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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0712**

State of Minnesota,
Respondent,

vs.

Keith Allen Armstrong,
Appellant.

**Filed April 10, 2023
Affirmed
Cochran, Judge**

Cass County District Court
File No. 11-CR-21-1379

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

Benjamin T. Lindstrom, Cass County Attorney, Cody M. Dorumsgaard, Assistant County Attorney, Walker, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Smith, Tracy M., Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal, appellant challenges his conviction of fifth-degree possession of a controlled substance. He argues that the evidence at trial was insufficient to support his conviction. Alternatively, he argues that he is entitled to a new trial because the

prosecutor committed misconduct during closing argument and thereby prejudiced his right to a fair trial. We affirm.

FACTS

On August 19, 2021, appellant Keith Allen Armstrong drove to an auto-parts store in Cass Lake with a passenger, B.K. Armstrong drove even though he knew that his license had been cancelled. At the time, there was also an active warrant for his arrest.

A law-enforcement officer with the Leech Lake Tribal Police Department saw Armstrong pull up to the store and exit the car. After Armstrong entered the store, another tribal police officer went into the store and placed Armstrong under arrest. The officer then brought Armstrong outside and conducted a search incident to arrest. The officer asked Armstrong if he had any drugs on his person, and Armstrong said that he did not. The officer did not ask Armstrong if he had any drug paraphernalia on his person. During the search, the officer found a glass pipe with white residue in Armstrong's front-left pant pocket, along with a small amount of cash. The officer also found a lighter in Armstrong's right-front pant pocket. A police investigator on the scene conducted a field test of the white residue on the pipe, and a subsequent lab test confirmed that the residue contained methamphetamine.

While Armstrong was being searched, Armstrong's passenger became upset. According to the responding officer, B.K. "was under the impression that she was going to be arrested" and "was getting emotional and not cooperating." Eventually, the officer handcuffed B.K. and "instructed her to sit still."

After discovering the pipe containing methamphetamine in Armstrong's pocket, respondent State of Minnesota charged Armstrong with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2020). The state also charged Armstrong with driving after cancellation (inimical to public safety) in violation of Minn. Stat. § 171.24, subd. 5 (2020). The case proceeded to a jury trial.

The prosecution called several witnesses, including the officer who arrested Armstrong. The officer testified that, during the search incident to arrest, he found a glass pipe with white residue in Armstrong's front-left pocket. Based on his training and experience, the officer knew that a glass pipe like the one he found in Armstrong's pocket is typically used to smoke narcotics and that the white residue inside the pipe was consistent with narcotics use. And, on cross-examination, the officer agreed that glass pipes like the one he recovered are commonly used to smoke methamphetamine. The glass pipe was admitted as an exhibit for the jury's consideration at trial. The officer also testified that Armstrong had cooperated with law enforcement and did not appear to be impaired. The officer further noted that people impaired by methamphetamine are often twitchy and erratic—"all over the place in their behavior." After the officer testified, the jury heard from the police investigator who was at the scene at the time of Armstrong's arrest and who field tested the pipe for methamphetamine. The jury also heard testimony from the officer who interacted with the passenger in Armstrong's car.

The defense called Armstrong as its sole witness. Armstrong testified that he drove to the auto-parts store on August 19, 2021, despite knowing that his driver's license had been cancelled. He admitted that he had a glass pipe in his pocket when he was arrested

but stated that the glass pipe belonged to his passenger, B.K. Armstrong claimed that B.K. had given him the pipe just before he got out of the car. Armstrong explained that he agreed to take the pipe because: “I [had] seen the cop, and I knew I had missed a court date, so I figured [that] I was going to jail.” He further testified that he had never seen the pipe before B.K. gave it to him, he did not inspect the pipe before putting it in his pocket, and he did not know that there was methamphetamine in the pipe when he took it. Armstrong also testified that he did not know that the pipe was used for methamphetamine or drug use, but he agreed that he “had reason to believe that it may be used for drugs.” Lastly, he admitted to having cash in his pocket with the pipe and a lighter in another pocket, but he stated that he used the lighter to smoke cigarettes.

