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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0344**

State of Minnesota,
Respondent,

vs.

George Luis Ramirez,
Appellant.

**Filed February 2, 2026
Affirmed
Smith, Tracy M., Judge**

Lyon County District Court
File No. 42-CR-24-651

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

Abby Wikelius, Lyon County Attorney, Julianna F. Passe, Assistant County Attorney,
Marshall, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Smith, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Appellant George Luis Ramirez appeals from the judgment of conviction for second-degree criminal sexual conduct. He argues that (1) the district court erred by admitting hearsay statements by the complainant under the residual exception to the

hearsay rule and under Minnesota Statutes section 595.02, subdivision 3 (2024),¹ and (2) the prosecutor committed misconduct by eliciting vouching testimony from two expert witnesses as to whether the complainant had been sexually abused. We conclude that the complainant's statements were properly admitted under the residual exception to the hearsay rule and that any vouching testimony was either not error or was harmless. We affirm.

FACTS

A jury found Ramirez guilty of second-degree criminal sexual conduct in violation of Minnesota Statutes section 609.343, subdivision 1(h)(iii) (Supp. 2019), based largely upon statements that his five-year-old daughter, H.N.R., made to her mother, G.R., and to medical providers, indicating that Ramirez engaged in sexual conduct with H.N.R.

H.N.R. was six years old at the time of Ramirez's criminal trial. Because of H.N.R.'s young age, the district court held a competency hearing to determine if H.N.R. was competent to testify. During the competency hearing, the only things that H.N.R. said verbally were her name, "hello," and "goodbye." H.N.R. shrugged when asked if she knew what it meant to tell the truth and shook her head "no" when asked if she knew what it meant to tell a lie. However, H.N.R. held up six fingers when asked how old she was and accurately answered other factual questions about her life, albeit nonverbally. The district court found that H.N.R. was very shy and preferred not to use her voice to answer questions, often looking down towards her hands or the ground. After observing H.N.R.'s

¹ Section 595.02, subdivision 3, excepts from the hearsay rule certain statements by children under the age of ten describing sexual or physical abuse.

behavior at the hearing, the district court determined that H.N.R. was incompetent to testify because she did “not currently have the capacity to understand the meaning of an oath, comprehend the obligation it imposes, or appropriately respond to questions.”

Respondent State of Minnesota filed a motion in limine asking the district court to allow it to introduce a forensic interview of H.N.R. as well as statements that H.N.R. made to G.R. and to various medical providers. The district court denied the state’s motion to introduce the forensic interview on the ground that it was testimonial and, therefore, barred by the Confrontation Clause. The district court granted the state’s motion to introduce H.N.R.’s statements to G.R., to her therapist, and to the nurse practitioner who performed H.N.R.’s forensic medical examination.

At trial, G.R. testified that on May 18, 2024, she walked out of the bathroom in the family home and observed her husband Ramirez touching H.N.R. on or near her buttocks. This worried G.R. because, even though both Ramirez and H.N.R. were fully clothed, she saw H.N.R. in a position that was reminiscent of anal sex. Additionally, G.R. observed that H.N.R. looked scared. Later that day, Ramirez dropped H.N.R. and G.R. off at church and G.R. asked H.N.R. in the church bathroom what had happened that morning with her father. G.R. testified that H.N.R. told her that “daddy touches [my butt cheeks],”² and further disclosed that he “touches with his, uh, tongue and his, uh, pee-pee.” G.R. testified that she

² This is a Spanish-speaking family, and an interpreter was used at trial and when G.R. reported the abuse to police. It appears that H.N.R. used the Spanish term “bumpies” to refer to her backside. This was translated into English as “butt,” “butt cheeks,” or “buttocks.”

slept in H.N.R.'s room that night and that, after Ramirez left home the following day to return to work in Nebraska, he no longer stayed with the family.

G.R. explained at trial that she did not immediately report the abuse of H.N.R. to the police because she was afraid and believed that she needed to have photos or video of the abuse before the police would believe her. However, G.R. was aware that Ramirez had a prostate infection so, when H.N.R. became sick with a fever and reported that her genitals were hurting, G.R. thought that Ramirez may have transmitted the infection to her. G.R. testified that, when she told a neighbor what had happened and her fears about H.N.R.'s health, the neighbor informed G.R. that she did not need photographic evidence of the abuse and encouraged her to take H.N.R. to the police and report what happened. G.R. did so on June 2, 2024. The police directed G.R. to take H.N.R. to a children's advocacy center for an examination, which she did.

