

*This opinion is nonprecedential except as provided by  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  
A24-0192**

State of Minnesota,  
Respondent,

vs.

Gabriel Macedo,  
Appellant.

**Filed January 21, 2025  
Affirmed  
Cochran, Judge**

Hennepin County District Court  
File No. 27-CR-20-27799

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Harris, Judge.

**NONPRECEDENTIAL OPINION**

**COCHRAN, Judge**

In this direct appeal, appellant challenges his conviction of third-degree criminal sexual conduct. Appellant argues his conviction should be reversed because the district court abused its discretion when it denied his motion to dismiss the complaint against him

based on the state's unnecessary delay in bringing him to trial. In the alternative, appellant argues that he is entitled to a new trial due to an erroneous evidentiary ruling and prosecutorial misconduct. We affirm.

## **FACTS**

In December 2020, respondent State of Minnesota charged appellant Gabriel Macedo with one count each of third-degree and fourth-degree criminal sexual conduct in violation of Minnesota Statutes sections 609.344, subdivision 1(c), and 609.345, subdivision 1(d) (Supp. 2019). The complaint alleged that Macedo sexually assaulted his ex-wife's 23-year-old nephew, S.M., in November 2019. The complaint further alleged that S.M. disclosed Macedo's conduct to police in May 2020.

Macedo pleaded not guilty, and the matter proceeded to a jury trial. At trial, the state called four witnesses, including S.M. and the officer who first interviewed S.M. The state introduced, among other exhibits, a recording and transcript of the initial police interview of S.M. as well as a recording and transcript of a conversation between S.M. and Macedo that S.M. recorded.

### *Macedo's Motion to Dismiss*

Prior to trial, Macedo moved to dismiss the criminal complaint, alleging that the state committed discovery violations by losing other recordings of statements made by S.M. and Macedo that were never disclosed to Macedo. The district court held an evidentiary hearing on Macedo's motion. A patrol officer and an investigator testified.

The patrol officer testified that he conducted the initial interview with S.M. in Spanish at a police station in May 2020. The officer added that he was wearing a

body-worn camera that recorded the interview. The officer testified that S.M. disclosed a sexual assault that allegedly occurred in Macedo's home and made other allegations against Macedo regarding workplace sexual harassment. This recording was not lost and was provided to Macedo.

The investigator testified about a follow-up interview that he and the officer conducted with S.M. regarding S.M.'s allegations of Macedo's sexual harassment at their joint workplace. The investigator testified that the follow-up interview with S.M. was also recorded. This recording was lost.

The patrol officer testified about a third recording made by law enforcement. According to the officer, after the follow-up interview with S.M., the officer arrested Macedo on an unrelated "sign and release" warrant. After Macedo signed the warrant, the officer talked with him about S.M.'s allegations of sexual assault. The officer testified that Macedo denied the allegations and claimed that he did not have a sexual relationship with S.M. The officer's discussion with Macedo was recorded by a body-worn camera and a squad camera. These recordings were lost. The officer also testified that he generated a written police report summarizing his conversations with S.M. and Macedo, which was provided to Macedo.

At the hearing, the state conceded that it lost the recording of the follow-up interview with S.M. and the recordings of the discussion with Macedo after he signed the warrant. Neither the officer nor the investigator could explain how these recordings had been lost.

During the hearing, an issue relating to Macedo's *Miranda* rights also came up. When testifying about his discussion with Macedo regarding S.M.'s allegations, the officer admitted that he could not remember whether he placed Macedo in handcuffs or whether he read Macedo his *Miranda* rights before having the discussion. Based on that testimony, Macedo's counsel requested time to draft a motion to suppress Macedo's statements to the officer as a *Miranda* violation.<sup>1</sup>

Following the filing of that motion, the district court filed an order addressing both pending motions. First, with regard to the state's failure to produce the missing recordings, the district court concluded that the state did not commit a discovery violation because there was comparable evidence in place of the lost recordings—the officer's written police report summarizing the recordings of the interviews of S.M. and Macedo. The district court noted that Macedo could “bring out the inadequacy of the summaries and any flaws in the interviewing officer's perceptions using cross-examination.” Accordingly, the district court denied Macedo's motion to dismiss.

The district court did, however, grant Macedo's motion to suppress. The district court found that the officer did not provide Macedo a *Miranda* warning and determined that Macedo was in custody when the officer questioned him about S.M.'s allegations. Thus, the district court suppressed Macedo's statements to the officer.

