STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1363

State of Minnesota,
Respondent,

vs.

Antonio Fransion Jenkins, Sr.,
Appellant.

Filed August 19, 2019
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CR-16-8250

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Kirk, Judge.*

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

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

JOHNSON, Judge

A Hennepin County jury found Antonio Fransion Jenkins, Sr., guilty of attempted second-degree murder and three other crimes based on evidence that he shot two men at close range while they were sitting in a parked car. Jenkins later petitioned for post-conviction relief based on newly discovered evidence, namely, that one of the victims recanted the portion of his trial testimony in which he identified Jenkins, with whom he previously was acquainted, as the shooter. The post-conviction court found that the victim-witness's trial testimony was not false and that his recantation is not genuine and, accordingly, denied the post-conviction petition. We conclude that the post-conviction court did not clearly err in its findings concerning the victim-witness's trial testimony and recantation and did not abuse its discretion by denying the post-conviction petition. We also conclude that the prosecutor did not engage in misconduct at trial. Therefore, we affirm.

FACTS

At approximately 5:30 a.m. on March 19, 2016, Minneapolis police officers were alerted to a shooting in south Minneapolis. When the officers arrived at the scene, one of the victims had fled, and the other victim was lying on the street. The latter victim, K.H.-W., told an officer that the person who shot him was "Tone." During his subsequent hospitalization, K.H.-W. told another officer that "Tone" shot him, and he later identified Tone as Jenkins.

The state charged Jenkins with four offenses: attempted second-degree murder, in violation of Minn. Stat. §§ 609.17, subd. 2; .19, subd. 1(1) (2014); possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2014); second-degree assault with a dangerous weapon inflicting substantial bodily harm, in violation of Minn. Stat. § 609.222, subd. 2 (2014); and second-degree assault with a dangerous weapon, in violation of Minn. Stat. § 609.222, subd. 1 (2014).

The case was tried to a jury on three days in March 2017. The state called ten witnesses. The state's primary witness was K.H.-W., who testified as follows: In the early morning on the day of the shooting, he and a relative, T.J., were sitting in a parked vehicle near the intersection of East Lake Street and Bloomington Avenue South in Minneapolis. K.H.-W. was sitting in the front passenger seat, and T.J. was sitting in the driver's seat. K.H.-W. saw a man approaching the passenger's side of the vehicle whom he immediately recognized as Jenkins. K.H.-W. said to him, "What up, Tone?" Moments later, Jenkins fired a handgun at K.H.-W. and T.J., shooting K.H.-W. in his right arm and his face and shooting T.J. in his back and a leg. T.J. ran away to evade Jenkins. K.H.-W. collapsed on the street. Shortly thereafter, an officer arrived and asked who shot him. K.H.-W. said, "Tone shot me." Two days later, a different officer visited him while he was in an intensive-care unit at a hospital. He told that officer that "Tone" shot him and later identified him in an array of photographs. He was questioned again a few months later when he was an inmate at the correctional facility in Rush City. He told the interviewing officers that a man called "Uncle John" told him that Jenkins shot him because he believed that K.H.-W. was responsible for the death of one of Jenkins's associates. K.H.-W. also

told the officers that, three days after the shooting, he saw Jenkins in a blue Chevrolet Tahoe at a gas station.

The state called eight law-enforcement officers as witnesses, and they generally corroborated K.H.-W.'s testimony. Officer Schliesing testified that, after he arrived at the scene of the shooting, K.H.-W. identified "Tone" as the shooter. Sergeant Metcalf testified that K.H.-W. told her on multiple occasions that "Tone" shot him and that his recollection of the incident was consistent each time he spoke with her. Sergeant Freeman testified that he was with Sergeant Metcalf at the Rush City prison when K.H.-W. told them that Jenkins had shot him.

Jenkins called four witnesses. His wife testified that she owns a blue GMC Yukon but that the vehicle was impounded at the time of the shooting. She also testified that Jenkins was asleep at their home at approximately 5:00 a.m. or 6:00 a.m. on the day of the shooting. Jenkins did not testify.

