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STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1328

State of Minnesota,
Respondent,

vs.

Devon Larry Green,
Appellant.

Filed August 20, 2018
Affirmed
Kirk, Judge

Hennepin County District Court
File No. 27-CR-16-892

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Kirk, Presiding Judge; Cleary, Chief Judge; and Jesson, Judge.

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

KIRK, Judge

In this direct appeal, appellant asks this court to reverse and remand his convictions and consecutive sentences for two counts of aiding and abetting attempted second-degree

murder, arguing that the district court erred in joining his trial with his codefendant-brother's trial and made several errors at the trial. Because the cumulative effect of any errors alleged by appellant did not deny him his right to a fair trial, we affirm.

FACTS

Around 2:30 a.m. on January 9, 2016, law enforcement responded to reports that two white men had been stabbed across the street from a club in downtown Minneapolis. The two men, A.S. and B.P., had gone out for drinks downtown and were walking to a nearby residence when an altercation occurred with a group of black men who had also been out drinking. A.S. was found lying on the sidewalk with two stab wounds to the neck. A.S. does not remember what happened other than turning around, hearing yelling, and feeling warm on his face before everything went fuzzy.

B.P. received six stab wounds to his neck and face, including to his left eye, and was bleeding profusely when he flagged down a nearby police squad car. B.P. testified that he and A.S. were walking down the street and a couple of men were following them. Words were exchanged, a fight started, and then additional men came from across the street and attacked them. B.P. testified that two men held him down while a third punched and stabbed him. B.P. said that attackers were all black males and that the attack stopped because the stabber cut his hand.

Two patrons were standing in front of the club and witnessed five black males "jump" two white males across the street. At some point, the patrons heard someone yell, "Get in the car!" A security guard from the club was alerted to the situation and came outside as the group of black men ran back across the street, got into a black Cadillac

parked in front of the club, and drove away. One of the men threw a bloody knife onto the sidewalk. The security guard testified that the passenger who got in the backseat behind the driver threw it, but one of the patrons testified that it was thrown from the driver's window. It is undisputed that Davon Matten drove the Cadillac from the scene.

One of the patrons stood by the knife until police arrived and secured it. A.S. and B.P. were taken by ambulance to the Hennepin County Medical Center (HCMC) with critical, potentially life-threatening injuries. The on-duty police deputy at HCMC heard reports of the stabbing and a description of the suspect Cadillac over the police radio. Shortly thereafter, the deputy observed two black men walk into the HCMC emergency room.

Both men had blood on their clothing and one had his hand wrapped. The man with his hand wrapped told the deputy that he had fallen on the ice. The deputy then went outside and saw a vehicle matching the description of the suspect Cadillac. After confirming that it was the vehicle from the stabbing, the deputy followed the vehicle until it parked a half block away from the hospital. The deputy stopped four men as they exited the vehicle. The club security guard was brought to the scene and identified the four men as having been involved in the stabbing, including codefendants-accomplices Davon Matten and Nicholas Durham-Smith. The guard also later identified codefendant-brother Cornelius Green at HCMC.

Meanwhile, another officer at HCMC spoke with the man who had his hand wrapped. The man gave the officer a false name but was later identified as appellant Devon Larry Green by hospital staff. The man with appellant was Cornelius. Appellant was

treated for a severe laceration to his finger. Appellant told hospital staff that he fell on a glass bottle. Appellant had an alcohol concentration of 0.238.

Appellant, Cornelius, Matten, and Durham-Smith were each charged with two counts of aiding and abetting attempted second-degree murder. Appellant's and Cornelius's cases were joined for a jury trial. At the joint trial, A.S. and B.P. testified, as did Matten and Durham-Smith, hospital staff, law enforcement officers, and investigators. Surveillance video from outside the club and still photographs showing a time lapse of the surveillance video were admitted, published for the jury, and discussed with several witnesses. The jury found appellant and Cornelius guilty of both charges.

