**IN THE COURT OF APPEALS OF IOWA**

No. 1-985 / 10-1401
Filed February 1, 2012

**KELVIN SCOTT,**
Applicant-Appellant,

**vs.**

**STATE OF IOWA,**
Respondent-Appellee.

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Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer, Judge.

Kelvin Scott appeals the dismissal of his application for postconviction relief. **AFFIRMED.**

Mark R. Lawson of Mark R. Lawson, P.C., Maquoketa, for appellant.

Kelvin Scott, Fort Madison, pro se.

Thomas J. Miller, Attorney General, Kyle P. Hanson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellee State.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

**DOYLE, J.**

Kelvin Scott appeals the dismissal of his application for postconviction relief, contending, through his counsel, the original trial court erred in various respects. He also asserts numerous "arguments" pro se. We affirm.

***I. Background Facts and Proceedings*.**

In the late evening hours of December 4 or the early morning of December 5, 2007, a fire occurred at Gina Siglin's residence in Waterloo, Iowa, causing significant damage to her residence and her property therein. On December 14, Kelvin Scott, Siglin's ex-boyfriend and father of Siglin's child, was charged by trial information with arson in the second degree in connection with the fire. On December 21, Scott filed a pro se motion requesting he be allowed to represent himself in the matter and that standby counsel be appointed.

Ten days later, the State filed additional minutes of testimony, listing two additional witnesses. Relevant here, the minutes stated one of the witnesses, Sam Graham, was an employee of the cell phone company I Wireless, and

> [t]his witness will testify to being the [c]ustodian of [r]ecords for [the cell phone company] and will testify as to his duties and responsibilities as well as to his training, education and experience in order to hold such a position.
>
> This witness will testify, identify and introduce into evidence the phone records which are attached and hereby incorporated by this reference.
>
> This witness will testify to any further knowledge or information he has regarding this case.

Attached to the minutes were cell phone records of Siglin's cell phone calls and text messages from December 3 to December 5, 2007.

Ultimately, the district court granted Scott's application to proceed pro se in the case, and standby counsel was appointed for him. Prior to trial, the State

filed a motion in limine concerning various matters, including requesting the district court enter an order prohibiting Scott from referring to or offering "[a]ny testimony, comments, or argument regarding any relationship between [Siglin and her ex-husband] Clovis Bowles" and "[a]ny testimony, comments, or argument regarding another person committing the charged arson, without substantive facts that create more than a mere suspicion that person actually committed the crime."

Trial commenced February 26, 2008, and the district court addressed the State's motion in limine before the presentation of evidence. Scott objected to the State's request concerning Bowles and regarding limiting testimony that another person may have committed the crime, explaining he intended to get into that testimony and he did "have evidence that would implicate other people that committed this crime." The court essentially declined to rule upon the State's motion as to those two issues, noting the State's requests were limited to relevancy matters and the State could object at the time such evidence or testimony was sought to be introduced.

Trial then proceeded. Siglin testified that during December 2007, she and Scott were in the midst of a breakup. On the evening of December 4, Siglin received several threatening phone calls from Scott while she was at a bar with friends. She testified Scott had told her he was going "to break [her] down to nothing," and she was afraid and contacted the police department. She testified she asked the police to check on her house based upon Scott's statements.

On Scott's cross-examination of Siglin, the following exchange occurred:

> Q. And somebody called you and told you that your cat, in fact, got burned up? A. Yes.
>
> Q. This was at a time could nobody could have known it but the investigators or the person that committed this crime, isn't that correct?
>
> [THE STATE]: Objection. Speculation.
>
> THE COURT: Sustained.
>
> Q. Who, in fact called you at that particular time and told you about your cat that burned up? A. Clovis Bowles.
>
> . . . .
>
> Q. To set your house on fire did Kelvin Scott get blamed for it, make you homeless and vulnerable, who has something to gain from that? Who has something to benefit from that? A. Wouldn't be me.
>
> Q. Wouldn't be me. A. I don't know.
>
> Q. Did anyone run to your rescue shortly after that? A. Clovis Bowles.
>
> Q. Did he, in fact . . . try to take you out of town that night? Tried to suade [sic] you to leave out of town and do other things? A. I didn't have nowhere to stay. I didn't have any clothes. I didn't have nothing. I was hysterical. He offered to take me to his daughter's to spend the night.
>
> Q. So that is a yes? A. Yes for what?
>
> Q. That he did run to your rescue, you know, got you vulnerable and homeless and come up and take you to Cedar Rapids. That was a yes? A. He was definitely right there.

