

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1733**

State of Minnesota,
Respondent,

vs.

Leonte Laray High Town,
Appellant.

**Filed November 7, 2022
Affirmed
Hooten, Judge***

Lyon County District Court
File No. 42-CR-21-419

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

Rick Maes, Lyon County Attorney, Abby Wikelius, Assistant County Attorney, Marshall, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Cochran, Judge; and Hooten, Judge.

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

NONPRECEDENTIAL OPINION

HOOTEN, Judge

Appellant challenges his convictions for unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2020), and aiding and abetting aggravated robbery in violation of Minn. Stat. § 609.245, subd. 1 (2020), alleging that the state committed prosecutorial misconduct by impermissibly vouching for a witness's credibility and misstating the law regarding accomplice liability. Because the prosecutor did not commit plain error that affected appellant's substantial rights, we affirm.

FACTS

On May 15, 2021, R.G. called 911 to report that two men had just robbed him at gunpoint in his apartment. He alleged that he was acquainted with the men, whom he knew as “Cuz” and Matthew. He later identified these men to be appellant, Leonte High Town and High Town's co-defendant, Matthew Williams. R.G. initially told police that he opened the door to the two men, and that High Town held a pistol to his head and took his wallet from his pocket.

Police located and questioned High Town, who initially stated to police that he had driven a mutual friend to R.G.'s apartment, but claimed that he had stayed in the car while his friend was in the apartment. In a subsequent police interview on May 27, 2021, High Town relayed a different version of events: he stated that he and Williams went to R.G.'s apartment on May 15 so that Williams could pick up some money, and that Williams gave High Town a pistol in the parking lot of R.G.'s apartment building, which he placed in the trunk of his car.

Respondent State of Minnesota charged High Town with one count of unlawful possession of a firearm, one count of aiding and abetting aggravated robbery, and one count of aiding and abetting simple robbery. The district court held a jury trial in August 2021.

At trial, R.G. testified that he did not recall who held the weapon or who took the wallet. Rather, he stated that when he let the men into his apartment, they “attacked him” by “putting their arms around” him and “demanding [his] wallet,” and one of the men put a pistol against R.G.’s cheek.

High Town’s testimony on direct examination was consistent with the statement he gave to police on May 27. He testified that he and Williams had gone to R.G.’s apartment on the evening in question, and that the purpose of their visit was for Williams to pick up some money that R.G. owed to Williams and to smoke marijuana. High Town stated that he placed the pistol Williams handed him in the parking lot into the trunk of his vehicle.

High Town further testified that R.G. let the two men into his apartment, and High Town walked directly to the kitchen. At that point, High Town looked into the living room and saw Williams restraining R.G. and reaching inside R.G.’s pockets. He stated that he did not see whether Williams had the pistol at that time. According to High Town’s testimony, Williams then ran from the apartment and got into High Town’s car. High Town claimed he “really didn’t know what was going on” and “didn’t know what to do,” so he left with Williams. High Town stated that he saw Williams carrying the pistol as they left R.G.’s apartment.

The May 27, 2021, police report documenting High Town’s statement included a quote from High Town stating if he was going to be charged with something, he should be

charged with “being the get-away-driver.” During cross-examination, High Town denied stating to police that he was “guilty of ‘driving the getaway car’” and clarified that he had said “driving away with Mr. Williams in my car.”

At the conclusion of trial, the jury found High Town guilty of all three counts. The district court sentenced him to 60 months’ imprisonment for unlawful possession of a firearm and 125 months’ imprisonment for aggravated robbery.

This appeal follows.

DECISION

High Town argues on appeal that the prosecutor committed misconduct during her closing argument in two ways: first, by impermissibly vouching for a witness’s credibility, and second, by misstating the law regarding accomplice liability. High Town did not object to these instances of alleged error at trial. We address each of High Town’s allegations of prosecutorial error in turn.

Generally, a defendant who fails to object to alleged prosecutorial misconduct at trial forfeits the right to appellate review of the issue. *State v. Darris*, 648 N.W.2d 232, 241 (Minn. 2002). However, appellate courts may review unobjected-to prosecutorial error under the modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 296 (Minn. 2006). Under this standard, the appellant bears the burden of demonstrating “both that error occurred and that the error was plain.” *Id.* at 302. “An error is plain if it is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotations omitted).

Once the appellant has satisfied the first two prongs of the plain-error test, the burden shifts to the respondent “to demonstrate lack of prejudice; that is, the misconduct did not affect substantial rights.” *Id.* The state can demonstrate lack of prejudice by showing that there is not “a reasonable likelihood that the error actually impacted the verdict.” *State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010).

