

*This opinion is nonprecedential except as provided by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
A25-0331**

State of Minnesota,
Respondent,

vs.

Miguel Angel Rodriguez,
Appellant.

**Filed December 29, 2025
Affirmed
Larkin, Judge**

Nobles County District Court
File No. 53-CR-24-106

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

Braden M. Hoefert, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Larkin, Judge; and Kirk, Judge.*

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction of fifth-degree criminal sexual conduct, arguing that the district court impermissibly inferred that he tailored his trial testimony and created an appearance of partiality. He also argues that the prosecutor engaged in misconduct during closing arguments. We affirm.

FACTS

A grand jury indicted appellant Miguel Angel Rodriguez on one count of fifth-degree criminal sexual conduct under Minn. Stat. § 609.3451, subd. 1 (2022), alleging that he “engaged in nonconsensual sexual penetration.”¹ The matter proceeded to a court trial.

At trial, the victim, N.R., testified that she had known Rodriguez for approximately seven years and acknowledged that she had a sexual relationship with Rodriguez “years ago.” N.R. testified that on the day in question, Rodriguez came to her apartment, and the two conversed in the living room while N.R. was on the couch. N.R. had recently had foot surgery. She still had an open wound, she was unable to put weight on her foot, her foot was in a walking boot, and she used a wheelchair and crutches for mobility. At the time of the offense, N.R.’s eight-year-old daughter was sleeping in N.R.’s room, and N.R.’s thirteen- or fourteen-year-old sister was sleeping in another room.

¹ The legislature recently created the crime of fifth-degree criminal sexual conduct based on nonconsensual sexual penetration. 2021 Minn. Laws 1st Spec. Sess. ch. 11, art. 4, § 20, at 2049.

N.R. testified that Rodriguez got on top of her and that she knew that Rodriguez wanted to have sex with her. N.R. testified that, although she tried, she could not push Rodriguez off of her and that she told him “No” multiple times. N.R. testified that Rodriguez penetrated her vagina with his penis despite her telling him multiple times that she did not want to have sex. N.R. explained that she did not want to wake her daughter and sister because they “would have been scared,” so she did not scream during the sexual assault.

The next day, N.R. contacted Rodriguez through social media and asked him, “[W]hy did you do this to me? You know I didn’t want to.” N.R. told Rodriguez that she had a nightmare about demons raping her. Rodriguez asked her if he was the demon, and she said, “yes.” Rodriguez told N.R. that he did not rape her. Later, while at an appointment regarding her foot, N.R. told a medical assistant about the sexual assault. The medical assistant encouraged N.R. to report the assault, and N.R. contacted the police.

A police officer called Rodriguez to discuss N.R.’s accusation, and footage from the officer’s body camera was admitted as evidence at trial. In the brief recorded conversation, Rodriguez said he “kn[e]w the situation” that the officer was referring to, but the conversation ended when Rodriguez requested an attorney.

At trial, Rodriguez testified that he and N.R. had a prior sexual relationship, with the most recent sexual encounter occurring approximately one year before the day in question. He testified that he went to N.R.’s apartment to say goodbye because he was planning to move. He denied that he intended to have sex with N.R. He testified that they talked for around five minutes and that he then began to touch N.R. He testified that he

performed consensual oral sex on N.R. and “got on top of her,” but he could not get an erection. He also testified that he unsuccessfully attempted vaginal penetration with his penis in two positions: while on top of N.R. and from behind her.

When asked to clarify what he meant when he said he performed oral sex on N.R., Rodriguez said he put his mouth on her vaginal area. When asked, “did it go inside?” he replied, “Yes.” But Rodriguez testified that his penis did not go inside N.R.’s vagina. He testified that he asked N.R. to perform oral sex on him, and she refused. On cross-examination, the prosecutor asked Rodriguez if his sexual encounter with N.R. involved “some degree of penetration” with his mouth or hand “enter[ing] her vaginal opening.” He responded, “Yes.” The prosecutor asked, “So what [we] don’t agree on is whether there was consent, right?” Rodriguez responded, “Agree.”

