STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1247

State of Minnesota,
Respondent,

vs.

Freddrick Lee Johnson,
Appellant.

Filed June 2, 2025
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-CR-23-171

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

John J. Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney, St. Paul, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

A Ramsey County jury found Freddrick Lee Johnson guilty of possession of a firearm by an ineligible person based on evidence that he possessed a backpack that contained a firearm. We conclude that the prosecutor did not engage in misconduct that requires a new trial and that the district court did not err by denying Johnson's motion for a downward dispositional departure. Therefore, we affirm.

FACTS

During the early morning hours of July 23, 2022, a person called 911 to report that a Black male with dreadlocks and "possibly with a black backpack" was causing a disturbance near a residence in St. Paul. The 911 dispatcher identified the man as Freddrick Johnson. Officer Wells responded to the call and, when he arrived at the scene, saw a man matching the description provided by the 911 caller. Officer Wells exited his squad vehicle and pointed a flashlight at the man. The man fled on foot.

Officer Wells pursued the man before losing sight of him in an alley. Officer Wells found a black backpack in the alley. He told other responding officers that the man "had this backpack on him." Inside the backpack, Officer Wells found, among other things, a loaded firearm, a credit card bearing the name Freddrick Johnson, and a locksmith receipt signed by Freddrick Johnson. The locksmith receipt bore a license-plate number assigned to a vehicle registered to Johnson. Officer Wells searched for Johnson's photograph in a DMV database and recognized Johnson as the man he had pursued.

The state charged Johnson with possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2022). The case was tried to a jury on one day in March 2024. The state called Officer Wells as its sole witness. The state played for the jury excerpts of a videorecording made by Officer Wells's body-worn camera, which shows Officer Wells's initial interaction with Johnson, his pursuit of Johnson, his discovery of the backpack, and his search of the backpack. The state also introduced photographs of the backpack and its contents. Johnson did not testify and did not introduce any other evidence.

The jury found Johnson guilty. Before sentencing, Johnson moved for a downward dispositional departure. The district court denied Johnson's motion but imposed a sentence of 36 months of imprisonment, which is a downward durational departure from the statutory minimum 60-month prison sentence. *See* Minn. Stat. § 609.11, subd. 5(b) (2022). Johnson appeals.

DECISION

I. Prosecutorial Misconduct

Johnson argues that he is entitled to a new trial on the ground that the prosecutor engaged in four types of misconduct during trial.

The right to due process of law includes the right to a fair trial. *Spann v. State*, 704 N.W.2d 486, 493 (Minn. 2005); *State v. Ferguson*, 729 N.W.2d 604, 611 (Minn. App. 2007), *rev. denied* (Minn. June 19, 2007). "Prosecutors have an affirmative obligation to ensure that a defendant receives a fair trial." *State v. Jones*, 753 N.W.2d 677, 686 (Minn. 2008) (quotation omitted). Consequently, prosecutorial misconduct may result in the

denial of a fair trial. *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). "A prosecutor engages in prosecutorial misconduct when he violates 'clear or established standards of conduct, e.g., rules, laws, orders by a district court, or clear commands in this state's case law.'" *State v. McCray*, 753 N.W.2d 746, 751 (Minn. 2008) (quoting *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007)).

Johnson concedes that he did not object at trial to the second, third, and fourth types of misconduct that he challenges on appeal. If an appellant did not object at trial to conduct that is alleged on appeal to be misconduct, we apply a "modified plain-error test." *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012). To prevail under the modified plain-error test, an appellant first must establish that there is prosecutorial misconduct and that it 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 prosecutor engages in plain misconduct, the burden shifts to the state to show "that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Id.* (quotation omitted). If the state fails to satisfy that burden, an appellate court must determine whether the plain misconduct should result in a new trial to ensure the "fairness, integrity, or public reputation of judicial proceedings." *Pulczinski v. State*, 972 N.W.2d 347, 356 (Minn. 2022).

A.

First, Johnson contends that the prosecutor engaged in misconduct by improperly eliciting testimony concerning the reason for the 911 call.

Before trial, Johnson filed a motion *in limine* to prohibit the state from introducing evidence about the conduct described by the 911 caller. The district court ruled that the state could introduce evidence that police officers responded to a "911 call for a disturbance" but could not elaborate on the nature of the disturbance.