The district court convicted appellant and sentenced him to consecutive terms of 193 months on count 1 and 153 months on count 2. The district court sentenced Cornelius to concurrent terms of 153 months on count 1 and 173 months on count 2. Appellant asks this court to reverse his convictions and sentences and remand for a new trial.

D E C I S I O N

I. The district court did not err in joining appellant's and Cornelius's cases for trial.

Appellant argues that the district court erred in joining his case with Cornelius's for trial and that the joinder caused him substantial prejudice. In reviewing joinder decisions, an appellate court makes "an independent inquiry into any substantial prejudice to defendants that may have resulted from their being joined for trial." *State v. Powers*, 654 N.W.2d 667, 674 (Minn. 2003) (quotation omitted).

Defendants may be tried jointly if they are alleged to have participated in the same behavioral incident constituting the charged offenses. Minn. Stat. § 631.035, subd. 1 (2016); *State v. Profit*, 591 N.W.2d 451, 458 (Minn. 1999). A district court may order a joint trial after separately considering: "(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. This rule neither favors nor disfavors joinder. *Santiago v. State*, 644 N.W.2d 425, 446 (Minn. 2002).

A. Nature of the offense charged

Appellant contends that the state's evidence failed to show that appellant and Cornelius worked in close concert or that a joint trial would assist a jury in determining each brother's role. The nature of the offense favors joinder where codefendants are charged with the same crimes, a majority of evidence is admissible against both, and the evidence shows that they worked in close concert. *See State v. Jackson*, 773 N.W.2d 111, 118-19 (Minn. 2009).

Here, appellant and Cornelius were charged with the same crimes, for the same incident, occurring at the same time and place, and the allegations against each brother were largely the same. While some of the evidence pointed more directly to appellant's role as the stabber, the majority of the evidence was inculpatory against both.

The record also shows that the brothers' roles were distinguishable from those of the other alleged attackers. Testimony at trial indicated, and the surveillance video shows, that several black males exited the Cadillac and ran across the street to join the fight but that the Green brothers were not among them, allowing the inference that they were already

across the street. Durham-Smith and Matten both testified that the fight started between the Greens and A.S. and B.P. The brothers were also dropped off at HCMC together by the others after the stabbings. This factor favors joinder.

B. Impact on the victim

Appellant maintains that joinder was not necessary to protect B.P. and A.S. from the trauma of testifying at multiple trials and that they still had to testify at two other trials for the codefendants-accomplices. Appellate courts consider "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." *State v. Johnson*, 811 N.W.2d 136, 143 (Minn. App. 2012) (quoting *State v. Blanche*, 696 N.W.2d 351, 371 (Minn. 2005)).

We agree that the additional trauma of having to testify at four trials as opposed to three would have been slight for A.S and B.P., both able-bodied adults. There is also no evidence that the witnesses were particularly traumatized or would have been further traumatized by testifying at four versus three trials. At the same time, the stabbings were violent and A.S.'s and B.P.'s injuries were critical. This factor is neutral.

C. Potential prejudice to appellant

Appellant argues that he was prejudiced by the joinder because he and Cornelius presented different and antagonistic defenses and appellant also raised affirmative defenses. But the brothers did not present inconsistent or antagonistic defenses. Both argued that they were not guilty and that a third-party perpetrator, Matten, was the stabber. *See Powers*, 654 N.W.2d at 675 ("General concern . . . that familial bonds will work against

[a defendant] is not adequate to demonstrate the existence of inconsistent or antagonistic defenses.").

Appellant also contends that the joinder suggested to the jury that the brothers acted together and that the court instructed the jury that if it acquitted appellant, it could not convict Cornelius, necessarily tying the outcome of their cases to one another. But appellant misrepresents the court's instruction, which was that appellant was guilty of aiding and abetting the crime of another person only if the other person committed or attempted to commit a crime. The court did not identify the other person as Cornelius or necessarily link the outcome of the brothers' cases. Further, to the extent that there was evidence inculpating only appellant or only Cornelius, "[w]e have . . . recognized the ability of juries in joint trials to separate evidence that inculpates only one defendant from evidence that inculpates both." *State v. Hathaway*, 379 N.W.2d 498, 502 (Minn. 1985).

