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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0992**

State of Minnesota,
Respondent,

vs.

Lamar Darcell Coffee,
Appellant.

**Filed April 29, 2019
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-CR-17-10084

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

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his convictions for making threats of violence and second-degree assault, arguing that he is entitled to a new trial based on prosecutorial misconduct during closing argument. We affirm.

FACTS

The circumstances underlying appellant Lamar Darcell Coffee's convictions flow from lawful efforts to repossess his wife's 2001 Honda Accord.¹ On March 24, 2017, J.H. drove a tow truck into the alley behind Coffee's house. The tow truck bore the name and telephone number of the towing company. J.H. parked the vehicle so it blocked access to Coffee's garage. Prior to his encounter with Coffee, J.H. saw the Honda enter the alley then immediately turn around and leave.

Coffee's eight-year-old son, D.B., was playing in the back yard when he saw a truck pull up through the alley to their garage. J.H. parked the truck, got out, and stood in the driveway talking on his phone. D.B. went upstairs and woke Coffee, who had worked the night shift. It was not until later, while he watched the exchange between J.H. and Coffee from an upstairs window, that D.B. noticed the vehicle was a tow truck.

Coffee testified that he awoke to see "a strange man standing in my driveway area" about 20 yards from the house. Coffee went out to the porch to confront J.H., asking him why he was on the property. J.H. responded that he was there to "collect the money" and

¹ Just over two months earlier, the same towing company repossessed the same Honda.

would not leave. Coffee “went back inside and grabbed [his wife’s registered] gun.” He told the children to stay inside, took a call from his wife and described the unfolding incident to her, and then called 911 but immediately hung up. Coffee explained that he retrieved the gun and held it at his side for “intimidation purposes.” When police returned his 911 call a few minutes later, Coffee told them that there was “a suspicious vehicle outside.” Coffee denied noticing that the vehicle was a tow truck.

J.H. testified that he had been sitting in the tow truck a few minutes when Coffee came out of the house and told him to “get the f-ck out of here and get off our property.” J.H. responded that he was there to repossess the Honda. Coffee went back into the house and returned, this time with a gun at his side. He resumed yelling and cursing, raised and cocked the gun, and pointed it at J.H. J.H. was not scared because “[y]ou could tell by his demeanor that he had no intention of using [the gun].” But he called 911. Officers arrived within minutes and arrested Coffee.

At trial, the following exchange occurred between Coffee and the prosecutor:

Q: You . . . said that your kids were there so you weren’t going to shoot the guy. That’s what you testified to earlier—

A. Yes.

. . . .

Q: So does that mean you just would have shot him if the kids weren’t there?

A. If he proceeded onto my property, yes.

Q. Just—just—you just would have shot him, point blank?

A. If he’s not leaving and I don’t know who you are, you on my property, I keep telling you to leave, eventually I probably would have. Because I don’t know your intentions.

Q. Before calling the police? Before doing anything else? Before going inside the house, you just would have shot him; is that—

A. At that—

Q. —what you said?

A. —time when my kids is in dire need or jeopardy, feel like they're in danger, the first thing on my mind is not to call cops. It was to protect my family.

Q. Well, you just said you'd do it if your kids weren't there, that you would have shot him if your kids weren't there.

A. That's hypothetical.

On redirect, Coffee explained that he wanted to intimidate J.H. so he would leave.

During closing argument, the prosecutor commented on three aspects of Coffee's testimony. Coffee did not object. The jury found Coffee guilty of both charged offenses. Coffee appeals.

DECISION

We review unobjected-to prosecutorial misconduct under a modified plain-error test. *State v. Parker*, 901 N.W.2d 917, 926 (Minn. 2017). The appellant must show that the prosecutor erred and that the error was plain. *Id.* An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). If the appellant establishes plain error, the burden shifts to the state to show that the appellant was not prejudiced. *Id.* “To warrant reversal for a new trial, the prosecutor’s misconduct—placed into the context of the entire trial—must be so serious and prejudicial that it impairs a person’s constitutional right to a fair trial.” *State v. Banks*, 875 N.W.2d 338, 348 (Minn. App. 2016), *review denied* (Minn. Sept. 28, 2016).

I. The prosecutor did not commit misconduct in closing argument.

During closing argument, a prosecutor may “present all legitimate arguments on the evidence and all proper inferences that can be drawn from that evidence.” *State v. Munt*, 831 N.W.2d 569, 587 (Minn. 2013) (quotation omitted). Prosecutorial misconduct “occurs

when the [prosecutor] . . . expresses a personal opinion as to a witness’s credibility.” *State v. Patterson*, 577 N.W.2d 494, 497 (Minn. 1998) (quotation omitted); see *State v. Mayhorn*, 720 N.W.2d 776, 791 (Minn. 2006) (finding prosecutorial misconduct when prosecutor referred to a defense witness named “Lyra” as aptly named). A prosecutor also commits misconduct by intentionally misstating the evidence. See *State v. Bobo*, 770 N.W.2d 129, 142 (Minn. 2009) (stating it is prosecutorial misconduct to intentionally misstate the evidence or make arguments unsupported by the evidence). In evaluating a claim of prosecutorial misconduct, we consider the prosecutor’s closing argument as a whole, declining to focus “on particular phrases or remarks that may be taken out of context or given undue prominence.” *State v. Jones*, 753 N.W.2d 677, 691 (Minn. 2008) (quotation omitted).

