

*This opinion is nonprecedential except as provided by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
A22-0151**

State of Minnesota,
Respondent,

vs.

Corrie Raeann Thompson,
Appellant.

**Filed December 5, 2022
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-20-15978

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Lisa Lopez, Acting Fourth District Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Frisch, Judge; and Cleary,
Judge.*

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

NONPRECEDENTIAL OPINION

FRISCH, Judge

Following her conviction for third-degree assault, appellant argues that the prosecutor committed misconduct warranting a new trial by making certain statements during closing argument. Because we discern no prosecutorial misconduct, prejudice to appellant affecting her substantial rights, or impairment of the fairness and integrity of the proceedings, we affirm.

FACTS

On July 20, 2020, following an assault of A.R., respondent State of Minnesota charged appellant Corrie Raeann Thompson and a co-defendant, K'Lob Stewart, with one count of first-degree assault causing great bodily harm, Minn. Stat. § 609.221, subd. 1 (2018), and one count of third-degree assault causing substantial bodily harm, Minn. Stat. § 609.223, subd. 1 (2018). Thompson and Stewart were tried jointly before a jury, and the jury's verdict against Thompson was based on the following evidence presented at trial.

Thompson worked at the Circle of Life Center. The victim, A.R., has cerebral palsy and received services at the center. A.R. began dating Stewart in high school, but she was no longer in a relationship with Stewart at the time of the reported assault. A.R. and Stewart share a daughter, J.S., who was two years old at the time of this event. Stewart physically abused A.R. during their relationship. As of the date of the assault, Stewart was in a romantic relationship with Thompson, and A.R. had not seen Stewart for several months.

On July 5, 2020, Stewart called A.R. about a Facebook post that contained offensive statements, including statements about Thompson's father and brother. A.R. denied

knowledge of the post and she said it originated from a fake account. A.R. testified that during the phone call, Stewart was “talking to [her] crazy, yelling at [her], and screaming at [her].” A.R. said she also recognized Thompson’s voice on the phone call. A.R. called police twice to report her fear that Stewart might hurt her and asked if police could apprehend Stewart before “something bad happens.” An officer told A.R. that police could not take any action under the circumstances.

On July 6, 2020, Stewart appeared outside A.R.’s apartment, threw rocks at her window, cried, and said he wanted to see J.S. A.R. woke J.S. and let Stewart into her apartment. Stewart entered the apartment with Thompson and Stewart’s two brothers. A.R. was surprised that Stewart was not alone.

A.R. testified that Thompson went to the bathroom, and when she came out, Stewart said to Thompson, “Go ahead. Get her.” A.R. said Thompson grabbed her hair, threw her to the floor, and punched and kicked her head and face. Stewart kicked A.R. in the face. A.R. grabbed Stewart’s leg and said, “Tell her to stop.” Stewart “lightly” pushed Thompson off A.R. Stewart dragged A.R. along the floor, into the hallway, and punched A.R.’s arms and side.

The state introduced evidence of two 911 calls following the incident. A.R. testified that she did not recall placing an emergency call. The transcript of one call is a report from a caller that her boyfriend and his girlfriend “beat me up really bad.” The transcript also indicates that the caller was occasionally not responsive, and she said she was bleeding and trying to stay focused.

Police arrived at the scene. Body-camera footage shows J.S. in a squad car saying, “daddy hurt mommy” and J.S. making another statement, either “Daddy stopped it,” or “Daddy stepped in it.” Officers observed numerous injuries on A.R.’s face and blood on her face and shirt. A.R. reported to one officer that Stewart had said he wanted to see his daughter, A.R. asked Stewart and his party to leave, and a fight broke out. Testimony from medical professionals confirmed that A.R. had numerous injuries to her face, head, and shoulder. A surgeon realigned A.R.’s nose and repaired a fracture in her jaw. A laceration on top of A.R.’s scalp was consistent with the possibility that her hair had been pulled.

