

*This opinion is nonprecedential except as provided by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
A23-1554**

State of Minnesota,
Respondent,

vs.

Deondre Demetrius Ramsey,
Appellant.

**Filed October 28, 2024
Reversed and remanded
Harris, Judge**

Hennepin County District Court
File No. 27-CR-22-18991

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

Mary F. Moriarty, Hennepin County Attorney, Robert I. Yount, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Smith, Tracy M., Judge; and
Harris, Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

Appellant challenges his convictions of attempted second-degree intentional murder and possession of a machine gun, arguing that the convictions must be reversed because multiple errors deprived him of his right to a fair trial. Because we conclude that the

cumulative effect of prosecutorial misconduct and evidentiary errors deprived appellant of his right to a fair trial, we reverse both convictions and remand to the district court for a new trial.

FACTS

In September 2022, respondent State of Minnesota charged appellant Deondre Demetrius Ramsey with attempted second-degree intentional murder, in violation of Minnesota Statutes section 609.19, subdivision 1(1) (2022). The charge arose from a shooting in downtown Minneapolis that occurred outside of a nightclub at approximately 2:32 a.m. on September 17, 2022. The incident was captured on surveillance video from the City of Minneapolis surveillance video system. The surveillance video shows a person wearing a blue hat, white t-shirt, and jeans, shooting the victim from behind and then running from the scene while concealing the weapon in their pants. The complaint alleged that the shooter in the surveillance video was Ramsey, that Ramsey was arrested with a Glock pistol that had a full-auto sear¹ and an extended magazine, that Ramsey confirmed the Glock pistol that he was arrested with was the same weapon that was used in the shooting, and that Ramsey did not deny that he shot the victim. The matter proceeded to a jury trial.

On the first day of trial, before voir dire, the district court permitted the state, over Ramsey's objection, to amend the complaint to add an additional charge of possession of a machine gun, in violation of Minnesota Statutes section 609.67, subdivision 2 (2022).

¹ A "full-auto sear" is a machine gun conversion kit that allowed the Glock pistol to fire automatically with one pull of the trigger.

At trial, the state presented testimony from two Minneapolis Police Department (MPD) officers who were the first to respond to the scene. One officer testified that he was parked near the intersection of Fifth Street and Hennepin Avenue when he heard “automatic gunfire” before responding to the scene. The state also called an MPD intelligence analyst, who testified about collecting the surveillance video. Then, a criminal intelligence analyst from the Hennepin County Sheriff’s Office, testified about how she identified the shooter as Ramsey. The analyst testified that another officer, who was in charge of the first precinct, received information that the shooter goes by the name “Block.” Based on this information, the analyst viewed the surveillance videos and identified Ramsey based on “tattoos, between him being with [a known individual,] and searching for the name ‘Block.’” The analyst testified that “investigators keep records of nicknames and monikers of people they’re tracking with trends,” that she received information that the shooter went by the name “Block,” and she had information from other agencies that Ramsey went by “Block” or “Block Money,” and she identified Ramsey as the shooter. She further testified that she received the name, date of birth, and street name of Ramsey from the Saint Paul Police Department and a photo of Ramsey from the Minnesota Repository of Arrest Photos. Based on this testimony, Ramsey objected and asked the court for a mistrial, arguing that the state agreed not to elicit testimony regarding his criminal record and police contacts, that the analyst’s testimony implied law enforcement

knew him from another case, and that he was a known person to the police.² The state asked that the court deny the request for a mistrial arguing that in preparation for trial they had three conversations with the analyst, which included discussions that the state was not going to elicit anything about Ramsey's past. The state also argued that the testimony was not intentionally elicited by the state. The district court noted that the testimony was prejudicial, but denied Ramsey's motion because the testimony was not unfairly prejudicial to the case.

An MPD sergeant then testified about her role in the investigation, including her interview with Ramsey following his arrest (Scales interview), and her interpretation of the surveillance videos. The sergeant used a PowerPoint presentation that consisted of still photographs from the surveillance video to describe her interpretation of the incident. In addition, the sergeant testified about finding a Glock magazine in Ramsey's car and that "he had a history of possessing it." Ramsey objected arguing that the sergeant's testimony unfairly suggested he had a history of using firearms.

A special agent testified about his surveillance and arrest of Ramsey. During his testimony he stated that Ramsey was a "felon" who was "commonly in possession of firearms." Ramsey objected, arguing that the testimony unfairly suggested he had a history of using firearms and his status as a felon.

