STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0707

State of Minnesota,
Respondent,

vs.

Emmett Chuckie Dixon,
Appellant.

Filed May 12, 2025
Affirmed
Harris, Judge

Hennepin County District Court
File No. 27-CR-23-8364

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

Mary F. Moriarty, Hennepin County Attorney, Nicholas G. Kimball, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Ede, Judge; and Bentley, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this direct appeal from a judgment of conviction for first-degree criminal sexual conduct, appellant argues that he is entitled to a new trial because (1) the prosecutor committed plain-error misconduct during opening and closing statements by portraying appellant as a repeat offender of the charged crime, and (2) the district court abused its

discretion when it denied appellant's two motions for a mistrial after the victim had two emotional breakdowns while testifying at trial. We conclude that, although the prosecutor's statements were plain error, they did not affect appellant's substantial rights. And because we discern no abuse of discretion by the district court in denying appellant's motions for a mistrial, we affirm.

FACTS

Respondent State of Minnesota charged appellant Emmett Chuckie Dixon with two counts of first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivisions 1(c)(i) (coercion) and 1(d) (use of force) (2022). The facts below summarize the evidence received during the jury trial, viewed in the light most favorable to the jury's verdict.

One evening in September 2022, B.N. attended a fraternity party near the University of Minnesota campus with four friends, including C.R. and D.H. After the party, they walked to Dinkytown for pizza. Eventually, B.N. and C.R. went to the next-door apartment of another individual they had met earlier that night. B.N. napped on the couch and, several hours later, told C.R. that she was going to order an Uber to take her home. B.N. left the apartment and waited downstairs, but when the Uber arrived, B.N. felt uncomfortable with the driver and sent him away and waited until D.H. joined her outside. As she waited, a man driving another car, who was later identified as Dixon, noticed B.N. outside, slowed his car down, and asked B.N. if she was okay. B.N. assured him that she was okay. At this point, B.N.'s and Dixon's versions of the events diverge.

B.N.'s Testimony

B.N. testified that, after Dixon approached her and she assured him that she was fine, he stated, "you shouldn't be out by yourself . . . . [Y]ou should come in my car." B.N. testified that Dixon parked his car and they engaged in small talk for about five minutes. B.N. testified that she was feeling scared and unsure of Dixon and the situation generally and tried to back away from him a few times. Dixon asked her where she was going, and B.N. told him that she was "waiting for a friend to let [her] back into the building." According to B.N., Dixon responded, "I have a friend we can call to get us back into the building" and, at that point, grabbed B.N.'s arm and pulled her to an area behind the pizza restaurant and the apartment building. Here, while Dixon was tying his shoes, B.N. called C.R. for help and told C.R., "please come get me, I need you now, I need help, please come get me."

While on the phone, B.N. attempted to walk away but Dixon blocked her path, grabbed her arm, and pulled her into a wheelchair-accessible ramp. Once the two were in the middle of the wheelchair ramp, Dixon released her arm and grabbed her hips. While they were both standing, Dixon lifted up her skirt and "inserted his penis in [her] vagina and immediately [B.N.] started crying." B.N. told him to stop "[t]wo to three" times. At some point, Dixon pushed B.N. to the ground and penetrated her again. B.N. testified that he "missed the first couple of times and hit [her] butt hole, [and that he] didn't go all the way in, just the tip." She added that she kept yelling ",No, please stop, please stop," to which Dixon responded "Be quiet, I'm almost there. I'm almost there." After the incident, Dixon walked back to his car and drove away.

Dixon's Testimony

Dixon testified that he attended a rave with some friends and was driving back home when he noticed a woman, B.N., pacing back and forth. Believing that she needed help, Dixon rolled down his window and asked if she was okay and if she needed a ride. When B.N. did not respond, Dixon got out of his car and again asked if she was okay. Dixon testified that after further conversation, they discussed smoking marijuana together and, according to Dixon, B.N. suggested getting back into the building first. Dixon testified that while they walked near the back of the apartment building he and B.N. kissed and then he engaged in vaginal intercourse with B.N. Dixon testified that after he and B.N. concluded having sex, "[B.N.'s] facial expression changed completely and she started screaming." Dixon described feeling shocked because "[B.N.'s] facial expression was [that] she was into it and she was going along with the foreplay that [they] were doing, but it just changed out of nowhere." Eventually, Dixon walked back to his car and left.

