STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0001

State of Minnesota,
Respondent,

vs.

Ryan Edward Pulley,
Appellant.

Filed December 12, 2022
Affirmed
Cochran, Judge

Anoka County District Court
File No. 02-CR-19-554

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

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Coley J. Grostyan, Minneapolis, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal from multiple convictions of second-degree criminal sexual conduct, appellant challenges the sufficiency of the evidence presented against him.

Appellant also argues that he is entitled to a new trial because the prosecutor committed misconduct by misstating the evidence and disparaging the defense. We affirm.

FACTS

In 2013, appellant Ryan Edward Pulley moved into the home of family friends to serve as a live-in nanny for eight-year-old D.W. and D.W.'s two-year-old sister. In 2019, respondent State of Minnesota charged Pulley with three counts of second-degree criminal sexual conduct. The complaint alleged that Pulley sexually abused D.W. over a period of about 15 months beginning when D.W. was 12 years old.

The case proceeded to a jury trial. The state called several witnesses including D.W., his mother, mother's ex-boyfriend, D.W.'s therapist, the investigating detective, and a forensic scientist. After the state presented its case, Pulley testified on his own behalf along with four character witnesses.

D.W. testified about his relationship with Pulley and described the incidents of alleged abuse. D.W. stated that Pulley was a "father figure" and liked to show affection by "hugging and . . . cuddling." He testified that they would regularly have movie nights where they would lie in Pulley's bed. Although Pulley was the nanny for both D.W. and his sister, D.W. stated that his sister was often not present when he and Pulley watched movies together.

D.W. testified that the first instance of sexual abuse occurred in November 2017 when D.W. was staying at a cabin for a hunting trip with his grandfather, a few of his grandfather's friends, and Pulley. The sleeping arrangements involved D.W. and Pulley sharing a pull-out couch bed. That evening, D.W. and Pulley were the last to go to bed.

D.W. testified that he fell asleep but woke in the middle of the night to Pulley touching him beneath his underwear. D.W. felt Pulley "moving his hand up and down" on D.W.'s penis. D.W. testified that at first, he thought he might be dreaming because he could not believe that Pulley "would do something like that." D.W. tried to go back to sleep, but he could not. After trying unsuccessfully to sleep, he shifted around in the bed so that Pulley would think he was awake. D.W. heard Pulley mumble "I'm so sorry. Will you forgive me?" The next morning, D.W. went deer hunting with Pulley but did not confront him about what had occurred during the night.

D.W. testified that after the camping trip, there were other instances when D.W. awoke to find Pulley touching him in a similar manner. D.W. stated that during these incidents, Pulley typically would pick up D.W.'s arm and drop it as a sort of reflex test to determine whether D.W. was awake before touching D.W.'s penis. D.W. stated that if Pulley thought that he was asleep, Pulley would then touch his penis. D.W. testified that when this occurred, he would try falling back asleep because he did not want it to happen. But if the touching did not stop, then D.W. would try moving around so Pulley would think that he was waking up and would stop.

D.W. also testified about one occasion when Pulley came into D.W.'s bedroom in the morning to wake D.W. up for school. D.W. stated that he was awake when Pulley came into the room, but D.W. was "faking" that he was asleep because he did not want to get up for school. D.W. testified that, on that occasion, Pulley again raised D.W.'s arm to make sure D.W. was asleep. When D.W. let his arm fall, Pulley then "put his hands under

[D.W.'s] underwear and moved his hand up and down [D.W.'s] penis." Pulley stopped when D.W. started moving around.

D.W. told no one about the incidents of abuse for some time because he "felt like it was something that [he] shouldn't share" and he did not want Pulley to have to move out of the home. But towards the end of 2018, D.W. promised himself that he would tell his mother if the abuse happened again because he "didn't like it" and "felt that it was very wrong."

