

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1379**

State of Minnesota,
Respondent,

vs.

Larry Rucker,
Appellant.

**Filed October 14, 2024
Affirmed in part, reversed in part, and remanded
Reilly, Judge***

Ramsey County District Court
File No. 62-CR-21-5897

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

John J. Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Stacy L. Bettison, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Ede, Judge; and Reilly, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant Larry Rucker appeals from final judgment of conviction following a jury trial. Rucker was convicted of second-degree intentional murder, *see* Minn. Stat. § 609.19, subd. 1(1) (2020), second-degree felony murder, *see* Minn. Stat. § 609.19, subd. 2(1) (2020), and possession of a firearm by an ineligible person, *see* Minn. Stat. § 624.713, subd. 1(2) (2020). On appeal, Rucker raises four challenges to his murder convictions. First, he argues that respondent State of Minnesota failed to disprove beyond a reasonable doubt that he acted in self-defense. Second, he argues the evidence was insufficient to support the two guilty verdicts for second-degree murder. Third, Rucker argues that the prosecutor committed prejudicial misconduct by “misstating evidence, misstating the law, and calling upon the jury” to align itself with the state during the prosecution’s closing argument. Fourth and finally, Rucker argues that his second-degree felony murder conviction must be vacated because it is an included offense of second-degree intentional murder under Minn. Stat. § 609.04 (2020). We affirm the convictions for second-degree intentional murder and possession of a firearm by an ineligible person. But we reverse and remand the second-degree felony murder conviction.

FACTS

The facts below were presented at trial. On the night of August 23, 2021, Rucker was drinking with a friend at an apartment building in St. Paul. Rucker’s ex-girlfriend, L.F., lived in the apartment building at that time. Prior to the charged incident, L.F. dated Rucker for about five months, although Rucker testified he did not know her.

By the night of August 23, L.F. had dated D.B., the victim, for less than a month. D.B. and L.F. went to a nearby bar for a few drinks and stopped at a liquor store on their walk back to L.F.'s apartment. Post-mortem toxicology showed D.B.'s alcohol concentration was 0.163. According to L.F., D.B. told her that he and Rucker had some sort of argument that night. L.F. also testified that D.B.'s friend informed D.B. that Rucker had a gun. According to L.F., D.B. did not have a gun before leaving her apartment that evening.

F.A. also lived in the apartment building and was home that same evening. F.A. observed two men, who she identified as D.B. and Rucker, "having words." F.A. saw D.B. come out of the apartment building and say, "I ain't scared to die," and "I ain't got no gun." F.A. thought he was talking to himself after arguing with somebody inside the building. Around ten or fifteen minutes after D.B. walked by F.A., she heard gunshots. Later that night, Rucker called F.A. and asked if anyone was hurt or dead. F.A. told Rucker someone had died, which F.A. had learned when law enforcement and medics responded to the shooting.

D.M. lived in a house near the location of the shooting and witnessed the incident. D.M. was in an upstairs bedroom when he heard gunshots. D.M. went to the window and saw D.B. approach and reach the back of a white sedan, shoot,¹ and duck behind the car. When D.B. stood up again, D.M. heard a shot and then saw D.B. fall. D.M. testified that he understood D.B. to have been shot, and that once he fell, he did not move again.

¹ As pointed out by the state, D.M. could not have seen D.B. fire his weapon, because, as discussed below, the evidence established that D.B. did not fire his weapon at any point.

