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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1032**

State of Minnesota,
Respondent,

vs.

Nathan Taylor Sheldon,
Appellant.

**Filed June 22, 2026
Affirmed
Schmidt, Judge**

Ramsey County District Court
File No. 62-CR-23-4514

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Beane, Judge; and Reilly,
Judge.*

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

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Nathan Taylor Sheldon argues that (1) the evidence is insufficient to sustain his conviction for first-degree assault; (2) the district court abused its discretion in making certain evidentiary rulings; (3) the prosecutor committed plain-error misconduct; and (4) the cumulative impact of these errors requires a new trial. We affirm.

FACTS

Sheldon and M.I. were romantically involved and living together. After the two got into an argument, a neighbor found M.I. injured in the apartment-building lobby and called 911. Sheldon was arrested, a domestic-abuse no-contact order issued, and M.I. moved out.

Two weeks later, M.I. met Sheldon and his friends at a bar. M.I. and Sheldon then walked to a different bar by themselves. M.I. was intoxicated and recalled “walking out of [the second bar], and that’s it.” M.I.’s next memory was being on the bathroom floor in Sheldon’s apartment. A neighbor heard M.I. screaming and called the police. When the police arrived, officers observed M.I.’s right eye swollen shut. M.I. was taken to the hospital where doctors determined that the orbital floor of her right eye was fractured.

Respondent State of Minnesota charged Sheldon with first-degree assault, third-degree assault, and violating a no-contact order. Several witnesses testified at trial, including M.I. and Sheldon. The court admitted footage from an officer’s body-worn-camera and audio from the 911 call. A jury found Sheldon guilty on all charges.

Sheldon appealed. We granted Sheldon’s motion to stay the appeal and remanded for postconviction proceedings. We later dissolved the stay and reinstated the appeal.

DECISION

Sheldon raises four arguments to contend that his first-degree-assault conviction should be reversed or that he is entitled to a new trial. We address each argument in turn.

I. The state presented sufficient evidence at trial to prove the great-bodily-harm element of first-degree assault.

Sheldon first challenges the sufficiency of the evidence for his first-degree-assault conviction. Our review “is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). Sheldon argues that M.I.’s injury did not satisfy the definition of “great bodily harm,” which presents a legal question that we review de novo. *State v. Dye*, 871 N.W.2d 916, 921-22 (Minn. App. 2015).

“Great bodily harm” is defined by statute as “bodily injury [1] which creates a high probability of death, or [2] which causes serious permanent disfigurement, or [3] which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or [4]other serious bodily harm.” Minn. Stat. § 609.02, subd. 8 (2022).

Here, the evidence established that M.I.’s right eye was swollen and bruised for several weeks. Her right orbital bones were “completely disrupted,” “broken,” “completely gone,” which the surgeon testified was “a permanent deformity.” The surgeon also testified that orbital bones are virtually unfixable without surgical intervention, and without surgery, “the eye could sink back further.” The surgeon testified that, at M.I.’s one-year follow-up appointment, her right eye had sunken back by four millimeters.

Sheldon characterizes M.I.’s injury as a purely cosmetic one. He cites *State v. Gerald*, in which we reversed a first-degree-assault conviction because a victim’s half-inch-long scars in, and behind, his ear did not meet the definition for “serious permanent disfigurement.” 486 N.W.2d 799, 802 (Minn. App. 1992). We concluded that the scars were “relatively small,” were located in areas that were “not particularly noticeable,” and were “significantly less . . . pronounced” than injuries that we had previously found meet the great-bodily-harm element of first-degree assault. *Id.* Sheldon argues that *Gerald* compels us to reverse. We are not persuaded.

