

*This opinion is nonprecedential except as provided by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
A23-1572**

State of Minnesota,
Respondent,

vs.

Ricardo Marlon Curtis,
Appellant.

**Filed September 16, 2024
Affirmed
Larson, Judge**

Stearns County District Court
File No. 73-CR-23-1309

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Larson, Presiding Judge; Segal, Chief Judge; and
Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Ricardo Marlon Curtis challenges his conviction for felony domestic assault, arguing: (1) the district court plainly erred when it offered an improper jury instruction on the jurors' ability to review audio/video exhibits outside the jury room; (2) the district court plainly erred when it offered a pattern jury instruction on the elements of self-defense; and (3) the state plainly erred when it committed prosecutorial misconduct during closing argument. We affirm.

FACTS

In February 2023, respondent State of Minnesota charged Curtis with felony domestic assault pursuant to Minn. Stat. § 609.2242, subd. 4 (2022),¹ arising from an altercation between Curtis and his mother, D.W., inside a St. Cloud apartment. In May 2023, the case proceeded to a jury trial where D.W., D.W.'s friend, and two St. Cloud police officers each testified. The witnesses testified to the following facts.

On February 12, 2023, Curtis stayed at D.W.'s apartment. Earlier in the day, Curtis smoked methamphetamine that D.W. gave him. D.W. had a history of heroin addiction and used heroin that morning. She had an appointment at a methadone clinic the next day.

¹ Under Minn. Stat. § 609.2242, subd. 1 (2022), an assault occurs when a person, “against a family or household member[,] . . . commits an act with intent to cause fear in another of immediate bodily harm or death . . . [or] intentionally inflicts or attempts to inflict bodily harm upon another.” Under the statute, a defendant is guilty of a felony when they violate subdivision 1 “within ten years of the first of any combination of two or more previous qualified domestic violence-related offense convictions . . . and may be sentenced to imprisonment for not more than five years.” *Id.*, subd. 4 (2022). At the beginning of trial, Curtis stipulated to having two prior qualifying convictions.

Prior to the incident, D.W. did not feel “heavily impaired” and could “understand what was going on.” After smoking the methamphetamine, Curtis left the apartment a couple of times before returning that evening.

Eventually, Curtis started arguing with D.W. while she was in the shower. He said D.W. gave him fake methamphetamine.² When D.W. exited the shower, Curtis followed her into her bedroom and yelled that D.W. was trying to poison and kill him. Once D.W. got dressed, Curtis put “his arm under [her] neck and [held her to] the wall.” Curtis continued accusing D.W. of trying to poison and kill him, saying that D.W. knew “what [she] did.” D.W. yelled as loud as she could to get Curtis to stop. She estimated that Curtis pinned her against the wall for ten minutes.

D.W.’s friend lived in the same building directly below D.W. D.W.’s friend testified that, on the night of the incident, she heard D.W. yell “[h]elp me” and a male voice yell “[s]hut the f-ck up.”

When Curtis stopped holding D.W. to the wall, he continued to follow and smack her in the face. Then both Curtis and D.W. went into Curtis’s bedroom where Curtis told D.W. that she would sleep with him that night. D.W. intended to call 911 but did not have access to her phone. Curtis prevented D.W. from leaving by using butcher knives to barricade the front door. Eventually, D.W. fell asleep in the living room. When she awoke, she remained frightened and tried to quietly remove the knives that Curtis had lodged in

² To D.W.’s knowledge, the methamphetamine was real and was not laced with any other controlled substances.

the door. She retrieved her phone from Curtis before she left the apartment for her methadone appointment.

After D.W. attended her appointment, she called the police from a gas station across the street from her apartment. Two St. Cloud police officers responded. The first officer interviewed D.W. at the gas station. D.W. gave a statement consistent with her trial testimony. While D.W. gave her statement, Curtis approached. Curtis told the first officer that D.W. had tried to poison and kill him. At trial, the first officer testified that Curtis seemed “very paranoid.” The state played a video of the first officer’s interaction with Curtis from the officer’s body-worn camera. The video was consistent with the first officer’s testimony.

When the second officer arrived at the gas station, he detained Curtis and placed him in the back of his vehicle. The second officer then took a *Mirandized*, recorded statement from Curtis. During his statement, Curtis mentioned contacting a dealer who said D.W. did not give Curtis methamphetamine. At trial, the second officer described Curtis as “sweating profusely” and “scattered.” The state played an audio recording of Curtis’s statement that was consistent with the second officer’s testimony.

After the state and Curtis rested their cases, the district court proceeded to instruct the jury before closing arguments. The district court emphasized that “[a]ttorneys are officers of the Court. It is their duty to make objections they think proper and to argue their client’s cause. However, the arguments or other remarks of an attorney are not evidence.” The district court also instructed the jury that if an attorney made “any

statement of the law that differ[ed] from the law [the district court provided], disregard the statement.”

