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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0329**

State of Minnesota,
Respondent,

vs.

Rondell Russell Camp,
Appellant.

**Filed January 22, 2019
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CR-17-2680

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Kalitowski, Judge.*

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

UNPUBLISHED OPINION

FLOREY, Judge

In this direct appeal from a conviction and sentence for second-degree intentional murder, appellant argues that the state failed to disprove his claim of self-defense and that the prosecutor engaged in prejudicial misconduct both by questioning appellant's expert about his remuneration and by asserting, without a factual basis, that appellant "stomped" on the victim's head. Appellant also raises a number of pro se arguments. Because the evidence was sufficient, the prosecutor's questioning of the expert's remuneration was not plain-error misconduct, the assertions that appellant "stomped" on the victim's head did not affect appellant's substantial rights, and appellant's pro se arguments are unavailing, we affirm.

FACTS

On January 29, 2017, appellant Rondell Russell Camp killed S.P. in a residential garage in North Minneapolis by cutting him with a knife and beating him with a blunt object multiple times. A loaded handgun was recovered from the scene, and S.P.'s palm print was found on the magazine of the gun. Appellant claimed at trial that he acted in self-defense after S.P. held him at gunpoint.

S.P. worked out of the garage as a freelance mechanic and had worked on appellant's vehicles in the past. On January 29, appellant and another man, D.E., went to the garage to get an oil change. S.P. discovered an oil leak and asked appellant to return for a repair. Later that day, S.P. contacted appellant and told him that he had enlisted another person to help fix the leak. Appellant returned to the garage by himself.

S.P. received an incoming call from appellant at 4:13 p.m. B.B., a neighbor, heard two men arguing loudly in the garage at around 4:20 p.m. and recognized one of the voices as S.P.'s. Soon after, an individual, J.S., heard appellant screaming. J.S. went out to investigate and saw appellant dragging himself along the ground, "screaming for help, saying, 'Somebody was trying to kill me.'" Appellant's leg was injured, and he had blood on his forehead, hands, and clothing. J.S. called 911.

Officers responded at around 4:30 p.m. S.P.'s body was discovered on the garage floor. The body was lying face up near the driver's side of appellant's car, parallel to the car. Steam was rising from the body, indicating that it had not cooled; in other words, S.P.'s body had not been lying there long. Salt and grime on the exterior of the car was disturbed in several places. The keys were in the car, and the driver's-side window was down. A winter jacket was draped over S.P.'s body. A loaded handgun was sitting on the passenger-side windshield of the car. The gun did not have blood on it. A bloody knife was on the ground near the wall of the garage and partially covered by some items. A bloody wrench was underneath S.P.'s head.

An ambulance was dispatched at 4:33 p.m. An officer rode with appellant to the hospital. The officer asked appellant, "Who did this to you?" and after a long pause, appellant responded, "I've already told you." Appellant did not mention a gun and did not indicate that his life had been threatened. At the hospital, appellant was treated for a large bruise and small abrasion on his forehead, and a fractured and partially dislocated right ankle. The ankle injury was severe, and appellant had torn ligaments. There was no other

significant trauma. Appellant told his sister to write down a telephone number and relay that he was going to jail.

The state charged appellant with one count of second-degree intentional murder. The matter proceeded to trial. A medical examiner testified about S.P.'s extensive injuries. S.P. suffered blunt-force and sharp-force injuries. His sharp-force injuries were of a cutting, rather than a stabbing nature, though he suffered a deep incision on his neck. The frontal bones of his head were "completely pulpified by a blunt force injury." He suffered major tissue damage to the brain, which, at a minimum, would have caused a loss of consciousness. The medical examiner could not determine the order of the injury pattern. S.P. had incision injuries to his fingers, which could have been caused from a bite. The medical examiner opined that S.P. suffered a minimum of 29 incision injuries, predominately located on his head, with one on the neck. The medical examiner noted at least 38 cutaneous groups of injuries, though she could not conclude how many individual blunt-force blows were delivered. The cause of death was "multiple blunt force and sharp force injuries to the head and neck," with the predominant cause being the blunt force injuries.