D.W. testified that the last time Pulley touched him was in January 2019, when D.W. and his sister were watching a movie with Pulley in Pulley's basement bedroom in the family home. Pulley was lying in between D.W. and his sister on the bed. D.W. fell asleep and later woke up to Pulley touching his penis. After waking, D.W. made movements so that Pulley would think D.W. was waking up. At that point, Pulley stopped touching him. D.W. then whispered to Pulley that his back was hurting, and he went to his own bed. The next day, after D.W.'s mother returned from work and while Pulley was away from the home, D.W. told his mother that Pulley had touched him inappropriately. D.W.'s mother confronted Pully, and Pulley left the home that same night and did not return.

D.W. spoke with an investigator from the county sheriff's office about the incidents of abuse. D.W. testified that he did not tell the investigator whether he ejaculated. At trial, he admitted that he "sometimes" ejaculated when Pulley touched him. And, on cross-examination, D.W. testified that shortly before trial he told the prosecutor that he did ejaculate during the January 2019 incident and that was the first time that he ejaculated. D.W. testified that he wished he had told someone sooner about the abuse but that it would

have been difficult because Pulley "was definitely the closest person in [his] life and [he] trusted him with just about everything."

D.W.'s mother testified about Pulley's relationship with D.W. and what she observed about their interactions. She stated that Pulley was more "bonded" with D.W. than with D.W.'s younger sister and more affectionate with D.W. She also testified that, at times, Pulley would exclude D.W.'s younger sister from "movie night." She testified that she would see Pulley and D.W. snuggling in the "spooning position" while watching television or a movie in Pulley's bed. She also testified that Pulley would sometimes go in to D.W.'s bedroom after she had tucked D.W. in bed, and she "had to tell [Pulley] to get out of there." According to D.W.'s mother, this occurred when D.W. was "older." She testified that, looking back, there were red flags.

D.W.'s clinical therapist, who he had being seeing since 2017, also testified. The therapist stated that D.W. did not tell him about the sexual abuse by Pulley until after it had been reported to law enforcement in January 2019. When D.W. spoke about the abuse, he told his therapist that he was touched inappropriately "roughly six times." The therapist testified that, in his history of working with people who have been sexually assaulted, he found that people usually underreport the instances of abuse because "[t]hey want to bury it" and "do not want to bring attention to themselves." He testified that he was not surprised that D.W. did not talk to him about the abuse earlier as not talking about abuse is a common "shame-based" response. The therapist also testified that when an individual does come forward to talk about their experiences of being abused, it often takes time, sometimes even decades, for them to reveal everything that occurred.

The detective from the county sheriff's office who interviewed D.W. also testified. The detective stated that he is trained to handle criminal sexual conduct cases involving children and had conducted between 100 and 200 interviews. The detective's interview with D.W. was recorded and presented as an exhibit to the jury. In the interview, D.W. told the detective about multiple incidents of sexual abuse. The detective testified that another detective collected D.W.'s shorts and underwear for testing.

The jury also heard testimony from a forensic scientist from the Midwest Regional Forensic Laboratory who tested D.W.'s shorts and underwear for any skin cells that might have been present. If skin cells are present on an item, DNA testing can determine who might have had contact with the item. The forensic scientist testified that it is more likely that DNA will be present on an item if a person directly touched the item with their hand rather than if a person's shirt touched the item because the shirt may not have had as many skin cells as the hand. The forensic scientist further testified that even if a person touched an item with their hand, DNA may not be found on the item because the hand may not have produced enough skin cells "to sluff off."

The forensic scientist testified that she ran DNA tests on three swabs from D.W.'s clothing and that the results showed DNA profile "mixtures of two or more individuals." Of those profiles, there was "a major male DNA profile that matched [D.W.] and did not match Ryan Pulley." But the forensic scientist could not rule out Pulley with regard to the minor DNA profiles because there was insufficient genetic data. The forensic scientist also testified that she inspected the clothing for ejaculate and noted no obvious signs of

ejaculate, but that a male's underwear is likely to contain some evidence of ejaculate. She further testified that she was not asked by law enforcement to test for seminal fluid.

Pulley testified on his behalf and denied ever sexually abusing D.W. He testified that he did not touch D.W. during the 2017 hunting trip nor did he ever touch D.W. in a sexual manner at any other time. Pulley also testified in detail about the January 2019 allegations when he watched a movie with the children and again denied touching D.W. inappropriately.