Appellant also argues that he suffered prejudice because he only received three peremptory strikes during jury selection as opposed to the five he requested. Under Minnesota criminal procedure, a defendant receives five peremptory challenges and the state receives three. Minn. R. Crim. P. 26.02, subd. 6. If there is more than one defendant, the court may increase each defendant's challenges and increase the state's correspondingly. *Id.* However, "[w]here more than one defendant is being tried jointly, peremptory challenges belong to a side, and not an individual defendant." *Jackson*, 773 N.W.2d at 120.

Here, the district court allowed each defendant three strikes or a total of six for the defense, and allowed the state four strikes. Thus, each side had one more strike than was

required. There is no evidence of how appellant used his strikes at trial, and appellant fails to argue how he would have used two additional strikes. He also fails to show that Cornelius's three strikes did not sufficiently address the two strikes he argues that he was denied. Accordingly, appellant has failed to show evidence of prejudice. This factor favors joinder.

D. Interests of justice

Finally, appellant argues that the interests of justice required separate trials and that a fair trial, not judicial economy, should have been the main priority. A district court may consider judicial economy and the length of separate trials in deciding to join cases. *Id.* at 119. Here, the allegations against each brother were largely the same, and if the matters had been tried separately, the evidence and testimony presented would have been the same or very nearly the same.

Granting a joint trial favored judicial efficiency and economy. The state saved resources by not having to try two cases, and the witnesses and victims had to testify at one fewer trial. At the same time, two additional trials were still necessary for the two codefendants-accomplices who were not joined. Although this slightly weakens the benefit to judicial economy, overall the interests of justice were served by holding one trial instead of two for the Green brothers. This factor favors joinder.

Our inquiry into the factors favoring joinder shows that appellant and Cornelius jointly participated in a single behavioral incident, that appellant was not substantially prejudiced by the joinder, and that the district court did not err in granting joinder.

II. The district court did not clearly err in denying appellant's *Batson* challenge.

Peremptory strikes allow parties to strike potential jurors that they believe will be less fair than others. *State v. Martin*, 773 N.W.2d 89, 100 (Minn. 2009). However, the Equal Protection Clause prohibits peremptory strikes based solely on race. *Batson v. Kentucky*, 476 U.S. 79, 89, 106 S. Ct. 1712, 1719 (1986). We review a district court's *Batson* decision for clear error. *State v. McDonough*, 631 N.W.2d 373, 385 (Minn. 2001).

In reviewing a *Batson* challenge, the district court conducts a three-step analysis. *State v. Diggins*, 836 N.W.2d 349, 354 (Minn. 2013). If the challenger makes a prima facie showing that the strike was based on race, the proponent of the strike must then articulate a race-neutral reason for the strike. *Id.* If the proponent offers a race-neutral reason, the district court must then determine whether the state's reasons were pretextual for purposeful discrimination. *Id.* at 355.

Here, appellant raised a *Batson* challenge to the state's peremptory strike of a prospective juror, a black male named T.R. The district court denied the *Batson* challenge. During voir dire, T.R. disclosed a 1981 criminal conviction, and the district court asked if he thought his race affected that case. Appellant replied, "Yes and no." The court then discussed race with other prospective jurors. As part of a follow-up discussion, the prosecutor asked the only other prospective black male juror if a black male could get a fair trial in America. The prosecutor then asked T.R. the same question but did not ask any other prospective juror. T.R. responded that neither appellant nor Cornelius had a jury of his peers and that the best lawyer could not change that. But T.R. also indicated that he could be fair and that race would not affect his decision on the jury.