---

<sup>1</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966), “prohibits the admission in evidence of statements made by a suspect during custodial interrogation absent procedural safeguards to protect the suspect's rights under the Fifth Amendment.” *State v. Tibiatowski*, 590 N.W.2d 305, 308 (Minn. 1999) (quotation omitted).

Following the district court's rulings on his motions, Macedo demanded a jury trial. The jury trial, which was initially scheduled for December 19, 2022, was rescheduled twice, ultimately to June 2023.

*Macedo Seeks Dismissal After the State Finds "New" Evidence*

Shortly before the June 2023 trial date, the state indicated to defense counsel and the district court that the state intended to move for dismissal. The state also told defense counsel that, before "the [s]tate filed anything," the prosecutor "would need to meet with" S.M. During that meeting, S.M. played a recording that he had saved on his phone, which, according to the prosecutor, contained an "incriminating" conversation between S.M. and Macedo. Upon hearing the recording, the prosecutor notified defense counsel and the district court that the state no longer intended to move for dismissal. The prosecutor also requested a continuance based on "new evidence"—namely, S.M.'s recording.

Defense counsel objected to the state's request for a continuance and asked the district court to dismiss the case under Minnesota Rule of Criminal Procedure 30.02 due to unnecessary delay by the state in bringing the case to trial. Defense counsel asserted that the state should have known about S.M.'s recording well before the prosecutor's recent meeting with S.M. because S.M. played a portion of the recording for the officer who first interviewed him, and its contents can be heard on the body-worn-camera recording of the officer's initial interview. Defense counsel also argued that the state could have obtained S.M.'s recording during previous meetings with S.M. Lastly, counsel emphasized that Macedo first demanded a trial in September 2022, around nine months prior to the June

2023 trial date. Based on those circumstances, counsel argued that the charges against Macedo should be dismissed for the state's unnecessary delay in bringing him to trial.

The district court orally denied Macedo's motion, summarily stating, "Your motion to dismiss for failure to prosecute is denied." The district court also denied the state's motion for a continuance because the officer's body-worn-camera recording, which the state had since the initial interview of S.M., included playback of the majority of S.M.'s purportedly new recording.

### *Jury Trial*

At trial, the state first called S.M. to testify. According to S.M., on the night of November 29, 2019, he was at a bar with Macedo and gave Macedo a ride back to his apartment after the bar closed. When they got back to Macedo's apartment, Macedo invited S.M. inside. Macedo lived in a one-bedroom apartment with a roommate. To give Macedo's roommate privacy, Macedo and S.M. hung out in a laundry room with a couch in it.

S.M. testified that he had "a little bit" of another drink at Macedo's house. S.M. started feeling lightheaded after drinking the beverage, so he told Macedo that he "would be laying on the couch." S.M. fell asleep on the couch but woke up to Macedo touching his behind. S.M. testified that he pushed Macedo away and tried to leave the laundry room. According to S.M., Macedo then grabbed S.M.'s arm and bent him over the edge of the couch. Next, Macedo pulled down S.M.'s pants, twisted S.M.'s left arm behind his back, and started licking and penetrating S.M.'s anus with his tongue. S.M. testified that he tried to fight back, but Macedo pushed his head against the couch when he tried to get up.

According to S.M., the incident lasted about 10 minutes. S.M. testified that Macedo stopped assaulting him after Macedo heard his roommate stirring in the other room. At that point, Macedo “[threw] himself onto the ground” and put his pants back on. S.M. also pulled his pants back up. The roommate then entered the laundry room and asked Macedo what was going on. After Macedo replied that nothing was happening, the roommate entered the bathroom connected to the laundry room. At that point, S.M. left Macedo’s apartment.

The jury also heard the recording of S.M.’s initial statement to police and S.M.’s phone recording of his conversation with Macedo. Along with the recordings, which were in Spanish, the state introduced transcripts of the recordings. Both transcripts are in Spanish and include an English translation. S.M.’s recorded statement to police in May 2020 is generally consistent with his trial testimony. In the recording, S.M. also told the officer that he delayed reporting the incident for several months because he was embarrassed, but he decided to disclose the incident because Macedo’s ongoing workplace harassment was causing S.M. “a lot of stress.”

