

*This opinion is nonprecedential except as provided by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
A25-1745**

State of Minnesota,
Respondent,

vs.

Darrius Lamar Plummer,
Appellant.

**Filed August 31, 2026
Affirmed in part, reversed in part, and remanded
Worke, Judge**

St. Louis County District Court
File No. 69DU-CR-24-1067

Keith Ellison, Attorney General, Timothy C. Rank, Assistant Attorney General, St. Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Duluth, Minnesota (for respondent)

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

Considered and decided by Worke, Presiding Judge; Frisch, Chief Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his second-degree murder conviction, arguing that (1) the prosecutor committed misconduct, and (2) the district court erroneously calculated his criminal-history score. We affirm appellant's conviction, but because the evidence is

insufficient to support inclusion of appellant's out-of-state convictions in calculating his criminal-history score, we remand for further development of the record.

FACTS

On April 11, 2024, appellant Darrius Lamar Plummer went to a bar with a friend. After the bar closed, people congregated outside, including Plummer, his friend, and C.M. Plummer knew C.M. because she had dated his friend. A confrontation ensued between Plummer and C.M., and C.M. attempted to punch Plummer. Plummer grabbed C.M., pushed her, and pinned her against a wall.

At one point, Plummer commented to a man standing with C.M. that she "wasn't worth the trouble." Another confrontation ensued. The bar's bouncer saw Plummer pull a knife while saying he would stab anybody who ran up on him. The bouncer urged Plummer to put the knife away. C.M. lunged at Plummer. Plummer reached around the bouncer and stabbed C.M. C.M. collapsed on the sidewalk and died from the stab wound. A bystander chased Plummer and knocked him to the ground by hitting him in the head with a pistol. Plummer got back up and continued running.

In June 2024, Plummer was apprehended in Detroit. Respondent State of Minnesota charged Plummer with second-degree unintentional murder, in violation of Minn. Stat. § 609.19, subd. 2(1) (2022).

At Plummer's jury trial, the state presented testimony from several witnesses, including the bouncer, law-enforcement officers, and the medical examiner who conducted C.M.'s autopsy.

Plummer testified that he pulled the knife in self-defense because people were threatening him. Plummer testified that he did not see who he was physically fighting and did not know that it was C.M. who swung at him. Plummer further testified that he did not see C.M. before he stabbed her because he was focused on a man in a white t-shirt who threatened him.

The following exchange occurred during cross-examination when the prosecutor questioned Plummer about retreating from potential danger:

Q: And you did not try to go into the bar when you were scared for your life of the people with guns outside?

A: Because I never seen those doors open.

Q: Sounds like you didn't see a lot?

A: I'm paying attention to everything that's in front of me, the people that's approaching me.

The prosecutor next questioned Plummer about the man in the white t-shirt:

Q: From where you are back here by the door, you're saying you can see past [the bouncer], [another employee], the 400-pound man, around the corner to this white t-shirt guy?

A: Yes. I . . . kept my eyes on him the whole time.

Q: You - - okay. So you could bend your eyesight to see him around that corner?

A: It wasn't bending. It was like the way everybody's standing, I could see this person.

The following questions were asked about Plummer's perception of C.M. before the stabbing:

Q: And it sounds like, conveniently, you can't see her ever again after you first address her when you walk out of the bar?

A: She wasn't being the main aggressor at that point, . . . I'm paying attention to the main person that said, "I will shoot this b----h up."

Q: You conveniently can't see her ever again?

A: I was paying attention - - it's a lot of chaos going on, so I'm paying attention to the main aggressor. I'm looking around, but I'm paying attention to the main aggressor at that point.

At the end of cross-examination, the prosecutor returned to what Plummer did or did not see before the stabbing:

Q: And you never yelled to [your friend] to help you?

A: How am I going to yell through a building?

Q: Through the open doors?

A: I never seen those doors open, like I told you before.

Q: Sounds like there was a lot of things you didn't see. So you didn't see the doors open?

A: It was behind me.

Q: And you never saw [C.M.]?

A: In the initial contact.

The jury found Plummer guilty as charged. The district court sentenced Plummer to 225 months in prison. This was a presumptive sentence calculated using Plummer's five criminal-history points that included points for out-of-state convictions. This appeal followed.

