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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1144**

State of Minnesota,
Respondent,

vs.

Lonny Slade Glover,
Appellant.

**Filed July 14, 2025
Affirmed in part, reversed in part, and remanded
Klaphake, Judge^{*}**

Koochiching County District Court
File No. 36-CR-22-348

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey Naglosky, Koochiching County Attorney, International Falls, Minnesota (for respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Harris, Judge; and Klaphake, Judge.

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

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

In a direct appeal that was stayed for postconviction proceedings, appellant challenges the district court's final judgments of conviction for two counts of second-degree criminal sexual conduct. Appellant argues that the district court erred by (1) communicating with the deliberating jury outside appellant's presence, (2) instructing the jury to continue deliberating after the jury indicated that it could not reach a unanimous verdict, and (3) convicting appellant for two counts of criminal sexual conduct based on a single act. Appellant raises five additional arguments in a supplemental brief. We conclude that the district court did not commit reversible error when communicating with the jury, that the district court did not plainly err by instructing the jury to continue deliberating, and that appellant is not entitled to relief based on the issues raised in his supplemental brief. But we conclude that the district court erred by entering convictions for two offenses that arose out of the same behavioral incident. Therefore, we affirm in part, reverse in part, and remand for resentencing.

DECISION

Generally, appellate courts review the denial of a petition for postconviction relief for an abuse of discretion. *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). But when, as here, "a defendant initially files a direct appeal and then moves for a stay to pursue postconviction relief, [appellate courts] review the postconviction court's decisions using the same standard that [they] apply on direct appeal." *State v. Beecroft*, 813 N.W.2d 814, 836 (Minn. 2012).

I. The district court did not commit plain error when it instructed the jury to continue deliberating.

Appellant Lonny Slade Glover argues that the district court gave a coercive jury instruction during deliberations.¹ Glover did not object to the challenged instruction during district court proceedings. Thus, we review his argument for plain error. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (noting that appellate courts have “the discretion to consider” an issue not raised to the district court “if it is plain error affecting substantial rights”). To meet the plain-error standard, “a criminal defendant must show that (1) there was an error, (2) the error was plain,” (3) the error affected their substantial rights, and (4) that the error should be addressed “to ensure fairness and the integrity of the judicial proceedings.” *State v. Myhre*, 875 N.W.2d 799, 804-05 (Minn. 2016) (quotation omitted). But if “any one of the requirements” of the plain-error test is not satisfied, an appellate court “need not address any of the others.” *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted).

A. The Jury Instructions

In January 2023, the district court conducted Glover’s four-day jury trial. At the close of the evidence, the district court gave the following jury instruction:

In order for you to return a verdict whether guilty or not guilty, each juror must agree with the verdict. Your verdict must be unanimous.

You should discuss the case with one another, and deliberate with a view toward reaching agreement, if you can

¹ This is the second issue addressed in the parties’ briefs. For ease of discussion, we first analyze the content of the district court’s challenged instruction, then the procedure in which it was given.

do so without violating your individual judgment. You should decide the case for yourself, but only after you have discussed the case with your fellow jurors and have carefully considered their views. You should not hesitate to reexamine your views and change your opinion if you become convinced that they're erroneous, but you should not surrender your honest opinion simply because other jurors disagree or merely to reach a verdict.

This was a near-verbatim recitation of CRIMJIG 3.04. 10 *Minnesota Practice*, CRIMJIG 3.04 (2022) (providing model jury instructions regarding deliberations and unanimous verdicts).

The case was submitted to the jury at 3:09 p.m. About four hours later, at 7:25 p.m., a bailiff gave the district court judge a note from the jury that said: “Your Honor, we cannot come to a unanimous decision on all the elements of the charges. Please advise us on our next steps. Thank you.” The judge testified that she replied by writing, on that same note, “something to the effect of if you could keep deliberating a little longer.” The note was then returned to the jury. About 15 minutes later, at 7:40 p.m., the district court notified the parties about the note and its supplemental instruction. Glover did not object to the instruction given by the district court. Seven minutes later, at 7:47 p.m., the district court excused the jury for the night.

The next morning, a little before 9:09 a.m., the district court gave the following instruction to the jury, pursuant to *State v. Martin*:

[I]n order to return a verdict, each of you must agree and that you—each of you must agree to that verdict. Jurors have a duty to consult with one another and to deliberate with a view to reach an agreement if it can be done without violence to individual judgment. Each juror must decide the case but only after an impartial consideration of the evidence with fellow

jurors. In the course of deliberations, a juror should not hesitate to re-examine their own views and change an opinion if convinced that it is erroneous. And no juror should surrender their honest conviction as to the weight or effect of the evidence solely because of the opinion of fellow jurors for the mere purpose of returning a verdict. So, at this time, we'll return you to the jury room to continue deliberations.