At trial, Officer Wells initially testified that he responded to "a call" concerning a residence on a particular street. The prosecutor followed up by asking, "And what was the call for—what was the purpose?" Officer Wells answered, "It was a disorderly conduct call." The prosecutor also asked Officer Wells "what information" he received from the dispatcher, and Officer Wells answered, "I received [information] that there was a male who they described as a Black male with dreads and a black shirt banging and creating a disturbance on a window."

Immediately after this testimony, Johnson's attorney requested a bench conference and moved for a mistrial on the ground that Officer Wells's testimony violated the district court's *in limine* ruling. The prosecutor initially did not object to Johnson's mistrial motion, stating that Officer Wells "had been instructed . . . that there would be no reference to any broken, damaged, or banging window." But the prosecutor later supported the district court's suggestion that the introduction of inadmissible evidence could be alleviated with a curative instruction. Before proceeding with the remainder of Officer Wells's testimony, the district court instructed the jury that "any information regarding the reason for the call . . . was not relevant to the charges in this case," that "the reasons for the call are irrelevant and prejudicial to the defendant," and that the jury should "disregard any information that you may have heard . . . regarding the reasons for the call because they're

irrelevant, they're prejudicial, . . . and you should not consider them in any way in making your decision in this case."

Johnson contends that the prosecutor engaged in misconduct by eliciting Officer Wells's testimony about the reason for the 911 call. The state agrees that Officer Wells's testimony includes inadmissible evidence but asserts that the prosecutor did not engage in misconduct because the prosecutor attempted to prepare Officer Wells and did not intentionally elicit inadmissible testimony.[1]

"The state has a duty to prepare its witnesses, prior to testifying, to avoid inadmissible or prejudicial statements." *State v. McNeil*, 658 N.W.2d 228, 232 (Minn. App. 2003). Improper testimony by a state's witness may be considered prosecutorial misconduct and may justify reversal. *State v. Mahkuk*, 736 N.W.2d 675, 689-90 (Minn. 2007). "It is generally misconduct for a prosecutor to 'knowingly offer inadmissible evidence for the purpose of bringing it to the jury's attention.'" *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (quoting *State v. Milton*, 821 N.W.2d 789, 804 (Minn. 2012)).

[1]Ordinarily this court would review the denial of a mistrial motion by applying an abuse-of-discretion standard of review. *See, e.g.*, *State v. Jaros*, 932 N.W.2d 466, 471-72 (Minn. 2019). In that type of review, we apply a deferential standard of review because "the district court is in the best position to evaluate the prejudicial impact, if any, of an event occurring during the trial." *State v. Bahtuoh*, 840 N.W.2d 804, 819 (Minn. 2013). In this case, Johnson has urged this court to review only the prosecutor's conduct, not the district court's ruling on his mistrial motion. The state does not argue that we should focus on the district court's ruling on the mistrial motion. For purposes of this nonprecedential opinion, we assume without deciding that the caselaw concerning prosecutorial misconduct applies.

In this case, the prosecutor asked Officer Wells about "the purpose" of the 911 call, asking, "what was the call for?" After Officer Wells described the call as "a disorderly conduct call," the prosecutor again asked Officer Wells to disclose additional information he received about the 911 call. The prosecutor's questions, on their face, appear to have been designed to elicit evidence that the district court clearly had ruled was inadmissible.

Thus, the prosecutor engaged in misconduct by intentionally eliciting inadmissible evidence from Officer Wells concerning the reason for the 911 call.

B.

Second, Johnson contends that the prosecutor engaged in misconduct by eliciting Officer Wells's testimony that he had "no doubt" that the firearm in the backpack belonged to Johnson.

Johnson asserts that a police officer may not testify to a personal belief that a defendant is guilty. In response, the state contends that, under rule 701 of the rules of evidence, a lay witness may testify to an opinion that is based on the witness's own perceptions. In *State v. Patzold*, 917 N.W.2d 798 (Minn. App. 2018), *rev. denied* (Minn. Nov. 27, 2018), this court concluded that a prosecutor did not engage in misconduct by eliciting opinion testimony from two police officers that an assault had occurred. *Id.* at 808. We reasoned that the officers were testifying as lay witnesses, that their testimony was "factual rather than legal," and that their testimony was "rationally based" on their perceptions. *Id.* at 808 (quotation omitted). *Patzold* applies here. Officer Wells offered an opinion that was based on his own observations and perceptions concerning the 911 call, his identification of Johnson, and his search of the backpack and its contents.