² Prior to trial, the state agreed not to elicit testimony regarding Ramsey's criminal records, that he had been investigated in other cases, that he was a person of interest, or otherwise mention his past criminal acts and cases.

Following this testimony Ramsey made a second request for a mistrial, arguing that the state's three law enforcement witnesses labeled Ramsey a criminal, noted he had a criminal record, called him a felon who was known to carry a gun, suggesting he was known to law enforcement as a dangerous person with a criminal record who carries guns.

The state asked that the court deny the request for a mistrial arguing the sergeant merely testified to the fact that law enforcement had probable cause to arrest Ramsey for a felony offense and that law enforcement knew a firearm was used in that offense. The state further noted that, "this was a misstep". The district court agreed that there was inadmissible testimony regarding Ramsey but denied the motion for a mistrial and found that a curative instruction was appropriate. The court instructed the parties to prepare a curative instruction.

The state also called two medical professionals, who testified about the victim's gunshot wounds and called the owner of the nightclub to lay foundation for the surveillance footage. An MPD forensic scientist also testified that cartridge casings collected at the scene were consistent with having been fired from the firearm that was in Ramsey's possession when he was arrested. The defense did not call any witnesses and Ramsey waived his right to testify.

Following the conclusion of testimony, the state gave its closing argument during which it showed the jury a side-profile view booking photograph alongside the name "Deondre Demetrius Ramsey," a date of birth, and the phrase "Block Money." Ramsey made a third request for a mistrial, arguing that the photograph was not entered into evidence and this was another instance of the jury being exposed to inadmissible evidence

of Ramsey's bad character. The photograph was not admitted into evidence. The state requested that the court deny the request for a mistrial, arguing that the photograph was referenced during the analyst's testimony and was included in the exhibit admitted when the analyst testified about receiving an arrest photo used to identify Ramsey during the investigation.³ The district court denied the motion for a mistrial, stating there was "nothing in the photograph that indicates that it was taken during the booking process," and found the photograph "otherwise relevant because it shows the defendant, it is consistent with the testimony, and it is not unreasonably prejudicial."

The jury found Ramsey guilty of both counts. The district court sentenced Ramsey to a 19-month prison term on the conviction of possession of a machine gun and a concurrent 240-month prison term on the conviction of attempted second-degree murder. Ramsey appeals.

DECISION

I. The district court did not abuse its discretion by permitting opinion testimony about the surveillance video because it was helpful to the jury.⁴

Ramsey argues that the district court abused its discretion by permitting the MPD sergeant to do "the jury's job for it" because she interpreted the surveillance videos using a PowerPoint presentation, which consisted of still photographs from the surveillance videos. Ramsey further argues that the MPD sergeant who provided testimony lacked first-

³ On appeal, the state concedes that the photograph was not admitted into evidence at trial. The photograph admitted into evidence during the analyst's testimony was not a side-profile view and was more similar to a driver's license photograph. The exhibit did include Ramsey's name, date of birth, and the phrase "Block Money."

⁴ We address this issue to provide guidance on remand.

hand knowledge and her opinions were not helpful to the jury. At trial, the sergeant explained the process of creating the PowerPoint and then used it to explain her interpretation of events, including the video's depiction of three males arriving at the nightclub in a blue vehicle, going to the vehicle presumably to retrieve a firearm, getting involved in an altercation with a group of individuals, and then the shooting. The defense objected to the exhibit, and the district court overruled the objection and determined that the photos were relevant and more probative than prejudicial. The state argues that the sergeant's testimony was helpful for the jury to be able to understand which individuals depicted in the footage the state alleged were Ramsey and his companions. We agree.

Minnesota Rule of Evidence 701 allows a lay witnesses to testify as to "opinions or inferences which are (a) rationally based on the perception of the witness; (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge." Minn. R. Evid. 701. This court reviews the district court's evidentiary rulings for an abuse of discretion. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019). A district court "abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quoting *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017)).

Ramsey cites two precedential cases to support his argument that the sergeant's testimony was inadmissible under rule 701. *Dunshee v. Douglas*, 255 N.W.2d 42 (Minn. 1977); and *Dahlbeck v. DICO Co.*, 355 N.W.2d 157 (Minn. App. 1984). These decisions are distinguishable from Ramsey's case.