Unlike the “not particularly noticeable” scars in *Gerald*, a person’s eyes are perhaps their most “visible,” “prominent[,]” and personal feature. See *State v. McDaniel*, 534 N.W.2d 290, 293 (Minn. App. 1995) (concluding that victim’s scars—one six centimeters on his neck and another two-thirds of an inch long on his chest—met the definition of “serious permanent disfigurement” because they were “highly visible,” “large[,]” and “prominently located”), *rev. denied* (Sept. 20, 1995). Here, the injury caused “significant” asymmetry to M.I.’s eyes, with her right eye “very obvious[ly] . . . set in a completely different position.” And, as the injury healed, M.I.’s right eye continued to sink back further. We conclude that M.I.’s injury met the legal definition of “great bodily harm” because Sheldon caused a “serious permanent disfigurement” to M.I.’s eye. Minn. Stat. § 609.02, subd. 8; *see also* Minn. Stat. § 609.221, subd. 1 (2022).

II. The district court’s evidentiary rulings were not an abuse of discretion.

Sheldon argues that the district court abused its discretion in four evidentiary rulings: (1) prohibiting Sheldon from calling M.I. as a rebuttal witness; (2) allowing the state to introduce statements under the medical-diagnosis hearsay exception; (3) allowing the state to introduce inadmissible relationship evidence; and (4) admitting M.I.’s statement to an officer as a recorded recollection. We address each argument in turn while reviewing the “district court’s evidentiary rulings for an abuse of discretion.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

A. The district court did not abuse its discretion by prohibiting Sheldon from calling M.I. as a rebuttal witness.

Sheldon argues that the district court abused its discretion by not considering the *Lindsey* factors when prohibiting him from calling M.I. as a rebuttal witness after sustaining the state’s lack-of-notice objection. *See State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979) (providing four factors for district courts to consider when imposing sanctions for discovery violations). We affirm based upon the district court’s other articulated reasons for prohibiting Sheldon from calling M.I. as a rebuttal witness.

M.I. testified during the state’s case-in-chief and was subject to defense counsel’s cross-examination. During its case-in-chief, the state also called two witnesses, H.I. (M.I.’s mother) and S.B. (a mutual acquaintance), to testify about their “perceptions of [Sheldon and M.I.’s] relationship between the time they met into . . . July of 2023.”

After the state rested, defense counsel asked to call M.I. as a witness to rebut H.I. and S.B.’s perceptions. The district court ruled that H.I. and S.B. testified about their own

impressions and observations about M.I. and Sheldon's relationship and, therefore, M.I. is not competent to testify about other people's perceptions. Because the denial of Sheldon's request was not based upon a discovery violation, the district court had no obligation to consider the *Lindsey* factors. We also conclude that the district court acted within its discretion in prohibiting Sheldon from calling M.I. as a rebuttal witness based upon the district court's reasoning that M.I. was not competent to rebut the testimony of H.I. and S.B. See *State v. Collins*, 150 N.W.2d 850, 860 (Minn. 1967) ("[W]hat is proper rebuttal evidence rests almost wholly in the discretion of the [district] court.").

B. Admitting the doctor's testimony about the medical notes constituted plain error, but Sheldon has not established that the error affected his substantial rights.

Sheldon argues that the district court abused its discretion by allowing "blame-casting statements" to be admitted under the medical-diagnosis hearsay exception. Sheldon did not, however, raise a hearsay objection to the admission of the now-challenged testimony. Instead, Sheldon objected to the testimony contending that: (1) notice was untimely, and (2) that H.I., not M.I., told medical professionals that M.I. had been assaulted by her significant other. Sheldon does not raise these arguments on appeal.

Our review of this issue, therefore, is for plain error. *State v. Myhre*, 875 N.W.2d 799, 804 (Minn. 2016). To demonstrate plain error, Sheldon must show (1) an error, (2) that was plain, and (3) the error affected the defendant's substantial rights. *Id.*

We first consider whether the district court plainly erred. "An error is 'plain' if it is clear or obvious." *State v. Vue*, 797 N.W.2d 5, 13 (Minn. 2011). This requires that the error "contravene[] case law, a rule, or a standard of conduct." *Id.*

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 inadmissible unless an exception applies. Minn. R. Evid. 802.

