**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A21-0998**

State of Minnesota,
Respondent,

vs.

Steven John Moore,
Appellant.

**Filed August 8, 2022**
**Affirmed**
**Bratvold, Judge**

Dakota County District Court
File No. 19HA-CR-19-1377

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

Kathryn M. Keena, Dakota County Attorney, Heather Pipenhagen, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Segal, Chief Judge; and Bjorkman, Judge.

**NONPRECEDENTIAL OPINION**

**BRATVOLD**, Judge

In this direct appeal from two judgments of conviction for second-degree criminal sexual conduct, appellant argues that (1) the prosecuting attorney committed misconduct by vouching for the victims' credibility and against appellant's, and (2) appellant was

denied the right to a unanimous jury verdict because the state introduced evidence of two separate incidents of sexual contact with one victim, and the district court did not instruct the jury on specific unanimity. Because the prosecuting attorney did not vouch for or against witness credibility, and because we discern no plain error in the unanimity instructions given to the jury, we affirm.

## FACTS

On April 26, 2019, South Saint Paul police officers took statements from two eight-year-old girls, A and B, both of whom said that appellant Steven John Moore "touched [them] inappropriately." A and B lived with Moore and called him "papa," their term for grandfather. A and B have the same father, C.A. (father). Father is married to A.A., who is B's mother. A and B have lived together as sisters for some time.[1]

In June 2016, B and A.A., who is Moore's daughter, moved into Moore's home. After A's mother died in 2017, A joined A.A. and B in Moore's home. Father was incarcerated at that time. In spring 2018, father was released from prison and moved into Moore's home.

On April 26, police officers responded to a call to Moore's home and observed "a heated argument between adults." A's maternal aunt, T.C. (aunt), told officers that A recently said Moore "touched her inappropriately multiple times," after which aunt and other family members confronted Moore. Aunt told officers that A stated that Moore

[1] A has mostly resided with father and A.A. since she was three years old, though she stayed with other relatives at times.

"recently rubbed his hand over her breasts and arms, which made her feel uncomfortable," and that Moore touched her inappropriately before this recent incident.

Moore told police that he never hurt or inappropriately touched A or B. A told officers that Moore "touched her chest numerous times," on top of and underneath her clothing, during the past year. A described a recent incident when she entered the home after taking out the trash, Moore "grabbed her from behind," "wrapped his arms around her front," and "squeezed her breasts over her shirt," and, when A tried to get away from Moore, he "squeezed her even harder and it hurt her" (trash incident). B told officers that Moore recently "touched her vagina." B stated that she fell asleep while watching a movie in Moore's bedroom and "awoke to [Moore] rubbing her vagina" with "an open hand . . . under [her] clothes." B also stated that Moore "rubbed and pinched her breasts" during this incident (movie incident).

Both A and B told police that they disclosed these incidents to each other but "decided to keep the information secret . . . because they were worried [father] would get mad and fight with [Moore]" and "return to jail as a result."

A child-protection social worker forensically interviewed A and B on April 29, 2019.[2] A stated that Moore "used to . . . touch us under our shirt and stuff," that "this happened over . . . a year ago and it's still continuing," and that Moore did this to her "recently" and "often." A clarified that "often" meant "more than two." A also confirmed that Moore "touch[ed]" and "massage[d]" her breasts and belly button with "his hands." A

[2] During Moore's trial, the audio recordings were received into evidence as exhibits 2 (A's interview) and 5 (B's interview).

stated that the last time this happened was "about a couple days ago" and then described the trash incident. B told the social worker about the movie incident.

On May 31, 2019, respondent State of Minnesota charged Moore with two counts of second-degree criminal sexual conduct under Minn. Stat. § 609.343, subd. 1(a) (2016). Count one was for Moore's sexual contact with A between April 1, 2018, and April 26, 2019. Count two was for Moore's sexual contact with B between June 1, 2018, and April 26, 2019.

The case proceeded to a jury trial in March 2021. The jury heard testimony from A, B, father, A.A., aunt, A's maternal grandmother, law-enforcement officers, the child-protection social worker, and Moore.

