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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0216**

State of Minnesota,
Respondent,

vs.

Billy Joe Coleman,
Appellant.

**Filed January 25, 2021
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-18-27983

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Hennepin County jury found Billy Joe Coleman guilty of first-degree damage to property based on evidence that he threw a hammer and a crowbar at another person's pickup truck, denting a door and breaking two windows. Coleman argues that he is entitled

to a new trial on the ground that the prosecutor engaged in misconduct by eliciting inadmissible evidence. We conclude that the prosecutor did not engage in misconduct because the evidence at issue is not inadmissible. Therefore, we affirm.

FACTS

In September 2018, the state charged Coleman with first-degree damage to property, in violation of Minn. Stat. § 609.595, subd. 1(4) (2018). The case was tried to a jury on two days in October 2019. The state called four witnesses: T.T., the owner of a damaged pickup truck; Officer Dykstra, a patrol officer who responded to T.T.'s 911 call; Officer Johnson, an investigator who reviewed another officer's written report and conducted an investigation; and D.M., an estimator for an auto-body shop who testified about the value of the damage to T.T.'s pickup truck.

T.T. testified that he was a contractor and that Coleman was working for him in September 2018. T.T. lent a vehicle to Coleman and, on the morning of September 18, 2018, sent him a text message to coordinate its return. In response, Coleman texted T.T. about money that T.T. owed him for work he had performed. T.T. went to Coleman's home and picked up the lent vehicle by using a spare key. T.T. returned to Coleman's home a short time later in his pickup truck to retrieve some of his tools and to discuss the money he owed Coleman. On T.T.'s second visit, he and Coleman argued while standing on the sidewalk. Coleman became upset and went inside his home. As T.T. was in his pickup truck preparing to leave, Coleman came outside carrying a hammer and a crowbar—the tools that T.T. had wanted to retrieve. Coleman threw the tools at T.T.'s

pickup truck, breaking both the front and rear passenger-side windows and denting the rear passenger door. Coleman went back inside his home, and T.T. called 911.

Officer Dykstra testified that he responded to a 911 call about damage to a pickup truck. When he arrived at the scene of the incident, he spoke to the caller, T.T., and observed the damage to his pickup truck. Officer Dykstra attempted to speak with Coleman by knocking on the door of his home, but no one answered. He testified that he did not write a report because he was merely assisting another officer on the call.

Officer Johnson testified that he was assigned to the case and that he began his investigation by reviewing the police reports, contacting T.T. and Coleman, and collecting the hammer and crowbar. Officer Johnson also reviewed the video-recording from Officer Dykstra's body-worn camera, which showed that the incident took place outside Coleman's residence and showed the broken windows and dented door of T.T.'s pickup truck. The prosecutor asked Officer Johnson why he did not identify any other suspects, take fingerprints from the tools, or conduct DNA testing of the tools. Officer Johnson responded by stating, among other things, that T.T. had made a clear statement about the incident and that fingerprint and DNA testing likely would not have yielded any useful evidence. On cross-examination, Coleman's trial attorney challenged the thoroughness of Officer Johnson's investigation in various ways. On re-direct examination, the prosecutor elicited additional testimony from Officer Johnson about his investigation and his reasons for not conducting a more extensive investigation.

Coleman did not testify, but he called his girlfriend as a witness. She testified that Coleman left home to run errands on the morning of the incident while she was still

sleeping, that she later heard police knock on the door but did not answer it, and that Coleman returned home about an hour later.

The jury found Coleman guilty. At sentencing, the district court stayed imposition of sentence, placed Coleman on probation for three years, ordered him to serve 30 days in jail, and ordered him to pay \$1,197 in restitution. Coleman appeals.

DECISION

Coleman argues that he is entitled to a new trial on the ground that the prosecutor engaged in misconduct by intentionally eliciting inadmissible evidence. Specifically, Coleman argues that the prosecutor elicited testimony from Officer Johnson in which he vouched for T.T.'s credibility. In response, the state argues that the prosecutor's questions were appropriate because Coleman was challenging Officer Johnson's investigation and T.T.'s credibility.

