STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0875

State of Minnesota,
Respondent,

vs.

Steven Lynn Oppel,
Appellant.

Filed June 17, 2013
Affirmed
Ross, Judge

St. Louis County District Court
File No. 69DU-CR-10-554

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

Mark S. Rubin, St. Louis County Attorney, Nathaniel T. Stumme, Assistant County Attorney, Duluth, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Ross, Judge; and Toussaint, Judge.*

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

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

ROSS, Judge

A jury heard evidence that on many occasions over the course of one year, Steven Oppel touched his then girlfriend's nine-year-old daughter both over and under her clothing on her buttocks using his hand or penis. The jury found Oppel guilty of first- and second-degree criminal sexual conduct. Oppel appeals from his conviction, arguing that the district court improperly allowed the jury to see a videorecorded interview of the victim, improperly admitted *Spriegl* evidence about which the state had given him no notice, and improperly sentenced him on the convictions of both the first- and second-degree offenses. He also contends that the evidence was insufficient and that the prosecutor engaged in prejudicial misconduct. Oppel raises additional contentions in a supplemental brief. Because none of Oppel's arguments warrant relief, we affirm.

FACTS

In November 2009, C.W. disclosed to a mandated reporter that Oppel, her mother's then-boyfriend, sexually touched her and physically abused her and her mother, B.O. After conferring with law enforcement, St. Louis County social workers promptly placed C.W. and her sister in foster care. One social worker described C.W. as "relieved."

The next day, C.W. was examined by a physician, who found no physical signs of abuse. She also met with Mary Ness, a child-protection case worker. Ness interviewed C.W. and captured the interview in a videorecording. C.W. said that she could not remember the first time that Oppel touched her, but she described at least one incident when Oppel touched her sexually with his finger. She answered Ness's question whether

it was on the outside or inside, saying, "Inside." C.W. also said that Oppel asked her to touch and suck his "wiener." She claimed that Oppel pushed her into the family van and that he once threatened her with a hammer.

The state charged Oppel with one count of first-degree criminal sexual conduct (penetration or contact) (Minn. Stat. § 609.342, subd. 1(a) (2008)) and one count of second-degree criminal sexual conduct (Minn. Stat. § 609.343, subd. 1(h)(iii) (2008)). Oppel represented himself throughout the proceedings, but he accepted the assistance of court-appointed advisory counsel at trial.

C.W., twelve years old at the time of trial, testified that Oppel lived with her, her sister, and B.O. when she was nine years old. She told the jury that Oppel began touching her in a way that she did not like. She said that it happened while B.O. showered and that it occurred mostly in the basement. C.W. described the different ways Oppel touched her. She testified that at least five times and as often as every other day, Oppel put his hand down her pants and kissed her. She said that more than thirty times he touched his "wienie" against her buttocks over her clothes. She said that once, he put it in her pants while she lay on her back. She explained that he touched it to her butt with her pants off. She recalled that she had participated in an interview shortly after she reported the abuse, but she could not remember stating that she had been touched by Oppel on the inside. On cross-examination, Oppel challenged C.W. about an incident when she alleged that Oppel strangled B.O. and kicked C.W. in the leg.

The state offered Ness's videorecorded interview of C.W. into evidence and played it for the jury without objection from Oppel. And it offered the testimony of Ness,

who testified that, in her experience, it is not uncommon for some children to disclose an event initially and later provide more details.

Oppel called B.O. to testify. She testified that the night before C.W. reported the sexual abuse, C.W. complained that she had a fever, which B.O. and Oppel disproved by taking her temperature. She said that C.W. became demonstrably upset when they told her that she would be going to school the following day. The next morning, C.W. continued to assert that she had a fever, and again B.O. came to a different conclusion after taking her temperature and determining that it was normal. According to B.O., C.W. "left in a rage." This was the morning of her report to the school official that Oppel had been abusing her during the past year. B.O. also testified that Oppel never hit her.

The jury found Oppel guilty of first-degree criminal sexual conduct and second-degree criminal sexual conduct. The district court sentenced him to the guidelines presumptive sentence of 144 months in prison for the first-degree conviction to be served concurrently with a 150-month prison term for the second-degree conviction.

