

*This opinion is nonprecedential except as provided by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
A25-1041**

State of Minnesota,
Respondent,

vs.

Lebert Clair McDowell,
Appellant.

**Filed June 29, 2026
Affirmed
Larson, Judge**

Hennepin County District Court
File No. 27-CR-24-22536

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

Kristyn Anderson, Minneapolis City Attorney, Lindsey Danielson, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Larson, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

In this direct appeal, appellant Lebert Clair McDowell challenges his domestic-assault conviction on three grounds. First, he argues respondent State of Minnesota presented insufficient evidence to prove that he caused L.B.'s (victim) injuries. Second,

he asserts the state committed prosecutorial misconduct during closing argument. Finally, he contends the district court violated the Confrontation Clause when it admitted testimonial hearsay. We affirm.

FACTS

In October 2024, the state charged McDowell with misdemeanor domestic assault under Minn. Stat. § 609.2242, subd. 1(2) (2024) (domestic assault-harm). The state alleged that McDowell intentionally inflicted bodily harm on victim, his fiancé, during an argument in victim’s apartment where McDowell resided. The following facts were elicited at a jury trial.

On the day of the incident, McDowell and victim began drinking alcohol around 9:30 a.m. Later, McDowell and victim began arguing, during which McDowell “put his hands on” victim. Victim called 911 and contemporaneously recounted the incident to the 911 operator. Victim stated that an unidentified man “put his hands on” her and “he [was] drunk as hell.” After the 911 operator reiterated that the man “put his hands on” her that day, victim responded, “[y]es he did. I’ll show you all the bruises.” Victim then yelled at the man “get out,” and told the operator, “[d]amn, he done cut my finger.” Victim identified the man as her fiancé during the 911 call.¹ After the 911 call, McDowell left the apartment and walked to a nearby bus stop.

Responding to the 911 call, Officer C.S. (officer) and his partner arrived at the apartment and knocked on the door. They heard a person crying and what sounded like

¹ At trial, McDowell confirmed that he was victim’s fiancé.

someone stepping on broken glass. Victim answered the door. Upon entering and while performing a protective sweep, officer asked victim whether her assailant was still in the apartment; victim responded that he had left. While in the apartment, officer observed bruising on victim's arm and shoulder area, along with a cut on her finger. Officer took photographs of the bruises and cut. Victim again confirmed that her assailant had left. Officer's body-worn camera recorded this interaction (the apartment statement).

Officer and his partner left the apartment and went to the nearby bus stop where they approached McDowell. Officer asked McDowell for identification; McDowell refused. Officer told McDowell that he was under arrest for domestic assault. McDowell refused to stand up and told officer he needed an arrest warrant. Officer responded, "I don't need an arrest warrant, the ma'am said you assaulted her" (the bus-stop statement). Officer and his partner arrested McDowell.

Pretrial, the parties disputed the admissibility of two statements. First, McDowell argued the apartment statement was inadmissible because it was testimonial and if admitted, would violate the Confrontation Clause.² The district court allowed the state to present the apartment statement via the body-camera footage, reasoning that the apartment statement was made during an ongoing emergency. Second, McDowell asserted that the bus-stop statement was inadmissible hearsay. The district court disagreed and allowed the state to admit the bus-stop statement via the body-camera footage as non-hearsay. The

² Victim was unavailable to testify at trial.

district court reasoned that the bus-stop statement was consistent with victim's statements during the 911 call.

The jury returned a guilty verdict. The district court then convicted McDowell and sentenced him to 75 days in jail, with credit for time-served.

McDowell appeals.

DECISION

McDowell raises three arguments on appeal. First, he argues the state presented insufficient evidence to sustain his conviction. Second, he asserts that he is entitled to a new trial because the state committed prosecutorial misconduct during closing arguments. Finally, he contends that he is entitled to a new trial because the district court violated the Confrontation Clause when it allowed the state to admit the bus-stop statement. We review each argument in turn.

I.

McDowell first argues the state presented insufficient evidence to sustain his conviction. To prove McDowell committed domestic assault-harm, the state had to prove that McDowell “intentionally inflict[ed] or attempt[ed] to inflict bodily harm” on victim. Minn. Stat. § 609.2242, subd. 1(2). “Bodily harm” is defined as any “physical pain or injury, illness, or any impairment of physical condition.” Minn. Stat. § 609.02, subd. 7 (2018). A “minimal amount of physical pain or injury” satisfies the definition of bodily harm. *State v. Jarvis*, 665 N.W.2d 518, 522 (Minn. 2003). Assault-harm is a general intent crime. *State v. Fleck*, 810 N.W.2d 303, 309-10 (Minn. 2012). This means that, although the state must prove that McDowell “intended to do the physical act forbidden,” the state

does not need to prove that “[he] meant to or knew that [he] would violate the law or cause a particular result.” *State v. Dorn*, 887 N.W.2d 826, 830 (Minn. 2016).