DECISION

Prosecutorial Misconduct

Plummer first argues that the prosecutor committed misconduct. Plummer did not object at trial. Unobjected-to claims of prosecutorial misconduct are reviewed under a modified plain-error standard. *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023). Under the modified plain-error test, Plummer must show that the prosecutor's conduct constituted error that was plain. *See id.* If Plummer shows plain error, "the burden shifts to the [s]tate to demonstrate that the error did not affect the defendant's substantial rights." *See id.*

(quotation omitted). Even if the error affected a defendant’s substantial rights, this court will not grant relief “unless [the] failure to do so will cause the public to seriously question the fairness and integrity of [the] judicial system.” *Pulczynski v. State*, 972 N.W.2d 347, 359 (Minn. 2022).

Cross-Examination

Plummer argues that, while questioning him relevant to his self-defense claim, the prosecutor impermissibly injected her personal opinion and inflamed the passions of the jury.

It is improper for a prosecutor to give their own opinion about the credibility of a witness during cross-examination. *State v. Mayhorn*, 720 N.W.2d 776, 786 (Minn. 2006); *see also State v. Blanche*, 696 N.W.2d 351, 375 (Minn. 2005) (“Prosecutors must not interject their personal opinions into a case.”). But a prosecutor is allowed to argue that there is no merit to a particular defense based on the evidence, so long as the prosecutor does not “belittle that defense either in the abstract or by suggesting that the defendant raised the defense because it was the only one with any hope for success.” *State v. Peltier*, 874 N.W.2d 792, 804 (Minn. 2016). Prosecutors are also allowed a wide range of inquiry on cross-examination, particularly when “there is a sharp conflict in the evidence,” and the credibility of the defendant is critical. *State v. McDaniel*, 534 N.W.2d 290, 293 (Minn. App. 1995), *rev. denied* (Minn. Sept. 20, 1995).

Plummer challenges four exchanges on cross-examination in which he claims that the prosecutor interjected her personal opinion about his testimony and, by extension, his credibility.

First, Plummer argues that the prosecutor’s statement—“[s]ounds like you didn’t see a lot?”—when questioning him about the possibility of retreating through the bar doors was not a question. Plummer responded that he was paying attention to the situation in front of him. Gauging the tone from a transcript alone is difficult, but it is a reasonable inference that the prosecutor asked a question because the court reporter included a question mark in the transcript and Plummer answered the question. In addition, the line of questioning highlights inconsistencies in Plummer’s testimony about not seeing the doors open when other evidence shows the doors open multiple times during the incident. Surveillance footage also shows Plummer talking to people standing in the doorway while the door is held open. The prosecutor’s questions highlight the evidence that made Plummer’s defense implausible and did not interject the prosecutor’s own opinion. Therefore, there was no misconduct.

Second, in response to Plummer stating that he kept his eyes on a man in a white t-shirt “the whole time,” the prosecutor asked Plummer if he could “bend [his] eyesight to see [the man in the white t-shirt] around [a] corner?” As Plummer contends, the prosecutor could have asked how he could see the man in the white t-shirt instead of asking if he could bend his eyesight. But in asking the latter, the prosecutor did not express their personal opinion.

Third, Plummer argues that the prosecutor’s “text and . . . tenor” when asking him about not paying attention to, and not seeing, C.M. while outside, expressed her opinion about his credibility. But Plummer’s testimony is strongly contradicted by the surveillance footage showing the altercation with C.M. and testimony from other witnesses. This “sharp

conflict in the evidence” and Plummer’s testimony—which was critical to Plummer’s self-defense claim—allowed a wide range of inquiry during the prosecutor’s cross-examination. *See id.*

Fourth, Plummer argues that the prosecutor expressed her personal opinion by stating: “Sounds like there was a lot of things you didn’t see. So you didn’t see the doors open?” The prosecutor’s question here, again, addressed Plummer’s testimony that was contradicted by other evidence. A prosecutor’s questions “need not be colorless” if they are tied to the evidence. *See State v. Davis*, 735 N.W.2d 674, 682-83 (Minn. 2007) (stating prosecutor calling defendant’s testimony “preposterous” was not belittling the self-defense claim and, while the arguments were “expressed in colorful terms,” they were not error and did not involve misconduct). The prosecutor’s questions, while at times colorful, were connected to the evidence and the reasonableness of Plummer’s belief that he was in imminent danger from C.M., the reasonableness of his use of force, and his failure to retreat—which were all directly tied to the credibility of Plummer’s self-defense claim. *See State v. Devens*, 852 N.W.2d 255, 258 (Minn. 2014) (stating self-defense claim requires evidence of defendant’s honest belief of imminent danger, use of reasonable force to resist danger, and inability to retreat). Moreover, Plummer’s version of events differed significantly from that presented by the state’s witnesses, which allowed the prosecutor “to explore discrepancies in testimony and the possible prejudice or bias of all witnesses,” including Plummer’s. *See McDaniel*, 534 N.W.2d at 293. Therefore, the prosecutor’s questions are not error and thus do not involve misconduct.