A reviewing court assesses the “closing argument as a whole” to determine whether a prosecutor committed plain error. *State v. Graham*, 764 N.W.2d 340, 356 (Minn. 2009) (quotation omitted); *accord State v. Fields*, 730 N.W.2d 777, 785 (Minn. 2007); *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993). If the court concludes that any one of the plain-error prongs is not satisfied, then it need not address the others. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). If all three prongs of the plain-error test are satisfied, this court then decides “whether it should address the error to ensure fairness and the integrity of the judicial proceedings.” *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998).

I. The prosecutor did not commit plain error in her closing-argument statements regarding witness credibility.

First, High Town argues that the prosecutor committed misconduct by impermissibly vouching for R.G.’s credibility as a witness. He challenges the following passage from the prosecutor’s closing argument:

The [s]tate believes the most important thing to consider is whose story—whose version of events has remained consistent and whose has changed and why has it changed? [R.G.] testified and told you that he was robbed and it happened fast and he didn’t know who had the firearm. What would be—the [s]tate submits to you that the easier—if [R.G.] by stating that he didn’t know the [s]tate believes that that is evidence that [R.G.] was being sincere or forthcoming with

you. It happened so fast he was overpowered by two men, firearm pointed to his face. He could not recall. His—he told you what he knew and the [s]tate would submit to you that his manner on the stand that was—that he was frank.

In response, the state contends that the prosecutor’s statements were not impermissible vouching, but rather, the statements merely offered an interpretation of the evidence regarding R.G.’s credibility.

Both the prosecution and the defense may “present to the jury all legitimate arguments on the evidence . . . [and] all proper inferences to be drawn therefrom.” *State v. Smith*, 541 N.W.2d 584, 589 (Minn. 1996). As such, a prosecutor may “analyze the evidence” in their closing argument “and vigorously argue that the state’s witnesses were worthy of credibility whereas defendant and his witnesses were not.” *State v. Googins*, 255 N.W.2d 805, 806 (Minn. 1977). However, a prosecutor’s closing argument may not express a guarantee or personal opinion regarding the truthfulness of a witness’s testimony. *State v. Patterson*, 577 N.W.2d 494, 497-98 (Minn. 1998); *see also State v. Swanson*, 707 N.W.2d 645, 656 (Minn. 2006) (stating that a prosecutor commits misconduct when they “personally endorse the credibility of witnesses”).

There is no bright-line rule that distinguishes when a prosecutor expresses a guarantee or personal opinion of a witness’s credibility. However, appellate courts have decided several cases that better define the bounds of impermissible vouching. For example, the Minnesota Supreme Court concluded that a prosecutor’s use of the pronoun “I” in closing argument was “an improper interjection of personal opinion into the argument.” *Ture v. State*, 681 N.W.2d 9, 20 (Minn. 2004); *but see State v. Anderson*,

720 N.W.2d 854, 864 (Minn. App. 2006) (“Here, the prosecutor’s prefatory phrase ‘I suggest’ is the equivalent to ‘I submit’ or ‘the state submits,’ which Minnesota courts have held are not impermissible expressions of opinion.”), *aff’d on other grounds*, 733 N.W.2d 128 (Minn. 2007).

The supreme court has also distinguished between a prosecutor’s two statements that a witness is “very believable” and that “the state believes [a witness] is very believable.” *Swanson*, 707 N.W.2d at 656. The supreme court held that the former is not impermissible vouching, whereas the latter “is impermissible vouching on its face because the state directly endorsed the credibility of” the witness. *Id.*

Furthermore, this court has concluded that it was impermissible vouching to state that a witness “did not lie.” *State v. Nowels*, 941 N.W.2d 430, 439 (Minn. App. 2020), *rev. denied* (Minn. June 16, 2020). In *Nowels*, we reasoned that this statement “went beyond merely arguing [a witness’s] credibility . . . [and] implicitly injected [the prosecutor’s] personal opinion about the veracity of [the witness’s] testimony.” *Id.*

Conversely, this court has held that several types of statements do not constitute impermissible vouching. In *State v. Smith*, we held that a prosecutor did not impermissibly vouch for a witness’s credibility when they stated the witness was “very sincere” and “very frank.” 825 N.W.2d 131, 139 (Minn. App. 2012), *rev. denied* (Minn. Mar. 19, 2013). A prosecutor’s argument that complainants testified to “the truth” with “frankness and [] sincerity” was not impermissible vouching because these statements “were used in the context of reviewing the evidence and urging the jury to find [the complainants] credible.” *State v. Rucker*, 752 N.W.2d 538, 552-53 (Minn. App. 2008), *rev. denied* (Minn.

