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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1946**

State of Minnesota,
Respondent,

vs.

Lamarquita Gesine Leach,
Appellant.

**Filed December 23, 2024
Affirmed
Smith, Tracy M., Judge**

Rice County District Court
File No. 66-CR-23-891

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

Taylor J. Kerkela, Northfield City Attorney, Eckberg Lammers, P.C., Stillwater, Minnesota
(for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Larkin, Judge; and Smith,
Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal, appellant Lamarquita Gesine Leach challenges her conviction for disorderly conduct. Leach argues that (1) the district court violated her right to present a complete defense by prohibiting her counsel from discussing race during closing

argument, (2) the prosecutor committed plain-error misconduct by eliciting testimony that vouched for the credibility of the alleged victim, and (3) the cumulative effect of the errors denied Leach her right to a fair trial. We affirm.

FACTS

This case arises out of an altercation between Leach and her then-housemate, H.M. The following facts are drawn from the jury trial.

According to H.M., after meeting Leach online, H.M. invited Leach to move into her home, which she shared with her son and another roommate, because Leach was experiencing “life trouble” and H.M. “wanted to help.” Sometime after moving in, Leach told H.M. that she was struggling to find a job. H.M. believed that Leach wanted to stay in H.M.’s home without paying rent, which H.M. “[was not] okay with.”

On April 14, 2023, H.M. confronted Leach in one of the upstairs bedrooms and asked her “if she could find other means.” Their discussion did not “go[] well,” and H.M. decided to leave and go to work. As H.M. was leaving the room, Leach pushed her. H.M. fell against a wall, broke a lamp, and started bleeding from her hand. H.M. “[went] red” after being pushed and “manually restrained” Leach, forcibly immobilizing her on a bed. After the altercation, H.M. called the police. Multiple officers responded, and H.M. spoke to one of the officers, telling him her version of events.

Another officer spoke to Leach. Leach told the officer that the altercation began because Leach had needed to use the bathroom and H.M. and her son would not leave for her to do so. Leach told the officer that, as the argument progressed, H.M. and Leach began pushing each other. Leach said that she grabbed H.M.’s wrists to defend herself. When the

officer asked for clarification, Leach stated that H.M. had entered the bedroom where Leach was waiting to use the bathroom and asked Leach to “get [her] things ready,” after which the altercation became physical. Leach stated that she was unsure who started the physical altercation.

A third officer spoke to a male witness who was also at the scene.

The officers then discussed the statements that they had received and determined that Leach was the primary aggressor based on the evidence corroborating H.M.’s statement, which included the statement from the male witness, the broken lamp, the injury to H.M.’s hand, and the blood smeared on the wall. They then arrested Leach. When an officer told Leach that she was being placed under arrest, she told the officer that she had not told the truth about what happened, but she did not elaborate further.

The state charged Leach with one count of misdemeanor domestic assault—attempt or intent to inflict bodily harm upon a household member under Minnesota Statutes section 609.2242, subdivision 1(2) (2022); one count of misdemeanor domestic assault—commits an act with intent to cause fear of immediate bodily harm or death in a household member under Minnesota Statutes section 609.2242, subdivision 1(1) (2022); and one count of disorderly conduct—brawling or fighting under Minnesota Statutes section 609.72, subdivision 1(1) (2022). After a trial, the jury acquitted Leach of both domestic-assault charges and found her guilty of the disorderly-conduct charge. The district court convicted Leach of disorderly conduct.

Leach appeals.

DECISION

Leach raises three challenges to her conviction. We address each in turn.

I. Leach’s right to present a complete defense was not violated.

Leach contends that the district court abused its discretion when it prohibited defense counsel from discussing race during closing argument, violating Leach’s right to present a complete defense. She asserts that the defense theory at trial was based on race—specifically, that H.M. believed that she could use her White privilege to convince the police to help her evict Leach, a Black woman, without legal process. Leach argues that this theme was seeded throughout the trial and that the district court therefore improperly limited her closing argument. We are not convinced.

“A criminal defendant has a constitutional right to a meaningful opportunity to present a complete defense.” *State v. Wilson*, 900 N.W.2d 373, 384 (Minn. 2017). “[T]hat right is not absolute,” but it includes the right for counsel “to present to the jury all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences to be drawn therefrom.” *State v. Romine*, 757 N.W.2d 884, 892 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. Feb. 17, 2009). “[T]he district court has the discretion to limit the scope of closing argument to protect the jury from misleading inferences.” *State v. Lyons*, 997 N.W.2d 771, 774 (Minn. App. 2023) (citing *State v. Atkinson*, 774 N.W.2d 584, 589 (Minn. 2009)) (other citation omitted). “A district 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.* (quoting *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017)).

