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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1607**

State of Minnesota,
Respondent,

vs.

Marcus Anthony Baker,
Appellant.

**Filed March 7, 2022
Affirmed
Bryan, Judge**

Ramsey County District Court
File No. 62-CR-19-8403

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Frederick J. Goetz, Goetz & Eckland P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Worke, Judge; and Florey,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal of his convictions, appellant questions the sufficiency of the circumstantial evidence presented against him, challenges the admissibility of certain evidence, and argues that the prosecutor committed misconduct during the trial. Because

the circumstantial evidence was sufficient to support the convictions and the state has shown that any prejudice resulting from the admission of the challenged evidence or the asserted prosecutorial misconduct was harmless, we affirm.

FACTS

In November 2019, respondent State of Minnesota charged appellant Marcus Anthony Baker with one count of second-degree intentional murder in violation of Minnesota Statutes section 609.19, subdivision 1(1) (2018), and one count of attempted second-degree intentional murder in violation of Minnesota Statutes section 609.19, subdivision 1(1), and section 609.17, subdivision 1 (2018). The state later amended the charges to include accomplice liability for the murder and attempted murder. The case proceeded to trial and the jury found Baker guilty of both counts. Baker appeals the two convictions. Given the arguments on appeal, we summarize the evidence presented and the relevant portions of the trial transcript.

A. Evidence Presented at Trial

On October 27, 2019, police responded to reports of a shooting near the intersection of Kent Street and Central Avenue in St. Paul, Minnesota. When they arrived at the scene, police found a vehicle blocking the nearby intersection of Dale Street and St. Anthony Avenue. The driver of the vehicle, later identified as S.J., was non-responsive and was transported to a hospital where he later died from a gunshot wound. Police also encountered a second individual, identified as W.J., who had been in a separate vehicle and was also injured, but suffered non-life-threatening injuries. There were no witnesses to the shooting who testified at trial.

The state introduced evidence from a surveillance video showing the intersection of Kent Street and Central Avenue. The surveillance video shows that at approximately 11:20 p.m., two vehicles stopped in the street facing opposite directions, one driven by S.J. and the other by W.J. While the two vehicles waited there, a white van approached, slowed down, and drove away without making a complete stop. Officers believed that an occupant of the white van shot at S.J. and W.J., killing S.J. and injuring W.J. Law enforcement subsequently determined that the registered owner of the white van was Brandon Baker (appellant's brother). Investigating officers also obtained video footage from Minnesota Department of Transportation (MNDOT) cameras. The state introduced evidence that, using footage from these cameras, police were able to follow the route of the white van as it headed east on Interstate 94, north on Interstate 35E, and east on Highway 36 before exiting the freeway. Law enforcement also obtained video footage from an apartment complex on Geneva Avenue (the Geneva residence), just a few blocks from where the van exited Highway 36.

The surveillance video from the Geneva residence introduced into the trial record shows that at 11:34 p.m., the white van entered the parking lot. The video shows the passenger door opening and an individual exiting the white van wearing a black hooded sweatshirt, grey pants, and lighter-colored shoes. The video also shows the driver exiting the white van wearing a grey hooded sweatshirt, dark pants, and brown shoes. For the next few minutes, the video shows the passenger and driver moving around the vehicle between the middle and rear portions of the van. The driver handed something to the passenger before the doors were closed, and both individuals walked away from the van. A separate

surveillance video from the Geneva residence shows, at approximately 11:43 p.m., two individuals walking to the detached parking garages in the apartment complex, opening a garage door, and entering the garage. After approximately two minutes, the video shows the individuals exiting the garage, closing the doors, and leaving the apartment complex in separate vehicles. Police later learned that the garage used by the two individuals was rented by a female, D.H.; that the garage doors open and close with a remote control; and that there was only one garage opener issued per apartment. Law enforcement officers also determined that D.H. and Baker have a child together.

