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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1520**

State of Minnesota,
Respondent,

vs.

Terry Soloman Price,
Appellant.

**Filed August 18, 2025
Affirmed and remanded
Smith, Tracy M., Judge**

Olmsted County District Court
File No. 55-CR-23-7508

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

Michael Walters, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Worke, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the final judgment of conviction for domestic assault by strangulation, felony domestic assault, and obstruction of legal process, appellant Terry Soloman Price argues that he is entitled to a new trial because (1) the district court erred

by permitting the state to cross-examine Price about the facts and guilty pleas underlying his two prior convictions, (2) the district court abused its discretion by permitting the state to introduce prior out-of-court statements made by two witnesses, (3) the prosecutor committed misconduct by using the pronoun “we” to align the prosecutor with the jury during closing and rebuttal arguments, and (4) even if none of the errors are independently reversible, the cumulative effect of the errors warrants a new trial. In the alternative, Price argues that there is an error in the length of sentence on the warrant of commitment that requires reversal and remand to correct the error.

We reject Price’s challenges to his convictions, but we conclude that there is an apparent error in the district court’s sentencing order. We therefore affirm and remand to allow the district court to address the sentencing error.

FACTS

The factual summary of the events underlying Price’s convictions is derived from the jury trial in this case.

Events of November 3, 2023

On November 3, 2023, Price and his then-pregnant wife, P.M., were at a store running errands when they began to argue. The argument ended and they left the store, returning to their shared apartment in Rochester.

At the apartment, Price began to drink and P.M. went into the bathroom to hang a new shower curtain. After Price had been drinking for some time, he entered the bathroom, where he tried to initiate another argument with P.M. She declined to engage with him, and Price left the bathroom. A few minutes later, Price returned to the bathroom and attempted

to touch P.M. in her stomach area. She responded by telling him to “just leave [her] alone.” Price then tried to push P.M. into the bathroom mirror, but P.M. moved around him to leave the bathroom and cross a hallway into the couple’s bedroom. Price followed P.M. to the bedroom.

In the bedroom, the couple continued arguing. P.M. told Price that she would call the police if he “continue[d] to escalate.” She told Price to step back. Price grew angrier and lunged at P.M., who believed that he was trying to hit her. After Price lunged at her, P.M. told Price that she was calling the police, and Price tried to grab her cellphone away from her. P.M. moved around Price to leave the bedroom. Price grabbed her from behind, wrapping his arms around her neck and choking her. P.M. struggled to breathe as she tried to get out of Price’s grip. Price slammed P.M. to the hallway floor, put his weight on top of her, and continued to choke her while continuing to try to take her cellphone.

Eventually, Price lost his balance and fell. P.M. then got to her feet and ran across the apartment toward the front door while dialing 911 on her cellphone. Price chased P.M. and grabbed her from behind before she reached the door. As P.M. struggled against Price, Price hit her, choked her, and slammed her into several objects while threatening to kill her. Price released P.M. from his grip after he finally gained control of her cellphone. P.M. stood and fled out the front door of the apartment, which opened into a shared hallway where she encountered her adult son, J.M.

Price followed P.M. and J.M. through the hallway and outside to the apartment building’s parking lot. Price swung at P.M. and J.M., striking P.M. in the back. Price started a fight with J.M., during which P.M. got her cellphone back. Shortly after that, P.M.

connected with 911. The dispatcher told her that a police officer was driving into the parking lot.

In total, three police officers and one ambulance reported to the scene. The officers were responding to a series of 911 calls that they had received, including one in which J.M. could be heard yelling, “Get your hands off my momma.”

The first police officer to arrive, Officer Peterson, attempted to speak with P.M., but he was interrupted when Price approached him. Price made conflicting statements to Officer Peterson about what had occurred between him, P.M., and J.M., stating at different points that he had “wrestled” with both of them, only one of them, or neither of them. He also claimed that J.M. and P.M. initiated the fighting. While making these statements, Price showed signs of “increasing agitation,” including balling his fists, shouting, and breathing heavily. Price’s actions made Officer Peterson have safety concerns, and as a result, he chose to handcuff Price. By the time Officer Peterson made that decision, two more officers, Officers Fitzgerald and Sveen, had arrived at the scene.