In its oral closing argument at trial, the state argued that Rodriguez “admitted to penetrating [N.R.] with his mouth or with his hands,” that “[t]he only element that’s in question is consent,” and that “[t]he parties agree that there was sexual penetration.” The district court allowed Rodriguez to submit his closing argument in writing, after the trial. In his written closing argument, Rodriguez conceded that “consent is the only issue.”

The district court found Rodriguez guilty and sentenced him to a stayed 36-month prison term.

Rodriguez appeals.

DECISION

I.

Rodriguez contends that the district court improperly inferred that he had tailored his testimony based on police reports and grand jury records that he received before trial. Rodriguez argues that the district court impermissibly based its credibility determination on his exercise of his discovery and confrontation rights. Specifically, Rodriguez complains that in finding his testimony less credible than N.R.'s, the district court remarked that "[Rodriguez] provided his first statement regarding the events . . . at the trial. His testimony was after discovery of the police reports and grand jury testimony was provided by the State."

In *State v. Swanson*, the supreme court addressed whether "[t]he state's questions and arguments implying that defendant used his constitutional right to confront witnesses against him to tailor his testimony were error." 707 N.W.2d 645, 650 (Minn. 2006). During rebuttal closing argument in *Swanson*, the prosecutor commented on the fact that the defendant had listened to the state's evidence before testifying and asserted that the defendant tailored his testimony to defend against the inculpatory evidence. *Id.* at 656-57. In addressing the alleged error, the supreme court noted that "[t]he United States Supreme Court has held that such comments do not violate a defendant's rights under the federal constitution," but "[t]he Court . . . did not discourage other jurisdictions from considering the question as a matter to be decided under state law." *Id.* at 657.

The *Swanson* court stated, “One can reasonably argue that, in some cases, such comments by the state are merely a statement of the obvious and therefore should be permitted.” *Id.* However, the *Swanson* court held:

We believe, however, that *although not constitutionally required*, the better rule is that the prosecution cannot use a defendant’s exercise of his right of confrontation to impeach the credibility of his testimony, at least in the absence of evidence that the defendant has tailored his testimony to fit the state’s case. Without specific evidence of tailoring, such questions and comments by the prosecution imply that all defendants are less believable simply as a result of exercising the right of confrontation. The exercise of this constitutional right, by itself, is not evidence of guilt. Because the record contains neither evidence of tailoring nor any other reason for the state’s argument, the prosecution’s questions and comments were error.

Id. at 657-58 (emphasis added) (footnote omitted).

One year later, in *State v. Davis*, the supreme court reiterated the *Swanson* rule:

Absent evidence in the record giving rise to an inference that a criminal defendant has tailored his or her testimony to fit the evidence, a prosecutor commits misconduct by questioning the defendant in a manner that implies the defendant’s testimony is not credible because the defendant was present at trial and had the opportunity to see the evidence before testifying.

735 N.W.2d 674, 676 (Minn. 2007); *see also State v. Leutschaft*, 759 N.W.2d 414, 416, 426 (Minn. App. 2009) (holding that a prosecutor’s unsubstantiated suggestion that the defendant tailored his trial testimony violates the defendant’s confrontation and due-process rights, but questions about tailoring may be proper if the facts show that possibility), *rev. denied* (Minn. Mar. 17, 2009).

Swanson and *Davis* establish a rule that applies to prosecutors at criminal trials. See *Swanson*, 707 N.W.2d at 657 (stating that “the better rule is that the prosecution cannot use a defendant’s exercise of his right of confrontation to impeach the credibility of his testimony”); *Davis*, 735 N.W.2d at 676 (stating that a prosecutor commits misconduct by questioning the defendant in a manner that implies tailored testimony); *Leutschaft*, 759 N.W.2d at 419 (“For future guidance, prosecutors must adhere to the *Swanson* rule and their failure to do so surely will be in the realm of prosecutorial misconduct rather than prosecutorial error.”).

