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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1704**

State of Minnesota,
Respondent,

vs.

Amran Abdikaren Roble,
Appellant.

**Filed June 29, 2010
Affirmed
Collins, Judge***

Olmsted County District Court
File No. 55-K3-05-004671

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, Eric M. Woodford, Criminal Division Lead
Attorney, Rochester, Minnesota (for respondent)

Craig E. Cascarano, Minneapolis, Minnesota (for appellant)

Considered and decided by Toussaint, Chief Judge; Bjorkman, Judge; and Collins,
Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

After an Olmsted County jury found Amran Roble guilty of first-, third-, and fifth-degree assault and disorderly conduct, the district court convicted and sentenced her for only the first-degree assault. Roble appeals, challenging the sufficiency of the evidence to sustain any of the verdicts and arguing that the prosecutor committed prejudicial misconduct in his closing argument. Because there was ample credible evidence supporting the verdicts and because we see no misconduct on the part of the prosecutor amounting to plain error, we affirm.

FACTS

After midnight on November 15, 2005, appellant Amran Roble and M.F. were among others at a downtown Rochester bar. There was an argument and M.F. was struck in his face with an object that caused a 12-centimeter wound requiring more than 50 stitches to close. The wound left a permanent scar. The disputed issue at trial was the identity of M.F.'s assailant.

The only uninvolved witness to the assault who testified at trial was the bartender. Roble and M.F. were approximately 30 feet away from the bartender when his attention was drawn to them as they were arguing. He did not notice anyone else near them. According to the bartender, M.F. slapped Roble with an open hand and she responded by hitting him in the face a number of times with her purse. The bartender further testified that after M.F. slapped Roble again, she picked up a four-inch tall drinking glass with a thick glass bottom and used it to "kind of crack[] [M.F.'s] face open pretty bad," although

it was developed on cross-examination that the bartender did not actually see the moment Roble struck M.F. in the face with the glass. M.F. then ran out of the bar. The bartender testified that he knew M.F. was hurt because he heard broken glass fall and saw blood on what remained of the drinking glass itself. The bartender went outside and found M.F. bleeding and holding a jacket to his face.

Two Rochester patrol officers had been parked watching the alley between the bar in this case and another bar. They saw someone, later identified as M.F., run into the alley with his face covered, and they knew that something was “not right” with him. One of the officers who then spoke with M.F. testified to M.F.’s account of the incident. M.F. said that he was arguing with a woman but he thought he may have been hit by a man who was with her. The woman had hit him with her purse and someone hit him from the side. M.F. assumed that it was the man who hit him in the face because he thought he got hit by a bottle and Roble was holding a drink. Another officer brought Roble out of the bar and M.F. identified her as the woman with whom he had argued.

The officer who escorted Roble from the bar testified that the bartender had told him that he saw a female patron hit M.F. in the face with a glass. Roble was placed under arrest and transported to the local adult-detention center, where personnel noticed a small amount of blood on Roble’s right hand and clothing.

The jury heard testimony from another officer who inspected the scene after speaking with the bartender. This officer observed blood on the table and on the floor, a broken drinking glass with blood on it, and shards of glass on the floor that appeared to

have come from the bloody broken drinking glass. No broken beer bottle was found anywhere near the scene of the assault.

At trial, M.F. testified that he was alone at the bar most of the evening and at some point he came to be standing next to Roble. According to M.F., Roble asked “do you want to get me a drink, b*tch,” to which M.F. responded “Hell, no, b*tch.” Roble then tried to hit him but could not reach him so she threw her glass instead and, at the same time, some man hit M.F. with a beer bottle. Contrary to the bartender’s testimony and M.F.’s own initial statement to the police, M.F. testified that he never slapped Roble and that she never hit him with her purse.

Much of the prosecutor’s closing argument addressed the bartender’s testimony and analyzed the factors that the jury was instructed to consider in evaluating witness credibility. The prosecutor argued each such factor supported the conclusion that the bartender was a credible witness. The defense did not object to the prosecutor’s closing argument.

