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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0916**

State of Minnesota,
Respondent,

vs.

Dru Alexander Barrow,
Appellant.

**Filed June 15, 2026
Affirmed
Reilly, Judge***

Hennepin County District Court
File No. 27-CR-24-8073

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

Mary F. Moriarty, Hennepin County Attorney, Robert I. Yount, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Reilly,
Judge.

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

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant seeks reversal of his conviction of fourth-degree criminal sexual conduct, arguing (1) there was insufficient evidence to support his conviction, (2) the district court erred by allowing inadmissible evidence at trial, (3) the prosecutor committed misconduct, (4) the district court erred by providing inadequate jury instructions, and (5) the cumulative impact of these errors deprived appellant of a fair trial. We affirm.

FACTS

Incident and Investigation

The facts below are based on the testimony at the jury trial. In March 2024, P.O. went to Tiger Cave Massage to receive a massage. P.O.'s assigned massage therapist was appellant Dru Alexander Barrow.

P.O. testified at trial that the following occurred to her during the massage. Near the beginning of the session, Barrow told her to “undress to your liking[,] and I’ll be back.” She entered the room alone, removed her clothes down to her underwear, positioned herself face down on the bench, and placed a towel on her midback.

Barrow entered the room and commented that he liked her back tattoo. Barrow asked her what kind of massage she wanted. She told Barrow about a kink in her neck and asked him to focus on her left-side shoulder and neck. She also said she wanted a full massage of her back, arms, and legs. She did not request a massage of her breasts.

Barrow started talking with her before the massage. Barrow asked if she received acupuncture or chiropractic care. When she responded that chiropractors scare her, Barrow

responded “Oh, so you don’t like being bent in different positions?” She “kind of chuckled and said, no, I [don’t].” She did not initially perceive the chiropractic comment as a sexual innuendo; instead, chalking it up to casual conversation often done by service providers.

Barrow started massaging her neck and upper back. Barrow then asked her to lie face up. After she rotated, Barrow placed a hot towel over her eyes and a sheet across her body. While blinded by the towel, she felt the sheet covering her chest lift so much that she could not feel it on her body. She said nothing to Barrow; instead, she tried to justify to herself what was happening.

Barrow placed the sheet back on her, covering her chest, and started massaging her shoulders and upper chest. Barrow’s hands slowly moved under the sheet. While under the sheet, Barrow’s hands moved over and around her breasts for about 30 seconds to one minute. Barrow’s thumbs and palms contacted her nipples.

Barrow returned to massaging her “pectoral area.” Barrow again lifted the sheet “uncomfortably high” and used a hot towel to clean off the oil residue left on her breasts. Barrow placed the towel over her exposed nipples, lifted one side to wipe down the center of her breasts, and repeated the same on the other breast.

Barrow finished the massage. During the rest of the massage, she feared Barrow would attempt to grope her vagina, and she twisted her thighs together to protect herself. But nothing further happened.

After the massage, P.O. quickly dressed and left the room. As she was leaving, another employee asked about her massage and if she wanted to leave a gratuity. She told the employee it was “fine” and handed the employee a \$20 gratuity.

After leaving Tiger Cave Massage, P.O. immediately called her grandmother, R.O., a retired massage therapist, and asked if what happened to her was normal. Testimony and evidence are mixed on how R.O. responded: P.O. testified that R.O. told her it was abnormal to massage a woman's breasts unless it was requested or if there was a medical reason for it. R.O. testified she told P.O. it was "absolutely not" normal. A text message between P.O. and her mother stated, "but grandma said it was normal."

The next day, P.O. told her mother and her husband about what had happened to her. Both agreed it was abnormal and that P.O. should notify the Tiger Cave Massage management.

P.O. notified the management about what occurred. The management at first did not believe her and offered 50% off her next visit. P.O. told the management that she was never returning to their business and left a public review on their Google page regarding the incident.

About eight days after the incident, Tiger Cave Massage management contacted P.O., offering a refund of the massage, a refund of the gratuity, and a certificate for a free hour-long massage. P.O. rejected the offer.