Subsequent Events

After Dixon left, B.N. called her mother, who told her to call the police. Before calling the police, B.N. encountered C.R. and D.H. outside, told them that she had been "raped" and asked them to leave. B.N., with the help of a passerby, called 911and reported the incident. Paramedics transported B.N. to the hospital where she underwent a sexual-assault examination. A forensic nurse examined B.N. and "found a small tear, less than .5 centimeters" near B.N.'s vaginal opening. The nurse testified that her observation of B.N.'s injury was consistent with nonconsensual vaginal penetration. When asked at trial what B.N. told her about the incident, the nurse's testimony was consistent with B.N.'s

version of events. The nurse also collected vaginal, oral, and perianal DNA swabs, which were later sent to the Bureau of Criminal Apprehension (BCA) for analysis. Based on the sample from B.N.'s vaginal swab, the BCA analyst determined that the DNA matched that of Dixon.

Jury Trial

The matter proceeded to a five-day jury trial, where the jury heard testimony from B.N., B.N.'s mother, three of B.N.'s friends, several police officers, the BCA analyst, the forensic nurse, and Dixon. The jury heard a recording of a jail call by Dixon during which, in discussing his current case and how he ended up in custody, he stated: "that's what happen when you, when you a womanizer and, and every pu--y you see, you gonna f-ck it."

B.N. had two emotional breakdowns while testifying. On the first day of trial, the district court judge stated that in response to the prosecutor's question about what happened after Dixon got out of his car, B.N. asked for a minute before she "turned her back to the jury and the attorney and . . . appeared to have a meltdown on the ground." A discussion was held off the record, after which the district court excused the jury into the hallway and instructed the state to bring B.N. into the jury room to collect herself. About eight minutes later, the jury and B.N. were brought back into the courtroom to resume her testimony. Dixon's attorney moved for a mistrial the following morning, which the district court denied.

B.N.'s second emotional breakdown occurred later that day during cross-examination. After excusing the jury and B.N., the district court judge stated for the record

that B.N. "turned away from the jury and from the attorneys and she appeared to be attempting to use the wastebasket . . . or container . . . in case she was going to be ill. [Dixon's attorney] had alerted the Court's attention to what was happening." The district court judge noted that she "did not see [B.N.] immediately turn away." Dixon's attorney renewed the previous motion for a mistrial, which the district court again denied.

Jury Deliberations

The jury began deliberating on a Friday afternoon. The following Monday morning, the jury sent a note to the district court with three requests: (1) to zoom in on surveillance footage captured by one of the surveillance cameras; (2) to view the transcripts of Dixon's jail calls; and (3) to be given the "definition or a better understanding of what the term[s] 'consent' and 'beyond a reasonable doubt'" meant. Both the prosecutor and defense counsel agreed that the first two requests should be denied but that the district court would reread portions of the jury instructions defining consent and reasonable doubt to the jury.

Later that day, the jury sent another note to the district court that read:

> To the Court, we have evaluated all the evidence and have taken multiple votes. We have had an entire weekend and discussed and reviewed all of the details of the case, and everyone is very confident that they have given their true just vote. We have reached an impasse on our vote on both counts.

The district court asked the jury to continue deliberating "with a view toward reaching an agreement if it can be done without violating [their] individual judgment." The following Tuesday afternoon, the jury found Dixon guilty on count 1 (coercion) and not guilty on count 2 (force). Dixon appeals.

DECISION

I. The prosecutor did not commit plain reversible error.

Dixon argues the state committed prosecutorial misconduct during opening and closing arguments by referring to Dixon as being "on the prowl" looking for the "next vulnerable woman" to take advantage of. Because Dixon did not object to these statements during opening or closing arguments, we apply the modified plain-error test. *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023).

Under the modified plain-error test, the defendant must prove (1) that there was error and (2) that it was plain. *Id.* If plain error is established, the burden then shifts to the state to prove that the plain error did not affect the defendant's substantial rights. *Id.* To do this, the state must show that there was "no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). And if the state fails to carry its burden, we then determine "whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id.*; *see also State v. Westrom*, 6 N.W.3d. 145, 157 (Minn. 2024).

A. The prosecutor's statements constituted plain error.

For an error to be plain, it must be "clear or obvious." *Id.* (quotation omitted). An error is clear or obvious if it "contravenes case law, a rule, or a standard of conduct." *Id.*

Generally, the state is not required to make "colorless argument[s]," but it must limit opening statements to a description of the facts that they expect to prove or the reasonable inferences they expect to prove. *State v. Bolstad*, 686 N.W.2d 531, 544 (Minn. 2004);

Minn. R. Crim. P. 26.03, subd. 12(c). Prosecutors must similarly limit closing arguments to what is factually supported by the evidence presented at trial or the reasonable inferences from that evidence. *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995).

