STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0655

State of Minnesota,
Respondent,

vs.

Amil Abdi Yonis,
Appellant.

Filed March 23, 2020
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-17-25578

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Kassius O. Benson, Sara B. Perlmutter, Kassius Benson Law, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Slieter, Judge.

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

BJORKMAN, Judge

Appellant challenges her convictions of malicious punishment, neglect, and endangerment of her stepson. She argues that (1) the prosecutor committed multiple

prejudicial discovery violations, (2) the prosecutor committed misconduct during closing argument, (3) the district court erred in deferring her motion for judgment of acquittal, and (4) the evidence is insufficient to support the convictions. We affirm.

FACTS

Appellant Amil Yonis married Thomas Kastigar in 2007, becoming stepmother to his two sons, 8-year-old C.K. and 4-year-old M.O. They lived with Kastigar's mother (grandmother) and her husband. Yonis and Kastigar had a daughter in 2009. They moved to their own apartment in 2010 after experiencing conflict with grandmother, who believed their parenting style was too strict.

In the following years, Yonis and Kastigar had additional children, and their treatment of M.O. and C.K. became more extreme. M.O. and his brother were not allowed to sit on chairs or sleep in a bed. They had to get permission to use the bathroom, and Yonis became increasingly strict about bathroom privileges. When they were unable to hold it any longer, they wet themselves. For M.O., this happened "pretty often," up to several times a week.

Yonis and Kastigar inflicted various punishments for the boys' wetting and misbehavior, often more frequent and more severe for M.O. Kastigar hit the boys on the bare buttocks with a belt, while Yonis hit them all over their bodies with a thick wooden spoon or a hanger. Sometimes they were hit two or three times a week, and sometimes not for a week or two.[1] Each time he was hit, M.O. was bruised and sore for days; although

[1] They were beaten more often in the summer when their bruises would not be noticed by school staff.

his clothing generally covered the marks, he had difficulty sitting down, going to the bathroom, and writing. Yonis and Kastigar also withheld food from the boys as a punishment. This occurred sporadically, but sometimes the boys went days in a row with little or no food at home.

In June 2013, C.K. ran away from home, and M.O.'s circumstances worsened. Yonis and Kastigar began forcing M.O. to stand bent over with his arms wrapped around his legs and gripping his ears, holding the painful position for hours. They also forced him to stand in a particular spot in the hallway for long periods of time, often the entire day. When he was given food, he ate in that spot. He still had to ask to use the bathroom, and Yonis and Kastigar began having his sisters watch him to make sure he did not "do something like vandalize their bathroom or . . . steal their Q-tips."

During the 2016-17 school year, when M.O. was in eighth grade, Kastigar and Yonis refused to let M.O. have a key to the apartment, so the boy waited in the building hallway after school, often for hours. Kastigar also began punishing M.O. by tying the boy's hands above his head with a jump rope and affixing them to the top hinge of a door, where he would spend the night.

On July 4, 2017, M.O. used money he had found to buy a package of cookies. He ate "a whole bunch of them," then vomited in the apartment. Yonis and Kastigar yelled at him for vomiting, telling him, "You're going to regret it tomorrow." The following morning, M.O. ran away. He contacted grandmother, whom he had not seen in four years, and she took him in. He weighed 87 pounds and had not grown appreciably since she last saw him; medical examination confirmed that his growth had plateaued from "chronic

malnutrition." But with regular access to food, he quickly grew and put on weight. He also stopped having trouble with wetting because he was able to use the bathroom freely.

In August, grandmother contacted Hennepin County Child Protection. M.O. consistently recounted Yonis and Kastigar's treatment of him to a county social worker, a pediatrician, and a forensic interviewer at CornerHouse, a child advocacy center. He was placed in grandmother's care.

Yonis and Kastigar were charged with child neglect, child endangerment, and two counts of malicious punishment of a child (substantial bodily harm and great bodily harm). After a two-week joint trial, beginning with 15-year-old M.O.'s testimony, a jury found them both guilty of all charges except for malicious punishment resulting in great bodily harm. Yonis appeals.[2]

D E C I S I O N

I. Yonis has not demonstrated prejudicial discovery violations.

A prosecutor must disclose (1) known written or recorded witness statements, (2) written summaries of oral statements, and (3) the substance of oral statements that relate to the case. Minn. R. Crim. P. 9.01, subd. 1. This obligation applies "before and during trial," and a disclosure must be made "in time to afford counsel the opportunity to make beneficial use of it." Minn. R. Crim. P. 9.03, subd. 2(a), (c). If the prosecutor does not comply, the district court "may, on notice and motion, order the party to permit the

[2] Kastigar also appealed his convictions. *State v. Kastigar*, No. A19-0561.

discovery, grant a continuance, or enter any order it deems just in the circumstances." *Id.*, subd. 8.

