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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1268**

State of Minnesota,
Respondent,

vs.

Jorge Luis Sandoval,
Appellant.

**Filed July 6, 2026
Affirmed
Larson, Judge**

Washington County District Court
File No. 82-CR-23-3841

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

Kevin M. Magnuson, Washington County Attorney, Andrew Jackola, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Evan A. Ottaviani, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Rasmusson, Judge; and Kirk,
Judge.*

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

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Jorge Luis Sandoval challenges his fifth-degree criminal-sexual-conduct conviction on the basis that respondent State of Minnesota committed multiple instances of prosecutorial misconduct. We affirm.

FACTS

The following facts are based on the evidence received at a jury trial. S.L. (victim) and K.L., victim's sister (sister), left their cousin's birthday party and discovered their car had been towed. Victim and sister noticed a "permit parking only" sign posted where their car had been parked and contacted the towing company listed on the sign. After confirming their car had been towed, victim, sister, and L.B., victim's mother (mother), went to the impound lot. Sandoval was the only employee working in the impound lot that night.

At the impound lot, victim and sister got into a tow truck with Sandoval to retrieve their car while mother went to a gas station to get cash for the towing fee. Because the tow truck only had two seats, victim and sister shared the passenger seat. While in the tow truck, Sandoval asked victim if she was wearing a bra; then, without victim's consent, Sandoval touched and squeezed victim's breast over her clothing.¹

¹ Sister's recollection differed slightly. Sister recalled Sandoval asking victim why victim was "touching her" breasts before Sandoval touched victim's breast. Victim testified that Sandoval asked her if she was wearing a bra then touched her breast and squeezed it three times. Despite these discrepancies, both sister and victim recall Sandoval touching victim's breast without victim's consent.

After Sandoval brought the car to the front of the impound lot, victim exited the tow truck, walked to mother's car, and texted her boyfriend about the incident. Sister reported the incident to mother. Despite encouragement from sister and mother, victim was hesitant to report the incident to law enforcement. Later that evening, victim made a police report. The state charged Sandoval with one count of fifth-degree criminal sexual conduct under Minn. Stat. § 609.3451 (2022).

Before trial, the state filed a motion requesting that the district court prohibit any mention of victim's previous sexual conduct in front of the jury; Sandoval did not object. The district court granted the state's motion. At the jury trial, victim, sister, mother, a responding police officer, and Sandoval testified. As relevant here, sister testified about victim's demeanor following the incident, stating that victim was "very distraught" and attributing this to victim's "past history of sexual assault." Sandoval did not object to sister's testimony. When Sandoval testified, he denied touching victim.

During closing arguments, the prosecutor highlighted pertinent aspects of victim's testimony and noted that sister and mother corroborated victim's version of events. The prosecutor stated that Sandoval's "testimony that this didn't happen doesn't make sense." Thereafter, the prosecutor reiterated that victim's version of events remained consistent and corroborated and, therefore, "[victim] should be believed. So believe [victim] and return a verdict of guilty."

The jury found Sandoval guilty on the sole count. The district court imposed a 364-day jail sentence, with 334 days stayed for up to two years.

Sandoval appeals.

DECISION

Sandoval argues that he is entitled to a new trial because the prosecutor committed multiple instances of prosecutorial misconduct. The central concern regarding prosecutorial-misconduct claims “is that [the] misconduct may deny the defendant’s right to a fair trial.” *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). Prosecutors are ministers of justice with “an affirmative obligation to ensure that a defendant receives a fair trial, no matter how strong the evidence of guilt.” *Id.*

Because Sandoval did not object to the alleged prosecutorial misconduct, 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 is clear or obvious,” usually when the prosecutor contravened “case law, a rule, or a standard of conduct.” *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (quotation omitted).

If the defendant establishes plain error, “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). Misconduct does not affect substantial rights if “there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Ramey*, 721 N.W.2d at 302. To determine whether a reasonable likelihood exists, “we consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions.” *Portillo*, 998 N.W.2d at 251-52 (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).

Here, Sandoval argues prosecutorial misconduct occurred when the state: (1) elicited improper testimony from sister regarding victim’s sexual-assault history; (2) shifted the burden of proof during closing argument; (3) improperly vouched for the victim during closing argument; and (4) made an improper social-policy argument. Sandoval also argues that, even if each individual error was insufficient to require reversal, the cumulative errors require a new trial. We address these arguments in turn.

