STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1398

State of Minnesota,
Respondent,

vs.

William Demont White, Jr.,
Appellant.

Filed August 17, 2020
Affirmed
Reilly, Judge

Benton County District Court
File No. 05-CR-18-617

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Philip K. Miller, Benton County Attorney, Foley, Minnesota (for respondent)

Melissa Sheridan, Special Assistant Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

REILLY, Judge

In his direct appeal from his convictions for second-degree intentional murder, first-degree assault, and arson, appellant argues that (1) the district court improperly joined his case for prosecution with his codefendant's case, (2) the district court erred by admitting

the victim's out-of-court identification, (3) the evidence was insufficient to support his first-degree-assault conviction beyond a reasonable doubt, and (4) he is entitled to a new trial because of his pro se claims. We affirm.

FACTS

This case arises out of a shooting that caused the death of J.D. and injury to N.P. Trial testimony establishes the following. Appellant William White, Jr., went to a bar with V.L. and N.J, and the two victims, J.D. and N.P. In the early morning hours of February 16, the group returned to the neighborhood where J.D. stayed with his sister, K.D., and her fiancé, P.H. After returning to the neighborhood, a confrontation broke out between appellant and J.D. Both N.P and V.L. witnessed the confrontation. N.P. testified that a "scuffle" broke out between J.D. and appellant, and N.P. approached the two men. N.P. punched appellant and then turned to walk away. In response, appellant "pistol-whipped" N.P. from behind. Next, N.P. was shot from behind.

V.L. also saw appellant and J.D. "fighting" and "wrestling" with a gun in the street. V.L. heard gunshots and saw N.P. fall to the ground, screaming. V.L. did not see who shot N.P. V.L. testified that, "[a]t that time, [J.D.] was on the ground too." N.J. was also present during the fight, and V.L. testified that N.J. removed something from the car, which he believed was a cell phone or a charger. After the shooting, V.L., N.J., and appellant got into J.D.'s car and drove away.

J.D.'s sister, K.D., heard the gunshots and woke up P.H. P.H. went outside and saw N.P. "screaming" and "bleeding out" on the ground. P.H. ran back inside to call for an ambulance. K.D. and P.H. then found J.D. lying on the porch, "[e]xhausted and hurt."

K.D. and P.H. determined that they could not wait for an ambulance and placed the two injured men into K.D.'s car. K.D. began driving to the hospital, but a police officer pulled her car over before she reached the hospital. The officer testified that J.D. was bleeding and moaning in the front passenger seat. N.P. was lying in the backseat with his pants down and blood on his legs and on his head. The officer requested more help and several police officers arrived on the scene and provided medical care to J.D. and N.P. Two ambulances arrived and took J.D. and N.P. to the hospital. J.D. was pronounced dead at the hospital as a result of blood loss from multiple gunshot wounds.

After driving away, appellant, V.L. and N.J. made arrangements to switch J.D.'s car with another car. The three men left J.D.'s car on a side street. After switching cars, the three men went to a gas station to purchase a gas can. The men filled the gas can with fuel but left the station without paying. Later that morning, the fire department received an alarm for a vehicle fire involving J.D.'s car. J.D.'s car was located about one to two miles away from the gas station. Firefighters arrived at the scene to find that the fire was "fully involved . . . throughout the vehicle" and discovered a gas can near the car. An investigator took samples from the car to determine whether there was a presence of an ignitable liquid in the passenger compartment. One of these samples tested positive for the presence of an ignitable liquid. Investigators confirmed that the car belonged to J.D.

A forensic scientist with the Bureau of Criminal Apprehension (the BCA), examined the bullet fragments found outside K.D.'s house. The BCA analyst determined that the fragment was from a .38 caliber bullet. The BCA analyst also examined a bullet

extracted from J.D.'s body and determined that it was also a .38 caliber bullet and had been fired from the same gun that produced the bullet fragment by K.D.'s house.

A grand jury issued an indictment, charging appellant with first-degree murder (counts 1 and 2), second-degree murder (counts 3-6), first-degree assault (count 7), second-degree arson (count 8), and crimes committed for the benefit of a gang (counts 9-15). The district court held a jury trial. After respondent State of Minnesota rested, the district court dismissed the counts for crimes committed for the benefit of a gang (counts 9-15). The jury found appellant guilty of second-degree intentional murder (count 3), second-degree felony murder (count 5), first-degree assault (count 7), and second-degree arson (count 8), and the district court imposed sentence. The jury did not return a verdict for attempted second-degree murder (count 6), and the district court declared a mistrial on that charge. The jury acquitted appellant of the remaining charges.

This appeal follows.