Thompson testified in her defense. She stated she accompanied Stewart to the apartment and that initially everybody was “talking and, like, happy,” but that A.R. became upset when she saw Thompson and asked Stewart, “Why did you bring her? I don’t want her here.” Thompson said A.R. “got really, really upset and angry” and yelled at Thompson, told her to leave, and made offensive statements about Thompson’s father and brother.

Thompson testified that A.R. first punched Thompson in the eye and nose and that Thompson pushed A.R. away. Thompson stated that A.R. came at her again, and in response, Thompson punched A.R. “maybe twice,” pulled A.R. to the ground, and kicked her twice. Thompson claimed that A.R.’s assault resulted in bruising and the jury received photos depicting a bruise around Thompson’s left eye and blood in the eye. Thompson said A.R. was not bloody or bruised when they left the apartment.¹

¹ Thompson also testified she was still in a relationship with Stewart at the time of trial but was not communicating with him. The state introduced evidence that between March

K.G. also testified at trial. K.G. did not know Stewart or Thompson, but she was familiar with A.R. from their interactions in the neighborhood. K.G. testified that she ran into A.R. and saw that A.R.'s face was bruised. K.G. asked A.R. what happened, and K.G. testified that A.R. said she was in an "incident" but was "laughing about it" because she had "pinned it on somebody else that really didn't do it." K.G. testified that A.R. also mentioned pinning it on her "baby dad" and saying "I can do whatever I want." K.G. testified she then made efforts to find Stewart's attorney and report what A.R. had said because A.R.'s actions did not "sit right" with her. K.G. denied that Stewart's or Thompson's families had urged her to make these claims. On cross-examination, K.G. stated that A.R. identified Stewart and Thompson by name, and that K.G. remembered their names a year later when she contacted defense counsel. A.R. denied talking with K.G. about the incident and testified that she never told anyone that someone other than Stewart and Thompson were responsible for her injuries.

During closing argument, the prosecutor made several statements about the state's burden of proof, witness credibility, and A.R. The jury found Thompson not guilty of first-degree assault, and guilty of third-degree assault.

Thompson appeals.

9 and July 27, 2021, Stewart made over 1,400 jail calls to a number belonging to Thompson, which Thompson denied. The state also introduced recordings of the calls between Thompson and Stewart, and the court informed the jury that the parties had stipulated that the voices on the recordings were of Thompson and Stewart.

DECISION

Thompson raises one issue on appeal: that the prosecutor's statements and theme during closing argument amount to misconduct warranting a new trial. Thompson specifically argues that the prosecutor misstated, diluted, and shifted the state's burden of proof, made improper statements about the credibility of witnesses, and stoked sympathy for the accuser.

We review this alleged prosecutorial misconduct under a modified plain-error test because Thompson did not object during closing argument. *See State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012) (citing *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006)). Under the modified plain-error test, Thompson must show that the misconduct was error and that the error was plain. *Id.* An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *Ramey*, 721 N.W.2d at 302. When reviewing a closing argument for plain error, we look “to the closing argument as a whole, rather than to selected phrases and remarks.” *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (quotation omitted). If Thompson establishes the existence of plain error, the “burden then shifts to the [s]tate to demonstrate that the error did not affect the defendant's substantial rights.” *Carridine*, 812 N.W.2d at 146. Plain error affects substantial rights “if the error was prejudicial and affected the outcome of the case.” *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). Error is “prejudicial” if there is a “reasonable likelihood” that it had a significant effect on the verdict. *Id.* (quotation omitted). Even where misconduct occurs, we will reverse only when “the defendant was denied a fair trial.” *State v. Porter*, 526 N.W.2d 359, 365 (Minn. 1995). If all prongs of the modified plain-error test are satisfied, we assess “whether the

error should be addressed to ensure fairness and the integrity of the judicial proceedings.”
Ramey, 721 N.W.2d at 302.