Leach identifies five instances in the trial that seeded the issue of race.

First, during voir dire, defense counsel asked potential jurors if they believed that individuals sometimes call the police “for the wrong reasons,” such as “to get somebody in trouble.” Defense counsel then asked if the jurors knew of an incident in which a woman called the police on a man birdwatching in New York. A juror explained that the news story involved an incident between a White woman and a Black man and that it may have been racially charged. Defense counsel then briefly discussed whether individuals with “privilege” call the police and “expect the police . . . to do something because of that.”

Second, the district court gave generic jury instructions on implicit bias before voir dire and before deliberation. During its instruction before voir dire, the district court mentioned race among a list of other potential biases. Race was not explicitly mentioned during the jury instruction before deliberation.

Third, during H.M.’s direct examination, H.M. explained that her relationship with Leach deteriorated after Leach “made some comments that . . . she wouldn’t be able to get a job because of her skin color and other things that were concerning, meaning that she would just want to try and live [with H.M.] for free.”

Fourth, in the body-worn camera footage shown to the jury, a police officer asked H.M. to repeat Leach’s first name, and H.M. said, “I don’t know. You know how their names are. They’re just kinda funky.” H.M. then said Leach’s first name twice and said, “[I]t’s a whoooole name.”

Fifth, while cross-examining H.M. about her statements in the body-worn camera footage about Leach’s name, H.M. protested that defense counsel was trying to make it

sound like H.M. was “being discriminatory” but that “d[id]n’t make sense” because H.M. is “literally of color.”

With that background, we turn to the ruling that Leach challenges. Leach’s counsel began closing argument by stating:

I want to bring you back to the jury [selection] day. . . . [Defense co-counsel] talked about white women, sometimes being named Karens, using their white privilege to call cops and to get people in trouble. And there was an agreement that that isn’t okay, it’s inappropriate for white women to use the privilege to get others in trouble --

The prosecutor then objected, and the district court determined that discussing race in this manner was “inflaming the emotions of the jury.” The district court permitted defense counsel to discuss race as it related to the “two-second clip . . . on the body-worn camera” but stated that it was “not going to let [the defense] use [race] as an anchor” in closing argument. The district court then held a ten-minute recess for defense counsel to adjust their closing argument, after which the district court clarified that the defense “can pick out . . . the undertones in the testimony,” but it would not “allow [race] to be the forefront and the anchor of the argument to the jury because [the district court did not] want the jury emotions inflamed.” The district court then held an additional 15-minute recess to ensure that defense counsel was prepared. Upon returning, defense counsel focused on H.M.’s desire to evict Leach “no matter what” and chose not to discuss race at all.

To support her contention that this restriction on her closing argument was an abuse of discretion, Leach compares her case to *State v. Banks*, 875 N.W.2d 338 (Minn. App.

2016), *rev. denied* (Minn. Sept. 28, 2016). In *Banks*, the appellant-defendant argued that the prosecutor had committed misconduct by injecting race into closing argument when the prosecutor argued that the defense incorrectly suggested that there was some sort of “racial context” to the case. *Id.* at 348. We concluded that the prosecutor had not acted improperly because the prosecutor was “trying to counter an anticipated defense argument about race-based police harassment.” *Id.* at 349. That argument was anticipated because the defendant had suggested in testimony that the police had pursued him because of his race and defense counsel had questioned jurors during voir dire about whether they would have difficulty being fair and impartial because of the defendant’s race. *Id.*

Leach argues that similar references to race appeared throughout her trial and that it was therefore an abuse of discretion to prevent her from discussing race in closing argument. We are not persuaded. In *Banks*, there were several explicit statements about race, all of which were made by the defense, either through defense counsel or the defendant himself. *Id.* Here, in contrast, Leach relies on a juror mentioning race in voir dire, the district court’s generic jury instruction about bias, and H.M.’s statements during trial and in the body-worn-camera footage to demonstrate that race was part of the defense’s theory of defense. But Leach’s counsel never explicitly mentioned race, and, outside of voir dire, the only time that the defense arguably raised the issue of race was in connection with H.M.’s statements to police about Leach’s name.

Moreover, contrary to Leach’s argument, the district court did not prohibit discussion of race altogether. The district court ruled that defense counsel’s reference to “Karens” invoking their White privilege to get people in trouble with the police would

inflammate the emotions of the jury. But the district court permitted the defense to address race in connection with H.M.'s statements about Leach's name. In other words, the district court permitted counsel to discuss race in connection with the evidence in this case and the inferences that might be drawn from it. *See Romine*, 757 N.W.2d at 892. The district court therefore acted within its discretion and did not deprive Leach of her right to present a complete defense.

