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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1129**

State of Minnesota,
Respondent,

vs.

Brandon Capone Williams-Gillard,
Appellant.

**Filed July 21, 2025
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69DU-CR-23-2043

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his convictions of aiding and abetting second-degree murder, aiding and abetting second-degree assault, and drive-by shooting, arguing that (1) the

district court made several prejudicial evidentiary errors, and (2) the prosecutor committed misconduct by misstating the law on accomplice liability. We affirm.

FACTS

In August 2023, respondent State of Minnesota charged appellant Brandon Capone Williams-Gillard with three crimes: aiding and abetting second-degree murder, aiding and abetting second-degree assault, and drive-by shooting. An eight-day jury trial was held in late November and early December. The following summarizes the evidence presented at trial.

Williams-Gillard and Sanussi Bangoura (codefendant) are friends and share a house in Duluth. Codefendant has a long-running conflict with another Duluth resident, whom we will call Jason to preserve his privacy. This conflict eventually expanded to involve friends of codefendant and Jason. It is undisputed that members of the two friend groups had orally confronted and threatened each other in the past.

In early August, Jason drove alone to a church parking lot to deliver a rent check to his ex-girlfriend. As he was leaving, a blue Chrysler 300—owned and driven by codefendant—cut him off. Williams-Gillard jumped out of the front passenger seat and began “punching” and “smacking” Jason’s car and yelling at Jason to exit the vehicle to fight. Because he was outnumbered, Jason told Williams-Gillard and codefendant to follow him down the road to his friend’s house where they could have a fistfight. The two vehicles proceeded to the home of Jason’s friend (victim). During the drive, Jason called another friend, whom we will call Carter, who was present at victim’s house, and asked him to come outside to back him up in a fight.

Upon arrival, Jason parked and exited his vehicle. He was then joined by Carter, victim, and two other individuals, whom we will refer to as Michael and Oliver. The five men walked down the street toward the Chrysler, yelling at codefendant and Williams-Gillard to get out of the car to “box.” Williams-Gillard momentarily exited out of the passenger door, but then re-entered the vehicle. As Jason and friends approached, Carter—who was filming the interaction on his cell phone—observed codefendant reaching for something he assumed was a gun. Carter punched codefendant in the face through the open driver’s side window and began running away. Multiple shots were then fired out of the Chrysler as the vehicle sped off. One of them hit Carter in the buttocks. Another hit victim in the head.

A home-security camera located on a nearby house captured the shooting. The video footage depicts the five men approaching the Chrysler on foot, followed by codefendant driving off with his right hand on the steering wheel and his left hand extended out of the window, firing a gun. Williams-Gillard’s actions are not discernible from the security footage. But Carter’s cell phone video shows Williams-Gillard sitting in the passenger seat, with a phone on his lap and a black fanny pack strapped around his body. At the time of the shooting, Williams-Gillard appears to be holding an unknown dark object at chest level.

After the Chrysler left the scene, Carter immediately called 911. Jason and Oliver took Carter to the hospital to be treated for his gunshot wound. Michael stayed at the scene with victim, who later died from his injury.

The Police Investigation of the Scene and Williams-Gillard's House

Police promptly arrived at the scene and began collecting evidence. Several .40-caliber shell casings were discovered on the street where the shooting occurred, .40-caliber bullet remnants were found in and around surrounding residences, and a 9mm bullet was recovered from a vehicle parked on the street. Police obtained home-security footage and interviewed individuals present at the scene, including Michael. Officers also went to the hospital, where they interviewed both Jason and Carter. Officers obtained additional statements from Jason and Carter in the days following the incident.

After identifying Williams-Gillard and codefendant as suspects, officers proceeded to their home in search of them. There, officers located codefendant, who informed them that his Chrysler was parked behind the house. Officers searched both the vehicle and the home.

The search of the Chrysler revealed two 9mm shell casings, one located on the driver's seat and the other on the driver's side floorboard. Additionally, a pair of rubber gloves was found in one of the vehicle's center-console cupholders. Four shell casings—three 9mm and one .40-caliber—were located inside one of the gloves.