Thus, the prosecutor did not engage in misconduct by eliciting lay opinion testimony from Officer Wells as to whether the firearm belonged to Johnson.

C.

Third, Johnson contends that the prosecutor engaged in misconduct by eliciting inadmissible hearsay evidence from Officer Wells concerning the 911 dispatcher's statement that the subject of the 911 call was Freddrick Johnson.

"Hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). As a general rule, hearsay is inadmissible. Minn. R. Evid. 802. But the rules of evidence provide numerous exceptions to the general rule of exclusion. *See* Minn. R. Evid. 803, 804.

The plain-error test applies with special force to an argument that a prosecutor engaged in misconduct by eliciting inadmissible hearsay:

> The 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. The complexity and subtlety of the operation of the hearsay rule and its exceptions make it particularly important that a full discussion of admissibility be conducted at trial.

State v. Manthey, 711 N.W.2d 498, 504 (Minn. 2006). The supreme court reasoned in *Manthey* that the statements at issue were not "clearly or obviously inadmissible hearsay" because, "[i]n the absence of an objection, the state was not given the opportunity to establish that some or all of the statements were admissible under one of the numerous exceptions to the hearsay rule." *Id.* Similarly, because Johnson did not assert a hearsay

objection at trial, the state did not have an opportunity to argue that the out-of-court statement of the 911 dispatcher either is not hearsay or is within an exception to the hearsay rule. Consequently, the narrow question is whether the statement at issue is "clearly or obviously inadmissible hearsay." *See id.*

Officer Wells referred to the 911 dispatcher's use of Johnson's name while testifying about his search of the backpack, which contained two items bearing Johnson's name. In context, it appears that the 911 dispatcher's statement was not offered to prove the truth of the matter asserted—that Johnson was, in fact, the subject of the 911 call. Accordingly, Officer Wells's testimony did not include inadmissible hearsay. For the same reason, Johnson's argument that Officer Wells's testimony concerning the 911 dispatcher's statement is inadmissible under the Confrontation Clause of the Sixth Amendment to the United States Constitution is without merit. *See Andersen v. State*, 830 N.W.2d 1, 9 (Minn. 2013) (citing *Crawford v. Washington*, 541 U.S. 36, 59 & n.9 (2004)).

Thus, the prosecutor did not engage in misconduct by eliciting inadmissible hearsay evidence.

D.

Fourth, Johnson contends that the prosecutor engaged in misconduct by stating, in both his opening statement and his closing argument, that "no one is above the law." Johnson cites caselaw for the proposition that prosecutors may not invite juries to take on the role of law enforcement. *See, e.g.*, *State v. Langley*, 354 N.W.2d 389, 401 (Minn. 1984) (concluding that prosecutor engaged in misconduct by arguing that "if we are to have law enforcement in this country it has to come with the fair and impartial deliberations of a jury

such as yourselves"); *State v. Threinen*, 328 N.W.2d 154, 157 (Minn. 1983) (concluding that prosecutor engaged in misconduct by arguing that jury should determine "what kind of conduct would be tolerated on the streets"). But a statement that "no one is above the law" does not invite a jury to adopt the role of law enforcement. Johnson does not cite any caselaw prohibiting a prosecutor from using the phrase "no one is above the law" or the like. Thus, the prosecutor did not engage in misconduct by arguing to the jury that "no one is above the law."

E.

Having concluded that the prosecutor engaged in one form of misconduct—intentionally eliciting Officer Wells's testimony about the purpose of the 911 call—we must determine whether Johnson is entitled to a new trial. The nature of that inquiry depends on the severity of the misconduct. If "the case involves less serious prosecutorial misconduct," we will reverse and remand for a new trial if "the misconduct likely played a substantial part in influencing the jury to convict." *State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010) (quotation omitted). If the case involves more serious prosecutorial misconduct, we will reverse and remand for a new trial "unless the misconduct is harmless beyond a reasonable doubt." *Id.* "Prosecutorial misconduct is harmless beyond a reasonable doubt if the jury's verdict was 'surely unattributable' to the misconduct." *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (quoting *State v. Nissalke*, 801 N.W.2d 82, 106 (Minn. 2011)). For purposes of this nonprecedential opinion, we assume without deciding that the prosecutor's elicitation of inadmissible evidence about the purpose of the 911 call was of the more-serious variety.

