STATE OF MINNESOTA
IN COURT OF APPEALS
A09-498

State of Minnesota,
Respondent,

vs.

Christopher Jon Eggers,
Appellant.

Filed April 6, 2010
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-CR-08-7627

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Judge

A Ramsey County jury convicted Christopher Jon Eggers of a fifth-degree controlled-substance crime based on evidence that he possessed methamphetamine. The methamphetamine was found in Eggers's bedroom by his probation officer, who searched the bedroom based on a tip from Eggers's mother. Before trial, Eggers moved to suppress the evidence, but the district court denied the motion. On appeal, Eggers challenges the reasonableness of the probation search and also argues that the prosecutor engaged in prosecutorial misconduct. We affirm.

FACTS

In 2006 and 2007, Eggers was convicted of four offenses arising from three separate incidents -- second-degree burglary, theft by check, financial card transaction fraud, and theft by false representation. In 2007, Eggers was sentenced on each of those convictions and received a probationary sentence for each offense.

At the time of sentencing in each case, Eggers signed a probation agreement that included the terms and conditions of his probation. Two of the agreements include the following "special condition": "No use or possession of alcohol or other mood altering substance without prescription and testing per probation officer or law enforcement." A third agreement includes similar language. Those three probation agreements also include the following "general condition": "I shall, when ordered by my Agent, submit to search of my person, residence or any other property under my control." Similarly, the fourth probation agreement includes Eggers's agreement that he "will not possess or use

any drugs without a doctor's prescription" and "will . . . be law abiding, [with] no drug/alcohol related offenses." The fourth probation agreement also states,

> I understand that my person, place, and personal property may be subject to search by my probation officer or agent of the probation office, if the officer or agent has reasonable suspicion that such search would produce evidence that I have engaged in criminal activity or other violation of probation.

In June 2008, Eggers was living with an uncle. Eggers's mother was at the residence one morning and saw a clear plastic bag in Eggers's bedroom containing a white powder that she believed to be illegal drugs. Eggers's mother telephoned Eggers's probation officer, Michael Scheierl, to report what she had seen. Scheierl knew that Eggers had tested positive for methamphetamine several times while on probation. Based on that background information and on Eggers's mother's tip, Scheierl decided to conduct a search of Eggers's residence to determine whether Eggers possessed illegal drugs. Scheierl contacted Eggers's uncle and asked for his consent to enter the residence. The uncle agreed. Scheierl met the uncle near the uncle's workplace, where the uncle lent Scheierl his keys to the residence.

At the residence, Scheierl entered first, followed by three police officers whom he had called for assistance. Scheierl found Eggers in his bedroom, sleeping. As the police officers secured Eggers, Scheierl looked under the bed and found a clear plastic bag containing a white powder. Subsequent testing revealed that the bag contained 1.75 grams of methamphetamine.

In July 2008, the state charged Eggers with one count of a fifth-degree controlled-substance crime in violation of Minn. Stat. § 152.025.2(1) (2006). In October 2008,

Eggers moved to suppress the evidence. After a hearing, the district court denied the motion. Later that month, a jury found Eggers guilty after a two-day trial. The district court sentenced Eggers to 24 months of imprisonment. Eggers appeals.

D E C I S I O N

I. Motion to Suppress

Eggers first argues that the district court erred by denying his motion to suppress evidence on the ground that the warrantless probation search of his bedroom by his probation officer was unlawful. He contends that the condition in his probation agreement providing for a warrantless search is invalid. He also contends, in the alternative, that even if the condition is valid, his probation officer did not have a reasonable suspicion of wrongdoing. He further contends that his uncle's consent to search Eggers's bedroom is invalid. We apply a *de novo* standard of review to the district court's ruling. *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007). We independently review the undisputed facts to determine, as a matter of law, whether the evidence should have been suppressed. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. "Warrantless residential searches and seizures are presumptively unreasonable under the Fourth Amendment." *Anderson*, 733 N.W.2d at 136. A warrantless search of a probationer may be valid, however, if it is reasonable in light of the totality of the circumstances. *Id.* at 138. In this context, "the reasonableness of a search is determined by assessing on the one hand, the degree to

which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *United States v. Knights*, 534 U.S. 112, 118-19, 122 S. Ct. 587, 591 (2001) (quotation omitted); *see also Anderson*, 733 N.W.2d at 137-38 (adopting *Knights* totality-of-the-circumstances approach).