Officer Sveen spoke with P.M. while Officer Peterson was speaking with Price. P.M. told Officer Sveen that she and Price had argued about their marriage that day and that Price had been drinking. P.M. stated that Price escalated a verbal argument between the couple to a physical attack, slamming her to the floor and grabbing her by her neck and hair, and that he also attacked her son, J.M. This conversation, which was captured on Officer Sveen’s body-worn camera, was interrupted by a “commotion” when Price yelled at Officers Peterson and Fitzgerald as they attempted to handcuff him. Officer Sveen went to assist those officers in restraining Price and placing him in handcuffs. Once Price was

handcuffed, Officer Sveen returned to speak further with P.M. She provided additional details about what had occurred, including that Price had told her that he was going to kill her. P.M. also showed Officer Sveen that she had suffered injuries to one of her arms and her chin. Officer Sveen photographed P.M.'s injuries.

Officer Peterson also spoke with J.M., who told Officer Peterson that he was present for part of the fight between P.M. and Price and that he saw Price put his hands around P.M.'s neck and squeeze. The conversation was recorded on Officer Peterson's body camera.

Pretrial Motions

Before trial, the state filed three motions asking the district court to admit certain evidence. These included a motion to admit evidence of two incidents of prior domestic conduct by Price against P.M., which had occurred in November and December 2019, as relationship evidence under Minnesota Statutes section 634.20 (2022);¹ a motion to admit evidence of Price's felony conviction arising out of the December 2019 incident as impeachment evidence under Minnesota Rule of Evidence 609 if Price chose to testify; and a motion to admit P.M.'s statements to Officer Sveen as prior consistent statements under Minnesota Rule of Evidence 807. The district court deferred ruling on the motions until trial.

¹ “‘Domestic conduct’ includes, but is not limited to, evidence of domestic abuse.” Minn. Stat. § 634.20. “Domestic abuse,” is defined in turn as, among other things, “physical harm, bodily injury, or assault” when “committed against a family or household member by a family or household member.” Minn. Stat. § 518B.01, subd. 2(a) (2022); *see also* Minn. Stat. § 634.20 (providing that “domestic abuse” under that section has the definition provided under section 518B.01, subdivision 2).

Trial

At trial, P.M. testified about the November 3 incident for which Price was charged in this case. In addition, after the district court granted the state's section 634.20 motion to admit evidence of the two incidents of domestic conduct, P.M. testified about those incidents. J.M. testified about the fight between P.M. and Price, including that he saw Price choke P.M. Officers Sveen, Fitzgerald, and Peterson testified about their investigation of the incident. The district court admitted exhibits, including photos of P.M.'s injuries and audio from 911 calls made by P.M. on November 3. The district court also granted the state's motion to admit portions of the officers' body-camera footage capturing the officers' conversations with P.M. and J.M. as prior consistent statements. Other body-camera footage recording Price's reaction to the police was also admitted.

Price testified in his own defense. The district court granted the state's motion to impeach Price with his prior felony conviction. The district court also permitted the state to cross-examine Price about the two prior domestic-conduct incidents.

Both parties made closing arguments. During the state's closing argument, the prosecutor used the pronoun "we" over 50 times. The prosecutor also used "we" three more times in her rebuttal argument. The jury found Price guilty of all counts charged.

Sentencing

At the sentencing hearing, the district court orally sentenced Price to a stayed prison term of 21 months with five years' probation and the condition that Price serve 222 days in jail, with the option to serve that time on authorized release. The district court then filed

a warrant of commitment that stated that Price's stayed sentence was for 24 months, rather than the 21-month term pronounced at his sentencing hearing.

Price appeals.