P.O. contacted police to report what occurred. Barrow's attorney reached out to the police to set up an interview with Barrow. At the interview, Barrow stated he did provide a massage to P.O., breast massages are unethical and inappropriate except for specific prenatal or pregnancy issues, and P.O. had not requested him to perform a breast massage.

Respondent State of Minnesota charged Barrow with fourth-degree criminal sexual conduct. A jury found Barrow guilty as charged. The district court sentenced Barrow to a stay of imposition with three years of supervised probation.

Barrow moved the district court for a new trial, arguing, among other things, that the district court erred in failing to define “sexual intent” for the jury; that there was prosecutorial misconduct because the prosecutor interjected race into jury voir dire, diluted or misstated the law about the burden of proof beyond a reasonable doubt, failed to prepare its witnesses, used its witnesses to elicit inadmissible and prejudicial statements, and introduced inadmissible evidence; and that the cumulative impact of the errors was a pervasive force affecting the trial. The district court denied the motion in a thorough order. The district court determined there were no misleading or incomplete jury instructions. The district court also decided that the prosecutorial-misconduct allegations were either not misconduct or did not prejudice the proceedings. The district court concluded that, because there were no prejudicial errors, Barrow received a fair trial.

Barrow appeals.

DECISION

I. Circumstantial Evidence of Sexual Intent

Barrow argues that there was insufficient evidence for the jury to conclude he acted with sexual intent. Intent is generally proved through circumstantial evidence. *State v. McInnis*, 962 N.W.2d 874, 890 (Minn. 2021); *see State v. Austin*, 788 N.W.2d 788, 792 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010). When the state presents circumstantial evidence to prove an element of the crime, this court applies a two-step test

to determine whether the evidence was sufficient to establish that element. *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026).

To be found guilty of fourth-degree criminal sexual conduct, the state must prove that the defendant engaged in sexual contact with another person and that the “actor is in a prohibited occupational relationship with the complainant,” which includes an “actor [who] performed massage or other body work for hire.” *See* Minn. Stat. §§ 609.345, subd. 1(d), .341, subd. 24(1) (2022) (“A ‘prohibited occupational relationship’ exists when . . . the actor performed massage or other bodywork for hire.”). “Sexual contact” includes intentional touching by the defendant of the complainant’s intimate parts “with sexual or aggressive intent.” Minn. Stat. § 609.341, subd. 11(a)(i) (2022). “Sexual intent” is “when the actor perceives himself to be acting based on sexual desire or in pursuit of sexual gratification.” *Austin*, 788 N.W.2d at 792. Sexual intent is generally “inferred from the nature of the conduct itself.” *Id.*

The first step in our analysis requires us to “winnow down the evidence presented at trial” and resolve “all questions of fact in favor of the jury’s verdict.” *Firkus*, 31 N.W.3d at 478 (quotation omitted). Once winnowed, what remains is a “subset of facts that constitute the circumstances proved.” *Id.* (quotation omitted).

The second step is to review the circumstances proved, as a whole and not as isolated facts, and consider whether any reasonable inferences can be drawn that are consistent with any rational hypothesis other than guilt. *Id.* We do not defer to the jury at this stage; instead, we examine the reasonableness of the inferences based on the circumstances

proved. *Id.* at 483. We must reverse if the circumstances proved, viewed as a whole, establish a reasonable inference inconsistent with guilt. *Id.*

The circumstances proved, resolving all facts in favor of the jury's verdict, are as follows: P.O. entered Tiger Cave to receive a massage; Barrow was her massage therapist; P.O. took her clothes off down to her underwear; during the massage, Barrow's hands went under the sheet, and his hands touched P.O.'s bare breasts and nipples for between 30 seconds and one minute; P.O. did not request that Barrow massage her bare breasts; and P.O. did not consent to Barrow touching her bare breasts. Viewing the circumstances proved as a whole, there is no reasonable hypothesis other than guilt. The only reasonable inference is that Barrow massaged P.O.'s breasts for sexual gratification.

Barrow does not argue that he did not touch P.O.'s breasts. Rather, he asserts there is a reasonable inference that his conduct was inadvertent, without sexual intent, and misinterpreted; specifically, because "it does not make sense that [he] would touch P.O.'s breasts and then return to a completely normal massage." This argument lacks merit.

