

*This opinion is nonprecedential except as provided by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
A24-2024**

State of Minnesota,
Respondent,

vs.

Stephani Marie Boyum,
Appellant.

**Filed February 2, 2026
Affirmed
Segal, Judge***

Sherburne County District Court
File No. 71-CR-23-391

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

Dawn R. Nyhus, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Bentley, Judge; and Segal, Judge.

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

NONPRECEDENTIAL OPINION

SEGAL, Judge

In this direct appeal, appellant challenges her conviction for felony fifth-degree controlled-substance crime. Appellant argues that the state’s evidence was insufficient to prove beyond a reasonable doubt that she (1) knowingly possessed a controlled substance, and (2) possessed 0.25 grams or more of a controlled substance, the amount required to support a felony-level conviction. Appellant also asserts that misconduct by the prosecutor deprived her of a fair trial. We affirm.

FACTS¹

In the early morning hours of March 26, 2023, a sergeant with the Sherburne County Sheriff’s Office stopped appellant Stephani Marie Boyum on Highway 169 outside Zimmerman, on suspicion that the windows of her car were illegally tinted. Boyum was in the driver’s seat, with an adult passenger seated next to her. During the stop, the sergeant noticed a cloth pouch hanging on the exterior of the car, attached to the rear driver-side door. The pouch was attached to the exterior of the door by a magnet located in the strap of the pouch. The sergeant opened the pouch and found two glass pipes, a metal pipe-cleaning tool, and two pieces of a crystal substance that was later determined to contain methamphetamine.

The sergeant testified that he first noticed Boyum’s car at a gas station near the highway. The sergeant drove by the car, while it was at the station, at “[p]arking lot speeds,

¹ The facts are summarized from the trial testimony and evidence.

very slow.” The sergeant agreed he had a “clear view of the driver’s side” and noticed the dark window tint but did not see anything attached to the outside of the car at that time. Surveillance video from the gas station captured the sergeant driving by Boyum’s car, but the driver-side of Boyum’s car is not visible in the video.²

After driving by Boyum’s car at the gas station, the sergeant watched the car from “right across the street” for approximately ten minutes. He then followed Boyum as she left the gas station and headed north on Highway 169. He followed Boyum for about eight miles before pulling her over on the highway. While following her, the sergeant drove behind and in the same lane as Boyum “[w]ithin a couple car lengths . . . [m]ost of the time,” but also pulled alongside her car at least once “to verify the tint.” When he drove alongside Boyum’s car, he saw “something kind of dangling from the driver’s area” of the car, but “didn’t confirm or take too much look at it at that time,” believing it was “damage to the vehicle.”

The sergeant testified that, because of his position relative to Boyum’s car and how dark it was, he “just wouldn’t have seen” if something had been discarded out the car’s window. The video from the sergeant’s dash camera, which began recording about 90 seconds before he pulled Boyum over, does not show any items being thrown from Boyum’s car, and no other vehicles can be seen traveling north on Highway 169.³

² The gas-station surveillance video was admitted into evidence and played for the jury. The video shows a view of Highway 169 in the background. During the six-and-a-half minutes of the video, only eight vehicles can be seen driving north on the highway.

³ The dash-camera video was also admitted into evidence and played for the jury.

During the stop, the sergeant questioned Boyum about the pouch. Boyum insisted she had never seen it before and denied tossing it out of her car. When the sergeant pat-searched Boyum, he found a “torch-style lighter” in her pants pocket. The sergeant testified that torch-style lighters are commonly used to provide a “more intense direct clean flame” to glass methamphetamine pipes. During his search of the car, the sergeant found a butane refill can. He testified that people who use “butane torch-style lighters for controlled substances” typically “go through a lot of butane” and “need refills.” In addition, the sergeant observed that the car was “messy” and testified that he did not “think somebody could have sat in the back seat without removing items.”

The sergeant sent the crystal substance to a lab for drug-chemistry testing. The test results showed that the crystal substance contained methamphetamine and weighed 0.479 grams, accurate to within 0.004 grams. The sergeant did not request, and the lab did not perform, any tests to determine drug purity.