Rodriguez does not argue that the prosecutor in this case asserted or implied that his testimony was tailored. Instead, he asks us to extend application of the *Swanson/Davis* rule to a fact-finder’s determination regarding the credibility of a defendant’s testimony, even if the prosecutor did not suggest that the defendant tailored his testimony. Rodriguez argues:

If it is highly improper for the prosecution to accuse a defendant of tailoring his testimony to conform to the evidence, it certainly is not proper for a trial court, sitting as the factfinder, to discredit or impeach the defendant’s credibility in this same manner.

He further argues: “It is difficult to understand how the judge can draw an adverse credibility inference on its own when the prosecutor would be forbidden from eliciting the same inference” and that “given the unique role of the judge, the *Swanson/Davis* rule is especially applicable.”

We need not determine this issue of first impression because—assuming without deciding that the district court erred—the error was not prejudicial. A violation of the

Swanson/Davis rule does not provide a ground for relief absent prejudice. “Once prosecutorial misconduct has been established, we must determine whether the misconduct constitutes harmless error.” *Swanson*, 707 N.W.2d at 658 (concluding that the prosecutor’s violation of the *Swanson/Davis* rule was harmless); *see also Davis*, 735 N.W.2d at 681-82 (stating that, despite the “conclusion that the prosecutor engaged in misconduct” in violation of the *Swanson/Davis* rule, “we also conclude that the state has met its burden . . . of showing that the misconduct did not affect Davis’s substantial rights”). For the reason that follows, we discern no prejudice from the alleged violation of the *Swanson/Davis* rule in this case.

Despite the district court’s observation that Rodriguez did not provide a statement regarding his version of the events until after his receipt of discovery and the presentation of the state’s case in chief, the district court provided numerous other detailed findings to support its credibility determination, which do not reference any so-called “tailored” testimony. The district court explained:

[N.R.’s] testimony at trial had some gaps where she indicated she no longer remembered clearly and also a bit of variation regarding whether she continued to push [Rodriguez] off her after he inserted his penis or just as he was about to insert his penis. However, the small gaps of memory and the small variation in when she was attempting to push [Rodriguez] off of her did not reduce her credibility in light of over a year passing between her first statement and trial. [N.R.] has overall consistently reported the events of July 15, 2023, for approximately 14 months, including her statements to [the medical assistant], the officer when she reported, testimony before the grand jury and finally at trial. [N.R.] had a rational reason not to yell during the incident. She expressed multiple times that she did not want to wake her young child or younger sister as she was responsible for them. She believed they

would be traumatized or at risk of harm. There is no benefit to [N.R.] from her testimony. [N.R.’s] testimony at trial was credible.

... The short amount of time that [Rodriguez] spoke with [N.R.] before beginning sexual contact is in direct contradiction to his insistence that he did not intend to have sexual relations with [N.R.] when he went to her apartment that morning. [Rodriguez’s] claim that the two of them engaged in multiple positions during the few minutes of the sexual encounter is less likely than [N.R.’s] testimony that the encounter occurred in one position with [Rodriguez] being on top of her. This is in light of [N.R.] wearing a post surgical boot and her behavior of keeping that foot elevated, using crutches and being particularly protective of her foot. [Rodriguez’s] testimony was less credible than [N.R.’s] testimony.

The district court also found that “during [N.R.’s] testimony she did not imply or in any way communicate any hatred or strong anger towards [Rodriguez]. She showed emotions more consistent with a friend undermining her trust”

On this record, in which the district court made one finding suggesting tailored testimony and offset that finding with numerous other detailed findings that persuasively show why the district court did not credit Rodriguez’s testimony, we discern no prejudice that would justify relief based on the alleged error.

II.