DNA testing on the grip portion of the handgun revealed DNA from four or more individuals, and appellant and S.P. could not be excluded as possible contributors, though 83.9 percent of the general population could be excluded. Latent-print testing revealed a right palm print from S.P. on the handgun's magazine. DNA testing revealed that the blood on the garage floor, garage wall, knife blade, and knife handle were from S.P. There was DNA from both individuals on appellant's hands and on S.P.'s fingernails.

One of the doctors who treated appellant on January 29 testified that appellant would not have been able to put weight on his foot and that the ankle injury was likely caused by simultaneous twisting and trauma to the foot. She was of the opinion that stepping down on an unstable or slippery surface could cause the injury. A trauma surgeon testified that appellant said at the hospital that he was assaulted, he thought that he was hit in the head, and he may have heard the click of a gun, but appellant did not really remember anything afterward.

Appellant testified in his own defense. According to appellant, at 4:13 p.m., he called S.P. and told him that he was down the street. S.P. opened the garage door, and appellant pulled in and turned off his car. Appellant asked S.P. where the other guy was who was going to help fix the car and informed S.P. that he had other things to do that day. S.P. said that the other guy was on his way. Appellant asked S.P. to open the garage door so that he could leave. S.P. walked around the driver's side, like he was going to open the garage door. Appellant started the car, and when he looked up, he was struck in the head with an object, which turned out to be a gun. S.P. told appellant to turn off the car and get out. Appellant complied. S.P. told appellant to turn around and lie face down on the ground. Appellant turned around and saw, out of the corner of his eye, S.P. stepping towards him, so he turned around and lunged for the gun. Appellant was able to grab S.P.'s wrist, and he started backing him towards the wall of the garage.¹ The two struggled for the gun. S.P. pulled appellant's jacket over appellant's head, and appellant "swooped out

¹ Both men weighed around 150 pounds.

of it,” but his arms were still inside of the sleeves. The gun was still in S.P.’s right hand. At some point, the two fell to the ground with appellant on top, and at that point appellant injured his ankle. Appellant tried to get up to escape, but his “leg wasn’t cooperating.” S.P. (apparently seeing the injury) then said, “Yes. Yes. I got you now. I got you now.” The two men began punching each other. Appellant did not know where the gun was located. S.P. put his fingers in appellant’s mouth, and appellant bit his fingers. Appellant grabbed what he believed to be a paint chipper, but what turned out to be a knife, and struck S.P. S.P. was able to knock the knife out of appellant’s hand. S.P. continued to attack appellant, so appellant grabbed another nearby object. Appellant hit S.P. four to six times, and S.P. then knocked that second weapon out of appellant’s hand. According to appellant, “at that point, the fight was pretty much over.” Appellant tried to get up again, and S.P. grabbed him “with both hands,” and said, “listen to me, listen to me, . . . [t]hey’re going to come back for you and try to kill you. Don’t let them do like they did the rest. Don’t let them do like they did the rest.” Appellant asked S.P., “Why would you do this? Who wants me dead?” And, according to appellant, S.P. “kept shaking his head” and “repeating the same things.” Appellant then left, screaming for help. According to appellant, S.P. was still alive when he left the garage.

The defense called an expert in biomechanics, who testified that appellant’s forehead injury was consistent with being hit with the handgun. He testified that appellant’s ankle injury was likely not caused by stomping down. He testified that S.P.’s laceration injuries were caused by a chopping motion, and the injuries to S.P.’s fingers

were consistent with bite marks. He believed that the wrench was used to cause the blunt-force trauma, which would be “likely incapacitating.”

The jury found appellant guilty of second-degree intentional murder. The jury was asked to answer special interrogatories and found that appellant acted with particular cruelty and that S.P. was particularly vulnerable, and appellant knew or should have known of that vulnerability. However, the jury found that appellant did not lack remorse for committing the crime. Appellant was sentenced to 367 months’ imprisonment. This appeal followed.