After the defense rested, the district court reviewed the jury instructions in detail with the jury. The district court described the elements of fifth-degree possession of a controlled substance as follows: (1) “the defendant knowingly possessed one or more mixtures containing methamphetamine”; (2) “the defendant knew or believed that the substance the defendant possessed was methamphetamine”; (3) “the defendant’s possession of methamphetamine was without lawful authority”; and (4) “the defendant’s act took place on August 19, 2021, in Cass County.” The district court instructed the jury that “[t]o know’ requires only that the defendant believes that the specified fact exists.” And, relevant to this appeal, the district court instructed the jury to disregard “any statement of the law” made by an attorney that differed from the statement of law set forth in the jury instructions.

The jury then heard closing arguments from the parties. There were no objections by Armstrong's counsel during the prosecutor's initial closing argument. But, during the prosecutor's rebuttal, defense counsel objected after the prosecutor asked the jury if they believed Armstrong "when he said that he didn't know that that pipe could be used for methamphetamine." The defense claimed that the prosecutor had misstated the law by implying that Armstrong could be convicted of fifth-degree possession if the state proved that he "should have known" that he possessed a controlled substance when the state was required to prove that he "actually did know" this fact. The district court sustained the objection and reminded the jury that "the law is exactly as it is stated in your jury instructions. That is the law to follow."

The prosecutor then finished his rebuttal argument. He first reminded the jury of the definition of "to know" set forth in the jury instructions, and he emphasized that "'to know' requires only that the defendant believes that the specified fact exists." The prosecutor concluded by stating that the investigator testified that the pipe was "typically used for methamphetamine" and that the jury could "apply that testimony to . . . Armstrong's testimony." No further objections were made by defense counsel. The case was then submitted to the jury after the district court provided some additional instructions to the jury.

During deliberation, the jury returned to the courtroom to ask a question about the elements of fifth-degree possession. The foreperson stated that the jury was "hung up on the first . . . and second element[s], particularly the second element of what constitutes knowledge and the proof that we've been given, the evidence." The foreperson then

requested “clarification on what it means to know, that the defendant knew or believed.” The jury then returned to the deliberation room so the court could discuss the matter with counsel on the record outside of the presence of the jury.¹

After doing so, the district court called back the jury and informed the jurors that the jury instructions provided the applicable law: the standard of proof beyond a reasonable doubt, the elements of the offense, and the definition of “know.” The district court also noted that “[t]here is no other explanation of the law.” The jury then returned to deliberation.

The jury found Armstrong guilty of fifth-degree possession of a controlled substance and driving after cancellation. The district court sentenced Armstrong to 21 months in prison, with credit for time served.

Armstrong appeals.

DECISION

Armstrong challenges only his conviction of fifth-degree possession of a controlled substance. He first argues that the evidence is insufficient to support his conviction because the state failed to prove that he knowingly possessed methamphetamine. Second, in the alternative, he argues that he is entitled to a new trial on the possession charge because the prosecutor committed prejudicial misconduct during closing argument. We address each argument in turn.

¹ During its conversation with counsel, the district court noted that it had relistened to the state’s closing rebuttal and had concluded that the prosecutor had *not* misstated the law, but rather had paired the law with the facts in a confusing manner, giving the district court the initial impression that the prosecutor had erred.

I. The evidence was sufficient to support Armstrong’s possession conviction.

In a criminal case, due process requires the prosecution to “prove every element of the offense beyond a reasonable doubt.” *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). When evaluating the sufficiency of the evidence, appellate courts “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Boldman*, 813 N.W.2d 102, 106 (Minn. 2012). “[W]e view the evidence in the light most favorable to the verdict and assume that the jury disbelieved any evidence that conflicts with the verdict.” *State v. Bahtuoh*, 840 N.W.2d 804, 809 (Minn. 2013).