In the home, officers found various firearm paraphernalia. Codefendant's bedroom contained a "drum-type magazine" for a pistol, three .30-06-caliber rifle cartridges, a gun holster, and a "sawed-off rifle barrel." And in Williams-Gillard's room, officers found two pistol magazines (one extended) both containing unfired bullets, along with several boxes of ammunition, including 9mm and .40-caliber ammunition matching shell casings recovered at the scene of the shooting.

Williams-Gillard's Post-Shooting Conduct and Apprehension

Immediately after the shooting, codefendant drove Williams-Gillard to an auto repair shop where his vehicle was being serviced. At approximately 2:00 p.m., Williams-Gillard picked up his vehicle and proceeded alone to the Miller Hill Mall where he met up with three friends, whom we will call Raymond, Anna, and Nina. The four shopped for an hour or so and then went to Raymond's home. During this time, Williams-Gillard made many phone calls and, because of security cameras positioned around his property, saw that police officers were at his house. Williams-Gillard told his three friends that, while he was in the car with codefendant, codefendant was punched through his window, prompting him to begin angrily shooting his gun. Williams-Gillard stated that codefendant fired about nine rounds and that he had shot his own firearm twice or maybe three times.

Williams-Gillard then asked Raymond to go to his house and retrieve ammunition from his bedroom. Raymond left with Nina to do so but did not enter Williams-Gillard's home because police officers were there. Upon returning home, Raymond spoke at length with Williams-Gillard, who was visibly upset and "crying."

That evening, police apprehended Williams-Gillard at Raymond's home. Williams-Gillard informed the arresting officers that Raymond, Anna, and Nina had "nothing to do with anything." All four individuals were then transported to the police station where Williams-Gillard, Raymond, and Anna provided statements to law enforcement. The next day, Raymond and Anna voluntarily returned to the police station to provide additional statements.

The Trial

At trial, the jury heard testimony from 40 witnesses, including Jason, Carter, Michael, Raymond, and Anna. And the district court admitted over 200 exhibits, including video footage of the shooting, the audio recordings of the 911 calls, recorded witness statements made to police, and three recorded phone calls codefendant made from jail.¹ Williams-Gillard did not testify and presented no evidence.

The jury found Williams-Gillard guilty as charged and the district court sentenced him to 480 months in prison for aiding and abetting second-degree murder and lesser concurrent prison terms for the other two offenses.

Williams-Gillard appeals, contending that the district court made numerous evidentiary errors and the prosecutor committed misconduct during closing argument.

DECISION

I. The district court’s alleged evidentiary errors do not warrant relief.

We review a district court’s evidentiary rulings for abuse of discretion. *State v. Boswell*, 20 N.W.3d 640, 651 (Minn. App. 2025), *rev. denied* (Minn. June 25, 2025). 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.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017). Even if evidence was erroneously admitted, we will not reverse unless there is a “reasonable possibility that the wrongfully admitted evidence significantly affected the verdict.” *State v. Bigbear*, 10 N.W.3d 48, 54 (Minn. 2024) (quotation omitted). The

¹ Codefendant invoked his Fifth Amendment right against self-incrimination and did not testify.

appellant bears the burden of proving abuse of discretion and that admission of the evidence was prejudicial. *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006).

Williams-Gillard argues that the district court abused its discretion by admitting (1) evidence that he possessed a firearm on previous occasions, (2) codefendant's hearsay statements made in three recorded jail calls, (3) Raymond's hearsay statements contained in a recorded statement to police, and (4) Jason's hearsay statements made in two recorded statements to police. We address each argument in turn.

