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STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1092

State of Minnesota,
Respondent,

vs.

Raheem Ali Beamon,
Appellant.

Filed June 22, 2020
Affirmed
Bratvold, Judge

Ramsey County District Court
File No. 62-CR-17-6722

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

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

BRATVOLD, Judge

Appellant challenges his judgment of conviction for third-degree assault and seeks a new trial, arguing that the state committed prosecutorial misconduct by failing to prepare

an expert witness to testify consistent with the district court's in limine ruling, and by making plainly erroneous closing arguments in which the prosecutor misstated the evidence and argued facts not in evidence. After a thorough review of the record under the applicable standard of review, we affirm.

FACTS

In September 2017, the state charged appellant Raheem Ali Beamon with four criminal offenses: third-degree assault under Minn. Stat. § 609.223, subd. 3 (2016) (count one); domestic assault by strangulation under Minn. Stat. § 609.2247, subd. 2 (2016) (count two); and fifth-degree assault under Minn. Stat. § 609.224, subd. 1 (2016) (counts three and four). Before trial, the state amended count two to domestic assault under Minn. Stat. § 609.2242, subd. 1(2) (2016). The following summary is based on evidence received during Beamon's jury trial, including a hotel-lobby video.

The charges arose from an incident at a Roseville hotel where Beamon, his girlfriend (D.S.), and their six-month-old infant were staying. On September 1, 2017, at around 10:00 a.m., a hotel employee heard screaming coming from inside one of the guest rooms. According to D.S., she and Beamon were arguing about their relationship and a shared credit card.

Around 3:45 p.m., D.S. walked through the hotel lobby and exited the hotel, carrying the infant in her arms. D.S. testified that she went outside to tell Beamon that she wanted the credit card. D.S. reentered the lobby and approached the front desk, still carrying the infant. Beamon came "running into the building" looking for D.S. "in attack mode," according to a hotel guest who was in the lobby. Beamon grabbed D.S. by the hair

and pulled her and the infant to the floor. Beamon began punching and kicking D.S. while she and the infant were on the floor. Meanwhile, the front-desk clerk and the hotel guest tried to intervene. Beamon punched the hotel guest in the ear and punched the clerk in the face.

The clerk guided Beamon out of the lobby, but Beamon soon returned and approached D.S., who had stood up, still holding the infant. Beamon pushed D.S. to the ground a second time, causing D.S. to land on top of the infant. Beamon dragged D.S. around by the hair while kicking and hitting her. The clerk intervened again and Beamon punched the clerk in the face, knocking her glasses off.

Meanwhile, D.S. stood up and ran out of the lobby with Beamon in pursuit. D.S. ran to a laundry-room closet and locked herself inside. Once police officers arrived, D.S. stated that Beamon assaulted her and that the infant hit her head during the assault. D.S. and the infant then were transported to receive medical care.

During the state's case-in-chief, the jury heard eyewitness testimony from the hotel employee, the clerk, the hotel guest, a medical expert, a nurse practitioner, a hotel manager, and three police officers. Beamon did not testify and called D.S. as his sole witness. D.S. testified that, shortly after the events happened, she told police, social workers, and medical personnel that Beamon assaulted her and that the infant hit her head during the assault. But D.S. testified her earlier statements were "lies," and the "truth" was that her infant "fell out of [her] arms" while she was hiding in the laundry-room closet.

The jury found Beamon guilty on all counts. The jury also found that an aggravating factor was present because the infant was unable to protect herself; but the state later

withdrew its motion for an upward departure. The district court committed Beamon to 36 months in the custody of the commissioner of corrections on count one, and imposed 90-day executed, concurrent sentences on counts two, three, and four.

Beamon appeals.

D E C I S I O N

Beamon challenges his conviction of third-degree assault for causing bodily harm to the infant, and does not challenge the other three convictions. He argues the prosecutor committed "prosecutorial misconduct" that deprived him of his constitutional right to a fair trial. The state disagrees, first arguing that "prosecutorial error" is the correct terminology here because Beamon does not allege the prosecutor intentionally or deliberately violated the law, rules, or governing trial standards.