In addition, the district court explained that Curtis was claiming self-defense. The jury instructions provided:

No crime is committed when a person uses reasonable force to resist an offense against the person if such an offense was being committed or the person reasonably believed that [it] was.

An offense against the person means an offense of a physical nature with the potential to cause bodily harm. Bodily harm means physical pain or injury, illness, or any impairment of physical condition. It is lawful for a person who is resisting an offense against his person and who has reasonable grounds to believe that bodily injury is about to be inflicted to defend from an attack.

The district court also instructed the jury on the presumption of innocence, stating the “presumption remains with the defendant unless and until the defendant has been proven guilty beyond a reasonable doubt.”

The parties then delivered their closing arguments. The state made a series of statements that Curtis challenges on appeal. First, during rebuttal, the state said:

At the beginning of this trial, [Curtis] is presumed innocent. [Defense counsel] is right. I have the burden to prove beyond a reasonable doubt that [Curtis] is guilty. We agree on that. There is no question about it. But the fact of the matter is, you now have the evidence. The evidence has been presented to you. The presumption of innocence is not permanent.

Second, the state made a series of “we” statements throughout its argument, including:

- “[I]f we believe [D.W.] when she said [Curtis inflicted bodily harm against her], then he is guilty.”

- Describing the domestic assault elements as “very straightforward. I think we can agree on that.”
- “We got to know [D.W.] a little bit. This is . . . a case where nobody is perfect.”
- “[W]e can safely infer that the male voice [D.W.’s friend heard] saying ‘Shut the f-ck up,’ [was] Mr. Curtis,” and because D.W.’s friend has impaired hearing, “we can infer Mr. Curtis [was] yelling it loudly.”
- “To understand whether we ruled out a possibility of innocence, we can begin by imagining what a [possibility] of innocence would look like. More specifically, what we would have to believe in order to agree that there is reasonable doubt.”
- “We have all these circumstance[s] supporting a guilty verdict.”

After closing arguments, the district court instructed the jury about deliberation. The district court stated: “While you will have certain exhibits with you in the exhibit room, it is not feasible to send the audio/video exhibits to the jury deliberation room, because we don’t have equipment to allow you to play those exhibits in the jury room.” In its instructions to the jury on interacting with jury attendants, the district court stated: “You may talk with jury attendants about scheduling. . . . [B]ut you may not discuss the evidence, these instructions, or other substantive issues [with them].”

After deliberations, the jury returned a guilty verdict. The district court convicted Curtis and sentenced him to 24 months in prison. Curtis appeals.

DECISION

Curtis raises three challenges to his felony domestic-assault conviction: (1) the district court offered an improper jury instruction regarding access to audio/video exhibits;

(2) the district court erroneously offered the standard jury instruction on the elements of self-defense; and (3) the state committed prosecutorial misconduct during closing argument. Because Curtis did not object to these alleged errors at trial, we review for plain error. *See State v. Milton*, 821 N.W.2d 789, 805 (Minn. 2012) (jury instructions); *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (prosecutorial misconduct).³

A district court commits plain error when there was “(1) [an] error; (2) that is plain; and (3) the error . . . affect[s] substantial rights.” *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). “An error is plain if it is clear or obvious,” usually when the district court contravened “case law, a rule, or a standard of conduct.” *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (quotation omitted). Plain error affects substantial rights when it is “prejudicial” and impacts “the outcome of the case.” *Id.* If an appellant demonstrates plain error that affects substantial rights, we then determine whether to “address the error to ensure fairness and the integrity of the judicial proceedings.” *Bernhardt v. State*, 684 N.W.2d 465, 475 (Minn. 2004) (quotation omitted).

I.

Curtis challenges the district court’s instructions—or lack thereof—regarding access to the audio/video exhibits. Specifically, Curtis challenges the district court’s “infeasibility instruction”—“[w]hile you will have certain exhibits with you in the exhibit room, it is not feasible to send the audio/video exhibits to the jury deliberation room, because we don’t have equipment to allow you to play those exhibits in the jury room.”

³ As described in part III, a modified plain-error standard applies to prosecutorial misconduct. *See Ramey*, 721 N.W.2d at 302.

Under Minn. R. Crim. P. 26.03, subd. 20(1):

Except as provided in this rule, the [district] court must permit received exhibits or copies into the jury room including audio or video exhibits. The [district] court may exclude audio or video exhibits from the jury room . . . if the [district] court determines that allowing the exhibits into the jury room is not feasible

In addition, a district “court may allow the jury to review specific evidence” that is not in the jury room. *Id.*, subd. 20(2). “[J]ury review of . . . audio or video exhibits not permitted in the jury room . . . must occur in open court.” *Id.*, subd. 20(2)(b).