A. Prior Possession of a Firearm

Under the Minnesota Rules of Evidence, “[e]vidence of another crime, wrong, or act is not admissible to prove the character of a person in order to show action in conformity therewith.” Minn. R. Evid. 404(b)(1). But this so-called *Spreigl*² evidence may be admissible for other purposes, such as “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.* To admit *Spreigl* evidence:

- (1) the state must give notice of its intent to admit the evidence;
- (2) the state must clearly indicate what the evidence will be offered to prove;
- (3) there must be clear and convincing evidence that the defendant participated in the prior act;
- (4) the evidence must be relevant and material to the state's case; and
- (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

State v. Smith, 940 N.W.2d 497, 503 (Minn. 2020) (emphasis omitted) (quotation omitted).

² *State v. Spreigl*, 139 N.W.2d 167, 169 (Minn. 1965) (stating that Minnesota courts generally adhere to the “rule excluding evidence connecting a defendant with other crimes, except for purposes of impeachment”).

Williams-Gillard contends evidence that he possessed a firearm on previous occasions is “inadmissible character evidence” not subject to a rule 404(b) exception. The challenged evidence was elicited through the following testimony of Carter and Anna.

PROSECUTOR: So there was conflict, and—and you’re saying that you and your friends would help [Jason] out and—when you guys would have run-ins with [codefendant] and [Williams-Gillard]?

CARTER: Yes.

PROSECUTOR: What were—were there ever any weapons involved when you guys would have run-ins in public?

CARTER: Like, just—we’d just see them, but never—they would never be brought into it.

PROSECUTOR: You would see—

CARTER: Just see ‘em.

PROSECUTOR: You would see what?

CARTER: Just see weapons.

PROSECUTOR: Okay.

CARTER: Yeah.

PROSECUTOR: And what do you mean, you would see weapons?

CARTER: Just, like, in laps, and that’s about it when we’re, like, passing each other and stuff like that.

PROSECUTOR: Okay. But no one was—you would see people with weapons, but no one was using the weapons?

CARTER: Yeah.

PROSECUTOR: And would that include people on your side as well?

CARTER: Yeah.

The prosecutor pursued a similar line of questioning with Anna:

PROSECUTOR: And in the—in the month time frame that you had known Mr. Williams-Gillard leading into this shooting, had you ever seen him with any weapons?

ANNA: Just one time.

PROSECUTOR: And when was that?

ANNA: We were, like, all at his house, and it was just in his room. There was just a gun on his—like, by his safe in his room.

Assuming without deciding that the district court abused its discretion by admitting this testimony, the record persuades us that its admission was harmless. In determining whether erroneously admitted evidence significantly affected the verdict, we consider the record as a whole and weigh the following nonexclusive factors: “(1) the manner in which the party presented the evidence, (2) whether the evidence was highly persuasive, (3) whether the party who offered the evidence used it in closing argument, and (4) whether the defense effectively countered the evidence.” *Bigbear*, 10 N.W.3d at 54 (quotation omitted). Not every factor is “relevant or persuasive in every case.” *Id.* at 55. And “strong evidence of guilt undermines the persuasive value of wrongfully admitted evidence.” *Id.* at 54 (quotation omitted). With this in mind, we consider the relevant *Bigbear* factors.

First, the evidence that Williams-Gillard possessed a firearm on prior occasions was not presented in a prominent manner. Indeed, the above exchanges span three pages of an approximately 1,400-page transcript. *See id.* at 56 (stating that number of transcript pages may be considered when analyzing whether the challenged evidence featured prominently in the state’s case). And the state did not mention this evidence in either its opening statement or closing arguments.

Second, the persuasive value of the evidence was minimal. Anna testified that she had observed Williams-Gillard with a firearm “one time.” And Carter made only a general statement that he had observed unidentified members of codefendant’s friend group with “weapons.” Moreover, numerous photo exhibits and testimonial evidence about the magazines and ammunition found in Williams-Gillard’s bedroom effectively rendered Anna’s and Carter’s statements cumulative.