Barrow, himself, told investigating officers that massaging the breasts without consent is inappropriate. And sexual contact does not require *additional* sexual contact for validation. Because there is no alternative hypothesis other than guilt, there was sufficient evidence for the jury to find Barrow guilty of fourth-degree criminal sexual conduct.

II. Inadmissible Evidence

During the jury trial, a police officer testified that law enforcement had obtained the cell phone of Barrow's boss, H.N. The officer explained how data was extracted from the phone and identified text messages recovered from the extraction. Another police officer

testified that he received the extracted text messages, which contained a conversation between H.N. and Barrow stating that Barrow should start identifying himself as “Andy Avery” in response to P.O.’s sexual-assault allegation. This police officer also testified that data was collected from the Tiger Cave Massage booking website, which showed that Barrow’s name changed to “Andy Avery.” Barrow argues that the district court erred in admitting the police officers’ testimony because the state failed to establish the requisite authentication necessary for admission, and the text messages were inadmissible hearsay.

Barrow asserts that he objected to the testimony about the text messages “several times.” Our careful review of the record shows that all of Barrow’s objections did not focus on the police officers’ testimony but rather on the admission of specific exhibits into evidence.¹ Because Barrow failed to object to the text-message testimony at trial, he forfeited review of those evidentiary decisions. *See State v. Vasquez*, 912 N.W.2d 642, 649 (Minn. 2018).

But this does not end our analysis because “we review forfeited issues for plain error.” *Id.* at 650. Under a plain-error analysis, the appellant must prove that (1) there was an error, (2) the error was plain, and (3) the error affected the defendant’s substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is plain when it “clear[ly] or obvious[ly] . . . deviat[ed] from a legal rule.” *State v. Onyelobi*, 879 N.W.2d 334,

¹ Barrow made one “leading” objection related to the text-message testimony. The district court sustained the objection and required the state to restate the question in a nonleading format. Thus, this objection is not appealable. *See State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993) (concluding objecting on grounds of a “legal conclusion” fails to preserve objection on substantive grounds such as hearsay and confrontation clause arguments), *rev. denied* (Minn. Oct. 19, 1993).

355 n.18 (Minn. 2016). The defendant bears the “heavy burden” of showing the error affected their substantial rights by proving a reasonable likelihood that the error had a significant effect on the jury’s verdict. *Griller*, 583 N.W.2d at 741.

Barrow argues that the text messages were inadmissible because neither he nor H.N. testified to authenticate them. But Barrow fails to show that the admission of the text-message testimony was plainly erroneous, such that it should have been found inadmissible on its own accord. Barrow cites several cases in which the district court *upheld* admission of text-message evidence. Yet, Barrow does not provide any case or rule stating that the admission of the testimony was obviously erroneous. As a result, Barrow failed to meet his burden of showing that admission of the testimony was plain error related to authentication.

Next, Barrow argues that the text messages were inadmissible under the hearsay rule. Under the hearsay rule, out-of-court statements offered to prove the truth of the matter asserted are inadmissible except for specific exceptions. *See* Minn. R. Evid. 801(c), 802-805. In *State v. Manthey*, the supreme court recognized that it is particularly hard to conclude plain error under the hearsay rule due to its “complexity,” “subtlety,” and multiple exceptions. 711 N.W.2d 498, 504 (Minn. 2006). In other words, we must be “hesitan[t] to deem the admission of hearsay plain error.” *State v. Stone*, 982 N.W.2d 500, 512 (Minn. App. 2022), *aff’d*, 995 N.W.2d 617 (Minn. 2023).

Barrow’s failure to object to the testimony as inadmissible hearsay prevented the parties and the district court from developing a thorough record, which is necessary to determine plain error. In other words, without a hearsay objection, the district court and

the parties could not argue or explain why, or why not, the text messages were inadmissible hearsay. Thus, we cannot conclude there was an error, much less that the error was plain.

