STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0501

State of Minnesota,
Respondent,

vs.

Christopher Lee Cannon,
Appellant.

Filed January 8, 2018
Affirmed
Connolly, Judge

Morrison County District Court
File No. 49-CR-16-1379

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Brian Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Connolly, Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges his convictions of felony domestic assault and fleeing a police officer, arguing that he is entitled to a new trial because of prosecutorial misconduct. We affirm.

FACTS

A jury found appellant, Christopher Cannon, guilty of (1) felony domestic assault of his wife, D.C., under Minn. Stat. § 609.2242, subd. 4 (2016), and (2) fleeing a police officer under Minn. Stat. § 609.487, subd. 6 (2016). The individuals who testified about the events leading up to appellant's arrest included: appellant; police officers; D.C.; and D.C.'s neighbors, C.W., G.D., and C.M.W.

D.C. testified that she and appellant got into an argument after appellant saw something on her phone. During the argument, appellant tried to strangle her with his arm, an extension cord, and a belt, while their two-year-old daughter watched nearby. While trying to choke her, appellant said, "I'm going to put you to sleep and when you wake up, we can talk." Appellant also threatened D.C. by saying he was going to bury her alive and that she would never see her daughter again. The incident lasted about 45 seconds. Appellant tried to lock D.C. in her room, but D.C. was able to grab her daughter and run to C.W.'s house to call the police. On the day of the charged assault, D.C. was taken to the police station for a recorded statement, where she stated that appellant tried to choke her with his arm, a belt, and a cord.

C.W., testified that D.C. came to his door with her daughter looking distraught and emotional. D.C. told C.W. that her "boyfriend" had assaulted her and to call 911. C.W. saw appellant peek his head out of D.C.'s front door and heard him say something like "don't do it" or "stop doing that."

Officers testified that they responded to the scene and found D.C. panicked and with red marks on her neck. D.C. told the officers that her husband had tried to choke her. The officers found an extension cord in D.C.'s bedroom. When asked about the last time she had contact with appellant before this altercation, D.C. said she had not seen him in about six weeks. At trial, D.C. admitted that she lied because she did not want to get evicted, as having appellant at her townhouse violated her lease.

C.M.W. and G.D. testified that appellant came to their back porch and asked each of them if he could come inside. Appellant had a belt slung over his shoulder. He told C.M.W. that he had been in a fight with his girlfriend. Appellant first asked C.M.W. if he could come inside her home, and she declined. Appellant asked if he could speak with G.D. Appellant looked scared and told G.D. that the police were looking for him. He told G.D. that his girlfriend had a husband and that the husband was going to beat his girlfriend up. Appellant asked G.D. three times if he could come inside the house, and each time G.D. said no. Appellant left after he saw police officers, leaving his belt on the porch.

An arresting police officer testified that he found appellant near a high school. After the officer announced his presence, appellant got on the ground on his stomach. The officer asked why appellant did this, and appellant stated that his wife was upset and she asked someone to call the police. Appellant told the officer that he left the area because he saw

police. Appellant said he did not harm his wife. He appeared nervous and was talking very fast. During his statement to police, appellant said he and D.C. got into an argument and "stuff got crazy" while they were in D.C.'s bedroom. He denied any use of force, but affirmed that he knew someone had called the police. He said his belt was off because he and D.C. had sexual intercourse and he did not have time to put it on before leaving the house. Appellant told police that both he and D.C. used methamphetamine and said they might be going through withdrawals.

Appellant testified that he had never harmed D.C.; rather, D.C. was aggressive toward him on the day of the charged offenses. His belt was off because he and D.C. had just "had sex" and that while D.C. was yelling at him, D.C. went into the bathroom with the cord, then came back into the bedroom and threw the cord. Appellant suspected that D.C. might be going through methamphetamine withdrawal because she "usually will have a tantrum or something like that, but this was a little overboard." Appellant heard D.C. tell her neighbor that he had hit her and choked her with a cord. Appellant leaned out the door and asked D.C. if she were going to send him to jail. D.C. responded that she should have taken care of his outstanding warrant. Thinking he was going to jail, he grabbed his belt and a sweater and left. Appellant stopped at C.M.W.'s and G.D.'s porch, but denied saying that D.C.'s husband was going to beat her up. He denied asking C.M.W. and G.D. if he could go inside their house. Appellant left when he saw an officer walking up the trail.

