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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1772**

State of Minnesota,
Respondent,

vs.

Dante Tyree Perez,
Appellant.

**Filed August 17, 2026
Affirmed
Beane, Judge**

Hennepin County District Court
File No. 27-CR-25-8285

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

Mary F. Moriarty, Hennepin County Attorney, Kara S. Bovee, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant
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Considered and decided by Beane, Presiding Judge; Smith, Tracy M., Judge; and
Schmidt, Judge.

NONPRECEDENTIAL OPINION

BEANE, Judge

Appellant Dante Tyree Perez challenges his conviction of threats of violence,
arguing that it is not supported by sufficient evidence. He also argues that the prosecutor

committed misconduct, implicating his threats-of-violence conviction and unadjudicated guilty verdict for domestic assault (fear), by (1) eliciting vouching testimony, (2) personally vouching for the complainant's credibility, (3) falsely accusing Perez of changing his testimony, and (4) arguing facts not in evidence. We affirm.

FACTS

In April 2025, Perez was living with his mother (mother) in her Minneapolis apartment. One morning, the two were involved in an altercation in the apartment, and both called 911. Responding officers arrested Perez, and respondent State of Minnesota charged him with three offenses: making threats of violence in reckless disregard of the risk of terrorizing another, domestic assault (harm), and domestic assault (fear). The following evidence was presented at trial.

Mother testified that she lives in a one-bedroom apartment that is "quite small." Perez was staying with her, sleeping in her bedroom while she slept on the futon in the living room. He did not pay rent. In describing how they got along, mother said that Perez "didn't like for [her] to talk to him," and would call her names like "stupid dumb b-tch." She also said that Perez "has a history of tearing apart things, throwing things, screaming," which is "frightening," and she is "always on edge" when Perez and his brother are around.

On the morning of April 3, Perez was angry and yelling at mother because she had let his ex-girlfriend come over and get some belongings. Mother was scared because, "[w]hen [Perez] gets angry like that, you just don't know what he's going to do." As Perez was yelling, he thrust his phone toward mother and told her to look at it. He "bopped" her forehead with his phone. It "wasn't hard," but it surprised mother and caused her to fall

backward to the floor. Both the impact from the phone and the fall “hurt.” Mother’s fall disturbed a previously cracked mirror, causing it to fall and break. Mother put herself behind a chair in the corner of the kitchen because she was scared. Then she told Perez to leave, and they both called 911. Mother acknowledged that Perez “called 911 first.”

As mother was calling 911, Perez “threaten[ed]” her. Mother explained that Perez’s “demeanor changed,” his eyes “went very dark,” he “didn’t look the same in the face,” and then he said: “If you call the police, I’ll kill you.” He said it twice, which “startled” mother and made her “afraid” because he had never said anything like that before. When asked what she was afraid of, mother said, “Of [Perez].” And then when asked, “Of being hurt?” she responded affirmatively: “Of being hurt, yes.” She said that Perez then left the apartment, after which she locked the door and put a chair in front of it to prevent Perez from coming back in.

Mother testified that she told the officers who responded to her 911 call what had happened and obtained a restraining order. But within a week, she felt “conflicted” about Perez being prosecuted and wrote a letter to someone in Perez’s attorney’s office. The letter itself is not in evidence, but mother described it as saying that she suffers from “mental illness,” is not a “credible reporter,” and had lied about the incident. In her testimony, mother clarified that her “mental illness” is part of her daily life but was not affecting her on the day of the incident. She said that she was “clear-minded” that day and that the letter saying that she had lied was “false.”