The right to due process of law includes the right to a fair trial, and the right to a fair trial includes the absence of prosecutorial misconduct. *Spann v. State*, 704 N.W.2d 486, 493 (Minn. 2005). One way in which a prosecutor may engage in misconduct is "to knowingly offer inadmissible evidence for the purpose of bringing it to the jury's attention." *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (quotation omitted). If a prosecutor intentionally elicits inadmissible evidence, a new trial may be ordered if the inadmissible evidence was prejudicial in the sense that it "played a substantial part in influencing the jury to convict." *State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010) (quotation omitted).

Whether a witness is credible or not credible is “strictly the domain of the jury.” *State v. Blanche*, 696 N.W.2d 351, 374 (Minn. 2005). Accordingly, one witness may not “vouch for or against the credibility of another witness.” *State v. Ferguson*, 581 N.W.2d 824, 835 (Minn. 1998). For example, in *Van Buren v. State*, 556 N.W.2d 548 (Minn. 1996), the district court erred by admitting testimony from multiple witnesses concerning whether members of the young victim’s family believed her allegations of sexual abuse by her uncle. *Id.* at 550-52. In *State v. Koskela*, 536 N.W.2d 625 (Minn. 1995), the district court erred by admitting a police officer’s testimony that the defendant was telling the truth when he confessed to the alleged crime. *Id.* at 630. And in *State v. Ellert*, 301 N.W.2d 320 (Minn. 1981), the district court erred by admitting a police officer’s testimony that the defendant lied when he gave an exculpatory statement. *Id.* at 323.

In this case, Coleman challenges three of the questions the prosecutor posed to Officer Johnson. First, Coleman challenges the prosecutor’s question about whether Officer Johnson considered doing DNA testing on the hammer and the crowbar and, if not, why not. Officer Johnson answered in the negative and explained as follows:

A couple reasons. I had a really clear statement from the victim in this case. You know, the incident happened right outside the address of the defendant, so . . . we had a good idea on a suspect. The other issue is, you know, you have to do some kind of an analysis of the cost-reward ratio when you’re doing this kind of complex testing, so that’s part of the issue. And the other issue was that the items were handled by the victim . . . by the time I had contact with him. So the main issue was that we had a very good identity of a suspect in this case.

Second, Coleman challenges the prosecutor's question on re-direct examination concerning whether Officer Johnson was relying solely on T.T.'s statement, which elicited the following testimony:

I wasn't solely basing my decision to submit this for charging based on what the victim told me. There were a number of things. He handed me physical evidence that matched the description of the items that were used; I watched the body-cam video; heard the officer talking about seeing the items in the car; saw the damage to the windows; the proximity of the damage report was at his residence; the relationship they had, the knowledge they had about each other. There were a lot of things that came together that made it very reasonable to believe what I thought sounded like a very credible recounting of the incident from the victim. So there were things in addition to what the victim told me that I took into account when deciding whether he was the appropriate suspect.

Third, Coleman challenges the prosecutor's follow-up question about whether it would be "unusual to move forward with a case based on the type of evidence" he had described.

Officer Johnson answered:

Oh, not at all. And, in fact, I could tell you, I'm very hesitant to move forward with a number of my cases. There are a number of my cases that never get submitted for charging. I have to feel pretty confident that the county attorney or city attorney will agree to charge it, because I don't want to look ridiculous as an investigator submitting things that are inappropriate. And I don't want to do that. . . .

Coleman concedes that he did not object to the prosecutor's alleged misconduct at trial. Accordingly, we apply the modified plain-error test. *See Mosley*, 853 N.W.2d at 801 (citing *State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006)).

The testimony elicited by the prosecutor's questions to Officer Johnson is not inadmissible for four reasons. First, the purpose of the officer's testimony was not to

establish T.T.'s credibility. Rather, the apparent purpose of the testimony was to describe the officer's investigation. We refer to the *apparent* purpose of the prosecutor's examination of Officer Johnson because Coleman did not object to the prosecutor's examination, so the prosecutor was not given an opportunity to explain her purpose. But the challenged questions are consistent with the general rule that evidence concerning a law-enforcement officer's investigation is admissible to give jurors context. *See, e.g., State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014); *State v. Griller*, 583 N.W.2d 736, 743 (Minn. 1998); *State v. Czech*, 343 N.W.2d 854, 856-57 (Minn. 1984).