We begin our analysis by identifying the elements of the offense that the state was required to prove. Under Minn. Stat. § 152.025, subd. 2(1), a person is guilty of fifth-degree possession of a controlled substance if they “unlawfully possess[] one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV.” “Possession crimes require proof that the defendant had actual knowledge of the nature of the substance in his possession.” *State v. Ali*, 775 N.W.2d 914, 918 (Minn. App. 2009) (quotation omitted), *rev. denied* (Minn. Feb. 16, 2010). Thus, to convict Armstrong of fifth-degree possession, the state was required to prove beyond a reasonable doubt that: (1) Armstrong was in possession of a mixture containing one or more controlled substances; (2) he knowingly possessed a controlled substance; and (3) his possession of the substance was unlawful. *See* Minn. Stat. § 152.025, subd. 2(1). Methamphetamine is a Schedule I controlled substance. Minn. Stat. § 152.02, subd. 2(a), (d)(2) (2020).

Armstrong argues that, rather than analyzing whether the state proved the elements of the offense set forth in the statute, we should instead consider the elements as described by the district court in the jury instructions. He notes that the jury instructions are more specific than the statute. The jury instructions required the state to prove that “the defendant knew or believed that the substance the defendant possessed was methamphetamine,” instead of that he knew or believed that he possessed “a controlled substance,” as required by the statute. Minn. Stat. § 152.025, subd. 2(1). Armstrong contends that, because neither party objected to the jury instructions, these instructions are the “law of the case” against which his sufficiency-of-the-evidence challenge must be measured, even though “the instructions include an essential element not required by statute.” We are not convinced.

In support of his argument, Armstrong relies on *State v. Lloyd A. Fry Roofing Co.*, 158 N.W.2d 851, 853 (Minn. 1968). In *Lloyd*, the supreme court concluded that an unobjected-to jury instruction that added a yet-to-be-recognized element to a charge under a municipal ordinance became “the law of the case” against which a sufficiency-of-the-evidence challenge was to be measured. 158 N.W.2d at 853. It reached this conclusion, however, without any legal analysis. *Id.* This 1968 case is the only criminal case cited by Armstrong to support his argument. Notably, Armstrong does not point to any sufficiency-of-the-evidence cases that have cited *Lloyd* or adopted the *Lloyd* standard since it was decided more than 50 years ago. Moreover, as Armstrong recognizes in his brief, a recent U.S. Supreme Court case calls into question Armstrong’s position that the jury instructions should control rather than the statute. *See Musacchio v. United States*,

577 U.S. 237, 243 (2016) (stating “that, when a jury instruction sets forth all the elements of the charged crime but incorrectly adds one more element, *a sufficiency challenge should be assessed against the elements of the charged crime, not against the erroneously heightened command in the jury instruction*” (emphasis added)). We recognize that *Musacchio* is not binding on this court but note that its analysis is relevant to the issue before us. See *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (explaining that the Minnesota Supreme Court is the supreme authority on Minnesota law). Moreover, numerous Minnesota Supreme Court decisions since *Lloyd* have considered the elements of the offense as set forth in statute in analyzing the sufficiency of the evidence. See, e.g., *State v. Davenport*, 947 N.W.2d 251, 265-67 (Minn. 2020) (analyzing a sufficiency-of-the-evidence challenge against the elements of the offense as set forth by state statute); *State v. Baladin*, 944 N.W.2d 204, 213-18 (Minn. 2020) (same); *State v. Petersen*, 910 N.W.2d 1, 6-9 (Minn. 2018) (same). Thus, there is a question as to whether *Lloyd* remains good law.

We need not resolve this question, however, because even if we assume that the jury instructions are the law of the case, we conclude that the evidence is sufficient to support Armstrong’s conviction. On appeal, Armstrong does not dispute that he possessed a pipe that contained methamphetamine in Cass County on August 19, 2021. He argues only that the evidence is not sufficient to establish that he knowingly possessed methamphetamine.

In this case, the state relied entirely on circumstantial evidence to establish knowledge.² When the state relies on circumstantial evidence to prove an element of the offense, we apply a two-step standard of review. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved by the state, assuming the jury resolved any factual disputes in a manner consistent with the verdict. *State v. Allwine*, 963 N.W.2d 178, 186 (Minn. 2021). “Second, we independently examine the reasonableness of any inferences that can be drawn from the circumstances proved, as a whole, including an inference consistent with rational hypotheses other than guilt.” *Id.* In doing so, we give no deference to the jury’s choice between reasonable inferences. *Id.* We will uphold a conviction based on circumstantial evidence if “the reasonable inferences that can be drawn from the circumstances proved *as a whole* [are] consistent with the hypothesis that the accused is guilty and . . . inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted). Mere speculation that a defendant is innocent is not sufficient to “overturn a conviction based on circumstantial evidence.” *State v. Hokanson*, 821 N.W.2d 340, 354-55 (Minn. 2012) (quotation omitted).

