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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0063**

State of Minnesota,
Respondent,

vs.

Renan Guandique,
Appellant.

**Filed January 21, 2025
Reversed and remanded
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-21-14547

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Jesson,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his convictions of two counts of first-degree criminal sexual conduct, arguing that the prosecutor plainly erred by beginning his rebuttal closing argument with an assertion that “[t]he presumption of innocence is gone.” We apply the supreme court’s decision in *State v. Portillo*, 998 N.W.2d 242 (Minn. 2023), and conclude that reversal is required under the plain-error standard of review.

FACTS

This case stems from appellant Renan Guandique’s convictions of two counts of first-degree criminal sexual conduct, which are based on allegations that he sexually abused two of his minor grandsons. Respondent State of Minnesota filed the original charge of second-degree criminal sexual conduct in August 2021. In May 2023, the state added two counts of first-degree criminal sexual conduct and an additional count of second-degree criminal sexual conduct. In August 2023, the state amended the complaint to modify the first-degree criminal-sexual-conduct charges. The charges were tried to a jury that month.

The evidence at trial indicated that appellant is originally from Honduras, where his daughter—the complaining witnesses’ mother—was born. Appellant moved to the United States when his daughter was two years old. Appellant did not see his daughter again until she was a teenager. Appellant married in 1994, and in 1998, appellant and his wife moved to Minnesota, where they worked as pastors at a church. The complaining witnesses and their mother moved to Minnesota in 2017 and lived with appellant for approximately six

months. The complaining witnesses were seven and four years old when they arrived from Honduras.

Each of the complaining witnesses testified at trial and described the alleged sexual abuse. The older child testified that appellant began abusing him shortly after he moved to Minnesota. The older child disclosed the alleged abuse to his mother in September 2020. The younger child testified that appellant began abusing him when he turned seven or eight years old. The younger child disclosed the alleged abuse to his mother around February 2021.

The children's mother did not immediately report the older child's accusation to the police. Instead, when she took him to see a doctor over four months later in February 2021, the child told the doctor that his grandfather had sexually abused him. A report was made to child-protection services and law enforcement.

The children's mother testified regarding each child's initial disclosure of the alleged abuse and the additional disclosures that each had made over time. The children were interviewed by professionals regarding their allegations, the interviews were recorded, and the recordings were received as evidence at trial. An expert witness on child sexual abuse testified about delayed and incremental disclosure, as well as grooming behaviors.

As to the defense, appellant testified that his relationship with his daughter was strained because of his absence during her childhood and his attention towards his wife's daughters. Appellant said that his daughter stormed out of a family Thanksgiving

celebration in 2019 and threatened to ruin him and his reputation. Appellant denied sexually abusing the children.

Appellant's former son-in-law testified that appellant is honorable and truthful. He also testified that he was present at the 2019 Thanksgiving celebration and confirmed that appellant's daughter threatened to ruin appellant's reputation and family.

Appellant's defense focused heavily on the children's credibility, as did closing arguments. The prosecutor began his rebuttal closing argument by stating: "The presumption of innocence is gone. [The children's] credible testimony proves this case beyond a reasonable doubt."

The jury found appellant guilty as charged. The district court entered judgments of conviction on two counts of first-degree criminal sexual conduct and imposed consecutive executed prison sentences of 172 months.

This appeal followed.

DECISION

Because the outcome of this case is controlled by the Minnesota Supreme Court's recent decision in *Portillo*, which was decided after the trial in this case, we begin with an overview of that decision. The *Portillo* defendant was charged with and convicted of criminal sexual conduct for sexually abusing a child over a number of years. 998 N.W.2d at 245-46. The state began its rebuttal closing argument as follows:

The presumption of innocence comes with an individual accused, unless and until the state proves its case beyond a reasonable doubt. [Defense counsel] correctly told you that. But it leaves him when the state has proven its case beyond a reasonable doubt. *He no longer has that presumption.* You've

heard all the evidence. You've heard all of the state's case against Mr. Portillo. *He no longer has that presumption of innocence.* He has been proven guilty beyond a reasonable doubt. We've gone through those elements. You'll be able to talk and consider each other's thoughts and the information you heard throughout the course of the case, but *he no longer has that presumption of innocence.*

Id. at 246-47 (emphases added). Portillo did not object to the state's argument in district court. *Id.* at 247. Instead, he challenged the argument as prosecutorial misconduct on appeal. *Id.*

