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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2070**

State of Minnesota,
Respondent,

vs.

Cassie Ann Garza,
Appellant.

**Filed November 20, 2017
Reversed and remanded
Ross, Judge**

Olmsted County District Court
File No. 55-CR-16-1524

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

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney,
Jennifer D. Plante, Assistant County Attorney, Rochester, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

ROSS, Judge

While Cassie Garza awaited trial for domestic abuse by strangulation and malicious
punishment of a child, the district court deemed evidence of Garza's alleged previous child

abuse inadmissible to prove her guilt. But the prosecutor's closing argument urged the jury to believe that Garza was guilty specifically because of the prior "substantiated allegations of abuse" against her. The jury found Garza guilty of malicious punishment. Because the prosecutor's argument constituted misconduct and the state does not establish that the prosecutor's improper argument did not prejudice Garza's right to a fair trial, we reverse her conviction and remand for a new trial.

FACTS

This case arose from a January 2016 incident involving Cassie Garza and J.C., Garza's teenage son. According to J.C., he and Garza began arguing when he came home from school. He says that Garza came toward him and put her arms tightly around his neck, preventing him from breathing. The state charged Garza with domestic abuse by strangulation and malicious punishment of a child.

Garza moved in limine for the district court to preclude the state from presenting evidence that child protection workers had concluded that Garza previously abused her children. The court agreed and prohibited the state from using any prior determinations that Garza had abused her children to support the credibility of the current allegations against Garza. The court acknowledged that evidence of abuse allegations would be introduced for other reasons, but it instructed the prosecutor not to linger on it.

During trial, the prosecutor elicited testimony of other instances of "domestic conduct" by Garza. J.C. claimed that he had been hurt by Garza previously, including instances in which Garza smacked, threw, and punched him. The district court contemporaneously instructed the jury that the evidence was being offered for the limited

purpose of demonstrating the nature of the relationship between Garza and her family members and that the jury could not rely on this evidence to find Garza presently guilty.

Vicki Duncan, a guardian ad litem assigned to Garza's children, testified that she is appointed by the court in cases of alleged abuse and neglect. Prompted by the prosecutor, Duncan said that she had been appointed because of allegations of abuse and neglect against Garza specifically. The prosecutor alluded to "abuse and neglect" three times in her brief cross-examination of Duncan.

Duncan then volunteered during questioning by Garza that, although she had not seen any signs of physical abuse, she had been appointed because of the "history of abuse that was substantiated." The prosecutor highlighted this testimony during her closing argument, implying that the jury should find Garza guilty because she had abused her children previously:

Members of the jury, believe [J.C.] about the assault. Consider that we had Child Protection in there already, the guardian ad litem; there had been substantiated allegations of abuse from 2015 alleged against the mother and each of her children were appointed a guardian ad litem.

The jury acquitted Garza of domestic assault by strangulation but convicted her of malicious punishment of a child. Garza appeals.

DECISION

Garza contends that the prosecutor committed misconduct by eliciting inadmissible testimony and by making an improper argument to the jury. The contention is compelling.

We must decide whether the prosecutor committed misconduct when she emphasized previous allegations of abuse against Garza and argued that the jury should

consider them in reaching its verdict. Because Garza did not object at trial, we review her claim of prosecutorial misconduct only for plain error. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *State v. Wren*, 738 N.W.2d 378, 393 (Minn. 2007). If Garza identifies a plain error, the burden shifts to the state to establish that the error did not affect Garza’s substantial rights. *Ramey*, 721 N.W.2d at 302.

The record supports Garza’s contention that the prosecutor willfully violated the district court’s pretrial order by emphasizing the previous allegations of abuse against her. Despite the restriction, the prosecutor emphasized the previous allegations of abuse during her short cross-examination of Duncan:

Q. And you’re a guardian ad litem so you’re – you’ve testified. Are you an individual then appointed by the Court when there’s allegations of abuse and neglect?