Following T.R.'s responses, the state exercised a peremptory strike of T.R. The state gave two race-neutral reasons for the strike: (1) T.R.'s negative experience with his 1981 case; and (2) T.R.'s failure to disclose a separate charge for financial transaction card fraud. The first two steps of the *Batson* analysis are undisputed on appeal. Thus, we review the district court's determination on the third step—whether the state's articulated reasons were pretextual for purposeful discrimination.

The district court did not make explicit findings on the third step, but its implicit ruling in denying the *Batson* challenge was that appellant failed to show that the reasons were pretextual for purposeful discrimination. The court found that T.R.'s lingering feelings about his 1981 conviction and his failure to disclose another criminal charge were valid race-neutral reasons to strike him. The court also found that T.R. showed "some emotion" in speaking about how his 1981 case was handled, and the record shows that T.R. indicated that the police were somewhat overzealous and aggressive. The district court may consider "the demeanor of the juror, the tone used in responding, and other similar factors" in determining pretext. *See State v. McRae*, 494 N.W.2d 252, 257 (Minn. 1992).

At the same time, the district court acknowledged that T.R. could not detach race from his experience, and the record shows that T.R. expressed some concern about the fairness of the criminal-justice system with respect to black males. The basis for a preemptory strike cannot be to exclude "any fair-minded, reasonable black person from the jury panel who expresse[s] any doubt the 'the system' is perfect." *Id.* It is somewhat concerning that the prosecutor only asked the two prospective black male jurors if a black male could get a fair trial in America, and thereafter moved to strike T.R. However, the

record shows that this question followed a larger discussion about race with other jurors that was initiated by the district court. This record supports the district court's implicit finding that the state's reasons for striking T.R. were not merely a pretext to strike T.R. for his race and race-based responses. On this record, we cannot conclude that the district court clearly erred in denying the *Batson* challenge.

III. The reverse-*Spreigl* evidence against Matten was relevant, but any error in excluding it was harmless.

Appellant argues that the district court erred by excluding reverse-*Spreigl* evidence that codefendant-accomplice Matten was charged with terroristic threats and domestic assault for a February 2017 incident with his girlfriend involving a knife because the evidence was relevant to establishing Matten as an alternative perpetrator.

The right to present a complete defense includes the right to present evidence showing that an alternative perpetrator committed the crime with which the defendant is charged. *State v. Blom*, 682 N.W.2d 578, 621 (Minn. 2004). A criminal defendant may "present evidence of other crimes, wrongs, or bad acts committed by the alleged alternative perpetrator in order to cast reasonable doubt upon the identification of the defendant as the person who committed the charged crime." *State v. Jones*, 678 N.W.2d 1, 16 (Minn. 2004).

To introduce "reverse-*Spreigl*" evidence, the proponent must first establish a connection from the alternative perpetrator "to the commission of the crime with which the defendant is charged." *Id.* Here, there was evidence that Matten was at the scene and involved in the assault and stabbings of A.S. and B.P., that he drove the Cadillac from the scene, and that a DNA profile matching A.S. was found on his clothing.

Having met this threshold requirement, the proponent must then establish: "(1) clear and convincing evidence that the alleged alternative perpetrator participated in the reverse-*Spreigl* incident; (2) that the reverse-*Spreigl* incident is relevant and material to defendant's case; and (3) that the probative value of the evidence outweighs its potential for unfair prejudice." *Id.* at 16-17 (footnote omitted). We review the district court's analysis of these factors for an abuse of discretion. *State v. Ashby*, 567 N.W.2d 21, 25 (Minn. 1997). If the district court erred, we then determine whether the error was harmless. *State v. Vance*, 714 N.W.2d 428, 437 (Minn. 2006). An error is harmless if the verdict is "surely unattributable to the error." *Id.*

First, the state does not dispute that there was clear and convincing evidence of Matten's participation in the reverse-*Spreigl* incident. Second, to show that a reverse-*Spreigl* incident is "relevant and material," it "must be similar to the charged offense either in time, location, or modus operandi." *State v. Johnson*, 568 N.W.2d 426, 434 (Minn. 1997) (footnote omitted). "Absolute similarity . . . is not required [but t]he greater the similarity between the [reverse-]*Spreigl* incident and the crime charged, . . . the greater the likelihood that [it] is relevant." *Id.* (citation omitted).

