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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1021**

State of Minnesota,
Respondent,

vs.

Matthew Phillip Ecker,
Appellant.

**Filed April 21, 2025
Affirmed; motion denied
Bond, Judge**

Ramsey County District Court
File No. 62-CR-22-7282

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

John J. Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Robert D. Richman, St. Louis Park, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bond, Judge; and Smith,
John, Judge.*

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

NONPRECEDENTIAL OPINION

BOND, Judge

In this direct appeal from the judgment of conviction for second-degree intentional murder, appellant argues that his conviction should be reversed because the evidence was insufficient to prove beyond a reasonable doubt that he intentionally caused the victim's death. Alternatively, appellant argues that he is entitled to a new trial because the prosecutor committed misconduct during closing argument by misstating the burden of proof and disparaging appellant's character. Because the evidence is sufficient to prove appellant's guilt beyond a reasonable doubt, and because the prosecutor did not commit plain error during closing argument, we affirm.

FACTS

Respondent State of Minnesota charged appellant Matthew Phillip Ecker with second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2022), in connection with the death of his romantic partner, A.P. The state alleged that in December 2022, Ecker shot A.P. during a struggle at the door to the bathroom in A.P.'s apartment. Ecker maintained that A.P. took her own life after she locked herself in the bathroom. The case proceeded to a jury trial, where the following evidence was received.

Ecker, who lived in Fergus Falls with his wife and four children, had been in a romantic relationship with A.P. for approximately two years. A.P. struggled with addiction and mental-health issues and had previously attempted suicide by taking too many medications. Ecker, a nurse practitioner, prescribed A.P. multiple medications and had

given her approximately \$28,000 over the course of their relationship. By December 2022, Ecker's credit cards were at or reaching their credit limits.

A.P. had recently become unemployed but had a job interview scheduled for December 15. On December 13, A.P. exchanged text messages with Ecker about the prospective job's location, hours, and salary. In one text, A.P. stated, "I'm not very hopeful at the moment about life." On December 14, A.P. asked Ecker for help paying the next month's rent and for additional prescription refills. Ecker agreed. A.P. also told Ecker that she had applied for additional jobs, and had multiple interviews scheduled in the near future. On December 15, A.P. spoke with a close friend and discussed plans to attend the friend's wedding the following summer. According to the friend, A.P. sounded normal during the call.

A.P. was right-handed. A.P.'s friends and family testified that she had not grown up around guns, did not know how to use them, cared about how she presented herself to the people around her, and was unlikely to use a firearm to harm herself.

Events of December 15-16, 2022

On December 15, A.P. texted Ecker for help because she had gotten into an argument with S.A., a man she was dating. A.P. and S.A.'s relationship was volatile, and Ecker took a day off work to travel to St. Paul and be with A.P. During the evening of December 15, Ecker and A.P. went to several bars. At the last bar they visited, they encountered S.A. with another woman. An altercation ensued and S.A. punched Ecker.

Surveillance footage shows Ecker and A.P. entering A.P.'s apartment building at 2:05 a.m. on December 16. At 2:24 a.m., Ecker and A.P. left the building; a few minutes

later, A.P. re-entered the building, followed by Ecker. The state characterized aspects of Ecker and A.P.'s body language as they re-entered the building as evidencing frustration.

At 2:52 a.m., Ecker called 911 and reported that A.P. had "shot herself in the head in the bathroom." Ecker said that the shooting happened about four minutes ago and that the gun, which was his, was on A.P.'s chest. Police arrived within minutes. A.P. was lying on her back on the bathroom floor with a gunshot wound to her left temple. There was a large amount of blood surrounding her head and blood spatter was on the toilet, bathtub, and shower curtain. The gun was lying on the left side of A.P.'s chest; her left hand was resting loosely on top of the gun. A.P.'s legs were splayed out on either side of the open bathroom door, such that her left leg obstructed the door from closing. Officers observed that A.P. was very pale and that the blood on the floor was already coagulating, factors which indicated that some time had elapsed between the shooting and their arrival at the scene. A.P.'s left hand had scantily splattered blood but otherwise appeared clean. A gun holster was on the kitchen island. A.P. was pronounced dead at the scene.