"We agree that there is an important distinction to be made between prosecutorial misconduct and prosecutorial error." *State v. Leutschaft*, 759 N.W.2d 414, 418 (Minn. App. 2009), *review denied* (Minn. Mar. 17, 2009). Misconduct "implies a deliberate violation of a rule or practice, or perhaps a grossly negligent transgression," while error "suggests merely a mistake of some sort, a misstep of a type all trial lawyers make from time to time." *Id.* But "[e]ven with this valid distinction, prosecutorial error theoretically can be egregious enough to deprive a defendant of a fair trial." *Id.*[1] We agree with the state that Beamon

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[1] Prosecutorial "misconduct" may require reversal even without a showing of prejudice. *See State v. Mahkuk*, 736 N.W.2d 675, 690 (Minn. 2007) ("We caution, however, that if we were to conclude that violation of the trial court's order was intentional, the appropriate remedy might well be reversal even having concluded that the misconduct was not prejudicial.").

does not claim, and the record does not establish, that the prosecutor deliberately violated applicable rules, standards of conduct, or the district court's pretrial rulings. For that reason, we determine that Beamon's appeal challenges prosecutorial error and observe that relevant caselaw refers to both prosecutorial misconduct and prosecutorial error.

Beamon contends that the prosecutor committed three reversible errors. First, he argues that the prosecutor erred by eliciting inadmissible medical testimony that contravened the district court's in limine ruling. Second, Beamon argues the prosecutor erred during closing arguments by misstating the evidence. And third, Beamon urges the prosecutor erred during closing arguments by arguing about facts not in evidence. We review each claimed error in turn.

I. Eliciting inadmissible medical testimony

"It is unprofessional conduct for either the prosecutor or defense counsel knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury to offer inadmissible evidence." *State v. White*, 203 N.W.2d 852, 857 (Minn. 1973). A prosecutor commits misconduct by eliciting evidence the district court has ruled inadmissible. *State v. Fields*, 730 N.W.2d 777, 782 n.1 (Minn. 2007). This is one reason our caselaw has recognized that "the state has a duty to properly prepare its own witnesses prior to trial." *State v. Underwood*, 281 N.W.2d 337, 342 (Minn. 1979). Prosecutorial misconduct may occur even when a state witness volunteers inadmissible testimony. *Mahkuk*, 736 N.W.2d at 689 (citing *State v. Huffstutler*, 130 N.W.2d 347, 348 (Minn. 1964) (explaining the state is "entirely responsible" for volunteered prejudicial testimony of its witnesses)).

If the defense objects to inadmissible testimony during trial, as was the case here, we apply "a two-tiered harmless-error test." *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016). First, we review "unusually serious" misconduct to determine whether the error is harmless "beyond a reasonable doubt." *State v. Nissalke*, 801 N.W.2d 82, 105 (Minn. 2011) (quotation omitted). Second, we review "less serious" misconduct to determine "whether the misconduct likely played a substantial part in influencing the jury to convict." *Id.* (quotation omitted).

A critical issue in the trial was whether Beamon's assault on D.S. caused bodily harm to the infant, a specific element of the third-degree assault charge. *See* Minn. Stat. § 609.223, subd. 3 (providing "bodily harm" must be to "the child's head, eyes, or neck," or "causes multiple bruises to the body"). Before trial, the state submitted disclosures about medical testimony it intended to offer to prove this element. The defense objected. After the state agreed to limit its medical testimony, the district court ruled pretrial that the doctor, the state's medical expert, was prohibited from opining that the infant's head injury was "inconsistent" with being dropped. The parties agreed that the state would not offer this testimony because this specific medical opinion was late-disclosed to the defense. The district court's pretrial ruling also provided that the doctor could testify about whether the infant's injury was consistent with the infant hitting her head on the hotel-lobby floor.