During the investigation, law enforcement located the Facebook page for appellant's brother. The state introduced evidence obtained from the Facebook page, including photographs of appellant's brother wearing a black baseball hat and a black hooded sweatshirt, like the passenger of the white van was wearing at the time of the shooting. Law enforcement also determined that appellant's brother was living in an apartment complex on Hoffman Road in White Bear Lake (the Hoffman residence). Police obtained surveillance videos from the Hoffman residence for October 27 and 28, 2019. Surveillance videos from the morning of the shooting show that the white van was parked at the Hoffman residence that morning and that appellant's brother left an apartment at the Hoffman residence wearing a black hooded sweatshirt and black pants, similar to what the passenger of the white van was wearing at the time of the shooting. Surveillance video also shows appellant's brother returning to the Hoffman residence just before midnight wearing the same clothes.

In the week following the shooting, a police officer observed the white van parked in the parking lot of an Applebee's restaurant in Hudson, Wisconsin. Law enforcement officers obtained surveillance video from the restaurant and introduced portions into evidence at the trial. That evidence showed the white van entering the parking lot on October 28 at 8:44 a.m. Law enforcement officers also obtained and introduced portions of surveillance videos from the Geneva residence and the Hoffman residence recorded on the morning of October 28, 2019, the day after the shooting. The surveillance video from the Hoffman residence on that morning shows appellant's brother wearing clothes similar to what the passenger of the white van was wearing at the time of the shooting, exiting an apartment, walking in the parking lot, and entering a dark green SUV with a silver stripe (the dark green SUV) before driving away.

Surveillance video from the Geneva residence on the morning after the shooting shows a person wearing a red jacket by an open garage near where the white van was parked. The video then shows the dark green SUV approaching and parking next to the open garage, the white van and the person wearing the red jacket stopping near a dumpster for a few minutes, and both the white van and the dark green SUV driving away from the Geneva residence. Surveillance footage from the Applebee's parking lot on the morning after the shooting shows both vehicles arriving, the driver of the white van exiting the van and entering the dark green SUV, and the dark green SUV leaving the Applebee's parking lot. On November 5, 2019, police officers conducted a traffic stop on the dark green SUV and arrested the occupants: Baker and his brother. At the time, Baker was wearing a red

jacket that is the same color and style as the red jacket worn by the person seen on video from the Geneva residence on the morning after the shooting.

The state presented evidence at trial regarding the execution of search warrants at the Hoffman residence, Baker's residence,¹ and the Geneva residence. From the Hoffman residence, law enforcement officers recovered the title for the white van, .40 caliber ammunition, and a Glock magazine loaded with .40 caliber bullets. From Baker's residence, police recovered Baker's driver's license, a grey hooded sweatshirt with a zipper, a pair of brown boots, a pair of black pants, and a used target from a shooting range with smaller caliber bullet holes in it (similar to .22 caliber). At the Geneva residence, police photographed a birth certificate identifying Baker and D.H. as parents of a child.

Law enforcement also obtained surveillance video footage from the Geneva residence in the days and weeks prior to the shooting. Portions of these videos were introduced at trial. According to the evidence presented by the state, the videos on more than one occasion clearly show Baker's face while he is wearing a grey hooded sweatshirt and tan boots like what the driver of the white van was wearing at the time of the shooting. The state offered the testimony of Sergeant Chou Jim Yang who reviewed the surveillance videos showing Baker at the Geneva residence. Based on this knowledge, Yang provided testimony regarding the video from the Geneva residence shortly after the shooting occurred. Yang testified that he compared "the build and the movement and the gait to

¹ Appellant refers to the residence on Parkway Drive as "Marcus Baker's residence" and "appellant's apartment."

known footage of [Baker]” and that they were “definitely” consistent. In his opinion, Baker was the driver of the white van on the day of the shooting.