Physical and forensic evidence

The edge of the bathroom door had a vertical crack extending above and below the latch, and the metal piece that surrounded the latch was missing. The metal latch piece was later found underneath A.P.'s head, covered in blood. The bathroom sink was dry.

The major DNA profile obtained from the mixture on the firearm's handgrip and slide serrations matched A.P. The firearm's magazine had a single DNA profile that matched A.P. Ecker's DNA was not detected on the gun. Testing of the gun holster revealed a mixture originating from five individuals and neither A.P. nor Ecker could be

excluded as possible contributors. Gunshot residue was detected on A.P.'s left hand. There were chemical indicators for blood on the gun's muzzle, but the gun was otherwise very clean. Neither blood nor gunshot residue was detected on Ecker's clothing.

Toxicology indicated that A.P.'s alcohol concentration was 0.227. She also tested positive for diazepam, fluoxetine, amphetamine, and trazodone.

Ecker's statements

At the scene, Ecker told the police that "everything was fine" when he and A.P. got back to the apartment. Ecker brought his gun with him to St. Paul because he was worried about S.A. coming back. According to Ecker, A.P. grabbed the gun from his backpack, put it to her head, went into the bathroom, locked the door, and shot herself. When Ecker heard the gunshot, he broke the door open. Ecker said that he held his hands over the gunshot wound in an attempt to stop the bleeding. Then he washed his hands in the bathroom sink and called 911. Police observed that Ecker was "crying real hard" and appeared in shock but was not shedding any tears.

Later that morning, Ecker gave a *Mirandized* statement at the police station. In this statement, Ecker said that A.P. grabbed the gun out of the holster, which was in his backpack. A.P. cocked the gun, held it to her left temple with her left hand, and told Ecker that if he came any closer, she would pull the trigger. Ecker said that A.P. backed up into the bathroom, shut the door, and locked it. Ecker went to the bathroom door, asked A.P. what she was doing, and then heard a gunshot. Using his shoulder, he broke through the door and saw A.P. lying on the floor.

Ecker did not tell officers at the apartment that he moved the gun, but at the station, he admitted that he took the gun from the bathroom floor and placed it on A.P.'s chest. When the investigators noted that the gun was found underneath A.P.'s hand, Ecker acknowledged that it was possible he also moved her hand so that it rested on top of the gun. He stated that approximately four minutes passed before he called 911. Later in the interview, Ecker told police that he needed to change one aspect of his statement. Ecker told police that when he first moved the gun, he put it in his suitcase. Then he went back to the bathroom, looked at A.P., and decided to move the gun back to the bathroom, where he placed it on A.P.'s chest underneath her left hand. Ecker stated that he was scared he would get in trouble because it was his gun. He denied cleaning the gun. Ecker estimated that five to eight minutes elapsed between the shooting and his 911 call.

Police officers' testimony

Multiple police officers testified regarding their observations at the scene and their investigation, and the jury viewed clips from responding officers' body-worn cameras. Several officers testified that the physical evidence appeared to contradict Ecker's version of events. For instance, Ecker stated that the bathroom door was closed when A.P. shot herself, but A.P.'s leg would have prevented the door from closing. Ecker told police he held his hands over the gunshot wound and then washed his hands, but, despite the significant amount of blood in the bathroom, the sink was dry and there was no blood on the faucet handles. Officers noted that A.P.'s left hand was "very clean for having been used to shoot herself," and that the lack of blood on the firearm, given the other evidence at the scene, was "inconsistent" with suicide.

Testimony from the state's medical examiner

Dr. Kelly Mills, the chief medical examiner for Ramsey County, conducted A.P.'s autopsy. Dr. Mills testified that the cause of death was a gunshot wound to the head. The bullet track was left to right and slightly back to front. The entrance wound showed abrasions from the barrel of the gun, indicating a contact or close contact wound.