Finally, the state presented strong evidence of Williams-Gillard’s guilt. The jury viewed video evidence of the shooting, including cell-phone audio of Williams-Gillard engaging in smack talk and footage of him sitting in the vehicle out of which shots were fired with something dark and indiscernible in his hands. Law enforcement recovered *two types* of shell casings from the scene; casings from .40-caliber bullets—which can be linked to codefendant—and casings from 9mm bullets. Williams-Gillard’s bedroom contained a large quantity of ammunition of the same brand and caliber used in the shooting. Anna described Williams-Gillard as “anxious” and “crying” after the shooting and stated that he told her and their other friends that he was in codefendant’s car at the time of the shooting. And Anna testified—without objection—that she overheard Williams-Gillard admit to Raymond that he “shot his gun twice” during the incident. Considered cumulatively, these facts form overwhelming evidence of Williams-Gillard’s guilt that undermines any persuasive value of the challenged prior-gun-possession evidence.³ Such “overwhelming

³ This summary of the evidence excludes the evidence that Williams-Gillard challenges on appeal.

evidence of guilt is a factor, often a very important one,” in determining whether an error was harmless. *Bigbear*, 10 N.W.3d at 59 (quotation omitted).

On this record, we conclude there is not a reasonable probability that the district court’s admission of evidence that Williams-Gillard has previously possessed a firearm significantly affected the jury’s verdict. Accordingly, any error in its admission was harmless.

B. Codefendant’s Jail Calls

Williams-Gillard next argues that the district court abused its discretion by admitting three recorded calls codefendant made from jail. The parties do not dispute, and we agree, that the recordings are hearsay. Hearsay is an out-of-court statement offered in evidence to prove the truth of the matter asserted and is generally inadmissible. Minn. R. Evid. 801(c), 802. But Minn. R. Evid. 804(b)(3) provides an exception to this general rule for statements made against the declarant’s penal interest.

For a statement to be admissible under the statement-against-interest exception, the district court must: (1) determine that the declarant is unavailable to testify; (2) determine that the hearsay statement “at the time of its making . . . so far tended to subject the declarant to civil or criminal liability . . . that a reasonable person in the declarant’s position would not have made the statement unless believing it to be true”; and (3) scrutinize the statement to avoid violating the Confrontation Clause. Minn. R. Evid. 804(b)(3); *State v. Morales*, 788 N.W.2d 737, 762 (Minn. 2010) (quotation omitted).

When admitting hearsay under this exception, the district court must “construe the term ‘statement’ narrowly and allow only those statements that directly inculcate the

declarant and not admit a larger narrative that merely contains some inculpatory statements.” *State v. Tovar*, 605 N.W.2d 717, 723 (Minn. 2000). Statements of arrested accomplices may be admissible if they are “truly self-inculpatory, rather than merely attempts to shift blame or curry favor.” *Morales*, 788 N.W.2d at 764 (quoting *Williamson v. United States*, 512 U.S. 594, 603 (1994)).

Codefendant made three calls from jail. During the first call, he stated that Raymond was a “snitch[.]” In the second call, he described the shooting, asserting that the entire situation “was all in [Williams-Gillard’s] hands.” Codefendant stated that Williams-Gillard told him to “block [Jason] in” while at the church parking lot and then instructed him to follow Jason to the site of the shooting. Codefendant admitted that he “sho[t] up in the air,” but explained that it was Williams-Gillard who was “aiming in on” and “shooting” at Jason and his friends. Finally, in the third call, codefendant stated, “I believe the angle that I was shooting, I couldn’t have hit anybody, especially because I was driving.”

It is undisputed that codefendant was unavailable to testify because he invoked his Fifth Amendment privilege against self-incrimination. Williams-Gillard asserts that admission of these recordings was an abuse of discretion because the calls (1) contain “inadmissible narrative,” and (2) are blame-shifting and not truly against codefendant’s penal interest.⁴ This assertion has merit.

⁴ The state argues that Williams-Gillard forfeited the argument that the calls contain inadmissible narrative because, at a pretrial hearing, he agreed that it was generally “safe to leave the redaction issues in [the parties’] hands.” We are not persuaded. Defense counsel immediately followed this statement with, “I was going to ask the Court to review [codefendant’s] county jail calls . . . before issuing a decision on that one issue.”