DECISION

Price challenges his convictions, arguing that (1) the district court erred by allowing the state to cross-examine him about the facts and guilty pleas underlying his convictions for the November and December 2019 incidents, (2) the district court abused its discretion by allowing the state to introduce prior consistent statements of P.M. and J.M. from police body-camera footage, (3) the prosecutor committed plain-error misconduct by aligning the state with the jury in closing and rebuttal arguments through the repeated use of the pronoun "we," and (4) the cumulative effect of these errors requires a new trial. Alternatively, Price argues that this court must reverse and remand to allow the district court to correct an error in the length of sentence in the warrant of commitment. We address each argument in turn.

I. The district court did not err by allowing the state to cross-examine Price about his prior domestic conduct.

Price argues that the district court committed reversible error by permitting the state to cross-examine him about the facts and guilty pleas underlying his two prior domestic-conduct offenses. He divides his argument into two assertions of error. First, he contends that the district court erred by ruling, over his objection, that the state could inquire into those incidents if Price took the stand and disputed P.M.'s testimony about the incidents. Second, he asserts that the state committed plain prosecutorial misconduct when, without

objection from the defense, the state exceeded the scope of the district court's ruling during its cross-examination of Price.

Before turning to Price's arguments, we provide some additional background. At the start of trial, the district court granted the state's motion under Minnesota Statutes section 634.20 to admit evidence about the November and December 2019 incidents of domestic conduct that Price committed against P.M. P.M. then testified about the two incidents during the state's case-in-chief, stating that Price choked her, punched her in the stomach, slammed her to the floor, and threatened to kill her.²

At the close of the state's case, Price indicated that he wanted to testify. Before accepting Price's waiver of his right to remain silent, the district court addressed the state's rule 609 motion to admit for impeachment purposes Price's felony conviction for domestic assault by strangulation arising from the December 2019 incident.³ The district court granted the state's motion but required the parties to characterize the conviction as an unspecified felony because the offense was too similar in nature to the offenses charged in Price's current case. The district court then confirmed that Price wanted to testify, and Price waived his right to remain silent. The state did not ask that Price's gross-misdemeanor

² P.M. was also pregnant during these incidents.

³ Under rule 609, a witness's credibility may be impeached by a felony conviction if "the court determines that the probative value of admitting [the] evidence outweighs its prejudicial effect." Minn. R. Evid. 609(a); *see also State v. Jones*, 271 N.W.2d 534, 537-38 (Minn. 1978) (outlining five factors considered under rule 609).

conviction for interference with a 911 call arising out of the November 2019 incident be admitted as impeachment evidence under rule 609.⁴

During discussion of the state's rule 609 motion, the state asserted that, if Price testified, it should be able to cross-examine him about the two prior domestic-conduct incidents pursuant to Minnesota Rule of Evidence 611(b). The district court decided that the state could inquire about those incidents, including Price's guilty pleas, if Price denied P.M.'s testimony about the two prior incidents. But the district court precluded such inquiry if Price "acknowledge[d]" the incidents as testified to by P.M.

Price took the stand. During direct examination, he acknowledged that "[P.M.] testified" that they had "some physical altercations" in November or December 2019 and that he was convicted of a felony in connection with those events. On cross-examination, the prosecutor questioned Price about the incidents. Regarding the November incident, Price acknowledged choking P.M. but denied slamming her to the floor, punching her in the stomach, or telling her that he was going to kill her; he also acknowledged pleading guilty to a 911-interference charge related to that incident. Regarding the December incident, Price testified that he had not attacked P.M., choked her, slammed her head on the ground, or punched her in the stomach or head. He acknowledged pleading guilty to an unspecified offense related to the December incident.

⁴ Convictions for crimes other than felonies are admissible under rule 609(a) only if they "involved dishonesty or false statement[s]."

A. The district court’s ruling was not erroneous.

Price argues that the district court erred by permitting the state, over his objection, “to impeach Price with the details of his prior convictions.”

