STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0703

State of Minnesota,
Respondent,

vs.

Clifton Dawayne Latimore Ingram,
Appellant.

Filed June 23, 2025
Affirmed
Bond, Judge

Hennepin County District Court
File No. 27-CR-22-24642

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

Mary F. Moriarty, Hennepin County Attorney, Britta Nicholson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bond, Presiding Judge; Reyes, Judge; and Jesson, Judge.*

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

NONPRECEDENTIAL OPINION

BOND, Judge

In this direct appeal from the judgment of conviction for second-degree intentional murder, second-degree unintentional murder, and unlawful possession of a firearm, appellant argues that he is entitled to a new trial due to prosecutorial misconduct. We affirm.

FACTS

Respondent State of Minnesota charged appellant Clifton Dawayne Latimore Ingram with second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2022); second-degree unintentional murder in violation of Minn. Stat. § 609.19, subd. 2(1) (2022); and unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2022). The charges related to S.B.'s death from a gunshot wound in W.Y.'s apartment on December 8, 2022. The case proceeded to a jury trial during which the following evidence was received.

On the morning of December 8, 2022, W.Y., two of W.Y.'s children, Ingram, and S.B. were in W.Y.'s apartment. Ingram, W.Y., and S.B. were childhood friends. S.B. had been staying with W.Y. for a few months.

W.Y. testified that S.B. became upset when Ingram began to break down marijuana on the living room coffee table that S.B. had just cleaned. As S.B. and Ingram were arguing, W.Y. heard a clicking noise; she looked up and saw Ingram pointing a silver revolver with a black handle at S.B. Shortly afterwards, W.Y. saw Ingram fire his revolver at S.B. W.Y. tried to push Ingram out of the apartment, telling him he needed to leave.

W.Y. testified that Ingram shot at S.B. one more time as he was leaving the apartment. S.B. died at the scene from a single gunshot wound to her chest.

W.Y. identified Ingram to responding police officers using Ingram's nickname and photos from his Facebook profile. Later that day, officers arrested Ingram at his home. During a warranted search, police found clothing matching W.Y.'s description of the clothing Ingram was wearing when he shot S.B. and, rolled up in a shirt underneath a mattress, a silver revolver with a black grip. Ingram's fingerprint was on the revolver's cylinder, and his DNA was detected on the revolver's trigger and grip. Ballistics evidence established that the bullet recovered from S.B.'s body had been fired from the revolver. Surveillance footage showed Ingram running out of W.Y.'s apartment building at the same time as W.Y.'s 911 call.

Ingram gave a custodial interview at the police station. In his statement, Ingram acknowledged that he had been at W.Y.'s apartment, that he argued with S.B., and that he was asked to leave. When the police officer asked about the cause of his argument with S.B., Ingram ended the interview by asking for an attorney.

The jury found Ingram guilty of all three charges and found the aggravating factor that the murder was committed in the presence of a child. The district court sentenced Ingram to 480 months in prison.

Ingram appeals.

DECISION

Ingram argues that he is entitled to a new trial because the state engaged in prosecutorial misconduct during the direct examination of the police officer who conducted Ingram's custodial interview. Specifically, Ingram asserts that the prosecutor committed misconduct by intentionally eliciting testimony from the officer that, during the interrogation, Ingram requested an attorney. Ingram argues, alternatively, that the prosecutor committed misconduct by failing to prepare the officer adequately to refrain from offering inadmissible testimony about Ingram's assertion of his right to remain silent.

Prosecutors are ministers of justice who "have an affirmative obligation to ensure that a defendant receives a fair trial, no matter how strong the evidence of guilt." *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). Consequently, prosecutorial misconduct may result in the denial of a fair trial. *Id.* ("The overarching concern regarding prosecutorial misconduct . . . is that [the] misconduct may deny the defendant's right to a fair trial.").

Ingram did not object at trial to the alleged misconduct. Accordingly, we apply the "modified plain-error test." *State v. Portillo*, 998 N.W.2d 242, 248 (Minn. 2023) (quotation omitted). Under this test, the defendant must show that the prosecutor's conduct constituted (1) error and (2) that the error was plain. *Id*. "An error is plain if it [i]s clear or obvious," which is usually established "if the error contravenes case law, a rule, or a standard of conduct." *Ramey*, 721 N.W.2d at 302 (quotation omitted). If the defendant establishes plain error, the burden then shifts to the state to demonstrate that the error did not affect the defendant's substantial rights. *Id*. To meet its burden, the state must 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). Even if these three prongs are met, "we will not grant relief to correct the error unless our failure to do so will cause the public to seriously question the fairness and integrity of our judicial system." *Pulczinski v. State*, 972 N.W.2d 347, 359 (Minn. 2022).

Ingram's claim of prosecutorial misconduct focuses on the following exchange that occurred during the prosecutor's direct examination of the police officer who interviewed Ingram:

> Q: And then did [Ingram] terminate the interview with you?
> A: Yes. When I asked him about what the argument [with S.B.] was about, and, ultimately, he requested an attorney.
>
> Q: And the interview was concluded?
> A: Yes.
>
> Q: The investigation continued, though; correct?
> A: Yes.
>
> Q: You previously mentioned that you had requested surveillance video footage from [the location of the shooting]; is that right?
> A: Correct.