Two officers who responded to the 911 calls also testified. Officer M.M. testified that when he and his partner arrived at the apartment building, they saw a white sedan

parked out front with one person inside. They went to the apartment, and after knocking multiple times, Officer M.M. heard the door being unlocked and saw it open “just a few inches.” He could see that a chair was blocking the door on the other side. Officer M.M. identified the person at the door as mother, who initially told him “never mind.” But because she had reported that her son threatened to kill her if she called 911, the officer thought she was scared of her son reentering the apartment or that he was still in the apartment. Officer M.M. also noted that she seemed “very frightened,” based on her voice and demeanor. He asked her where her son was, and she said he was in a vehicle in front of the building. She pointed through a window to Perez’s white car. She went back in and locked the door, and the officers went to talk to Perez. As the officers approached, Perez got out of his vehicle, and the officers immediately arrested him. After interacting with Perez, Officer M.M. noted that mother “is a lot smaller” than Perez.

Officer A.H. also responded to the 911 calls and testified about his interactions with mother after Perez was in custody. Mother told Officer A.H. that Perez had gotten upset with her, put his phone up to her face, and pushed her. She said she had used items in the kitchen to create a barrier between herself and Perez. Officer A.H. testified that mother said Perez told her, “If you call the police, I’ll kill you.” As she was talking to him, Officer A.H. noticed that her demeanor was “[d]evastated” and “sad.” He noted that mother refused an ambulance but explained that people decline medical service “[a] lot of times.” After a series of questions about whether victims tend to “minimize incidents” and whether that appeared to have happened here—which the district court permitted over Perez’s objections—Officer A.H. testified: “At that point I thought she was just—her demeanor, I

thought she was telling it like it is. I mean, she was very upset, and that was the state she was in at that time.”

The jury also heard testimony about the 911 calls and a recording of the calls. The Minneapolis call center received four calls related to the altercation between Perez and mother. The first two are associated with one number, and the second two are associated with another number. In the first call (10:28 a.m.), amid cross-talk, Perez told the operator that there was “a dispute” and gave the address, adding, “I guarantee you, I, nobody hit anybody. And they’re literally trying to say, they’re trying to make it seem, because I was in a domestic dispute the other day.” The call ended after ten seconds. In the second call (10:29 a.m.), which lasted 30 seconds, Perez and mother mostly talked to each other. At one point, mother said, “You hit me in the face with a phone,” and a little later, Perez said, “You better not f-cking say anything.” The third call (10:33 a.m.) was a hangup. And in the fourth call (10:39 a.m.), which lasted 18 seconds, mother reiterated the address and said: “Uh, my son assaulted me, and he said that if the police come, he was gonna kill me.”

The state also presented video footage from Officer M.M.’s body-worn camera. Several times in the footage, mother says “never mind,” “it’s okay,” or “it’s fine.” But when Officer M.M. asked mother if she just wanted Perez “out,” she said: “No, he did push me. He pushed me down, and he said that if he went in again with the police that he was going to kill me.” When the officer asked her “what started all this,” she explained that it started the previous day because Perez “assaulted his girlfriend” and stole her belongings, then the girlfriend came over to retrieve them, and Perez “flipped out.” The dispute continued that morning, when she asked him to leave and he refused, and he pushed her

and made her fall. Mother said she was uncertain what could be done but added: “I don’t need him coming back here trying to kill me.”

After the state finished presenting its case in chief, Perez elected to testify as the only defense witness. He said mother “has bipolar” and was not herself the day of the incident, that she was “[m]ad, flaring out.” He testified that he did not want things to escalate, so he left, called 911, and sat in his car to wait for the police. Perez acknowledged that he has prior felony convictions and denied that he was concerned about how police would respond but said he did not want “things going how they used to be.” He repeatedly denied striking or making any physical contact with mother. And he denied telling her that he would kill her if she called the police, saying, “I’m the one who called the police.” He denied yelling at mother or calling her names, but also said, “Yeah, we argue and yell with each other.” When asked about the broken mirror in the kitchen, Perez denied that it broke during the incident, saying it had been sitting in the kitchen broken for “days.” He also denied that he told mother not to tell anybody about what happened. But when asked if it was his voice on the audio recording of the 911 calls saying, “You better not f-cking say anything,” he acknowledged it was his voice, suggested he was talking about something else, noted that the recording is muffled, and said he did not remember what he said. He also acknowledged that he was yelling at mother, saying, “I didn’t think that I was yelling as much as I seemed to be.”

