his postconviction petition and remand for a new trial, arguing that the prosecutor committed prejudicial misconduct by vouching for the victim's credibility during closing arguments. The state contends that the prosecutor's statements were not improper vouching and that any potential error does not warrant a new trial.

We review a district court's denial of a petition for postconviction relief for an abuse of discretion. *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013). "A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted). Accordingly, we review the district court's findings of fact for clear error and its legal conclusions de novo. *Id.* Claims of unobjected-to prosecutorial misconduct are reviewable under a modified plain-error framework. *See State v. Peltier*, 874 N.W.2d 792, 803 (Minn. 2016).

Under that test, the defendant has the burden to demonstrate that the misconduct constitutes (1) error, (2) that is plain. If plain error is established, the burden then shifts to the [s]tate to demonstrate that the error did not affect the defendant's substantial rights. To meet the third prong, the [s]tate must show that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict. If all three prongs of the test are met, we may

correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.

Id. at 803-04 (quotations and citations omitted). We assume without deciding that the prosecutor plainly erred by vouching for the victim's credibility because we are satisfied that the state has demonstrated that any error did not affect Ahmed's substantial rights. See *State v. Mosley*, 853 N.W.2d 789, 798 (Minn. 2014) (explaining that if one plain-error prong is dispositive we need not consider other prongs); see also *Hummel v. State*, 617 N.W.2d 561, 563 (Minn. 2000) (affirming district court's postconviction decision on alternative grounds).

The state contends that any potential misconduct was not prejudicial because there was ample evidence of Ahmed's guilt, the statements were brief, and the jury received cautionary instructions regarding their consideration of closing arguments. We agree.

"[W]e 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); see also *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017). A district court's cautionary instructions are also relevant in assessing prejudice because "[w]e presume that the jury followed the court's instruction." *State v. Taylor*, 650 N.W.2d 190, 207 (Minn. 2002).

The challenged statements were undeniably brief. They constituted fragments of two sentences in the prosecutor's principal and rebuttal arguments. Ahmed acknowledges this brevity but emphasizes that the prosecutor's arguments were short in their entirety.

Even though the challenged statements were delivered during brief closing arguments, the prosecutor did not linger on any improper suggestion, and he did offer other reasons to credit the victim's version of events.

Despite Ahmed's claim that the state's case "was riddled with inconsistencies and conspicuously missing evidence," the state's case was not weak. Ahmed emphasizes that there was no sign of a struggle, that the officer saw no signs of an injury or distress when he first arrived, that the photographs of the victim show no obvious injury, and that law enforcement failed to conduct any follow-up with the victim to document her injuries days after the assault. The jury was aware of many of these circumstances and heard testimony offering additional context. For instance, the officer testified that the victim kept her face down initially, that his encounter with her was brief, and that he *personally observed* the injuries to the victim's face hours after the assault. As for the photographic evidence of the injuries, the officer indicated the location of the injuries displayed on the photographs during the trial, and our examination of those photographs indicates perceptible areas of swelling at the mid-point of the victim's brow. All of this evidence contextualizes the strength of the victim's testimony itself, which described Ahmed's assault in detail.

In addition, counsel for Ahmed presented extensive argument to the jury to rebut any improper suggestion by the prosecutor. Counsel's argument spanned 11 transcript pages and consisted of meticulously fact-oriented arguments attempting to convince the jury that the victim was *not* a credible witness. Counsel emphasized various inconsistencies in the victim's testimony and developed a theory as to why the victim was motivated to lie. These efforts were exhaustive.

Last, we note that the instructions given by the district court mitigated the potentially prejudicial nature of the prosecutor's statements. The jury was instructed that they were the sole judge of credibility; that the attorneys' arguments were not evidence; and that they bore the exclusive duty to resolve questions of fact. We presume that the jury followed these instructions in its deliberations. *See id.*

On balance, we conclude that there is no reasonable likelihood that the absence of the challenged statements would have had any significant effect on the jury's verdict. *See Peltier*, 874 N.W.2d at 803-04. Because the alleged misconduct did not affect Ahmed's substantial rights, we see no abuse of discretion by the district court in its denial of the petition for postconviction relief.

Affirmed.