

*This opinion is nonprecedential except as provided by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
A20-1450**

Paul Matthew Ashfeld, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 21, 2021
Affirmed
Hooten, Judge**

Meeker County District Court
File No. 47-CR-17-207

Cathryn Middlebrook, Chief Appellate Public Defender, Christopher L. Mishek, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Brandi Schiefelbein, Meeker County Attorney, John P. Fitzgerald, Assistant County Attorney, Litchfield, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Hooten, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from an order denying postconviction relief, appellant argues that the district court erred by admitting prejudicial hearsay statements of the victim and the

prosecutor committed misconduct during closing argument by comparing the victim to a “hunted animal.” We affirm.

FACTS

Respondent State of Minnesota charged Appellant Paul Matthew Ashfeld with first-degree, second-degree, and third-degree criminal sexual conduct, as well as misdemeanor domestic assault. These charges were based on allegations that Ashfeld had used force to engage in sexual contact and sexual penetration with the victim—his ex-girlfriend and the mother of his child—and had thereby caused the victim physical harm.

Prior to trial, the state filed a motion in limine seeking admission of two audio recordings of out-of-court statements the victim had made about the assault, arguing that they were admissible as prior consistent statements and statements of identification. The district court granted the state’s motion, and both recordings were eventually played for the jury at trial. Ashfeld objected to the admission of the second of these recordings, a statement the victim had made to law enforcement, as being both cumulative and inadmissible hearsay. The district court also permitted, over Ashfeld’s objection that it was cumulative and repetitive, testimony by a police detective in which the detective recounted an out-of-court statement the victim had made describing the sexual assault. The jury found Ashfeld guilty on all counts, and the district court entered a judgment of conviction on count one—the charge of first-degree criminal sexual conduct.

Instead of filing a direct appeal, Ashfeld petitioned for postconviction relief. He waived an evidentiary hearing and instead requested that the postconviction court base its decision on the petition, responsive pleadings, and trial record. A district court judge other

than the trial judge, sitting as the postconviction court, denied Ashfeld's petition. Ashfeld now appeals.

DECISION

"We review the denial of a petition for postconviction relief for an abuse of discretion." *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). "A postconviction court abuses its discretion when it has exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings." *Id.* (quotation omitted). "Legal issues are reviewed de novo." *Id.*

I. The postconviction court correctly concluded that the district court had not abused its discretion in admitting evidence of the victim's out-of-court statements.

Ashfeld first argues that the district court abused its discretion in admitting two pieces of evidence: an audio recording and transcript of a statement the victim made to police on the morning of the sexual assault and testimony by a police detective recounting the victim's statements describing the assault. Ashfeld asserts that he was prejudiced by these errors and that the postconviction court therefore erred by denying his petition. We discuss each piece of evidence in turn.

A. Evidence of the Victim's Out-of-Court Statement

The state filed a motion in limine seeking to admit evidence of an out-of-court statement the victim had made to law enforcement later on the same morning of her assault. In this recorded statement, the victim described how Ashfeld had returned, drunk, to the home they shared earlier that same day and had violently sexually assaulted her over a span of nearly two hours. The state argued that evidence of this statement was admissible

because the statement was both a prior consistent statement and a statement of identification and therefore not hearsay. The district court granted the state's motion, announcing that it was "allowing the victim's prior consistent statements and statements of identification . . . [assuming], of course, [that] the victims [sic] testifies prior to any – any of these consistent statements being discussed."

During opening argument, Ashfeld's trial counsel argued that the victim was fabricating her allegations against Ashfeld. Then, during the prosecutor's direct examination of the victim, a recording of the victim's prior statement was played for the jury over the objection of Ashfeld's trial counsel that it was "cumulative and hearsay." A transcript of the recording was also admitted into evidence. The district court did not make any explicit findings that the victim's credibility had been challenged, that the evidence of the victim's prior statement would be helpful to the trier of fact, or that the prior statement and appellant's trial testimony were consistent.

Ashfeld challenged the district court's evidentiary ruling on two grounds in his postconviction petition. First, Ashfeld argued that the district court erred by concluding that the victim's statement was admissible as a statement of identification. Second, Ashfeld contended that the district court erred by concluding that the victim's statement was admissible as a prior consistent statement.

The postconviction court concluded that Ashfeld's first argument—that the district court had erred by concluding that evidence of the victim's out-of-court statement was admissible as a statement of identification—was "without merit." Specifically, the postconviction court concluded that the district court had not relied on the rule exempting

statements of identification from the definition of hearsay, because identification of the perpetrator had not been at issue at trial. Finally, the postconviction court concluded that, even if the district court had abused its discretion in admitting the victim's out-of-court statement, Ashfeld had "failed to establish how this admission would have had a prejudicial effect on the jury's verdict," given the strength of the state's case against him.