Statements explaining the cause of an injury are generally admissible under the medical-diagnosis hearsay exception. Minn. R. Evid. 803(4). But when the record lacks “evidentiary foundation to establish that the identity of the person who caused an injury was reasonably pertinent to the medical diagnosis or treatment of that injury, [a] statement of identity is not admissible” under the medical-diagnosis hearsay exception. *State v. Robinson*, 718 N.W.2d 400, 407 (Minn. 2006).

Based upon our thorough review of the record, we conclude that the district court committed plain error by admitting the doctor’s testimony that M.I. was assaulted by Sheldon. The testimony contravened *Robinson* and rule 803(4) because the state offered no evidentiary foundation to establish that medical notes that identified M.I.’s significant other “was reasonably pertinent to the medical diagnosis or treatment” such that the testimony could be admissible under the medical-diagnosis hearsay exception. *Id.*

We next analyze whether the plain error affected Sheldon’s substantial rights. An error affects a defendant’s substantial rights “if there is a reasonable likelihood that [the error] . . . had a significant effect on the verdict.” *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). Sheldon bears the “heavy burden” of persuasion to show prejudice. *Id.*

Although Sheldon argues the issue under the harmless-error standard for an objected-to error, the Minnesota Supreme Court has held that the harmless-error standard “is the equivalent” of the third prong—whether the plain error affected a defendant’s

substantial rights—of the plain-error test. *See State v. Matthews*, 800 N.W.2d 629, 634 (Minn. 2011). Following the supreme court’s lead, we must consider the four factors for harmless-error review. *Id.* (citing *State v. Ferguson*, 581 N.W.2d 824, 833 (Minn. 1998)). Those factors are: “(1) the manner in which the [s]tate presented the testimony, (2) whether the testimony was highly persuasive, (3) whether the [s]tate used the testimony in closing argument, and (4) whether the defense effectively countered the testimony.” *Id.*

The manner in which the state presented the evidence did not create a reasonable likelihood that the testimony substantially affected the verdict. The doctor gave one mention of the medical report that identified M.I.’s significant other as the assailant.

We conclude, however, that the testimony was highly persuasive. The doctor testified that he “put in my report that [M.I.] stated she was assaulted by a significant other.” That testimony gives a strong inference that Sheldon was the assailant. On appeal, Sheldon claims that without the doctor’s testimony the jury might have believed his testimony—that some unknown assailant assaulted M.I. According to his testimony, Sheldon found M.I. “battered” on the front steps of his apartment building at 3 a.m. after he woke up and decided to look for his cell phone outside of the apartment building. Sheldon testified that he assisted M.I. to his apartment where she stayed for a few minutes and then ran out of the apartment and was screaming while running down the hallway. At which point, a neighbor found M.I. in the vestibule and called 911.

We disagree with Sheldon’s assessment of the evidence. The physician’s mention of the medical report was overshadowed by strong evidence of guilt. The evidence at trial established that Sheldon had physically abused M.I. multiple times over the course of

several months, leaving M.I. with visible bruises and black eyes. The evidence showed that M.I. moved out of their apartment after one incident, which resulted in a domestic-abuse no-contact order being issued against Sheldon. The evidence also showed that Sheldon was verbally abusive and controlling toward M.I. Thus, even without the doctor's brief testimony, the evidence supported a strong inference that Sheldon had assaulted M.I.

Finally, the state did not emphasize the testimony during closing argument. The prosecutor mentioned the testimony once in an otherwise lengthy closing argument.

After having reviewed the record in light of the factors articulated by the supreme court, we conclude that there is no reasonable likelihood that admitting the doctor's testimony significantly affected the verdict. We conclude that Sheldon has not met his burden to demonstrate that the plain error affected his substantial rights.

