

*This opinion is nonprecedential except as provided by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
A22-1167**

State of Minnesota,
Respondent,

vs.

Willie Coagar Skylark,
Appellant.

**Filed July 3, 2023
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-CR-19-6317

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Mark D. Nyvold, Special Assistant Public Defender, Fridley, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his criminal-sexual-conduct conviction following a jury trial,
arguing that the prosecutor committed misconduct in closing argument. We affirm.

FACTS

Respondent State of Minnesota charged appellant Willie Coagar Skylark with third-, fourth-, and fifth-degree criminal sexual conduct under Minn. Stat. §§ 609.344, subd. 1(c), .345, subd. 1(c), .3451, subd. 1(1) (2016). The state alleged that Skylark sexually assaulted S.C. in March 2018. Skylark and S.C. met through an online dating website, first communicating online in February 2017. They stopped communicating before resuming communication on the website in March 2018. This time, they agreed by text message to meet at Skylark's residence and then go somewhere else to play pool or darts.

According to S.C.'s November 2021 trial testimony, Skylark invited her inside his residence when she arrived. S.C. accepted, believing that they would talk inside for several minutes before walking to a bar. In Skylark's living room, he asked S.C. if she would "rub his shoulders." S.C. "was fine with that" and did so. After several minutes, they moved to Skylark's bedroom, where S.C. "rub[bed] his back." At some point they were "cuddling" when Skylark put his hands under S.C.'s shirt and "down [her] pants and . . . underwear." S.C. told Skylark "no" and "stop." Skylark continued, stating that "it was just skin" and "not a big deal."

S.C. testified that Skylark exposed his penis and "encouraged [S.C.] to give him oral sex." S.C. did so "reluctant[ly]," believing that she could "end the evening a little earlier" if she complied, and not knowing "what [Skylark's] reaction would be if [she] resisted." Skylark "flipped [S.C.] over onto [her] back" and pulled off her pants. S.C. repeated "no" and "stop," stating that they could not have sex because they did not have a condom. Skylark "reached over and got [a] condom" from somewhere while laying on S.C., who

could not get up because of her smaller size. S.C. said “no” and “stop” again several times, but Skylark did not stop. S.C. did not resist for fear that she would be injured and need to explain the injury when picking up her child the next morning. Skylark had vaginal intercourse with S.C., during which S.C. kept repeating “stop,” “no,” and “we can’t do this.” S.C. left Skylark’s residence shortly after.

After leaving Skylark’s residence, S.C. called her friend, C.N. S.C. went to C.N.’s house and told him that a man sexually assaulted her. According to C.N., S.C. told him that she “tr[ie]d to resist” but eventually “did not resist” because of the force applied to her, including the man forcing “[h]er legs apart.” C.N. testified that S.C. was “flustered,” “unsure,” “sporadic,” “shaky,” and crying. C.N. stated that this was not typical of S.C., who was usually “logical” and “organized.” C.N. encouraged S.C. to contact the police, which S.C. did hesitantly. After the assault, C.N. rented a room from S.C. and lived with her for around nine months because S.C. “did not feel comfortable staying alone.”

The next day, S.C. reported the assault to police in a video-recorded statement consistent with her trial testimony. That day, S.C. also received a sexual-assault nurse examination. The examiner testified about what S.C. reported, also consistent with S.C.’s trial testimony. The examiner testified that S.C. recounted unsuccessfully “trying to keep her legs closed,” and “vaginal penetration” by Skylark’s fingers. The examiner further testified that victims of sexual assault can experience “frozen fear” in which they are “[a]fraid to take . . . action” to stop the assault.

Skylark’s defense was that he and S.C. had consensual sex and that S.C. was making “false accusations.” Skylark testified that he had been “on a lot of [dating] sites” and

“would always see [S.C.] on every site” too. Skylark stated that in March 2018, he sent S.C. a message on a dating website when her screen name, “Big Booty Red,” “caught [his] eye.” The timeline to which Skylark testified was similar to S.C.’s timeline. But Skylark claimed that S.C. was the one making sexual advances and that he merely followed along, forcing S.C. to do nothing.