Burden of Proof

Thompson argues that the totality of the prosecutor’s closing argument misled the jury and shifted the state’s burden of proof because the prosecutor urged the jury not to weigh all of the evidence but instead to reach a verdict based on A.R.’s testimony alone. Thompson specifically argues that the prosecutor improperly advised the jury that it should “disregard” testimony of certain witnesses if it did not find such testimony credible, that if the jury credited A.R.’s testimony then it had “everything that you need” to convict Thompson, that the law allows the jury to decide the case based on the testimony of a single witness, and that the jury should acquit Thompson if it believed that A.R. made the “whole story up.” The state argues that the prosecutor “essentially” argued to the jury “that A.R.’s testimony was critical to the State proving Appellant’s guilt beyond a reasonable doubt.” We discern no error in the prosecutor’s closing argument.

First, Thompson did not identify any statement by the prosecutor about the burden of proof that is contrary to case law, a rule, or a standard of conduct. *See State v. Caine*, 746 N.W.2d 339, 360 (Minn. 2008) (“It is the job of a jury to determine the credibility of the witnesses.”); *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990) (“It is well established that a conviction can rest upon the testimony of a single credible witness.”).

Second, we disagree with Thompson’s claim that the prosecutor’s arguments suggesting the jury must choose whether to believe A.R. or Thompson was plainly erroneous as “just a variation” on improper “were they lying” questions. The prosecutor

did not make an argument akin to “were they lying” questions. The jury was confronted with the necessary choice of determining the credibility of competing, inconsistent testimony. It is not error for a prosecutor to argue to the jury that it must make a credibility determination from contrasting testimony. *Caine*, 746 N.W.2d at 359 (holding that prosecutor’s statements in closing argument including “what we’ve got is a credibility determination,” “it really has come down to who are you going to believe,” “I want you to contrast [the defendant’s] testimony with [the witness’s],” and “we’re back to [the witness’s] credibility versus the defendant’s” were not analogous to “were they lying” questions when “a great deal of evidence” pointed to the defendant’s guilt and “[t]he only contrary evidence was [defendant’s] testimony” (quotations omitted)); *see also State v. Meyers*, No. A12-0781, 2013 WL 599284, at *5 (Minn. App. Feb. 19, 2013) (concluding that the prosecutor did not make statements analogous to “were they lying” questions misstating the burden of proof when he argued that “these cases . . . come down to credibility” and that the case came “down to two people’s statements” (quotation omitted)); *State v. Dudley*, No. A07-1843, 2009 WL 112845, at *8-9 (Minn. App. Jan. 20, 2009) (concluding that the prosecutor’s statement during closing argument that the jury needed to decide who was credible between the alleged victim and defendant was not the same as “were they lying” questions and was not improper), *rev. denied* (Minn. Mar. 31, 2009).² The prosecutor therefore did not commit misconduct by inviting the jury to evaluate the credibility of competing testimony from the witnesses.

² Nonprecedential opinions are not binding authority and are being cited as persuasive authority. Minn. R. Civ. App. P. 136.01, subd. 1(c).

Third, the prosecutor did not misstate the burden of proof. We disagree with Thompson's argument that the prosecutor's statements were similar to those in *State v. Strommen*, where the supreme court concluded that a prosecutor misstated the state's burden of proof by telling the jury to "weigh the story in each hand and decide which one is most reasonable, which one makes the most sense." 648 N.W.2d 681, 690 (Minn. 2002) (quotation omitted). The prosecutor here did not ask the jury to "weigh" competing stories and instead argued that "the state has the burden to prove beyond a reasonable doubt with evidence in court at trial" that the defendants committed the crime, that the "elements of the offense are what the state has to prove," and that the jury may consider direct and circumstantial evidence and evaluate the credibility of the witnesses. We discern no error in these statements.