Here, the district court found that the reverse-*Spreigl* incident between Matten and his girlfriend in a residence where Matten grabbed a nearby kitchen knife to threaten her after he had been drinking was a domestic incident and not sufficiently similar to a street fight involving strangers where someone brought a knife. We disagree. This is a stabbing case. Appellant's defense was that someone else stabbed A.S. and B.P. Allegations that Matten was involved in another altercation where he assaulted and threatened someone

with a knife after a night of drinking are relevant to identifying Matten as an alternative perpetrator.

After finding that the evidence was not relevant, the district court indicated that the probative versus prejudicial value of the evidence was less concerning. But even if we assume, without deciding, that the evidence was more probative than prejudicial, and that the district court abused its discretion in excluding this reverse-*Spreigl* evidence, the error was harmless.

In this case, appellant was charged with aiding and abetting attempted second-degree murder. To find appellant guilty, the state had to prove that appellant, or someone he aided and abetted, stabbed A.S. and B.P. intending to kill them, or with reckless disregard for that risk. The state did not have to prove who the stabber was, only that appellant aided and abetted the stabbings. And the state presented a very strong case that appellant aided and abetted attempted second-degree murder.

Furthermore, to the extent it was relevant, appellant was still able to present his defense and argue that Matten stabbed the victims. The jury heard that Matten faced the same charges as appellant, and during Matten's testimony, the defense implied that, and asked if, Matten stabbed the victims. Both sides encouraged the jury to scrutinize Matten's testimony and his role in the assault and stabbings. On this record, we conclude that the exclusion of the reverse-*Spreigl* evidence, even if erroneous, was harmless and did not impact the jury's verdicts.

IV. The error, if any, in admitting hearsay evidence was harmless.

Appellant argues that the district court erred by allowing B.P. to testify about an out-of-court statement made by his emergency-room doctor without an applicable hearsay exception and without proving that the doctor was unavailable. Hearsay is an out-of-court statement "offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Hearsay is inadmissible unless an exception applies. Minn. R. Evid. 802. "A defendant claiming error in the [district] court's reception of evidence has the burden of showing both the error and the prejudice resulting from the error." *State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981).

During the state's direct examination of B.P., B.P. testified that he asked the emergency-room doctor if he was going to die and heard an unknown declarant respond, "You're going to die, motherfucker." The state asked B.P. if he discussed this statement with the doctor, and B.P. indicated that he had. The state did not ask any additional questions. During cross-examination, the defense asked B.P. what he had learned from others at the hospital, if he had heard an unknown voice while in the ER, and if B.P. knew firsthand that the alleged stabber cut himself during the assault or if someone at the hospital told him that. Subsequently, during redirect, the state asked B.P. about what he and the doctor discussed after hearing the unknown declarant's statement. Over appellant's objection, the district court allowed B.P. to respond that the doctor told him the unknown declarant was a suspect in his stabbing and had a cut on his hand.

The district court did not cite to an applicable exception for the admission of the doctor's hearsay statement or find that the doctor was unavailable. Rather, the court found

that the defense "opened the door" for the state to elicit testimony from B.P. about what the doctor at HCMC told him. *See State v. Cermak*, 365 N.W.2d 243, 247-48 (Minn. 1985) (upholding hearsay admission by state to explain delayed case filing where defense raised adequacy of investigation and insinuated that defendant was falsely accused).

We need not determine whether the district court erred in admitting the doctor's hearsay statement because even if the admission was erroneous, it was not prejudicial. Appellant maintains that the doctor's statement was very prejudicial because the club security guard did not identify him as being involved in the stabbings and no one testified that he committed the stabbings. But again, the state did not have to prove who the stabber was to find appellant guilty, and there was other significant evidence of his involvement.