The postconviction court also concluded that the district court had not abused its discretion in admitting evidence of the victim's out-of-court statement to law enforcement as a prior consistent statement. The postconviction court found "that credibility was central to this case," as "the alleged victim and suspect were the only ones with personal knowledge thereby making each account apposite at times and challenged." Noting that Ashfeld's trial counsel challenged the victim's credibility during opening statement, the postconviction court concurred that the victim's out-of-court statement "was helpful to the jury to evaluate her testimony as the victim of the crime and aided the jury in determining credibility by demonstrating whether her memory was similar or if she had an improper motive to fabricate the incident." The postconviction court further determined that the victim's "trial testimony was not inconsistent with her prior out of court statement," as "she was consistent as to where the assault occurred, who the perpetrator was, and the nature of the acts that occurred."

"Evidentiary rulings rest within the sound discretion of the district court, and [an appellate court] will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). "Under an abuse-of-discretion standard, [an appellate court] may reverse the district court when the district court's ruling is based

on an erroneous view of the law or is against logic and the facts in the record.” *State v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015) (quotation omitted). “When challenging evidentiary rulings, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Valentine*, 787 N.W.2d 630, 638 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010) (alteration in original) (quotation omitted). Where a postconviction petitioner has not had his conviction reviewed on direct appeal, the standards of review normally applied to a direct appeal are applied to his postconviction petition. *Santiago v. State*, 644 N.W.2d 425, 439 (Minn. 2002).

Hearsay evidence is generally inadmissible. Minn. R. Evid. 802. Hearsay “is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). But several types of out-of-court statements are excluded from the definition of hearsay—and are therefore not barred by the general rule against hearsay—even though they are offered to prove the truth of the matter asserted.

A statement is excluded from the definition of hearsay if the declarant—that is, the person who made the statement—“testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . consistent with the declarant’s testimony and helpful to the trier of fact in evaluating the declarant’s credibility as a witness.” Minn. R. Evid. 801(d)(1). Such a “prior consistent statement” may only be admitted if the district court makes several determinations. *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *review denied* (Minn. Feb. 24, 2000). First, the district court

must determine that the witness's credibility has been challenged. *Id.* The witness's credibility may be challenged on cross-examination, but it may also be challenged in an opening statement. *State v. Grecinger*, 569 N.W.2d 189, 193 (Minn. 1997). Second, the district court must determine that "the prior consistent statement would be helpful to the trier of fact in evaluating the witness's credibility." *Bakken*, 604 N.W.2d at 109. "It is unlikely that mere repetition of a statement implies veracity." *Id.* "But a prior consistent statement might bolster credibility by showing a fresh complaint, obviating an improper influence or motive, providing a meaningful context, or demonstrating accuracy of memory." *Id.* Finally, the trial court must determine that "the prior statement and the trial testimony are consistent with each other." *Id.* The trial testimony and the prior statement need not be identical to be consistent. *Id.*

A statement is also excluded from the definition of hearsay if "[t]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . one of identification of a person made after perceiving the person, if the court is satisfied that the circumstances of the prior identification demonstrate the reliability of the prior identification." Minn. R. Evid. 801(d)(1). This rule "does not extend to the out-of-court accusation against an offender whose identity was well-known to the victim." *State v. Robinson*, 718 N.W.2d 400, 408 (Minn. 2006).

The postconviction court correctly concluded that the district court did not abuse its discretion in admitting evidence of the victim's out-of-court statement to law enforcement as evidence of a prior consistent statement. A prior consistent statement is only admissible if the district court determines that (1) the declarant-witness's credibility has been

challenged, (2) the prior statement would be helpful to the factfinder in assessing the declarant-witness's credibility, and (3) the prior statement and the declarant-witness's testimony are similar. *Bakken*, 604 N.W.2d at 109. As noted, Ashfeld's trial counsel challenged the victim's credibility during opening statement by claiming that she was fabricating her allegations against Ashfeld. It would be reasonable to conclude that evidence of the victim's prior statement would help the factfinder assess her credibility; this evidence went beyond "mere repetition" and bolstered the victim's credibility by demonstrating that she reported the assault to police soon after it occurred and showing that her memory of the assault was consistent with her prior statement at the time she testified. And the prior statement and the victim's trial testimony were consistent in terms of location, perpetrator, and manner of abuse. Finally, while it is true that the district court did not make explicit findings regarding the *Bakken* factors, Ashfeld cites no authority as support for the proposition that the district court was required to make such findings on the record before admitting evidence of the victim's out-of-court statement.