A. Sexual-Assault History

Sandoval first argues the state engaged in prosecutorial misconduct when it elicited improper testimony from sister regarding victim’s sexual-assault history. A prosecutor engages in misconduct when they introduce evidence the district court previously ruled inadmissible. *See State v. Ray*, 659 N.W.2d 736, 744-46 (Minn. 2003). Here, the district court granted the state’s pretrial motion to prohibit witnesses from testifying about victim’s prior sexual conduct, which included references to allegations of sexual abuse. *See Minn. Stat. § 609.347* (2022); *see also State v. Kobow*, 466 N.W.2d 747, 750 (Minn. App. 1991) (concluding that the term “sexual conduct” as used in Minn. Stat. § 609.347 includes “allegations of sexual abuse”), *rev. denied* (Minn. Apr. 18, 1991). At trial, the prosecutor elicited testimony from sister about victim’s demeanor following the incident, which revealed victim’s sexual-assault history. The exchange occurred as follows:

PROSECUTOR: Okay. How did [victim] seem when [the touching] happened?

SISTER: Very distraught because we both looked at each other because she's had a past history with sexual assault.

Because the district court ruled that such testimony was inadmissible, we conclude that the prosecutor committed plain-error misconduct when they elicited this testimony from sister.² *See Ray*, 659 N.W.2d at 744-746. Having identified a plain error, the burden shifts to the state to demonstrate that this error did not affect Sandoval's substantial rights. *See Portillo*, 998 N.W.2d at 248.

We conclude that the state met its burden here. The state had a strong case against Sandoval. Victim's testimony that Sandoval touched her breast was consistent with victim's police report and corroborated by sister. The error was not pervasive; rather, it was a single fleeting remark. And the state neither asked follow-up questions, nor revisited sister's improper testimony during closing arguments. Moreover, Sandoval had an opportunity to respond to the testimony, *see Portillo*, 998 N.W.2d at 251, because he used the testimony to argue "[victim's] past . . . could be a reason [victim] would lie about this."

² To the extent the state argues there was no misconduct because the prosecutor did not *intentionally* elicit the improper testimony, we are not persuaded. Our courts recognize that a state witness providing improper testimony may constitute prosecutorial misconduct, even when it is unclear that the prosecutor intentionally elicited the improper testimony. *See State v. Mahkuk*, 736 N.W.2d 675, 689 (Minn. 2007) ("Based on the record, we cannot determine whether [the witness's] violation of the trial court's order was intentional or not; nonetheless, it was misconduct attributable to the prosecutor."); *see also State v. Carlson*, 264 N.W.2d 639, 641 (Minn. 1978) (noting the state must prepare its witnesses so they "will not blurt out anything that might be inadmissible and prejudicial"); *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003) ("The state has a duty to prepare its witnesses, prior to testifying, to avoid inadmissible or prejudicial statements.").

For these reasons, sister's improper testimony did not affect Sandoval's substantial rights.

B. Burden of Proof

Sandoval argues second that the state engaged in prosecutorial misconduct when it shifted the burden of proof during closing argument. Specifically, Sandoval contends that the prosecutor's statement that "Sandoval's testimony that this didn't happen doesn't make sense" impermissibly shifted the burden of proof.

"[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). When reviewing whether a prosecutor improperly shifted the burden of proof, we "must look at the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence to determine whether reversible error has occurred." *McDaniel*, 777 N.W.2d at 751 (quotation omitted).

Sandoval argues the prosecutor's statement during closing argument was analogous to the improper burden shifting that occurred in *Strommen*. There, during closing argument, the prosecutor stated, "[w]hen we have difficult cases like this, sometimes the only way to deal with it is just to weigh the story in each hand and decide which one is

most reasonable, which one makes the most sense.” *Strommen*, 648 N.W.2d at 685. The supreme court concluded the prosecutor’s statement was plainly erroneous because it misstated “the state’s burden to prove each element of the crime charged beyond a reasonable doubt” and “may have” affected the jury’s decision. *Id.* at 690. *Strommen* is distinguishable from this case. Here, the prosecutor did not ask the jury to “weigh” the parties’ testimony and “decide which one” makes more sense. Rather, the prosecutor made the statement that Sandoval’s testimony did not “make sense” while highlighting and analyzing discrepancies in Sandoval’s testimony regarding the incident.