According to Rucker, he did not know D.B. before that night, nor did he argue with D.B., although he did testify that D.B. was “arguing with everybody” that night. Rucker testified that he understood that D.B. wanted no one talking to L.F. Rucker explained that D.B. seemed “like he was just mad,” but that D.B. was not threatening towards him. Rucker said he was not nervous about D.B., but he was confused by the situation. Rucker testified that “[e]ven if [the situation] was over a female,” presumably referring to L.F., Rucker did not “think the situation was worth the cause.”²

As for the shooting itself, Rucker testified that he and J.W., an associate, were standing between a parking lot for the apartment building and a nearby commercial building. Rucker recalled seeing D.B. with another person, and that they approached him and J.W. Rucker told D.B. that he “didn’t want to talk” and “[D.B.] stopped and said you got that right[,] I’m done, too.” Rucker saw D.B. walk away and get a gun, and then walk back toward him and J.W. Rucker told D.B. to go back, but D.B. kept walking toward him and J.W. J.W. then fired a single shot at D.B., and D.B. then raised his own gun and ran toward a parked car that was between D.B. and Rucker. Rucker testified that he initially thought the first shot came from D.B. and Rucker backed up but had no place to take cover. Rucker stated that he thought he was being shot at, so he fired his gun.

² Rucker’s testimony on this point differs from his testimony that he and D.B. had not been arguing that night. Similarly, Rucker testified that he wanted to go into a nearby bar for a drink, but that he was concerned that he would bump into D.B. on his way out because there is only one entrance or exit to the bar, implicitly acknowledging that the men were engaged in an ongoing disagreement at the time.

Security camera videos presented at trial show some of the shooting. In a video showing the parking lot on the south side of the commercial building, and some of the cul-de-sac where the shooting took place, D.B. and another person, his nephew, approach Rucker and J.W. before quickly turning around. D.B.'s nephew then gives D.B. a gun before ducking into his car and leaving. D.B. begins walking back toward Rucker and J.W. Although D.B. is carrying the gun in his hand, his hand is by his side and D.B. does not point the gun or raise it toward Rucker or J.W. at that time. As D.B. is walking, the first shot, fired by J.W., can be heard, followed in close succession by two shots fired by Rucker. Once the first shot is fired, D.B. ducks, raises his own weapon, and begins running in the direction of Rucker and J.W. As D.B. runs forward, he moves out of the camera's line of sight.

Another video shows the parking lot to the northeast of the apartment building, and the commercial building just beyond the parking lot. In the video, D.B. and his nephew approach Rucker and J.W., and then promptly turn around. This video shows little else until the first three shots are heard. The video then shows D.B. running toward Rucker and J.W., who have emerged from behind a bush. Eight or nine seconds after the third shot, Rucker steps forward and fires the fourth and final shot of the exchange. A metallic ringing can be heard just after the fourth shot. Only after this shot do Rucker and J.W. turn and run away.

Rucker testified that he took the final shot to give himself enough time to run, because he was scared that if he ran across the open space behind him, D.B. would shoot him. Rucker said he "shot away from" D.B. and that he did not intend to hit D.B. with the

shot. According to Rucker, he only intended to make D.B. duck to give himself enough time to run across the open space behind him.

Following the shooting, the police arrived to investigate. They found D.B. lying on the ground in the cul-de-sac next to the commercial building. Medics pronounced D.B. dead at the scene. The medical examiner confirmed that D.B. died from a single gunshot wound to the chest. The bullet caused catastrophic internal injuries, perforating both of D.B.'s lungs, his aorta, stomach, liver, and diaphragm.

The police found a gun near D.B.'s body, which was later "decisively associate[d]" with D.B. The police also recovered four spent bullet casings from the scene and determined that three bullets had struck the white sedan. Consistent with Rucker having fired three shots and J.W. one shot, three of the four bullet casings were determined to have come from the same gun. Police were also able to conclusively determine that none of the four casings came from the gun associated with D.B., which was corroborated by the fact that all 17 rounds of ammunition that D.B.'s gun could hold at capacity were recovered, unfired, from the scene.

At the end of trial, the jury found Rucker guilty of all three charges. The district court entered judgment of conviction on all three counts. At sentencing, the district court granted Rucker a downward durational departure for his conviction of second-degree intentional murder, noting that D.B. was "an aggressor" on the night of the shooting. Rucker appeals.

