

*This opinion is nonprecedential except as provided by  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  
A25-0818**

State of Minnesota,  
Respondent,

vs.

Shawn Louis Boit,  
Appellant.

**Filed April 20, 2026  
Affirmed; motion denied  
Johnson, Judge**

Becker County District Court  
File No. 03-CR-23-2202

Keith Ellison, Attorney General, Jamal Zayed, Assistant Attorney General, St. Paul, Minnesota; and

Brian W. McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Johnson, Judge; and Schmidt, Judge.

**NONPRECEDENTIAL OPINION**

**JOHNSON, Judge**

A Becker County jury found Shawn Louis Boit guilty of four charges of first-degree criminal sexual conduct. We conclude that the prosecutor did not engage in misconduct that requires a new trial. Therefore, we affirm.

## FACTS

In 2023, Boit lived with L.T. and their then-12- or 13-year-old daughter, N.T. Boit and L.T. had been in a relationship years earlier when N.T. was conceived, but they broke up before N.T. was born. During part of N.T.'s childhood, L.T. lived with and was in a relationship with another man, whom N.T. considered to be a stepfather. But L.T. eventually broke up with the other man.

Boit and L.T. reconnected in mid-2022, and L.T. became pregnant. Boit moved into L.T.'s home in January or February of 2023. L.T. gave birth to a child in May 2023. She typically worked four or five days per week, so Boit often cared for the baby and for N.T. while L.T. was at work. The relationship between Boit and L.T. soon deteriorated, and L.T. asked Boit to move out in December 2023.

Shortly after Boit moved out, N.T. disclosed to L.T. that Boit had sexually abused her throughout the period in which he lived with them. After the matter was reported to law enforcement, a police officer arranged for a forensic interview of N.T. During the interview, N.T. disclosed several incidents in which Boit engaged in sexual contact or sexual penetration. She stated that, during the first or second week after Boit moved in, he penetrated her vagina with his penis. She stated that, on one occasion when they were watching television in the living room, Boit forced her to touch his penis with her hand and then took her to her bedroom, where he penetrated her vagina with his penis. N.T. stated that, after this incident, Boit sometimes penetrated her twice a day while her mother was either away or asleep. N.T. stated that Boit touched her vagina with his hand on multiple occasions and once forced her to engage in fellatio.

The state charged Boit with first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1a(e) (2022), and first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1a(h)(iii). The state later amended the complaint to allege two additional charges of first-degree criminal sexual conduct, in violation of Minn. Stat. § 609.342, subd. 1a(e).

Before trial, the state filed a motion *in limine* seeking leave to introduce a videorecording of N.T.'s forensic interview, arguing that it should be admitted under the residual exception to the hearsay rule. *See* Minn. R. Evid. 807. Boit filed a motion *in limine* seeking to exclude the videorecording on the ground that it would be “repetitive.” The district court granted the state’s motion and denied Boit’s motion.

The case was tried to a jury on three days in December 2024. The state called six witnesses, including N.T. and L.T. N.T. testified about sexual contact and sexual penetration in a manner generally consistent with her forensic interview. The state played for the jury a videorecording of the forensic interview, which is more than an hour long, in its entirety.

Boit testified that he never engaged in sexual contact or sexual penetration with N.T. He testified that he was not alone with N.T. when she said the alleged sexual abuse occurred. Boit testified that he worked evenings, that he often stayed out late with L.T., and that he participated in a bowling league.

The jury found Boit guilty of all charges. In addition, the jury found two aggravating factors. The district court imposed concurrent prison sentences of 360, 180,

and 360 months on counts 1, 2, and 3. The district court did not adjudicate guilt on count 4. Boit appeals.

## DECISION

Boit argues that he was denied a fair trial on the ground that the prosecutor engaged in two forms of prosecutorial misconduct. First, he argues that the prosecutor improperly offered evidence that Boit had caused L.T. to use drugs and to relapse. Second, he argues that the prosecutor improperly aligned himself with jurors during his closing argument.

The right to due process includes the right to a fair trial. *State v. Duol*, 25 N.W.3d 135, 141 (Minn. 2025). “Prosecutors have an affirmative obligation to ensure that a defendant receives a fair trial.” *State v. Jones*, 753 N.W.2d 677, 686 (Minn. 2008) (quotation omitted). Consequently, prosecutorial misconduct may result in the denial of a fair trial. *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). “A prosecutor engages in prosecutorial misconduct when he violates clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state’s case law.” *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (quotation omitted).

