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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1638**

State of Minnesota,
Respondent,

vs.

Nicholas Alonzo Jefferson,
Appellant.

**Filed August 26, 2019
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-17-12997

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

Michael O. Freeman, Hennepin County Attorney, Audrey A. Liquard, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Schellhas, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Nicholas Jefferson challenges his conviction for second-degree murder, arguing that the district court plainly erred by failing to give an accomplice-corroboration

jury instruction and that the prosecutor plainly committed misconduct during the closing argument. We affirm.

FACTS

On May 12, 2017, at 3:15 in the afternoon, I.W. was fatally shot in a mall parking lot on Lyndale Avenue North in Minneapolis.

Shortly before I.W. was killed, Marvel Williams, I.W.'s then-boyfriend, and Jefferson were together at a restaurant. After Williams got a call from his friend A.W. that A.W. was at a nearby shopping center and that I.W. was there, too, Williams and Jefferson drove to the shopping center in a rented Dodge SUV.¹ A.W. got into the back of the SUV when Williams and Jefferson arrived at the shopping center. Williams, who was driving the vehicle, saw I.W.'s car in the multi-aisle parking lot. Her car was midway down an aisle and was parked facing the aisle. Williams pulled the SUV directly in front of I.W.'s car and stopped in the aisle so that the SUV was perpendicular to and blocking I.W.'s car. The passenger side of the SUV was next to I.W.'s car. The SUV was facing away from the shopping center. Williams got out of the SUV and headed back toward the shopping center where I.W. was. Jefferson moved to the driver's seat of the SUV, and A.W. got into the front passenger's seat.

Williams found I.W. in a barbershop at the shopping center, and the two got into an argument. Although I.W. was holding a baby, Williams "smacked" her on the jaw because

¹ The record reflects that Williams was angry with I.W. because he believed that she had damaged his luxury vehicle.

he thought she “started talking crazy.” After putting the baby down, I.W. sprayed mace in Williams’s face. Williams ran out of the building with I.W.’s cell phone in his hand. He ran back to the Dodge SUV, and I.W. followed him. At one point, Williams and I.W. were arguing several yards in front of the SUV, with Williams farther away from the vehicle.

Events in the parking lot were captured from various angles by surveillance cameras. One camera provided a view of the front passenger-side window of the Dodge SUV. Although, in the videos, anything below the front passenger-side window is blocked from view by other cars in the parking lot and the rear passenger-side window is out of view, Williams and I.W. are clearly visible in that footage in front of the Dodge SUV. Additional cameras provided views of Williams, I.W., and the driver’s side of the Dodge SUV as well.

After a few moments in front of the SUV, I.W. turned and walked around the SUV toward the front passenger-side window of the vehicle. At the moment I.W. reached the passenger-side window, Williams heard a gunshot and ducked down. Onlookers who had been watching the commotion ran away. The bullet penetrated I.W.’s torso from the back and then went through her car’s left headlight unit. Williams went around the passenger side of the vehicle, over I.W.’s body, and got in the SUV through the rear driver-side door. A.W., who was in the front passenger’s seat, exited the vehicle and walked away, and Jefferson hurriedly drove the vehicle away from the shopping center. I.W. was transported to the hospital via ambulance, but she died.

The police officers who were dispatched to the shopping center learned that Williams and Jefferson were potential suspects. The police interviewed Jefferson on

May 15 and 18, 2017. During the interviews, Jefferson maintained that there was another person in the backseat at the time of the shooting and that the backseat passenger was the shooter. But Jefferson gave shifting statements regarding the color of the t-shirt that the backseat passenger was wearing. And Jefferson ultimately failed to identify the backseat passenger to the police, stating that he barely knew the person. A few days later, the police also interviewed A.W. and decided not to arrest him. Instead, they moved to arrest Jefferson. On or about May 30, 2017, after Jefferson was arrested, A.W. was murdered.

The state charged Jefferson with second-degree murder for the killing of I.W. At trial, Williams testified to the events described above, but he also added information that cannot be confirmed by the surveillance videos, including that: (1) on May 12, before the shooting, Williams saw a bulge that he believed was a gun in Jefferson's pocket; (2) when Williams got into the backseat of the SUV after the shooting, the backseats were not occupied; (3) on the way to a friend's house where Williams washed his face after the shooting, Williams saw a gun on the center console between the front seats; and (4) at the friend's house, Jefferson said that he, Jefferson, shot the victim.