The *Portillo* court applied the four-step modified plain-error standard of review that applies to claims of unobjected-to prosecutorial misconduct, as articulated in *State v. Ramey*, 721 N.W.2d 294 (Minn. 2006). *Id.* at 248. Under that standard, the defendant must demonstrate that the alleged misconduct constitutes “(1) error, (2) that was plain.” *Id.* (quotation omitted). An error is “plain” if it “contravenes case law, a rule, or a standard of conduct.” *Id.* at 250 (quotation omitted). If the defendant establishes an error that is plain, “the burden then shifts to the [s]tate,” under the third step, “to demonstrate that the error did not affect the defendant's substantial rights.” *Id.* at 248 (quotation omitted). In assessing that factor, we ask “whether there is a reasonable likelihood that the prosecutor's error had a significant effect on the verdict,” and “we consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions.” *Id.* at 251-52 (quotation omitted). If the state fails to meet its burden, we proceed to the fourth step of the test and determine “whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” *Id.* at 248 (quotation omitted).

The *Portillo* court began its analysis with a recognition that “[i]t is axiomatic that criminal defendants are presumed innocent until proven guilty beyond a reasonable doubt.” *Id.* at 248-49. “Moreover, it has long been held that one accused of crime has the right to have the jury take the presumption of innocence to the jury room with them as the voice of the law.” *Id.* at 249 (quotations omitted). The *Portillo* court stated that the prosecutor’s statement during rebuttal was inconsistent with Minnesota law because the prosecutor “erroneously suggested that Portillo, at the time the prosecutor made this statement, had been proven guilty beyond a reasonable doubt and was therefore no longer entitled to the presumption of innocence.” *Id.* at 250 (emphasis omitted). The supreme court clarified that “[a] defendant is only proven guilty beyond a reasonable doubt, however, when the jury has deliberated and reached that conclusion, not before.” *Id.*; see *Moore v. State*, 945 N.W.2d 421, 434 (Minn. App. 2020) (“[O]nly once the jury reaches the conclusion that a defendant is guilty beyond a reasonable doubt has the presumption [of innocence] been lost.”), *rev. denied* (Minn. Aug. 11, 2020).

The *Portillo* court was very clear regarding its reasoning:

The prosecutor told the jury, during the [s]tate’s closing-argument rebuttal, that Portillo no longer had the presumption of innocence before the jury began deliberating. Because this assertion is not correct and is contrary to the constitutional protections afforded criminal defendants under the U.S. and Minnesota Constitutions, we conclude that the prosecutor’s statement was an error.

998 N.W.2d at 250.

The *Portillo* court rejected the state’s argument that the error was not plain, reasoning:

Our court has made clear that the presumption of innocence is a fundamental component of a fair trial under our criminal justice system, a bedrock axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law. Only once a defendant has been afforded a fair trial and convicted of the offense for which he was charged does the presumption disappear. None of the decisions that the [s]tate cites to support its position—namely, that the law is unsettled with regard to how far a prosecutor can go in saying that a defendant has lost the presumption of innocence prior to a jury’s deliberations—approved of language that corresponds with the language that the prosecutor used here.

Id. at 251 (quotations and citations omitted).

As to the third step of the modified plain-error standard, the *Portillo* court determined that the state did not meet its burden to “show that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Id.* at 251, 254 (quotations omitted). The supreme court reasoned:

We agree with *Portillo* that the evidence of guilt here was not strong. *Portillo* is correct that the allegations are based solely on the testimony of J.G. without any corroborating testimony, physical evidence, or other witnesses to the abuse. Moreover, the testimony at trial was given more than 10 years after the alleged conduct occurred. *Portillo* also correctly notes that J.G.’s statements regarding the abuse have been inconsistent on several occasions.

Id. at 252 (footnote omitted). The supreme court explained that “[c]ases in which our court has concluded that the evidence against a defendant was strong enough to counteract any alleged prosecutorial errors have tended to show more than the evidence here.” *Id.* It also emphasized that the “strength of the case is not determinative, and prosecutorial error may

deprive a defendant of a fair trial even in a case in which the evidence of guilt is strong.”
Id. at 253.