The prosecutor’s statement was more akin to *Nissalke*. 801 N.W.2d at 106. There, during closing argument, the prosecutor discredited the defense’s theory when they stated, “there’s nobody who can really provide an alibi for the defendant.” *Id.* The supreme court concluded the statement was not an attempt “to shift the burden of proof. Instead, these comments argued that there was an absence of evidence to support theories that [the defendant] put before the jury.” *Id.* at 107. Similarly here, the prosecutor did not shift the burden of proof to Sandoval because, when viewed in context, the prosecutor made the “make sense” statement to highlight discrepancies in Sandoval’s testimony, which demonstrated an absence of evidence to support Sandoval’s version of events.³

We therefore conclude the prosecutor’s statement was not plain-error misconduct.

³ We further note that, even if the prosecutor’s statement had shifted the burden of proof, “corrective instructions by the court can cure prosecutorial error.” *McDaniel*, 777 N.W.2d at 750. Here, the prosecutor argued the proper burden of proof in closing, and the district court properly instructed the jury on the state’s burden of proof and instructed the jury to “disregard” any differing statements by the parties.

C. Vouching

Sandoval argues third that the state engaged in prosecutorial misconduct when the prosecutor improperly vouched for victim during closing argument. Sandoval specifically challenges the following statements: “So why should you believe [victim]. Because she has no motivation to lie. She didn’t get anything out of this. They still had to pay th[e] \$420 [towing fee to retrieve the car]. She had nothing to gain from it and quite a bit to lose, because this is not a dignifying process.” The prosecutor then recounted pertinent aspects of victim’s testimony. Thereafter, the prosecutor stated:

[Victim] was careful. She readily admitted when she didn’t remember a fact or she wasn’t sure about a fact. But she was firm in what she did remember and what she remembered was being violated by . . . Sandoval. She was frank, she was sincere, and she should be believed.

The prosecutor ended the closing argument, repeating, “[victim] should be believed. So believe her and return a verdict of guilty.”

A prosecutor engages in misconduct when they use their personal opinion to bolster the state’s witness’s credibility. *See State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984); *see also State v. Patterson*, 577 N.W.2d 494, 497 (Minn. 1998) (stating that vouching occurs “when the government implies a guarantee of a witness’s truthfulness, refers to facts outside the record, or expresses a personal opinion as to a witness’s credibility”). It is the jury’s job to determine witness credibility, and therefore an advocate “may not throw onto the scales of credibility the weight of his own personal opinion.” *Ture*, 353 N.W.2d at 516. However, “prosecutors are not prohibited from arguing that certain witnesses are

believable.” *State v. Rucker*, 752 N.W.2d 538, 552 (Minn. App. 2008), *rev. denied* (Minn. Sept. 23, 2008).

Sandoval contends that the prosecutor impermissibly vouched for victim, comparing the prosecutor’s argument to *State v. Nowels*. 941 N.W.2d 430, 439 (Minn. App. 2020), *rev. denied* (Minn. June 16, 2020). In *Nowels*, appellant argued that the prosecutor improperly vouched for the victim-witness when they stated the victim “didn’t lie.” *Id.* at 438. We concluded that the prosecutor committed plain-error misconduct because “the prosecutor went beyond merely arguing [the victim’s] credibility or that he was believable—she stated that *he did not lie*.” *Id.* at 439. Sandoval asserts that the prosecutor’s statement to the jury that victim “*should* be believed” similarly inserts the prosecutor’s personal opinion about the victim’s truthfulness. (Emphasis added.)

The state disagrees, urging that, under existing case law, the prosecutor’s statements were not an improper endorsement of victim’s credibility. The state cites several cases to support its argument. For example, in *Rucker*, we determined that no improper vouching occurred when the prosecutor stated: “This is a search for the truth. A search for the truth is what we do in criminal court. And that’s what those two girls testified to.” 752 N.W.2d at 552. And in *State v. Leutschafft*, we concluded no improper vouching occurred when the prosecutor said, “[victim] was very honest on the stand, both on direct and cross.” 759 N.W.2d 414, 425 (Minn. App. 2009), *rev. denied* (Minn. Mar. 17, 2009). In *State v. Gail*, the supreme court concluded that the prosecutor calling the witness “a believable person” and “frank and sincere” was not improper vouching. 713 N.W.2d 851, 866 (Minn. 2006). And in *State v. Swanson*, the supreme court held that the prosecutor was *not*

vouching for witnesses when they said the witnesses were “very believable,” but the prosecutor was impermissibly vouching for a witness when they stated “[t]he state believes [the witness] is very believable.” 707 N.W.2d 645, 656 (Minn. 2006).