B. Admission of Challenged Evidence and Use of Leading Questions

The surviving victim, W.J., did not testify at trial, and the parties discussed the admissibility of testimony regarding fear of retaliation and gang affiliation. Specifically, prior to presenting its case-in-chief, the state notified the district court that it was not introducing gang or intimidation evidence. The district court then instructed both parties “not to elicit any testimony regarding any retaliation or gang affiliation, and instruct the witnesses to do the same and not elicit—or not volunteer that information until either party has brought that to the [c]ourt’s attention for a ruling and the [c]ourt has ruled on how to have that information into the trial.”

During direct examination, Yang testified that he had worked “quite often” on cases in which witnesses or victims were reluctant to speak with police. After the district court overruled a relevancy objection, Yang gave the following testimony:

Quite often, a lot of time witnesses don’t stay behind because they don’t want to be involved, they don’t want to be linked into it. They’re scared for their relationship to be part of it. Victims, sometimes, they don’t corroborate because they’re [sic] fear of retaliation. They’re fearful that –”

Baker’s counsel objected and asked to approach the bench. After a brief bench conference, the district court overruled the objection and Yang continued:

[T]here are many times, especially the victims, they don’t want to be continuing it, fearing that the suspects or the person who may have caused harm to them may come back and retaliate or come hurt then [sic] them again. Sometimes they also don’t want to participate in it because they’re fearful of their address

and their information, which is detailed in the police report because of the facts of the incident will be discovered. And those are stuff that most of the time they're fearful of.

Yang also testified specifically about his contacts with W.J. during the investigation. The district court overruled a hearsay objection about W.J.'s overall demeanor and Yang testified that W.J. "was reluctant to share information. He was sharing that he was kind of withholding information." Defense renewed its hearsay objection and the district court sustained and struck the last portion of Yang's answer. Yang then described his other encounters with W.J., testifying that each time W.J. appeared reluctant to share information and that as trial approached, he was "worse" and did not "want to be part of anything at all."

Towards the end of Yang's testimony, the district court sustained a series of objections to the state's leading questions:

Q. Does [the white van] drive by coming to a slow roll but never a complete stop?

A. Yes.

Q. And does it pepper [S.J.'s] car with shots over –

BAKER'S COUNSEL: Objection; leading, Your Honor.

THE COURT: Sustained.

....

Q. And comparing it to the MnDOT video, does it show the vehicle to travel at a very high rate of speed?

A. Yes.

BAKER'S COUNSEL: Objection; leading.

THE COURT: I'm going to have you just pause between the question. I'll overrule the objection. You've already answered "yes." Counsel, ask your next question.

....

Q. And then you know that Brandon Baker left the next morning from his apartment on Hoffman?

A. Yes.

Q. Picked up by this defendant in that blazer?

BAKER'S COUNSEL: Objection; leading and speculation.

THE COURT: Sustained.

.....

Q. All right. Thank you for that clarification. And is Brandon then dropped back at Geneva?

BAKER'S COUNSEL: Objection; leading. This whole line of questioning is leading, Your Honor.

THE COURT: Sustained.

Q. Do you see – does the timing line up from when Brandon Baker left Hoffman to when his vehicle – the vehicle he got into arrives at Geneva?

A. Yes.

Q. Is he still wearing a black sweatshirt and grey sweatpants?

A. Yes.

Q. And does that person then get into the van and drive it to Hudson?

BAKER'S COUNSEL: Objection; leading.

THE COURT: Sustained.

Q. Is that vehicle seen driving first to the dumpsters at Geneva?

A. Yes.

Q. And then to Hudson?

A. Yes.

Q. Where he gets back—the driver of the van gets back into the SUV?

BAKER'S COUNSEL: Objection; leading.

THE COURT: Sustained.

Q. And then when a search warrant was executed of Brandon Baker's vehicle, did they find .40 caliber rounds?

A. Yes.

Q. And a ma—

BAKER'S COUNSEL: Objection; Your Honor.

THE COURT: Sustained. Counsel, do you want to approach?

THE COURT: Counsel, you can proceed.

BAKER'S COUNSEL: Thank you.