Dixon points to the following remarks from opening statement and closing arguments to assert that the state committed prosecutorial misconduct. The first is from the beginning of the prosecutor's opening statement:

> On September 18th, 2022, a little bit after 5:00 a.m., the defendant, Emmett Chuckie Dixon, was *on the prowl*. He was *on the prowl* in Dinkytown, and he was looking for an opportunity. *He was looking for somebody who was vulnerable. He was looking for somebody who he could take advantage of.*

(Emphasis added.)

The second is near the beginning of the prosecutor's closing argument:

> And, in this case, this defendant, Mr. Dixon, would not take no for an answer. *[B.N.] was an opportunity, just the next woman that the defendant knew he had to have in any way.* And she was a perfect opportunity. She was a petite woman, out alone, she had been drinking, it was five in the morning, she was on a dark sidewalk alone, separated from her friends, locked out of the apartment building where her friends were, friends not answering the phone, without her glasses, and maybe, most importantly, she was the perfect opportunity because she was the victim who would react with such fear to his aggressive advances that she wouldn't fight back or run. And within two minutes of seeing her, within less than a minute of getting out of his car, he was grabbing her, forcefully pulling her towards him and starting to kiss her, with no reaction from her.

(Emphasis added.)

Dixon argues that these statements by the prosecutor (1) had no evidentiary support in the record; (2) attacked his character by suggesting he was the type of person to commit criminal sexual conduct and that B.N. was not Dixon's first victim; and (3) inflamed the jury's passions against him. The state argues that the prosecutor used "descriptive language" that explained the state's theory of the case and what the prosecutor anticipated the evidence would illustrate to the jury. We agree that the state's opening statement and closing argument contained improper statements.

Evidence was presented at trial to support the state's theory that Dixon was "looking for an opportunity" (from opening statement), and that B.N. was "just the next woman that [he] had to have in any way" (from closing argument). For example, the jury heard Dixon's jail conversations where he stated: "That's what happen when you, when you a womanizer and, and every pu--y you see, you gonna f--k it." In another jail call, Dixon admitted the following:

> My real problem is lust for women. I'm a womanizer. That's my real problem . . . that's where I fall short . . . I am addicted to women. I'm addicted to women . . . and that's my biggest problem. *It comes so, easy for me that sometimes [when] I'm not getting what I want, I feel like I go out there and I get it any other way.*

(Emphasis added.)

Dixon's statements during the jail call support at least some of the prosecutor's statements that he was "looking for an opportunity" and "acted on his sexual desires when he took advantage of that opportunity." Accordingly, there was evidence to support the prosecutor's brief remarks in opening and closing statements.

Dixon argues, however, that the prosecutor's remark that B.N. was the "next" woman he "knew he had to have in any way" implies that he is the type of person to commit the charged offense and that B.N. was not his first victim. This implication, Dixon argues, is unsupported by the record because the district court denied the state's attempt to introduce evidence of his prior sexual-assault conviction as *Spreigl* evidence. While Dixon is correct that the district court denied the state's attempt to use *Spreigl* evidence at trial, Dixon's admissions in the jail call support the prosecutor's remark. Although the prosecutor's statements seem to portray Dixon as a sexual predator and imply that B.N. was not his first victim, the record supports what the prosecutor had anticipated would be revealed throughout trial.

We are more persuasded by Dixon's argument that the prosecutor' statements that Dixon was "on the prowl" were improper because they could have inflamed the jury's passion or prejudice against him. In presenting opening and closing statements, prosecutors must not "inflame the passions of the jury or prejudice the jury against the defendant." *State v. DeWald*, 463 N.W.2d 741, 744-45 (Minn. 1990). Appellate courts "will pay special attention to statements that may inflame or prejudice the jury where credibility is a central issue." *Porter*, 526 N.W.2d at 363.

In *State v. Duncan*, this court held that the prosecutor inflamed the passions or prejudices of the jury when he explicitly and repeatedly referred to the defendant as a "predator" and used other forms of the word during closing argument. 608 N.W.2d 551, 556 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000). Here, although the prosecutor did not explicitly call Dixon a "predator," the prosecutor twice stated during opening

statement that he was "on the prowl." The prosecutor added that Dixon "was looking for an opportunity. He was looking for somebody who was vulnerable. He was looking for somebody who he could take advantage of." This description appears to suggest predatory behavior, which could reasonably have inflamed the passions of the jury.