Dunshee addressed whether the district court abused its discretion by excluding expert witness opinion testimony, which is subject to a different rule of evidence and outside the purview of rule 701. 255 N.W.2d at 47-48. The Minnesota Supreme Court concluded that the testimony “would have been little more than an interpretation of the photographs,” which called into question “whether [it] would appreciably aid the jury,” and explained that the expert had not examined the physical items in the photograph, did not witness the accident, and did not conduct any scientific tests. *Id.* at 48.

In *Dahlbeck*, we concluded that the district court did not abuse its discretion by excluding a coworker’s lay witness opinion testimony describing accident pictures because the coworker’s opinion was speculative and would do little more than interpret photos, which the jury was capable of. 355 N.W.2d at 165-66.

Here, the sergeant’s testimony did more than identify Ramsey on the surveillance video. Instead, the sergeant affirmed that she used the photos from the surveillance video to “track th[e] person in the blue hat from when they got to the parking lot, went to [the nightclub], left [the nightclub], committed the shooting, and went back to the car.” Although “[c]ourts should be cautious about the influence of a law enforcement officer’s opinion on ultimate issues,” *State v. Hogetvedt*, 623 N.W.2d 909, 915 (Minn. App. 2001), the district court here did not abuse its discretion. The sergeant did not identify Ramsey as the shooter. She identified a person in a white t-shirt and blue hat, and the testimony likely was helpful to the jury in interpreting the surveillance video. Unlike *Dunshee* and *Dahlbeck*, the sergeant in this case was familiar with the nightclub and surrounding area where the shooting occurred and had prior knowledge of a known associate of Ramsey.

This knowledge aided in her explanation of the photos. Moreover, Ramsey objected to the testimony based on speculation and had the opportunity to cross-examine the witness.

Because the officer had enough personal knowledge to give a helpful, non-speculative opinion to the jury, we discern no abuse of discretion in the district court's decision to allow the sergeant's testimony.

II. Prosecutorial misconduct deprived Ramsey of a fair trial.

Ramsey argues that prosecutorial misconduct and evidentiary errors occurred during trial. Ramsey argues that each error individually, and the errors when considered cumulatively, deprived him of his right to a fair trial, and mandate reversal of his convictions and a new trial.

First, we consider the objected-to errors and conclude that more than one instance of prosecutorial misconduct occurred because the prosecuting attorney repeatedly failed to adequately prepare three law enforcement officers to prevent them from testifying to inadmissible character evidence, elicited inadmissible testimony that violated Ramsey's right to confrontation, and used a booking photograph that was not introduced at trial during closing argument. Second, we consider the unobjected-to error and conclude that the district court committed plain error when it allowed hearsay statements identifying Ramsey as the shooter. Finally, we consider the prejudicial effect of these errors and conclude that their cumulative effect warrants a new trial.

A. Objected-to Prosecutorial Misconduct

A prosecutor commits misconduct if she materially undermines the fairness of the trial by violating clear or established standards of conduct. *State v. Fields*, 730 N.W.2d

777, 782 (Minn. 2007). For objected-to prosecutorial misconduct, “we have utilized a harmless-error test, the application of which varies based on the severity of the misconduct.” *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012). Under that test, if the defendant establishes prosecutorial misconduct, we then consider whether that misconduct was harmless beyond a reasonable doubt for serious misconduct or “whether the misconduct likely played a substantial part in influencing the jury to convict” for less serious misconduct. *Id.* at 150.

1. The prosecutor failed to adequately prepare three law enforcement officers to prevent them from testifying to inadmissible character evidence.

Ramsey moved for a mistrial based on testimony from three witnesses, arguing that in each instance, the prosecutor elicited inadmissible character evidence describing prior bad acts. Generally, evidence of other crimes, wrongs, or acts is inadmissible evidence. Minn. R. Evid. 404(b); *see State v. Spreigl*, 139 N.W.2d 167, 173 (Minn. 1965) (holding that when the state seeks to introduce evidence of a defendant’s other crimes or bad acts, the state must provide written notice to the defendant within a reasonable time before trial). Here, the parties agreed that the state would not elicit or attempt to elicit criminal records or evidence that Ramsey was investigated in prior cases and would not otherwise mention other criminal acts or cases. “[T]he state has an absolute duty to prepare its witnesses to ensure that they are aware of the limits of permissible testimony.” *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003).