A. Validity of Probation Condition

Before weighing Eggers's privacy interests against the state's interests in enforcing the probation agreements, we must address a threshold issue: whether the provisions in Eggers's probation agreements permitting a warrantless search are valid. A condition of probation cannot justify a warrantless search unless it was validly imposed. *Anderson*, 733 N.W.2d at 137-38. Eggers argues that the probation condition permitting warrantless searches of his residence is invalid because it was not ordered by the district courts that imposed sentences on him.

In *State v. Henderson*, 527 N.W.2d 827 (Minn. 1995), the supreme court held that only a district court has authority to impose intermediate probationary sanctions. *Id*. at 829-30. In that case, a county corrections department assigned the probationer to a special supervision program. That program was more restrictive than ordinary probation in several ways. The probationer was subject to a curfew, was required to obtain permission from a probation officer before leaving his residence, and was required to obtain approval for any activities outside the residence. *Id*. at 828. Henderson argued that the county corrections department was not authorized by statute to impose conditions of such severity because only a district court may impose "intermediate sanctions," which, at that time, were defined as follows:

> [T]he term "intermediate sanctions" includes but is not limited to incarceration in a local jail or workhouse, home detention, electronic monitoring, intensive probation, sentencing to service, reporting to a day reporting center, chemical dependency or mental health treatment or counseling, restitution, fines, day-fines, community work service, and work in lieu of or to work off fines.

Minn. Stat. § 609.135, subd. 1 (1994).[1] The supreme court compared the special supervision program to the definition of "intermediate sanctions" and concluded that the special supervision program contained elements that "are strongly suggestive of the 'intermediate sanctions' set forth in Minn. Stat. § 609.135." 527 N.W.2d at 829. The supreme court thus concluded that it was "beyond the authority" of the county corrections department to impose such sanctions. *Id.*

As far as it appears in the record of this case, the requirement that Eggers submit to a warrantless search of his residence upon the request of his probation officer is unlike the intermediate sanctions described in section 609.135. The requirement that a probationer permit an occasional warrantless search of his residence is far less of a restraint or an invasion than "home detention, electronic monitoring, intensive probation, sentencing to service, reporting to a day reporting center, chemical dependency or mental health treatment or counseling." Minn. Stat. § 609.135, subd. 1(b) (2008). It appears that the condition that Eggers is challenging is applied generally to all persons on probation in the counties in which Eggers was convicted in 2007. There is no allegation or evidence otherwise. A condition permitting a warrantless search of a probationer's residence is

[1]This definition has since been expanded slightly to include "work service in a restorative justice program" and "with the victim's consent, work in lieu of or to work off restitution." Minn. Stat. § 609.135, subd. 1(b) (2008).

distinguishable from the conditions at issue in *Henderson* and, thus, is not a condition that must be imposed by a district court. Thus, the condition in Eggers's probation agreement permitting a warrantless search of his residence was validly imposed.

B. *Knights* Balancing Test

As stated above, "the reasonableness of a search is determined by assessing on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." *Knights*, 534 U.S. at 118-19, 122 S. Ct. at 591 (quotation omitted); *see also Anderson*, 733 N.W.2d at 137-38. We proceed to apply this test to Eggers's circumstances.

First, we consider the degree to which the probation condition intrudes on Eggers's privacy interests. *Knights*, 534 U.S. at 119, 122 S. Ct. at 591. As the supreme court explained in *Anderson*, Eggers's "reasonable expectation of privacy [is] diminished merely by virtue of his status as a probationer." 733 N.W.2d at 139. This echoes the explanation in *Knights* that "[i]nherent in the very nature of probation is that probationers do not enjoy the absolute liberty to which every citizen is entitled." 534 U.S. at 119, 122 S. Ct. at 591 (quotation marks omitted). Eggers's signatures on the four probation agreements, each of which explicitly stated his agreement to a search of his person and residence, indicate that Eggers was "unambiguously informed" of the search condition. *Id*. at 119, 122 S. Ct. at 592. Thus, Eggers's reasonable expectation of privacy was "significantly diminished" by the probation condition. *Id*. at 120, 122 S. Ct. at 592.