Sept. 23, 2008). Similarly, a prosecutor's statements that a witness was "a responsible, mature person" who was "very honest on the stand" did not amount to impermissible vouching. *State v. Leutschaft*, 759 N.W.2d 414, 424-25 (Minn. App. 2009).

Applying the foregoing caselaw to the facts of the instant case, we conclude that the prosecutor did not err in her closing argument regarding witness credibility. Reading the closing argument as a whole, it becomes clear that the prosecutor delivered the challenged statements in the context of explaining to the jury how to evaluate and weigh the evidence and testimony presented. *See Rucker*, 752 N.W.2d at 553. The prosecutor introduced the topic of witness credibility in her closing argument by stating,

[T]he Court will tell you how you are to make decisions about what to believe, what not to believe . . . [and] how to weigh the evidence . . . The most important thing . . . you should rely on in making your decision about what to—what to believe and what weight to give any . . . piece of testimony you should rely upon your own experience, good judgment, and common sense.

The closing-argument phrases that contained the alleged vouching, namely that R.G. was "sincere or forthcoming," and that "he was frank," followed from the preceding discussion of the jury's duty to weigh evidence. These statements did not explicitly guarantee the truthfulness or credibility of R.G.'s testimony. Rather, these statements recognized R.G.'s admission that he couldn't remember certain facts and offered an interpretation of that testimony to the jury. Furthermore, the prosecutor refrained from speaking in the first person or implying any personal opinion as to R.G.'s credibility. *See Ture*, 681 N.W.2d at 20.

The prosecutor's statements here align more closely with the caselaw in which appellate courts did not find prosecutorial misconduct. As such, we conclude that there was no plain error in the prosecutor's statements regarding witness credibility.

II. The prosecutor did not commit plain error in her closing-argument statements regarding accomplice liability.

High Town argues that the prosecutor committed misconduct by misstating the law regarding his liability as an accomplice to aggravated robbery and simple robbery. A prosecutor's misstatement of the law may constitute misconduct in certain cases. *See State v. Strommen*, 648 N.W.2d 681, 690 (Minn. 2002).

High Town alleges the prosecutor misstated the law in a passage of several paragraphs from the closing argument, including:

Now even if you are gonna take the defendant's testimony as the gospel truth in this matter the [s]tate submits to you that the defendant's actions would still be—would still constitute the crime of Aggravated Robbery. It would still constitute the crime of Simple Robbery as well as ineligible possession.

[I]f we're gonna just look—look at what the defendant said, the defendant knew another person was going to commit or was committing a crime. The defendant testified that he became aware of the robbery when it was happening when he looked over inside [R.G.'s] kitchen and saw his cousin, the person who arrived with him, his—his front seat passenger robbing the—robbing [R.G].

Now the defendant, second, in order to find under this version of the events that the defendant intentionally aided you'd have to find that under the defendant's um testimony today that he intended his presence or action to aid the commission of the crime. Well what did he do? He told you he drove him away after he was trying to flee the scene, what did he do? He left, entered his car, and drove him to Casey's gas station . . . where Mr. Williams allegedly disposed of the wallet.

High Town argues that “the offense of robbery—whether aggravated or simple—was completed as soon as Williams used force to obtain [R.G.’s] wallet,” and therefore, High Town “did not aid Williams in the *commission* of the robbery” by driving him away from the scene. Based on this interpretation of the law, High Town contends that the prosecutor committed misconduct by arguing that the jury should find him guilty even if it believed his version of events.

High Town relies on *State v. Solomon*, 359 N.W.2d 19 (Minn. 1984), to support his contention that the elements of a robbery offense are satisfied once a person has forcefully obtained another’s property. In *Solomon*, the defendant robbed a supermarket clerk at gunpoint, but he dropped the money and attempted to flee when he saw police outside. *Id.* at 20. The court determined that “the state’s evidence, if believed, established the completed offense of aggravated robbery,” rather than attempted aggravated robbery, because the element of “taking or carrying away” of property was “complete, if only for a few seconds, once the money was in [the defendant’s] hands.” *Id.* at 21.