See State v. Martin, 211 N.W.2d 765 at 771-72 (Minn. 1973) (adopting instructions for district courts to use with a deadlocked jury). Less than an hour later, at 9:52 a.m., the jury reached a guilty verdict.

B. Analysis

We first consider whether the substance of the district court's note to the jury was plain error. "An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotations omitted). Glover challenges the district court's instruction to continue deliberating.

A district court may provide supplemental instructions if a jury reports itself unable to agree on a verdict; however, the instructions must not improperly coerce a verdict. *Martin*, 211 N.W.2d at 771-73. A district court improperly coerces a verdict when its instructions, taken as a whole, communicate to the jury "that it must reach a verdict, or that deadlock is not an option." *State v. Olsen*, 824 N.W.2d 334, 339 (Minn. App. 2012), *rev. denied* (Minn. Feb. 27, 2013).

When a district court believes that the jury is at an impasse, it "may require the jury to continue their deliberations and may give or repeat an instruction" but it "shall not require or threaten to require the jury to deliberate for an unreasonable length of time or

for unreasonable intervals.” *State v. Kelley*, 517 N.W.2d 905, 909 (Minn. 1994) (quotation omitted). A district court need not instruct the jury that a deadlock is permissible. *State v. Peterson*, 530 N.W.2d 843, 846 (Minn. App. 1995). Here, the district court’s postconviction order determined that the instruction to continue deliberating “did not misstate the law nor was it coercive.”

Glover argues that the district court’s instruction “coerced the jury toward a unanimous verdict and allowed them to believe a deadlock was not an option.” (Quotation omitted.) Glover contends that this instruction was “‘particularly coercive’ because the court gave it in response to the jurors asking to be told what to do next after saying they could not come to a unanimous decision on the elements of the charges.” Glover also maintains that the later *Martin* instruction “did not fix the problem of giving the coercive instruction” because it did not tell the jury that deadlock was a permissible outcome.

The state counters that the district court did not err by instructing the jury to continue deliberating because the district court (1) “properly read the model instruction on deliberation and unanimity”; (2) “did not require the jurors to keep deliberating for an unreasonable amount of time”; and (3) “did not coercively pronounce that the jury ‘*must* return a verdict’ or direct that ‘*you are* to make a decision on this,’” as prohibited by caselaw.

Both parties rely on *State v. Olsen*. 824 N.W.2d at 337-40. In *Olsen*, the district court gave a “near-verbatim recitation of CRIMJIG 3.04” to the jury. *Id.* at 336-37. “[A]fter 4.75 hours of deliberation, the jury sent a note to the district court stating: ‘We have reached an impasse, how should we continue.’” *Id.* at 337. The district court instructed the jury to

continue deliberating. *Id.* The district court added, “*There are twelve of you and you are to make a decision on this. . . . Back to the room.*” *Id.* The jury returned a verdict 5.5 hours after the instruction. *Id.* We determined that the district court’s instruction “was the equivalent of telling the jury that it must reach a verdict,” and concluded that the district court’s instruction, “in the context of the instructions taken as a whole, constituted the reversible error of coercing the jury to reach a verdict.” *Id.* at 339-40.

There are some parallels between the challenged instruction here and the instruction in *Olsen*. Both instructions came about four hours into deliberations and after the jury told the district court it reached an impasse. However, there are also key distinctions between the two instructions. Here, the district court instructed the jury only to continue deliberating. The record does not include any statements indicating that the jury *must* reach a verdict or that deadlock was *not* an option. And unlike the jury in *Olsen*, which deliberated for an additional 5.5 hours after receiving its instruction, Glover’s jury was excused about 20 minutes after being instructed to continue deliberating. *Id.* at 337. This shows that the jury was not required to deliberate “for an unreasonable length of time.” *Kelley*, 517 N.W.2d at 909.

Perhaps most importantly, the district court here gave a *Martin* instruction the following morning. *See Martin*, 211 N.W.2d at 772-73 (explaining that, when confronted with a deadlocked jury, the district court should reiterate the jury-instruction language on a unanimous verdict). The last instruction the jury heard from the district court before finding Glover guilty was that “no juror should surrender their honest conviction as to the weight or effect of the evidence solely because of the opinion of fellow jurors or *for the*

mere purpose of returning a verdict.” (Emphasis added.) Appellate courts assume that the jury followed the district court’s instructions. *State v. Ferguson*, 581 N.W.2d 824, 833 (Minn. 1998).

