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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0011**

State of Minnesota,
Respondent,

vs.

Tou Pheng Yang,
Appellant.

**Filed February 1, 2021
Affirmed
Gaïtas, Judge**

Washington County District Court
File No. 82-CR-17-3672

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

Pete Orput, Washington County Attorney, Nicholas A. Hydukovich, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Connolly, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Tou Pheng Yang appeals his multiple convictions for controlled-substance crimes following a jury trial. He argues that he should receive a new trial because the prosecutor's misconduct unfairly prejudiced the jury and impacted the verdicts.

Yang claims that the prosecutor improperly asked police officers for their expert opinions about whether he intended to sell, and not simply use, controlled substances. And he claims that the prosecutor committed misconduct during closing argument by asking the jury to “care” about the community and hold him accountable. Yang acknowledges that his trial attorney did not object to the prosecutor’s conduct, limiting this court to plain-error review.

We conclude that the prosecutor committed plain error by asking several police witnesses to give expert opinions about Yang’s intent, and that some of the prosecutor’s remarks during closing arguments constituted misconduct. But because there was overwhelming evidence of Yang’s guilt, the prosecutor’s misconduct did not affect Yang’s substantial rights, and therefore, Yang is not entitled to a new trial. We affirm.

FACTS¹

Yang’s convictions stem from two traffic stops that occurred about six weeks apart. The first traffic stop happened at night in late August 2017. Woodbury Police Officer Tommy Satele saw a maroon Lexus SUV weave in its lane and cross over the fog line several times.² Officer Satele stopped the SUV. Yang was the driver, and his girlfriend, the vehicle’s registered owner, was in the passenger seat. Officer Satele discovered that Yang had an arrest warrant related to a misdemeanor traffic offense. He called Officer Veronica Giese to assist him. When she arrived, the officers took Yang out of the SUV and handcuffed him.

¹ Our summary of the facts is based on the record of Yang’s jury trial.

² We identify the officers involved in Yang’s case only to facilitate our later discussion of the prosecutor’s questions to these officers during Yang’s jury trial.

Officer Satele searched Yang's pockets and found a rolled up piece of paper, about \$1,500 in cash, and three counterfeit \$100 bills. The paper was wrapped around a small amount of methamphetamine. After this discovery, police brought a drug-sniffing dog to the scene. Following the dog sniff, Officer Satele searched the SUV's interior. In the backseat, he found a brown designer backpack containing a loaded gun, a gun magazine, a plastic bag containing a white substance later confirmed to be about 24 grams of methamphetamine, and a black substance later confirmed to be a mixture of about 1.2 grams of morphine and codeine. Subsequent testing revealed the presence of DNA consistent with Yang's DNA on the gun. The backpack also contained documents in Yang's name, including a bank deposit slip, a letter addressed to Yang, a vehicle title, and a paper version of Yang's driver's license.

During the search of the vehicle, Officer Giese noticed a cellphone in the SUV's center console openly displaying messages that seemed to reference a drug exchange. When the police examined the phone after obtaining a warrant, they discovered a photo showing bags of marijuana positioned next to a leather bag and keys to a BMW vehicle, and other photos showing bundles of cash, firearms in black cases, and Yang's driver's license. The phone also contained text messages that suggested to police that Yang was selling marijuana.

The second traffic stop happened in early October 2017 when Yang was driving his own silver BMW sedan without a valid driver's license. The police pulled Yang over, arrested him, and took him to jail. After the arrest, officers searched Yang's car and found several items in the trunk. This time, they found a loaded gun inside a black designer

handbag. They also found a brown designer handbag containing about 42 grams of marijuana wrapped in plastic, empty small plastic bags, and thousands of dollars in cash and counterfeit bills.