We conclude the prosecutor’s statements in this case are akin to those non-vouching statements in *Rucker*, *Leutschaft*, *Gail*, and *Swanson*. Here, the prosecutor did not make a personal endorsement or guarantee of the witness’s truthfulness but instead stated that victim “should be believed” after drawing upon record evidence. *See Rucker*, 752 N.W.2d at 552 (stating that a prosecutor may argue that a witness was or was not credible based on the evidence presented at trial); *see also Gail*, 713 N.W.2d at 866 (stating that prosecutors are not prohibited from arguing that certain witnesses are believable).

Sandoval argues alternatively that, even if the statements about believing the victim were not improper vouching, the prosecutor’s statements about the difficulties involved in bringing charges against Sandoval crossed the line into improper vouching. Again, we disagree. In *Rucker*, the prosecutor, told the jury that they “can look at [the victim’s] frankness and their sincerity from the standpoint of how difficult it was for them to be subjected to” direct- and cross-examination. 752 N.W.2d at 553. And we concluded that no improper vouching occurred.⁴ *Id.*

⁴ We reached a similar conclusion in *State v. Borg*. No. A09-243, 2012 WL 987273 (Minn. App. Mar. 26, 2012), *rev. denied* (Minn. June 19, 2012); *see also* Minn. R. Civ. App. P. 136.01 (noting we may cite nonprecedential opinions as persuasive authority). There, the prosecutor stated in their closing argument “that the [witness] would not have taken the stand and testified about personal and embarrassing things if she were making them up.” *Id.* at *4. We concluded that the prosecutor’s statement was not a personal endorsement of credibility, but rather “an explanation as to why the complainant’s testimony was credible.” *Id.*

Because we conclude the statements made in this case are akin to the permissible statements in *Rucker*, *Leutschaft*, *Gail*, and *Swanson*, the closing argument did not contravene existing caselaw. Accordingly, the prosecutor did not engage in plain-error misconduct.

D. Social Policy

Sandoval asserts fourth that the state engaged in prosecutorial misconduct when the prosecutor injected a broad social policy into the case. Specifically, Sandoval argues the prosecutor committed misconduct when they “repeatedly [told] the jury to believe [victim] after eliciting testimony that she had a history of sexual assault.” Sandoval contends this improperly inserted a broader theme—that society should believe sexual-assault survivors. We are not persuaded.

“[I]t is improper for the prosecutor to make statements urging the jury to protect society or to send a message with its verdict.” *State v. Duncan*, 608 N.W.2d 551, 556 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000). “[T]he state should refrain from asking questions or making arguments that would divert the jury from its duty to decide a case on the evidence by injecting issues broader than a defendant’s guilt or innocence into the trial.” *State v. Dobbins*, 725 N.W.2d 492, 512 (Minn. 2006).

In *Duncan*, we concluded that misconduct occurred when the prosecutor urged the jury to return a guilty verdict “to send a message generally affirming the allegations of children and the work of law enforcement.” 608 N.W.2d at 556. And in *State v. Peterson*, we determined the prosecutor engaged in misconduct when they “urge[d] the jury to send a message to the children of the world ‘that we will protect you’ . . . [and] drew the jury’s

attention away from the particular facts of this case to broader societal problems.” 530 N.W.2d 843, 848 (Minn. App. 1995). Here, unlike *Duncan* and *Peterson*, Sandoval does not point to any specific statement where the prosecutor asked the jury to return a guilty verdict based on broad social policies,⁵ nor do we find one in our review of the record.

We conclude that the prosecutor did not insert broad social policies into the case and, therefore, did not commit plain-error misconduct.

E. Cumulative Error

Finally, Sandoval contends that we should reverse on the ground that the cumulative errors require a new trial. A defendant “may be entitled to a new trial in rare cases where the errors, when taken cumulatively, have the effect of denying [the] appellant a fair trial.” *State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017) (quotation omitted). Here, we conclude the state only committed one instance of plain-error misconduct, which did not affect Sandoval’s substantial rights, thus Sandoval has not met his burden to show cumulative error.

Affirmed.

⁵ Rather Sandoval points to the combination of the prosecutor’s statements about victim’s believability and *sister’s* earlier testimony about victim’s prior sexual-assault history. We do not agree that, through these separate statements, the prosecutor “inject[ed] issues broader than a defendant’s guilt or innocence into the trial.” *See Dobbins*, 725 N.W.2d at 512.