At the end of the trial, Pulley moved for a judgment of acquittal pursuant to Minnesota Rule of Criminal Procedure 26.03, subdivision 18(1). Pulley argued that "given the evidence, the contradictions and lack of physical evidence . . . no reasonable, rational jury could find Mr. Pulley guilty beyond a reasonable doubt as to the sexual contact." The district court denied the motion.

The jury found Pulley guilty of all three second-degree criminal-sexual-conduct charges. The district court entered convictions on all counts but sentenced Pulley only on the first count. This appeal follows.

DECISION

Pulley challenges his convictions on two grounds. First, he contends that the evidence is not sufficient to support his convictions. Second, he argues that the prosecutor committed misconduct during closing argument. We address each issue in turn.

I. Sufficient evidence supports Pulley's convictions.

Pulley raises two related arguments regarding the sufficiency of the evidence. He argues that the district court erred in denying his motion for judgment of acquittal at the close of evidence because the state failed to present sufficient evidence to support convictions of the crimes charged. Similarly, he argues that the jury's verdicts must be overturned because they are not supported by sufficient evidence.

Minnesota Rule of Criminal Procedure 26.03, subdivision 18(1)(a) allows a defendant to move for judgment of acquittal if the evidence is insufficient to sustain a conviction. The denial of a motion for acquittal presents a question of law, which requires this court to conduct a de novo review of the evidence. *State v. McCormick*, 835 N.W.2d 498, 506 (Minn. App. 2013), *rev. denied* (Minn. Oct. 15, 2013). The standard of review for the denial of a motion for acquittal is the same standard we apply when reviewing a challenge to the sufficiency of evidence. *State v. Sam*, 859 N.W.2d 825, 830 (Minn. App. 2015).

We review a sufficiency-of-the-evidence challenge by carefully examining the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We will not disturb a guilty verdict "if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Ortega*,

813 N.W.2d at 100. We review de novo whether an appellant's conduct satisfies the statutory definition of an offense. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

The state charged Pulley with three counts of second-degree criminal sexual conduct. Pulley acknowledges that D.W.'s testimony established each of the elements of the offenses. But he argues that the testimony is insufficient to support the verdicts because (1) D.W.'s testimony was "questionable" as D.W. could not explain why he continued pretending to sleep when Pulley allegedly touched him, despite also testifying that the abuse would stop when he made movements indicating that he was awake; and (2) there is no direct physical evidence corroborating D.W.'s testimony, further calling into question D.W.'s testimony. We are not persuaded that the evidence is insufficient to support the verdicts.

A. D.W.'s Testimony

"Assessing the credibility of a witness and the weight to be given a witness's testimony is exclusively the province of the jury." *Francis v. State*, 729 N.W.2d 584, 589 (Minn. 2007). "[T]he jury is free to accept some aspects of a witness's testimony and reject others." *State v. Wright*, 679 N.W.2d 186, 190 (Minn. App. 2004), *rev. denied* (Minn. June 29, 2004). Inconsistency or conflicts in a witness's testimony do not prove that the testimony is false, especially in cases involving traumatic events. *Id.* Further, in a prosecution of second-degree criminal sexual conduct, "the testimony of a victim need not be corroborated." Minn. Stat. § 609.347, subd. 1 (2020).

Viewing the evidence in the light most favorable to the verdicts, we conclude that the evidence is sufficient to sustain Pulley's convictions. Here, the jury heard D.W.'s

testimony about multiple instances of sexual abuse by Pulley. D.W. described the abuse in detail, particularly the first and last incidents. The jury also heard D.W.'s explanation, on cross-examination, about why he did not make movements indicating that he was awake on some occasions when Pulley raised D.W.'s arm and let it fall before the touching occurred. D.W. explained that he was hoping that Pulley would stop the touching and D.W. would be able to "go back to sleep on [his] own without having to show that [he] was waking up." Pulley contends that D.W.'s testimony in this regard was "bizarre" given that D.W. knew the assault may have stopped if he moved around or woke up. But Pulley's argument ignores that D.W. was a boy at the time and Pulley was a father figure to him. Further, Pulley's argument ignores that, as the abuse continued, D.W. went from pretending that it was not happening to trying to stop it from happening. D.W. testified that during the last incident, he started acting like he was waking up so that Pulley would stop. The jury heard D.W.'s explanations and found D.W. credible. We defer to that credibility determination. *See State v. Reese*, 692 N.W.2d 736, 741 (Minn. 2005) (stating that "assessment of a witness credibility is a jury function").

