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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2140**

State of Minnesota,  
Respondent,

vs.

Victor Lee Trawick,  
Appellant.

**Filed November 12, 2013  
Affirmed  
Stauber, Judge**

Benton County District Court  
File No. 05CR112120

Lori A. Swanson, Attorney General, Karen Beth Andrews, Assistant Attorney General, St. Paul, Minnesota; and

Philip Miller, Benton County Attorney, Karl L. Schmidt, Assistant County Attorney, Foley, Minnesota (for respondent)

William Anders Folk, Matthew C. Tews, Special Assistant State Public Defenders, Leonard, Street and Deinard, Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Halbrooks, Judge; and Stauber, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

On appeal from his conviction of third-degree controlled substance crime (sale), appellant argues that (1) the district court abused its discretion by admitting a previous

booking photograph of appellant and then failing to grant a mistrial after the photograph was referred to as a previous booking photograph at trial; (2) the district court abused its discretion by allowing a police officer to testify about the confidential informant's previous and unrelated controlled buys that led to convictions; (3) the prosecutor committed prejudicial misconduct at trial; and (4) the cumulative effect of the trial errors entitled appellant to a new trial. We affirm.

### **FACTS**

In January 2011, a confidential informant (CI) informed law enforcement that she was told by appellant Victor Lee Trawick that he had "cocaine for sale." A controlled buy was then arranged at which appellant allegedly sold 0.78 grams of cocaine to the CI on January 5, 2011. In November 2011, appellant was arrested and charged with third-degree controlled substance crime in violation of Minn. Stat. § 152.023, subd. 1(1) (2010).

Prior to trial, appellant moved in limine to preclude admission of a booking photograph of appellant that the police showed to the CI for identification purposes prior to the controlled buy. The district court held that that the photograph was admissible because it did not appear to be a booking photograph.

At trial, evidence and testimony was presented establishing that the CI contacted police after appellant left her "voice mails and text messages" informing her that "he had about an ounce [of cocaine] to get rid of." The CI then went to the police station where she was shown a booking photograph of appellant to "confirm" that she and the police

“were talking about the same person.” The photograph used to identify appellant was admitted into evidence at trial as Exhibit 1.

After confirming appellant’s identity, the CI agreed to accept \$60 as payment to participate in a controlled buy with appellant. The CI was then thoroughly searched for contraband and currency. Although the search was not a “strip search,” Officer Annie Whitson testified that her search of the CI would have uncovered two small plastic baggies of cocaine if the CI had been concealing them, unless the bags were inside a body cavity.

In a recorded telephone call, admitted into evidence as Exhibit 2, the CI contacted appellant to arrange a meeting, and the parties agreed to meet in the parking lot of the CI’s former apartment building. The CI then drove an undercover police vehicle to the parking lot, where appellant got into the car. According to the CI, the “deal took place” in the car. Although the audio device the CI was wearing during the controlled buy malfunctioned, several police officers conducted surveillance of the meeting.

Officer Daniel Trautman, one of the officers conducting surveillance of the controlled buy, testified that in order to identify appellant he was provided with a “previous booking photograph” of appellant prior to the controlled buy. He later referred to the photograph as a booking photograph a second time. In response to the officer’s testimony, appellant moved for a mistrial. The district court found that the testimony was not a “sufficient basis or grounds for a mistrial,” and denied the motion.

The CI testified that following her meeting with appellant, she returned to the police station where she gave police two bags of suspected cocaine. The CI told police

that appellant gave her the bags in exchange for \$60 of controlled-buy money. A forensic specialist testified that the two bags contained a total of 0.78 grams of cocaine.

Appellant testified in his defense and denied that he was the person speaking with the CI on the recorded telephone call admitted as Exhibit 2. He also denied selling drugs to the CI. Although appellant acknowledged that he met with the CI in the parking lot, he claimed they were talking about getting bail money for a mutual friend. On cross-examination, the state attacked appellant's credibility with evidence that he had been convicted of felony possession of stolen property in 2004.

The jury found appellant guilty of the charged offense. The district court sentenced appellant to 66 months in prison. This appeal followed.

## **D E C I S I O N**

### **I.**

Appellant argues that the district court abused its discretion by admitting a previous booking photograph of appellant. Appellant also contends that the district court abused its discretion by denying his motion for a mistrial after Officer Trautman referred to the photograph as a booking photograph during his testimony.

#### **A. Admission of the booking photograph**

“Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced.” *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citations omitted).