Appellate courts review district courts’ evidentiary rulings for a clear abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). If an alleged error does not implicate a constitutional right, an appellant may obtain reversal only if they show that “there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016) (quotation omitted).

As Price recognizes, Minnesota Rule of Evidence 611(b) provides that “[a]n accused who testifies in a criminal case may be cross-examined on any matter relevant to any issue in the case, including credibility.” But Price contends that the cross-examination here was nevertheless precluded by rule 609. He cites for support the supreme court’s decisions in *State v. Clark*, 293 N.W.2d 49 (Minn. 1980), and *State v. Valtierra*, 718 N.W.2d 425 (Minn. 2006).

In *Clark*, the supreme court held that a defendant charged with an ordinance violation could not be cross-examined regarding her prior ordinance violations because the evidence was inadmissible under Minnesota Rule of Evidence 403.⁵ 293 N.W.2d at 52. The supreme court rejected the state’s argument that cross-examination related to the violations was permitted by rule 611(b) despite the inadmissibility of the violations under

⁵ Rule 403 permits the exclusion of evidence “if its probative value is substantially outweighed by” its prejudicial effect.

rule 403. *Id.* In *Valtierra*, the appellant argued that the district court erred by permitting the state to cross-examine him about the specific facts of his prior felony conviction for aggravated robbery that was introduced as impeachment evidence under rule 609. 718 N.W.2d at 435. The supreme court explained that, normally, when a prior conviction is admitted to impeach a witness under rule 609, cross-examination must be limited to the fact of the witness's conviction and should not extend to "the facts underlying the prior conviction" but further inquiry may be permitted if the witness "opens the door." *Id.* at 436 (quotation omitted).

Price argues that, under *Valtierra*, inquiry into the facts underlying his previous two offenses was impermissible under rule 609 because he did not open the door to further inquiry and his gross-misdemeanor conviction was not admissible as impeachment evidence under rule 609. He then contends that, because the inquiry was impermissible under rule 609, pursuant to *Clark*, the state's cross-examination could not have been authorized by rule 611(b). The argument is misguided.

In *Clark*, the evidence elicited on cross-examination of the defendant was barred by rule 403. Here, in contrast, in a separate ruling that Price does not challenge on appeal, the district court permitted the state to introduce evidence of Price's two prior incidents of domestic conduct as relationship evidence under section 634.20. In doing so, the district court determined that the evidence was relevant and that its probative value was not substantially outweighed by the danger of unfair prejudice. Because rule 611(b) provides that the accused may be cross-examined on any matter relevant to an issue in the case, the state could cross-examine Price regarding the relevant relationship evidence that was

admitted under section 634.20. *Valtierra* does not alter this conclusion—because the state’s inquiry into the relationship evidence was permitted under rule 611(b), it is irrelevant whether Price opened the door for further inquiry into his conviction under rule 609. The district court’s ruling that the state could cross-examine Price on the details of the November and December 2019 incidents was therefore not erroneous.

B. The state did not commit prosecutorial misconduct by exceeding the scope of the district court’s ruling.

Price also argues that the state committed plain prosecutorial misconduct by violating the limitation that the district court placed on the state’s cross-examination into the prior incidents by asking about the underlying facts of the incidents because Price had acknowledged his prior conduct.

Unobjected-to prosecutorial misconduct is reviewed under a modified plain-error standard. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006); *State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010) (referring to the standard outlined in *Ramey* as “the modified plain-error test”). “An error is plain if it is ‘clear’ or ‘obvious,’ which is typically established ‘if the error contravenes case law, a rule, or a standard of conduct.’” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quoting *Ramey*, 721 N.W.2d at 302). Under the modified plain-error analysis, “[t]he defendant must prove an error was made that was plain.” *State v. Jackson*, 773 N.W.2d 111, 121 (Minn. 2009). If the defendant does so, “the burden shifts to the prosecution to demonstrate that the error did not affect substantial rights.” *Id.* If the state fails to carry its burden, the reviewing court “consider[s] whether

the error should be addressed to ensure fairness and the integrity of judicial proceedings.”
State v. Parker, 901 N.W.2d 917, 926 (Minn. 2017).