Q. Again, Sergeant, was there ammunition found at the apartment of Brandon Baker?

A. Yes.

Q. What caliber?

A. .40, 9 and—

BAKER'S COUNSEL: Objection, Your Honor; outside the scope.

THE COURT: Sustained.

The state also inquired of Sergeant Michael Dunaski regarding the recovery of a shooting range target, which was admitted over Baker's objection. For example, to establish foundation for a series of exhibits, the state asked Dunaski what was depicted in the photographs taken at the time that law enforcement executed the search warrant at Baker's residence: "[Exhibit] 288? A: A gun range style target picture." After the exhibits were received, the state asked a nearly identical question of the same witness: "288? A: A photograph, including a picture of a silhouette target from a gun range." The state also introduced the item itself through the same witness:

Q. Sergeant, this is Exhibit 420. What should be inside of that bag?

A. Item 64, indoor shooting range target from the first floor bedroom.

Q. Will you please open the bag and identify the contents?

A. (The witness opens the package.)

Q. Can you hold it up, please?

A. (Complies.)

Q. And that is a shooting range target?

A. Correct.

Q. All right. Thank you.

On cross-examination, Baker's counsel asked a few substantive questions and the state followed up on redirect examination:

Q. I'm going to hand you Exhibit 420. Is that the gun range target?

A. Yes, sir.

Q. There's some holes in it, right?

A. Yes, there were.

Q. I know you can't probably tell the caliber of the gun, but can you tell me the general size of the holes, what you would expect the caliber of that gun to be that made that? I don't expect you to be perfect.

A: Yeah. I'm not a ballistics expert, but it looks to be a smaller caliber, like a .22 or something.

Q. A larger gun would leave a larger hole, right?

A. Yes, sir.

Q. Possibly tear the paper a little bit differently than what's shown on there, right?

A. Possibly, yes, sir.

BAKER'S COUNSEL: I have no further questions.

THE COURT: Any redirect?

REDIRECT EXAMINATION BY THE STATE:

Q. To what degree of certainty can you say that that's a .22?

A. Once again, I'm not a ballistics expert known to matching up the paper to targets, but the hole seems consistent with a smaller—a smaller caliber.

The parties did not inquire further regarding the shooting target. In total, the transcript from the ten days of trial proceedings exceeds 1,450 pages, including approximately 600 pages of testimony.

In closing arguments, the parties focused on what inferences the jury could make from evidence whose admission is not challenged on appeal. The state's closing arguments included nearly 5,700 words and Baker's closing argument included approximately 2,700 words. The state's attorney briefly mentioned that at the scene of the incident, W.J. was "reluctant to tell what happened," and the attorney made a single, passing reference to the recovery of the shooting range target as part of a list of items recovered from the various search warrants: "And they found a shooting target."

DECISION

I. Sufficiency of Circumstantial Evidence

Baker argues that the circumstantial evidence presented is insufficient to support his convictions because it does not prove the identity of those involved in the shooting. In response, the state contends that the circumstantial evidence proves that Baker drove the white van. We agree with the state and conclude that the circumstances proved are consistent with guilt and inconsistent with any inference to the contrary.

Where, as here, “the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict,” we apply the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). “[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* In assessing the sufficiency of circumstantial evidence, we conduct a two-part analysis. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). First, we “identify the circumstances proved,” *id.* at 329, deferring to the jury’s credibility determinations and weighing of the evidence, *Harris*, 895 N.W.2d at 600. Second, we consider whether the circumstances proved are consistent with guilt and inconsistent with a rational hypothesis other than guilt. *Andersen*, 784 N.W.2d at 329-30. “Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than

guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). In this second step, no deference is given to the jury’s verdict. *Loving*, 891 N.W.2d at 643.