“Relevant evidence” is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. Relevant evidence is generally admissible but “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403; *see also* Minn. R. Evid. 402. “Unfair prejudice under rule 403 is . . . evidence that persuades by illegitimate means, giving one party an unfair advantage.” *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005).

Photographs should not be admitted if their “probative value is substantially outweighed by the danger of unfair prejudice under Minn. R. Evid. 403.” *State v. Stewart*, 514 N.W.2d 559, 565 (Minn. 1994). “[T]he main reason for generally excluding police photographs is that the jurors might infer from them that the defendant has been involved in prior criminal conduct.” *State v. McAdoo*, 330 N.W.2d 104, 107 (Minn. 1983).

Here, appellant objected to the admission of the booking photograph on the grounds that it would be prejudicial because it was obviously a prior “booking” photograph. The district court found that the photograph “does not have any markings at all to indicate that it is a booking photo.” The court also found that appellant is wearing civilian attire in the photograph, and that it looks like a “driver’s license photo.” Thus, the district court denied appellant’s motion to exclude the photograph.

Appellant argues that the district court abused its discretion by admitting the photograph because the “factual findings underlying its decision were clearly erroneous.” We disagree. Appellant is wearing civilian clothes in the photograph and, unlike a stereotypical booking photograph in which the suspect is directly facing the camera or turned to the side, appellant appears to be slightly turned while facing the camera. Moreover, there is nothing in the backdrop of the photograph to indicate that the photograph was taken at a police station. Although there are computer markings on the photograph, such as “eject” in the upper right hand corner of the picture, the markings do not clearly indicate that the picture is a booking photograph. Accordingly, the district court’s factual findings are not clearly erroneous.

Appellant further argues that the district court abused its discretion by admitting the photograph because “the danger of unfairly prejudicing [appellant] by admitting the booking photograph substantially outweighed its limited probative value.” Appellant’s position is supported by caselaw; the Minnesota Supreme Court does “not approve of the practice of admitting ‘mug shots’ or ‘booking photographs,’ particularly if the defendant has already been identified.” *State v. Jobe*, 486 N.W.2d 407, 418 (Minn. 1992). But the admission of such photographs has been upheld where the nature of the photograph is not obvious to the jury. *See, e.g., id.*; *see also State v. Sutherlin*, 393 N.W.2d 394, 397 (Minn. App. 1986), *review denied* (Minn. Nov. 17, 1986).

Here, the photograph had probative value because it was used to explain how appellant was identified as a suspect since appellant was known to police by a different name than that provided by the CI. Moreover, as the state points out, it has the burden of

proving every element of the offense, and the photograph was relevant to proving the suspect's identity as appellant. And, the prejudicial nature of the booking photograph was substantially minimized by the contents of the photograph, which did not obviously reflect that the picture was a booking photograph. Therefore, the district court did not abuse its discretion by admitting the booking photograph.

## **B. Mistrial**

Appellant also challenges the district court's denial of his motion for a mistrial after Exhibit 1 was referenced as a booking photograph at trial. This court reviews a district court's denial of a motion for a mistrial for abuse of discretion. *State v. Spann*, 574 N.W.2d 47, 52 (Minn. 1998).

“The [district court] is in the best position to determine whether an outburst creates sufficient prejudice to deny the defendant a fair trial such that a mistrial should be granted.” *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). “A mistrial should not be granted unless there is a reasonable probability that the outcome of the trial would be different if the event that prompted the motion had not occurred.” *Id.* (quotation omitted). When analyzing whether potentially prejudicial but inadvertent testimony has deprived a defendant of the right to a fair trial, the relevant factors this court considers include: “the nature and source of the prejudicial matter, the number of jurors exposed to the influence, the weight of evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice.” *State v. Hogetvedt*, 623 N.W.2d 909, 914 (Minn. App. 2001) (quoting *State v. Cox*, 322 N.W.2d 555, 559 (Minn. 1982)), *review denied* (Minn. May 29, 2001).