Price argues that the state’s cross-examination contravened the district court’s order precluding inquiry into the prior incidents if Price acknowledged the incidents testified to by P.M. The argument is unpersuasive.

Contrary to Price’s argument, he did not “acknowledge” all the incidents described by P.M. in her testimony. On direct examination, Price was asked, “[P.M.] testified that back in November or December of 2019 that you and she had . . . some physical altercations; is that correct?” He responded, “Yes, I’m aware of that.” On its face, this exchange did not constitute an acknowledgement by Price of what P.M. said occurred during those incidents. Later, Price was asked on cross-examination, “Are you denying what [P.M.] said happened [in] December?” Price responded, “Yes, I deny it.” That response was clearly not an acknowledgement. As for the November incident, it is true that Price acknowledged part of P.M.’s testimony, including that he choked P.M. with his hand, but he also denied P.M.’s testimony that he punched her in the stomach, slammed her to the ground, and threatened to kill her.

Because Price did not acknowledge the November and December incidents as testified to by P.M., the state did not violate the limitation that the district court’s order placed on cross-examination. Price therefore has failed to carry his burden to demonstrate error.

II. The district court did not abuse its discretion by admitting P.M.'s and J.M.'s prior out-of-court statements as consistent statements.

Price makes two arguments regarding the district court's admission of statements by P.M. and J.M. about the events of November 3, 2023, that were captured on body-camera footage. First, he argues that none of the prior statements were properly admitted because he did not challenge the witnesses' credibility. Second, he argues that, even if P.M.'s credibility was sufficiently challenged to make one of P.M.'s statements admissible, the district court abused its discretion by not ordering redaction of the footage to preclude other statements by her that were cumulative.

As stated above, a district court's evidentiary rulings are reviewed for a clear abuse of discretion. *State v. Nunn*, 561 N.W.2d 902, 906-07 (Minn. 1997). When challenging the admission of evidence, an appellant bears the burden to prove that there was an abuse of discretion and that they were prejudiced by it. *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009). Harmless error does not require reversal. *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024). "Reversal is warranted only when the error substantially influences the jury's decision." *Nunn*, 561 N.W.2d at 907.

A. The district court did not abuse its discretion by deciding that Price challenged the witnesses' credibility.

"'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Hearsay is generally not admissible. Minn. R. Evid. 802. Minnesota Rule of Evidence 801(d)(1)(B) provides that the prior statement of a witness-declarant is not hearsay if it is "consistent with the declarant's testimony and helpful to the trier of fact in

evaluating the declarant's credibility as a witness." For this rule to apply, the declarant must testify at trial and be subject to cross-examination about the prior statement and the admitted statement must be consistent with the declarant's testimony. Minn. R. Evid. 801(d)(1)(B). The witness-declarant's credibility must be challenged before the prior statement is admitted, and the prior statement must bolster credibility of the witness in a manner that relates to the challenged aspect of the witness's credibility. *Nunn*, 561 N.W.2d at 909. The district court must "make a threshold determination of whether there has been a challenge to the witness's credibility" before admitting the statement. *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *rev. denied* (Minn. Feb. 24, 2000).

Price argues that he never challenged the credibility of P.M. and J.M. In moving to admit the prior statements at trial, the state argued that Price's counsel attacked P.M.'s credibility during opening statements by referring to the November 3 incident as "mutual combat" and stating that "there were multiple sides to the story." The part of Price's counsel's opening statement that the state was referencing reads as follows:

One of the questions that you're going to be asked to consider is whether this was a mutual physical altercation in which both parties would be at fault or if this was an assault where one person is a victim of an assault and the other person is the perpetrator of an assault.

There are multiple sides to every story, and in this story today . . . you will hear from both [Price] and [P.M.] about what they recall about what they believe happened.

I'm asking you to listen carefully to all the evidence that is presented, evaluate, and consider.