C. The court did not abuse its discretion in admitting relationship evidence.

Sheldon argues that the district court abused its discretion by admitting relationship evidence in violation of the Confrontation Clause and hearsay rules. "Evidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members, is admissible unless the probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, or misleading the jury[.]" Minn. Stat. § 634.20 (2022).¹ Evidence admitted under this statute is referred to as "relationship evidence." *State v. Zinski*, 927 N.W.2d 272, 276 (Minn. 2019).

¹ Although the legislature lacks power to dictate what evidence may be considered in a trial, *In re Tracy*, 266 N.W. 88, 93 (Minn. 1936), the supreme court has adopted section 634.20 as a rule of evidence. *State v. Fraga*, 864 N.W.2d 615, 627 (Minn. 2015).

Sheldon seeks a new trial based upon the admission of the following evidence: (1) an anonymous 911 call that reported the crime for which Sheldon was convicted; (2) an officer's body-worn-camera footage and subsequent testimony; and (3) testimony by H.I. about how M.I. sustained her injuries. We are not persuaded.

1. The district court did not violate the Confrontation Clause by admitting an anonymous 911 call.²

Sheldon argues that the district court's admission of an anonymous 911 call into evidence violated his rights under the Confrontation Clause. In the call, a resident of the apartment building finding M.I. in the lobby with visible injuries, told the 911 operator that Sheldon had attacked M.I., and noted that they "need[ed] a cop [t]here ASAP." Sheldon argues that the district court abused its discretion by admitting the 911 call because it was testimonial and because Sheldon did not have an opportunity to cross-examine the caller.

A criminal defendant has a right "to be confronted with the witnesses against [them]." U.S. Const. amends. VI, XIV; Minn. Const. art. I, § 6. The Confrontation Clause prohibits the "admission of testimonial statements of a witness who did not appear at trial unless [they were] unavailable to testify and the defendant had had a prior opportunity for cross-examination." *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). We review de novo whether admitted evidence violated a defendant's rights under the Confrontation Clause. *State v. Sutter*, 959 N.W.2d 760, 764 (Minn. 2021).

² Sheldon does not appear to challenge the admission of the anonymous 911 call as improper relationship evidence. Instead, Sheldon argues that the evidence was improperly admitted as violating the Confrontation Clause and hearsay rules. We analyze the issue under the "relationship evidence" heading to track Sheldon's appellate brief.

The first question in a Confrontation Clause analysis is whether the statement at issue is “testimonial.” *Crawford*, 541 U.S. at 51. A statement is “nontestimonial” if it is made under circumstances that objectively indicate that the primary purpose was to enable assistance to meet an ongoing emergency. *Davis v. Washington*, 547 U.S. 813, 822 (2006). A statement is “testimonial” if “the circumstances objectively indicate that there is no such ongoing emergency” and the primary purpose of the statement was made to establish past events that may be relevant to later criminal prosecution. *Id.*

To determine whether the statement was testimonial, we must consider whether

(1) the [non-testifying person] described events as they actually happened and not past events; (2) any “reasonable listener” would conclude that the [person] was facing an ongoing emergency; (3) the questions asked and answers given were necessary to resolve a present emergency, rather than only to learn what had happened in the past; and (4) there was a low level of formality in the interview because the [person’s] answers were frantic and [their] environment was not tranquil or safe.

State v. Warsame, 735 N.W.2d 684, 690 (Minn. 2007).

First, the caller described the circumstances using both past-tense language (“she was attacked,” “she was choked,” and “she got pretty throttled”) and present-tense language (“she has visible marks on her neck,” and “she’s pretty beat up”). In totality, the 911 caller described the events that they observed. Even the caller’s past-tense language was describing their present observations of M.I.’s injuries.

Second, a reasonable listener would conclude that the caller and M.I. faced an ongoing emergency. Although the altercation had ended, the caller described M.I.’s significant injuries and noted that Sheldon was still in the apartment and did not know that

someone was calling 911. The caller asked whether M.I. should move to the caller's apartment or stay in the lobby until police arrived. The caller also implored the dispatcher that they "need[ed] a cop [t]here ASAP." These portions of the 911 call suggest that the threat to M.I. had not ended. The reasonable inferences from the caller's description of M.I.'s injuries and Sheldon still being a threat suggests that the emergency was ongoing.