In this case, the state proved the following circumstances:

- On October 27, 2019, an occupant of a white van registered to appellant’s brother shot at S.J. and W.J. near the intersection of Kent Street and Central Avenue in St. Paul, Minnesota. S.J. died as a result of the gunshot wound.
- The white van traveled to the Geneva residence. Two occupants exited the vehicle: the driver wore a grey hooded sweatshirt, black pants, and tan boots, and the passenger wore a black sweatshirt, grey pants, and lighter shoes. Using a remote garage door opener issued to D.H. (the mother of Baker’s child), the driver of the white van entered a garage rented by D.H.
- Additional videos depict Baker at the Geneva residence in the past and videos show him wearing clothes like what the driver wore at the time of the shooting. The videos from more than one occasion clearly show Baker’s face and show him wearing a grey hooded sweatshirt and tan boots.
- Law enforcement officers recovered a grey hooded sweatshirt, black pants, and tan boots from Baker’s residence.
- In addition to wearing clothes like Baker’s, the driver of the white van has a build like Baker’s and walks with a gait that is notably similar to what Baker looks like when he is walking. Officer Yang believed that, based on this information, Baker was the driver of the white van.
- In addition, on the morning of the shooting, the white van was parked at the Hoffman residence and appellant’s brother left the Hoffman residence wearing clothes that match what the passenger wore at the time of the shooting. Appellant’s brother returned to the apartment just before midnight and approximately forty minutes after the

shooting. He was still wearing the clothes that match what the passenger was wearing at the time of the shooting.

- Law enforcement officers recovered the title for the white van, .40 caliber ammunition, and a Glock magazine loaded with .40 caliber bullets from the Hoffman residence.
- On the morning after the shooting, appellant's brother left the Hoffman residence in the dark green SUV, again wearing a black sweatshirt and grey sweatpants like what the passenger of the white van wore at the time of the shooting. Appellant's brother arrived at the Geneva residence where he met with a person wearing a red jacket by the open garage near where the white van was parked. After stopping near a dumpster for a few minutes, both the white van and the dark green SUV left the Geneva residence. The white van and the dark green SUV traveled to the Applebee's parking lot in Hudson, Wisconsin. After parking the white van, the driver exited the van and entered the dark green SUV before the dark green SUV drove away from the parking lot.
- On November 5, 2019, police officers stopped the dark green SUV and arrested Baker and his brother. At the time, Baker was wearing a red jacket that is the same color and style as the red jacket worn by the person seen at the Geneva residence near the white van on the morning after the shooting.

These circumstances connect Baker on the day of the shooting to the white van, to the Geneva residence, to D.H.'s parking garage, and to his brother. The circumstances proved also tie Baker to the white van, the Geneva residence, the dark green SUV, the Applebee's restaurant, and his brother on the morning after the shooting. In particular, the clothes that Baker wore on multiple previous occasions match the ones that the driver of the white van wore on the day of the shooting, and the red jacket Baker was wearing when he was arrested matches the one that the person wore who was with the white van on the

morning after the shooting. Finally, Baker has the same build and the same gait as the driver of the white van. When viewed as a whole, we conclude that the only rational inferences to draw from these circumstances are consistent with Baker's guilty verdicts.

II. Remaining Arguments

Baker also challenges the admission of certain evidence and argues that the prosecutor's conduct compels reversal. In addition, Baker argues that the cumulative effect of the trial errors and the prosecutor's conduct violated his right to a fair trial. The state argues that the district court did not err, that the prosecutor's conduct was proper, and that none of these alleged errors impacted the jury's verdict. We conclude that the state has established that the asserted errors are harmless.

Erroneous admission of evidence and prosecutorial misconduct warrant reversal only when prejudicial. For objected-to evidence, as at issue in this case, we determine whether the error substantially influenced the jury to convict. *E.g., State v. Loebach*, 310 N.W.2d 58, 64 (Minn. 1981) (noting that the erroneous admission of evidence warrants reversal only when the error substantially influences the jury to convict).