G.R. also testified that, between the time of the incident on May 18 and reporting the incident to police on June 2, H.N.R. continued to disclose more about the abuse to G.R. For example, G.R. testified that one day H.N.R. was on the couch and put the TV remote on her vagina. When G.R. asked H.N.R. why she was doing that, H.N.R. said that was how her daddy does it. G.R. also testified that H.N.R. described her daddy using a finger to touch her butt cheeks "many times" and demonstrated to G.R. the position that Ramirez would put her in. G.R. explained at trial that when G.R. said "butt cheeks" she was actually referring to H.N.R.'s claims that Ramirez touched the inside of H.N.R.'s anus and said that H.N.R. reported that it hurt her anus and vagina.

After G.R. reported the abuse to police, she began taking H.N.R. to a therapist. At trial, the therapist testified that, during play therapy, H.N.R. disclosed that Ramirez had touched her butt with a toy. The therapist also testified that on another occasion H.N.R. told her therapist, “Daddy touched my privates.” The therapist testified that she assessed and was treating H.N.R. and that she had diagnosed H.N.R. with post-traumatic stress disorder. When asked by the prosecutor what symptoms of post-traumatic stress disorder that she observed in H.N.R., the therapist replied, “[H.N.R.] experienced a traumatic evidence of sexual abuse.” Ramirez’s attorney objected to this answer and requested a curative statement for the jury to disregard the statement. The district court overruled the objection

The nurse practitioner who performed H.N.R.’s forensic medical examination at the child advocacy center did not testify to any hearsay statements. But she did say that, based upon the medical-examination findings and laboratory analysis, she “came to [an] impression that the disclosures that [H.N.R.] had made to G.R. and during the forensic interview were concerning for sexual abuse.” Ramirez did not object to the nurse practitioner’s statements at trial.

Ramirez appeals.

DECISION

Ramirez argues that the district court abused its discretion when it admitted hearsay statements by H.N.R. and that the state committed prosecutorial misconduct by eliciting vouching testimony from two expert witnesses. We address each argument in turn.

I. The district court did not abuse its discretion by admitting H.N.R.’s hearsay statements under rule 807.

Ramirez contends that the district court reversibly erred by finding H.N.R.’s hearsay statements to G.R. and to her therapist admissible under both Minnesota Rule of Evidence 807 and under Minnesota Statutes section 595.02, subdivision 3. Because we conclude that the district court did not abuse its discretion in determining that the statements were admissible under rule 807, our analysis begins and ends there.

Appellate courts review a district court’s evidentiary rulings for an abuse of discretion. *State v. Sime*, 669 N.W.2d 922, 927 (Minn. App. 2003). Relevant here, “[a] determination that a statement meets the foundational requirements of a hearsay exception is reviewed for an abuse of discretion.” *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009). “A district court abuses its discretion if it misapplies the law, makes findings unsupported by the record, or resolves discretionary questions in a manner that is contrary to logic and the facts on record.” *State v. Johnson*, 979 N.W.2d 483, 502 (Minn. App. 2022), *aff’d*, 995 N.W.2d 155 (Minn. 2023). An appellant has the burden of establishing both that the district court abused its discretion and that the appellant was prejudiced by the error. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003).

Hearsay “is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is not admissible unless an exception applies. Minn. R. Evid. 802. Rule 807—the residual exception—is one such exception. It states:

A statement not specifically covered by rule 803 or 804
but having equivalent circumstantial guarantees of

trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.

A district court must conduct a two-step analysis when deciding whether to admit evidence under the residual-hearsay exception. *State v. Hallmark*, 927 N.W.2d 281, 292 (Minn. 2019). “First, the district court must look at the totality of the circumstances to determine whether the hearsay statement has circumstantial guarantees of trustworthiness.” *Id.* (quotations omitted). Second, the district court must “determine whether the three enumerated requirements of Rule 807 are met.” *Id.* at 293. Ramirez does not dispute that the statements meet the three enumerated requirements of rule 807 but argues that the hearsay statements by H.N.R. lack circumstantial guarantees of trustworthiness.