A testified that while her parents were out one night, she "went into [Moore's] room to watch a movie," and when she "was laying down next to him, he started touching [her] on [her] stomach. But before he got down to her underwear, [she] made an excuse" and left the room. A then clarified that Moore also touched her "breast" (bedroom incident).

When asked if there was "another time" when Moore touched her while she was "doing chores" or "outside," A answered no. When asked if Moore touched her "more than one time," A testified that she thought "it was twice." B then testified about the movie incident.

The jury found Moore guilty on both counts, and the district court sentenced Moore to 36 months stayed for ten years on count one and 48 months stayed for ten years on count two, to be served concurrently.

This appeal followed.

## DECISION

### I. The prosecuting attorney did not commit misconduct by vouching for the victims' credibility and against Moore's credibility.

Moore contends reversal of both convictions is warranted because his substantial rights were affected when the prosecuting attorney endorsed the victims' credibility and criticized Moore's credibility during closing arguments. The state acknowledges that prosecuting attorneys cannot interject personal opinions about any witness's credibility but contends that, here, the prosecuting attorney argued about witness credibility only by analyzing the evidence, which is permissible.

Moore did not object to the prosecuting attorney's closing argument during trial, so we review his claim of prosecutorial misconduct under a modified plain-error standard. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) ("On appeal, an unobjected-to error can be reviewed only if it constitutes plain error affecting substantial rights."). Under this standard, Moore bears the burden of establishing an error that is plain. *See id*. Once Moore establishes a plain error, "the burden shifts to the State to demonstrate that the plain error did not affect the [appellant]'s substantial rights." *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017). If the state fails to show that the error did not affect the appellant's substantial rights, we consider "whether the error should be addressed to ensure fairness and the integrity of judicial proceedings." *Id*. "When evaluating alleged vouching, a court will look at the closing argument as a whole." *State v. Fields*, 730 N.W.2d 777, 785 (Minn. 2007) (quotation omitted).

Moore argues the prosecuting attorney committed misconduct "at least eight times" during closing arguments by vouching for the victims' credibility and against Moore's credibility. The state argues there was no plain error because the prosecuting attorney's "statements were all arguments about the interpretation of the evidence in this case, and not expressed as the prosecutor's personal opinion." In the reply brief filed with this court, Moore contends that there is no other reasonable way to interpret the prosecuting attorney's statements in closing and that those statements are "plainly misconduct."

An error is plain when it is "clear or obvious," like when the error "contravenes case law, a rule, or a standard of conduct." *State v. Cao*, 788 N.W.2d 710, 715 (Minn. 2010). Caselaw establishes that prosecuting attorneys "may not personally endorse the credibility of witnesses." *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006).

A prosecuting attorney's "statements in closing argument become improper vouching when the prosecutor 'implies a guarantee of a witness's truthfulness . . . or expresses a personal opinion as to a witness's credibility.'" *State v. Smith*, 825 N.W.2d 131, 139 (Minn. App. 2012) (quoting *State v. Patterson*, 577 N.W.2d 494, 497 (Minn. 1998)), *rev. denied* (Minn. Mar. 19, 2013). Prosecuting attorneys may "analyze the evidence and vigorously argue that the state's witnesses were worthy of credibility whereas defendant and his witnesses were not." *State v. Googins*, 255 N.W.2d 805, 806 (Minn. 1977). To this end, "the state is free to argue that particular witnesses were or were not credible." *Fields*, 730 N.W.2d at 785. A prosecuting attorney may also comment on "factors affecting the credibility" of a witness. *Swanson*, 707 N.W.2d at 656. Indeed, the

jury is routinely instructed on nine factors affecting credibility. 10 *Minnesota Practice*, CRIMJIG 3.12 (2021).[3]

Caselaw offers guidance on when a prosecuting attorney's statements are not permissible argument because the statements vouch for a witness's credibility. In *Swanson*, the prosecuting attorney argued that one witness was "very believable" and said about a different witness, "The state believes she is very believable." 707 N.W.2d at 656. The supreme court affirmed the appellant's conviction after determining he was not substantially prejudiced. The supreme court noted, however, that the prosecuting attorney's second statement was plain error and "impermissible vouching on its face because the state directly endorsed the credibility of [the] witness." *Id.* And in *Smith*, this court determined that a prosecuting attorney did not vouch by arguing that a witness was "very sincere" and "very frank" because the statements were not a "direct endorsement" of the witness's credibility. 825 N.W.2d at 139.