Five days after S.C.’s report to police, an investigator called Skylark by phone and recorded the conversation. The investigator informed Skylark that he was from the sex crimes unit and that a woman had reported something happening between her and Skylark the prior week. Skylark repeatedly asked what woman the investigator was asking about. Skylark claimed that he had not been with a woman the prior week and was either out of town or just getting back from out of town on the day in question. When asked if he had gone on a date that day, Skylark stated that he last went on a date “a long time ago.” Skylark acknowledged having used the dating website through which he and S.C. allegedly met. But he reiterated that he had not met anyone through the website “in a long time.” And when asked if S.C.’s name was familiar, Skylark said it was not. In his trial testimony, Skylark admitted that his statements to the investigator were false. But Skylark claimed that he was merely in “protection mode,” “being evasive” until he could speak with a lawyer.

During closing argument and rebuttal, the prosecutor argued that S.C. was credible and Skylark was not. The prosecutor contrasted S.C.’s consistent account after more than three years and her lack of motive to lie with Skylark’s inconsistency and purported lack of memory on certain details, his motive to lie and exculpate himself, his sexual advances

by text message that S.C. repeatedly declined before the assault, his unanswered text messages to S.C. after the assault, and the lack of evidence supporting Skylark's account beyond his own assertions.

During closing argument, the prosecutor also made the following comments without objection from the defense:

I want to talk about victim blaming and victim shaming. Ask yourself, what was the purpose of Mr. Skylark's testimony that [S.C.] was on all of these different dating [websites] that he was on . . . [?]

. . . .

And ask yourself, what was the purpose of Mr. Skylark sharing with you that [S.C.]'s screen name was Big Booty Red? . . . [I]t doesn't matter whether it is true or not. The purpose that these [facts] serve are to victim blame or shame. It's an underhanded way to undermine a victim of sexual assault.

To support the charges of third- and fourth-degree criminal sexual conduct, the prosecutor highlighted evidence that Skylark accomplished the sexual assault with coercion, including his superior size and isolation of S.C. from others.

The jury acquitted Skylark of third- and fourth-degree criminal sexual conduct but found him guilty of fifth-degree criminal sexual conduct. The district court sentenced Skylark to 360 days in local confinement with three years of probation. This appeal followed.

DECISION

Skylark asserts that the prosecutor committed misconduct by arguing that he testified about S.C.'s use of multiple dating websites and screen name to "victim blame and shame." Skylark did not object during closing argument. Alleged prosecutorial

misconduct to which the appellant did not object is reviewed under a modified plain-error standard. *State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010). That standard in part requires the appellant “to demonstrate . . . (1) error[] (2) that was plain.” *Id.* If the appellant shows plain error, the state must show that the error did not affect the appellant’s substantial rights. *Id.* We conclude that Skylark fails to show error. We also conclude that the state has shown that any error did not affect Skylark’s substantial rights.

Error

Skylark asserts that the victim-blaming argument was not based on “reasonable inferences from the evidence in the record,” contained the prosecutor’s “personal opinion” or “impl[ied] special or secret knowledge” about witness credibility, and was “calculated to appeal to improper prejudices of the trier of fact.” We address these contentions in turn.

Reasonable inference of victim blaming or shaming

“[T]he [s]tate may present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence in its closing argument.” *State v. Peltier*, 874 N.W.2d 792, 804 (Minn. 2016) (quotation omitted) (first alteration in original). But “a lawyer may not speculate without a factual basis.” *Id.* An argument is permissible as based on “a reasonable inference” if “*some* evidence” supports it. *See State v. Bobo*, 770 N.W.2d 129, 142 (Minn. 2009).