Circumstances Proved

In this case, the circumstances proved are as follows: (1) a glass pipe typically used to smoke narcotics was found in Armstrong’s front-left pocket; (2) a lighter was found in Armstrong’s front-right pocket; (3) the pipe was of the sort commonly used to smoke

² Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted).

methamphetamine; (4) the pipe contained a residue which contained methamphetamine; (5) Armstrong had reason to believe that the pipe was used for drugs; (6) Armstrong claimed that B.K. gave him the pipe; (7) B.K. was emotional and erratic in her behavior; and (8) being emotional and behaving erratically are signs of methamphetamine use.

Reasonable Inferences

Viewed as a whole, the circumstances proved support the rational inference that Armstrong knowingly possessed methamphetamine. Armstrong possessed a glass pipe typically used to smoke narcotics and commonly used to smoke methamphetamine, and he had reason to believe that the pipe was used for drugs. The pipe contained residue of methamphetamine and was given to him by someone who exhibited signs of methamphetamine use. Based on these circumstances, a reasonable jury could infer that Armstrong knowingly possessed methamphetamine. Armstrong does not dispute this conclusion.

Instead, Armstrong argues that the circumstances proved also support the rational “alternative hypothesis that [he] did not have actual knowledge that the residue in the pipe contained methamphetamine.” We disagree. Based on the circumstances proved, it is mere speculation to assert that Armstrong believed that the substance in the pipe was anything other than methamphetamine. No other drugs were found on Armstrong’s person or in the car, and none of the officers testified about alternative uses of the pipe. Moreover, Armstrong received the pipe with methamphetamine residue from someone who was exhibiting signs of methamphetamine use. None of the circumstances proved suggest that Armstrong believed the pipe contained anything other than methamphetamine. Rather,

Armstrong’s argument appears to rely on evidence that the jury rejected—namely, Armstrong’s testimony that he did not know that the pipe contained methamphetamine—which is not a circumstance proved. In sum, viewing the circumstances proved as a whole, the only rational hypothesis is that Armstrong knowingly possessed methamphetamine. We therefore conclude that the circumstantial evidence is sufficient to support the jury’s verdict that Armstrong is guilty of fifth-degree possession of a controlled substance, namely methamphetamine.

II. The prosecutor’s closing argument does not entitle Armstrong to a new trial.

Armstrong next argues that he is entitled to a new trial because the prosecutor engaged in misconduct during closing argument by misstating the law and the evidence. Armstrong challenges four allegedly erroneous statements that the prosecutor made during closing argument, only one of which was objected to by defense counsel. We first consider the objected-to statement and then consider the unobjected-to statements. We ultimately conclude that none of these statements warrant reversal.

A. The objected-to statement did not constitute misconduct and, regardless, was harmless beyond a reasonable doubt.

We review objected-to prosecutorial misconduct under a two-tiered harmless-error test. *State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974); *see State v. Nissalke*, 801 N.W.2d 82, 105 n.10 (Minn. 2011) (questioning but not deciding whether *Caron*’s two-tiered harmless-error test remains good law because the prosecutor did not commit misconduct of any type). For a claim alleging less serious misconduct, we consider “whether the misconduct likely played a substantial part in influencing the jury to convict.”

Id. (quotation omitted). For a claim alleging “unusually serious misconduct,” we “ask whether the alleged misconduct was harmless beyond a reasonable doubt.” *Id.* (quotation omitted). Prosecutorial misconduct is “harmless beyond a reasonable doubt only if the verdict rendered was surely unattributable to the error.” *Id.* at 105-06 (quotation omitted).