First, Ramsey challenges testimony from the analyst about using an arrest photo to identify Ramsey during the investigation. The analyst used the word “arrest” when

describing an exhibit, which was a photo of Ramsey. Ramsey argues that because the testimony described how investigators identified Ramsey, the analyst was temporally referring to a prior arrest. The testimony was as follows:

Q: Now showing you page 2 of Exhibit 15, what do we see here?

A: This is a photo that I had received and confirmed later it came from the *Minnesota Repository of Arrest Photos*. Saint Paul Police Department had provided me with the name and date of birth and street name of Mr. Ramsey.

(Emphasis added).

Ramsey moved for a mistrial based on this testimony, arguing that the parties agreed that the state would not elicit any testimony about Ramsey's prior criminal record.⁵ The district court denied the motion, stating, "I find that the evidence is not relevant. I find that it is prejudicial. I find that it is not unfairly prejudicial. I find that it was not intentional, and I believe both sides are conceding that, by either the prosecutor or by the police officer." Defense counsel did not request a curative instruction immediately and reserved the ability to request a curative instruction.

⁵ The state argues that we should review the analyst's statement about the arrest photograph under the modified plain-error standard because Ramsey's objection was untimely. We note that although Ramsey did not object during the witness's testimony, the district court was given an opportunity to provide a curative instruction and declare a mistrial. *See State v. Morgan*, 477 N.W.2d 527, 531 (Minn. App. 1991) ("Th[e] failure to object deprives the trial court of [the] opportunity to either give the jury a curative instruction, or, if the argument is sufficiently egregious, to declare a mistrial."). And because we later review the errors collectively and conclude that under either standard this error alone did not affect Ramsey's substantial rights or play a substantial part in influencing the verdict, we do not decide whether Ramsey's objection was timely.

Second, Ramsey challenges the testimony from the MPD sergeant, and argues that the testimony suggested that Ramsey had a history of possessing the Glock that was in his possession when he was arrested. The testimony was as follows:

Q: What did you find in the car?

A: I found a Glock brand empty magazine in, I believe, the center console.

Q: Why is that significant to this case?

A: I think it is – I believe that it is further – just a little bit more evidence to show that the Glock that was recovered and – was something that was – *that he had a history of possessing it.*

(Emphasis added). Ramsey objected and the district court sustained the objection to the extent that the testimony was about “her belief that the defendant had a history of use.” The district court offered to provide a curative instruction, Ramsey did not request one.

Third, Ramsey challenges the following testimony from the special agent,

Q: In the third week of September, near September 17th to the 21st , were you brought into an investigation of a man named Mr. Deondre Ramsey?

A: Yes, ma’am.

Q: And how so?

A: We were informed that Mr. Ramsey had an active felony warrant through the State of Minnesota *and that he was a felon that was commonly in possession of a firearm.*

(Emphasis added). Ramsey moved for a mistrial. The district court determined,

I agree with the defendant that there has been inadmissible testimony regarding the defendant’s Saint Paul arrest history through [the analyst], and there has been inadmissible testimony through the defendant’s history of use by [the sergeant]. And, most recently, there has been inadmissible testimony by our [special agent] who testified that the defendant has an active felony warrant and that he was known as a felon commonly in possession of a firearm.

The active felony warrant isn't so much troubling because he had an active felony warrant for this offense. What is troubling is that he was known as a felon, meaning he had a prior history, commonly in possession of a firearm, meaning, arguably, that he's for whatever reason, prohibited from possessing a firearm, which is not an element of this offense. While I find that all troubling and all deserving of an instruction if requested, which I will give, I do not find it a sufficient basis for a mistrial at this point. And so I'm going to deny the defendant's motion for a mistrial.

Later the district court opined,

And, Counsel, this strikes me as – I think the baseball term is unforced error. None of this is supposed to happen. You need to talk to your witnesses before they take the stand, and in areas that are as delicate as these, you need to think through the questions that you ask before you solicit an answer that you're not anticipating. This could have been avoided. As I indicated at the bench, you're creating unnecessary issues for appeal here, and it is affecting this defendant's right to a fair trial.

Ramsey argued that a curative instruction was not sufficient under the circumstances. However, the district court read the following curative instruction addressing all three issues to the jury:

Members of the jury, the defendant is on trial for crimes charged and those crimes alone. I instruct you that you are to disregard any testimony about defendant's arrest history or defendant's alleged possession of a firearm prior to September 17th, '22 – 2022. You may not consider or use this evidence or testimony in your deliberations. And again, I refer you to the instructions I gave you at the beginning of the case about what you're not to do when I instruct you that something is to be disregarded or stricken.