Taken as a whole, the district court’s instructions did not communicate to the jury that they were required to reach a verdict. Therefore, the district court did not err when it instructed the jury to continue deliberating. Because the content of the instruction was not erroneous, we need not address the other steps of the plain-error test. *See Lilienthal*, 889 N.W.2d at 785.

II. The district court’s error in communicating with the jury outside Glover’s presence did not impact Glover’s substantial rights.

Glover next argues that the district court erred by answering the jury’s note outside of open court, without his knowledge, consent, or presence, and without making a contemporaneous record of the communications with the jury. The Sixth Amendment of the United States Constitution grants a defendant the right to be present at all stages of trial. *State v. Sessions*, 621 N.W.2d 751, 755 (Minn. 2001) (citing *Lewis v. United States*, 146 U.S. 370, 374 (1892)). The district court “[r]esponding to a deliberating jury’s question is a stage of trial.” *Sessions*, 621 N.W.2d at 755. The Minnesota Rules of Criminal Procedure also mandate that a criminal defendant be present “for every stage of the trial including . . . any jury questions dealing with evidence or law.” Minn. R. Crim. P. 26.03, subd. 1(1).

Glover did not object to the district court communicating with the jury outside of his presence at trial. Therefore, we apply the plain-error test described above. *See Griller*, 583 N.W.2d at 740.

A. The district court plainly erred when it answered the jury’s question outside Glover’s presence.

We first consider whether the district court’s out-of-court communication with the jury was plain error. *See Webster*, 894 N.W.2d at 787 (stating that an error is plain “if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct” (quotations omitted)). The district court’s postconviction order found that “it was perhaps error for [the judge] to return a note to the jury advising them to keep deliberating.” The state concedes that the judge “may have plainly erred under the criminal rules.”

In *Sessions*, the district court received three notes from the jury during its deliberations. 621 N.W.2d at 754-55. After notifying each attorney about the jury’s questions and its proposed answers, the district court delivered its written answers to the jury room. *Id.* at 754. Appellant “was not told of the jury’s questions nor consulted regarding the trial court’s proposed answers, and . . . did not waive any right to be present.” *Id.* at 754-55. The supreme court concluded that the district court’s “response to the jury in this case in appellant’s absence and without obtaining a waiver from appellant violated his Sixth Amendment right to be present and Rule 26.03, subd. 1(1).” *Id.* at 756.

Like the district court in *Sessions*, the district court here answered the jury’s note outside Glover’s presence without obtaining a waiver from him. *See id.* The district court

also allowed the jury to receive a supplemental instruction outside of the courtroom, in violation of Minn. R. Crim. P. 26.03, subd. 20(3) (“If the jury asks for additional instruction on the law during deliberation, the court must give notice to the parties. The court’s response must be given in the courtroom.”). Because the district court’s response contravenes caselaw and the rules of criminal procedure, it was plain error.

B. The error did not affect Glover’s substantial rights.

We next consider whether the error affected Glover’s substantial rights. An error affects the defendant’s substantial rights when “there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury’s verdict.” *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted).² An appellate court’s “analysis under the third prong of the plain error test is the equivalent of a harmless error analysis.” *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011). “When considering whether the erroneous exclusion of a defendant from judge-jury communications constitutes harmless error, we consider the strength of the evidence . . . and substance of the judge’s response.” *Sessions*, 621 N.W.2d at 756.³ Glover bears the “heavy burden” of showing that he was prejudiced by this error. *Griller*, 583 N.W.2d at 741.

² In his brief, Glover analyzes whether the district court’s communication was harmless beyond a reasonable doubt. However, when a constitutional error is reviewed for plain error, the threshold for prejudice is whether “there is a reasonable likelihood that the error had a significant effect on the jury’s verdict.” *Beecroft*, 813 N.W.2d at 841 (quotation omitted).

³ An error is not harmless merely because sufficient evidence supports the verdict. *State v. Bigbear*, 10 N.W.3d 48, 55 (Minn. 2024). Instead, appellate courts “must consider all the evidence introduced as well as other illuminating factors . . . and ask whether there is a reasonable possibility that the error significantly affected the verdict.” *Id.*

1. Strength of the Evidence

As to the strength of the evidence, Glover argues that the evidence of guilt was weak for both charges. The state does not appear to address this factor in its brief. The state charged Glover with second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1a(e) (Supp. 2021), alleging that Glover was more than 36 months older than the complainant, who was under 14 years of age (count one), and second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1a(h)(iii) (Supp. 2021), alleging that Glover had a significant relationship to the complainant, who was under 16 years of age, and that the sexual abuse involved multiple acts committed over an extended period of time (count two). The complaint alleged that Glover engaged in sexual contact with his girlfriend's nine-year-old daughter "on or about" May 18, 2022, and that the abuse began when daughter was seven years old.