The state charged Boyum with felony-level fifth-degree controlled substance crime under Minnesota Statutes section 152.025, subdivision 2(1) (2022).⁴ A jury found Boyum guilty of the offense and the district court convicted Boyum but stayed imposition of sentence and placed her on probation for up to five years. Boyum appeals.

⁴ The state also charged Boyum with possession of drug paraphernalia, a petty-misdemeanor offense. But the district court dismissed the charge prior to trial after the legislature decriminalized the offense. *See* 2023 Minn. Laws ch. 52, art. 15, § 17, at .1052. (repealing Minn. Stat. § 152.092 (2022) which made it “unlawful for any person knowingly or intentionally to use or to possess drug paraphernalia”).

DECISION

Boyum asserts three arguments on appeal. First, Boyum argues that the state failed to prove that she possessed methamphetamine because there are alternate reasonable hypotheses demonstrating that persons other than Boyum may have been in exclusive possession of the pouch prior to the sergeant's stop of her car. Second, Boyum argues that, even if she knowingly possessed the methamphetamine, the state proved only that she possessed 0.25 grams or more of a substance containing methamphetamine—not that she possessed a felony-level amount of methamphetamine—because the state presented no evidence of the purity of the drug. Finally, Boyum argues that the state committed prosecutorial misconduct during the closing argument and that she is therefore entitled to a new trial. We address each argument in turn.

I. The evidence is sufficient to prove that Boyum knowingly possessed a controlled substance.

Boyum argues that the evidence is insufficient to establish that she knowingly possessed a controlled substance because the circumstances proved are consistent with at least three rational hypotheses other than guilt: (1) her passenger had exclusive possession of the pouch that contained the controlled substance; (2) the pouch was thrown by someone in a passing car; and (3) the pouch was “dusted up” off the roadbed. Because the jury had to infer that the methamphetamine was in Boyum's possession before the sergeant found the pouch hanging on the outside of Boyum's car door,⁵ we must apply the standard of

⁵ When a defendant does not have actual physical possession of the item at the time of the arrest, the state can prove possession through constructive possession “where the inference

review for sufficiency of circumstantial evidence. *See State v. Harris*, 895 N.W.2d 592, 601-03 (Minn. 2017) (applying the circumstantial-evidence standard of review in a constructive possession case).

Appellate courts review sufficiency of circumstantial evidence in two steps. “The first step is to identify the circumstances proved. In identifying the circumstances proved, we defer to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (quotations and citation omitted). And appellate courts “consider only those circumstances that are consistent with the verdict.” *Id.* at 599.

“The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotations omitted). In doing so, appellate courts “review the circumstantial evidence not as isolated facts, but as a whole” and “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved.” *Id.* (quotations omitted). Appellate courts “give no deference to the fact-finder’s choice between reasonable inferences.” *Id.* (quotation omitted).

The following summarizes the circumstances proved:

- Boyum was in the driver’s seat when the sergeant pulled her over and a passenger was seated in the front seat next to her.
- The rear seat was too cluttered for someone to sit in.

is strong that the defendant at one time physically possessed” the contraband. *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975).

- When the sergeant stopped Boyum's car, a pouch was attached by a magnet to the exterior of the rear driver-side door, slightly behind and below the driver's window. The pouch was very light.
- The pouch contained a crystal substance in two pieces, two glass pipes, and a pipe-cleaning tool. The pipes and the two pieces of the crystal substance were intact.
- The crystal substance found in the pouch contained methamphetamine and weighed 0.479 grams (plus or minus 0.004 grams).
- The pouch was not attached to the exterior of Boyum's car when the sergeant observed her car at the gas station.
- In the roughly six-and-a-half minutes that Boyum was parked at the gas station, eight cars passed by on north Highway 169, the road Boyum was travelling on when she was pulled over. The sergeant followed Boyum for about eight miles before pulling her over. During the 90 seconds that the sergeant's dash camera recorded before Boyum was pulled over, there are no other vehicles visible on north Highway 169.
- The sergeant found a torch-style lighter in Boyum's pants pocket, and a butane refill can in her car. Both are associated with the use of glass pipes to smoke methamphetamine.