S.M. testified that he used his phone to record a conversation with Macedo that occurred about a month after the sexual assault at Macedo’s apartment. S.M. testified that the conversation happened in S.M.’s car while S.M. was driving Macedo home from work. According to S.M., Macedo did not know that S.M. was recording it. S.M. testified that he made the recording because “there were no[] witnesses of what had happened” and he “wanted some evidence of everything [Macedo] had been telling [S.M.] all along.” In the recording, Macedo tells S.M. that S.M. had “awoke[n]” a “desire” within him. Macedo

also tells S.M. that he “want[s]” his “backside” and that “it’s an obsession” now that S.M. “gave [Macedo] a taste.” Macedo asks S.M. for his consent to help him “get rid of all that nasty desire” and suggests that S.M. should allow Macedo to penetrate his “backside” with his penis. S.M. refuses to give his consent and, throughout the recording, S.M. expresses his disinterest in performing any sexual acts with Macedo.

Macedo testified on his own behalf. He stated that S.M. consented to the sexual encounter in November 2019. Macedo admitted that he “want[ed] something sexual to happen again” with S.M., as reflected by the recording of the conversation between the two, but he claimed that he “did not want to do anything that [S.M.] would not agree with.” Macedo also asserted that he and S.M. routinely flirted with each other.

In his testimony, Macedo implied that S.M.’s initial statement to police was the result of workplace animosity between Macedo and S.M. Macedo claimed that he received a large bonus and S.M. received a small bonus, which made S.M. “really upset.” Macedo testified that he declined to share his bonus with S.M. after S.M. asked Macedo for money. Macedo added that S.M. was not a hard worker, and Macedo had to cover for S.M.’s shortcomings at work. Macedo testified that he eventually told S.M. that he needed to “step up” and that he was not going to cover for S.M. anymore. Macedo said that S.M. “left upset [after that conversation], and that’s when he went to see the police.”

Macedo also testified that S.M. was religious and had expressed concern about having premarital sexual relations with a man. According to Macedo, S.M. said that he felt embarrassed about the thought of telling his future wife about what had happened.

On cross-examination, the prosecutor asked Macedo if he denied that “anything sexual occurred” with S.M. when he was interviewed by the officer who arrested him. Macedo testified that he could not remember “because it’s been a long time.” The prosecutor then explained that she was going to ask some additional questions to clarify what Macedo “did and didn’t say” to the officer. In response to the subsequent questions, Macedo claimed he had no memory. When asked if he told the officer about any of the specifics of his sexual relationship with S.M. that he testified to at trial or about flirting with S.M., Macedo responded that he could not remember the details of the conversation except that he did recall the officer asking him if he had harassed S.M. at work. Macedo stated that he denied harassing S.M. Lastly, Macedo expressly denied telling the officer that S.M. “couldn’t handle it when other employees would call him gay.”

Based on Macedo’s answers indicating a lack of memory about his prior statement to the officer, the district court permitted the state to call the officer in rebuttal to testify about his interview of Macedo. The officer testified that Macedo denied having a sexual relationship with S.M. and claimed that S.M. took “things overboard” and did not appreciate his coworkers “play[ing] along with him being gay.” The officer also testified that the impression he was left with was that S.M. and Macedo were just friends and that “it wasn’t anything sexual at all.”

#### *The State’s Closing Argument*

During the state’s closing argument, the prosecutor anticipated that Macedo would argue that S.M. reported the sexual assault because S.M. was “embarrassed that he engaged in a consensual sex act with another man; that because of his religion, he had to say it

wasn't consensual to save face with his church." The prosecutor argued that S.M. had no reason to lie about the assault because "word did not get out" and "no one knew about it." The prosecutor also relied on the officer's rebuttal testimony to attack Macedo's defense that the November 2019 encounter with S.M. was consensual, pointing out that "[Macedo] told [the officer] that they had never had a sexual relationship."

### *Verdict and Sentencing*

The jury returned guilty verdicts on the third-degree and fourth-degree criminal-sexual-conduct counts. The district court convicted Macedo of third-degree criminal sexual conduct but did not enter a conviction for the lesser-included offense of fourth-degree criminal sexual conduct. Macedo received an executed 41-month sentence.

Macedo appeals.

## **DECISION**

Macedo makes four arguments on appeal. First, he asserts that the district court abused its discretion by denying his motion to dismiss the complaint against him based on unnecessary delay by the state in bringing him to trial. Second, and in the alternative, Macedo argues that he is entitled to a new trial because the district court abused its discretion by permitting the state to call the officer who interviewed Macedo to testify as a rebuttal witness. Third, Macedo argues that a new trial is warranted because the prosecutor engaged in misconduct. Finally, Macedo argues that, if the evidentiary and prosecutorial errors do not individually warrant a new trial, the cumulative effect of the errors requires one. We conclude that Macedo's arguments do not warrant reversal.