The state also introduced testimony of V.P., who shared a jail cell with Jefferson shortly after Jefferson's arrest. V.P. testified that Jefferson told him the following: (1) Jefferson, Williams, and A.W. were in the Dodge SUV and ran into the victim at the shopping center; (2) Williams was fighting with the victim; (3) the victim sprayed Williams with mace; (4) Williams was struggling to see because of the mace; (5) Jefferson was driving; and (6) Jefferson shot the victim.

The jury found Jefferson guilty of second-degree murder, and the district court convicted him. This appeal follows.

D E C I S I O N

I. The district court’s failure to sua sponte give an accomplice-corroboration instruction, while plainly erroneous, was not reversible error.

Jefferson first argues that his conviction must be reversed because the district court failed to instruct the jury that the testimony of Williams, an accomplice, needed to be corroborated. Because Jefferson did not object to the district court’s failure to give an accomplice-corroboration instruction, the plain-error standard applies. *See* Minn. R. Crim. P. 31.02 (“Plain error affecting a substantial right can be considered by the court on motion for new trial, post-trial motion, or on appeal even if it was not brought to the trial court’s attention.”). The plain-error standard requires the appellant to show: (1) error; (2) that was plain; and (3) that affected substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). If these three prongs are met, the appellate court then assesses (4) whether it should address the error to ensure the fairness and integrity of the judicial proceedings. *State v. Matthews*, 779 N.W.2d 543, 549 (Minn. 2010).

“An error is plain if it . . . violates or contradicts case law, a rule, or an applicable standard of conduct.” *Id.* Minn. Stat. § 634.04 (2018) provides:

A conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense, and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

The supreme court has held that, accordingly, “as a rule, trial courts have a duty to instruct juries on accomplice testimony in any criminal case in which it is reasonable to consider any witness against the defendant to be an accomplice.” *State v. Clark*, 755 N.W.2d 241, 251 (Minn. 2008) (quotation omitted). The state concedes that Williams was plainly an accomplice. The district court in this case violated its duty by failing to give an accomplice-corroboration instruction. The district court committed error, and the error was plain. Therefore, the next question is whether Jefferson’s substantial rights were affected.

When evaluating the impact of a district court’s failure to give an accomplice-corroboration instruction, appellate courts examine

whether the testimony of the accomplice was corroborated by significant evidence, whether the accomplice testified in exchange for leniency, whether the prosecution emphasized the accomplice’s testimony in closing argument, and whether the court gave the jury general witness credibility instructions.

State v. Horst, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted). We turn to these factors.

A. Corroborative Evidence

“Corroborative evidence . . . must affirm the truth of the accomplice’s testimony and point to the guilt of the defendant in some substantial degree.” *Reed v. State*, 925 N.W.2d 11, 21 (Minn. 2019) (quotation omitted). But the corroboration requirements—affirmation of the accomplice’s testimony and incrimination of the defendant—need not both be satisfied by each individual piece of corroborating evidence. *Clark*, 755 N.W.2d at 255. Caselaw requires only that “the evidence *as a whole* . . . affirm the truth of the accomplice’s testimony and point to the defendant’s guilt.” *Id.*

Williams testified extensively as to what happened after he got to the shopping center on May 12, 2017. Williams's description of events up to the point of the shooting is largely confirmed by the surveillance videos; in fact, much of Williams's testimony was given to the jury alongside the playback of the videos. Key aspects of Williams's testimony that the surveillance videos indisputably affirm are that the victim was on the passenger's side of the Dodge SUV at the moment of the gunshot and that Williams ducked down at the sound of the gunshot. These pieces of information point to someone inside the Dodge SUV as the shooter. And, as we explain next, the surveillance videos and V.P.'s testimony incriminate Jefferson as the shooter.

Surveillance videos

In the surveillance videos, I.W. is seen walking, moments before the shooting, from in front of the Dodge SUV to the passenger's side of the vehicle. As she approaches the front passenger-side window, the window rolls down and an object that looks like the barrel of a handgun appears. The gun-like object makes a recoiling motion, and then the object is lowered and disappears from view. What appears to be the top of the victim's body is seen falling behind the parked vehicles that are in the line of sight from the camera to the victim.