Third, the questions asked by the 911 dispatcher and the callers answers sought to resolve a present emergency. The caller described M.I.'s injuries—"she's pretty beat up" and "she got pretty throttled"—in response to whether M.I. needed medical attention. Those questions and answers were about the present emergency. Similarly, the caller's information about Sheldon's location, inquiring whether to move M.I., and needing an officer there "ASAP" suggest that the call was to resolve a present emergency.

Finally, while the caller does not sound "frantic," they answer the 911 dispatcher's questions very quickly. During the call, M.I. can be heard crying in the background. The caller did not imply that M.I. was safe.

Under the factors articulated in *Warsame*, we conclude that the district court did not abuse its discretion in determining that the 911 call was a nontestimonial statement because the primary purpose of the conversation was to determine whether M.I. needed medical attention and whether Sheldon still posed a threat. As such, the district court did not violate Sheldon's Confrontation Clause rights by admitting the anonymous 911 call.

2. The district court did not abuse its discretion by admitting the officer's body-worn-camera footage.

Sheldon argues that the district court abused its discretion by admitting video from an officer's body-worn camera. We disagree.

A few days after the charged offense, an officer's body-worn camera captured the officer calling H.I. on the phone to discuss M.I.'s assault. H.I. can be heard in the footage saying that M.I. "was just assaulted by her boyfriend," and that "he just beat the f--- out of her a week [prior]." The district court overruled Sheldon's objection.

The statements in the officer's body-worn-camera footage were offered to prove the nature of Sheldon and M.I.'s relationship. *See* Minn. Stat. § 634.20. To ensure that the jury did not consider the evidence for the truth of the matter asserted, the district court gave the following instruction before the jury viewed the body-worn-camera footage:

[D]uring the audio that you are about to listen to, you will hear a portion where there is evidence of conduct by the defendant on July 15 or 16. That evidence is being offered for the limited purpose of demonstrating the nature and extent of the relationship between the defendant and [M.I.] in order to assist you in determining whether the defendant committed those acts with which the defendant is charged in the complaint.

The defendant is not being tried for and may not be convicted of any behavior other than the charged offenses.

We presume that jurors follow a district court's limiting instructions. *Ferguson*, 581 N.W.2d at 835 .

Given that the evidence was not admitted for the truth of the matter asserted and given our presumption that the jury followed the limiting instruction, we conclude that the district court did not abuse its discretion in admitting the body-worn-camera footage.

3. The district court did not abuse its discretion by admitting H.I.’s testimony about how M.I. sustained injuries.

Sheldon argues that the district court abused its discretion by admitting, over his objection on hearsay grounds, H.I.’s testimony about how M.I. sustained injuries. Sheldon challenges H.I.’s testimony regarding her understanding “that [M.I.] was hit in the back of the head multiple times with a large glass jar that had been used to hold spare change.”

We conclude that the district court did not abuse its discretion in overruling Sheldon’s hearsay objection because H.I. did not testify to what M.I. told her. Instead, H.I. testified about her own belief as to how M.I. sustained injuries.

D. The district court did not abuse its discretion by admitting the audio recording of M.I.’s statements to an officer.

Sheldon argues that the district court abused its discretion by admitting, over his objection, an audio recording of M.I.’s statements made in a phone interview the day after the assault. Sheldon contends that the audio was not a recorded recollection because M.I. neither created the evidence herself, nor adopted it when it was fresh in her mind.