At trial, daughter testified that she lived with her mother and Glover when Glover was dating her mother. Daughter agreed that she told her friend, J.L., a "secret" about Glover, but could not remember what it was. Daughter agreed that she spoke with a social worker about "some parts of our bodies that we keep covered up" and that their conversation had "something to do with one of the secrets" daughter told J.L. Daughter agreed that she told the social worker the truth when they spoke but testified that she could not remember why she talked to the social worker or most of their conversation. Daughter cried on the stand and agreed that it was "[j]ust too hard to talk about."

A social worker with Koochiching County Public Health and Human Services testified that, in May 2022, she conducted a forensic interview of daughter about alleged

sexual abuse, using the Child First protocol.⁴ The interview was video recorded and played for the jury. In the recording, daughter reported multiple instances of Glover touching her intimate parts and stated that the touching began when she was seven years old. Daughter also reported that she told her mother and three of her friends, including J.L., about the abuse.

Mother testified that she was in a relationship with Glover in May 2022. Mother received a Facebook message from J.L.'s mother that daughter had told J.L. that Glover "was touching her inappropriately." Daughter confirmed that this was true, and mother reported the sexual abuse to the police.

J.L. testified and agreed that daughter told her a "pretty big" secret. J.L. cried on the stand and agreed that daughter's secret was "about somebody hurting her."

The video interview, which was received into evidence, supports both counts of second-degree criminal sexual conduct. J.L. and mother's testimony corroborated daughter's disclosures of the sexual abuse. Daughter, however, did not testify about the abuse while she was on the witness stand, and there was no other evidence of abuse. Because the state's case hinged on daughter's credibility during the video interview, this factor slightly favors Glover.

⁴ According to the social worker's testimony, Child First is a forensic interviewing program that teaches professionals how to interview children who may have experienced sexual abuse. The training teaches interviewers to build rapport with the child before asking the child about their story.

2. The Substance of the Judge's Response

We next consider the substance of the judge's response. During postconviction proceedings, the judge who conducted Glover's trial testified that she received a written note from the jury asking how it should proceed. On the same piece of paper, the judge handwrote "something to the effect of if you could keep deliberating a little bit longer." The judge did not know who delivered the note back to the jury but "imagine[d] it was the bailiff." The judge "had no contact with the Jury." The district court's postconviction order determined that "[t]here is simply no evidence that [the judge's] response to the jury affected the outcome of the result."

Glover argues that the judge's "instruction to continue deliberating was coercive and the jury was never told that deadlock was a permissible option."⁵ As already discussed, the substance of the instruction was not coercive, and the judge was not required to affirmatively instruct that a deadlock was permissible. *See Peterson*, 530 N.W.2d at 846. Because the substance of the judge's response complied with the law, this factor weighs strongly in favor of the state and of harmless error.

Although the evidence against Glover was not particularly strong, the substance of the judge's response was not coercive or otherwise erroneous. Thus, there is no reasonable

⁵ Glover also argues that "the record does not establish that the parties would not have argued for providing the jury with a substantive response to the jury's question that would have provided clarity to the jury's confusion about how to proceed." Glover maintains that this error was not harmless "because it deprived [him] of the opportunity to object." But Glover did have an opportunity to object. Fifteen minutes after the judge received and responded to the jury's note, the judge called the parties and notified them of her exchange with the jury. Glover did not object to the out-of-court communication, nor to the instruction provided by the judge.

likelihood that the error affected the outcome of the case. We therefore conclude that the district court did not commit reversible error by answering the jury’s question outside Glover’s presence.

III. The district court erred by entering convictions for both counts of second-degree criminal sexual conduct.

The jury found Glover guilty of count one and count two. Glover’s warrant of commitment shows that the district court entered convictions for both counts. Glover argues—and the state concedes—that the district court erred by convicting Glover for both counts because the counts arose from the same behavioral incident. We review this issue *de novo*. *State v. Bonkowske*, 957 N.W.2d 437, 443 (Minn. App. 2021).