The doctor testified during trial about the degree of force necessary to sustain an "occipital skull fracture"—the infant's injury, as established by other medical testimony—and described this injury as "consistent" with an adult falling on top of a child. After

characterizing the infant's injury as requiring "a higher force," the prosecutor asked the doctor to elaborate on his opinion:

> PROSECUTOR: So, when you say a higher force injury, or a higher force is necessary to cause that injury, what do you mean by that?
>
> DOCTOR: I mean that I wouldn't expect this with a baby falling off of a couch. I wouldn't expect this with a baby falling off of a changing table. I wouldn't expect this with a baby that gets dropped, as things happen.

Beamon's counsel immediately objected and the district court held a bench conference off-the-record. After the bench conference ended, the prosecutor began by saying, "[Doctor], instead of talking about what you wouldn't expect to see . . . ," and then asked a new question.

On appeal, Beamon claims "the prosecutor committed plain error by failing to prepare her expert witness to avoid inadmissible testimony" precluded by the district court's pretrial ruling. Beamon argues the doctor's testimony "violated supreme court precedent," and the district court's pretrial ruling, because the doctor's first and second examples—about falling off "a couch" or "a changing table"—are "the equivalent distance of a 'drop' from a mother's arms." Beamon contends the third example, about an infant being "dropped," directly violates the pretrial ruling.

Based on our review of the record, we agree that an error occurred. But we consider this error to be "less serious." Beamon contends the prosecutor neglected to prepare the doctor and does not argue the error was "unusually serious." Nothing in the record suggests to us that the state procured the doctor's inadmissible testimony by design. *See State v.*

Bauer, 776 N.W.2d 462, 471-72 (Minn. App. 2009), *aff'd on other grounds*, 792 N.W.2d 825 (Minn. 2011) (concluding prosecutor's improper questions were not "unusually serious"); *see also State v. Steward*, 645 N.W.2d 115, 123 (Minn. 2002) (holding prosecutor elicited excluded testimony and this was "less serious" misconduct). As a result, we review this error to determine whether it "likely played a substantial part in influencing the jury to convict" Beamon.[2] *See Nissalke*, 801 N.W.2d at 105 (quotation omitted).

Beamon contends the doctor's inadmissible testimony affected the jury's verdict because it "improperly undercut Beamon's defense and unfairly buttressed the state's case on the critical disputed issue." Beamon claims the prosecutor "made sure" the doctor's points were "not lost on the jury" by emphasizing the doctor's testimony in closing. The state argues any error that may have occurred was harmless because other admissible evidence was "uniquely strong on the cause of [the infant's] head injury."

We agree with the state and, for two reasons, determine the prosecutor's error likely did not play a substantial part in influencing the jury's verdict. First, the doctor's inadmissible testimony was brief and isolated. *See State v. Wilford*, 408 N.W.2d 577, 580 (Minn. 1987) (concluding prosecutor's improper questions likely did not impact jury verdict where questions were "brief" and "isolated"). We note, in particular, that following the defense objection and the bench conference, the prosecutor's next question directed the doctor away from offering more inadmissible testimony.

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[2] Beamon argues the plain-error standard of review should apply to this claim, but we review claims of objected-to misconduct for harmless error. *Whitson*, 876 N.W.2d at 304.

Second, the effect of the doctor's inadmissible testimony on the verdict was slight when considered along with other evidence about the infant's injury. The clerk, hotel guest, and the hotel employee all testified that they saw Beamon pull and push D.S. to the floor with the infant in her arms. The clerk testified that she witnessed D.S. land "face first" on the floor and that D.S. "went down with the baby first." The hotel guest agreed he saw the infant "hit the ground," and described Beamon as throwing D.S. around "like a rag doll," causing D.S. to land "on top of the baby." And the hotel guest testified "the baby was hurt because—[D.S.] was holding the baby." The hotel employee testified he saw Beamon grab D.S. "from her head" and "brought her down to the floor," and that "[t]he baby hit her head." Other testimony corroborated the three eyewitnesses. A responding police officer testified that, upon his arrival, he learned that "during the assault the mother had been pulled to the ground and the baby had struck her head during the time, because [D.S.] was holding onto the baby during that." And the jury viewed a hotel-lobby video consistent with the eyewitness testimony.