DECISION

We first address Rucker's argument that, under Minn. Stat. § 609.04, Rucker's second-degree felony murder conviction must be vacated, because it is an included offense of second-degree intentional murder. The state concedes that the district court should not have entered convictions for both counts of second-degree murder. Under Minn. Stat. § 609.04, a person "may be convicted of either the crime charged or an included offense, but not both." We have determined that "[s]econd-degree felony murder is a lesser-included offense of second-degree intentional murder." *State v. Lory*, 559 N.W.2d 425, 426, 428-29 (Minn. App. 1997), *rev. denied* (Minn. Apr. 15, 1997). As a result, the district court should not have entered a conviction on the second-degree felony murder charge.

We therefore reverse Rucker's conviction for second-degree felony murder and remand to the district court to vacate the conviction, leaving the finding of guilt in place. Because the second-degree felony murder charge should not have been adjudicated, we need not consider Rucker's challenges to that conviction. *See State v. Ashland*, 287 N.W.2d 649, 650 (Minn. 1979) (declining to consider the sufficiency of evidence supporting guilty verdicts when the district court never formally adjudicated defendant guilty of those charges). We address Rucker's remaining arguments below.

I. Self Defense

Rucker first argues that the state failed to disprove his self-defense claim beyond a reasonable doubt. Rucker's challenge is essentially a sufficiency-of-the-evidence challenge, and this court reviews it as such. *See State v. McKissic*, 415 N.W.2d 341, 344 (Minn. App. 1987) (reviewing appellant's argument that the state failed to prove beyond a

reasonable doubt that appellant was not acting in self-defense for sufficiency of the evidence). When reviewing the sufficiency of the evidence, “[t]he evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). When the state provides direct evidence supporting a charge or disproving a defense, this court painstakingly reviews “the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted).

There are four elements to a self-defense claim:

- (1) the absence of aggression or provocation on the part of the defendant;
- (2) the defendant’s actual and honest belief that he or she was in imminent danger of death or great bodily harm;
- (3) the existence of reasonable grounds for that belief; and
- (4) the absence of a reasonable possibility of retreat to avoid the danger.

State v. Johnson, 719 N.W.2d 619, 629 (Minn. 2006) (quoting *State v. Basting*, 572 N.W.2d 281, 285 (Minn. 1997)). When employing force in self-defense, a person may only use “the level of force reasonably necessary to prevent the bodily harm feared.” *State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014). “[I]n all situations in which a party claims self-defense, even absent a duty to retreat, the key inquiry will still be into the reasonableness of the use of force and the level of force under the specific circumstances of each case.” *State v. Glowacki*, 630 N.W.2d 392, 402 (Minn. 2001). “Once a defendant meets the burden of going forward with evidence to support a claim of self-defense, the [s]tate bears

the burden to disprove, beyond a reasonable doubt, one or more of the four elements.” *Devens*, 852 N.W.2d at 258 (quotation omitted). Rucker argues that the state failed to disprove, beyond a reasonable doubt, any of the three applicable elements of his self-defense claim.³

A. The absence of aggression or provocation on the part of the defendant.

Rucker first argues the state failed to prove that he was the aggressor. Rucker argues that, in fact, D.B. was the aggressor, and that his position is supported by the district court’s decision to grant a downward durational departure based on the mitigating circumstance that D.B. was an aggressor. Rucker describes the record as showing that D.B. retrieved a gun from his nephew and then walked toward Rucker and J.W. “with his firearm brandished.” Applying our deferential standard of review, we disagree that the record supports Rucker’s claim that D.B. brandished his firearm when he first walked toward Rucker and J.W. Even so, Rucker’s argument that D.B. was the aggressor because he procured a gun and then walked toward Rucker with the gun in his hand, on an evening where the two men were engaged in an ongoing argument, presents a close question.