Here, each of the three law enforcement officers provided inadmissible character evidence. *See* Minn. R. Evid. 404(b) (evidence of other crimes, wrongs, or acts is

inadmissible evidence). We acknowledge that the testimony was provided in response to open-ended questions and the parties agreed that the conduct was not intentional. However, we agree with the district court that this could have, and should have been avoided. Given that the testimony referring, even ambiguously, to Ramsey's criminal history occurred three times during trial and was from three different experienced law enforcement officers, we conclude that the state engaged in prosecutorial misconduct by not meeting its obligation to adequately prepare its witnesses prior to trial.

2. The prosecutor committed misconduct during closing argument by displaying a “booking” photograph that was not introduced at trial.

Next, Ramsey argues that the prosecutor committed misconduct by displaying Ramsey's booking photograph during closing arguments. The state presented the photograph, which was a profile view of Ramsey, alongside Ramsey's name, date of birth, and the phrase “Block Money,” while arguing that Ramsey was identified as the shooter. After the jury left the courtroom to deliberate, Ramsey renewed his motion for a mistrial because the photograph was not received into evidence during trial. The district court determined the photo was relevant and not unreasonably prejudicial and denied the motion for a mistrial.

“A prosecutor's closing argument should be based on the evidence presented at trial and the inferences reasonably drawn from the evidence.” *State v. Bauer*, 776 N.W.2d 462, 475 (Minn. App. 2009) (quotation omitted). A prosecutor engages in misconduct when they refer to facts that were not admitted as evidence. *State v. Mayhorn*, 720 N.W.2d 776, 788-89 (Minn. 2006). To determine whether prosecutorial misconduct occurred during

closing argument, we examine “the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence.” *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993).

We conclude that it was error for the prosecutor to use the booking photograph during closing argument.⁶ The state concedes that the photograph used during closing argument was not introduced at trial.⁷ And the Minnesota Supreme Court does “not approve of the practice of admitting ‘mug shots’ or ‘booking photographs,’ particularly if the defendant has already been identified.” *State v. Jobe*, 486 N.W.2d 407, 418 (Minn. 1992).

While the state argues that the photograph was duplicative of other photographs introduced at trial, this is not persuasive. The photograph admitted during trial was not an obvious booking photograph but showed Ramsey wearing street clothes and looking directly into the camera. In contrast, the photograph used during closing argument was a side profile of Ramsey from the neck up, and thus was easily identifiable as a booking photograph. And because there was no eyewitness testimony, a large portion of the state’s

⁶ The state argues that we should review the prosecutor’s use of the booking photograph under the modified plain-error standard because Ramsey’s objection was untimely. We note that, similar to above, although Ramsey did not object until after the jury started to deliberate, the district court was given an opportunity to declare a mistrial. *See Morgan*, 477 N.W.2d at 531. And because we later conclude that the cumulative effect of errors deprived Ramsey of a fair trial, we ultimately need not decide whether Ramsey’s objection was timely.

⁷ At trial the state noted that it thought the photograph had been admitted, but was not careful to make sure they were using the exhibit that had been admitted during closing argument.

case was focused on Ramsey's physical features and identifying Ramsey as the individual depicted on the surveillance video.

In sum, the state had no good faith basis to believe that the photograph was admissible, and we conclude that the prosecutor committed misconduct by showing and referring to it during closing arguments.

B. Unobjected-to Prosecutorial Misconduct

If the defendant does not object during trial, we “review the prosecutor’s statements under a modified plain error analysis.” *State v. Davis*, 982 N.W.2d 716, 726 (Minn. 2022) (citing *State v. Ramey*, 721 N.W.2d 294, 299-300, 302 (Minn. 2006)). Under the modified plain-error test, the appellant bears the burden to show that the prosecutor committed error and that the error is plain. *Ramey*, 721 N.W.2d at 302. An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *Id.* If a defendant establishes plain error, the burden shifts to the state to show that “the plain error *did not* affect the defendant’s substantial rights.” *State v. Epps*, 964 N.W.2d 419, 423 (Minn. 2021). Ramsey argues that the prosecutor committed misconduct by eliciting inadmissible hearsay evidence identifying Ramsey as the shooter.

1. The prosecutor committed misconduct by eliciting inadmissible hearsay evidence identifying Ramsey as the shooter and violating Ramsey’s right to confrontation.