Three more witnesses also testified about the infant's injury. First, a treating nurse practitioner testified that D.S. stated she fell on top of the infant and "the baby's head hit the ground when [D.S.] was pushed and slammed to the ground." The nurse practitioner also testified that D.S. stated the infant began vomiting, shaking, and her eyes rolled back after hitting the floor. Based on her physical examination, the nurse practitioner testified that the infant had suffered a "linear occipital skull fracture" and the fracture occurred where the bone is thickest in the skull. The nurse practitioner also explained that this bone does not fracture easily and required significant force. The nurse practitioner also testified

that D.S.'s initial statements about how the infant "hit the ground" were "consistent" with the skull fracture she had observed.

Second, D.S. testified that she told the nurse practitioner, child protection services, and law enforcement that she fell on top of the infant when Beamon assaulted her. D.S. also testified the "truth" was that she dropped the infant while hiding in the laundry-room closet. D.S. testified that her earlier statements were untrue, and she at first did not disclose that she had dropped the infant because she feared her child would be taken away.

Third, the doctor testified that the infant had suffered "a higher force injury," consistent with evidence that Beamon pushed or pulled D.S. to the floor and she landed on top of the infant. Although one response from the doctor was improper, his other testimony was admissible.

Beamon also argues that the prosecutor emphasized the doctor's inadmissible testimony in closing argument. But the record shows the opposite. During closing argument, the prosecutor stated the doctor testified that falling "off a couch" or "off a bed" would not create enough force to cause a skull fracture. We disagree with Beamon's argument that these two examples "indirectly" violated the district court's in limine ruling. The district court's ruling precluded evidence related to an infant being "dropped" and did not mention an infant falling off a couch or a bed. Thus, the prosecutor's reference in closing is of no consequence because the doctor's third example, the only inadmissible part of his testimony, was omitted from the closing argument.

In sum, we conclude the state's failure to prepare the doctor to avoid inadmissible testimony does not entitle Beamon to a new trial because the error did not "likely play[] a

substantial part in influencing the jury to convict." *See Nissalke*, 801 N.W.2d at 105 (quotation omitted). Based on the three eyewitnesses' detailed testimony, the nurse practitioner's testimony, D.S.'s initial statements about how the infant was injured, and the doctor's admissible testimony, we conclude that the prosecutor's error in eliciting the doctor's inadmissible testimony is not reversible.

II. Misstating the evidence

Next, Beamon argues he is entitled to a new trial because the prosecutor made plainly erroneous arguments during closing that affected his substantial rights. Because our standard of review depends on whether an objection was made, we first observe that Beamon's counsel did *not* object during the state's closing argument.

> When a defendant alleges unobjected-to prosecutorial misconduct, we apply a modified plain-error standard that requires the defendant to show an error was made that was plain. If the defendant satisfies this burden, the burden shifts to the State to establish that the un-objected to misconduct did not affect substantial rights.

State v. Waiters, 929 N.W.2d 895, 901 (Minn. 2019) (quotation omitted). An error is plain if it is "clear or obvious." *Id.* (citing *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 330 (Minn. 2016)). If a defendant cannot show that a plain error occurred, his substantial rights have not been affected. *See id.* Thus, Beamon must establish plain error under the modified standard, after which the burden would shift to the state to show that Beamon's substantial rights were unaffected. *See id.*

During closing arguments, the prosecutor referred to testimony about how the infant's head injury occurred. The prosecutor first referred to the hotel employee's

testimony: "[H]e told you that he *heard* that baby's head hit the floor. You know that happened." (Emphasis added.) Later, the prosecutor returned to the same testimony and added the hotel guest and clerk's testimony:

> Fortunately in this case, we had [the hotel employee], who *heard* the baby's head hit the ground. We had [the hotel guest] who *saw* the baby's head hit the ground. We had [the clerk] who testified that mom went down on the stomach *hard* with the baby on her chest. She landed on top of the baby. You have three witnesses that told you this same thing.