Even if we were to assume plain error occurred, we are unconvinced that such an error affected Barrow's substantial rights. On cross-examination, Barrow elicited testimony from a police officer that it was H.N.'s idea to change his name, not Barrow's. Thus, the testimony Barrow elicited from the police officer removed any assumed prejudice from the prior testimony. Barrow is not entitled to relief under the plain-error standard.

III. Prosecutorial Misconduct

Barrow argues that the state committed prosecutorial misconduct throughout the jury trial. Our review of prosecutorial misconduct allegations differs depending on whether the defendant objected. *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016). If the defendant did not object to the alleged misconduct, the reviewing court applies a modified plain-error test, requiring the defendant to show that the conduct constituted error that was plain. *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014). If the defendant shows plain error, the burden then shifts to the state to demonstrate that the error did not affect the defendant's substantial rights; specifically, 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." *Id.* (quotation omitted). "If all three prongs of the test are met, we may correct the error only if it seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* (quotations omitted).

But if the defendant did object to the alleged misconduct, the reviewing court applies "a two-tiered harmless-error test under which the standard of review varies based

on the seriousness of the misconduct.” *Whitson*, 876 N.W.2d at 304. If the prosecutorial misconduct is “unusually serious,” we must determine whether the misconduct was “harmless beyond a reasonable doubt.” *Id.* If the misconduct is less serious, we must determine whether the misconduct played a substantial part in influencing the jury. *State v. Steward*, 645 N.W.2d 115, 121 (Minn. 2002).

Barrow makes several assertions of prosecutorial misconduct. He objected to some, but not others. We address each in turn.

A. Injecting Race into the Trial

During voir dire of the potential jurors, the prosecutor asked: “[G]enerally speaking, have any of you[] heard of Mike Tyson’s famous line that, ‘Everybody has a plan until you get punched in the face?’” Multiple potential jurors stated that they knew of the quote. Barrow objected to the question and moved for a mistrial, stating that the prosecutor’s statement inappropriately interjected race into juror voir dire. In response to the objection, the district court read an instruction defining and discussing implicit bias. The district court also provided a curative instruction in the jury instructions: “And remember that I told you that the statements of the attorneys are not evidence. You must not let any statements made by the attorneys improperly bias you.” The district court denied Barrow’s motion for a mistrial.

On appeal, Barrow argues the prosecutor committed misconduct by inappropriately interjecting race into the juror voir dire. Because Barrow objected, we apply the two-tiered harmless-error test.

“The exposure of a jury to potentially prejudicial material creates a problem of constitutional magnitude, because it deprives a defendant of the right to an impartial jury and the right to confront and cross-examine the source of the material.” *State v. Varner*, 643 N.W.2d 298, 304 (Minn. 2002) (quotation omitted). We consider the improper injection of race into the trial to be unusually serious prosecutorial misconduct. *See State v. Cabrera*, 700 N.W.2d 469, 473 (Minn. 2005) (reviewing prosecutor’s injection of race in closing arguments under serious-misconduct standard).

The quote the state used discusses “ha[ving] a plan” until the unexpected or shocking incident happens. The state’s follow-up question about whether potential jurors had expectations about how an “accuser might or should act in that situation” further supports that it was not associating Mike Tyson’s sexual-assault history or race with Barrow. The essence of the question was to determine whether the potential jurors had opinions about how an individual should respond to a distressing incident.

We agree with the district court that, while use of the quote was “inept,” based on the single use of the quote, the context of the quote, and the follow-up questions, the quote did not inject race into the proceedings. This is reinforced by the district court’s determination that the jury provided a “generally bored response” when the state used the quote. We defer to the district court’s factual findings unless they are clearly erroneous. *Averbeck v. State*, 791 N.W.2d 559, 561 (Minn. App. 2010). Such a “bored” response shows the quote did not inflame the jury’s passions or inject issues broader than guilt or innocence. Thus, using the quote was not prosecutorial misconduct.

The district court also gave both an additional implicit bias instruction and a curative instruction that the jury should not consider attorney statements as evidence. We presume that a jury will follow a district court's cautionary instruction, and such instruction will cure any prejudicial effect. *State v. Budreau*, 641 N.W.2d 919, 926 (Minn. 2002). That is to say, the district court mitigated any presumed potential prejudice brought out by the quote. And any presumed potential prejudice caused was harmless beyond a reasonable doubt. Thus, there was no prosecutorial misconduct, but even assuming that there was, it was harmless beyond a reasonable doubt.