B. Corroborating Evidence

Pulley also contends that the absence of physical evidence connecting Pulley to the sexual abuse alleged by D.W. demonstrates that the evidence is insufficient to support Pulley's convictions. Pulley emphasizes that the state presented no evidence of Pulley's DNA or any evidence of ejaculate on D.W.'s clothes to corroborate D.W.'s testimony. While caselaw does recognize that "the absence of corroboration . . . may well call for a holding that there is insufficient evidence upon which a jury could find the defendant guilty

beyond a reasonable doubt," generally corroboration is not required in criminal sexual conduct cases. *Wright*, 679 N.W.2d at 190 (citing Minn. Stat. § 609. 347, subd. 1). Further, nothing in the law requires corroborating physical evidence to support a criminal-sexual-conduct conviction. *See* Minn. Stat. § 609.347, subd. 1.

Here, the absence of scientific evidence does not support Pulley's contention that there is insufficient evidence to support the convictions. With regard to the DNA evidence, the forensic scientist found "mixtures of two or more individuals with a major male DNA profile that matched [D.W.]" But the expert did not rule Pulley out as being one of the "minor types." Rather, there was not enough genetic information to determine whether Pulley or any other person was a match. Similarly, the absence of evidence of ejaculate does not contradict or call into question D.W.'s testimony because D.W.'s clothing was not tested for seminal fluid. The jury found D.W.'s explanations and testimony credible, and we defer to the jury's credibility determination. *Reese*, 692 N.W.2d at 741.

In addition, while there was no physical evidence to corroborate D.W.'s testimony, there was corroborating testimony from D.W.'s mother and others. D.W.'s mother testified that, looking back, there were many "red flags." For example, Pulley sometimes excluded D.W.'s sister from movie nights and bonded more with D.W. She also testified that, at times, when she opened the door to Pulley's room in the morning, she observed D.W. in bed with Pulley, the bed would move, and they would pretend to sleep. D.W.'s therapist and the investigator also provided corroborating testimony. They testified that D.W. described incidents of sexual touching by Pulley. This testimony supports the jury's determination that D.W. testified credibly as to the incidents of sexual assault.

C. Conclusion

In sum, viewing the evidence in the light most favorable to the verdicts, the district court did not err in denying Pulley's motion for judgment of acquittal. The evidence is sufficient to support the convictions.

II. Pulley has not demonstrated plain error by the prosecutor during closing arguments.

Pulley next argues that we should reverse his convictions because the prosecution engaged in misconduct during closing arguments by misstating the evidence and disparaging the defense, and thereby prejudiced his right to a fair trial. We decline to reverse on this basis because Pulley has not demonstrated plain error by the prosecutor.

Pulley did not object at trial to the alleged prosecutorial misconduct. Generally, a defendant who fails to object to alleged prosecutorial misconduct at trial forfeits the right to appellate review of the issue. *State v. Darris*, 648 N.W.2d 232, 241 (Minn. 2002). However, appellate courts may review unobjected-to prosecutorial misconduct under the modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 296 (Minn. 2006). Under this standard of review, the defendant bears the burden "to demonstrate both that error occurred and that the error was plain." *Id.* at 302. "An error is plain if it was clear or obvious," which is typically established "if the error contravenes case law, a rule, or a standard of conduct." *Id.* (quotation omitted).

If the defendant demonstrates an error that is plain, the burden then shifts to the state "to demonstrate lack of prejudice; that is, the misconduct did not affect substantial rights." *Id.* (citing *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998); Minn. R. Crim. P. 31.02).

The state can meet its burden by showing "that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Id.* (quotation omitted).