The district court asked Price's counsel whether she believed that she had attacked the witnesses' credibility in her opening statement. She responded, "I'm not sure that I would

say that I didn't attack [P.M.'s] credibility at all in opening statements, but it was a blanket there are two different versions." The district court decided to admit the evidence.

The supreme court has held that witness credibility may be attacked during opening statements. *State v. Greninger*, 569 N.W.2d 189, 193 (Minn. 1997). And in *Nunn*, the supreme court determined that an appellant had challenged the credibility of two witnesses by disputing their recollection of the events that surrounded the charged offenses. 561 N.W.2d at 909. That dispute as to the witnesses' version of events was a sufficient credibility challenge to support the district court's ruling that the witnesses' prior consistent statements were admissible under rule 801(d)(1)(B). *Id.*

On appeal, Price argues that his counsel did not challenge P.M.'s or other witnesses' credibility in opening statements—rather, his counsel merely asked the jury to listen to, evaluate, and consider the evidence. But Price's counsel told the jury that it would be faced with competing versions of the events that took place on November 3, implying that, to decide which version of events to believe, the jury would necessarily have to decide whom to believe—Price or P.M. and the other witnesses who testified consistently with her version of events, such as J.M. The district court could reasonably determine that implicitly disputing the witnesses' different versions of events was a challenge to the witnesses' credibility. For this reason, the district court did not abuse its discretion by admitting the prior consistent statements of P.M. and J.M.

B. The district court did not abuse its discretion by admitting more than one of P.M.'s prior statements.

Price argues that, even if he did challenge P.M.'s credibility, the district court abused its discretion by not ordering redaction of the body-camera footage to include only one statement by P.M. that was consistent with her testimony, rather than three.

The district court has discretion to refuse to admit cumulative impeachment evidence. Minn. R. Evid. 403; *State v. Martin*, 614 N.W.2d 214, 225 (Minn. 2000).

Price argues that, because the jury heard his version of events only once during his testimony, the district court's admission of multiple accounts by P.M. "risked buttressing [P.M.'s] credibility by fixating the jury on her version, thereby persuading by illegitimate means." In support of this argument, Price cites *Ture v. State*, 681 N.W.2d 9, 16 (Minn. 2004). In that case, the supreme court determined that the presentation of 24 witnesses' testimony about *Spreigl* evidence over the course of three days of a 12-day trial was highly prejudicial to the appellant.⁶ *Ture*, 681 N.W.2d at 16. Citing Minnesota Rule of Evidence 403, the supreme court stated that "[district] courts should not allow the state, when presenting *Spreigl* evidence, to present evidence that is unduly cumulative with the potential to fixate the jury on the defendant's guilt of the other crime." *Id.*

There are significant distinctions between *Ture* and this case. First, the evidence that Price challenges was admitted as prior consistent statements, not *Spreigl* evidence, which by its nature may pose a higher risk of prejudice. Second, the quantity of potentially

⁶ "*Spreigl* evidence is evidence of another crime, wrong, or bad act" *Id.* at 15 (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)).

cumulative evidence here is significantly less than the evidence at issue in *Ture*. Price argues that the redacted version of the body-camera footage that was admitted into evidence contained three statements by P.M. about her version of events. Those statements are not comparable to the testimony of 24 witnesses over the course of three days. And further, the district court did order redaction of at least one of P.M.’s statements in the body-camera footage because, as the district court observed, it “[got] cumulative” at one point. The district court did not err by declining to exclude more.

In sum, the district court did not abuse its discretion by admitting the out-of-court statements of P.M. and J.M. as prior consistent statements.

III. The state did not commit reversible prosecutorial misconduct during closing argument.

Price argues that the state committed reversible prosecutorial misconduct when the prosecutor repeatedly used the pronoun “we” in closing and rebuttal arguments because doing so impermissibly aligned the prosecutor with the jury against Price.