There is some merit to Rucker’s position that D.B. was the aggressor because he was carrying a gun toward a person he had been arguing with that evening. At minimum, D.B.’s introduction of a gun into the situation elevated the potential danger. But the

³ Relying on *State v. Gardner*, 104 N.W. 971 (Minn. 1905), the district court declined to instruct the jury regarding the duty to retreat. The district court’s jury instructions, and its decision not to instruct the jury on the duty to retreat, are not properly before this court, and we do not address them.

evidence also shows that D.B. did not brandish, aim, raise, or otherwise suggest that he intended to use the gun he was carrying at the point that he first walked toward Rucker and J.W. *See State v. Radke*, 821 N.W.2d 316, 324-25 (Minn. 2012) (rejecting defendant’s argument that the deceased was the aggressor because he had a shotgun when he arrived at the defendant’s location). D.B. raised his gun only after J.W. and Rucker began shooting at him, and even then, the evidence shows that D.B. never fired his weapon.

Viewing the evidence in the light most favorable to the verdict, we conclude that there was sufficient evidence to allow the jury to determine that Rucker and J.W. were the initial aggressors. Rucker and J.W. fired on D.B. before D.B. revealed that he intended to use deadly force, or any force, against either of them. D.B. never fired his weapon. And Rucker and J.W. fired their weapons with apparent intent to hit D.B., as evidenced by the fact that the first three bullets struck the car D.B. took cover behind. *Cf. State v. Columbus*, 258 N.W.2d 122, 125 (Minn. 1977) (defendant was the aggressor, in part, because “he made no attempt to avoid danger (for example, by turning the gun away from [the deceased])”).

Even assuming without deciding that a district court’s stated reasons for a sentence are relevant to a defendant’s sufficiency-of-the-evidence challenge, we are also not persuaded by Rucker’s argument that the district court agreed with Rucker’s position through its “finding that D.B. was the aggressor” in sentencing Rucker. While the departure report states that the basis for the departure was “the victim was the aggressor,” the oral pronouncement of a sentence controls over the written sentencing order, *State v. Staloch*, 643 N.W.2d 329, 332 (Minn. App. 2002), and during the sentencing

hearing, the district court stated only that D.B. was “*an* aggressor.” (Emphasis added.) The district court also compared this case to other cases in which “the victim was an aggressor,” and concluded “that is a basis to depart in this case as well.” Even Rucker’s counsel acknowledged that D.B. was “[m]aybe not the aggressor in this matter, but . . . an aggressor.” Even if D.B. became “an aggressor” by running at Rucker with his gun raised, we still conclude there was sufficient evidence for the jury to determine that Rucker was *the initial aggressor*, and “the original aggressor in an incident giving rise to [a] self-defense claim” cannot validly claim self-defense unless “he actually and in good faith withdraws from the conflict and communicates that withdrawal . . . to his intended victim.” *Bellcourt v. State*, 390 N.W.2d 269, 272 (Minn. 1986). Rucker presented no evidence that he withdrew from the conflict at any point.

B. The reasonableness of the use of force.

Rucker also argues that he acted reasonably and used only the amount of force necessary to prevent the bodily harm feared. “[E]ven absent a duty to retreat, the key inquiry will still be into the reasonableness of the use of force and the level of force under the specific circumstances of each case.” *Glowacki*, 630 N.W.2d at 402. Therefore, assuming we determined that Rucker was not the aggressor, we would still affirm his second-degree intentional murder conviction because there was sufficient evidence for the jury to determine that Rucker did not act reasonably under the circumstances.

Rucker took the fourth, fatal shot eight or nine seconds after the third shot. Rucker’s conduct does not appear to be that of a person shooting solely to cover their own retreat (as he testified). Instead, Rucker slowly steps out from behind the bush where he was taking

cover, and rather than running for cover, or firing several shots to make D.B. take cover so Rucker could run, Rucker steps toward D.B. and fires a carefully aimed shot that struck and killed D.B. Viewing the evidence in the light most favorable to the verdict, the jury could have found that Rucker's actions were not those of a person merely trying to survive the situation, but those of a person intent on killing the person with whom he had been arguing. As a result, we conclude that there was sufficient evidence for the jury to determine that Rucker did not act reasonably when he used force, and in particular, when he fired the fourth shot at D.B. The jury's guilty verdict suggests that it did, in fact, find that Rucker's actions were not reasonable.⁴

II. Sufficiency of the evidence

Rucker also challenges the sufficiency of the evidence as it pertains to which of the four shots killed D.B. Rucker contends that there is no direct evidence about which shot killed D.B.