B. Preparation of Witnesses

Before the jury trial, the district court granted Barrow's pretrial motion to prohibit the introduction of evidence about Barrow's licensure, to preclude the state or witnesses from testifying to any fact outside their knowledge, and to prohibit the state from referring to P.O. as a victim.

During the jury trial, the prosecutor asked one of the police officers if Barrow told them "anything[] about telling his new employer about this [sexual-assault] allegation." The police officer testified that H.N. had told Barrow that he should say he did foot massages because he was not licensed for table massages. Barrow objected. The district court sustained the objection and gave a cautionary instruction to the jury to disregard that testimony. The state immediately switched questions to a different topic.

Similarly, during the jury trial, the police officer and the prosecutor identified P.O. as the "victim." Barrow did not object. Instead, during cross-examination, defense counsel asked the police officer why he identified P.O. as a "victim." The police officer stated he

uses the term for those who report being sexually assaulted. Barrow asked the officer if they had “first-hand knowledge” that P.O. was sexually assaulted. The officer testified “No.”

On appeal, Barrow argues that the prosecutor committed misconduct by failing to inform the state’s witnesses that the district court precluded testimony about Barrow’s licensing issues and identifying P.O. as a victim. Because Barrow objected, we review this nonserious misconduct to determine whether it played a substantial part in influencing the jury to convict. *See Steward*, 645 N.W.2d at 121.

“The state has a duty to prepare its witnesses, prior to testifying, to avoid inadmissible or prejudicial statements.” *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003). Any misconduct is harmless beyond a reasonable doubt if the verdict is “surely unattributable” to the error. *State v. Nissalke*, 801 N.W.2d 82, 105-06 (Minn. 2011). “Factors relevant to the determination of whether prosecutorial misconduct is harmless beyond a reasonable doubt include how the improper evidence was presented, whether the [s]tate emphasized it, whether it was highly persuasive, and whether the defendant countered it.” *Whitson*, 876 N.W.2d at 304.

Here, even assuming without deciding that the state had committed misconduct and that it was unusually serious, the alleged misconduct was harmless beyond a reasonable doubt. There was only a single, limited question that was not structured to elicit the inadmissible testimony, and the state changed the focus of its questioning and did not attempt to elicit the information from the officer again. The district court upheld the objection and gave a curative instruction to the jury. We presume that a jury will follow a

district court's cautionary instruction, and such instruction will cure any prejudicial effect. *Budreau*, 641 N.W.2d at 926. These factors lead us to conclude that the inappropriate testimony was harmless beyond a reasonable doubt. *See Whitson*, 876 N.W.2d at 304-05 (concluding prosecutor's isolated and not repeated question, coupled with curative jury instruction and strong evidence of guilt, rendered the question harmless beyond a reasonable doubt).

Similarly, the police officer identifying P.O. as the "victim" was harmless beyond a reasonable doubt. First, unlike the licensure testimony, Barrow did not object. As a result, we review any misconduct for plain error. Second, in cross-examination, Barrow himself elicited testimony from the officer that they use the term "victim" for anyone alleging sexual assault, and they had no firsthand knowledge of the assault. In other words, Barrow's cross-examination countered the terminology and dispelled or minimized any impact it had on the jury. The state met its burden to prove that any alleged prosecutorial misconduct was harmless beyond a reasonable doubt.

C. Eliciting Inadmissible Evidence

1. The Text Messages

Besides arguing that the district court erred when it admitted testimony about the text messages on H.N.'s cell phone, Barrow also argues that the prosecutor committed misconduct by eliciting the "clearly inadmissible" testimony. "It is improper for a prosecutor to ask questions . . . calculated to elicit . . . inadmissible and highly prejudicial answer[s]." *State v. Henderson*, 620 N.W.2d 688, 702 (Minn. 2001). Prosecutorial

misconduct may result from violations of “rules, laws, orders by a district court, or clear commands [from caselaw].” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007).