Here, the state argues that the circumstances “point unerringly towards Boyum's actual possession of the pouch” prior to the stop. The state notes in support of its argument that the pouch was attached to the outside of her car in the position it would have landed if dropped by Boyum from the driver's window, and “only Boyum possessed other items that [the sergeant] could tie to smoking methamphetamine.” We agree that the facts proved are consistent with Boyum's constructive possession of the drugs. And Boyum, herself, acknowledges that the “state's theory that Boyum threw the pouch from the vehicle in an

effort to abandon known contraband represents one inference from the circumstances proved.” But she argues that there are at least three other rational hypotheses that can be drawn from the circumstances proved.

First, Boyum argues that it is reasonable to infer that her passenger had exclusive possession of the pouch and that he either “flung the item from the [front] passenger side window in such a way that it landed on the rear driver’s-side door panel or that [he] reached across the interior of the vehicle and tossed the item out of the rear driver’s-side window, where it stuck to the door panel just below” the window. We are not persuaded.

If the pouch was thrown out the front passenger-side window, the pouch would have to have traveled in an arc over the top of Boyum’s moving car, landing on the other side of the car immediately behind and below the driver-side window. This hypothesis stretches common sense and is not reasonable. Similarly, it is not reasonable to infer that the passenger reached from the front seat, across the back seat, to toss the pouch out the driver’s-side rear window. Such an act would seem to defeat the purpose of tossing the pouch out the window—to dispose of the methamphetamine without being observed by the sergeant in the squad car.

Boyum next suggests that the pouch may have been thrown by someone in a passing car, because “[i]t is reasonable to infer that . . . a driver or occupant in another vehicle may have noted a law enforcement presence and deemed it prudent to discard contraband, just as the state argued Boyum might have done.” We reject this suggestion as pure speculation. *See State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010) (noting that, in challenging a conviction based on circumstantial evidence, a defendant may point “to evidence in the

record that is consistent with a rational theory other than guilt” but appellate courts “do not set aside verdicts based on speculation” (quotation omitted)). In addition, the evidence in the record reflects that there were few other cars on north Highway 169 at that time and that the sergeant did not notice the pouch being thrown from another vehicle. The pouch was also “very light,” making it less believable that it would have attached to Boyum’s car after being tossed from another moving vehicle.

Finally, Boyum argues that “it is reasonable to believe that the pouch may have . . . been dusted up onto” Boyum’s car from the roadbed. But this would require numerous coincidences: (1) that the pouch was lying discarded along the highway in a place where Boyum’s car would have run over it while being followed by the squad car; (2) that Boyum drove her car over or near the pouch in such a way that the pouch jumped up from the road and attached to the driver-side of the car right behind the driver’s door; and (3) that despite being dusted up from the roadbed, the glass pipes and methamphetamine crystals were unbroken and intact. Boyum argues that, because the “crystal substance was found ‘rolled up’ in a plastic bag and ‘tucked inside’ a ‘sleeve’ in a ‘soft fabric pouch,’ and the pipes were located inside the same pouch, further encased in additional fabric sleeves,” it is not unreasonable that they would be undamaged. But even if this was possible, the “dusted-up-from-the-roadbed” hypothesis requires too many coincidences to amount to a rational hypothesis.

Because the circumstances proved are consistent with guilt and inconsistent with the alternative hypotheses that the pouch was discarded by the passenger, thrown by

someone from another car, or dusted up from the roadbed onto Boyum's car, the evidence is sufficient to establish Boyum's knowing possession of a controlled substance.

II. The evidence is sufficient to prove that the amount of the controlled substance was 0.25 grams or more.

Boyum also asserts a statutory-interpretation challenge to the sufficiency of the state's proof that she possessed a felony-level amount of the methamphetamine. Boyum's argument focuses on the fact that a fifth-degree controlled substance crime involves possession of "one or mixtures containing a controlled substance," Minn. Stat. § 152.025, subds. 2(1), but the word "mixture" is absent from the subdivision of the statute that differentiates a felony offense from a gross misdemeanor. This latter subdivision references only "the amount of the controlled substance possessed." *Id.*, subd. (4)(a) (2022).

When "a sufficiency-of-the-evidence claim turns on the meaning of a statute, [appellate courts] review the question of statutory interpretation de novo." *State v. Loveless*, 987 N.W.2d 224, 247 (Minn. 2023). "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (2022). Our first step in statutory interpretation is to determine "whether the statute's language is ambiguous." *State v. Riggs*, 865 N.W.2d 679, 682

(Minn. 2015). If the statutory language is unambiguous, appellate courts apply the statute’s plain meaning. *State v. Powers*, 962 N.W.2d 853, 858 (Minn. 2021).