Here, McDowell argues the state failed to prove beyond a reasonable doubt that he caused victim’s injuries. To prove this element, the state needed to demonstrate that McDowell’s application of force to victim was not done “accidentally or involuntarily,” *State v. Lampkin*, 994 N.W.2d 280, 291 (Minn. 2023), and that his application of force resulted in victim’s injury, *see* Minn. Stat. § 609.2242, subd. 1(2).

Because McDowell challenges the sufficiency of the evidence, we must first determine whether the state used direct or circumstantial evidence to prove McDowell caused victim’s bodily harm. *See State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Direct evidence is evidence “based on personal knowledge or observation and . . . if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted).

McDowell contends the state relied on circumstantial evidence to prove McDowell caused victim bodily harm. Relying on *Dorn*, McDowell argues that victim’s statements in the 911 call are only circumstantial evidence that McDowell caused victim’s injuries. In *Dorn*, the supreme court concluded that, even though the victim stumbled on debris, Dorn pushing the victim constituted a battery directly causing the victim’s injuries. 887 N.W.2d at 833. McDowell asserts that, unlike *Dorn*, the only evidence linking victim’s injury to McDowell’s actions was victim’s statements in the 911 call, which requires an inference. We are not persuaded. Victim’s statement that a man—her fiancé—inflicted

the bodily harm, McDowell’s confirmation at trial that he was victim’s fiancé, and photographs depicting victim’s injuries are direct evidence linking McDowell’s application of force on victim to her injuries. *See Harris*, 895 N.W.2d at 599 (stating that personal knowledge, if true, is direct evidence because it does not require additional inferences or presumptions); *see also State v. Ortle*, No. A22-0783, 2023 WL 3445472, *5 (Minn. App. May 15, 2023) (applying the direct-evidence standard after determining, as relevant here, that statements in a 911 call were direct evidence), *rev. denied* (Minn. Aug. 22, 2023).³ Therefore, we apply the direct-evidence test.

When the state relies on direct evidence, we apply “the traditional standard for evaluating the sufficiency of the evidence.” *State v. Jones*, 4 N.W.3d 495, 501 (Minn. 2024). Under this standard, “we limit our review to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *Horst*, 880 N.W.2d at 40 (quotation omitted). When viewing the evidence in the light most favorable to the conviction, we “assume[] that the [factfinder] believed the state’s witnesses and disbelieved any contrary evidence.” *State v. Olson*, 982 N.W.2d 491, 495 (Minn. App. 2022).

We conclude the state presented sufficient direct evidence to prove beyond a reasonable doubt that McDowell’s application of force caused victim bodily harm. Victim stated in the 911 call that an unidentified man “put his hands on” her and “he [was] drunk

³ This opinion is nonprecedential and, therefore, not binding. We cite nonprecedential opinions only as persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

as hell.” After the 911 operator reiterated that the man “put his hands on” her that day, victim responded, “[y]es he did. I’ll show you all the bruises.” Victim then yelled at the man “get out,” and told the 911 operator, “[d]amn, he done cut my finger.” Victim identified the man as her fiancé during the 911 call. At trial, McDowell confirmed that he was victim’s fiancé. Upon arriving at the apartment, officer observed and documented the bruising on victim’s arm and shoulder area, and the cut on victim’s finger. This is sufficient direct evidence to prove McDowell caused victim bodily harm. *See State v. Johnson*, 152 N.W.2d 768, 773 (Minn. 1967) (concluding that there was sufficient evidence to constitute “bodily harm” when the victim experienced pain from being struck); *see also State v. Mattson*, 376 N.W.2d 413, 415 (Minn. 1985) (finding sufficient evidence of physical injury based on a bruise).

For these reasons, we affirm the domestic-assault conviction.

II.

McDowell next argues that he is entitled to a new trial because the state committed prosecutorial misconduct. Specifically, McDowell argues the prosecutor improperly shifted the burden of proof to McDowell when she stated during closing argument: “McDowell testified he did not provide any other reason for [victim’s] bruising on her arm or for the cut on her finger.”

Because McDowell did not object to the prosecutor’s statement at trial, we apply the modified plain-error test. *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). Under this test, the defendant must show that the prosecutor’s conduct constituted (1) an error (2) that was plain. *Id.* An error is plain if it “contravenes case law, a rule, or a standard of

conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn 2006). “If the defendant is successful, the burden then shifts to the [s]tate to demonstrate that the error did not affect the defendant’s substantial rights.” *Portillo*, 998 N.W.2d at 248 (quotation omitted). If the state fails to meet its burden, we “will not grant relief to correct the error unless our failure to do so will cause the public to seriously question the fairness and integrity of our judicial system.” *Pulczynski v. State*, 972 N.W.2d 347, 359 (Minn. 2022).