Dr. Mills concluded that the manner of death was undetermined, meaning she could not definitively say whether it was homicide or suicide. However, Dr. Mills testified that she observed no facts inconsistent with homicide, whereas several facts were inconsistent with suicide: for example, A.P. was right-handed and Ecker, A.P.'s romantic partner, had moved the gun multiple times, ultimately positioning it under A.P.'s left hand. These facts led Dr. Mills to exclude suicide as a manner of death. Regarding the presence of gunshot residue on A.P.'s left hand, Dr. Mills noted that gunshot residue can be transferred to a person if they are in close proximity to a gun even if they did not handle it. Gunshot residue can also be washed off.

Testimony from the defense medical examiner

As part of the defense case,¹ Ecker called Dr. Lindsey Thomas, the former medical examiner for eight different counties in Minnesota. Dr. Thomas agreed with Dr. Mills that the manner of death was undetermined. However, Dr. Thomas believed that it was "more likely" that A.P. died by suicide. Dr. Thomas noted several factors consistent with suicide, including A.P.'s chemical dependency and mental-health issues, the unusual nature of a

¹ Ecker did not testify at trial.

contact gunshot to the temple, the lack of defensive wounds, and the scantily splattered blood on A.P.'s left hand, which Dr. Thomas opined was consistent with blowback from A.P. firing the gun. On cross-examination, Dr. Thomas agreed that "a bullet track extending from back to front in the temple is uncommon in suicide" and that trying to close a door on a person could be considered defensive action.

The jury found Ecker guilty. The district court sentenced Ecker to 360 months in prison.

Ecker appeals.

DECISION

I. The circumstantial evidence was sufficient to prove that Ecker intentionally caused A.P.'s death.

Ecker argues that his conviction should be reversed because the state's evidence failed to prove beyond a reasonable doubt that he caused A.P.'s death. Specifically, Ecker claims that the circumstantial evidence supports a reasonable hypothesis that A.P. killed herself.

Due process requires the state to prove every element of a charged crime beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970); *State v. Merrill*, 428 N.W.2d 361, 366 (Minn. 1988); see U.S. Const. amend. XIV; Minn. Const. art. I, § 7. To obtain a conviction for second-degree intentional murder, the state must prove beyond a reasonable doubt that the defendant "cause[d] the death of a human being with intent to effect the death of that person or another, but without premeditation." Minn. Stat. § 609.19, subd. 1(1).

In determining whether the evidence is sufficient to support a conviction, we “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). We view the evidence in the light most favorable to the verdict and assume the fact-finder believed the state’s witnesses and disbelieved contrary evidence. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014).

At trial, the state relied on circumstantial evidence to prove that Ecker killed A.P. The parties agree that we should apply the circumstantial-evidence standard of review.

Under the circumstantial-evidence standard of review, our first step is to identify the circumstances proved. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). To do 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. Harris*, 895 N.W.2d 592, 600-01 (Minn. 2017). The deference at this first step to the fact-finder’s acceptance of the proof of the circumstances and rejection of evidence that conflicts with the circumstances proved “recognize[s] that the trier of fact is in the best position to determine credibility and weigh the evidence.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). When uncontroverted accounts from the state’s witnesses “are not necessarily contradictory to the verdict, they constitute circumstances proved.” *State v. German*, 929 N.W.2d 466, 473 (Minn. App. 2019).

Under the second step, we determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Al-Naseer*, 788 N.W.2d at 473. We independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, giving “no deference to the fact finder’s choice between reasonable inferences.” *Silvernail*, 831 N.W.2d at 599 (quotation omitted). “Circumstantial evidence 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.” *Al-Naseer*, 788 N.W.2d at 474 (quotation omitted).