As relevant here, subdivision 2(a)(1) of section 152.025 defines fifth-degree controlled substance crime as “possess[ing] one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV.” Minn. Stat. § 152.025, subd. 2(a)(1). The level of the offense—felony or gross misdemeanor—is set out in subdivision 4 of the section. The offense is a gross misdemeanor if the defendant “has not been previously convicted of a violation of [Minnesota Statutes, chapter 152],” and “the amount of the controlled substance possessed . . . is less than 0.25 grams.” *Id.*, subd. 4(a). Possession of 0.25 grams or more is a felony-level offense.⁶ *Id.*, subd. 4(b) (2022).

Boyum argues that, while the offense as set out in subdivision 2(a)(1) of the statute criminalizes possession of “mixtures containing a controlled substance,” the word “mixture” is absent from subdivision 4(a). That subdivision references only “the amount of the controlled substance possessed”—that it be 0.25 grams or more to constitute a felony. She contends that the absence of the word “mixture” in subdivision 4 means that the state had to prove that Boyum possessed 0.25 grams or more of *pure* methamphetamine for her to be convicted of a felony. Because the state presented no evidence concerning the purity of the methamphetamine, Boyum argues that the state failed to prove that she possessed a felony-level amount of the drug. Instead, she maintains that all the state proved

⁶ It is undisputed that Boyum had no prior conviction for a violation of chapter 152.

is that she may have possessed a substance weighing 0.479 grams that contained an unknown amount of methamphetamine.

The state argues that Boyum’s interpretation—that felony fifth-degree controlled substance crime requires proof that the defendant possessed 0.25 grams or more of the controlled substance in its pure form—is unreasonable. The state maintains that the phrase “controlled substance” in subdivision 4 of the statute incorporates mixtures because subdivision 4 merely sets the level of offense for the crime of possessing “mixtures containing a controlled substance” and that the phrase “controlled substance” in subdivision 4 thus necessarily includes “mixtures.”

We need not, however, resolve the broader question of whether subdivision 4 of section 152.025 requires proof that the defendant possessed 0.25 grams or more of a *pure* controlled substance, because methamphetamine is defined as a mixture in sections 152.01 and 152.02 of the statute. In reaching this conclusion, we look first to the definitions section of chapter 152 that defines the phrase “controlled substance” as “a drug, substance, or immediate precursor in Schedules I through V of section 152.02.” Minn. Stat. § 152.01, subd. 4 (2022). Schedule II of section 152.02, in subdivision 3(d)(2), provides: “Unless specifically excepted or unless listed in another schedule, any material, compound, *mixture*, or preparation which contains *any quantity* of the following substances having a stimulant effect on the central nervous system: . . . (2) methamphetamine, its salts, isomers, and salts of its isomers.” Minn. Stat. § 152.02 subd. 3(d)(2) (2022) (emphasis added). Thus, the phrase “controlled substance” when referring to methamphetamine is, unambiguously, defined to include *mixtures* that contain the drug.

Boyum asserted at oral argument that the word “substance” in the definition of “controlled substance” narrows the meaning of controlled substance to the chemicals listed in subdivision 3(d)(1)-(5) of section 152.02, thereby excluding the reference to mixtures at the outset of the list. But the word “substance” in section 152.02 is not used just to refer to the listed chemicals in the schedules but is used in a multitude of different ways.

For example, subdivision 1 of section 152.02, which notes that there are five controlled-substance schedules in the section, states generally that the “schedules consist of the *substances* listed in this section.” Minn. Stat. § 152.02, subd. 1 (2022) (emphasis added). Subdivision 3 of section 152.02—which lists Schedule II drugs, including methamphetamine—states at the outset that “Schedule II consists of the *substances* listed in this subdivision.” *Id.*, subd. 3(a) (2022). And, as quoted above, the subsection that includes methamphetamine, then references “any material, compound, mixture, or preparation” that contains any quantity of the listed “substances.” *Id.*, subd. 3(d).

