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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1348**

State of Minnesota,
Respondent,

vs.

Tony Dean Boos,
Appellant.

**Filed June 22, 2026
Affirmed
Schmidt, Judge**

Hennepin County District Court
File No. 27-CR-22-20223

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

Mary F. Moriarty, Hennepin County Attorney, Nicholas G. Kimball, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Smith, Tracy M., Judge; and Beane, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Tony Dean Boos argues that she is entitled to a new trial because the prosecutor committed reversible misconduct. Boos also raises arguments in a pro se supplemental brief. We affirm.

FACTS

Law enforcement and the fire department responded to a call from a hotel that had an active fire in room 311. Officers went to the third floor to evacuate guests and saw Boos wandering the hallway and “peering” into room 311. Inside room 311, the sprinkler heads were covered with towels and the smoke detector was covered with a plastic baggie. Hotel staff told officers that Boos was the most recent tenant in room 311.

Shortly thereafter, officers found Boos in room 325. When an officer spoke with Boos, she did not answer the officer’s questions about the fire. Instead, she “spoke about UFOs and aliens and NASA.” Boos told the officer that she had stayed in room 311, but it “had maintenance issues, and so she got switched to [r]oom 325.”

While one officer stayed in room 325 with Boos, another officer confirmed that room 311 was still registered to Boos, but she had relocated to room 325. The officer also reviewed surveillance footage, which showed Boos entering room 311 early in the morning and then, a few hours later, the hallway beginning to fill with smoke.

After speaking with her for nearly an hour, officers released Boos. But she stayed at the scene. After confirming that Boos still had access to room 311, reviewing the surveillance footage, and determining that Boos was a suspect, officers arrested her.

By amended complaint, respondent State of Minnesota charged Boos with one count of first-degree arson. After a three-day trial, the jury found Boos guilty. The district court sentenced Boos to 50 months in prison.

Boos appeals.

DECISION

Boos argues that her conviction must be reversed and that she is entitled to a new trial because the prosecutor committed reversible misconduct. Boos also submitted a supplemental pro se brief. We first address the issues raised in Boos' counseled brief and then turn to her pro se arguments.

I. The prosecutor did not commit reversible misconduct.

Boos argues that the prosecutor committed reversible misconduct by: (1) telling the jury they could not consider law enforcement's failure to investigate other individuals; (2) telling the jury it could not consider the absence of a motive; (3) disparaging defense counsel's argument; (4) eliciting inadmissible profile evidence about arsonists; and (5) arguing irrelevant facts not in the record and diluting the state's burden of proof. Of the specific incidents raised, defense counsel only objected to the prosecutor's comments about law enforcement's failure to investigate other individuals. Defense counsel raised no objection to the other four incidents. We address each challenge in turn.

"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).

A. The prosecutor did not commit reversible misconduct in discussing law enforcement's investigation of the charged offense.

We will reverse a district court's decision to overrule an objection based on an allegation of prosecutorial misconduct when, "considered in the context of the trial as a whole," the misconduct was so serious "that the defendant's constitutional right to a fair trial was impaired." *State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000). When assessing objected-to alleged misconduct in a prosecutor's closing argument, we look to the argument "as a whole rather than focus on particular phrases or remarks that may be taken out of context or given undue prominence." *Id.* at 728 (quotation omitted). Minnesota appellate courts have found "prejudicial prosecutorial misconduct only in extreme circumstances[.]" *State v. McDaniel*, 777 N.W.2d 739, 752 (Minn. 2010).

Boos argues that the prosecutor committed reversible misconduct based upon the following closing argument:

STATE: Let's also talk about this "let's blame the investigation, let's blame the police," right? Police did a bad job, blame them. One, the police are not on trial here, so a verdict based on that is totally inappropriate. Second, they didn't interview all these other people here. How many other people were seen on video coming and going from 311? Zero, only Ms. Boos. Who did they interview? Ms. Boos.

. . . .

STATE: As I just said to you, you're not to speculate about things from outside of this courtroom. Only consider the evidence before you. These statements about other people potentially having the card? Speculation. About what other witnesses might have said? Speculation. That is not evidence, folks. The evidence is what you heard from these witnesses and from the exhibits you received.

In overruling defense counsel's objection, the district court made the following ruling:

THE COURT: . . . first, with regard to the speculation, I said at bench conference, which is then what [the prosecutor] came back and said, which is that it's true that jurors are instructed that they are only to consider the evidence they heard in court, and I did think that was fair to say in response to the defense's statements about they—they didn't talk to other witnesses.

And there is case law that if the witnesses are equally available it should not be—essentially, the State should not be dinged in argument for not having brought them, and therefore, that's a, you know, fatal flaw in their case. So I think that the speculation statement was legitimate in terms of they have all the instructions, they know what they're to consider, they also know they can—that the State has to prove its case beyond a reasonable doubt. We've reiterated that over and over.

