This opinion is nonprecedential except as provided by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
A23-1351

State of Minnesota,
Respondent,

vs.

Jaime Rodrigo Guairacaja Chafl,
Appellant.

Filed November 12, 2024
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-22-19447

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

Mary F. Moriarty, Hennepin County Attorney, Robert I. Yount, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Samuel J. Edmunds, Sieben Edmunds Miller PLLC, Eagan, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Bratvold, Judge; and Jesson, Judge.[*]

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

In this direct appeal from the final judgment of conviction for second-degree criminal sexual conduct, appellant argues that the prosecuting attorney committed misconduct during rebuttal argument by vouching for the credibility of the state's key witness. We determine that prosecutorial misconduct occurred. But even if we assume that the misconduct was unusually serious, we conclude that it was harmless beyond a reasonable doubt. Thus, we affirm.

FACTS

Respondent State of Minnesota charged appellant Jaime Rodrigo Guairacaja Chafl[1] with one count of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1a(e) (2020). The following summarizes the evidence received at Guairacaja's jury trial.

In 2022, D.D., then nine years old, lived in her grandmother's house in Minneapolis with her mother, three siblings, aunt, uncle, grandmother, and grandmother's husband, Guairacaja. D.D., her mother, and her three siblings shared a room.

One day in June 2022, D.D. and her mother folded laundry together in a bedroom. D.D. left the bedroom to get a snack from the kitchen. Guairacaja entered the kitchen, walked toward D.D., and touched D.D.'s chest under her shirt. D.D. tried to "[g]et away,"

[1] This opinion will refer to appellant as Guairacaja, which is how his attorney referred to him during district court proceedings.

but Guairacaja "grabbed" her "hard" and like "a hook." Guairacaja said, "Don't tell [your] mom."

D.D. returned to the bedroom. Her mother later testified that D.D. "looked really shocked." D.D. told her mother that Guairacaja "just touched [her]." Her mother asked D.D. where he touched her, and D.D. "pointed to her breast area and her vaginal area."

D.D.'s mother went "to speak to" Guairacaja. She told Guairacaja that D.D. said he "touched her." Guairacaja said, "No, I didn't." Later in the conversation, Guairacaja stated that D.D. "came down" to the basement and that he "put [his] leg around her and bit her ear."

A few weeks later, D.D.'s mother moved D.D. and her siblings out of their grandmother's house. D.D.'s mother reported the incident with Guairacaja to law enforcement, who referred D.D. for a forensic interview at CornerHouse.[2]

At Guairacaja's March 2023 jury trial, the state called the following witnesses: D.D., her mother, the forensic interviewer, and a law-enforcement officer. A video recording of D.D.'s CornerHouse interview was admitted into evidence and played for the jury. Along with the facts outlined above, D.D.'s mother agreed on cross-examination that D.D. would sometimes say things that were not true to avoid getting in trouble. D.D.'s grandmother testified on Guairacaja's behalf and said that, in her experience, D.D. was not an honest child. Guairacaja did not testify.

[2] The forensic interviewer testified that CornerHouse is "an accredited child advocacy center" that "assist[s] kids who have been abused sexually and physically."

After the parties rested, the district court instructed the jury. The prosecuting attorney and Guairacaja's attorney gave closing arguments that focused on D.D.'s credibility. The prosecuting attorney ended the rebuttal argument by stating:

> There's no evidence whatsoever that [D.D. and her mother] colluded with each other to lie about this, there's no reason that they would do that, and it's unreasonable, I believe—it's unreasonably—unreasonable to believe that this mother and child, for no reason whatsoever, colluded on a lie against this man. Because if you believe what the defense is saying, [D.D.] would have had to come up with this to avoid trouble and then her mom would have had to have supported her in this lie and given her information to give to the court and to you, and that doesn't hold water. That's not a reasonable doubt. I think [D.D.] was very credible, and I ask that you find [Guairacaja] guilty of the charges. Thank you.

Immediately after the prosecuting attorney finished, the district court stated, "One thing I just have to touch on: It doesn't matter what [the prosecuting attorney] thinks with respect to [D.D.'s] credibility. What really matters is what you think. So you can disregard his comments and—in that regard. I'm assuming you probably would have done that anyway."

Outside the presence of the jury, Guairacaja's attorney moved for a mistrial and objected to the state's closing argument about D.D.'s credibility as prosecutorial misconduct. Guairacaja's attorney argued that "[i]t's not proper for a prosecutor to endorse the credibility of a witness in closing statements." The prosecuting attorney stated that his use of "I believe" was accidental.

