**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A19-1277**

State of Minnesota,
Respondent,

vs.

Antonio Deshaun Collins,
Appellant.

**Filed August 31, 2020**
**Affirmed**
**Cochran, Judge**

Hennepin County District Court
File No. 27-CR-18-8903

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

Erik A. Nilsson, Acting Minneapolis City Attorney, Paula Kruchowski Barrette, Assistant City Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Stan Keillor, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Schellhas, 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

**COCHRAN**, Judge

In this direct appeal, appellant challenges his conviction of carrying or possessing a pistol without a permit in violation of Minn. Stat. § 624.714, subd. 1a (2016). Appellant argues that he is entitled to a new trial because the district court erred by failing to strike a juror sua sponte for bias. He also argues that the district court abused its discretion by limiting cross-examination of the arresting officers. In addition, he contends that the evidence was insufficient to support his conviction. Concluding that appellant has failed to demonstrate grounds for a new trial or reversal of his conviction, we affirm.

## FACTS

On the night of February 14, 2018, two police officers stopped a vehicle driven by appellant Antonio Deshaun Collins. The police stopped the vehicle after one of the officers observed that the vehicle's headlights were "extremely dim" and that the driver was not wearing a seat belt. When that officer approached the stopped vehicle, he could smell marijuana emanating from the vehicle. The officer then searched the vehicle while his partner remained outside with Collins. During the search, the officer found a pistol in the center console. The officers took Collins to the police station to question him. During the interview at the police station, Collins told one of the officers that he had a permit for the pistol, but that the permit was no longer valid. The state charged Collins with possession of a pistol without a permit under Minn. Stat. § 624.714, subd. 1a.

The case proceeded to a jury trial. During voir dire, the district court asked the potential jurors about their feelings and opinions on drugs. A potential juror, Juror C,

informed the court that he "would not be able to be fair if drugs are brought out in this." The district court asked Juror C if he would be able to consider the evidence presented and apply the law as instructed. Juror C responded that "if someone was arrested and had drugs on them, no matter what I was told, I would go guilty automatically." The court then asked if any jurors had "such strong views about drug abuse" that they would be unable to be fair and impartial in this case. Juror C raised his hand.

At the end of voir dire, defense counsel challenged two jurors for cause—neither of which was Juror C. Defense counsel challenged one juror because she stated that she could not be fair and impartial in a case involving firearms. Defense counsel challenged a second juror because she experienced a sexual assault at gunpoint and also expressed concern about whether she could be fair and impartial. The district court granted the first challenge, but denied the second. Defense counsel later used a peremptory challenge to remove the second-challenged juror. Defense counsel had remaining peremptory challenges, but did not challenge Juror C. Juror C served on the jury.

At trial, the state called the two arresting officers to testify. At the time they stopped Collins, both officers were members of the Community Response Team, a team responsible for narcotics and weapons investigations. The first officer testified about his observations that led to the stop. He also testified that he recognized the vehicle that they stopped. And, when he approached the stopped vehicle, he recognized Collins as the driver of the vehicle. The officer was familiar with Collins from an investigation of Collins's brother in 2017. During the 2017 investigation, the officer learned that Collins carried a pistol in his vehicle and that he had a permit to carry the pistol at that time. With regard to the stop at issue

here, the officer explained that he searched the vehicle because he smelled marijuana when he first approached the vehicle. During the search, the officer found a pistol in the center console under the cup holders.

The officer also testified about interviewing Collins at the police station. According to the officer, Collins admitted during the interview that the pistol belonged to him. The officer also testified that Collins indicated that he no longer had a valid permit to carry the pistol. And that Collins did not present him with a valid permit. The officer then testified that, according to records he had accessed, Collins was not issued a new permit for the pistol.

On cross-examination, defense counsel played an audio recording of the interview at the police station. Defense counsel asked the officer if, after the recorded interview ended, he tried to recruit Collins to be an informant. The officer testified that he did not recall, but also stated that he may have had "other conversations" with Collins. Defense counsel then asked the officer if he remembered the specifics of the "other conversations." The state objected on relevance grounds. The district court sustained the objection.

The second arresting officer also testified that he had met Collins during the 2017 investigation and that he knew that Collins had a pistol in the past. The officer acknowledged that a bodycam video of the incident at issue in this case captured him saying that Collins "keeps it in his center console." He also testified that he attempted to drive Collins's car to the precinct where Collins was interviewed. When asked on cross-examination why Collins was brought in to be interviewed—to recruit him as an informant or to investigate the permit offense—the officer replied, "I don't know."

Defense counsel then asked the officer if "that" was "something that has been done before?" At that point, the state objected on relevance grounds and the district court sustained the objection.