Curtis first argues the district court’s use of the infeasibility instruction constituted plain error because the district court did not expand the instruction and explain that the jury could ask to review the audio/video exhibits in open court (“review-in-open-court instruction”). In other words, Curtis makes the novel argument that a review-in-open-court instruction must accompany an infeasibility instruction. But there is no legal authority requiring the district court to give a review-in-open-court instruction. *See State v. Lutz*, No. A23-1668, 2024 WL 3755942, at *4 n.2 (Minn. App. Aug. 12, 2024) (describing the same argument as “novel”).⁴ And on plain-error review, we only correct errors that are “clear or obvious.” *Sontoya*, 788 N.W.2d at 872. Because there is no precedent requiring a review-in-open-court instruction, we cannot conclude the district court plainly erred when it failed to give that instruction. *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017)

⁴ This case is nonprecedential and, therefore, not binding. We cite nonprecedential cases for persuasive authority only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

(concluding district court did not plainly err when it gave an instruction that did not contravene existing caselaw).

Second, Curtis argues the district court plainly erred when it gave the infeasibility instruction coupled with the “jury-attendant instruction”—“You may talk with jury attendants about scheduling. . . . [B]ut you may not discuss the evidence, these instructions, or other substantive issues [with them].” According to Curtis, read together, the two instructions “plainly implied that there was no way” to request review of the audio/video exhibits.

Curtis relies on *State v. Spaulding*, 296 N.W.2d 870 (Minn. 1980) to support this argument. In *Spaulding*, despite a rule allowing the jury to request rereading testimony, the district court instructed the jury at the outset that “no testimony would be reread.” 296 N.W.2d at 877-78. The supreme court concluded that the district court abused its discretion because it “categorically refused to honor any requests for rereading evidence.” *Id.* at 878.

This case is distinguishable from *Spaulding*. Unlike *Spaulding*, the jury-attendant instruction did not directly contradict the rule that jurors could ask the judge to review the audio/video exhibits. Instead, the jury-attendant instruction appropriately informed the jurors not to talk about the *substance* of the case with the jury attendants and was silent with respect to the jury’s ability to request reviewing the audio/video exhibits. And, as set forth above, there was no legal authority requiring the district court to give a review-in-open-court instruction. *See Lutz*, 2024 WL 3755942, at *4 n.2. Again, without any such legal authority, we cannot conclude the district court plainly erred. *See Webster*, 894 N.W.2d at 787.

For these reasons, we conclude the district court did not plainly err when it issued its jury instructions regarding access to audio/video exhibits.

II.

Curtis next argues the district court plainly erred when it used a standard jury instruction to instruct the jurors on the elements of self-defense. District courts generally have wide latitude to articulate jury instructions in so far as the instructions do not “confuse, mislead, or materially misstate the law.” *State v. Taylor*, 869 N.W.2d 1, 14-15 (Minn. 2015) (quotation omitted).

Under Minn. Stat. § 609.06, subd. 1(3) (2022), a person may use “reasonable force . . . upon or toward the person of another without the other’s consent . . . to resist an offense against the person.” The elements of self-defense include:

(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 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. Devens, 852 N.W.2d 255, 258 (Minn. 2014) (quotation omitted).

Here, the district court instructed the jury that “[a]n offense against the person means an offense *of a physical nature* with the potential to cause bodily harm” and “[i]t is lawful for a person who is resisting an offense against his person and who has reasonable grounds to believe that bodily injury is about to be inflicted to *defend from an attack*.” (Emphasis added.) This instruction mirrored the standard jury instruction in effect at the time of trial. *See 10 Minnesota Practice*, CRIMJIG 7.13 (Supp. 2022).

Curtis challenges the district court’s wording that the offense must be “of a physical nature” and that self-defense is only lawful to “defend from an attack.” He argues that both phrases imply that an assault must occur and preclude a defense based on D.W. providing him with dangerous narcotics. To support his argument, Curtis relies primarily on *State v. Lampkin*, 994 N.W.2d 280 (Minn. 2023).

In *Lampkin*, the state charged the defendant with felony domestic assault. 994 N.W.2d at 283. The defendant claimed self-defense, arguing that he was protecting himself from assault. *Id.* at 283-84. The district court instructed the jury that “[i]t is lawful for a person who is resisting an *assault against his person* and who has reasonable grounds to believe that bodily injury is about to be inflicted upon the person to defend from an attack.” *Id.* at 284. After the jury found him guilty, the defendant appealed, arguing that the district court plainly erred when it used this jury instruction because it “stated that he could only use reasonable force to defend against an ‘assault’ rather than any ‘offense against the person.’” *Id.* at 284. Upon review, the supreme court acknowledged that the word “assault” does not cover the broader range of acts that might constitute “an offense against the person” threatening bodily harm. *Id.* at 290. But the supreme court concluded the instruction was not plainly erroneous because it “fit the contentions of the parties.” *Id.* (quotation omitted).