On redirect, the State asked Siglin if she knew where Bowles was when she called him after learning of the fire, and Siglin testified she could not say for sure. Siglin testified she and Bowles were present when Scott's vehicle was searched, and her rosary and earrings were found in the vehicle along with framed photographs from her house. She testified the items had been in her house and she had not given Scott or anyone else permission to remove them.

On re-cross, Scott asked Siglin:

> Q. On the night of December the 4th is it true that Clovis Bowles had blowed your phone up, called you numerous times before you, in fact, called him back and asked him for a ride? A. He was calling me at the bar asking me if I would remarry him and . . . he was calling. Yes, he was calling.
>
> . . . .

> Q. Did he make it there to pick you up? A. Yes. Eventually he did. At the police station.
>
> . . . .
>
> Q. . . . What was your response to when he kept asking you to remarry him that night? A. He—There wasn't much there, you know.
>
> . . . .
>
> [SCOTT]: . . . Your Honor, I have . . . copies of Clovis Bowles's cell phone records here. I have copies here where he called her up—
>
> [THE STATE]: I'm going to object.
>
> THE COURT: Excuse me. Don't speak to what your items state. If you have items that you want to have identified, you need to have them handled properly through the witness.
>
> Q. Did [Bowles] seem upset when you kept somewhat putting him off about the marriage? Did he seem somewhat . . . upset? Persistent? A. He says he is upset; that he wished he never would have divorced from me, and we would remarry.
>
> Q. Did it appear that Kelvin Scott was in his way? A. Yes.

Two witnesses who were at the bar that night testified Siglin received calls from Scott and Siglin was upset. One witness testified Siglin told her Siglin needed to call the cops because "Kelvin is going to burn my house down. He said he is going to tear my house up." The other witness testified she heard Siglin say something about "someone saying they were going to fuck her house up."

Officer Jamie Sullivan testified he and Officer Dustin Lindaman responded to Siglin's call. He testified he spoke with Siglin at the bar and she told him Scott had been making phone calls and threatening her. She asked the officers to drive by her house. He testified he went back on patrol thereafter and drove toward Siglin's house. He testified he saw smoke coming from Siglin's residence and contacted dispatch and requested the fire department respond.

Additionally, the State asked Officer Sullivan:

> Q. Did you see Clovis Bowles arrive on scene? A. He was there later, yes.
>
> Q. So he wasn't there when you got there? A. No.

Thereafter, Scott objected stating:

> "[T]he [S]tate is merely doing investigation right here on the stand here. Nothing in . . . this trial information has this question where Clovis Bowles had ever been investigated, and it is merely speculation here what [the State] is doing here.

The court sustained Scott's objection "as to it is not showing in [Officer Sullivan's] report regarding Mr. Bowles." A discussion was then held outside the presence of the jury. The State stated:

> It has been, I guess, a very obvious theme of the defendant's case that he believes or is putting out there that Clovis Bowles may have had something to do with this fire. [Officer Sullivan] has indicated what he observed while he was on scene. This is in response to the [S]tate's questioning which is in response to the defendant's line of questioning on the previous witnesses.

The court then overruled itself and allowed the State to continue questioning Officer Sullivan concerning Bowles at the scene. Officer Sullivan testified Bowles arrived at the scene approximately an hour after he had arrived, and the officer spoke with him. The officer testified Bowles was on the phone with Siglin, and he spoke with Siglin on Bowles's phone.

On cross-examination by Scott, the following exchange occurred:

> Q. . . . Now, by this just coming up about you and Clovis Bowles standing out and chatting and passing the phone back and forth talking to [Siglin], is you all main reason for bringing this up at a later time like this right here is to give you and Clovis Bowles an alibi?
>
> . . . .
>
> A. Is that an alibi?
>
> Q. Yes. Was that an alibi? A. No.
>
> . . . .
>
> Q. While standing there talking with Clovis Bowles did you all smoke a joint? A. No.