“Rule 804(b)(3) does not consider whether an entire [statement] is, on balance, against the declarant’s interest.” *Id.* at 763. Rather, it requires district courts to “parse a declarant’s generally self-inculpatory narrative to separate and omit from the narrative non-self-inculpatory declarations or remarks.” *Id.* Codefendant’s jail calls included several self-inculpatory statements, but they were interspersed within a blame-shifting narrative that tends to downplay his involvement. We therefore conclude that the district court abused its discretion in admitting codefendant’s recorded calls.

But the record persuades us that admission of the jail recordings did not significantly affect the jury’s verdict. *See Bigbear*, 10 N.W.3d at 54 (listing the nonexclusive harmless-error factors). Codefendant’s calls were not presented in a prominent manner—they are referenced on only 19 transcript pages. And the content of the calls has minimal persuasive value; the information relayed is largely cumulative of the video evidence of the shooting and the testimony provided by Jason, Carter, Michael, and Anna. The prosecutor did describe the calls—and played two short audio excerpts—during closing arguments. But the excerpts and related discussion were brief, comprising only three of the 41-page closing arguments. Finally, as discussed above, the evidence of Williams-Gillard’s guilt was strong. On this record, admission of codefendant’s jail calls was harmless.

C. Raymond’s Statement to Police

Williams-Gillard argues that the district court abused its discretion by admitting a video recording of the statement Raymond gave to police the day after the shooting

occurred.⁵ Again, the parties agree—and so do we—that Raymond’s police statement constitutes hearsay. *See* Minn. R. Evid. 801(c). Williams-Gillard challenges the district court’s admission of the recording under Minn. R. Evid. 807, the residual hearsay exception.

The residual hearsay exception permits admission of a hearsay statement that satisfies a number of requirements and has “equivalent circumstantial guarantees of trustworthiness.” Minn. R. Evid. 807. We evaluate the trustworthiness of a statement using the totality of the circumstances. *State v. Hallmark*, 927 N.W.2d 281, 292 (Minn. 2019). In doing so, we consider the four factors first set forth in *State v. Ortlepp*, 363 N.W.2d 39 (Minn. 1985):

(1) there is no Confrontation Clause issue because the declarant testifies, admits to making the prior statement, and is available for cross-examination by the defense counsel; (2) the statement is recorded, removing any real dispute about what the declarant said; (3) the statement is against the declarant’s penal interest; and (4) the statement is consistent with the State’s other evidence that “pointed strongly toward” the defendant’s guilt.

Hallmark, 927 N.W.2d 281 at 293 (quoting *Ortlepp*, 363 N.W.2d at 44). But these factors are not the “*only* relevant factors” under the totality test. *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020). We may also assess whether the statement was voluntary, whether the statement was made under oath and subject to cross-examination, the relationship between the declarant and the litigants, and whether the declarant recanted the statement. *Id.*

⁵ Williams-Gillard does not challenge the admission of the video recording of the statement Raymond made to police on the day of the shooting.

On the day after the shooting, Raymond told police that Williams-Gillard told him that he had shot his gun two, maybe three times during the incident. At trial, Raymond recanted this statement, testifying that Williams-Gillard only told him that “some sh-t had happened.” Raymond explained that he lied to police about Williams-Gillard shooting his gun to try to expedite the return of his own firearm, which had been confiscated during the search of his home following Williams-Gillard’s arrest.

Over Williams-Gillard’s objection that the statement was not trustworthy because Raymond had recanted, the district court admitted the statement under the residual exception. The court reasoned that (1) Raymond had testified, (2) he admitted making the statement, (3) the statement matched Anna’s testimony, and (4) his long-standing friendship with Williams-Gillard played a role in his differing testimony.

