

*This opinion is nonprecedential except as provided by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
A23-1694**

State of Minnesota,
Respondent,

vs.

Jonathan Gary Phipps,
Appellant.

**Filed September 23, 2024
Affirmed
Frisch, Judge**

Lake County District Court
File No. 38-CR-23-253

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Russell H. Conrow, Lake County Attorney, Two Harbors, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Connolly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant challenges his conviction for failure to register as a predatory offender, arguing that his conviction must be reversed and remanded for a new trial because the

prosecutor committed plain-error misconduct in eliciting inadmissible testimony during trial. Because there is no reasonable likelihood that the absence of the alleged misconduct would have significantly affected the verdict, we affirm.

FACTS

Respondent State of Minnesota charged appellant Jonathan Gary Phipps with two counts of failure to register as a predatory offender pursuant to Minn. Stat. § 243.166, subd. 5(a)(1) (2022), one count of obstructing legal process pursuant to Minn. Stat. § 609.50, subd. 1(2) (2022), and one count of fleeing law enforcement by a means other than a motor vehicle pursuant to Minn. Stat. § 609.487, subd. 6 (2022).¹ The following facts were elicited at a jury trial.

Phipps is required by statute to register his address with the Minnesota Bureau of Criminal Apprehension (BCA) because of a prior offense. In November 2022, Phipps began living with his sister A.P.P., her husband J.P., and their children. On April 17, 2023, Phipps registered his address with the BCA, denoting that his address at the time was A.P.P. and J.P.’s home and that he had moved there on January 11, 2023. Phipps’s registration reflects a secondary address at his mother’s home. The registration form includes Phipps’s initials and signature as acknowledgment that he knew that he had a duty to register and a duty to update his registration if his address changed.

In late May 2023, a disagreement between family members led to J.P. asking Phipps to leave the home. A.P.P. testified that “it was just determined that it wasn’t good to have

¹ Phipps does not challenge his convictions for the latter two counts.

[Phipps] at the house at that time” and that J.P. told Phipps that “he couldn’t stay [at the home] anymore.” Early in the morning on May 30, Phipps left the home. Phipps was not at the home between May 31 and June 6. Phipps’s probation officer did not hear from Phipps from May 29 until he was notified that Phipps was in custody on June 7.

On June 6, C.V.G., a police investigator, received a report that Phipps had an outstanding arrest warrant and was currently living under a bridge. C.V.G. knew that Phipps was required to register his address, so he checked to see if Phipps had changed his primary or secondary address and discovered he had not. When C.V.G. checked with other local law-enforcement agencies and Phipps’s probation officer to learn if Phipps had given notice that he was moving or had moved, C.V.G. discovered that Phipps had not provided such notice.

On the morning of June 7, J.P. brought Phipps back to the home because Phipps “needed . . . to report” in court that day. Phipps’s clothes were still at the home. After returning to the home, Phipps went to sleep. At some point, A.P.P. and J.P. learned that Phipps had an outstanding arrest warrant, and A.P.P. called 911.

C.V.G. responded to the 911 call and went to the home with other officers. On the way, C.V.G. spoke with J.P., who confirmed that Phipps “wasn’t allowed at the house” and that the officers could search for Phipps in the home. When officers arrived at the home, they searched but could not locate Phipps. C.V.G. called J.P. and asked that J.P. let him know if he saw Phipps return to the home on surveillance cameras in the house. Later that day, J.P. alerted C.V.G. that Phipps had returned and permitted the officers to enter the home again. Officers approached the home and waited for Phipps to leave the house.

Phipps fled, but officers found him hiding in a car behind the home. Phipps was eventually removed from the car and arrested.

The district court held a jury trial and the state presented testimony from Phipps's mother, A.P.P., J.P., and law-enforcement officers including C.V.G. During C.V.G.'s testimony, the state asked him "in terms of failing to register, did you determine that Mr. Phipps failed to follow his registration requirements?" C.V.G. responded, "Yes." The jury returned guilty verdicts for each count. The district court convicted Phipps of each charged offense and sentenced him to 18 months' imprisonment.

Phipps appeals.

DECISION

Phipps argues that the prosecutor committed plain-error misconduct during C.V.G.'s testimony by eliciting C.V.G.'s opinion on an ultimate issue in the case and seeking a legal conclusion. Because Phipps did not object to the prosecutor's question at trial, we review his assertion of misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under this standard, Phipps bears the burden to establish plain error, after which the burden shifts to the state to prove that there is no reasonable likelihood that the absence of the misconduct would have significantly affected the jury's verdict. *Id.* If the state fails to meet its burden, we next consider "whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id.* If we conclude that "any one of the requirements is not satisfied, we need not address any of the others." *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017).

We assume without deciding that the prosecutor’s question during C.V.G.’s testimony was improper but conclude that any error does not warrant reversal because the state has met its burden to show that there is no reasonable likelihood that the absence of the misconduct would have significantly affected the verdict. *See id.*

To evaluate the effect of the alleged misconduct on Phipps’s substantial rights, we “consider various factors, including the pervasiveness of improper suggestions and the strength of evidence against the defendant.” *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017) (quotation omitted). Here, the pervasiveness of the alleged misconduct is minimal—the alleged misconduct was limited to one question posed to a single witness. *See State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (concluding that a prosecutor’s question that elicited inadmissible testimony was harmless beyond a reasonable doubt because the question was asked only once and the prosecutor did not again attempt to elicit or refer to the answer). And the prosecutor did not reference C.V.G.’s answer to this question in closing arguments. *See State v. Epps*, 964 N.W.2d 419, 424 (Minn. 2021) (noting that a prosecutor’s alleged improper statement was “brief and not repeated” in determining that the defendant’s substantial rights were not affected by the alleged misconduct).

The strength of the evidence against Phipps was also considerable. The jury heard testimony that Phipps left his registered address on or around May 30, that he did not return until June 7, that he was living under a bridge on June 6, and that he had not contacted law enforcement or otherwise updated his registered primary or secondary address. And these facts were all elicited before the alleged improper question and answer. Thus, the state has

shown that the prosecutor’s alleged improper question did not affect Phipps’s substantial rights. *See Parker*, 901 N.W.2d at 926.

Finally, reversal is not necessary to ensure the fairness and integrity of judicial proceedings. *See Ramey*, 721 N.W.2d at 302; *Epps*, 964 N.W.2d at 422 (stating that appellate courts have the “discretionary power” to grant relief for plain-error prosecutorial misconduct “when a particularly egregious error seriously affects the fairness, integrity, or public reputation of judicial proceedings” (quotation omitted)). Phipps’s assertion of error is limited to the harm of the alleged misconduct as it affected him, but he makes no argument about the fairness and integrity of judicial proceedings generally. *See Pulczynski v. State*, 972 N.W.2d 347, 358 (Minn. 2022) (stating that the fairness-and-integrity inquiry “is not concerned with whether an error caused harm to the particular defendant”). And we conclude that the alleged misconduct is not “particularly egregious” such that we are compelled to exercise our discretionary power. *See Epps*, 964 N.W.2d at 422.

In sum, the state has met its burden to show that the misconduct alleged by Phipps did not affect his substantial rights because there is no reasonable likelihood that the absence of the misconduct would have significantly affected the verdict. And Phipps has not established that the alleged misconduct necessitates reversal to ensure the fairness and integrity of judicial proceedings.

Affirmed.