The reviewing court assesses "the closing argument as a whole" to determine whether a prosecutor committed misconduct constituting plain error. *State v. Graham*, 764 N.W.2d 340, 356 (Minn. 2009) (quotation omitted). If "any one of the requirements" of the plain-error test is not satisfied, the reviewing court "need not address any of the others." *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017) (quotation omitted). If all three prongs of the plain-error test are satisfied, the reviewing court then decides "whether it should address the error to ensure fairness and the integrity of the judicial proceedings." *Griller*, 583 N.W.2d at 740.

A. The prosecutor did not commit misconduct by misstating the evidence.

Pulley first argues that the prosecutor committed misconduct by misstating the evidence. Specifically, Pulley argues that the prosecutor misstated the evidence during her closing argument when the prosecutor argued that it was unclear whether there should have been ejaculate on D.W.'s underwear and when she alluded to Pulley's clothing inhibiting the transfer of DNA to D.W.'s clothing.

"Prosecutors are allowed to argue all reasonable inferences from evidence in the record." *State v. Smith*, 876 N.W.2d 310, 335 (Minn. 2016) (quotation omitted). "It is unprofessional conduct, however, for the prosecutor intentionally to misstate the evidence or mislead the jury as to the inferences it may draw." *Id.* (quotation omitted).

We begin by addressing whether the prosecutor's statement regarding evidence pertaining to ejaculation constituted an intentional misstatement. The prosecutor made the following statement about that evidence during her closing argument:

> We don't know whether or not there was ejaculation in [D.W.'s] underwear that last time . . . . That makes sense given when [D.W.] disclosed was after the testing was done. *So we don't know if he ejaculated at that time or at a different time. That was unclear* . . . .

(Emphasis added.)

Pulley argues that the prosecutor intentionally misstated the evidence in this portion of the closing argument because it is contrary to D.W.'s testimony that he ejaculated for the first time during that last assault—the January 2019 assault. Thus, Pulley contends that there should have been evidence of ejaculation on D.W.'s underwear collected by law enforcement and that the prosecutor intentionally misstated the evidence when she stated that "we don't know if he ejaculated at that time or at a different time."

Taken as a whole, ambiguity exists in the evidence regarding ejaculation. Pulley is correct that D.W. testified that he told the prosecutor, at a meeting *prior* to trial, that he ejaculated during the January 2019 assault. But D.W. also testified at trial that he ejaculated "just sometimes" from Pulley touching him. In addition, the forensic scientist testified that the underwear was not tested for ejaculate and she did not observe any ejaculate on the underwear upon visual inspection. Viewing this evidence collectively, we cannot conclude that the prosecutor intentionally misstated the evidence regarding ejaculation during her closing argument. Further, in her closing argument, the prosecutor appropriately analyzed why it was unknown whether seminal fluid was present in the

underwear, emphasizing that D.W. did not disclose any information regarding ejaculation until after the forensic testing was complete. *See State v. Smith*, 541 N.W.2d 584, 589 (Minn. 1996) (explaining that the prosecution and the defense have "considerable latitude in closing argument" and have "the right to present to the jury all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences to be drawn therefrom"). For these reasons, we conclude that Pulley has not demonstrated that the prosecutor intentionally misstated the evidence regarding ejaculation.

We next consider whether the prosecutor committed misconduct when discussing the lack of DNA evidence connecting Pulley to the alleged abuse. Pulley's argument focuses on the following statement by the prosecutor:

> The defense counsel asked where's the evidence . . . . [W]e'll take you back to [the forensic technologist's] testimony where the conversation was if I'm holding a pen, . . . are you going to find DNA on here? "It's likely." If my arm is on here, are you going to find DNA on there? "Possible." What's the difference? . . . . [*T*]*he question that was asked was about my sleeve, that my sleeve got in the way . . . . The defendant testified. What does he sleep in? Well obviously a shirt. Perhaps his sleeve got in the way. It wasn't that there wasn't DNA on there. It's that the DNA is small enough or because we don't live in the world of CSI,*[1] *we cannot identify it to be the defendant's.* But the idea that there is no DNA that points to the defendant is a red herring.