Barrow argues that the substance of the text messages was “plainly inadmissible” based on the same hearsay and authentication arguments discussed above. As already analyzed, Barrow failed to show that admitting testimony about the text messages was plain error. Without showing that the testimony was inadmissible, we cannot conclude that the prosecutor committed misconduct. Thus, Barrow fails to show how the prosecutor committed plain misconduct by eliciting the testimony.

2. *Burden-of-Proof Dilution*

During closing argument, the prosecutor told the jury that proof beyond a reasonable doubt is based on “common sense,” it was not a “high bar,” and that “if you believe her, that’s all you need,” because one witness is “sufficient for proof beyond a reasonable doubt.” Barrow did not object to the prosecutor’s statement.

On appeal, Barrow argues that by making these statements, the prosecutor committed misconduct by diluting or misstating the law about the burden of proof. “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). Because Barrow did not object, we review for plain error.

We first address the prosecutor’s statements regarding proof beyond a reasonable doubt. “Prosecutors may not materially misstate the law in closing arguments.” *State v. Fravel*, 34 N.W.3d 309, 330 (Minn. 2026). When assessing whether it is reasonably likely that the plain error “would have had a significant effect on the jury’s

verdict, we 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 229 (quotation omitted). A district court’s jury instruction that accurately defines proof beyond a reasonable doubt and instructs the jury to disregard statements of law that differ from those given by the district court, while not dispositive, assists in preventing prejudice against a defendant. *See Whitson*, 876 N.W.2d at 305 (stating “the court’s instructions to the jury adequately ameliorated the risk of prejudice”); *State v. Atkins*, 543 N.W.2d 642, 648 (Minn. 1996) (concluding prosecutor’s misstatement of the law was harmless because the district court properly instructed jury on the law).

In reviewing the record, the district court accurately instructed the jury on the proof-beyond-a-reasonable-doubt standard and also instructed the jury to disregard statements of law different than those given by the district court. Based on the district court’s instructions, the prosecutor’s comments regarding proof beyond a reasonable doubt were not pervasive. We also recognize that the evidence of guilt against Barrow is strong. Because of this, even assuming the prosecutor’s statements about the burden of proof were plain error, any misconduct did not affect the jury’s verdict.

We next address the prosecutor’s statement that “if you believe her, that’s all you need [to convict].” The supreme court has stated that “were they lying” questions may be inappropriate, as such questions are “perceived as unfairly giving the jury the impressions that in order to acquit, they must determine that witnesses whose testimony is at odds with the testimony of the defendant are lying.” *State v. Pilot*, 595 N.W.2d 511, 516

(Minn. 1999). Such questions obstruct the jury's providence to determine witness credibility by impressing that it must find only one witness credible, not both. *Id.* We see the prosecutor's statement as placing the same unfair impression on the jury—that to acquit Barrow, it must find that P.O. was lying. Simply put, the jury need not find that P.O. was lying to acquit Barrow; yet the prosecutor told the jury the opposite. The prosecutor committed misconduct.

Because Barrow has established prosecutorial misconduct, the burden now shifts to the state to show that the misconduct did not affect Barrow's substantial rights. *See Mosley*, 853 N.W.2d at 801. The state's brief does not address the effect of the potential error on Barrow's substantial rights. Thus, the state waived any argument that the misconduct did not affect Barrow's substantial rights. *See State v. Porte*, 832 N.W.2d 303, 314 (Minn. App. 2013).

Because all three prongs of the modified plain-error analysis have been satisfied, we must address whether reversal is necessary to ensure the fairness and integrity of the judicial proceedings. We will not reverse if granting the defendant a new trial would be “an exercise in futility and a waste of judicial resources.” *Griller*, 583 N.W.2d at 742.

Here, Barrow had a complete adversarial process, presented his theory of the case, and the jury considered and rejected that theory. The jury also credited P.O.'s version of events, which was supported by P.O.'s mother and grandmother's testimony and other evidence that P.O. discussed Barrow's conduct almost immediately after the incident. Granting a new trial would be futile and a waste of judicial resources. Reversal is not necessary.