Armstrong argues that the prosecutor engaged in unusually serious misconduct when the prosecutor asked jurors if they believed Armstrong “when he said that he didn’t know that the pipe *could be* used for methamphetamine, and that [methamphetamine] *could be* found on that pipe.” (Emphasis added.) Armstrong asserts that this question misstated the law by implying that the state could meet its burden of proof on the knowledge requirement by showing that Armstrong “had considered the possibility” that the pipe contained methamphetamine, when the law requires the state to prove that Armstrong actually knew this fact.

“A prosecutor’s misstatement of the burden of proof is ‘highly improper’ and constitutes misconduct.” *State v. Martin*, 773 N.W.2d 89, 105 (Minn. 2009) (quoting *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000)). But arguments that go to witness credibility or emphasize the central question in the case do not constitute misconduct. *See State v. Jackson*, 773 N.W.2d 111, 124 (Minn. 2009); *State v. Carridine*, 812 N.W.2d 130, 148 (Minn. 2012). “When assessing alleged prosecutorial misconduct during a closing argument, we look to the closing argument as a whole, rather than to selected phrases and remarks.” *State v. Graham*, 764 N.W.2d 340, 356 (Minn. 2009) (quotation omitted).

Considering the closing argument as a whole, we conclude that the prosecutor’s objected-to statement did not constitute prosecutorial misconduct. The prosecutor’s

statement did not alter the state's burden of proof. Rather, the statement asked jurors whether they believed Armstrong's testimony and the statement emphasized the central question in the case: whether Armstrong *knowingly* possessed methamphetamine. Additionally, the prosecutor correctly stated the definition of "to know" multiple times during his closing argument, including immediately before and after he made the objected-to statement. For these reasons, we conclude that the objected-to statement was not improper.³ See *Carridine*, 812 N.W.2d at 148 (holding that there was no prosecutorial misconduct where the prosecutor's statement emphasized the central question in the case); *Jackson*, 773 N.W.2d at 124 (holding that there was no prosecutorial misconduct where the prosecutor's statement was intended to support the witness's credibility).

Even if we assume that the prosecutor's question about Armstrong's testimony was improper, the record shows that it was harmless beyond a reasonable doubt, satisfying even the more stringent harmless-error test. After Armstrong objected to the prosecutor's statement, the district court reminded the jurors that "the law is exactly as it is stated in your jury instructions," and it instructed the jurors that "[t]hat is the law to follow." The district court also repeated the definition of "to know" set forth in the jury instructions prior to jury deliberation. And, in response to the jury's question during deliberation about the knowledge requirement, the district court stated that "[t]here is no other explanation of the law" apart from the jury instructions. Thus, even if the prosecutor's objected-to statement

³ Despite initially sustaining Armstrong's objection, the district court ultimately concluded that the prosecutor's objected-to statement was not a misstatement of law but rather an inartful pairing of law and fact.

constituted misconduct, the district court's repeated clarification of the law and direction that the jurors use the definition of "to know" provided to them in the jury instructions demonstrates that the verdict was surely unattributable to the prosecutor's statement. In sum, any misconduct in the prosecutor's characterization of Armstrong's testimony was harmless beyond a reasonable doubt. *See Jackson*, 773 N.W.2d at 124 (holding that a prosecutor's "inartful" statements, which the defense objected to, were harmless because the district court instructed the jury to disregard the statements).

B. Any unobjected-to prosecutorial misconduct did not affect Armstrong's substantial rights.

Armstrong also argues that three unobjected-to statements by the prosecutor amount to misconduct. He further asserts that these misstatements require reversal because they affected his substantial rights. We disagree.

When a defendant does not object to alleged prosecutorial misconduct, he ordinarily forfeits the right to challenge it on appeal. *State v. Darris*, 648 N.W.2d 232, 241 (Minn. 2002). "[U]nobjected-to prosecutorial misconduct can be reviewed only if it constitutes plain error affecting substantial rights." *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006). Accordingly, we apply the modified plain-error standard to review unobjected-to statements. *Id.* at 302. Under this standard, the defendant must first "demonstrate both that error occurred and that the error was plain." *Id.* "An error is plain if it was clear or obvious," and an error is clear or obvious if it "contravenes case law, a rule, or a standard of conduct." *Id.* (quotation omitted).