> Q. Is it normal procedure during a fresh investigate [sic] into a freshly crime of this nature to stand around and gossip with spectators or the person who might have committed the crime? A. No.
>
> Q. Did you do that? A. No.
>
> Q. I'm getting confused. What is Clovis Bowles? What was he? A. [Siglin's] husband . . . .
>
> Q. So at this time he wasn't considered as a spectator? He was allowed there at the crime scene, in and out of the crime scene? A. He was not allowed anywhere near the crime scene. He was outside the crime scene.
>
> . . . .
>
> Q. Did you see Clovis Bowles exit the side door [of the house]? A. No.
>
> Q. If you had seen him exit the side door, would you sit here and admit on it today? A. Absolutely.
>
> Q. Even if it get you in a little trouble, you still sit here and admit it today?
>
> . . . .
>
> A. If I seen Clovis Bowles, you wouldn't be standing there right now. He would be in jail. I didn't see him leave.

Officer Lindaman testified he also responded to Siglin's call. Siglin told him Scott had been calling her throughout the evening and making threats towards her. "She was concerned about welfare. She was concerned that [Scott] was going to break into her house. He may burn down her house that evening. She wanted to be escorted home. . . ." After he left Siglin, Officer Lindaman testified he heard about the house fire on the police radio and he and several other officers responded to the area. He testified he "observed Mr. Scott driving a white SUV, Tahoe-type vehicle," at an intersection which was "give or take [three] blocks" from Siglin's house. Officer Lindaman and another officer initiated a stop of Scott, but Scott eluded the officers. Officer Lindaman followed Scott for three to five minutes, and the officers' pursuit ended when Scott struck an unattended vehicle. Officer Lindaman testified Scott was told to drop to the ground, but Scott failed to follow the officers' requests and was then tasered.

Scott got back up, and the officers had to physically handcuff Scott "after a short struggle."

Officer Michael Rasmussen testified he inventoried Scott's vehicle thereafter and found several pieces of men's clothing and footwear, some of them still on hangers. In the front of Scott's vehicle, red and grey jewelry boxes were found, along with miscellaneous papers and folders that had Siglin's and Scott's name on them, a white bible, and some framed pictures. Officer Rasmussen testified Scott's vehicle smelled like gasoline.

The officer testified he interviewed Scott and his story changed a couple of times. Scott told him the jewelry was stuff he had bought Siglin and the rest belonged to Scott. Scott also told him the vehicle smelled of gasoline because he had ran out of gas that day and Siglin had brought him a gas can to fill-up the vehicle. Scott told him that during morning hours of December 4, he had gone to a gas station and got gas for his vehicle. The officer obtained the surveillance video from the station, which showed Scott getting gas. Officer Rasmussen testified the video showed Scott with a large man. He opined it would have been "uncomfortable" for the large man to ride in Scott's vehicle if the papers, pictures, and other items were in the car at that time, and he testified it did not appear when they searched Scott's vehicle that the items had been sat on. He also testified that, other than Scott, there had been no other suspects throughout the investigation.

The last witness called by the State was Sam Graham, the I Wireless representative. The State questioned Graham concerning Siglin's cell phone records. The State then proceeded to question Graham concerning an exhibit

containing the cell phone tower records of Bowles's cell phone on the night of the fire. Scott objected, arguing "[t]he [S]tate is introducing evidence that it is not even consistent with trial information." Further argument was held outside the presence of the jury. The State admitted it had not provided a copy of Bowles's cell phone tower records to Scott before calling Graham, but responded:

> Mr. Graham was subpoenaed for this afternoon at least last week. He did come today. After he was subpoenaed for last week I did also this morning ask him to bring some other documents with him. My request was based on Mr. Scott's vein of questioning. His questioning has indicated that he is attempting to link Clovis Bowles to the fire at [Siglin's residence]. And by linking—I mean, that he is saying, in fact, did set that fire. I asked Mr. Graham to bring to me the cell phone tower records of the phone number that has been identified in court on the record as the cell phone of Clovis Bowles. Mr. Graham did bring to me the cell phone tower records of the evening in question. . . .
>
> . . . The [S]tate believes Mr. Graham would be appropriate for the state's rebuttal witness, but since he is here and in connection with [*State v. Ellis*, 350 N.W.2d 178, 182-83 (Iowa 1984),] and considering economy and he is well outside of the county, the [S]tate is asking that it be allowed to address the issues that the defendant has previously brought up.