During closing argument, the prosecutor emphasized the size difference between Perez and mother, their contentious history, the statements in the 911 calls, how fearful mother appeared to the responding officers, and inconsistencies in Perez’s testimony. He

also sought to anticipate and respond to defense arguments, addressing Perez calling 911 first and mother's letter trying to "make charges go away." Perez objected twice during the argument—after the prosecutor said "Perez's testimony has changed" and after he said that mother "testified at trial about the truth"—and the district court effectively overruled both.

The jury found Perez guilty of threats of violence and domestic assault (fear) but acquitted him of domestic assault (harm). The district court convicted Perez of threats of violence and sentenced him to 27 months' imprisonment.

Perez appeals.

DECISION

I.

Perez challenges the sufficiency of the evidence to support his threats-of-violence conviction. A person is guilty of making a threat of violence if they "threaten, directly or indirectly, to commit any crime of violence with purpose to terrorize another . . . or in a reckless disregard of the risk of causing such terror." Minn. Stat. § 609.713, subd. 1 (2024). To prove a person guilty of making a reckless threat of violence, the state must prove four elements: (1) an actor communicates an intention to injure another or their property; (2) the threat is to commit a "crime of violence," as that term is statutorily defined; (3) in context, the words or conduct "create a reasonable apprehension" that the actor "will follow through with or act on the threat"; and (4) the actor makes the threat "in conscious disregard of a substantial and unjustifiable risk" that their words or conduct will cause extreme fear. *State v. Mrozinski*, 971 N.W.2d 233, 240 (Minn. 2022). Perez focuses on the third element,

arguing that the state failed to present sufficient evidence to prove that he created a reasonable apprehension that he would follow through on his threat to kill mother.

When evaluating the sufficiency of the evidence, we “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Marth*, 25 N.W.3d 911, 923 (Minn. App. 2025) (quotation omitted), *rev. denied* (Minn. Oct. 29, 2025). The standard under which we review a sufficiency-of-the-evidence claim depends on whether the state relied on direct or circumstantial evidence to prove the challenged element of the offense. *State v. Jones*, 4 N.W.3d 495, 500 (Minn. 2024). Because the state relied on circumstantial evidence to prove the reasonable-apprehension element, we apply the circumstantial-evidence standard.

Under that standard, we use a “heightened two-step analysis” to review the sufficiency of the evidence. *Id.* In the first step, we “winnow down the evidence presented at trial by resolving all questions of fact in favor of the . . . verdict, which results in a subset of facts that constitute the circumstances proved.” *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026) (quotations omitted). In identifying the circumstances proved, we do not “reweigh the evidence.” *Id.* at 479. Next, we consider the circumstances proved as a whole to determine “whether a reasonable inference of guilt can be drawn and no reasonable inference inconsistent with guilt can be drawn.” *Id.* at 484. In doing so, we “independently assess the reasonableness of the inferences of guilt and not guilt,” without deferring to the jury. *Id.* “If the circumstances proved when viewed as a whole, support a reasonable

inference that is inconsistent with guilt, the evidence is not sufficient to support the conviction and we must reverse.” *Id.* at 483 (quotations omitted).

The circumstances proved, pertaining to the reasonable-apprehension element, fall into two categories—background circumstances, and the circumstances of the incident and its immediate aftermath. Regarding background, the state proved the following circumstances: (1) Perez does not like mother to talk to him, calls her names like “stupid dumb b-tch,” and tears and throws things and screams; (2) mother finds this behavior frightening and is on edge when Perez is around; (3) in April 2025, Perez was staying rent-free in mother’s small one-bedroom apartment, sleeping in her bedroom while she slept on the futon; (4) Perez has a criminal history and, at the time of this incident, had recently been involved in a domestic disturbance with his ex-girlfriend; and (5) Perez is physically larger than mother.