"The imposition of sanctions for violations of discovery rules and orders is a matter particularly suited to the judgment and discretion of the [district] court." *State v. Lindsey*, 284 N.W.2d 368, 373 (Minn. 1979). In determining the appropriate sanction, courts consider (1) the reason for the nondisclosure, (2) prejudice to the objecting party, (3) whether the prejudice can be remedied by a continuance, and (4) any other relevant concern. *Id.* We will reverse a conviction only if the appellant demonstrates both a discovery violation and resulting prejudice. *State v. Jackson*, 770 N.W.2d 470, 479 (Minn. 2009).

Yonis contends the prosecutor violated her discovery obligations by failing to disclose the audio recording of interviews she and Kastigar and two of their daughters gave to the county social worker in August 2017. The issue arose in the second week of trial, during Yonis's cross-examination. During a break, the prosecutor informed counsel that she intended to question Yonis about a particular section of the interview transcript. Yonis's counsel objected, stating she had not known the interviews were recorded or transcribed. The prosecutor noted that the social worker's summary of the interviews was previously disclosed as part of the child-protection file, and stated that her records indicated the recording itself was disclosed more than five months earlier. But the prosecutor acknowledged that something may have gone wrong in transmitting the recording. Yonis's counsel agreed that the prosecutor had not intentionally withheld the recording.

After an extended discussion, the district court and the parties agreed to a four-part solution. First, Yonis's counsel was afforded time to fully review the recording and transcript, and compare them to previous testimony and the child-protection file, including the social worker's summary. Second, the district court permitted Yonis's counsel to re-call Yonis for further direct examination before the prosecutor continued her cross-examination. Third, after the court indicated its willingness to exclude the recording and transcript, the parties stipulated to the admission (through Yonis's testimony) of segments of the daughters' interviews. Fourth, the district court permitted Yonis's counsel to re-call the social worker.

Yonis now argues that the district court, in helping to fashion this "remedy," found a discovery violation, and that "this remedy was inadequate and there should have been a mistrial." We disagree. Yonis did not ask the district court to find that the prosecutor committed a discovery violation, and the court made no such finding. Nor is a violation clearly apparent from the record; the prosecutor stated that she disclosed, or attempted to disclose, the recording, and Yonis's counsel acknowledged that any disclosure failure was unintentional. But even if we assume there was a discovery violation, the parties and the district court crafted an appropriate remedy. The four agreed-to steps remedied any prejudice to Yonis.

Yonis also asserts that the prosecutor deprived her of a fair trial by failing to disclose until mid-trial (1) photographs taken during an August 2017 medical examination of M.O., (2) emails Yonis sent in March 2018, and (3) photographs of M.O. "engaged in various different activities." This argument lacks merit. While Yonis cites to a portion in the

record where she objected to the disclosure of these items, she overlooks her acceptance of the prosecutor's statement that she disclosed the evidence as soon as she received it. More importantly, Yonis fails to acknowledge that the prosecutor ultimately agreed to and did not use the evidence in question. In sum, the record demonstrates neither error nor prejudice that would entitle Yonis to a new trial due to discovery violations.

II. The prosecutor did not commit misconduct during closing argument.

Where, as here, the appellant did not object to claimed prosecutorial misconduct, we apply a modified plain-error standard. *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017). The appellant must show that the prosecutor erred and the error was plain. *Id.* If the appellant establishes plain error, the state must show that the appellant was not prejudiced. *Id.*

In evaluating a claim of prosecutorial misconduct based on closing argument, we consider the argument as a whole, declining to focus "on particular phrases or remarks that may be taken out of context or given undue prominence." *State v. Jones*, 753 N.W.2d 677, 691 (Minn. 2008) (quotation omitted). A prosecutor may "present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence." *State v. Munt*, 831 N.W.2d 569, 587 (Minn. 2013) (quotation omitted). But the prosecutor must "avoid inflaming the jury's passions and prejudices" against the defendant. *State v. McDaniel*, 777 N.W.2d 739, 752 (Minn. 2010) (quotation omitted).

Yonis challenges four portions of the prosecutor's closing argument, asserting that these arguments inflamed the jury's passions and prejudices. But Yonis takes the

challenged portions out of order and out of context. After reviewing the argument as a whole, we are satisfied that none of the challenged arguments are improper.