Methamphetamine is thus defined as a substance that is a mixture containing a substance. We therefore reject Boyum’s narrow reading of the word “substance” in the statute.

Because the state presented evidence that the crystal substance in the pouch contained methamphetamine and weighed in excess of 0.25 grams, the evidence was sufficient to convict Boyum of felony fifth-degree controlled substance crime.

III. Any prosecutorial misconduct did not rise to the level of reversible plain error.

Boyum next argues that she is entitled to a new trial because the prosecutor misstated the burden of proof and argued facts not in evidence. Boyum’s trial counsel did

not object to the asserted errors. Appellate courts review unobjected-to prosecutorial misconduct under a modified plain error standard. *State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006). The defendant has the burden of proving that an error was made, and that it was plain, by showing that the error contravenes case law, a rule, or a standard of conduct. *Id.* at 302. If the defendant satisfies this burden, the burden then shifts to the state to demonstrate that the error did not affect the defendant's substantial rights. *Id.* An error affects a defendant's substantial rights if there is a "reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Id.* (quotation omitted). "If these three prongs are satisfied, the court then assesses whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *Id.*

In analyzing whether prosecutorial misconduct affected a defendant's substantial rights, appellate courts consider three factors: "(1) the strength of the evidence against [the defendant]; (2) the pervasiveness of the erroneous conduct; and (3) whether [the defendant] had an opportunity to rebut any improper remarks." *State v. Peltier*, 874 N.W.2d 792, 805-06 (Minn. 2016).

Appellate courts "view the prosecutor's statements as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence to determine whether reversible error has occurred." *State v. Waiters*, 929 N.W.2d 895, 901 (Minn. 2019) (quotation omitted). Prosecutorial misconduct will result in a new trial only when, viewed in light of the whole record, it "appears to be inexcusable and so serious

and prejudicial that [the] defendant's right to a fair trial was denied." *State v. Wahlberg*, 296 N.W.2d 408, 420 (Minn. 1980).

Alleged misstatement of the burden of proof

Boyum argues that the prosecutor misstated the burden of proof in the closing argument by "repeatedly invoking and injecting into the state's burden the principle of Occam's Razor—that is, that the 'easiest' or 'simplest' explanation is the best explanation." The state contends that the reference to Occam's Razor merely described to jurors "how to draw an inference from circumstantial evidence." (Quotation omitted).

"In the context of a criminal trial, misstatements of the burden of proof are highly improper." *State v. Strommen*, 648 N.W.2d 681, 690 (Minn. 2002) (quotation omitted). But "[p]rosecutors are allowed to argue that there is no merit to the specific defense raised by the defendant." *State v. Matthews*, 779 N.W.2d 543, 552 (Minn. 2010). And "a remark by a prosecutor on the lack of evidence regarding the defense's theory does not shift the burden of proof." *State v. Gassler*, 505 N.W.2d 62, 69 (Minn. 1993).

Here, the prosecutor introduced the concept of Occam's Razor at the beginning of trial in the state's opening statement:

But again, when I was prepping this case, I couldn't help but think of the often-quoted problem-solving principle known as Occam's Razor which is the idea that sometimes the easiest explanation is the best explanation for why something happened. In this case the easiest explanation is that when [the sergeant] was following Stephani Boyum's car, at some point she rolled down the window, dropped that pouch that had the magnet on it, and while it was falling down it attached to the rear passenger door.

The prosecutor repeated this theme in closing arguments but did not return to Occam's Razor in rebuttal.

This court has addressed prosecutors' use of Occam's Razor in non-precedential opinions, *see, e.g., State v. Monyak*, 14 N.W.3d 210, 215 (Minn. 2024) (following rule 136.01(c) and citing a nonprecedential decision as persuasive authority in the criminal context).⁷ In *State v. Tabaka*, this court held that invoking Occam's Razor was not plain error because "the prosecutor employed a crude but accurate description of how to draw an inference from circumstantial evidence." No. A05-1899, 2007 WL 1120523 at *8 (Minn. App. Apr. 17, 2007), *rev. denied* (Minn. June 27, 2007). In *State v. Tykwinski*, this court determined it was improper for the prosecutor to invoke Occam's Razor "to illustrate to the jury that, when presented with competing theories, the simplest, most logical explanation is the best choice." No. C3-99-1608, 2000 WL 1051919 at *4 (Minn. App. Aug. 1, 2000), *rev. denied* (Minn. Sep. 17, 2000). This court determined, however, that any error was harmless because the prosecutor, defense counsel, and the district court correctly articulated the state's burden of proof. *Id.*