The state cites to precedential and nonprecedential cases to argue that the phrase "on the prowl" is merely a description of actual conduct rather than a label of a type of person. We are not persuaded for two reasons. First, while the state is correct that "prowl" describes conduct, the first two definitions of the word "prowl" reveal a more predatory meaning: "[t]o roam through stealthily, as in search of *prey* or plunder" or "[t]o rove furtively or with *predatory intent*." *The American Heritage Dictionary of the English Language* 1419 (5th ed. 2018) (emphasis added). Second, the cases cited by the state use "prowl" in a variety of contexts that are factually distinguishable from the case here. And the fact that "prowl" has been used by courts in different contexts does not negate the reasonable inference of "on the prowl" as used in the context here. *Cf.* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 70 (2012) ("One should assume the contextually appropriate ordinary meaning unless there is reason to think otherwise.").

We "pay special attention to statements that *may* inflame or prejudice the jury where credibility is a central issue." *Porter*, 526 N.W.2d at 363 (emphasis added). Here, the jury had to make credibility determinations because it heard conflicting testimony from B.N. and Dixon. Dixon claimed it was consensual, and B.N. claimed it was not. Because the

prosecutor's statements may have inflamed the prejudice of the jury, we conclude that the prosecutor committed plain error.

B. The prosecutor's plain error did not affect Dixon's substantial rights.

The next step under the modified plain-error test is to analyze whether the plain error affected Dixon's substantial rights. *Portillo*, 998 N.W.2d at 248.

> To determine whether there is a reasonable likelihood that the prosecutor's error had a significant effect on the verdict, 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.

Id. at 251 (quotation omitted).

The evidence against Dixon was strong. The state presented the following as evidence at trial: B.N.'s testimony; testimony from B.N.'s mother's, who testified about the phone call she had with B.N. right after the sexual assault; testimony from three of B.N.'s friends; two of Dixon's jail calls; the 911 call; surveillance-camera video from the pizza restaurant, the apartment complex, and surrounding streets; a police officer's body-worn camera footage; and testimony from police officers and the forensic nurse who examined B.N. Aside from Dixon's testimony, the trial testimony and the exhibits supported B.N.'s version of events.

Dixon notes, however, that the jury stated it had reached an "impasse" after requesting to view some of the evidence and for clearer definitions of "consent" and "beyond a reasonable doubt," suggesting that the evidence was anything but overwhelming. The jury did spend a considerable amount of time deliberating and, even

after receiving a repeated definition of "consent" and "beyond a reasonable doubt," the jury still could not reach a unanimous verdict. However, the jury did reach a verdict. Notably, however, one of the reasons why the jury deliberated for so long was because they struggled to understand the difference between count 1 (criminal sexual conduct-coercion) and count 2 (criminal sexual conduct-force), as evinced by their questions to the district court during their deliberations Dixon's argument, therefore, is unavailing.

Regarding the pervasiveness of any improper suggestions, the prosecutor's remarks were minimal. Of the prosecutor's eight-page opening statement, only two sentences referred to Dixon as "on the prowl". And throughout the prosecutor's 32-page closing argument, no reference was made about Dixon being "on the prowl." Although the prosecutor did state that "[B.N.] was an opportunity" and was "the next woman that the defendant knew he had to have in any way," this was only one sentence out of a 32-page closing argument, and both remarks were at the very beginning of the prosecutor's summation. *See Portillo*, 998 N.W.2d at 254 (concluding that defendant's substantial rights were affected where prosecutor's improper remarks "occurred at the end of closing argument just prior to jury instructions and deliberations").

Finally, Dixon had the opportunity to object to the prosecutor's remarks. *See State v. Ture*, 353 N.W.2d 502, 516 (Minn. 1984) ("The fact that defendant failed to object to the prosecutor's statements suggests he then did not consider them prejudicial."). Indeed, defense counsel appeared to rebut the prosecutor's statement during closing argument by stating that the evidence presented at trial "tells an experience not of a predator on the

prowl, as [the prosecutor] told [the jury] in the opening argument, but a young man out partying on Saturday night who had a casual sexual encounter."

In sum, we look at "the closing argument as a whole, rather than just selective phrases or remarks." *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993). And viewing the prosecutor's opening and closing statements as a whole, the improper suggestions were not so pervasive as to have affected Dixon's substantial rights.

Accordingly, we conclude that the prosecutor's improper statements did not affect Dixon's substantial rights.