In *State v. Leutschaft*, we concluded that a prosecuting attorney's statements during closing arguments were not vouching when the prosecuting attorney described the victim as responsible, mature, and not vindictive, and stated that she was very honest and did the best she could to tell the jury "what it is she saw, and she knows what she saw."

[3] These factors include: "[1] Interest or lack of interest in the outcome of the case, [2] Relationship to the parties, [3] Ability and opportunity to know, remember, and relate the facts, [4] Manner, [5] Age and experience, [6] Frankness and sincerity, or lack thereof, [7] Reasonableness or unreasonableness of their testimony in the light of all the other evidence in the case, [8] [Any impeachment of the witness's testimony], [9] And any other factors that bear on believability and weight." CRIMJIG 3.12. The district court gave this instruction to the jury in Moore's case.

759 N.W.2d 414, 424-25 (Minn. App. 2009), *rev. denied* (Minn. Mar. 17, 2009). We reasoned that the prosecuting attorney's arguments "called the jury's attention to [the victim]'s testimony and suggested that it was plausible and that she testified honestly. He did not interject personal opinion or intimate that he had any particular knowledge of her truthfulness"; instead, the prosecuting attorney "invited the jury to make its assessment on the basis of what it heard and saw in the courtroom." *Id.* at 425.

We separately consider each of the prosecuting attorney's eight statements that Moore challenges. We repeat them here, in the context of the state's initial closing argument and during rebuttal, with italics showing the specific statements Moore identifies.

The first two statements occurred when the prosecuting attorney argued A's testimony tracked her recorded statements. According to the prosecuting attorney, A stated that Moore "touched her bare chest," "squeezed it and made her uncomfortable," and that the touching happened "more than once at [Moore's] house . . . when she was eight." The prosecuting attorney stated, "*[T]he State submits that it's still credible* given that the core of her story is still the same and because we were asking her to open up in this environment, in this environment where there's strangers, where so much time has passed, and where it's something she wants to forget." The prosecuting attorney then argued B's testimony matched her recorded statements by stating, "*And the State submits that the consistency of the core of their story makes them credible.*"

The next three statements occurred when the prosecuting attorney discussed the victims' credibility given their delayed report of Moore's abuse. The prosecuting attorney stated, "*[T]he State submits that the delayed reporting especially in this case is so credible*

*to why they did not want to tell.*" The prosecuting attorney discussed the evidence that the victims feared father would "go back to prison if he found out that [Moore] was touching them inappropriately." The prosecuting attorney concluded, "*So the reason for their delayed report is reasonable and gives them credibility*," and stated that "*this delayed reporting shows credibility and shows that they're credible.*"

The sixth statement occurred when the prosecuting attorney argued, "*The State submits that the Defendant lacks credibility*," before the prosecuting attorney explained that Moore "deflecte[d]" from discussing the allegations of abuse during his recorded interview with police. The prosecuting attorney also described the perceived inconsistencies between Moore's testimony and his recorded statements.[4]

The seventh statement occurred when the prosecuting attorney argued that Moore "picked the perfect victims" and described how Moore testified that "he is the saver of this family" that was living in poverty. The prosecuting attorney argued, "Who is going to believe these girls over him? *The state submits that they are credible.*"

Finally, the eighth statement occurred during rebuttal, when the prosecuting attorney responded to the defense attorney's argument that the victims' testimony was not credible. The prosecuting attorney argued, "Well, the state submits that their core story was consistent. They consistently told you where he touched, how it made them feel, and when—how old they were when that happened and that it happened at his house." The

[4] The prosecuting attorney argued that Moore deflected from answering questions about whether he abused A and B by instead talking about how A, B, and their parents "were supposed to have moved out" of his home and detailing "all these wonderful things" Moore did for A and B while father was in prison.

prosecuting attorney continued, "Yeah, that was in a lot of other details, but *when you're looking at an 8-year-old testifying and talking about what happened to them, the State submits that that's credible and that you should find the Defendant guilty in this case.*"