A criminal defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2020). Thus, a district court cannot enter judgments of conviction for “two counts of criminal sexual conduct (different sections of the statute or different subsections) on the basis of the same act or unitary course of conduct.” *State v. Folley*, 438 N.W.2d 372, 373 (Minn. 1989). When a defendant is found guilty of more than one charge for the same conduct, the district court should “adjudicate formally . . . on one count only.” *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). The state has the burden of proving that acts arose out of separate behavioral incidents to sustain multiple convictions. *State v. Williams*, 608 N.W.2d 837, 841-42 (Minn. 2000).

Here, the jury found Glover guilty of two counts of second-degree criminal sexual conduct against daughter, in violation of Minn. Stat. § 609.343 (Supp. 2021). Under count

two, the complaint alleged multiple acts of sexual contact with a child under 16 years of age, committed over a specific timeframe, where there was a significant relationship with the child. Minn. Stat. § 609.343, subd. 1a(h)(iii). Under count one, the complaint alleged a single act of sexual contact with a child under 13 years of age that occurred during the same timeframe as count two. *Id.*, subd. 1a(e). The state does not argue that the act underlying count one arose out of a separate behavioral incident than the multiple acts underlying count two. Accordingly, the district court erred when it entered convictions for both counts of second-degree criminal sexual conduct. We therefore reverse and remand for the district court to vacate one of Glover’s convictions and to amend the warrant of commitment, leaving the jury’s finding of guilt on both offenses intact.⁶

IV. Glover is not entitled to relief based on the arguments in his supplemental brief.

Glover raises five issues in a supplemental brief. Glover argues that (1) the evidence is insufficient to sustain his convictions, (2) the prosecuting attorney engaged in misconduct during closing arguments, (3) the district court erred by limiting Glover’s

⁶ In its brief, the state argues that this court “should remand Count II with instructions to vacate the conviction and leave the guilty verdict adjudicated.” If a defendant is “formally adjudicated” guilty of both a crime and a lesser-included offense, the conviction for the latter should be vacated. *State v. Plan*, 316 N.W.2d 727, 728-29 (Minn. 1982) (quotation omitted). Count two is only a lesser-included offense of count one if it is “necessarily proved” when count one is proved. Minn. Stat. § 609.04, subd. 1(4). Unlike count one, count two requires multiple acts of abuse over an extended period, as well as a significant relationship with the child. *See* Minn. Stat. § 609.343, subd. 1a(e), (h)(iii). Because count two is not “necessarily proved” when count one is proved, it is not a lesser-included offense. We therefore remand for the district court to decide which conviction to vacate. *See Folley*, 438 N.W.2d at 373 (remanding for the district court to vacate one of two convictions for criminal sexual conduct when both were based on the same evidence of the same acts).

access to daughter’s video interview, (4) the state improperly investigated the case, and (5) the district court erred by not striking inadmissible testimony from the social worker. We address each argument in turn.

A. The evidence is sufficient to sustain Glover’s convictions.

Glover does not appear to contest some elements of the charges—for example, that daughter was under 13 years old or that he had a significant relationship with her at the time of the alleged offenses. Glover instead challenges the sufficiency of the evidence that (1) he engaged in sexual contact with daughter under Minn. Stat. § 609.343, subd. 1a(e), h(iii), and (2) the offenses occurred on May 18, 2022.

“When evaluating the sufficiency of the evidence, appellate courts carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt.” *State v. Griffin*, 887 N.W.2d 257, 263 (quotation omitted) (Minn. 2016). Appellate courts must view the evidence “in the light most favorable to the verdict” and must assume that the jury “disbelieved any evidence that conflicted with the verdict.” *Id.*

1. Evidence of Sexual Contact

To prove that Glover engaged in sexual contact with daughter, the state had to present sufficient evidence that Glover intentionally touched daughter’s “intimate parts” or

“the clothing covering the immediate area of the intimate parts” with “sexual or aggressive intent.” Minn. Stat. § 609.341, subd. 11(a)-(b) (Supp. 2021).

Glover argues that daughter’s testimony “did not show any accusation in this case” and that the video interview was leading “and suggested [daughter’s] answers.”⁷ The state counters that the video interview “was admitted as substantive evidence” and that any argument about how the social worker asked the questions during the interview “goes to the weight of the evidence.” The state argues that this court “must defer to the jury’s determination that [daughter’s] statements during the interview were credible.” *See State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016) (deferring to the factfinder’s credibility determinations when analyzing the sufficiency of the evidence).