When evaluating whether a statement has circumstantial guarantees of trustworthiness at the first step, the district court examines “the circumstances actually surrounding the making of the statements.” *Id.* at 292. The totality of the circumstances test “requires a careful balancing of all relevant circumstances surrounding the making of the statement” and the court must “look[] to all relevant factors bearing on trustworthiness.” *Id.* at 292-93 (quotation omitted).

In *State v. Ortlepp*, the supreme court identified factors to consider in determining the trustworthiness of a hearsay statement under rule 807. 363 N.W.2d 39, 44 (Minn. 1985). Under *Ortlepp*, a hearsay statement may be considered inherently trustworthy when (1) there is no Confrontation Clause issue because the declarant testifies, admits to making

the statement, and is available for cross-examination; (2) the statement is recorded, removing any real dispute about what the declarant said; (3) the statement is against the declarant's penal interest; and (4) the statement is consistent with all the other evidence presented by the state that strongly points toward the defendant's guilt. *Id.* But, as the supreme court has explained since *Ortlepp*, "the *Ortlepp* factors are not exclusive and merely represent an application of the totality of the circumstances approach to satisfy the equivalent circumstantial guarantees of trustworthiness element of the residual hearsay exception." *Hallmark*, 927 N.W.2d at 293 (internal quotations and citation omitted).

In *State v. Vangrevenhof*, the supreme court offered a list of additional factors that may be considered. 941 N.W.2d 730, 736 (Minn. 2020). These factors include the extent to which the hearsay statement was voluntary, whether it was made under oath and subject to cross-examination, the declarant's relationship to the parties in the litigation, the motivation in making the statement and personal knowledge of the statement, whether the statement was recanted, the existence of corroborating evidence, and the declarant's character for truthfulness and honesty. *Id.*

And in *State v. Ahmed*, this court identified relevant factors for evaluating the trustworthiness of statements by children about abuse:

In child abuse cases, these circumstances include whether the statement was spontaneous, whether the questioner had a preconceived idea of what the child should say, whether the statement was in response to leading questions, whether the child had any apparent motive to fabricate, whether the statements are of the type one would expect a child of that age to fabricate, whether the statement remained consistent over time, and the mental state of the child at the time of the statements.

782 N.W.2d 253, 260 (Minn. App. 2010).

Here, in its written order, the district court concluded that the totality of the circumstances provided circumstantial guarantees of trustworthiness of H.N.R.'s statements to G.R. and to her therapist. With respect to H.N.R.'s statements to G.R., the district court cited the circumstances of the disclosure—specifically, that H.N.R. told G.R. about the alleged conduct only when asked after G.R. saw concerning conduct in the living room, that H.N.R. had no motivation other than to answer G.R.'s questions, that H.N.R.'s statements to G.R. were corroborated by other statements to medical providers, that the Confrontation Clause was not implicated because the statements were not testimonial, that H.N.R.'s statements were “more spontaneous than not” because they disclosed things beyond what G.R. witnessed, that G.R. did not know what H.N.R. was going to say, that there was no evidence that H.N.R. had a motive to fabricate and it was not expected that a child her age would fabricate, and that H.N.R.'s statements to G.R. became more detailed but remained consistent over time.

With respect to H.N.R.'s statements to the therapist, the district court cited the following circumstances: there was no evidence that the statements were not voluntary, there was no evidence of a bad motivation to make the statements, H.N.R. would be unlikely to have a bad motive given her age, there was no evidence that H.N.R. recanted her statements, subsequent statements by H.N.R. supported the challenged statements, the statements were consistent with H.N.R.'s statements to G.R. and medical providers, the statements “were at times spontaneous,” the statements were given on multiple occasions,

and there was no evidence to show that the therapist had a preconceived notion about what H.N.R. would say.

Ramirez argues that the district court's ruling was an abuse of discretion. He contends that the district court did not consider important factors that weighed against the hearsay statements' trustworthiness, improperly evaluated the factors that it did consider, and erred in applying *Ahmed*. We are not convinced.

As to his argument that the district court did not consider important factors, Ramirez points out that H.N.R. did not testify or acknowledge making the out-of-court statements and that the statements were not recorded. But not all factors have to be met in order to find that a hearsay statement is sufficiently trustworthy under the totality-of-the-circumstances test. *See, e.g., Hallmark*, 927 N.W.2d at 293.