3. *Misstating the Law about Sexual Intent*

During closing argument, the prosecutor told the jury that touching a woman's breasts and nipples is an act that "speaks for itself," and Barrow's conduct was "no doubt" for his own sexual gratification. Barrow did not object to these statements.

On appeal, Barrow argues that the prosecutor committed misconduct because these statements are misstatements of the law regarding what establishes sexual intent. Because Barrow did not object, we review for plain error.

In *Austin*, we stated that sexual intent is generally "inferred from the nature of the conduct itself." 788 N.W.2d at 792. This is near-identical to the prosecutor's statements to the jury. The prosecutor did not misstate the law. There was no prosecutorial misconduct.

4. *Disparagement, Inflaming Passions, and Injecting Improper Topics*

During Barrow's closing argument, he asserted that either P.O. or her grandmother lied about the conversation in which they discussed whether the massage was normal, that P.O. waived civil liability against Barrow, that P.O. testified that she "has seen things that are not there" and "post[ed] online that [she] take[s] sick pleasure in assuming the worst." He also commented about P.O.'s inconsistent statements to the police.

On rebuttal, the state said,

Well, ladies and gentlemen, a lot about me in that closing and not a lot about what the evidence was and what the facts were. And what we know now is in 2024, a woman that alleges sexual assault is a liar who's just out for money. The old stereotype holds true. You can't believe a woman who reports sexual assault unless he's caught red-handed or on video.

How dare [P.O.] report what happened because to the [d]efense, what happened was nothing out of the ordinary. . . . The [d]efense has pure disdain for [P.O]. At one point, he just refers to her as “that gal,” not even by name.

Barrow objected, stating it was inappropriate for the prosecutor to disparage the defense. The district court responded, “[a]ll right.” The state continued its rebuttal, stating that perpetrators of sexual assault choose to isolate their victims because they know “there is only one witness . . . it’s th[e] victim,” and that the victim will need strength to come forward and make the report. Barrow did not object to this specific statement.²

On appeal, Barrow argues that the prosecutor committed misconduct because the prosecutor’s statements were disparaging, appealed to the jurors’ emotions, and encouraged the jury to consider issues broader than guilt or innocence. Because Barrow’s objection was based only on disparagement of the defense, we review whether the prosecutor’s statements inflamed the passions of the jury and employed improper tactics, for plain error. *See State v. Peltier*, 874 N.W.2d 792, 799 (Minn. 2016). Because the prosecutor’s asserted disparaging statement was isolated, addressed by the court, and not perpetuated further, we review the statement for whether it played a substantial part in influencing the jury to convict. *See State v. McDaniel*, 777 N.W.2d 739, 752-53 (Minn. 2010).

² Barrow’s defense attorney objected during the prosecutor’s rebuttal argument, stating only, “Objection on the law.” The district court did not rule on the objection; the bench conference that occurred after the objection was not recorded; and Barrow’s defense attorney did not specify the statement or legal basis for the objection. Because the record is unclear about the basis for the objection, we conclude it did not preserve a specific objection.

Prosecutors cannot inflame the jury's passions and prejudices against defendants. *Id.* at 752. Further, prosecutors can argue that a particular defense lacks merit, but cannot belittle the defense, either in the abstract or through suggestions that a defense was raised only because it was likely to succeed. *Id.* Statements "couched in arguments about the evidence" do not belittle the defense. *State v. Davis*, 982 N.W.2d 716, 727 (Minn. 2022) (quotation omitted). "[T]he law does not require that a colorless argument be made." *State v. Lasnetski*, 696 N.W.2d 387, 397 (Minn. App. 2005).