As described above, when the state proves its case with direct evidence, this court painstakingly reviews “the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *Horst*, 880 N.W.2d at 40 (quotation omitted). The direct evidence here was sufficient to permit the jury to determine that Rucker hit D.B. with the fourth shot.

⁴ Because we conclude that the evidence sufficiently disproved the absence of aggression or provocation on Rucker's part and that there was sufficient evidence for the jury to determine that Rucker did not act reasonably under the circumstances, we need not address Rucker's additional arguments about his actual and honest belief that he was in imminent danger of death or great bodily harm and the existence of reasonable grounds for that belief. See *Johnson*, 719 N.W.2d at 629; *Glowacki*, 630 N.W.2d at 402.

D.M. testified that he saw D.B. reach the back of a white sedan, duck behind the car, stand up, then a “[s]hot came from somewhere and that was it.” D.M. stated that D.B. had been shot, fell to the ground, and did not move any more. This is direct evidence that D.M. observed the final shot strike D.B., and it is undisputed that Rucker took the fourth and final shot. And D.B. is visible in video footage of the incident during the first three shots. The videos do not show any of the first three shots striking D.B. Instead, D.B. ducks and runs for cover behind the white sedan. This is direct evidence that the first three shots did not strike and kill D.B. *See State v. Blevins*, 10 N.W.3d 29, 39-40 (Minn. 2024) (determining that surveillance videos provided “direct evidence of what they show”). We therefore conclude there was sufficient direct evidence to support the jury’s verdict.

Even though we conclude that there was sufficient direct evidence to support the jury’s verdict, we also conclude that there was sufficient evidence to support the jury’s verdict under the heightened two-step standard for reviewing the sufficiency of circumstantial evidence. *See State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). Under this test, we first “identify the circumstances proved.” *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). In this step, “we defer to the jury’s acceptance of the proof of these circumstances” and “assume that the jury believed the [s]tate’s witnesses and disbelieved the defense witnesses.” *Id.* at 598-99 (quotations omitted). “In doing so, we winnow down the evidence presented at trial to a subset of facts that is consistent with the jury’s verdict and disregard evidence that is inconsistent with the jury’s verdict.” *State v. Gilleylen*, 993 N.W.2d 266, 275 (Minn. 2023) (quotation omitted).

We then determine whether the circumstances proved, when viewed in their entirety, “are consistent with guilt and inconsistent with any rational hypothesis except that of guilt,” and “not simply whether the inferences that point to guilt are reasonable.” *Silvernail*, 831 N.W.2d at 599 (quotations omitted). During this step, the court does not defer “to the fact-finder’s choice between reasonable inferences.” *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010) (quotation omitted). The circumstantial evidence the state presents “must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted).

Assuming that the jury believed the state’s witnesses and winnowing down the evidence to the subset of facts consistent with the jury’s verdict, we are bound to accept that one of the circumstances proved is that D.M. observed D.B. being shot, after hearing several shots and then moving to the window. Because D.M. had heard a few shots, and because some time elapsed before D.M. moved to the window, the shot D.M. saw strike D.B. could only have been the fourth and final shot. Since Rucker undisputedly fired the fourth shot, the circumstances proved lead “so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *See Al-Naseer*, 788 N.W.2d at 473 (quotation omitted).