Ingram argues that the prosecutor either intentionally elicited inadmissible evidence concerning Ingram's request for an attorney, or failed to prepare the officer adequately to prevent the officer from offering inadmissible testimony.

It is plain error for a prosecutor to intentionally elicit inadmissible testimony. *State v. Henderson*, 620 N.W.2d 688, 702 (Minn. 2001) ("It is improper for a prosecutor to ask questions that are calculated to elicit or insinuate an inadmissible and highly prejudicial answer."); *see also State v. Ray*, 659 N.W.2d 736, 744-746 (Minn. 2003). Unintentionally

eliciting inadmissible evidence may also be misconduct because 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). In general, though, neither "[u]nintended responses under unplanned circumstances" nor "brief" and "unsolicited" inadmissible statements constitute prosecutorial misconduct. *State v. Patzold*, 917 N.W.2d 798, 807 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Nov. 27, 2018).

We agree that it was improper for the officer to comment on Ingram's request for counsel. Under the Fifth Amendment to the U.S. Constitution, as applied to the states through the Fourteenth Amendment, a defendant has a right to have an attorney present during a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 439-40, 470 (1966). It is well-established that "[a] defendant's choice to exercise his constitutional right to counsel may not be used against him at trial." *State v. Hall*, 764 N.W.2d 837, 841 (Minn. 2009) (quoting *State v. Juarez*, 572 N.W.2d 286, 290 (Minn. 1997)). Thus, "the state generally may not refer to or elicit testimony about a defendant's . . . request for counsel." *State v. Dobbins*, 725 N.W.2d 492, 509 (Minn. 2006). "This is so because a jury would be likely to infer from the testimony that the defendant was concealing his guilt." *State v. Litzau*, 650 N.W.2d 177, 185 (Minn. 2002) (quotation omitted).

We disagree, however, that the record shows that the prosecutor intentionally elicited this testimony. The prosecutor asked the officer, "And then did [Ingram] terminate the interview with you?" This was a closed-ended question which could have been answered with a simple "yes" or "no." When the officer unnecessarily referenced Ingram's request for an attorney as part of his answer, the prosecutor changed topics and did not

mention or refer to the officer's improper testimony at any other point during the trial. *See Patzold*, 917 N.W.2d at 807 (rejecting claim of prosecutorial misconduct based on police officer's "brief and unsolicited comment" because the prosecutor's question did not call for the improper response and the prosecutor "moved on" to a different topic); *see also State v. Hagen*, 361 N.W.2d 407, 413 (Minn. App. 1985) (concluding, in the context of a mistrial motion, that the prosecutor had not "intentionally tainted the trial by asking the question which elicited the objectionable response" because "the answer was an unintended and unexpected explanatory answer to a question calling for a yes or no response"). And when defense counsel brought the improper testimony to the attention of the court the next day, counsel requested that the state caution its witnesses not to reference Ingram's invocation of his right to counsel. The defense did not argue, and the district court did not find, that the prosecutor intentionally elicited testimony that Ingram requested an attorney. We cannot conclude that the record before us establishes that the prosecutor intentionally elicited this testimony.

Ingram alternatively argues that the prosecutor committed misconduct by failing to prepare the officer to prevent him from offering inadmissible testimony. Assuming without deciding that the prosecutor plainly erred by failing to adequately prepare the officer to testify, we conclude that the state has met its burden to show that there is no reasonable likelihood that the absence of the misconduct would have had a significant effect on the verdict. *Ramey*, 721 N.W.2d at 302.

To determine whether the state has met its burden, appellate courts consider "the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *State v. Davis*, 735 N.W.2d 674, 681-82 (Minn. 2007). Here, the state's evidence against Ingram was strong. W.Y. testified that she had known Ingram since childhood. W.Y. identified Ingram in court and testified that she saw him shoot S.B. Although Ingram attacks W.Y.'s credibility, the evidence corroborated her testimony in significant ways. Police recovered a jacket and shoes from Ingram's home, both of which matched W.Y.'s description of the clothing Ingram was wearing when he shot S.B. Ingram's fingerprint and DNA were on the revolver found hidden in his home. Ballistics evidence established that the revolver was used to shoot S.B. Ingram admitting being at W.Y.'s apartment, arguing with S.B., and being asked to leave.

Importantly, the officer's improper testimony was not pervasive. The officer made a single reference, in a single sentence, to Ingram's request for an attorney. The jury heard no other reference to Ingram's request for an attorney, nor was Ingram's request for an attorney mentioned by the prosecutor at any point in the trial.

Because the state has met its burden of showing that there is no reasonable likelihood that the prosecutor's conduct affected Ingram's substantial rights, Ingram is not

entitled to a new trial based on prosecutorial misconduct. *See State v. Thompson*, 3 N.W.3d 257, 265 (Minn. 2024).[1]

Affirmed.

[1] In a footnote, Ingram asserts that if we determine that he is not entitled to a new trial based on prosecutorial misconduct, "the standard of review is similar for plain error admission of inadmissible evidence." We question whether Ingram has sufficiently raised this argument. *See State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017) ("Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred."). Even if we were to consider Ingram's plain-error evidentiary argument, as we have explained, Ingram's substantial rights were not impacted by the brief reference to his request for an attorney. *See State v. Strommen*, 648 N.W.2d 681, 686, 688 (Minn. 2002) (considering whether, on prong three of plain-error review of evidentiary error, there was a reasonable likelihood that the error substantially affected the verdict).