And so I think together that shows them that they can't speculate about things that aren't evidence, that evidence has to meet the appropriate standard, it has to be enough. And if the holes that [defense] raised cause them to question that evidence, then that would be reasonable doubt and that's what he was arguing. So that's a long way of saying I think it was within the bounds of the law so that's why I asked him to mention that they have to consider the evidence in the courtroom and not speculate about things that were not evidence.

With regard to the inappropriate to consider the police. I took it in the way that [the prosecutor] just said, which is that, essentially, you can't render a verdict just because you don't like cops. Now, I understand your point, [defense counsel], that you felt like he was saying it's inappropriate to consider sloppy police work. That's a huge defense for a lot of people. I took it as the way [the prosecutor] described it. I understand it was a little bit ambiguous, but I think the instructions were clear enough. And I don't know if you're looking to bring them back to remind them of the burden, but I do think the instructions were very clear. I think you both hammered on the burden, but I do think the instructions were very clear. I think you both hammered on the burden of proof, so I think that we're in a fair position, but I understand your concern.

In considering the prosecutor's closing argument as a whole, we agree with the district court's well-reasoned ruling that the prosecutor's argument was appropriate. In the context of the entire argument, the prosecutor told the jury that evidence does not include speculation or attorney statements. As the district court noted, that is an accurate recitation of the law and consistent with the instructions provided to the jury.

B. Boos' Unobjected-To Allegations of Prosecutorial Misconduct

Boos also asserts four unobjected-to incidents of alleged prosecutorial misconduct: (1) telling the jury that it could not consider the absence of a motive; (2) disparaging defense counsel's argument; (3) eliciting inadmissible profile evidence; and (4) arguing facts not in the record and diluting the state's burden of proof.

We review unobjected-to allegations of prosecutorial misconduct under a modified plain-error standard. *Ramey*, 721 N.W.2d at 302. The defendant must first demonstrate an error that is plain. *Id.* Upon establishing plain error, the burden shifts to the state to show that the error did not affect the defendant's substantial rights. *Id.* If the state fails to meet its burden, we then "consider 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).

1. The prosecutor's discussion of motive during closing arguments did not constitute plain error.

Boos argues that the prosecutor misstated the law and misled the jury by stating:

STATE: The State can't tell you motive of why Ms. Boos did what she did. At the beginning of this trial, [defense counsel] told you [to] "think about that." You shouldn't think about that because that is not an element that you are to consider. There is not an element hidden in there that says, "why did Ms. Boos set this hotel room on fire? What was her motive in starting

this hotel room on fire?” I don’t need to prove that to you. That is not an element for you to consider.

As I said with intent, we rarely see into the minds of people. People every single day commit crimes that make no sense and have very little reason behind it. They still do it. And I don’t need to prove [] that to you why she did it. I just need to prove to you that she did it, and she did.

The prosecutor did not misstate the law by noting that motive is not an element of first-degree arson. *See Zornes v. State*, 880 N.W.2d 363, 372 (2016) (holding that a prosecutor did not commit misconduct by arguing that “it would be nice to know a motive for these brutal homicides”). The prosecutor’s statement does not constitute plain error.

2. The prosecutor’s comments about defense counsel’s presentation of defenses do not constitute plain error.

Boos argues that the prosecutor committed plain error by commenting on defense counsel’s conflicting theories during closing arguments:

STATE: Now, the defense also might bring this up, “well there could have been somebody else who did it.” But Ms. Boos didn’t act intentionally if it did happen. So it is this “or” argument, the alternative. So it’s either another person did it that we never capture or Ms. Boos didn’t act intentionally. Which one is it, folks? Because you can’t have it both ways. This isn’t fast food, you got to pick one. And the evidence is this was an intentional act. The evidence is that this was only one person, and that’s Ms. Boos.

The prosecutor’s comments, here, do not rise to the level of belittlement or attacking defense counsel’s credibility. The argument was a permissible statement that the defense theories lacked merit. *See McDaniel*, 777 N.W.2d at 752 (“[A] prosecutor can argue that a particular defense has no merit.”); *see also State v. Martin*, 773 N.W.2d 89, 108 (Minn. 2009) (“A prosecutor may argue that there is no merit to a particular defense.”).

3. The prosecutor's elicitation of profile evidence did not constitute plain error.

Boos argues that the prosecutor committed plain error by eliciting improper profile evidence. A prosecutor may not elicit impermissible testimony that a defendant fits the profile of a certain type of criminal. *See, e.g., State v. Williams*, 525 N.W.2d 538, 545-48 (Minn. 1994). Boos argues the prosecutor did just that:

STATE: Will you also document the people that are at the scene?

DETECTIVE: Yep. So especially if there's different clues in the radio communications of a suspicious fire or multiple areas of origin, that's kind of making the hairs on my neck go up. Okay, I'd better take a few pictures outside and see if there's people kind of standing around in the background. Some fire setters are known to stay in the area and kind of watch. They get the excitement from just the whole excitement of the incident itself.

STATE: So there's, from your knowledge, people who start fires will either return or stay at the scene of the fire they set?