Closing Argument

Plummer also argues that, during closing argument, the prosecutor improperly shifted the burden of proof on his self-defense claim. The state has “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.” *State v. Smith*, 541 N.W.2d 584, 589 (Minn. 1996). To determine whether the prosecutor committed misconduct in closing argument, this court examines “the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence.” *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993).

During closing argument, the prosecutor stated that Plummer “want[ed] so badly for this to be a self-defense case.” Plummer argues that this statement impliedly shifted the burden of proof, forcing Plummer to prove his innocence. *See State v. McDaniel*, 777 N.W.2d 739, 750 (Minn. 2010) (stating misstatement of burden of proof is “highly improper” and prosecutorial misconduct). But Plummer’s argument ignores that, immediately after this statement, the prosecutor explained the elements that needed to be met for Plummer’s self-defense claim to succeed. The prosecutor then discussed the evidence that disproved Plummer’s self-defense claim. By taking the closing argument as a whole, rather than selecting just this one sentence, the prosecutor did not improperly shift the burden and, therefore, did not commit misconduct. *See Walsh*, 495 N.W.2d at 607.¹

¹ Because we conclude that there was no error and, thus, no misconduct, we need not address Plummer’s substantial-rights argument.

Sentence

Plummer argues that he is entitled to resentencing because the state failed to prove that his out-of-state convictions could be included in his criminal-history score. While Plummer did not raise the issue with the district court, “a defendant may not waive review of his criminal history score calculation.” *State v. Maurstad*, 733 N.W.2d 141, 147 (Minn. 2007). Appellate courts review a district court’s criminal-history-score calculation for an abuse of discretion. *State v. Oreskovich*, 915 N.W.2d 920, 926 (Minn. App. 2018). A sentence based on an incorrect criminal-history score must be remanded for resentencing. *State v. Woods*, 945 N.W.2d 414, 416-17 (Minn. App. 2020).

“The state has the burden of proving by a preponderance of the evidence the facts necessary to justify consideration of out-of-state convictions in determining a defendant’s criminal history score.” *State v. Outlaw*, 748 N.W.2d 349, 355 (Minn. App. 2008) (quotation omitted), *rev. denied* (Minn. July 15, 2008). An unsubstantiated list of prior convictions on a sentencing worksheet is insufficient to prove that the convictions should be applied to a defendant’s criminal-history score. *State v. Maley*, 714 N.W.2d 708, 711 (Minn. App. 2006). To include an out-of-state conviction in a criminal-history score, the district court must determine “the equivalent Minnesota offense based on the elements of the prior non-Minnesota offense.” Minn. Sent. Guidelines 2.B.5.b (2024). The district court must also consider “the sentence imposed” and “whether the offense is defined as a felony, gross misdemeanor, or targeted misdemeanor in Minnesota.” *Id.*

Plummer was sentenced with a criminal-history score of five. The following felony offenses were listed: (a) unarmed robbery, one point; (b) forgery, one-half point;

(c) second-degree drug sale, one and one-half points; and (d) possession of firearms by a prohibited person, one and one-half points. Three of these are out-of-state convictions: Michigan (unarmed robbery and firearm possession) and Illinois (forgery). Plummer asserts, and the record reflects, that the out-of-state convictions were unsubstantiated by any other documentation or testimony. The state concedes that the district court's determination appears to rely solely on the presentence investigation report and that the report alone does not establish the facts necessary to justify the inclusion of the out-of-state convictions. *See State v. Johnson*, 31 N.W.3d 566, 575 (Minn. App. 2026).

Therefore, we reverse and remand for resentencing, allowing the state the opportunity “to further develop the sentencing record so that the district court can appropriately make its determination.” *Outlaw*, 748 N.W.2d at 356.

Affirmed in part, reversed in part, and remanded.