The district court denied the motion for mistrial, noting that it had already given a curative instruction. The district court explained, "[T]hat's why I felt it necessary, before

the jury was excused, to . . . clarify for them it's not [the prosecuting attorney's] view of whether [he] thinks [D.D.'s] credible or not, and that that's not evidence, so I thought appropriate to correct him on whatever they may have drawn from that." The district court also stated that the jury understood that the prosecuting attorney was "arguing [D.D.] was credible rather than telling them that . . . [D.D.] was credible."

The jury found Guairacaja guilty of second-degree criminal sexual conduct. The district court sentenced Guairacaja to 36 months in prison, stayed for five years, and 180 days in the Hennepin County Adult Corrections Facility.

Guairacaja appeals.

DECISION

Guairacaja raises one issue on appeal: whether his right to a fair trial was denied "when the prosecutor injected his personal belief into the proceeding regarding the key witness's credibility in a sexual abuse case." The state counters that the district court did not abuse its discretion in denying Guairacaja's motion for mistrial because the objected-to statements during rebuttal argument did not deprive Guairacaja of his right to a fair trial.

A criminal defendant's due-process rights include a right to a fair trial. *State v. Varner*, 643 N.W.2d 298, 304 (Minn. 2002). "Prosecutors have an affirmative obligation to ensure that a defendant receives a fair trial." *State v. Jones*, 753 N.W.2d 677, 686 (Minn. 2008) (quotation omitted). "Whether a new trial should be granted because of prosecutorial misconduct is governed by no fixed rules but rests within the discretion of the trial judge, who is in the best position to appraise its effect." *State v. Steward*, 645 N.W.2d 115, 121 (Minn. 2002).

In considering a claim of prosecutorial misconduct, our analysis follows two steps. Appellate courts must first determine "whether or not there was an objection at trial to the claimed misconduct." *State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010); *see also State v. Wren*, 738 N.W.2d 378, 393-94 (Minn. 2007) (determining that "the prosecutor's conduct was improper" and applying a harmless-error analysis). Second, "[w]hen defense counsel objects to instances of alleged prosecutorial misconduct at trial," appellate courts have applied "a two-tiered harmless-error test under which the standard of review varies based on the seriousness of the misconduct." *Woodard v. State*, 994 N.W.2d 272, 277 n.2 (Minn. 2023) (quotation omitted); *see, e.g.*, *Steward*, 645 N.W.2d at 121 (describing a two-tiered harmless-error test for "unusually serious" and "less serious" misconduct).[3]

Guairacaja argues that the prosecuting attorney committed misconduct during rebuttal arguments by "vouching for [D.D.'s] credibility."[4] Guairacaja's brief to this court focuses on the prosecuting attorney's rebuttal statement, quoted in full above, and argues

[3] In *State v. Whitson*, the supreme court observed that "[r]ecent cases have questioned whether the two-tiered . . . standard for reviewing objected-to misconduct remains viable" and declined to resolve the issue in that case. 876 N.W.2d 297, 304 n.2 (Minn. 2016). The question appears to remain unresolved. Although the supreme court purported to apply the standard for "nonserious" misconduct in *Woodard*, it did so as dicta because it did not conclude that misconduct occurred. 994 N.W.2d 277-78, 277 n.2 (citing *Whitson*, 876 N.W.2d at 304).

[4] In his brief to this court, Guairacaja also points out that the prosecuting attorney's opening statement and initial closing argument included statements about D.D.'s credibility. When asked during oral argument whether Guairacaja also was contending that these other statements amounted to prosecutorial misconduct, Guairacaja's attorney stated that the appeal contends misconduct occurred during the rebuttal argument and that his brief mentions other statements by the prosecuting attorney to provide context. We have reviewed the entirety of the opening statements and closing arguments, along with the rest of the trial transcript, to consider the context of the rebuttal arguments.

that "the last words the jury heard from the prosecutor were, '*I think D.D. was very credible*, and I ask that you find him guilty of the charges. Thank you.'" As noted above, the district court immediately gave a curative instruction on its own initiative and then, outside the presence of the jury, Guairacaja's attorney objected to the prosecuting attorney's rebuttal argument and asked for a mistrial, which the district court denied.

We first determine whether the prosecuting attorney committed misconduct. *See Wren*, 738 N.W.2d at 393-94. Vouching for a witness's credibility is prosecutorial misconduct and "occurs when the prosecutor implies a guarantee of a witness's truthfulness . . . or expresses a personal opinion as to a witness's credibility." *State v. Martin*, 773 N.W.2d 89, 106 (Minn. 2009) (quotation omitted). "While a prosecutor must not personally endorse a witness's credibility, the State may, in closing argument, argue that a witness was or was not credible." *Id.* The supreme court has instructed that, when evaluating an argument for misconduct, appellate courts should not take statements out of context but "look at the closing argument as a whole." *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006); *see State v. Johnson*, 616 N.W.2d 720, 728 (Minn. 2000) (stating that an appellate court should not "focus on particular phrases or remarks that may be taken out of context or given undue prominence" in considering prosecutorial misconduct in a closing argument (quotation omitted)).