Here, like in *Lampkin*, if the provision of dangerous drugs can amount to an “offense against the person,” the district court’s formulation adequately “fit the contentions of the parties.” *See id.* (quotation omitted). Curtis argues that he acted in self-defense because D.W. poisoned and intended to kill him. Assuming Curtis’s allegations about D.W. are

true, words like “of a physical nature” and “attack” fit under the umbrella of the behavior he describes. Further, wording like “of a physical nature” and “attack” fit the basic elements of self-defense, which required Curtis to have an “honest belief” that D.W. put him “in imminent danger of bodily harm.” *See Devens*, 852 N.W.2d at 258) (quotation omitted). And the instruction was consistent with the standard jury instruction in effect at the time of trial. *See Webster*, 894 N.W.2d at 787 (noting the import of a district court using a standard jury instruction on plain-error review).

For these reasons, we conclude the district court did not plainly err when it instructed the jury on self-defense.

III.

Finally, Curtis argues the state engaged in prosecutorial misconduct during closing argument.⁵ When a defendant does not object to alleged prosecutorial misconduct, we apply a modified plain-error review. *See Ramey*, 721 N.W.2d at 302. This standard differs from traditional plain-error review because, if the defendant meets their burden to show an error that is plain, the burden shifts to the state to demonstrate “no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict.” *Id.* (quotation omitted). Whether the state met its burden depends on factors like

⁵ Though there is a distinction between prosecutorial error and prosecutorial misconduct, the same standard applies to both. *See State v. Leutschaft*, 759 N.W.2d 414, 418 (Minn. App. 2009) (distinguishing between prosecutorial misconduct and prosecutorial error but applying modified plain-error standard regardless of the characterization), *rev. denied* (Minn. Mar. 17, 2009). Because Curtis characterizes his argument as one for prosecutorial misconduct, we address his argument under that framing.

the strength of the state’s evidence and the error’s pervasiveness. *State v. Davis*, 735 N.W.2d. 674, 682 (Minn. 2007).

Here, Curtis challenges a prosecutor statement that he argues misconstrued the presumption of innocence. Curtis relies on *State v. Portillo*, where the supreme court concluded a prosecutor engaged in misconduct by stating the defendant “*no longer*” had the presumption of innocence. 998 N.W.2d 242, 250-51 (Minn. 2023) (emphasis added).

Curtis also challenges a series of “we” statements the prosecutors used during closing arguments. For support, Curtis invokes *State v. Mayhorn*, where the supreme court held a prosecutor may not “describe [themselves] and the jury as a group of which the defendant is not a part,” and that prosecutor’s use of “‘we’ and ‘us’ is inappropriate and may be an effort to appeal to the jury’s passions.” 720 N.W.2d 776, 790 (Minn. 2006).

We first consider whether the state met its burden to show that there is no reasonable likelihood that the absence of these statements would have had a significant impact on the verdict. *See Ramey*, 721 N.W.2d at 302. If we conclude the state met its burden, we need not decide whether the prosecutor’s statements constituted plain error. *See State v. Garland*, 942 N.W.2d 732, 750 (Minn. 2020).

On this record, we conclude that the state met its burden. The state’s case against Curtis was overwhelming. The state presented multiple witnesses, along with audio/video evidence supporting D.W.’s assault allegation.⁶ Moreover, “[w]e presume that jurors

⁶ We note that this is distinguishable from *Portillo* where the state failed to meet its burden, in part, because the state relied on a single witness’s testimony a decade after the alleged conduct occurred “without any corroborating testimony, physical evidence, or other witnesses to the abuse.” 998 N.W.2d at 252.

follow a judge's instructions." *State v. Miller*, 573 N.W.2d 661, 675 (Minn. 1998). And here, the district court cautioned the jurors that the "remarks of an attorney [were] not evidence," and instructed the jury that if an attorney made "any statement of the law that differ[ed] from the law [the district court provided], disregard the statement." The district court also provided a correct instruction on the presumption of innocence, stating the defendant was presumed innocent "unless and until the defendant has been proven guilty beyond a reasonable doubt." And, upon our inspection of the prosecutor's "we" statements, we do not discern that the prosecutor intended to use the statements to appeal to the jury's passions. *See Mayhorn*, 720 N.W.2d at 790.

For these reasons, we conclude the state met its burden to show that, if the prosecutor's statements amounted to misconduct, there is no reasonable likelihood that the absence of such statements would have had a significant effect on the verdict.

Affirmed.