(Emphasis added.)

Beamon argues that, during these portions of the closing argument, "the prosecutor misstated the testimony of three eyewitnesses regarding whether and how [the infant]'s head hit the lobby floor." Beamon maintains the prosecutor's misstatements "unfairly strengthened the state's case." We consider each of the prosecutor's alleged misstatements in turn and compare them to each witness's testimony.

First, Beamon contends the prosecutor "wrongly asserted" that the hotel employee testified "he *heard* that baby's head hit the floor" because the hotel employee's actual testimony referred only to what he saw. The record agrees with Beamon's description of the hotel employee's testimony.

> PROSECUTOR: Did you *see* the baby hit her head?
>
> HOTEL EMPLOYEE: Yes.
>
> PROSECUTOR: How hard did that baby hit her head?
>
> HOTEL EMPLOYEE: It was pretty hard.

Second, Beamon claims that the prosecutor "erroneously represented" the hotel guest's testimony by saying he "saw the baby's *head* hit the ground." We agree with Beamon that the hotel guest's testimony refers to "the baby" and not the infant's head.

> PROSECUTOR: So, did you see *the baby* hit the ground?
>
> HOTEL GUEST: Yes.

Third, Beamon contends the prosecutor misstated the clerk's testimony by arguing that the clerk "testified that [D.S.] went down on [her] stomach hard with the baby on her chest." Our review of the transcript shows that the clerk's testimony was about "the baby falling first to the floor."

> CLERK: . . . [D.S.] ran around the corner of the desk trying to get away from [Beamon], but she couldn't get all the way around before he grabbed her by the hair and yanked her back around the corner, and yanked her onto the floor, the baby falling first to the floor, and she was trying to hold him.
>
> PROSECUTOR: So, [D.S.] was trying to hold the baby and you said the baby fell first to the floor?
>
> CLERK: Yep. She kind of went down with the baby first.
>
> PROSECUTOR: Did she land—in which direction did [D.S.] land on the floor?
>
> CLERK: Like face first.

Beamon argues the clerk did not testify that D.S. had the infant "on her chest," nor did the clerk "characterize the force" in which D.S. fell "in any way at all." We agree with Beamon that the transcript does not reflect these precise words.

We next consider whether the misstated testimony in the prosecutor's closing arguments amounted to clear or obvious errors. We give a prosecutor considerable latitude

during closing argument because a prosecutor need not "make a colorless argument." *State v. Smith*, 541 N.W.2d 584, 589 (Minn. 1996). But "[i]t is unprofessional conduct for the prosecutor intentionally to misstate the evidence." *State v. Bobo*, 770 N.W.2d 129, 142 (Minn. 2009). "Prosecutors have an affirmative obligation to ensure that a defendant receives a fair trial, no matter how strong the evidence of guilt." *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). Prosecutors are bound by the rules of evidence and criminal procedure, as well as the standards of professional conduct. Prosecutors may not obtain convictions at any price.

Here, the prosecutor's misstatements during closing argument were not accurate summaries of witness testimony. Still, the prosecutor's misstatements may not be clear or obvious errors if the differences between the closing argument and the witness's testimony are slight and other evidence supports the prosecutor's statements. *See Waiters*, 929 N.W.2d at 901 (stating plain errors must be "clear or obvious"); *State v. Barthman*, 917 N.W.2d 119, 126 (Minn. App. 2018) (holding prosecutor's "slight misstatement" of testimony in closing argument was not plain error), *aff'd on other grounds*, 938 N.W.2d 257 (Minn. 2020). And a prosecutor may argue that the jury should draw inferences from the evidence. "[T]he State may present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence in its closing argument." *State v. Peltier*, 874 N.W.2d 792, 804 (Minn. 2016) (quotation omitted). Based on this caselaw, we consider whether the challenged misstatements were slight, supported by other evidence, or fair inferences based on the evidence as a whole. With these considerations in mind, we return to each challenged misstatement.