The *Portillo* court acknowledged that the prosecutor’s misstatement occurred three times in just over “half a page of the six-page rebuttal and the 20-page total closing argument,” but it noted that the misstatements occurred during the state’s rebuttal closing argument and “were part of the last argument that the jury heard before the district court gave the jury its final instructions.” *Id.* The supreme court determined that the district court’s final instructions were insufficient to remedy any prejudice that the misstatements caused, reasoning that

although the district court’s instruction on the presumption of innocence was a correct statement of the law, the instruction did not contradict or otherwise instruct the jury to ignore the prosecutor’s misstatement that Portillo had already lost the presumption of innocence before deliberations. In other words, the district court’s statement that “[t]he presumption remains with the defendant unless and until the defendant has been proven guilty beyond a reasonable doubt” does not obviously and clearly correct the prosecutor’s erroneous statement that Portillo “has been proven guilty beyond a reasonable doubt [H]e no longer has that presumption of innocence.”

Id. at 254 (emphasis omitted).

The *Portillo* court’s reasoning was clear:

On balance, although the prosecutor’s misstatement may not have been in bad faith or pervasive, the [s]tate cannot meet its burden of showing that there is “no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Ramey*, 721 N.W.2d at 302 (citation omitted) (internal quotation marks omitted). The [s]tate’s case against Portillo was not strong, the misstatement occurred at the end of closing

argument just prior to jury instructions and deliberations, and the district court's instructions did not correct the prosecutor's misstatement of the presumption of innocence. Thus, a reasonable likelihood exists that the prosecutor's misstatement may have had a significant effect on the verdict of the jury.

Id. (citing *Estelle v. Williams*, 425 U.S. 501, 504 (1976) (“The actual impact of a particular practice on the judgment of jurors cannot always be fully determined. But this Court has left no doubt that the probability of deleterious effects on fundamental rights calls for close judicial scrutiny.”)).

Finally, as to the fourth part of the modified plain-error test, the *Portillo* court held that reversal was required to preserve the fairness and integrity of the judicial proceedings. *Id.* at 256. The supreme court noted that the “pivotal question is whether addressing the prosecutorial error will serve to enforce the constitutional protections afforded to all criminal defendants.” *Id.* at 255. The court explained that “[t]he uncorrected, erroneous statement that Portillo was not entitled to the presumption of innocence as the jury deliberated deprived Portillo of the ability to present his defense and have the charges against him considered under the proper, correct instructions.” *Id.* at 256. The court stated that if such errors were “[l]eft unchecked,” they would “have a substantial and deleterious effect on future trials and undercut the historic standard of proof imposed on the [s]tate in criminal trials.” *Id.* (quotation omitted). “Consequently, Portillo [was] entitled to a new trial.” *Id.*

Because the relevant circumstances in this case are not meaningfully distinguishable from those in *Portillo*, our application of the modified plain-error standard of review results in the same outcome: appellant is entitled to a new trial.

Error that is Plain

The state's remark that "[t]he presumption of innocence is gone" constitutes plain error under *Portillo* because it erroneously suggested that appellant had lost the presumption of innocence *prior to* any jury deliberations regarding his guilt. *See id.* at 250 (finding plain error because "[a] defendant is only proven guilty beyond a reasonable doubt . . . when the jury has deliberated and reached that conclusion, not before").

The state argues that the prosecutor's statement here is more like the statements found not to be plain error in *State v. Young*, 710 N.W.2d 272 (Minn. 2006), and *State v. Vue*, 797 N.W.2d 5 (Minn. 2011). But the *Portillo* court distinguished both of those cases, and those distinctions apply here. *Id.* at 249-51.

As to *Young*, the *Portillo* court noted that the prosecutor "never explicitly mentioned the presumption of innocence in the portion of the [s]tate's closing argument at issue; even in the context of the argument as a whole, the prosecutor only stated that the evidence was sufficient to find the defendant guilty, so '[h]e's no long[er] an innocent man.'" *Id.* at 249-50 (quoting *Young*, 710 N.W.2d at 280). Unlike the circumstances in *Young* and like the circumstances in *Portillo*, the prosecutor in this case expressly told the jury that "[t]he presumption of innocence is gone" before the jury began its deliberations.