Thompson also cites *In re Welfare of D.D.R.* for the proposition that the prosecutor misstated the burden by inviting the jury to acquit if the jury determined that A.R. "made up" her testimony. 713 N.W.2d 891, 903-04 (Minn. App. 2006). But in *D.D.R.*, we determined that the prosecutor's statements that the jury would have to find that "all the evidence is wrong" in order to find the defendant not guilty and the comment that the "[a]ppellant [is] no longer presumed innocent" amounted to misconduct because it "goes against the fundamental tenets of the judicial system that an individual is innocent until proven guilty." *Id.* (quotations omitted). The prosecutor in this case did not make a similar misstatement of the law. We therefore conclude that the prosecutor did not misstate the burden of proof.

Sympathy for the Accuser

Thompson argues that the prosecutor committed misconduct by stoking sympathy for the accuser during closing argument with the following statements:

[Y]ou have to decide whether you believe her or not. So consider some of those factors about [A.R.]. Who is she? She's a single mom. She's disabled. She told you she's part of Minneapolis's Native community. Right now, she's getting a lot of support from her church.

....

. . . And [J.S. is] a witness who [Thompson's attorney] did not reference. . . . This little girl, days before her third birthday, was there.

Thompson argues these comments “had nothing to do with what happened in [A.R.’s] apartment on the night in question, and were expressed solely to engender sympathy and outrage.”

A “prosecutor must avoid inflaming the jury’s passions and prejudices against the defendant.” *Porter*, 526 N.W.2d at 363. But “[p]rosecutors are permitted to make reasonable inferences from evidence on the record, to analyze or explain the evidence, and to make legitimate arguments to the jury based on the evidence.” *State v. Rucker*, 752 N.W.2d 538, 552 (Minn. App. 2008), *rev. denied* (Minn. Sept. 23, 2008). We 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.” *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993).

We disagree with Thompson’s characterization that these two isolated statements were without a proper purpose and designed solely to stoke the sympathies of the jury. The

statement about A.R. had a proper purpose. In examining the totality of the argument, the prosecutor accurately recounted the jury instructions related to witness credibility, made the referenced statements about A.R.'s background in the context of asking the jury to consider A.R.'s credibility, and followed the statements by setting forth A.R.'s consistent accounts of the offense. We do not consider the entirety of this argument as an improper attempt to interject sympathy or prejudice. The prosecutor mentioned A.R.'s disability because that fact related to a potential aggravating factor. The statement about J.S. also had a proper purpose. The prosecutor made the statement about J.S. in rebuttal after Thompson's attorney argued to the jury that it "only heard from three people" about the accusations and omitted that the jury received evidence that J.S. was also present during the altercation and reported to police that "daddy hurt mommy." Because the prosecutor had a legitimate purpose for making these limited, isolated statements during closing argument and did not improperly stoke the sympathies of the jury given the totality of the closing argument, we discern no plain error.

Substantial Rights

Even assuming that the prosecutor committed plain error during closing argument, we only reverse a conviction due to prosecutorial misconduct if such plain error "affects the defendant's substantial rights." *State v. Hill*, 801 N.W.2d 646, 654 (Minn. 2011). For claims of prosecutorial misconduct, we apply a modified substantial-rights test where the state has the burden to demonstrate the misconduct did not affect substantial rights. *Id.* To determine whether a plain error affected a defendant's substantial rights, we consider "(1) the strength of the evidence against the defendant; (2) the pervasiveness of the

improper conduct; and (3) whether the defendant had an opportunity (or made efforts) to rebut the prosecutor's improper suggestions." *Id.* at 655. We address each of these factors in turn.