Second, we consider "the degree to which [the search] is needed for the promotion of legitimate governmental interests." *Knights*, 534 U.S. at 119, 122 S. Ct. at 591. This

part of the *Knights* balancing test requires that "we recognize the state's legitimate interest in ensuring that [Eggers] abides by the terms of his probation." *Anderson*, 733 N.W.2d at 140. Each of Eggers's probation agreements specifically forbids the use or possession of controlled substances. As the Supreme Court explained, "it must be remembered that the very assumption of the institution of probation is that the probationer is more likely than the ordinary citizen to violate the law." *Knights*, 534 U.S. at 120, 122 S. Ct. at 592 (quotation marks omitted). At the same time, the state also has the "hope that [a probationer] will successfully complete probation and be integrated back into the community." *Knights*, 534 U.S. at 120-21, 122 S. Ct. at 592. Nevertheless, the state "may . . . justifiably focus on probationers in a way that it does not on the ordinary citizen." *Id*. at 121, 122 S. Ct. at 592.

In weighing these competing interests, both the United States Supreme Court in *Knights* and our supreme court in *Anderson* concluded with respect to those two cases that "the balance of these considerations requires no more than reasonable suspicion to conduct a search of this probationer's house." *Knights*, 534 U.S. at 121, 122 S. Ct. at 592; *Anderson*, 733 N.W.2d at 140. We see no reason why a different result should obtain after balancing Eggers's privacy interests and the state's interests in ensuring that Eggers abides by the terms of his probation. Thus, we conclude that, as a result of the conditions imposed on Eggers by his four probation agreements, a warrantless search of his residence is reasonable if there exists a reasonable suspicion of criminal conduct or violation of the terms of probation. *Knights*, 534 U.S. at 121, 122 S. Ct. at 592-93.

C. Reasonable Suspicion

Eggers argues that the warrantless search of his bedroom was unreasonable because the information provided by his mother did not give Scheierl reasonable suspicion that Eggers possessed illegal drugs. Reasonable suspicion requires "a sufficiently high probability that criminal conduct is occurring to make the intrusion on the [probationer's] privacy interest reasonable." *Knights*, 534 U.S. at 121, 122 S. Ct. at 592. Reasonable suspicion is "more than an unarticulated hunch." *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000). It is "'a particularized and objective basis for suspecting [a] person . . . of criminal activity.'" *State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998) (quoting *Ornelas v. United States*, 517 U.S. 690, 696, 116 S. Ct. 1657, 1661 (1996)). The requisite showing is "not high." *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1422 (1997). An officer may make inferences and deductions that might elude an untrained person. *Appelgate v. Commissioner of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). Objective facts, however, must justify that suspicion, and an officer may not base suspicion on a mere hunch. *State v. Cripps*, 533 N.W.2d 388, 391-92 (Minn. 1995). Facts need only "support at least one inference of the possibility of criminal activity." *State v. Schrupp*, 625 N.W.2d 844, 847-48 (Minn. App. 2001), *review denied* (Minn. July 24, 2001).

At the suppression hearing, Scheierl testified that he received a telephone call from Eggers's mother, who informed him that she had seen, that same morning, a clear plastic bag containing a substance that she believed to be methamphetamine. Eggers's mother previously had expressed to Scheierl her concern that Eggers was using illegal

drugs. In addition, Scheierl was aware that Eggers had repeatedly tested positive for methamphetamine while on probation. These facts easily provided Scheierl with a reasonable suspicion that Eggers possessed illegal drugs. *See Anderson*, 733 N.W.2d at 138 (holding that tip from appellant's girlfriend's mother that appellant had guns, combined with information that appellant had been arrested for assault, provided reasonable suspicion justifying warrantless probation search); *cf. State v. Davis*, 732 N.W.2d 173, 182-83 (Minn. 2007) (holding that informant's tip that appellant was growing marijuana at home provided reasonable suspicion justifying warrantless dog sniff outside appellant's apartment).