The jury returned verdicts finding Roble guilty of first-, third-, and fifth-degree assault and disorderly conduct. Properly adjudicating only the first-degree assault, the district court sentenced Roble to 54-months’ imprisonment, a departure from the presumptive duration of 74 to 103 months. This appeal followed.

DECISION

I.

The first issue is whether there is sufficient evidence to support the conviction. In considering a claim of insufficient evidence, this court’s 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, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Roble contends that the versions of the incident coming from the only two eyewitnesses who testified at trial were so inconsistent that a jury could not reasonably conclude there was sufficient evidence to find that she committed the assault beyond a reasonable doubt. Roble argues that because M.F. testified that there was a man standing next to her and that both she and the man attacked M.F. at the same time, the jury could not have reasonably credited the bartender’s testimony that Roble and M.F. were standing alone; nor could the jury have reasonably found that M.F. slapped Roble and that she responded by hitting M.F. with her purse and eventually striking him in the face with the drinking glass. However, the jury is permitted to accept part of a witness’s testimony, *State v. Mems*, 708 N.W.2d 526, 531 (Minn. 2006), and a jury may rely on the

uncorroborated testimony of a single credible witness, *State v. Foreman*, 680 N.W.2d 536, 539 (Minn. 2004).

Where M.F.'s testimony varied from the bartender's version of the incident, there were several factors that support the jury's decision to credit the bartender's testimony. First, the bartender was sober and M.F. had been drinking, which goes to the witnesses' ability to know and accurately remember facts. Second, the jury had the opportunity to evaluate the competing testimony in light of the other evidence presented. For example, there was the broken drinking glass with blood on it and shards of glass on the floor, and no broken beer bottle was found in the area of the assault. Moreover, M.F.'s trial testimony was significantly at odds with the statement he gave to police in the aftermath of the assault. Having carefully reviewed the record we are satisfied that a reasonable juror could have credited the bartender's testimony, fully supporting the verdicts. We thus conclude that Roble's sufficiency of the evidence challenge is without merit.

II.

The second issue raised by Roble is whether the prosecutor engaged in misconduct in his closing argument by vouching for the credibility of a witness and, if so, whether the misconduct compels reversal. When the defendant fails to object, alleged prosecutorial misconduct is reviewed under the plain-error standard. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (stating the plain-error standard is used for unobjected-to error). Plain error requires that there be (1) an error; (2) that is plain; and (3) that affects the defendant's substantial rights. *Id.* If these three prongs are met, "the [appellate] court

then assesses whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).

Improper 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.” *State v. Lopez-Rios*, 669 N.W.2d 603, 614 (Minn. 2003) (quotations omitted). While it is improper for a prosecutor to personally endorse a witness’s credibility, the prosecution may argue that a witness was or was not credible. *State v. Jackson*, 714 N.W.2d 681, 696 (Minn. 2006). But in arguing that a witness is credible, a prosecutor “may not throw onto the scales of credibility the weight of his own personal opinion.” *State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984).

Roble argues that the prosecutor personally endorsed the credibility of the bartender. But unlike the statement “the state believes,” which has been held to be clear error, *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006), the prosecutor here stated that the jury “should believe” the bartender’s testimony. These were not direct statements about what the state believed or what the prosecutor personally believed, but were suggestions made in the course of argument analyzing the believability of the bartender’s testimony in view of the entire body of evidence presented. The prosecutor tied his argument to the credibility criteria set forth in the jury instructions and argued why the jury, applying those criteria, should believe the bartender. At no point did the prosecutor directly endorse the credibility of the bartender nor did he guarantee that the bartender was truthful. Arguing that a jury should find a witness’s testimony credible is permissible, so long as the prosecutor does not add his or her own endorsement to the

witness's credibility. *Swanson*, 707 N.W.2d at 656. Because the prosecutor only argued the reasons why the jury should find the bartender's testimony credible in the context of the evidence presented, we see no prosecutorial misconduct amounting to plain error.

Affirmed.