Regarding the incident itself, the state proved the following circumstances: (1) Perez was angry with mother because she allowed his ex-girlfriend to come to the apartment and retrieve some belongings; (2) Perez yelled at mother and thrust his phone in her face, impacting her forehead with his phone hard enough to hurt and make her fall down, which also hurt; (3) mother was afraid and hid behind a chair, in a corner; (4) Perez called 911 and reported a dispute, denying that he hit anybody but acknowledging that he had recently been in a domestic disturbance; (5) Perez was cognizant of his criminal history and did not want “things going how they used to be”; (6) Perez continued yelling at mother during the 911 call, including telling her, “You better not f-cking say anything”; (7) as the altercation continued, Perez’s eyes grew “dark” and he said, “If you call the police, I’ll kill you,” then

repeated the threat a second time; (8) he had never said such a thing to mother before, and the threat startled mother and made her afraid that Perez would hurt her; (9) after Perez left, mother locked the door and put a chair against it; (10) mother called 911 and reported that Perez assaulted her and threatened to kill her; (11) mother told responding officers that Perez assaulted her and threatened to kill her, adding that she did not “need him coming back here trying to kill [her]”; (12) mother barely opened her door to speak with the officers and dismissed things as “fine,” but her reticent demeanor and halting and shaky voice led the officers to perceive she was afraid; (13) mother obtained a restraining order against Perez; and (14) within a week, mother sent a letter saying that she was not a reliable reporter because of mental illness and had lied about the incident, but this letter was itself false and mother was “clear-minded” at the time of the incident.

We next consider whether these circumstances support a reasonable inference that Perez’s words and conduct created a reasonable apprehension that he would follow through with his threat to kill mother if she called police. Perez argues that it is not reasonable to make such an inference because mother did not actually apprehend that he would kill her. He emphasizes mother’s testimony that his threat to kill her made her afraid of him, and that he would “hurt” her, and asserts that this means she apprehended only that he would inflict some “hurt” short of killing her. We disagree.¹

¹ Perez contends that the reasonable-apprehension element contains two sub-elements: (1) someone subjectively apprehends that the actor will follow through on the threat, and (2) such apprehension is objectively reasonable. The state disagrees that this element contains a subjective-apprehension requirement, pointing to the principle that “[t]he effect of a terroristic threat on the victim is not an essential element.” *See State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975). Because we conclude that the evidence here is sufficient

Perez's argument hinges on an overly narrow view of the evidence. For one thing, nothing about mother's testimony that she feared being "hurt" necessarily indicates that she believed Perez would not hurt her seriously enough to kill her. But more importantly, mother's testimony is not the only evidence bearing on whether she believed Perez would act on his threat to kill her. Mother also reported in her 911 call and to responding officers that Perez threatened to kill her. She described a "dark" look in Perez's eyes when he made that threat that she had never seen before. She voiced a fear of Perez "coming back here trying to kill [her]" and barricaded herself in her apartment to prevent Perez from returning. She exhibited extreme fear in the aftermath of the altercation and Perez's threat, as detailed in the officers' testimony and shown in the footage from Officer M.M.'s body-worn camera. And she obtained a restraining order against Perez. All these circumstances are consistent with the inference that being killed by Perez was precisely what mother feared.

The circumstances proved also establish the objective reasonableness of mother's apprehension that Perez would follow through on his threat to kill her. Perez has a notable size advantage over mother and has a history of prior aggressive and demeaning behavior toward mother and others. His behavior toward mother during the incident was both verbally and physically aggressive. And the altercation culminated in visible changes to Perez's demeanor and face as he twice threatened to kill mother. Mother perceived these threats, and Perez's demeanor when making them, as different from any aggressive

to prove mother's subjective apprehension that Perez would follow through on his threat, we need not decide whether it is a necessary component of the reasonable-apprehension element.

behavior she had previously observed from him. Taken together with mother's actual fear, these circumstances are sufficient to prove a reasonable apprehension that Perez would follow through on his threat to kill mother if she called police.