Based on the evidence found during the two traffic stops, Yang was charged with first-degree possession of 17 or more grams of methamphetamine with intent to sell under Minn. Stat. § 152.021, subd. 1(1) (2016) (count one); second-degree possession of 10 or more grams of methamphetamine while in possession of a firearm under Minn. Stat. § 152.022, subd. 2(a)(2)(i) (2016) (count two); third-degree possession of 10 or more grams of a narcotic other than heroin, Minn. Stat. § 152.023, subd. 2(a)(1) (2016) (count three); fifth-degree possession of a controlled substance (morphine), Minn. Stat. § 152.025, subd. 2(1) (2016) (count four); and fifth-degree possession of marijuana with intent to sell, Minn. Stat. § 152.025, subd. 1(1) (2016) (count five). The state also gave notice of its intent to seek a sentencing enhancement under Minnesota Statutes section 609.11, subdivisions 5(a) and 9 (2016), on counts one, three, and four based on Yang's alleged commission of the drug offenses while possessing firearms. Yang pleaded not guilty and had a single jury trial involving the charges stemming from both traffic stops.

During the state's case-in-chief, five police officers and two Minnesota Bureau of Criminal Apprehension scientists testified, and the prosecutor offered 44 exhibits into evidence. On direct examination, the prosecutor asked the five police officers for their opinions about whether Yang possessed the drugs for personal use or to sell, phrasing the questions differently for each officer. The five officers testified that the evidence was consistent with intent to sell both methamphetamine and marijuana. Defense counsel made

some objections during the officers' testimony on the grounds of "speculation" and "foundation." But defense counsel did not object to the substance of the officers' opinions.

Yang testified that most of the items seized during the two arrests—the cellphone, the firearms and magazine, the backpack containing 24 grams of methamphetamine, and the handbag containing 42 grams marijuana—did not belong to him. He did admit, however, that the cash and small amount of methamphetamine found in the paper in his pockets during the first stop were his, as was some of the marijuana and cash found during the second stop. Yang also admitted that he knew there was a gun in his car during the second stop. But he denied that the gun belonged to him, and he denied knowing who owned the gun.

During closing arguments, the prosecutor emphasized a theme of public safety and personal accountability to the jury. The prosecutor argued that Yang was a danger to the community and did not care about the community. He asked the jurors to care about the community and to "do the right thing" by holding Yang accountable with their verdicts. Defense counsel made no objection to the state's closing argument.

The jury found Yang guilty of all five counts. At sentencing, the district court sentenced Yang to 110 months in prison for count one and concurrent 36-month terms for counts four and five. This appeal follows.

DECISION

Yang argues that the prosecutor committed two types of misconduct that prejudiced the jury and ultimately affected the verdicts. First, he contends that the prosecutor asked

questions designed to elicit inadmissible expert-opinion testimony. And second, he claims that the prosecutor made improper remarks during closing arguments.

In reviewing prosecutorial-misconduct claims, our standard of review depends on whether defense counsel objected to the misconduct at trial. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Because defense counsel did not object to the prosecutor's questions on the ground that they called for inadmissible expert testimony, and did not object to the prosecutor's remarks during closing argument, we review these claims for plain error. *See State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (holding that errors not preserved with a trial objection are reviewed under the plain-error standard of review).

The Minnesota Supreme Court has adopted a modified plain-error standard of review for claims of prosecutorial misconduct. *Ramey*, 721 N.W.2d at 302. Under the modified plain-error standard, a defendant must show that the prosecutor engaged in conduct constituting an error that was plain. *Id.* An error is plain if it is "clear or obvious," meaning that it "contravenes case law, a rule, or a standard of conduct." *State v. Sanchez-Sanchez*, 879 N.W.2d 324, 330 (Minn. 2016) (quotations omitted). If plain error is shown, the burden then shifts to the state to demonstrate that the error did not affect the defendant's substantial rights. *Ramey*, 721 N.W.2d at 302. To demonstrate that the error did not impact the defendant's substantial rights, "the [s]tate must show 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." *State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010) (quotation omitted). Finally, if the state fails to satisfy its burden, the appellate court

considers “whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” *Id.*

We now turn to Yang’s claims, considering each allegation of misconduct in turn.³