Alternatively, Rodriguez contends that the district court created an appearance of partiality when it relied on an “improper inference” to find Rodriguez guilty. “Justice requires that the judicial process be fair and that it appear to be fair; it necessarily follows that a presiding judge must be impartial and must appear to be impartial.” *State v. Pratt*,

813 N.W.2d 868, 878 (Minn. 2012). We presume that the district court discharged its judicial duties properly. *State v. Munt*, 831 N.W.2d 569, 580 (Minn. 2013).

There are three types of judicial bias: actual, emergent, and perceived. *State v. Lopez*, 988 N.W.2d 107, 117 (Minn. 2023). Rodriguez urges this court to apply the *Powell* test, which applies in instances of perceived bias. When addressing “perceived bias, which arises when facts or circumstances might cause the public to reasonably question the impartiality of an unbiased court,” courts apply the *Powell* test and address three factors to determine whether reversal is warranted: “(1) the risk of injustice to the parties in the particular case, (2) the risk that denial of relief will produce injustice in other cases, and (3) the risk of undermining the public’s confidence in the judicial process.” *Id.* at 117, 120 (citing *Powell v. Anderson*, 660 N.W.2d 107, 121 (Minn. 2003)).

As to the risk of injustice to Rodriguez, we discern none. As explained in section I of this opinion, Rodriguez was not prejudiced by the district court’s single finding regarding the timing of his trial testimony. For that same reason, we are not persuaded that the denial of relief here will produce injustice in other cases. Finally, we are not concerned that the single finding in this case will undermine the public’s confidence in the judicial process. As the supreme court observed in *Swanson*, “One can reasonably argue that in some cases, [tailoring] comments by the state are merely a statement of the obvious and therefore should be permitted.” 707 N.W.2d at 657.

In sum, the district court did not create an appearance of partiality.

III.

Finally, Rodriguez contends that the prosecutor committed serious prejudicial misconduct during the state's closing argument. A prosecutor engages in misconduct if he misstates the applicable law. *State v. Strommen*, 648 N.W.2d 681, 689-90 (Minn. 2002). A prosecutor also engages in misconduct if he intentionally misstates the evidence. *State v. Mayhorn*, 720 N.W.2d 776, 788 (Minn. 2006).

Rodriguez argues that the prosecutor misstated the law and the evidence by arguing that he "admitted to penetrating [N.R.] with his mouth or with his hands," that "[t]he only element that's in question is consent," and that "[t]he parties agree that there was sexual penetration." Rodriguez did not object to these statements.

Unobjected to allegations of prosecutorial error are reviewed under a "modified plain-error test." *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). Under that test, the defendant has the burden to show that the misconduct constitutes error that is plain. *Id.* If the defendant establishes error that is plain, the burden then shifts to the state to show "that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict." *Id.* at 248, 251 (quotations omitted). If the state fails to meet its burden, then we assess "whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id.* at 248 (quotation omitted).

Rodriguez was convicted under Minn. Stat. § 609.3451, subd. 1, which states, "A person is guilty of criminal sexual conduct in the fifth degree if the person engages in nonconsensual sexual penetration." The term "sexual penetration" is defined to include

“cunnilingus” as well as “any intrusion however slight into the genital or anal openings . . . of the complainant’s body by any part of the actor’s body.” Minn. Stat. § 609.341, subd. 12 (2022).

Rodriguez argues that the challenged statements were inaccurate because state did not charge him with having oral sex with N.R. without her consent. But the indictment alleged that Rodriguez engaged in nonconsensual sexual penetration, without specifying a particular form of penetration. In addition, although the challenged statements were made during the prosecutor’s oral closing argument at trial, Rodriguez’s subsequent written closing argument did not assert that the prosecutor had improperly framed the issue for the fact-finder. Instead, like the prosecutor, Rodriguez argued, “In this case, consent is the only issue.”

On this record, Rodriguez fails to establish that the prosecutor engaged in misconduct by misstating the law or the evidence.

Affirmed.