Ramsey argues the prosecutor engaged in misconduct by eliciting inadmissible evidence from the analyst identifying Ramsey as the shooter. Ramsey argues that this evidence violated his right to confrontation and was inadmissible hearsay. Specifically, Ramsey challenges the following testimony:

Q: And then during your briefing, were you given additional information that could lead you on the path to potentially identify the shooter in this shooting?

A: Yes. [An officer] had received information that the shooter goes by the name Block.

....

Q: Were you able to identify the shooter in this case?

A: Yes.

Q: And how did you do that?

A: When reviewing the still shots and video from inside [the nightclub], the videos, they're incredibly clear. They are clear enough to see scars, marks, tattoos. Scars, marks, and tattoos are something that are unique. And combined with the tattoos that I could see, him being in the presence of – it appeared to me that he was with [an associate], so I had assumed – well, I'll back up. Between the tattoos, between him being with [the associate], and searching for the name "Block," I ended up looking at Deondre Ramsey. *And I had information from other agencies previously that he went by Block, or Block Money, and the tattoos that I could see on the video matched.*

(Emphasis added.)

Ramsey argues that admitting the analyst's statement identifying the shooter violated his rights under the Confrontation Clause of the Sixth Amendment to the U.S. Constitution. We review whether the admission of evidence violated the Confrontation Clause *de novo*. *State v. Sutter*, 959 N.W.2d 760, 764 (Minn. 2021). And the plain-error analysis applies to unobjected-to alleged violations of the defendant's Sixth Amendment right to confront witnesses. *See State v. Noor*, 907 N.W.2d 646, 649-50 (Minn. App. 2018), *rev. denied* (Minn. Apr. 25, 2018).

"The Sixth Amendment guarantees the accused the right to confront the witnesses against him." *State v. Tscheu*, 758 N.W.2d 849, 864 (Minn. 2008). The Confrontation Clause prohibits the "admission of testimonial statements of a witness who did not appear

at trial unless he was unavailable to testify, and the defendant had had a prior opportunity for cross-examination.” *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). A defendant’s rights under the Confrontation Clause are violated when (1) “the statement in question was testimonial,” (2) “the statement was admitted for the truth of the matter asserted,” and (3) “the defendant was unable to cross-examine the declarant.” *Sutter*, 959 N.W.2d at 765.

We first address whether the statements at issue were testimonial. Here, an officer received information from someone that the shooter goes by the name “Block” and then conveyed this information to the analyst. We conclude that these statements are testimonial because they were made for the purpose of establishing past events for a later criminal prosecution. *Davis v. Washington*, 547 U.S. 813, 822 (2006).

Second, we address whether the statements were offered for the truth of the matter asserted. The state argues that the statement did not violate the Confrontation Clause because it was not offered for the truth of the matter asserted—that Ramsey’s street-name was “Block.” Instead, the testimony was offered to show why the analyst focused on Ramsey as a suspect, and the out-of-court statement was admissible as a tip offered to explain steps in the investigation. We are not persuaded.

“In criminal cases, evidence that an arresting or investigating officer received a tip for purposes of explaining why the police conducted surveillance is not hearsay.” *State v. Litzau*, 650 N.W.2d 177, 182 (Minn. 2002). But “a police officer testifying in a criminal case may not, under the guise of explaining how the investigation focused on the defendant, relate hearsay statements of others.” *Id.* (quotation omitted). Here, the statement was not

offered only to explain the investigation, but also to directly tie Ramsey to the crime. The prosecutor directly asked, “were you able to identify the shooter in this case?” We note that this was a leading question to elicit the analyst’s personal belief that Ramsey was the shooter. *See State v. Hardy*, 354 N.W.2d 21, 24-25 (Minn. 1984) (concluding it was error for a prosecutor to attempt to use the contents of a tip to tie the defendant to the crimes because “the potential of the evidence being used for an improper purpose outweighed its very limited probative value”); *see also Hogetvedt*, 623 N.W.2d at 915 (reversing and remanding for a new trial because officer expressed personal opinion about defendant’s guilt). And the record demonstrates that during closing argument, the state relied on the out-of-court statement to argue that “Block” was Ramsey’s nickname and Ramsey was the shooter.

Lastly, we conclude that Ramsey was not able to cross-examine the police officer who communicated with the analyst, or the individual who communicated with the police officer because the state did not call these individuals to testify. And the state had the burden to allow Ramsey to confront the witnesses who offered the statements against him. *State v. King*, 622 N.W.2d 800, 807 (Minn. 2001). Therefore, we conclude the prosecutor elicited inadmissible testimony that violated Ramsey’s right to confrontation.