**I. The district court did not abuse its discretion by denying Macedo’s motion to dismiss under rule 30.02.**

Macedo first argues that the district court should have dismissed the complaint against him pursuant to Minnesota Rule of Criminal Procedure 30.02. Rule 30.02 provides that “[t]he [district] court may dismiss the complaint . . . if the prosecutor has unnecessarily delayed bringing the defendant to trial.” Minn. R. Crim. P. 30.02. For dismissal to be warranted under rule 30.02, the defendant must demonstrate both unnecessary delay and prejudice. *State v. Hart*, 723 N.W.2d 254, 257 n.5 (Minn. 2006) (noting that the supreme court requires “a showing of prejudice for a dismissal under the rule”). We review a district court’s denial of a motion to dismiss under rule 30.02 for an abuse of discretion. *State v. Mikell*, 960 N.W.2d 230, 256 (Minn. 2021). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

Macedo argues that the state’s delay in bringing him to trial was the result of the state losing evidence and failing to interview its own witness and therefore amounted to an unnecessary delay. The state counters that “the longest delays in the proceedings, including bringing the case to trial” were attributable to the defense.

Assuming without deciding that the state unnecessarily delayed in bringing Macedo to trial, we conclude that the district court did not abuse its discretion by denying the motion to dismiss. We reach this conclusion because Macedo did not meet his burden to demonstrate prejudice resulting from the delay. Before the district court, Macedo did not address the question of prejudice. He did not raise any argument or otherwise contend that

he was prejudiced because of the delay. Consequently, Macedo failed to meet his burden of demonstrating *both* unnecessary delay and prejudice as required for relief under rule 30.02. *Hart*, 723 N.W.2d at 257 n.5. Although Macedo argues on appeal that he was prejudiced due to the delay, this argument is not properly before us. *State v. Banks*, 875 N.W.2d 338, 346 (Minn. App. 2016), *rev. denied* (Minn. Sept. 28, 2016) (stating “[a]ppellate courts ordinarily do not consider issues raised for the first time on appeal”). The district court therefore did not abuse its discretion by denying Macedo’s rule 30.02 motion to dismiss.<sup>2</sup>

**II. The district court did not abuse its discretion by permitting the state to call a rebuttal witness to testify about Macedo’s suppressed statement.**

Macedo next argues that the district court abused its discretion by permitting a law-enforcement officer to testify in rebuttal about Macedo’s statement that the district court had previously suppressed on *Miranda* grounds.

“Statements made by a suspect during a ‘custodial interrogation’ are admissible only if the statement was preceded by a *Miranda* warning.” *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010) (quoting *Miranda*, 384 U.S. at 444-45). “*Miranda* provides procedural safeguards to protect an individual’s Fifth Amendment privilege against self-incrimination.” *State v. Heinonen*, 889 N.W.2d 817, 820-21 (Minn. App. 2017), *aff’d*, 909 N.W.2d 584 (Minn. 2018). But “[t]he shield provided by *Miranda* cannot be perverted

---

<sup>2</sup> Because the record reflects that Macedo failed to argue prejudice before the district court, we are satisfied that the district court did not abuse its discretion by denying the rule 30.02 motion. We note, however, the district court summarily denied the motion without specifying its reasons. To facilitate appellate review, we encourage district courts to make findings and determinations in support of a rule 30.02 ruling even when doing so orally.

into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances.” *Harris v. New York*, 401 U.S. 222, 226 (1971). Thus, the state may impeach a defendant’s testimony with his prior inconsistent statements—so long as they were voluntary—even if those statements were suppressed pursuant to *Miranda*. *Id.*; see *State v. Slowinski*, 450 N.W.2d 107, 111 (Minn. 1990) (applying this aspect of *Harris*). “Ordinarily, what is proper rebuttal rests almost wholly in the discretion of the [district] court.” *State v. Turnbull*, 127 N.W.2d 157, 162 (Minn. 1964). We review a district court’s admission of rebuttal testimony for an abuse of discretion. *State v. Swaney*, 787 N.W.2d 541, 562 (Minn. 2010).

Macedo contends that the district court abused its discretion by allowing the officer to testify in rebuttal as to Macedo’s suppressed statement. More specifically, Macedo argues that his trial testimony was not inconsistent with his previous statement to the officer, and therefore the district court should not have permitted the officer to testify in rebuttal as to his suppressed statement. The state counters that Macedo’s prior statement “directly contradicted his testimony to the jury.” We agree with the state.