Scott, through his standby counsel, argued the testimony by Graham concerning Bowles's cell phone tower records was an unfair surprise to Scott, explaining:

> I think it is pretty likely that the [S]tate knew that [the link to Bowles] was going to be Mr. Scott's defense for a long time, and therefore this is evidence that they could have obtained a long time ago and provided to us a long time ago so Mr. Scott could prepare a defense for it.
>
> . . . .
>
> I guess the final thing that Mr. Scott is pointing out to the court is that the [S]tate listed Mr. Graham back on December 31st which is again some time ago. So this is not someone that they could not have communicated with, could not have asked "Do you have additional records? Do you have more details that we can look at?" And so they have had ample time to be aware of this additional exhibit or potential existence of this additional exhibit. . . .

The court ultimately ruled the evidence

> would be proper rebuttal if called at the end of the defendant's case, if the defendant presented evidence. And it seems to be as a means of more that convenience but with the witness coming from out of area, if this matter could be taken care of, the admission of the limited part of this exhibit to show what is necessary for the [S]tate, it would make sense to do that at this time. However, I do believe that, Mr. Scott, you should be given an opportunity to review the document before it is testified to so that you can do a proper cross-examination. I would note that you have not done depositions in any—of any other witnesses in this case.

The court allowed Scott time to review the exhibit, and the trial resumed. Graham testified the records concerned the phone number that had been previously identified as Bowles's number. Graham further testified the record showed a call starting at 11:39 p.m. on December 4, and the cell tower that processed the call was located at 4664 Old Lincoln Highway in Mechanicsville, Iowa. Graham also testified the date and time of the first call to a Waterloo cell tower of that cell number was on December 5 at 1:19 a.m.

On cross-examination by Scott, Graham testified the phone record only showed "where a tower handled the call. I can't tell what the call was about or . . . even who was holding the phone at that time." The State then rested its case.

Scott did not testify. However, he called several witnesses in his defense, including Bowles. On Scott's direct examination of Bowles, the following exchange occurred:

> Q. . . . [Y]ou were served a subpoena to be here for the court today? A. Yes.
>
> . . . .
>
> Q. How did the man allegedly serve the subpoena? A. It was a woman.
>
> Q. Do you remember her name? A. Sherri.

> Q. Did you have a conversation with her? A. Certainly. Nice person.
>
> Q. Nice person. What you and her talk about?
>
> [THE STATE]: Objection. Relevance.
>
> THE COURT: Sustained.
>
> . . . .
>
> Q. Did you ask Sherri to talk with her? A. Sure I did.
>
> Q. Did you . . . tell Sherri [Siglin] is a black whore? A. I—
>
> [THE STATE]: First of all, objection. This is leading, and defendant's testifying. We've already gone over this that this is irrelevant.
>
> THE COURT: The objection is sustained. And we'll have a side bar.
>
> (An off-the-record discussion was held at the bench.)
>
> [THE STATE]: Your Honor, the [S]tate would ask that the last question also be struck from the record.
>
> THE COURT: The . . . question will be struck from the record.

On cross-examination by the State, Bowles testified he was out of town when he heard of the fire at Siglin's house and when he arrived at her home police officers and fire fighters were present. Thereafter, Scott rested his case.

During the State's closing argument, the prosecutor made several statements indicating Siglin testified Scott was going to burn down her house, including "Siglin said I'm worried Kelvin Scott is going to burn down my house. That same night her house is burned down." In Scott's closing argument, Scott stated, among other things:

> I really don't have much to say about [Bowles] because the [S]tate helped me . . . fulfill my goal, my purpose of bringing him here. I didn't drove [sic] [Bowles] to put reasonable doubt in your own mind. [Bowles], wanted to get him to admit that he did this crime. That was my sole purpose for bringing him up here. But the [S]tate . . . stopped all that. They put a stop to all that. For whatever reason it was, I don't know personally.

The case was thereafter submitted to the jury, and the jury found Scott guilty as charged.

After trial, Scott filed several motions, including a motion for a new trial. At the sentencing hearing, Scott's motions were heard by the court. As to the motion for new trial, Scott argued there was "somewhat newly rebuttal evidence in regards to the error made by the courts that were allowing the evidence to be introduced into the court that [he] didn't have a chance to rebut on." Scott then called several witnesses and asked them questions concerning Bowles, as well as questions concerning their testimony at trial. The State objected on numerous occasions, and the court instructed Scott to limit his questions to newly discovered evidence, as the matters he was questioning the witnesses upon were "all matters that were available to [him] at the time of trial . . . ." Scott later explained that "[r]eally nothing come up new, but yeah, a new defense come up top in respects to the . . . area of the court evidence being introduced. It defeated my defense . . . ." The court ultimately denied Scott's motions. Scott was then sentenced to a ten-year prison term for his arson conviction.