D E C I S I O N

I. The evidence was sufficient to disprove appellant’s claim of self-defense.

Appellant contends that the evidence was insufficient because the state failed to prove beyond a reasonable doubt that he did not act in self-defense. In considering a claim of insufficient evidence, this court’s review is limited to a thorough analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

The parties agree that a circumstantial-evidence standard is applicable. Under that standard, we review the evidence using a two-step analysis. We first identify the circumstances proved, deferring “to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate.” *State v. Robertson*, 884 N.W.2d 864, 871 (Minn. 2016) (quotations omitted). Second, we “independently examine the reasonableness of all inferences that

might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *Id.* (quotations omitted). “In order to sustain a conviction based on circumstantial evidence, the reasonable inferences that can be drawn from the circumstances proved as a whole must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted).

At trial, appellant asserted that he acted in self-defense.² Minnesota permits the intentional taking of a life when necessary to resist or prevent “an offense which the actor reasonably believes exposes the actor . . . to great bodily harm or death.” Minn. Stat. § 609.065 (2016). The absence of aggression or provocation by the actor is generally required before this defense may be claimed. *State v. Edwards*, 717 N.W.2d 405, 410-11 (Minn. 2006). The defendant bears the burden of presenting evidence to support a self-defense claim. *State v. Johnson*, 719 N.W.2d 619, 629 (Minn. 2006). Once that burden is satisfied, the state bears the ultimate burden of disproving one of the self-defense elements beyond a reasonable doubt:

(1) the absence of aggression or provocation on the part of the defendant; (2) the defendant’s actual and honest belief that he was in imminent danger of death or great bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

² At trial, appellant approved of using a justifiable-taking-of-a-life instruction, rather than the more general self-defense instruction, and although appellant argued at trial that the killing of S.P. was not intentional, on appeal, he does not challenge the instruction that was given. See *State v. Carridine*, 812 N.W.2d 130, 143-44 (Minn. 2012) (concluding that the justifiable-taking-of-life instruction was given in error where the defendant’s defense was that the death was unintended).

State v. Radke, 821 N.W.2d 316, 324 (Minn. 2012); *Johnson*, 719 N.W.2d at 629. For the defense to apply, the defendant must have a subjective fear of death or great bodily harm, and there must be objectively reasonable grounds for that fear and the actions taken. See *Johnson*, 719 N.W.2d at 630-32 (stating that the second self-defense element “is subjective and depends upon the defendant’s state of mind,” and the third element requires “an objective test” and an assessment of “whether the killing was necessary”). Stated differently, the following conditions must be met:

- (1) The killing must have been done in the belief that it was necessary to avert death or grievous bodily harm.
- (2) The judgment of the defendant as to the gravity of the peril to which he was exposed must have been reasonable under the circumstances.
- (3) The defendant’s election to kill must have been such as a reasonable man would have made in light of the danger to be apprehended.

Edwards, 717 N.W.2d. at 413; *State v. Boyce*, 170 N.W.2d 104, 112 (Minn. 1969); *State v. Pollard*, 900 N.W.2d 175, 178-79 (Minn. App. 2017).

We first address the circumstances proved. Appellant and S.P. were familiar with each other. On January 29, they argued and then fought in a residential garage. Appellant hacked at S.P. with a knife a minimum of 29 times and bludgeoned him multiple times, causing 38 cutaneous groups of injuries. S.P. suffered devastating injuries to his head, which would have rendered him unconscious. At some point during or after the fray, appellant seriously injured his ankle. Appellant also had a small injury to his forehead, but was otherwise not seriously hurt. A loaded handgun was recovered from the scene, on the

passenger-side windshield of appellant's car, and the gun had S.P.'s print on the magazine. The gun did not have blood on it. S.P.'s body was found face up on the floor of the garage by the driver's side of the car. A knife covered in S.P.'s blood was on the ground near the wall of the garage, and a bloody wrench was underneath S.P.'s head. After appellant exited the garage, he claimed that he had been attacked.