At trial, Macedo testified that his sexual encounter with S.M. was consensual. Macedo also admitted to flirting with S.M. and asking him for sex. On cross-examination, the prosecutor asked Macedo whether he denied having sexual relations with S.M. when talking with the officer who interviewed him about the allegations. Macedo testified that he could not remember doing so. He testified that he only remembered the officer asking him if he was harassing S.M. at work and he told the officer that he “did not do that.” When

the prosecutor asked him if he also told the interviewing officer that S.M. “couldn’t handle it when other employees would call him gay,” Macedo testified, “No, I didn’t say that.”

Following Macedo’s testimony, the state moved to call the interviewing officer to testify on rebuttal. The state proffered that the rebuttal testimony was admissible for impeachment purposes because “Macedo testified that he did not recall certain portions of his statement [to the officer,]” and the state had concerns over whether Macedo’s lack of recollection was “feigned.” The state also argued that the officer’s rebuttal testimony was proper for impeachment purposes because it would directly contradict Macedo’s testimony denying that he told the officer that S.M. did not appreciate being called gay. The district court permitted the officer to testify in rebuttal on statements that Macedo gave during the interview regarding topics that Macedo was questioned about at trial because “Macedo did answer some questions about his prior statement, and on some he didn’t remember.”

In his rebuttal testimony, the officer testified that, during his interview with Macedo, Macedo denied having a sexual relationship with S.M. According to the officer, Macedo stated that nothing sexual occurred with S.M., and Macedo only admitted to some “horseplay.” The officer also testified that Macedo told him that S.M. took “things overboard and [could not] handle it when other employees [would] play along with him being gay.” The officer stated that Macedo did not give him any indication that (1) he had a consensual sexual relationship with S.M., (2) he had flirted with S.M., or that (3) he had asked S.M. to have sex with him.

The officer’s rebuttal testimony reflects that there is a conflict between what Macedo told the officer during his interview of Macedo and what Macedo testified to at

trial. For example, Macedo testified at trial that the charged sexual conduct was consensual but, during the interview with the officer, Macedo denied having sexual relations with S.M. and stated that nothing sexual occurred. Similarly, Macedo's testimony at trial also conflicted with the officer's testimony about coworkers calling S.M. gay. Macedo expressly denied that he told the officer S.M. "couldn't handle it when other employees would call him gay." But the officer testified that Macedo made such a statement. Due to the inconsistencies between Macedo's testimony at trial and his prior statements during his interview with law enforcement, the district court did not abuse its discretion by permitting the officer to testify in rebuttal to the substance of the suppressed statement. *See Harris*, 401 U.S. at 226.

### **III. The prosecutor did not commit plain-error misconduct.**

Macedo next argues a new trial is necessary because the prosecutor committed misconduct by misstating evidence and by misleading the jury. We are not persuaded.

When, as here, there is no objection at trial to the alleged prosecutorial misconduct, we "review the prosecutor's statements under a modified plain error analysis." *State v. Davis*, 982 N.W.2d 716, 726 (Minn. 2022). Under this analysis, the defendant has the burden to prove an error that is plain. *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017). "An error is plain if it [i]s clear or obvious," which is usually established "if the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). If the defendant meets his burden to establish plain error, "the burden shifts to the [s]tate to demonstrate that the plain error did not affect the [appellant's] substantial rights." *Parker*, 901 N.W.2d at 926. If the state

does not meet its burden, appellate courts “consider whether the error should be addressed to ensure fairness and the integrity of judicial proceedings.” *Id.*

Macedo argues that the prosecutor committed misconduct that constitutes plain error by misstating the evidence at trial and by making arguments based on facts that were not in the trial evidence. “A prosecutor commits misconduct by intentionally misstating evidence.” *State v. Mayhorn*, 720 N.W.2d 776, 788 (Minn. 2006). It is also misconduct for a prosecutor to “speculate without a factual basis” or “mislead the jury as to the inferences it may draw.” *State v. Peltier*, 874 N.W.2d 792, 805-06 (Minn. 2016).

In support of his argument, Macedo alleges four specific instances of misconduct. First, Macedo asserts that the prosecutor committed misconduct while cross-examining him. Macedo argues that the prosecutor’s questioning on whether he told the interviewing officer that nothing sexual happened between him and S.M. was tantamount to misstating the evidence at trial because the interviewing officer’s “report about Macedo’s statement does not say that.” This argument misses the mark. As an initial matter, Macedo’s reliance on the officer’s report is misguided because the report was not entered into evidence at trial. The only evidence of Macedo’s prior statement to the officer admitted at trial was introduced via the officer’s rebuttal testimony, and the officer testified that Macedo denied having sexual relations with S.M. Moreover, the prosecutor was merely questioning Macedo during her cross-examination—she was not making a statement about any evidence. The prosecutor therefore did not misstate the evidence during her cross-examination of Macedo.