D E C I S I O N

I. Appellant did not suffer substantial prejudice as a result of the joinder of his trial with his codefendant's trial.

Appellant argues that the district court improperly granted the state's pretrial motion to join his case with that of his codefendant, N.J. Defendants may be tried jointly "if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense." Minn. Stat. § 631.035, subd. 1 (2018). There is no presumption for or against joinder. *State v. Johnson*, 811 N.W.2d 136, 142 (Minn. App. 2012), *review denied* (Minn. Mar. 28, 2012). The district court must consider: "(1) the

nature of the offense charged; (2) the impact on the victim; (3) the potential prejudice to the defendant; and (4) the interests of justice." Minn. R. Crim. P. 17.03, subd. 2. In reviewing a joinder issue, this court conducts "an independent inquiry into any substantial prejudice to defendants that may have resulted from their being joined for trial." *State v. Blanche*, 696 N.W.2d 351, 370 (Minn. 2005) (quotation omitted). We consider each joinder factor in turn.

a. Nature of the Offense Charged

The first factor favors joinder when "the overwhelming majority of the evidence presented [is] admissible against both [defendants], and substantial evidence [is] presented that [codefendants] worked in close concert with one another." *Johnson*, 811 N.W.2d at 142 (citation omitted). The state charged appellant and N.J. with aiding and abetting murder, assault, and arson, stemming from the shooting that killed J.D. and injured N.P. The vast majority of the evidence and the witness testimony, including testimony from V.L., N.P., K.D., P.H., the police officers, J.D.'s neighbor, the gas station attendant, and the BCA analyst, was admissible against both defendants. The defendants were alleged to have acted in concert with each other during each part of the criminal activity, during the initial assault and shooting, when they fled the scene together in J.D.'s car after the shooting, and when they set J.D.'s car on fire. Given these circumstances, we agree with the district court that the nature of the offense favors joinder.

Impact on the Victims

The second factor considers "the impact on both the victim of the crime as well as the trauma to the eyewitnesses who would be compelled to testify at multiple trials." *Id.*

at 143 (quotation omitted). The district court determined that this factor favored joinder and we agree. The state charged appellant and N.J. with murder and attempted murder. We agree with the district court's determination that the victim, N.P., would have to "relive the trauma of the alleged crime multiple times in multiple trials." And that J.D.'s sister, K.D., and her fiancé, P.H., would face the trauma of testifying about J.D.'s death at multiple trials. *See State v. Jackson*, 773 N.W.2d 111, 119 (Minn. 2009) (recognizing that this factor favors joinder when "potential trauma" is "significant").

b. Potential Prejudice to Defendant

"Joinder is not appropriate when there would be substantial prejudice to the defendant, which can be shown by demonstrating that codefendants presented 'antagonistic defenses.'" *State v. Martin*, 773 N.W.2d 89, 100 (Minn. 2009). "Antagonistic defenses occur when the defenses are inconsistent, and the jury is forced to choose between the defense theories advocated by the defendants." *Id*. (quotations omitted). Antagonistic defenses do not exist when the jury must "choose between the state's theory of the case and each defendant's theory of the case." *Johnson*, 811 N.W.2d at 143 (citations omitted). Moreover, a "[g]eneral concern on the behalf of defense counsel" that antagonistic defenses exist is insufficient to show substantial prejudice. *State v. Powers*, 654 N.W.2d 667, 675 (Minn. 2003). "Absent an offer of proof or the identification of any inconsistent or antagonistic defenses by the appellant, there [is] no indication that joinder would substantially prejudice [a defendant's] trial." *Id*.

Appellant argues that the defenses were antagonistic because the state's theory of the case was that appellant was the shooter and N.J. was merely an accomplice. Appellant

asserts in his brief that N.J.'s counsel repeatedly "pointed the finger" at appellant during trial, but he does not back up that assertion with citations to the record. And N.J.'s defense at trial was that he was not the shooter.

Here, the jury was not in the position of having to choose between contradictory defense theories offered by the defendants. Instead, the jury had to decide between the state's theory of the case and each defendant's own theory of the case. N.J.'s theory of the case was that the state failed to prove that he was the shooter. And appellant did not claim that N.J. was the shooter or try to place the blame squarely on N.J. *See, e.g.*, *State v. Hathaway*, 379 N.W.2d 498, 503 (Minn. 1985) (noting that substantial prejudice is not evident where, for example, codefendants "did not even attempt to place the blame on each other"). In fact, during closing argument, appellant's counsel argued that another person, V.L., was the shooter. While appellant makes a conclusory statement that antagonistic defenses existed, he failed to present an offer of proof in support of his argument. Nor did he support his claim of pervasive antagonistic defenses by citing to evidence in the record. We conclude that appellant did not suffer prejudice when his trial was joined with his codefendant's trial.

c. Interests of Justice

"[T]he length of separate trials is a legitimate factor in deciding to join cases." *Johnson*, 811 N.W.2d at 143 (citation omitted). Here, the evidence would have been nearly identical in both cases, and would have relied on the testimony of the same witnesses and exhibits. Joining the trials was much more efficient and eliminated the risk that extensive

media coverage of the first trial would impact the second trial. The interests of justice favor joinder of the cases.