First, while the hotel employee did not testify to *hearing* the infant's head hit the floor, he testified to *seeing* the infant hit her head "pretty hard." And Beamon's counsel rebutted the prosecutor's statement about the hotel employee's testimony during closing argument. Because of the slight difference between the prosecutor's misstatement and the hotel employee's testimony, and because other record evidence supports the prosecutor's misstatement, we determine that the prosecutor's first misstatement was not a clear or obvious error. *See Barthman*, 917 N.W.2d at 126.

Second, the hotel guest did not testify to seeing the infant's *head* hit floor, but he did testify to seeing *the infant* hit floor. The hotel guest also testified he saw that "the mother landed on top of the baby." Other witnesses testified about the infant's head hitting the floor—the hotel employee testified he saw the infant's head hit floor, as did D.S. in her initial statements to law enforcement. Because we consider the evidence "as a whole," we conclude that the prosecutor's second misstatement is not clear error; it either was supported by, or was a reasonable inference drawn from, other record evidence. *See State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993) (holding state's closing arguments must be reviewed as a whole rather than piecemeal).

Third, the clerk did not testify that D.S. went down "hard" with the infant on her "chest." But the clerk did testify that (a) D.S. was "yanked [] onto the floor," (b) while "trying to hold [the infant]," and (c) D.S. landed "face first" with "the baby falling first to the floor." And the clerk testified she believed "it's pretty evident" the infant's head hit the floor during the assault. The hotel employee similarly testified the infant hit her head *hard* and, as stated above, the hotel guest also testified that D.S. fell *on top* of the infant.

Moreover, D.S. at first stated to law enforcement that she fell on her stomach with the infant in her arms. Because we consider the prosecutor's closing argument "as a whole, rather than just selective phrases or remarks," we agree with the state that the prosecutor's third misstatement is inferable from other evidence presented during trial and thus is not clear error. *Walsh*, 495 N.W.2d at 607.

In sum, we conclude that the three challenged statements do not amount to error that is plain. Even if the three challenged statements amounted to error that is plain, we alternatively determine that the jury instructions addressed any error. Before closing arguments, the district court instructed the jury that

> Attorneys are officers of the court. It is their duty to make objections they think proper and to argue their client's case. However, the arguments or other remarks are not evidence. If the attorneys, or I have made or should make any statement as to what the evidence is, which differs from your recollection of the evidence, you should disregard the statement and rely solely on your own memory.

See also 10 *Minnesota Practice*, CRIMJIG 3.11 (2019). Because we "presume[] that the jury follows the court's instructions," any minor misstatements of the evidence here were cured by trial judge's instruction. *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005) (holding district court's curative instruction aptly mitigated the prosecutor's improper arguments). Since we determine the challenged statements during closing argument were not error that is plain, and alternatively conclude that any error that is plain was cured by the jury instructions, we also determine that a new trial is unwarranted because Beamon's substantial rights were unaffected. *See Waiters*, 929 N.W.2d at 901.

III. Arguing facts not in evidence

Beamon's final argument is that the prosecutor committed plain error in closing by making arguments about D.S. that are not based on the evidence received during trial. Beamon relies on the following excerpt from the prosecutor's closing argument:

> PROSECUTOR: Maybe the baby slipped from her arms. Maybe [D.S.] was protecting her, we don't know. But the bottom line is it doesn't matter. [D.S.] blames herself for what happened like so many domestic victims do. So classic to feel that a domestic victim feels that they are responsible for the situation. So classic that they want to protect the true perpetrator of the assault.