I. Eliciting Inadmissible Expert-Opinion Testimony

In determining whether the prosecutor elicited improper expert-opinion testimony, we first consider whether the prosecutor’s conduct was plainly erroneous. The state “may not seek a conviction at any price” because prosecutors are “minister[s] of justice whose obligation is to guard the rights of the accused as well as to enforce the rights of the public.” *Ramey*, 721 N.W.2d at 300 (quoting *State v. Penkaty*, 708 N.W.2d 185, 196 (Minn. 2006)). That is why “[w]e expect that prosecutors . . . are aware of our caselaw proscribing particular conduct as well as the standards of conduct prescribed by the ABA.” *Ramey*, 721 N.W.2d at 300-01. One expectation set forth in the caselaw is that prosecutors must not elicit inadmissible trial testimony. *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014); *Ramey*, 721 N.W.2d at 300; *State v. Harris*, 521 N.W.2d 348, 353-54 (Minn. 1994); *State v. Valentine*, 787 N.W.2d 630, 642 (Minn. App. 2010), *review denied* (Minn. Nov. 16, 2010).

³ We use the term “prosecutorial misconduct” here to refer to trial errors committed by the prosecutor because this is the term used in the caselaw. Our use of this term should not suggest that we are ascribing any particular intent to the prosecutor’s conduct. Nor do we intend to equate prosecutorial misconduct with attorney ethics. *See State v. Leutschaft*, 759 N.W.2d 414, 418 (Minn. App. 2009) (discussing distinction between prosecutorial misconduct and prosecutorial error but applying plain-error review regardless of characterization of prosecutor’s conduct when no objection was made), *review denied* (Minn. Mar. 17, 2009).

The Minnesota Rules of Evidence govern the admissibility of evidence. Rule 702 allows an expert witness to testify “in the form of an opinion” if the witness’s “scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue.” Under rule 704, which concerns opinion testimony in general, “[t]estimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.” Minn. R. Evid. 704. Indeed, “[e]xpert and lay witnesses will not be precluded from giving an opinion merely because the opinion embraces an ultimate fact issue to be determined by the jury.” *Id.*, 1977 comm. cmt. Expert-opinion testimony on an ultimate issue is therefore generally admissible so long as it is helpful to the factfinder. *State v. Moore*, 699 N.W.2d 733, 740 (Minn. 2005) (citing Minn. R. Evid. 704)).

At the same time, the Minnesota Supreme Court has “consistently expressed . . . concern that expert testimony be carefully monitored in criminal cases so that a jury is not dissuaded from exercising its own independent judgment.” *State v. DeShay*, 669 N.W.2d 878, 885 (Minn. 2003). The supreme court has been “very reluctant” to allow experts to testify regarding “matters that are generally for the jury’s determination.” *Id.* (quotation omitted). For instance, caselaw provides that expert witnesses may not offer legal conclusions or give an opinion on a defendant’s subjective state of mind. *See, e.g., State v. Provost*, 490 N.W.2d 93, 101-02 (Minn. 1992) (discussing inadmissible psychiatric opinion on defendant’s criminal intent); *State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990) (determining whether officer offered a legal or factual conclusion); *State v. Stewart*, 923 N.W.2d 668, 677 (Minn. App. 2019) (“An expert witness may not offer an opinion as

to a defendant's intent.”), *review denied* (Minn. Apr. 16, 2019). Moreover, courts must be mindful of the fact that “[a]n expert with special knowledge has the potential to influence a jury unduly.” *State v. Grecinger*, 569 N.W.2d 189, 193 (Minn. 1997); *see also DeShay*, 669 N.W.2d at 885-86 (Minn. 2003) (discussing perils of expert testimony, and concluding that law enforcement officer's expert testimony on gangs was improperly admitted).

These evidentiary principles apply to drug-sale prosecutions involving expert-opinion testimony on a defendant's intent to sell controlled substances. *See State v. Collard*, 414 N.W.2d 733, 736 (Minn. App. 1987) (affirming admission of opinion that large quantity of drugs was indicative of sale because the testimony was “not expressed as a legal conclusion or in otherwise conclusive terms”), *review denied* (Minn. Jan. 15, 1988).⁴ Accordingly, when a prosecutor asks a law enforcement officer a question during trial that is calculated to elicit the officer's conclusive expert opinion about whether the defendant had an intent to sell drugs, the prosecutor may commit misconduct depending on the specific question asked.