As to *Vue*, the prosecutor in that case argued that the defendant "has now lost that presumption of innocence as a result of the evidence that you have heard." 797 N.W.2d at 13. The *Portillo* court distinguished this statement, explaining that the *Vue* prosecutor essentially argued that the state "had produced sufficient evidence to overcome the

presumption” rather than argued “that the defendant was not entitled to the presumption.” 998 N.W.2d at 251 (quotation omitted). Because the prosecutor’s statement in this case that “[t]he presumption of innocence is gone” is virtually identical to the prosecutor’s statement in *Portillo* that the defendant “no longer has th[e] presumption of innocence,” we conclude that the statement here was plainly erroneous under *Portillo*, regardless of the outcome in *Vue*. *Id.* at 250 (“An error is plain if it contravenes a principle that is conclusively resolved at the time of appeal.” (quotation omitted)).

This court’s nonprecedential decisions applying *Portillo* are instructive as to application of *Portillo*. See Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that, although nonbinding, “nonprecedential opinions may be cited as persuasive authority”). For example, in *State v. Perez-Robles*, we concluded that a prosecutor misstated the burden of proof in his rebuttal closing argument by stating, “[t]he presumption of innocence is gone” and that the misstatement constituted plain error that required reversal under *Portillo*. No. A23-1216, 2024 WL 3877492, at *1 (Minn. App. Aug. 19, 2024). We reasoned that the misstatement in *Perez-Robles* was “virtually indistinguishable from the statements the supreme court deemed to be plain error in *Portillo*.” *Id.* at *3. In this case, the challenged statement is identical to the rebuttal argument justifying reversal in *Perez-Robles*, and we discern no reason for a different outcome in this case.

Conversely, in *State v. Johnson*, we rejected a defendant’s argument that the prosecutor plainly erred by misstating the presumption of innocence during closing argument. No. A23-1196, 2024 WL 3407693, at *3 (Minn. App. July 15, 2024), *rev. denied* (Minn. Oct. 15, 2024). The *Johnson* prosecutor argued in closing that “as the

[j]udge instructed you” the defendant is “presumed innocent of [the] charges. But that presumption only remains with her until the [s]tate has proven the essential elements by proof beyond a reasonable doubt. Once the essential elements are proven, that presumption goes away and you must find her guilty.” *Id.*

In concluding that the prosecutor’s argument in *Johnson* did not constitute plain error under *Portillo*, we reasoned that “the prosecutor did not assert that Johnson was not entitled to the presumption at the time of closing arguments.” *Id.* Instead, “the prosecutor stated that . . . the presumption does not remain when the state proves the essential elements beyond a reasonable doubt.” *Id.* The statement in this case is readily distinguishable from the one in *Johnson*. The prosecutor here did not argue that appellant retained the presumption of innocence until such time as the jury determined, beyond a reasonable doubt, that the state had proved his guilt. Instead, the prosecutor here informed the jury that “[t]he presumption of innocence is gone,” indicating that the presumption was inapplicable during the jury’s deliberations.

We also rejected a *Portillo* challenge in *State v. Shines*. No. A23-1794, 2024 WL 4344953, at *5-7 (Minn. App. Sept. 30, 2024), *petition for rev. filed* (Minn. Oct. 30, 2024). In closing argument in that case, the prosecutor described the presumption of innocence as a “legal default position that the defendant is presumed innocent unless and until you determine that the [s]tate has proven its case beyond a reasonable doubt.” *Id.* at *6. We concluded that the state’s argument did “not rise to the level of misstatement that the supreme court rebuffed in *Portillo*,” reasoning:

The prosecutor did not assert that Shines was not entitled to the presumption of innocence before the jury began deliberating. Instead, the prosecutor stated that Shines “is presumed innocent unless and until you determine that the [s]tate has proven its case beyond a reasonable doubt.”

Id. The prosecutor’s argument was acceptable under *Portillo* because “the prosecutor did not assert that Shines was no longer entitled to the presumption of innocence at the time of the prosecutor’s closing argument.” *Id.* Once again, this case is distinguishable because the prosecutor here explicitly told the jury, in rebuttal argument, that “[t]he presumption of innocence [was] gone” before the jury began its deliberations.

In sum, *Portillo* establishes that it is plain error for a prosecutor to argue that a defendant has lost the presumption of innocence prior to jury deliberations. Under the reasoning of *Portillo*, and consistent with our nonprecedential decisions applying *Portillo*, we conclude that the prosecutor erroneously stated that appellant had lost the presumption of innocence prior to jury deliberations and that the error was plain.