After considering these statements in context, we determine the prosecuting attorney was not vouching either for the victims' credibility or against Moore's credibility. Rather, the prosecuting attorney argued about the evidence bearing on factors affecting witness credibility. For example, the prosecuting attorney argued about the victims' consistency in describing what happened, the reasons for delayed reporting, Moore's relationship with the victims, Moore's deflection during his police interview, inconsistencies in Moore's statements, and the victims' young ages. Caselaw instructs that these types of arguments about credibility are proper. *See Swanson*, 707 N.W.2d at 656 (stating that prosecuting attorneys may comment on "factors affecting the credibility" of a witness); *see also Leutschaft*, 759 N.W.2d at 425 (concluding the prosecuting attorney "did not interject personal opinion or intimate that he had any particular knowledge of [the witness's] truthfulness"; instead, "he invited the jury to make its assessment on the basis of what it heard and saw in the courtroom").

Because the prosecuting attorney argued about the evidence and factors affecting witness credibility, we conclude that no plain error occurred. Because no plain error occurred, we need not consider the remaining steps in the modified plain-error analysis.

## II. The district court did not commit reversible error by failing to instruct the jury on specific unanimity for count one, Moore's sexual conduct against A.

The district court instructed the jury that it must reach a unanimous verdict. Moore contends the district court plainly erred when it failed to instruct the jury that it must unanimously agree on which act Moore committed against A that satisfied an element of the charge for count one. Moore did not request a specific-unanimity instruction or object to the district court's jury instructions. Generally, a party forfeits any error by failing to object to jury instructions. *State v. Cross*, 577 N.W.2d 721, 726 (Minn. 1998). Even so, we may review unobjected-to error in the jury instructions for plain error. *State v. Crowsbreast*, 629 N.W.2d 433, 437-38 (Minn. 2001) (noting that an unpreserved claim of an omitted specific-unanimity jury instruction is reviewed for plain error).

Under plain-error review, we examine the jury instructions to determine whether there was (1) an error, (2) that was plain, and (3) that affected appellant's substantial rights. *State v. Ihle*, 640 N.W.2d 910, 916-17 (Minn. 2002). If these requirements are satisfied, we will reverse if the error seriously affects the fairness, integrity, or public reputation of judicial proceedings. *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014). But if "any one of the requirements" of the plain-error test is not satisfied, we "need not address any of the others." *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted).

### a. Any error was not plain.

Moore contends the district court's failure to give a specific-unanimity instruction to the jury was plain error because Minnesota caselaw shows such an instruction is required

when the state offers evidence of two separate behavioral incidents and either of them could satisfy an element of the charged offense.

"An error is plain if it is clear or obvious." *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted). An error is "clear or obvious" if it "contravenes case law, a rule, or a standard of conduct." *Id*. (quotation omitted). An alleged error does not contravene case law unless the issue is "conclusively resolved" in the case law. *State v. Jones*, 753 N.W.2d 677, 689 (Minn. 2008).

Caselaw is clear that a jury must agree unanimously that the state proved each element of a criminal offense beyond a reasonable doubt. *State v. Pendleton*, 725 N.W.2d 717, 730 (Minn. 2007) ("Jury verdicts in all criminal cases must be unanimous."); Minn. R. Crim. P. 26.01, subd. 1(5). "To achieve that end, a jury must 'unanimously find that the government has proved each element of the offense.'" *Pendleton*, 725 N.W.2d at 730-31 (quoting *Ihle*, 640 N.W.2d at 918).

If the state offers more than one act by a defendant to prove one element of the charged crime, "the jury must unanimously agree on which acts the defendant committed." *State v. Stempf*, 627 N.W.2d 352, 355 (Minn. App. 2001) (citing *Richardson v. United States*, 526 U.S. 813, 824 (1999) (holding that "series of violations" in the criminal-enterprise statute required the jury unanimously to agree that the defendant committed a continuing series of violations and unanimously to agree on which three acts constituted the violations)). However, "the jury does not have to unanimously agree on the facts underlying an element of a crime in all cases." *Pendleton*, 725 N.W.2d at 731.