Oppel appeals. The briefing suggests that the parties are confused as to the form of first-degree criminal sexual conduct the jury convicted Oppel of. The verdict forms state that the jury found Oppel guilty of "first-degree criminal sexual conduct—sexual penetration," and the district court clerk stated on the record that the jury found Oppel guilty of first-degree criminal sexual conduct (penetration) and not guilty of first-degree criminal sexual conduct (contact). We will address the issues on appeal based on the verdict form and the district court's pronouncement that the jury found Oppel guilty of first-degree criminal sexual conduct based on penetration.

D E C I S I O N

I

Oppel contends that the district court improperly allowed C.W.'s videorecorded interview into evidence. Because Oppel did not object to the admission of this evidence at trial, we review for plain error. Minn. R. Crim. P. 31.02; *State v. Brown*, 792 N.W.2d 815, 820 (Minn. 2011). Plain error exists if there is an error, the error is plain, and the error affects substantial rights. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). An error is plain if it is clear, obvious, or contravenes a rule, case law, or standard of conduct, or disregards a well-established and longstanding legal principle. *Brown*, 792 N.W.2d at 823. An error affects a defendant's substantial rights if there is a reasonable likelihood that the error substantially affected the jury's verdict. *Id*. at 824. Even if these three elements are met, this court has discretion whether to address the error, guided by whether reversal will protect the fairness and integrity of the judicial proceedings. *Ramey*, 721 N.W.2d at 302.

Oppel contends that the district court committed plain error by failing to exclude the videorecorded interview under several theories rooted in the hearsay rule. Succeeding in an appeal based on the inappropriateness of unobjected-to hearsay is particularly difficult under the plain-error standard because "[t]he number and variety of exceptions to the hearsay exclusion make objections to such testimony particularly important to the creation of a record of the [district] court's decision-making process in either admitting or excluding a given statement." *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). The challenge implies that a trial judge has a duty to strike evidence *sua sponte* based on the

judge's assumption that the evidence might violate the hearsay rule. This puts the nearly impossible burden on the district court judge both to properly catalogue proffered evidence as hearsay in light of the various circumstance-based qualifiers, *see* Minn. R. Evid. 801(d) (listing circumstances when out-of-court statements by witnesses and party-opponents are "not hearsay"), and also to accurately reject any applicable exceptions to the exclusion of the hearsay, *see* Minn. R. Evid. 803 (listing 23 exceptions regardless of declarant's availability); Minn. R. Evid. 804(b) (listing four additional exceptions that depend on declarant's unavailability); Minn. R. Evid. 807 (establishing an overarching, circumstance-based residual exception). And the judge would often have to undertake this issue-spotting and analysis in an instant while the questioning and allegedly inadmissible testimony is unfolding. Nevertheless, both the supreme court and this court have occasionally, albeit rarely, found plain error to exist on the district court's failure to exclude unobjected-to hearsay. *See, e.g.*, *State v. Tscheu*, 758 N.W.2d 849, 864 (Minn. 2008) (holding that it was plain error to admit agent's hearsay testimony relaying out-of-court statement by a witness); *State v. McClenton*, 781 N.W.2d 181, 193 (Minn. App. 2010) (observing that the parties agreed that the district court plainly erred by admitting documentary hearsay).

Oppel's plain-error argument faces an additional obstacle: the videorecording that he now claims to have been plainly erroneous for the district court to show to the jury was shown to the jury on Oppel's enthusiastic endorsement. He insisted that the entire recording, not just portions, be presented. He urged the district court, "It would be of course, nice, you know, [to play the entire video] so [the jury] can actually see the

expressions in her face and if she's being truthful, as many of the jurors had said that they would like to watch her reactions to questions." Oppel also asserted that the video was "critical to [his] defense, 'cause—you know, that the juror [sic] actually see her lying." It is evident that Oppel's decision not to object was part of his trial strategy. We do not review trial strategy for error. *State v. Voorhees*, 596 N.W.2d 241, 255 (Minn. 1999). And more specifically here, we will not ascribe error, let alone plain error, to the district court for not preventing Oppel from pursuing his own expressly declared defense strategy.

II

Oppel contends that the district court erred by admitting *Spreigl* evidence for which the state had given him no notice. We review a trial court's failure to *sua sponte* strike the testimony or to provide a cautionary instruction with regard to unnoticed *Spreigl* evidence for plain error. *State v. Vick*, 632 N.W.2d 676, 685 (Minn. 2001).