Beamon did not object to this argument during trial. On appeal, Beamon argues that this passage from the prosecutor's argument has "no basis in the record." Beamon also argues, citing caselaw, that this amounted to plain error because the prosecutor's "assertions" were not adequately supported "by either the facts in evidence or expert testimony." *See Peltier*, 874 N.W.2d at 804. Finally, Beamon contends this "misconduct was intended to have a significant influence on the jury's decision and there is no reason to conclude that it did not have the desired effect."

As discussed above, we review "unobjected-to prosecutorial misconduct" for "plain error." *Waiters*, 929 N.W.2d at 901. A plain error can usually be shown when an error violates precedent, a rule, or standard of conduct. *Ramey*, 721 N.W.2d at 302. A prosecutor may not make arguments unsupported by the record evidence. *Peltier*, 874 N.W.2d at 804. Beamon argues that the prosecutor violated this rule because no evidence established that D.S. blamed herself for what happened or that D.S. wanted to protect Beamon. The state

responds that the prosecutor's arguments were "fundamentally" about the credibility of D.S.

Beamon mainly relies on *State v. Peltier* to argue the prosecutor's argument was merely a "psychological hypothes[is]."[3] *See id.* at 805. In *Peltier*, the supreme court determined that the prosecutor made improper closing arguments about the defendant (a) having learned abusive behavior from a past romantic partner, (b) engaging in behaviors common to child abusers, and (c) feeling a need to justify her actions by victim-blaming. *Id.* at 804-05.

Peltier, however, is distinguishable. Here, the prosecutor's arguments asked the jury to draw inferences from the testimony of D.S. and other witnesses about D.S.'s relationship with Beamon, as well as from her initial statement about how the infant was injured. In contrast, the challenged prosecutorial arguments in *Peltier* were not supported by any evidence. *Id.* at 805. Because the prosecutor here relied on evidence produced during trial, the prosecutor's statements about D.S. are not error.

On direct-examination, D.S. testified, "I mean I couldn't even keep [the infant] safe, and then she fell and I basically felt like it was my fault." D.S. also testified she did not want Beamon to get in trouble. When defense counsel specifically asked D.S., "Are you

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[3] Beamon also relies on an unpublished decision, *State v. Ciriaco-Martinez*, No. A18-1415, (Minn. App. July 1, 2019). But unpublished decisions "are not precedential." Minn. Stat. § 480A.08, subd. 3 (2018); *Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 575 n.2 (Minn. 2009) (stating that "the unpublished Minnesota court of appeals decision does not constitute precedent").

trying to protect Mr. Beamon?" D.S. replied, "No." D.S. then testified she stopped seeing Beamon after the incident occurred and that she had no plans or desire to be with him again.

D.S.'s testimony opened the door for the state to recall the hotel guest as a rebuttal witness, who testified that, over the lunch break, Beamon gave him "the middle finger" when the hotel guest saw D.S. and Beamon in a car together. The prosecutor's closing argument asked the jury to draw inferences about D.S.'s motives based on this evidence, while also relying on more general evidence that D.S. refused to testify for the state, she changed her statements about how the infant's injury occurred, and her testimony was inconsistent with her initial report and contradicted the testimony of three eyewitnesses. In short, the prosecutor's challenged statements about D.S. during closing argument were fair arguments about her credibility.

We recognize that "the state should refrain from asking questions or making arguments that would divert the jury from its duty to decide a case on the evidence by injecting issues broader than a defendant's guilt or innocence into the trial." *State v. Dobbins*, 725 N.W.2d 492, 512 (Minn. 2006). But the credibility of D.S. fits within those limits because "the state may argue that certain witnesses were or were not credible." *State v. Jackson*, 714 N.W.2d 681, 696 (Minn. 2006).

Based on the record before us, we determine no plain error occurred during the challenged portions of the prosecutor's closing argument. As a result, we do not consider whether Beamon's substantial rights were affected.

Affirmed.