After the officers testified, Collins testified in his own defense. He testified that he met the two arresting officers in 2017 when they were executing a warrant at his house concerning his brother. During that interaction, the officers took his pistol and wallet, and brought him to the precinct to be interviewed. Collins testified that, at that time, he had a license to carry. And that, during the 2017 interview, the officers asked him about his brother and if his brother was selling drugs. They also asked Collins if he knew anyone selling large amounts of marijuana. In response, Collins told the officers that he did not interact with anyone selling drugs.

Collins also testified about the February 2018 incident at issue here. He confirmed that the officers pulled him over and that they found a pistol in his car. He denied, however, that there was an odor of marijuana in the car. Collins admitted that the pistol found by the officers belonged to him. He testified that he did not remember when he put the pistol in the car and stated it was an "honest mistake." Collins also testified that after the recorded interview at the police station, there was a "significant conversation." The state objected to further questioning about the unrecorded conversation. The district court sustained the objection.

The jury found Collins guilty of possessing a pistol without a valid permit. Collins appeals.

## D E C I S I O N

Collins raises three issues on appeal: (1) whether the district court plainly erred by failing to sua sponte strike Juror C for bias; (2) whether the district court abused its discretion by limiting cross-examination of the arresting officers; and (3) whether the evidence was sufficient to prove Collins's guilt beyond a reasonable doubt. We address each issue in turn.

### I. Collins's juror-bias argument is not reviewable.

Collins argues that the district court erred when it failed to strike Juror C sua sponte for bias after Collins's trial counsel failed to challenge Juror C. The state argues that under *State v. Stufflebean*, 329 N.W.2d 314 (Minn. 1983), Collins was required to challenge Juror C for bias in district court to preserve the issue on appeal. We agree with the state.

Minnesota courts have held it is "too late" to challenge a biased juror for the first time on appeal. *State v. Thieme*, 160 N.W.2d 396, 398 (1968) (declining to consider appellant's biased-juror argument because the "defendant, after consultation with his counsel, chose to make no . . . challenge" to the juror); *see also Stufflebean*, 329 N.W.2d at 317 (stating that an appellant must challenge the juror for cause to preserve the issue for appeal); *State v. Geleneau*, 873 N.W.2d 373, 379 (Minn. App. 2015) (same), *review denied* (Minn. Mar. 29, 2016). As the supreme court recognized in *Thieme*, allowing a defendant to challenge a juror for the first time on appeal "would extend an invitation to every defendant to leave unchallenged an objectionable juror only to raise the objection upon appeal." 160 N.W.2d at 398.

In *Stufflebean*, the supreme court held that "[i]n an appeal based on juror bias, an appellant must show [1] that the challenged juror was subject to challenge for cause, [2] that actual prejudice resulted from the failure to dismiss, and [3] that appropriate objection was made by appellant." 329 N.W.2d at 317.[1] The first *Stufflebean* requirement leaves no room for an appeal based on juror bias where appellant failed to challenge the juror for cause. *See Geleneau*, 873 N.W.2d at 380 (noting that *Stufflebean* establishes that "an objection is *necessary* for appellate relief, which implies that the absence of an objection in the district court is a sufficient basis for rejecting a biased-juror argument on appeal" (emphasis added)). As we observed in *Geleneau*, the requirement that a defendant first challenge a juror for cause in the district court "is consistent with the principle that the district court is in the best position to determine whether a prospective juror can be an impartial juror because the district court can assess the prospective juror's demeanor and credibility during voir dire." *Id.* Accordingly, *Stufflebean* requires that a defendant must first challenge the juror for bias in the district court to raise the issue of juror bias on appeal.

Collins argues that we should circumvent the challenge requirement in *Stufflebean* and instead review the juror-bias issue pursuant to Minn. R. Crim. 31.02. That rule provides that a "[p]lain error affecting a substantial right can be considered by the court . . . on appeal even if it was not brought to the trial court's attention." Minn. R. Crim.