DETECTIVE: Correct.

STATE: Even though they set that fire?

DETECTIVE: Correct, yeah.

Boos also argues that the state exacerbated the error during closing argument when summarizing the testimony:

STATE: . . . the fire inspector [told] you that it is common amongst arsonist[s] or firebugs to go back and stay at the scene to watch what they've done, to see what they've done.

The state argues that the testimony and closing argument were appropriate because defense counsel opened the door to such evidence when counsel questioned why Boos would remain at the scene during the opening statement at trial:

DEFENSE COUNSEL: They already got a statement from Ms. Boos. They already had a feeling this fire was intentionally set when that officer decided to let my client go, and even then, Ms. Boos sticks around. And why does she stick around? Because that's where she's staying. That's where she's living at the moment.

And so, again, if this is a person who just committed a very serious arson, why hang around? Why talk to the police? Why wait to get caught? Well, the reason she stuck around is because she didn't do this. It's because she's innocent.

The parties cite no caselaw, and we have unearthed none, addressing whether the state may admit profile evidence to prove guilt when a defense counsel “opens the door” during opening statements. Because there is no caselaw that holds these circumstances constitute misconduct, we conclude that there is no plain error. *See State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (concluding no plain error because the supreme court had not “clearly” ruled that un-objected-to appellate issue constituted an error).

4. The prosecutor's statements about its burden of proof did not constitute plain error.

Boos argues that the prosecutor committed plain error by misstating the state's burden of proof during closing argument. Boos identifies the following portion of the prosecutor's closing argument:

STATE: I want to talk to you about proof beyond a reasonable doubt. Now, at the start of the case, you heard the defense mention extraordinary claims take extraordinary evidence. That's not the standard in the State of Minnesota. It's not the

standard in the United States. The standard is proof beyond a reasonable doubt. It's whether there is sufficient evidence to prove each element beyond a reasonable doubt, not extraordinary evidence, regular evidence, the same evidence you heard in this case.

You also heard me in voir dire and my opening talk about common sense, because you all raised your hand and said you have good common sense. I asked you in my opening to keep that common sense in mind when you listen to the testimony and you heard the evidence. I'm asking you again now to rely on your common sense in your good reason when you go back to that jury deliberation room, because proof beyond a reasonable doubt is doubt based on reason and common sense. It is not doubt that is fanciful or capricious. Use that common sense.

On rebuttal, the state continued:

STATE: Let's talk about a few things, ladies and gentlemen. Let's talk about proof beyond a reasonable doubt quick. We talked about how high a burden this is, highest burden in the world. Guess what? People are found guilty every single day in courthouses in every single state across this country. It happens right here in this building on the 24 floors that occupy it. It's not that hard to do, ladies and gentlemen, if you use your common sense and reason and if the State has proven it beyond a reasonable doubt.

This is not some extraordinarily difficult task. It happens all the time, every day.

These statements are similar to those made in *Martin*. In *Martin*, for example, the Minnesota Supreme Court concluded that a prosecutor does not misstate or shift the burden of proof by arguing that “even with the presumption of innocence, many people are still convicted and that proof beyond a reasonable doubt was ‘a stiff burden.’” *Martin*, 773 N.W.2d at 105. The supreme court held that the statements were “a legitimate explanation of the State’s burden.” *Id.*; see also *McDaniel*, 777 N.W.2d at 751 (concluding

that prosecutor's argument that other defendants have been found guilty was not improper as it suggested "to the jury that the State's burden is not an impossible one"). We conclude that the prosecutor's similar closing arguments, here, do not constitute plain error.

II. Boos' Pro Se Supplemental Arguments

Boos asserts that police took her cell phone when they arrested her, which she alleges contained exculpatory evidence. Boos argues that the state violated *Brady v. Maryland*, 373 U.S. 83 (1963), by not disclosing her cell phone.

Boos did not raise this argument to the district court. A "party may not raise issues for the first time on appeal." *Taylor v. State*, 910 N.W.2d 35, 38 (Minn. 2018) (quotation omitted). As such, Boos has forfeited appellate review of that issue. *Id.*

Even if we reviewed the issue for plain error, we conclude that the record does not support any *Brady* violations by the state. To prove a *Brady* violation, Boos must establish that: (1) the evidence was favorable to her because it would have been either exculpatory or impeaching, (2) the evidence was intentionally, or otherwise, suppressed by the prosecution, and (3) the evidence was material, i.e., the absence of the evidence caused prejudice to Boos. *Walen v. State*, 777 N.W.2d 213, 216 (Minn. 2010) (citation omitted).

We discern no *Brady* violation. There is nothing in this record to show that the contents of Boos' phone were either exculpatory or impeaching. Most importantly, there is nothing in the record to suggest that the state reviewed the contents of Boos' phone, discovered exculpatory or impeaching contents, and then suppressed the evidence. As such, we conclude that Boos' argument does not satisfy the elements under *Brady*.

Affirmed.