In the first portion, toward the beginning of her argument, the prosecutor stated: "And that's the thing about abuse like this. It's not just the physical pain or the hunger or the exhaustion every day at school. It's emotionally and mentally dehumanizing. And children are the perfect victims for it. They're vulnerable because adults control the world they live in." The first three sentences of this argument address testimony from both M.O. and C.K., who described not only pain and hunger at their parents' hands, but also humiliation and degradation such that running away from home was emotionally freeing. It was not improper for the prosecutor to address the scope of the harm that Yonis inflicted on the boys. And the last two sentences fairly responded to Yonis's defense theory that M.O. was fabricating previously undisclosed allegations of abuse, and invited the jury to consider the dynamics in M.O.'s life that led him not to disclose the abuse.

The second challenged portion of the argument similarly confronted the question of credibility: "It's all the evidence there is in a lot of child abuse cases, a child's word, a child's consistent, corroborated word. And if you believe [M.O.], this case is proven." Yonis contends these statements invited the jury to focus on M.O.'s testimony and ignore all of the other evidence. We disagree. The prosecutor merely acknowledged that the state's case required the jury to believe M.O. over his father and Yonis. And the statements accurately reflect that. M.O.'s testimony, if credited on its own merit or because of the extensive corroborating evidence, was enough to establish the elements of the charged offenses and therefore was enough to prove the state's case. *See State v. Foreman*, 680

N.W.2d 536, 539 (Minn. 2004) (stating that a single witness's uncorroborated testimony can support a conviction).

Yonis's third challenge relates to the prosecutor's argument regarding great bodily harm: "The legislature, the Minnesota legislature, can't predict everything that's ever going to happen in a case. They can't predict every type of abuse or injury that might be inflicted on a victim." The context of this argument defeats Yonis's contention. The prosecutor argued that "two-and-a-half years or more of impaired or stunted growth is a protracted loss or impairment of the function of any bodily member or organ." *See* Minn. Stat. § 609.02, subd. 8 (2016) (defining great bodily harm). In urging that position, she explained that other types of injuries "fit more easily" into that definition, but even though the legislature did not expressly anticipate such things, "that doesn't mean that starving a kid, that doesn't mean that altering his growth to the point where he's horizontal across the growth chart, that does not mean that it's not great bodily harm." We discern no error in this argument regarding an element of one of the charged offenses.

In the fourth challenged portion, at the end of her argument, the prosecutor reiterated her response to the defense theory that M.O. made up the abuse: "There is something inherently imbalanced about cases like these, about cases where a child has been victimized." She urged the jury to consider that the power imbalance between M.O. and his parents contributed to his reticence to report earlier, and that the nature of the abuse—inflicted in secret, sporadically but consistently—means that it would not always have been apparent to outsiders.

Overall, the prosecutor's argument explained why the jury should credit M.O.'s testimony about how Yonis and Kastigar treated him, and why his testimony supports guilty verdicts. That the evidence may have inspired a strong emotional response in the jurors does not mean the prosecutor acted improperly by discussing it and even arguing that its egregious nature supported a finding of guilt on the most serious charge—an argument that the jury ultimately rejected. Because neither error nor prejudice is apparent on this record, Yonis is not entitled to relief based on her claim of prosecutorial misconduct.

III. The district court's deferral of Yonis's motion for judgment of acquittal does not warrant reversal.

We interpret rules of procedure de novo, looking to the rule's plain language. *State v. Thomas*, 891 N.W.2d 612, 616 (Minn. 2017). Failure to comply with procedural rules does not warrant reversal unless it causes prejudice. Minn. R. Crim. P. 31.01. And if a defendant fails to object to procedural error at trial, the "unobjected-to error can be reviewed only if it constitutes plain error affecting substantial rights." *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006).

A defendant may move for a judgment of acquittal after the close of the state's evidence or after trial. Minn. R. Crim. P. 26.03, subd. 18(1)(a). "If the defendant's motion is made at the close of the prosecution's case, the court must rule on the motion." *Id.*, subd. 18(2). While the court need not rule on the motion "immediately," it must do so before moving on to the next stage of the trial. *Thomas*, 891 N.W.2d at 616-17. This protects the defendant "from having to come forward with evidence that would fill[] gaps in the State's case." *Id.* at 617 (alteration in original) (quotation omitted).

After the close of the state's evidence, Yonis moved for judgment of acquittal. The district court prevented Yonis from arguing the motion at that time and declined to issue a ruling because the jury was waiting:

> We're just going to have to do this later during a break. Okay? I will take the motion under advisement. . . . I absolutely know I need to deal with judgment of acquittal now that's made. . . . But let's just do it when we can all be on our own time and not the jury's. Okay?