The postconviction court did, however, err in concluding that Ashfeld's other argument—that the district court had erred by concluding that evidence of the victim's out-of-court statement was admissible as a statement of identification—was "without merit." Here, the district court stated prior to trial that it was "allowing the victim's prior consistent statements and statements of identification." It is unclear whether the district court was relying, in part, on the rule exempting statements of identification from the definition of hearsay when it admitted evidence of the victim's out-of-court statement to law enforcement. That rule "does not extend to the out-of-court accusation against an offender

whose identity was well-known to the victim,” *Robinson*, 718 N.W.2d at 408, and Ashfeld was well known to the victim in this case, as the two share a child. As such, if the district court relied on the rule concerning statements of identification to admit the statement at issue, that decision would have been legally erroneous.

Nevertheless, the district court and the postconviction court correctly concluded that the statement at issue was a prior consistent statement and that evidence of the statement was therefore admissible non-hearsay. Accordingly, Ashfeld has failed to demonstrate that the postconviction court erred by concluding that the district court did not abuse its discretion in admitting evidence of the victim’s out-of-court statement to law enforcement.

B. The Detective’s Testimony

The district court permitted the prosecutor to elicit testimony from a police detective, in which the detective recounted statements the victim had made describing the assault. Specifically, the detective testified about how the victim took him through the crime scene, describing what happened where and how damage to the home resulted from Ashfeld’s actions. The detective also testified about how he collected physical evidence and took photographs during this tour of the crime scene. A number of these photographs were admitted into evidence. Ashfeld’s trial counsel objected to the detective’s testimony as cumulative, but the district court overruled that objection.

In his petition for postconviction relief, Ashfeld argued that the district court had abused its discretion in permitting this testimony by the detective, as the minimal probative value of the evidence was outweighed by its cumulative character. The postconviction court disagreed, concluding that the detective’s testimony “was not cumulative because he

aided the jury in the integrity of the entire case, allowed the jury to assess pieces of the case, or determine credibility of the other evidence and witnesses and not just [the victim].”

In Minnesota, all relevant evidence is admissible at trial unless the United States or Minnesota Constitutions, the Minnesota Rules of Evidence, or other court rules provide otherwise. Minn. R. Evid. 402. Minn. R. Evid. 403 provides that “evidence may be excluded if its probative value is substantially outweighed” by the consideration of “needless presentation of cumulative evidence.” Evidence may be needlessly cumulative when it is “merely duplicative,” *Moore v. State*, 945 N.W.2d 421, 438 (Minn. App. 2020), *review denied* (Minn. Aug. 11, 2020) (quotation omitted), or when it is offered as proof of a fact, the existence of which has been shown through other evidence and has not been contradicted by the opposing party. *See State v. Zumberge*, 888 N.W.2d 688, 696 (Minn. 2017).

The postconviction court correctly concluded that the district court had not abused its discretion in admitting the detective’s testimony. Contrary to Ashfeld’s suggestions, the evidence at issue did more than merely repeat the statements the victim had made while testifying and in the various audio recordings played for the jury. It provided context for law enforcement’s investigation of the assault, linking the photographs of the crime scene that were admitted into evidence with the events that the victim described in her testimony and elsewhere. Without this connection, the jury would have been left to speculate about whether those photographs depicted damage that resulted from the events the victim described, or whether this damage was instead unrelated to the assault. And while the detective’s testimony did, to some extent, repeat the victim’s statements about the assault,

those statements were not the focus of the testimony. The testimony was, instead, focused on the investigative process whereby law enforcement gathered evidence. Therefore, the postconviction judge did not err by concluding that the district court properly admitted the detective's testimony.

II. The postconviction court correctly concluded that the prosecutor had not committed prejudicial plain error by inflaming the passions of the jury during closing argument.

The prosecutor made the following statement during his rebuttal to Ashfeld's closing argument:

There was also some comment about [the victim's] first call. The first call to her boyfriend . . . I believe when she testified she indicated just as to why she didn't immediately call 911. She was – she was scared and she was alone. And think about the context of this whole thing. She had just previously called under duress and told her boyfriend her sit – that she cares about, the person that she's still dating that things were over between them. Why wouldn't she call him first? Why wouldn't she call the person she cares about, she loves, to tell him what happened to her? And of course, this all is in a context of a rape just occurring, something terrible had happened to her, something that might make a rational person not think or act the way we expect them to. You know, some of you – I didn't – I didn't ask this during jury selection, maybe it was somewhat covered but some of you may be hunters or know hunters. And with hunting you see animals, you see deer, what are their impulses when they encounter a threat? Sometimes they flee, sometimes they freeze. Some animals, they fight. Fight, flight, freeze. All of those reactions you heard about. [The victim] fought. She tried to get away and then this whole context of things that during and the after she wasn't quite reacting to the way – way things maybe we didn't expect her to. Maybe she didn't call 911 right away but [the police detective] told you about that in his nine plus years of experience working criminal sexual conduct investigations, it is common – it is common for individuals who have been sexually assaulted not to call 911 right away. He wasn't telling you to ignore your common

sense. He was telling you about his experience on the job in this role. Take that back to you – to the deliberation room when your analyst – when you’re analyzing that issue.