⁴ We recognize that the parties have cited a number of unpublished decisions from this court. *Haaland v. State*, A10-1124, 2011 WL 781229, at *4 (Minn. App. Mar. 8, 2011); *State v. Martin*, A08-1523, 2009 WL 3364236, at *2, *7-9 (Minn. App. Oct. 20, 2009), *review denied* (Minn. Jan. 19, 2010); *State v. Belgarde*, A08-101, 2009 WL 511140, at *8 (Minn. App. March 3, 2009); *State v. Dukes*, A04-2423, 2006 WL 278906, at *2-3 (Minn. App. Feb. 7, 2006), *review denied* (Minn. May 16, 2006). While not precedential, we agree that these cases have some persuasive value in relation to the prosecutorial misconduct claim currently before us. *Kruse v. Comm'r of Pub. Safety*, 906 N.W.2d 554, 559 (Minn. App. 2018) (“‘Unpublished opinions of the Court of Appeals are not precedential,’ but they may be persuasive.” (quoting Minn. Stat. § 480A.08, subd. 3(c) (2016))). In particular, these unpublished decisions further illustrate that the admissibility of expert testimony on a defendant's intent to sell controlled substances depends on the conclusiveness of the opinions offered and the overall helpfulness of the testimony.

With these standards guiding our review, we now consider the prosecutor's questions to the law enforcement officers at Yang's trial.

The prosecutor opened his case-in-chief with a direct examination of Officer Satele, a patrol officer with three years of law-enforcement experience. After establishing the basis for Officer Satele's decision to stop Yang, the prosecutor questioned him about the items found inside the SUV, including "a very large amount of white crystal rock." The following exchange then occurred:

PROSECUTOR: [I]n your training and experience, did the amount of crystal -- is the amount of that crystal substance that you located in that backpack, is that consistent with personal consumption?

OFFICER SATELE: Absolutely not.

Following Officer Satele's response, the prosecutor did not ask Officer Satele to explain his response. He continued asking about items found during the search.

At the end of the direct examination, and after cataloguing all of the items found in the SUV, the prosecutor asked Officer Satele for his opinion on Yang's intent.

PROSECUTOR: Officer, in your training and experience, when you're dealing with narcotics activity -- you have that experience. When you take a look at methamphetamine and the amount set forth here in Exhibit 22; you take a look at the fake cash and the amount of cash that was located on the defendant; when you take a look at this firearm that was located, what if anything -- and the presence of morphine in the backpack, the smaller bindle of methamphetamine in his pocket -- what, if anything, does that suggest to you about defendant's intentions based on your training and experience?

OFFICER SATELE: Based on my training and experience, I believe he was involved in the sale of controlled substances.

The prosecutor questioned the next witness, Officer Giese, in similar fashion.

PROSECUTOR: [I]n your training and experience here, your twelve years in law enforcement, multiple cases involving controlled substance, the discussion that we just had about drug dealing, when you take a look at the bag, substantial bag of crystal substance in front of you --

OFFICER GIESE: Um hum.

PROSECUTOR: -- you take a look at the firearm, take a look at the language on the phone at the time, the amount of cash that the defendant had on him, the other morphine in the backpack, the spindle [sic] of methamphetamine in the defendant's pocket; in your training and experience, what does that all say, if anything, about what the defendant's intentions were?

Defense counsel objected on the grounds of “[s]peculation, foundation,” and the district court overruled the objection. Officer Giese began to discuss how the firearm was designed for conceal and carry, and the district court prompted the prosecutor to rephrase the question.⁵

PROSECUTOR: Officer Giese, is the amount of crystal substance in the bag right in front of you consistent with personal consumption?

OFFICER GIESE: No, it is not.

PROSECUTOR: The evidence that we've talked about today, is any of it, in your training and experience, indicia of drug dealing activity?

OFFICER GIESE: Yes, they are all indicators of drug activity.

Following Officer Giese's testimony, the prosecutor asked similar questions of three more police officers. Those questions included whether the amount of methamphetamine

⁵ We note that the district court intervened once again during the prosecutor's attempt to rephrase the question and held a bench conference with the attorneys off the record. The state concedes in its brief to this court that during the bench conference the district court “likely instructed the prosecutor that he should rephrase his questions regarding evidence of intent to sell.” The matters discussed during the bench conference are not in the record, however, and we do not speculate about what transpired.

seized was “consistent with personal use” or “indicative of drug sale activity,” and whether the evidence in totality is “indicative of drug sale activity.” The officers gave brief responses, opining that the amount of drugs seized was indicative of sale and “[n]ot at all” consistent with personal use, and that the evidence as a whole indicated that Yang was involved in “drug sale activity.”