It is true that the surveillance videos do not conclusively rule out the possibility that an unidentified backseat passenger was holding the gun-like object and, therefore, are arguably insufficient to support Jefferson's conviction. But "[c]orroborative evidence need not, standing alone, be sufficient to support a conviction" See *Reed*, 925 N.W.2d at 21 (quotation omitted). Rather, the question is whether the surveillance videos "point to the guilt" of Jefferson "in some substantial degree." *Id.* (quotation omitted). The

surveillance videos satisfy that standard. As seen in the videos, the motion of the gun-like object and the position in which it is held out the window suggest that the gun was being held by the driver, stretching his arm over the center console. While it is possible that a driver-side backseat passenger was wielding the gun in the manner depicted in the video, it is not the most natural inference because of the position of the gun and A.W.'s presence in the passenger's seat. In short, a shooter in the backseat likely would have shot through the backseat window.

Jefferson tries to discount the incriminating nature of the surveillance videos in various ways. First, he emphasizes what the surveillance videos do *not* show—they do not show “a muzzle flash or any smoke or powder” emanating from the gun-like object. Undoubtedly, the videos would provide stronger corroboration if they captured a muzzle flash, smoke, or powder, but the surveillance cameras recorded the incident under bright daylight, and the gun-like object was at a considerable distance from the cameras. Nothing in the record indicates that, despite the brightness and the distance, “a muzzle flash or any smoke or powder” would be clearly identifiable in the videos had a gun been fired through the front passenger-side window. Jefferson's assertion does not overcome the clearest indication of the surveillance videos—the driver of the Dodge SUV shot the victim through the front passenger-side window.

Second, Jefferson argues that the entrance wound in the victim's back is not consistent with the gun being fired through the front passenger-side window because the victim was walking by the passenger's side of the Dodge SUV from in front of the vehicle. Jefferson also implies that Williams, away from whom the victim was walking, shot the

victim, citing a witness's testimony that she thought she saw a shiny metal object in Williams's right hand and that she told the police she thought the object was a gun. But the videos establish that Williams did not shoot the victim. In the videos, during the few seconds before the victim is shot, Williams is seen with a small, white object—which he testified was the victim's phone—in his right hand, following the victim toward the passenger's side of the Dodge SUV. At the moment the victim is shot, Williams ducks while still being a few feet in front of the vehicle and keeping his hands close to his body. In the videos, the onlookers start to run away from the scene precisely when Williams ducks, which suggests that that is when everyone hears the gunshot. And close examination of the footage reveals that Williams's gait slowed slightly before he and everyone else heard the gunshot. The slowed gait indicates that Williams did not expect what he saw—the shooting of I.W. Ultimately, the entrance wound in the victim's back can only be explained through inference because the videos captured only part of the victim's body when she was shot and there was no testimony to fill that void in the recording. But given that Williams was not the shooter, the only reasonable explanation for the entrance wound is that the victim suddenly changed her direction of motion just before the shooting, turning her back against the gun. Jefferson's second argument does not negate the corroboration that the surveillance videos provide.

Third, Jefferson points to the fact that the state “did not check the Dodge SUV for the presence of gunshot residue, which may have confirmed the area where the gun was fired.” That the state did not check for gunshot residue does not mean that there was none or that the shot did not come from the Dodge SUV. Fourth, the presence of a shell casing

outside of the SUV, Jefferson argues, suggests that the gun was not fired through the window of the vehicle. But, given the gun's position relative to the front passenger-side window, it is reasonable to posit that the casing would end up outside the vehicle. As with his first two arguments, Jefferson's third and fourth arguments elaborate the ways in which the surveillance videos could have been more corroborative, but they do not seriously undermine the effectiveness of the videos as corroborating evidence.

V.P.'s testimony

V.P.'s testimony also corroborates Williams's testimony that Jefferson was the shooter. Jefferson argues that V.P.'s testimony does not corroborate Williams's testimony because V.P. was a "jailhouse snitch" and his testimony was inconsistent with other evidence. But, as the state correctly notes, *State v. Pippitt*, 645 N.W.2d 87 (Minn. 2002) defeats Jefferson's argument. In *Pippitt*, the supreme court held "that [an accomplice's] testimony was sufficiently corroborated by [a jailhouse informant's] testimony to support the verdict" under the accomplice-testimony statute. 645 N.W.2d at 94. V.P.'s testimony is not deprived of corroborative effect simply because V.P. is a "jailhouse snitch." Also, in *Pippitt*, there were other indications that the informant's testimony was not reliable, as Jefferson argues is the case here, but the supreme court nevertheless upheld the testimony, stating that "weighing the credibility of witnesses is a function exclusively for the jury." *Id.* at 93-94 (quotation omitted). Jefferson fails to show why this court should not consider V.P.'s testimony, which specifically points to Jefferson's guilt, as corroborating evidence.