Scott filed a direct appeal thereafter, but his appeal was dismissed as frivolous. Scott later filed a pro se application for postconviction relief (PCR). The district court found Scott's filings were "confusing and convoluted." Concerning Scott's complaints regarding issues surrounding Bowles, the court found:

> It appears that [Scott] was attempting in part to defend himself by maintaining [Bowles] started the fire. [Scott] was afforded ample opportunity to present evidence in that regard. [Bowles] had an alibi and was able to demonstrate that he was elsewhere at the time the fire started. Cell phone records corroborated that explanation.

The district court dismissed Scott's application on all alleged points of error.

Scott now appeals. He contends, through his counsel, the PCR court erred in dismissing his PCR application because the trial court erred in three respects: (1) in overruling his objection to the testimony of Sam Graham that was beyond the scope of the minutes of testimony; (2) in denying his motion for a new trial due to prosecutorial misconduct; and (3) in denying his motion for a new trial due the improper exclusion of impeachment evidence. He also asserts several "arguments" pro se.

***II. Scope and Standards of Review*.**

We review summary dismissals of applications for postconviction relief for the correction of errors at law. *Castro v. State*, 795 N.W.2d 789, 792 (Iowa 2011). In determining whether summary disposition is warranted, the moving party has the burden of establishing the material facts are undisputed. *Id*. We examine the facts in the light most favorable to the nonmoving party. *Id*.

***III. Discussion*.**

***A. Minutes of Testimony*.**

On appeal, Scott first argues the PCR court erred in dismissing his application, asserting the trial court erred in allowing Graham to testify about matters outside the scope of the minute of testimony. Scott asserts the State was required to provide a full and fair statement of Graham's testimony in its minute concerning his testimony about Bowles's cell phone tower records, and therefore Graham's testimony was beyond the scope of the provided minute. Additionally, Scott contends "Graham's minute of testimony also was not a meaningful minute from which a defense could be prepared. . . . If proper notice

had been given, Scott would have had a chance to verify whether or not the records were correct."

Upon our review, we find no error by the PCR court. It is true Iowa Rule of Criminal Procedure 2.5(3) provides:

> The prosecuting attorney shall, at the time of filing such information, also file the minutes of evidence of the witnesses which shall consist of a notice in writing stating the name and occupation of each witness upon whose expected testimony the information is based, and a full and fair statement of the witness' expected testimony.

Nevertheless, the "minutes need not list each detail to which a witness will testify" as long as they provide a "defendant with a full and fair statement sufficient to alert him to the source and nature of the information against *him*." *State v. Ellis*, 350 N.W.2d 178, 181 (Iowa 1984) (emphasis added); *see also State v. Walker*, 281 N.W.2d 612, 614 (Iowa 1979).

Here, the minute provided by the State concerning Graham's proposed testimony related directly to showing Siglin's calls the night of the fire to corroborate Siglin's testimony. The minute provided by the State was a full and fair statement of this testimony by Graham sufficient to alert Scott to the source and nature of the information against him. Offered as rebuttal evidence by the State, the State then went on to question Graham concerning his knowledge of cell phone tower records and the cell phone tower records of Bowles on the night of the fire.

Rebuttal witnesses are not required to be disclosed by the State. *See* Iowa R. Crim. P. 2.19(3).

> The reason is apparent: rebuttal evidence is that which explains, repels, controverts, or disproves evidence produced by the other

> side. Until the defendant presents his evidence, the State cannot know if rebuttal is necessary or what direction it should take. As we noted in an earlier case, it often happens on a trial, that a party may reasonably suppose that a fact prima facie shown on the direct examination, will stand as unquestioned on the trial, with other evidence at hand to sustain it. In such a case, if it is contradicted, the court may properly permit the other party to offer additional rebuttal evidence.

*Greiman v. State*, 471 N.W.2d 811, 813 (Iowa 1991) (internal citations and quotation marks omitted). Thus, the State is not precluded from calling witnesses to rebut testimony presented by a defendant when it fails to endorse the name of the witness on the trial information. *State v. Nelson*, 261 Iowa 204, 208, 153 N.W.2d 711, 714 (1967). Moreover, the trial court has considerable discretion in admitting rebuttal evidence, including the discretion to admit evidence that technically could have been offered as part of plaintiff's case-in-chief. *State v. Johnson*, 539 N.W.2d 160, 163 (Iowa 1995).