Importantly, when evaluating the inferences that may be drawn from the circumstances proved, “[w]e review the circumstantial evidence not as isolated facts, but as a whole.” *State v. Sterling*, 834 N.W.2d 162, 175 (Minn. 2013). “The circumstantial evidence standard does not allow us to ‘analyze and parse each fact’ in a ‘piecemeal’ fashion to conclude that a hypothesis is reasonable.” *State v. Colgrove*, 996 N.W.2d 145, 150 (Minn. 2023) (quoting *State v. Cox*, 884 N.W.2d 400, 415 (Minn. 2016)). And a reviewing court may not set aside a verdict based on conjecture or speculation. *Id.*; *Al-Naseer*, 788 N.W.2d. at 480.

A. The circumstances proved

We first identify the circumstances proved, which in this case are not disputed by the parties in any significant way.

Ecker, who was married, was in a romantic relationship with A.P. Ecker prescribed medications for A.P. and provided her financial support, causing him to accrue significant

credit card debt. A.P. struggled with addiction and mental-health issues and had previously attempted suicide. Two days before her death, A.P. had told Ecker that she was “not very hopeful at the moment about life.” Yet A.P. had multiple job interviews scheduled, was making plans to attend a friend’s wedding in the summer, and asked Ecker to help with her next rent payment and medication refills. A.P. neither liked nor knew how to use guns. She was right-handed and cared about her physical appearance and “how she presented herself to people around her.”

On the evening of December 15, there was an altercation at a bar with S.A., whom A.P. was dating, and S.A. punched Ecker. Ecker and A.P. returned to A.P.’s apartment at 2:05 a.m. At 2:24 a.m., they briefly left the building, re-entering a few minutes later.

Ecker called 911 at 2:52 a.m. and reported that A.P. had shot herself in the head. A.P.’s body was on the floor of the bathroom and showed no signs of defensive wounds. The bathroom door was partially open with A.P.’s legs splayed out on either side of the door. A.P.’s left leg was in the path of the door, preventing it from closing. The bathroom door had a crack near the latch, and a piece of the latch was found underneath A.P.’s head. A.P. was pale and the blood was coagulating when police arrived, indicating it had been longer than the several minutes Ecker had reported passed since her death. Although there was a significant amount of blood in the bathroom, and Ecker told police he held his hands to A.P.’s head in an attempt to render aid, there was no blood on Ecker or his clothes. Ecker told police he washed his hands after touching A.P., but the sink was dry.

A.P. was killed by a single close-contact gunshot wound to her left temple. The bullet track was left to right and slightly back to front. Scantily splattered blood was

detected on A.P.'s left hand but her hand was otherwise very clean, which was unusual for someone who had used that hand to shoot themselves at close range.

No gunshot residue was found on Ecker, but there was gunshot residue on A.P.'s left hand. Gunshot residue can be washed off or transferred to a person if they are in close proximity to a gun even if they did not handle it.

A.P.'s DNA was on the gun and the holster. Ecker's DNA was not on his gun, even though he stated he moved it back and forth from the bathroom to his suitcase and then back to the bathroom. DNA can be cleaned or wiped off an object. Testing revealed chemical indicators for blood on the muzzle of the gun, but the gun otherwise appeared to be very clean, which an officer testified was inconsistent with suicide.

Ecker gave inconsistent accounts of his actions after the shooting. In his second statement, he admitted that he moved the gun, first putting it in his suitcase and then placing it on A.P.'s chest underneath her left hand, and that it could have been between five to eight minutes before he called 911.

The medical examiners could not determine the manner of death. However, Dr. Mills testified that she observed no facts inconsistent with homicide, whereas there were multiple facts inconsistent with suicide. Based on the evidence, Dr. Mills excluded suicide as the manner of death.

B. The circumstances proved are consistent with a reasonable hypothesis of guilt

Having established the circumstances proved, we next consider “whether a reasonable inference of guilt can be drawn from the circumstances proved, viewed as a

whole.” *Harris*, 895 N.W.2d at 600. We conclude that, when viewed as a whole, the circumstances proved support a rational hypothesis that Ecker caused A.P.’s death.