If the defendant establishes that the prosecutor plainly erred, the burden then shifts to the state to demonstrate that “the misconduct did not affect substantial rights.” *Id.* Misconduct “affects the defendant’s substantial rights if it significantly influences the verdict by going to a critical issue at the trial or [if it] is central to the prosecution’s case.” *State v. Vasquez*, 912 N.W.2d 642, 650 (Minn. 2018). Misconduct does not affect substantial rights if “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.” *Ramey*, 721 N.W.2d at 302 (quotation omitted). When assessing whether misconduct affected substantial rights, “we consider: (1) the strength of the evidence against [the defendant]; (2) the pervasiveness of the erroneous conduct; and (3) whether [the defendant] had an opportunity to rebut any improper remarks.” *State v. Peltier*, 874 N.W.2d 792, 805-06 (Minn. 2016). We also consider the cumulative effect of the misconduct. *State v. Dobbins*, 725 N.W.2d 492, 506 (Minn. 2006).

If any prong of the plain-error test is not satisfied, we need not address the others. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). But if all three prongs are satisfied, we then decide whether to “address the error to ensure fairness and the integrity of the judicial proceedings.” *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

The three unobjected-to closing statements that Armstrong challenges include two alleged misstatements of the evidence and one alleged misstatement of the law. We first address the alleged misstatements of evidence and then turn to the alleged misstatement of the law, considering each for plain error. Finally, we consider whether Armstrong’s substantial rights were affected by any plain error.

Statements Regarding the Evidence

“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.* (emphasis added) (quotation omitted).

Armstrong first argues that the prosecutor misstated the evidence by misattributing certain testimony from the arresting officer to a police investigator and by misconstruing that testimony. Specifically, Armstrong contends that the prosecutor erroneously asserted that the *investigator* testified that a pipe like the one found on Armstrong “is really *only used for methamphetamine*,” when in fact the *arresting officer* testified that the pipe was “*commonly*” used to smoke methamphetamine. (Emphasis added.)

Armstrong is correct that the prosecutor misstated this testimony by law enforcement, but he has not shown that the misstatement constitutes plain error. During his closing argument, the prosecutor stated: “[Investigator J.G.] said that a pipe like [the one found on Armstrong] is really only used for methamphetamine.” But the transcript reflects that it was the arresting officer, not the investigator, who testified about the pipe. The relevant testimony follows:

Defense counsel: Okay. Here’s another question I have for you. You indicated that [the pipe found on Armstrong] is a pipe commonly used to smoke methamphetamine?

Arresting officer: Correct.

Thus, the prosecutor misstated the evidence when he asserted that the investigator testified that the pipe was “really only used for methamphetamine” instead of saying that the pipe was the type that is “commonly used to smoke methamphetamine.” But Armstrong has not demonstrated, and does not argue, that this misstatement was *intentional*, as the law requires. *Id.* (“It is unprofessional conduct . . . for the prosecutor *intentionally* to misstate the evidence.” (emphasis added) (quotation omitted)). Accordingly, the prosecutor’s misstatement of law enforcement’s testimony regarding the pipe does not constitute plain error.

Second, Armstrong contends that the prosecutor misstated Armstrong’s own testimony regarding the pipe. Armstrong argues that the prosecutor erroneously asserted that Armstrong “*knew* that that pipe could be used for drugs.” (Emphasis added.) Armstrong notes that what Armstrong actually testified to was that he “*had reason to believe* that [the pipe] may be used for drugs.” (Emphasis added.) Although there is a discrepancy between the prosecutor’s statement and Armstrong’s testimony in this regard, Armstrong has not demonstrated that the prosecutor’s statement constitutes plain error. Here again, Armstrong has not argued or demonstrated that the misstatement by the prosecutor was intentional.