The parties agree that Boit did not object at trial to the conduct he challenges on appeal. Accordingly, we review for plain error. *See* Minn. R. Crim. P. 31.02. Under the plain-error test, an appellant is entitled to relief only if (1) there is an error, (2) the error is plain, and (3) the error affects the appellant’s substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is plain if it is clear or obvious because it contravenes caselaw, a rule, or a standard of conduct. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). If a prosecutor has engaged in plain misconduct, the plain-error test is

modified to require the state to bear the burden with respect to the third requirement by establishing that the plain misconduct did not affect the defendant's substantial rights. *State v. Portillo*, 998 N.W.2d 242, 248, 251 (Minn. 2023); *Ramey*, 721 N.W.2d at 302. If the first three requirements of the plain-error test are satisfied, an appellate court will provide appellate relief if necessary to ensure "the fairness, integrity, or public reputation of judicial proceedings." *Portillo*, 998 N.W.2d at 248.

#### A.

We begin by considering Boit's argument that the prosecutor engaged in misconduct by improperly aligning himself with the jury by using the word "we" 12 times in his closing argument.

A prosecutor may not "describe herself and the jury as a group of which the defendant is not a part." *State v. Mayhorn*, 720 N.W.2d 776, 790 (Minn. 2006). Accordingly, "it is improper for a prosecutor to highlight the defendant's racial or socioeconomic status," "to highlight cultural differences between [a] predominantly white jury and [a non-white] defendant," or to exploit cultural differences to make "a thinly-veiled character attack." *Id.* at 789 (emphasis omitted). In light of these general principles, "to use 'we' and 'us' is inappropriate and may be an effort to appeal to the jury's passions." *Id.* at 790. But using the word "we" is not prosecutorial misconduct *per se*. See *Nunn v. State*, 753 N.W.2d 657, 662-63 (Minn. 2008). The word "we" does not improperly align the prosecutor with jurors if the prosecutor uses the word when describing the evidence presented at trial and the word reasonably could be interpreted to "refer to everybody who

was in court when the evidence was presented.” *Id.* at 663; *see also State v. Zielinski*, 10 N.W.3d 1, 18 (Minn. 2024).

In this case, the prosecutor sometimes used the word “we” when signaling a transition in his closing argument, such as “[t]hen we turn to [N.T.],” “then we fast forward to trial,” and “[t]hen we heard from the defendant.” The prosecutor sometimes used the word to refer to an issue that would be discussed later, such as “we’ll come back to that,” and “we’ll circle back to that.” On other occasions, the prosecutor used the word when describing the evidence, saying “[w]e learned a lot about bowling,” “we had testimony that . . . ,” and “[w]e know from testimony that . . . .”

None of these uses of the word “we” are attempts by the prosecutor to “describe [him]self and the jury as a group of which the defendant is not a part.” *See Mayhorn*, 720 N.W.2d at 790. None are attempts to highlight Boit’s socioeconomic status or cultural differences between him and the jury, “thinly-veiled character attack[s],” or inappropriate attempts “to appeal to the jury’s passions.” *See id.* at 789-90. All uses of the prosecutor’s uses of the word “we” are statements that describe the evidence in a way that does not exclude Boit or are innocuous references to the issues discussed by the prosecutor. *See Zielinski*, 10 N.W.3d at 18; *Nunn*, 753 N.W.2d at 662-63.

Thus, the prosecutor did not engage in misconduct by using the word “we” during closing argument.

## **B.**

Boit also argues that the prosecutor engaged in misconduct by offering unnoticed and inadmissible other-acts evidence. *See Minn. R. Evid.* 404(b). “It is generally

misconduct for a prosecutor to knowingly offer inadmissible evidence for the purpose of bringing it to the jury's attention." *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (quotation omitted).