II. The district court did not abuse its discretion in denying Dixon's motions for a mistrial.

"A mistrial should be granted only if there is a reasonable probability, in light of the entirety of the trial including the mitigating effects of a curative instruction, that the outcome of the trial would have been different had the incident resulting in the motion not occurred." *State v. Griffin*, 887 N.W.2d 257, 262 (Minn. 2016). The district court "is in the best position to determine whether an outburst creates sufficient prejudice to deny the defendant a fair trial such that a mistrial should be granted." *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006).

We review a district court's denial of a motion for a mistrial for an abuse of discretion. *Griffin*, 887 N.W.2d at 262. "A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted).

B.N. had two emotional breakdowns while testifying at trial: the first occurred during direct examination and the second occurred the following day, during cross-examination. Both instances are discussed below.

The day after her first breakdown, defense counsel, without citing to any authority, moved for a mistrial, asserting that B.N.'s breakdown was extremely emotional and occurred in front of the jury, with B.N. on the ground, shaking, and "sort of convulsing." The state responded that B.N.'s emotional reaction was a valid consideration for the jury; in addition, when she "turn[ed] her back and start[ed] to have a panic attack, the [district court] asked the jury to leave the courtroom."

In denying the motion for a mistrial after the first breakdown, the district court stated that it could not find "any cases that resulted in a mistrial because of an emotional display by a witness or victim on the stand." The court also noted that "[i]t is not unusual for witnesses or alleged victims to display emotion when they are testifying." It observed that, when B.N. turned her back to the jury and the prosecutor and went to the ground, "the jury would not have been able to see what [B.N.] was doing from their vantage point because she was behind the witness stand."

B.N.'s second emotional breakdown occurred later that day, during cross-examination. The district court explained:

> For the record, the jury has been excused from the courtroom. The witness, [B.N.], had turned away from the jury and from the attorneys and she appeared to be attempting to use the wastebasket—or container to in case she was going to be ill. [Dixon's attorney] had alerted the Court's attention to what was happening. I did not see her immediately turn away. I did excuse the jury. I called the attorneys up to the bench.

Defense counsel renewed the motion for a mistrial, arguing that B.N.'s "extremely emotional reaction" prejudiced Dixon's "ability to have his evidence fairly weighed against him." Defense counsel alternatively requested a curative instruction. The state argued that they were in the same position as before: B.N. was in the same place behind the witness stand and was not visible to the jury, and nothing audible occurred, so there was nothing for the jury to hear.

The district court denied the renewed motion for a mistrial due to the lack of binding authority that would permit a mistrial in this case. The district court judge also referenced her own experience as an attorney and judicial officer, explaining as follows:

> [I]t is not uncommon for witnesses to be emotional on the stand, where—I've seen instances where witnesses have stormed off the witness stand and could be heard crying or yelling in the hallway after their testimony. I've seen witnesses faint. I had a young child bite the victim advocate . . . when leading her to the witness stand. I've had witnesses hide under the witness stand or under counsel table. And so none of those instances resulted in a mistrial, and, again, I have not found any authority that says that this would be a—and yes, I can see that it can be prejudicial. However, it is whether it is going to be unduly prejudicial and whether it is inflaming the passions of the jury.

The district court, however, granted defense counsel's request that a curative instruction be read to the jury before B.N. resumed her testimony. The curative instruction provided:

> Members of the jury, at this time, I'm going to remind you of a previous instruction that I had provided to you that you are to decide this case based solely on the evidence presented during the trial and applying the law as I instruct you. You are not—or excuse me. You are to evaluate evidence

> without prejudice, bias, sympathy, without regard to your personal likes or dislikes.

Based on this record, the district court did not abuse its discretion in denying either of defense counsel's motions for a mistrial. "The [district court] is in the best position to determine whether an error is sufficiently prejudicial to require a mistrial or whether another remedy is appropriate." *Griffin*, 887 N.W.2d at 262. Here, the district court carefully analyzed the circumstances, including the degree of B.N.'s emotional breakdowns and how visible and audible they were to the jury; adequately considered each party's arguments; gave defense counsel time to cite legal authority in support of a mistrial under the circumstances; promptly excused the jury and had B.N. escorted into the jury room; and provided a curative instruction to the jury before B.N. resumed her testimony. The district court ultimately concluded that B.N.'s emotional breakdowns were not unduly prejudicial. Because the district court's denial of both motions for a mistrial was neither based on an erroneous view of the law or against logic and the facts in the record, we discern no abuse of discretion. *See Hallmark*, 927 N.W.2d at 291.

Affirmed.