Perez argues that the circumstances proved are also consistent with a reasonable hypothesis other than guilt. He contends that it does not make sense to think that he would have followed through on his threat to kill mother for three reasons. First, he notes that he called 911 before mother and asserts that it is unreasonable to think he would kill her for doing the same. But the circumstances proved show that Perez was concerned about police involvement, particularly after a recent domestic dispute, and called 911 to control the narrative by reporting "a dispute" in which "nobody hit anybody." It is reasonable to think that Perez would be angry—even murderously angry—if mother called 911 and provided police a more incriminating description of his conduct. Second, Perez asserts that he had nothing to gain by killing mother because he was living rent-free in her home. But the lack of a benefit from killing mother does not mean he was unlikely to do so, particularly given the extraordinary rage he displayed during the altercation. Perez conceded in his own testimony that the 911 call recordings reflect that he was yelling more during the incident than he remembered. Third, Perez emphasizes that he had never physically hurt mother before and asserts that it is unreasonable to think that he would suddenly kill mother. Perez may not have physically harmed mother before the incident, but he was aggressive and controlling toward her to a degree that already made her afraid of him. And again, the unprecedented threats and demeanor that mother observed from him during the incident is consistent with a conclusion that he would have inflicted physical violence, even if he had

not done so before. We therefore reject Perez’s argument that the circumstances proved are consistent with a reasonable inference inconsistent with his guilt.

In sum, the circumstances proved support only the single reasonable hypothesis that Perez’s words and conduct, leading up to and during his altercation with mother, gave rise to a reasonable apprehension that he would follow through on his threat to kill mother if she called police. And Perez does not dispute the sufficiency of the evidence supporting any other element of the offense. We therefore conclude that sufficient evidence supports Perez’s conviction of threats of violence.

II.

Perez alternatively argues that he is entitled to a new trial because of prosecutorial misconduct. Perez contends the prosecutor committed four types of misconduct: (1) eliciting vouching testimony, (2) personally vouching for mother’s credibility during closing argument, (3) falsely arguing that Perez changed his testimony, and (4) arguing facts not in evidence. As Perez acknowledges, he did not object to all these claimed instances of misconduct, which affects how we review them.

When a defendant objects to claimed prosecutorial misconduct during trial, we apply a harmless-error test that varies based on the severity of the misconduct. *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012) (citing *State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974)). If the claimed misconduct was harmless beyond a reasonable doubt—the standard for more serious misconduct—then we may affirm without addressing the severity of the misconduct. *See id.* at 146, 150. When a defendant fails to object at trial, they generally forfeit appellate review of claimed prosecutorial misconduct. *State v.*

Dobbins, 725 N.W.2d 492, 508 (Minn. 2006). But we may review for plain error. *Id.* In doing so, we apply a modified plain-error test under which the defendant must show that the misconduct was error, and that the error was plain, after which the state must show that the error did not affect the defendant’s substantial rights. *State v. Metcalfe*, 13 N.W.3d 704, 715 (Minn. App. 2024), *rev. denied* (Minn. Jan. 21, 2025). If the state fails to make this showing, we then consider whether we “should address the error to ensure fairness and the integrity of the judicial proceedings.” *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007) (quotation omitted). With this framework in mind, we address each of Perez’s claims of prosecutorial misconduct in turn.