During closing arguments, the prosecutor stated:

> So we've got the story the victim told which is essentially the same at the scene, a recorded statement yesterday, and then you have the defendant throwing as much mud at the wall as he can

> in the hopes that something will stick. And I'd like to tell you why that mudslinging is nothing but mudslinging and should be completely and utterly discounted because it would require you to believe him, a convicted felon on the run from the law who's twice been convicted of producing a false name to police officers, providing false information to police officers that resulted in his conviction of a crime.

The prosecutor also argued that appellant was lying about D.C. using drugs because "he's trying to sully her. He's trying to dirty her up so that she is not a believable person." The jury found appellant guilty of domestic assault and fleeing a peace officer on foot.

This appeal follows.

D E C I S I O N

For the first time on appeal, appellant claims that he is entitled to a new trial because during closing arguments the prosecutor belittled and disparaged the defense. Minnesota appellate courts review unobjected-to prosecutorial misconduct challenges for plain error by determining whether (1) there was error, (2) that error was plain, and (3) that error affected the appellant's substantial rights. *State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006). If the appellant cannot satisfy any of the three prongs, the others need not be addressed. *Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011).

Plain error is error that contravenes caselaw, rule, or a standard of conduct. *Ramey*, 721 N.W.2d at 302. If appellant shows plain error, the burden shifts to the state to prove the misconduct did not prejudice the appellant's substantial rights. *Id.* The state then must show that 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." *Id.* (quotation omitted). If the state cannot meet its burden, this court then considers whether fairness and integrity of

the judicial proceedings require addressing the error. *State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010).

When reviewing a closing argument for prosecutorial misconduct, this court "look[s] to the closing argument as a whole, rather than to selected phrases and remarks." *State v. Graham*, 764 N.W.2d 340, 356 (Minn. 2009) (quotation omitted). Prosecutors have "considerable latitude" during closing arguments and are "not required to make a colorless argument." *State v. Williams*, 586 N.W.2d 123, 127 (Minn. 1998). One example of misconduct includes disparaging the defendant's defense to the charges. *State v. Griese*, 565 N.W.2d 419, 427 (Minn. 1997). "While the prosecutor is free to argue that there is no merit to a particular defense or argument, and prosecutors are free to anticipate arguments defense counsel will make, the prosecutor may not generally belittle a particular defense in the abstract." *State v. Ashby*, 567 N.W.2d 21, 28 (Minn. 1997).

Appellant argues that the prosecutor committed error by belittling appellant's defense in the abstract when he told the jury that appellant's testimony was mudslinging that was meant to sully D.C. Respondent argues that the closing argument was not error because the prosecutor merely pointed to evidence inconsistent with appellant's statements, then argued that appellant's statements to police and trial testimony were not credible and "largely served to impugn D.C.'s character." The prosecutor then pointed to evidence that corroborated D.C.'s statements and argued that D.C.'s statements to police and trial testimony were credible.

The Minnesota Supreme Court has held that similar closing-argument statements did not amount to misconduct. *See State v. Jackson*, 773 N.W.2d 111, 125 (Minn. 2009)

(holding that there was no misconduct when a prosecutor argued that defendant offered evidence to smear a witness's character in the jury's eyes); *see also State v. Simion*, 745 N.W.2d 830, 844 (Minn. 2008) (holding that there was no error when a prosecutor argued that the defendant took "every opportunity to dirty up [victims] by accusing and insinuating that they were violating some rule or regulation.")

Similarly, here, there was no prosecutorial misconduct. The prosecutor supported his arguments with evidence that contradicted appellant's testimony and supported D.C.'s testimony. The prosecutor was arguing that appellant's testimony was not credible. He was not belittling a particular defense. Therefore, there was no error.

Affirmed.