For objected-to prosecutorial misconduct, we apply one of two standards of prejudice. If the case involves claims of serious prosecutorial misconduct, appellate courts do not reverse if the misconduct is harmless beyond a reasonable doubt. *State v. Caron*, 218 N.W.2d 197, 200 (Minn. 1974). For less serious prosecutorial misconduct, appellate courts apply the same standard as used when evaluating claims of objected-to admission of evidence: determining whether the misconduct likely played a substantial part in influencing the jury to convict. *Id.* at 200. Since *Caron*, however, the Minnesota Supreme

Court decided *State v. Mayhorn*, 720 N.W.2d 776, 785 (Minn. 2006), and *State v. Swanson*, 707 N.W.2d 645, 658 (Minn. 2006). The “continued viability of the two-tiered approach set forth in *State v. Caron* . . . remains to be decided.” *State v. McCray*, 753 N.W.2d 746, 754, n.2 (Minn. 2008); *see also State v. Whitson*, 876 N.W.2d 297, 304 n.2 (Minn. 2016) (noting that “[r]ecent cases have questioned whether the two-tiered *Caron* standard for reviewing objected-to misconduct remains viable,” and listing cases); *State v. Graham*, 764 N.W.2d 340, 348 (Minn. 2009) (noting that the Minnesota Supreme Court has “yet to decide whether the two-tiered approach for objected-to prosecutorial misconduct as set forth in *State v. Caron* remains viable”).

In deciding what effect challenged evidence or conduct had on the verdict, this court considers “the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it.” *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002); *see also State v. Powers*, 654 N.W.2d 667, 679 (Minn. 2003) (holding that a statement did not amount to misconduct because “[t]he improper statement was only two sentences in a closing argument that amounted to over 20 transcribed pages”); *State v. Glaze*, 452 N.W.2d 655, 662 (Minn. 1990) (holding that alleged prosecutorial misconduct in closing arguments did not require a new trial because “the remarks were isolated and not representative of the closing argument when reviewed in its entirety”); *State v. Johnson*, 616 N.W.2d 720, 728 (Minn. 2000) (concluding that alleged prosecutorial misconduct was not prejudicial in part because the jury was properly instructed that remarks made by the attorneys in closing were not evidence).

In this case, Baker argues that we should vacate his convictions because of the erroneous admission of general testimony regarding reluctant witnesses, the admission of evidence regarding a used shooting range target, and the prosecutor's use of leading questions. Assuming without deciding the presence of error and prosecutorial misconduct, we conclude that the state has established that the errors and misconduct were harmless beyond a reasonable doubt.² The challenged portion of Yang's testimony comprises approximately four pages of trial transcript, out of more than 700 pages of testimony. The state's attorney made one passing reference in closing argument, stating that at the scene of the incident, W.J. was "reluctant to tell what happened." The relevant testimony regarding the shooting range target makes up even fewer pages of transcript than Yang's general testimony regarding reluctant witnesses, and the only substantive testimony occurred during Baker's cross-examination of Dunaski. In the state's closing argument, counsel made a single, passing reference to the recovery of the shooting range target during the recitation of the items recovered from the various search warrants: "And they found a shooting target." Although the state's closing arguments included nearly 5,700 words, only these six related to the shooting range target. Given the manner of presentation and the lack of emphasis by the state, these statements are harmless beyond a reasonable doubt.

In addition, although the state did ask a series of leading questions, these questions asked Yang to affirm what was depicted on a video and about the recovery of .40 caliber casings. The district court admitted into evidence the video itself, as well as the .40 caliber

² Given this determination, we need not address whether the two-tiered approach is viable, whether the district court erred, or whether the prosecutor committed any misconduct.

casings, photographs of the casings, and additional testimony regarding the casings. Baker does not challenge the admission of these items on appeal. In addition, the district court instructed the jury before and after the trial that attorneys' questions were not evidence.

For these reasons, we conclude that the state established that the alleged errors and misconduct—even when considered together—were harmless and did not deprive Baker of a fair trial.

Affirmed.