Further, the evidence was otherwise presented. B.P. testified the stabber cut his finger during the attack. The HCMC deputy and HCMC hospital staff testified that appellant arrived with his hand wrapped and was treated for a severely lacerated finger shortly after the stabbings. Durham-Smith testified that appellant indicated in the Cadillac that he stabbed someone and was screaming that he cut himself. Matten also testified that he drove appellant to the hospital after he indicated that he cut himself trying to stab someone. Given this record, any error in admitting the hearsay evidence was harmless.

V. Any error in failing to give an accomplice-corroboration instruction to the jury did not affect appellant's substantial rights.

Appellant argues that the district court committed plain error affecting his substantial rights by admitting Durham-Smith's and Matten's testimony without an accomplice-corroboration instruction. Appellant did not request the instruction before the

codefendants-accomplices testified or during final jury instructions, and no objection was made at trial.

Where, as here, a defendant fails to request, or object to the absence of, a jury instruction, our review is under the plain-error standard. *State v. Reed*, 737 N.W.2d 572, 583 (Minn. 2007). Appellant must show (1) error, (2) that is plain, and (3) that affected his substantial rights. *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). "If those three prongs are met, we may correct the error only if it 'seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.'" *Id.* (alteration in original) (quoting *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001)).

District courts "have a duty to instruct juries on accomplice testimony in any criminal case in which it is reasonable to consider any witness against the defendant to be an accomplice." *Id.* at 689. It is undisputed that Matten and Durham-Smith were charged as codefendants and were accomplices here. *See State v. Henderson*, 620 N.W.2d 688, 701 (Minn. 2001) (defining accomplice as someone who "could have been indicted and convicted for the crime with which the accused is charged"). The state concedes that the lack of an accomplice-corroboration instruction was plain error but argues that it did not affect appellant's substantial rights.

For appellant to establish that his substantial rights were affected, he must show "that there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted); *Reed*, 737 N.W.2d at 583-84. Appellant maintains that Matten's and

Durham-Smith's testimony was the most compelling evidence of his guilt because no other witnesses could establish how the fight began or could identify him as the stabber.

Again, to find appellant guilty of aiding and abetting attempted murder, the state had to prove that appellant, or someone he aided and abetted, stabbed A.S. and B.P. intending to kill them, or with reckless disregard for that risk. The record shows that the state met this burden. Although the accomplices testified about how the fight allegedly started, the roles that each of the four codefendants played, and attempted to shift the blame to appellant and Cornelius, the state was not required to prove who started the fight or who stabbed the victims. And contrary to appellant's argument, there was sufficient evidence proving his participation in the stabbings of A.S. and B.P.

In addition to the codefendants-accomplices' testimony, A.S., B.P., the club patrons, and the club security guard all testified about how the fight and stabbings occurred. And surveillance video and photographs showed appellant at the scene. The deputy on duty at HCMC and hospital staff testified that appellant arrived at the hospital shortly after the stabbings and was treated for a cut finger. The record also showed that the stabber cut his finger during the stabbings. Further, appellant's and B.P.'s DNA profiles could not be excluded from the bloody knife recovered at the scene, and a DNA profile matching A.S. was found on appellant's clothing from that night.

Although the district court did not give the accomplice-corroboration instruction, the court did instruct the jury on how to examine witness credibility. *See State v. Jackson*, 726 N.W.2d 454, 461 (Minn. 2007) (noting that general instructions on credibility alert the jury to conflicting motivations for witnesses' testimony).

The jury learned that DNA profiles matching A.S. and B.P. were found on Durham-Smith's clothing from that night, that Durham-Smith and Matten were facing the same charges as appellant, and that there was a pending no contact order between them. The jury heard their testimony attempting to minimize their roles in the stabbings and attempting to shift blame to appellant and Cornelius and was able to weigh the reasonableness and reliability of their statements. The jury was not given the misconception that the accomplices' testimony should be taken at face value. Matten and Durham-Smith were vigorously cross-examined, and counsel for appellant and Cornelius, as well as the prosecutor, questioned the accuracy and reliability of their testimony during closing argument.