After our independent inquiry of the four factors set forth in rule 17.03, we conclude that appellant did not suffer substantial prejudice as a result of being joined for trial with his codefendant, and we affirm the district court's decision.

II. The district court did not err by admitting the victim's out-of-court identification of appellant as the shooter.

Appellant argues that the district court erred by allowing N.P.'s out-of-court statement identifying appellant as the person who shot him. Evidentiary rulings rest within the sound discretion of the district court. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Even if the district court abused its discretion, an appellant is not entitled to a new trial if the error was harmless. *State v. Robinson*, 718 N.W.2d 400, 407 (Minn. 2006).

N.P. was sedated and unconscious in the hospital for three days after the shooting. Once he regained consciousness, an investigating detective visited N.P. at the hospital and "carried on [a] conversation for quite a while" with him. The detective brought photographs from the security cameras at the bar to see if N.P. "could remember who was with him that evening." The detective went through the photographs one at a time. When he reached appellant's photograph N.P. stated, "That is the motherf----r that shot me."

At trial, the state sought to introduce N.P.'s out-of-court statement. Appellant objected on hearsay grounds. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). While hearsay is generally not admissible at trial under Minn. R. Evid. 802, an out-of-court statement offered to prove the

truth of the matter asserted may be admissible if it falls within an exception to the hearsay rule or is exempted from the definition of hearsay. *See Robinson*, 718 N.W.2d at 408. The district court admitted the statement over appellant's objection, determining that the statement was admissible under rule 801(d)(1)(C). Under that rule, a statement "of identification of a person made after perceiving the person" does not constitute hearsay if the declarant testifies and is available for cross-examination. Minn. R. Evid. 801(d)(1)(C). N.P. testified at trial and thus was available for cross-examination.

The parties disagree about the appropriate standard of review. Appellant argues that we should review for harmless error, while the state urges this court to conduct a plain-error analysis because appellant did not object to the detective's testimony on the same basis he asserts now. *Compare State v. Yang*, 774 N.W.2d 539, 554 (Minn. 2009) (reviewing objected-to evidence for harmless error) *with State v. Ramey*, 721 N.W.2d 294, 297-98 (Minn. 2006) (reviewing for plain error when defendant fails to object at trial). We determine that, even assuming admission of N.P.'s statement was erroneous, any error did not affect appellant's substantial rights under either standard. *See State v. Hill*, 801 N.W.2d 646, 658 (Minn. 2011) (noting that parties disagreed about standard of review and applying "less onerous" harmless-error analysis); *see also State v. Reed*, 737 N.W.2d 572, 583-84 (Minn. 2007) (explaining that both harmless-error and plain-error review require that, for an error to be reversible, it must affect a defendant's substantial rights).

The evidence, even if improperly admitted—which we do not think it was—was not prejudicial to appellant. Prejudice occurs when an erroneously-admitted statement substantially influences the jury to convict the appellant. *State v. Expose*, 872 N.W.2d 252,

260 (Minn. 2015). Furthermore, admitting an out-of-court statement that is "cumulative, and merely corroborate[s] other [evidence]" is harmless. *State v. Washington*, 521 N.W.2d 35, 42 (Minn. 1994). Here, the state presented strong evidence of appellant's guilt. In addition to N.P.'s out-of-court identification, the state also presented direct evidence from N.P. that he saw appellant struggling with J.D., and that appellant "pistol-whipped" N.P. when he approached appellant. N.P. turned away from appellant to walk away, and was shot in the back. V.L. testified that he saw appellant struggling with J.D. in the street over a gun. Even under harmless-error review, the less-onerous standard for a criminal defendant seeking reversal of his conviction, appellant cannot show "a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Courtney*, 696 N.W.2d 73, 84 (Minn. 2005). We therefore determine that the district court did not err by admitting N.P.'s out-of-court identification.

III. Sufficient evidence supports appellant's first-degree-assault conviction.

Appellant challenges the sufficiency of the evidence underlying his conviction for first-degree assault.[1]

To evaluate the sufficiency of the evidence, appellate courts "carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [factfinder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). Appellate courts review the evidence "in the

[1] Appellant does not challenge the sufficiency of the evidence for his other convictions.

light most favorable to the conviction" and "assume the jury believed the State's witnesses and disbelieved any evidence to the contrary." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). Appellate courts "will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *Id.* We review de novo whether the defendant's conduct satisfies the statutory definition of an offense. *State v. Hayes*, 826 N.W.2d 799, 803 (Minn. 2013).