Ecker was the only other person in the apartment with A.P. A.P. was unfamiliar with guns, and, in the opinion of her family and friends, was unlikely to take her own life using a firearm.

The position of A.P.’s legs in relation to the bathroom door and the door’s metal latch piece underneath A.P.’s body are consistent with the state’s theory that Ecker slammed into the door before A.P. was shot and that the door was open when she died. The gun, which was Ecker’s, was located in A.P.’s left hand, but A.P. was right-handed. Officers testified that the lack of blood on the gun was inconsistent with suicide. *See State v. Allwine*, 963 N.W.2d 178, 188 (Minn. 2021) (stating that circumstances proved supporting reasonable inference that defendant was the person who used a gun to shoot his wife included law-enforcement testimony that the crime scene was inconsistent with suicide). Ecker stated he washed his hands after attempting to stop the bleeding, but there was no blood on the sink handles and the sink was dry. Ecker denied cleaning the gun, yet despite his admission that he transferred the gun from the bathroom to the suitcase and back to the bathroom, his DNA was not on his gun.

Perhaps most significantly, Ecker admitted that he moved the gun, first to his suitcase and then back to the bathroom, where he positioned it underneath A.P.’s left hand on her chest. Although Dr. Mills could not determine a manner of death, she testified that she had never seen a suicide where the decedent’s romantic partner repositioned the gun in

the way Ecker stated he had in this case. Dr. Mills believed that the evidence was inconsistent with suicide.

Thus, the circumstances proved, viewed in their entirety, support a reasonable inference that Ecker killed A.P.

C. The circumstances proved are inconsistent with any reasonable hypothesis except guilt

Ecker's primary contention is that, even if the circumstances proved support a reasonable inference of guilt, they support the equally reasonable inference of innocence, specifically that A.P. died by suicide. We independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, giving "no deference to the fact finder's choice between reasonable inferences." *Silvernail*, 831 N.W.2d at 599.

To support his argument that the circumstances proved support a reasonable inference of innocence, Ecker relies heavily on the evidence of A.P.'s mental-health issues, her prior suicide attempt, and her December 13 text message that she did not feel hopeful about life. But in determining the reasonableness of inferences, we must consider the circumstances proved not in isolation, but as a whole. *Colgrove*, 996 N.W.2d at 150; *Sterling*, 834 N.W.2d at 175. Here, other circumstances proved establish that A.P. was actively planning for the future: she was interviewing for jobs, arranging for ongoing payment of rent and refills of prescription medication, and making plans to attend a wedding the following summer. In addition, A.P. did not like, or have familiarity with, firearms, and multiple witnesses testified about the unlikelihood that A.P. would use a firearm to end her life.

Ecker also points to physical and forensic evidence as being inconsistent with guilt. Ecker argues that the nature of the gunshot wound, the lack of obvious defensive wounds, the absence of blood or gunshot residue on his hands or clothing, and the presence of A.P.'s DNA on his holster support the inference that A.P. committed suicide. Again, though, Ecker's argument relies on isolated circumstances. Additional circumstances proved include A.P.'s clean hands, the clean gun, A.P.'s pallor, the coagulating blood, the dry sink, and officer testimony that the crime scene was inconsistent with suicide. As a whole, this evidence is inconsistent with any reasonable inference of innocence.

Notably, the circumstances proved also include that Ecker removed the gun from the bathroom and then repositioned it on A.P.'s chest under her hand. Dr. Mills testified—and in our independent examination, we agree—that this behavior is particularly inconsistent with a rational hypothesis that A.P. took her own life. Viewing the circumstances proved as a whole, there is no *reasonable* inference that A.P. died by suicide. *State v. Tscheu*, 758 N.W.2d 849, 857 (Minn. 2008) (stating that the circumstances proved, as a whole, need not exclude all inferences other than guilt because “[t]he State’s obligation is to exclude all *reasonable* inferences other than guilt”).