The state’s argument is persuasive. Although daughter did not testify about the abuse at trial, she did testify that she told the truth during her interview. In the video interview, which was shown to the jury, daughter spoke in detail about Glover touching her “front part” and “back part”—which the social worker testified was daughter’s vagina and butt—multiple times. Daughter also reported that the abuse started when she was seven years old. J.L. and mother’s testimony corroborated daughter’s disclosures of the abuse. Viewing the video interview and the other evidence in the light most favorable to the guilty verdict, “the facts and the legitimate inferences drawn from” the testimony would allow a

⁷ Glover does not appear to challenge the admissibility of the video interview on appeal and did not object to its admission at trial.

jury to reasonably conclude that Glover engaged in sexual contact with daughter beyond a reasonable doubt. *Griffin*, 887 N.W.2d at 263.

2. Evidence of the Offense Dates

Glover next argues that “there is nothing in this record anywhere showing anything happened on May 18th, 2022”⁸ and that “[t]he phrase, ‘over an extended period of time,’ was missing in this case which is required.”⁹ We understand these arguments to mean that the state did not prove beyond a reasonable doubt that the offenses occurred during the timeframes listed in the amended complaint. The state counters that the prosecuting attorney “did not have to prove when each offense occurred because that is not an element of the crime.”

The precise date of an offense “is an essential element of the crime only where the act done is unlawful during certain seasons, on certain days or at certain hours of the day.” *State v. Becker*, 351 N.W.2d 923, 927 (Minn. 1984). “[S]pecific dates need not be charged or proven in a sexual abuse case.” *State v. Poole*, 489 N.W.2d 537, 544 (Minn. App. 1992), *aff’d*, 499 N.W.2d 31 (Minn. 1993); *see also* Minn. Stat. § 609.343, subd. 1a(e), h(iii) (not listing a precise date as an element of the offenses).

⁸ Glover notes that, during the video interview on May 19, 2022, daughter stated that the abuse “stopped a couple weeks ago” or “like last week.” Glover maintains that daughter’s statement “negates the charging documents,” which state that the offenses occurred on or about May 18, 2022.

⁹ Glover appears to refer to count two in the amended complaint, which only states that the offense occurred “on or about” May 18, 2022. However, the charge description for count two states that the sexual abuse occurred “over an extended period of time” and began when daughter was seven years old.

Here, the district court instructed the jury that an element of each offense was that they “took place on or about May 18th, 2022” and that count two involved “multiple acts committed over an extended period of time.” Notably, a law enforcement officer testified that mother reported the sexual abuse to police on May 18, 2022. Because the specific date is not an essential element of either offense, and because daughter’s video interview and the date of mother’s report supports the events having occurred “around” the specified timeframe, we conclude that Glover is not entitled to relief based on insufficient evidence of the offense dates.

B. Glover did not demonstrate that the prosecuting attorney engaged in misconduct during closing arguments.

Glover next argues that the prosecuting attorney engaged in misconduct by misstating the facts during closing arguments. Glover raises this argument for the first time on appeal. Appellate courts review “unobjected-to prosecutorial misconduct under a modified plain-error standard of review.” *State v. Jones*, 772 N.W.2d 496, 506 (Minn. 2009). The appellant must show “(1) error (2) that is plain.” *Id.* If the appellant shows plain error, “then the burden shifts to the State to show that [the appellant’s] substantial rights were not affected.” *Id.* If the appellant’s substantial rights were affected, then the appellate court must consider “whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” *Id.* (quotation omitted).

“A prosecutor engages in prosecutorial misconduct when he violates clear or established standards of conduct.” *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (quotation omitted). When evaluating alleged misconduct during a closing argument,

appellate courts consider “the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence.” *State v. Munt*, 831 N.W.2d 569, 587 (Minn. 2013) (quotation omitted). “During closing argument, a prosecutor may argue all reasonable inferences from evidence in the record. It is unprofessional conduct for the prosecutor intentionally to misstate the evidence or mislead the jury as to the inferences it may draw.” *State v. Bobo*, 770 N.W.2d 129, 142 (Minn. 2009) (quotations omitted).

Glover challenges the following statements made by the prosecuting attorney during closing arguments:

- “Sexual contact means the intentional touching by the Defendant of [daughter’s] intimate parts, which include the genital area, groin, inner thigh, buttocks, or breast. Either over or under the clothing. It makes no difference. *[Daughter] testified that that happened.*”
- “Fifth, that the sexual abuse involved multiple acts committed over an extended period of time. *And again, that’s [daughter’s] testimony.*”
- “*And [daughter’s] testimony* was consistent that that always occurred in the basement of their family home.”
- “We have a little girl who’s begging her mom, *don’t go to darts cuz she knows what happens when it’s dart league.*”
- “[J.L.’s mother] declined permission [for police] to speak to her daughter. *Said you know what, this has been tough enough, I don’t want you to.*”
- “We’re talking about *something done in secret* that [daughter] wasn’t allowed to talk about.”