(Emphasis added.) Pulley contends that this statement constitutes misconduct because Pulley never testified that he was wearing a shirt during the alleged assaults. We are not persuaded. First, the prosecutor's statement that "he" slept in a shirt could refer to D.W.,

[1] We assume that the prosecutor's statement "in the world of CSI" refers to the fictional television show CSI: Crime Scene Investigation.

not Pulley, as Pulley's testimony on cross-examination established that D.W. sometimes wore a shirt to bed. And the prosecutor did not specify that "he" referred to Pulley. The prosecutor may have been imprecise when using the word "he." Accordingly, we conclude that Pulley has not demonstrated that the prosecutor intentionally misstated the evidence relating to DNA.

Finally, even assuming the prosecutor's statements regarding the DNA and ejaculation evidence taken in isolation could be considered misstatements, when read in the broader context they do not amount to misconduct. As noted above, when prosecutorial-misconduct claims arise from a closing argument, "we look to the closing argument as a whole, rather than to selected phrases and remarks." *State v. Hallmark*, 927 N.W.2d 281, 308 (Minn. 2019) (quotation omitted). The prosecutor's statements that Pulley challenges on appeal represent only a few sentences in the state's 37-page closing argument. *See State v. Powers*, 654 N.W.2d 667, 679 (Minn. 2003) (holding that a statement did not amount to misconduct because "[t]he improper statement was only two sentences in a closing argument that amounted to over 20 transcribed pages"). And, while perhaps imprecise, the statements were drawn from evidence and do not appear to be intentional misstatements when read in the broader context. *See State v. McCray*, 753 N.W.2d 746, 753 (Minn. 2008) (holding that some of the prosecutor's statements read in isolation could be construed as misstatements but read in a broader context were not misstatements). For these reasons, we conclude that Pulley has failed to demonstrate that the prosecution engaged in misconduct by intentionally misstating the evidence.

B. The prosecutor did not commit misconduct by disparaging the defense.

Pulley next argues that the prosecution disparaged the defense by "inferring the defense was willing to throw out any defense that might work." Pulley refers to the state's closing argument about ejaculate evidence (or the lack thereof):

> Even if there was ejaculate, remember the defense's argument would be, of course there's ejaculate. He's a 12-year-old child. Of course there's going to be some pre-ejaculate . . . . "Things happen to bodies when kids are 12 and it would make sense that it was his own." That's a red herring.

We are not persuaded.

"Although a prosecutor can argue that a particular defense has no merit, a prosecutor may not belittle the defense, either in the abstract or by suggesting that the defense was raised because it was the only defense that might succeed." *State v. McDaniel*, 777 N.W.2d 739, 752 (Minn. 2010) (quotation omitted); *see also State v. Griese*, 565 N.W.2d 419, 427 (Minn. 1997) ("[I]t is improper to disparage the defense in closing arguments or to suggest that a defense offered is some sort of standard defense offered by defendants when nothing else will work." (Quotation omitted.)). If the prosecutor's conduct is disparaging and improper, a new trial is warranted only if the conduct plays a substantial part in influencing the jury to convict. *See McDaniel*, 777 N.W.2d at 752-53. Prejudicial prosecutorial misconduct is generally found only in extreme circumstances. *Id.* at 752.

The prosecutor's statements here do not amount to disparagement of the defense. The statements do not suggest that the defense was raised because it was the only defense that could succeed. *See State v. Williams*, 525 N.W.2d 538, 548 (Minn. 1994) (concluding

that the prosecution disparaged the defense by using the language "[w]hat kind of defense could you raise in a drug case" which improperly invited the jurors to speculate about the motivation behind the defendant's decision to try the case a certain way); *State v. Bettin*, 244 N.W.2d 652, 654 (Minn. 1976) (holding that the prosecution disparaged the defense by stating that the insanity defense was a "pushbutton defense which defendants raise when they cannot think of anything" (quotation omitted)). Instead, the statements challenge the merits of the defense by presenting an alternative argument based on the evidence.

In sum, we conclude that Pulley has not met his burden to demonstrate that the prosecutor's conduct constitutes plain error. Because Pulley has not demonstrated plain error, we need not address the prejudice prong of the modified plain-error analysis.

Affirmed.