The trial record establishes that the prosecutor's misconduct is harmless beyond a reasonable doubt. The critical factual issue at trial was whether Johnson possessed the firearm that was found in the backpack. The evidence on that issue was overwhelming. The 911 caller stated that the man causing a disturbance might have a black backpack. Officer Wells testified that when he arrived at the scene, he saw a man with a backpack. He also testified that the man fled on foot down an alley, that he found a black backpack in the alley, that the backpack contained a loaded firearm, and that the backpack contained a credit card and a receipt bearing Johnson's name. The receipt also bore a license-plate number that matched the license plate assigned to a vehicle registered to Johnson. Officer Wells's testimony was corroborated by his body-worn camera's videorecording. In addition, the district court gave a curative instruction that instructed the jury to "disregard any information . . . regarding the reasons for the [911] call because they're irrelevant." Given the circumstances, we easily conclude that the jury's verdict was "surely unattributable to the misconduct." *See Whitson*, 876 N.W.2d at 304 (quotation omitted). Thus, the prosecutor's misconduct is harmless beyond a reasonable doubt.

In sum, Johnson is not entitled to a new trial on the ground of prosecutorial misconduct.

II. Downward Dispositional Departure

Johnson argues in the alternative that the district court erred by denying his motion for a downward dispositional departure.

The Minnesota Sentencing Guidelines prescribe presumptive sentences for felony offenses. Minn. Sent'g Guidelines 2.C (2022). For any particular offense, the guidelines

sentence is "presumed to be appropriate for all typical cases sharing criminal history and offense severity characteristics." Minn. Sent'g Guidelines 1.B.13 (2022). Accordingly, a district court "must pronounce a sentence . . . within the applicable [presumptive] range . . . unless there exist identifiable, substantial, and compelling circumstances to support a departure." Minn. Sent'g Guidelines 2.D.1 (2022). The sentencing guidelines provide non-exclusive lists of mitigating and aggravating factors that constitute identifiable, substantial, and compelling circumstances and thus may justify a departure if such circumstances are found to exist. Minn. Sent'g Guidelines 2.D.3 (2022). Only in a "rare case" will this court reverse a district court's imposition of a presumptive sentence. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

Johnson contends that the district court denied his motion for a downward dispositional departure without considering the circumstances that might support a departure. But a district court need not explain its reasons for denying a departure motion if the court "considers reasons for departure but elects to impose the presumptive sentence." *State v. Van Ruler*, 378 N.W.2d 77, 80 (Minn. App. 1985); *see also* Minn. Sent'g Guidelines 2.D.1.c. So long as the record shows that the district court deliberately evaluated the testimony and information presented to it before making a decision, this court "may not interfere with the sentencing court's exercise of discretion." *Van Ruler*, 378 N.W.2d at 80-81.

The district court stated on the record that it had reviewed Johnson's presentence investigation report and had received his motion for a dispositional departure. The district court listened to arguments from both Johnson's attorney and the prosecutor. The district

court ordered a downward durational departure on the ground that Johnson's offense was less serious than the typical offense of possession of a firearm by an ineligible person. The district court showed its familiarity with Johnson's case by commenting that, in light of Johnson's expressed desire to "be there for [his] family," he "should have been making decisions all along that would have made it possible." The record shows that the district court "carefully evaluated" Johnson's motion and stated reasons for denying it. *See id.* at 81.

Johnson also contends that the district court improperly considered the fact that he had exercised his right to go to trial instead of pleading guilty. Johnson notes that, during the sentencing hearing, the district court posed the following question to his attorney: "Didn't we have this conversation prior to ever going to trial?" The district court asked that question in response to Johnson's attorney's assertion that, if the district court were to order probation in this case, Johnson likely would be placed on probation in another case that was pending in another county. Johnson asserts that the district court's question refers back to a pre-trial hearing in which the parties informed the district court that Johnson had declined a plea offer, the terms of which were not fully described on the record. But it is unclear which part of the pre-trial hearing was being referenced by the district court. Also, without a full description of the plea offer, it is difficult to discern the meaning of all statements made at the pre-trial hearing and, likewise, the meaning of the district court's question at sentencing. We acknowledge that a departure decision may not be based on a "defendant's exercise of constitutional rights during the adjudication process." Minn. Sent'g Guidelines 2.D.2 (2022). But it does not clearly appear from the record that the

district court denied Johnson's motion for a downward dispositional departure on the ground that he chose to go to trial instead of pleading guilty.

Thus, the district court did not err by denying Johnson's motion for a downward dispositional departure.

Affirmed.