Boit's argument is based on a statement N.T. made in one part of the forensic interview, which was presented to jurors when the videorecording was played in the courtroom. Specifically, Boit challenges N.T.'s statement that he caused L.T. to use drugs and to relapse. N.T. made the challenged statement after she said that Boit had asked for her permission to move into L.T.'s home. The interviewer asked N.T. to elaborate about Boit's request for her permission. She answered:

Because the summer that I left . . . was because of him. *He was the one getting my mom into drugs* and doing stuff with my mom. And *he made her relapse twice* now. Like she relapsed that summer and then just recently relapsed this summer too after she had my brother, but she told me that one. But like the one with last summer, like she got to the point where she was hallucinating because it got so bad. (Emphasis added.)

Boit contends that the prosecutor engaged in misconduct by offering the entire videorecording, which includes N.T.'s statement that Boit caused L.T. to use drugs and to relapse.

In its responsive brief, the state initially contends that the prosecutor did not engage in misconduct because the district court previously had ruled that the videorecording could be admitted under an exception to the hearsay rule. That contention is nonresponsive because Boit does not argue on appeal that the videorecording or any part of it is inadmissible hearsay. Also, the district court's ruling on the parties' motions *in limine* did

not foreclose a subsequent ruling that the videorecording is inadmissible for a reason not raised in the pre-trial motions.

The state also contends that N.T.’s statement is not inadmissible other-acts evidence for two reasons: first, because N.T. did not say that Boit used drugs and, second, because the drug at issue is marijuana, which was legalized in Minnesota before trial. *See* 2023 Minn. Laws ch. 63, art. 1, § 9, at 2707-08 (codified at Minn. Stat. § 342.09 (2024)). The state’s first point does not appreciate that N.T. stated that Boit caused L.T. to use drugs and caused her to relapse, which could be construed as “another crime, wrong, or act” that reflects adversely on Boit’s character. *See* Minn. R. Evid. 404(b)(1). The state’s second point might alleviate the prejudicial nature of the statement to some extent. Nonetheless, N.T.’s statement suggests that Boit caused L.T. some degree of harm. Accordingly, the videorecording includes inadmissible other-acts evidence.

The question remains whether the prosecutor plainly engaged in misconduct by offering the unredacted videorecording. Boit cites one opinion in which a prosecutor engaged in misconduct by eliciting inadmissible other-acts evidence, but the prosecutor in that case did so by examining witnesses in the courtroom. *See State v. Harris*, 521 N.W.2d 348, 353-54 (Minn. 1994). In this case, the prosecutor did not elicit inadmissible evidence by questioning a witness; the prosecutor did so by offering a videorecording that contained, in one small part, inadmissible evidence. It is possible that the prosecutor did not “knowingly offer inadmissible evidence,” *Mosley*, 853 N.W.2d at 801, by not realizing or not believing that inadmissible evidence was embedded in the videorecording, but the state does not make that argument.

In any event, the appellate courts have made clear that both prosecutors and district courts have a duty to ensure that videorecordings and other exhibits offered and admitted into evidence do not contain inadmissible evidence and, if they do, to ensure that the inadmissible parts are removed or concealed by edits or redactions. *See State v. Bigbear*, 10 N.W.3d 48, 54-60 (Minn. 2024) (applying harmless-error review to erroneous admission of unredacted videorecording in which alleged victim made prejudicial comments about defendant); *State v. Pearson*, 775 N.W.2d 155, 162 (Minn. 2009) (concluding that district court erred by admitting unredacted videorecording containing inadmissible evidence); *State v. Noor*, 907 N.W.2d 646, 656-57 (Minn. App. 2018) (concluding that district court erred by admitting unredacted exhibit containing inadmissible evidence), *rev. denied* (Minn. Apr. 25, 2018). In *Bigbear*, the supreme court stated, “We expect prosecutors, when seeking admission of a prior consistent statement . . . to be vigilant in excising unfairly prejudicial, extraneous material before it is played for the jury.” 10 N.W.3d at 57. In a separate opinion, the chief justice described “the State’s . . . failure to redact the video interview to ensure that Bigbear received a fair trial” as “inexplicable” and added that “the State abused its prosecutorial power by introducing the full 33-minute video.” *Id.* at 62, 64 (Hudson, C.J., concurring). In light of these authorities, the prosecutor plainly engaged in misconduct by offering the videorecording of N.T.’s forensic interview without redacting her statement that Boit had caused L.T. to use drugs and to relapse.

We next consider whether the prosecutor’s plain misconduct affected Boit’s substantial rights. *See Portillo*, 998 N.W.2d at 251-55; *Griller*, 583 N.W.2d at 740.