Oppel argues that C.W.'s testimony that he physically abused both C.W. and B.O., and that B.O.'s testimony that her parental rights had been terminated, constitute unnoticed *Spreigl* evidence. The state must provide a defendant with advance notice of *Spreigl* evidence to be used during the state's case in chief. *State v. Clark*, 296 N.W.2d 359, 368 n.6 (Minn. 1980). But the need for rebuttal evidence, which explains evidence elicited by the defense, *State v. Gutierrez*, 667 N.W.2d 426, 435 (Minn. 2003), cannot be predicted accurately before trial.

It was Oppel who first elicited evidence of physical abuse. During his cross examination of C.W., Oppel asked, "Did I ever hit [B.O.]?" C.W. responded, "No. You

only strangled her." Oppel asked several follow-up questions related to the alleged strangulation, attempting to tarnish C.W.'s credibility. Oppel also asked C.W. about his habit of yelling. When C.W. testified that he did not yell at her, Oppel asked, "I thought with the van incident I yelled at you so bad you were terrified?"

Oppel's questioning of C.W. about her observations of his alleged prior abuse of B.O. and his anger toward C.W. invited the state to provide responsive evidence of his abusive conduct to rehabilitate C.W.'s credibility. The alleged *Spreigl* evidence in C.W.'s videorecorded statements about Oppel strangling B.O. and about the van incident, which included a threat with a hammer, therefore resulted from Oppel's trial tactics rather than the state's effort to provide surprise evidence of Oppel's prior acts.

The same problem defeats Oppel's contention that the district court plainly erred by allowing the state to question B.O. on the termination of her parental rights. Before this questioning occurred, Oppel had asked B.O. during her direct examination, "Do you want [C.W.] back?" When she responded, "No," Oppel followed, asking, "And why wouldn't you want [C.W.] back? She is your daughter?" Having exposed the issue of B.O. "wanting her daughter back," Oppel presented the state with the right to clarify the context of the exchange by inquiring through B.O. about the termination of her parental rights. We add that, even if allowing the unobjected-to questioning constituted error, and even if the error was plain, the error did not apparently affect Oppel's substantial rights because this questioning was brief and not referenced later during trial. *See Vick*, 632 N.W.2d at 685; *State v. Haglund*, 267 N.W.2d 503, 506 (Minn. 1978).

We also conclude that the district court's failure to exclude or strike the social worker's testimony that he reviewed the intake sheet that indicated that C.W. disclosed Oppel's physical abuse of her and B.O. was not plain error. The social worker did not elaborate on the contents of those disclosures, *see Haglund*, 267 N.W.2d at 506, and explained that an investigation took place shortly after, alerting the jury that the intake sheet merely recites allegations rather than facts or conclusions.

III

Oppel contends that the evidence was insufficient to support his convictions. We review challenges to the sufficiency of the evidence to determine if the evidence, viewed in the light most favorable to the conviction, could allow the jury to find the defendant guilty. *State v. Pendleton*, 759 N.W.2d 900, 909 (Minn. 2009). This means we assume that the jury credited the state's witnesses and drew all reasonable inferences on disputed evidence in favor of the conviction. *State v. Jackson*, 726 N.W.2d 454, 460 (Minn. 2007). We will not disturb the verdict if the jury, giving due regard to the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have found the appellant guilty. *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007). Based on that standard and the disputed testimony, some of which clearly supports the jury's verdict, we have no basis to reverse the conviction of either first-degree criminal sexual conduct or second-degree criminal sexual conduct.

Oppel challenges an element of the first-degree crime. First-degree criminal sexual conduct (penetration) occurs when a defendant sexually penetrates a person under thirteen years of age when the defendant is more than thirty-six months older. Minn. Stat.

§ 609.342, subd. 1(a). Oppel maintains that the evidence cannot prove penetration. Penetration includes any intrusion into the genital opening of the complainant's body. Minn. Stat. § 609.341, subd. 12(2) (2008). During the recorded interview, which was shown to the jury, Ness asked C.W. if Oppel touched her on the outside or the inside. C.W. answered, "Inside." She also described a physical sensation, reporting that it "tickled." The evidence is not overwhelming, but the jury was entitled to believe it, and it did. From this evidence, the jury could reasonably conclude that Oppel penetrated C.W. and engaged in first-degree criminal sexual conduct.