On appeal, Williams-Gillard concedes that the first two *Ortlepp* factors (the declarant’s availability and the existence of a recording) are satisfied. But he argues that the third factor is not because Raymond’s statement was not against his *penal* interest, as it does not subject him to criminal liability. *See Hallmark*, 927 N.W.2d at 293. We are not persuaded. “[T]he third *Ortlepp* factor may be satisfied even when a declarant’s statement is not against the declarant’s penal interest if the declarant is hostile to the state and supportive of the defendant.” *State v. Plantin*, 682 N.W.2d 653, 659 (Minn. App. 2004) (citing *State v. Whiteside*, 400 N.W.2d 140, 146 (Minn. App. 1987), *rev. denied* (Minn. Mar. 18, 1987)), *rev. denied* (Minn. Sept. 29, 2004). Raymond was hostile to the state, as shown by the need to subpoena him to obtain his testimony at trial. And Raymond is supportive

of Williams-Gillard—he testified that Williams-Gillard is “one of [his] closest friends.” Accordingly, we conclude that the third *Ortlepp* factor is satisfied.

Williams-Gillard also contends that the district court erred in concluding the fourth *Ortlepp* factor—that the statement is consistent with other evidence—was met because Anna’s testimony has its “own trustworthiness issues.” We are not convinced. Anna’s testimony aligns exactly with Raymond’s statement to police; both consistently describe spending time with Williams-Gillard at the mall and then at Raymond’s house, and both state that Williams-Gillard told Raymond that he had shot his firearm twice. The assessment of Anna’s credibility was a function of the jury. *State v. Reese*, 692 N.W.2d 736, 741 (Minn. 2005).

Finally, Williams-Gillard asserts that the unsworn nature of Raymond’s statement and his subsequent recantation render it untrustworthy. *See Vangrevenhof*, 941 N.W.2d at 736. Although the statement was not made under oath, the fact that Raymond came to the police station of his own accord—the day after the shooting—to make the statement supports its veracity. *See Hallmark*, 927 N.W.2d at 295 (considering the voluntary nature of a statement in analyzing its trustworthiness). And while Raymond did recant the statement at trial, a recanted statement may be sufficiently trustworthy under the residual hearsay exception when “(1) other uncontradicted evidence discredits the declarant’s recantation; (2) the declarant possesses a motive to falsely recant; (3) the declarant’s recantation is itself inconsistent; and (4) the prior hearsay statements are strongly corroborated by evidence admitted at trial.” *Id.* at 293 (quotation omitted). That is the situation here. As discussed above, Anna’s testimony discredits Raymond’s recantation and

Raymond's close friendship with Williams-Gillard provides him a clear motive to falsely recant. Moreover, the officers' discovery of 9mm shell casings in codefendant's car and the matching 9mm ammunition in Williams-Gillard's bedroom further corroborates the substance of Raymond's police statement.

Because we conclude that Raymond's police statement was sufficiently trustworthy under *Ortlepp* and *Vangrevenhof*, we discern no abuse of discretion by the district court in admitting it.

D. Jason's Statements to Police

Williams-Gillard finally argues that the district court abused its discretion by admitting Jason's two recorded statements to police. Jason's first statement was made immediately after the shooting, while he was at the hospital with Carter. His second statement was made later that same day at the police station. We address the admissibility of each statement in turn.

Jason's First Statement

Jason's first statement to police identifies Williams-Gillard and codefendant as the shooters. The district court admitted it as a nonhearsay statement of identification under Minn. R. Evid. 801(d)(1)(C). Under that rule, a statement is not hearsay if:

The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is . . . one of identification of a person made after perceiving the person, if the court is satisfied that the circumstances of the prior identification demonstrate the reliability of the prior identification.

Minn. R. Evid. 801(d)(1)(C).