Minnesota Rule of Evidence 803(5) provides an exception to the hearsay rule for recorded recollections, which are “record[s] concerning a matter about which a witness once had knowledge but now has insufficient recollection to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness’ memory and to reflect that knowledge correctly.” In *State v. Stone*, the supreme court analyzed a district court’s admission of an audio recording under rule 803(5). 784 N.W.2d 367, 370 (Minn. 2010). The audio recording admitted in *Stone* was between an assault victim and a police officer. *Id.* at 378. The witness did not create the evidence

and the state did not show that the witness adopted the audio recording. *Id.* Nonetheless, the supreme court affirmed the district court’s admission of the recording, reasoning that “the trustworthiness of the record received in evidence is of paramount concern.” *Id.*

Following *Stone*, we determine that Sheldon’s argument fails.³ Like in *Stone*, the recording, here, consisted of a call between a victim of assault (M.I.) and a police officer, which M.I. neither created nor adopted. But the testimony of the police officer here showed that M.I. “made” the statement the day after the assault while the “matter was fresh in” her memory. *See* Minn. R. Evid. 803(5) (noting the statement must have been “made *or* adopted by the witness when the matter was fresh in the witness’ memory”) (emphasis added). As such, also like in *Stone*, there is no issue regarding the “paramount concern” of the “trustworthiness of the” recording. 784 N.W.2d at 378. Accordingly, the district court did not abuse its discretion by admitting the audio recording.

³ Sheldon cites *United States v. Mornan*, in which the Third Circuit held that a district court did not abuse its discretion by declining to admit a witness’s statement as a recorded recollection because the government failed to show that the statement was adopted by the witness. We are neither bound by the Third Circuit’s opinion, nor are we not convinced that *Mornan* has persuasive value as applied to these circumstances. *See Widner v. Ace Auto Parts & Salvage Co.*, 21 N.W.3d 274, 284 (Minn. App. 2025) (“This court is bound by Minnesota Supreme Court and United States Supreme Court precedential decisions but may consider federal caselaw as persuasive.”) (citation omitted).

III. The prosecutor did not commit plain-error prosecutorial misconduct.

Sheldon identifies three unobjected-to prosecutorial errors that he argues require a new trial: (A) eliciting vouching testimony; (B) asking “were they lying” questions; and (C) arguing that a conviction was necessary to protect the community. We review these issues for plain error. *Myhre*, 875 N.W.2d at 804.

A. The prosecutor did not commit plain error by eliciting improper vouching testimony.

Sheldon argues that the prosecutor committed plain error by intentionally eliciting improper vouching testimony. We disagree.

“[O]ne witness may not vouch for or against the credibility of another witness.” *State v. Vick*, 632 N.W.2d 676, 689 (Minn. 2001) (quotation omitted). A witness need not explicitly speak to another witness’s credibility to violate the vouching-testimony rule. *See, e.g., State v. Wembley*, 712 N.W.2d 783, 792 (Minn. App. 2006), *aff’d on other grounds*, 728 N.W.2d 243 (Minn. 2007).

Sheldon challenges the following exchange:

PROSECUTOR: Were you, [H.I.], under the impression that your daughter didn’t know she was injured?

H.I.: No.

The challenged exchange is asking H.I. for her impressions of M.I.’s past knowledge and behavior. The prosecutor did not ask H.I. to comment on M.I.’s testimony at trial or her credibility as a witness. Thus, we conclude that the prosecutor did not commit plain prosecutorial error by eliciting improper vouching testimony.

B. The prosecutor did not commit plain error by asking Sheldon were-they-lying questions on cross-examination.

Sheldon argues that the prosecutor committed plain error by asking him were-they-lying questions on cross-examination:

PROSECUTOR: Mr. Sheldon, do you believe [M.I.] was lying when she told the police how you assaulted her on the 15th and 16th of July? [T]hat you [had] grabbed her by the throat, she said that you kicked her repeatedly on the ground, and that you strangled her. Are those all accurate statements?

SHELDON: Those are lies.

PROSECUTOR: So [M.I.] is a liar, in your opinion.

SHELDON: I'm not saying that.

. . . .