The circumstances are consistent with appellant's guilt and inconsistent with self-defense. We focus our analysis on two particular elements of self-defense, whether it is reasonable to infer that appellant subjectively feared death or great bodily harm and whether there were objective grounds for that fear and the actions taken.³ *See Johnson*, 719 N.W.2d at 630-32. Viewed in a light most favorable to the conviction, the circumstances render such inferences unreasonable. Even under a circumstantial-evidence analysis, "possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable." *State v. Hughes*, 749 N.W.2d 307, 313 (Minn. 2008) (quotations omitted).

By returning a guilty verdict, the jury rejected appellant's testimony that S.P. continued to be the aggressor and remained conscious and talking even after the final blows were struck. Indeed, this testimony was inconsistent with the medical testimony that S.P. would have, at a minimum, been rendered unconscious by his injuries. Setting aside those

³ We acknowledge that there is less support for the conviction on self-defense elements one and four. The handgun with S.P.'s print arguably allows for a reasonable inference that S.P. was the initial aggressor, that is, S.P. pulled a gun on appellant. Though, it seems equally possible that S.P. pulled the gun in self-defense. Likewise, appellant's severely injured ankle allows for a reasonable inference that, to some degree, retreat was not possible. Though, it is unclear when the ankle injury occurred.

portions of appellant's testimony that are inconsistent with the verdict, we focus on the circumstances proved. One of those circumstances is that the handgun was recovered from the passenger-side windshield of the car, away from S.P.'s body. The gun did not have blood on it, though there was a great deal of blood near S.P.'s body. Despite the lack of any firearm near S.P., the condition of S.P.'s body shows that appellant maintained a sustained attack, at some point switched weapons, and then continued the attack, causing 38 cutaneous groups of injuries. The injuries were devastating and effectively pulpified the frontal bones of S.P.'s head, rendering him unconscious. In contrast, although appellant suffered a serious ankle injury, his injuries were otherwise superficial. Given the lack of an accessible firearm, there were not objectively reasonable grounds for appellant's sustained attack.

II. The prosecutor's questions regarding the defense expert's remuneration do not amount to misconduct.

Appellant asserts that the prosecutor engaged in prejudicial misconduct by questioning appellant's expert witness about being paid to testify. Appellant acknowledges that he did not object to this alleged misconduct.

"[B]efore an appellate court reviews an unobjected-to error, there must be (1) error; (2) that is plain; and (3) the error must affect substantial rights." *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). For unobjected-to prosecutorial misconduct, our review is under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006). If an appellant establishes that the prosecutorial misconduct is plain error, then the burden shifts to the state to show that the misconduct did not affect the appellant's

substantial rights. *Id.* at 302. This requires a 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.” *Id.* (quotations omitted). If all prongs of the modified plain-error test are met, an appellate court “then assesses whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” *Id.*

During the direct examination of the defense’s biomechanics expert, the expert was asked about his fees and testified that he charges \$245 per hour. On cross-examination, the following exchange occurred between the prosecutor and the defense’s expert:

Q: You were paid by the defense, correct?
A: Yes.
Q: By the hour?
A: Crane Engineering was, yes.
Q: Your firm was paid by the hour, correct?
A: Yes.
Q: And that’s where you derive your salary?
A: Yes.
Q: And you said \$245 an hour?
A: Yes.
Q: For all aspects of the work that you performed?
A: Yes.
Q: To initially study the evidence, correct?
A: Yes.
Q: To prepare and write a report?
A: Yes.
Q: To communicate with the defense team?
A: Yes.
Q: To prepare for your testimony today?
A: Yes.
Q: To prepare the PowerPoint presentation?
A: Yes.
Q: To testify?
A: Yes.
Q: Including any wait time in the hallway to testify?
A: Yes.
Q: How many hours did you bill?

A: So far 14 hours.