In *State v. Robinson*, our supreme court explained that the rationale behind this rule “stems from the belief that if the original identification procedures were conducted fairly, the prior identification would tend to be more probative than an identification at trial.” 718 N.W.2d 400, 408 (Minn. 2006) (quotation omitted). The court then clarified that “[t]his rationale applies to cases involving the prior identification of an unknown offender, where the in-court identification is so highly suggestive that it would be misleading if the jury were allowed to believe that this was the witness’s only identification of the offender.” *Id.* Because this same reasoning does not apply to the identification of a known offender, the court held that rule 801(d)(1)(C) “does not extend to the out-of-court accusation against an offender whose identity was well-known to the victim.” *Id.*

Williams-Gillard argues that the district court abused its discretion in admitting the statement under rule 801(d)(1)(C) because Williams-Gillard was a “known offender” to Jason. *See id.* We agree. Jason testified that he knew both Williams-Gillard and codefendant “from the city” and explained that he, codefendant, and their respective friend groups had been in conflict for “years.” Based on this testimony, it is clear that Williams-Gillard was well known to Jason. Accordingly, the district court abused its discretion by admitting Jason’s first statement under rule 801(d)(1)(C). *See id.*

Because the district court abused its discretion, we must assess whether there is a “reasonable possibility” that the evidence “significantly affected the verdict.” *Bigbear*, 10 N.W.3d at 54 (quotation omitted). An examination of the relevant factors persuades us that it did not.

Jason's first statement did not play a prominent role at trial and was only minimally persuasive. The jury viewed the ten-minute video recording one time during an eight-day trial. This equates to approximately 15 pages of transcript, of which approximately six sentences specifically identify Williams-Gillard and codefendant. The substance of Jason's first statement was otherwise cumulative of his trial testimony. And his identifications of Williams-Gillard and codefendant were cumulative of those made by Carter and Michael, which Williams-Gillard does not challenge. Williams-Gillard had the opportunity to and did cross-examine Jason about the discrepancies between the statement and his testimony, and about his own prior criminal record. And while the prosecutor did reference the first police statement during closing argument, the discussion was limited, amounting to only four pages of their 41-page closing arguments. Finally, as we have discussed, the evidence of Williams-Gillard's guilt was strong. In short, we conclude that there is no reasonable probability that the admission of Jason's first police statement significantly affected the jury's verdict. *See Smith*, 940 N.W.2d at 505.

Jason's Second Statement

Jason's second statement to police recounts the events of the shooting, identifies Williams-Gillard and codefendant as the shooters, and explains Jason's conflict with codefendant. Williams-Gillard contends that the statement is hearsay and that no exception applies. But he did not object to its admission at trial. We review the unobjected-to admission of evidence for plain error. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). Under the plain-error standard, a defendant must establish (1) error, (2) that was plain, and (3) that affected the defendant's substantial rights. *State v. Fraga*, 898 N.W.2d

263, 277 (Minn. 2017). An error is “plain” when it clearly or obviously contravenes caselaw, a rule, or a standard of conduct. *State v. Lilienthal*, 889 N.W.2d 780, 785 (Minn. 2017). If the three plain-error requirements are met, this court may only correct the error if it “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” *Pulczynski v. State*, 972 N.W.2d 347, 356 (Minn. 2022).

It is difficult to review evidentiary issues—particularly hearsay challenges—for plain error. Indeed, “[t]he number and variety of exceptions to the hearsay exclusion make objections to such testimony particularly important to the creation of a record of the trial court’s decision-making process in either admitting or excluding a given statement.” *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). Because Williams-Gillard did not object to the admissibility of Jason’s second statement, the state did not have the opportunity to demonstrate that one of the many hearsay exceptions applies. Nor did the district court have the opportunity to evaluate the statement’s admissibility under the various evidentiary rules. Because we conclude that Jason’s second statement is not “clearly or obviously inadmissible hearsay,” *see id.*, we discern no plain error and need not consider the remaining prongs of the plain-error analysis, *Lilienthal*, 889 N.W.2d at 785.