PROSECUTOR: Did you testify that you used to catch [M.I.] in little lies when you were dating?

SHELDON: She had lied before, yes.

PROSECUTOR: So you think [M.I.] was a liar?

SHELDON: Not necessarily.

PROSECUTOR: That she's lying to the police about you assaulting her?

. . . .

SHELDON: I think that it was a chaotic situation, but those statements were incorrect.

PROSECUTOR: So when [M.I.] testified that it was a back-and-forth, 50/50 fight, is that a lie too?

“[A]s a general rule, ‘were they lying’ questions are inappropriate.” *State v. Morton*, 701 N.W.2d 225, 233 (Minn. 2005). Such questions “unfairly giv[e] the jury the

impression that in order to acquit, it must determine that the witness whose testimony contradicts the defendant[']s testimony is lying.” *Id.*

But were-they-lying questions may be “permissible when the defendant [holds] the issue of the credibility of the state’s witnesses in central focus.” *Id.* (alteration in original) (quotation omitted). A defendant does this by “unmistakable insinuation [that] accuses a witness of a falsehood.” *State v. Leutschaft*, 759 N.W.2d 414, 423 (Minn. App. 2009). *See also State v. Pilot*, 595 N.W.2d 511, 518 (Minn. 1999) (concluding “were they lying” questions were permissible where defense’s theory focused on contending that state witnesses were lying and the evidence was fabricated).

Here, Sheldon’s testimony gave an “unmistakable insinuation” that M.I. was lying about being assaulted by Sheldon. At a minimum, reasonable minds could differ as to whether M.I.’s credibility was the central focus of Sheldon’s defense, such that were-they-lying questions were permissible. We have held that, under such circumstances, were-they-lying questions did not constitute *plain* error. *See Leutschaft*, 759 N.W.2d at 423 (“[I]t is reasonably debatable whether the ‘were they lying’ questions were error, and, therefore, they were not plain error.”). Therefore, we conclude that the prosecutor did not commit plain error by asking Sheldon were-they-lying questions on cross-examination.

C. The prosecutor did not commit plain error by suggesting that a conviction was necessary to protect the community in their closing arguments.

Sheldon argues that the prosecutor committed plain error in their closing arguments by suggesting that a conviction was necessary to protect the community and, therefore, presenting issues broader than Sheldon’s guilt or innocence to the jury.

In closing arguments, a prosecutor cannot make “arguments that divert the jury from its duty to decide the case on the evidence[] by injecting issues broader than the guilt or innocence of the accused under the controlling law, or by making predictions of the consequences of the jury’s verdict.” *Nunn v. State*, 753 N.W.2d 657, 662 (Minn. 2008) (quotation omitted). When assessing alleged misconduct during a closing argument, “we look to the closing argument as a whole, rather than to selected phrases and remarks.” *Id.* at 661 (quotation omitted).

During closing argument, the prosecutor stated that “it is the [s]tate’s job to try to protect the community, even when . . . the people who suffer . . . [the] abuse want to keep it a secret.” The prosecutor’s argument, in context, appears to explain why M.I. may have refrained not reported Sheldon as her assailant. In addition, the challenged remark consisted of a single sentence that the prosecutor did not repeat within a closing argument that fills 15 pages of trial transcript.

Additionally, the district court instructed the jury that “arguments or other remarks of an attorney are not evidence” and we presume that juries follow the court’s instructions. *Ferguson*, 581 N.W.2d at 835. Even assuming the statement constituted plain error, we conclude that any error did not affect Sheldon’s substantial rights.

Affirmed.⁴

⁴ Sheldon argues that if the individual errors do not require a new trial, those errors taken cumulatively do. Although the district court committed plain error in admitting the doctor’s testimony about the medical report, we determined that the plain error did not affect Sheldon’s substantial rights. And because the district court did not abuse its discretion in the other evidentiary rulings and the prosecutor did not commit any plain-error misconduct, there is no cumulative error.