Eggers also argues that the police officers' participation in the search converted the search into something that was not authorized by the probation agreements such that a warrant was required. This is not a viable argument in light of recent caselaw. Prior to *Knights*, some federal circuit courts had held that a probation search could not be a "ruse" or "stalking horse" for a law enforcement investigation. *See, e.g., United States v. McFarland*, 116 F.3d 316, 318 (8th Cir. 1997); *United States v. Richardson*, 849 F.2d 439, 441 (9th Cir. 1988). Those cases do not survive *Knights*, in which the Supreme Court concluded "that ordinary Fourth Amendment analysis dictates the propriety of a search and that 'there is no basis for examining official purpose.'" *Id*. at 378 (quoting *Knights*, 534 U.S. at 122, 122 S. Ct. at 593). In light of *Knights*, "inquiries into the purpose underlying a probationary search are . . . impermissible." *United States v. Williams*, 417 F.3d 373, 377 (3d Cir. 2005); *see also United States v. Brown*, 346 F.3d 808, 810-12 (8th Cir. 2003); *United States v. Tucker*, 305 F.3d 1193, 1199-1200 (10th

Cir. 2002); *United States v. Stokes*, 292 F.3d 964, 967-68 (9th Cir. 2002). Thus, we need not analyze Eggers's argument that the police, rather than his probation officer, conducted the search of his bedroom.

In sum, the warrantless search of Eggers's residence was reasonable, and the district court did not err by denying Eggers's motion to suppress. *See Anderson*, 733 N.W.2d at 137-38. In light of that conclusion, we need not consider Eggers's alternative argument that his uncle could not consent to the search of Eggers's bedroom.

II. Allegations of Prosecutorial Misconduct

Eggers also argues that the prosecutor engaged in prosecutorial misconduct on three occasions: by referencing his prior felony conviction in a question posed to Scheierl, by improperly shifting the burden of proof in closing argument, and by unfairly inflaming the jury's passions during closing argument.

A. Reference to Prior Felony

Eggers argues that the prosecutor committed misconduct when he asked the following question of Scheierl regarding Eggers's status as a probationer: "And that is, without getting into specifics, that's for a prior felony criminal conviction, is that right?" After Scheierl answered the question, defense counsel objected at a sidebar conference on the ground that the district court had previously ruled that Eggers's status as a probationer was admissible but that his criminal record was inadmissible unless it was used to impeach Eggers's own testimony. Defense counsel did not move to strike, but at the next break in trial, defense counsel moved for a mistrial. The district court denied the motion,

noting that the question "was not prejudicial, certainly not unduly or unreasonably prejudicial" but was "an accurately descriptive word for the probation."

A prosecutor may not refer to inadmissible evidence in a manner that causes jurors to draw adverse inferences from the evidence. *State v. Mayhorn*, 720 N.W.2d 776, 788-89 (Minn. 2006). In this case, the prosecutor's question referred to Eggers's felony conviction, which the district court previously had ruled was inadmissible except to impeach Eggers's own testimony. The question was posed to Scheierl; it was not offered to impeach Eggers. Thus, the prosecutor's question was improper.

If a defendant has objected to a question that is alleged to be prosecutorial misconduct, an appellate court should apply a harmless error test that "varies based on the severity of the misconduct." *State v. Wren*, 738 N.W.2d 378, 389-90 (Minn. 2007) (citing *State v. Ramey*, 721 N.W.2d 294, 299 n.4 (2006)). The supreme court has set forth a two-tiered test:

> [I]n cases involving unusually serious prosecutorial misconduct this court has required certainty beyond a reasonable doubt that the misconduct was harmless before affirming. . . . On the other hand, in cases involving less serious prosecutorial misconduct this court has applied the test of whether the misconduct likely played a substantial part in influencing the jury to convict.

Id. at 390 n.8 (quoting *State v. Caron*, 300 Minn. 123, 127-28, 218 N.W.2d 197, 200 (1974)); *see also State v. McCray*, 753 N.W.2d 746, 754 n.2 (Minn. 2008) ("leav[ing] . . . for another day" the question whether the two-tiered approach should continue to apply).