Although Scott did not testify in his defense, his questioning of the witnesses, as illustrated above, was replete with insinuations, if not direct accusations, of Bowles being responsible for the fire. While Graham testified as to the rebuttal evidence in the State's case-in-chief, it is clear he could have been called as a rebuttal witness after Scott rested his defense. The court merely allowed his testimony at that time for economy and convenience of the witness who lived out of town.

Finally, we note our review of the record shows Scott subpoenaed Bowles's cell phone records, and he himself at one point during the trial sought to introduce Bowles's cell phone records into evidence. Clearly Scott had those records prior to trial and could have also requested the tower information from

the cell phone company. Scott was given the opportunity to review Bowles's cell phone tower records produced by the State before Graham was questioned, and Scott had the opportunity to question Graham about the records. Furthermore, Scott had the ability to call witnesses in his defense at that point to rebut the records if he questioned whether or not the records were correct. He chose not to. The prejudice Scott now complains of did not come from the failure of the State to disclose the existence of Bowles's cell phone tower records in the minutes of testimony, but Scott's own failure to investigate his defense. We conclude the trial court properly overruled Scott's objection in allowing Graham's testimony as a rebuttal witness for the State, and therefore find no error by the court in dismissing Scott's PCR application concerning this issue.

***B. Prosecutorial Misconduct*.**

Scott also argues the PCR court erred in dismissing his application, asserting the trial court erred in denying his motion for a new trial due to prosecutorial misconduct. Specifically, Scott maintains the prosecutor's statements in her closing argument indicating Siglin testified Scott threatened to burn down her house misrepresented the evidence, and because Siglin did not so testify, the statements constituted prosecutorial misconduct. Scott concedes he did not object to the statements during trial, but argues he preserved error by raising the issue on a motion for a new trial. However, the State argues Scott's motion for a new trial failed to preserve this issue for our review. We agree.

Iowa courts have consistently adhered to the principle that error must be preserved before we will address it on appeal. *See, e.g.*, *State v. Seering*, 701 N.W.2d 655, 661-62 (Iowa 2005) (discussing error preservation and refusing to

address issues "deemed unpreserved"); *State v. Hernandez-Lopez*, 639 N.W.2d 226, 234 (Iowa 2002) ("Generally, we will only review an issue raised on appeal if it was first presented to and ruled on by the district court."). This even includes constitutional issues. *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997) ("Issues not raised before the district court, including constitutional issues, cannot be raised for the first time on appeal."). Scott's decision to proceed pro se does not alter our decision. *See State v. Heacock*, 106 Iowa 191, 198, 76 N.W. 654, 656 (1898) ("It may be said in this connection that the appellant was not represented by an attorney in the district court but conducted the defense in his own behalf. He is not an attorney, but that fact does not excuse his failure to observe the settled rules of procedure which govern the trial of causes."); *accord In re Estate of DeTar*, 572 N.W.2d 178, 180 (Iowa Ct. App. 1997); *Metro. Jacobson Dev. Venture v. Bd. of Review*, 476 N.W.2d 726, 729 (Iowa Ct. App. 1991) ("We do not utilize a deferential standard when persons choose to represent themselves. The law does not judge by two standards, one for lawyers and the other for lay persons. Rather, all are expected to act with equal competence. If lay persons choose to proceed pro se, they do so at their own risk.").

A "[m]otion for new trial ordinarily is not sufficient to preserve error where proper objections were not made at trial." *State v. Steltzer*, 288 N.W.2d 557, 559 (Iowa 1980). To preserve error a party must make a specific objection and the trial court must be given an opportunity to rule on the objection and correct any error. *State v. Brown*, 656 N.W.2d 355, 361 (Iowa 2003); *see also State v. Reese*, 259 N.W.2d 771, 775 (Iowa 1977) ("In order for [there] to be a proper

preservation of errors committed by the trial court in the introduction of evidence at trial, objections to evidence must be timely and be raised at the earliest time the error becomes apparent."). Because Scott failed to object to the prosecutor's statements during the closing argument, we conclude his alleged error is not preserved for our review.