II. The state did not commit prosecutorial misconduct.

Leach argues that the state committed plain-error prosecutorial misconduct because, while questioning two responding officers about how they decided to arrest Leach and not H.M., the prosecutor elicited testimony that improperly vouched for H.M.'s credibility. We disagree.

Leach's counsel did not object to the state questioning the officers about how they decided to arrest Leach. We review unobjected-to prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The defendant must establish that an error occurred and that the error is plain. *Id.* "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) (quotation omitted). If the defendant establishes plain error, the burden shifts to the state to prove the misconduct did not prejudice the defendant's substantial rights. *Ramey*, 721 N.W.2d at 302. If the state fails to carry its burden, appellate courts consider "whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id.*

“Prosecutors may not elicit credibility-vouching testimony from trial witnesses.” *State v. Robideau*, 783 N.W.2d 390, 400 (Minn. App. 2010), *rev’d on other grounds*, 796 N.W.2d 147 (Minn. 2011). Vouching occurs when a witness testifies about the credibility of other witnesses. *See, e.g., State v. Koskela*, 536 N.W.2d 625, 630 (Minn. 1995) (stating that a police officer’s testimony that he had “no doubt” that a witness made a truthful statement raised concerns about vouching); *State v. Ellert*, 301 N.W.2d 320, 323 (Minn. 1981) (holding that district court erroneously admitted police officer’s opinion testimony that defendant lied when making her statement). Vouching is improper because “[t]he credibility of a witness is for the jury to decide.” *Auringer v. State*, 695 N.W.2d 640, 645 (Minn. App. 2005) (citing *Koskela*, 536 N.W.2d at 630), *rev. denied* (Minn. July 19, 2005).

Leach argues that vouching occurred because the prosecutor, while asking about why the officers arrested Leach and not H.M., asked for the officers’ opinions about whom they believed and why.

When asked about the decision to arrest Leach, the officer who questioned Leach explained that, at the time of the arrest, he did not have a clear idea of who started the altercation because Leach had given him two inconsistent statements. In response to the prosecutor’s later question about how the police treat consistent versus inconsistent statements, the officer responded that “the consistent statements are the ones that [the police] tend to believe more.” The officer explained that the officer who questioned H.M. made the ultimate decision to arrest Leach. The prosecutor asked the officer who questioned H.M. what factors led to arresting Leach. That officer explained that the decision to arrest Leach was based on the evidence corroborating H.M.’s story, including

a statement from the male witness, H.M.'s injured hand, the broken lamp, and the blood on the wall.

Neither officer commented on their perception of H.M.'s or Leach's credibility in this case. Instead, they testified to the factors considered in determining that Leach was the primary aggressor. Because the officers did not discuss the credibility of H.M. or Leach, there was no improper vouching testimony. *See State v. Ferguson*, 581 N.W.2d 824, 836 (Minn. 1998) (holding that there was no improper vouching when the officer "did not testify that [an informant] was telling the truth or that he believed one witness over another").

Leach also argues that the prosecutor's statement in rebuttal relied heavily on the officers' testimony and that the statement, when viewed together with the testimony, was improper vouching because it assured the jury that they should believe H.M. because the officers believed H.M. "While a prosecutor must not personally endorse a witness's credibility, the [s]tate may, in closing argument, argue that a witness was or was not credible." *State v. Martin*, 773 N.W.2d 89, 106 (Minn. 2009).

The prosecutor here never improperly endorsed the officers' credibility. During rebuttal, the prosecutor addressed defense counsel's argument that the police should have found that H.M. was the initial aggressor by discussing the experience of the officers. The prosecutor then stated to the jury: "I want to ask you who determined who the initial aggressor was there? And how did they make that determination? And how they handled responding to domestics in the past. And what's their overall experience in handling domestic calls? And why did they do what they did?" The prosecutor's statement prompted

the jury to consider the officers' testimony; it did not endorse the credibility of the officers. And, because the officers never directly discussed H.M.'s or Leach's credibility, the prosecutor's closing did not indirectly instruct the jury to find H.M. more credible than Leach. Neither the officers' testimony nor the prosecutor's rebuttal constituted vouching, and, as a result, there was no prosecutorial misconduct. There was therefore no error, and we need not address the remaining prongs of the plain-error test to reject Leach's argument.

III. The cumulative effect of the alleged errors does not warrant a new trial.

Leach argues that, even if individual errors in this case were harmless, the cumulative effect of the errors led to an unfair trial. In rare cases, a new trial is warranted when the cumulative effect of the errors denied appellant a fair trial. *State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017). Because we determine that the district court did not err in restricting defense counsel's discussions of race during closing argument and that the responding officers' testimony and the state's discussion of that testimony was not erroneous, there were no errors that could culminate in an unfair trial.

Affirmed.