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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1299**

State of Minnesota,
Respondent,

vs.

Rickey Maddox,
Appellant.

**Filed June 5, 2017
Affirmed
Larkin, Judge**

Olmsted County District Court
File No. 55-CR-15-4134

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

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

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

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of violating Minnesota's predatory-offender registration requirements, arguing that the prosecutor engaged in misconduct during voir dire. Because appellant is not entitled to relief under the plain-error standard, we affirm.

FACTS

The State of Minnesota charged appellant Rickey Maddox with violating Minnesota's predatory-offender registration requirements under Minn. Stat. § 243.166 (2014), because he failed to update his primary address in the sex-offender registry. Maddox waived his right to counsel and proceeded pro se at a jury trial with advisory counsel. The jury found Maddox guilty, and the district court sentenced him to serve 30 months in prison. This appeal follows.

DECISION

Maddox contends that “the prosecutor committed misconduct during voir dire that denied [him] his right to an impartial jury.” Because Maddox did not object to the alleged misconduct in district court, we apply a modified plain-error test. *See State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006). Under this test, the defendant must show error and that the error was plain. *Id.* at 302. An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *Id.* If the defendant satisfies this burden, the state must show that the misconduct did not affect the defendant's substantial rights. *State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010). “An error affects a defendant's substantial rights if there is a reasonable likelihood that the error actually impacted the verdict.” *Id.* If the state does

not meet its burden, “the court then assesses whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” *Ramey*, 721 N.W.2d at 302.

“Generally, a prosecutor’s acts may constitute misconduct if they have the effect of materially undermining the fairness of a trial.” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). “A prosecutor engages in prosecutorial misconduct when he violates clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state’s case law.” *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (citation omitted). For example, a prosecutor may not misstate the presumption of innocence or the burden of proof, or inflame the passions and prejudices of the jury. *Ramey*, 721 N.W.2d at 300.

A criminal defendant has the right to an impartial jury. U.S. Const. amends. VI, XIV; Minn. Const. art. 1, § 6; *State v. Greer*, 635 N.W.2d 82, 87 (Minn. 2001). The purpose of voir dire is “to discover grounds for challenges for cause and to assist in the exercise of peremptory challenges.” Minn. R. Crim. P. 26.02, subd. 4(1). The comment to this rule explains that “[t]he court has the right and the duty to assure that the inquiries by the parties during the voir dire examination are ‘reasonable.’ The court may therefore restrict or prohibit questions that are repetitious, irrelevant, or otherwise improper.” Minn. R. Crim. P. 26 cmt.

Maddox argues that the state’s voir dire was improper because the prosecutor “indoctrinated the jury as to the burdens of proof and punishment” and “improperly committed the jury to afford the state a fair trial.” During voir dire, the prosecutor told the venire members that “beyond a reasonable doubt does not mean beyond all possibility of

doubt, or beyond a shadow of a doubt. You do not need to be absolutely convinced beyond any doubt.” The prosecutor asked, “Does anyone here feel like they should be able to decide what the punishment is of violating the law? Is anyone really disappointed by the fact that you won’t get to do that? No one is itching to dish out punishment?” The prosecutor also solicited a promise to give the state a fair trial:

PROSECUTOR: You understand both [Maddox] as the Defendant and the State of Minnesota have a right to a fair trial?

....

PROSECUTOR: Can you promise that every time you think about affording [Maddox] a fair trial, you will also think about giving the State of Minnesota a fair trial in this matter?

Maddox also argues that the prosecutor “inflamed the prejudices of the jury by questioning jurors about their feelings on sex-offender registration.” The prosecutor asked the venire members, “[D]o people think that sex offenders should have to register? Does anyone think they should not have to register?” The prosecutor also asked, “[O]ther than just registering, are there certain things that you think sex offenders should have to do?” and “[W]hy do you think it would be important for someone to register their address?” The prosecutor then asked whether there “should be consequences if someone doesn’t follow their registration requirements” and summarized the venire members’ responses as follows: “[A]s a general proposition, I think I’m hearing people should be accountable for breaking the law.”

Maddox does not cite a case or rule that clearly establishes that the prosecutor’s questions were improper. Instead, he relies on the Minnesota Supreme Court’s Jury Task Force Report from 2001, which recommended changes to the jury system in Minnesota.

Maddox concedes that the report is “advisory in nature.” Indeed, this court has noted, in unpublished opinions,¹ that the report has not been adopted as law. *State v. Nelson*, No. A09-1925, 2010 WL 4068700, at *6 (Minn. App. Oct. 19, 2010) (“Appellant also cites to the [jury task force report], which contains recommendations that are not part of the rules.”), *review denied* (Minn. Dec. 22, 2010); *State v. Poppenhagen*, No. A08-0225, 2009 WL 982047, at *1 (Minn. App. Apr. 14, 2009) (“Those recommendations, however, are not a part of the current rule and may be assumed to be advisory only.”). Because the report is advisory only, it does not establish that the prosecutor’s questions in this case are plainly erroneous.

Maddox also relies on *State v. Bolstad*. 686 N.W.2d 531 (Minn. 2004). In *Bolstad*, the defendant was convicted of first-degree murder for killing his father. *Id.* at 534. During voir dire, the prosecutor asked the venire members if they had ever offered money to have a parent killed. *Id.* at 543. The supreme court concluded, “While we are concerned about the nature of the state’s questioning, given the record as a whole we conclude that the questioning was not unduly prejudicial.” *Id.*

“An alleged error does not contravene caselaw unless the issue is conclusively resolved.” *State v. Hollins*, 765 N.W.2d 125, 133 (Minn. App. 2009) (quotation omitted). Although the supreme court noted that it was concerned about the prosecutor’s questions in *Bolstad*, the supreme court did not conclusively establish a line between appropriate and

¹ Although unpublished opinions are not precedential, they may have persuasive value. Minn. Stat. § 480A.08, subd. 3(c) (2016) (“Unpublished opinions of the Court of Appeals are not precedential.”); *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993) (concluding that unpublished opinions may be persuasive).

inappropriate voir dire questions. *Bolstad* therefore does not establish that the prosecutor's questions in this case are plainly erroneous.

Because Maddox does not cite precedential authority establishing that the prosecutor's voir dire questions in this case were improper, he does not show error that is plain. Moreover, it is apparent that the alleged misconduct did not affect Maddox's substantial rights. Maddox presented a double-jeopardy defense at trial. He argued that, because the state had revoked his probation, in part, for failing to provide a current address, it could not prosecute him for failing to update his address in the sex-offender registry. And he conceded guilt in his closing argument, stating, "You notice [Maddox] never said he wasn't guilty. He never denied that."² Given Maddox's personal concession of guilt, there is no reasonable likelihood that the alleged prosecutorial misconduct actually impacted the verdict.

In sum, Maddox is not entitled to relief under the plain-error standard, and we therefore affirm.

Affirmed.

² Maddox referred to himself in the third person during his closing argument.