[1] We note that the supreme court has clarified that an appellant is not required to demonstrate that a juror's bias resulted in actual prejudice. *See State v. Fraga*, 864 N.W.2d 615, 625-26 (Minn. 2015). Rather, the presence of a biased juror is a structural error that requires a new trial, without any inquiry into the consequences of the biased juror's participation. *Id.*

P. 31.02. Collins contends that the issue of Juror C's bias is properly raised on appeal under rule 31.02 because the district court's failure to strike the juror was plain error. The language of rule 31.02, however, is permissive—not mandatory. The rule provides that an appellate court "can" consider a question of plain error, not that it "must." *See generally The American Heritage Dictionary of the English Language* 269, 1162 (5th Ed. 2011) (defining "can" as a word "[u]sed to indicate possibility or probability" and "must" as a word "[u]sed to indicate inevitability or certainty"). And the supreme court decided *Stufflebean* after the promulgation of the rule 31.02 and still required the appellant to challenge the juror for cause to preserve the issue on appeal. *See generally In re Proposed Rules of Criminal Procedure*, No. 45517 (Minn. Feb. 26, 1975) (order adopting the Minnesota Rules of Criminal Procedure). Therefore, we decline to apply the plain-error standard of review and instead apply the standard set forth in *Stufflebean*, which requires Collins to show that he challenged the juror for cause at the district court level. *See State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (noting that we are "bound by supreme court precedent"). Because Collins failed to bring a for-cause challenge to Juror C in district court, the question of whether the district court erred by failing to strike Juror C sua sponte is not properly before us.[2]

[2] Moreover, even if we were to apply the plain-error test, Collins would be unsuccessful. The plain-error test requires a defendant to establish (1) an error; (2) that is plain; and (3) that affects the defendant's substantial rights. *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998). An error is plain "when it contravenes a rule, case law, or a standard of conduct." *State v. Brown*, 792 N.W.2d 815, 823 (Minn. 2011). The error here was not plain because "[n]either the caselaw nor the rules of criminal procedure impose on the district court a duty to strike prospective jurors for cause sua sponte." *State v. Gillespie*, 710 N.W.2d 289, 296 (Minn. App. 2006), *review denied* (Minn. May 16, 2006).

## II. The district court did not abuse its discretion when it limited cross-examination of the arresting officers.

Collins next argues that the district court abused its discretion when it limited cross-examination of the arresting officers regarding an alleged unrecorded conversation because the excluded testimony had the potential to show that the arresting officers wanted to recruit Collins as an informant and were biased against him. The state argues that Collins was afforded an adequate opportunity to question the officers about bias, and therefore the district court did not abuse its discretion in limiting the testimony. We agree with the state.

Under the Confrontation Clause, the accused has a right to confront witnesses. U.S. Const. amends. VI, XIV; Minn. Const. art. I, § 6. "The essence of confrontation is the opportunity to cross-examine opposing witnesses." *State v. Greer*, 635 N.W.2d 82, 89 (Minn. 2001); *see also State v. Brown*, 739 N.W.2d 716, 720 (Minn. 2007) ("[T]he defendant's right to cross-examine witnesses for bias is secured by the Sixth Amendment."). District courts, however, have broad discretion to control the scope of cross-examination. *Greer*, 635 N.W.2d at 89.

In terms of witness bias, "the Confrontation Clause contemplates a cross-examination of the witness in which the defendant has the opportunity to reveal a prototypical form of bias on the part of the witness." *State v. Lanz-Terry*, 535 N.W.2d 635, 640 (Minn. 1995). To establish a violation of the Confrontation Clause, a defendant must show "that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness." *Id.* (quotation omitted). "Bias is a catchall term describing attitudes, feelings, or emotions of a witness

that might affect [the witness's] testimony, leading [the witness] to be more or less favorable to the position of a party for reasons other than the merits." *Id.* (quotation omitted). Thus, not everything a witness testifies to will show bias, and evidence that is "only marginally useful" for that purpose may be excluded. *Id.* Our examination of whether the district court abused its discretion in restricting a defendant's attempted cross-examination to show bias "turns on whether the jury has sufficient other information to make a discriminating appraisal of the witness's bias or motive to fabricate." *Id.* at 641 (quotation omitted).

We conclude that the district court did not abuse its discretion by excluding the attempted cross-examination because the jury had sufficient other information by which to make an appraisal of any bias on the part of the officers. *Lanz-Terry*, 535 N.W.2d at 641. At trial, the jury watched portions of the second officer's bodycam video in which the officer revealed that he knew where Collins kept his pistol before the other officer searched the car. Similarly, each of the officers testified that they knew Collins from a prior investigation of his brother and that they knew Collins had a pistol. Moreover, Collins himself testified, over the state's objection, that the officers tried to recruit him to be an informant in 2017. He described how the officers asked about his brother's involvement with drugs and if he knew of others who sold drugs. Collins also testified that after the interaction in 2017, the officers continued to stop him. And defense counsel played the recording of the police-station interview to the jury where Collins asked the officer if they were talking about the other investigation, and the officer told Collins that they would talk about that later. Finally, while the district court sustained the state's objection to certain

questions regarding the alleged conversation, both officers did answer some questions about the issue on cross-examination before an objection was made by the state on relevance grounds. Accordingly, there was sufficient information by which the jury could evaluate any officer's bias or motive to fabricate without the excluded cross-examination. *Id.*