Here, despite the district court's decision to admit the photograph because it does not look like a booking photograph, the photograph was referred to twice as a booking photograph at trial by one of the state's witnesses. Appellant argues that this testimony was highly prejudicial and, therefore, the district court should have granted his motion for a mistrial. We agree that the prosecution clearly should have instructed the testifying officer to refrain from testifying that the photo was a booking photograph. But, the state alleges that the officer's references to the nature of the photograph were brief and unsolicited and that he did not expound on the origin of the photograph. And appellant's counsel declined a curative instruction to avoid bringing more attention to the testimony. Moreover, and more importantly, although the evidence against appellant was not "overwhelming," as the state suggests, it was significant. The state produced testimony from the CI and law enforcement detailing the events and circumstances of the controlled buy. The state also produced a tape-recorded conversation between appellant and the CI setting up the controlled buy. Therefore, in light of the evidence presented at trial, there is no reasonable probability that the outcome of the trial would have been different without the reference.

## II.

Appellant argues that the district court abused its discretion by "allowing Officer Meierding to testify as to the CI's previous controlled buys leading to convictions because such testimony was irrelevant and improperly bolstered the CI's character for truthfulness." "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion." *Amos*, 658 N.W.2d at 203.

“Evidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.” Minn. R. Evid. 404(a). Here, although marginal, the challenged testimony is relevant to provide the jury with context about the CI’s experience and competence as an informant. Moreover, despite appellant’s claim to the contrary, the testimony did not improperly bolster the CI’s character for truthfulness because Officer Meierding never stated, nor implied, that the CI has a general trait or propensity for truthfulness. Rather, the officer simply testified that the CI had participated in other controlled buys that led to convictions. And, as pointed out by the state, Officer Meierding did not testify that the jury should believe the CI’s testimony instead of appellant’s testimony. *See State v. Ferguson*, 581 N.W.2d 824, 836 (Minn. 1998) (concluding that a police officer’s testimony that the informant had helped in five or six other cases was not improper vouching because the officer “did not testify that [the informant] was telling the truth or that he believed one witness over another”). Therefore, the district court did not abuse its discretion by admitting the challenged testimony regarding the CI’s prior participation with controlled buys.

### **III.**

Appellant argues that he is entitled to a new trial because the prosecutor engaged in prejudicial misconduct at trial by (1) presenting and improperly soliciting character evidence of appellant and (2) misstating the evidence and injecting personal opinion during closing arguments. Appellant acknowledges that he did not object to the alleged misconduct during trial and that the plain-error analysis therefore applies.

“On appeal, an unobjected-to error can be reviewed only if it constitutes plain error affecting substantial rights.” *State v. Ramey*, 721 N.W.2d 294, 297 (Minn. 2006) (applying plain-error analysis to an allegation of unobjected-to prosecutorial misconduct). An error is “plain” if it is “clear or obvious” in that it “contravenes case law, a rule, or a standard of conduct.” *State v. Jones*, 753 N.W.2d 677, 686 (Minn. 2008). An error affects substantial rights “if the error was prejudicial and affected the outcome of the case.” *State v. Griller*, 583 N.W.2d 736, 741 (Minn. 1998). When prosecutorial misconduct reaches the level of plain error, the state bears the burden of demonstrating that the misconduct did not affect the defendant’s substantial rights. *Ramey*, 721 N.W.2d at 299-300. If the appellate court identifies plain error affecting substantial rights, the court “may correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.” *State v. Crowbreast*, 629 N.W.2d 433, 437 (Minn. 2001) (alteration in original) (quotation omitted).

#### **A. Character evidence**

A prosecutor “is a minister of justice whose obligation is to guard the rights of the accused as well as to enforce the rights of the public,” and to ensure that a defendant receives a fair trial. *Ramey*, 721 N.W.2d at 300 (quotation omitted). A prosecutor may not intentionally elicit inadmissible character evidence at trial. *State v. Harris*, 521 N.W.2d 348, 354 (Minn. 1994). Violation of established standards of conduct, including “orders by a district court” and “attempting to elicit or actually eliciting clearly inadmissible evidence may constitute [prosecutorial] misconduct.” *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007).

Appellant argues that the state elicited two types of improper character evidence. First, appellant argues that the state presented irrelevant evidence that appellant spent time at the Dream Center, a halfway house for people who just got out of prison. Second, appellant contends that the state “elicited testimony from the CI regarding alleged and uncharged criminal conduct by [appellant] tending to show that he had a large quantity of cocaine to sell.”

### **1. Dream center**

During opening statements, the prosecutor informed the jury that the CI “will tell you that she first met [appellant] in St. Cloud at the Dream Center.” Thereafter, in examining the CI, the prosecutor asked her: “How did you meet [appellant]?” The CI replied that she “met him through [her] ex Dan, he was at the Dream Center. He had to stay there after he got out of prison . . . .”