We assume without deciding that the prosecutor's error was of the more serious variety. For more serious errors, it is appropriate to consider five factors to determine whether the misconduct was harmless beyond a reasonable doubt: (1) how the improper evidence was presented; (2) whether the state emphasized it during trial; (3) whether the evidence was highly persuasive or circumstantial; (4) whether the defendant countered it; and (5) the strength of the evidence. *Wren*, 738 N.W.2d at 393-94 & n.13. In this case, the first factor indicates harmlessness because the reference to Eggers's felony conviction was in a single question. The prosecutor never again used the word "felony." The second factor indicates harmlessness because the evidence was not emphasized and, in fact, never again was mentioned. The third factor indicates harmlessness because the jury already knew that Eggers was on probation because Eggers's status as a probationer provided the reason for Scheierl's search of Eggers's residence. The fourth factor is neutral; although Eggers did not rebut the evidence, he was able to present a full and robust defense. Finally, the fifth factor indicates harmlessness because the evidence in support of the conviction was strong. A clear plastic bag containing methamphetamine was found in Eggers's bedroom while he was present. Thus, we conclude that the erroneous reference to Eggers's prior felony conviction was harmless.

B. Reference to Burden of Proof

Eggers next argues that the prosecutor committed misconduct during rebuttal argument by shifting the burden of proof to him. Eggers challenges the following statement: "The Defense indicated to you that there was no indication in the record of what the Defendant had to say, and that's true, and that's true, but that's not the fault of

the State. That's not the State's issue." Eggers did not object to the prosecutor's statement.

"Prosecutors improperly shift the burden of proof when they imply that a defendant has the burden of proving his innocence." *State v. Martin*, 773 N.W.2d 89, 105 (Minn. 2009). "A misstatement of this burden is highly improper and constitutes prosecutorial misconduct." *State v. McDaniel*, 777 N.W.2d 739, 750 (Minn. 2010) (quotation omitted). But a prosecutor does not shift the burden, and does not commit error, by "comment[ing] on the lack of evidence supporting a defense theory." *Id.* If an appellant did not object to an alleged instance of prosecutorial misconduct, we apply a "modified plain error test." *Wren*, 738 N.W.2d at 389; *see also Ramey*, 721 N.W.2d at 302. Under the modified plain error test, "the defendant must establish both that misconduct constitutes error and that the error was plain." *Wren*, 738 N.W.2d at 393. "The defendant shows the error was plain 'if the error contravenes case law, a rule, or a standard of conduct.'" *Id*. (quoting *Ramey*, 721 N.W.2d at 302). "The burden then shifts to the state to demonstrate that the error did not affect the defendant's substantial rights." *Id*.

Eggers contends that the prosecutor's statement was improper because it "implied to the jury that [Eggers] should have testified or told this story." In response, the state argues that the comment was a fair rebuttal of defense counsel's statement in his closing argument that "[t]here were no statements in the record regarding what Mr. Eggers had to say regarding all of this." The state contends that Eggers's counsel's statement "'opened

the door' for the prosecutor to explain that the state was not at fault for [Eggers's] failure to testify."

For two reasons, the prosecutor's statement was not erroneous. First, the comment related more to Eggers's decision to not testify than to the burden of proof. There was no reference to the burden of proof, and the jury likely did not perceive the comment as being related to the burden of proof. Second, the state is correct that a prosecutor may comment on a defendant's decision to not testify if necessary to rebut an argument made by defense counsel on that issue, *i.e.*, if defense counsel "opened the door." *Cf. State v. Goelz*, 743 N.W.2d 249, 258 (Minn. 2007) (holding that district court did not err by admitting evidence of appellant's faked suicide because appellant first referred to incident); *State v. Larson*, 358 N.W.2d 668, 671-72 (Minn. 1984) (holding that district court did not err by instructing jury that no inference could be drawn from appellant's decision to not testify because appellant referred to issue in closing argument). A review of the transcript reveals that the prosecutor's comment was fairly responsive to defense counsel's argument. In fact, the prosecutor expressly referred to defense counsel's prior statement. Thus, the prosecutor's comment was not plain error.