Vouching Testimony

Perez first contends the prosecutor committed misconduct by eliciting testimony from Officer A.H. that vouched for mother’s credibility. As a preliminary matter, Perez contends that he preserved this issue for review as objected-to alleged misconduct, and the state accepts that characterization, but we are not convinced. To preserve an argument for appeal, “an objection must be specific as to the grounds for challenge.” *State v. Boswell*, 20 N.W.3d 640, 652 (Minn. App. 2025) (quotation omitted), *rev. denied* (Minn. June 25, 2025). Perez objected during the prosecutor’s questioning of Officer A.H., but only on the ground of “speculation.” Only much later, after the officer was excused, did Perez note that he “should have” objected on the ground of “improper vouching.” The district court responded that the objection “didn’t get offered at the time, so the objection is waived.” On this record, Perez did not preserve an objection and must now demonstrate plain error.

An error is plain if it is “clear or obvious,” usually because it “contravenes case law, a rule, or a standard of conduct.” *State v. Portillo*, 998 N.W.2d 242, 250 (Minn. 2023) (quotation omitted). It is well established that a witness may not vouch for or against another witness’s credibility, *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998), and a prosecutor may not intentionally elicit such testimony, *Van Buren v. State*, 556 N.W.2d 548, 551 (Minn. 1996).

The prosecutor asked Officer A.H. if, in his experience, “victims tend to minimize incidents.” The officer answered, “At times.” The prosecutor then asked, “And did that appear that that was happening in this case?” The officer said that he “couldn’t tell at that time.” The prosecutor followed up by asking, “Well, looking back on it now, can you tell or same answer?” The officer answered, “At that point I thought she was just—her demeanor, I thought she was telling it like it is. I mean, she was very upset, and that was the state she was in at that time.” By saying that mother was “telling it like it is,” Officer A.H. expressly vouched for her credibility. Given the prosecutor’s persistent questioning, we can only conclude that the prosecutor intended to elicit this testimony. This contravenes established law and is plain error.

The state bears the burden of responding to Perez’s showing of plain error by proving that the error did not affect Perez’s substantial rights. *Metcalf*, 13 N.W.3d at 715. “Prosecutorial misconduct affects substantial rights if there is a reasonable likelihood that the absence of misconduct would have had a significant effect on the jury’s verdict.” *Davis*, 735 N.W.2d at 681-82. The state did not address the effect of Officer A.H.’s vouching

testimony on the verdict and therefore has not carried this burden. But that does not end our analysis.

Even if the state fails to demonstrate that substantial rights were not affected, we still must consider whether to address the error “to ensure fairness and the integrity of the judicial proceedings.” *Id.* at 682 (quotation omitted). Our consideration of this factor does not focus on the effect of the error on the particular case before us but on “whether it would have wider ramifications affecting the public’s trust in the fairness and integrity of our judicial system.” *Portillo*, 998 N.W.2d at 248. This factor favors reversal if the error in question fundamentally undermines constitutional rights, such as misstating the burden of proof or the presumption of innocence. *Id.* at 256. But reversal is not warranted if review of the record confirms that a new trial would yield the same result. *See id.*

This case falls into the latter category. Perez was afforded a full adversarial trial and presented his theory of the case to the jury. Officer A.H.’s testimony that mother was “telling it like it is” was a single brief remark in a trial that encompassed mother’s testimony, Perez’s testimony, the 911 calls, both officers’ descriptions of mother’s statements and demeanor, and the body-worn-camera footage. The jury was able to consider the full breadth of this evidence to make its own determination as to mother’s credibility. And the jury’s mixed verdict reflects its consideration of the evidence and the elements of the charged offenses. On this record—even assuming that Officer A.H.’s vouching testimony might have affected the verdict, which we doubt—we conclude that this is not the sort of error that requires reversal in the interest of judicial fairness and integrity.