Appellant argues that the state intentionally elicited inadmissible character evidence because evidence that appellant met the CI while appellant was living at a halfway house is not relevant to whether he sold .78 grams of cocaine to the CI. The challenged testimony, along with the testimony regarding the booking photograph, demonstrates that the prosecution repeatedly failed to control its witnesses. But, a review of the challenged testimony indicates that it is not clear whether the CI is saying that it was appellant or her ex-boyfriend who stayed at the Dream Center after getting out of prison. And, it is speculation to assume that the jury would know that the Dream Center is a halfway house because the state did not disclose such information. Moreover, even if appellant is able to establish that the prosecutor intentionally elicited evidence that

appellant was living at a halfway house, the error likely had no effect on appellant's substantial rights.

## **2. Alleged uncharged criminal conduct**

As a general rule, evidence connecting a defendant with other crimes or bad acts for which he is not on trial is inadmissible. *State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965). If such evidence is to be admitted, certain procedural safeguards must be taken: the state must, among other things, give notice of its intent to offer the evidence and prove the defendant's participation in the other crime or bad act by clear and convincing evidence. *See* Minn. R. Evid. 404(b).

Appellant contends that it was prosecutorial misconduct for the state to elicit "testimony from the CI regarding alleged and uncharged criminal conduct by [appellant], intending to show that he had a large quantity of cocaine to sell." Appellant's claim is based on the following colloquy between the prosecutor and the CI:

PROSECUTOR: All right. Now when you had that conversation with [appellant] the week before what precisely - - I'm sorry. He indicated to you that he testified that he needed some help with something?

CI: Yeah, he said that he had about an ounce to get rid of, of coke, so I was like, "Okay, I'll see what I can do to help you out."

Appellant argues that because an "ounce" is "36 times more cocaine than he was charged with selling," the CI's testimony that appellant told her that he had "about an ounce to get rid of" shows that appellant "was a bad person, a cocaine dealer, who acted in conformity with being a cocaine dealer on January 5, 2011."

We disagree. Although the question asked by the prosecutor was clearly aimed at obtaining a response that appellant contacted the CI intending to “get rid of” some cocaine, there is no indication that the prosecutor was intending to elicit a response regarding the amount of cocaine appellant wanted to sell. And, after the CI stated that appellant had an “ounce” of cocaine to sell, the prosecutor did not comment further on the amount as indicated by the CI. Consequently, appellant cannot establish that the prosecutor intended to elicit the *Spreigl* evidence. Finally, even if the testimony constitutes inadmissible character evidence, the error, by itself, would not have had a significant effect on the verdict.

#### **B. Closing arguments**

Appellant argues that the prosecutor engaged in prejudicial misconduct by misstating the evidence, injecting personal opinion into the case, and vouching for the credibility of the CI at various times during closing and rebuttal arguments. Prosecutors are obligated to ensure that a defendant receives a fair trial and “may not seek a conviction at any price.” *Ramey*, 721 N.W.2d at 300. In presenting a closing argument, a prosecutor “may present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence,” but “may not speculate without a factual basis.” *State v. Pearson*, 775 N.W.2d 155, 163 (Minn. 2009). This court reviews the prosecutor’s “closing argument as a whole and does not focus on selective phrases or remarks.” *State v. Taylor*, 650 N.W.2d 190, 208 (Minn. 2002).

“[I]t is misconduct for a prosecutor to mischaracterize evidence or make arguments unsupported by the record.” *State v. Ferguson*, 729 N.W.2d 604, 616 (Minn.

App. 2007), *review denied* (Minn. June 19, 2007). Moreover, it is improper for the prosecutor to interject his or her personal opinion. *State v. Blanche*, 696 N.W.2d 351, 375 (Minn. 2005). And, it is improper for a prosecutor to personally endorse the credibility of a witness. *State v. Patterson*, 577 N.W.2d 494, 497 (Minn. 1998).

### **1. Narrative on CI's concealing drugs in a body cavity**

During closing arguments, the prosecutor stated that “[b]ased on some of the questions that the defense attorney asked during the trial, I anticipate that they may argue that [the CI] had these drugs concealed somehow in a body cavity of hers and whipped them out at some undisclosed time and provided them later to Officer Meierding.” The prosecutor then stated that “I would argue to you that scenario just is not plausible” because “[a]s Officer Whitson said, anyplace that she didn’t search, if a person was hiding something in those places, they would essentially have to undress to remove that item.”