For example, specific dates need not be proved in cases charging criminal sexual conduct over an extended period. *State v. Becker*, 351 N.W.2d 923, 927 (Minn. 1984) (holding that a defendant can be convicted of sexual abuse if the prosecution proves abuse occurred within a reasonable period; specific dates of abuse need not be proved); *State v. Poole*, 489 N.W.2d 537, 544 (Minn. App. 1992) ("[S]pecific dates need not be charged or proven in a sexual abuse case."), *aff'd*, 499 N.W.2d 31 (Minn. 1993). Also, when the state offers different means for proving a crime, the jury need not agree on the specific means if the charging statute establishes that alternative means may satisfy an element of the offense. *Ihle*, 640 N.W.2d at 917.

Moore contends that a specific-unanimity instruction was required because the state submitted evidence of two acts of sexual conduct against A, and the acts were not part of the same behavioral incident. Moore relies on *Stempf* and distinguishes his case from *State v. Rucker*, 752 N.W.2d 538 (Minn. App. 2008), *rev. denied* (Minn. Sept. 23, 2008).[5] The state contends that Moore mischaracterizes A's testimony. While the state acknowledges that A's testimony and statements to police describe two separate incidents—the trash incident and the bedroom incident—A also stated that Moore's abuse was "still continuing" and occurred "often," and she testified that the abuse occurred "twice." The state concludes that offering evidence of two incidents of abuse is therefore consistent with A's statements

[5] Moore also refers to a case from Washington, *State v. Coleman*, 150 P.3d 1126, 1127 (Wash. 2007). Because there is ample Minnesota caselaw on this issue, and *Coleman* is not precedential, we do not find it persuasive.

and testimony. The state also argues the facts here are like those in *Rucker* and distinct from those in *Stempf*.

We consider Moore's case given the precedent cited by the parties. In *Stempf*, we reversed a drug-possession conviction after concluding the district court abused its discretion by not giving a requested specific-unanimity instruction. 627 N.W.2d at 354, 358. The state offered evidence of two distinct behavioral incidents, each of which involved drug possession, to prove one charged count. *Id.* (noting the state introduced evidence that Stempf possessed methamphetamine in two places on two separate dates). We reasoned that Stempf's right to a unanimous verdict was violated because some jurors may have believed Stempf possessed the drugs found in his office on one day, while other jurors may have believed he possessed the drugs found in his truck the next day. *Id*. at 358. Notably, we applied an abuse-of-discretion standard of review in *Stempf*, not plain error, because Stempf requested the specific-unanimity instruction, and the district court denied his request. *Id.* at 357-58.

In *Rucker*, we affirmed two convictions for criminal sexual conduct after concluding the district court did not plainly err by failing to give a specific-unanimity instruction. 752 N.W.2d at 543, 548. Rucker's sexual conduct occurred over a period of two years against two victims, and both victims testified at trial about many incidents of sexual conduct. *Id*. We held that "[u]nlike *Stempf*," (1) the jurors were instructed to find only whether the abuse occurred between August 2003 and August 2005; (2) the prosecuting attorney "did not emphasize certain incidents, distinguish as to the proof of some incidents compared to others, or encourage the jury to find certain incidents were more likely to have

occurred than other incidents"; and (3) Rucker did not present separate defenses for each incident of alleged sexual conduct; instead, he maintained he never had sexual contact with either victim. *Id.* at 548. Thus, when viewed in the context of the state's entire case, the victims' testimony about specific events "served as examples of [Rucker's] conduct and not distinct allegations of sexual abuse." *Id.*

Here, the state offered evidence of two distinct incidents to prove Moore's sexual contact with A: the trash incident and the bedroom incident. As in *Stempf*, each of these incidents is a separate behavioral incident because the acts occurred on separate dates. *See* 627 N.W.2d at 358. The same may be said of the evidence in *Rucker* as the victims testified to many incidents of sexual conduct that were not part of a singular behavioral incident. *See* 752 N.W.2d at 543. Similar to Rucker, Moore was charged with a single count of criminal sexual conduct against A, occurring over the course of one year, and the jury was instructed to determine whether Moore's abuse occurred between April 1, 2018, and April 26, 2019. *See id.* (stating Rucker was charged with one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct for his actions against each victim between 2003 and 2005). Like the victims in *Rucker*, A testified and stated that Moore's sexual conduct happened when she was eight years old, was continuing, and happened "twice" or more than once. *See id.* at 543-44 (describing that each victim testified about "several" incidents of sexual contact with Rucker). Like Rucker, Moore did not assert different defenses against each victim or allegation of abuse; instead, Moore denied that any sexual conduct ever occurred. *See id.* at 548.

