

*This opinion is nonprecedential except as provided by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
A23-1196**

State of Minnesota,
Respondent,

vs.

Janelle Lorraine Johnson,
Appellant.

**Filed July 15, 2024
Affirmed
Kirk, Judge***

Beltrami County District Court
File No. 04-CR-20-3462

Keith Ellison, Attorney General, Thomas R. Ragatz, Assistant Attorney General, St. Paul, Minnesota; and

David Hanson, Beltrami County Attorney, Bemidji, Minnesota (for respondent)

Daniel J. Koewler, Charles A. Ramsay, Ramsay Law Firm, P.L.L.C., Roseville, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Kirk, Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant challenges her conviction for second-degree intentional murder, arguing that the prosecutor committed misconduct by misstating the law regarding the presumption of innocence during closing arguments, that the district court erred by answering a jury question outside of her presence, and that the cumulative effect of these errors deprived her of a fair trial. Because the prosecutor did not err and the district court's error was harmless, we affirm.

FACTS

Respondent State of Minnesota charged appellant Janelle Lorraine Johnson with second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2020) for causing the death of her brother-in-law. The matter proceeded to a jury trial. The facts elicited at trial are as follows.

On December 25, 2020, Johnson hosted a family gathering that J.F.—Johnson's sister and the victim's wife—attended. The victim was not invited to Johnson's gathering. During the family gathering, Johnson was drinking “[a] lot.”

J.F. returned to Johnson's home shortly after going home for the night. When asked why she came back to Johnson's house, J.F. said that nothing happened and that she just wanted to go to bed. A family member recalled J.F. stating that J.F. “got into it” with the victim and “had to push her way out of the door and grab her keys and go.” J.F.'s family members were aware of issues with J.F. and the victim's marriage, including physical abuse.

Johnson told J.F. that Johnson and her husband, A.J., were going to go to J.F.'s home. J.F. suspected that Johnson and A.J. took a firearm with them because Johnson told A.J., "upstairs" and "top drawer." Johnson had experience shooting weapons, including a 357-caliber revolver. Johnson and A.J. went to J.F.'s home and returned about an hour later. Johnson and A.J. went upstairs. A.J. put the firearm away and Johnson grabbed a glass of alcohol.

A family member testified that Johnson said that she shot the victim. Johnson told her family that Johnson and A.J. spoke with the victim outside. A.J. and the victim argued, and the victim pushed A.J. Johnson tried to intervene, was pushed down, jumped back up, grabbed the gun from A.J.'s side pocket, and shot the victim.

Just after midnight on December 26, Johnson called a non-emergency line of the sheriff's office and told the dispatcher that she shot at the victim and that the victim was possibly injured. The dispatcher sent officers to Johnson's location and officers and medical personnel to the victim's location. When officers arrived at Johnson's location, she told officers that she had shot at the victim and turned herself in because of that. One officer observed that Johnson appeared intoxicated.

Officers interviewed Johnson and A.J. at the law enforcement center. When officers first tried to interview Johnson around 4:45 a.m. on December 26, "it was apparent that she was under the influence of alcohol." Johnson confirmed that she drank alcohol around the time she contacted law enforcement. Officers returned to interview Johnson at around 11:30 a.m. Johnson told the officers that she grabbed A.J.'s gun and shot the victim three times.

When officers arrived at the victim's location, they observed victim's body outside about 25-30 yards away from the home. The medical examiner testified that the victim suffered three gunshot wounds, that the victim's cause of death was "gunshot wounds of trunk," and the manner of death was homicide. Officers recovered a 357-caliber revolver and ammunition from Johnson's home. Bullets recovered from the scene and from the victim's body were fired from the 357-caliber revolver recovered from Johnson's home.

Johnson testified in support of her defense. Johnson estimated that she began drinking around noon on December 25 and continued through the evening. Johnson asked A.J. to come with her to talk to the victim because she had been drinking. Johnson recalled that she initially spoke with the victim in the kitchen. When the conversation became more "verbally abusive," Johnson, A.J., and the victim went outside. A.J. and Johnson "got pushed down." Johnson testified that she got up and started walking toward her car, heard "loud noises," turned to yell, and saw A.J. walking toward the truck. They then went home. Johnson specified that she only recalled hearing two shots. Johnson testified that she did not bring a gun, but that A.J. did. Johnson denied shooting the victim or the gun. Johnson testified that "[A.J.] shot [the victim]." She testified that she lied about who shot the victim to protect her husband, and that she was telling the truth at trial because her family and the community needed to know what happened, because of her religious beliefs, and to set an example. On cross-examination, Johnson agreed that she lied to her family members about what happened but had no reason to do so.