II. The prosecutor did not commit misconduct by misstating the law on accomplice liability.

Where, as here, the defendant did not object to claimed prosecutorial misconduct at trial, we review for plain error. *State v. Patzold*, 917 N.W.2d 798, 806 (Minn. App. 2018), *rev. denied* (Minn. Nov. 27, 2018). In doing so, we apply a “modified” plain-error test, under which the defendant must establish that error occurred and that the error was plain.

Id. If plain error is shown, the burden shifts to the state to demonstrate that the error did not affect the defendant’s substantial rights. *Id.* A prosecutor errs when they misstate the law during closing argument. *State v. Segura*, 2 N.W.3d 142, 161 (Minn. 2024).

Under Minnesota law, a person is liable for aiding and abetting the crimes of another if “the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the other to commit the crime.” Minn. Stat. § 609.05, subd. 1 (2022). Aiding and abetting is a “theory of criminal liability”; it is not a “separate substantive offense.” *State v. Ezekia*, 946 N.W.2d 393, 407 (Minn. 2020) (quotations omitted). Minnesota Statutes section 609.05 holds an accomplice liable as if they were the principal. *State v. Lee*, 683 N.W.2d 309, 315 (Minn. 2004).

In closing argument, the prosecutor described accomplice liability as follows:

So in this case, [codefendant] and Mr. Williams-Gillard, there is not a principal actor. *They’re acting equally together towards a goal of this drive-by shooting, so it does not matter, legally, whose bullet killed [victim] or whose bullet injured [Carter]*, because they’re acting equally in this drive-by shooting by both shooting guns. Because of that, they’re both charged with aiding and abetting that drive-by shooting that led to [victim’s] death and led to [Carter’s] injury.

(Emphasis added.)

Williams-Gillard contends this misstated the law because a person is either a “principal or an accomplice to a crime” and, if a person is charged as an accomplice, “the state has to prove that the principal committed the offense, and the defendant intentionally aided it.” The state points to *State v. Atkins*, 543 N.W.2d 642 (Minn. 1996), as support for the prosecutor’s argument. We agree that *Atkins* guides our analysis.

Atkins was found guilty under an accomplice-liability theory for intentional first-degree murder while committing or attempting to commit a robbery. *Atkins*, 543 N.W.2d at 646. The accomplice-liability theory was necessary because Atkins and another individual had “each accused the other of firing the shots that killed” the victim. *Id.* In considering Atkins’s sufficiency-of-the-evidence challenge, the supreme court explained that the clear purpose of accomplice liability is to allow the state to charge and prosecute two accomplices, even if “each point[s] the finger at the other as the truly guilty one.” *Id.* In other words, “under Minn. Stat. § 609.05, regardless of who fired the fatal shots, either Atkins or [his accomplice] could be charged and prosecuted for first-degree murder.” *Id.*

Consistent with *Atkins*, the prosecutor here told the jury that it did not matter whether Williams-Gillard or codefendant fired the shots that killed victim and injured Carter. That explanation captures the essence of the accomplice theory of criminal liability, which makes accomplices criminally liable as principals and permits the prosecution of more than one individual when it is impossible to precisely pinpoint exactly who dealt the critical blow. *See id.* With this in mind, we see no error—let alone plain error—in the prosecutor’s explanation of the law during closing argument. *See Ezeka*, 946 N.W.2d at 407 (stating that an “error is plain if it is ‘clear’ or ‘obvious’” (quotation omitted)). Because we conclude that the prosecutor did not plainly err, we need not address the other prongs of the modified plain-error test. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006).⁶

⁶ Williams-Gillard also asserts that he is entitled to a new trial based on cumulative error. In “rare cases,” a new trial is warranted when the cumulative effect of trial error effectively denies the defendant a fair trial. *Fraga*, 898 N.W.2d at 278. But because Williams-Gillard has not prevailed on most of his claims of error and, as discussed above, the few

In sum, Williams-Gillard has failed to establish prejudicial evidentiary error or prosecutorial misconduct. Accordingly, he is not entitled to relief on appeal.

Affirmed.

demonstrated errors had a limited impact on the trial, we are satisfied that this is not such a case.