The prosecutor commented about the "old stereotype" to counter the defense's attack on P.O.'s credibility. Indeed, the prosecutor followed up the comment by remarking that sexual-assault perpetrators use isolation as a tool, and the victim will need strength to testify. These comments, in context, explain why P.O. was the only one testifying to what occurred during the massage, and why P.O. was initially hesitant about reporting, or even knowing if she was sexually assaulted. *See Finnegan v. State*, 764 N.W.2d 856, 865-66 (Minn. App. 2009) (concluding prosecutor's comments explaining victim's age, inexperience, and shame were not an attempt to inflame jury passions, but an explanation of evidence on "why [the victim] did not immediately report the sexual assault"), *aff'd*, 784 N.W.2d 243 (Minn. 2010); *see also State v. Rucker*, 752 N.W.2d 538, 552 (Minn. App. 2008) ("Prosecutors are permitted to make reasonable inferences from evidence on the record, to analyze or explain the evidence, and to make legitimate arguments to the jury based on the evidence."), *rev. denied* (Minn. Sept. 23, 2008). In other words, "[t]he state's argument was tailored to meet the arguments made by appellant's trial counsel and does not constitute misconduct." *See State v. Patzold*, 917 N.W.2d 798, 809

(Minn. App. 2018) (concluding prosecutor’s closing statement “when is the word of a rape victim not enough,” followed by “look at the physical evidence we have in this case” was not misconduct because it was tailored to meet defendant’s argument that the victim was not credible misconduct), *rev. denied* (Minn. Nov. 27, 2018).

But the prosecutor’s comment about the defense having “pure disdain for [P.O.]” has little to no argumentative value and belittles Barrow’s defense. This statement was misconduct. That said, misconduct that is “sporadic, minimal, and rectified by the court’s constant admonition that . . . statements by the lawyers are not evidence” does not substantially influence the verdict. *McDaniel*, 777 N.W.2d at 753. The district court upheld Barrow’s objection to the disparaging comment, and the court’s jury instructions, both written and oral, included a statement that an attorney’s arguments and comments are not evidence. And the conviction is based on ample evidence. Thus, the prosecutor’s statement did not play a substantial part in the conviction. Reversal is unnecessary.

IV. Jury Instructions and Questions

After the parties had rested, Barrow requested that the jury instructions define “sexual intent.” The district court did not include a definition for “sexual intent” but did define the term “intentional” using the statutory definition of “[i]ntentionally” under Minn. Stat. § 609.02, subd. 9(3) (2024). The jury instructions also included an instruction that “arguments or other remarks of an attorney are not evidence.”

During deliberation, the jury asked the district court for “clarification on sexual [and]/or aggressive intent.” Barrow again asked the district court to give the jury a

definition for “sexual intent.” The district court denied the request and told the jury that it must rely on the instructions given to answer the question asked.

On appeal, Barrow argues that the district court erred by not providing the jury with a specific definition of “sexual intent.” Minnesota appellate courts review challenged jury instructions for an abuse of discretion. *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019). Similarly, we review a district court’s decision to provide additional jury instructions for an abuse of discretion. *See State v. Murphy*, 380 N.W.2d 766, 772 (Minn. 1986) (“The court has the discretion to decide whether to amplify previous instructions, reread previous instructions, or give no response at all.”).

We analyze the jury instructions “as a whole to determine whether they fairly and adequately explain the law.” *State v. Evans*, 756 N.W.2d 854, 874 (Minn. 2008). We also recognize that “the [district court] may, in [its] discretion, give additional instructions in response to a jury’s question on any point of law.” *Murphy*, 380 N.W.2d at 772; *see also* Minn. R. Crim. P. 26.03, subd. 20(3)(a) (stating if jury asks for additional instructions, “[t]he court may give additional instructions”).

While the jury requested a more specific definition of the phrase “sexual or aggressive intent,” our prior caselaw has applied the “common and approved usage” of the term “sexual intent” in determining whether a prosecutor supplied sufficient evidence to prove the defendant acted with sexual intent. *Austin*, 788 N.W.2d at 792. Accordingly, we fail to see how the district court could have erred by declining to specifically define a term whose plain meaning has been held to sufficiently describe the offense element. As

a result, the district court did not abuse its discretion by failing to give a specific definition of sexual intent.

V. Cumulative Impact

Barrow argues that the cumulative impact of the errors prevented him from having a fair trial. We conclude that although there were a few errors, those few errors were harmless beyond a reasonable doubt. Further, the jury had sufficient evidence to find Barrow guilty of the sexual contact. Thus, those harmless errors did not prevent him from having a fair trial.

Affirmed.