Oppel also challenges an element of the second-degree crime. Second-degree criminal sexual conduct occurs when a defendant has sexual contact with a person who is under age sixteen, the defendant has a significant relationship with the person, and the abuse involves multiple acts over an extended period of time. Minn. Stat. § 609.343, subd. 1(h)(iii). Sexual contact means that the defendant intentionally touches the person's intimate parts or the clothing over those parts with sexual or aggressive intent. Minn. Stat. § 609.341, subd. 11(b) (2008). Again, Oppel challenges only the sufficiency of the evidence related to the physical element. But C.W. testified that Oppel touched her on the outside of her genital area at least five times and as often as every other day. In the videorecorded interview, C.W. stated that Oppel touched her "area" and played around with her "area." From this testimony, the jury could reasonably conclude that Oppel committed second-degree criminal sexual conduct.

Oppel highlights C.W.'s inconsistent statements, her delay in reporting, the lack of physical evidence, and the presence of a motive for her to have fabricated the story. We

recognize that these points are relevant and significant and that they might have convinced a jury to acquit. But they all constitute factors to be considered when weighing evidence and assessing witness credibility. On appeal, that is not our role. And we have a perspective that differs substantially from that of a jury. We do not weigh evidence or assess witness credibility; these are within the exclusive province of the jury. *State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997). We review the record only to decide whether, if the evidence supporting the conviction was believed by the jury, it could support the conviction as a matter of law. Despite the inconsistencies that certainly might have persuaded (but did not persuade) the jury to acquit, C.W. consistently maintained that Oppel sexually abused her in some fashion and she described the abuse. The testimony of a single credible witness may support a conviction. *State v. Jones*, 647 N.W.2d 540, 548 (Minn. App. 2002), *rev'd on other grounds*, 659 N.W.2d 748 (Minn. 2003); Minn. Stat. § 609.347, subd. 1 (2012) (testimony of a victim in a criminal sexual conduct case need not be corroborated). This testimony was supported by the social worker's testimony that C.W. was crying because she was "relieved" when he picked her up from school and took her to a foster home. *See State v. Reinke*, 343 N.W.2d 660, 662 (Minn. 1984) (stating that evidence of the victim's emotional condition at the time she complained to others is corroborating evidence of a victim's testimony). Given our deferential role on appeal as it regards disputed matters of fact, we hold that the evidence was sufficient.

IV

Oppel contends that he is entitled to a new trial because the prosecutor engaged in misconduct during closing argument. Because Oppel did not object at trial, we review only for plain error. *See Ramey*, 721 N.W.2d at 302. If Oppel can show plain error, the burden shifts to the state to establish that the error did not affect Oppel's substantial rights. *See State v. Dobbins*, 725 N.W.2d 492, 508 (Minn. 2006).

Oppel argues that the prosecutor inflamed the jury's prejudices during his closing argument. "[A] prosecutor must avoid inflaming the jury's passions and prejudices against the defendant." *State v. MacLennan*, 702 N.W.2d 219, 235 (Minn. 2005) (quotation omitted). Statements or evidence presented at trial that are unrelated to the elements of the charged offenses may play on the sympathies of the jury and are improper. *See State v. McNeil*, 658 N.W.2d 228, 235 (Minn. App. 2003). The supreme court has repeatedly declared more specifically that it is improper for a prosecutor to seek justice beyond the parameters of the extant case. *See, e.g.*, *State v. Atkins*, 543 N.W.2d 642, 648 (Minn. 1996) ("[T]he prosecutor was not urging the jury to convict Atkins in order to teach him a lesson, to 'send a message' to society or otherwise seek justice beyond the parameters of the case, purposes for which we have not hesitated to chastise prosecutors in the past."). Oppel asks us to review the prosecutor's declarations that referred to justice for children generally rather than justice for C.W. specifically: "Disclosure is a process, and justice for children cannot mean that you simply choose between what [C.W.] says to Mary Ness and what she says on the stand and . . . what she might have said to anybody else." The prosecutor added that "justice for children, and in

light of disclosure as a process, means that you can choose—you can, and should, choose all of these things and not simply keep a scorecard of inconsistencies."