III. Prosecutorial misconduct

Rucker’s final argument is that he is entitled to a new trial because the prosecutor committed prejudicial misconduct during closing argument. Unobjected-to prosecutorial

misconduct is reviewed under a modified plain-error test. *See State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006). Under the modified plain-error test, “the defendant has the burden to demonstrate that the misconduct constitutes (1) error, (2) that was plain. If the defendant is successful, the burden then shifts to the [s]tate to demonstrate that the error did not affect the defendant’s substantial rights.” *State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010) (citation omitted). In assessing whether plain error affected the defendant’s substantial rights, this court considers: “(1) the strength of the evidence against [the appellant]; (2) the pervasiveness of the erroneous conduct; and (3) whether [the appellant] had an opportunity to rebut any improper remarks.” *State v. Peltier*, 874 N.W.2d 792, 805-06 (Minn. 2016). When reviewing a prosecutor’s “closing argument, we review the closing argument as a whole.” *State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010); *see also State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993) (noting that courts look at the state’s “closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence”).

First, Rucker argues the prosecutor told the jury that Rucker brandished a gun when there is no evidentiary support for that statement. In response, the state points out that the prosecutor was trying to define the elements of the underlying felony, “albeit confusingly.” Read in context, the prosecutor’s statement is part of an a fortiori argument that Rucker committed felony assault. The prosecutor did not say that Rucker brandished a weapon. He instead told the jury that even brandishing a weapon can constitute assault, and in this case, Rucker shot D.B., so Rucker’s conduct constituted assault. This statement was not error because the prosecutor did not misrepresent the facts.

Rucker also argues that the prosecutor misstated the law by suggesting that two people could have a self-defense claim, which “may very well have confused the jury.” But if two people both use force against each other, they may both claim to have acted in self-defense, and which of the two is correct would be a factual determination for the jury to decide. Rucker cites no authority to support his assertion that had D.B. survived and been prosecuted for a crime, that he would not have been able to claim self-defense. Rucker has therefore failed to demonstrate that the prosecutor’s statement was error, much less plain error.

Third, Rucker challenges the prosecutor’s statement that Rucker “had every opportunity to leave the situation.” Rucker argues that the prosecutor improperly implied that Rucker had a duty to retreat, contrary to the jury instructions and the district court’s determination that Rucker had no duty to retreat. But the jury must consider “the reasonableness of the use of force and the level of force under the specific circumstances of each case.” *Glowacki*, 630 N.W.2d at 402. Because the jury must assess the reasonableness of the use of force in the specific circumstances of the case, the prosecutor’s statement that “Rucker had every opportunity to leave the situation,” was not inappropriate nor did it imply to the jury that Rucker had a legal duty to retreat before using force. The statement merely points out that resorting to deadly force may not have been reasonable in this situation. And as earlier stated, an initial aggressor cannot claim self-defense unless “he actually and in good faith withdraws from the conflict and communicates that withdrawal . . . to his intended victim.” *Bellcourt*, 390 N.W.2d at 272. The prosecutor’s statement was consistent with and relevant to this aspect of Rucker’s self-defense claim.

Finally, Rucker claims it was improper for the prosecutor “to align the jury to the [s]tate,” challenge Rucker’s assertion of self-defense in the abstract, and suggest that the jury’s verdict should consider the broader issue of gun violence. Rucker challenges a statement where the prosecutor said:

And if the system just let every guy off the hook who’s walking around with an illegal gun, getting into quarrels, and then later gets into a shootout, shoots and kills a guy; flees the state; comes back and says hey, man, all self-defense. Well, we’d be in a pretty tough bind to try to regulate gun violence in any way.

The state concedes that the prosecutor’s statements were inappropriately made. That said, the state convincingly argues that these two sentences did not affect Rucker’s substantial rights. This is so because the state presented strong direct evidence that Rucker was guilty of shooting and killing D.B., and the erroneous conduct was not pervasive—it was two sentences stated toward the conclusion of a 25-page closing argument. Although it does not appear that Rucker had an opportunity to rebut the improper remarks, on balance, we conclude that the prosecutor’s remarks did not affect Rucker’s substantial rights.

Affirmed in part, reversed in part, and remanded.