Coffee challenges three portions of the prosecutor’s closing argument. We address each in turn.

The prosecutor first stated:

Instead of doing the things that he could have done, called the tow truck company, call the police, he inserted himself in the situation, he became the aggressor in the situation, he got the gun and he walked out and he was there for—to intimidate [J.H.]. That’s what he said. Heck, he said, “I would have shot the guy if my kids weren’t there. I would have shot the guy if my kids weren’t there.” Shot him. For asking for money. He didn’t do any of those things. The defendant was not playing defense. He was playing offense. [J.H.] didn’t trespass. He aborted his duty to retreat just to reengage [J.H.], this time with a firearm.

Coffee argues that this statement does not accurately reflect his testimony. We disagree.

Coffee repeatedly testified that he would use a gun to defend his property. And he

acknowledged that J.H. told him he was there “for the money.” Given this testimony, it was reasonable for the prosecutor to argue that Coffee had no basis to claim self-defense and that his conduct demonstrated his intent to assault and terrorize J.H. While the prosecutor’s statement that Coffee testified that he would have “shot the guy” for “asking for money” may mischaracterize the overall tenor of Coffee’s testimony—which emphasized his belief that he faced a larger threat than a simple request for money—we do not view this isolated comment as unfair. We are persuaded that the prosecutor’s “recap” was a fair argument based on Coffee’s testimony.

The prosecutor next questioned Coffee’s wife’s testimony that Coffee does not have a reputation for being aggressive. In regard to that testimony, the prosecutor said, “She wasn’t in [the courtroom] when the defendant said on the stand that he would have shot that guy for asking for money. Is that not being aggressive? Maybe she doesn’t know her own husband or maybe she’s not telling you what she knows about her own husband.” Coffee contends this statement mischaracterizes his testimony and improperly suggests his wife lied during her testimony. We disagree. The prosecutor’s effort to discredit the testimony of Coffee’s wife was reasonable in light of undisputed evidence that Coffee was aggressive during his encounter with J.H.

Finally, the prosecutor labeled as “inconsistent from one another” Coffee’s testimony that he never saw the tow truck with D.B.’s testimony that he was able to see the tow truck from an upstairs window. We reject Coffee’s contention that this statement mischaracterizes the witnesses’ testimony. It did not. And the prosecutor was under no obligation to resolve the inconsistency in favor of Coffee. Rather, the prosecutor was

entitled to, and did, make all reasonable arguments derived from the evidence. *Munt*, 831 N.W.2d at 587. The prosecutor did not commit misconduct during closing argument.

II. Coffee was not prejudiced by the prosecutor's closing argument.

Even if we viewed the prosecutor's statements as misconduct, Coffee is not entitled to a new trial. A person commits second-degree assault when he "assault[s] another with a dangerous weapon." Minn. Stat. § 609.222, subd. 1 (2016). An "assault" includes "an act done with intent to cause fear in another of immediate bodily harm or death." Minn. Stat. § 609.02, subd. 10(1) (2016). And a person makes threats of violence when he "threatens, directly or indirectly, to commit any crime of violence with purpose to terrorize another." Minn. Stat. § 609.713, subd. 1 (2016). Coffee's testimony that he brandished the gun to intimidate J.H. so he would leave the property is direct evidence of his intent to cause fear. *See State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (stating that Horst's statement "I want him dead" is direct evidence of mens rea). This statement, along with J.H.'s testimony, are sufficient to convict Coffee of making threats of violence and second-degree assault.

Moreover, the claimed misconduct comprises only a small part of the prosecutor's nearly 20-page closing argument. *See State v. Lewis*, 547 N.W.2d 360, 364 (Minn. 1996) (holding that there was no reversible prosecutorial misconduct when the alleged error comprised only a small portion of the prosecutor's argument). Finally, the district court instructed the jury that "the arguments or other remarks of an attorney are not evidence. If the attorneys or I have made any statement about what the evidence is that differs from your recollection of the evidence, you should disregard the statement and rely solely on

your own memory.” *See State v. Johnson*, 616 N.W.2d 720, 728 (Minn. 2000) (ruling that attorney argument based on facts not in evidence did not prejudice the defendant because the jury was instructed that attorneys’ arguments were not evidence). Juries are presumed to “follow instructions given by the court.” *State v. Matthews*, 779 N.W.2d 543, 550 (Minn. 2010).

In sum, our careful review of the record reveals no prosecutorial misconduct. The prosecutor’s closing argument, considered as a whole, reflects legitimate comment on the evidence and the reasonable inferences the evidence supports. And we conclude that any claimed misconduct did not prejudice Coffee.

Affirmed.