The jury found Jenkins guilty on all counts. In May 2017, the district court imposed a sentence of 240 months of imprisonment on count 1, a concurrent sentence of 60 months of imprisonment on count 2, and a consecutive sentence of 60 months of imprisonment on count 4.

Shortly after being sentenced, Jenkins was imprisoned at the correctional facility in St. Cloud. Coincidentally, K.H.-W. also was imprisoned there, and the two men were inadvertently assigned to adjacent prison cells for five days in June 2017. During that five-day period, Jenkins made two telephone calls to persons outside the prison in which he described his interactions with K.H.-W. In the first telephone call, Jenkins told the other

person that he and K.H.-W. were in adjacent cells and that he told K.H.-W. to "sign this affidavit and to tell the truth." In the second telephone call, Jenkins told his wife that he needed to talk to a lawyer about an affidavit. During the same time period, K.H.-W. wrote a letter to his wife saying that the man who shot him was in the same prison. Shortly thereafter, K.H.-W.'s wife called the prison to express her concern. A few weeks later, K.H.-W. thanked his wife by telephone for contacting the department of corrections. In that same telephone call, K.H.-W. told his wife that Jenkins had entered his cell, apologized for shooting him, offered him money, and placed money into his canteen account.

In August 2017, Jenkins filed a notice of appeal from his conviction and sentence. In January 2018, while his direct appeal was pending, Jenkins moved to stay the appeal so that he could pursue post-conviction proceedings. This court granted the motion.

In March 2018, Jenkins filed a petition for post-conviction relief. The petition was based on an affidavit that K.H.-W. had executed a couple weeks earlier in which he recanted significant portions of his trial testimony, including his identification of Jenkins as the man who shot him. The affidavit stated that his "statement to police at the scene of the shooting and [his] testimony at Mr. Jenkins's trial were not the truth." He stated, "I did not see who shot me on March 19th," and "I thought it could have been Mr. Jenkins because of our past relationship, but I never saw Mr. Jenkins on March 19th." He also stated, "I later testified that Mr. Jenkins shot me because I did not want to change my story from what I first told police." He further stated that he did not see Jenkins at a gas station in a Chevrolet Tahoe and that he fabricated that event to show that he was able to identify Jenkins.

The district court scheduled an evidentiary hearing on the petition. The parties appeared before the district court in August 2018. The parties stipulated to the admissibility of numerous exhibits, one of which is K.H.-W.'s affidavit. The parties also stipulated that, if K.H.-W. were called as a witness, he would refuse to testify based on his Fifth Amendment right against self-incrimination. Because neither party offered any testimony, the matter was submitted based on the stipulated exhibits and the trial record.

Most of the exhibits in the post-conviction record were offered by the state to rebut K.H.-W.'s affidavit. Included among the exhibits are audio-recordings and transcripts of the telephone calls made by Jenkins and K.H.-W. from the St. Cloud prison in mid-2017, which are described above. Also included among the exhibits is a recording and a transcript of a telephone call between K.H.-W. and his wife in which she confronted him about his recantation. In response, K.H.-W. acknowledged to his wife that Jenkins shot him, that he was telling the truth when he testified at trial, and that he was "under stress" when he sent the January 22, 2018 letter.

In October 2018, the post-conviction court filed a ten-page order in which it denied Jenkins's post-conviction petition. The district court concluded that it was "not reasonably well satisfied that [K.H.-W.'s] trial testimony was false or that his recantation is genuine." Jenkins moved to dissolve the stay and reinstate his direct appeal, and this court granted the motion.

D E C I S I O N

I. Newly Discovered Evidence

Jenkins first argues that the district court erred by denying his petition for post-conviction relief. He contends that he is entitled to a new trial on the ground that newly discovered evidence shows that K.H.-W. testified falsely at trial.

If a criminal offender seeks a new trial based on a trial witness's recantation of trial testimony, a post-conviction court should grant a new trial if:

> (1) the court is reasonably well-satisfied that the testimony given by a material witness is false; (2) without it the jury might have reached a different conclusion; and (3) the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.