Moreover, Collins focuses his argument on the motive *for stopping and arresting* him as a basis for showing officer bias. Even though extrinsic evidence may be used to show bias, "courts may exclude evidence that is only marginally useful for this purpose." *State v. Larson*, 787 N.W.2d 592, 598 (Minn. 2010) (quotation omitted). It is unclear to us how additional evidence related to the motive for the stop and arrest would be helpful in showing officer bias on testimony regarding the elements of the crime of carrying a pistol without a license, particularly given that Collins himself admitted that the pistol belonged to him and that he did not have a valid permit. The excluded testimony in this case is only "marginally useful" to show officer bias. *Id.*

In sum, the jury had sufficient information to appraise the officers' bias or motive to fabricate given the evidence presented at trial. Therefore, the district court did not abuse its discretion by limiting the scope of the cross-examination.

**III. There is sufficient corroborating evidence to support Collins's admission.**

Collins next argues that the state failed to prove beyond a reasonable doubt that he did not have a permit and therefore failed to prove an element of the offense—that he did not possess a permit to carry the pistol. The state argues that Collins's admission that he did not have a valid permit is direct evidence of his guilt and that one of the arresting

officers corroborated Collins's admission by confirming that he was not issued a new permit.

We analyze a claim of insufficient evidence by determining whether the evidence, when considered in the light most favorable to the conviction, could reasonably support the verdict with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). In doing so, we assume that the jury believed the state's witnesses and evidence and disbelieved contrary evidence. *State v. Robinson*, 539 N.W.2d 231, 238 (Minn. 1995).

A defendant's confession is direct evidence of guilt. *State v. McClain*, 292 N.W. 753, 755 (1940). However, despite our deference to the jury on matters of credibility, uncorroborated confessions of guilt are not sufficient to support a conviction under Minnesota law. *See* Minn. Stat. § 634.03 (2016) ("A confession of the defendant shall not be sufficient to warrant conviction without evidence that the offense charged has been committed[.]"). Section 634.03 has a dual function: "it discourages coercively acquired confessions and requires that admissions and confessions be reliable." *State v. Heiges*, 806 N.W.2d 1, 10 (Minn. 2011). But section 634.04 does not require that each element of the offense charged be individually corroborated. *Id.* at 13; *see also In re Welfare of M.D.S.*, 345 N.W.2d 723, 735 (Minn. 1984) (stating that "not all or any of the elements had to be individually corroborated" to sufficiently corroborate a defendant's confession). Instead, it "only requires independent evidence of attending facts or circumstances from which the jury may infer the trustworthiness of the confession."

*Heiges*, 806 N.W.2d at 13 (quotation omitted). The statement at issue here relates to only one element of the offense—that Collins did not possess a permit to carry the pistol.

The evidence in this case establishes that, during the traffic stop, Collins admitted that he did not have a permit to carry the pistol. Then, during the interview at the precinct, Collins told the officer that he had a permit to carry the pistol in the past but that it was no longer valid.

To corroborate Collins's confession, the state presented an officer's testimony that Collins admitted the pistol was his and that he did not have a valid permit to carry the pistol. The same officer also testified that Collins did not present him with a valid permit. The prosecutor then asked the officer, "And according to the records, did you have access to—he was not issued a permit, a new permit; is that correct?" The officer replied, "Correct."

Collins argues that because the question regarding the officer's record search was compound and confusing, the state failed to corroborate Collins's confession. We are not persuaded. It is clear that the prosecutor was asking whether the officer found a valid permit in his record search. While we agree the better practice would be to support the confession by other evidence such as the records themselves, the corroboration need only provide the jury with independent evidence to "infer the trustworthiness of the confession." *Heiges*, 806 N.W.2d at 13 (quotation omitted). We conclude that the state presented sufficient evidence to corroborate the attendant facts and circumstances of Collins's confession.

## IV. Pro Se Brief

Collins also filed a supplemental pro se brief. In his brief, Collins describes a number of encounters with the arresting officers and the circumstances surrounding his arrest but does not articulate any legal arguments. Nor does he cite to legal authority. To the extent we are able to discern any legal arguments, the arguments that he raises are similar to those raised in his primary brief. Because Collins's supplemental pro se brief contains no argument or citation to legal authority, we deem the issues raised waived and do not address them except to the extent that we have already addressed similar issues in the preceding sections of this opinion. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002) (noting that allegations of error without "argument or citation to legal authority in support of the allegations" are deemed waived).

**Affirmed.**