Vouching Argument

Perez also contends the prosecutor improperly vouched for mother's credibility during closing argument by stating: "That recantation letter, [mother] ultimately cares for her son, and she didn't want him to get into trouble. Ultimately, she testified at trial about the truth." The district court overruled Perez's objection, but the state acknowledges that it is improper for a prosecutor to assert their own opinion about a witness's credibility in closing argument. *State v. Mayhorn*, 720 N.W.2d 776, 791 (Minn. 2006). Nonetheless, the state contends the prosecutor's argument that mother testified "about the truth" was harmless error under the more stringent beyond-a-reasonable-doubt standard.

Prosecutorial misconduct is harmless beyond a reasonable doubt if the jury's guilty verdict was "surely unattributable" to the misconduct. *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (quotation omitted). In applying that standard, we consider how the improper argument was presented, whether the state emphasized it, whether it was highly persuasive, and whether the defendant countered it. *See State v. Wren*, 738 N.W.2d 378, 394 (Minn. 2007).

The prosecutor's vouching comment was brief, only one sentence out of a closing argument that spanned nearly 12 transcript pages. Much more of the prosecutor's argument focused appropriately on reasons why the jury should find mother credible, based on the evidence—her demeanor at the time of the incident, as shown in Officer M.M.'s body-worn-camera footage and described in both officers' testimony; her demeanor and the language she used while testifying; and the consistency of her reporting. *See State v. Fields*, 730 N.W.2d 777, 785 (Minn. 2007) (stating that, while prosecutor may not vouch for a

witness's credibility, they are "free to argue that particular witnesses were or were not credible"). And Perez had ample opportunity to counter with his own arguments about reasons to find mother not credible, such as the officers' unrushed demeanor in responding to the call, mother's choice of words in testifying about the nature of her fear after the incident, and her recantation letter. On this record, the jury's verdict is surely unattributable to the prosecutor's remark about mother testifying truthfully, so this error was harmless beyond a reasonable doubt.

Argument about Perez's Testimony

Perez argues that the prosecutor misstated the evidence by falsely accusing Perez of changing his testimony.² He points to the following portion of closing argument: "Mr. Perez's testimony has changed. He said, 'Hey, I didn't hit her at all.' But they'll argue that based on her things, even if what she—she walked into my phone. I was showing her this phone so passionately that she walked into it, and she fell over." The district court overruled Perez's objection.

It is improper for a prosecutor to intentionally misstate the evidence. *Mayhorn*, 720 N.W.2d at 788. But a prosecutor has latitude to present "all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence" in closing argument. *State v. Nissalke*, 801 N.W.2d 82, 105 (Minn. 2011) (quotation omitted).

² Perez also argues for the first time in this appeal that the argument about changing his testimony improperly suggested to the jury that it use against him his exercise of his rights to be present during trial and to testify. But the prosecutor commenting on the internal consistency of Perez's testimony is a legitimate argument pertaining to his credibility, not a comment on his exercise of his trial rights. See *Fields*, 730 N.W.2d at 785 (stating that prosecutor may argue that a witness was not credible).

The prosecutor's statement does not expressly indicate what part of Perez's testimony changed. Viewed in context, it seems to say that Perez's testimony changed with respect to hitting mother with his phone, which is inaccurate because Perez consistently denied any such contact. But Perez's testimony did change with respect to other aspects of the altercation, particularly whether he yelled at mother. As such, we are not convinced that the prosecutor intentionally misstated the evidence by saying that Perez's testimony changed.

Even if we were to assume that the statement about Perez changing his testimony was error, it was harmless beyond a reasonable doubt. *See Wren*, 738 N.W.2d at 394. The statement itself was very brief, and the following argument about accidental contact was a legitimate argument anticipating a plausible defense argument based on inferences from the evidence. Perez was able to counter by arguing: "He explained to you he never touched his mom. It doesn't apply to accidental situations, even if [mother]'s sequence of events is believed to be true." And as noted above, Perez's testimony did change in some respects, and it was permissible for the prosecutor to urge the jury to consider inconsistencies in his testimony in weighing his credibility. Given these factors, reversal is not warranted based on this claimed misconduct.