Ortega v. State, 856 N.W.2d 98, 103 (Minn. 2014) (citing *Larrison v. United States*, 24 F.2d 82, 87-88 (7th Cir. 1928)). "While the first two prongs must be met for the petitioner to be entitled to a new trial, the third prong is a relevant factor to be considered, but not an absolute condition precedent for granting a new trial." *Ferguson v. State*, 779 N.W.2d 555, 559 (Minn. 2010) (quotation omitted). "The first prong of *Larrison* is met only when the court is reasonably certain that the recantation is genuine." *Id.* at 559-60 (quotation omitted). The circumstances surrounding a recantation may be considered when determining whether the recantation is genuine. *See State v. Walker*, 358 N.W.2d 660, 661 (Minn. 1984).

A post-conviction petitioner bears the burden of establishing that he or she is entitled to relief. *Pippitt v. State*, 737 N.W.2d 221, 226 (Minn. 2007). This court generally applies

an abuse-of-discretion standard of review to the denial of a post-conviction petition. *Matakis v. State*, 862 N.W.2d 33, 36 (Minn. 2015). We apply a clear-error standard of review to determine "'whether there is sufficient evidence in the record to sustain the post-conviction court's findings.'" *Id.* (quoting *Vance v. State*, 752 N.W.2d 509, 512 (Minn. 2008)).

In its order denying Jenkins's petition, the post-conviction court began its analysis by stating that the second requirement is satisfied and that the third requirement is not satisfied. The post-conviction court noted that only the first prong of the *Larrison* test was at issue. The post-conviction court reviewed K.H.-W.'s testimony at trial and stated that he "repeatedly identified Petitioner as the man who shot him." The post-conviction court described the circumstances surrounding K.H.-W.'s recantation as "highly suspicious and indicative of pressure placed on him by Petitioner." Specifically, the post-conviction court stated that a January 22, 2018 handwritten letter signed by K.H.-W., stating that he "provided false testimony" at trial and that he "would like to take [his] statement back . . . to help an innocent man come home," is "inherently suspicious" because it contains two different forms of handwriting, thus providing "very strong evidence that [K.H.-W.] did not write the substance of the recantation letter." The post-conviction court also stated that, even after K.H.-W. signed the January 2018 handwritten letter and executed the March 2018 affidavit, he "*continued* to acknowledge that Petitioner shot him." The post-conviction court concluded as follows:

> Considering all of the information in the record, the Court is not reasonably well satisfied that [K.H.-W.'s] trial testimony was false and that his recantation is genuine. Rather,

> the evidence heavily supports that [K.H.-W.] was pressured by petitioner to recant during the days they were inadvertently housed next to each other at Minnesota Correctional Facility-St. Cloud.

On appeal, Jenkins contends that the post-conviction court erred because K.H.-W.'s "sworn affidavit proves that his trial testimony identifying Appellant as the shooter was false." He also contends that the exhibits introduced by the state at the post-conviction hearing do not undermine K.H.-W.'s affidavit. These contentions collide head-on with the post-conviction court's finding that K.H.-W.'s affidavit is not credible and that the circumstances surrounding the affidavit indicate that Jenkins pressured K.H.-W. to execute it. The same judge presided over the trial and over post-conviction proceedings, and the judge simply did not believe K.H.-W.'s affidavit. The post-conviction court's ultimate finding is supported by voluminous evidence of statements made by Jenkins and K.H.-W. after the trial that strongly suggest that Jenkins pressured K.H.-W. to execute the affidavit recanting his trial testimony. The post-conviction court is in a better position than this court to assess the credibility and reliability of K.H.-W.'s trial testimony and his subsequent affidavit. *See McDonough v. State*, 827 N.W.2d 423, 426 (Minn. 2013); *Opsahl v. State*, 710 N.W.2d 776, 782 (Minn. 2006).

Thus, the post-conviction court did not clearly err in its finding with respect to the first requirement of the *Larrison* test. Accordingly, the post-conviction court did not err by denying Jenkins's petition for post-conviction relief.

II. Claim of Prosecutorial Misconduct

Jenkins also argues that he is entitled to a new trial on the ground that the prosecutor engaged in misconduct at trial. Specifically, Jenkins argues that the prosecutor engaged in misconduct in his direct-examination of a witness, in his closing argument, and in his rebuttal closing argument.