Because Price did not object to the state’s closing argument, the modified plain-error standard applies. *See Ramey*, 721 N.W.2d at 302. Again, under that standard, the defendant bears the burden to show error that was plain. *Jackson*, 773 N.W.2d at 121. If the defendant meets that burden, the state must prove that the error did not affect the defendant’s substantial rights. *Id.* If the state fails to carry its burden, the reviewing court may reverse “to ensure fairness and the integrity of judicial proceedings.” *Parker*, 901 N.W.2d at 926.

In *State v. Mayhorn*, the supreme court determined that a prosecutor's use of "we" and "us," including during closing argument, constituted misconduct. 720 N.W.2d 776, 790 (Minn. 2006). *Mayhorn* involved an appellant who was convicted of aiding and abetting first-degree murder and second-degree assault by a principal who Mayhorn had partnered with to engage in drug trafficking. *Id.* at 779-80. In that case, the prosecutor stated to the jury, "[The events are] kind of foreign for all of us, I believe, because we're not really accustomed to this drug world and drug dealing." *Id.* at 789. The supreme court explained that, while the statement referred explicitly only to "this drug world," it was improper in light of other instances at trial in which the state appeared to be highlighting cultural differences between the predominantly White jury and the Black defendant. *Id.* In addition, the supreme court explained that "a prosecutor is not a member of the jury" and the use of "we" and "us" in a prosecutor's closing argument may improperly align the prosecutor with the jury and "may be an effort to appeal to the jury's passions." *Id.* at 790.

In *Nunn v. State*, the supreme court considered whether a prosecutor's use of "we" in closing argument constituted prosecutorial misconduct and concluded that it did not. 753 N.W.2d 657, 662-63 (Minn. 2008). In that case, the prosecutor used "we" when "describing the evidence that had been presented at trial (i.e., 'we learned' various facts from the trial testimony)." *Id.* at 663. The supreme court recognized the rule in *Mayhorn* that a prosecutor may not use the term "we" to describe the prosecutor and the jury as belonging to a group that the defendant does not also belong to. *Id.* But it concluded that the prosecutor's use of "we" in Nunn's case could be interpreted as referring to everyone in the courtroom at the

time that the evidence was presented and that the term thus was not necessarily exclusive of the defendant. *Id.*

Here, the prosecutor used the word “we” over 50 times in her closing argument. She also said “we” three times during her rebuttal. While many of the “we” statements were permissible because they did not exclude Price or his counsel, at least two statements seem to have improperly excluded Price. The prosecutor argued, “Here we just have a drunk man who was assaulting his wife and who was obstructing law enforcement because he was going to exert his power and control and he was going to be violent and he was going to be persistent about that.” The prosecutor also stated, after paraphrasing portions of Price’s testimony about Price not being present during P.M.’s calls to 911, that “we know that that’s not true.”

We assume, without deciding, that the prosecutor’s use of the pronoun “we” was plainly erroneous.⁷ We turn to whether the state has shown that the misconduct did not affect Price’s substantial rights.

“Prosecutorial misconduct affects substantial rights if there is a reasonable likelihood that the absence of misconduct would have had a significant effect on the jury’s verdict.” *State v. Davis*, 735 N.W.2d 674, 681-82 (Minn. 2007). To determine whether there is a reasonable likelihood that misconduct significantly affected the verdict, appellate

⁷ We note that the state could have easily avoided this issue if it had not used, or had at least minimized, its use of “we” in its closing argument. While many of these instances were likely of the permissible variety addressed in *Nunn v. State*, the sheer number of instances that the prosecutor used the term “we” requires significant parsing to determine whether the language was used as a harmless rhetorical device or, instead, to align the prosecutor and the jury, improperly pitting the jury against the defendant.

courts “consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions.” *Id.* at 682. When misconduct stems from a closing argument, appellate courts look at “the closing argument as a whole, rather than to selected phrases and remarks.” *Ture*, 681 N.W.2d at 19.