B. Other Factors

The remaining factors are “whether the accomplice testified in exchange for leniency, whether the prosecution emphasized the accomplice’s testimony in closing argument, and whether the court gave the jury general witness credibility instructions.” *Horst*, 880 N.W.2d at 38 (quotation omitted). It is undisputed that Williams gave his testimony in exchange for leniency, which supports appellant’s argument. But the prosecution did not emphasize Williams’s testimony in closing argument. As the state points out, the prosecutor acknowledged in closing argument that Williams’s testimony was not altogether credible. He said:

And let’s be honest, folks, I don’t suspect there’s a person in this room now or . . . at any time in this trial who likes Marvel Williams. Think in my opening I told you that Marvel Williams is probably not the guy who’s in the first row at the Mormon Tabernacle Choir singing

. . . .

And I suspect that you folks will conclude that Mr. William’s statement that he didn’t know she had been shot is probably nonsense, untrue.

. . . .

Talked about the fact that, you know, he stepped over the dead or dying body of his girlfriend and claims not to know. The State acknowledges that part’s . . . not believable

Although the prosecutor spent a substantial amount of time reviewing Williams’s testimony, he did not do so to artificially lend credence to Williams’s testimony. Rather, the prosecutor tried to communicate the many aspects of Williams’s testimony that were consistent with other evidence presented to the jury. For example, when referring to

Jefferson's confession to Williams, which is arguably the most incriminating part of Williams's testimony, the prosecutor immediately turned to V.P.'s testimony. Lastly, the district court gave the jury general witness-credibility instructions.

While one out of the four relevant factors weighs in his favor, overall Jefferson fails to show that his substantial rights were affected by the district court's failure to give an accomplice-corroboration instruction.

II. The prosecutor did not plainly commit misconduct during closing argument.

Jefferson next argues that he is entitled to a new trial based on unobjected-to prosecutorial misconduct during closing argument. When the defendant fails to object during trial, prosecutorial misconduct is reviewed under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The defendant bears the burden of establishing error that is plain, but, once plain error is established, the burden shifts to the state to prove that there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the jury's verdict. *Id.* If the state fails to meet its burden, an appellate court then "must decide whether the error seriously affected the fairness and integrity of the judicial proceedings." *State v. Radke*, 821 N.W.2d 316, 329 (Minn. 2012).

Jefferson argues that the prosecutor plainly erred during closing argument by "repeatedly referenc[ing]" A.W.'s statement to the police because that statement was not in evidence and was inadmissible hearsay. But the prosecutor did not tell the jury what A.W. said in his interview with the investigating officers. The prosecutor only talked about the investigating officers' reaction to what A.W. said: they "cleared" A.W. and pursued

Jefferson instead. It is undisputed that the evidence of the investigating officers' reaction to A.W.'s statement was properly admitted at trial. Therefore, the question raised by Jefferson's argument is whether the prosecutor's reference to the investigating officers' reaction violated the rule against hearsay by unduly implying the contents of A.W.'s statement.

"A police officer testifying in a criminal case generally may not, under the guise of explaining how an investigation focused on the defendant, relate hearsay statements of others." *State v. Fields*, 679 N.W.2d 341, 348 (Minn. 2004) (citing *State v. Cermak*, 365 N.W.2d 243, 247 (Minn. 1985)). Here, the police testimony that the prosecutor referred to in the closing argument evinced only that the police interviewed A.W. and decided not to arrest him. While that testimony may lend itself to an inference that A.W.'s testimony incriminated Jefferson, caselaw distinguishes between an officer's testimony regarding out-of-court conversations that disclose the contents of those conversations and testimony that does not. *See State v. Litzau*, 650 N.W.2d 177, 183 n.4 (Minn. 2002) ("A police officer 'may reconstruct the steps taken in a criminal investigation, may testify about his contact with an informant, and may describe the events leading up to a defendant's arrest, but the officer's testimony must be limited to the fact that he spoke to an informant without disclosing the substance of that conversation.'" (quoting *United States v. Williams*, 133 F.3d 1048, 1052 (7th Cir.1998))).

Jefferson bears the burden of showing that there was misconduct constituting error and that the error was plain; to be plain, the error must "contravene[] case law, a rule, or a standard of conduct." *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012) (quotation

omitted). Jefferson has not shown that the prosecutor's reference to the investigating officers' reaction after interviewing A.W. implied the contents of a hearsay statement in contravention of case law, a rule, or a standard of conduct. The prosecutor did not plainly commit misconduct.

Affirmed.