The right to due process of law includes the right to a fair trial, and the right to a fair trial includes the absence of prosecutorial misconduct. *Spann v. State*, 704 N.W.2d 486, 493 (Minn. 2005); *State v. Ferguson*, 729 N.W.2d 604, 616 (Minn. App. 2007), *review denied* (Minn. June 19, 2007). This court applies "a modified plain-error test" to unobjected-to claims of prosecutorial misconduct. *State v. Carridine*, 812 N.W.2d 130, 146 (Minn. 2012). To prevail under the modified plain-error test, an appellant must establish that there is an error and that the error is plain. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). An error is plain if it "contravenes case law, a rule, or a standard of conduct." *Id.* If there is a plain error, the state bears the burden of showing that the plain error did not affect an appellant's substantial rights, *i.e.*, "that there is no reasonable likelihood that the absence of the misconduct in question would have had a significant effect on the verdict of the jury." *Id.* (quotation omitted). "If the state fails to demonstrate that substantial rights were not affected, 'the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.'" *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007) (quoting *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)).

A. Direct Examination of Witness

Jenkins argues that the prosecutor engaged in misconduct by not preparing one of the state's witnesses to refrain from testifying about inadmissible character evidence. During the state's case-in-chief, the prosecutor examined Sergeant Metcalf about the process by which she prepared the photographic array that was presented to K.H.-W. When asked, "how do you develop the photo lineup?," Sergeant Metcalf testified, "There is a database we call MRAP . . . that holds thousands of booking photos." Jenkins objected on the ground that the testimony suggested that he had previously been arrested, and he moved for a mistrial. The district court denied Jenkins's motion for a mistrial but granted his request for a curative instruction.

"It is generally misconduct for a prosecutor to 'knowingly offer inadmissible evidence for the purpose of bringing it to the jury's attention.'" *State v. Mosley*, 853 N.W.2d 789, 801 (Minn. 2014) (quoting *State v. Milton*, 821 N.W.2d 789, 804 (Minn. 2012)). If a prosecutor intentionally elicits inadmissible evidence from a state's witness, a new trial may be appropriate if the inadmissible evidence was prejudicial in the sense that it "played a substantial part in influencing the jury to convict." *See State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010) (quotation omitted); *see also State v. McNeil*, 658 N.W.2d 228, 231-32 (Minn. App. 2003); *cf. State v. Mahkuk*, 736 N.W.2d 675, 689-90 (Minn. 2007) (cautioning that reversal may be appropriate remedy for intentionally eliciting inadmissible evidence even if not prejudicial).

If a prosecutor unintentionally elicits inadmissible evidence, a defendant may be entitled to a new trial if the inadmissible evidence "prejudiced the defendant's case." *State*

v. Richmond, 214 N.W.2d 694, 695 (Minn. 1974). This is so because a prosecutor "has a duty to properly prepare its own witnesses prior to trial." *State v. Underwood*, 281 N.W.2d 337, 342 (Minn. 1979). "The fact that the prejudicial information was volunteered by the witness does not render it less harmful to defendant." *State v. Huffstutler*, 130 N.W.2d 347, 348 (Minn. 1964). But the admission of inadmissible and prejudicial evidence is not reversible error if the prosecutor did not intentionally elicit the testimony, the statement at issue was merely a "passing" reference, and the evidence supporting guilt was "overwhelming." *State v. Haglund*, 267 N.W.2d 503, 506 (Minn. 1978). In addition, the unintentional eliciting of inadmissible and prejudicial evidence is not reversible error if it is harmless beyond a reasonable doubt because "the jury's verdict was surely unattributable to the misconduct." *State v. Whitson*, 876 N.W.2d 297, 304 (Minn. 2016) (quotation omitted).

