

*This opinion is nonprecedential except as provided by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
A24-0243**

State of Minnesota,
Respondent,

vs.

Romaine Temor-Lemarc Johnson,
Appellant.

**Filed February 24, 2025
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-23-9146

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

Mary F. Moriarty, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

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

Considered and decided by Bentley, Presiding Judge; Worke, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his convictions for second-degree assault and unlawful possession of a firearm, arguing that the prosecutor committed misconduct by accusing appellant of tailoring his testimony to the state's evidence. We affirm.

FACTS

In April 2023, police officers responded to a shooting and found A.L. with multiple gunshot wounds. Their investigation led them to the nearby apartment of L.B., with whom A.L. was acquainted. At L.B.'s building, officers observed bullet holes in the exterior door and spent bullet casings in the hallway and on the floor inside L.B.'s apartment. Officers found appellant Romaine Temor-Lemarc Johnson in a bedroom and placed him under arrest. Officers found a firearm hidden in the apartment that matched the caliber of the spent bullet casings. Johnson's DNA matched the major DNA profile on the firearm. Johnson was charged with attempted murder, second-degree assault, and unlawful possession of a firearm.

At trial, Johnson initially advanced an alternative-perpetrator defense. In his opening statement, he argued that it would have been easy for someone else to have shot A.L. and escape before first responders arrived. Johnson also suggested that the DNA evidence was unreliable.

The state called L.B. and A.L. as witnesses. L.B. testified that she heard A.L. and Johnson arguing but did not witness the shooting. She also testified that she told police that "Johnson had a gun" that night.

It was unclear whether A.L. could testify because he was recovering from his wounds, but on the second day of trial, A.L. appeared to testify. Immediately prior to A.L. taking the stand, Johnson abandoned his alternative-perpetrator defense and notified the district court that he intended to assert self-defense. The district court noted that the late

disclosure was prejudicial to the state's case, but took the request for a self-defense jury instruction under advisement.

A.L. testified that he had been staying at L.B.'s apartment and was asleep when Johnson arrived. He testified that when he awoke, Johnson threatened him with a gun, and when he attempted to leave, Johnson shot him.

Johnson testified that he arrived at L.B.'s apartment unarmed. He testified that L.B. and A.L. were arguing, and that when he intervened, A.L. reached for a gun in his waistband. Johnson stated that he slammed A.L. against a wall. As they struggled over the gun, a shot was fired, and Johnson realized that A.L. had shot himself. Johnson pulled the gun out of A.L.'s hand and fired shots at A.L. as A.L. ran out of the building.

Prior to closing statements, the state moved the district court for permission to argue that Johnson tailored his testimony to the state's evidence. Johnson objected. The district court granted the state's request and granted Johnson's request for a self-defense jury instruction.

The state argued in closing:

[Johnson's] defense came out of nowhere during the trial. Nobody . . . expected that we were going to be able to get [A.L.] to come into this courtroom and testify. . . . We prepared and anticipated a largely circumstantial case, without the direct evidence of the victim But you know what, he showed up.

The only other person in that room that night showed up. [A.L.] identified [Johnson] as the shooter and that's when it became a self-defense case all of a sudden. Think about that. Think about how the evidence presented during this trial varied from what we all expected and how they responded, how his story changed, how the defense changed.

Once [Johnson] knew that the only other person in that room was going to come in here and testify about what happened, all of a sudden, it's a self-defense case. What does that mean? It undermines the credibility of the self-defense claim.

In his closing, Johnson claimed that he did not initially assert self-defense because he did not want to be labeled a snitch.

The jury found Johnson guilty of second-degree assault and unlawful possession of a firearm, and not guilty of attempted murder. The district court imposed concurrent prison sentences of 132 months for the unlawful possession conviction and 71 months for the assault conviction. This appeal followed.

DECISION

Johnson argues that the prosecutor committed misconduct by suggesting that Johnson tailored his defense to fit the state's evidence.

We review objected-to prosecutorial misconduct for harmless error, and we will not reverse a conviction if the misconduct was harmless beyond a reasonable doubt. *State v. Swanson*, 707 N.W.2d 645, 658 (Minn. 2006). “[M]isconduct is harmless beyond a reasonable doubt if the verdict rendered is surely unattributable to the error.” *State v. Hunt*, 615 N.W.2d 294, 302 (Minn. 2000).

Tailoring occurs when a defendant shapes his testimony to fit the state's version of the case. *State v. Leutschaft*, 759 N.W.2d 414, 419 (Minn. App. 2009), *rev. denied* (Minn. Mar. 17, 2009). Tailored testimony is “fair game for attack,” *id.*, because “[a] defendant's credibility is subject to impeachment . . . once the defendant takes the stand and testifies.” *Swanson*, 707 N.W.2d at 657 (Minn. 2006). But a defendant has the right under the

Confrontation Clause to be present at trial and hear the testimony against him. *Id.* It is prosecutorial misconduct to “use a defendant’s exercise of his right of confrontation to impeach the credibility of his testimony,” unless the state has evidence that a defendant tailored his testimony to the state’s case. *Id.* at 657-58.

Because the state does not dispute that the prosecutor accused Johnson of tailoring his testimony, we turn directly to the question of whether there was sufficient evidence to justify the accusation.

To justify a tailoring accusation, the state must cite “specific evidence” that demonstrates a “fit” between the defendant’s testimony and the state’s evidence against him. *Id.* Evidence of tailoring exists when a defendant significantly changes his version of events after hearing the state’s evidence against him. *State v. Ferguson*, 729 N.W.2d 604, 617 (Minn. App. 2007), *rev. denied* (Minn. June 19, 2007).

The state argues that there was sufficient evidence to accuse Johnson of tailoring his testimony, and we agree. The record reflects that Johnson initially advanced an alternative-perpetrator defense. Then, after hearing L.B.’s damaging testimony, and learning that A.L. planned to testify, Johnson changed his story and admitted, for the first time, that he was involved in A.L.’s shooting. That version of events differs significantly from Johnson’s original version, and it also fits the state’s evidence against him. In fact, self-defense appears to be the only plausible explanation that Johnson could offer to rebut the fact that he was found at the scene of the crime, that the major DNA profile on the gun matched his own, that A.L. identified him as the shooter, and that L.B. told police that Johnson had a gun.

Johnson does not challenge the state's tailoring evidence, arguing instead that when a district court grants a defendant's request to assert self-defense, the state is then precluded from arguing that the defendant has tailored his testimony. Johnson offers no authority for his claim and asks this court to adopt it as a new rule of law. As an error-correcting court, that is not our role. *See Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *rev. denied* (Minn. June 17, 1998).

However, even if the prosecutor's tailoring accusation did constitute misconduct, we conclude that it was harmless beyond a reasonable doubt. To determine whether misconduct was harmless beyond a reasonable doubt, we consider, among other things, the strength of the other evidence supporting the verdict, whether the state's argument was emphasized, and whether the defendant countered it. *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016). Here, the prosecutor limited the tailoring accusation to a few paragraphs in closing argument, Johnson countered it in his closing argument, and the evidence against Johnson was strong.

Finally, the holding in *Swanson* serves to safeguard a defendant's rights under the Confrontation Clause, and the record in this case demonstrates that the parties were cognizant of those rights and took steps to uphold them. The prosecutor sought the district court's permission before making the tailoring accusation; defense counsel preserved the issue through timely objection; and the district court deliberated on the prosecutor's request, ultimately providing a well-reasoned decision consistent with caselaw.

Because there was specific evidence that Johnson tailored his testimony to fit the state's evidence against him, we conclude that the prosecutor did not commit misconduct.

Affirmed.