Here, we consider whether the prosecuting attorney impermissibly vouched for D.D.'s credibility during rebuttal when he stated, "I think D.D. was very credible." A prosecuting attorney's use of the phrase "'I think' to interject personal opinion into a closing argument is improper." *State v. Blanche*, 696 N.W.2d 351, 375 (Minn. 2005); *see*

also Swanson, 707 N.W.2d at 656 (determining that the prosecuting attorney impermissibly vouched for the credibility of a witness by stating, "The state believes she is very believable"). We conclude that the prosecuting attorney committed misconduct by expressing his personal opinion about D.D.'s credibility.

Next, this court must determine whether the prosecuting attorney's misconduct was harmless. *See State v. Jackson*, 773 N.W.2d 111, 121 (Minn. 2009). We will assume without deciding that the more stringent standard applies to the prosecuting attorney's misconduct. "In cases involving unusually serious prosecutorial misconduct, that misconduct will not be characterized as harmless unless there is certainty beyond a reasonable doubt that the misconduct was harmless." *Steward*, 645 N.W.2d at 121. An error is "harmless beyond a reasonable doubt only if the verdict rendered was surely unattributable to the error." *Swanson*, 707 N.W.2d at 658 (quotations omitted).

Guairacaja argues that error was not harmless beyond a reasonable doubt because "the evidence here was not overwhelming and rested solely on the credibility of [D.D.]" and the prosecuting attorney vouched for D.D.'s credibility in "his final statement" to the jury. Guairacaja explains that "[t]he jury, trusting the prosecutor's authoritative viewpoint, entered a guilty verdict."

We conclude that the prosecuting attorney's misconduct was harmless beyond a reasonable doubt for two reasons. First, the prosecuting attorney's misconduct was a single brief statement during rebuttal. The prosecuting attorney vouched for D.D.'s credibility in one sentence, which was part of a longer 14-page closing argument and rebuttal. The short duration of the misconduct militates against the harmfulness of the error. *See Wren*,

738 N.W.2d at 394-95 (determining that the prosecuting attorney's misconduct was harmless beyond a reasonable doubt and noting that "the objectionable conduct was brief").

Second, the district court gave a spontaneous curative instruction that directed the jury to disregard the prosecuting attorney's statement and make its own determination of credibility. The district court stated: "It doesn't matter what [the prosecuting attorney] thinks with respect to [D.D.'s] credibility. What really matters is what you think. So you can disregard his comments and—in that regard. I'm assuming you probably would have done that anyway."

The supreme court and this court have determined in other appeals that a district court's immediate curative instruction may render prosecutorial misconduct harmless beyond a reasonable doubt. *See Martin*, 773 N.W.2d at 107 (stating that "any possible misconduct by the prosecutor was harmless" where "the jury was instructed to disregard the [prosecutor's] statements"); *In re Welfare of D.D.R.*, 713 N.W.2d 891, 900 (Minn. App. 2006) (determining that the district court's "instructions were sufficient to negate . . . any prejudice that may have occurred as a result of" the prosecuting attorney's improper vouching).

Guairacaja argues that the curative instruction did not lessen the prejudice because the district court told "the jury they *can* choose to disregard the [prosecutor's] opinions as opposed to they *must* disregard them." But Guairacaja ignores the rest of the district court's instruction, which informed the jury that "[i]t doesn't matter" what the prosecuting attorney "thinks" about D.D.'s credibility. When the entire curative instruction is considered in

context, the district court's statement that the jury "can disregard" the prosecuting attorney's comments remedied the prosecuting attorney's misconduct.

Also, the district court was in the best position to assess the prejudicial effect of the rebuttal argument. *See Steward*, 645 N.W.2d at 121. The district court determined that the immediate curative instruction was appropriate to "correct" the prosecuting attorney's misconduct and "whatever [the jury] may have drawn from that." The district court found that the jury understood that it was to make its own assessment of credibility. In denying the motion for mistrial, the district court stated: "I think [the jury] understand[s] their role and understand[s] that [the prosecuting attorney was] arguing [D.D.] was credible rather than telling them that . . . [D.D.] was credible."

Thus, even if we assume that the harmless-beyond-a-reasonable-doubt standard for unusually serious misconduct applies, the prosecutorial misconduct was harmless beyond a reasonable doubt because it was brief and immediately corrected by the district court. The jury's verdict was surely unattributable to the prosecuting attorney's misconduct. *See Whitson*, 876 N.W.2d at 304-05 (assuming that the standard for unusually serious misconduct applied and concluding that the prosecutor's misconduct was harmless beyond a reasonable doubt). We therefore also conclude that Guairacaja's right to a fair trial was not abridged and that he is not entitled to a new trial.

Affirmed.