Turning to the considerations outlined in *Davis*, we first analyze “the strength of the evidence against the defendant.” 735 N.W.2d at 682. The state argues that, even if it did misuse “we,” “the evidence of Price’s guilt was overwhelming.” We agree that the state presented strong evidence of Price’s guilt, which included P.M.’s testimony about the assault and her consistent prior statements to the police, J.M.’s testimony that he saw Price choking P.M. and his consistent prior statement to the police, the evidence of two prior incidents of domestic conduct, photos that corroborated P.M.’s injuries, and recordings of the 911 calls.

Next, we consider “the pervasiveness of the improper suggestions.” *Id.* The state argues that the challenged use of “we” in its closing and rebuttal arguments must be considered in the context of the prosecutor’s “relatively long closing argument” and that, given that context, any misconduct was not pervasive. *See Ture*, 681 N.W.2d at 19. We agree. In over 50 instances of the prosecutor using “we,” we identified only two instances that raise concerns of the state improperly aligning itself with the jury. While we do not endorse those two uses of “we,” in the broader context of the state’s 27-page closing argument, the troubling statements were relatively minor and fleeting.

Finally, considering “whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions,” we note that Price’s counsel had an opportunity to address the concerns in her closing argument and the district court also asked whether surrebuttal would be necessary, which Price’s counsel declined.

Because all three considerations weigh in favor of the state, we conclude that the state has shown that any error in the prosecutor’s closing argument did not affect Price’s substantial rights.

IV. There is no cumulative error requiring reversal.

Price argues that, even if none of the asserted errors independently requires reversal, the cumulative effect of the errors warrants a new trial. The state responds that no errors occurred and that, even if they did, they were not so egregious as to make this one of the “rare cases” that requires a new trial.

In “rare cases,” an appellant may be entitled to a new trial if “the errors, when 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). To determine whether cumulative error justifies a new trial, appellate courts “look to the egregiousness of the errors and the strength of the State’s case.” *Id.*

As described above, we assume that the prosecutor’s use of “we” in closing argument was plainly erroneous but we do not find other errors. Therefore, there are not cumulative errors, and a new trial is not warranted.

V. The sentence in the warrant of commitment is erroneous.

Price argues that we must reverse his sentence and remand to correct the district court's error in recording a 24-month stayed sentence on the warrant of commitment after orally pronouncing a 21-month stayed sentence at his sentencing hearing. The state agrees that remand is appropriate. We agree that remand is necessary to allow the district court to correct the sentence on the warrant of commitment.

When pronouncing sentencing, the district court is required to “[s]tate precisely the terms of the sentence.” Minn. R. Crim. P. 27.03, subd. 4(A). “When an orally pronounced sentence varies from a written sentencing order, the orally pronounced sentence controls.” *State v. Staloch*, 643 N.W.2d 329, 329 (Minn. App. 2002). If an oral sentence is ambiguous, then the written order may be considered “to determine the intended sentence.” *Id.* at 331 (quotation omitted).

The oral sentence pronounced by the district court at Price's sentencing hearing was unambiguous. The district court stated, “I'm going to commit [Price] to the Commissioner of Corrections for a period of 21 months. I'm staying execution of that for a five year period” Because the oral sentence was unambiguous, it controls without need to refer to the written warrant of commitment to determine the district court's intent. *See id.* at 329-31.

If there is a clerical mistake in a judgment, order, or the record that arises from an oversight, the district court may at any time correct the mistake. Minn. R. Crim. P. 27.03, subd. 10. The Minnesota Supreme Court has categorized an error as clerical when it “cannot reasonably be attributed to the exercise of judicial consideration or discretion.” *State v. Pflepsen*, 590 N.W.2d 759, 768 n.4 (Minn. 1999) (quotation omitted).

Although it has a substantive effect, the discrepancy between the warrant of commitment and the orally pronounced sentence appears to be a clerical error because it “cannot reasonably be attributed to the exercise of judicial consideration or discretion.” *See id.*

Accordingly, we remand to permit the district court to address the sentencing error in the warrant of commitment, leaving the convictions intact.

Affirmed and remanded.