“[M]isstatements of the burden of proof are highly improper.” *State v. Strommen*, 648 N.W.2d 681, 690 (Minn. 2002) (quotation omitted). A prosecutor improperly shifts the burden of proof “when they imply that a defendant has the burden of proving his innocence.” *State v. McDaniel*, 777 N.W.2d 739, 750 (Minn. 2010) (quotation omitted). However, a prosecutor does not improperly shift the burden of proof if they point to the absence of evidence to support a defendant’s alternative theory. *See State v. Nissalke*, 801 N.W.2d 82, 106-07 (Minn. 2011).

We conclude that McDowell failed to meet his burden to demonstrate that the prosecutor plainly erred. *See Ramey*, 721 N.W.2d at 302. Under existing caselaw, a prosecutor can appropriately note the absence of evidence without inappropriately shifting the burden of proof. *See Nissalke*, 801 N.W.2d at 106-07 (determining no prosecutorial misconduct occurred when comments were on the absence of evidence to support the defense’s theories); *see also State v. Matthews*, 779 N.W.2d 543, 552 (Minn. 2010) (“Prosecutors are allowed to argue that there is no merit to the specific defense raised by the defendant.”); *State v. Race*, 383 N.W.2d 656, 664 (Minn. 1986) (determining a prosecutor’s remark concerning the lack of evidence and challenging one of the defense’s

rebuttal theories did not shift the burden of proof). The prosecutor’s statement in this case that McDowell “did not provide any other reason for [victim’s] bruising on her arm or for the cut on her finger” is analogous and, therefore, did not contravene existing caselaw.

Accordingly, we conclude McDowell is not entitled to a new trial based on prosecutorial misconduct.

III.

Finally, McDowell argues the district court violated the Confrontation Clause when it allowed the state to admit the bus-stop statement. The Sixth Amendment guarantees a criminal defendant the right to be confronted with the witnesses against them. U.S. Const. amend. VI; *see also* Minn. Const. art. 1, § 6. This protection applies to the states through the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See Pointer v. Texas*, 380 U.S. 400, 403 (1965). A defendant’s rights under the Confrontation Clause are violated when a court admits a statement and (1) “the statement . . . was testimonial,” (2) “the statement was admitted for the truth of the matter asserted,” and (3) “the defendant was unable to cross-examine the declarant.” *State v. Sutter*, 959 N.W.2d 760, 765 (Minn. 2021) (quotation omitted).

The parties dispute the appropriate standard of review. McDowell argues the harmless-error test applies because he alleges a constitutional violation. The state contends the plain-error test applies because McDowell did not challenge the bus-stop statement before the district court on constitutional grounds. We agree with the state. The record shows McDowell challenged the bus-stop statement only on hearsay grounds. Therefore, we review for plain error. *See State v. Rossberg*, 851 N.W.2d 609, 618 (Minn. 2014)

(reviewing for plain error when the defendant made a hearsay objection, but not a Confrontation Clause objection); *see also State v. Vasquez*, 912 N.W.2d 642, 650 (Minn. 2018) (applying plain-error standard of review to forfeited evidentiary objection).

“Under the plain-error standard, relief is available only if there is (1) error, (2) that was plain, and (3) that affected the defendant’s substantial rights.” *Rossberg*, 851 N.W.2d at 618 (quotation omitted). If the defendant meets their burden on all three elements, we “may correct the error only when it seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Pulczynski*, 972 N.W.2d at 356 (emphasis omitted).

We assume without deciding that admitting the bus-stop statement violated the Confrontation Clause because any error did not affect McDowell’s substantial rights. *See State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007) (“If a defendant fails to establish that the claimed error affected his substantial rights, we need not consider the other factors.”). “An error affects substantial rights if there is a reasonable likelihood that it substantially affected the verdict.” *Rossberg*, 851 N.W.2d at 618 (quotation omitted). Here, the bus-stop statement was duplicative of properly admitted evidence in the record. Specifically, the bus-stop statement was duplicative of victim’s statements in the 911 call that McDowell “put his hands on” her and “cut [her] finger,” McDowell’s testimony that he applied force to victim, and the photographs of victim’s bruises and the cut on her finger. In light of this evidence, it is not reasonably likely that the bus-stop statement substantially affected the jury’s verdict.

For these reasons, we conclude McDowell is not entitled to a new trial based upon the admission of the bus-stop statement.

Affirmed.