The jury found Johnson guilty of second-degree intentional murder. The district court convicted Johnson and sentenced her to 343 months' imprisonment.

Johnson appeals.

DECISION

Johnson asserts that the prosecutor committed misconduct by misstating the law during closing arguments, that the district court erred by answering a jury question outside of her presence, and that the cumulative effect of these errors deprived her of a fair trial. We address each argument in turn.

I. The prosecutor did not commit plain-error prosecutorial misconduct.

Johnson argues that the prosecutor committed plain-error prosecutorial misconduct by asserting in closing arguments that she was no longer entitled to the presumption of innocence. “It is axiomatic that criminal defendants are presumed innocent until proven guilty beyond a reasonable doubt.” *State v. Portillo*, 998 N.W.2d 242, 248-49 (Minn. 2023). And a defendant “has the right to have the jury take the presumption of innocence to the jury room with them.” *Id.* at 249 (quotation omitted).

Because Johnson did not object to the prosecutor’s statement, we “apply the modified plain-error test.” *Id.* at 248 (quotation omitted). Under that test, Johnson “has the burden to demonstrate that the misconduct constitutes (1) error, (2) that was plain.” *Id.* (quotation omitted). If Johnson establishes plain error, “the burden then shifts to the State to demonstrate that the error did not affect [her] substantial rights.” *Id.* (quotation omitted). We then evaluate “whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” *Id.* (quotation omitted).

Johnson cites a recent supreme court decision, *Portillo*, 998 N.W.2d 242, to support her assertion of misconduct. In *Portillo*, the supreme court held that a prosecutor

committed plain-error misconduct when the prosecutor “said on three separate occasions during the closing-argument rebuttal that [the defendant] had *already* lost the presumption of innocence.” *Id.* at 249. Specifically, the prosecutor stated that:

He no longer has that presumption. You’ve heard all of the evidence. You’ve heard all of the state’s case against [the defendant]. He no longer has that presumption of innocence. He has been proven guilty beyond a reasonable doubt. We’ve gone through those elements. You’ll be able to talk and consider each other’s thoughts and the information you heard throughout the course of the case, but he no longer has that presumption of innocence.

Id. The supreme court reasoned that a “defendant is only proven guilty beyond a reasonable doubt,” “when the jury has deliberated and reached that conclusion, not before.” *Id.* at 250. Thus, the suggestion that the defendant was not entitled to the presumption at the time of closing arguments was a misstatement of the law. *Id.* at 250-51.

In his closing argument, the prosecutor here stated:

Now, for her actions in shooting [the victim], [Johnson is] charged with Second Degree Intentional Murder. And as the Judge instructed you, and as we talked about in jury selection, she is presumed innocent of those charges. But that presumption only remains with her until the State has proven the essential elements by proof beyond a reasonable doubt. Once the essential elements are proven, that presumption goes away and you must find her guilty.

Unlike in *Portillo*, the prosecutor did not assert that Johnson was not entitled to the presumption at the time of closing arguments. *Id.* at 249. Instead, the prosecutor stated that “she is presumed innocent of those charges,” but that the presumption does not remain when the state proves the essential elements beyond a reasonable doubt. This is a correct statement of the law. We also note that the prosecutor later repeated that Johnson “is

presumed innocent of these charges.” Reviewing the closing argument as a whole, the prosecutor did not assert that Johnson was no longer entitled to the presumption of innocence at the time of the prosecutor’s closing argument. *Id.* at 250; *see also State v. Johnson*, 616 N.W.2d 720, 728 (Minn. 2000) (explaining that we “consider the closing argument as a whole rather than focus on particular phrases or remarks that may be taken out of context or given undue prominence” when reviewing prosecutorial-misconduct claims (quotation omitted)).

Because the prosecutor did not err in his statement of the law regarding the presumption of innocence, we need not address the remaining prongs of modified plain-error review. *State v. Epps*, 964 N.W.2d 419, 423 (Minn. 2021) (stating that we may end our analysis on “a negative answer to any one of the three parts of the plain error doctrine”).

II. The district court erroneously responded to a jury question outside of Johnson’s presence, but this error was harmless.