Appellant argues that the prosecutor’s statements “vastly misstated” the officer’s testimony because “nowhere in Officer Whitson’s testimony does she suggest that a female CI would have to take off any clothing to remove items hidden in her body.” We disagree. The record reflects that Officer Whitson agreed on direct examination that the extent of the search that she conducted on the CI would uncover two small plastic baggies “provided [that] it wasn’t in a body cavity.” And, on cross examination, in responding to a question about what a strip search would have revealed, Office Whitson replied: “if there were something in a very intimate area between a woman’s legs *causing them to take off their clothing* and then positioning them such without that

clothing it could reveal if they had it tucked in that very intimate area.” (Emphasis added). At the very least, a reasonable inference from Officer Whitson’s testimony is that the CI would have needed to remove her clothing in order to access any items hidden inside a body cavity. *See Pearson*, 775 N.W.2d at 163 (stating that in presenting a closing argument, a prosecutor “may present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence”). Thus, the prosecutor did not misstate the evidence pertaining to the CI concealing drugs in a body cavity.

Appellant also contends that during this narrative, the prosecutor “improperly injected a personal opinion by using the pronoun ‘I.’” But statements like “I suggest to you,” although poorly chosen, may not be plain error in circumstances where their rhetorical use does not suggest the testimony of the prosecutor. *Blanche*, 696 N.W.2d at 375; *see also State v. Bradford*, 618 N.W.2d 782, 799 (Minn. 2000) (concluding that the statement, “I submit to you . . .” was not prosecutorial misconduct because the prosecutor offered an interpretation of evidence and not a personal opinion).

Here, after discussing the theory that the CI set appellant up by concealing the drugs in a body cavity, the prosecutor stated, “I would submit to you there is no evidence to support that claim if that is what the defense is claiming.” The prosecutor’s statement came as part of a discussion of the evidence and the reasonable inference that the jury could make when considering such evidence. Accordingly, the prosecutor’s statements do not constitute plain error.

## **2. CI's alleged motive to set up appellant**

Appellant also contends that the prosecutor committed prejudicial misconduct when discussing the plausibility of appellant's claim that the CI set him up. Specifically, appellant argues that the prosecutor misstated the evidence and inserted his personal opinion by stating: (1) that appellant "didn't testify to any friction" with the CI at trial; (2) that appellant and the CI "got along really well"; and (3) that "[c]learly there was not any sort of friction or any sort of anger between these parties."

Appellant's argument is without merit. Although appellant acknowledged that some "friction" developed between him and the CI after she was asked to move out of appellant's girlfriend's apartment, appellant testified that he was able to maintain a friendship with her. Appellant elaborated by testifying that he had a good relationship with the CI, that she regularly stopped by the apartment, and that his girlfriend's kids called the CI "Auntie." Appellant also testified that he regularly talked to the CI, and that they were "getting along pretty well" at the time of the alleged controlled buy. Moreover, the prosecutor's specific statement was that "when [appellant] testified, he really didn't testify as to any friction." This statement indicates that there may have been some friction between the CI and appellant, but that it was minor and that overall the two maintained a good relationship. This reasoning is supported by the record and does not reflect any personal opinion by the prosecutor.

Appellant further argues that the prosecutor improperly vouched for the CI's credibility when the prosecutor stated: "Clearly when it's an important case like any case, like this case is, [the CI] recognizes that that is something that you just don't do."

A prosecutor may not express a personal opinion regarding witness credibility, but it is not improper for a prosecutor “to analyze the evidence and argue that particular witnesses were or were not credible.” *State v. Wright*, 719 N.W.2d 910, 918-19 (Minn. 2006). A prosecutor’s statements in closing argument become improper vouching when the prosecutor “implies a guarantee of a witness’s truthfulness, refers to facts outside the record, or expresses a personal opinion as to a witness’s credibility.” *Patterson*, 577 N.W.2d at 497 (quotation omitted). To determine whether a prosecutor’s statement constituted improper vouching, this court considers the closing argument as a whole. *State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006).

Here, when read by itself, the statement referenced by appellant indicates that the prosecutor was vouching for the CI’s credibility. But the statement was made directly after the prosecutor’s argument that the evidence did not support a claim of friction between appellant and the CI. And directly after the statement was made, the prosecutor continued his argument that the evidence did not support a claim that the CI was trying to set up appellant. When considered with the closing argument as whole, the statement indicates that the CI was credible based on the evidence presented at trial. Therefore, the prosecutor’s statement does not constitute improper vouching.