The jury convicted appellant of first-degree assault under Minn. Stat. § 609.221, subd. 1 (2018), for shooting N.P. Under the statute, "[w]hoever assaults another and inflicts great bodily harm may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than $30,000, or both." *Id*. Assault is defined as "(1) an act done with intent to cause fear in another of immediate bodily harm or death; or (2) the intentional infliction of or attempt to inflict bodily harm upon another." Minn. Stat. § 609.02, subd. 10 (2018); *see also State v. Fleck*, 810 N.W.2d 303, 305 (Minn. 2012) (recognizing two types of assault identified as assault-fear and assault-harm).

Appellant argues that the state failed to prove beyond a reasonable doubt that N.P. suffered great bodily harm. Appellant concedes that N.P. suffered a gunshot wound, but claims that the state failed to present evidence that the wound was life-threatening or caused serious bodily harm or pain. We are not persuaded. The statute defines great bodily harm as "bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of

the function of any bodily member or organ or other serious bodily harm." Minn. Stat. § 609.02, subd. 8 (2018).

Sufficient evidence supports the first-degree-assault conviction. N.P. testified that appellant "pistol-whipped" him. N.P. turned to walk away from appellant and was shot from behind. P.H. ran out of the house and found N.P. "screaming" and "bleeding out" on the ground, and feared N.P. would die. The officer who stopped K.D.'s car on the way to the hospital saw N.P. in the backseat bleeding from his legs and his head. Officers provided emergency medical care at the scene to stop N.P.'s bleeding and called for an ambulance. N.P. was sedated and unconscious in the hospital for three days after the shooting and had surgery on his stomach. The evidence amply supports the jury's verdict that N.P. suffered great bodily harm. *See, e.g.*, *State v. Barner*, 510 N.W.2d 202, 202 (Minn. 1993) (determining that victim suffered great bodily harm for purpose of assault statute where he sustained a head injury, multiple stab wounds, and injuries to his hands); *State v. Peters*, 143 N.W.2d 832, 833 (Minn. 1966) (affirming aggravated-assault conviction and finding great bodily harm where victim was pistol-whipped and shot in shoulder).

Viewing the evidence in the light most favorable to the verdict, the jury reasonably concluded that appellant was guilty of first-degree assault. *See Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (noting that court will not disturb verdict "if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [a] defendant was proven guilty of the offense charged").

IV. Appellant is not entitled to relief based on his pro se claims.

a. Venire

Appellant argues that he was denied the right to a jury made up of a fair cross section of the community. When, as here, the defendant does not raise this challenge to the district court, we review for plain error and consider whether (1) an error occurred, (2) the error was plain, and (3) appellant's substantial rights were affected. *State v. Brown*, 937 N.W.2d 146, 158 (Minn. App. 2019) (citation omitted). To prevail, appellant must show that the "the group allegedly excluded . . . was not fairly represented in the venire." *Id*. (citations omitted). Appellant contends that there was a "systematic exclusion of African-Americans from jury panels," but fails to support this claim with citation to evidence in the record. Because appellant has not established that an error occurred, we do not address the remaining factors. *See id*. (determining that appellant failed to demonstrate error and declining to consider remaining plain-error factors).

b. Mistrial

Appellant argues that the district court failed to instruct the jury on partial verdicts and should have declared a mistrial on certain counts.[2] Minnesota law provides that "[t]he court may accept a partial verdict if the jury has reached a verdict on fewer than all of the charges and is unable to reach a verdict on the rest." Minn. R. Crim. P. 26.03, subd. 20(7).

[2] Appellant also argues that the district court failed to sequester the jury and failed to give the jurors adequate breaks. Appellant provided no factual support for these arguments and we therefore consider them forfeited. *See State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003) (considering arguments forfeited when they are unsupported by facts in the record and contain "no citation to any relevant legal authority").

Here, the district court excused the jury to begin its deliberations on March 8, at 1:02 p.m. At 9:48 p.m., the jury submitted a note to the district court revealing that it was having trouble agreeing on certain counts. Less than half an hour later, however, the jury sent another note asking for another hour to deliberate. At 11:26 p.m., the jury shared that it was still unable to reach a verdict on certain counts. At 12:03 a.m.—and after approximately 11 hours of deliberation—the district court accepted the jury's partial verdict. Because Minn. R. Crim. P. 26.03, subd. 20(7), explicitly permits a jury to return a partial verdict, the district court did not act improperly by accepting the jury's partial verdict after 11 hours of deliberation.

Affirmed.