Ecker highlights the lack of motive, arguing that its absence supports a rational theory of innocence. Motive is not an element that needs to be proven by the state in a homicide case. Nonetheless, the evidence here established that Ecker was having an affair with A.P. and was heavily in debt because of the money he had given her. Caselaw recognizes that financial strain can be motive evidence. *State v. Tran*, 712 N.W.2d 540, 549 (Minn. 2006) (discussing credit-card debt and financial problems as potential motive

for murder); *State v. Manthey*, 711 N.W.2d 498, 500-01 (Minn. 2006) (noting state's theory that defendant committed murder to collect on a life-insurance policy and obtain other financial benefits in order to pay off gambling debts).

Ecker asserts that it is "possible" that A.P.'s foot might have been outside the path of the door or that an officer may have moved A.P.'s leg when first entering the bathroom. Ecker also argues that the metal latch piece could have been underneath A.P.'s head not because he forced the door open before killing A.P., but because he moved her head as he was attempting to render aid. But there are no circumstances proved to support such inferences. We cannot overturn a jury verdict based on speculation or "mere conjecture." *See Cox*, 884 N.W.2d at 412; *Al-Naseer*, 788 N.W.2d. at 480.

Finally, Ecker emphasizes the opinions from the medical examiners that the manner of death was undetermined. We acknowledge the unusual circumstance of an undetermined manner of death in a homicide case. But "[w]eighing the credibility of witnesses, including expert witnesses, is the exclusive function of the jury." *State v. Triplett*, 435 N.W.2d 38, 44 (Minn. 1989). "Where the opinions of reputable doctors have a reasonable basis on the facts, it must be left to the trier of facts to say who is right when other doctors have conflicting opinions." *State v. Ostlund*, 416 N.W.2d 755, 760 (Minn. App. 1987) (quotation omitted), *rev. denied* (Minn. Feb. 24, 1988). Here, Dr. Thomas, the defense medical examiner, testified the manner of death was undetermined but was more likely suicide. Dr. Mills, the state's medical examiner, testified that the manner of death was undetermined, but she excluded suicide because of evidence inconsistent with a theory that A.P. took her own life. We defer to the jury's credibility determinations, and, given

the verdict, must assume that the jury believed Dr. Mills and disbelieved any testimony from Dr. Thomas to the contrary.

Viewed in their entirety, the circumstances proved render any inference of innocence unreasonable. Because the reasonable inferences drawn from the circumstances proved are consistent with the hypothesis that Ecker intentionally caused A.P.'s death, and inconsistent with any reasonable hypothesis that A.P. committed suicide, the evidence is sufficient to sustain Ecker's conviction for second-degree intentional murder.

II. Ecker is not entitled to a new trial based on alleged prosecutorial misconduct.

Ecker argues that he is entitled to a new trial because the prosecutor committed misconduct during closing argument. Because Ecker did not object to the prosecutor's argument at trial, we apply the modified plain-error test. *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). Under this test, the defendant must show that the prosecutor's conduct constituted (1) error and (2) that the error was plain. *Id.* "An error is plain if it was clear or obvious. Usually this is shown if the error contravenes case law, a rule, or a standard of conduct." *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotations and citation omitted). If a defendant successfully establishes an error that was plain, the burden shifts to the state to demonstrate that the error did not affect the defendant's substantial rights. *Portillo*, 998 N.W.2d at 248. If these three prongs are met, we determine "whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted).

Ecker first argues that the prosecutor denigrated the burden of proof during closing argument by referencing "the concept of a reasonable degree of medical certainty . . . solely

to distinguish that standard from proof beyond a reasonable doubt, so as to dilute the latter.” We disagree.