In response, the state argues that High Town “overstates the holding in *Solomon*.” The state’s argument is convincing because *Solomon* stands for the idea that the robbery element of “taking or carrying away” of property is satisfied even if the “[d]efendant’s control or dominion over” the property is very brief. *Id.* It does not affirmatively state that the element of “taking or carrying away” of property is completed at the first moment the defendant has “control or dominion over” the property. *Id.*

We agree with the state’s interpretation of *Solomon*, and we hold that the prosecutor did not misstate the law in light of other Minnesota caselaw in which the defendants’

convictions have been affirmed based on their participation as a driver in a robbery offense. For example, in *State v. Ritchie*, the defendant was identified as the getaway-car driver in a robbery, and the supreme court affirmed his aggravated robbery conviction. 195 N.W.2d 570, 572 (Minn. 1972). In *State v. Boyd*, the defendant did not dispute the occurrence of a robbery in the car he was driving, but he argued that he did not intend to “participate, aid or promote the robbery.” 410 N.W.2d 445, 448 (Minn. App. 1987). However, we affirmed his conviction for simple robbery. *Id.* In reaching its conclusion, this court reasoned:

If an accused plays at least some knowing role in the commission of a crime and does not take steps to thwart its completion, a jury may infer the requisite mens rea for an aiding and abetting conviction. Presence, companionship, and conduct, before and after the offense are circumstances from which the requisite criminal intent may be inferred.

Id. (quotation omitted).

Based on our precedent regarding aiding-and-abetting liability, the prosecutor did not misstate the law. Therefore, we conclude that no error occurred in the prosecutor’s closing argument.

III. The state met its burden to show that neither alleged error affected High Town’s substantial rights.

Even were we to assume that the prosecutor plainly erred in her closing argument, the alleged errors do not require reversal of High Town’s conviction because the state has met its burden of proving that the alleged misconduct did not affect his substantial rights.

First, the state argued that there is no reasonable likelihood that the alleged vouching impacted the jury’s verdict. The state contended that the entirety of the prosecutor’s closing argument, in conjunction with the district court’s jury instructions, made it clear to

the jury that the jurors were to determine the witnesses' credibility. Second, the state argued that the evidence of High Town's guilt was "overwhelming," and that High Town's own testimony supported the jury's guilty verdict.

We agree with the state's argument and note that appellate courts have rarely concluded that a prosecutor's impermissible vouching affected an appellant's substantial rights. *See, e.g., Swanson*, 707 N.W.2d at 656; *Ture*, 681 N.W.2d at 20; *Nowels*, 941 N.W.2d at 439; *Rucker*, 752 N.W.2d at 553-54. The supreme court's analysis in *Swanson* is apposite to the instant case. In *Swanson*, the court determined that any alleged error was not "sufficiently prejudicial" in light of the evidence against Swanson and the fact that "the impermissible vouching constituted only a small part of the prosecutor's closing argument." *Swanson*, 707 N.W.2d at 656; *see also State v. Tate*, 682 N.W.2d 169, 178 (Minn. App. 2004) ("The [challenged] statements were short comments, involving 13 lines of a closing argument transcript that is 25 pages long."), *rev. denied* (Minn. Sept. 29, 2004).

In the instant case, as in *Swanson*, the prosecutor moved on from her credibility argument quickly. The challenged passage makes up a relatively small part of the closing argument as a whole—only six sentences out of an 11-page closing argument. Much of the passage merely reiterates pieces of R.G.'s testimony; only two sentences contain the alleged vouching. Overall, the instances of the alleged error were not pervasive. It is unlikely that the prosecutor's comments regarding R.G.'s credibility affected the jury's verdict, and therefore, the alleged error did not affect High Town's substantial rights. *See McDaniel*, 777 N.W.2d at 752-53.

The state also met its burden of showing that the alleged misstatement of law did not prejudice High Town's substantial rights. The state noted that the district court instructed the jury, "If an attorney's argument contained any statement of the law that differs from the law I give you, disregard that statement." The supreme court has held that "corrective instructions by the court can cure prosecutorial error" in some instances. *Id.* at 750; *see also State v. Race*, 383 N.W.2d 656, 664 (Minn. 1986) (stating that the trial court's reiteration of the correct burden of proof cured any improper comments by the prosecutor). We will also presume that the jury follows the trial court's instructions when the jury is confused or needs clarification. *See State v. Shoen*, 578 N.W.2d 708, 718 (Minn. 1998). At trial, the district court properly instructed the jury regarding accomplice liability. Thus, even if the prosecutor had erred in her description of the law regarding accomplice liability, the district court's jury instructions ensured that the error did not affect High Town's substantial rights.

Affirmed.