Moreover, to satisfy the knowledge requirement, the state was required to prove beyond a reasonable doubt that Armstrong *believed* that he possessed one or more mixtures containing methamphetamine. *See* Minn. Stat. § 152.025, subd. 2(1) (setting forth the requirements for fifth-degree possession of a controlled substance); Minn. Stat. § 609.02, subd. 9(2) (2020) (defining “[k]now” as “belie[f] that the specified fact exists”); *Ali*,

775 N.W.2d at 918-19 (providing that “[p]ossession crimes require proof that the defendant had actual knowledge of the nature of the substance in his possession” and that the defendant’s awareness of his possession of a controlled substance satisfies the actual-knowledge requirement (quotation omitted)). Although “having reason to believe” is different than “believing,” a prosecutor may “argue all reasonable inferences from evidence in the record.” *Smith*, 876 N.W.2d at 335 (quotation omitted). And it is reasonable to infer from Armstrong’s testimony along with the evidence of the pipe, which was admitted as an exhibit, that Armstrong believed that the pipe was used for drugs. Thus, the prosecutor’s closing statement regarding Armstrong’s knowledge of the pipe’s use is not plainly erroneous.

Statement Regarding the Law

Lastly, Armstrong asserts that the prosecutor misstated the law regarding the knowledge requirement. During closing argument, the prosecutor stated:

“To know” requires only that the defendant believes that the specified fact exists. [Armstrong] had *reason to believe* that that specified fact exists, that this pipe was used for drugs, and that it *could possess* that substance on it. He told you he knew it was a pipe. He told you he knew that that pipe could be used for drugs. He knew that that specified fact, he knew, *could believe* that that specified fact exists, existed. That’s all you need to think about in this case, ladies and gentlemen.

(Emphasis added.)

Armstrong contends that, in making this statement, the prosecutor erroneously implied that the state was required to prove only that Armstrong *had reason to believe* that the substance on the pipe *could be* methamphetamine, when the state was actually required

to prove that Armstrong *believed* that the substance on the pipe *was* methamphetamine. Armstrong argues that this misstatement artificially lowered the state's burden of proof, which strengthened the state's case and undercut his defense.

We are not persuaded for three reasons. First, at the start of the challenged statement set forth above, the prosecutor correctly stated the knowledge requirement for the fifth-degree possession offense. The prosecutor's statement was entirely consistent with the jury instructions and the law. *See* Minn. Stat. § 152.025, subd. 2(1). Second, the remainder of the prosecutor's statement connected Armstrong's testimony at trial to the law. A prosecutor may "argue all reasonable inferences from evidence in the record." *Smith*, 876 N.W.2d at 335 (quotation omitted). Finally, and most importantly, Armstrong does not argue that this alleged misstatement was intentional. Thus, he has failed to demonstrate that the statement is plainly erroneous. *See id.*

Substantial Rights

Even if we assume that the prosecutor's unobjected-to statements are plainly erroneous, we conclude that the challenged statements did not affect Armstrong's substantial rights. As noted above, when analyzing whether a defendant's substantial rights were affected, we consider the following factors: "(1) the strength of the evidence against [the defendant]"; (2) the pervasiveness of the alleged erroneous conduct; and (3) whether the defendant "had an opportunity to rebut any improper remarks." *Peltier*, 874 N.W.2d at 805-806.

These factors lead us to conclude that Armstrong's substantial rights were not affected. First, the evidence against Armstrong was significant. He was found in

possession of a pipe that is typically used to smoke narcotics and commonly used to smoke methamphetamine. The pipe contained residue of methamphetamine. A lighter was found in Armstrong's pocket. And Armstrong testified that he had reason to believe that the pipe may be used for drugs. Second, the prosecutor's statements were not pervasive in light of the rest of his closing argument. During closing argument, the prosecutor correctly defined "to know" and the elements of possession. Additionally, the district court instructed the jury on the law, including the definition of "to know," and told the jury to disregard any attorney statement of the law that differed from that provided by the court. Finally, the prosecutor's statements occurred during the state's closing argument but *before* Armstrong's closing argument. Thus, Armstrong had an opportunity to rebut the prosecutor's statements. In light of these circumstances, "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." *Ramey*, 721 N.W.2d at 302 (quotation omitted). Accordingly, any plain errors did not affect Armstrong's substantial rights. *Id.*; *see Peltier*, 874 N.W.2d at 805-06.

In sum, the prosecutor's challenged statements do not constitute prosecutorial misconduct, and even if they did, such misconduct was either harmless beyond a reasonable doubt or did not affect Armstrong's substantial rights.

Affirmed.