Yang argues that the prosecutor committed misconduct by eliciting five separate expert opinions from five witnesses on an ultimate issue in the trial—whether Yang had the intent to sell the methamphetamine and marijuana. He contends that these expert opinions “went well beyond providing the jury information . . . from which the jury could decide for itself whether Yang intended to sell drugs.” Yang specifically points to Officer Satele’s testimony: “I believe [Yang] was involved in the sale of controlled substances.” Further, Yang maintains that the officers’ conclusive legal opinions regarding his intent were “plainly inadmissible” and were not helpful to the jury, citing *Collard*, 414 N.W.2d 733.

The state responds that the prosecutor did not knowingly elicit inadmissible evidence because the officers’ testimony was admissible, or, at best, its admissibility was “reasonably debatable.”⁶ According to the state, *Collard* allows a police officer to testify that the evidence “indicate[s] an intent to sell rather than to retain for personal use.” 414

⁶ The state argues that Yang must show that the prosecutor intentionally committed misconduct by knowingly eliciting inadmissible evidence. But we apply plain-error analysis regardless of the prosecutor’s intent. See *Leutschafft*, 759 N.W.2d at 418; see also *Ramey*, 721 N.W.2d at 299-300. Thus, we reject the state’s contention that Yang must show that the prosecutor intentionally committed misconduct in order to show plain error.

N.W.2d at 735. The state also observes that the caselaw in this area is unclear, and accordingly argues that there can be no plain error.⁷

We conclude that two of the prosecutor’s questions were plainly improper because they were calculated to elicit inadmissible expert opinion testimony about Yang’s intent to sell. First, the prosecutor’s final question to Officer Satele—summarizing the evidence and then inquiring “what, if anything, does that suggest to you about defendant’s intentions based on your training and experience”—clearly called for a legal conclusion and invaded the jury’s fact-finding role. Moreover, given that the prosecutor established virtually no foundation for Officer Satele’s opinion, Officer Satele’s response—“I believe he was involved in the sale of controlled substances”—was not helpful to the jury. Second, for the same reasons, the prosecutor’s question to Officer Giese—summarizing the evidence at great length and then asking, “what does that all say, if anything, about what the defendant’s intentions were”—was improper. Because the prosecutor’s questions to Officer Satele and Officer Giese were designed to elicit inadmissible expert testimony in contravention of the Minnesota Rules of Evidence and caselaw, they constituted misconduct.

The prosecutor’s follow-up question to Officer Giese, and the other questions that Yang brings to our attention, are not, in and of themselves, improper questions. These questions inquired whether specific evidence was “indicative of” or “consistent with”

⁷ The state does not challenge Yang’s assertion that the prosecutor’s questions sought the officers’ expert opinions—opinions based on their training and experience as law enforcement officers.

personal use or with sale. *Collard* suggests that such questions are permissible. 414 N.W.2d at 736 (concluding that officer's testimony about the amount of drugs consistent with personal use was not improper). For that reason, we cannot conclude that the prosecutor's questions in that vein amounted to misconduct. But we do observe that where there is no foundation for an officer's opinion, as was the case with the majority of such questions here, an officer's opinion that the evidence shows a particular intent is not helpful. And yet, because it is cloaked in expertise, this type of opinion may unfairly persuade the jury. *See Grecinger*, 569 N.W.2d at 193. We therefore encourage prosecutors to establish proper foundation for expert testimony touching on the ultimate issues to avoid crossing the line into misconduct.⁸

Because we have concluded that two of the prosecutor's questions were calculated to elicit inadmissible expert-opinion testimony and constituted misconduct, we must next consider the question of prejudice. As noted, under the modified plain-error analysis, the burden shifts to the state to prove that Yang was not prejudiced. *Ramey*, 721 N.W.2d at 302. An error is "prejudicial" if there is a "reasonable likelihood that the error had a significant effect on the jury's verdict." *State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010). When examining a claim of prejudicial error, appellate courts focus on the strength of the

⁸ Although Yang frames his legal complaint as prosecutorial misconduct, he also alleges that some of the officers' responses to questions were plain error. For example, he notes that one officer, when asked whether 24 grams of methamphetamine was consistent with selling drugs, responded, "Based on my training and experience, absolutely." We do not find that these responses to appropriate questions amounted to plain error.

evidence, the pervasiveness of the error, and whether the defendant rebutted the improper evidence. *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007).