### **3. Exhibit 2**

Appellant argues that the prosecutor improperly injected his personal opinion during closing arguments by stating that: “I would submit to you that after listening to [appellant] testify and listening to [Exhibit 2] that the male voice in that recording is, in fact, [appellant], that they are one and the same person.” But the statement was made in

the context of discussing evidence supporting the state's claim that appellant was the individual who provided the CI with the contraband. In making the statement, the prosecutor was drawing a reasonable inference for the jury based upon the evidence. Moreover, the statement at issue was immediately preceded by the prosecutor's statement reminding the jury that the issue of whether it was appellant's voice in the recording was "a fact for you to determine." Appellant is unable to establish that the challenged statement constitutes improper vouching.

#### **4. Alleged vouching for the CI's credibility**

Appellant further argues that the prosecutor improperly vouched for the CI's credibility by stating: "I would submit that the fact that [the CI's] testimony is corroborated by what the officer saw showed that she actually is credible." But a prosecutor is permitted to argue that a witness is or is not credible. *State v. Anderson*, 720 N.W.2d 854, 865 (Minn. App. 2006), *aff'd*, 733 N.W.2d 128 (Minn. 2007). Therefore, the prosecutor did not commit misconduct by making the statement.

#### **5. Alleged personal opinion of appellant's testimony**

Appellant argues that the prosecutor improperly injected his personal opinion during rebuttal arguments regarding appellant's credibility by stating that appellant's story "doesn't add up," and later concluding that the "most plausible explanation" for the CI and appellant to meet was a drug transaction. But although a prosecutor may not inject his personal opinion about a defendant's credibility, a prosecutor may point to facts that cast doubt on a defendant's credibility. *State v. Duncan*, 608 N.W.2d 551, 555 (Minn. App. 2000), *review denied* (Minn. May 16, 2000).

Arguably, the statements made by the prosecutor are injections of his personal opinion about appellant's credibility. But taken in context, we conclude that the prosecutor's statements were made in discussing the evidence presented at trial and appellant's interpretation of the evidence. Thus, the statements were made to cast doubt on appellant's credibility, and were not plain error.

#### **6. Alleged misstatement of evidence in rebuttal arguments**

At trial, appellant testified that he met with the CI on January 5, 2011 to talk about getting bail money for their mutual friend. But during rebuttal arguments, the prosecutor stated:

If [the CI] is coming over to visit [appellant's girlfriend's] kids, if she's coming over because of her roommate, why does she sit and meet with [appellant] in a car for four minutes and leave? What's that about? He never really did explain what they were meeting for or what that brief meeting was about, what they discussed. He didn't remember that.

Appellant argues that the prosecutor engaged in prejudicial misconduct by misstating why the CI went to his apartment parking lot on January 5, 2011. But the law recognizes that inadvertent misstatements may occur and requires only that closing arguments be "proper, not perfect." *State v. Atkins*, 543 N.W.2d 642, 648 (Minn. 1996).

Here, appellant is correct in that the prosecutor misstated the evidence during closing arguments. But the statement appears to be inadvertent. The statement was made in rebuttal after defense counsel asserted that it was not unusual for the CI to visit appellant at the apartment. And, there is no evidence that the statement was made to intentionally mislead the jury. Moreover, even if the statement does rise to the level of

plain error, the error did not affect appellant's substantial rights. Accordingly, appellant is not entitled to a new trial due to prosecutorial misconduct.

#### IV.

Appellant finally argues that the cumulative effect of the trial errors warrants reversal. “[I]n rare cases, . . . the cumulative effect of trial errors can deprive a defendant of his constitutional right to a fair trial when the errors and indiscretions, none of which alone might have been enough to tip the scales, operate to the defendant’s prejudice by producing a biased jury.” *State v. Davis*, 820 N.W.2d 525, 538 (Minn. 2012) (quotation omitted).

Here, even if we were to conclude that some of appellant’s claims have merit, appellant is not entitled to a new trial. “It is well settled that a criminal defendant is not guaranteed a perfect trial . . . , simply a fair one.” *State v. Prtine*, 784 N.W.2d 303, 312 (Minn. 2010). The record reflects that appellant received just that—a fair trial. Moreover, the record reflects that the evidence against appellant was significant. Therefore, we conclude that the cumulative effect of any trial errors did not deprive appellant of a fair trial.

**Affirmed.**