It is improper to assert, without grounds, that a professional witness is testifying in a predetermined manner for money. *State v. Wahlberg*, 296 N.W.2d 408, 419-20 (Minn. 1980). In this case, the expert testified during direct examination that he was being paid for his services. The prosecutor then, on cross-examination, delved into the specifics of that payment. The prosecutor's numerous questions had a cumulative effect, but there was no objection, and the prosecutor never overtly stated that the expert was testifying in a predetermined manner based upon his remuneration. The prosecutor's questions did not violate "clear or established standards of conduct." *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (quotation omitted). We discern no plain error.

III. The prosecutor's statements in closing arguments that appellant stomped on S.P.'s head did not affect appellant's substantial rights.

Appellant argues that the prosecutor committed prejudicial misconduct in closing arguments by asserting that appellant stomped on S.P.'s head, without a factual basis to support such assertions. Appellant acknowledges that there was no objection to these statements.⁴

During his closing argument, the prosecutor suggested that appellant broke his ankle while stomping down on S.P.'s head at the end of the fight. The prosecutor stated that

⁴ Also, during opening statements, the prosecutor stated that appellant likely broke his foot stomping on S.P.'s head. However, appellant does not challenge this statement on appeal.

appellant “even stomped [S.P.],” and it appears that the prosecutor demonstrated the act for the jury.⁵ At the close of his argument, the prosecutor further stated:

But what single explanation explains the broken foot and the injuries . . . ? I suggest to you that, A, the ambulance footage of how much pain the defendant was in would stop even him from beating on [S.P.] once he’s down and immobilized. You can see the pain that he was in. So if that’s true and that’s a debilitating injury as was testified to and he can no longer put his weight on his foot and it’s going to cause a great deal of pain, the inference is that it happened much towards the end of these events, which also indicates it was caused by the stomping motion on a head that is breaking, that is slick with blood, that is mobile and moving and breaks at different rates; cheekbones or different structures in the forehead bone, the jaw bone is a different structure and rolled that ankle breaking it. And at that point, the defendant decided he needed to hobble out of the garage. One explanation I offer you to explain multiple phenomena.

A prosecutor may argue “reasonable inferences from the facts presented.” *State v. Johnson*, 616 N.W.2d 720, 728 (Minn. 2000). And a prosecutor need not present a colorless argument. *State v. Porter*, 526 N.W.2d 359, 363 (Minn. 1995). But the prosecutor should refrain from making remarks that are intended to inflame the passions and prejudices of the jury. *State v. Mayhorn*, 720 N.W.2d 776, 786-87 (Minn. 2006).

We need not determine if the prosecutor’s statements were plain-error misconduct because, even assuming so, appellant’s substantial rights were not affected. In determining whether substantial rights were affected, 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.” *State v. Davis*,

⁵ The transcript, by including the word “indicating” in parentheses, suggests that the prosecutor demonstrated the stomping for the jury

735 N.W.2d 674, 682 (Minn. 2007). As the state notes, the evidence strongly suggested that appellant's actions were excessive and beyond the scope of reasonable self-defense, the prosecutor's statements were limited in number and constituted only a limited portion of the closing argument, and the jurors were instructed that the statements of attorneys are not evidence. Moreover, appellant had an opportunity, and indeed attempted, to rebut the prosecutor's assertion that the ankle injury was caused by stomping. For example, appellant's counsel noted in closing argument that there was no blood on appellant's shoes. It is not reasonably likely that the verdict would have been different without the prosecutor's comments.

IV. Appellant's pro se arguments are unavailing.

Appellant also filed a pro se supplemental brief in which he argues that (1) one of the jurors was biased; (2) a witness was biased; (3) evidence was not properly addressed and his trial counsel was ineffective; (4) a witness committed perjury; (5) his *Miranda* rights were violated; (6) the district court improperly reopened direct examination; (7) evidence was tampered with at the crime scene; (8) self-defense is applicable; (9) the prosecutor engaged in misconduct; and (10) a lack of probable cause. We have thoroughly reviewed appellant's claims and find them to be without merit.

Affirmed.