As to his argument that the district court improperly evaluated the factors that it did consider, Ramirez asserts that, because H.N.R. could not "discern between a truth and a lie," her statements could not have been voluntary and she likely could not have formed the motivation to tell the truth. But in finding that H.N.R. was not competent to testify, the district court found that she did "not currently have the capacity to understand the meaning of an oath, comprehend the obligation it imposes, or appropriately respond to questions." The district court did not find that H.N.R. was unable to tell what the truth was and what a lie was. Moreover, the district court weighed other evidence impacting the factors of voluntariness and motivation in its ruling. It pointed out that there was no evidence that the statements were not given voluntarily and that the evidence showed that "H.N.R. had no particular motivation to make the statement other than to answer [G.R.'s] questions." The

district court made similar determinations about H.N.R.'s statements to her therapist, explaining that "[g]iven her age it is unlikely that she would have a bad motive."

Ramirez also argues that H.N.R.'s statements were not corroborated by other evidence. The district court observed that H.N.R. made statements describing Ramirez's abuse to multiple people. H.N.R. reported to G.R. that Ramirez touched H.N.R. on her butt and on her "privates" with his hand, tongue, and "pee-pee." H.N.R. made statements to the therapist that Ramirez touched H.N.R.'s butt with a toy and said, "Daddy touched my privates." H.N.R. also disclosed to the forensic interviewer that Ramirez touched her inside her butt and that it hurt her. Ramirez asserts that corroborating evidence must be physical evidence or the testimony of an independent witness and cannot be hearsay statements to a different witness. But we find no support for this contention in our precedential caselaw. And we note that, in addition to the other out-of-court statements, there is corroborating evidence in that G.R. testified that she personally observed Ramirez touching H.N.R.'s buttocks in a position that was reminiscent of anal sex and G.R. observed H.N.R. putting a remote control on her vaginal area.

Ramirez also contends that H.N.R.'s hearsay statements were inconsistent with each other, weighing against their admissibility. He focuses on the fact that H.N.R. made statements to G.R. that her father had touched her butt and her vagina with his tongue, penis, and fingers, but told the forensic interviewer that he touched her butt and denied that he touched any other part of her body. During the forensic interview, H.N.R. reported that Ramirez touched her hard, inside her butt, hurting her, and she relayed multiple instances of such abuse, stating that it happened "more than one day" and that he touched her with

his hand and his toes. When asked by the forensic interviewer if Ramirez had touched her anywhere other than her butt, H.N.R. denied that he had.

But H.N.R. made statements to both G.R. and her therapist that Ramirez had “touched her privates.” And the district court observed that “[t]he statements H.N.R. made to [G.R.] remained consistent over time and have become more specific as shown in her health records.” In addition, H.N.R. consistently said to G.R., the nurse practitioner, the forensic interviewer, and the therapist that Ramirez abused her and described his abuse as including putting his fingers in her anus. Given these consistencies in her statements, we disagree that the inconsistencies cited by Ramirez rendered H.N.R.’s statements untrustworthy.

Finally, as to Ramirez’s argument that the district court erred in applying the *Ahmed* factors, he contends that, unlike in the statements in *Ahmed*, the statements here were not spontaneous because G.R. and the therapist asked questions of H.N.R. when they had a preconceived idea of what she would say. In *Ahmed*, we analyzed a statement made by a young child to his grandmother when she asked, “What is wrong?” and “Who did this?” after her hug caused the child pain. 782 N.W.2d at 257, 261. The statement was made at a child advocacy center where the grandmother was present to help her grandson feel comfortable talking to the forensic examiner because he had previously refused to answer any of their questions. *Id.* at 257. We upheld the district court’s determination that the child’s statement was spontaneous and, based on that factor and others, was trustworthy. *Id.*

Ramirez argues that H.N.R.'s statements could not properly be considered spontaneous under *Ahmed* because they were made in response to questions by G.R. and the therapist that were intended to inquire about possible abuse. But, as the district court pointed out, H.N.R.'s statements to G.R. disclosed things that went beyond what G.R. witnessed when she first inquired. And when G.R. asked H.N.R. why she was putting a remote control on her vagina, H.N.R. offered, "[T]hat's how my daddy does it." As for H.N.R.'s statements to her therapist during play therapy, the district court observed that H.N.R. is a very young child without motive to fabricate statements of sexual abuse. We see no conflict between the district court's reasoning here and our decision in *Ahmed*.