III. The cumulative effect of the errors deprived Ramsey of his right to a fair trial.

We next turn to whether the cumulative effect of the identified errors requires reversal. We first assume, without deciding that, individually the alleged instances of prosecutorial misconduct were harmless beyond a reasonable doubt or did not affect Ramsey’s substantial rights. *See State v. Keeton*, 589 N.W.2d 85, 91 (Minn. 1998)

(declining to consider whether errors standing alone would warrant a new trial because the “errors, taken cumulatively, deprived the appellant of his right to a fair trial”); *see also Mayhorn*, 720 N.W.2d at 791 (considering whether the combination of the evidentiary errors and the multiple incidents and types of prosecutorial misconduct deprived appellant of a fair trial). “[An] appellant 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.’” *State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017) (quoting *State v. Yang*, 774 N.W.2d 539, 560 (Minn. 2009)). “When considering a claim of cumulative error, we look to the egregiousness of the errors and the strength of the state’s case.” *Id.* The state argues that the cumulative effect of the errors did not deprive Ramsey of a fair trial because “the state’s case was also otherwise strong in its own right.” We disagree.

Here, the state’s case consisted of video evidence of a man wearing a white t-shirt and blue hat entering the nightclub and separate video evidence of an individual shooting the victim. Relying on details from the video evidence—tattoos and an individual known to law enforcement—investigators identified Ramsey as the individual shown in the video at the nightclub. A few days after the shooting, Ramsey was arrested with a Glock pistol that, through forensic testing, was identified to be the same weapon used in the shooting. Ramsey participated in a Scales interview, during which the interviewing sergeant interpreted Ramsey’s nonverbal body language to mean that he agreed with her statement, “the switch that you were caught with was the switch you used in the shoot.” Based on this evidence, the jury may have found Ramsey guilty. But “[p]rosecutors have an

affirmative obligation to ensure that a defendant receives a fair trial, no matter how strong the evidence of guilt.” *Ramey*, 721 N.W.2d at 300.

The jury should not have heard improper hearsay testimony identifying Ramsey as the shooter on the surveillance video. This evidence deprived Ramsey of a fair trial because the identity of the shooter was the main dispute at trial and there was no evidence from eyewitnesses or from the victim identifying Ramsey as the shooter or placing him in downtown Minneapolis on the night of the offense. The only other evidence identifying Ramsey was dark surveillance video of a man wearing a white t-shirt and blue hat entering the nightclub and separate surveillance video of an individual shooting the victim. *See Fraga*, 898 N.W.2d at 279 (“[W]e are more inclined to order a new trial for cumulative errors in very close factual cases.”). This error was amplified by improper testimony from three different law enforcement officers suggesting that Ramsey had been arrested in the past and had a propensity to possess firearms. And the state reminded the jury of that inadmissible testimony during closing argument by using a booking photograph with the words “Block Money” and Ramsey’s name to argue Ramsey was the shooter, referencing both the hearsay testimony and the testimony suggesting Ramsey’s arrest history. Additionally, after the state displayed the “booking” photograph, no curative instruction was given. However, even if a curative instruction was given, the misconduct was repeated, persuasive, and likely not lessened by a curative instruction. *See State v. Reardon*, 73 N.W.2d 192, 194-95 (Minn. 1955) (holding a curative instruction may not always assuage prejudice that improper remarks may cause).

In sum, we conclude that the cumulative effect of the prosecutorial misconduct and evidentiary errors denied Ramsey the right to a fair trial. We reverse both convictions because both convictions were based on the same evidence. And the identification of the shooter was also dispositive of whether Ramsey was guilty of possessing a machine gun. Although Ramsey had a firearm in his possession when he was arrested, and he was arrested in Ramsey County, the jury found him guilty of possessing a machine gun “between September 17, 2022, and September 21, 2022, in *Hennepin County*.” (Emphasis added.) Accordingly, we reverse his convictions and remand for a new trial.⁸

Reversed and remanded.

⁸ Ramsey also argues that the district court erred by sentencing him on two convictions arising out of the same behavioral incident. Because we reverse and remand for a new trial, we do not address Ramsey’s alternative challenge to his sentence, nor do we address the arguments raised in Ramsey’s pro se supplemental brief.