On this record, any error in failing to give the accomplice-corroboration instruction sua sponte was mitigated at trial. Given the other strong evidence against appellant, appellant has not established that the jury's verdicts were substantially affected as a result. *See Reed*, 737 N.W.2d at 584-85 (finding failure to give accomplice-corroboration instruction did not affect appellant's substantial rights where accomplice's testimony sufficiently corroborated by weight of other trial testimony).

VI. Appellant has not demonstrated cumulative error warranting a new trial.

To the extent that we have determined, or assumed without deciding, that the district court erred herein, we have also discussed that none of these errors prejudiced appellant, substantially affected the jury's verdicts, or denied appellant's right to a fair trial. Appellant had the opportunity to cross-examine the state's witnesses and to present a complete defense, including his alternative-perpetrator theory. On this record, appellant

has failed to show that the cumulative effect of any errors was so prejudicial as to warrant a new trial.

VII. Appellant's pro se arguments are without merit.

Finally, appellant submitted a pro se supplemental brief raising the issues of the sufficiency of the evidence, the Confrontation Clause, alleged prosecutorial misconduct, and consecutive sentencing.

First, as previously discussed, there was sufficient evidence in the record to find appellant guilty of both counts, and there is no support for appellant's argument that the forensic testimony and DNA evidence presented at trial was misstated. *See Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (noting deference to verdict if jury, acting with due regard for presumption of innocence and requirement of proof beyond reasonable doubt, could reasonably find defendant guilty of charged offense).

Second, we previously determined that any error in admitting the emergency-room doctor's hearsay statement was harmless. For the same reasons discussed in section IV above, even if we assume that the admitted statement violated the Confrontation Clause, the resultant constitutional error was harmless beyond a reasonable doubt and would not warrant a new trial. *See State v. Caulfield*, 722 N.W.2d 304, 314 (Minn. 2006).

Third, appellant contends that the prosecutor recklessly offered the perjured testimony of accomplices Durham-Smith and Matten knowing that it was false. A prosecutor is an officer of the court, charged with the affirmative obligation to achieve justice and fair adjudication, not merely convictions. *State v. Ramey*, 721 N.W.2d 294, 300 (Minn. 2006). "Generally, a prosecutor's acts may constitute misconduct if they have

the effect of materially undermining the fairness of a trial." *State v. Fields*, 730 N.W.2d 777, 782 (Minn. 2007). Where, as here, the defendant fails to object to alleged prosecutorial misconduct at trial, we review it under a modified plain-error standard. *Ramey*, 721 N.W.2d at 302. If the defendant shows error that is plain, then under the third or "prejudice" prong, the state bears the burden of proving that there is no reasonable likelihood that the absence of the alleged misconduct would have had a significant effect on the jury's verdicts. *Id.*

Here, there is no evidence that the prosecutor recklessly elicited false testimony. Instead, the prosecutor acknowledged the gaps in the accomplices' testimony and encouraged the jury to consider them. The prosecutor's actions did not amount to misconduct, but even if they did, the state met its burden under the third prong. The record shows that the state's case against appellant was strong, with or without the accomplices' testimony. There is no reasonable likelihood that the prosecutor's actions significantly impacted the jury's verdicts.

Finally, appellant challenges the district court's imposition of consecutive sentences, which we review for an abuse of discretion. *State v. Ali*, 895 N.W.2d 237, 247 (Minn. 2017). At sentencing, the district court indicated that it "carefully considered the sentence" in light of appellant's criminal history and the presumptive sentence, and because it found that appellant was "the most serious actor," the court imposed consecutive sentences for the two separate victims and two separate acts. The court's findings are sound and supported by the record, and we cannot conclude that the court abused its

discretion in imposing consecutive sentences for appellant and concurrent sentences for Cornelius.

Affirmed.