In this case, the state concedes that evidence concerning a prior booking photograph of Jenkins is inadmissible but contends that its disclosure was inadvertent and did not affect the jury's verdict. There is nothing in the record to indicate that the prosecutor intentionally elicited Sergeant Metcalf's reference to Jenkins's booking photograph, and Jenkins does not argue that it was intentional. The district court gave a curative instruction by telling the jury to disregard the answer, which, we presume, mitigated the prejudicial effect of the evidence. *See State v. Budreau*, 641 N.W.2d 919, 926 (Minn. 2002); *see also State v. Manthey*, 711 N.W.2d 498, 505-06 (Minn. 2006). In light of K.H.-W.'s testimony identifying Jenkins as the shooter, the brief reference to inadmissible evidence likely had very little impact on the jury's verdict. *See Ture v. State*, 353 N.W.2d 518, 524 (Minn.

1984) (concluding that evidence of identification from "mug shots" was "unfortunate" but not prejudicial).

B. Arguments Concerning Burden of Proof

Jenkins next argues that the prosecutor engaged in misconduct by shifting or misstating the burden of proof on four occasions during closing argument. On three of those occasions, he did not object.

First, Jenkins argues that the prosecutor improperly shifted the burden of proof to him by arguing that Jenkins's alibi defense (that he was asleep at home when the shooting occurred) is "not supported by any credible evidence." A prosecutor may argue that a defense or a defendant's argument lacks merit, and a prosecutor may proactively argue against arguments that defense counsel might make. *State v. Salitros*, 499 N.W.2d 815, 818 (Minn. 1993); *see also State v. Martin*, 773 N.W.2d 89, 106 (Minn. 2009). In addition, "the state is free to argue that particular witnesses were or were not credible." *State v. McCray*, 753 N.W.2d 746, 752 (Minn. 2008) (quotation omitted). Furthermore, the supreme court has specifically stated that "a prosecutor's comment on the lack of evidence supporting a defense theory does not improperly shift the burden." *McDaniel*, 777 N.W.2d at 750. For these reasons, the prosecutor did not improperly shift the burden by arguing that Jenkins's alibi defense is not supported by credible evidence.

Second, Jenkins argues that the prosecutor improperly shifted the burden of proof by suggesting that Jenkins did not produce evidence to support his theory that K.H.-W. fabricated the incident at the gas station. In the challenged statements, the prosecutor noted that Jenkins's attorney did not show K.H.-W. a photograph of the GMC Yukon and

questioned whether it was the same vehicle that Jenkins's wife said was impounded. The district court overruled Jenkins's objection to the prosecutor's argument. On appeal, Jenkins contends that the prosecutor implied that he had the burden to prove that the vehicle K.H.-W. claimed to see at the gas station was the same vehicle that was impounded. The prosecutor's statements do not shift the burden at all; they merely argue that there was an absence of evidence to support Jenkins's theory that K.H.-W. was lying about the gas-station incident. *See State v. Nissalke*, 801 N.W.2d 82, 106-07 (Minn. 2011); *McDaniel*, 777 N.W.2d at 750.

Third, Jenkins argues that the prosecutor improperly shifted the burden of proof by arguing that the jurors should vote to acquit Jenkins if they did not believe K.H.-W.'s testimony. The relevant excerpt is as follows:

> What motive would [K.H.-W.] have to lie? What the defense is asking you to believe is that when he is shot, laying on the ground about to die, he's going to make up a story that Antonio Jenkins was the one that shot him. If you believe that, then acquit him.

Jenkins contends that the prosecutor's statement improperly suggested that the jury had to decide between two alternatives. He cites *State v. Strommen*, 648 N.W.2d 681 (Minn. 2002), in which the supreme court concluded that the prosecutor misstated the state's burden of proof by telling the jury to "weigh the story in each hand and decide which one is most reasonable, which one makes the most sense." *Id.* at 690. Jenkins's argument assumes that the jury was given a binary choice, *i.e.*, that the jury *must acquit* Jenkins if they did not believe K.H.-W.'s testimony and, thus, *must convict* Jenkins if they believed K.H.-W.'s testimony. But the prosecutor's statement did not suggest that the jury had only

two choices and did not refer to the burden of proof. The prosecutor's statement simply invited the jury to determine whether they found K.H.-W.'s testimony credible, which is permissible. *See State v. Fields*, 730 N.W.2d 777, 785-86 (Minn. 2007).