“A prosecutor’s misstatement of the burden of proof is highly improper and constitutes misconduct.” *State v. Martin*, 773 N.W.2d 89, 105 (Minn. 2009) (quotation omitted). During closing argument, the prosecutor stated:

We’ve heard over and over and over that [Ecker] came down to protect [A.P.]. We also heard that there are no people who can determine whether this is a homicide or whether this is a suicide because you didn’t hear from anyone who can do it. But that is why you are here today. That is why this jury has been impaneled. Because that decision belongs to you.

We’re not talking about moral guilt, we’re not talking about a medical standard, we are talking about legal guilt. We are talking about meeting elements and burdens.

The prosecutor’s statements do not amount to plain-error misconduct. First, the prosecutor did not affirmatively misstate the burden of proof. Rather, the prosecutor’s statement distinguished the legal burden of proof from the medical standard used to ascertain manner of death. Separating out different standards of proof does not necessarily equate to misstating those standards or privileging one standard over another. *See id.* (“[A]n argument that points out the difference between a criminal case and the civil preponderance-of-the-evidence standard is not misconduct provided the prosecutor also correctly states the reasonable-doubt standard.”). Contrary to Ecker’s assertion, the prosecutor did not argue that the medical standard was a higher standard than “legal guilt.” Rather, the prosecutor told the jury that it was not obligated to come to the same conclusion

as the medical examiners because the medical standard is distinct from the proof beyond a reasonable doubt necessary for criminal liability.

Additionally, the prosecutor correctly explained the burden of proof to the jury, stating:

I've got the duty to prove this case beyond a reasonable doubt. Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based on reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt.

The prosecutor also directed the jury to follow the district court's instructions, stating: "All of the instructions that you're supposed to get and that you have gotten, they come from the Court. . . . [T]he law is the law that the Court has given you." For these reasons, the prosecutor's comments regarding the burden of proof do not amount to plain error.

Second, Ecker argues that the prosecutor committed plain error by improperly attacking Ecker's character. A prosecutor may commit misconduct if they engage in improper character attacks against the defendant. *State v. Ives*, 568 N.W.2d 710, 713-14 (Minn. 1997); *see also State v. Jones*, 753 N.W.2d 677, 690-91 (Minn. 2008) (explaining that a prosecutor may not make "gratuitous" or "unfair" character attacks on a defendant).

Here, Ecker claims that the prosecutor improperly attacked his character by referencing Ecker's marriage, his extramarital relationship with A.P., the fact that he prescribed medications for A.P., and Ecker's statements about drinking with A.P. The prosecutor's comments were based on the evidence presented at trial. *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995) (observing that while the state's closing argument need not

be “colorless,” it must be based on the evidence produced at trial or reasonable inferences from that evidence). Moreover, the prosecutor’s statements do not rise to the level of the kind of gratuitous and improper attack on a defendant’s character that Minnesota courts have characterized as misconduct. *Cf. Ives*, 568 N.W.2d at 713-14 (holding that prosecutor’s references to defendant as a “would-be punk with a pathetic little life” was an improper attack on defendant’s character (quotations omitted)). We therefore conclude that the prosecutor did not commit plain-error misconduct during closing argument. Because there was no error that was plain, we need not consider the remaining prongs of the plain-error test.

Affirmed; motion denied.²

² The state moved to strike the portion of Ecker’s reply brief in which Ecker cites to a *New York Times* article concerning the relative number of tears produced by men compared to women. The state argues that this portion of Ecker’s reply brief “refers to matter outside the record on appeal.” Ecker argues that the article “is not evidence outside the record” because “[i]t is cited as authority in support of Mr. Ecker’s argument that there is no basis for the State’s unfounded claim that the absence of tears has any evidentiary significance.” Because Ecker’s reference to the disputed article has no bearing on our decision, we deny the state’s motion to strike as moot. *See Matakis v. State*, 862 N.W.2d 33, 39 n.6 (Minn. 2015) (denying state’s motion to strike as moot because the information the state sought to strike was not relevant to determining the outcome of the appeal).