Johnson argues that the district court erred by answering a jury question outside of her presence. A district court violates a defendant’s right to be present at trial by communicating with the jury during deliberations without the defendant. *See State v. Sessions*, 621 N.W.2d 751, 755-56 (Minn. 2001) (stating that “the general rule is that a trial court judge should have no communication with the jury after deliberations begin unless that communication is in open court and in the defendant’s presence” and concluding that the district court violated the defendant’s right to be present by responding to a jury question in the defendant’s absence). And a district court must respond to jury questions

in the courtroom. Minn. R. Crim. P. 26.03, subd. 20(3); *see also Sessions*, 621 N.W.2d at 756 (concluding that the district court violated the Minnesota Rules of Criminal Procedure by responding to the jury in writing outside of open court).

During deliberations, the jury sent a note to the district court asking, “Regarding the third element, could it be proven beyond a reasonable doubt that the defendant has acted with the intent to effect the death of a person who died by gunshot if it is not clear as to who pulled the trigger?” The district court met with counsel in chambers. Counsel for both parties and the district court agreed on a response.¹ The district court then wrote back to the jury, “The Court would refer you back to the instructions you have been provided.” Because the district court responded to the jury’s question in writing and outside of Johnson’s presence, the district court’s communication to the jury was erroneous.

But Johnson is only entitled to a new trial if she shows that there is a reasonable likelihood that this error affected her substantial rights. *See State v. Matthews*, 800 N.W.2d 629, 633-34 (Minn. 2011) (describing harmless-error and plain-error review); *Sessions*, 621 N.W.2d at 756 (applying harmless-error review to an improper jury communication).² An error affects substantial rights when “there is a reasonable likelihood that the error

¹ A defendant may waive their right to be present at trial, and the waiver need not be explicit. *State v. Martin*, 723 N.W.2d 613, 619-21 (Minn. 2006). Because the record is unclear as to whether Johnson waived her right, we do not consider the right waived.

² The parties suggest that the asserted error may be subjected to plain-error review, but we need not specify whether we are applying harmless-error or plain-error review here because both frameworks ask whether a defendant’s substantial rights were affected, and we ultimately conclude that Johnson’s were not. *Matthews*, 800 N.W.2d at 634 (“[T]he third prong of the plain error test is the equivalent of a harmless error analysis.”).

substantially affected the verdict.” *Matthews*, 800 N.W.2d at 634 (quotation omitted). “When considering whether the erroneous exclusion of a defendant from judge-jury communications constitutes harmless error, we consider the strength of the evidence . . . and substance of the judge’s response.” *Sessions*, 621 N.W.2d at 756.

In this case, we are particularly persuaded that there is no reasonable likelihood that Johnson’s substantial rights were affected based on the substance of the district court’s response to the jury question. In response to the jury’s question, the district court referred the jury back to the jury instructions consistent with Minn. R. Crim. P. 26.03, subd. 20(3)(b), which provides that the district court “may reread portions of the original instructions.” And the response did not contain new information or favor either party. *See Sessions*, 621 N.W.2d at 756-57 (noting that “[t]he court did not issue any new instructions in its responses, and the instruction repeated did not favor the prosecution or defense”).

Johnson asserts that the judge’s response was improper because the jury asked a fact question, which the district court should have answered by advising the jury that “it was their duty to determine, beyond a reasonable doubt, ‘who pulled the trigger.’” But the jury did not ask “who” pulled the trigger. Rather, the jury asked *whether* it could find that Johnson intended to affect the victim’s death if they could not decide who had shot the firearm. This is a question of law. *Cf. State v. Colvin*, 645 N.W.2d 449, 452 (Minn. 2002) (analyzing *whether* the state could prove an element of a charge in a particular way *de novo* because the construction of a criminal statute is a question of law).

Because Johnson did not show a reasonable likelihood that the district court's error in communicating with the jury outside of her presence affected her substantial rights, she is not entitled to a new trial on this error.

III. Johnson did not establish cumulative error.

Johnson argues that the cumulative effect of the prosecutorial-misconduct and jury-instruction errors was to deny her a fair trial because the state's case was weak, and the jury notes indicate that it struggled reach a verdict. Because Johnson has only established one error, her claim for cumulative error fails. *See State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017) (stating a defendant may be entitled to a new trial “in rare cases where the *errors*, when taken cumulatively, have the effect of denying the appellant a fair trial” (quotation omitted) (emphasis added)).

Affirmed.