A. That’s correct.

Q. And so were you appointed to both [J.C.] and . . . [C.C.] by the Court?

A. Yes.

Q. Because of allegations of neglect and abuse?

A. Yes.

Q. Against?

A. Mom.

Q. Ms. Garza?

A. Yes.

Q. And how long had you been a guardian ad litem to [C.C.] and [J.C.]?

A. I was appointed in November of – November 18th of 2015.

Q. And as a guardian ad litem, who do you represent?

A. The children.

Q. And once you’re appointed because of allegations of abuse and neglect, how do you work with the children?

The prosecutor's repetitious use of the phrase "abuse and neglect" by Garza spotlighted the prior allegations about Garza. The state argues that Garza opened the door to testimony about previous allegations of abuse by asking Duncan to state her occupation. But the "opening-the-door" doctrine applies when one party introduces evidence that the opposing party can counter using evidence that would otherwise be inadmissible. *State v. Fraga*, 898 N.W.2d 263, 272 (Minn. 2017). Duncan's answer to Garza's question about her occupation was not that sort of evidence; it did not harm the state's case or give the prosecutor any reason to respond with contrary, prejudicial evidence. The prosecutor's overstepping here, without more, might not have justified reversal, but her closing argument intensified the violation beyond what we can fairly call harmless.

We are especially concerned that the prosecutor counselled the jury to consider "substantiated allegations of abuse from 2015 alleged against the mother," in the very manner the district court prohibited. Garza's closing argument called J.C.'s credibility into doubt. If the jury disbelieved J.C.'s account entirely, it would acquit Garza. The prosecutor countered with, "Members of the jury, believe [J.C.] about the assault." And then she immediately told the jury how it should accomplish this: "Consider that we had Child Protection in there already, the guardian ad litem; there had been substantiated allegations of abuse from 2015 alleged against the mother and each of her children were appointed a guardian ad litem." By directing the jury to believe J.C.'s account of abuse specifically by considering previous "substantiated allegations of abuse . . . against the mother," the prosecutor was doing precisely what the district court ordered the prosecutor not to do and advising the jury to do precisely what the court had instructed the jury not to do. It is

unprofessional conduct for the prosecutor to knowingly make impermissible arguments and mislead the jury as to the inferences it may draw. *State v. Peltier*, 874 N.W.2d 792, 805 (Minn. 2016); *State v. Steward*, 645 N.W.2d 115, 122 (Minn. 2002). The prosecutor’s argument offends this restriction. We are not persuaded otherwise by the state’s contention that some evidence had been admitted under Minnesota Statutes, section 634.20 (2016), which allows “[e]vidence of domestic conduct by the accused against the victim of domestic conduct, or against other family or household members.” Evidence presented under section 634.20 is admissible only to demonstrate the history of the relationship between the accused and the alleged victim of domestic abuse. *State v. Barnslater*, 786 N.W.2d 646, 650 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010). The jury may not rely on it as character evidence to find that a defendant is guilty, which is how the prosecutor packaged the evidence here. This was a plain error because it violated a standard of conduct not to elicit evidence ruled inadmissible.

Because Garza has identified prosecutorial misconduct, the state can avoid reversal by showing that there is no reasonable likelihood that the misconduct had a significant effect on the jury’s verdict. *Ramey*, 721 N.W.2d at 302. “In assessing [prejudice] we consider . . . whether the defendant had an opportunity to . . . rebut the improper suggestions.” *See State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007). Almost immediately after the prosecutor told the jury it should rely on Garza’s previous substantiated allegations of abuse as it pondered whether she was presently guilty, the jury retired to deliberate. The jury received no curative instruction, and Garza had no practical opportunity to respond. The improper argument bolstered the state’s only direct evidence of malicious

punishment—J.C.’s account of the incident. The state has not attempted to defend the prosecutor’s closing argument or to demonstrate that it did not prejudice Garza’s defense, focusing instead only on the prosecutor’s questioning of witnesses.

Because the state fails to show that there is no reasonable likelihood that the prosecutor’s misconduct significantly affected the jury’s verdict, we turn to the question of reversal. If we determine that the prosecutor’s misconduct affects a defendant’s substantial rights, we correct the error if correction is necessary to ensure fairness and the integrity of the judicial proceedings. *Ramey*, 721 N.W.2d at 298. Given the circumstances here, we are satisfied that reversal is necessary to ensure fairness and the integrity of the judicial proceedings. We therefore reverse Garza’s conviction and remand for a new trial.

Garza also contests the district court’s rulings on the admissibility of expert testimony, but we need not address that argument in light of our reversal on these grounds.

Reversed and remanded.