Ashfeld did not object to this statement before the district court. He nevertheless contends that it constitutes prejudicial plain error requiring the reversal of his conviction.

In his petition for postconviction relief, Ashfeld argued that the prosecutor’s statements constituted prejudicial plain error requiring reversal of his conviction. The postconviction court disagreed, concluding that “there was no prosecutorial misconduct in closing arguments with reference to [the victim] as a hunted animal whose behavior was to freeze initially while experiencing the trauma of the incident.” The postconviction court went on to conclude that, “[e]ven if error was committed in closing arguments, and the error was plain, [Ashfeld] is not entitled to the relief he seeks because he failed to establish, when assessing the closing arguments as a whole, how the jury was prejudiced by the analogy raised one time in the entire context of all closing arguments.”

“A prosecutor must avoid inflaming the jury’s passions and prejudices against the defendant.” *State v. Morton*, 701 N.W.2d 225, 236 (Minn. 2005) (quotation omitted). “When credibility is a central issue, we pay special attention to statements that may inflame or prejudice the jury.” *Id.* When an appellant has failed to object during trial, we review allegations of prosecutorial misconduct under a modified plain error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under this standard, the appellant bears the burden of establishing an error that is plain. *Id.* An error is plain when it is “clear or obvious,” as where the error “contravenes case law, a rule, or a standard of conduct.” *State v. Cao*, 788 N.W.2d 710, 715 (Minn. 2010). If the appellant establishes plain error, “the

burden shifts to the State to demonstrate that the plain error did not affect the [appellant]’s substantial rights.” *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017). The state bears the burden of proving 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.” *Ramey*, 721 N.W.2d at 302 (quotations omitted). In deciding whether the misconduct significantly affected the jury’s verdict, we consider such factors as “the pervasiveness of improper suggestions and the strength of evidence against the defendant.” *Parker*, 901 N.W.2d at 926 (quotations omitted). If the state fails to demonstrate that the error did not affect the appellant’s substantial rights, we then consider “whether the error should be addressed to ensure fairness and the integrity of judicial proceedings.” *Id.*

The postconviction court correctly concluded that the prosecutor had not committed prejudicial plain error. First, it is far from “clear or obvious” that the statement at issue amounted to prosecutorial misconduct by inflaming the passions and prejudices of the jury. During his closing argument, Ashfeld’s trial counsel attacked the victim’s credibility by questioning why the first call she made after the assault was to her boyfriend, why she then went to her friend’s house, and why she did not call 911 until she arrived at her place of work later that morning. The prosecutor’s statement appears to have been a response to this line of argument, not an attempt to inflame the passions and prejudices of the jury against Ashfeld. While Ashfeld is correct in noting that we have previously held that a prosecutor impermissibly inflames the passions and prejudices of the jury by referring to a criminal defendant as a “predator,” *State v. Duncan*, 608 N.W.2d 551, 556 (Minn. App. 2000), *review denied* (Minn. May 16, 2000), the present case is distinguishable: nowhere

in his closing argument and rebuttal did the prosecutor refer to Ashfeld as a predator or any variation of that term, and, as noted above, the prosecutor's statement comparing the victim's behavior to that of a hunted animal was an attempt to respond to Ashfeld's attacks on her credibility, not to implicitly argue that Ashfeld was a predator.

Second, the state has carried its burden of demonstrating that there is no reasonable likelihood that the absence of the statement at issue would have substantially affected the verdict of the jury. The statement at issue was only one page in a 23-page closing argument and rebuttal. The characterization of the victim as a hunted animal was not the central motif of the state's case against Ashfeld, which instead focused on the victim's own testimony at trial and the physical, audio, and photographic evidence of the assault. And most importantly, the state's case was strong, as is discussed above. On this record, there is not a reasonable likelihood that the absence of the statement at issue would have substantially affected the verdict of the jury. As such, and because that statement did not amount to plainly erroneous prosecutorial misconduct, we need not reverse Ashfeld's conviction.

Affirmed.