(Emphasis added.) Glover appears to argue that each of these statements either (1) states facts not in evidence or (2) were not testified to at trial. The state counters that the prosecuting attorney's references to daughter's "testimony" rather than her statements in the video interview were "inadvertent mistake[s]" and that the other challenged statements "constituted reasonable inferences from the evidence in the record, including the forensic interview."

To demonstrate prosecutorial misconduct as alleged, Glover must show that the prosecuting attorney "intentionally" misstated the evidence. *Id.* While it is true that daughter did not *testify* about the sexual abuse or where it occurred, she did describe those facts in her video interview, which was admitted as substantive evidence that Glover sexually abused daughter. Glover offers no evidence that the prosecuting attorney's references to daughter's "testimony" were intentional. In any event, these misstatements did not prejudice Glover because the facts discussed by the prosecuting attorney were in the video interview that was shown to the jury.

Record evidence supports the other statements made by the prosecuting attorney during closing arguments. First, mother agreed at trial that daughter asked her "to not go to dart league," and daughter stated in the video interview that the sexual abuse occurred when mother was "at darts." From that evidence, it is reasonable to infer that daughter asked mother not to go to darts so daughter could avoid the sexual abuse. Second, a law enforcement officer testified that J.L.'s mother "didn't want [the officer] to interview, or take a taped statement" from J.L. during the sexual-abuse investigation. From that testimony, it is reasonable to infer that J.L.'s mother did not want J.L. involved in the case

because the situation was “tough enough.” Finally, daughter stated in the video interview that Glover “told [her] not to tell anyone” about the abuse, and J.L. agreed that daughter told her a “secret about somebody hurting her.” From that evidence, as well as the general nature of child-sexual-abuse cases, it is reasonable to infer that the sexual abuse was “something done in secret.”

Because no record evidence suggests that the prosecuting attorney’s references to daughter’s “testimony” were intentional, and because the other challenged statements were reasonable inferences based on the evidence, Glover failed to show that any prosecutorial misconduct occurred.

C. The district court did not abuse its discretion by limiting Glover’s access to daughter’s video interview.

Before trial, Glover waived his right to counsel in a written petition and exercised his right to represent himself. Glover also moved to compel the state “to produce a copy of the forensic interview.” At a hearing, the prosecuting attorney noted that Glover was “certainly entitled to review that forensic interview,” and that “a copy of the disc” was made available to him “during business hours” at the county attorney’s office. The prosecuting attorney added: “But given the sensitive nature of the forensic interview, and Mr. Glover being a . . . pro se litigant, we have not provided him a copy.” The district court

determined that a copy of the forensic interview “will be available for viewing at the county attorney’s office.”

Glover appears to argue that the district court erred by limiting his access to the video interview.¹⁰ The district court has “wide discretion to issue discovery orders and, absent clear abuse of that discretion,” its discovery orders will not be disturbed. *Underdahl v. Comm’r of Pub. Safety (In re Comm’r of Pub. Safety)*, 735 N.W.2d 706, 711 (Minn. 2007) (quotation omitted). Appellate courts “review a district court’s order for an abuse of discretion by determining whether the district court made findings unsupported by the evidence or by improperly applying the law.” *Id.*

Glover does not dispute that he had an opportunity to view the video interview at the county attorney’s office. Instead, Glover argues that he was entitled to a copy of the video interview because he represented himself. Glover maintains that he “was not able to send the disc to experts because [he] was not allowed a copy to send,” and that making an expert witness travel to International Falls to view the video “would have been extremely cost-prohibitive and no attorney would have had to do the same.” The state counters that Glover “fails to make any legal argument that [the district court’s] discovery ruling was plainly erroneous” or that the prosecuting attorney’s limited disclosure of the video interview “was plain misconduct.”

¹⁰ Glover’s supplemental brief characterizes the limited disclosure of the video interview as unobjected-to prosecutorial misconduct. However, the district court made a discovery ruling on this issue and Glover notes that “the problem was brought up at several hearings” before the district court. Therefore, we analyze the issue as a discovery ruling by the district court.

Minnesota's discovery rules state that "[m]aterials furnished to a party under discovery rules or orders must remain in the party's custody and be used by the party only to conduct that attorney's side of the case and may be subject to other conditions the court orders." Minn. R. Crim. P. 9.03, subd. 4. Further, a district court "granting discovery must specify the time, place, and manner of discovery, and may impose reasonable terms and conditions." *Id.*, subd. 3.