On the caselaw, the prosecutor's plea for "justice for children" constitutes misconduct. The prosecutor's proper role does not include urging jurors to protect entire classes of victims or to use their verdict as a proclamation against injustice. This is because

> the jury's role is not to enforce the law or teach defendants lessons or make statements to the public or to "let the word go forth"; its role is limited to deciding dispassionately whether the state has met its burden in the case at hand of proving the defendant guilty beyond a reasonable doubt.

State v. Salitros, 499 N.W.2d 815, 819 (Minn. 1993); *see also State v. Peterson*, 530 N.W.2d 843, 848 (Minn. App. 1995) (holding that a prosecutor's plea to send a message to children that "we will protect you" is improper). By inviting the jury to consider victim "children" generally rather than to maintain a keen focus on C.W.'s allegations and the evidence related to them, the prosecutor engaged in the kind of inflammatory tactics that have no place in factfinding on the presented evidence.

Despite this holding, we are satisfied by the state's argument on appeal that the jury would not have reached a different verdict even if the prosecutor had confined his remarks appropriately. We recognize that "[s]exual-abuse cases inevitably evoke an emotional reaction, and any attempt by the prosecutor to exacerbate this natural reaction by making any emotive appeal to the jury is likely to be highly prejudicial." *McNeil*, 658 N.W.2d at 234. But we look at the closing argument as a whole when reviewing alleged misconduct. *Ture v. State*, 681 N.W.2d 9, 19 (Minn. 2004). And the inflammatory

reference was a brief part of an argument that filled twenty pages of transcript, which, on the whole, reveals appropriate emphasis on the evidence in relation to the criminal elements and burden of proof. We hold that, in light of the evidence presented and the general propriety of the argument as a whole, the brief improper comments about "justice for children" did not have a substantial impact on the jury's verdict and therefore did not affect Oppel's substantial rights.

After oral argument, Oppel's counsel asked us to consider *State v. Jackson*, No. A12-1070, 2013 WL 1943001 (Minn. App. May 13, 2013), for this issue. In *Jackson*, a panel of this court recently reversed a conviction for prosecutorial misconduct after the prosecutor argued for "justice for children" also in a child-victim criminal sexual conduct case. 2013 WL 1943001, at *5. We decline to reach the result of *Jackson* here for four reasons. First, *Jackson* is an unpublished decision and is therefore not binding authority. *See* Minn. Stat. § 480A.08, subd. 3(c) (2012); *Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 572, 575 n.2 (Minn. 2009). Second, unlike this case, *Jackson* involved an appeal in which the state offered no responsive argument whatsoever. 2013 WL 1943001, at *2. Third, unlike the prosecutor here, the prosecutor in *Jackson* made "repeated [improper] statements" during voir dire and throughout the closing argument. *Id.* at *3–5. Fourth, we think this case is more akin to two of the three cases that the *Jackson* panel found analogous, which held that reversal was *not* the proper remedy for the improper statements. *See State v. Gaulke*, 281 Minn. 327, 330, 161 N.W.2d 662, 664 (1968) ("[W]e cannot say that these concluding sentences, while clearly improper, when considered as part of the whole argument and in conjunction with the court's cautionary

instructions, were so prejudicial as to warrant granting a new trial."); *State v. Friend*, 385 N.W.2d 313, 322 (Minn. App. 1986) ("In view of the entire record, the prosecutor's statement . . . did not play a substantial part in influencing the jury to convict."), *review denied* (Minn. May 22, 1986). And this case also is not at all like the third case that *Jackson* relied on, in which we reversed not because of any single improper argument, but because of the cumulative impact of multiple trial errors. *See State v. Peterson*, 530 N.W.2d 843, 848 (Minn. App. 1995) ("We conclude [that] the cumulative effect of the trial court's 'dynamite' instruction, the violation of Peterson's right to confrontation, and the prosecutorial misconduct in closing argument combine to compel reversal as a matter of law."). *Jackson* does not alter our decision.