Because Occam's Razor is typically presented as a guiding "principle" or "rule," albeit a philosophical one, the use of the phrase creates an unnecessary risk of confusing the jury regarding the state's burden of proof and should not be used. But we conclude that the use of the phrase in this case is not a plain error and we are not persuaded that the argument affected Boyum's substantial rights. *See Ramey*, 721 N.W.2d at 302.

⁷ Nonprecedential opinions are not binding authority but may be cited for their persuasive value. Minn. R. Civ. App. P. 136.01, subd.1(c).

Here, immediately after referencing Occam's Razor in closing argument, the prosecutor advised the jury to use the "definition that the Judge just gave you about proof beyond a reasonable doubt." The prosecutor then went on to explain what constitutes a reasonable doubt and stated: "So when I say the simplest explanation is the only doubt is (sic) proof beyond a reasonable doubt is because there's no other explanation that could possibly create a reasonable doubt for how this magnetic pouch got to the side of the car." The prosecutor thereby reinforced the correct burden-of-proof standard in conjunction with the use of the phrase. And the district court also instructed jurors three times—once at the start of trial and twice before closing arguments—on the state's burden to prove Boyum's guilt beyond a reasonable doubt.

Arguing facts not in evidence

Boyum contends that the prosecutor argued facts not in evidence in two instances: (1) stating that the pouch containing methamphetamine was "perfectly" or "exactly" where it would be if someone dropped it out their window or from the driver's seat; and (2) stating that the sergeant "told [jurors] he didn't recall any other cars being nearby while he was following [Boyum's] vehicle."

In closing argument, the "State may present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence." *Peltier*, 874 N.W.2d at 804 (quotation omitted). A prosecutor, however, "may not speculate without a factual basis

or “intentionally . . . misstate the evidence or mislead the jury as to the inferences it may draw.” *Id.* at 804-05 (quotations and citations omitted).

As to the prosecutor’s statements that the magnetic pouch was found “exactly where it would land” and “perfectly right where it would have landed if you had dropped it out the window,” we construe those statements to be properly argued inferences based on the evidence. *See Wahlberg*, 296 N.W.2d at 419-20 (“Counsel have the right to present to the jury all legitimate arguments on the evidence, to analyze and explain the evidence, and to present all proper inferences to be drawn therefrom.”).

Turning to the second statement, Boyum is correct that the prosecutor misstated the evidence in saying that the sergeant testified that “he didn’t recall any other cars being nearby.” The sergeant did not testify to this fact. The state acknowledges that this misstatement constitutes an error but maintains that it was an innocent misstatement, and that the prosecutor intended to reference the “squad video that showed that there were no other vehicles in sight when [the sergeant] stopped Boyum’s car.”

We conclude that the misstatement does not rise to the level of reversible plain error. Even if this was plain error, we are not persuaded that it affected Boyum’s substantial rights. While the prosecutor erred in representing the sergeant’s testimony, there is support in the record for the proposition that there were not a lot of other cars driving on the highway at the time. In addition to the squad video that shows no other cars in the vicinity immediately before the sergeant pulled Boyum over, the gas station surveillance video shows that there were only eight cars heading north on highway 169 during the six-and-a-half-minute clip played for the jury.

The state also presented strong evidence that the pouch was not on the side of Boyum's car when it was at the gas station, but that it was attached to the exterior of the driver's side of the car when the sergeant pulled her over eight miles later. And Boyum, herself, acknowledges that one inference from the evidence is that she disposed of the pouch by tossing it out of her car window and thus was in possession of the drugs.

Finally, it is significant that the misstatement was made during the state's closing argument—when Boyum had an opportunity to rebut the statement during her closing—and was not mentioned again in the state's rebuttal.

Thus, even if the misstatement was plain error, we would conclude that the state has satisfied its burden of establishing that the misstatement did not affect Boyum's substantial rights.

Affirmed.