Fourth, Jenkins argues that the prosecutor misstated the burden of proof by making the following argument:

> Now, [Jenkins's attorney] also talked about a significant burden, okay? Beyond a reasonable doubt. That is the burden that the State of Minnesota does not take lightly. But, ladies and gentlemen, beyond a reasonable doubt, there is nothing magical about that standard. That's a standard that we've had in this justice system for approximately 200 years. That's a standard that's met in courtrooms just like this all across the country. Do not be intimidated by that standard.

A similar argument was made in *Martin*, in which "the prosecutor told jurors that 'when liberty interests are at stake it's only fair' that the burden rests with the prosecution, but even with the presumption of innocence, many people are still convicted and that proof beyond a reasonable doubt was 'a stiff burden.'" 773 N.W.2d at 105. The supreme court concluded that the prosecutor's argument did not misstate the burden of proof because "it was a legitimate explanation of the State's burden." *Id.* The same is true of the prosecutor's argument in this case.

C. Argument Concerning Society

Jenkins argues that the prosecutor engaged in misconduct by urging the jury to find him guilty to protect society. In the challenged statement, the prosecutor said to the jury:

> Now, obviously, [K.H.-W.] has had his own issues with the courts and the criminal justice system. You as jurors can only imagine why he wouldn't want to come in and use the courts to settle his differences with a man who tried to kill him.

> Sometimes, the State of Minnesota is forced to use its subpoena power to compel reluctant witnesses to testify even when they don't want to. You saw [K.H.-W.]. You saw his demeanor. He didn't want to be here. At times, he was just outright hostile. But, you know what, at the end of the day, he told you who shot him. Now, regardless of what labels we want to put on people or our opinions of them and their lifestyle, we are all human beings. Every one of us. Different in every way. When one human being pulls out a gun on the streets and tries to kill another human being, all of us in society are harmed. As human beings and people, we all know that regardless of who we are, when we're mortally wounded laying on the ground and gasping for air . . ., the last thing you're going to do is make up a story about who did this to you.

A prosecutor's closing argument must be based on the evidence introduced at trial or reasonable inferences from the evidence. *State v. Morton*, 701 N.W.2d 225, 237 (Minn. 2005); *State v. Crane*, 766 N.W.2d 68, 74 (Minn. App. 2009), *review denied* (Minn. Aug. 26, 2009). "It is improper for the prosecutor to make statements urging the jury to protect society or to send a message with its verdict." *State v. Duncan*, 608 N.W.2d 551, 556 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). In this case, the state contends that the prosecutor's purpose was not "to send a message" but, rather, to argue that K.H.-W. was credible "despite his hostility on the stand, his desire not to testify, and his desire not to cooperate with the criminal justice system." The state compares this case to *Ferguson*, in which this court approved of a closing argument in which the prosecutor argued with particularity why the state called reluctant witnesses. *See* 729 N.W.2d at 616. The state's position is corroborated by the fact that, immediately before the challenged statement, the prosecutor commented that K.H.-W. was reluctant to testify against someone

who had shot him. In light of the state's justification for the prosecutor's argument, we cannot conclude that the argument is plainly erroneous.

Even if the argument were plainly erroneous, we nonetheless would conclude that Jenkins was not prejudiced by the argument. Jenkins contends that the statement that "all of us in society are harmed" was "highly prejudicial because there was no debate regarding the fact that a very serious crime took place; someone shot and almost killed" K.H.-W. Jenkins's contention actually suggests that the prosecutor's statement was *not* prejudicial. The jury knew that someone shot K.H.-W. because both parties acknowledged that fact at trial. The issue for the jury was the *identity* of the shooter. K.H.-W. testified that Jenkins was the shooter. We believe that "there is no reasonable likelihood that" the prosecutor's statement that "all of us in society are harmed" had "a significant effect on the verdict of the jury." *See Ramey*, 721 N.W.2d at 302 (quotation omitted).

Thus, Jenkins is not entitled to a new trial on the ground that the prosecutor engaged in misconduct.

Affirmed.