At the outset, we note that although the prosecutor asked two questions designed to elicit inadmissible expert-opinion testimony, only one of those questions received the intended response. The second improper question—requesting Officer Giese’s opinion about whether Yang intended to sell methamphetamine—initially received a nonresponsive answer, and ultimately went unanswered. The question, which was leading and suggested the answer (yes), was nevertheless problematic and created an unnecessary risk of influencing jurors. *See* Minn. R. Evid. 611(c) (“Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness’ testimony.”); *State v. Ray*, 659 N.W.2d 736, 744-45 (Minn. 2003) (discussing impropriety of a prosecutor using leading questions to elicit inadmissible testimony). But because there was no response, its capacity for prejudice was mitigated.

Against this backdrop, we consider the strength of the state’s case. The evidence of Yang’s guilt was overwhelming. Police found guns and large quantities of drugs in Yang’s possession during two separate traffic stops—24 grams of methamphetamine, 42 grams of marijuana, a mixture of 1.2 grams of morphine and codeine, loaded firearms, and firearm magazines. Additionally, the state presented significant evidence connecting these items to Yang, including cash and the small amount of methamphetamine found inside his pockets, Yang’s official paperwork located in the same bag as the methamphetamine, and evidence of Yang’s DNA on a firearm. Finally, there was ample circumstantial evidence of Yang’s intent to sell the drugs, including large amounts of real and counterfeit cash,

small empty plastic bags, and a cellphone containing photographs of large amounts of drugs, cash, and firearms, and a photograph of Yang's driver's license. That same cellphone contained text messages implicating Yang in a marijuana sale.

Given this evidence, the state has satisfied its burden to establish that the prosecutor's improper questions, and Officer Satele's inadmissible expert opinion that Yang intended to sell the drugs, had no significant effect on the jury's verdicts. The prosecutor did revisit the problematic testimony in closing argument, and Yang's counsel did little to rebut the expert testimony. Nonetheless, the sheer volume of admissible evidence establishing Yang's guilt convinces us that the misconduct did not significantly affect the jury's verdicts. And because we find no prejudice, we need not reach the final prong in the plain-error analysis. *See State v. Lilienthal*, 889 N.W.2d 780, 786 (Minn. 2017) (declining to address latter prongs of plain-error test when former prong failed).

II. Improper closing arguments

Yang's second allegation of misconduct involves remarks made by the prosecutor during his principal and rebuttal closing arguments. "Prosecutors have 'considerable latitude' during closing arguments and are 'not required to make a colorless argument.'" *State v. Patzold*, 917 N.W.2d 798, 808 (Minn. App. 2018) (quoting *State v. Williams*, 586 N.W.2d 123, 127 (Minn. 1998)), *review denied* (Minn. Nov. 27, 2018). But a prosecutor's argument must adhere to the evidence presented during trial and any reasonable inferences that may be drawn from the evidence. *DeWald*, 463 N.W.2d at 744.

Yang contends that the prosecutor committed misconduct by suggesting to the jury that guilty verdicts were necessary to protect the community and by emphasizing the need

to hold Yang accountable. Prosecutors must avoid statements that are “calculated to inflame the passions of the jury or prejudice the jury against the defendant.” *Id.* at 744-45. It is misconduct for a prosecutor to suggest “that the jury represent[s] the people of the community and that their verdict [will] determine what kind of conduct would be tolerated on the streets.” *State v. Threinen*, 328 N.W.2d 154, 157 (Minn. 1983). Likewise, a prosecutor commits misconduct by urging the jury to “protect their ‘loved ones’ and Minnesota’s citizens from future harm.” *State v. Hoppe*, 641 N.W.2d 315, 320 (Minn. App. 2002), *review denied* (Minn. May 14, 2002). Prosecutors similarly must not overemphasize the notion of accountability. *State v. Montjoy*, 366 N.W.2d 103, 109 (Minn. 1985). A prosecutor cannot ask the jury to send a message or teach the defendant a lesson by way of a guilty verdict. *See State v. Salitros*, 499 N.W.2d 815, 819 (Minn. 1993) (explaining that juries do not “enforce the law or teach defendants lessons”).