Here, some evidence supported characterizing Skylark’s testimony as victim blaming or shaming. Skylark’s defense was that S.C. consented to sex and fabricated contrary allegations. In that context, Skylark’s testimony could be reasonably understood as implying that, because S.C. was using multiple dating websites with a sexualized screen

name, she invited and consented to sex with Skylark. This implication could be considered victim blaming or shaming. *State v. Mitchell*, No. A20-0589, 2021 WL 1166392, at *10 (Minn. App. Mar. 29, 2021) (concluding that record supported prosecutor’s “comparison between . . . defense theory and the so-called ‘victim blaming’ argument that a person’s manner of dress invites sexual assault” when “appellant had argued in his closing that the victim’s actions immediately prior to the assault indicated her consent to have sex with appellant”).¹ Therefore, the prosecutor based her argument regarding victim blaming or shaming on a reasonable inference from the evidence. Doing so was not misconduct.

Opinion about witness credibility

“[I]t is improper for a prosecutor to give her own opinion about the credibility of a witness in closing argument.” *State v. Mayhorn*, 720 N.W.2d 776, 786 (Minn. 2006). “But it is not misconduct for the state to analyze the evidence and argue that particular witnesses were or were not credible.” *State v. Wright*, 719 N.W.2d 910, 918-19 (Minn. 2006).

Here, the prosecutor did the latter. The prosecutor asserted that S.C.’s use of multiple dating websites and her screen name were irrelevant to whether she consented to sex with Skylark. As established, that assertion was permissible based on the evidence. And it is not apparent how the prosecutor’s argument would have implied secret or special knowledge about witness credibility.

The prosecutor might have injected her opinion by referring to Skylark’s testimony as “underhanded.” But “when viewed in context of the closing argument” and rebuttal “as

¹ Nonprecedential opinions are not binding but may be persuasive, as *Mitchell* is here. Minn. R. Civ. App. P. 136.01, subd. 1(c).

a whole”—which together spanned approximately 24 transcript pages—calling Skylark’s testimony “underhanded” once “does not amount to misconduct.” *See State v. Powers*, 654 N.W.2d 667, 679 (Minn. 2003) (holding that, even though prosecutor “seem[ed] to . . . express an opinion on the credibility of the defendant,” expression was not misconduct when it “was only two sentences in a closing argument . . . over 20 transcribed pages”).

Appeal to improper prejudice

“The prosecutor must refrain from making statements that will inflame the passions or prejudices of the jury.” *State v. Duncan*, 608 N.W.2d 551, 556 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000). But this rule is not implicated when “[t]he evidence support[s] the characterization” at issue. *See State v. Leutschafft*, 759 N.W.2d 414, 425 (Minn. App. 2009), *rev. denied* (Minn. Mar. 17, 2009). Here, the evidence supported the characterization that Skylark was victim blaming or shaming. We therefore conclude that this characterization did not inflame the jury such that it was misconduct. As a result, Skylark fails to demonstrate error.

Substantial rights

Even if Skylark showed error, the state has shown that any error did not affect Skylark’s substantial rights. To show no effect on substantial rights, the state must show that there is “no reasonable likelihood” that the misconduct significantly affected the verdict. *State v. Dye*, 871 N.W.2d 916, 925 (Minn. App. 2015). Relevant factors include “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.” *Id.* (quoting *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007)).

Here, all identifiable factors favor the state. As for the strength of the evidence, the jury had strong evidence supporting S.C.’s credibility and discrediting Skylark with no contrary evidence but Skylark’s testimony. The jury heard S.C.’s testimony in which she candidly admitted that she reluctantly consented to some sexual contact. The jury also heard from three witnesses about three prior consistent accounts by S.C. *Id.* (concluding that state met its burden on substantial-rights prong when assault victim “told the 911 dispatcher and the officers at the scene that appellant shot her”). The only notable details missing from S.C.’s testimony that were in her prior statements—Skylark forcing her legs apart and vaginally penetrating her with his fingers—were damaging to Skylark. Testimony about “frozen fear” helped explain why S.C. acted as she did during the assault. And the jury could have understood S.C.’s subsequent behavior as indicating trauma from being sexually assaulted. Skylark offered no reason for S.C. to lie, while Skylark had an obvious potential motive to lie and exculpate himself. *Cf. State v. Griese*, 565 N.W.2d 419, 428 (Minn. 1997) (holding that misconduct did not deny fair trial to defendant when “the evidence of guilt [was] overwhelming” and “there was scant evidence supporting the defense theory”). Indeed, Skylark’s phone call with the investigator could have severely discredited Skylark.