In sum, we discern no abuse of discretion in the district court's determination that H.N.R.'s out-of-court statements to G.R. and her therapist had sufficient circumstantial guarantees of trustworthiness to be admissible under rule 807.

II. Ramirez has not established reversible prosecutorial misconduct.

Ramirez contends that the prosecutor committed reversible prosecutorial misconduct by eliciting vouching testimony from two expert witnesses. The first instance of claimed misconduct was not objected to, but the second instance was. The two claims are therefore subject to different standards of review.

For unobjected-to misconduct, the modified plain-error test applies. *State v. Ramey*, 721 N.W.2d 294, 296 (Minn. 2006). Under that test, the defendant must prove misconduct that was plain and, if that is proved, the burden shifts to the state to show that the error did not affect the defendant's substantial rights. *Id.* "A plain error affects the substantial rights of the defendant when there is a reasonable likelihood that the error substantially affected

the verdict.” *State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011) (quotation omitted). If the plain prosecutorial misconduct affected the defendant’s substantial rights, the reviewing court “then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.” *Ramey*, 721 N.W.2d at 298.

For objected-to prosecutorial misconduct, appellate courts use a harmless-error test. *State v. Epps*, 949 N.W.2d 474, 488-89 (Minn. App. 2020), *aff’d*, 964 N.W.2d 419 (Minn. 2021). Error is established when a prosecutor violated clear or established standards of conduct in rules, laws, or caselaw. *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008). Whether the error was harmless depends on the severity of the prosecutorial misconduct. *State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974). For “unusually serious prosecutorial misconduct,” the standard is whether the misconduct was “harmless beyond a reasonable doubt.” *Id.* For less serious misconduct, the standard is whether the misconduct “likely played a substantial part in influencing the jury to convict.” *Id.*³

A. Unobjected-to Prosecutorial Misconduct

The first instance of claimed prosecutorial misconduct occurred at the end of the prosecutor’s direct examination of the nurse practitioner who performed H.N.R.’s forensic medical examination. The nurse practitioner had been answering questions about how infections may or may not be transferred during a sexual act and the results of H.N.R.’s

³ We note that the supreme court has questioned the continued viability of the two-tiered harmless-error test for prosecutorial misconduct but has not resolved the question. *See State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012).

test for transmitted infections, which had been negative for such infections. The following exchange then occurred:

Q: Based on your . . . evaluation conducted on [H.N.R.], what was your medical impression?

A: So, you know, based on the, um, history that I obtained; the physical exam findings, laboratory analysis, I came to an impression that the disclosures that [H.N.R.] had made to [G.R.] and during the forensic interview were concerning for sexual abuse.

Ramirez did not object to the question or the answer in this exchange. Ramirez argues that, in this exchange, the prosecutor elicited vouching testimony and that such conduct is plain error.

“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 “for or against the credibility of another witness.” *State v. Vick*, 632 N.W.2d 676, 689 (Minn. 2001). Generally, district courts must “reject expert opinion testimony regarding the truth or falsity of a witness[’s] allegations about a crime, for the expert’s status may lend an unwarranted ‘stamp of scientific legitimacy’ to the allegations.” *State v. Myers*, 359 N.W.2d 604, 611 (Minn. 1984) (quoting *People v. Izzo*, 282 N.W.2d 10, 11 (Mich. Ct. App. 1979)).

We do not agree with Ramirez that the nurse practitioner’s testimony constituted impermissible vouching. The nurse practitioner testified that, based on the history that she had obtained and her examination of H.N.R., H.N.R.’s disclosures to G.R. and during the forensic examination were “concerning for sexual abuse.” The nurse did not state that

H.N.R.'s disclosures were credible or testify about H.N.R.'s veracity, nor did she testify that she had concluded that sexual abuse had occurred. Thus, this brief exchange did not constitute impermissible elicitation of an expert opinion vouching for H.N.R.'s credibility.

B. Objected-to Conduct

The second exchange that Ramirez challenges occurred during the direct examination of H.N.R.'s therapist.

Q: What are the symptoms of post-traumatic stress disorder that manifested in [H.N.R.]?

THE WITNESS: May I review my notes for that answer?