Second, the prosecutor elicited testimony from Officer Johnson to respond to Coleman's attorney's attack on the officer's investigation. In his opening statement, Coleman's attorney reminded the jury of the state's burden of proof and told the jury that two police officers "were given one account from this so-called victim, . . . took that account as God's given word, and did no subsequent investigation whatsoever." It is apparent that the prosecutor sought to blunt the defense theory of the case during the direct examination of Officer Johnson by asking him to carefully explain his investigation. After the direct examination, Coleman's attorney cross-examined Officer Johnson by focusing on tasks that Officer Johnson did not perform. It was only natural that, on re-direct examination, the prosecutor followed up by asking additional questions of Officer Johnson about the manner and scope of his investigation.

In *Ali*, the defense theory was that police officers had misidentified the defendant as the person who shot and killed a shopkeeper. 855 N.W.2d at 248. The supreme court held that the state's evidence concerning the investigation was not inadmissible because,

“[w]ithout police being able to testify as to *why* they ruled out . . . a possible alternate perpetrator, the jury might have wondered why police did not further investigate [the alternate perpetrator] and why police decided to focus the investigation on [appellant] as the possible shooter.” *Id.* at 249. Similarly, the direct and re-direct examinations of Officer Johnson were appropriately responsive to the defense theory and were designed to ensure that the jury did not wonder why Officer Johnson did not investigate further. In a sense, Coleman “opened the door” to the evidence at issue, which justifies its admission even if it were otherwise inadmissible. *See State v. Bailey*, 732 N.W.2d 612, 622 (Minn. 2007); *State v. Valtierra*, 718 N.W.2d 425, 435-36 (Minn. 2006).

Third, some of the testimony that Coleman contends is inadmissible actually was sought by Coleman’s trial attorney. The second excerpt from Officer Johnson’s testimony was responsive to a question originally asked by Coleman’s attorney on cross-examination. Coleman’s attorney asked Officer Johnson to agree that he “didn’t have any independent verification” but nonetheless “chose to believe the victim witness.” But Coleman’s attorney did not allow Officer Johnson to answer the question before asking questions about other issues. On re-direct examination, the prosecutor began by stating to Officer Johnson, “It appeared that you weren’t able to finish your response when defense counsel was asking you about why you made this determination based just on the victim’s statement, and I’m wondering if there is anything else that was part of that determination.” It was not inappropriate for the prosecutor to give the witness an opportunity to answer Coleman’s attorney’s prior question because the jury otherwise might have believed that Officer Johnson did not have a good answer.

Fourth, Officer Johnson did not comment directly on T.T.'s credibility. Throughout his testimony, Officer Johnson generally described his investigation without reference to whether T.T. was credible or not credible. Officer Johnson's testimony that he had received "a really clear statement from the victim" was phrased in terms of the clarity of T.T.'s statement, not its truthfulness. Officer Johnson once used the word "credible" when saying that he had received "a very credible recounting of the incident from the victim." But on the whole, the focus of his testimony was his investigation and the decisions he made during the investigation. This case is different from *Van Buren*, in which several of the state's witnesses were asked bluntly whether certain other persons believed the victim's accusations of sexual abuse. 556 N.W.2d at 550-52. This case also is very different from *Koskela*, in which a police officer testified, "I had no doubt whatsoever that I was taking a truthful statement." 536 N.W.2d at 630.

Thus, the testimony elicited by the prosecutor is not inadmissible. Because the testimony is admissible, the prosecutor did not engage in misconduct by eliciting it. Accordingly, there is no error, let alone plain error. Therefore, Coleman is not entitled to a new trial.

Affirmed.

A handwritten signature in cursive script, appearing to read "Matthew Johnson".