First, there was significant evidence against Thompson. Thompson admitted to punching A.R. at least twice, pulling A.R. to the ground, and kicking A.R. twice after she was on the ground. The testimony from medical professionals and photographs show the severity of A.R.'s injuries, and A.R.'s injuries were consistent with her description of the assault. A.R.'s testimony was also consistent with her statement to the police and the emergency calls. While Thompson disputed the severity of A.R.'s injuries, the state introduced evidence to impeach Thompson's credibility, including evidence showing that Stewart had contacted Thompson over 1,400 times while he was incarcerated despite Thompson's denial that she was contacting Stewart and her statement she was not communicating with Stewart. Thus, the evidence supporting Thompson's guilt of third-degree assault against A.R. was strong and the evidence of self-defense was not. *See State v. Hohenwald*, 815 N.W.2d 823, 832-35 (Minn. 2012) (concluding the evidence against defendant was strong for purposes of substantial-rights analysis when the state relied on circumstantial evidence to support the verdict).

Second, as discussed above, the prosecutor's statements in closing argument were not pervasive. Thompson does not argue that the challenged statements about A.R.'s background permeated the entirety of the closing argument, and the record reflects that Thompson complains of only isolated statements in the prosecutor's argument.

Third, Thompson rebutted the prosecutor’s allegedly improper statements. Thompson’s counsel argued to the jury that it should make a “neutral assessment of the evidence” and that it “cannot let . . . sympathy for [A.R.]” or the question of who it “believe[s] more” to “substitute for evidence.”³ *See State v. Cao*, 788 N.W.2d 710, 718 (Minn. 2010) (concluding the third factor of substantial-rights analysis weighed against defendant when his counsel addressed prosecutor’s alleged misstatements during closing argument).

Accordingly, we conclude that any alleged misconduct did not have a significant effect on the verdict and therefore did not affect Thompson’s substantial rights. *See State v. Jones*, 753 N.W.2d 677, 692-93 (Minn. 2008) (holding alleged prosecutorial misconduct during closing argument did not affect defendant’s substantial rights when there was strong evidence of defendant’s guilt and defendant’s credibility was undermined, the alleged misconduct were not significant parts of the state’s closing argument, defendant had the opportunity to correct the prosecutor’s comments, and the jury was correctly instructed on the burden of proof, presumption of innocence, witness credibility, and the difference between evidence and the arguments of counsel).

³ We observe that Thompson’s attorney also made similar statements to those of the prosecutor to which she now objects. For example, Thompson’s attorney stated that the testimony from the witnesses “gives you basically two general possibilities as to what went down here” and that it was “either the prosecution’s theory, more or less in some fashion along the lines of what [A.R.] says, or what you had was a short interaction and a short scuffle between my client and [A.R.]”

Fairness and Integrity of the Proceedings

Finally, even assuming that the prosecutor committed plain error affecting Thompson's substantial rights, we conclude that a new trial would not be necessary to ensure the fairness and the integrity of the proceedings. The district court instructed the jury to apply the correct burden of proof, to consider all of the evidence, to consider and evaluate the credibility of witnesses, and not to allow sympathy or prejudice to influence its decision. The district court instructed the jury that it may only consider evidence admitted at trial, that the arguments of counsel are not evidence, and to follow the law as instructed by the court. The district court instructed the jury to disregard anything the attorneys say in closing argument that may contradict the instructions delivered by the district court and to follow the district court's instructions. "We assume that the jury followed the court's instructions and properly considered the evidence." *State v. Vang*, 774 N.W.2d 566, 578 (Minn. 2009); *see also State v. Matthews*, 779 N.W.2d 543, 550 (Minn. 2010) ("We presume that juries follow instructions given by the court."). These instructions were sufficient to cure any potential prejudice from the prosecutor's statements. *See State v. Bell*, 199 N.W.2d 769, 771 (Minn. 1972) (concluding trial court's jury instructions prevented prejudice to defendant from prosecutor's indiscretion); *see also Ramey*, 721 N.W.2d at 298-99 (recognizing jury instructions can cure the effect of improper prosecutorial argument).

Thompson does not contest that the district court properly instructed the jury and offers no basis to conclude that the jury did not follow the district court's instructions in

reaching its verdict. We therefore conclude that a new trial is not necessary to ensure the fairness and integrity of the proceedings.

Affirmed.