THE COURT: You can take a look at your notes, refresh your recollection and when you've refreshed your recollection you can look up from your notes, I'll have the prosecutor resume questions.

THE WITNESS: Thank you.

Q: What are the symptoms of post-traumatic stress disorder that manifested in [H.N.R.]?

A: [H.N.R.] experienced a traumatic evidence of sexual abuse.

Ramirez's lawyer objected, arguing that the therapist improperly testified to a conclusion about the legal question in the case, and asked for a curative instruction to disregard the statement. The district court overruled the objection, reasoning that the therapist was testifying to a medical diagnosis and not to whether sexual abuse had occurred and that defense counsel could challenge the therapist's conclusion through cross-examination.

Ramirez argues that the therapist's answer constituted vouching for the credibility of H.N.R.'s allegations, in contravention of caselaw. "[A]n expert qualified to render an opinion with respect to the emotional and psychological characteristics often observed in children who are victims of sexual abuse may testify about those characteristics and may

describe characteristics or emotional conditions that the expert observed in the complainant.” *State v. Morales-Mulato*, 744 N.W.2d 679, 687 (Minn. App. 2008) (citing *Myers*, 359 N.W.2d at 609-11). Even so, “[a]n expert witness may not testify as to the credibility of a specific witness.” *State v. Wembley*, 712 N.W.2d 783, 791 (Minn. App. 2006).

Here, the therapist was asked about the characteristics of post-traumatic stress disorder that she observed in H.N.R., but the therapist did not answer that question. Instead, she stated that “[H.N.R.] experienced a traumatic evidence of sexual abuse.” While the phrasing is awkward, that testimony suggests that the therapist was opining that H.N.R.’s disclosures were true and that the child in fact suffered sexual abuse. For this reason, we conclude that the testimony was impermissible vouching testimony.

The state asserts that, even if the testimony crossed the line, Ramirez opened the door to the testimony and thus waived his objection. The state relies on *Myers*, in which the supreme court concluded that expert-opinion testimony regarding the truth of the child complainant’s allegations of sexual assault was permissible because the defendant had opened the door by eliciting testimony from the child’s mother that she did not believe the allegations. 359 N.W.2d at 611-12. The state argues that Ramirez similarly opened the door by questioning G.R. why she did not immediately report to the police and suggesting that G.R. did not believe H.N.R. This argument is unconvincing. Here, in response to defense counsel’s questioning, G.R. testified consistently that she believed H.N.R. Unlike in *Myers*, Ramirez did not elicit testimony that G.R. did not believe the allegations. We thus disagree

that Ramirez opened the door to a responsive expert-witness opinion that H.N.R.'s allegations were credible.

Having found error, we turn to the question of whether the error was harmless. In his brief, Ramirez describes the two-tier standard for determining harmless error in a prosecutorial-misconduct case. *See Caron*, 218 N.W.2d at 200. But he does not expressly identify which of those standards should apply here. Instead, he asserts that, for both objected-to and unobjected-to misconduct, the state “must prove that Ramirez’s substantial rights were not affected by the misconduct.” Because Ramirez does not argue that the misconduct was unusually serious, and because the prosecutor did not deliberately elicit the response, we apply the harmless-error standard for less serious misconduct—namely, whether the misconduct “likely played a substantial part in influencing the jury to convict.” *Id.*

We conclude that the misconduct did not likely play a substantial part in influencing the jury to convict. The therapist’s statement was an isolated statement that seemed to answer a question that the prosecution did not ask. The prosecutor immediately moved on from the statement and did not mention the statement at all in its closing argument. In addition, the defense was able to mitigate any damage done by the statement by eliciting testimony on cross-examination that the therapist’s diagnosis of post-traumatic stress disorder was based on G.R.’s report that Ramirez sexually abused H.N.R. and that if what G.R. said was not true—and there was no traumatic event—the therapist would not give a post-traumatic stress disorder diagnosis. In other words, the value of the therapist’s opinion was limited because it was expressly based on G.R.’s report and the credibility of that

report was challenged by Ramirez throughout the trial. Moreover, there was other evidence of guilt, including H.N.R.'s statements to other witnesses, observations made by G.R., and observations that the therapist made while treating H.N.R. We therefore conclude that the objected-to prosecutorial misconduct was harmless error.

Affirmed.