Affects Substantial Rights

We next consider whether the state has established that there is no reasonable likelihood that the prosecutor’s error had a significant effect on the verdict. *See Portillo*, 998 N.W.2d at 251. The state argues that it has met its burden for these reasons: (1) it presented a strong case, (2) its statement regarding the presumption of innocence was not pervasive, (3) the district court correctly instructed the jury regarding the presumption of innocence, and (4) appellant was given the opportunity to rebut the prosecutor’s statement regarding the presumption of innocence.

As to the strength of the state's case, the state concedes that the complaining witnesses' credibility was central and argues that "[i]f the jury credited the victims' testimony, the case simply was not a close call." The state further argues that "[i]f the jury credited the victims' testimony, the evidence of [a]ppellant 'repeatedly sexually abus[ing] those two boys over and over' was significant." Finally, the state notes that the "jury's verdicts show the jury found the victims' testimony credible." The state's argument on this point is not persuasive because it does not recognize that the presumption of innocence could have impacted the jury's credibility determinations. *See State v. Peterson*, 673 N.W.2d 482, 486-87 (Minn. 2004) (stating that the "reasonable doubt standard of proof provides concrete substance for the presumption of innocence," and "a misdescription of the burden of proof . . . vitiates *all* the jury's findings, leaving the reviewing court only to speculate on its own as to what a reasonable jury would have done" (quotations omitted)).

Indeed, the *Portillo* court was not swayed by the state's argument that the jury "clearly found [the alleged victim] to be credible" and that its credibility determination was entitled to deference. 998 N.W.2d at 252. Instead, the *Portillo* court determined that the evidence of guilt was not strong. *Id.* It noted that the child-sexual-abuse allegations were based solely on the testimony of the alleged victim, "without any corroborating testimony, physical evidence, or other witnesses to the abuse." *Id.* The *Portillo* court also noted that the alleged victim's testimony at trial was given "more than 10 years" after the alleged abuse occurred and that the alleged victim's statements regarding the abuse had been inconsistent on several occasions. *Id.*

Although the child-sex-abuse allegations in this case regarded conduct that allegedly occurred closer in time to trial, the convictions here heavily depended on the complaining witnesses' credibility. Like the circumstances in *Portillo*—and as is often the case in a prosecution for child sexual abuse—there were no firsthand witnesses to the alleged sexual assaults and no physical evidence. We have considered that the jury in this case heard testimony from two alleged child victims and that they reported similar sexual misconduct by appellant. But given the *Portillo* court's reminder that “strength of the case is not determinative, and prosecutorial error may deprive a defendant of a fair trial even in a case in which the evidence of guilt is strong,” we are not persuaded that the strength of the state's case here is adequate to establish that it is unlikely that the error impacted the verdict. *Id.* at 253.

As to the pervasiveness of the prosecutor's error in this case, we agree with the state that the error was not pervasive. Unlike the *Portillo* prosecutor, who thrice said during rebuttal argument that *Portillo* no longer had the presumption of innocence, the prosecutor in this case made the erroneous statement only once. However, like the circumstances in *Portillo*, the district court's instructions regarding the presumption of innocence were inadequate to correct the prosecutor's misstatement of the relevant constitutional principle. As explained in *Portillo*:

Moreover, although the district court's instruction on the presumption of innocence was a correct statement of the law, *the instruction did not contradict or otherwise instruct the jury to ignore the prosecutor's misstatement that Portillo had already lost the presumption of innocence before deliberations.* In other words, the district court's statement that “[t]he presumption remains with the defendant unless and until

the defendant has been proven guilty beyond a reasonable doubt” does not obviously and clearly correct the prosecutor’s erroneous statement that Portillo “has been proven guilty beyond a reasonable doubt [H]e no longer has that presumption of innocence.”

Id. at 254 (emphasis added). The *Portillo* court emphasized that a standard instruction regarding the presumption of innocence could not cure the prosecutor’s erroneous statement that the defendant had lost the presumption prior to jury deliberations, explaining:

[T]he instructions given by the district court failed to properly counter the prosecutor’s misstatement of the law. The jury instructions given by the district court were a generic recitation of black-letter law and lacked sufficient specificity to cure that error. To put it more directly, the instructions never mention the prosecutorial error regarding the fundamental principle of the presumption of innocence and fail to tell the jury to disregard the prosecutor’s statement that the defendant no longer was entitled to the presumption of innocence.