Here, the video interview includes a nine-year-old's disclosure of sexual abuse. Glover's brief only cites rule 9.03, which allows the district court to impose "reasonable terms and conditions" on discovery. *Id.* Given the sensitive nature of daughter's interview, limiting Glover's access to the video was reasonable. Therefore, the district court did not abuse its discretion when it made this discovery ruling.

D. Glover did not demonstrate an error in the state's criminal investigation.

Glover next argues that the prosecuting attorney "refused to investigate" the case according to protocol. He notes that the prosecuting attorney failed to interview certain individuals, including daughter's friends, brother, teacher, and neighbors. The state counters that Glover "lacks legal authority to support the claim" that the prosecuting attorney committed "misconduct that is plain," and that Glover "did not suffer prejudice because he was not precluded from interviewing or otherwise investigating other potential witnesses."

Glover did not object to this alleged misconduct during district court proceedings; therefore, we review this issue using the modified plain-error standard described above. *Jones*, 772 N.W.2d at 506. In his supplemental brief, Glover only cites *State v. Fields* for

the proposition that a prosecuting attorney's acts may constitute misconduct "if they have the effect of materially undermining the fairness of a trial" or violate "clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state's case law." 730 N.W.2d 777, 782 (Minn. 2007). Glover, however, does not point to a rule, law, order, or caselaw that was violated by the prosecuting attorney's investigation. "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (quotation omitted). Because prejudicial error is not obvious on mere inspection of the record, we conclude that Glover waived this issue on appeal.

E. The district court did not commit plain error by failing to sua sponte strike the social worker's testimony about daughter's credibility.

On cross-examination, Glover asked the social worker about the Child First protocol used during daughter's video interview. During that questioning, the following exchange occurred, with the relevant answer italicized:

Q: Okay. And you asked [daughter] if I put anything in her vagina, didn't you?

A: I have to clarify.

....

Q: And there's no roundabout way of asking a little girl outside of that direct question where she would not have that image in her mind for the rest of her life probably?

A: She has a lot of images in her mind for the rest of her life.

Q: (Laughs.) Yeah. And who put those images in her head?

A: *You did. You committed that crime.*

(Emphasis added.)

Glover argues that the social worker “conducted the interview as an advocate rather than an independent forensic interviewer.” Glover appears to argue that the district court erred by not sua sponte striking the social worker’s testimony that he committed the crime. Because Glover did not object to this testimony during trial, and did not ask the district court to strike the testimony, we review the challenged testimony under the traditional plain-error test. *See Myhre*, 875 N.W.2d at 804-05.

We first consider whether the challenged testimony was admissible. *See Webster*, 894 N.W.2d at 787 (“An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” (quotations omitted)). Generally, a forensic interviewer in a child-sex-abuse case may not testify directly or indirectly to their opinion about the credibility of the interviewed victim. *State v. Wembley*, 712 N.W.2d 783, 791-92 (Minn. 2006), *aff’d* 728 N.W.2d 243 (Minn. 2007). A forensic interviewer’s opinion testimony that the complainant had been sexually abused is also inadmissible as vouching testimony. *State v. Morales-Mulato*, 744 N.W.2d 679, 688 (Minn. App. 2008), *rev. denied* (Minn. Apr. 29, 2008). Here, the social worker’s testimony that Glover “committed that crime” goes toward daughter’s credibility and is inadmissible vouching. *See id.*

The state argues that the district court’s failure to strike this inadmissible testimony was not plain, because “district courts are generally not required to intrude into the trial

without request” and “doing so risks interfering with the presentation of the evidence and with trial strategy.” *See State v. Washington*, 693 N.W.2d 195, 205 (Minn. 2005) (discussing improperly admitted evidence and stating: “We do not agree that the district court must, or even should, interfere with the trial strategy of the defendant. To act *sua sponte* here would risk highlighting or enforcing rights that the defendant had, for tactical reasons, decided to waive”). We need not determine whether the district court’s failure to sua sponte strike the inadmissible testimony was plain error, however, because Glover did not demonstrate that the error affected his substantial rights.

Under the third step of the plain-error test, Glover bears the heavy burden “of establishing that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury’s verdict.” *Horst*, 880 N.W.2d at 38 (quotation omitted). In his supplemental brief, Glover does not argue that the challenged testimony prejudiced his case. Thus, he failed to demonstrate that any plain error in not striking the social worker’s testimony affected his substantial rights. Glover is therefore not entitled to relief on this issue.

Affirmed in part, reversed in part, and remanded.