Arguing Facts Not in Evidence

Perez contends the prosecutor's closing argument included statements that lacked support in the evidence. A prosecutor may "present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence," but they may not "speculate without a factual basis" or intentionally misstate the evidence. *State v.*

Peltier, 874 N.W.2d 792, 804-05 (Minn. 2016) (quotations omitted). Perez contends the prosecutor crossed the line in two portions of his closing argument. First, the prosecutor argued: “Now, domestic abuse is about demanding to control, and Mr. Perez demanded to control. He did that by living in his mother’s apartment. He made her sleep in the living room on a futon while he slept in the bedroom.” Second, the prosecutor argued that mother “felt that she needed to submit” the letter recanting her allegations. Perez undisputedly did not object in either instance and therefore must show that these portions of the prosecutor’s argument were plain error. No error is plain on this record.

With respect to the statement that “domestic abuse is about demanding to control,” it does not draw from any particular witness’s testimony but fairly summarizes the state’s theory of the case and is consistent with evidence about Perez’s behavior toward mother. *Cf. id.* (concluding that argument that defendant “learned abusive behavior from a past romantic partner” was improper because “no evidence was presented to show that domestic abuse is learned and passed on between adults”). And no controlling caselaw precludes such argument, so even if it is error, it is not plain. *See State v. Jones*, 753 N.W.2d 677, 689 (Minn. 2008) (stating that an error is not plain if caselaw is not “conclusively resolved” regarding the conduct in question).

The rest of the statements are reasonable inferences based squarely in the evidence. There was evidence that Perez slept in mother’s bedroom while she slept on the futon; paired with evidence that mother fears him and tries to stay out of his way, it supports the inference that this arrangement was at Perez’s insistence and a demand for control. Likewise, there was evidence that mother submitted the recantation letter because she did

not want Perez to get in trouble from the incident and felt conflicted about the prosecution, which supports the inference that she felt she needed to submit the letter. Because Perez has not demonstrated plain error in any of the challenged portions of closing argument, he is not entitled to relief on his claim of arguing facts not in evidence.

Cumulative Error

Although Perez has not argued that the cumulative effect of all these errors warrants a new trial, we nonetheless consider whether these errors, taken together, may have deprived Perez of his right to a fair trial. “An appellant may be entitled to a new trial in rare cases where the errors, when taken cumulatively, have the effect of denying the appellant a fair trial.” *State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017) (quotation omitted). To determine whether cumulative error warrants a new trial, we consider “the egregiousness of the errors” and the strength of the state’s case. *Id.* In doing so, we are mindful that “the Constitution guarantees a fair trial—not a perfect or error-free trial.” *Dobbins*, 725 N.W.2d at 513.

Here, we discern two vouching errors and a close call in arguing about Perez’s changed testimony. Each of these errors involved a short statement within the context of a trial that focused appropriately on presenting the jury with two competing versions of events and empowering the jury to determine the weight and credibility of the evidence in deciding guilt. To be sure, it is incumbent upon a prosecutor, as a “minister of justice,” to diligently avoid such errors. *See id.* (quotation omitted). But in the broader context of the entire trial, the prosecutor’s errors were neither egregious nor prevalent. Despite those errors, the state’s evidence was strong. While the case fundamentally turned on whether

Perez's or mother's version of events was most credible, this is not a case where the jurors were presented only with testimony describing the April 3 incident. Instead, the state presented the jury with additional evidence from which they could evaluate credibility. The jurors heard the 911 call recordings, from which they could evaluate for themselves the anger in Perez's voice. And they saw Officer M.M.'s body-worn-camera footage, from which they could evaluate mother's fear by observing her demeanor and voice and hearing her account of the incident in its immediate aftermath. Given the strength of this evidence, in addition to the witness testimony, we conclude that the cumulative impact of the state's erroneous vouching statements and statement about Perez's changed testimony did not deprive Perez of a fair trial.

Affirmed.