Id. at 255. Thus, “the jury instructions did not correct the prosecutor’s misstatement.” *Id.*

Finally, we are not persuaded by the state’s arguments that appellant had “the opportunity to rebut the improper suggestion but chose not to do so” and that appellant “did not raise any objections and did not request any curative instructions regarding the presumption of innocence.” The same could have been said of the *Portillo* defendant. But the supreme court did not do so and instead stated:

On balance, although the prosecutor’s misstatement may not have been in bad faith or pervasive, the [s]tate cannot meet its burden of showing that there is “no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury.” *Ramey*, 721 N.W.2d at 302 (citation omitted) (internal quotation marks omitted). The [s]tate’s case against Portillo

was not strong, the misstatement occurred at the end of closing argument just prior to jury instructions and deliberations, and the district court's instructions did not correct the prosecutor's misstatement of the presumption of innocence. Thus, a reasonable likelihood exists that the prosecutor's misstatement may have had a significant effect on the verdict of the jury. *See Estelle*[, 425 U.S. at 504] ("The actual impact of a particular practice on the judgment of jurors cannot always be fully determined. But this Court has left no doubt that the probability of deleterious effects on fundamental rights calls for close judicial scrutiny.").

Id. at 254.

On balance, we do not discern a meaningful way to distinguish the circumstances of this case from those in *Portillo* when applying the third part of the modified plain-error test. We therefore conclude that the prosecutor's misstatement likely affected the jury's verdict because it invited the jury to deliberate without giving appellant the benefit of the presumption of innocence.

Fairness and Integrity of Judicial Proceedings

Having concluded that the prosecutor plainly erred and that the state has not shown that there is no reasonable likelihood that the prosecutor's error had a significant effect on the verdict, we next consider the final part of the modified plain-error test: "whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings."

Id. at 255 (quotation omitted).

Appellant argues that we must address the error "because it implicates the principles of due process and affects the public's trust in whether a defendant can receive a fair trial." The state does not address this factor.

The *Portillo* court found a need to address the error, explaining:

Ultimately, we conclude that the prosecutorial error here must be addressed to ensure the fairness and integrity of judicial proceedings. The [s]tate, as noted above, has failed to show that there is no reasonable likelihood that the prosecutor's misstatement did not affect the jury's verdict, and the error in misstating the presumption of innocence strikes at that bedrock axiomatic and elementary principle whose enforcement lies at the foundation of the administration of our criminal law. When there is a reasonable likelihood that but for the error, the result would be different, affirming Portillo's conviction would adversely affect the public's confidence in the fairness and integrity of judicial proceedings. Fairness requires that a defendant be given an opportunity to present his account to a jury under the proper instructions. The uncorrected, erroneous statement that Portillo was not entitled to the presumption of innocence as the jury deliberated deprived Portillo of the ability to present his defense and have the charges against him considered under the proper, correct instructions. Left unchecked, such errors would also have a substantial and deleterious effect on future trials and undercut the historic standard of proof imposed on the [s]tate in criminal trials. Consequently, Portillo is entitled to a new trial.

Id. at 256 (quotations and citations omitted).

Once again, we do not discern—and the state has not suggested—a principled basis to reach a different conclusion in this case. We therefore conclude that the prosecutor's error should be addressed to ensure fairness and the integrity of judicial proceedings. Thus, we reverse and remand for a new trial, without addressing appellant's second argument that the district court committed prejudicial plain error by admitting multiple recorded interviews with the complaining witnesses. We also do not address the assertions in appellant's pro se brief, which do not establish an additional basis for relief. *See Brooks v. State*, 897 N.W.2d 811, 818 (Minn. App. 2017) (“An assignment of error based on mere

assertion and not supported by legal authority or argument is waived unless prejudicial error is obvious on mere inspection.”), *rev. denied* (Minn. Aug. 8, 2017).

In conclusion, we acknowledge that our decision will likely cause distress to the complainants and their family. But the *Portillo* court has clearly spoken regarding the circumstances that necessitate a new trial based on a prosecutor’s erroneous closing-argument rebuttal statement regarding the presumption of innocence. The circumstances here align with those in *Portillo*, and we are obligated to follow the law. *See State v. Curtis*, 921 N.W.2d 342, 343 (Minn. 2018) (“The court of appeals is bound by supreme court precedent.”).

Reversed and remanded.