Yonis agreed and began presenting evidence. At the end of the day, she argued the motion, and the district court denied it.

The state concedes that this procedure was plain error, and we agree. But Yonis has not demonstrated that the error impaired her substantial rights.

Between the time Yonis asserted her motion and when the district court considered and ruled on it, Yonis presented the testimony of three witnesses. Her medical expert opined that M.O.'s slow growth, his nutritional deficiencies, and the marks on his body were not indicative of abuse at all. And a physical education teacher at M.O.'s middle school and an imam who knows the family both testified that M.O. never complained of or exhibited signs of physical abuse or starvation. While these witnesses disputed aspects of the state's case, their testimony did not support any elements of the charged offenses. In other words, the error did not result in Yonis coming forward with evidence that filled gaps in the state's case. *Cf. id.* (observing that this is the concern to be avoided by ruling promptly).

Contrary to Yonis's suggestion that the district court "failed to give due time and consideration to [her] argument," the record shows that the district court carefully

considered and articulated its reasoning as to each count. In particular, the court thoroughly analyzed the question of great bodily harm, which was the primary focus of Yonis's motion, and decided to leave it to the jury, which ultimately acquitted her on that charge. On this record, we are persuaded that the district court's plain error does not warrant reversal.

IV. Sufficient evidence supports the convictions.

When considering a challenge to the sufficiency of the evidence, this court carefully reviews the record "to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict." *Lapenotiere v. State*, 916 N.W.2d 351, 360-61 (Minn. 2018) (quotation omitted). A single witness's testimony can support a conviction.[3] *Foreman*, 680 N.W.2d at 539. And we assume the jury believed the witnesses whose testimony supports the verdict and did not believe evidence to the contrary. *State v. Pendleton*, 706 N.W.2d 500, 512 (Minn. 2005).

To convict Yonis of malicious punishment, the state was required to prove that she, as M.O.'s undisputed stepmother and caregiver, committed an intentional act or a series of intentional acts with respect to M.O. that evidenced "unreasonable force or cruel discipline

[3] Yonis dismisses M.O.'s testimony as "dubious" and urges us to review under the heightened standard applicable to circumstantial-evidence cases. M.O.'s and C.K.'s testimony was direct evidence of what Yonis did to M.O. and how it affected him. *See State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (explaining that direct evidence is "based on personal knowledge or observation" and "if true, proves a fact without inference or presumption"). And it was the jury's exclusive province to assess credibility. *Francis v. State*, 729 N.W.2d 584, 589 (Minn. 2007).

that is excessive under the circumstances." Minn. Stat. § 609.377, subd. 1 (2016). A conviction on the neglect charge required proof that she willfully deprived him of necessary food, clothing, shelter, health care, or supervision appropriate to his age, when she was reasonably able to make the necessary provisions. Minn. Stat. § 609.378, subd. 1(a)(1) (2016). And a conviction of endangerment required proof that she intentionally or recklessly caused or permitted M.O. to be placed in a dangerous situation. Minn. Stat. § 609.378, subd. 1(b)(1) (2016). The state was also required to prove that Yonis's actions caused M.O. substantial bodily harm, Minn. Stat. §§ 609.377, subd. 5 (malicious punishment), .378, subd. 1(a)(1) (neglect) (2016), or led to a situation "likely to substantially harm [his] physical, mental, or emotional health," Minn. Stat. § 609.378, subd. 1(b)(1) (endangerment). Substantial bodily harm is defined as bodily injury that "involves a temporary but substantial disfigurement," or "causes a temporary but substantial loss or impairment of the function of any bodily member or organ," or "causes a fracture of any bodily member." Minn. Stat. § 609.02, subd. 7a (2016).

M.O. testified about Yonis's conduct and the harm it caused him. His testimony was corroborated by extensive evidence, including medical records, apartment building records, and the testimony of C.K., grandmother, the county social worker, the CornerHouse interviewer, and the pediatrician who examined him in August 2017. M.O. described a pattern of conduct over years that involved Yonis beating him with various objects, forcing him to stand or hold contorted postures for hours at a time, severely restricting his bathroom access, withholding food for prolonged periods of time, and routinely excluding him from family meals and activities. These acts caused M.O. pain

and bruising. He experienced extreme hunger and malnutrition that stunted his growth. The bathroom restrictions and privacy invasions interfered with his bladder control well into his teen years. And M.O. suffered emotional harm so severe that he fled his home and went to live with grandmother, where he felt, for the first time, "equal . . . like another person in the house." This record amply supports the convictions of malicious punishment, neglect, and endangerment.

Affirmed.