During closing argument, the prosecutor also highlighted text messages between Skylark and S.C. that are particularly damaging to Skylark. Before S.C. went to Skylark’s residence on the date of the offense, Skylark sent S.C. a text message asking what kind of

underwear she wore and for photos of them. S.C. declined. Skylark insisted that he would take the photos for S.C. and asked her to wear a certain kind of underwear that evening. S.C. replied, “That’s a tall request for the same day I’m meeting you.” S.C. went on to write that if Skylark wanted to “get into” the kind of underwear he was requesting her to wear, they should not meet. This text exchange supports the idea that S.C. would not consent to sex that day while discrediting Skylark’s claim that S.C. made sexual advances. The exchange also could have discredited Skylark’s testimony as a whole by showing that he ignored S.C.’s boundaries hours before escalating to criminal sexual conduct.

Any prosecutorial misconduct was limited, covering less than one page in a closing argument and rebuttal spanning approximately 24 transcript pages. *State v. Washington*, 521 N.W.2d 35, 40 (Minn. 1994) (holding that improper closing argument played no “substantial part in influencing the jury to convict” when argument was “in only [four] of 45 pages” of closing-argument transcript). “The prosecutor did not unduly emphasize[] or repeat” the victim-blaming argument. *Peltier*, 874 N.W.2d at 806 (holding that state met substantial-rights prong). And the argument was far from “central to the [s]tate’s case.” *Id.* It was only in response to Skylark’s apparent attempt to discredit S.C. The prosecutor devoted “[t]he remainder of the closing argument” and rebuttal “to arguing [other] facts and applying them to the charges against” Skylark. *Washington*, 521 N.W.2d at 40.

Skylark “had ample opportunity to rebut” the victim-blaming argument in his own closing argument “even if []he declined to do so.” *Peltier*, 874 N.W.2d at 806. For example, he could have tried arguing that his testimony was only to provide context or was legitimately probative to whether S.C. consented. Ultimately, the jury “acquitted” Skylark

of third- and fourth-degree criminal sexual conduct “but convicted” Skylark of fifth-degree criminal sexual conduct. *Washington*, 521 N.W.2d at 40. This tends to show that any misconduct did “not unduly inflame[]” the jury. *See id.* (quotation omitted).

The district “court’s instructions to the jury are also relevant.” *Id.* The district court instructed the jury on its “exclusive responsibility” to “[d]ecid[e] questions of fact” based on “all the evidence.” The district court further “instructed the jury that the arguments of an attorney are not evidence,” *see id.*, and to “disregard” any statement different from the jury’s recollection of the evidence or from the court’s instructions. The jury “presum[ably]” followed these instructions. *See State v. Gatson*, 801 N.W.2d 134, 151 (Minn. 2011) (stating that juries presumably follow instructions).

Finally, that “defense counsel did not object to the prosecutor’s closing argument” and “seek a curative instruction . . . weigh[s] heavily” against reversal “because the [district] court might have . . . ameliorate[d] the effect of improper prosecutorial argument.” *See Washington*, 521 N.W.2d at 40 (quotation omitted). Given that and the rest of the above considerations, the state has shown that there is no reasonable likelihood that any prosecutorial misconduct significantly affected the verdict. Therefore, the state has shown that any prosecutorial misconduct did not affect Skylark’s substantial rights.

Affirmed.