Because defense counsel made no objection to the prosecutor’s closing argument, we review this claim of prosecutorial misconduct under the same modified plain-error standard applied to Yang’s first claim. *See Ramey*, 721 N.W.2d at 302. We first consider the alleged instances of misconduct.

The central theme of the prosecutor’s closing argument was public safety and accountability; the prosecutor addressed these concepts at the beginning and end of his closing argument, and again on rebuttal. Yang argues that the following portions of the prosecutor’s principal closing argument were improper:

PROSECUTOR: Ladies and gentlemen, State versus Tou Yang is about all of this, all of this. Overwhelming evidence of drug sale, drug possession. Overwhelming. Evidence that

proves that the defendant has [no] regard. He doesn't care. He doesn't care for public safety, other people that are out there on the streets. Other families out there in Washington County. He doesn't care about the law. He hasn't proved that because after he was caught on August 26th, 2017 with methamphetamine in his pocket, a larger amount was in arm's reach, a loaded firearm, morphine. Forty three days later he gets caught again. More drugs. More loaded firearms. Drive around Washington County. Methamphetamine. Morphine. Marijuana. Loaded firearms. Folks, fortunately this case is about accountability. Accountability for his actions.

....

PROSECUTOR: It's all there folks. Every crime. The State has proven it all beyond a reasonable doubt. I'm now asking you to hold the defendant accountable for his actions because in this case -- because in this case, the evidence proves that he does whatever he wants. He needs to be held accountable. Why? Based on the overwhelming -- overwhelming evidence of drug dealing, drug possession. It's all there. Hold him accountable. Find him guilty of all five counts. Thank you.

And during rebuttal, the prosecutor argued:

PROSECUTOR: Folks, at the end it comes down to this. Is it reasonable that he had no idea about the methamphetamine right behind him when he's got some in his pocket? No, it's not. It's absolutely not. What's the evidence that's clear? Defendant has demonstrated he has no regard. The State is asking you to do just the opposite. Care about this case. Do the right thing, based on the evidence which prove the defendant's guilty beyond a reasonable doubt. Find the defendant guilty of all five counts. Thank you.

Yang argues that the prosecutor committed misconduct by suggesting that he does not care about the surrounding community, implying that he is a public safety risk, and then urging the jury to care and "do the right thing" by holding him accountable with guilty verdicts. The state counters that the prosecutor merely linked the theme of accountability to the "overwhelming evidence of drug dealing and drug possession."

Although the prosecutor walked the line in pressing the jury to do the “right thing” and hold Yang accountable, we do not believe these remarks amounted to misconduct. But the prosecutor’s remarks that appealed to the jury’s concern for their families and public safety were improper under the caselaw. *See Salitros*, 499 N.W.2d at 819; *Montjoy*, 366 N.W.2d at 109; *Threinen*, 328 N.W.2d at 157; *Hoppe*, 641 N.W.2d at 320. We therefore conclude that the prosecutor engaged in plainly erroneous misconduct.

The misconduct does not warrant reversal of Yang’s convictions, however. Again, the evidence of Yang’s guilt was significant. And the prosecutor’s comments were not so pervasive or egregious as to have unduly influenced the jury’s verdicts. The district court instructed the jury on the state’s burden of proof and that the remarks of counsel were not evidence. Given these circumstances, it is very unlikely that the jury would have reached a different result without the misconduct. Because we find no prejudice, we do not reach the final prong in the plain-error analysis. *See Lilienthal*, 889 N.W.2d at 786.

We conclude that there is no reasonable likelihood that the prosecutor’s misconduct had a significant effect on the jury’s verdicts. Thus, we affirm Yang’s convictions.

Affirmed.