Oppel also argues that the prosecutor invited the jury to make unreasonable inferences about the evidence and to speculate about evidence that was not presented during trial. "A prosecutor may draw reasonable inferences from the evidence produced at trial." *State v. Ashby*, 567 N.W.2d 21, 28 (Minn. 1997). But he "should not intentionally misstate the evidence or mislead the jury as to the inferences it may draw." *State v. McCray*, 753 N.W.2d 746, 754 (Minn. 2008) (quotation omitted). Acknowledging that inconsistencies existed between C.W.'s videorecorded interview and trial testimony, the prosecutor stated, "I dare say if [C.W.] were interviewed again she might say even more," and that "[C.W.'s] disclosures may not, even now, be complete, but the evidence thus far from her disclosure process certainly supports convictions for the three offenses." These comments do not constitute misconduct. The prosecutor was attempting to explain C.W.'s inconsistent statements. He referenced Ness's testimony

that "sometimes there's things that kids are ready to talk about and other things that they're not ready to talk about," and that "disclosure is a process. It's something that happens over time." He characterized the testimony reasonably by asserting, "Some interviews it may be everything that happened. . . . [B]ut with other kids, they're just not quite ready and it might take longer for them to . . . tell the full . . . experience." The argument summarizes rather than misstates the evidence. And to the slight extent that the prosecutor's predicting what a witness might say in the future raises any concern, the district court allayed the concern by adequately instructing the jurors that statements of counsel are not evidence.

V

Oppel contends that the district court erred by sentencing him on both convictions—for first- *and* second-degree criminal sexual conduct. A person who commits multiple offenses during a single behavioral incident may be punished for only one offense. Minn. Stat. § 609.035, subd. 1 (2012); *State v. Marchbanks*, 632 N.W.2d 725, 731 (Minn. App. 2001). When the facts are undisputed, the determination of whether the offense arose from a singular behavioral incident is a question of law reviewed de novo. *Marchbanks*, 632 N.W.2d at 731. The district court considers whether the conduct shares a unity of time and place and whether it was motivated by a single criminal objective. *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995).

The district court made no findings on whether Oppel's conduct constituted a single behavioral incident. The complaint and the jury instructions list the same place and periods of time that both the first- and second-degree criminal sexual conduct occurred.

But the evidence defined separate events. C.W. indicated that she suffered at least one act of sexual penetration and multiple acts of other sexual touching. On this evidence, the state proved at least one act involving penetration and others involving other types of sexual contact. The district court instructed the jury on the different elements of first- and second-degree criminal sexual conduct. The single act involving penetration satisfies the elements for first-degree criminal sexual conduct. The multiple other acts of sexual contact over an extended period of time satisfies the elements for the second-degree offense. The acts that support the convictions did not arise from a single behavioral incident. The district court therefore did not err by imposing sentences on both convictions.

This holding also guides our decision on Oppel's argument arising from Minnesota Statutes section 609.04. That section precludes convictions of both a charged crime and a lesser-included offense. Minn. Stat. § 609.04 subd. 1(1) (2012). Although we have held that second-degree criminal sexual conduct is a lesser-included offense of first-degree criminal sexual conduct (penetration), *State v. Kobow*, 466 N.W.2d 747, 752 (Minn. App. 1991), *review denied* (Minn. Apr. 18, 1991), section 609.04 does not apply if the offenses constitute separate criminal acts, *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006). Because Oppel's crimes did not arise from a single behavioral act, section 609.04 does not lead us to reverse.

VI

Oppel raises several additional arguments in his pro se supplemental brief. He insists that witnesses lied. Again, witness credibility and the weight given to their

testimony are issues for the jury to determine. He also argues that the district court violated his constitutional right to counsel by denying him a public defender. Oppel never applied for public-defender representation despite being informed of that option. Twenty-two months passed between Oppel's first appearance and the trial and he received several continuances for pretrial hearings based on his assurances that he was going to secure counsel. This case is similar to *State v. Jones*, 772 N.W.2d 496 (Minn. 2009). In *Jones*, the supreme court held that a defendant's failure to obtain counsel after being granted several continuances to do so constituted "extremely dilatory" conduct, forfeiting his right to counsel. *Id.* at 506. Oppel's right to a public defender was forfeited, not violated.

Oppel complains that he was rushed during the jury selection process. The record reveals that the district court permitted Oppel ample opportunity to question prospective jurors individually and as a group. He raises several other issues: whether he was entitled to the recordings of pretrial hearings; whether the district court should have dismissed a prospective juror; whether the district court responded properly to Oppel's interest in questioning a witness about his willingness to take a polygraph examination; whether this court should consider a transcript in an unrelated case. We have carefully reviewed all of Oppel's arguments and conclude that none warrants further discussion or reversal.

Affirmed.