Furthermore, even if error had been preserved, we conclude Scott failed to establish any proof of misconduct. *See State v. Musser*, 721 N.W.2d 734, 754 (Iowa 2006) ("In order to establish a . . . violation based upon prosecutorial misconduct, the defendant must first establish proof of misconduct."). A "prosecutor is allowed some latitude during closing arguments, and . . . may argue the reasonable inferences and conclusions to be drawn from the evidence," *State v. Graves*, 668 N.W.2d 860, 874 (Iowa 2003), though "counsel has no right to create evidence or to misstate the facts." *State v. Carey*, 709 N.W.2d 547, 554 (Iowa 2006).

Here, although Siglin did not specifically testify Scott told her he was going to burn down her house, she did testify she requested the officers check out her residence because she was concerned after receiving calls from Scott. Two other witnesses specifically testified Siglin told them Scott said he was going to burn down her house. Another witness testified she heard Siglin say someone was "going to fuck her house up." Based on the evidence presented, we find the prosecutor reasonably drew conclusions and argued permissible inferences during her closing argument, and we accordingly conclude Scott failed establish any proof of misconduct. We therefore affirm the PCR court in dismissing this issue.

***C. Exclusion of Impeachment Evidence*.**

Scott argues the PCR court erred in dismissing his application, asserting the trial court erred in denying his motion for a new trial due the improper exclusion of impeachment evidence. Specifically, he contends the trial court improperly denied him the right to impeach Bowles concerning statements Bowles allegedly made to the server of the subpoena in the case. Scott argues he preserved error on the issue by attempting to present the evidence at trial and then by raising it in his motion for a new trial. The State disagrees, essentially arguing Scott was required to make an offer of proof at trial to preserve the error.

An offer of proof is oftentimes necessary to preserve error. *See generally State v. Schutz*, 579 N.W.2d 317, 318-19 (Iowa 1998); *State v. Harrington*, 349 N.W.2d 758, 760 (Iowa 1984) ("We have often held they are necessary to preserve error."); *State v. Windsor*, 316 N.W.2d 684, 688 (Iowa 1982) ("[P]rejudice will not be presumed or found when the answer to the question was not obvious and the proponent made no offer of proof."). Error is not preserved, absent an offer of proof, unless the whole record makes apparent what is sought to be proven. Iowa R. Evid. 5.103(*a*)(2).

Here, Scott made no offer of proof to the trial court judge as to the relevancy of his questions to Bowles concerning derogatory comments he allegedly made about Siglin, and Scott did not call the subpoena server as a witness during his trial. It is questionable whether the record made apparent what was sought to be proven at that time in the trial. Although Scott did later call the subpoena server during his hearing on his motion for a new trial, and she testified Bowles had made derogatory comments to her about Siglin, this offer

was too late. Scott's decision to proceed pro se does not change his obligation to alert the trial court to the purpose of the testimony or his failure to call the witness during his trial.

In any event, we find the exclusion was harmless error. "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected . . . ." Iowa R. Evid. 5.103(*a*). The rule "requires a harmless error analysis where a nonconstitutional error is claimed." *State v. Newell*, 710 N.W.2d 6, 19 (Iowa 2006). Under this analysis we ask: "'Does it sufficiently appear that the rights of the complaining party have been injuriously affected by the error or that he has suffered a miscarriage of justice?'" *Id*. (citation omitted). We presume prejudice unless the record affirmatively establishes otherwise. *Id*.

Here, we agree with the State that the evidence presented against Scott was overwhelming. We find no error by the PCR court and affirm on this issue.

***D. Pro Se Arguments*.**

Finally, Scott raises some "arguments" pro se. However, "[a] skeletal 'argument', really nothing more than an assertion, does not preserve a claim. . . . Judges are not like pigs, hunting for truffles buried in briefs." *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991). Those arguments that can be discerned from Scott's brief were either not raised below or are not properly presented on appeal. *See* Iowa R. App. P. 6.903(2)(*g*)(3) (stating the argument section shall include "[a]n argument containing the appellant's contentions and the reasons for them with citations to the authorities relied on and references to the pertinent parts of the record . . . [and f]ailure to cite authority in support of an

issue may be deemed waiver of that issue"); *see also McCright*, 569 N.W.2d at 607; *Metro. Jacobson Dev. Venture*, 476 N.W.2d at 729. As a result, these claims of error are not preserved for our review.

***IV. Conclusion*.**

For the reasons stated above, we affirm the PCR court's dismissal of Scott's PCR application.

**AFFIRMED.**