Because the modified plain-error test places the burden on the state with respect to the third requirement, we seek to determine whether the state has established that the plain prosecutorial misconduct did *not* affect Boit's substantial rights. *See Portillo*, 998 N.W.2d at 248, 251. To satisfy that burden, the state must "show that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Id.* at 251 (quotation omitted). In considering that issue, an appellate court may consider "[1] the strength of the evidence against the defendant, [2] the pervasiveness of the improper suggestions, and [3] whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *Id.* at 251-52 (quotation omitted).

First, the state presented strong evidence of Boit's guilt. N.T. testified in detail about specific incidents of sexual contact and sexual penetration, which typically occurred while L.T. was either asleep or at work. N.T.'s testimony was corroborated by the videorecording of the forensic interview and the testimony of other witnesses. L.T. testified that Boit often was home alone with N.T. and her younger brother. The forensic interviewer testified about reliability factors that were present in N.T.'s interview, such as the fact that N.T. followed interview rules by stating when she did not know the answer to a question and the fact that she provided sensory details about specific instances of sexual contact and sexual penetration. A family friend testified that N.T. told her about the sexual abuse shortly after Boit moved out. The state also presented evidence that, after Boit moved in, N.T. began to do poorly in school and otherwise struggle.

Second, the plain prosecutorial misconduct was not pervasive. We have rejected Boit's argument concerning the prosecutor's use of the word "we" in closing argument. *See supra* at A. The plain misconduct we have identified resulted in the admission of inadmissible evidence for a brief period of approximately 30 seconds during a more-than-one-hour-long videorecording in a three-day trial. The prosecutor did not thereafter refer to N.T.'s statement that Boit caused L.T. to use drugs and to relapse, either in questioning other witnesses or in closing argument.

In addition, we question the extent of the prejudice arising from N.T.'s statement, given other evidence presented at trial. Before the videorecording was played, L.T. self-disclosed her drug use by testifying that she relapsed after her son was born in June 2023. In addition, N.T.'s stepfather testified that N.T. sometimes left L.T.'s home to stay at his home because there were "drugs in [L.T.'s] house." N.T.'s stepfather also testified that county social workers engaged with the family after a report of "drug paraphernalia in the house." Furthermore, Boit voluntarily disclosed his drug use to jurors during the defense case. When asked about the interpersonal dynamics in L.T.'s home, Boit testified that L.T. told N.T. "that I'm using drugs," and he also testified that he and L.T. once "got high" before going bowling. In short, jurors heard other evidence of drug use in the home, which tends to diminish the impact of N.T.'s statement that Boit caused L.T. to use drugs and to relapse.

Third, Boit had an opportunity to rebut the challenged statement during his own testimony. Boit could have denied N.T.'s statement or otherwise explained. His ability to rebut the inadmissible evidence was limited by his own decision to voluntarily disclose his

drug use during his testimony. Boit could have requested a limiting or curative instruction but did not do so. It is notable that the district court's first draft of jury instructions included a limiting instruction concerning other-acts evidence but that, before the end of trial, the district court removed it with the approval of Boit's trial attorney.

In light of these factors, we conclude that the state has shown that "there is no reasonable likelihood that the absence of" N.T.'s statement that Boit caused L.T. to use drugs and to relapse "would have had a significant effect on the verdict of the jury." *See Portillo*, 998 N.W.2d at 251 (quotation omitted). Thus, the state has satisfied its burden of showing that the prosecutor's plain misconduct did not affect his substantial rights.

### C.

Before concluding, we must rule on a pending motion. After oral argument, the state filed a letter with a citation to supplemental authority. *See* Minn. R. Civ. App. P. 128.05. Boit moved to strike the letter on the ground that it does not comply with the applicable rule. The state's letter refers to a recent opinion discussing relationship evidence. *See* Minn. Stat. § 634.20 (2024). The issue of relationship evidence was not briefed by either party. This opinion does not discuss the issue. Thus, we deny Boit's motion as moot. *See Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 233 n.2 (Minn. 2007) (denying motion to strike as moot because court did not rely on challenged material); *In re Purported Financing Statement*, 745 N.W.2d 878, 882 (Minn. App. 2008) (same).

In sum, Boit is not entitled to a new trial.

**Affirmed; motion denied.**