Even if the comment was plain error, it would not be reversible error unless it "affect[ed] the defendant's substantial rights." *Wren*, 738 N.W.2d at 393. But the comment was a small part of a closing argument that spanned more than 13 pages. *See State v. Powers*, 654 N.W.2d 667, 679 (Minn. 2003) (considering relative length of objectionable passage in determining whether improper comment deprived defendant of fair trial). Separately, the prosecutor explained to the jury that the state had the burden of

proof and that the burden of proof was beyond a reasonable doubt. *See Martin*, 773 N.W.2d at 105 (concluding that prosecutor did not err when describing state's burden). Finally, the district court correctly instructed the jury on the burden of proof, and the jury is presumed to follow instructions. *See State v. Clark*, 755 N.W.2d 241, 261 (Minn. 2008). Thus, the prosecutor's comment, even if erroneous, did not affect Eggers's substantial rights.

C. Reference to Methamphetamine

Eggers last argues that the prosecutor committed misconduct in closing arguments by inflaming the passions of the jury through an appeal to their knowledge of the societal effects of methamphetamine. Specifically, he challenges the following statements:

> This is a, you've seen this waved around a little bit in the courtroom, inside this evidence bag is some plastic there, a little plastic bag of the evidence that contained the Methamphetamine. Just a little bag, little. But, don't be fooled by how little it is. It's Methamphetamine. The effects can be huge.
>
> No matter how small this may look, when someone looks at it, the effects can be dramatic, an addictive, destructive drug. It damages and destroys some lives. But, despite the fact it may be small and may look small, it's very serious, because of the impact it can have on people.

Because Eggers did not object, we again apply the modified plain error test. *See Wren*, 738 N.W.2d at 389. In response, the state argues that the prosecutor's remarks "were designed to prevent the jury from discounting the seriousness of the offense based on the size of the drugs."

The state's closing argument "'must be based on the evidence produced at trial, or the reasonable inferences from that evidence.'" *State v. Young*, 710 N.W.2d 272, 281 (Minn. 2006) (quoting *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995)). A prosecutor may not make arguments "calculated to inflame the passions or prejudices of the jury." *State v. Salitros*, 499 N.W.2d 815, 817 (Minn. 1993) (quotation omitted). A prosecutor "should refrain from argument which would divert the jury from its duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the accused under the controlling law, or by making predictions of the consequences of the jury's verdict." *State v. Clark*, 291 Minn. 79, 82, 189 N.W.2d 167, 170 (1971) (quotation omitted). Accordingly, arguments with "law and order" themes are improper. *Id.* (holding that prosecutor erred by suggesting that defendant should be convicted because of crime problem in general); *see also State v. Clifton*, 701 N.W.2d 793, 800 (Minn. 2005) (noting that prosecutor may not "inject[] issues broader than the guilt or innocence of the accused" into closing argument); *State v. Threinen*, 328 N.W.2d 154, 157 (Minn. 1983) (holding that prosecutor erred by arguing that jury represented people of community whose verdict would determine what would be tolerated on streets). On the other hand, a closing argument need not be "colorless." *Young*, 710 N.W.2d at 281 (quotation omitted). In determining whether there was error in a closing argument, we review the closing argument as a whole. *State v. Leake*, 699 N.W.2d 312, 327 (Minn. 2005).

Eggers is correct that the prosecutor's comment went beyond merely arguing that a small amount of methamphetamine constitutes a violation of the applicable statute. The

prosecutor referred to facts and issues beyond the scope of this case by stating that even a small amount of drugs can "destroy lives." Whether the prosecutor's comments about methamphetamine were *plainly* in error, which is the relevant question, is a close call.

We need not answer that question, however, because, even if the prosecutor's comment was plainly erroneous, the comment did not affect Eggers's substantial rights because it likely did not have a significant effect on the jury's verdict. *See Ramey*, 721 N.W.2d at 302. As the state argues, there was "a substantial amount of evidence indicating that appellant possessed methamphetamine." In short, Eggers's probation officer found methamphetamine in Eggers's bedroom, while Eggers was present. Thus, we cannot conclude that the prosecutor's error affected Eggers's substantial rights. *See State v. Dobbins*, 725 N.W.2d 492, 513 (Minn. 2003) (concluding that verdict not attributable to prosecutorial misconduct because evidence was strong).

In sum, Eggers is not entitled to a new trial on the ground that the prosecutor engaged in prosecutorial misconduct.

Affirmed.