Second, Macedo argues that the prosecutor committed misconduct during closing argument by stating that Macedo “lied” when he told the interviewing officer that he did not have sexual relations with S.M. Macedo contends that this portion of the closing argument misstated the evidence from trial because Macedo never denied having sexual contact with S.M. This argument is unavailing. The evidence from trial reflects that the interviewing officer testified on rebuttal that Macedo made such a denial. Thus, the prosecutor did not misstate the evidence or mislead the jury in this regard during closing argument.

Third, Macedo argues that the prosecutor injected misinformation into the jurors’ minds by stating that “no one knew” about the assault because, according to Macedo, the evidence showed that someone did know—Macedo’s roommate. When reviewing prosecutorial misconduct pertaining to closing argument, “we look to the closing argument as a whole, rather than to selected phrases and remarks.” *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (quotation omitted). Based on our review, we are satisfied that the prosecutor did not intentionally misstate the evidence. During the state’s closing argument, in an effort to rebut Macedo’s likely argument that S.M. told the officer that the sexual conduct was not consensual “to save face with his church,” the prosecutor argued that the defense’s theory was not persuasive because “no one knew” about what happened. The prosecutor emphasized that Macedo’s roommate did not “interrupt[] this sex act” and “start[] telling everyone about it.” These statements by the prosecutor do not misstate the evidence. The evidence at trial regarding Macedo’s roommate was that he opened the door to the laundry room and walked through the room on his way to the

bathroom around the time Macedo was assaulting S.M. But S.M. and Macedo each testified that the roommate entered the laundry room only after Macedo separated from S.M. and S.M. was able to pull up his pants. And, even assuming the roommate witnessed any sexual conduct, there is no evidence that the roommate told anyone about what he saw when he entered the room. For these reasons, we cannot conclude that the prosecutor intentionally misstated the evidence or misled the jury by arguing that “no one knew” about the sexual assault.

Fourth, Macedo argues that the prosecutor misstated the evidence when the prosecutor was discussing the recording S.M. made of a conversation he had with Macedo. During closing argument, the prosecutor stated that the recording reflects that S.M. told Macedo, “It doesn’t give you the right to force me.” The prosecutor relied on that statement to argue that S.M. was “allud[ing] to what had occurred” and was “talking about the sexual assault.” Macedo is correct that the transcript of S.M.’s recording does not include such a statement by S.M. But according to the transcript of the recording, S.M. says, “[T]hat doesn’t mean that you have the right to—” before being interrupted by Macedo, who says, “I’m not forcing you, silly.” Further, on Macedo’s cross-examination, Macedo admitted that he remembered S.M. telling him, “This doesn’t give you the right to force me” and that “it was really strange” for Macedo that S.M. “was acting up like that because he had consent[ed] to several things before.” Macedo’s testimony on cross-examination is evidence that S.M. made the statement in question. Therefore, while the prosecutor’s reference to S.M.’s statement as reflected on the recording was imprecise, we cannot

conclude that the prosecutor intentionally misstated this piece of evidence during closing argument.

For the foregoing reasons, we conclude that Macedo has not met his burden to demonstrate that the prosecutor engaged in plainly erroneous misconduct. *See State v. Epps*, 964 N.W.2d 419, 423 (Minn. 2021) (“[A] negative answer to any one of the three parts of the plain error doctrine may end our analysis and a defendant’s quest for relief.”).

#### **IV. Macedo has not shown cumulative errors that necessitate a new trial.**

Lastly, Macedo argues that, even if the admission of the officer’s rebuttal testimony and the prosecutor’s misconduct do not individually warrant a new trial, the cumulative effect of the errors does. In rare cases, a new trial may be warranted when “the errors, . . . taken cumulatively, have the effect of denying the appellant a fair trial.” *State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017) (quotation omitted). As discussed above, the district court’s ruling permitting the officer’s rebuttal testimony was not an abuse of discretion and Macedo has not demonstrated that the prosecutor committed misconduct. Because Macedo has not demonstrated error in either regard, we conclude there is no cumulative error warranting a new trial.

**Affirmed.**