We acknowledge that the evidence in Moore's case is distinct from the evidence in *Rucker*. In *Rucker*, the victims stated and testified that Rucker committed many instances of sexual conduct over an extended period. 752 N.W.2d at 543-44. Although A stated Moore's conduct was "continuing" and occurred "often," she identified one example, the trash incident, when speaking to her family, police, and the child-protection social worker. During trial, A testified about another example, the bedroom incident, and did not testify about the trash incident. It is, therefore, more difficult to describe the evidence against Moore as "examples of appellant's conduct and not distinct allegations of sexual abuse," as the evidence in *Rucker* was characterized. *Id.* at 548.

We conclude that the district court did not plainly err by omitting a specific-unanimity instruction. No caselaw addresses when a specific-unanimity instruction is required without a request from the parties, nor does caselaw suggest what a specific-unanimity instruction should include. At best, *Stempf* suggests that it may have been an abuse of discretion if the district court declined to give a specific-unanimity instruction had Moore requested such an instruction. 627 N.W.2d at 357-58. *Stempf* does not establish that failure to give this instruction was plain error. *Id*.

Also, the facts here are closer to those in *Rucker* than to those in *Stempf* because the jury was instructed to determine whether Moore's abuse occurred over a period of time, the prosecuting attorney did not emphasize particular incidents during closing arguments, and Moore did not present separate defenses to particular incidents. Thus, we conclude that any error in omitting a specific-unanimity instruction was not plain.

**b. Even if plain error occurred, Moore's substantial rights were not affected.**

Even if we assume a plain error occurred, then a "heavy burden" is on the appellant to show that the error affected their substantial rights, which is satisfied if the error was prejudicial and affected the outcome of the case. *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). An error in the district court's jury instructions is prejudicial if "there is a reasonable likelihood that giving the instruction in question had a significant effect on the jury's verdict." *State v. Watkins*, 840 N.W.2d 21, 28 (Minn. 2013) (quotation omitted).

Moore contends reversal is required because "[t]he differences between the quality and type of evidence for each" of the separate incidents made it more likely that jurors evaluated the evidence differently and may have assigned guilt differently, which prejudiced his substantial rights. The state argues Moore was not prejudiced. We agree with the state for four reasons.

First, the district court gave a general unanimity instruction after closing arguments, instructing the jury, "In order for you to reach a verdict, whether guilty or not guilty, each juror must agree with the verdict. Your verdict must be unanimous." Unlike in *Stempf*, where the prosecuting attorney told the jurors that they did not have to agree on which incident of possession occurred to find appellant guilty, 627 N.W.2d at 358, the prosecuting attorney here did not argue about specific incidents or contend the jury did not have to agree.

Second, this is a case about Moore's sexual abuse of A over time. A repeated throughout the investigation and during trial that Moore sexually assaulted her more than

once, and this is what was alleged in the state's complaint. Third, the record includes evidence of both the trash incident and the bedroom incident. A's testimony denying Moore had sexual contact with her while she was "doing chores" or "outside" is not equivalent to A recanting that the trash incident occurred. Based on A's statements, the trash incident occurred on the stairs after she entered Moore's home from taking out the trash. Thus, the prosecuting attorney's questions about sexual contact while "doing chores" or while "outside" may have confused A, who testified that she tried to forget what happened and that it was difficult to testify.

Fourth, the closing arguments do not suggest any error was prejudicial. The prosecuting attorney did not argue about a particular incident and emphasized the "core" similarities of A's statements and testimony about Moore's sexual contact. Moore denied that any sexual contact ever occurred. Moore's defense attorney also did not discuss each incident of sexual contact separately and used evidence that A's statements differed from her testimony to argue she was not credible.

For these reasons, we conclude there is not a reasonable likelihood that giving a specific-unanimity instruction would have significantly affected the jury's verdict. Thus, Moore has not satisfied the heavy burden of showing that any plain error prejudiced him.

**Affirmed.**